

THE EXPANDING POWERS OF POLLUTION CONTROL BOARDS UNDER THE WATER ACT AND AIR ACT: LIMITS OF ADMINISTRATIVE DISCRETION

by

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ABSTRACT

In this country, the pollution is controlled through two main legislations The Water Act 1974 and Air Act 1981. The Central Pollution Control Board and the various State Pollution Control Boards are at the crux of making these laws work and these governments possess a pretty extensive regulation, oversight and even quasi-judicial powers. Five and a half decades since the enactment of such laws, the scope of the activities these Boards can undertake is vast both because Parliament has changed a few of the laws and because the National Green Tribunal, and the Supreme Court, continuously expanded the rights such Boards have. This paper examines the details of Section 33A of the Water Act and Section 31A of the Air Act the provisions which enable the Pollution Control Boards to issue directions for closure of factory premises, step down of electricity and water supply, and even to demand payment of environmental damages and how the powers have continued to expand. It also thoroughly reviews the extent to which the administrative discretion exercised by these Boards remains within constitutional constraints such as the rule of law, prohibition of arbitrary action, natural justice and proportionality. This paper argues: yes, increasing the power of Boards would be helpful to make environmental governance actually function; but increase in the power should be accompanied by robust procedural structure, transparency and judicial controls to ensure it is not misused, by referring to the recent case law in the area of environmental damages at the PPP (Polluter Pays Principle).

Introduction

India finds itself facing one of its greatest challenges ever, that being an ecosystem ravaged on a massive scale. The country's air, water and land are subjected to incredible stress with factories sprouting in all quarters, unplanned urbanization, a soaring population and ever insatiable demand for natural resources. The government has not turned a blind eye to the issue: the legislative response has been piecemeal, and the first two laws, the Water Act 1974 and the Air Act 1981, are perhaps most important.¹ These two laws, in combination, establish a comprehensive framework of institutions to address water and air pollution, including the establishment of Pollution Control Board at the national and State levels.²

The scale of environmental deterioration that prompted these legislative interventions is difficult to overstate. According to the IQAir World Air Quality Report 2024, India ranked as the fifth most polluted country in the world, with an average annual PM2.5 concentration of 50.6 micrograms per cubic metre exceeding the World Health Organization's recommended safe limit by approximately ten times.³ Six of the world's ten most polluted cities were located in India in 2024, with New Delhi recording an annual PM2.5 average of 91.6 micrograms per cubic metre, making it the most polluted capital city globally. The sustained failure of India's air and water quality to meet even domestic ambient air quality standards has imbued questions of Board power and enforcement effectiveness with a public health urgency that purely doctrinal analyses often understate.

Finally, Central Pollution Control Board (CPCB) was established under Section 3 of the Water Act and State Boards were established under Sections 4 and 5 of the Water Act and Sections 4 & 5 of the Air Act. These Boards were conceived of, at the time of their creation as purely advisory and regulatory, and that is all.⁴ They were responsible for gathering and disseminating information on pollution; to set standards on pollution of the water and air; to inspect factories and to be able to say who can pollute and on what conditions basically to operate the consent mechanism.⁵

¹*The Water (Prevention and Control of Pollution) Act, 1974*, (Act 6 of 1974).

²*The Air (Prevention and Control of Pollution) Act, 1981*, (Act 14 of 1981).

³IQAir, *World Air Quality Report 2024* (IQAir 2025), cited in 'India ranks fifth in polluted air globally in 2024, says IQAir report', *Business Standard* (11 March 2025) <https://www.business-standard.com/india-news/india-ranks-5th-in-world-air-quality-index-with-most-polluted-cities-iqair-125031100434_1.html> accessed 8 September 2026.

⁴The Water Act, 1974, s. 3; The Air Act, 1981, s. 5.

⁵The Water Act, 1974, ss. 16, 17; The Air Act, 1981, ss. 16, 17.

However, there is one catch: it did not turn out to work that well in practice. Pollution continued to deteriorate and the Indian judiciary was now roused to environmental issues in no puny measure. This led to an ever expansion of the powers of these Boards through further amendment of the laws and some extremely imaginative judicial rulings.⁶

This is when Parliament introduced the concept of special methods in Section 33A of the Water Act (1988 Amendment) and Section 31A of the Air Act (1987 Amendment). These provisions provided the Pollution Control Boards with the power to issue directions, not just polite tokens, but to shut down, to ban, to regulate any industry or process – even to cut off electricity, water, or any other service to the polluting unit.⁷ This paper delves into all these areas – explores the trajectory of Board powers in a changing landscape, examines some key judicial pronouncements on the boundary of administrative discretion and attempts to assess where the 2024 legislative amendments leave the future of environmental governance in India.⁸

Statutory Framework and Powers of Pollution Control Boards under the Water Act and Air Act

Water Act 1974 has the distinction of being the first proper comprehensive Law passed by Indian Parliament to address squarely the issue of water pollution. It sprang from Article 252 of the Constitution the component which enables Parliament to enact laws on State matters when necessary resolutions are passed by a sufficient number of State legislatures.⁹ This has given rise to a two tier structure, the CPCB at the apex and SPCBs in every state. The job of the CPCB was basically coordinating, getting the State Boards to meet, providing technical assistance, conducting training programmes, collating information on water pollution, advising the central government etc. However, hands-on regulatory work was left for the State Boards. They had the power to examine sewage and industrial effluents, enforce treatment standards and – this is the doozy – issue, withhold or revoke consent for the establishment and operation of discharge outlets as per Section-25 and Section-26.¹⁰ Establishment of these stand-alone bodies was a clear attempt to

⁶P. Leelakrishnan, *Environmental Law in India* 156 (4th edn, LexisNexis, Nagpur, 2016).

⁷*The Water (Prevention and Control of Pollution) Amendment Act, 1988*, (Act 53 of 1988), inserting s. 33A.

⁸*The Air (Prevention and Control of Pollution) Amendment Act, 1987*, (Act 47 of 1987), inserting s. 31A.

⁹Constitution of India, art. 252.

¹⁰The Water Act, 1974, ss. 25, 26.

abandon the previous process whereby general public health legislation and the common law of nuisance were the only two frameworks available, neither of which could have effectively addressed industrial-scale pollution.¹¹

The Air Act of 1981 was modelled along similar lines. Parliament shackled out the air pollution mandate to the same State Boards operating under the Water Act, thanks to Section 4 of the Air Act.¹² The introduction of a consent process for air pollution, under Section 21 of the Air Act, meant that prior to the operation of an industrial plant there had to be a consent by the State Board applied for, if the plant was in an air pollution control area. The Boards had the power to establish emission standards, gather and publish data on air quality, and audit factories to determine if a factory was complying with the rules and conditions associated with the consent. A dual mandate for water and air pollution was ambitious for the same State Boards, who were now in charge of both pollutions and confronted with pollution control challenges.¹³

It was at this point that the design shortcomings began to reveal themselves. There was no real enforcement mechanism for either Acts in their original form. The consent process proved effective on paper but ineffective in practice due to a lack of institutional capacity, institutional muddle-headedness, political interference and the overwhelming number of industries to be regulated.¹⁴ As for the penal provisions — that made violations criminal offences to be taken to court — they were cumbersome, slow and almost comically ineffective. This was recognized by the Supreme Court in some of the earlier pollution issues, as the current regulatory framework was simply proving to be inadequate to deal with the river and air pollution levels in India. These deficiencies prompted action by Parliament, which added Sections 33A and 31A to the Water Act and the Air Act respectively, in 1988 and 1987. These new powers provided the Boards a broad mandate to issue orders as it went about performing its duties: one order might be to close a factory, another to deny it water supply, another to deny it electrical power, another to take whatever steps were necessary to make it conform.¹⁵

¹¹The Water Act, 1974, s. 4.

¹²The Air Act, 1981, ss. 4, 5.

¹³Shyam Divan and Armin Rosencranz, *Environmental Law and Policy in India* 143 (2nd edn, Oxford University Press, New Delhi, 2001).

¹⁴Gurdip Singh, *Environmental Law in India* 187 (3rd edn, Eastern Book Company, Lucknow, 2016).

¹⁵The Air Act, 1981, s. 31A.

These institutional constraints are not merely of historical interest; they persist as structural features of the regulatory system today. Research published by the Centre for Policy Research in 2022, drawing on data gathered through Right to Information applications, found that at least forty per cent of all sanctioned posts across nine State Pollution Control Boards were vacant, with vacancies for technical positions reaching eighty-four per cent in Jharkhand and exceeding seventy-five per cent in Bihar and Haryana.¹⁶ A report subsequently submitted to the National Green Tribunal revealed that more than fifty per cent of sanctioned posts across all State Pollution Control Boards and Pollution Control Committees remained unfilled nationwide, with 6,075 of 12,016 positions vacant.¹⁷ The consequence is that engineers in at least four states are left with less than one working day to inspect, evaluate and decide upon each consent application, a workload that renders meaningful regulatory scrutiny effectively impossible and exposes the enforcement function to precisely the arbitrariness and inconsistency that constitutional principles proscribe.

The effect of Sections 33A and 31A cannot be overemphasized. They transformed the Pollution Control Boards as they were. These entities shifted from main advisory and consent-granting entities to strong regulators with the ability to take direct and decisive action against polluting industries. The Supreme Court has said time and time again that these provisions are far-reaching. In *Vellore Citizens Welfare Forum v. Union of India*, the Court emphasized the need for the environmental authorities to possess adequate enforcement powers for the value of environmental protection as a constitutional goal to gain any meaning.¹⁸ It had introduced two essential features of international environmental law in the domain of Indian law Precautionary Principle and Polluter Pays Principle – and had given a solid legal recognition in reading the powers of Pollution Control Boards expansively under articles 21, 48A and 51A(g) of the Constitution.¹⁹

The Expanding Scope of Board Powers Through Judicial Interpretation

¹⁶Shibani Ghosh and others, 'The State of India's Pollution Control Boards' (Centre for Policy Research 2022), cited in 'Staff crunch ailing state pollution control boards in India, finds think tank analysis', *Mongabay-India* (20 February 2023) <<https://india.mongabay.com/2022/11/staff-crunch-ailing-state-pollution-control-boards-in-india-finds-think-tank-analysis/>> accessed 8 September 2026.

¹⁷'Understaffed and overburdened: The state of pollution control boards in India', *Bar and Bench* (14 August 2024) <<https://www.barandbench.com/columns/understaffed-and-overburdened-the-state-of-pollution-control-boards>> accessed 8 September 2026.

¹⁸*Vellore Citizens Welfare Forum v. Union of India*, (1996) 5 SCC 647.

¹⁹Constitution of India, arts. 21, 48A, 51A(g).

The courts have been at the very heart of determining the authority or authority not of Pollution Control Boards, frequently extending what it might think the statutes actually mean, far beyond that. In over three decades of rulings, one after the other, the Supreme Court and the National Green Tribunal have been expanding the horizons of Board's empowerment. Along with coercive directions, the courts have read into these sections 33A and 31A, the power for Boards to impose environmental damages, bank guarantees and even to take proactive steps to prevent environmental injury. One of the most important judicial contributions in this whole area has been the development of the Polluter Pays Principle. The Supreme Court, in the *Indian Council for Enviro-Legal Action* case, opined that if a business is found to be hazardous or inherently dangerous, strict liability in context of environmental damage flows - no excuse - in favour of the business and it includes, among others, the cost of restoring the environment and providing compensation to affected people.²⁰

In *M.C. Mehta v. Kamal Nath*, the Court went one step ahead and revived the Public Trust Doctrine and recognized the natural resources as held as trusteeship by the State on behalf of the public and where the resources are destroyed by someone, then the State must seek remuneration. In fact, prior to that, in *M.C. Mehta's Oleum Gas Leak* case, the principle of absolute liability for hazardous industries had been laid down, which was more stringent than what had been adopted earlier, as in that case traditional means of defence were overruled. In sum, these decisions wrought a strong judiciary. They provided the legal authority to Pollution Control Boards to move beyond consents and bring polluters to heel to pay them the money to do the right thing.²¹²²²³

This judicial trend did not abate as the years went on. The issue before the Supreme Court in the *Sterlite Industries* case was whether it was proper for the Tamil Nadu Pollution Control Board to issue a closure order against a copper smelter. The Court upheld the Board's power to do so when it's satisfied that an industry is causing environmental damage but it also made clear that such orders need to be backed by proper evidence and need to follow natural justice. The same script was played here in the 2024 case of *Vedanta Limited vs. the State of Tamil Nadu* wherein the Supreme Court declined to permit the reopening of the Sterlite copper smelter at Tuticorin, decline

²⁰*Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212.

²¹P. Leelakrishnan, *Environmental Law in India* 198 (4th edn, LexisNexis, Nagpur, 2016).

²²*M.C. Mehta v. Union of India*, (1987) 1 SCC 395 (Oleum Gas Leak case).

²³*M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388.

to accept the risks it poses to human health and the environment, and prevent the economic benefits of its continued operations from derogating from the fundamental right to clean environment.²⁴²⁵

Perhaps most important of all in recent memory was the decision of the Supreme Court, in August 2025, on the question, on the question of the power of the Pollution Control Boards to impose environmental damages, from its appeals of the Delhi High Court's decision in 2012. A bench of Justices P.S. Narasimha and Manoj Misra found that Sections 33A and 31A do empower the Boards to ask for Environmental damage compensation and bank guarantees – and that it is forward looking action, and not merely a remedy in the past. The Court was careful to not label this authority 'punitive but rather 'compensatory,' stating that it was incidental and ancillary to the overall regulatory power which the Boards have in any event. Since the right to live in a pollution-free environment has been recognised as part of the right to life under Article 21, the regulatory tools needed to protect that right have to be interpreted generously that was the Court's reasoning.²⁶²⁷

Notably, the Court distinguished the compensatory power from the punitive power, to impose penalties, which the 2024 amendments transferred to newly established Adjudicating Officers. Two different purposes within the regulatory scheme makes no conflict," the Court said, adding that "what the Boards do and what the Adjudicating Officers do involves entirely different types of powers on their part. To substantiate the stance the Court relied heavily on the previous ruling in *Research Foundation for Science Technology and Natural Resources Policy v. Union of India*.²⁸

This decision in 2025 is particularly significant because it directly addressed the implicit loss of power for the Boards to impose damages on certain offences due to the decriminalisation of those offences and the establishment of the Adjudicating Officers with broad powers to impose damages. The Court repelled all that, as the amendments did not remove any rights already possessed by the Boards. It wasn't as though that's it, as the Court says at the same time (and that's key), look. It instructed the government to draft and issue appropriate rules and regulations introducing the

²⁴*Vedanta Limited v. State of Tamil Nadu*, 2024 SCC OnLine SC 1706.

²⁵*Sterlite Industries (India) Ltd. v. Union of India*, (2013) 4 SCC 575.

²⁶*Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598.

²⁷*Supreme Court of India*, 2025 INSC 923 (decided on 4 August 2025).

²⁸*Research Foundation for Science Technology and Natural Resources Policy v. Union of India*, (2005) 13 SCC 186.

principle of natural justice in the manner of establishing damages in case of environmental damage, which would lay down the modalities of its computation.²⁹

Administrative Discretion and Its Constitutional Limits

When you provide a governmental entity with general enforcement authority you usually have to ask yourself where those powers stop. That is at the core of the modern regulatory state authorities would want to have sufficient power in the administrative process to be effective, but not to the point of violating constitutional bounds. The Constitution in India (Articles 14, 19 and 21) imposes and restricts the nature of administrative discretion in considerable ways. Over the years, the courts have developed a detailed body of law that maps out where the line is between what's permissible and what's not.³⁰

Article 14 provides for equality before the law and to the protections of the law. The Supreme Court interpreted this to include an implicit bar on arbitrary state action. This classic formulation did appear in *E.P. Royappa v. State of Tamil Nadu* where the Court stated that arbitrariness is the very opposite of equality; if the state does something arbitrary, irrational, non-explainable or whimsical, it violates Article 14. This principle does have very real consequences for Pollution Control Boards. Closed, utilities stopped, damages – if a Board brings in any of these measures as a result of 33A or 31A it must meet rational standard, supported by actual evidence, applied equally across the board. It's not possible to attack one factory for polluting and ignore another factory that's polluting down the way. Such selective enforcement is textbook 'arbitrariness,' and would provide any industry targeted strong grounds for legal challenge.^{31,32}

The next big safeguard is natural justice. The principle of audi alteram partem (lit. "hear the other side before you decide") is that nobody should be subjected to any adverse order unless they have been first given a fair chance to respond. This principle was interpreted liberally by the Supreme Court in *Maneka Gandhi v. Union of India* which provided that any procedure impinging on the life or freedom of a person should be just, fair and reasonable. However, the judiciary has also

²⁹Shyam Divan and Armin Rosencranz, *Environmental Law and Policy in India* 247 (2nd edn, Oxford University Press, New Delhi, 2001).

³⁰I.P. Massey, *Administrative Law* 312 (9th edn, Eastern Book Company, Lucknow, 2017).

³¹H.M. Seervai, *Constitutional Law of India* 592 (4th edn, Universal Law Publishing, Delhi, 2015).

³²*E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3.

explained that the principles of natural justice are inbuilt in every exercise of power which has an impact on a person's right, even if not expressly indicated by the law. In other words, before Boards issue a closure direction and/or a demand for damages, they must first issue a show cause notice, provide industry with time and opportunity to respond, and give its responses a genuine consideration before determining whether a closure direction and/or damages demand is issued. Failure of a Board to make those steps renders an Order precarious and likely unsafe for challenges in the Courts.³³³⁴³⁵

The Supreme Court decision in 2025 on environmental damages took a firm stance on this point. The Court ordered government to publish the subordinate legislation bakes in the natural justice requirements on how Boards operate in respect of arriving at a determination of the extent to which the environment is damaged and the quantum of damages to be charged. The doctrine of proportionality piles on yet another constraint. It means the action by the regulator should be commensurate to the issue faced. A closure order in such circumstances – which could put thousands of workers out of work or otherwise create economic hardship – must be commensurate with the scale of environmental damage. The Board must also demonstrate that it has given consideration to less drastic alternatives and determined these alternatives to be less desirable.³⁶³⁷

In *Paryavaran Suraksha Samiti v. Union of India*, Supreme Court discussed this and ordered online Continuous Monitoring of Emissions and emphasized that regulation's response must be proportionate - serving the purpose of environmental protection within the frame of economic realities. The Court pointed out that the technology is sometimes, such as real-time emission monitoring, a more effective way of achieving the regulatory goals than simply closing a plant. In doing such a proportionality analysis, the Board must consider various factors, such as the real nature of the environmental damage, the possible availability of different solutions, the economic

³³S.P. Sathe, *Administrative Law* 218 (7th edn, LexisNexis, Nagpur, 2004).

³⁴*A.K. Kraipak v. Union of India*, AIR 1970 SC 150.

³⁵*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

³⁶M.P. Jain, *Indian Constitutional Law* 1476 (8th edn, LexisNexis, Nagpur, 2018).

³⁷*Supreme Court of India*, 2025 INSC 923, para 47.

consequences of the measure under consideration, and whether compliance of the industry in question can be reasonably expected within a reasonable timeframe.³⁸³⁹

These constitutional concerns about proportionality and arbitrariness acquire particular salience when examined against the documented governance architecture of the Boards themselves. Research by the Centre for Policy Research found that leadership positions within most State Pollution Control Boards are customarily held by civil servants with no domain expertise in environmental science, and that representation from public health professionals and civil society organisations remains systematically inadequate.⁴⁰ A report submitted to the National Green Tribunal further found that more than fifty per cent of sanctioned posts across all State Pollution Control Boards and Pollution Control Committees were unfilled, with some boards recording vacancy levels approaching sixty per cent.⁴¹ An administrative body exercising the expanded discretionary powers surveyed in this paper while simultaneously operating with such structural deficiencies in institutional capacity and composition is one for which the risk of arbitrary, inconsistent and disproportionate enforcement is considerably heightened.

Direct oversight of actions taken by the Board is also an important check in place by the courts. The writ power of the High Courts falls under Article 226, which allows the High Court to look into the actions of Boards and how they act. The National Green Tribunal set up under the NGT Act, 2010, is a specialised body having environmental expertise which reviews and exercises Appellate and Original Jurisdiction. The courts generally do not substitute their own judgment for the substantive judgment of the expert bodies: There is a presumption that Boards have the technical expertise, judges don't. However, they do ask whether the Board had adhered to the law, relevant material, excluded irrelevant considerations, and used natural justice and whether the decision was proportionate and reasonable. Not to mention the Supreme Court decision in *MK Ranjitsinh v. Union of India* in 2024, wherein the Court declared that the right to be protected from

³⁸S. Ghosh, "Reforming the Liability Regime for Air Pollution in India" (2015) 37 *Hastings International and Comparative Law Review* 447.

³⁹*Paryavaran Suraksha Samiti v. Union of India*, (2017) 5 SCC 326.

⁴⁰'Non-Transparent Pollution Control Boards', *Drishti IAS Current Affairs* (2022) <<https://www.drishtiias.com/daily-news-analysis/non-transparent-pollution-control-boards>> accessed 8 September 2026, drawing on Centre for Policy Research, 'The State of India's Pollution Control Boards' (2022).

⁴¹'Understaffed and overburdened: The state of pollution control boards in India', *Bar and Bench* (14 August 2024) <<https://www.barandbench.com/columns/understaffed-and-overburdened-the-state-of-pollution-control-boards>> accessed 8 September 2026. A National Green Tribunal report cited in this article revealed 6,075 of 12,016 sanctioned positions across all State Pollution Control Boards and Pollution Control Committees were unfilled.

climate change's negative impact is pivotal for the fundamental rights of life and freedom as guaranteed by Articles 14 and 21 of the Constitution. That decision has established a new constitutional measure for determining if Boards are underdoing, or overdoing, its job.⁴²⁴³

The 2024 Amendments and the Future of Environmental Governance

There were significant changes to both the Water Act and Air Act in 2024. However, with the amendments withering through, courtesy of the Jan Vishwas Act 2023 (JVA) and the detailed notifications released by the Ministry of Environment, Forest and Climate Change (MoEFCC), some of the basic rules of the game were reshaped. Several of the crimes under both the Acts were removed from the criminal code, and a whole new category of public servants, “Adjudicating Officers” was created to issue monetary penalties for violations. The rationale was rather pragmatic: problems with a case-laden criminal justice system, delays in environmental prosecutions, and an administration seeking a more effective, speedier enforcement system. In November 2024, new rules were issued to establish the adjudication procedure for water and air pollution cases.⁴⁴

The new 'decriminalisation' form of implementation reflects a shift in Indian approach for the enforcement of environmental law. The original scheme of both pieces of legislation said that it could be a criminal offence to breach the consent conditions, the emission standards or even orders of the Board i.e. that you could end up going to jail for doing so. If someone was prosecuted this involved a complaint being lodged with a Magistrate's court and then following the full criminal trial process. That was a slow and painful process, and the rate of true convictions in environmental cases actually was still hideously low, if not nonexistent. Analysis of data published by the National Crime Records Bureau for 2022, reported by Down to Earth, found that over 88,400 environment-related cases were pending trial in Indian courts, with courts disposing of an average of 129 such cases per day. At that pace, courts were estimated to require between eight and thirty-three years to clear the backlog of cases filed under the Air and Water Acts alone, a figure that starkly illustrates the practical futility of relying on criminal prosecution as a primary enforcement

⁴²*MK Ranjitsinh v. Union of India*, 2024 SCC OnLine SC 1366.

⁴³The National Green Tribunal Act, 2010 (Act 19 of 2010), ss. 14, 15, 16.

⁴⁴The Jan Vishwas (Amendment of Provisions) Act, 2023 (Act 18 of 2023), ss. 28-39.

mechanism.⁴⁵ That is what the 2024 amendments attempted to do; repeal criminal prosecution in various circumstances but leave criminal liability in place for the egregious violations. As per the November 2024 rules, the Adjudicating Officers will be responsible for dealing with queries and imposing penalties, and the intention is to do this in a manner which is more expeditious, more focussed and will be more responsive in the nitty-gritty of environmental protection needs.⁴⁶

However, the appointment of these Adjudicating Officers has apparently thrown up another question: What about the powers of the Boards under Sections 33A and 31A? Some took the view that presumably Parliament were aware that Boards had no purpose in mind to impose a penalty or damages function and that if it transpired that this was necessarily the case, then that would render Adjudicating Officers redundant. In August 2025, the Supreme Court did not pull any punches regarding this argument and dismissed it. The Board's authority to seek environmental remediation is compensatory, in the sense that they intended to ensure the 'polluter must pay,' the Court found. Power for Adjudicating Officer is PUNITIVE, it is about punishing law breaking. These are two independent entities existing in two distinct realities why not have both of them?⁴⁷

It is difficult to say where all this will go, to be honest, Spending, in particular, and cash furniture, in general, could be decriminalised and penalties administered, which might well accelerate the pace of enforcement and cut down on the backlog of cases. However, there is a legitimate concern that if criminal sanctions – even in part – are removed, the deterrent effect of the law would diminish. In a large organisation with a substantial budget, paying a monetary penalty could simply be "the cost of doing business. How much the penalties sting, Adjudicating Officers' levels of independence and stringency, and whether the Boards continue to exercise their power to issue directions with any conviction will determine whether the new system is effective or not.⁴⁸

The Supreme Court's focus in 2025 on the need for the government to formulate appropriate subordinate law regarding environmental damage determination and damage assessment is truly significant. One of the major issues in the regulatory system has been the lack of procedure, where

⁴⁵'India will need around 34 years to dispose of the pending cases under the Environment Protection Act', *Down to Earth* (22 April 2024) <<https://www.downtoearth.org.in/environment/india-will-need-around-34-years-to-dispose-of-the-pending-cases-under-the-environment-protection-act-93272>> accessed 8 September 2026, citing National Crime Records Bureau data for 2022.

⁴⁶The Water Act, 1974, ss. 41-44; The Air Act, 1981, ss. 37-40.

⁴⁷*Supreme Court of India*, 2025 INSC 923, paras 52-58.

⁴⁸A. Rosencranz and S. Divan, "The Right to Clean Air" (2001) 36(5) *Economic and Political Weekly* 437.

inconsistencies and at times arbitrary decision making have occurred for years. Where proper rules are indeed notified, they would introduce the much needed discipline in the use by the Boards of the powers vested in them, add transparency and reduce scope for arbitrary action by the Board. In the interim, the *M.C. Mehta v. Union of India* case, pending since 1985 you say, continues to be a tool for the continuous judicial monitoring of the Boards from appointment of people in the offices of the Board to the implementation of emission monitoring technology.⁴⁹

Much needs to be said of the role played by the National Green Tribunal in all this. Since its inception in 2010, the NGT has established itself as an environmental court with a special focus whose judges are not scared of calling Boards to account. It has overseen the performance of the Board, insisted on the development of institutional capabilities, and stringent penalties for industries that pollute and violate laws. In its order in *Ganga Lalwani v. Union of India* in the year 2021, the Tribunal enunciated these words that truly sting: “Severe air pollution is like a public health emergency”, and that “Pollution control laws must be enforced, and the hand of the Supreme Court should not be held and pollution should not wait for it to come up with action. When it comes to board role, it is expected that boards are performing their job in a self-governing and determinate manner particularly with regard to people's health.”⁵⁰

Conclusion

One can't but marvel at the changes in PCBs from the 1970s and 1980s to today. Originally they would largely be used to advise, and to give consent, and now they give coercive directions, close factories down, say there will be environmental damage and make pre-emptive action on behalf of that. This growth was not driven by anyone waking up one day, deciding Boards had become too weak and needed to get stronger. It happened because decades of progressive judging by the Supreme Court and the NGT predetermined it – environmental protection, a fundamental right, was the excuse, and it was time to extend the reach of the Board on the basis of principles like the Polluter Pays and the Precautionary Principle – which are already in the constitution.⁵¹

⁴⁹*M.C. Mehta v. Union of India*, W.P.(C) No. 13029/1985.

⁵⁰*Ganga Lalwani v. Union of India*, O.A. No. 456/2021 (NGT, Principal Bench, 2021).

⁵¹L. Rajamani, "Rights Based Climate Litigation in the Indian Courts" (2013) 1 *Journal of Climate and Environmental Law* 302.

But there is always more risk with more power. Giving such broad and largely unchecked power to administrative agencies with insufficient resources, political pressure, and/or unclear procedures and guidelines also sets the stage for arbitrary, disproportionate, and discriminatory enforcement likely, if not focused on equality-enhancing policies. It is the constitutional protections – equality under Article 14, natural justice, proportionality – that are essential in restraining this power, and the judiciary, in particular, has been central in clarifying and enforcing these boundaries. This balance is well captured in the Supreme Court's judgment of August 2025 regarding the environmental damages: it acknowledges the far-reaching powers of Boards and requires at the same time an adherence to specific rules, transparency and a decision-making process.⁵²

The changes for 2024, including the decriminalisation of some offences and the appointment of Adjudicating Officers, are a sensible re-evaluation of enforcement arrangements. It remains to be seen whether environmental regulation will actually improve in the long run as a result of them. Many things will hinge on the ability of the Adjudicating Officers, their independence from the Boards, the size and severity of the penalties which may turn out to be inflatable and whether the Boards will be aggressive with their direction granting powers or quietly back off. The Supreme Court guidance to draft sub-statutory rules to define environmental damage is a positive step towards developing the entire system into a more sophisticated and responsible one.⁵³

But the last thing anyone needs at the end of the day is to authorize the Board to do more. It's about creating institutions that have officially and really the capacity to succeed and are not held back by political interference, do not have smoke and mirrors associated with their operations and can be accountable for mistakes. The Boards are on the front line of pollution control as provided in the two Acts (Water and Air), and if the constitutional promise of the clean and healthy environment is ever to be realised, the Boards should be able to carry out the task that it requires. The Indian experience with environmental regulation is an interesting one which walks the tightrope between providing the regulator with sufficient teeth to be tough on polluters, and curbing the excesses of its use. Climate change is becoming increasingly severe, industry continues to grow and cities are expanding, so the Boards will just become more essential. Procedural protections must be enhanced in line with their growing powers; institutional capabilities must be

⁵²U. Baxi, "The Avatars of Indian Judicial Activism" in S.K. Verma and K. Kumar (eds), *Fifty Years of the Supreme Court of India* (Oxford University Press, New Delhi, 2000).

⁵³Gurdip Singh, *Environmental Law in India* 312 (3rd edn, Eastern Book Company, Lucknow, 2016).

strengthened and true accountability must be in place. The only way to ensure that these powers are truly exercised for the betterment of the people and not for arbitrary and unilateral state action.

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