



## A critical legal analysis of recent amendments to the water (Prevention and control of pollution) act, 1974 in India

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### Abstract

The mushrooming growth of industrialization and urbanization over the past century has catalysed unprecedented economic growth but concurrently given rise to a pressing environmental crisis. Pollution of rivers and streams is a global environmental challenge with profound consequences for ecosystems, human health, and sustainable development. In India the Water (Prevention and Control of Pollution) Act, 1974, which came in to force five decade ago and stands as a pivotal legislation, addressing the critical need for the preservation and sustainable management of water resources. It empowers authorities to set water quality standards, monitor pollution levels, and take corrective actions against polluters. It establishes the legal framework for the prevention and control of water pollution, outlining the responsibilities of industries, local bodies, and the central and state pollution control boards.

Recently, government introduced the Water (Prevention and Control of Pollution) Amendment Bill, 2024, aiming to modify the existing Water (Prevention and Control of Pollution) Act, 1974. This act originally instituted central and state pollution control boards (CPCB and SPCBs) to address water pollution. The proposed amendments in the bill focus on decriminalizing various offenses, opting for the imposition of penalties as an alternative measure. This article critically examines recent amendments made to the Act, raising concerns about their potential counterproductive effects on environmental conservation and sustainable use of water resources. The Water Act, originally enacted to safeguard water resources and control pollution, has undergone modifications that, according to critics, may undermine its core objectives.

**Keywords:** Counterproductive effects, critique, legal framework, sustainable development, water pollution and wholesomeness of water

### Introduction

Water holds a central role in sustaining livelihoods, especially in agriculture, which stands as the predominant sector supporting individual livelihoods. It necessitates regulation in a way that prioritizes its safeguarding and conservation, ensuring both short-term and long-term sustainability for human utilization<sup>[1]</sup>. Currently, 71.8% of the rural population is considered to possess adequate access to safe water<sup>[2]</sup>. The task ahead is to ensure access for the remaining 28.2%, aiming to achieve this goal<sup>[3]</sup> by either 2030, as per the internationally agreed target, or by 2022, in alignment with the more ambitious national objective of providing safe drinking water and sanitation access to all habitations<sup>[4]</sup>. During the early 1960s, there was an increasing awareness of the detrimental impacts of water pollution on public health, ecosystems, and the environment. The necessity for a comprehensive legal framework to regulate and control water pollution became evident with the intensification of industrial activities and urban development. The Indian government constituted an expert committee to make suggestions for making law to prevent and control water pollution to the central and state government. At the global level India drew immense inspiration from the Stockholm declaration adopted by the United Nation Conference on the Human Environment which took place in 1972 and enacted the Water (Prevention and Control of Pollution) Act, 1974 under article 252 of the Indian Constitution. After the independence the Water (Prevention and Control of Pollution) Act, 1974, represents the initial legislative framework aimed at preventing water pollution in India. This legislation marks a significant step taken by the government to address the issue of water

pollution comprehensively. It underscores the importance of regulating and controlling activities that contribute to water pollution, reflecting a commitment to safeguarding water resources and environmental well-being. The Act consist of 64 sections divided in 8 chapters. The intent of the act is evident from its preamble which ensuring the prevention and control of water pollution, as well as the preservation or restoration of water's overall purity. It includes the establishment of several boards vested with specific powers and functions. The act is quit comprehensive in its coverage of various types of waters. It includes the rivers, water course (whether flowing or for the time being dry), inland water whether natural or artificial, sub-terranean waters, sea and tidal water.

### Meaning of Wholesomeness of water

Water, an essential component for the sustenance of human life, stands as the fundamental building block for both vitality and environmental equilibrium. It is an essential requirement for the sustenance of human life, recognized as a fundamental need and integral to the right to life and human rights. This recognition is enshrined in Article 21 of the Indian Constitution. Additionally, India, as a signatory to the 1977 United Nations Water Conference resolution, is committed to the unanimous acknowledgment that water is a crucial element for human well-being and is intertwined with broader global concerns. All people, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantum and of a quality to their basic need<sup>[5]</sup>. This assertion underscores the inclusivity of the right to clean and safe drinking water, extending to every person regardless of

their socio-economic status or the developmental stage of their community. It not only pertains to the accessibility of water sources but also emphasizes the guarantee of a sufficient quantity of water. Moreover, the statement draws attention to the significance of water quality, stressing the need for adherence to specific standards to prevent the presence of contaminants that could pose health risks. By framing access to drinking water as an essential requirement, the statement aligns with the broader perspective that water plays a crucial role in sustaining life and ensuring the overall well-being of individuals and communities. This affirmation echoes global initiatives and agreements recognizing water as an inherent human right, demonstrating a dedication to establishing a life of dignity and health for all. Its significance extends across various domains, playing a multifaceted role in human well-being, agriculture, industry, and ecosystems. In agriculture, water proves indispensable for irrigation, playing a pivotal role in sustaining a substantial portion of the world's food production. Industries heavily depend on water for their processes, underscoring the critical need for responsible usage to avert environmental deterioration. The quality of water directly impacts the biodiversity of aquatic ecosystems, encompassing rivers, lakes, and oceans, thus holding a key position in maintaining environmental harmony. Furthermore, water serves as a renewable energy source through hydropower, contributing to a well-rounded and sustainable energy portfolio. Oceans, in turn, assume a crucial responsibility in climate regulation by absorbing and releasing heat, influencing weather patterns, and serving as vital carbon sinks. In order to considering the significance of water the Water (Prevention and Control of Pollution) Act, 1974 provide the restoring the wholesomeness of water for the prevention and control of water pollution. The quality and suitability of water for consumption or various uses, known as its wholesomeness, are determined by meeting established standards for cleanliness, safety, and purity. A water supply is considered wholesome when it is free from harmful contaminants, pollutants, or pathogens that could pose risks to human health or the environment. Wholesome water is crucial for drinking, irrigation, industrial processes, and the well-being of aquatic ecosystems. To maintain water wholesomeness, consistent monitoring, treatment, and adherence to regulatory guidelines are essential. These practices ensure that water remains suitable for a range of uses, protecting both public health and the ecosystem.

### Administrative Bodies

The legislation in question intricately structures its framework by establishing various administrative bodies, each assigned specific roles and responsibilities aimed at achieving the outlined objectives. A notable feature of this legal framework is the delineation of administrative entities at different levels of governance. These include the formation of Central, State, and Joint Boards, each entrusted with distinct functions centered around the prevention and control of water pollution. At the national level, the Central Board is instituted to oversee and coordinate efforts addressing water pollution on a broader scale. It serves as a pivotal authority, formulating policies, guidelines, and strategies to ensure comprehensive management of water resources. This central body is typically equipped with the necessary jurisdiction and powers to enforce regulations

consistently across various regions. On the regional front, State Boards are established to address specific water pollution concerns within individual states. These entities play a crucial role in implementing the policies devised by the Central Board, tailoring them to the unique environmental and geographical characteristics of each state. State Boards are often empowered to enact regulations, monitor compliance, and take corrective measures to address localized water pollution challenges effectively. In instances where water pollution concerns transcend state boundaries or necessitate collaborative efforts, the legislation mandates the formation of Joint Boards. These collaborative entities facilitate coordination and cooperation between different states or regions, pooling resources and expertise to tackle shared water pollution issues. Joint Boards serve as a testament to the legislation's recognition of the interconnected nature of water systems and the need for collaborative strategies to address pollution comprehensively. In essence, the establishment of Central, State, and Joint Boards within the legislative framework reflects a sophisticated and multi-tiered approach to address water pollution. This administrative hierarchy ensures a systematic and coordinated effort at various levels of governance, with each board contributing to the overarching goal of preventing and controlling water pollution in a comprehensive and effective manner.

### a. Constitution of Boards

The authority to establish the Central <sup>[6]</sup> and State <sup>[7]</sup> Pollution Control Boards is vested in the Central and State governments. Boards shall consists of a full time Chairman being a person having special knowledge and various members representing different stakeholders such as government departments, environmental experts, agricultural, fishery, industry, corporations, and a full time member secretary to be appointed by central or state government respectively. Members of the boards, excluding the member secretary, are appointed for a term of three years from the date of their nomination <sup>[8]</sup>. They can be removed by the government before the completion of their term, provided they are given an opportunity for a hearing. Re-nomination is a possibility for a board member. However, these members may face disqualification <sup>[9]</sup> if declared insolvent, deemed unsound of mind by a competent court, or convicted of an offense involving moral turpitude, among other grounds. To fulfil the objectives of the act, the boards are required to convene at least once every three months <sup>[10]</sup>. They must adhere to prescribed rules of procedure regarding the conduct of business during their meetings. The Boards are the legal persons. They having perpetual succession and a common seal with power to acquire, hold and dispose of property and to contract and may sue or be sued. Additionally, the Central Board is vested with the authority and responsibilities of a state board for the Union territory. Furthermore, the establishment of a Joint Board <sup>[11]</sup> can also be initiated through an agreement that includes either two or more governments of a neighbouring state or through collaboration of the Central government or one or more governments of states adjacent to the relevant union territory or union territories.

### b. Functions of Boards

The Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCBs) play pivotal roles in

enforcing water pollution control measures in India as mandated by the Water (Prevention and Control of Pollution) Act, 1974. The collaborative efforts of the Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCBs) emerge as indispensable for the effective implementation and enforcement of measures aimed at controlling water pollution. The following outlines their primary functions<sup>[12]</sup>:

1. To establish and revise standards for the quality of water for various uses. These standards are essential guidelines for regulation and control of water pollution.
2. To monitor and conduct surveillance on water quality across various water bodies. This includes rivers, lakes, and other water sources to assess the level of pollution.
3. To issue consent based on compliance with set standards and regulations to industries.
4. To create awareness among the public about the importance of water conservation and pollution prevention. This involves educational programs, workshops, and dissemination of information.
5. To coordinate between the central and state governments concerning water pollution control. It facilitates communication and collaboration between different stakeholders.
6. To provide technical and scientific advice to the Governments on matters related to water pollution.
7. To compile data on water quality, pollution levels, and compliance status. They submit periodic reports to the central and state governments, as well as to other relevant authorities.

### Prevention and Control of water pollution

The legislation includes various measures aimed at preventing and managing water pollution. To effectively address water pollution, the board is endowed with specific powers. In order to control the water pollution, the Board has the following powers:

1. Power of the state government to restrict the Application of the Act to certain areas as declared as water pollution, prevention and control area or areas<sup>[13]</sup>.
2. Power to take samples of effluents from any stream or well for the purpose of analysis and the result of the analysis of such sample shall be admissible in evidence with the conditions<sup>[14]</sup>.
3. Power of entry and inspection to a person empowered by the State Board, for examining any plant, record, register, document or any other material object with the prescribed procedures<sup>[15]</sup>.

Additionally, the statute encompasses other provisions designed to mitigate and control water pollution. The regulation imposes a ban on utilizing streams or wells for the disposal of contaminating substances and stipulates penalties for any violations thereof. According to this provision<sup>[16]</sup>, individuals are prohibited from knowingly introducing poisonous, noxious, or polluting materials, as determined by the State Board, into any stream, sewer, or land. Any contravention of this prohibition is subject to penalties<sup>[17]</sup>. It further imposes the restrictions on new outlets and new discharges into a stream or well<sup>[18]</sup>. It provided that no individual may establish or initiate the establishment of any industry, operation, process, treatment and disposal system, or any extension thereof without prior consent from

the State Board. This includes activities that are likely to discharge sewage or trade effluent into a stream, well, sewer, or on land (hereafter referred to as sewage discharge). Furthermore, bringing into use any new or modified outlet for sewage discharge or commencing any new discharge of sewage is strictly prohibited without the previous approval of the State Board. An application for the consent of the State Board can be made on the prescribed form and fee. If any person aggrieved by the order of the board may within thirty days from the date on which the order is communicated to him prefer an appeal to the appellate authority as the State Government<sup>[19]</sup>. Following the implementation of the National Green Tribunal Act, 2010, any dissatisfied individual with the decision of the appellate authority or the board can file an appeal to the Tribunal<sup>[20]</sup> in accordance with the provisions outlined in that Act.

### Transformative Amendments

The Indian Parliament recently approved the Water (Prevention and Control of Pollution) Amendment Bill, 2024 which seeks to decriminalise minor offences related to water pollution, and exempt certain categories of industrial plants from statutory restrictions. The proposed legislation replaces criminal charges with penalties for numerous violations. The Water (Prevention and Control of Pollution) Amendment Bill, 2024, encompasses several key provisions. Firstly, it outlines the method for the nomination of the chairman of the State Pollution Control Board, a responsibility now to be prescribed by the Central Government. Secondly, it empowers the Central Government to grant exemptions to specific categories of industrial plants from the constraints outlined<sup>[21]</sup>, which pertain to restrictions on new outlets and new discharges. Additionally, the bill grants authority to the Central Government to issue guidelines concerning the approval, rejection, or revocation of consent by any State Board for the establishment of industries, operations, processes, or the implementation of new or modified outlets. Moreover, it advocates for the decriminalization of minor offenses, proposing monetary penalties for ongoing contraventions. The legislation also defines the process for adjudicating penalties, with an adjudicating officer required to hold a position not lower than the rank of Joint Secretary to the Government of India or Secretary to the State Government. Penalties for non-compliance, which respectively address restrictions on new outlets and new discharges and existing discharge of sewage or trade effluent, are stipulated. Finally, the bill directs that the fines imposed are to be directed to the Environmental Protection Fund, as established under section 16 of the Environment (Protection) Act, 1986. Initially, it is set to be implemented in Himachal Pradesh, Rajasthan, and the union territories. Subsequently, other states have the option to extend its applicability by passing resolutions under Article 252 of the Indian Constitution. These are the following amendments introduced in the Water (Prevention and Control of Pollution) Act, 1974:

1. The current system specifies that the State Pollution Control Board (SPCB) chairman is appointed by the state government<sup>[22]</sup>. However, the upcoming Bill proposes a provision granting the central government the authority to outline the nomination process and determine the terms and conditions of service for the chairman<sup>[23]</sup>. Supporters argue that state governments

- are better suited to appoint individuals familiar with the local environmental challenges of their region. They express concerns that a centralized nomination process at the national level might disregard the nuanced environmental issues specific to individual states. Additionally, it is argued that centralizing the appointment process could lead to bureaucratic delays and a lack of responsiveness to rapidly evolving environmental situations at the state level. Another concern is that centralizing the appointment process may increase the risk of political interference at the national level, potentially compromising the autonomy of environmental regulatory bodies.
2. According to the current legislation, the State Pollution Control Board (SPCB) has the authority to issue directives for the immediate cessation of activities causing the discharge of harmful substances into water bodies <sup>[24]</sup>. The law also prohibits the violation of standards established by the SPCB for pollutants in water bodies or on land, with specific exemptions in place. Currently, breaches of these regulations incur penalties, including imprisonment ranging from one and a half to six years, along with fines. However, the proposed Bill aims to replace this punitive approach, opting for monetary penalties ranging from Rs 10,000 to Rs 15 lakh. The absence of the threat of imprisonment may reduce the incentive for strict adherence to environmental regulations, heightening the risk of pollution-related activities. Shifting to monetary penalties might not adequately address the long-term environmental damage caused by violations, potentially leaving affected ecosystems without proper restitution. Additionally, relying solely on financial penalties may not effectively discourage repeat offenders, as the financial burden may not be significant enough to deter ongoing violations. Choosing to penalize violations with fines may not have the same impact in deterring activities causing the discharge of harmful substances, potentially weakening the overall regulatory framework.
  3. As per the act person are under obligation to apply for consent, before they are taking steps to establish any industry or are bringing into use any new outlet or are continuing with the existing Outlet for the discharge of sewage or trade effluent <sup>[25]</sup>. The Bill specifies that the central government, in consultation with the CPCB, may exempt certain categories of industrial plants from obtaining such consent. The Bill also adds that the central government may issue guidelines for the grant, refusal, or cancellation of consent granted by the SPCB. Under the Act, establishing and operating an industry without obtaining such consent from the SPCB is punishable with imprisonment up to six years and fine. The Bill retains this. It also penalises tampering with monitoring devices used in determining whether any industry or treatment plant can be set up. The penalty will be between Rs 10,000 and Rs 15 lakh. Exempting specific industries from obtaining consent might undermine the regulatory process, as these exemptions may be granted without a thorough assessment of the potential environmental impact of the exempted activities. This could result in increased pollution, as industries exempted from obtaining consent might not be held to the same standards as others. Additionally, the punitive measures such as imprisonment and fines for operating an industry without consent and tampering with monitoring devices might be considered too severe. Critics may argue that imposing such harsh penalties may discourage small businesses or hinder economic growth, especially if the regulatory requirements are perceived as excessive or burdensome.
  4. The proposed legislation grants the central government the authority to designate adjudication officers responsible for determining penalties in accordance with the Act. These officers must hold a position equivalent to a Joint Secretary to the central government or a Secretary to the state government, indicating a requisite level of expertise and seniority in governmental affairs. In the event of disagreement or dissatisfaction with the decisions of the adjudicating officer, individuals or entities have the option to appeal before the National Green Tribunal. However, a noteworthy condition is imposed, requiring appellants to deposit 10% of the imposed penalty before filing their appeal. This financial requirement serves as a condition precedent for seeking redress through the appellate process. Importantly, any penalties determined and levied by the adjudicating officer are earmarked to contribute to the Environment Protection Fund, as established under the Environment (Protection) Act of 1986. This fund plays a crucial role in financing initiatives and projects aimed at environmental conservation and protection. By directing the collected penalties to this fund, the legislation aligns its punitive measures with the broader objective of fostering environmental sustainability and conservation efforts.
  5. According to the existing Act, a court is authorized to recognize an offense when a complaint is filed by the Central Pollution Control Board (CPCB) or the State Pollution Control Board (SPCB), or by an individual who has provided prior notice of the complaint to these Boards. The proposed Bill introduces an expansion to this provision by including the adjudicating officer as an additional entity empowered to make a complaint, thereby broadening the scope of authorities who can initiate legal proceedings for environmental offenses. This amendment acknowledges the role of adjudicating officers in overseeing and deciding on penalties under the Act. By granting them the authority to file complaints, the Bill recognizes their pivotal role in the regulatory framework. This inclusion ensures a more comprehensive and flexible approach to the initiation of legal actions, aligning with the objective of efficient enforcement of environmental regulations.

### Conclusion

In conclusion, the journey of environmental legislation in India, particularly concerning water pollution, has evolved over the decades, responding to the imperative need to safeguard public health, ecosystems, and the environment. The genesis of the Water (Prevention and Control of Pollution) Act, 1974, marked a pivotal moment in addressing the escalating challenges posed by industrial activities and urbanization to water resources. Inspired by global environmental initiatives, this legislation reflects a commitment to combat water pollution comprehensively. The Act, with its 64 sections divided into 8 chapters, casts a

wide net in its coverage, encompassing various types of waters, from rivers and water courses to inland and subterranean waters. It establishes boards at the central, state, and joint levels, imbued with specific powers and functions. These administrative bodies play a crucial role in setting and revising water quality standards, conducting surveillance, issuing consents, and coordinating efforts between different levels of governance. The concept of water "wholesomeness" becomes paramount in the Act, emphasizing the quality and suitability of water for consumption and various uses. The Act envisions a holistic approach to maintain water wholesomeness, necessitating consistent monitoring, treatment, and adherence to regulatory guidelines. However, recent amendments to the Water (Prevention and Control of Pollution) Act, 1974, raise concerns about their potential impact on the effectiveness of environmental regulation. The proposed shift from criminal charges to monetary penalties for certain violations, the centralization of the appointment process for Pollution Control Board chairpersons, and the exemption of specific industrial categories from obtaining consent are particularly contentious. The proposed changes introduce a nuanced landscape where environmental considerations must balance with economic and administrative efficiency. The potential implications of these amendments on regulatory responsiveness, deterrence mechanisms, and environmental conservation need careful consideration. While some argue for the need to adapt to changing economic landscapes, others caution against compromising the foundational principles that underpin environmental protection.

As we navigate this critical juncture, a delicate balance between economic development and ecological sustainability must be maintained. The efficacy of the Water (Prevention and Control of Pollution) Act, 1974, lies not only in its legal provisions but in the collective commitment to its spirit the safeguarding of water resources for the well-being of present and future generations.

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