

***PROCEDURAL CHALLENGES IN PROSECUTING  
ENVIRONMENTAL CRIMES UNDER BNSS***

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**ABSTRACT**

Environmental crimes though often perceived as regulatory or civil wrongs have evolved into series offences which require strict criminal justice mechanisms. The introduction to the criminal law that is Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 which replaced the colonial era criminal procedure code 1973 marks a pivotal shift in India's criminal procedure framework. However, the effective prosecution of the environmental crimes under this new court faces multifaceted procedural challenges. This includes difficulties in investigation due to scientific complexities, lack of specialized training and visual overlaps between environmental and criminal agencies. Further issues relating Cognizant by Magistrates Coordination with special statutes commercial issues also exist and creates complicated prosecution. This paper critically examines how the provisions on investigation charge framing evidence and trial procedure etc. impact the environmental education. It also argues that without procedural adaptations and capacity building the prosecution of environmental crimes may remain ineffective despite substantive environmental laws. The study concludes by suggesting reforms to ensure that the new law felicitates timely, specialized and effective prosecution of environmental offences.

**Keywords:** Environmental Crimes, BNSS, Environment, Procedural Challenges

## **INTRODUCTION**

Environmental crimes of offences that directly or indirectly harm the ecological systems, Natural Resources and human health. These include activities such as illegal mining deforestation industrial pollution unauthorized dumping of the waste etc. in India where industrialization and urbanization are accelerating such offences present a serious threat to the country's environmental stability and the constitutional right to life under article 21. The government has enacted several substantive environmental legislations such as the Environment Protection Act 1986 water prevention and control of pollution act 1974 and air prevention and control of pollution act 1981. These statutes empower the authorities to regulate monitor and penalize the polluters. However, while these laws define offences unprescribed penalties, the actual process of Investigation, trial and punishment falls under the procedural framework of the new law the code that has replaced the colonial era code that is the criminal procedure code 1973. The new law was introduced to modernize India's Criminal justice system, Vidhan emphasis on transparency integration and timely justice. It introduces provisions for electronic filing of complaints digital evidences timelines for investigation and stronger victim participation. Despite these reforms environmental crimes pose unique procedural challenges. The technical nature of environmental offences often requires scientific testing expert analysis and intelligence coordination areas where general terminal procedures prove inadequate. The traditional policing and Prosecution mechanisms are ill equipped to handle complex environmental data or determine position between an act and environmental harm. Therefore, while the BNSS represents a procedural advancement it does not directly address the specialized needs of environmental law enforcement. This research paper aims to examine how the BNSS framework interacts with environmental crime prosecution identifying existing procedural barriers and proposed reforms that could make the system most efficient, specialized and responsive to India's evolving environmental challenges.

## **STATEMENT OF PROBLEM**

Despite having One of the most comprehensive sets of environmental legislations in the world India continues to struggle with effective prosecution of environmental crimes. The low conviction rates delayed trials and procedural ambiguities have undermined the deterrent effect of environmental laws. This central problem lies not in the lack of substantive statutes but in

the procedural inefficiencies that hinder their enforcement. The transition of bringing a new law was expected to streamline criminal proceedings and introduce digitalization ensure faster disposal of cases. However, when it comes to environmental offences the challenges persists. Because the new law has not incorporated any specialized provisions to address the technical and scientific aspects of such crimes. Environmental offences are distinct from traditional crime because they often involve complex scientific evidence expert opinions and causation that spans over long periods and multiple jurisdictions linking industrial emission to public health damage requires specialized expertise yet police officers and prosecutors handling these cases often lack the necessary training. Moreover, procedural overlaps between the pollution control boards state governments and the law enforcement agencies lead to delays in investigation and prosecution. The absence of a clear procedural framework for expert involvement evidence collection and the intelligence coordination further complicates the matter. Additionally, jurisdictional confusion regarding whether offences under environmental stage youths are cognizable or non-cognizable often delays the filing of complaints. Magistrates may hesitate to take cognizance due to lack of clarity or technical understanding of the issues. These procedural shortcomings collectively We can environmental governance and reduce the accountability for offenders. Thus, the core problem addressed by this study is the gap between the substantive environmental law framework and the procedural mechanism under BNSS necessary to ensure effective enforcement and Justice delivery.

## **NEED, RELEVANCE & IMPORTANCE OF STUDY**

The study of procedural challenges in prosecuting environmental crimes under BNSS is both timely and essential. Environmental crimes are not merely violations of statutory norms but offences that endanger public health biodiversity and sustainable development. As India transitions into a new era of criminal jurisprudence it becomes imperative to assess how effectively this procedural framework accommodates the unique nature of environmental offences. The need for this study arises from the growing gap between the objectives of environmental protection laws and their actual implementation through procedural mechanisms. Despite the existence of stringent penalties in environmental legislation, poor investigation, weak evidence collection and procedural delays often result in acquittals or prolong litigation. The relevance of this research lies in its focus on identifying these procedural bottlenecks and evaluating how the new law can bridge them. Environmental offences always

differ significantly from the conventional crimes such as theft or assault because they involve complex causations requires scientific proof and often implicate corporate or governmental entities. Therefore, understanding whether the procedural provisions under the BNSS such as those of dealing with investigation charge framing evidence and trial are adequate to handle such cases is crucial for achieving environmental justice. The importance of this study also extends to its broader and constitutional implications. Article 21 of the Indian Constitution guarantees the right to life which has been judicially interpreted including the right to clean and healthy environment. Ensuring effective prosecution of environmental crimes does an extension of fundamental right itself. Furthermore, as India aspires to meet global environmental commitments under the Paris agreement and the sustainable development goals the procedural efficiency of its criminal justice system becomes central to the compliance. Hence this study is significant for policymakers' legal practitioners and scholars striving for a more sustainable and accountable legal framework.

## **RESEARCH METHODOLOGY**

This research adopts a doctrinal and analytical methodology focusing primarily on second sources of law. The doctrinal approach is appropriate for this study because it allows a comprehensive examination of the procedural provisions under BNSS and their interaction with existing environmental legislations. The research lies on retail analysis of statutory provisions, judicial pronouncements and law commission reports or any kind of scholarly writings to identify the procedural challenges and prosecute environmental crimes. Various environmental laws have been examined in light of the procedural requirements set forth under the BNSS. The study also employs a comparative framework contrasting the provision of the former PoD with those two BNSS to evaluate the extent of procedural reform. This comparison helps identify whether the BNSS has effectively modernized investigation and trial processes or whether it continues to pose barriers similar to the old code. Judicial interpretations by Supreme Court and high courts have also been analyzed to understand how the procedural gaps have been addressed in environmental crime cases. Furthermore, the research utilizes descriptive and evaluative methods to interpret legislative intent and practical outcomes. No empirical or field-based data collection has been undertaken as the focus remains on legal analysis. This methodology aims to identify procedural deficiencies under BNSS and provide

recommendations for reform to ensure effective specialized and scientifically informed prosecution of environmental crimes in India.

## **LEGAL FRAMEWORKS**

The prosecution of environmental crimes in India is governed by a combination of substantive and procedural laws. While the substantive law defines offenses and prescribed penalties the procedural law Lays down the mechanism for investigation arrest evidence collection trial and punishment. Understanding this dual framework is essential to examine the challenges in prosecuting environmental crimes effectively. India's environmental legal framework is anchored in five major legislations that together create a comprehensive regulatory system in aimed at preventing and controlling environmental harmful stop The Environment Protection Act Enacted after Bhopal crash tragedy in 1986, Functions as an umbrella statute empowering central government to regulate emissions, style standards and impose penalties. Section 15 prescribes funds and imprisonments while section 19 permits any individual to file complaint after serving prior notice to the authorities making it one of the few environmental laws that allow citizen initiative prosecution. Complimenting this act, a sector specific statute such as water prevention at 1974 was established by the central and state pollution control board and it empowers them to inspect industries, grant or withhold consent for operations and prosecute violations under section 41. Similarly, the air prevention act 1981, Prohibits emission beyond prescribe limits and authorizes state pollution control votes to file complaints under section 43. The wildlife protection act 1972 adds a conservation focused dimension criminalizing poaching in legal wildlife trade and habitat destruction from the prescribing stringent penalties for repeated offenders. Although primarily civilian character the National Green Tribunal Which plays a crucial role in environmental governance by adjudicating disputes, ordering restoration and recommending criminal prosecution when necessary. Together these laws establish strong substantive protections but their enforcement relies heavily on procedural mechanisms governed by the Bharatiya Nyaya Sanhita 2023. The new criminal law came with the objective of modernizing criminal procedures enhancing efficiency and integrating technology. Several of its reforms hold particular Relevance for environmental crimes. The introduction of electronic first information reports enable faster reporting and responses to offences, especially important for pollution incidents often detected or reported through digital platforms. They emphasize on time bound investigation seeks to reduce delays that frequently undermine the

credibility of environmental evidence which is susceptible to contamination or tampering. This also strengthens the role of forensic and expert testimony a critical component in environmental prosecution where linking pollutants, emissions or ecological damage to specific actors requires scientific analysis. Further its victims entering approach potentially empowered effective communities by giving them more participatory role during investigation and trial. Technological provisions such as video recording of evidence and digital submission of documents enhance the reliability of data in cases involving his ideas waste illegal mining or industrial pollution. Despite these positive developments the interplay between substantive and procedural law reveals significant gaps the procedural law does not contain specialized procedural provisions tailored to the technical nature of environmental crimes. Investigating officers often lack scientific expertise leading to weak evidence collection. Coordination between police and environmental authorities remains in consistent and procedural requirements. Other mandates such as It shows all the authorized officers or persons who give prior notice may file complaints Which create delays and ambiguities. Uncertainty over whether offences and environmental statutes Are cognizable further complicates the ability of police to take so much action. Constitutionally the framework is grounded in article 48 Coma article 51G which mandate environmental protection while judicial interpretations of article 21 in various cases is also done Which ensure the right to clean environment. India's commitments to international instruments such as Stockholm declaration in 1972 and Paris agreement in 2015 reinforced the need for robust procedural mechanisms. Ultimately while India's substantive law is strong their effective enforcement under the criminal law or the procedural law requires greater procedural clarity, scientific integration and institutional coordination to make environmental protection truly operational and enforceable.

## **JUDICIAL APPROACH**

The judiciary in India has played a pivotal role in expanding the scope of environmental protection and addressing the procedural deficiencies that hinder effective prosecution of environmental crimes to an expansive interpretation of constitution and environmental statutes Indian courts have evolved a strong environmental accountability linking environmental protection with the fundamental rights of life under article 21. However, despite such progressive ruling codes have repeatedly highlighted procedural challenges in enforcing environmental laws especially those related to investigation and prosecution. The Supreme

Court of India has been a front runner in recognizing environmental protection as constitutional obligation. In *M.C. Mehta v. Union of India (1987)*, the court observed that environmental preservation is an essential component of right to life thereby creating a constitutional foundation for prosecuting environmental offences. The code developed the principles such as polluter base precautionary and public trust doctrines which though not procedural in nature but influenced how environmental cases are adjudicated and monitored these judgments emphasized that environmental harm must be remedied swiftly, and authorities must act with urgency and responsibility. In *Indian Council for Enviro-Legal Action v. Union of India (1996)*, the Supreme Court held industry is liable for environmental damage and directed compensation under the principle of absolute liability the court criticized procedural delays by investigating agencies and lower codes highlighting this low prosecution undermines deterrence and justice. Similarly, in *Vellore Citizens' Welfare Forum v. Union of India (1996)*, The court reiterated that environmental protection must be given precedence over economic development and directed authorities to take immediate punitive action against violators. Quotes have repeatedly drawn attention to procedural weakness in environmental law enforcement. In *M.C. Mehta v. Kamal Nath (1997)*, The Supreme Court noted that lack of coordination between government departments and delayed investigation reports weaken the prosecution. The court emphasize that procedural mechanism should facilitate and not frustrate environmental justice. In several cases high courts have observed that police and pollution control boards lack adequate technical expert to investigate environmental crimes effectively. A series of continuous mandamus orders were issued in multiple cases the court also converted its role into one of the supervisions over administrative and investigate the agencies but still there was no result. This judicial activism has filled enforcement gaps that the procedural law including the BNSS and its procedures CrPC has failed to address adequately. While in the present criminal law It introduces reforms such as E- FIRs, forensic procedures and time bound investigations Indian courts continue to emphasize that mere procedural modernization cannot guarantee justice without institutional capacity. Coats have advocated for the creation of specialized environmental codes and for mandatory inclusion of expert witnesses in trials concerning pollution deforestation or his idea substances. The judiciary has also called for harmonizing procedures between the national green tribunal and criminal courts to ensure that environmental offences are not delayed due to jurisdictional confusion. Overall, the judicial

approach to prosecuting environmental crimes reflects a balance between activism and restraint.

Courts have expanded constitutional interpretations to support environmental protection while urging procedure deformed to strengthen enforcement. The judiciary's consistent stance has been that procedural law must evolve to match the complexity of environmental harmful stock through the current criminal law and its progressive structure. We can complement it by judicial endorse reform such as specialized training for investigators, simplified cognizance procedures and integrated environmental prosecution mechanisms. Thus, the judiciary continues to be the most influential actor in ensuring that procedural justice aligns with environmental justice in India.

## **CONCLUSION & SUGGESTIONS**

The prosecution of environmental crimes in India stands at critical juncture where the aspirations of environmental justice intersect with the procedural laws' challenges. While new criminal law has been enacted with the objective of modernizing India's criminal justice system and ensuring faster and fairer trials its framework still struggles to fully accommodate the unique demands of environmental offences. These crimes are not merely conventional violations but they involve scientific evidence, multidisciplinary investigations and deep understanding of ecological impact of all which require procedural mechanisms that go beyond traditional processes. The study reveals that existence of strong substantive environmental laws and therein enforcement often fails at the prosecution stage due to procedural shortcomings. Investigations are frequently delayed because of lack of specialized personal and forensic infrastructure. The police and environmental authorities often separate and operate in silos leading to overlapping jurisdiction and conflicting responsibilities. Moreover, the chain of custody for environmental samples is not clearly codified resulting in evidentiary weaknesses during the trial while the new criminal law progressive in promoting digital evidence and speedier procedures it does not explicitly recognize the complexity of environmental evidence or provide guidance on export driven investigations.

Judicial pronouncements have repeatedly emphasized that environmental protection is part of article 21 of the constitution yet the courts continue to face difficulties in translating that recognition into effective prosecution India have expanded the meaning of environmental

rights but without procedural reforms under the criminal law such judgments risk remaining aspirational rather than operational. There is thus an urgent need for procedural synchronization between the BNSS and environmental litigations and legislations to ensure coherent enforcement. To strengthen environmental prosecutions. This paper suggests several key reforms firstly, specialize environmental investigation units should be established under state and police departments or pollution control boards trained specifically in evidence collection, sampling and digital monitoring. Secondly, the new criminal law should incorporate specific procedural provisions for handling environmental crimes such as guidelines for admissibility of scientific data expert reports and environmental impact assessments. Thirdly, the judicial training and establishment of dedicated environmental codes or benches can ensure that complex technical evidence is properly evaluated. Fourthly, the collaboration between Central and state agencies must be institutionalized through a shared database of environmental offences to prevent that duplication and delay. Finally, environmental crime should be treated not as minor regulatory infractions but a serious offence that directly threaten public and sustainability. The BNSS being a new procedural law creates an opportunity to align India's criminal justice frameworks with modern environmental realities. Effective prosecution of environmental crimes will not only deter violators but also reinforce India's commitment to sustainable development and constitutional value of life health and ecological balance. In essence the road required ahead is more than legislative reforms it calls for an integrated procedural approach where environmental protection becomes an enforceable right by robust investigation, credible evidence and efficient trial mechanisms under the new criminal law.

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