

# **MAINSTREAMING ENVIRONMENTAL CRIMES: THE ROLE OF THE BNS AND BNSS IN INDIA’S GREEN JUSTICE**

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## **ABSTRACT**

The Bharatiya Nyaya Sanhita, 2023 and Bharatiya Nagarik Suraksha Sanhita, 2023 modernize India’s criminal justice system while reinforcing accountability for environmental harm. Although specialized laws like the Environment Protection Act, 1986 remain primary, the BNS and BNSS criminalize environmental degradation through provisions on public nuisance, fouling water, noxious emissions, negligent handling of hazardous substances, and disease-spreading acts. Judicial precedents, constitutional mandates under Articles 21, 48A, and 51A(g), and doctrines such as “polluter pays” and “precautionary principle” strengthen this framework. The effectiveness of these provisions, however, depends on robust enforcement and coordinated action.

**Keywords:** Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, environmental crimes, public nuisance, constitutional right to life, polluter pays, precautionary principle.

## **I. Introduction**

The criminal justice system in India has recently undergone significant change. A comprehensive review of India's current criminal laws is required due to shifts in the socioeconomic landscape, technological advancement, and the emergence of new crimes. The government has responded by enacting two brand-new criminal codes, namely Bharatiya Nyaya Sanhita, 2023 and Bharatiya

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Nagarik Suraksha Sanhita, 2023 respectively replaced, Indian Penal Code,1860 and Code of Criminal Procedure,1973.

The primary laws governing India's criminal justice system are the Bharatiya Nyaya Sanhita and the Bharatiya Nagarik Suraksha Sanhita, hereafter referred to as BNS and BNSS, respectively. A closer look at the BNS and BNSS reveals implicit provisions that also address environmental crimes and provide a framework for prosecution and punishment of green collar crimes, despite the fact that specific environmental laws in India regulate environmental offenses. In this essay, we will talk about relevant BNS and BNSS provisions that deal with environmental crimes.

### **Green Collar Crimes**

In criminology, the term "green collar crime" or "environmental crime" is a relatively recent concept that has seen significant recognition in recent decades. The illegal acts that harm or degrade the environment in such a way that it becomes noxious or hazardous to human health are referred to as environmental offenses. A wide range of individual and business activities can constitute environmental offense. Water pollution occurs when industries or individuals throw or dump waste or untreated hazardous substances into water bodies. These actions degrade the quality of the water, making it unsafe for human consumption and destabilizing aquatic life. In a similar vein, industries pollute the atmosphere by releasing noxious gases and microscopic particles. The purpose of green collar crimes was to make the world a safer place for everyone by making such acts illegal and punishing those who committed them.

### **Environmental infractions covered by BNS**

The BNS is the primary part of the Indian criminal justice system that defines and punishes various crimes. Environmental offenses are not explicitly defined by BNS. However, if you read it carefully, you'll find that chapter xv of BNS contains provisions pertaining to environmental offenses. This chapter defines and penalizes a number of environmental offenses, including public nuisance, malicious and negligent acts that are likely to spread infection, and negligent

use of poisonous substances which includes violations of the environment in its interpretation. These clauses are discussed further down.

### **Public Nuisance (Section 270)**

According to BNS Section 270<sup>2</sup>, "Public Nuisance" is any act or omission that "commonly injures, threatens, or annoys the public." Under the heading of danger, annoyance, and harm to the public, this section provides a comprehensive definition of the term "public nuisance," which encompasses a variety of environmental offenses. A fine of up to one thousand rupees has been mentioned in Section 292 of the BNS for this offense.

Using loud speakers, honking in cars, or even performing construction work can make people "annoyed" in public in residential areas or near hospitals and schools. If they cause a significant amount of annoyance or inconvenience to the general public, these kinds of activities may be considered a "preview of public nuisance" as defined in Section 270. According to the standards of a reasonable man, a nuisance is any noise that has the effect of materially interfering with the usual comforts of life.<sup>3</sup>

In addition, improper garbage and waste disposal in public areas or bodies of water can both be dangerous and "annoying" to the general public. These activities can potentially invoke the provisions of this section because they contribute to environmental pollution and can pose health risks.

It may also be considered a public nuisance when factories or other commercial establishments release smoke, odors, or dangerous gases into residential areas. Under this provision, emissions of this kind can be challenged in court if they have a negative impact on public health and well-being.

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<sup>2</sup> Bharatiya Nyaya Sanhita, 2023 S 270

<sup>3</sup> Ratanlal & Dhirajlal, THE INDIAN PENAL CODE, pg380,36th Edition, 2021.

It is common knowledge that these provisions will be useless without effective enforcement measures. Legislators have included effective mechanisms in the Bharatiya Nagarik Suraksha Sanhita as a result of this consideration.

A comprehensive framework for dealing with public nuisances, such as unsanitary conditions, air, water, and noise pollution, is provided in Chapter xi of the BNSS, 2023. For reducing these problems, effective, quick, and preventative solutions are provided in this chapter. Specifically, Section 152 grants the authority to issue conditional orders for the removal of public nuisances to district, sub-divisional, or executive magistrates who have been specifically authorized by the state government. This provision allows the magistrate to order the person causing the nuisance to either remove or address the issue. The magistrate can make the order final if the person objects. Importantly, any order made in accordance with Section 152 is final and cannot be challenged in any civil court.

The case of *Municipal Council, Ratlam Municipal Corporation v. Vardhichand*<sup>4</sup> is a landmark decision in this regard. It was the first time a court had ordered a government agency to carry out its statutory responsibilities in order to eliminate a public nuisance. The public nuisance was the subject of a complaint filed with the Magistrate in accordance with Section 133 of the Criminal Procedure Code (CrPC). The Municipal Council was tasked by the Magistrate with removing the annoyance. The High Court upheld the Magistrate's decision and issued similar directions. The lower courts' decisions were also upheld by the Supreme Court, which ordered the municipality to take the necessary steps to resolve the matter. Also in the case of *Subhash Kumar v. State of Bihar*,<sup>5</sup> the Court held that the right to life under Article 21 includes the right to enjoyment of pollution-free water and air.

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<sup>4</sup> Ratlam Municipal Corporation v. Vardhichand, MANU/SC/0171/1980.

<sup>5</sup> AIR 1991 SC 420

Further in *M/s. Nagarjuna Paper Mills Ltd. v, Subdivisional Magistrate and Revenue Divisional Officer*,<sup>6</sup> the court take the view that the Water (Prevention and Control of Pollution) Act, 1974, doesn't override the Sub-Divisional Magistrate's powers under Section 133 the provision of which has now mentioned under Section 152 BNSS.

### **Acts likely to spread of infection of disease**

Anything done by either knowingly, such as "Malignly" or unknowingly, for example sections 271 and 272, respectively, for "negligently" spreading infectious diseases. Environmental offenses can be included within the scope of this liability principle. Sections 272 and 271 are in violation by businesses, factories, or individuals who, knowingly or unknowingly, release harmful and toxic substances into the environment untreated. For instance, businesses that know that dumping toxic waste into rivers will harm aquatic life and contaminate drinking water; these actions not only pose a threat to human health but also have a long-term negative impact on the environment. A significant decision was made by the Madras High Court regarding the emission of contaminated effluents and dust particles by a factory. These emissions not only encroached on the land that was adjacent to the factory but also posed a threat to the health and well-being of the people who lived there. The court decided that the factory's actions met the requirements of a number of offenses, including section 269 of the Indian Penal Code, which is now incorporated into section 271 of the BNS.

### **Fouling water of public spring or reservoir**

Section 279 of the BNS was enacted with the explicit intention of preserving and protecting the sacredness of aquatic ecosystems, whereas Section 270 criminalized all environmental offenses. Communities rely heavily on public springs and reservoirs to obtain clean water for drinking and other household uses. This section explicitly prohibits any voluntary and intentional actions by individuals that can "corrupt or foul" these water bodies, thereby diminishing their suitability for

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<sup>6</sup> *M/s. Nagarjuna Paper Mills Ltd. v. Sub-Divisional Magistrate and Revenue Divisional Officer*, MANU/AP/0022/1987.

daily use, in recognition of the significance of maintaining their purity. This section specifically seeks to protect the sacredness of "public springs or reservoirs," which refers to ponds, tanks, and lakes. On the other hand, this section does not apply to flowing water sources like rivers and streams. Dumping wastes and pollutants into these water bodies is therefore an offense under this section.

The offender will be held accountable for any violations of this provision, which could result in up to six months in prison. Consequently, in addition to being imprisoned, the person convicted under this section may also face a fine of up to Rs.5,000/-.

It is essential to keep in mind that the non-obstante clause in Section 60<sup>7</sup> of the Water Act does not automatically nullify Section 277 of the IPC, which is now mentioned in Section 279 of the BNS. The non-obstante clause only applies when the specific intent was to exclude or invalidate Section 277 of the IPC; the provision itself would have used explicit language to accomplish this.

In *M.C. Mehta v. Union of India*,<sup>8</sup> (Ganga Pollution Case), the Supreme Court ordered closure of tanneries releasing untreated waste into the Ganga, holding that the right to clean water is part of the right to life.

### **Creating a toxic environment for health <sup>9</sup>**

By prohibiting any acts that taint the atmosphere and make it hazardous to human health, Section 280 of the BNS serves as a mandatory provision designed to protect individuals' well-being. This section emphasizes the significance of preserving the atmosphere's natural composition, which is necessary for human survival.

Any act that alters the atmosphere's composition by disrupting its natural equilibrium is referred to as vitiating. This can apply to a wide range of activities, including the release of toxic gases, the release of harmful pollutants, and the excessive use of chemicals that can pollute the air. In

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<sup>7</sup> Water (prevention and Control of Pollution) Act, 1974

<sup>8</sup> AIR 1988, SC 284

<sup>9</sup> Bharatiya Nyaya Sanhita, 2023 S 280.

particular, the Kerala High Court ruled in the well-known *Ramakrishna V. State of Kerala*,<sup>10</sup> case that the provisions of Section 280 can also apply to smoking in public places. Make a case.

The term "noxious" is just as important because it means that a resource has been exploited or used in such a way that it is no longer useful for its intended use and is also harmful to anyone who consumes it or comes into contact with it. In the context of Section 280, the term "noxious" refers to air pollution that is harmful to human health. By prohibiting any act that can taint the atmosphere, Section 280 of the BNS is an essential step toward protecting the environment. A fine of up to one thousand rupees may be imposed on anyone found to have broken section 280.

In the landmark case of *Indian Council for Enviro-Legal Action v. Union of India*,<sup>11</sup> the Supreme Court emphasized that polluting industries are strictly liable for remediation of environmental damage.

### **Negligent behavior in relation to a poisonous substance:<sup>12</sup>**

Infractions involving the careless handling of poisonous substances are specifically addressed in Section 286 of the BNS. This provision emphasizes the need for responsible individuals and businesses to handle, store, and dispose of toxic materials with due care in order to prevent harm from being caused by their improper management. By doing so, section 286 aims to protect people and the environment as well as prevent injuries caused by improper handling of poisonous substances. It is essential to note that this section's liability provision only applies to negligent acts and does not require actual harm or disastrous consequences to have occurred.

Additionally, the Supreme Court in *M.C. Mehta v Union of India*,<sup>13</sup> (Oleum Gas Leak Case), ruled that the businesses have a strict legal obligation to prevent hazardous emissions.

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<sup>10</sup> R.Ramakrishna Rao V. State of Kerala, MANU/SC/0122/1968.

<sup>11</sup> AIR 1996, SCC 1531

<sup>12</sup> Bharatiya Nyaya Sanhita, 2023 S 286.

<sup>13</sup> M.C. Mehta v. Union of India, MANU/SC/0092/1986.

The individual will be subject to monetary penalties, including up to six months in prison, for any violation of this provision. Consequently, in addition to being imprisoned, the person convicted under this section may also face a fine of up to Rs.5,000/-.

In Sterlite Industries Case,<sup>14</sup>the Madras high court ordered closure of a copper smelter for toxic gas emissions affecting residents.

### **Judicial Expansion of Environmental Rights**

Indian judiciary has expanded the ambit of general criminal law and constitutional rights to cover environmental protection:

- Article 21 (Right to Life) has been interpreted to include the right to a clean and healthy environment (Subhash Kumar v. State of Bihar).
- Public Interest Litigations (PILs) have been an effective mechanism for environmental protection, as seen in M.C. Mehta cases on air and water pollution.
- Principles of Environmental Jurisprudence
  - ❖ Polluter Pays Principle (Indian Council case),
  - ❖ Precautionary Principle (Vellore Citizens Welfare Forum v. Union of India, 1996),
  - ❖ Sustainable Development (Narmada Bachao Andolan v. Union of India, 2000)have been judicially incorporated.

### **Conclusion:**

The main Indian criminal codes, the Bharatiya Nyaya Sanhita (BNS) and the Bharatiya Nagarik Suraksha Sanhita (BNSS), have their respective environmental offense provisions examined in this article. The objectives of these provisions are to safeguard a healthier environment for future generations, encourage sustainable development, and prevent environmental pollution.

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<sup>14</sup> 2013, Madras HC



Notably, the Environment Protection Act of 1986, the Water (Prevention and Control of Pollution) Act of 1974, the Air (Prevention and Control of Pollution) Act of 1981, and the Wild Life (Protection) Act of 1972 are the primary pieces of specialized legislation in India that deal with environmental offenses. However, a number of judicial decisions have made it clear that these laws do not take precedence over general criminal laws.

Environmental violations continue to be one of the most undervalued offenses in contemporary legal practice despite the existence of these laws. In light of this, recent alterations to criminal laws have attempted to strengthen enforcement by making environmental crimes explicitly illegal.

In conclusion, the BNS and BNSS's environmental provisions are a significant step toward protecting India's environment. However, the impact of these provisions will be determined by the commitment of law enforcement, policymakers, and the judiciary to uphold and enforce them. In the end, a safer and more sustainable environment for everyone depends on the effective implementation and enforcement of these laws.