

WEAKENING DETERRENCE OR ENHANCING EFFICIENCY? THE QUASI-DECRIMINALISATION OF ENVIRONMENTAL OFFENCES IN INDIA

AUTHOR – SRISHTI YADAV, STUDENT AT ASIAN LAW COLLEGE

BEST CITATION – SRISHTI YADAV, WEAKENING DETERRENCE OR ENHANCING EFFICIENCY? THE QUASI-DECRIMINALISATION OF ENVIRONMENTAL OFFENCES IN INDIA, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 6 (9) OF 2026, PG. 426-431, APIS – 3920 – 0001 & ISSN – 2583-2344.

ABSTRACT

This research article examines the critical paradigm shift in India's environmental regulatory framework from a strict, court-centred "command and control" model to a trust-based compliance system introduced through the Jan Vishwas (Amendment of Provisions) Act 2023. Historically, India's environmental governance relied heavily on criminal prosecution to deter polluters, treating every minor procedural violation as jail-eligible offences. This act aims to ease the regulation by decriminalising minor, technical and procedural defaults. While this "quasi-decriminalisation" successfully reduces business compliance burden by replacing the imprisonment for minor procedural defaults with civil penalties, it introduces major constitutional and enforcement challenges.

Vesting the quasi-judicial powers in the executive-appointed Adjudicating Officers raises significant separation of powers concerns, creates conflicts of interest when the prosecuting government based or owned polluters and highlight a critical technical competence deficit. Additionally, flat civil penalties risk being dismissed as a mere "cost of doing business" potentially diluting deterrence. To preserve environmental integrity while achieving regulatory efficiency, the study advocates targeted reinvestment of the Environmental Protection Fund to strengthen institutional capacity, enhance technical expertise, and develop a transparent public digital compliance portal. It concludes that the success of India's quasi-decriminalisation framework will ultimately depend upon its ability to balance economic facilitation with constitutional accountability, effective enforcement, and the overarching objective of environmental justice.

Keywords: Jan Vishwas Act, Decriminalisation, Civil penalties, Environment protection

-INTRODUCTION: HISTORY OF INDIA'S ENVIRONMENTAL LAWS

"Earth provides enough to satisfy every man's needs, but not every man's greed"

-Mahatma Gandhi

India is a rich country with vast flora and fauna. Every species of these flora and fauna is unique in its characteristics. However, with this uniqueness, there comes a responsibility to protect them as well. Before 1972, India did not have any single, strong legal system to protect the environment. There was no concrete and

strict law to punish the polluters. But this changed after June 1972, India became a participant of the famous United Nations Conference on the Human Environment in Stockholm, famously known as, the Stockholm Conference on Protection of Environment. To meet the global promises, India's Parliament quickly began passing with strong federal laws.

This initiative started with the Water Act of 1974⁶⁹¹ and then the Air Act of 1981⁶⁹², which led to the establishment of the Central and the State Pollution Control Boards, to act as the watchdog over the factories. In January 1985, the Ministry of Environment was established. later in the same

⁶⁹¹ The Water (Prevention and Control of Pollution) Act, 1976

⁶⁹² The Air (Prevention and Control of Pollution) Act, 1981

year, the Department of Environment became a part of it. Furthermore, the government also implemented these laws in the Constitution of India. They added Article 48A⁶⁹³, putting a responsibility on the government to protect forests and the wildlife, and Article 51A(g)⁶⁹⁴ making it a Fundamental duty of the citizens to protect rivers, lakes and nature.

India has seen the horrific incident in December 1984, the Bhopal Gas Tragedy⁶⁹⁵, revealing the profound gaps in the environmental governance corporate accountability and the enforcement of safety standards prompting a critical reassessment of India's environmental and industrial regulatory framework. In response, the Environment (Protection) Act, 1986 was passed. Also known as the "Umbrella Act". The primary strategy these laws was "command and control" i.e. "rule and punish". If an industry broke the regulation of the pollution standards or operated without permission, it was treated as a crime. Factory owners and managers faced heavy criminal fines and actual jail time.

With time, the hon'ble Supreme Court has stepped in to establish the same principle to protect the environment. The landmark case, Vellore Citizens Forum v. Union of India (1996)⁶⁹⁶ where in Tamil Nadu, the Palar River is the main source of water supply for drinking purpose to the residents. Nearly 900 tanneries (the leather factories) were caught dumping the untreated toxic wastewater into that Palar River. As a result, this toxic discharge polluted 35,000 hectares of farmland and approx. 350 wells completely unsafe to use. The hon'ble Supreme Court applied the "Polluter Pays Principle" and "Precautionary Principle" to order those tanneries to reconstruct and pay for the ecological damages.

THE BURDEN ON THE INDIAN COURTS:

The biggest problem faced by the Indian Environmental law is its too much dependency

on the Criminal Courts. Under the traditional system, if the Pollution Board has to penalise the factory, it first must file a criminal lawsuit in the court. This led to the complex and overburden on India's already overloaded court system. This led to the stretch and drag of the cases for decades.

However, to resolve this problem, the Indian government decided to "decriminalize" minor, technical violations. This effort was led by the Department of Promotion of Industry and Internal Trade (DPIIT) as a part of their "ease of doing business initiative".

This made a way for the "Jan Vishwas (Amendment of Provisions) Act, 2023".⁶⁹⁷ The aim of this act was to stop treating the minor business errors as crimes.

The Big Shift: The Act replaces "fines" which requires a long, criminal court trial with "civil penalties" which can be decided by the government officials, called Adjudicating Officers. This bypasses the slow and overloaded court system.

However, the key term here is, this is described as the "**quasi- Decriminalisation**" because jail time is not completely removed. While one cannot go to jail for initial violation, if an offender fails to pay the civil penalty within the prescribed 90 days, they will face a criminal trial. In that case, the offender can be sentenced to up to 3 years of imprisonment, a double fine, or both.

Statute	Provisions	Old Criminal Punishments	New Civil Penalty Reform
Environment (Protection) Act, 1986	Section 15 (General Penalty)	Up to 5 years imprisonment, or fine up to 1 lakh, or both	Jail removed Penalty of Rupees

⁶⁹³ Protection and improvement of environment and safeguarding of forests and wild life

⁶⁹⁴ to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures

⁶⁹⁵ Union Carbide Corporation vs Union of India Etc. 1989 SCC (2) 540

⁶⁹⁶ Vellore Citizens Welfare Forum vs Union of India & Ors 1996 (5) SCC 647

⁶⁹⁷ Jan Vishwas (amendment of provision) Act, 2023

			10,000 to 15 lakhs
Environment (Protection) Act, 1986	Section 15A (Offences by Companies)	Directors faced imprisonment	Corporate penalty of Rupees 1 lakh to 15 lakhs
Environment (Protection) Act, 1986	Section 15B (Offences by Govt. Departments)	Head of Department was criminally guilty.	Head of Department pays a penalty of 1 month of basic salary.
Air (Prevention and Control of Pollution) Act, 1981	Section 37 (Breaking emission limits)	1.5 to 6 years imprisonment, plus fine.	Jail removed. Penalty up to Rupees 15 lakhs
Air (Prevention and Control of Pollution) Act, 1981	Section 38 (Minor offenses/Tampering)	Up to 3 months imprisonment, or fine up to Rupees 10,000 or both	Jail removed. Penalty up to Rupees 15 lakhs.

Moreover, to ensure that these penalties remain meaningful as the economy grows, the Jan Vishwas Act specifies that all the fines and penalties will automatically increase by 10% of the minimum amount every 3 years.

However, despite several measures taken and initiatives being introduced, the condition is still

persistent with respect to the delays in the court system. If we consider the current 2026 NGT⁶⁹⁸ data regarding the pending cases, it is:

Total institution: 54,617 cases

Total disposal: 49,002 cases

Total pending cases: 5,615 cases (as of 31.03.2026)

LEGAL AND PRACTICAL CONCERNS WITH THE NEW SYSTEM:

While the new approach is faster, legal experts and environmentalists have raised several serious issues, these are:

- Venting of Separation of Powers: The Indian Constitution under Article 50⁶⁹⁹ provided that the Executive branch and the Judicial branch must remain divided. But under the new system, Senior government officers called the Adjudicating Officers who are Joint Secretaries or State Secretaries, get to act like judges and award large penalties, up to Rupees 15 lakh. Now these officers are career bureaucrats, there is doubt about their independence from the political pressure.
- Conflict of Interest with Government Polluters: Many of India's worst polluters are the government-owned bodies itself, like the municipal boards or Public Sector Undertakings (PSUs). It becomes difficult to believe that a government-appointed executive officers will remain completely neutral or non-bias when pronouncing judgement against their own employer or administrative department.
- Scientific Knowledge Gap: Environmental cases are highly technical when it comes to deciding if a factory has polluted a river as it requires analyses of complex chemical reports. Bureaucrats might not have the technical training to understand this data, whereas Pollution Control

⁶⁹⁸ National Green Tribunal

⁶⁹⁹ Separation of judiciary from executive

Boards historically had expert scientists to do so.

- Possibility of Double Jeopardy: The Civil penalties under the Jan Vishwas Act are “in addition to” any compensation ordered by the National Green Tribunal (NGT) under the “Polluter Pays Principle”. This might lead to situation where a factory has to pay a penalty to the Adjudicating Officer, and then face an enormous compensation claim from the NGT for the exact same violation.

THE CURRENT COURT CASES: T. BARAI RULE

Now the question arises, what happens to the thousands of environmental cases that are already in court? Can the Jan Vishwas Act, 2023 provide relief to persons convicted under offences that have subsequently been decriminalised?

The answer lies in the Article 20 (1)⁷⁰⁰ of the Indian Constitution. While the government cannot make a new law to punish the accused for something he did in the past, it can apply the new law to reduce his punishment.

This is called the “rule of beneficial construction”. In the landmark case of T. Barai v. Henry Ah Hoe (1983)⁷⁰¹, the hon’ble Supreme Court ruled that if a new law reduces the punishment for an old offense, the accused should automatically get the benefit of the lower punishment because it now becomes the matter of fairness.

Because of this, the courts are now quashing old criminal trials and sending them to the new Adjudicating Officers, so companies pay civil penalties instead of imprisonment. However, this has created a temporary gap because criminal courts often do not have the power to directly hand over the cases to executive officers, causing confusion.

SUGGESTIONS TO MAKE INDIAN ENVIRONMENTAL LAWS BETTER:

With the introduction of the new act and the environment act, there has been a lot of trouble

in interpretation and ensuring the fairness of the act. To make things better and ensure that the new act protects nature and does not let the polluters buy their way out of the liability, we need four key reforms:

- Make Penalties higher than Compliance Costs (the hybrid penalty model): Under the new act, the deterrence for the imprisonment is null for most violations, replaced by the administrative penalties capped at Rupees 15 lakh. For a giant, multi- crore chemical factory, paying Rupees 15 lakh penalty might be cheaper than spending crores of rupees to build and run an advanced wastewater treatment plant. To stop this, it must be replaced with scientifically calculated Hybrid Computation Model. This method ensures that the penalty is mathematically designed to be higher than the profit the company made by violating the law.

The total penalty should be calculated using this formula:

$$\text{Penalty}_{\text{(total)}} = \text{EBN} + \text{ERC}$$

EBN (Economic Benefit of Non-Compliance): This represents the exact amount of money the factory saved or pocketed by delaying its environmental investments.

ERC (Environmental Restitution Cost): This is the actual cost required to physically clean up the polluted river, soil, or air as well as compensate any affected citizens.

- Safeguarding the Separation of Powers (AO Independence): Under the new framework, the government appoints the career bureaucrats to act as the Adjudicating Officers to hear the cases and decide penalties. Now this creates a conflict in the separation of powers. To protect the Constitutional separation of powers and ensure fair trials, we should set up an independent Adjudicating authorities that are staffed by a balanced

⁷⁰⁰ Protection in respect of conviction for offences

⁷⁰¹ T. Barai vs Henry Ah Hoe and Another 1983 (1) SCC 177

mix of judicial members and scientific experts. These authorities should be established at two levels:

State- level Adjudicating Authorities for major violations causing direct ecological damage and a second at the Division- level Adjudicating Authority for minor paperwork and reporting lapses.

- Create an Online Transparency and Public Compliance Portal: The traditional criminal court trials are public, meaning citizens and local activists could track which factories were sued for polluting their neighbourhoods. Without absolute transparency, there is a serious risk of private deals, corruption and a complete loss of public accountability, leaving local communities completely in dark.

To restore public trust and keep corporate entities accountable, the government must build an unified, public digital portal. The central pollution control board (CPCB) must maintain an open- access portal where every single show- cause notice, consent application, exemption, and penalty order is published for the public to inspect.

Further, when local residents can see exactly how much pollution a factory is discharging and what penalties are being imposed, it allows civil society, local communities and NGOs to act as co- monitors of the environment.

The portal should integrate secure decentralised tools (such as blockchain- authenticated compliance tracking and strong whistleblower protection systems) so that employees or local residents can safely report illegal bypassing of waste- treatment systems without fear of retaliation.

CONCLUSION: FINDING THE RIGHT BALANCE BETWEEN GROWTH AND GREENERY

We have seen that the transition brought by the Jan Vishwas Act, 2023 represents a major turning point in the history of the Indian Environmental law. By swapping away the slow- moving, completely criminal based to a faster, administrative civil penalty framework, India has

taken a major step towards modernising its legal landscape.

However, as environmentalists and legal scholars has already warned, decriminalisation must never be permitted to become a shortcut for deregulation. If civil penalties are capped at flat rates that are too low, large corporations can easily treat these penalties as a mere “tax on pollution” or on a normal business expense rather than serious ecological wrong.

Furthermore, placing judicial powers in the hands of government appointed senior executive bureaucrats who act as Adjudicating Officers, raises valid concerns regarding the separation of powers and whether these officers possess the scientific training needed to determine complex chemical and air pollution data.

To ensure that India’s transition to civil penalties does not weaken its environmental standards, key structural reforms must be implemented. First, India should adopt a strict “Hybrid Penalty Model”. This will ensure that the fine always claws back the economic benefit of not complying (EBC) and covers the actual cost of restoring the local ecosystem (ERC).

Ultimately, economic progress and environmental preservation do not have to be enemies of each other. By establishing this friendly balanced, transparent and strictly enforced administrative framework, India can protect the “Ease of Doing Business” while firmly safeguarding every citizen’s fundamental right to a clean, safe and sustainable environmental.

REFERENCES

- The Jan Vishwas (Amendment of Provisions) Act, 2023, No. 18, Gazette of India, pt. II sec. 1 (Aug. 11, 2023)
- The Environment (Protection) Act, 1986, No. 29, Acts of Parliament, 1986 (India)
- The Air (Prevention and Control of Pollution) Act, 1981, No. 14, Acts of Parliament, 1981 (India)
- Environment Protection (Manner of Holding Inquiry and Imposition of Penalty) Rules, 2024, Ministry of

Environment, Forest and Climate Change,
S.O. 4970(E) (Nov. 4, 2024) (India)

- National Green Tribunal Act, 2010
- Sairam Bhat & Jaibatraka Mohanta, *Quasi-Decriminalisation in Environmental Laws in India: An Evaluation*, CEERA-NLSIU (Oct. 8, 2023)
- PRS Legislative Research, *Legislative Brief: The Jan Vishwas (Amendment of Provisions) Bill, 2022* (2023)
- Department for Promotion of Industry and Internal Trade (DPIIT), *Note on the Jan Vishwas (Amendment of Provisions) Act, 2023*, Ministry of Commerce & Industry, Government of India (2023)
- Central Pollution Control Board (CPCB), *Report of the CPCB In-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund* (2019)

