

5. Environmental Jurisprudence- Environment

The fading of India's environmental jurisprudence

India faces a conflict between industrial growth and constitutional environmental protection, where policy dilution and "regulatory leniency" increasingly override ecological security. To counter this, there is a demand for "Ecological Constitutionalism," enforcing the "Environmental Rule of Law" to ensure that fundamental rights to a clean environment are not treated as mere procedural hurdles.

The Conflict Between Growth and Ecology

India is currently facing a widening conflict between rapid industrial growth and constitutional environmental protection. Policy and judicial shifts have increasingly prioritized short-term economic gains over critical ecological needs like carbon sinks and water security. This trend demands a move towards Ecological Constitutionalism, placing environmental rights at the core of the Environmental Rule of Law.

Understanding the "Environmental Rule of Law"

Environmental governance cannot rely on laws alone; it requires the "Environmental Rule of Law" to ensure these laws are not merely paper tigers.

Four Pillars

- Fair and Clear Laws- Legislation must be unambiguous and equitable.
- Effective Implementation- Laws must be enforced on the ground, not just exist in statutes.
- Public Participation- Communities must have a voice in decision-making processes that affect their environment.
- Accountability- There must be consequences for ecological damage.

Consequence of Absence- Without these pillars, environmental rights remain "parchment barriers"—easily torn down by economic pressure.

About Environmental Jurisprudence

This refers to the legal philosophy and principles used by courts to balance development with environmental protection.

Definition- A framework of legal philosophy, principles, and judicial doctrines for balancing developmental needs with nature's intrinsic value.

Core Doctrines

Precautionary Principle- Lack of full scientific certainty cannot be used to delay preventive action against potential harm; the burden of proof lies on the developer to prove safety.

Polluter Pays Principle- The polluting entity bears the full cost of remediation and compensation for damage caused.

Public Trust Doctrine- Natural resources like air, water, and forests are held by the State in trust for the public and cannot be appropriated for private use.

Sustainable Development- Development must proceed without undermining the ecological balance.

Inter-generational Equity- The present generation has a duty to conserve natural resources for future generations.

Significance- These doctrines function as a constitutional check on executive and economic activity, ensuring growth aligns with ecological sustainability.

Essential Landmark Jurisprudence

The Supreme Court of India has played a pivotal role in shaping environmental law.

Subhash Kumar v. State of Bihar (1991)- Interpreted Article 21 (Right to Life) to include the right to pollution-free air and water.

Vellore Citizens Welfare Forum v. Union of India (1996)- Formally integrated the Precautionary Principle and Polluter Pays Principle into Indian law.

M.C. Mehta (Oleum Gas Leak Case, 1987)– Established Absolute Liability for hazardous industries, imposing a stricter standard than traditional "Strict Liability."

T.N. Godavarman Thirumulpad Case (1996–Ongoing)– Introduced "Continuing Mandamus" in forest governance and expanded the definition of "forest" to its dictionary meaning, covering all forests regardless of ownership.

A.P. Pollution Control Board v. Prof. M.V. Nayudu (1999)– Clarified the Burden of Proof, placing it squarely on the developer to prove a project is environmentally benign.

Narmada Bachao Andolan v. Union of India (2000)– Emphasized balancing development with the rights of displaced communities and ecological impact.

India's Legal Frameworks for Environmental Protection

India has a robust constitutional and statutory framework.

Article 21 (Fundamental Right)– The "Right to Life" encompasses the right to a clean and healthy environment, making it a judicially enforceable fundamental right.

Article 48A (Directive Principle)– Mandates the State to protect and improve the environment and safeguard forests and wildlife.

Article 51A(g) (Fundamental Duty)– Imposes a moral and legal duty on every citizen to protect the natural environment and have compassion for living creatures.

National Green Tribunal (NGT) Act, 2010– Established a specialized body with expertise to handle environmental disputes expeditiously.

Recent Cases of Dilution of Environmental Regulation

Recent trends indicate a shift toward "Regulatory Leniency," where safeguards are seen as procedural hurdles.

Redefinition of Natural Landscapes

Aravalli Height Threshold (2025)– The Supreme Court accepted a 100-meter height-based definition for hills. This stripped protection from lower ridges and foothills in the NCR, ignoring their role in groundwater recharge and preventing desertification.

Forest (Conservation) Amendment Act (FCAA), 2023– Redefined "forests" to include only recorded lands, effectively deregulating "deemed forests" and easing land diversion for projects, especially in border areas.

Normalization of "Post-Facto" Governance

Vanashakti vs. Union of India Recall (2025)– The Court recalled its ban on Ex-Post Facto Environmental Clearances (approving projects after construction has begun), citing "devastating economic consequences."

Monetization of Violations– Allows illegal projects to pay a fine and get regularized, treating environmental damage as a transactional business cost.

Institutional Weakening of Impact Assessments

EIA Policy Dilution (Dec 2025)– New policies allow assessments without specific location details, turning the EIA into a theoretical exercise that ignores site-specific sensitivities.

Compliance Relaxation– Increased exemptions, reliance on self-certification, and reduced public consultations.

Strategic Infrastructure vs. Geological Stability

Char Dham Highway Project– Despite identifying 811 landslide zones, the project continues under "strategic connectivity," overriding the Precautionary Principle and leading to soil instability and flash floods.

Citizens for Green Doon vs. Union of India (2021)– Allowed wider roads for strategic defense needs despite ecological risks.

Coastal Ecology and the “Compensatory” Fallacy

Mangrove Destruction– Judicial approval for mangrove destruction (e.g., in Raigarh) relies on Compensatory Afforestation, ignoring that saplings cannot replace the storm-surge protection of mature ecosystems.

CRZ Notification, 2019– Allowed higher construction and tourism in coastal areas, increasing vulnerability to rising sea levels.

Biological Diversity (Amendment) Act, 2023– Relaxed compliance for industries and weakened benefit-sharing with local communities.

Structured Framework of “Regulatory Leniency”

Category	Specific Dilution / Shift	Impact on Rule of Law
Definition Dilution	Re-classification of "Forests" (FCAA 2023) & "Hills" (Aravalli 100m rule).	Creates "Cartographic Gaps" allowing legal exploitation of ecologically sensitive zones.
Process Dilution	Weakening of EIA notification; exemptions for strategic border roads.	Erodes the Precautionary Principle by bypassing site-specific impact rigor.
Compliance Dilution	Regularization of Ex-Post Facto clearances (Vanashakti Recall 2026).	Normalizes a "Pay-to-Pollute" culture; environmental damage becomes a transactional cost.
Institutional Dilution	High vacancy rates in SPCBs (over 40%) and NGT expert benches.	Leads to "Check-box Compliance" rather than substantive field monitoring.

Importance of Environmental Regulation

Regulation is the infrastructure of sustainable wealth, not an obstacle.

Preventing “Tragedy of the Commons”– Prevents depletion of shared resources for short-term gain.

Protecting Public Health (The National Health Dividend)

Air Quality– Reduces asthma, heart disease, and cancer by limiting PM2.5 and NO2.

Water Safety– Prevents toxins like lead and PFAS in drinking water.

Economic Return– Every ₹1 spent on regulation saves ₹30 in healthcare costs (30-1 ratio).

Maintaining “Free” Ecosystem Services–

Flood Mitigation– Mangroves (e.g., Bhitarkanika) and wetlands (e.g., East Kolkata Wetlands) act as natural bio-shields and sewage treatment plants, saving millions in infrastructure costs.

Water Security– Protects aquifers for long-term irrigation and drinking supply.

Carbon Sequestration– Forests and mangroves (supported by schemes like MISHTI) absorb CO2.

Economic Stability and Innovation

Driving Innovation– Mandates force industries to innovate (e.g., EVs, Renewable Energy), creating new markets valued at ~\$23 billion.

Preventing Externalities– Forces companies to internalize waste costs, promoting circular models.

Level Playing Field– Prevents “dirty” competitors from undercutting compliant firms.

Resource Longevity and Disaster Risk Reduction– Prevents “boom and bust” cycles.

Climate Resilience– Robust EIAs “climate-proof” infrastructure, preventing fiscal losses from disasters like landslides.

Challenges for Environmental Regulation in India

Growth vs. Governance Paradox– Tension between “Ease of Doing Business” and the Precautionary Principle leads to weakened oversight for speed.

Normalization of Post-Facto Clearances– Regularizing illegal projects undermines deterrence.

Dilution of Appraisal Processes– Expanded exemptions bypass public consultations and local community power.

Institutional & Enforcement Gaps

Bureaucratic Capture– Conflicts of interest in clearance committees.

Resource Depletion– High vacancies in State Pollution Control Boards (SPCBs) force a "check-box" monitoring approach.

The "Polluter Pays" Paradox– Fines are delayed by litigation and viewed as a business cost by large corporations.

The "Green vs. Green" Conflict– Tension between Climate Mitigation (renewables) and Biodiversity Conservation (e.g., Solar farms vs. Great Indian Bustard habitat).

The "Compensatory" Fallacy & Data Gaps

Monoculture– Plantations cannot replace biodiversity-rich forests.

Monitoring Deficit– Lack of high-fidelity baseline data (reliance on low-cost sensors) hampers judicial accountability.

Global Initiatives Taken

The Financial Architecture (The Trillion-Dollar Pivot)

Baku to Belém Roadmap– Aim to scale climate finance to \$1.3 trillion annually by 2035.

NCQG (COP29)– Established a public finance floor of \$300 billion/year.

Tropical Forests Forever Facility (TFFF)– A \$125 billion fund paying tropical nations to maintain forests.

Biodiversity and Marine Governance

30x30 Mandate– Protecting 30% of land and oceans by 2030 (GBF).

High Seas Treaty (BBNJ)– Legally binding framework for Marine Protected Areas in international waters.

Ramsar Convention (COP15)– Focus on wetlands as "natural infrastructure."

The Global Plastics Treaty– Aiming for a legally binding treaty covering the entire plastic lifecycle.

Transparency and Market-Based Rules

TNFD– Mandatory reporting of nature-related risks by corporations.

UN Global Carbon Market (Article 6)– Launched an UN-managed carbon trading system for high-integrity credits.

Way Forward

Judicial & Structural Support

Revival of Green Bench– Establish a permanent Supreme Court Green Bench with specialized jurists.

Institutional Autonomy– Independent ecological experts in SPCBs and clearance committees.

Ecological Definition of Landscapes– Shift from arbitrary metrics (100m height) to scientific parameters (hydrology, biodiversity) for defining forests and hills.

Transition to Carrying Capacity– Regional Carrying Capacity-based Assessments instead of individual project approvals.

Constitutional Primacy– Align clearances with Article 21 and 48A. Declare "Post-Facto" approvals unconstitutional for industrial expansion; limit to essential utilities.

Prior Clearance must be a constitutional prerequisite.

Digital & AI-Enhanced Enforcement

Environmental "Digital Twins"– Simulate project impacts before construction.

Automated Surveillance– IoT sensors and satellite AI for real-time monitoring and immediate legal notices.

Integrated Data Architecture– Combine water, energy, and waste data to prevent siloed governance.

Mainstreaming Environmental Finance

Mandatory Disclosures (TNFD)– Treat natural loss as a material financial risk.

Carbon Border Adjustments (CBAM)– Modernize industry to avoid global "carbon taxes."

Green Credit Programme (GCP)– Reward eco-restoration outcomes rather than just tree planting.

The "Just Transition" Model (NITI Aayog 2026 Strategy)–

Electrification– Transition energy use to electricity.

Greening the Grid– Renewables and Green Hydrogen.

Efficiency & Circularity– Maximize material lifecycle.

Behavioral Shift (Mission LiFE)– Promote Pro-Planet People lifestyles.

Conclusion

India must shift from "economic expediency" to Ecological Constitutionalism. By leveraging AI-driven monitoring, nature-based finance, and specialized judicial oversight, the state can decouple growth from degradation, ensuring that development does not compromise the intergenerational equity and constitutional rights of its citizens.

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