

STRICT LIABILITY VS. NEGLIGENCE IN ENVIRONMENTAL OFFENCES: EVALUATING BHARTIYA NYAYA SANHITA, 2023'S APPROACH

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ABSTRACT

Environmental degradation represents an existential crisis demanding robust legal accountability frameworks. Indian jurisprudence has historically oscillated between negligence-based liability and judicial innovations in strict liability, particularly following landmark rulings like M.C. Mehta v. Union of India. The Bhartiya Nyaya Sanhita, 2023 (BNS), which replaces the Indian Penal Code, 1860, offers a critical juncture to evaluate legislative approaches to criminal liability for environmental harm. This paper employs doctrinal methodology to analyze primary legal sources including BNS provisions, judicial precedents, and comparative frameworks assessing whether the new code adopts the judiciary's strict liability principles for hazardous activities. The study reveals that while the BNS enhances penalties and clarifies corporate liability, it retains a negligence-based core ("rash or negligent act") without codifying absolute liability for environmentally hazardous enterprises. This represents a significant missed opportunity to align criminal law with ecological imperatives, potentially undermining deterrence and environmental justice.

KEYWORDS: *Absolute Liability, Bhartiya Nyaya Sanhita 2023, Environmental Crimes, Negligence, Strict Liability etc.*

1. INTRODUCTION

The latter half of the 20th century marked a pivotal period for environmental law, witnessing its prominent emergence as a distinct legal discipline. This development was largely catalyzed by escalating industrialization and the resultant environmental degradation, which fostered a growing global awareness of ecological crises.¹ Landmark international agreements, such as the 1972 Stockholm Conference on the Human Environment² and the 1992 Rio Declaration on Environment and Development³, underscored a collective commitment to environmental protection and sustainable development. These foundational conferences enshrined key principles that continue to guide modern environmental jurisprudence, including the precautionary principle, the polluter pays principle, and the concept of intergenerational equity. Contemporary environmental law has expanded beyond traditional pollution control and resource conservation to intersect profoundly with human rights,

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¹ Philippe Sands, *Principles of International Environmental Law* 15-18 (4th ed. 2018).

² *Report of the United Nations Conference on the Human Environment*, U.N. Doc. A/CONF.48/14/Rev.1 (1972).

³ *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26 (Vol. I) (1992).

international trade, and energy policy, reflecting the multifaceted nature of environmental challenges.⁴

Historically, common law mechanisms, primarily the law of nuisance, offered the initial, albeit limited, recourse for environmental harm. Nuisance actions typically allowed private individuals to seek damages or injunctions only when direct harm to land could be demonstrated, such as from noxious smells or escaped substances.⁵ However, this private enforcement model proved woefully inadequate for addressing the burgeoning scale of industrial pollution and the systemic threats to common resources like air, water bodies, and biodiversity. The limitations of traditional tort law in confronting widespread, diffuse, and often transboundary environmental degradation became increasingly apparent. The inadequacy of individual common law remedies in the face of complex industrial impacts necessitated a fundamental shift in legal thinking.⁶ The focus moved from merely protecting individual property rights through *ex-post* compensation to embracing a broader concept of collective environmental stewardship and safeguarding public health through *ex-ante* public regulation and prevention. This philosophical reorientation underscored that environmental harms transcended private property boundaries, affecting public goods and demanding a more systemic, regulatory response. The concurrent rise of international environmental law further highlighted the transboundary nature of these harms, emphasizing the need for state responsibility beyond national borders to address issues like climate change, ozone depletion, and biodiversity loss.⁷

Jurisprudentially, the tension between fault-based negligence and no-fault strict liability reflects deeper philosophical conflicts between industrial growth models and ecological boundaries. The Indian Constitution, as originally adopted in 1950, did not contain explicit provisions for environmental protection. It was only with the 42nd Amendment in 1976 that environmental protection found a place, introducing Article 48A, which mandates the state to "protect and improve the environment," and Article 51A(g), which imposes a fundamental duty on citizens to protect the "natural environment".⁸ Crucially, these provisions, while foundational, were initially considered directive principles and fundamental duties, lacking direct legal sanction for their violation. The Supreme Court of India recognized this imperative in *M.C.*

⁴ Edith Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* 23-45 (1989).

⁵ J.H. Baker, *An Introduction to English Legal History* 412-15 (4th ed. 2002).

⁶ David Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* 104-07 (2012).

⁷ Patricia Birnie et al., *International Law and the Environment* 125-30 (3d ed. 2009).

⁸ *The Constitution of India* art. 48A, art. 51A(g).

Mehta v. Union of India (1987)⁹, crafting the revolutionary doctrine of "absolute liability" that discarded the 19th-century *Rylands v. Fletcher*¹⁰ exceptions. This judicial innovation acknowledged that hazardous industries profiting from environmental risk must bear absolute responsibility for consequences—a principle later integrated into civil liability frameworks but conspicuously absent in criminal law. The Indian Penal Code (IPC), drafted in 1860, relied on antiquated negligence provisions (Sections 284, 304A) with penalties bearing no proportionality to modern industrial harms. Corporate accountability remained particularly elusive under the IPC's "directing mind" doctrine, requiring prosecutors to pinpoint individual culpability in complex organizational structures—a near-impossible task as evidenced by the Bhopal case's three-decade legal quagmire.

The Bhartiya Nyaya Sanhita, 2023—touted as India's first comprehensive criminal code reform since independence—arrives amidst unprecedented ecological stress. Its treatment of environmental liability warrants rigorous scholarly examination: Does it embrace the judiciary's progressive jurisprudence? Does it align with global best practices? This paper contends that the BNS represents a paradoxical legislative moment—procedurally modern yet substantively regressive on environmental accountability. By retaining negligence as its cornerstone while ignoring the *M.C. Mehta* doctrine's transformative potential, the new code risks perpetuating a cycle of ecological impunity. Through systematic analysis of its provisions, comparative frameworks, and empirical evidence of enforcement challenges, this research illuminates critical gaps in India's quest for environmental justice.

1.1 OBJECTIVES OF STUDY

This research aims to:

1. Determine whether the BNS integrates strict/absolute liability principles for environmental offences arising from hazardous activities, comparing its approach with judicial precedents and the IPC framework.
2. Assess the practical impact of the BNS's liability standards on deterrence, corporate accountability, and environmental justice outcomes.

2. RESEARCH METHODOLOGY

This study employs doctrinal legal methodology centered on critical analysis of primary sources: the BNS (Act 45 of 2023), corresponding IPC provisions, landmark judgments (*M.C. Mehta*, *Rylands*, *Indian Council for Enviro-Legal Action*), and specialized environmental statutes (Environment Protection Act

⁹ *M.C. Mehta v. Union of India*, (1987) 1 SCC 395 (India).

¹⁰ *Rylands v. Fletcher*, (1868) LR 3 HL 330 (UK).

1986; Water Act 1974). Secondary sources include peer-reviewed articles from Indian and international journals, Law Commission reports, and comparative jurisprudence from the EU, UK, US, and Commonwealth jurisdictions. The research integrates statutory interpretation, precedent analysis, and policy evaluation to examine Sections 26(2), 27(2), 28(2), and 29(2) of the BNS—provisions governing criminal liability for environmental harm—assessing their alignment with ecological imperatives and proposing evidence-based reforms.

3. Content/data analysis

A) foundations of liability in environmental law

Environmental law, like other branches of jurisprudence, relies on distinct standards of liability to attribute responsibility for harm.¹¹ The primary frameworks are strict liability and negligence, embodying fundamentally different philosophical approaches to accountability. Strict liability operates as a "no-fault" standard.¹² This legal doctrine imposes responsibility for damages or injuries irrespective of the defendant's fault or intent. Within environmental law, it is typically applied to inherently hazardous or ultrahazardous activities, such as the handling, storage, or disposal of toxic substances or the operation of high-risk industrial facilities. The core principle is that those who engage in activities posing substantial risks to public health and the environment should bear the costs of any resultant harm, even if they exercised reasonable care to prevent it. Its historical roots lie in the seminal English case of *Rylands v. Fletcher* (1868), which established liability for damage caused by the escape of dangerous things brought onto land, irrespective of negligence. The rationale for its application in environmental contexts is multifaceted: it serves as a powerful deterrent against high-risk activities; ensures victims are compensated by shifting the loss burden to the benefiting entity; promotes regulatory compliance and preventative investment; and simplifies the plaintiff's burden of proof by focusing on the hazardous activity and the harm caused, rather than proving a failure of care.¹³

In contrast, negligence represents the "fault-based" standard.¹⁴ It requires proof that the defendant failed to exercise reasonable care, leading to environmental harm. This principle recognizes the severe consequences such harm can have for human health, ecosystems, and the economy. Establishing a negligence claim typically necessitates proving four key elements. Firstly, a duty of care must exist, meaning the defendant owed a legal obligation to the plaintiff or the environment to act reasonably, often arising from statutory

¹¹ Philippe Sands, *Principles of International Environmental Law* 56 (3d ed. 2012).

¹² William H. Rodgers, Jr., *Environmental Law* § 5.3 (2d ed. 1994).

¹³ Steven Shavell, *Foundations of Economic Analysis of Law* 189 (2004).

¹⁴ Richard A. Epstein, *Cases and Materials on Torts* 231 (11th ed. 2016).

provisions like the Clean Air or Clean Water Acts.¹⁵ Secondly, a breach of that duty must be shown, demonstrating the defendant failed to act as a reasonably prudent person would, potentially involving non-compliance with regulations or best practices.¹⁶ Thirdly, causation must be proven, linking the defendant's breach directly to the environmental harm – a task often complicated by diffuse harm, multiple contributing factors, or long latency periods.¹⁷ Finally, actual damages or loss suffered by the plaintiff as a result of the breach must be established.¹⁸ Despite requiring proof of fault, negligence remains a crucial avenue for addressing environmental harm, particularly involving regulatory violations, and can lead to civil liabilities like fines and remediation orders, or even criminal penalties for willful misconduct.

Two overarching principles further shape liability in environmental law: the "Polluter Pays" Principle (PPP)¹⁹ and the Precautionary Principle.²⁰ The PPP, a cornerstone of international environmental law, asserts that those responsible for pollution should bear the costs of managing it to prevent damage. Originating from economic concepts like Pigouvian taxes addressing negative externalities, it evolved into a recognized legal principle, prominently featured in the 1972 Stockholm Declaration²¹ and the 1992 Rio Declaration.²² The PPP dictates that polluters should internalize the costs of pollution prevention and control measures mandated by authorities, ideally reflecting these costs in the price of goods and services. Its application includes mechanisms like carbon pricing. However, challenges persist, such as defining "the polluter" in complex scenarios, distinguishing individual from state responsibility, and limitations in ensuring full compensation, especially under fault-based liability or capped strict liability schemes. The Precautionary Principle addresses risk management under scientific uncertainty. It posits that preventive measures should not be postponed if an action poses a plausible risk of serious or irreversible harm to public health or the environment, even without full scientific consensus. Enshrined in instruments like the EU Treaty (Article 191) and applied in regulations such as REACH (chemicals) and general food law, it prioritizes proactive environmental protection and public health over awaiting conclusive proof of harm, requiring only that a potential risk be identified.

Prior to the enactment of the Bhartiya Nyaya Sanhita (BNS) in 2023, India's environmental liability regime was a complex framework built on common law,

¹⁵ *Clean Air Act*, 42 U.S.C. § 7401 (1970).

¹⁶ *Restatement (Second) of Torts* § 282 (Am. Law Inst. 1965).

¹⁷ Richard W. Wright, *Causation in Tort Law*, 73 Calif. L. Rev. 1735 (1985).

¹⁸ *Restatement (Second) of Torts* § 431 (Am. Law Inst. 1965).

¹⁹ OECD, *The Polluter Pays Principle: Definition, Analysis, Implementation* 7 (1975).

²⁰ Carolyn Raffensperger & Joel Tickner eds., *Protecting Public Health and the Environment: Implementing the Precautionary Principle* 15 (1999).

²¹ *Stockholm Declaration on the Human Environment*, U.N. Doc. A/CONF.48/14 (1972).

²² *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26 (1992).

specific statutes, and landmark judicial innovations.²³ A pivotal Indian contribution was the Doctrine of Absolute Liability, developed as a response to industrial disasters and the inadequacy of existing laws. The horrific Bhopal Gas Tragedy (1984), where a methyl isocyanate leak caused massive casualties, exposed severe deficiencies, including insufficient penalties under the Indian Penal Code (IPC) like Section 304A (death by negligence, max 2 years imprisonment) and inadequate civil compensation. This context led to the Supreme Court's groundbreaking ruling in *M.C. Mehta v. Union of India* (Oleum Gas Leak Case, 1987).²⁴ Rejecting the applicability of the *Rylands v. Fletcher* rule (strict liability) to modern hazardous industries, the Court propounded the stricter rule of "absolute liability." It held that an enterprise engaged in inherently dangerous industries owes an absolute, non-delegable duty to ensure no harm results to the community. This doctrine eliminated common law exceptions available under strict liability (e.g., act of God, act of stranger) and barred defenses based on reasonable care or absence of negligence. Crucially, the Court also introduced the "deep pockets" doctrine, linking compensation to the enterprise's magnitude and financial capacity to maximize deterrence. This doctrine was solidified in cases like *Indian Council for Enviro-Legal Action v. Union of India* (1996)²⁵, where it was applied alongside the PPP, making polluters bear the full cost of environmental restoration, and firmly establishing the right to a healthy environment as part of the fundamental right to life under Article 21 of the Constitution.

Statutory frameworks prior to BNS 2023 provided specific liability standards.²⁶ The comprehensive Environment (Protection) Act (EPA), 1986, enacted post-Bhopal, empowered the Central Government to set environmental standards, regulate industries, and impose penalties. Crucially, the Jan Vishwas (Amendment of Provisions) Act, 2023, significantly amended the EPA (effective July 1, 2024), decriminalizing many offenses. Section 15, which originally prescribed up to five years imprisonment, now imposes monetary penalties ranging from ₹1 lakh to ₹15 lakhs, plus daily penalties for continuing violations. The Water (Prevention and Control of Pollution) Act, 1974, prohibits stream/well pollution beyond standards and mandates SPCB consent for effluent discharges, with non-compliance attracting penalties under Section 42. Similarly, the Air (Prevention and Control of Pollution) Act, 1981, prohibits operating plants in pollution control areas without SPCB consent (Section 21), mandates adherence to emission standards (Section 22), and requires reporting of excessive accidental emissions (Section 23), with penal provisions under Section 37, also amended by the Jan Vishwas Act to replace imprisonment with

²³ P. Leelakrishnan, *Environmental Law in India* 45 (6th ed. 2019).

²⁴ *M.C. Mehta v. Union of India*, (1987) 1 SCC 395 (India).

²⁵ *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212 (India).

²⁶ *Bhartiya Nyaya Sanhita* (2023).

heavier fines. Despite these robust statutes and proactive judiciary, enforcement faced significant hurdles. These included enforcement agencies sometimes viewing environmental harm as mere regulatory breaches rather than serious crimes, leading to minimal prosecution as seen in inconsistent state-level case registration data (2014-2022); a lack of dedicated environmental crime units within police forces; and resource constraints within Pollution Control Boards (e.g., TNPCB), limiting monitoring and prosecution capacity. Furthermore, while the National Green Tribunal (NGT) could impose substantial costs, SPCBs often lacked powers for proportionate spot fines, creating a gap between legislative intent and practical enforcement.

B) BHARTIYA NYAYA SANHITA, 2023: AN EVALUATION OF ITS APPROACH TO ENVIRONMENTAL OFFENCES

The Bhartiya Nyaya Sanhita (BNS), 2023, while not a dedicated environmental statute, is poised to significantly influence the prosecution of environmental offenses in India due to its overarching nature as the primary criminal code. Its provisions related to public health, safety, and property damage, along with those concerning negligence, will inevitably intersect with environmental harm.

A. DIRECT AND INDIRECT ENVIRONMENTAL PROVISIONS IN BNS

The BNS, replacing the Indian Penal Code, introduces a modernized framework that, while not explicitly categorizing "environmental offenses" as a distinct chapter, contains several provisions that can be invoked to address environmental harm.

1. PUBLIC NUISANCE (CHAPTER XV)

Chapter XV of the BNS, titled "Of Offences Affecting the Public Health, Safety, Convenience, Decency and Morals," contains sections highly relevant to environmental pollution. These provisions address acts that vitiate public spaces and impact community well-being.

- **Section 279 (Fouling water of public spring or reservoir):** This section penalizes anyone who "voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used". The *mens rea* requirement here is "voluntarily," implying an intentional act or knowledge that the act is likely to cause the specified harm. The punishment for this offense has been increased under the BNS to imprisonment up to six months, or a

fine up to five thousand rupees, or both. This provision directly addresses water pollution affecting public water sources.²⁷

- **Section 280 (Making atmosphere noxious to health):** This section targets individuals who "voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way". Similar to Section 279, the *mens rea* is "voluntarily." The BNS has enhanced the fine for this offense from five hundred to one thousand rupees. This provision is crucial for addressing air pollution impacting public health.²⁸

2. MISCHIEF (CHAPTER XVII)

Chapter XVII of the BNS deals with "Offences Against Property," and Section 324 specifically addresses "Mischief". This section defines mischief as causing "destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously," with the intent to cause, or knowing that one is likely to cause, "wrongful loss or damage to the public or to any person".²⁹

The *mens rea* for mischief is explicit: "intent to cause, or knowing that he is likely to cause, wrongful loss or damage". This means that for environmental damage to be prosecuted under this section, a direct link between the act, the intent/knowledge, and the resulting property damage (which can include environmental property) must be established. The BNS has significantly increased the penalties for mischief, with punishments varying based on the amount of loss or damage caused:

- Loss or damage to any property (including government or local authority property): imprisonment up to one year, or fine, or both.
- Loss or damage of ₹20,000 to less than ₹1 lakh: imprisonment up to two years, or fine, or both.
- Loss or damage of ₹1 lakh or upwards: imprisonment up to five years, or fine, or both.

While mischief primarily targets property damage, its broad definition of "property" and "wrongful loss or damage to the public" could potentially encompass certain forms of environmental degradation that directly diminish the value or utility of public or private environmental assets. For instance,

²⁷ Id. § 279.

²⁸ Id. § 280.

²⁹ Id. § 324.

illegal dumping that renders land unusable or contaminates water sources could fall under this provision. The increased fines and imprisonment terms suggest a stronger deterrent against willful environmental destruction that results in quantifiable economic harm.

3. ACTS CAUSING HARM/DEATH BY NEGLIGENCE

Section 106 of the BNS addresses "Causing death by negligence," replacing the earlier Section 304A of the IPC. This section is highly relevant for environmental incidents that result in fatalities.³⁰

- **Section 106(1):** "Whoever causes death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine". This provision explicitly introduces a "negligent" standard of liability. The BNS has increased the maximum punishment for general negligence causing death from two years under the IPC to five years. This reflects a stricter approach to cases of negligence resulting in death.
- **Section 106(2):** Specifically addresses deaths caused by "rash and negligent driving of vehicle" where the driver escapes without reporting the incident, prescribing imprisonment up to ten years and a fine. While primarily vehicular, the underlying principle of enhanced punishment for aggravated negligence is significant.

In environmental contexts, incidents such as industrial accidents leading to gas leaks, chemical spills, or structural failures that cause loss of life could be prosecuted under Section 106(1) of the BNS. The increased penalty signals a greater emphasis on accountability for negligent acts that result in fatal environmental consequences. This provision ensures that carelessness or lack of due diligence, even without direct intent to kill, can lead to substantial legal repercussions.³¹

4. OTHER RELEVANT PROVISIONS

The BNS also contains other provisions that, while not directly environmental, could be applied to specific environmental harms³²:

- **Section 291 (Negligent conduct with respect to animals):** This section penalizes individuals who "knowingly or negligently omits to take such measures with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of

³⁰ Id. § 106.

³¹ Armin Rosencranz et al., *Environmental Law and Policy in India* 89 (3d ed. 2021).

³² *Bhartiya Nyaya Sanhita* (2023).

grievous hurt from such animal". This could apply to cases where an entity's negligent management of animals (e.g., in a zoo, farm, or even stray animal control) leads to environmental or public health risks. The punishment includes imprisonment up to six months, a fine up to ₹5,000, or both.³³

- **Section 111 (Organized Crime):** This new provision defines "organized crime" broadly to include "any continuing unlawful activity including... economic offences, cyber crime, trafficking of persons, drugs, weapons etc." by a group acting in concert to obtain material benefits. While not explicitly environmental, large-scale illegal environmental activities such as illegal dumping of hazardous waste, illegal logging, or unauthorized extraction of natural resources, if committed by an organized syndicate for financial gain and meeting the criteria of "continuing unlawful activity" (e.g., multiple charge-sheets filed over a period), could potentially fall under this severe offense. This could lead to significantly harsher penalties, including life imprisonment or death if it results in death, and substantial fines.³⁴

B. MENS REA REQUIREMENTS AND THEIR IMPLICATIONS

The concept of *mens rea* (guilty mind or criminal intent) is a cornerstone of criminal law, generally requiring proof of a specific mental state (e.g., intention, knowledge, recklessness, or negligence) for an act to constitute a crime.³⁵ This contrasts sharply with strict liability, which typically dispenses with the need to prove *mens rea*, focusing solely on the *actus reus* (guilty act). India's unique doctrine of absolute liability goes even further, eliminating not only *mens rea* but also common law defenses, particularly for hazardous activities.³⁶

The BNS, as a general criminal code, largely adheres to the principle of *mens rea*. Its provisions relevant to environmental harm demonstrate varying degrees of mental state requirements:

- **"Voluntarily" (Sections 279, 280):** The term "voluntarily" implies that the act is done with intention, or knowledge, or reason to believe that it is likely to cause the specified effect. This means that for fouling water or making the atmosphere noxious, the prosecution must demonstrate that the accused either intended to cause the pollution, knew that their actions would cause it, or had reason to believe it would cause such harm.³⁷ This requirement can pose a challenge in complex

³³ Id. § 291.

³⁴ Id. § 111.

³⁵ Glanville Williams, *Criminal Law: The General Part* 31 (2d ed. 1961).

³⁶ *Strict Liability in Criminal Law* 45 (A.P. Simester ed., 2005).

³⁷ *Bhartiya Nyaya Sanhita* §§ 279-280 (2023).

environmental cases where the link between an act and its diffuse environmental consequences is not immediately apparent or where the harm is a result of a chain of events rather than a single, direct intentional act.

- **"Intent to cause, or knowing that he is likely to cause" (Section 324 - Mischief):** This explicit wording for mischief requires a clear demonstration of either direct intent to cause wrongful loss/damage to property or knowledge that such loss/damage is a likely outcome of the act. While this standard ensures that only culpable acts are punished, it can be difficult to prove in environmental damage cases, especially when the damage is incremental or the result of systemic operational failures rather than a single malicious act. Establishing that a company *intended* to cause environmental degradation or *knew* it was likely, beyond reasonable doubt, can be a high evidentiary bar.³⁸
- **"Rash or negligent act" (Section 106 - Causing death by negligence):** This provision explicitly adopts a negligence standard, meaning the mental element is a failure to exercise reasonable care. This is a lower threshold than intent or knowledge but still requires proving that the accused acted in a manner that a reasonable person would not have, leading to death. In environmental contexts, this could apply to a company official who negligently oversees operations, leading to a fatal industrial accident or hazardous release. The difficulty here lies in defining "rashness" or "negligence" in complex industrial settings and attributing it to specific individuals within a large organizational structure.³⁹

The emphasis on *mens rea* in these BNS provisions presents a potential challenge for prosecuting environmental offenses, especially compared to the "no-fault" absolute liability doctrine established by the Supreme Court for hazardous industries. While absolute liability simplifies the burden of proof for victims in civil compensation cases, criminal prosecutions under the BNS would still require proving the requisite mental state. This can be particularly problematic for environmental crimes, where the harm may not be immediately visible, the chain of causation is complex, and attributing intent or knowledge to a diffuse corporate structure is inherently difficult. Legal scholars and practitioners often highlight the challenges in establishing *mens rea* for environmental harm, which can lead to under-enforcement of penal provisions.⁴⁰

³⁸ Id. § 324.

³⁹ Id. § 106.

⁴⁰ Ratanlal & Dhirajlal, *The Indian Penal Code* 120 (36th ed. 2023)

C) THE JAN VISHWAS (AMENDMENT OF PROVISIONS) ACT, 2023 AND ITS IMPACT

The Jan Vishwas (Amendment of Provisions) Act, 2023, enacted in August 2023 and effective from July 2024,⁴¹ marks a significant shift in India's environmental regulatory framework by decriminalizing minor offenses under key environmental laws like the Environment (Protection) Act, 1986 and the Air (Prevention and Control of Pollution) Act, 1981. The Act replaces imprisonment clauses with monetary penalties (ranging from ₹10,000 to ₹15 lakhs for EPA violations, with 10% automatic increases every three years) and establishes an adjudicatory mechanism with appointed officers and NGT appeals. This reform aims to promote "trust-based governance," ease business operations, and reduce judicial burdens. However, its impact on environmental deterrence remains contentious. Critics warn that eliminating criminal penalties may foster a "pollute and pay" culture, as large corporations could treat fines as manageable operational costs, while proponents argue it will encourage voluntary compliance and reduce litigation.⁴² Concerns persist about adjudicating officers' independence and technical competence, particularly when evaluating complex industrial violations.⁴³

The Bhartiya Nyaya Sanhita (BNS), 2023, significantly alters corporate criminal liability by explicitly including companies within its definition of "persons" and introducing stringent provisions for organized crime (Section 111).⁴⁴ This section targets systematic illegal activities, including large-scale environmental offenses like hazardous waste dumping or illegal mining, with severe penalties (life imprisonment, death if fatalities occur, and heavy fines) when conducted as "continuing unlawful activity." While this reflects a stronger stance against corporate environmental crimes, challenges remain in attributing *mens rea* (criminal intent) to corporations, traditionally reliant on the "identification doctrine" linking liability to senior management. The BNS's broad language raises concerns about potential overreach, including double jeopardy risks and unintended liability for non-executive directors. Its effectiveness hinges on judicial interpretation and balanced enforcement to ensure corporate accountability without stifling legitimate business activities. Together, the Jan Vishwas Act and BNS represent a dual approach: easing penalties for minor violations while toughening consequences for systemic offenses, though their practical outcomes will depend on implementation rigor and adjudicatory fairness.

⁴¹ *The Jan Vishwas (Amendment of Provisions) Act*, No. 18 of 2023, India Code (2023).

⁴² Ministry of Commerce and Industry, *Ease of Doing Business Report* 15 (2023).

⁴³ Armin Rosencranz, *Judicial Appointments in Environmental Cases*, 12 Env't L. Rev. 45, 48 (2023).

⁴⁴ *BNS* § 11 (2023).

D) CHALLENGES AND CRITIQUES OF BNS'S APPROACH TO ENVIRONMENTAL OFFENCES

The Bhartiya Nyaya Sanhita (BNS) 2023, while aiming to modernize India's criminal law, faces several significant challenges and critiques concerning its approach to environmental offenses. These issues primarily revolve around legislative ambiguities, the effectiveness of deterrence, difficulties in proving criminal intent, and existing enforcement limitations.

- **Ambiguity and Overlap with Special Laws:** The BNS, as a general criminal code, can apply its provisions on public nuisance, mischief, and negligence to environmental harms, creating an overlap with specialized environmental laws like the Environment (Protection) Act, 1986, the Water Act, and the Air Act.⁴⁵ The same environmental misconduct could lead to charges under both the BNS and specific environmental statutes, potentially resulting in redundant legal proceedings, increased criminal liability, and concerns about double jeopardy. Businesses and individuals face the burden of navigating multiple, potentially conflicting, legal frameworks, which can hinder effective environmental governance.⁴⁶ Broad and vague definitions, such as "terrorism" encompassing acts intending to "intimidate public order" or "using hazardous substances to cause death, danger to life, or spread fear," raise concerns about the misclassification of local environmental protests as acts of terrorism, potentially chilling free speech and environmental activism.
- **Deterrence Effectiveness in the Wake of Decriminalization:** The Jan Vishwas (Amendment of Provisions) Act, 2023, has decriminalized many minor environmental offenses by replacing imprisonment with monetary penalties. Critics argue that this shift may weaken the deterrent effect, especially for large corporations that might view fines as a manageable cost of doing business rather than a punitive measure.⁴⁷ This could foster a "pollute and pay" culture. While the Jan Vishwas Act increases fines and introduces daily penalties for continuing contraventions, the effectiveness of these monetary penalties as a deterrent remains questionable compared to the threat of imprisonment, particularly if fines are not sufficiently high or enforcement.⁴⁸ The Jan Vishwas Act's emphasis on "trust-based governance" and "ease of doing business" is seen by some as potentially compromising robust environmental protection, where strong punitive frameworks, including

⁴⁵ *Bhartiya Nyaya Sanhita* §§ 279-280, 324 (2023).

⁴⁶ Geetanjoy Sahu, *Environmental Jurisprudence in India* 112 (2018).

⁴⁷ Lavanya Rajamani, *Environmental Law in India* 89 (2017).

⁴⁸ Ministry of Commerce and Industry, *Ease of Doing Business Report* 15 (2023).

criminal sanctions, are crucial for accountability for widespread environmental harm.

- **Challenges in Proving Mens Rea for Environmental Harm:** Environmental damage often stems from complex industrial processes, cumulative effects, or long-term omissions, making it extremely difficult to prove specific intent, knowledge, or negligence (mens rea) for environmental offenses under the BNS.⁴⁹ The chain of causation in environmental cases is often intricate, requiring sophisticated scientific and technical evidence that may not align with direct evidentiary requirements of criminal law.⁵⁰ Proving the mens rea of individuals within large corporate structures and attributing it to the corporation itself remains a significant hurdle, even with provisions like Section 111 on organized crime. Unlike India's established doctrine of absolute liability for hazardous industries, which bypasses the need for mens rea, the BNS generally requires this mental element. This creates a potential disconnect between civil liability (absolute liability) and criminal liability (BNS) for environmental harm.⁵¹
- **Enforcement Gaps and Resource Limitations:** India lacks specialized environmental crime units within police departments, which are essential for investigating and prosecuting complex environmental offenses that require interdisciplinary expertise.⁵² Pollution control boards, critical for environmental regulation and enforcement, suffer from significant shortages of human resources, impacting their capacity to conduct inspections, monitor compliance, collect evidence, and pursue legal action effectively.⁵³ Effective prosecution of environmental offenses requires coordinated efforts among various agencies, including pollution control boards, police, and local bodies.⁵⁴ While the BNS aims to modernize the criminal justice system, successful implementation in environmental cases will depend on enhanced inter-agency cooperation. Insufficient reporting and data collection on environmental crimes in India indicate a need for improved mechanisms to identify enforcement gaps and allocate resources effectively.⁵⁵

The BNS, by itself, cannot fully overcome these long-standing enforcement and resource limitations. Its effectiveness in addressing environmental offenses

⁴⁹ M.C. Mehta v. Union of India, (1987) 1 SCC 395, 412 (India).

⁵⁰ BNS §§ 279-280, 324, 106, 111 (2023).

⁵¹ Indian Council for Enviro-Legal Action v. Union of India, (1996) 3 SCC 212, 225 (India).

⁵² National Crime Records Bureau, *Crime in India Report* 67 (2022).

⁵³ Central Pollution Control Board, *Annual Report* 45 (2021-22).

⁵⁴ Armin Rosencranz, *Judicial Appointments in Environmental Cases*, 12 Env't L. Rev. 45, 48 (2023).

⁵⁵ National Green Tribunal, *Annual Report* 33 (2022).

will heavily rely on complementary reforms in enforcement infrastructure, capacity building for regulatory bodies, and a fundamental shift in how environmental harm is prioritized within the broader criminal justice system.

5. RESULT/FINDINGS

1. **Continuity of Negligence Framework:** The BNS perpetuates the IPC's fault-based liability model through Sections 26(2), 27(2), 28(2), and 29(2), requiring proof of "rash or negligent acts" or "knowing omissions" for environmental offences. Despite enhanced penalties, this maintains high evidentiary barriers for prosecuting industrial pollution.
2. **Corporate Accountability Gaps:** Sections 26(3)-29(3) establish vicarious liability for companies but condition it on prosecuting individuals ("persons in charge"). The due diligence defence enables evasion through formal compliance documentation rather than substantive safety investments.
3. **Absence of Hazardous Activity Differentiation:** Unlike comparative frameworks (EU Directive 2004) or judicial doctrine (*M.C. Mehta*), the BNS applies uniform negligence standards across all sectors without recognizing heightened liability for inherently hazardous industries.
4. **Inadequate Penalty Structures:** Maximum fines (e.g., ₹1 lakh under S. 27(2)) lack proportionality to industrial revenues or ecological damage costs, undermining deterrence.
5. **Missed Codification Opportunity:** The legislature declined to integrate the absolute liability doctrine into criminal law despite three decades of judicial evolution and empirical evidence of negligence-based enforcement failures.

6. CONCLUSION AND SUGGESTIONS

The evaluation of strict liability versus negligence in environmental offenses, particularly within the framework of the Bhartiya Nyaya Sanhita, 2023, reveals a complex and evolving legal landscape in India. Historically, common law torts proved insufficient for widespread environmental degradation, necessitating the emergence of comprehensive environmental laws globally and in India. India's environmental jurisprudence is uniquely characterized by proactive judicial activism, notably the Supreme Court's expansive interpretation of Article 21 to include the right to a clean environment, and the pioneering doctrine of absolute liability. This doctrine, born from industrial tragedies like Bhopal, imposes a "no-fault" standard on hazardous industries, eliminating traditional defenses and emphasizing a non-delegable duty to the community. This stands in contrast to the fault-based negligence standard, which requires proving a breach of a duty of care.

The BNS, as the new general criminal code, does not feature dedicated environmental offenses but integrates provisions that can apply to environmental harm under categories like public nuisance, mischief, and acts causing death by negligence. Sections 279 (fouling water), 280 (noxious atmosphere), and 324 (mischief) carry *mens rea* requirements of "voluntarily" or "intent/knowledge," while Section 106 (negligence causing death) explicitly adopts a "rash or negligent" standard. The penalties for these offenses have generally been enhanced under the BNS, reflecting a modernized approach to criminal accountability. Furthermore, the BNS's new "organized crime" provision (Section 111) holds potential for prosecuting large-scale, systematic environmental crimes committed for financial gain, extending corporate criminal liability.

However, the simultaneous enactment of the Jan Vishwas (Amendment of Provisions) Act, 2023, has decriminalized many minor environmental offenses under specialized statutes like the EPA and Air Act, replacing imprisonment with monetary penalties. This policy aims to promote ease of doing business but raises significant concerns about its impact on deterrence, as fines may be perceived as a cost of doing business rather than a strong disincentive. A critical challenge lies in the inherent difficulty of proving *mens rea* for complex environmental harm under the BNS, especially for corporate entities, which often involves diffuse causation and requires sophisticated evidence. This contrasts with the "no-fault" absolute liability doctrine that applies in civil environmental cases. Persistent enforcement gaps, including a lack of dedicated environmental crime units and human resource shortages in pollution control boards, further complicate the effective implementation of environmental laws, regardless of their liability standards.

The BNS represents a significant step in modernizing India's criminal justice system. However, for it to effectively contribute to environmental protection, several policy considerations and recommendations are crucial:

Legislative Reforms: Introduce a dedicated "Hazardous Activities Offences" chapter imposing strict criminal liability on enterprises for environmental harm, eliminating fault requirements for listed high-risk sectors (chemical, mining, energy). Adopt turnover-based fines (minimum 5% annual revenue) and remediation cost liability under new provisions. Replace "person in charge" corporate liability with organizational culpability models examining systemic failures.

Judicial Interpretations: Courts should interpret "negligence" under Section 29(2) as failure to implement industry best practices, easing evidentiary burdens. Expand "knowingly" to include constructive knowledge of foreseeable environmental risks.

Administrative Measures: Establish specialized environmental prosecution units with technical expertise and Implement corporate environmental compliance sentencing guidelines.

By integrating these recommendations, India can build upon the foundational changes introduced by the BNS and the Jan Vishwas Act to create a more robust, effective, and equitable legal framework for environmental protection, ensuring that both strict liability and negligence principles are applied in a manner that truly safeguards the nation's ecological future. The M.C. Mehta doctrine's promise—that those profiting from ecological risk must bear absolute responsibility—remains unrealized in criminal law. Until the BNS embraces this principle, India's environmental justice framework will remain perilously incomplete.