



DAILY EDITORIAL ANALYSIS

TOPIC

**A DISMANTLING OF THE BASE OF
ENVIRONMENTAL REGULATION**

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A Dismantling of the Base of Environmental Regulation

Context

- Recently, the **Supreme Court of India**, in a **2:1 majority**, revisited and **recalled its May 2025 ruling** (Vanashakti Judgement) reinstating the possibility of retrospective **environmental clearances (ECs)**, citing public interest as justification.
 - It undermines the foundational principles of environmental governance in India, and collectively dilutes the enforcement mechanisms of environmental law.

Vanashakti Judgment of Supreme Court of India

- The **Vanashakti case** originated from a petition filed by the environmental NGO Vanashakti, **challenging the legality of post-facto (retrospective) environmental clearances (ECs)** granted to industrial and construction projects.
- It challenged the **construction permissions and environmental clearances granted in eco-sensitive zones (ESZs)** surrounding the **Tungareashwar Wildlife Sanctuary** and parts of the **Western Ghats corridor**.
- These were seen as **undermining the core principle of prior environmental assessment** enshrined in the **Environment (Protection) Act, 1986** and the **EIA Notifications of 1994 and 2006**.

Key Outcomes in Vanashakti Case

- Reinforcement of Prior EC Requirement:** The **Supreme Court of India** reaffirmed that no project can begin without prior environmental clearance (post-facto ECs were illegal), reinforcing the preventive nature of environmental regulation.
- Invalidation of Government Office Memorandums (OMs):** The judgment invalidated government notifications that had created a mechanism for granting ECs after project commencement, closing a major legal loophole.

Government Notifications Diluting the EIA Regime

- Notification (2017) by the MoEFCC:** It allowed violators — those who started projects without ECs — to apply for retrospective approval within six months.
- Office Memorandum (2021):** It extended the leniency, enabling violators who missed the earlier window to regularize their breaches by paying penalties
 - The Original 2025 judgment** struck down both, emphasizing that retrospective clearances **defeat the purpose of environmental law**, which is to **prevent harm before it occurs**, not to accommodate it later.

Recent Reversal By Three Judge Bench of Supreme Court

- 'Judicial restraint must be exercised in matters of policy implementation where statutory frameworks already exist', while ecological protection is crucial.
- It reinstated the **environmental clearances** that complied with EIA norms post-2020, provided that projects include **biodiversity offset measures** and **annual ecological audits**.
- The restoration and monitoring directives remained in force but under the oversight of **MoEFCC's Central Empowered Committee (CEC)** instead of the independent state committee proposed earlier.

Justice Bhuyan's Dissent: Upholding the Spirit of Environmental Law

- He underscores that **laws are designed to anticipate harm, not excuse it** and warns that replacing preventive scrutiny with after-the-fact regularization **undermines decades of judicial progress** in environmental protection.
- He highlights the past rulings like *Common Cause vs Union of India* (2017) which explicitly held that **retrospective ECs are 'detrimental to the environment'** and *MC Mehta* cases, which insisted on prior approvals even for renewals.

Environmental Regulation in India

- **Legal and Institutional Framework:**
 - ♦ **Environment (Protection) Act, 1986:** An umbrella legislation empowering the central government to take measures for environmental protection.
 - ♦ **Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974:** Establish regulatory bodies like the Central and State Pollution Control Boards.
 - ♦ **Forest (Conservation) Act, 1980 and Wildlife Protection Act, 1972:** Govern forest use and biodiversity conservation.
 - ♦ **EIA Notification, 2006:** Mandates environmental impact assessments for large-scale projects.
- MoEFCC is the nodal agency for policy and implementation, while the National Green Tribunal (NGT) serves as a specialized judicial body for environmental disputes.

Judicial Oversight and Recent Shifts

- The **right to a clean and healthy environment** as part of **Article 21 of the Constitution**.
- The **Supreme Court of India** has recognized the **precautionary principle, polluter pays principle, intergenerational equity**, and **sustainable development** as cornerstones of environmental governance.

Implications of Review Judgment

- **Weakening of the EIA process:** Public hearings and expert reviews risk becoming mere formalities, stripped of preventive power.
- **Normalization of violations:** Project proponents may willingly ignore EC requirements, expecting later regularization through fines.
- **Regulatory paralysis:** The state's authority to enforce environmental law diminishes, and deterrence fades.
- **Crisis of judicial credibility:** The reversal undermines faith in the Court's commitment to environmental justice and the **rule of law**.

Other Implications

- **Revisits the role of High Courts** in enforcing ecological norms beyond statutory limits.
- **Highlights judicial-policy tension** in balancing conservation and development.
- **May influence pending cases** related to mangrove protection and ESZ notifications across India.
- Signals a **shift towards centralized ecological governance**, reducing NGO-led regional litigation leverage.

Conclusion

- The Supreme Court's review in CREDAI vs Vanashakti marks a **regressive moment** in India's environmental jurisprudence. It signals that **economic expediency can override ecological prudence**, eroding decades of progress in building a preventive and participatory environmental regime.
- As the Court reassembles to rehear the matter, it needs to recognize that what stands at risk is **not merely the validity of two notifications**, but the **integrity of India's environmental rule of law** and its **constitutional promise of a livable planet**.

Source: TH

Daily Mains Practice Question

[Q] Examine the implications of the Supreme Court's reversal of the Vanashakti judgment. How does this shift affect the foundational principles of environmental governance in India?

