



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

THE JAN VISHWAS (AMENDMENT OF PROVISIONS) ACT, 2023: A CRITICAL ASSESSMENT OF ITS IMPACT ON ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT IN INDIA

AUTHORED BY - MOHANAPRIYA.M & AATHEKA JUHI. T N

Abstract

The Jan Vishwas (Amendment of Provisions) Act, 2023 (JV Act), marks a radical regulatory pivot in India, designed to streamline governance and improve the 'Ease of Doing Business' by decriminalizing numerous minor offenses across 42 statutes. This doctrinal study critically assesses the legal ramifications of applying this legislative policy to core environmental statutes, notably the Environment (Protection) Act, 1986 (EPA), and the Air (Prevention and Control of Pollution) Act, 1981 (Air Act). The Act replaces the threat of imprisonment and substantial fines with an administrative penalty regime enforced by Adjudicating Officers (AOs).

The central legal dilemma investigated is whether this shift, coupled with a drastic reduction in the quantum of penalties—such as the 85% to 90% reduction in maximum and minimum fines under the Air Act—compromises the requisite level of economic deterrence. Employing statutory exegesis and deterrence theory analysis, the research confirms the alternative hypothesis: the significantly diminished financial liability risks compromising the legal sufficiency of deterrence, signaling a reduction in regulatory risk for major industrial polluters.

Furthermore, the study identifies critical structural anomalies: the creation of legal fragmentation between the low-cap AO fines and the robust compensatory jurisdiction of the National Green Tribunal (NGT); the legal ambiguity surrounding the technical competence of AOs; and the inherent financial insufficiency of the new Environmental Protection Fund (EPF). The conclusion asserts that without fundamental legislative reform—specifically introducing dynamic, turnover-linked penalty calculations and mandating specialized legal and technical competence for AOs—the JV Act risks sacrificing long-term ecological security for short-term administrative efficiency.

Keywords: Jan Vishwas Act, 2023, Decriminalization, Environmental Compliance, Economic Deterrence, Administrative Penalties, Adjudicating Officers, Air Act, National Green Tribunal (NGT).

I. INTRODUCTION

I. Introduction

The regulatory landscape in India underwent a transformative legislative change with the enactment of the Jan Vishwas (Amendment of Provisions) Act, 2023 (JV Act), which received Presidential assent on August 11, 2023. This Act fundamentally reorients the relationship between the state and regulated entities by enhancing "trust-based governance for ease of living and doing business," through the decriminalization and rationalization of minor offences across 42 Central Acts. The legislative intent was buttressed by India's goal to improve its Ease of Doing Business (EODB) rankings, which had risen significantly from 142nd in 2014 to 63rd by 2019.

A critical component of this massive overhaul involves significant amendments to India's primary environmental protection statutes: the Environment (Protection) Act, 1986 (EPA); the Air (Prevention and Control of Pollution) Act, 1981 (Air Act); and the Public Liability Insurance Act, 1991 (PLI). Historically, environmental enforcement in India relied on a sanction-based criminal strategy, which was frequently criticized as ad hoc, time-consuming, and ineffective. **Crucially, environmental courts faced massive backlogs prior to 2023:** Analysis of 2022 data showed that, at the prevailing rate of disposal, clearing the existing backlog of cases under the **Environment (Protection) Act, 1986, would take over 34 years.** Similarly, clearing the backlog under the Air and Water Acts would take between eight and 33 years.

The JV Act represents a significant paradigm shift, converting numerous violations, which previously included imprisonment provisions, into administrative contraventions punishable only by monetary penalties determined by newly appointed Adjudicating Officers (AOs). This replacement necessitates a rigorous critical assessment of whether the removal of criminal deterrence is adequately substituted by a financially weaker administrative regime, or if efficiency has been prioritized at the expense of ecological security.

Research Problem Formulation:

The core research problem arises from the inherent friction between the government's dual policy objectives: achieving 'Ease of Doing Business' (EODB) by minimizing criminal liability, and upholding 'Environmental Protection,' which demands robust deterrence against pollution that imposes massive social and ecological costs.

The central legal dilemma demanding investigation is: *Does the replacement of criminal sanctions (including imprisonment) with administrative penalties and the subsequent significant reduction in the quantum of minimum and maximum penalties, as stipulated by the Jan Vishwas (Amendment of Provisions) Act, 2023, effectively undermine the deterrent mechanism necessary to ensure high levels of environmental compliance among regulated entities in India?* The transition shifts the focus from retributive criminal justice to administrative efficiency, making it imperative to evaluate through legal analysis if efficiency has been prioritized at the expense of ecological security.

II. RESEARCH OBJECTIVES

Research Objectives (ROs)

1. To conduct a rigorous doctrinal analysis of the policy rationale and legislative trade-offs inherent in the JV Act's environmental amendments, contrasting the goals of Ease of Doing Business with established environmental jurisprudence principles (e.g., Polluter Pays Principle).
2. To analyze the legal implications of converting imprisonment and fines into administrative penalties, focusing on the loss of criminal deterrence versus the potential gain in certainty of punishment via the Adjudicating Officer (AO) mechanism.
3. To evaluate the procedural and structural coherence of the new administrative adjudication framework, including the role, power, and competence requirements of Adjudicating Officers and the appellate mechanism of the National Green Tribunal (NGT).
4. To determine the legal anomalies and potential fragmentation introduced by the JV Act regarding the division of enforcement labor and monetary penalties between AOs and the NGT's existing compensatory jurisdiction.
5. To formulate legally sound recommendations for harmonizing the new administrative enforcement architecture with the robust compensatory regime of the NGT to ensure

effective deterrence.

Research Questions (RQs)

- 1. Deterrence Efficacy:** How does the legislative replacement of criminal sanctions (imprisonment) with administrative penalties affect the *legal theory* of deterrence against severe environmental violations by industrial entities?
- 2. Procedural Coherence:** What legal inconsistencies or ambiguities arise from the appointment, jurisdiction, and required technical competence of Adjudicating Officers (AOs) within the existing framework of environmental governance?
- 3. Harmonization Challenge:** To what extent does the significant reduction in penalty quanta under the JV Act create legal anomalies or fragmentation with the compensatory jurisdiction of the NGT?
- 4. Penalty Rationality:** Does the statutory penalty structure established by the JV Act (e.g., maximum ₹15 Lakh for core Air Act violations, subject to a 10% triennial increase) satisfy the legal principle that penalties must outweigh the economic benefit of non-compliance?

Research Hypothesis (H)

The research will test the following doctrinal hypothesis against principles of effective environmental governance derived from legal theory:

Null Hypothesis (H₀): The implementation of the Jan Vishwas Act's administrative penalty regime constitutes a valid legal shift that retains credible deterrence by increasing the *certainty* and *speed* of punishment, despite lowering its *severity*.

Alternative Hypothesis (H₁): The replacement of criminal sanctions with administrative penalties of significantly reduced magnitude under the JV Act compromises the core legal principle of economic deterrence for highly polluting industries, risking a decline in **statutory compliance standards** due to the trivialization of non-compliance costs.

III. RESEARCH METHODOLOGY

Research Approach:

The research adopts a **purely Doctrinal Approach**, focusing on the rigorous analysis of primary and secondary legal sources. This method is concerned solely with the development and elaboration of legal doctrines, statutory interpretation, and normative principles.

Study Design, Data Collection, and Variables:

The study employs an **Analytical Doctrinal Design**, focusing on four main stages: (1) Exegesis of the JV Act and its amendments; (2) Statutory Interpretation, comparing the new provisions against existing environmental jurisprudence; (3) Doctrinal mapping of the AO mechanism's jurisdiction; and (4) Normative assessment of the reduced penalties against deterrence theory.

Data Collection Method:

The research relies exclusively on the **analysis of legal sources**: Acts of Parliament, legislative history documents (e.g., Joint Parliamentary Committee reports), judicial precedents (NGT and Supreme Court rulings on compensation), legal commentary, and government notifications establishing the AO framework and EPF.

Data Collecting Instrument:

The primary instrument is the application of established methods of **Statutory Interpretation Protocols** and **Legal Consistency Frameworks** to map the coherence of the new provisions with the principles of environmental law.

Suitable Variables (Doctrinal Concepts)

In a doctrinal study, variables are conceptual constructs used to systematically analyze the legal texts:

Variable Type	Variable Name	Operational Definition
Dependent	Legal Deterrence Risk (LDR)	The likelihood that the reduced penalties fail to legally deter high-profit, high-risk non-compliance, as measured by the ratio of maximum penalty to potential economic gain from non-compliance (derived from analysis of the penalty structure).
Dependent	Procedural Coherence Index (PCI)	A normative score assigned based on the legal clarity and consistency of the AO appointment criteria, appellate route, and jurisdictional boundaries with the NGT's compensatory regime.
Independent	Shift from	The removal of imprisonment provisions and the conversion

Variable Type	Variable Name	Operational Definition
	Criminality (SC)	of fines to administrative penalties.
Independent	Penalty Reduction Quantum (PRQ)	The legislated reduction percentages (e.g., 85% max reduction in the Air Act) which define the new statutory economic cost of violation.

Sampling Techniques and Size:

Doctrinal research uses Purposive Sampling (or a legal census) approach, focusing solely on the legal materials necessary to establish the doctrine.

- (i) **Size:** Not applicable in a statistical sense.
- (ii) **Method:** Purposive Sampling focusing on the primary texts: The Jan Vishwas (Amendment of Provisions) Act, 2023; the amended sections of the EPA 1986, Air Act 1981, IFA 1927, and PLI 1991; and key legal precedents concerning deterrence and compensation (NGT and Supreme Court rulings).

Data Analysis and Findings:

Data analysis is exclusively qualitative, analytical, and normative.

- (i) **Statutory Exegesis:** Analyzing the text of the JV Act and amended statutes to define the new powers of the AO and the new penalty brackets.
- (ii) **Analogical Reasoning:** Comparing the new administrative penalty levels against established principles of deterrence theory to determine if the quantum of punishment remains legally adequate.
- (iii) **Legal Consistency Check:** Systematically evaluating the AO mechanism against the jurisdiction of the NGT to identify potential legal anomalies regarding overlapping liabilities and set-offs.

IV. REVIEW OF RELEVANT LITERATURE

This doctrinal study relies on legal scholarship concerning regulatory governance, deterrence theory, and comparative environmental law.

- (i) **Decriminalization and Alternative Enforcement Mechanisms:** Legal literature scrutinizing the shift from criminal to administrative regimes focuses on the trade-offs

between the severity and certainty of punishment. This body of work is essential for analyzing whether low monetary sanctions can maintain deterrence when the social stigma and threat of incarceration are removed, particularly in high-risk environmental fields.

- (ii) **Restorative Justice, Compensation, and the NGT:** Scholarship explores the interaction between the JV Act's quasi-decriminalization and the restorative/compensatory regime of the NGT. This analysis questions whether ecological restoration can be financially achieved when administrative fines, directed towards the Environmental Protection Fund (EPF), are capped at a drastically reduced level.
- (iii) **Effectiveness of Sanction-based vs. Compliance-based Strategies:** Prior legal studies on environmental enforcement in India reveal that the historical sanction-based strategy has often been "ad hoc and generally ineffective," lacking certainty. This historical context, characterized by extremely slow criminal court disposal rates (e.g., 34 years to clear the EPA backlog), justifies the need for procedural reform but not necessarily the reduction in penalty severity.
- (iv) **Legislative Intent, Rationalization, and Reduction of Penalties:** Legal analysis confirms the JV Act's intent to enhance "trust-based governance for ease of living and doing business" by rationalizing offenses. However, this literature also documents the specific quantum of financial reduction (e.g., 85% maximum reduction under the Air Act), which forms the core evidence for questioning the resultant economic deterrence.
- (v) **Competence and Accountability of Adjudicating Officers (AOs):** Legal critique focuses on the structural challenges presented by the AO mechanism. Concerns have been raised that AOs, appointed as senior executive officials, may lack the required **technical and judicial competence** to assess complex environmental evidence accurately, risking poorly reasoned penalty orders and increasing the appellate burden on the NGT.

V. SIGNIFICANCE OF THE STUDY AND LIMITATIONS

Significance of the Study:

The JV Act represents a landmark piece of legislation that redefines the equilibrium between economic aspirations and environmental stewardship. This doctrinal study provides:

- (i) **Doctrinal Clarity:** It maps the precise legal effects of decriminalization, providing clarity on the reduced liability risk for businesses and the altered enforcement powers of the executive.
- (ii) **Guidance for Policy:** The findings offer crucial input to the Central Government and MoEFCC regarding the adequacy of the new administrative penalty structure to maintain **statutory compliance standards** required for environmental protection.
- (iii) **Judicial Contribution:** The analysis of the NGT appellate mechanism and the interaction with the Environmental Protection Fund (EPF) contributes to judicial clarity, highlighting potential legal gaps or anomalies.

Limitations

- (i) **Exclusion of Implementation Data:** As a purely doctrinal study, it assesses the "law in the books" only, excluding the real-world operational effects of the AO mechanism (e.g., actual speed of disposal, technical competence in practice).
- (ii) **Ambiguity of Deterrence:** Legal analysis of deterrence is normative; it cannot definitively prove whether the reduction in penalties will *actually* lead to increased non-compliance, only whether the new structure is legally sufficient to create a deterrent effect.

VI. CONTEXT OF STUDY: THE JAN VISHWAS ACT, 2023 AND ENVIRONMENTAL LAW

Legislative History and Stated Intent:

The journey of the JV Act commenced with its introduction as a Bill in the Lok Sabha on December 22, 2022. Following review by a Joint Parliamentary Committee, the Bill was passed by both houses in mid-2023 and received Presidential assent on August 11, 2023. The overarching stated aim of the legislation is to foster trust between citizens/businesses and the state, minimize criminal liability for technical or minor procedural violations, and ease the burden on the judiciary.

Mapping Key Environmental Amendments

The JV Act amends four key environmental statutes: the Indian Forest Act, 1927 (IFA); the Environment (Protection) Act, 1986 (EPA); the Air (Prevention and Control of Pollution) Act, 1981 (Air Act); and the Public Liability Insurance Act, 1991 (PLI).

The amendments result in substantial legal restructuring: (i) **Decriminalization:** For most contraventions under the EPA 1986, the Act removes the provision for imprisonment (up to five years). The introduction of Section 15A under the EPA shifts enforcement from criminal prosecution to an administrative penalty system. (ii) **Administrative Adjudication:** The Act converts fines into administrative penalties. Adjudicating Officers (AOs) are to be appointed by the Central Government to hold inquiries and impose these penalties. Appeals against AO orders concerning the EPA can be filed with the NGT within 60 days, provided the aggrieved person deposits ten per cent of the penalty amount imposed. (iii) **Penalty Rationalization:** The financial penalties are drastically reduced, particularly for pollution control laws. The penalties are subject to an automatic 10% increase every three years.

The table below illustrates the scale of this financial deregulation

TABLE 1: GENERAL SUMMARY OF SIGNIFICANT CHANGES

Feature/Sanction Type	Pre-JV Act (Criminal Penalties, e.g., Section 37/39)	Post-JV Act (Administrative Penalties, e.g., Section 39A)	Policy Implication
Enforcement Mechanism	Criminal Prosecution (Judicial Courts)	Administrative Adjudication (Adjudicating Officer)	Trade-off: Severity for Certainty/Speed
Imprisonment Provision	Yes (Up to 5 years)	Removed for most offenses	Policy shift to 'Ease of Doing Business'
Minimum Financial Penalty	₹1,00,000 (1 Lakh)	₹10,000 (10 Thousand)	90% Reduction (Massive shift in liability floor)
Maximum Financial Penalty	₹1,00,00,000 (1 Crore)	₹15,00,000 (15 Lakhs)	85% Reduction (Risk of Deterrence Erosion for MPIs)
Penalty Escalation	Variable (Judicial discretion)	Fixed 10% increase every 3 years	Inadequate to counteract industrial profitability inflation

TABLE 2: COMPARISON BETWEEN AIR ACT AND WATER ACT

Environmental Act	Amending Legislation	Core Penalty Range (Administrative)	Status of Consent/Unauthorized Discharge (e.g., Water Act Sections 25/26 Equivalent)	Policy Objective
Air Act, 1981	Jan Vishwas (Amendment of Provisions) Act, 2023	₹10,000 – ₹15,00,000	Decriminalized penalties for non-compliance with most directions/orders.	Prioritizes EODB and judicial speed.
Water Act, 1974	Water (Prevention and Control of Pollution) Amendment Act, 2024	₹10,000 – ₹15,00,000	RETAINED for major contraventions (discharge without consent).	Balances EODB for procedural tasks with robust protection for core resources.

THE ENVIRONMENT PROTECTION ACT, 1986

Section	Description (Prior & Amended)	Prior to Jan Vishwas	After Jan Vishwas (2023)
2	Definitions (no "Fund").	Not present	Inserted (ca): Defines "Fund" as Environmental Protection Fund under section 16.
10(2)-(4)	Required assistance for inspections; failure/obstruction as offence under CrPC	Not present	Substituted: Failure/obstruction liable to penalty under 14B; CrPC applies to searches.

Section	Description (Prior & Amended)	Prior to Jan Vishwas	After Jan Vishwas (2023)
14A	Penalty for contravention of Section 7 (prohibits emission/dischARGE of environmental pollutants) or Section 8 (handling hazardous substances)	Not present	Penalty: ₹1 lakh–₹15 lakh; ₹50,000/day for continuing contravention
14B	Penalty for contravention of Sections 9 (furnishing information), 10 (entry/search/inspection), 11 (sample analysis)	Not present	Penalty: ₹10,000–₹5 lakh; ₹10,000/day for continuous contravention
15	Penalty for general contravention of Act, rules, orders, or directions not otherwise specifically penalized	Imprisonment up to 5 years or fine up to ₹1 lakh or both	Penalty: ₹10,000–₹15 lakh; ₹10,000/day for continuous contravention
15A	Penalty for contravention by companies	Not present	Penalty: ₹1 lakh–₹15 lakh; ₹1 lakh/day for continuing contravention
15B	Penalty for contravention by Government Departments	Not present	Penalty: Head of Dept. - one month's basic salary; similar penalty for officers
15C	Appointment of Adjudicating Officer to determine penalties (administrative, not judicial)	Judicial court proceedings	Officer (of certain seniority) conducts summary administrative inquiry

Section	Description (Prior & Amended)	Prior to Jan Vishwas	After Jan Vishwas (2023)
15D	Appeal mechanism to higher authority/NGT	Appeal to courts available	Appeal to National Green Tribunal (NGT)
15E	Crediting penalty amounts to Environmental Protection Fund	Penalty to Consolidated Fund	Amounts go to Environmental Protection Fund
15F	Imprisonment/fine for non-payment of penalty	Only for main offences, not non-payment	Jail (up to 3 yrs) or fine (2x penalty) for non-payment

WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974:

Section	Description (Prior & Amended)	Prior to Jan Vishwas	After Jan Vishwas (2023)
25	Penalty for establishing/operating industry without State Board's consent (core anti-pollution requirement)	Imprisonment up to 3 years, fine up to ₹10,000	Penalty: ₹1 lakh (1st), ₹2 lakh (2nd), ₹5 lakh (3rd+ offences)
27-29	Penalties for other consent-related or Board-ordered offences	Varied imprisonment/fine by section	Penalty structure: ₹1 lakh-₹5 lakh; no imprisonment
33A	Penalty for failure to comply with Board's directions	Prosecution in court, imprisonment/fine	Up to ₹1 lakh/day; HOD salary penalty for Govt Dept.

AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981:

41	Liability for company offences	Company officers criminally liable	Penalty for company, HOD salary penalty for Govt Dept.
45A	Failure to produce documents/furnish information as required	Imprisonment up to 6 months and fine	Penalty: ₹5 lakh+ for repeated; administrative adjudication
45B	Adjudicating Officer	Not Present	Appointment of Adjudicating Officer
45C	Appeal to National Green Tribunal	Not Present	Any person aggrieved by the order passed by the adjudicating officer under section 45B may prefer an appeal to the National Green Tribunal established under section 3 of the National Green Penalties credited to EPF under EPA.
45D	Penalties credited to EPF under EPA.	Not Present	Where an adjudicating officer imposes penalty or additional penalty, as the case may be, under the provisions of this Act, the amount of such penalty shall be credited to the Environmental Protection Fund established
45E	Penalty non-payment	Not Present	a) Whoever fails to comply with the provisions of section 25

			<p>or section 26, in respect of each such failure, shall be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years</p> <p>b) Penalty non-payment (imprisonment up to 3 yrs/fine twice amount). Company/govt liability with defenses.</p>
Section	Description (Prior & Amended)	Prior to Jan Vishwas	After Jan Vishwas (2023)
21	Requirement of Consent to establish/operate industry in air pollution control area	Non-compliance: prosecution/imprisonment/fine	Penalty: ₹10,000–₹15 lakh; daily penalty for ongoing contravention
21A		Not Present	Inserted 21A: Central govt (with central board) issues guidelines for consent grant/refusal/cancellation (time-bound disposal, validity); SPCBs must comply.

Section	Description (Prior & Amended)	Prior to Jan Vishwas	After Jan Vishwas (2023)
37–39	Penalties for failure to comply with standards/directions, other acts obstructing Board’s work	Imprisonment penalties (3 months–6 years), fines	Civil penalty: ₹10,000–₹15 lakh; ₹10,000/day for continuance
38A	Penalty for contravention by Government departments	Not present	Head of Dept./officer: equal to one month’s basic salary
39A	Appointment of Adjudicating Officer to determine penalties	Court jurisdiction	Senior officer adjudicates penalties administratively
39B	Appeal mechanism	Appeal to regular courts	Appeal to National Green Tribunal (NGT), 10% penalty deposit for appeal admission
39C	Environmental Protection Fund: crediting penalties	Not provided	Penalties go to Environmental Protection Fund
39D	Punishment for wilful non-payment of penalty/continued	Not clear/Case law	Jail for intentional non-payment, up to 6 yrs and fine

Section	Description (Prior & Amended)	Prior to Jan Vishwas	After Jan Vishwas (2023)
	default on consent		

The Parallel Regulatory Framework: Water (Prevention and Control of Pollution) Act, 1974:

It is a critical distinction that the Jan Vishwas (Amendment of Provisions) Act, 2023, **did not directly amend** the Water (Prevention and Control of Pollution) Act, 1974 (Water Act). However, the same decriminalization philosophy and administrative penalty model were applied to the Water Act through a subsequent, parallel legislative vehicle: the **Water (Prevention and Control of Pollution) Amendment Act, 2024**. This ensured harmonization of enforcement architecture across India's two principal pollution control statutes.

A. Legislative Pathway and Penalty Structure: (i) *Constitutional Requirement:* Since the Water Act operates on a framework adopted by states under Article 252 of the Constitution, the subsequent amendment required state legislative assemblies (such as the Haryana Legislative Assembly) to pass a resolution to adopt the central amendment bill before it could be introduced in Parliament, reflecting a cooperative federal approach to this major regulatory change. (ii) *Decriminalization of Procedural Offenses:* Mirroring the changes in the Air Act, the Water Amendment Act, 2024, decriminalized almost all penal provisions for minor and procedural lapses (Section 41 to 45A), replacing jail terms with financial penalties. Violations such as failing to comply with directions or reporting failures are now administrative matters. (iii) *Equivalent Penalty Quantum:* The new administrative penalties established under the Water Act model are set at the same magnitude as the Air Act: ranging from a minimum of **₹10,000** to a maximum of **₹15 Lakhs**.

B. Key Distinction: Retention of Criminal Liability for Core Acts

The philosophical intent behind environmental enforcement is most clearly revealed in the statutory provisions that retained criminal liability under the Water Act, 1974. (i) *Sections Retaining Criminal Punishment:* Imprisonment and the requirement for criminal prosecution were specifically **retained** for the most rigorous contraventions related to unauthorized discharge. These core violations pertain to **Sections 25 and 26** of the Water Act. Section 25 makes it mandatory to obtain consent from the State Pollution Control Boards (SPCBs) to

establish new outlets or begin new discharges. Section 26 governs existing discharges of sewage or trade effluents. (ii) **Imprisonment for Non-Payment:** While minor procedural violations are decriminalized, the law imposes a severe criminal consequence for administrative failure: if an individual fails to pay the administrative penalty, they can face imprisonment of up to three years or pay a fine that is twice the original penalty amount.

C. Philosophical Split in Regulatory Intent

The retention of criminal liability for unauthorized effluent discharge (Sections 25/26) suggests a deliberate distinction in the legislative philosophy applied to different environmental media. Water pollution, particularly unauthorized effluent release into streams or wells, often causes severe, localized, and immediate public health crises and irreversible ecological damage. By retaining the threat of imprisonment for these core acts, the legal framework implicitly maintains that while procedural/reporting failures are administrative burdens subject to the EODB agenda, unauthorized operation and discharge remain serious crimes, prioritizing Environmental Protection above Ease of Doing Business in these critical areas. This distinction indicates a nuanced, albeit potentially inconsistent, application of the decriminalization mandate across India's principal pollution laws.

VII. CONCEPTUAL FRAMEWORK: DECRIMINALIZATION, DETERRENCE, AND COMPLIANCE

The conceptual framework for analyzing the JV Act is built upon evaluating the regulatory transition from a punitive, deterrence-focused criminal system to a trust-based administrative system.

- 1. The Architecture of Trust-Based Governance:** The government's move intends to streamline legal processes, thereby increasing the *certainty* of punishment, even if the *severity* is lowered. This shift is conceptually tested against whether the resulting low-severity penalty structure can satisfy the core requirement of economic deterrence theory: the expected cost of the penalty must outweigh the economic benefit a company gains from non-compliance.
- 2. The Role of Administrative Adjudication:** The shift of enforcement power from criminal courts to politically appointed Adjudicating Officers (AOs) is the most significant procedural change. The conceptual framework examines whether the independence and procedural competence of these AOs are legally secured to prevent

inconsistent or technically flawed penalty orders that would defeat the goal of judicial streamlining.

- 3. The Environmental Protection Fund (EPF):** Penalties imposed by AOs are directed to the EPF. The legal utility of this fund is intrinsically tied to the quantum of penalties collected. The massive 85% reduction in maximum penalties severely limits the potential size of the EPF, creating a legal concern that the fund will be financially insufficient to cover major remediation costs, undermining the goal of restorative justice.

VIII. CASE STUDIES/EXAMPLES: DOCTRINAL APPLICATION ANALYSIS

The study focuses on the legal implications of the penalty rationalization for key industrial polluters operating under the EPA and Air Act.

1. Analysis of Penalty Rationalization and Deterrence Erosion

The reduction in penalties fundamentally alters the structure of economic deterrence. Specific doctrinal findings reveal a substantial decrease in the required financial consequence for non-compliance:

- **Air Act (Maximum Penalty):** The reduction of the maximum penalty by 85% (from ₹1 Crore to ₹15 Lakhs) for violations under the Air Act is a critical point of doctrinal analysis. For large, highly profitable red-category industries, a maximum penalty of ₹15 Lakh is negligible compared to the operational budgets or profit margins saved by skirting environmental responsibilities (e.g., failing to install costly pollution control equipment). This reduction risks lowering the potential economic cost of pollution to a level where the penalty becomes a predictable, non-catastrophic business cost, arguably institutionalizing non-compliance as a viable business strategy.
- **Minimum Penalty Reduction:** The 90% reduction in the minimum penalty under the Air Act (from ₹1 Lakh to ₹10 Thousand) similarly trivializes the cost of failure for medium and smaller enterprises, potentially signaling a relaxed regulatory standard.
- **Indexing Insufficiency:** While the Act mandates a 10% increase in fines and penalties every three years, doctrinal analysis suggests this fixed increase is unlikely to maintain pace with the inflation of industrial profit margins or the escalating real cost of

environmental damage, ensuring that the sanctions quickly lose their power to deter high-stakes violations.

2. Legal Mechanisms Affecting Environmental Compliance

The JV Act affects environmental compliance through two primary legal mechanisms: **economic calculus** and **regulatory signal**:

- 1. Deterioration of Economic Deterrence (Compliance via Cost):** Compliance is primarily driven by the calculation that penalties must exceed abatement costs. The JV Act compromises this through the *Penalty Reduction Quantum (PRQ)*. For high-polluting sectors, compliance requires massive capital expenditure (e.g., installing air scrubbers or Zero Liquid Discharge systems). When the maximum legal penalty for core breaches is capped at ₹15 Lakh, the legal pressure to make multi-crore compliance investments diminishes drastically. This effectively shifts the legal mechanism from *deterrence* (prevention of violation) to *licensing* (payment for violation).
- 2. Weakening of Regulatory Signal (Compliance via Social Stigma):** The wholesale removal of imprisonment provisions for core environmental violations under the EPA (Section 15A) and Air Act converts the enforcement regime from a criminal sanction approach to a purely civil/administrative one. Criminal enforcement is valued because it attaches a **social stigma** and personal risk (incarceration) that monetary fines cannot replicate. Decriminalization signals that environmental contraventions are no longer matters of moral culpability or severe public concern, but rather technical infractions. This signal undermines the normative basis for voluntary compliance.
- 3. Procedural Ambiguity:** While the introduction of AOs aims for faster, more certain punishment (addressing the pre-existing 34-year backlog), the legal system's compliance capacity is hampered by structural flaws. The lack of mandatory technical qualifications for AOs risks the imposition of legally weak and technically indefensible orders. If AO orders are inconsistent or frequently overturned, the intended **certainty of punishment** fails, leading to prolonged legal uncertainty that encourages firms to delay costly compliance measures until the legal route is exhausted.

3. Legal Anomalies and Harmonization with the NGT

The JV Act introduces potential legal fragmentation within India's pollution control framework, an issue already flagged by the Supreme Court.

- **Conflict of Jurisdiction and Quantum:** A key doctrinal anomaly lies in the potential conflict between the penalties imposed by AOs (capped at ₹15 Lakh, feeding the EPF) and the Environmental Compensation orders issued independently by the NGT, which are often based on calculated environmental damage and can run into multiple crores of rupees. Without clear jurisdictional hierarchy, regulated entities may face dual penalties of widely divergent magnitudes for the same contravention, leading to complex and protracted litigation over set-offs and overlapping liabilities.
- **Access to Justice Barrier:** Section 39B mandates that the NGT shall not entertain an appeal against an AO order unless the appellant has deposited ten per cent of the penalty amount. While intended as a procedural filter, this pre-deposit requirement may be financially prohibitive for genuinely small businesses or citizens impacted by IFA amendments, risking disproportionate access to the appellate mechanism compared to large, profitable corporations.

IX. KEY TAKEAWAYS AND FINDINGS

The doctrinal analysis confirms the Alternative Hypothesis () by concluding that the reduction in penalty severity risks compromising the legal sufficiency of deterrence, placing a greater burden on procedural efficiency to maintain compliance.

- (i) Deterrence Erosion Confirmed:** The significant reduction in the maximum financial penalty in core environmental statutes contradicts the legal principle of economic deterrence, which requires penalties to be high enough to exceed the financial benefit derived from non-compliance. This shift fundamentally signals a reduction in regulatory risk for businesses.
- (ii) Procedural Competence is a Legal Risk:** The legal structure appointing AOs, who are senior executive officials, is vulnerable to challenge based on a lack of required technical and judicial competence to assess complex environmental evidence. This lack of specialized capacity risks leading to inconsistent penalty orders and subsequent judicial gridlock at the NGT appellate level, undermining the goal of judicial streamlining.
- (iii) Fragmentation of Enforcement Authority:** The JV Act has created a parallel system of administrative fines (AOs) alongside the compensatory jurisdiction (NGT), raising doctrinal questions about the harmonized application of the Polluter Pays Principle and

creating a risk of fragmented enforcement authority within the pollution control framework.

X. CHALLENGES AND LIMITATIONS

- (i) **Competence and Accountability:** The appointment criteria for AOs must be legally revised to mandate specific technical expertise alongside administrative experience to ensure the legitimacy and durability of their decisions against NGT appeal.
- (ii) **Financial Insufficiency of EPF:** The low ceiling on administrative penalties legally guarantees that the EPF will be inadequate to address the significant costs of major environmental remediation projects, undermining the goal of restorative justice.

XI. RECOMMENDATIONS

XI. Recommendations (Legal and Regulatory Reform):

Based on the doctrinal assessment of the legislative changes and anticipated normative outcomes, the following recommendations are proposed to mitigate the legal risks associated with weakened deterrence while preserving administrative efficiencies:

- (i) **Strengthening Administrative Competence and Accountability:**
 - (a) *Mandatory Technical Qualifications:* The Central Government must revise the rules governing the appointment of AOs to mandate specific technical expertise (e.g., environmental engineering or pollution control science) alongside required legal or administrative experience.
 - (b) *Procedural Independence:* Rules must be established to guarantee the procedural independence of AOs from the State Pollution Control Boards (SPCBs) that generate the non-compliance reports, ensuring unbiased determination of penalties.
- (ii) **Penalty Structuring for Effective Deterrence:**
 - (a) *Dynamic Penalty Calculation:* The penalty framework should be revised to introduce a dynamic, percentage-based calculation, linking the penalty quantum directly to a percentage of the polluting company's annual turnover or profit margin. This aligns the fine with the firm's ability to pay and the true economic benefit of non-compliance, ensuring penalties function as genuine economic deterrents.
 - (b) *Enhanced Indexing:* The fixed 10% triennial increase in penalties is legally insufficient. This indexing should be significantly revised upward or directly

indexed to a combination of the Wholesale Price Index (WPI) and a factor reflecting the escalating real cost of environmental damage.

(iii) Harmonization and Integration with NGT

(a) *Clear Jurisdictional Hierarchy*: Legislative clarity is urgently needed to define the legal relationship between AO penalties and NGT environmental compensation. It should be legislatively affirmed that AO penalties are administrative sanctions aimed at deterrence, while NGT compensation orders are civil liability measures aimed at *remediation and restoration*, minimizing overlap.

(b) *EPF Governance and Transparency*: Rules detailing the transparent operation of the EPF are essential. Funds collected must be earmarked explicitly for environmental restoration projects relevant to the violation type and geography to ensure the principle of restorative justice is practically realized.

XII. CONCLUSION

XII. Conclusion:

The Jan Vishwas (Amendment of Provisions) Act, 2023, represents a decisive attempt to favor administrative efficiency and business trust over conventional criminal sanctions, primarily by addressing the crippling backlog in environmental criminal courts.

This doctrinal analysis concludes that the concomitant, substantial reduction in the quantum of minimum and maximum monetary penalties for serious environmental contraventions introduces a profound and unacceptable risk, confirming the Alternative Hypothesis (). While the procedural shift to AOs holds the promise of solving the decades-long issue of slow judicial disposal (e.g., the 34-year backlog), the dramatic reduction in financial liability suggests that environmental non-compliance is being reframed as a manageable regulatory cost. This undermines the legal sufficiency of economic deterrence, particularly for Major Polluting Industries. Continuous legislative review of the penalty structures is essential to prevent this regulatory innovation from becoming a pathway to ecological deregulation.

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