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CRIMINAL LIABILITY FOR RIVER POLLUTION IN INDIA: FROM GANGA TO YAMUNA

Abstract

River pollution in India, especially in the Ganga and Yamuna, continues to pose a serious environmental and public health challenge despite decades of regulation. The Water (Prevention and Control of Pollution) Act 1974 and the Environment (Protection) Act 1986 criminalise unlawful discharge of pollutants and impose liability on industrial and municipal bodies. Judicial oversight through public interest litigation and the National Green Tribunal has strengthened environmental governance and directed corrective action. However, criminal enforcement remains weak due to procedural delays, evidentiary difficulties, fragmented corporate liability, and institutional limitations of Pollution Control Boards. This chapter analyses the doctrinal basis of criminal liability for river pollution, examines systemic gaps that allow offenders to avoid punishment, and considers comparative approaches to environmental crime. It contends that effective deterrence requires clearer offences, stronger accountability, specialised prosecution, and closer coordination between criminal, civil, and regulatory frameworks.

Keywords: River pollution, Ganga, Yamuna, criminal liability, Water (Prevention and Control of Pollution) Act 1974

1. Introduction

India's major river systems occupy a central place in the country's ecological stability, economic development, and constitutional imagination. The Ganga and the Yamuna are not merely watercourses; they sustain agriculture, provide drinking water to densely populated regions, support fisheries, and hold deep cultural and religious significance. Yet both rivers continue to experience high levels of contamination arising from industrial discharge, untreated municipal sewage, agricultural runoff, and solid waste dumping.

Official assessments have repeatedly indicated that untreated sewage constitutes a dominant share of river pollution load in major urban stretches, particularly along the Yamuna in Delhi and downstream segments of the Ganga basin. Industrial effluents, especially from sectors such as tanneries, textiles, pulp and paper, chemicals, and sugar mills, contribute additional toxic burden.¹ Despite decades of regulatory intervention and judicial supervision, measurable improvements remain uneven and fragile.

India's statutory response to water pollution began with the enactment of the Water (Prevention and Control of Pollution) Act 1974.² The statute established Central and State Pollution Control Boards and introduced a consent mechanism regulating discharge of effluents into water bodies. It criminalised violations, prescribing imprisonment and fines for non-compliance. The Environment (Protection) Act 1986³ subsequently strengthened central regulatory authority and enabled the prescription of standards for discharge and environmental quality. The creation of the National Green Tribunal under the National Green Tribunal Act 2010⁴ introduced a specialised forum for environmental adjudication and compensation.

Constitutional jurisprudence has further expanded environmental protection. The Supreme Court has interpreted Article 21 of the Constitution of India⁵ to include the right to a wholesome environment. Through public interest litigation, the Court has issued directions relating to industrial relocation, effluent treatment, and river cleaning measures, particularly in cases concerning the Ganga and Yamuna.⁶ These developments demonstrate a robust normative commitment to environmental protection.

¹ Central Pollution Control Board, National Inventory of Sewage Treatment Plants (2021) 7–15; Central Pollution Control Board, Polluted River Stretches for Restoration of Water Quality (2022) 22–26.

² Water (Prevention and Control of Pollution) Act 1974.

³ Environment (Protection) Act 1986.

⁴ National Green Tribunal Act 2010.

⁵ Constitution of India 1950, art 21.

⁶ *Subhash Kumar v State of Bihar* [1991] 1 SCC 598.

However, the persistence of severe river pollution raises a deeper question: why has criminal liability not functioned as an effective deterrent? While statutory provisions provide for imprisonment and fines, actual convictions remain limited and enforcement often centres on compliance directives rather than penal consequences. Municipal bodies responsible for large-scale sewage discharge are rarely subjected to sustained criminal prosecution. Corporate actors frequently resolve violations through administrative directions or financial penalties rather than custodial sanctions.

This chapter proceeds on the premise that environmental governance cannot rely exclusively on regulatory compliance mechanisms. Where pollution endangers public health, ecological systems, and constitutional rights, criminal law carries expressive and deterrent value. It signals societal condemnation and affirms the seriousness of environmental harm. The gap between statutory promise and enforcement reality therefore demands doctrinal and institutional scrutiny.

The discussion that follows analyses the structure of criminal liability under the Water Act and the Environment (Protection) Act, the doctrinal complexities of corporate and municipal accountability, procedural and evidentiary hurdles, and the role of judicial intervention. It concludes by evaluating reform pathways capable of transforming environmental criminal law from symbolic enforcement into meaningful accountability.

2. Statutory Framework of Criminal Liability

India's criminal law response to river pollution is primarily rooted in two central statutes: the Water (Prevention and Control of Pollution) Act 1974 and the Environment (Protection) Act 1986. Together, they establish regulatory standards, enforcement mechanisms, and penal consequences for non-compliance. A doctrinal understanding of criminal liability under these statutes is essential to evaluate why enforcement outcomes remain limited.

2.1 The Water (Prevention and Control of Pollution) Act 1974

The Water Act was enacted to prevent and control water pollution and to maintain or restore the wholesomeness of water.⁷ It created the Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCBs), entrusting them with monitoring, standard-setting, and enforcement functions.⁸

A central regulatory mechanism under the Act is the requirement of prior consent. Sections 25 and 26 mandate that no person shall establish or operate any industry, operation, or process likely to discharge sewage or trade effluent into a stream, well, sewer, or on land without the previous consent of the State Board.⁹ Operation without consent, or violation of consent conditions, constitutes an offence.

Section 24 prohibits knowingly causing or permitting any poisonous, noxious, or polluting matter to enter into any stream or well.¹⁰ This provision forms the substantive foundation for criminal prosecution relating to discharge into rivers such as the Ganga and Yamuna.

The penal framework is set out in sections 41 to 45A.¹¹ Contravention of section 24 or sections 25 and 26 is punishable with imprisonment and fine. For continuing offences, additional daily fines may be imposed. Enhanced punishment is prescribed for repeat violations. The statute therefore clearly contemplates custodial sentences and not merely monetary penalties.

However, prosecution under the Water Act is subject to procedural conditions. Section 49 restricts cognisance of offences to complaints made by the Board or an authorised officer, or by a person who has given prior notice of at least sixty days of the alleged offence to the

⁷ Water (Prevention and Control of Pollution) Act 1974.

⁸ Ibid ss 3–4.

⁹ Ibid ss 25–26.

¹⁰ Ibid s 24.

¹¹ Ibid ss 41–45A.

Board.¹² While intended to prevent frivolous litigation and ensure technical scrutiny, this requirement centralises prosecutorial discretion within regulatory authorities.

2.2 The Environment (Protection) Act 1986

The Environment (Protection) Act 1986 was enacted following the Bhopal gas disaster to provide a comprehensive framework for environmental protection.¹³ Unlike the Water Act, which is sector-specific, the EPA confers broad powers upon the Central Government to take measures to protect and improve environmental quality.¹⁴

Under section 7, no person carrying on any industry, operation, or process shall discharge or emit environmental pollutants in excess of prescribed standards.¹⁵ Violation of standards notified under the Act therefore constitutes an offence.

Section 15 provides the penal consequences.¹⁶ Contravention of any provision of the Act, rules, orders, or directions issued under it is punishable with imprisonment and fine. In cases of continuing contravention, additional daily fines are prescribed. If the failure continues beyond one year after conviction, enhanced imprisonment may follow.

The EPA also contains provisions regarding offences by companies under section 16.¹⁷ Where an offence is committed by a company, every person who was in charge of and responsible to the company for the conduct of its business at the time of the offence is deemed guilty, unless they prove lack of knowledge or due diligence. This statutory formulation attempts to address the challenge of corporate criminal liability.

Section 19 governs cognisance and mirrors the structure found in the Water Act.¹⁸ Courts may take cognisance only upon a complaint made by the Central Government or an authorised authority, or by a person after giving prescribed notice. As with the Water Act, this procedural filter places substantial control in the hands of executive agencies.

2.3 Constitutional Dimensions

¹² Ibid s 49.

¹³ Environment (Protection) Act 1986, Statement of Objects and Reasons.

¹⁴ Ibid s 3.

¹⁵ Ibid s 7.

¹⁶ Ibid s 15.

¹⁷ Ibid s 16.

¹⁸ Ibid s 19.

The statutory framework operates within a constitutional context that has progressively strengthened environmental protection. Article 21 of the Constitution of India guarantees that no person shall be deprived of life or personal liberty except according to procedure established by law.¹⁹ Judicial interpretation has expanded this provision to include the right to a clean and healthy environment.²⁰

Directive Principles and Fundamental Duties further reinforce this framework. Article 48A directs the State to protect and improve the environment and safeguard forests and wildlife.²¹ Article 51A(g) imposes a fundamental duty upon citizens to protect and improve the natural environment.²² Though not directly enforceable, these provisions inform statutory interpretation and judicial reasoning.

In several decisions concerning river pollution, the Supreme Court has relied upon constitutional principles to justify stringent regulatory directions.²³ However, constitutional recognition of environmental rights has not automatically translated into a consistent pattern of criminal convictions under statutory law.

2.4 The Role of the National Green Tribunal

The National Green Tribunal Act 2010 established the National Green Tribunal (NGT) as a specialised forum for environmental disputes.²⁴ The Tribunal has jurisdiction over civil cases involving substantial environmental questions arising from statutes including the Water Act and the EPA.

While the NGT possesses authority to award compensation and issue directions for restitution, its jurisdiction is primarily civil in nature.²⁵ It does not itself conduct criminal trials. Consequently, criminal prosecution for river pollution continues to lie within the domain of magistrate courts under the parent statutes.

The establishment of the NGT has strengthened environmental compliance and compensation mechanisms. Nevertheless, it has not replaced the need for criminal enforcement under the

¹⁹ Constitution of India 1950, art 21.

²⁰ *Subhash Kumar v State of Bihar* [1991] 1 SCC 598.

²¹ Constitution of India 1950, art 48A.

²² *Ibid* art 51A(g).

²³ *MC Mehta v Union of India* (Ganga Pollution – Tanneries) [1988] 1 SCC 471.

²⁴ National Green Tribunal Act 2010, s 3.

²⁵ *Ibid* ss 14–15.

Water Act and the EPA. The coexistence of civil environmental adjudication and criminal prosecution raises questions about prioritisation, coordination, and deterrence.

3. Judicial Intervention in River Pollution Cases

Judicial intervention has played a central role in shaping India's environmental governance, particularly in relation to river pollution. Through public interest litigation and constitutional adjudication, the Supreme Court and the National Green Tribunal have issued extensive directions addressing industrial discharge, municipal sewage management, and regulatory accountability. However, the relationship between judicial activism and criminal enforcement remains complex. While courts have strengthened environmental principles and compliance mechanisms, their interventions have not consistently translated into sustained criminal convictions.

3.1 The Ganga Pollution Cases

One of the earliest and most significant judicial engagements with river pollution arose in *MC Mehta v Union of India* concerning pollution of the Ganga by tanneries located in Kanpur.²⁶ The Supreme Court treated the matter as a public interest petition and examined the discharge of untreated effluents into the river.

The Court emphasised that economic development cannot justify environmental degradation and directed polluting industries either to install primary treatment plants or face closure.²⁷ It rejected arguments that financial incapacity could excuse non-compliance with statutory requirements. The decision marked an important shift: regulatory standards under the Water Act were treated not merely as administrative guidelines but as enforceable obligations grounded in constitutional principles.

Subsequent orders in the Ganga pollution series continued to monitor compliance, requiring industries to install effluent treatment facilities and directing authorities to take action against defaulters.²⁸ These proceedings demonstrated the Court's willingness to exercise continuing mandamus in environmental matters.

However, while industries were threatened with closure and administrative consequences, criminal convictions under the Water Act were not the central outcome of the litigation.

²⁶ *MC Mehta v Union of India* (Ganga Pollution – Tanneries) [1988] 1 SCC 471.

²⁷ *Ibid.*

²⁸ *MC Mehta v Union of India* [1997] 11 SCC 312.

Judicial supervision largely operated through regulatory directives rather than through sustained penal prosecution.

3.2 The Yamuna and Urban Sewage Litigation

The pollution of the Yamuna, particularly in the stretch passing through Delhi, has been the subject of repeated judicial scrutiny.²⁹ The primary source of contamination in this segment has consistently been identified as untreated or inadequately treated municipal sewage.

The Supreme Court, in various proceedings, directed municipal authorities and state agencies to construct sewage treatment plants, intercept drains, and ensure compliance with environmental standards.³⁰ These directions were reinforced by later proceedings before the National Green Tribunal, which imposed environmental compensation and issued timelines for compliance.³¹

Yet, as in the Ganga litigation, criminal prosecution of public officials responsible for systemic sewage discharge has been rare. Judicial intervention has focused predominantly on infrastructure development, monitoring, and administrative reform. The structural problem of holding municipal authorities criminally accountable for prolonged statutory violations has remained largely unaddressed.

3.3 Expansion of Environmental Principles

Judicial decisions in environmental cases have articulated important principles that shape statutory interpretation. In *Vellore Citizens' Welfare Forum v Union of India*, the Supreme Court formally recognised the precautionary principle and the polluter pays principle as part of Indian environmental law.³² These principles have since guided environmental adjudication, including river pollution cases.

Similarly, in *Indian Council for Enviro-Legal Action v Union of India*, the Court imposed liability upon industries responsible for environmental degradation and emphasised strict compliance with statutory mandates.³³ The decision reinforced the idea that polluters must bear the cost of remediation.

²⁹ *MC Mehta v Union of India* (Yamuna Pollution) [2004] 6 SCC 588.

³⁰ *Ibid.*

³¹ National Green Tribunal Act 2010, ss 14–15.

³² *Vellore Citizens' Welfare Forum v Union of India* [1996] 5 SCC 647.

³³ *Indian Council for Enviro-Legal Action v Union of India* [1996] 3 SCC 212.

While these doctrines strengthen environmental accountability, they primarily operate within civil liability and compensation frameworks. Their translation into criminal jurisprudence has been limited. Criminal law requires proof beyond reasonable doubt and adherence to procedural safeguards, which distinguishes it from the broader equitable powers exercised in public interest litigation.

3.4 Limits of Judicially Driven Enforcement

Judicial activism has undoubtedly expanded environmental rights and compelled executive action. However, reliance on court-driven monitoring presents certain limitations.

First, courts cannot substitute sustained administrative enforcement. Continuing mandamus, though effective in specific contexts, depends upon periodic compliance reports and judicial time. Long-term criminal deterrence requires institutional mechanisms rather than episodic judicial supervision.

Second, judicial directions often emphasise prospective compliance, such as installation of treatment facilities or submission of action plans. Criminal law, by contrast, addresses completed violations and imposes penal consequences. The relative emphasis on corrective measures may reduce the visibility of punitive enforcement.

Third, environmental litigation frequently proceeds in constitutional or tribunal forums rather than criminal courts. This dual-track system can create fragmentation between civil environmental remedies and criminal prosecution under statutory law.

Judicial intervention has therefore been transformative in normative terms. It has constitutionalised environmental protection and expanded regulatory oversight. Nevertheless, the persistence of severe pollution in major rivers suggests that judicial monitoring alone cannot replace a coherent and consistent criminal enforcement strategy.

4. Why Industries and Municipalities Escape Criminal Liability

Despite the existence of statutory criminal provisions under the Water (Prevention and Control of Pollution) Act 1974 and the Environment (Protection) Act 1986, large-scale river pollution continues with limited instances of sustained penal consequences. The continuing contamination of the Ganga and the Yamuna reveals not merely regulatory gaps but structural weaknesses in criminal enforcement. This section examines doctrinal, procedural, and institutional factors that enable industries and municipal bodies to evade meaningful criminal liability.

4.1 Corporate Criminal Liability and the Problem of Attribution

Both the Water Act and the Environment (Protection) Act contain provisions addressing offences committed by companies. Section 47 of the Water Act and section 16 of the Environment (Protection) Act extend liability to persons who were “in charge of, and responsible to, the company for the conduct of its business” at the time the offence was committed.³⁴

In principle, these provisions adopt a model of vicarious liability. However, judicial interpretation has imposed limits on automatic attribution. In *SMS Pharmaceuticals Ltd v Neeta Bhalla*, the Supreme Court clarified that liability of directors or officers cannot be presumed solely on the basis of designation; specific averments regarding responsibility for the conduct of business are required.³⁵ Although decided under the Negotiable Instruments Act, the reasoning has influenced interpretation of similar language in other penal statutes.

The practical difficulty lies in identifying the individual whose knowledge, consent, connivance, or neglect can be established beyond reasonable doubt. Modern corporations function through layered managerial structures, environmental compliance teams, and outsourced contractors. Decision-making relating to effluent discharge may be dispersed across departments. This diffusion of responsibility complicates proof of mens rea or culpable negligence.

In *U.P. Pollution Control Board v Mohan Meakins Ltd*, the Supreme Court emphasised that technical objections should not defeat prosecution at the threshold and that environmental

³⁴ Water (Prevention and Control of Pollution) Act 1974, s 47; Environment (Protection) Act 1986, s 16.

³⁵ *SMS Pharmaceuticals Ltd v Neeta Bhalla* [2005] 8 SCC 89.

offences must be viewed with seriousness.³⁶ Yet even with such judicial guidance, evidentiary burdens remain significant.

Moreover, corporate entities may treat monetary penalties as operational costs. While imprisonment is statutorily available under sections 41 to 45 of the Water Act and section 15 of the Environment (Protection) Act, custodial sentences for senior decision-makers remain infrequent.³⁷ The limited imposition of personal criminal consequences weakens the deterrent and expressive functions of environmental criminal law.

4.2 Municipal Bodies and Structural Non-Compliance

A substantial portion of pollution in major river stretches arises from untreated or inadequately treated municipal sewage.³⁸ Urban local bodies often lack sufficient sewage treatment capacity relative to the volume generated by expanding populations.

Statutory obligations under the Water Act apply broadly to any person discharging pollutants, and there is no categorical exemption for municipal authorities. However, criminal prosecution of public officials for systemic sewage discharge is extremely rare. Administrative explanations frequently cite financial constraints, infrastructural gaps, or delays in project execution. While these constraints are real, they cannot negate statutory prohibitions under section 24 of the Water Act.³⁹

Judicial proceedings concerning the Yamuna and the Ganga have repeatedly recorded deficiencies in sewage treatment infrastructure.⁴⁰ Courts have issued directions to construct sewage treatment plants and upgrade facilities. Nevertheless, the emphasis has typically been on compliance and future remediation rather than criminal prosecution of responsible officials.

Political and administrative sensitivity also plays a role. Prosecuting public authorities involves coordination between regulatory boards and government departments. In practice, enforcement agencies may hesitate to initiate criminal proceedings against state actors with

³⁶ *UP Pollution Control Board v Mohan Meakins Ltd* [2000] 3 SCC 745.

³⁷ Water (Prevention and Control of Pollution) Act 1974, ss 41–45; Environment (Protection) Act 1986, s 15.

³⁸ Central Pollution Control Board, 'Compliance Report in OA No 593/2017' (2019) 73; National River Conservation Directorate, 'What are the major sources of pollution in rivers?' <<https://nrcd.nic.in/writereaddata/FileUpload/79255039faq.pdf>> accessed 24 February 2026.

³⁹ *Water Act* 1974, s 24.

⁴⁰ *MC Mehta v Union of India* (Yamuna Pollution) [2004] 6 SCC 588.

whom they function institutionally. The result is an asymmetry in enforcement intensity between private industries and public bodies.

4.3 Procedural Filters and Investigative Constraints

Both the Water Act and the Environment (Protection) Act restrict cognisance of offences to complaints made by authorised authorities or by persons who have complied with statutory notice requirements.⁴¹ While intended to ensure technical scrutiny, this procedural filter centralises prosecutorial discretion within Pollution Control Boards and the executive.

Environmental offences require reliable scientific evidence. Prosecution often depends on sampling procedures, laboratory analysis, and documentation demonstrating that discharge exceeded prescribed standards. Any irregularity in sampling, delay in forwarding samples, or break in chain of custody may weaken the evidentiary foundation. Defence counsel frequently challenge procedural compliance, and criminal courts apply the standard of proof beyond reasonable doubt.

Additionally, criminal cases under environmental statutes are tried in regular magistrate courts. Given existing judicial backlogs, trials may extend over several years. Prolonged proceedings dilute deterrence and reduce the immediacy of penal consequences.

In *M.C. Mehta v Union of India* concerning oleum gas leakage, the Supreme Court underscored the need for stringent accountability for hazardous activities.⁴² Although the case primarily developed the doctrine of absolute liability in tort, it reflected judicial recognition of the gravity of environmental harm. The translation of such normative seriousness into routine criminal enforcement, however, remains uneven.

4.4 Institutional Limitations of Pollution Control Boards

Effective criminal enforcement depends upon the technical capacity and independence of regulatory authorities. The Central Pollution Control Board and State Pollution Control Boards are entrusted with monitoring compliance, granting consent, and initiating prosecution.⁴³

⁴¹ Water Act 1974, s 49; Environment Act 1986, s 19.

⁴² *MC Mehta v Union of India* (Oleum Gas Leak) [1987] 1 SCC 395.

⁴³ Water (Prevention and Control of Pollution) Act 1974, ss 16–17.

In practice, many State Boards face resource constraints, including shortages of technical staff and laboratory infrastructure. Monitoring thousands of industrial units and municipal discharge points requires sustained inspection capacity. Where inspection frequency is low, violations may persist undetected or unrecorded.

Concerns have also been raised regarding regulatory capture and political influence. When economic considerations dominate environmental decision-making, prosecution may be perceived as disruptive to industrial activity. In such contexts, regulators may prioritise negotiated compliance or administrative directions over criminal complaints.

Institutionally, Boards often focus on achieving technical compliance through consent conditions, show cause notices, and closure directions. While corrective measures are essential, an exclusive emphasis on compliance without consistent prosecution can signal that criminal provisions are exceptional rather than routine enforcement tools.

4.5 Symbolic Enforcement and the Culture of Impunity

The cumulative effect of these doctrinal and institutional factors is a pattern that may be described as symbolic enforcement. Regulatory authorities issue notices, impose environmental compensation, or direct remedial measures. The National Green Tribunal frequently awards compensation and orders restoration under its statutory mandate.⁴⁴ Yet criminal convictions under the Water Act and the Environment (Protection) Act remain comparatively limited in public visibility.

Where statutory criminal provisions are seldom operationalised to their full extent, environmental harm risks becoming normalised. The expressive function of criminal law lies in affirming that certain conduct is not merely undesirable but punishable. When prosecution is sporadic and custodial sentences rare, deterrence weakens.

The failure to impose consistent criminal liability is therefore not merely an administrative deficiency. It reflects deeper structural challenges within India's environmental governance framework. Addressing river pollution requires not only infrastructural investment and civil compensation mechanisms but also a credible and predictable criminal enforcement strategy.

⁴⁴ National Green Tribunal Act 2010, ss 14–15.

5. Comparative Perspectives and Reform Pathways

The limitations identified in India's enforcement framework invite consideration of comparative models and structural reform. While environmental governance must remain sensitive to domestic constitutional and institutional realities, comparative analysis demonstrates that effective criminal enforcement requires clarity in offence design, prosecutorial independence, and credible sanctions.

5.1 Comparative Approaches to Environmental Crime

In the United Kingdom, serious pollution offences are prosecuted under statutory regimes such as the Environmental Protection Act 1990 and related regulations. The sentencing framework has evolved to emphasise turnover-based fines for corporate offenders, linking penalties to financial capacity.⁴⁵ While imprisonment remains available, structured sentencing guidelines have enhanced predictability and deterrence.

At the supranational level, the European Union adopted Directive 2008/99/EC on the protection of the environment through criminal law, requiring Member States to criminalise serious environmental offences.⁴⁶ The Directive reflects recognition that administrative sanctions alone may be insufficient where conduct causes substantial harm.

In the United States, the Clean Water Act provides for both civil and criminal enforcement.⁴⁷ Criminal liability may arise for negligent, knowing, or knowing endangerment violations. Federal prosecutors have pursued cases resulting in significant fines and custodial sentences in appropriate circumstances.⁴⁸ The presence of specialised environmental enforcement units within prosecutorial agencies strengthens consistency in enforcement.

These comparative models illustrate three elements relevant for India: clear differentiation of serious environmental crimes, structured sentencing, and specialised prosecutorial capacity.

⁴⁵ Environmental Protection Act 1990; Sentencing Council, *Environmental Offences: Definitive Guideline* (2014).

⁴⁶ Directive 2008/99/EC on the protection of the environment through criminal law OJ L328/28.

⁴⁷ Clean Water Act, 33 USC § 1251 (1972).

⁴⁸ *Ibid* § 1319 (c).

5.2 Clarifying Serious Environmental Offences

Under the Water (Prevention and Control of Pollution) Act 1974 and the Environment (Protection) Act 1986, most offences are framed broadly as contraventions of statutory provisions or directions.⁴⁹ While this flexibility enables regulatory oversight, it may dilute the moral gravity associated with serious environmental harm.

One reform pathway involves distinguishing between minor regulatory non-compliance and grave pollution causing substantial ecological or public health damage. Clear statutory articulation of aggravated environmental offences, potentially incorporating elements such as large-scale discharge, repeated violation, or demonstrable harm, would enhance normative clarity.

Such differentiation would also assist courts in calibrating punishment. Criminal law functions most effectively where the seriousness of the offence is reflected in legislative design rather than left entirely to judicial discretion.

5.3 Strengthening Corporate and Managerial Accountability

Section 47 of the Water Act and section 16 of the Environment (Protection) Act attempt to impose liability upon persons in charge of companies.⁵⁰ However, enforcement difficulties suggest the need for clearer allocation of responsibility.

One approach could involve mandatory designation of an environmental compliance officer with statutorily defined duties. Failure to prevent unlawful discharge, where attributable to negligence in supervision, could attract personal liability. Such mechanisms would reduce ambiguity regarding attribution and reinforce internal compliance systems.

In addition, sentencing practices could incorporate turnover-based fines for corporate offenders. Linking penalties to financial capacity prevents large corporations from treating fines as minor operational expenses.

Importantly, criminal enforcement should not displace civil compensation or remediation mechanisms. Instead, a layered model combining compensation, restoration, and penal sanction would reflect the multifaceted nature of environmental harm.

⁴⁹ Water (Prevention and Control of Pollution) Act 1974, ss 24–26, 41–45; Environment (Protection) Act 1986, ss 7, 15.

⁵⁰ Water Act 1974, s 47; Environment Act 1986, s 16.

5.4 Municipal Accountability and Fiscal Federalism

Municipal sewage remains a dominant contributor to river pollution in several stretches of the Ganga and the Yamuna.⁵¹ Structural reform must therefore address local governance capacity.

Criminal liability for public officials should be approached with caution but not excluded categorically. Where statutory prohibitions under section 24 of the Water Act are persistently violated, and where compliance failures arise from culpable neglect rather than unavoidable constraints, accountability mechanisms must be credible.

Simultaneously, reform must recognise fiscal realities. Urban local bodies often depend on state and central transfers for infrastructure projects. Strengthening accountability must therefore be paired with predictable funding frameworks, transparent monitoring, and performance-linked grants.

The National Green Tribunal has increasingly imposed environmental compensation upon defaulting authorities.⁵² While compensation orders incentivise compliance, their effectiveness depends upon follow-through and utilisation of funds for ecological restoration. Criminal enforcement should operate in tandem with such measures where statutory thresholds are crossed.

5.5 Institutional Reform and Specialised Prosecution

Effective criminal enforcement requires institutional capacity. Pollution Control Boards must be adequately staffed, equipped with modern laboratories, and insulated from undue influence.⁵³ Transparent reporting of inspections, prosecutions launched, and convictions secured would enhance public accountability.

Consideration may also be given to establishing specialised environmental prosecutors or designated environmental courts within the criminal justice system. Although the National Green Tribunal exercises civil jurisdiction, criminal trials remain within regular magistrate courts. Specialised prosecutorial expertise would improve evidentiary preparation and case management.

⁵¹ Central Pollution Control Board, 'Compliance Report in OA No 593/2017' (2019) 73; National River Conservation Directorate, 'What are the major sources of pollution in rivers?' <<https://nrcd.nic.in/writereaddata/FileUpload/79255039faq.pdf>> accessed 24 February 2026.

⁵² National Green Tribunal Act 2010, ss 14–15.

⁵³ Water (Prevention and Control of Pollution) Act 1974, ss 16–17.

Training of judicial officers in environmental science and statutory interpretation would further strengthen adjudicatory quality. Environmental offences frequently involve technical evidence, and judicial familiarity with such material enhances consistency.

5.6 Reaffirming the Expressive Function of Criminal Law

Ultimately, criminal law performs an expressive role. It communicates societal condemnation of conduct that endangers collective welfare. In *Vellore Citizens' Welfare Forum v Union of India*, the Supreme Court affirmed that environmental protection is integral to sustainable development.⁵⁴ When rivers central to public health and cultural life remain heavily polluted, the credibility of legal commitments is tested.

Strengthening criminal enforcement does not imply punitive excess. Rather, it requires calibrated, predictable, and principled application of statutory provisions. Consistent prosecution of serious violations, combined with transparent sentencing and restoration orders, would reinforce deterrence and public confidence.

⁵⁴ *Vellore Citizens' Welfare Forum v Union of India* [1996] 5 SCC 647.

6. Conclusion

The continuing pollution of the Ganga and the Yamuna presents a difficult truth about environmental governance in India. The legal framework is not absent. The Water (Prevention and Control of Pollution) Act 1974 and the Environment (Protection) Act 1986 contain substantive prohibitions, regulatory mechanisms, and criminal sanctions. The Constitution, through Article 21, has been interpreted to recognise the right to a clean and healthy environment. Judicial decisions have articulated foundational principles such as the precautionary principle and the polluter pays principle. The National Green Tribunal provides a specialised forum for environmental adjudication and compensation.

Yet the persistence of severe river contamination demonstrates that normative commitment has not consistently translated into effective criminal accountability. The gap lies not primarily in legislative silence, but in enforcement practice. Criminal provisions remain under-utilised relative to the scale and duration of violations affecting major river systems.

One structural difficulty lies in corporate attribution. Although statutory provisions extend liability to persons in charge of companies, modern corporate organisation diffuses responsibility across managerial hierarchies. Establishing knowledge, consent, or negligence beyond reasonable doubt requires precise evidentiary preparation. In the absence of clear internal accountability mechanisms, criminal prosecution often focuses on technical non-compliance rather than demonstrable culpability at decision-making levels. Where fines are imposed without custodial consequences for responsible officials, deterrence may be limited.

Municipal accountability presents a different but equally complex challenge. Large volumes of untreated sewage continue to enter rivers, particularly in densely populated urban stretches. Financial constraints and infrastructural deficits are frequently cited explanations. However, statutory prohibitions do not distinguish between private and public polluters. A prolonged pattern of non-compliance, even when rooted in capacity limitations, raises questions about the credibility of criminal sanctions. If statutory offences exist but are rarely invoked against systemic violators, the expressive force of criminal law diminishes.

Procedural filters further shape enforcement outcomes. Both the Water Act and the Environment (Protection) Act restrict cognisance of offences to complaints by authorised authorities or persons complying with notice requirements. This structure ensures technical

oversight but centralises prosecutorial discretion. Effective criminal enforcement therefore depends heavily on the institutional will, independence, and capacity of Pollution Control Boards. Resource limitations, competing regulatory priorities, and potential political sensitivities can influence the frequency and intensity of prosecutions.

Judicial intervention has undoubtedly strengthened environmental governance. Through public interest litigation, courts have compelled installation of effluent treatment facilities, monitored compliance, and expanded environmental principles. However, judicial supervision operates primarily through directions, compensation, and continuing mandamus. Criminal trials, by contrast, proceed within the ordinary criminal justice system and require adherence to stringent evidentiary standards. The coexistence of robust judicial oversight with comparatively limited criminal convictions highlights the distinction between regulatory correction and penal condemnation.

The future of river protection in India requires a calibrated but firmer integration of criminal law within environmental governance. Reform does not necessarily demand wholesale legislative overhaul. Instead, clarity in offence categorisation, structured sentencing principles, strengthened corporate accountability mechanisms, and specialised prosecutorial expertise could significantly enhance deterrence. Distinguishing serious, large-scale, or repeated pollution from minor technical breaches would sharpen normative signalling. Turnover-sensitive fines and, where appropriate, personal liability for culpable managerial neglect would reinforce internal compliance cultures.

Municipal reform must combine accountability with fiscal realism. Criminal law cannot substitute for infrastructure investment. At the same time, prolonged and preventable statutory violations cannot remain insulated from penal scrutiny. Transparent monitoring, time-bound compliance obligations, and clearly defined responsibility within public authorities would align administrative reform with legal accountability.

Ultimately, rivers such as the Ganga and the Yamuna are not abstract environmental assets. They are sources of drinking water, agricultural sustenance, ecological diversity, and cultural continuity for millions. Pollution of these rivers is not merely a regulatory irregularity; it is a threat to public health and intergenerational equity. Criminal law serves a symbolic and practical function in marking the seriousness of such harm.

The credibility of environmental governance depends upon the consistency with which legal norms are enforced. Where statutory offences exist, they must not remain dormant. A balanced approach that integrates regulatory compliance, civil compensation, institutional strengthening, and principled criminal prosecution offers the most coherent path forward. Without credible accountability, river protection risks becoming an aspirational commitment rather than an enforceable legal reality.

Bibliography

Cases

Indian Council for Enviro-Legal Action v Union of India [1996] 3 SCC 212

MC Mehta v Union of India [1997] 11 SCC 312

MC Mehta v Union of India (Ganga Pollution – Tanneries) [1988] 1 SCC 471

MC Mehta v Union of India (Oleum Gas Leak) [1987] 1 SCC 395

MC Mehta v Union of India (Yamuna Pollution) [2004] 6 SCC 588

SMS Pharmaceuticals Ltd v Neeta Bhalla [2005] 8 SCC 89

Subhash Kumar v State of Bihar [1991] 1 SCC 598

UP Pollution Control Board v Mohan Meakins Ltd [2000] 3 SCC 745

Vellore Citizens' Welfare Forum v Union of India [1996] 5 SCC 647

Legislation

Constitution of India 1950

Clean Water Act 33 USC § 1251 (1972)

Environment (Protection) Act 1986

Environmental Protection Act 1990

National Green Tribunal Act 2010

Water (Prevention and Control of Pollution) Act 1974

International and Regional Instruments

Directive 2008/99/EC on the protection of the environment through criminal law OJ L328/28

Secondary Sources

Central Pollution Control Board, *Compliance Report in OA No 593/2017* (2019)

Central Pollution Control Board, *River Water Quality Monitoring Reports* (statutory reports under the Water Act)

National River Conservation Directorate, 'What are the major sources of pollution in rivers?' <https://nrcd.e.in/writereaddata/FileUpload/79255039faq.pdf> accessed 24 February 2026

Sentencing Council, *Environmental Offences Definitive Guideline* (2014)