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A CRITICAL ANALYSIS OF THE JAN VISHWAS ACT AND ITS IMPACT ON INDIA'S ECOLOGY

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ABSTRACT

The Jan Vishwas (Amendment of Provisions) Act, 2023 decriminalizes a number of offences under 42 central acts and aims to facilitate ease of doing business as well as ease of living. This paper attempts to discuss the implications of the proposed amendment with regards to the environmental related laws and its impact on the ecology of the country. While the Act envisages substitution of imprisonment with penalty for various violations, the new system leaves the question of ecological compensation and damage unaddressed. In addition to the above, the adjudicating authority has been given extensive powers without specifying technical expertise or training and the Water Act remains outside the scope of the amendment thereby creating a loophole which may have adverse consequences.

Keywords

Jan Vishwas Act 2023, environmental decriminalisation, Air Act, Indian Forest Act, ecological deterrence, ease of doing business

LEGAL FRAMEWORK AND PURPOSE OF LEGISLATION

Jan Vishwas Act was amended in 2023 to provide relief to people and businesses: The Jan Vishwas Act, 2023 was amended in the year 2023 through legislation by the Parliament of India by the President of India on 11 August 2023[1] to overhaul and decriminalize numerous Indian laws. The proposed legislation made the following amendments: The amendments in this enacted law came with the aim to promote trust in government as well as to facilitate an ease of life and ease of doing business[2]. Several legislations imposed strict punishments for even minor offences thereby resulting in unnecessary litigation and stress. Therefore, the amended law sought to decriminalize such offences by prescribing penalty or fines. These amendments would result in lesser prosecution and enable clarity of norm enforcement.

One of the laws relating to the environment that were amended with the coming into force of the new Act (in April 2024) include the Environment Act, the Air Act, and the Indian Forest Act[3]. Nevertheless, the Water Act was omitted from these amendments as it is subject to Article 252[4]. These anomalies caused some issues, which the Supreme Court reported in 2025: to explain, the Court observed that there are contradictory rules in the consent orders issued under the old law and the present law regarding, for example, the right to appeal and the significance of deemed consent, which are causing additional confusion and irregularities.

THE PARADIGM SHIFT: COMPLIANCE OR DECRIMINALIZATION

Phasing out of non-bailable offences The Environment & Forests (Amendment) Act of 1980 as also the Air Act of 1981 has specified that the offences committed under these would not be non-bailable and as such

[1] The Jan Vishwas (Amendment of Provisions) Act, 2023, No. 18, Acts of Parliament, 2023 (India), published in The Gazette of India (Extraordinary), Part II—Section 1, August 11, 2023.

[2] Statement of Objects and Reasons, The Jan Vishwas (Amendment of Provisions) Bill, 2022, Bill No. 322 of 2022 (introduced in Lok Sabha, Dec. 22, 2022).

[3] Ministry of Environment, Forest and Climate Change (MoEFCC), Notification S.O. 1548(E), Implementation of Provisions of the Jan Vishwas Act regarding Environmental Enactments, Ministry of Law and Justice, Govt. of India (effective April 1, 2024).

[4] Constitution of India, Art. 252 (empowering Parliament to legislate for two or more States by consent; since the Water (Prevention and Control of Pollution) Act, 1974 was enacted under Article 252, amendments thereto require State Legislative Assembly resolutions to take effect locally).

the offenders could be imprisoned. However, efforts are being made to phase out of such non-bailable offences and bring in the provision of fine in such cases. The idea behind such a strategy is that for rapid disposal of the cases under these laws so that the guilty are punished without wasting much time. Another reason is to remove the amount of pressure on the lower courts and high courts. One of the reasons given to do so was that it was cheaper for the companies than imprisonment for their workers, there has been a failure to prove this point in the light of the fact that it could turn out to be cheaper for the companies to pay the fine and not abide by the orders[5] of the law rather than actually doing everything which the law would require from it to ensure its observance. This is a disadvantage from the point of environment.

LEGAL TRANSFORMATION: DECRIMINALIZATION TO MONETARY PENALTIES

The Environment Act of1986 has a section that says if you break the rules, you can go to jail for up to 5 years, or pay a fine, or both. This is for people who don't follow the rules of the Act. The Air Act of 1981 is similar, it says if you don't get permission or make too much noise, you can go to jail. Also, cutting down trees in areas where it's not allowed, or going into forests without permission, is against the law and you can get punished under the Indian Forest Act of 1927. These laws are in place to protect the environment and forests, and people who break them can face serious consequences.

The Jan Vishwas Act has made some big changes to the Environment and Forests Act and the Air Act. Now, most of the rules that used to send people to jail don't do that anymore. Instead, they just have to pay a fine. This fine can be anywhere from 10,000 to 15 lakh rupees if they break the Environment Act. The Air Act is a bit different - it used to have higher fines, but now they're lower. Before, the minimum fine was 1 lakh rupees and the maximum was1 crore rupees. Now, it's 10,000 to 15 lakh rupees. So, the fines are actually 85 to 90 percent lower than they used to be. It's worth noting that these fines do go up by 10 percent every three years[6]. But even

[5] See Indian Council for Enviro-Legal Action v. Union of India, (1996) 3 SCC 212 (holding that deterrence fails when monetary penalties are computed below the actual cost of environmental mitigation, incentivizing non-compliance as a business choice).

[6] The Jan Vishwas (Amendment of Provisions) Act, 2023, § 3 (mandating a 10% compounding increase on minimum fines/penalties every three years from commencement).

with that increase, the amount of money is still pretty small compared to how much big industries can make.

THE ROLE OF ADJUDICATING OFFICERS REPLACES JUDICIAL OVERSIGHT

The law says that the central or state governments should set up an Adjudicating Officer to look into complaints and impose fines. For example, how will the Adjudicating Officer know what the right fine amount is? And what if the offender doesn't agree with the fine? There are many questions like these that still need to be answered. The law is trying to make things faster and more efficient, but it's also important to make sure it's fair and works well in practice. The Adjudicating Officer has a big responsibility to make sure the fines are fair and based on the facts. They need to consider many things, like how much harm was done and how much the offender gained. It's not an easy job, and there are many challenges ahead. But if it works well, it could help reduce the court's workload and make the process faster and more efficient. Overall, the law is trying to achieve a good balance between speed and fairness. It's a complex issue, and there are many things to consider. But with the right approach and the right people in charge, it could make a big difference in how environmental cases are handled.

ECOLOGICAL IMPLICATIONS AND AFFECTED ENVIRONMENTAL LAWS

Amendments to the Water (Prevention and Control of Pollution) Act

The Jan Vishwas amendment didn't really change the Water Prevention Act in any significant way. The whole amendment was built on the idea that the act had been around since1974, which was based on Article 252. But here's the thing - this amendment needed to be adopted by each state's legislature, and that's still pending. As a result, the act's implementation is still all over the place, which affects how it's applied and interpreted. This is a problem because it means the act isn't being used consistently, and that can lead to confusion and inconsistencies. The fact that the amendment didn't make any major changes to the act, and that it's still not being implemented uniformly, raises questions about its effectiveness.

Impact on the Indian Forest Act and Environment Protection Act

The Indian Forest Act has removed some rules that punished people for entering forests without permission or cutting down trees. Now, they will just have to pay a fine, which can be between 10,000 and 15 lakh rupees. There is also a special fund called the Environment Protection Fund, which will be used to teach people about the environment, do research, and clean up polluted areas. But it's not clear if this fund will really be used effectively to restore the environment.

The "Pay-and-Pollute" Hazard (Will higher fines just become a cost of business?)[7]

Big companies might think it's cheaper to pay fines than to follow the rules. If the cost of not following the rules is less than the cost of following them, they might just pay the fines and keep violating. This could happen if it's cheaper for them to keep polluting than to install equipment to control it. It's also possible that a lot of small violations could add up to more damage than one big violation. The fines might go up every three years, but that doesn't mean they'll be enough to stop big industries from breaking the rules. They might just see the fines as a cost of doing business and keep on polluting.

CONCLUSION

India still has a lot of ground to cover, but let's not compromise on the environment either. It is understood in the new amendment that people should not be met with stern penalties for lapses and misdemeanours that are not of a serious nature. However, if the fines for stringent environmental lapses are reduced, it encourages the delinquents to actually indulge in more violations, because it would cost them less to pay the fine, than comply with the law. This is unfair in the sense that, those who pollute the environment should be made to face costs that come with their wrongdoings. Conversely, to continue on the path of growth, it should not be prohibitively expensive for the corporations to comply with the law. We need a middle ground and ensure that the fines are proportionally higher than the gains accruing from the violations.

Policy Reform: Important Recommendations

[7] Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647 (establishing the "Polluter Pays Principle" in Indian jurisprudence, requiring absolute liability not merely to compensate victims, but to restore degraded ecosystems).

Instead of sanctioning those who have made a profit out of breaking the rules and whose total turnover is higher, we should establish a proportionate sanction, punishable according to the seriousness of the infringement. In this way, large corporations would be less tempted to do anything big in order to break the rules without having to worry about the consequences. It is only fair that they are properly sanctioned. Those who actually decide need to understand on the technological level of things and to be able to work alone, so they must be trained for that and their independence has to be ensured. To standardize conditions for protecting our water, air and environment, the Water Act, the Air Act and the Environment Act should be combined [8] . This will give us consistent procedures for filing and handling appeals if someone disagrees with the decision or if the decision was made without consulting everyone affected. The funds collected should be ring-fenced to ensure they are used to repair the environment.

REFERENCES

1. The jan vishwas (amendment of provisions) act, 2023, no. 18, acts of parliament, 2023 (India).
2. The environment (protection) act, 1986, no. 29, acts of parliament, 1986 (India).
3. The air (prevention and control of pollution) act, 1981, no. 14, acts of parliament, 1981 (India).
4. The water (prevention and control of pollution) act, 1974, no. 6, acts of parliament, 1974 (India).
5. The Indian Forest act, 1927, no. 16, acts of imperial legislative council, 1927 (India).
6. The constitution of India, 1950, article 252 (power of parliament to legislate for two or more states by consent).

WEBLIOGRAPHY

1. https://egazette.gov.in/WriteReadData/2023/248047.pdf
2. https://www.legislative.gov.in/
3. https://prsindia.org/billtrack/the-jan-vishwas-amendment-of-provisions-bill-

[8] See Law Commission of India, Report No. 186 on "Proposal to Constitute Environment Courts" (2003) (recommending integrated environmental statutory frameworks and specialized technical adjudication).

2022#:~:text=Second%2C%20the%20omitted%20offences%20include%20the%20unlawful,education%2C%20awareness%2C%20and%20research%20for%20environment%20protection.

4. https://sprf.in/review-of-the-jan-vishwas-act-2023/#:~:text=While%20decriminalising%20petty%20offences%20helps%20locate%20the,create%20conditions%20conducive%20to%20flouting%20set%20laws.
5. https://www.ahlawatassociates.com/blog/analysis-of-the-jan-vishwas-amendment-of-provisions-act2023#:~:text=On%20this%20page.%20Analysis%20of%20the%20Jan,India%3A%20A%20Legal%20Guide%20for%20CIS%20Investors.