

The

ACHIEVERS IAS ACADEMY

THE JAN VISHWAS (AMENDMENT OF PROVISIONS). BILL, 2022



The Jan Vishwas (Amendment of Provisions) Bill, 2022

→ विधेयक की मुख्य बातें

Highlights of the Bill

- §The Jan Vishwas (Amendment of Provisions) Bill, 2022 amends 42 laws, across multiple sectors, including agriculture, environment, and media and publication. Acts being amended include the Indian Post Office Act, 1898, the Environment (Protection) Act, 1986, the Public Liability Insurance Act, 1991, and the Information Technology Act, 2000.
- §The Bill converts several fines to penalties, meaning that court prosecution is not necessary to administer punishments. It also removes imprisonment as a punishment for many offences. All offences under the Post Office Act, 1898 are being removed.
- Fines and penalties for certain offences in specified Acts are being increased. These fines and penalties will be increased by 10% of the minimum amount every three years.
- The Bill amends some Acts to provide for the appointment of Adjudicating Officers to decide penalties. It also specifies the appellate mechanism.

Key Issues and Analysis

- The Bill omits all offences under the Indian Post Office Act, 1898. This raises two questions. First, since several offences under this Act can only be committed by post office officials, it is not clear how deleting those offences is relevant to the stated objective of improving ease of living and doing business. Second, the omitted offences include the unlawful opening of postal articles. Removing punishments for this offence may lead to unjustified invasions of privacy.
- The Adjudicating Officers appointed to award penalties for environmental offences are senior officials of the Executive branch. They may lack the required technical and judicial competence to decide on such penalties.
- The Bill creates an Environmental Protection Fund for education, awareness, and research for environment protection. The reasons for § creating this fund are unclear given the overlap between its purpose and that of existing funds of the Central and State Pollution Control Boards.



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 **PART A: HIGHLIGHTS OF THE BILL****Context**

The Ease of Doing Business rankings, published by the World Bank, cover various aspects of business activity, including contract enforcement and tax compliance. [1] India ranked 132 out of 185 countries in 2013, and improved to 63 in 2020, after which the rankings were discontinued.[2],[3] Over the years, various expert committees including the Standing Committee on Commerce (2015) and the Company Law Committee (2019, 2021) have recommended reforms to reduce deterrents to business activity.[4] The Company Law Committee identified criminal liability for technical or procedural contraventions to be a deterrent to business activity.[5],[6] Subsequently, the Companies Act, 2013 was amended in 2019 and 2020 to re-categorise offences as civil contraventions that can be awarded by a government officer.[7],[8]

The Jan Vishwas (Amendment of Provisions) Bill, 2022, was introduced in Lok Sabha on December 22, 2022. It amends 42 Acts to decriminalise certain offences, reduce the compliance burden on individuals and businesses and ensure ease of doing business. The Bill was referred to a Joint Parliamentary Committee (Chair: Mr. P.P. Chaudhary), which submitted its report on March 17, 2023.[9]

The Committee recommended amendments to the severity of certain punishments. For example, under the Merchant Shipping Act, 1958, failing to inform a notified authority of the ship's involvement in an accident is punishable by up to one year's imprisonment, a fine of up to Rs 10,000, or both. The Bill amends this to a penalty of five lakh rupees. The Committee recommended omitting the amendment due to the environmental implications of such contraventions.9 For some laws decriminalised by the Bill, such as those in the Boilers Act, 1923, the Committee also recommended amendments to provide for Adjudicating Officers and appellate authorities of at least one rank above the Adjudicating Officer.9

Key Features

- The Bill amends 42 Acts which include: the Indian Post Office Act, 1898, the Environment (Protection) Act, 1986, the Public Liability Insurance Act, 1991, and the Information Technology Act, 2000.
- Decriminalising certain offences: Under the Bill, several offences with an imprisonment term in certain Acts have been decriminalised by imposing only a monetary penalty. For example, under the Information Technology Act, 2000, disclosing personal information in breach of a lawful contract is punishable with imprisonment of up to three years, or a fine of up to five lakh rupees, or both. The Bill replaces this with a penalty of up to Rs 25 lakh. In certain Acts, offences have been decriminalised by imposing a penalty instead of a fine. For instance, under the Patents Act, 1970, a person selling a falsely represented article as patented in India is subject to a fine of up to one lakh rupees. The Bill replaces the fine with a penalty, which may be up to ten lakh rupees.
- Removal of offences: The Bill removes certain offences. These include all offences under the Indian Post Office Act, 1898.
- Revision of fines and penalties: The Bill increases the fines and penalties for various offences in the specified Acts. The fines and penalties will be increased by 10% of the minimum amount every three years.
- Adjudicating Officers: The central government may appoint one or more Adjudicating Officers for determining penalties. These Officers may summon individuals for evidence and conduct inquiries into violations of the respective Acts. These Acts include the Agricultural Produce (Grading and Marking) Act, 1937 and the Public Liability Insurance Act, 1991. The Bill also specifies the appellate mechanisms for the orders passed by these Officers. For instance, in the Environment (Protection) Act, 1986, appeals against the Adjudicating Officer's orders may be filed with the National Green Tribunal within 60 days.

PART B: KEY ISSUES AND ANALYSIS

Omission of offences under the Indian Post Office Act, 1898

The Bill removes all offences and penalties under the Indian Post Office Act, 1898. This raises two issues.

Omission of offences under the Act may not be relevant to legislative intent

Offences being removed include those committed by officers employed in post offices, such as theft or dishonest misappropriation of postal articles and fraud in connection with postal marks. It is unclear why such offences are being removed, since they may not be relevant to the objective of the Bill. The stated objective of the Bill is to decriminalise certain offences to promote ease of living and doing business

Omission of offences under the Act may lead to privacy issues

The Act punishes officers of post offices for the illegal opening of postal articles with imprisonment of up to two years, a fine, or both. Persons other than postal officials are also penalised for opening a mail bag. The Bill removes all these provisions. This may raise questions regarding privacy. Highly personal information, such as health insurance information and credit card statements, may be received by post. Deleting these offences would remove the safeguards against invasions of privacy. This may go against the Right to Privacy recognised by the Supreme Court in 2017. These violations are not covered by other laws, such as the Indian Penal Code, 1860, which punish only where they are accompanied by theft or misappropriation.[10]

Competence of Adjudicating Officers added under environmental laws

The Bill amends the adjudication process under the Air (Prevention and Control of Pollution) Act, 1981 (Air Act) and the Environment (Protection) Act, 1986 (EP Act). Currently, contraventions of both laws are prosecuted in court only upon a complaint by specified authorities, or by any person who has given these authorities 60 days' notice of their intention to file a complaint.[11] Under the Air Act, these authorities are the Central Pollution Control Board (CPCB) and the respective State Pollution Control Boards (SPCBs). Under the EP Act, these authorities are the notified officers of the central government. The Bill provides for Adjudicating Officers to decide penalties under both Acts, and also to file complaints in court under the EP Act. Appeals against their orders lie with the National Green Tribunal. Under both Acts, the officer would be of the rank of Joint Secretary to the central government or above, or a Secretary to the state government. This new process of adjudication raises a few issues.

Independence of Adjudicating Officers

Governments or their agencies may violate the Air Act and the EP Act. For example, in 2022, the National Green Tribunal penalised Singareni Collieries Company Limited, a coal mining company jointly owned by the central government and the Government of Telangana, for excess mining.[12] The question is whether government officers would be sufficiently independent as adjudicating authorities in such cases.

Judicial and technical competence of Adjudicating Officers

Under the Bill, penalties for failing to comply with the EP Act, or the rules and directions made under it range from Rs 5,000 to Rs 15 lakh (300 times the lower limit). The Bill also adds the criteria for the Adjudicating Officer to decide penalties under the EP Act. These include: (i) the population and area affected, (ii) the duration and frequency of violation, (iii) the vulnerability of those affected, and (iv) undue gain from the contravention. Given the wide band of penalties and the extent of discretion involved in balancing various criteria, adjudicating cases under both the EP Act and Air Act is effectively a judicial role. Therefore, the question is whether the Adjudicating Officer, who would be a Joint Secretary to the central government or a Secretary to the state government, would be competent to decide these penalties.

Further, there is significant technical input involved in legal proceedings for offences under the Air Act. These Adjudicating Officers may lack the technical competence necessary to decide all penalties under the Air Act and the EP Act. For example, under the Air Act, a complaint may be filed in a court by the CPCB or an SPCB, or by any person who has first given notice to the relevant pollution control board. Officers of pollution control boards are empowered to collect samples of air emissions under the Act. These samples are then analysed by expert analysts, whose reports may be produced as evidence in legal proceedings.

Under the Bill, the manner of conducting inquiries and deciding penalties by an Adjudicating Officer under the Air Act is to be prescribed by rules. The role of pollution control boards in assessing environmental damage in proceedings before the Adjudicating Officer is not specified in the Bill.

Relationship between Adjudicating Officers and the judiciary

Under the Bill, the Adjudicating Officer will be responsible for receiving and hearing complaints against contraventions under the EP Act. Their decisions can be appealed to the National Green Tribunal, whose decisions are appealed to the Supreme Court. The Bill also empowers the Adjudicating Officer to file complaints in court for offences under the EP Act. The question is whether there is a need for a parallel process in which the Adjudicating Officer can also file a complaint in court. This may be conflating the role of an adjudicatory body with that of the prosecution.

Functional overlap between proposed and existing Funds

The Bill adds an Environmental Protection Fund under the EP Act. The Fund will be used for education, awareness, and research for environmental protection, as well as the expenses of implementing these Acts. Other funds exist which fulfil a similar purpose, hence the question is whether this new Fund is necessary.

Both the CPCB and SPCBs have their own Funds.[13],[14] The CPCB and SPCBs both bear responsibility for implementing provisions of the Air Act and the EP Act.[15],[16],[17],[18] They also conduct research, programme implementation, and media programmes for the control of air and water pollution.[19] Since these Funds already provide for education, awareness, and research for environmental protection, the need for a new Fund for the same purposes is unclear. As per a 2017 report of the Comptroller and Auditor General, the CPCB and SPCBs have sufficient funds, but lack the personnel and infrastructure to utilise them fully.[20] Similar issues may persist with the new Fund.

Rationale for amending the High Denomination Bank Notes (Demonetisation) Act, 1978

The High Denomination Bank Notes (Demonetisation) Act, 1978 sought to curb illegal transactions which relied upon high-denomination banknotes, by declaring them to cease to be legal tender on January 16, 1978.[21] These included banknotes with denominations of Rs 1,000, Rs 5,000, and Rs 10,000. The Act requires banks to prepare declarations regarding the volume of high-value banknotes held by them, and submit them to the Reserve Bank of India.[22] Any person could also exchange such banknotes before January 19, 1978, by submitting them along with a declaration providing certain details. [23] Offences include failing to present this declaration before the deadline, or knowingly submitting a false declaration. The Act provides for imprisonment for bank officials making false returns, or persons making false declarations while submitting the banknotes. The Bill seeks to remove imprisonment as a punishment for these offences. These banknotes ceased to be legal tender and the deadline for exchanging them ended 45 years ago. It is therefore unclear why these penalties are relevant today, and need to be decreased. The Joint Parliamentary Committee on the Bill (2023) recommended repealing the Act itself.9

