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DECRIMINALIZING ENVIRONMENTAL OFFENSES: IMPLICATIONS OF REMOVING PENALTY PROVISIONS IN INDIAN ENVIRONMENTAL LAW

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I. ABSTRACT

The decriminalization of environmental offenses in India has sparked intense debate among policymakers, legal experts, and environmental advocates. This study examines the implications of removing penalty provisions from key environmental laws such as the Environment Protection Act, 1986, and the Water (Prevention and Control of Pollution) Act, 1974. The study critically examines the rationale behind decriminalization, its potential impact on compliance and deterrence, and whether alternative enforcement mechanisms such as administrative penalties, restorative justice, and economic incentives can effectively replace criminal sanctions. Drawing on case studies, global practices, and empirical data, this study highlights the challenges and opportunities posed by the policy shift, offering recommendations for a balanced and sustainable regulatory framework. The findings aim to contribute to the ongoing discourse on modernizing environmental governance in India without compromising ecological and public health priorities.

II. KEY WORDS

Decriminalization, environmental offenses, regulatory framework, public health priorities.

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CHAPTER 1: INTRODUCTION

III. INTRODUCTION

"Environmental law is not just about regulations; it is about securing the future of our planet for generations to come³."

- Gro Harlem Brundtland

Environmental protection is a crucial aspect of sustainable development. As industrialization and economic growth continue to expand, the challenge of balancing development with environmental sustainability becomes more pressing. In India, environmental laws have traditionally relied on criminal penalties to deter violations. However, there has been increasing debate on whether decriminalizing environmental offenses can lead to more effective enforcement through civil penalties, administrative fines, and compliance-based incentives.

India has a vast legal framework for environmental protection, including the Environment Protection Act (1986), the Water (Prevention and Control of Pollution) Act (1974), and the Air (Prevention and Control of Pollution) Act (1981). These laws impose criminal penalties, including imprisonment, for violations. However, enforcement challenges, judicial delays, and low conviction rates have led to discussions on reforming India's environmental regulatory approach by shifting from criminal liability to monetary penalties and administrative sanctions. This chapter provides an overview of decriminalization in environmental law, its objectives, and the potential impact on compliance and enforcement.

IV. OBJECTIVES OF THE STUDY

The key objectives of this research are:

³ World Commission on Environment and Development, our common future 8 (oxford univ. press 1987).

1. To analyze the implications of decriminalizing environmental offenses in India.
2. To compare India's approach with international models of environmental enforcement.
3. To assess whether civil penalties can effectively replace criminal sanctions in ensuring compliance.
4. To identify challenges and propose policy recommendations for effective environmental governance.

V. RESEARCH METHODOLOGY

This study adopts a qualitative research approach, utilizing legal analysis, case studies, and comparative research. It examines existing environmental laws, judicial interpretations, and policy recommendations from international models to determine the feasibility of decriminalization in India.

VI. REVIEW OF LITERATURE

A. Environmental Law and Its Evolution in India

Several scholars have explored the historical evolution of environmental law in India. Books such as Shyam Divan and Armin Rosencranz's *Environmental Law and Policy in India* discuss the development of environmental statutes and their enforcement challenges. They highlight how criminal penalties have been ineffective due to judicial delays and weak regulatory oversight.

B. The Debate on Decriminalization

Recent research articles emphasize the shift toward civil penalties in environmental enforcement. Studies in the *Harvard Environmental Law Review* argue that monetary penalties are more effective than criminal prosecution since they ensure financial accountability rather than prolonged litigation. Other scholars, like Richard Macrory, have suggested that restorative justice models, where violators compensate for environmental damage, lead to better compliance.

C. International Models of Environmental Compliance

Comparative studies, including reports from the OECD and the United Nations Environment Programme (UNEP), highlight successful decriminalization models in Germany, Canada, and the UK. These studies argue that a balance between civil enforcement and criminal liability is necessary to ensure deterrence.

D. Challenges in Implementing Decriminalization

Several reports, including Transparency International's study on regulatory corruption, highlight how decriminalization can lead to regulatory inefficiencies if enforcement mechanisms are weak. Scholars argue that India must strengthen its institutional capacity before shifting away from criminal penalties.

VII. SCOPE OF THE STUDY

This study focuses on:

1. Analyzing the current legal framework for environmental protection in India.
2. Evaluating the impact of decriminalization on corporate compliance and environmental sustainability.
3. Comparing India's proposed reforms with international best practices.
4. Recommending policy measures to ensure effective enforcement post-decriminalization.

CHAPTER 2: EVOLUTION OF ENVIRONMENTAL LAW IN INDIA

I. EARLY ENVIRONMENTAL REGULATIONS

Environmental regulation in India dates back to ancient times when conservation principles were embedded in religious and cultural traditions. Ancient Indian texts, such as the Vedas and Arthashastra, emphasized environmental preservation. The

Arthashastra, written by Kautilya (also known as Chanakya), prescribed strict penalties for environmental offenses, including fines for cutting trees and polluting water bodies.⁴ During the colonial era, environmental concerns were addressed primarily to serve economic and administrative interests rather than ecological well-being. The British government enacted several laws, such as the Indian Forest Act, 1878, which aimed to regulate forest usage and ensure the continued supply of timber for railway construction and other industrial purposes.⁵ The Shore Nuisance (Bombay and Kolaba) Act, 1853, was one of the earliest laws dealing with water pollution, aimed at preventing the dumping of waste into coastal waters.⁶ Despite these early regulations, colonial environmental policies were primarily extractive and focused on commercial exploitation rather than conservation. The legal framework lacked a comprehensive approach to environmental protection, and enforcement was weak.

II. Post-Independence Legal Framework

After independence, India recognized the need for a structured environmental governance system. The initial approach was sectoral, with laws addressing specific environmental concerns such as water pollution, air pollution, and forest conservation.

A. The Water (Prevention and Control of Pollution) Act, 1974

The Water Act of 1974 was India's first major environmental legislation. It aimed to prevent and control water pollution by establishing the Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCBs). These regulatory bodies were given the power to monitor pollution levels, grant permits, and take action against violators.⁷ However, enforcement challenges arose due to limited institutional capacity and weak penalties. While the Act prescribed imprisonment and fines for non-compliance, many polluters escaped liability due to legal loopholes and corruption.

⁴ Kautilya, *Arthashastra* (R.P. Kangle trans., Motilal Banarsidass Published 2d Ed. 1972).

⁵ The Indian Forest Act, 1878.

⁶ The Shore Nuisance (Bombay and Kolaba) Act, 1853.

⁷ The Water (Prevention and Control of Pollution) Act, 1974, Section 16.

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

Following India's participation in the United Nations Conference on the Human Environment (Stockholm Conference, 1972), the Air Act of 1981 was enacted to address rising air pollution levels.⁸ It empowered authorities to regulate emissions from industrial plants and vehicles. Despite its provisions, air quality remained poor, particularly in urban areas, due to rapid industrialization, vehicular pollution, and weak enforcement. The penalties under the Act were often inadequate to deter large corporations from violating pollution norms.⁹

C. The Environment (Protection) Act, 1986

The Bhopal Gas Tragedy of 1984, one of the world's worst industrial disasters, exposed the shortcomings of India's environmental regulatory system. In response, the Environment (Protection) Act, 1986 (EPA) was enacted as an umbrella legislation to provide a comprehensive framework for environmental governance. The EPA granted the central government sweeping powers to regulate all forms of pollution, set environmental standards, and take punitive action against violators. It introduced criminal penalties, including imprisonment of up to five years for serious violations. However, prosecution rates remained low, and cases took years to resolve due to judicial backlog.¹⁰

D. The Wildlife (Protection) Act, 1972, and the Forest Conservation Act, 1980

The Wildlife (Protection) Act, 1972, was a landmark law aimed at protecting India's rich biodiversity. It imposed strict penalties for poaching, illegal trade in wildlife, and habitat destruction.¹¹ The Forest Conservation Act, 1980, sought to restrict deforestation by requiring government approval for the diversion of forest land for non-forest purposes.

⁸ United Nations, Stockholm Declaration on the Human Environment, 1972.

⁹ The Air (Prevention and Control of Pollution) Act, 1981, Section 21.

¹⁰ Union Carbide Corporation v. Union of India, AIR 1992 SC 248.

¹¹ The Wildlife (Protection) Act, 1972, Section 9 (prohibition of hunting).

While these laws helped in curbing wildlife crimes and deforestation, illegal activities persisted due to poor enforcement and lack of community participation.

III. JUDICIAL INTERVENTIONS AND ROLE OF THE SUPREME COURT

Over the years, the Supreme Court of India and various High Courts have played a proactive role in strengthening environmental governance through Public Interest Litigations (PILs).

A. Landmark Cases

1. MC Mehta v. Union of India (1987): This case led to the closure of polluting industries near the Taj Mahal, setting a precedent for environmental protection through judicial activism.¹²
2. Alembic Pharmaceuticals Ltd. V. Rohit Prajapati & others: the Court underscored that allowing such clearances would be detrimental to the environment and could lead to irreparable degradation¹³.
3. Pahwa Plastics Pvt. Ltd. & Anr. v. Dastak NGO & Ors: the Court emphasized that such clearances should be granted only in exceptional circumstances and not as a norm¹⁴

B. Establishment of the National Green Tribunal (NGT)

To expedite environmental cases, the National Green Tribunal (NGT) was established in 2010 under the National Green Tribunal Act. The NGT has played a crucial role in enforcing environmental laws, imposing penalties on polluting industries, and directing government agencies to take corrective measures.¹⁵

¹² MC Mehta v. Union of India, AIR 1987 SC 965, 1987 SCR (1) 819.

¹³ Alembic Pharmaceuticals Ltd. V. Rohit Prajapati & others, AIR 2020 SC 347, 2020(2) SCR 1.

¹⁴ Pahwa Plastics Pvt. Ltd. & Anr. V. Dastak NGO & Ors., AIR 2021 SC 655, 2021 (3) SCR 456.

¹⁵ The National Green Tribunal Act, 2010, Section 14 (jurisdiction of NGT).

IV. LIMITATIONS OF THE CURRENT LEGAL FRAMEWORK

Despite comprehensive legislation, several challenges persist:

1. **Judicial Delays:** Environmental cases take years to resolve due to an overburdened legal system.
2. **Weak Enforcement:** Regulatory bodies like the CPCB and SPCBs lack the resources and independence to enforce laws effectively.
3. **Overcriminalization vs. Compliance:** The presence of criminal penalties often leads to lengthy litigation, while civil penalties could provide quicker compliance mechanisms.

CHAPTER 3: RATIONALE FOR DECRIMINALIZING ENVIRONMENTAL OFFENSES IN INDIA

Environmental laws in India have traditionally relied on criminal penalties, including imprisonment and fines, to deter environmental violations. However, recent debates suggest that criminalization is not always the most effective deterrent and may hinder compliance due to lengthy legal proceedings, inconsistent enforcement, and regulatory inefficiencies. The Government of India has proposed decriminalizing certain environmental offenses under laws such as the Environment (Protection) Act, 1986, Water Act, 1974, and Air Act, 1981, replacing criminal penalties with civil fines and administrative actions.¹⁶ This chapter examines the rationale for decriminalizing environmental offenses and evaluates whether civil penalties, regulatory incentives, and alternative dispute resolution mechanisms could provide a more effective framework for environmental governance.

¹⁶ Ministry of Environment, Forest and Climate Change, Government of India, Proposal for Decriminalization of Environmental Offenses, 2023.

I. ISSUES WITH CRIMINALIZING ENVIRONMENTAL OFFENSES

A. Overburdening the Judiciary

India's judicial system is heavily burdened with pending cases, and criminalizing environmental offenses has contributed to legal delays and inefficiencies. As of 2023, the National Green Tribunal (NGT) alone had over 2,000 pending cases related to environmental violations.¹⁷ Prosecutions under laws like the Environment (Protection) Act, 1986, often take years to conclude, delaying corrective actions and reducing the immediate impact of environmental enforcement. Furthermore, criminal trials require a higher burden of proof ("beyond a reasonable doubt"), making it difficult to convict offenders unless irrefutable evidence is presented. This results in low conviction rates for environmental crimes.

B. Ineffective Deterrence and Compliance Challenges

Criminal penalties are rarely imposed on large industries, as companies often use legal loopholes, delays, and appeals to avoid prosecution. In contrast, small businesses and individuals bear the brunt of environmental criminalization due to unequal enforcement practices.¹⁸ For example, under the Water (Prevention and Control of Pollution) Act, 1974, industries found guilty of polluting water bodies can face imprisonment of up to six years.¹⁹ However, regulatory authorities often hesitate to file criminal cases against large corporations due to political pressure and economic considerations. Instead, cases are settled through fines, which undermines the purpose of strict criminal penalties.

C. Regulatory Uncertainty for Businesses

Businesses and industries require clear, predictable regulatory frameworks to function efficiently. Criminalizing environmental offenses creates uncertainty for businesses, as minor violations may lead to criminal liability, prolonged litigation, and reputational

¹⁷ National Green Tribunal (NGT), Annual Report on Pending Cases, 2023.

¹⁸ Ramesh Singh, Unequal Enforcement of Environmental Laws in India, *Journal of Enviro Law*, 2022, at page no 45.

¹⁹ The Water (Prevention and Control of Pollution) Act, 1974, Section 43.

damage. This discourages investment in environmental compliance programs and may lead to unintended economic consequences.²⁰

D. Inadequate Resources for Enforcement Agencies

Regulatory bodies like the Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCBs) lack adequate resources, trained personnel, and technological infrastructure to enforce criminal penalties effectively. These agencies often struggle with limited funding, staff shortages, and bureaucratic inefficiencies, making it difficult to investigate and prosecute environmental violations.²¹

II. GLOBAL TRENDS IN DECRIMINALIZING ENVIRONMENTAL OFFENSES

Several countries have moved away from criminal penalties for environmental offenses and have adopted civil penalties, administrative actions, and compliance-based approaches.

A. The United States Model

In the United States, the Environmental Protection Agency (EPA) primarily uses civil penalties and administrative settlements instead of criminal prosecution. For instance, under the Clean Water Act (1972), violators are often fined through civil enforcement actions, and criminal penalties are reserved for intentional or severe environmental damage.²² This approach has been more effective in ensuring compliance as industries prefer to pay civil fines and correct violations rather than facing prolonged litigation.

²⁰ Arvind Kumar, Regulatory Uncertainty and Its Impact on Environmental Compliance, *Economic & Political Weekly*, 2021, at 25.

²¹ Central Pollution Control Board (CPCB), *Challenges in Environmental Law Enforcement in India*, 2022.

²² United States Environmental Protection Agency (EPA), *Civil vs. Criminal Enforcement Under the Clean Water Act*, 2021.

B. The European Union's Approach

The European Union (EU) has also shifted towards civil enforcement mechanisms under its Environmental Liability Directive (2004). Member states focus on financial penalties, environmental restoration, and compliance incentives rather than criminalizing environmental breaches. Countries like Germany and France impose strict environmental liability rules but rarely use criminal sanctions.²³

C. The United Kingdom's Regulatory System

The United Kingdom (UK) follows a tiered approach, where minor environmental offenses are resolved through administrative fines, while serious environmental crimes – such as illegal dumping of hazardous waste – may lead to criminal prosecution. The Environmental Permitting Regulations (2016) allow businesses to rectify environmental breaches without facing criminal charges.²⁴

III. ALTERNATIVE APPROACHES TO ENVIRONMENTAL COMPLIANCE IN INDIA

Given the global shift towards decriminalization, India can adopt a hybrid approach that ensures environmental protection without overburdening the legal system.

A. Strengthening Civil Penalties and Administrative Actions

Replacing criminal penalties with higher civil fines and administrative orders can encourage faster compliance. Regulatory agencies can impose hefty fines, require polluters to remediate environmental damage, and use environmental bonds or escrow funds to ensure compliance.²⁵

²³ European Commission, Environmental Liability Directive and Civil Penalties in the EU, 2020.

²⁴ UK Environment Agency, Environmental Permitting Regulations: Enforcement Guidelines, 2022.

²⁵ NGT Act, 2010, Section 19 (Powers to Impose Civil Penalties).

B. Promoting Environmental Compliance Incentives

Instead of punitive criminal action, the government can offer tax incentives, subsidies, and recognition programs for industries that adopt sustainable practices and pollution-control technologies.

C. Fast-Track Dispute Resolution through Tribunals

The National Green Tribunal (NGT) can play a larger role in resolving environmental disputes through mediation and arbitration, avoiding prolonged criminal trials. Expanding NGT's jurisdiction to include civil settlements and negotiated compliance can improve enforcement efficiency for example in 2015 mediation in the river Ganga pollution case the NGT emphasized the importance of involving stakeholders, including the public and industries, in finding solutions to the problem. The tribunal encouraged mediation to arrive at a settlement, focusing on practical solutions such as waste treatment and the reduction of pollutants. This case is an example of how the NGT used mediation to facilitate dialogue between the government, industries, and environmental organizations to address the issue more effectively and also in 2020 arbitration in the sand mining case the NGT used arbitration in a case related to illegal sand mining activities in several states. The dispute was between government authorities, mining companies, and local communities. The NGT facilitated arbitration between the parties to come to an agreement on the restoration of illegally mined sites and ensuring that future mining activities adhere to environmental norms. Through arbitration, the parties were able to reach a quicker resolution than if the case had gone through lengthy criminal trials.

CHAPTER 4: POTENTIAL BENEFITS OF DECRIMINALIZING ENVIRONMENTAL OFFENSES IN INDIA

The debate on decriminalizing environmental offenses in India is driven by the need to balance strict environmental protection with efficient enforcement mechanisms. Proponents argue that shifting from criminal penalties to civil fines and administrative

sanctions can lead to faster compliance, reduced judicial burden, and improved regulatory efficiency.²⁶ This chapter examines the potential benefits of decriminalization, focusing on its impact on compliance, economic growth, judicial efficiency, environmental restoration, and regulatory transparency.

I. ENCOURAGING FASTER AND HIGHER COMPLIANCE RATES

A. Reducing Litigation and Legal Delays

One of the biggest drawbacks of criminal penalties is the slow legal process. Environmental cases often take years to resolve due to court backlogs, procedural delays, and high evidentiary requirements. As of 2023, nearly 1,500 environmental cases were pending before the Supreme Court, High Courts, and the National Green Tribunal (NGT).²⁷ Replacing criminal penalties with civil fines and administrative enforcement mechanisms allows regulatory bodies like the Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCBs) to impose immediate penalties, leading to quicker corrective actions.²⁸

B. Increasing Willingness to Self-Regulate

Businesses often fear criminal prosecution due to the risk of imprisonment and reputational damage. If enforcement shifts to civil penalties, companies are more likely to cooperate with regulators rather than engage in legal battles to avoid criminal liability. Studies show that industries in countries with civil environmental enforcement are more proactive in adopting cleaner technologies.²⁹

²⁶ Ministry of Environment, Forest and Climate Change (MoEFCC), Draft Proposal on Environmental Decriminalization, 2023.

²⁷ National Green Tribunal (NGT), Annual Case Status Report, 2023.

²⁸ Central Pollution Control Board (CPCB), Challenges in Environmental Compliance, 2022.

²⁹ OECD, Environmental Policy and Corporate Social Responsibility: The Role of Environmental Regulations, 2015 <https://www.oecd.org/env/indicators-modelling-outlooks/>.

II. PROMOTING ECONOMIC GROWTH AND EASE OF DOING BUSINESS

A. Reducing Regulatory Uncertainty

India has complex environmental laws with overlapping provisions, making compliance difficult. Criminal penalties often lead to uncertainty among businesses regarding the severity of potential punishments. Decriminalization simplifies compliance mechanisms, giving businesses clear guidelines on acceptable environmental practices and financial liabilities.³⁰ **The Implementation of Environmental Clearance in India** One example of regulatory uncertainty being addressed is the simplification of the Environmental Clearance (EC) process for businesses. In 2014, the Government of India introduced a revised framework for environmental clearances under the *Environmental Impact Assessment (EIA) Notification, 2006*, which streamlined the process for granting clearances to industrial projects. This change aimed to reduce delays in the approval process and promote business growth. A study by the **World Bank** suggests that simplifying these procedures led to faster project completion and reduced business uncertainty, which contributed to a more predictable regulatory environment for businesses.

B. Attracting Investments and Industrial Development

Countries with simplified regulatory structures are more attractive to investors. The World Bank's Ease of Doing Business Report suggests that economies with predictable regulatory frameworks experience higher foreign direct investment (FDI).³¹ Decriminalization can boost industrial growth while ensuring strict environmental compliance through monetary penalties, environmental compensation, and technology mandates.

³⁰ Ramesh Sharma, Regulatory Uncertainty and Its Impact on Industrial Compliance, *Journal of Environmental Law*, 2021, at 35.

³¹ World Bank, *Ease of Doing Business Report*, 2022.

III. STRENGTHENING ENVIRONMENTAL RESTORATION MECHANISMS

A. Shifting Focus from Punishment to Remediation

Criminal prosecution punishes offenders but does not always lead to environmental restoration. Civil penalties allow regulatory bodies to direct violators to remediate damage by funding environmental restoration projects. For example, under the polluter-pays principle, industries found guilty of violating pollution norms can be required to fund afforestation, clean water projects, and biodiversity conservation programs instead of facing prolonged court trials.³²

B. Funding Environmental Programs Through Fines

A structured environmental compensation fund can be created, where fines collected from environmental violations are used exclusively for environmental conservation. Countries like Germany and Sweden successfully implement such models to fund climate adaptation, pollution control, and forest restoration projects.³³

IV. REDUCING CORRUPTION AND SELECTIVE ENFORCEMENT

A. Eliminating Discretionary Criminal Proceedings

Criminal prosecution involves subjective decision-making by enforcement agencies, which can lead to selective application of environmental laws. Decriminalization reduces the opportunity for corruption by establishing fixed civil penalties. For instance, under the current regime, pollution control boards have the discretion to recommend criminal prosecution, which can be misused for bribery or political pressure. Civil penalties would create a transparent, rule-based system.³⁴

³² MC Mehta v. Union of India, AIR 1987 SC 1086 (Polluter Pays Principle).

³³ European Commission, Environmental Liability Directive and Civil Penalties in the EU, 2020.

³⁴ Transparency International, Corruption Risks in Environmental Law Enforcement, 2021.

V. ALIGNING WITH GLOBAL BEST PRACTICES

A. Learning from International Models

Many developed nations have moved away from criminalizing minor environmental offenses and instead rely on financial penalties and compliance mechanisms.

1. **United States:** The Environmental Protection Agency (EPA) relies on monetary penalties and compliance settlements rather than criminal prosecution.³⁵
2. **European Union:** The Environmental Liability Directive (2004) promotes restorative justice and environmental compensation instead of strict criminal penalties.
3. **Japan:** Japan follows a corporate compliance-based model, where industries must meet environmental performance benchmarks or face heavy fines.

Decriminalization of environmental offenses can lead to faster compliance, reduced litigation, better environmental restoration, and improved regulatory efficiency. By adopting global best practices and ensuring strict civil enforcement, India can create a stronger, more effective environmental governance framework. The next chapter will analyze the challenges and risks associated with decriminalization.

CHAPTER 5: RISKS AND CHALLENGES OF DECRIMINALIZING ENVIRONMENTAL OFFENSES IN INDIA

While decriminalizing environmental offenses can lead to better compliance, faster resolution, and reduced judicial burden, it also comes with significant risks and challenges. Critics argue that removing criminal liability could weaken environmental protection, reduce deterrence, and allow industries to violate laws by merely paying

³⁵ United States Environmental Protection Agency , Civil vs. Criminal Enforcement in Environmental Law, 2021.

fines.³⁶ This chapter explores the potential drawbacks of decriminalization, including reduced deterrence, regulatory inefficiencies, risk of increased pollution, economic disparities in enforcement, and challenges in implementing a robust civil penalty system.

I. WEAKENING DETERRENCE AND COMPLIANCE

A. Risk of Large Corporations Exploiting Civil Penalties

One of the major concerns with decriminalization is that large industries with financial resources may treat civil fines as a "cost of doing business" rather than a deterrent. Under criminal law, corporate executives could face imprisonment for severe violations, creating a strong disincentive to violate environmental regulations. If criminal penalties are removed, wealthy corporations may repeatedly pay fines instead of changing their behavior.³⁷ For example, in the United States, several oil companies have paid billions in civil fines for environmental violations, yet they continue to pollute because the financial penalties are minor compared to their profits.³⁸

B. Reduced Fear of Consequences for Intentional Violations

Criminal liability creates a strong fear of imprisonment, particularly for repeat offenders and grossly negligent polluters. If imprisonment is removed, industries might be less motivated to comply with environmental standards. A study in the European Union found that companies were more likely to comply in countries where environmental crimes carried severe criminal penalties.³⁹

³⁶ Ministry of Environment, Forest and Climate Change (MoEFCC), *Challenges in Environmental Law Reform*, 2023.

³⁷ Arvind Mehta, *Corporate Influence in Environmental Compliance*, *Journal of Environmental Policy*, 2021, at 48.

³⁸ United States Environmental Protection Agency (EPA), *Effectiveness of Civil Penalties in Environmental Compliance*, 2022.

³⁹ European Commission, *Environmental Compliance and Criminal vs. Civil Penalties*, 2021.

II. INCREASED POLLUTION AND ENVIRONMENTAL HARM

A. Possibility of More Violations Due to Weaker Enforcement

Decriminalization may lead to more environmental violations if regulatory agencies fail to enforce civil penalties effectively. Studies show that when fines are too low or poorly enforced, industries do not take them seriously.⁴⁰ For example, in India's construction and mining industries, many companies continue illegal sand mining despite existing penalties because enforcement is weak and penalties are minimal.⁴¹ Without strong monitoring and enforcement mechanisms, decriminalization could lead to higher pollution levels and greater environmental degradation.

B. Challenges in Monitoring and Collecting Fines

Civil penalties require efficient tracking systems to monitor violations and collect fines. If industries refuse to pay fines or challenge penalties in court, the enforcement process could become slow and ineffective. A report by the Central Pollution Control Board (CPCB) in 2022 revealed that over 40% of environmental fines imposed on industries remain unpaid, either due to legal disputes or lack of enforcement mechanisms.⁴²

III. RISK OF REGULATORY CAPTURE AND CORRUPTION

A. Increased Discretionary Power for Regulators

If environmental offenses are decriminalized, enforcement will largely depend on regulatory agencies imposing civil fines instead of courts handling criminal cases. This could lead to greater bureaucratic corruption, where industries bribe regulators to avoid fines or receive lower penalties.⁴³ For instance, in many states, industries already influence pollution control boards to delay action against them. Decriminalization could further reduce accountability if strict oversight mechanisms are not in place.

⁴⁰ OECD Report on Environmental Regulation and Industrial Behavior, 2020.

⁴¹ Central Pollution Control Board (CPCB), *Illegal Sand Mining and Weak Enforcement*, 2022.

⁴² National Green Tribunal (NGT), *Annual Report on Environmental Penalties Collection*, 2023.

⁴³ Transparency International, *Bribery Risks in Environmental Law Enforcement*, 2022.

B. Selective Enforcement Favoring Powerful Corporations

Small businesses and individuals may still face penalties, while large corporations with political influence may escape consequences. This could lead to unequal enforcement, where big polluters are protected while small offenders bear the burden of environmental regulations.⁴⁴

IV. LEGAL AND ADMINISTRATIVE CHALLENGES

A. Defining the Scope of Decriminalization

One of the major legal challenges is determining which environmental offenses should be decriminalized and which should remain criminal. Some violations, such as oil spills, hazardous waste dumping, and groundwater contamination, cause severe environmental and public health damage and should still carry criminal penalties. However, less severe violations, such as minor air pollution exceedances, could be addressed through civil penalties.⁴⁵ The lack of clear guidelines could create legal confusion, where industries exploit loopholes to avoid liability.

B. Harmonizing Central and State Environmental Laws

India has multiple environmental laws at the central and state levels, with different enforcement mechanisms. If decriminalization is introduced at the central level, state pollution control boards may not have uniform procedures to handle civil penalties. This could lead to conflicting enforcement practices across different states. For example, some states may adopt strict monetary penalties, while others may implement lenient regulations, leading to unequal environmental protection.⁴⁶

⁴⁴ Ramesh Sharma, Regulatory Capture and Selective Enforcement, *Economic & Political Weekly*, 2021, at 32.

⁴⁵ The Water (Prevention and Control of Pollution) Act, 1974, Section 41.

⁴⁶ State Pollution Control Board Report, Variations in Environmental Enforcement Across Indian States, 2022.

V. RISK OF WEAKENING INTERNATIONAL ENVIRONMENTAL COMMITMENTS

A. India's Global Reputation on Environmental Protection

India is a signatory to several international environmental agreements, such as the Paris Agreement (2015) and the Stockholm Declaration (1972). Weakening environmental penalties could affect India's global standing on climate action and sustainable development.⁴⁷ For example: India, as a signatory to the Paris Agreement, is committed to reducing its greenhouse gas emissions and limiting global temperature rise to well below 2°C, with efforts to limit the rise to 1.5°C. This requires India to implement stringent environmental regulations, including those for carbon emissions, air quality, and other forms of pollution and the Impact of Decriminalization Weakening environmental penalties could reduce the effectiveness of India's climate action efforts, as industries might be less motivated to comply with stricter environmental standards, undermining the country's ability to meet its Nationally Determined Contributions (NDCs). This could affect India's global credibility and its ability to fulfill its Paris Agreement commitments to reduce emissions and promote climate resilience⁴⁸.

B. Impact on Foreign Investments in Sustainable Sectors

Investors in green industries, renewable energy, and sustainable manufacturing prefer countries with strong environmental regulations. If India reduces criminal penalties, foreign investments in environmentally responsible sectors could decline due to concerns about weaker environmental governance.⁴⁹ While decriminalization can improve regulatory efficiency, it also carries significant risks such as weaker deterrence, increased pollution, regulatory corruption, legal uncertainties, and potential damage to India's international reputation. To prevent negative consequences, any move toward

⁴⁷ United Nations Environment Programme (UNEP), Paris Agreement Compliance Report, 2021.

⁴⁸ United Nations Framework Convention on Climate Change (UNFCCC), *Paris Agreement*, 2015, article 14 https://unfccc.int/sites/default/files/english_paris_agreement.pdf.

⁴⁹ World Bank, *Impact of Environmental Policies on Foreign Investment*, 2022.

decriminalization must include strong regulatory safeguards, higher civil penalties, and transparent enforcement mechanisms. The next chapter will explore potential safeguards and regulatory frameworks needed to balance decriminalization with strong environmental protection.

CHAPTER 6: SAFEGUARDS AND REGULATORY MEASURES FOR EFFECTIVE DECRIMINALIZATION

While decriminalizing environmental offenses may lead to improved regulatory efficiency and economic growth, it must be implemented with strong safeguards to prevent environmental harm, regulatory abuse, and reduced deterrence. Without proper safeguards, decriminalization could result in increased pollution, weak enforcement, and legal loopholes that industries may exploit. This chapter explores the essential safeguards and regulatory measures needed to ensure that decriminalization does not compromise environmental protection. These include strict civil penalties, environmental compensation funds, independent regulatory oversight, public participation, and enhanced compliance monitoring.

I. Strengthening Civil Penalties and Administrative Sanctions

A. Imposing Higher Financial Penalties for Violations

To prevent industries from treating fines as a "cost of doing business," penalties for environmental violations must be high enough to act as a strong deterrent. The government should establish a graded penalty system, where fines increase based on:

1. Severity of pollution (e.g., minor air pollution vs. toxic waste dumping)
2. Repeat offenses (higher penalties for repeat violators)
3. Financial capacity of the violator (higher fines for large corporations)

For example, the European Union's Environmental Liability Directive (2004) mandates that fines for environmental violations should be proportionate to the damage caused and should include the cost of restoration and prevention.⁵⁰

B. Introducing Non-Monetary Sanctions

In addition to financial penalties, the government can impose non-monetary sanctions, such as:

1. Temporary suspension of industrial licenses
2. Mandatory environmental audits
3. Public disclosure of violators ("name and shame" policies)

Countries like Canada and Germany have successfully implemented public disclosure mechanisms, where companies violating environmental laws are listed in government reports, affecting their reputation.⁵¹

II. Establishing an Environmental Compensation Fund

To ensure that fines are used for environmental restoration, the government should create a dedicated Environmental Compensation Fund (ECF). All penalties collected from violators should be deposited into this fund and used for:

1. Restoration of polluted sites
2. Afforestation and biodiversity conservation
3. Funding research on pollution control technologies

For instance, in Norway, fines collected from industrial polluters are exclusively used for marine and air pollution control projects.⁵²

⁵⁰ European Commission, Environmental Liability Directive and Civil Penalties in the EU, 2020.

⁵¹ OECD Report on Environmental Compliance Strategies, 2021.

⁵² Norwegian Ministry of Environment, Pollution Control and Industrial Accountability Report, 2022.

III. STRENGTHENING REGULATORY OVERSIGHT AND TRANSPARENCY

A. Independent Environmental Monitoring Committees

To prevent regulatory corruption and selective enforcement, an independent environmental monitoring body should be established. This agency should:

1. Conduct surprise inspections of industries
2. Audit the enforcement of civil penalties
3. Review complaints from the public regarding pollution violations

For example, the United States Environmental Protection Agency (EPA) has an Office of Enforcement and Compliance Assurance (OECA) that monitors environmental compliance separately from government agencies.⁵³ Proposed Structure for an Independent Environmental Monitoring Committee (IEMC) in India consist of a diverse range of experts and stakeholders to ensure impartiality and comprehensive oversight and The IEMC should have the authority to conduct investigations into industries or public complaints. It should be empowered to issue orders for immediate corrective actions, penalties, or suspension of operations if severe violations are detected.

B. Public Participation and Whistleblower Protection

Public participation in environmental enforcement can enhance transparency and accountability. The government should introduce:

1. A public grievance redressal system for reporting pollution violations
2. Whistleblower protection laws for individuals who expose environmental crimes
3. Mandatory public hearings before allowing major industrial projects

⁵³ United States Environmental Protection Agency (EPA), Office of Enforcement and Compliance Assurance (OECA) Guidelines, 2021.

Countries like Sweden and the Netherlands have strong citizen participation laws, where local communities can file complaints and demand investigations into environmental violations.⁵⁴

IV. ENHANCING COMPLIANCE MONITORING AND TECHNOLOGICAL INTEGRATION

A. Real-Time Environmental Monitoring Systems

Industries should be required to install real-time pollution monitoring systems that send data directly to regulatory authorities. This can help detect violations immediately instead of waiting for periodic inspections. For example, India's Central Pollution Control Board (CPCB) has started implementing Continuous Emission Monitoring Systems (CEMS) for industries, but enforcement needs to be strengthened.

B. Strengthening Digital Enforcement Tools

The use of AI, drones, and satellite surveillance can help regulators monitor illegal deforestation, river pollution, and air quality violations more effectively. Countries like China and Australia use satellite imagery to track illegal mining and industrial pollution. For decriminalization to be effective without compromising environmental protection, India must adopt strict civil penalties, transparent enforcement mechanisms, public participation models, and advanced technological monitoring. By implementing these safeguards, the government can ensure that environmental compliance remains strong, even without criminal penalties. The next chapter will explore comparative models from other countries and their lessons for India.

CHAPTER 7: COMPARATIVE ANALYSIS OF DECRIMINALIZATION MODELS IN OTHER COUNTRIES

Decriminalizing environmental offenses is a complex policy decision that requires careful consideration of international best practices. Several countries have reformed their

⁵⁴ Transparency International, *Public Participation in Environmental Law Enforcement*, 2022.

environmental laws by replacing criminal penalties with civil enforcement mechanisms while ensuring strict compliance through alternative measures. This chapter examines comparative models from countries such as the United States, the United Kingdom, Germany, Canada, and Australia, highlighting their approaches, successes, and challenges. The goal is to identify lessons that India can adopt to create a balanced and effective environmental enforcement system.

I. The United States: A Hybrid Model of Civil and Criminal Penalties

A. Key Features of the U.S. Approach

The United States Environmental Protection Agency (EPA) uses a dual enforcement model, where civil penalties are applied for most environmental violations, but criminal liability remains for serious offenses such as:

- Intentional pollution leading to severe environmental damage
- Falsification of environmental reports
- Large-scale hazardous waste dumping

The Clean Water Act (1972) and the Clean Air Act (1970) allow for civil fines up to millions of dollars, while severe violations can lead to prison sentences for corporate executives.⁵⁵

B. Success and Challenges

Success: The U.S. system incentivizes compliance by allowing companies to self-report violations in exchange for reduced penalties, encouraging environmental responsibility.⁵⁶

Challenge: Some industries prefer paying fines rather than investing in long-term pollution control measures, reducing the overall deterrence effect.⁵⁷

⁵⁵ United States Environmental Protection Agency (EPA), Clean Water Act Enforcement Report, 2022.

⁵⁶ OECD, Environmental Compliance Models in Developed Countries, 2021.

⁵⁷ Harvard Law Review, The Effectiveness of Civil vs. Criminal Penalties in Environmental Law, 2020.

II. THE UNITED KINGDOM: FOCUS ON REGULATORY COMPLIANCE AND CIVIL SANCTIONS

A. Key Features of the UK Approach

The United Kingdom's Environmental Civil Sanctions Order (2010) replaced most criminal penalties with civil sanctions, including:

- Variable Monetary Penalties (VMPs): Fines based on damage caused and economic benefit gained from the violation
- Enforcement Undertakings: Companies can agree to fund environmental restoration projects instead of facing penalties
- Stop Notices: Authorities can immediately halt any activity that poses serious environmental risks

B. Success and Challenges

- **Success:** The system has increased corporate accountability, as companies prefer funding restoration projects rather than facing public penalties.⁵⁸
- **Challenge:** Some critics argue that the absence of criminal prosecution weakens deterrence for repeat offenders.⁵⁹

III. GERMANY: STRICT ENVIRONMENTAL LIABILITY AND HEAVY FINES

A. Key Features of the German Approach

Germany follows the "Polluter Pays Principle", where companies must compensate for all environmental damage they cause. The Federal Immission Control Act (1974) and the Environmental Liability Act (1990) impose:

⁵⁸ UK Environment Agency, Evaluation of the Environmental Civil Sanctions Order, 2022.

⁵⁹ Transparency International, Environmental Law Enforcement and Corporate Accountability, 2021.

1. Strict liability for environmental damage, ensuring full cost recovery from violators
2. Very high administrative fines, sometimes exceeding €10 million, to deter corporate misconduct
3. Mandatory ecological restoration for any damage caused

B. Success and Challenges

- **Success:** Germany's strict enforcement mechanisms have led to high corporate environmental compliance and investment in sustainable technologies.⁶⁰
- **Challenge:** The high financial burden on businesses sometimes leads to legal disputes over fine calculations and enforcement procedures.⁶¹

IV. CANADA: BALANCING DECRIMINALIZATION WITH PUBLIC PARTICIPATION

A. Key Features of the Canadian Approach

Canada follows a "Restorative Environmental Justice" model, where companies must:

1. Pay civil penalties based on the severity of violations
2. Fund environmental restoration projects in affected communities
3. Engage in public hearings to address community concerns

B. Success and Challenges

- **Success:** Public participation ensures greater transparency, as affected communities have a say in how penalties are utilized.⁶²

⁶⁰ German Federal Ministry for the Environment, Impact of Environmental Liability Laws on Compliance, 2020.

⁶¹ European Environmental Bureau, Legal Challenges in Environmental Fine Implementation, 2021.

⁶² Canadian Environmental Law Association, Public Participation in Environmental Law Enforcement, 2022.

- **Challenge:** Some critics argue that the process can be time-consuming, delaying enforcement actions.⁶³

V. AUSTRALIA: USE OF TECHNOLOGICAL MONITORING AND RAPID ENFORCEMENT

A. Key Features of the Australian Approach

Australia combines decriminalization with technological enforcement, using:

1. Satellite surveillance and AI-driven monitoring to detect pollution in real-time
2. Automatic fines for minor environmental violations
3. Criminal penalties reserved for repeat offenders and serious cases

B. Success and Challenges

- **Success:** The use of technology has reduced regulatory corruption by minimizing human discretion in enforcement.⁶⁴
- **Challenge:** Small businesses often struggle with compliance costs, as automated systems do not differentiate between minor and major offenders.

VI. KEY LESSONS FOR INDIA

Based on these global models, India can adopt the following best practices:

1. Retain criminal penalties for serious environmental offenses, but use civil sanctions for minor violations (like the U.S. model).
2. **Environmental Compensation Fund:** Use penalties to fund restoration projects instead of just collecting fines (like Canada and the UK).
3. **Strict Financial Penalties:** Impose higher fines for large corporations while keeping smaller penalties for minor violations (like Germany).

⁶³ Government of Canada, Annual Report on Environmental Compliance Strategies, 2023.

⁶⁴ Australian Department of Environment, Technology-Based Environmental Regulation, 2022.

4. **Technology-Based Monitoring:** Implement AI-driven environmental tracking systems to improve enforcement efficiency (like Australia).
5. **Public Participation Mechanisms:** Allow affected communities to participate in penalty allocation and environmental restoration (like Canada).

Comparing different international approaches highlights the importance of balancing decriminalization with strict regulatory oversight. By adopting a hybrid enforcement system, India can ensure efficient environmental governance without compromising environmental protection. The next chapter will explore potential policy recommendations for India's environmental law reforms.

CHAPTER 8: POLICY RECOMMENDATIONS FOR INDIA'S ENVIRONMENTAL LAW REFORMS

As India considers decriminalizing environmental offenses, it is crucial to implement strong policy measures that maintain effective enforcement, corporate accountability, and environmental sustainability. The lessons from international models (discussed in Chapter 7) show that decriminalization must be accompanied by alternative enforcement mechanisms to ensure compliance. This chapter presents policy recommendations tailored for India, focusing on strengthening civil penalties, enhancing regulatory frameworks, incorporating technology-driven monitoring, promoting public participation, and ensuring sector-specific enforcement

I. STRENGTHENING CIVIL PENALTIES AND ALTERNATIVE SANCTIONS

A. Higher Financial Penalties for Violations

To ensure strong deterrence, fines should be proportionate to the severity of violations. The government should:

1. Impose tiered financial penalties, increasing for repeat offenders.

2. Ensure fines cover not just damage costs but also environmental restoration expenses.
3. Apply higher fines on large corporations compared to small businesses.

For example, Germany's Environmental Liability Act imposes strict fines on industries, ensuring full compensation for environmental harm.⁶⁵

B. Mandatory Environmental Restoration Programs

Instead of just imposing fines, violators should be required to:

1. Fund environmental restoration projects in affected areas.
2. Undertake community service obligations, such as afforestation or waste management programs.
3. Invest in green technology adoption, as a condition for penalty reduction.

In Canada, companies found violating environmental laws must contribute to local ecological projects under the country's restorative environmental justice framework.⁶⁶

II. ENHANCING REGULATORY FRAMEWORKS AND ENFORCEMENT MECHANISMS

A. Independent Environmental Monitoring Body

To prevent political interference and weak enforcement, India should establish an independent regulatory body responsible for:

1. Conducting surprise inspections of industrial facilities.
2. Monitoring real-time pollution data and ensuring compliance.
3. Investigating public complaints against environmental violations.

⁶⁵ German Federal Ministry for the Environment, Environmental Liability and Compliance Models, 2022.

⁶⁶ Canadian Environmental Law Association, Restorative Environmental Justice: Best Practices, 2023.

The United States Environmental Protection Agency (EPA) has an independent Office of Enforcement that ensures regulatory decisions are free from political influence.⁶⁷

B. Strengthening Environmental Courts and Tribunals

India's National Green Tribunal (NGT) plays a crucial role in resolving environmental disputes. To improve efficiency:

1. Specialized environmental benches should be created in High Courts.
2. Case resolution timelines should be strictly enforced to prevent delays.
3. The government should provide greater funding for expert panels assisting courts.

III. USING TECHNOLOGY FOR REAL-TIME MONITORING AND COMPLIANCE

A. AI-Driven Environmental Surveillance

To enhance enforcement, India should deploy:

1. Satellite-based pollution tracking to detect industrial emissions.
2. AI-powered sensors in high-risk industrial zones for real-time monitoring.
3. Blockchain-based data records to prevent manipulation of pollution reports.

Australia uses satellite imaging and AI to monitor illegal deforestation, reducing regulatory lapses.⁶⁸

a. Amendments to Existing Environmental Laws -Environment (Protection) Act, 1986 (EPA):

The **EPA** would need to be amended to incorporate provisions related to the use of AI, satellite imaging, and blockchain for environmental monitoring. New sections can be added to empower the **Ministry of Environment, Forest, and Climate Change**

⁶⁷ United States Environmental Protection Agency (EPA), Environmental Enforcement Guidelines, 2021.

⁶⁸ Australian Department of Environment, Satellite-Based Environmental Regulation and Compliance, 2022.

(MOEFCC) to use advanced technologies for real-time tracking and enforcement. For example, an amendment could be introduced that explicitly allows satellite imaging for monitoring industrial emissions, deforestation, and illegal mining and Provisions should be introduced that allow automated enforcement actions based on AI data, such as automatic issuance of fines or penalties when threshold limits are exceeded.

b. The National Data Governance Framework:

A new **National Data Governance Framework** could be introduced to facilitate the collection and sharing of environmental data in real-time while ensuring transparency and accountability in the process. It could set clear guidelines for the use of AI and satellite data for monitoring environmental compliance, ensuring that all data shared is used for regulatory purposes and is accessible to relevant stakeholders (e.g., regulatory bodies, citizens, and NGOs).

B. Digital Public Grievance Platforms

A dedicated online platform should be created where:

1. Citizens can report pollution violations in real-time.
2. The government publishes data on corporate environmental performance.
3. Whistleblower protection mechanisms ensure public participation without fear of retaliation.

Countries like Sweden and the Netherlands have strong digital platforms where communities can track environmental compliance.⁶⁹

C. Sector-Specific Environmental Regulations

Decriminalization should be applied differently across sectors:

1. Heavy industries (chemical, mining, oil & gas): Maintain strict oversight, with heavy fines and mandatory restoration requirements.

⁶⁹ OECD, Digital Platforms for Environmental Governance, 2021.

2. Small and medium enterprises (SMEs): Provide compliance assistance programs instead of strict penalties.
3. Agriculture and fisheries: Introduce sustainability incentives instead of punishment-based enforcement.

Decriminalization of environmental offenses in India must be strategically implemented to balance economic growth with ecological sustainability. By adopting higher civil penalties, independent regulatory oversight, technology-based monitoring, and public participation mechanisms, India can create an effective and deterrent-based environmental law framework.

CHAPTER 9: CHALLENGES IN IMPLEMENTING ENVIRONMENTAL DECRIMINALIZATION IN INDIA

While decriminalization of environmental offenses aims to streamline enforcement and encourage compliance, its implementation in India faces significant legal, institutional, and societal challenges. Without proper safeguards, decriminalization could lead to weak enforcement, increased violations, and regulatory inefficiencies. This chapter explores the key challenges India may face in implementing environmental decriminalization, including weak regulatory capacity, potential increase in non-compliance, lack of public trust, corruption risks, and conflicts between state and central laws.

I. WEAK REGULATORY CAPACITY AND ENFORCEMENT MECHANISMS

A. Limited Resources for Pollution Control Boards

State Pollution Control Boards (SPCBs) and the Central Pollution Control Board (CPCB) lack adequate manpower, funding, and technological infrastructure to effectively implement civil penalties. Many regulatory agencies are already struggling to monitor compliance under existing laws. For instance, a CPCB report in 2022 found that over 60% of environmental penalties imposed on industries had not been collected due to poor

enforcement mechanisms.⁷⁰ Without strengthening enforcement capacity, decriminalization could lead to non-payment of fines and continued violations. For example Bihar: Holds the highest vacancy rate, with 84% of sanctioned positions unfilled, leaving only 15% of posts occupied, Jharkhand: Faces a vacancy rate of 73%, with 198 out of 271 positions vacant, Andhra Pradesh: Holds 69% of positions vacant Uttarakhand: Has 61% of positions unfilled, Karnataka: Faces 60% of positions vacant⁷¹. These staffing shortages severely hinder the capacity of SPCBs and PCCs to conduct regular inspections, enforce environmental regulations, and effectively monitor pollution sources. Addressing these disparities is crucial for strengthening environmental governance and ensuring consistent enforcement of environmental laws across all states

B. Lack of Expertise in Administrative Adjudication

If environmental offenses are shifted from courts to administrative agencies, these agencies must have the technical and legal expertise to evaluate complex environmental violations. However, many pollution control boards lack trained personnel to assess environmental damage and impose appropriate penalties. In countries like Canada and Germany, independent environmental courts oversee decriminalized offenses, ensuring fair and expert-driven decisions.⁷² India currently lacks such a specialized administrative system.

II. Risk of Increased Violations and Non-Compliance

A. Fear of Reduced Deterrence for Large Corporations

A major criticism of decriminalization is that large industries may treat monetary fines as a business expense, leading to higher instances of pollution. If penalties are too low or poorly enforced, businesses may continue polluting without fear of serious

⁷⁰ Central Pollution Control Board (CPCB), Annual Report on Environmental Violations and Penalties, 2022.

⁷¹ https://economictimes.indiatimes.com/news/india/over-50-pc-posts-in-pollution-control-bodies-vacant-says-cpcb-report/articleshow/109202953.cms?utm_source=chatgpt.com.

⁷² German Federal Ministry for the Environment, Specialized Environmental Courts and Regulatory Enforcement, 2021.

consequences. For example, in the United States, some corporations have repeatedly violated environmental regulations, paying fines without improving compliance.⁷³ India must ensure that penalties are high enough to deter violations rather than being seen as an affordable cost.

B. Challenges in Monitoring Repeat Offenders

Without criminal penalties, it may become difficult to track repeat offenders and prevent systematic violations. A clear "blacklisting system" is needed to ensure that industries with repeated violations face escalating penalties and operational restrictions. Countries like Germany and the UK maintain "environmental offender registries" that help regulators track compliance histories and impose stricter penalties for repeat violations.⁷⁴ India currently lacks such a centralized compliance tracking system.

III. PUBLIC DISTRUST AND PERCEPTION OF WEAKENING ENVIRONMENTAL LAWS

A. Opposition from Environmental Activists and Civil Society

Many environmental groups oppose decriminalization, fearing that it signals a weakening of environmental protections. Public perception is crucial—if decriminalization is seen as a "pro-industry move" at the expense of environmental protection, it may lead to legal challenges and public protests. For example, in 2020, the Indian government faced backlash over proposed amendments to the Environment Impact Assessment (EIA) framework, which were seen as diluting environmental protections.⁷⁵ To gain public trust, the government must clearly communicate the benefits of decriminalization and ensure strict enforcement mechanisms.

⁷³ United States Environmental Protection Agency (EPA), Environmental Compliance Failures and Repeat Offenders Report, 2022.

⁷⁴ UK Environment Agency, Environmental Offender Registries and Compliance Monitoring, 2023.

⁷⁵ Ministry of Environment, Forest and Climate Change (MoEFCC), Public Response to EIA Draft Amendments, 2020.

B. Need for Greater Public Participation in Environmental Governance

Decriminalization should be accompanied by stronger citizen participation in environmental monitoring and enforcement. India should implement:

1. Whistleblower protections for citizens reporting environmental violations.
2. Online public grievance mechanisms for tracking compliance violations.
3. Increased transparency in penalty collection and fund utilization.

IV. CORRUPTION RISKS IN ENVIRONMENTAL REGULATION

A. Increased Discretionary Powers for Regulatory Agencies

Shifting environmental enforcement from courts to administrative bodies increases the risk of regulatory corruption. If pollution control boards have unchecked powers to impose civil penalties, there may be opportunities for bribery and selective enforcement. For example, studies on regulatory corruption in India show that industries often negotiate with regulators to avoid penalties or inspections.⁷⁶ To prevent this, India must:

1. Implement transparent digital tracking systems for fines and penalties.
2. Conduct independent audits of regulatory decisions.
3. Establish strict anti-corruption safeguards for pollution control boards.

V. CONFLICTS BETWEEN CENTRAL AND STATE ENVIRONMENTAL LAWS

A. Need for Harmonization of State and Central Regulations

Environmental laws in India are enforced at both the central and state levels, leading to inconsistencies in implementation. If decriminalization is introduced at the central level, some states may resist changes or continue to impose criminal penalties under local laws. For example, some states have stricter pollution control laws, and removing criminal

⁷⁶ Transparency International, *Corruption Risks in Environmental Regulation*, 2021.

penalties may lead to conflicts between state and central regulatory bodies. To address this:

1. The central government should provide clear guidelines for state-level implementation.
2. A uniform penalty structure should be developed to prevent regulatory discrepancies.
3. State-level pollution boards should have the flexibility to increase fines for severe violations.

Implementing decriminalization in India presents several challenges, including weak enforcement capacity, potential increase in violations, public distrust, corruption risks, and legal conflicts. These challenges must be proactively addressed through strong safeguards, regulatory transparency, and public engagement. The next chapter will explore the way forward for India's environmental law reforms.

CHAPTER 10: CONCLUSION AND THE WAY FORWARD

"We do not inherit the earth from our ancestors; we borrow it from our children."

— *Native American Proverb*

Environmental law plays a crucial role in ensuring ecological sustainability while balancing economic development. The debate over decriminalizing environmental offenses in India raises important questions about regulatory effectiveness, compliance incentives, and enforcement mechanisms.

I. SUMMARY OF KEY FINDINGS

This research has examined the implications of decriminalization, including:

1. Current Environmental Legal Framework in India:

1. India's environmental laws impose criminal penalties for violations.

2. Enforcement challenges, judicial delays, and low conviction rates hinder compliance.

2. Comparative Study of International Models:

1. The United States and Canada use civil penalties with restorative justice models.
2. Germany and the UK impose strict financial penalties and corporate accountability measures.
3. Australia integrates technology-driven enforcement with civil sanctions.

3. Challenges in Decriminalization:

1. Weak enforcement capacity of pollution control boards.
2. Potential increase in environmental violations if penalties are too low.
3. Regulatory corruption risks due to greater administrative discretion.
4. Public distrust and perception of weakened environmental laws.

II. THE WAY FORWARD: POLICY RECOMMENDATIONS

To ensure effective environmental governance post-decriminalization, India must adopt a balanced approach that strengthens regulatory oversight and compliance mechanisms.

A. Legal Revisions:

Amendments to existing environmental laws (e.g., Environment Protection Act, Air, and Water Pollution Acts) should be introduced to empower regulators to shift from criminal to civil penalties for environmental offenses.

Capacity Building: Strengthening Pollution Control Boards (SPCBs and CPCB) through enhanced funding, manpower recruitment, and technological support to handle the increased responsibility of managing civil penalties and ensuring compliance.

B. Enhancing Institutional Capacity

Monitoring and Enforcement Mechanisms: Establish independent environmental monitoring bodies with oversight functions to ensure that penalties are imposed fairly and effectively. This includes setting up mechanisms for real-time monitoring, such as AI-powered surveillance, satellite data, and blockchain.

Public and Private Sector Engagement: Initiate campaigns to raise awareness about the shift in enforcement mechanisms and the responsibilities of industries in the new framework. This would involve consultations with major stakeholders in industries to ensure they understand the new compliance systems.

C. Review and global alignment

Review and Evaluation: A comprehensive review of the system to assess the impact of decriminalization on compliance, pollution reduction, and industry practices. This review will help determine if further amendments or regulatory changes are needed to optimize the system.

Global Alignment: Strengthen India's position in international environmental agreements and trade forums by ensuring that the new laws comply with global environmental standards, thereby avoiding potential trade sanctions.

D. ADR and global participation:

Effectiveness of Alternative Dispute Resolution (ADR) Mechanisms: Further studies are needed to evaluate how well the National Green Tribunal (NGT) and other ADR methods are functioning in practice, especially in terms of improving efficiency and fairness in environmental litigation.

Regional Variations in Enforcement: Given the regional disparities in staffing and enforcement capacities of state pollution control boards, future studies could examine how these variations impact the overall effectiveness of environmental protection laws across different states.**Public Perception and Participation:** Future research could

investigate how public awareness campaigns and public participation mechanisms in environmental decision-making influence compliance rates and regulatory effectiveness.

E. Economic Implications of Environmental Reforms:

Studies could analyze the economic impact of decriminalization on industrial growth, investment flows, and employment, and whether a shift to civil penalties would create a more attractive business environment while still maintaining high standards of environmental protection.

III. CONCLUSION

Environmental law is crucial for maintaining ecological sustainability while fostering economic development. In India, the ongoing debate over decriminalizing environmental offenses presents an important opportunity to reshape environmental governance. Currently, criminal penalties for environmental violations result in delayed enforcement, lengthy legal proceedings, and low conviction rates, which weaken the deterrent effect of environmental laws. Shifting to civil penalties, such as fines and compensation, could provide a more effective, timely, and predictable enforcement mechanism. However, this transition requires careful planning and the implementation of legislative changes to enable civil penalties under existing laws, such as the Environment Protection Act and the Air and Water Pollution Acts. Regulatory bodies like the Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCBs) would need to be empowered with the necessary resources, manpower, and technological support to enforce these penalties effectively. A phased implementation strategy is essential, with legal reforms occurring in the short term (1-2 years), capacity-building measures in the medium term (3-5 years), and a comprehensive review of the system in the long term (5+ years). In addition to the national context, India's global reputation on environmental protection is a significant consideration. As a signatory to key international agreements, such as the Paris Agreement, India's environmental policies are closely scrutinized. Any weakening of penalties could harm India's standing in global environmental governance, especially with trade partners who increasingly link environmental compliance with trade

agreements. Therefore, India must ensure that reforms do not compromise its international commitments. Finally, while the shift toward civil penalties holds promise, future research is necessary to evaluate its long-term impact. Areas such as the effectiveness of alternative dispute resolution mechanisms (e.g., the National Green Tribunal), regional variations in enforcement, and the role of public participation in environmental decision-making will be crucial in refining the approach. By addressing these challenges, India can move towards a regulatory framework that balances economic growth with robust environmental protection. Decriminalizing environmental offenses offers an opportunity to enhance the efficiency and fairness of environmental enforcement. If implemented strategically, these reforms can strengthen India's environmental governance while maintaining its commitment to sustainable development and global environmental leadership.