

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 9 | Issue 3

2026

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Environmental Activism to Judicial Restraint: A Critical Analysis of Indian Judicial Process in the context of Forest Conservation

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ABSTRACT

This research paper is an attempt to study the effect of judicial process on India's environmental jurisprudence, especially in the context of forest conservation. The purpose of this paper is to understand how Indian judiciary used to have an activist approach in the late 20th century, but in today's era, it has moved towards a balanced approach.

This research paper presents the reality that the Indian judicial process often becomes limited, or constrained, due to the aggressive industrial development of the state.

In the Raigad of Maharashtra, in the case of clearing the Mangrove Forest, an unexpected decision of the Supreme Court has come forward. The court has tried to create a balance between economic benefits and the protection of ecologically sensitive areas. Now, the big question arises: Can Forest destruction be compensated in any other way for economic benefits?

This research paper will shed light on the judicial concepts and doctrines developed since independence, which guide the state to preserve wildlife and forests. Also, this paper will try to find out why the view of the court has shifted from an activist approach to an economic balancing approach. In the end, its aim is to find ways to reduce the loopholes from decision to implementation in the judicial process, so that forest conservation is effective in India.

Keywords: *Forest Conservation in India, Landmark Environmental Judgments, Industrial Development vs Ecological Protection, Environmental Jurisprudence.*

I. INTRODUCTION: ENVIRONMENTAL JURISPRUDENCE IN INDIA AND ITS EVOLUTION

India, which is a nation having diverse biodiversity. Roughly around, 24.6 % of India's land is covered by forests.¹ This area of forest is also home to 7-8 % of all the recorded species when

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¹Forest Survey of India, India State of Forest Report 2021 (Ministry of Environment, Forest and Climate Change 2022) vol I, ch 2.

compared with the world.² Around 45,500 species of plants are found in India which also contain various important herbs for medicinal purposes.³ Out of these 45,500 plant species, 33 percent of them are Endemic.⁴

To protect country's flora and fauna, No strong provisions are there in the Indian constitution. It was only in 1976 when some constitutional provisions for environmental protection are added there in the Constitution like (Article 48A and 51A(g)), by 42nd Amendment Act, 1976.⁵ Unfortunately, these added articles are in the form of Directive Principles of State Policy and Fundamental Duty.

Directive Principles, as we already know are just guiding principles for government. They are not compulsory for government to enforce them. Also, you cannot enforce them in the courts.⁶ It only provides a optional path way for the government in policy making.

Starting in the 1980s, Indian government only fulfilling the international treaties and commitments such as 1972 Stockholm conference by way of Article 253⁷ by making legislation such as Environment protection Act, 1986.⁸ But This was done only to fulfil the international commitments. No actual enthusiasm was there in the Indian government to protect the environment.

It was up to the judiciary now to protect the Environment. Before the courts direct and active role in protecting flora and fauna, Indian government did not take it seriously to protect the environment.

It was in 1985 through the initial order which was given by the supreme court in Rural Litigation and Entitlement Kendra versus State of Uttar Pradesh (also known as The Dehradun Quarrying Case, 1988)⁹ that we saw for the first time, the Indian Supreme Court, expanded the interpretation of Article 21 (Right to Life), and also link it with the Right to a healthy environment¹⁰ needed for a dignified life. This case also witnessed the 'activist' role of

²International Union for Conservation of Nature, 'India: Megadiverse Country' (IUCN) <<https://iucn.org/our-work/region/asia/countries/india>> accessed 13 May 2026.

³Botanical Survey of India, 'Plant Discoveries' (BSI, Ministry of Environment, Forest and Climate Change) <<https://bsi.gov.in>> accessed 13 May 2026.

⁴Vishwas S Chitale, Mukund D Behera and Partha S Roy, 'Future of Endemic Flora of Biodiversity Hotspots in India' (2014) 9(12) PLoS ONE e115264.

⁵Constitution (Forty-second Amendment) Act 1976, ss 10, 11, inserting arts 48A and 51A(g).

⁶Constitution of India 1950, art 37; State of Madras v Champakam Dorairajan AIR 1951 SC 226.

⁷Declaration of the United Nations Conference on the Human Environment (Stockholm, 16 June 1972) UN Doc A/CONF.48/14/Rev.1; Constitution of India 1950, art 253.

⁸Environment (Protection) Act 1986, preamble.

⁹Rural Litigation and Entitlement Kendra v State of Uttar Pradesh AIR 1985 SC 652; Rural Litigation and Entitlement Kendra v State of UP (1989) Supp (1) SCC 504.

¹⁰Subhash Kumar v State of Bihar (1991) 1 SCC 598; Virender Gaur v State of Haryana (1995) 2 SCC 577.

judiciary.¹¹

This changing phase in Indian environmental jurisprudence was crucial as the country witnessed continuous ecological destruction during and after the liberalization era.¹²

But the trajectory of judicial engagement in Indian environmental jurisprudence has not been the same on a linear path.

During the late 20th century, the Indian judiciary was focussing in establishing the basic and foundational principles of Indian environmental jurisprudence and overriding executive dominance in the matters concerning the Environment.¹³

While the 21st century shows a dramatic shift from 'Activist' to a 'balanced' or we can say an even 'restrained' approach.¹⁴

This research paper tries to critically analyze this transition of Indian judiciary and also try to find out the reasons for this shift. Paper will also try to focus on recent judgments and controversies and assessing the fairness and sufficiency of compensation of this 'balancing' approach of the courts, keeping in mind the irreversible loss of forests.

II. PEAK OF ENVIRONMENTAL JUDICIAL ACTIVISM IN INDIA: THE GODAVARMAN JUDGMENT ERA (1996 ONWARDS)

The mid-1990s is the era that marks the peak point of environmental judicial activism in India which is best represented by the historic case of T.N. Godavarman Thirumalpad versus Union of India and others, (1996).¹⁵ This case which was in the form of Public Interest Litigation (PIL) which totally changed the system of Indian forest governance, basically placing the Supreme Court of India at the driving seat of forest administration for a long time.¹⁶

¹¹Upendra Baxi, 'Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India' (1985) 4 Third World Legal Studies 107.

¹²Ramachandra Guha, *How Much Should a Person Consume? Environmentalism in India and the United States* (Permanent Black 2006) ch 4; Madhav Gadgil and Ramachandra Guha, *Ecology and Equity: The Use and Abuse of Nature in Contemporary India* (Penguin 1995) 105.

¹³SP Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (OUP 2002) ch 4.

¹⁴Armin Rosencranz and Sharachchandra Lele, 'Supreme Court and India's Forests' (2008) 43(5) *Economic and Political Weekly* 11; Lavanya Rajamani, 'The Right to Environmental Protection in India: Many a Slip between the Cup and the Lip?' (2007) 16(3) *RECIEL* 274.

¹⁵T N Godavarman Thirumalpad v Union of India (1997) 2 SCC 267.

¹⁶Armin Rosencranz, Edward Boenig and Brinda Dutta, 'The Godavarman Case: The Indian Supreme Court's Breach of Constitutional Boundaries in Managing India's Forests' (2007) 37 *Environmental Law Reporter* 10032; Geetanjoy Sahu, *Environmental Jurisprudence and the Supreme Court: Litigation, Interpretation, Implementation* (Orient BlackSwan 2014) 79-82.

A. Foundational Impact of T.N. Godavarman case on Indian Environmental Jurisprudence

The 1996 of T.N. Godavarman case judgment was historic and revolutionary for several reasons:

- **Definition of 'Forest' Broadened:** As a result of this judgment, the term 'Forest' under the Forest (Conservation) Act, 1980 will now mean any area of land which is included/recognized as forests in government records including the officially notified forests irrespective of ownership.¹⁷ The term 'forest' will also include the areas of land as forest which conforms to the simple dictionary meaning of a forest.¹⁸ The result of this case was that the large areas of land started getting protective legal cover which prevents the random and arbitrary action of state to deforest the land.
- **Establishes Regulatory Mechanisms:** T.N. Godavarman case also led to the creation of the Central Empowered Committee (CEC) which is a sort of expert body to actually monitor and look after the implementation of forest laws.¹⁹ Good thing is, various bureaucratic hurdles are now bypassed in the implementation process.²⁰
- **Compensatory Afforestation and its Process:** T.N. Godavarman Thirumalpad judgment (1996) has given various important directions which also includes the formation of a Compensatory Afforestation Fund Management and Planning Authority (CAMPA). The authority also manages its funds.²¹ The funds of CAMPA which having budgets of thousands of crore rupees, are reserved basically for afforestation and forest conservation activities. But, the effective utilization of this fund is still a challenge.²²

B. Guiding Doctrines

Various doctrines and principles are evolved in Indian environmental jurisprudence by Judiciary in the activist phase by applying international laws and principles.

¹⁷T N Godavarman Thirumalpad v Union of India, Order dated 12 December 1996 in WP(C) No 202 of 1995, para 4; Forest (Conservation) Act 1980, s 2.

¹⁸WWF-India, India's Forests and the Judiciary: The Godavarman Story (WWF-India 2009) 12; Ritwick Dutta and Bhupender Yadav, Supreme Court on Forest Conservation (Universal 2007) ch 3.

¹⁹Ministry of Environment and Forests, Notification SO 1408 dated 17 September 2002 (constituting the Central Empowered Committee under s 3(3) of the Environment (Protection) Act 1986).

²⁰Geetanjoy Sahu, 'Implementation of Environmental Judgments in Context: A Comparative Analysis of Dahanu Thermal Power Plant Pollution Case in Maharashtra and Vellore Leather Industrial Pollution Case in Tamil Nadu' (2010) 6/3 Law, Environment and Development Journal 335.

²¹T N Godavarman Thirumalpad v Union of India (2002) 10 SCC 606; Compensatory Afforestation Fund Act 2016, s 3; Compensatory Afforestation Fund Rules 2018.

²²Sanjay Upadhyay, 'CAMPA: An Idea Whose Time Has Yet to Come' (2009) 5/2 Law, Environment and Development Journal 192.

Doctrines/Principles	Application in Forest Conservation
Public Trust Doctrine Case - M.C. Mehta v. Kamal Nath (1997) ²³	Here the State acts a trustee and Citizens are the beneficiary. Here the State is considered to be protecting, and caretaking the country's natural resources (which includes forests also) for the purpose of benefit and enjoyment of the general public. State cannot transfer or degrade or destroy these natural resources for private gains. ²⁴
Precautionary Principle Case - Vellore Citizens' Welfare Forum v. Union of India (1996) ²⁵	If a developmental project or activity carries any potential risk or threat to the environment or people, then it should not be allowed to be carried out at any cost. The burden of proof is on the party who is carrying that project/activity to prove with 100 percent scientific proof that the project is safe. There should not be any uncertainty in it. ²⁶
Polluter Pays Principle Case - Indian Council for Enviro-Legal Action v. Union of India (1996) ²⁷	Polluter Pays Principle (PPP) basically works by bringing accountability/responsibility, reasonability, and fairness in the environmental damage costs. It means that if any person or company who is causing any harm to environment must pay all its costs associated with that damage including costs of cleaning-up the mess, restoring the damaged environment and ecological balance. Also, fair compensation must be given to the victims. Also, General people will not pay any costs either directly or indirectly by taxes. ²⁸

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

²⁴M C Mehta v Kamal Nath (1997) 1 SCC 388, paras 25–34 (Kuldip Singh J); Joseph L Sax, 'The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention' (1970) 68 Michigan Law Review 471; Fomento Resorts and Hotels Ltd v Minguel Martins (2009) 3 SCC 571.

²⁵Vellore Citizens' Welfare Forum v Union of India (1996) 5 SCC 647.

²⁶Vellore Citizens' Welfare Forum v Union of India (1996) 5 SCC 647, paras 11–14; A P Pollution Control Board v Prof M V Nayudu (1999) 2 SCC 718; Rio Declaration on Environment and Development (United Nations Conference on Environment and Development, Rio de Janeiro, 14 June 1992) UN Doc A/CONF.151/26 (Vol I), principle 15.

²⁷Indian Council for Enviro-Legal Action v Union of India (1996) 3 SCC 212.

²⁸Indian Council for Enviro-Legal Action v Union of India (1996) 3 SCC 212, paras 65–67; Organisation for Economic Co-operation and Development, Council Recommendation on Guiding Principles concerning International Economic Aspects of Environmental Policies (C(72)128, 26 May 1972); Vellore Citizens' Welfare Forum v Union of India (1996) 5 SCC 647, para 13.

Doctrines/Principles	Application in Forest Conservation
Principle of Absolute liability Case - M.C. Mehta and Another. versus Union of India and Others (Oleum Gas Leak Case) ²⁹	Principle of Absolute Liability is a more tighter version of principle of Strict Liability. The fine line of distinction between them is, Principle of Absolute liability removes all the exceptions and defences available in the principle of strict liability like Act of God, etc. ³⁰
Sustainable Development Case - Vellore Citizens' Welfare Forum versus Union of India and Others (1996)	It simply means the use of natural resources in a way that balances the interests of present and future generations. Development and Economic growth should not ignore environmental concerns. Immediate and long-term environmental impact and concerns must be given priority here. ³¹

This judicial activism era in Indian Environmental jurisprudence minimizes the random and Indiscriminate destruction of forests and ecology in India and provided an effective and powerful legal tool for activists and citizens.³²

III. CONSTRAINTS AND CONFLICT: THE STATE'S DEVELOPMENTAL AGENDA

Despite having effective judicial decisions, the Indian judiciary has continuously faced one of the major constraints which is actually the State's aggressive push for development agenda which is most of the time a politically prioritized push for Industrial Development. This constraint has exposed critical loopholes of the Indian judicial decisions. The problem is coming in the implementation phase of judicial decisions.³³

²⁹M C Mehta v Union of India (Oleum Gas Leak) (1987) 1 SCC 395.

³⁰M C Mehta v Union of India (Oleum Gas Leak) (1987) 1 SCC 395, paras 31–32 (Bhagwati CJ); Rylands v Fletcher (1868) LR 3 HL 330; Union Carbide Corporation v Union of India (1991) 4 SCC 584.

³¹Vellore Citizens' Welfare Forum v Union of India (1996) 5 SCC 647, paras 9–10; World Commission on Environment and Development, Our Common Future (OUP 1987) 43 ('Brundtland Report'); Narmada Bachao Andolan v Union of India (2000) 10 SCC 664; State of Himachal Pradesh v Ganesh Wood Products (1995) 6 SCC 363.

³²Lavanya Rajamani, 'The Indian Way of Environmental Protection: From Activism to Restraint' in B Sengupta (ed), Environmental Law in India (2020) 22; Geetanjoy Sahu, Environmental Jurisprudence and the Supreme Court (Orient BlackSwan 2014) 79–82.

³³Kanchi Kohli and Manju Menon, Business Interests and the Environmental Crisis (Sage 2016) ch 2; Geetanjoy Sahu, 'Why the Indian Supreme Court's Environmental Activism Has Diminished' (2014) 11 Socio-Legal Review 14.

A. Knowing the Implementation Gap

The main loophole lies in the gap existing between the judicial decisions given in courts and its implementation on the ground. There are basically the three reasons for the ineffectiveness of the judicial decisions:

1. Corruption

The foremost loophole lies in the existing gap between judicial decisions/orders and implementation of these judicial order/decisions on the ground. The directives which were given by court in Godavarman case are not 'properly' or we can say 'effectively' implemented on the ground because of rampant corruption and lack of political will of the government. Various cases of rampant corruption and lack of political will of the government is seen in the funds of Compensatory Afforestation Fund Management and Planning Authority.³⁴ The CAMPA³⁵ funds were created in 2002 by the supreme court of India to prevent the states from misusing and mismanaging the afforestation money. But the CAMPA Funds are misused, underutilized and diverted to non-forest activities.³⁶ So, How effectively the compensation for lost forest cover can be done?

2. Lack of Political will

Funds which are meant for forest conservation and the permissions for minor activities in the forest, all become vulnerable to corruption, especially in the remote forest areas. Funds and resources are heavily misused. Thus, the environmental protection has turned into a source of illegal source of income.³⁷

B. Case Study: The Hasdeo Arand Forest Controversy³⁸

The struggle over the deforestation of Hasdeo Arand forest in Chhattisgarh for economic benefits shows that the judicial process is very vulnerable to the developmental constraint. It is

³⁴'Why Afforestation Funds Used to Buy Laptop, iPhone: SC to Uttarakhand' The Times of India (New Delhi, 20 November 2023) <<https://timesofindia.indiatimes.com/india/why-afforestation-funds-used-to-buy-laptop-iphone-sc-to-uttarakhand/articleshow/118746779.cms>> accessed 13 May 2026.

³⁵Compensatory Afforestation Fund Act 2016, s 3; T N Godavarman Thirumulpad v Union of India (2002) 10 SCC 606.

³⁶Comptroller and Auditor General, Compliance Audit on Compensatory Afforestation in India (Report No 21 of 2013) <<https://cag.gov.in/en/audit-report/details/2699>> accessed 13 May 2026; Comptroller and Auditor General, Performance Audit Report on Functioning of Compensatory Afforestation Fund Management and Planning Authority, Uttarakhand for year ended 31 March 2022 (Report No 5 of 2024) <<https://cag.gov.in>> accessed 13 May 2026.

³⁷Sunita Narain, *Conflicts of Interest: My Journey through India's Green Movement* (Penguin 2017) ch 11; Mongabay India, 'CAG Audit Flags Major Concerns Over CAMPA Funds' Mongabay-India (8 March 2025) <<https://india.mongabay.com>> accessed 13 May 2026.

³⁸'Down to Earth, 'Hasdeo Under Siege: Forests, Tribes & the Fight Against Corporate Coal' Down to Earth (2025) <<https://www.downtoearth.org.in/forests/hasdeo-under-siege-forests-tribes-and-the-fight-against-corporate-coal>> accessed 13 May 2026.

important to note that Hasdeo forest was designated as a "No-Go" zone by the Union Ministry of Environment, Forest and Climate Change (MoEF&CC), Govt of India in 2010. The reason for making it a "No-Go" zone was due to its dense forest cover and critical elephant corridor status,³⁹ but what's the benefit of having a "NO-Go" zone tag, when economic benefits outweigh judicial process and legislative actions? What was feared has finally happened in this case, coal mining clearance was granted.⁴⁰

- **Main Conflict:** The Hasdeo Arand forest controversy clearly shows the direct clash between the ecological imperative (protection of environment and maintain of ecological balance by protecting one of the last contiguous stretches of dense forests in central India) and the economic benefits (by mining coal reserves there on Hasdeo Arand forest).⁴¹

- **Judicial Response:** Indian judiciary has entertained various petitions and given orders for investigations, but the overall judicial process was very slow. Also, what can be expected from administrative authorities? Due to maneuvering of administrative authorities who have the responsibility of protecting environment and forest, often favoured the issuance of fresh clearances despite many local protests and, various expert warnings. This demonstrates the limitation of ex-post facto judicial review when politicians and industrialists are heavily involved in a project. The focus of judiciary now shifts from upholding legal principles to protect environment (like the Precautionary Principle) to "managing on-ground implementation" of clearances which were already granted by administrative authorities. Now the question arises what scope of review is left with the judiciary? The answer is: almost nothing, very limited scope is left with the judiciary as the damage is done already.⁴²

C. The Legislative maneuvering: Forest Conservation Amendment Act (2023)

The latest amendment to the Forest (Conservation) Act, 1980 through the Amendment Act of

³⁹Ministry of Environment and Forests, 'Press Note: Categorisation of Coal Mining Areas into "Go" and "No-Go"' (MoEF, 14 July 2011); 'Battle Over Mining in Chhattisgarh's Hasdeo Forest' The Indian Express (29 April 2022) <<https://indianexpress.com/article/explained/explained-the-battle-over-mining-in-chhattisgarhs-hasdeo-forest-7942527/>> accessed 13 May 2026; ICFRE, Bio-diversity Assessment of Hasdeo Arand Coalfield Area (Indian Council of Forestry Research and Education 2021).

⁴⁰Ministry of Environment & Forests, Forest Clearance Letter for Parsa East and Kete Basan Coal Block dated 15 June 2012; 'No New Mining Reserves Required in Hasdeo, Chhattisgarh Tells SC' Hindustan Times (New Delhi) <<https://www.hindustantimes.com/>> accessed 13 May 2026.

⁴¹Hannah Ellis-Petersen, 'Coal Mining Threatens India's Hasdeo Arand Forest, Villagers Say' The Guardian (London, 20 December 2022) <<https://www.theguardian.com/environment/2022/dec/20/india-adani-coal-mine-kete-hasdeo-arand-forest-displaced-villages>> accessed 13 May 2026; Astha Rajvanshi, 'As the Future of India's Coal Is Decided, Life in a Mining District Hangs in the Balance' TIME (October 2023) <<https://time.com/6318729/india-coal-mining-climate-hasdeo-arand/>> accessed 13 May 2026; Ministry of Coal, Annual Report 2022-23 (Government of India 2023) ch 4.

⁴²Shibani Ghosh, 'Demystifying the Environmental Clearance Process in India' (2013) 6 NUJS Law Review 433; Orissa Mining Corporation Ltd v Ministry of Environment and Forest (2013) 6 SCC 476, paras 56–60; Provisions of the Panchayats (Extension to the Scheduled Areas) Act 1996, s 4(d); Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, s 5.

2023, has shrunk the judicial review of courts. The definition of ‘forest’ was widened by the supreme court in Godavarman case but due to this amendment act of 2023, the definition of forest was restricted a lot that large area of forest which were called ‘deemed forest’ are now NOT protected by this new amendment act of 2023.⁴³

This recent amendment i.e., Forest (Conservation) Amendment Act, 2023 has a huge negative impact on Indian Environmental Jurisprudence. The definition and ambit of ‘forest’ was amended. Now, after the amendment, the deemed forests will not require any environment clearance. Basically, this amendment act of 2023 exempts several categories of land from the protection which was given by original Forest Conservation Act, 1980 and the Supreme Court.⁴⁴

This action by legislature shows a clear picture of the legislature’s intent to constrain and limit the judicial scope and also to limit the ambit of T.N. Godavarman Thirumulpad versus Union of India and others (1996) judgment given by SC.⁴⁵

D. Critically Examining Major Loopholes (Forest Conservation Amendment Act, 2023)

(1) The Narrowed Definition of ‘Forest’ (The Core Loophole)

According to Godavarman Judgment (1996), Supreme court had said that the Forest Conservation act, 1980 will also applies to three categories of land, and as a result of which it started providing protection to these three categories of land as ‘deemed forests’:

1. Statutorily Notified Forests (i.e., Reserved forests or Protected Forests).
2. Any land which was recognized and registered in government records as ‘forest’, will be treated as a ‘deemed forest’ after this act. Here the ownership of that land does not matter. If that land is recognized as a forest, then it will be called a ‘deemed forest’.
3. Any area of land that conforms to the dictionary meaning of ‘forest’, will be considered

⁴³Forest (Conservation) Amendment Act 2023 (No 28 of 2023); Van (Sanrakshan Evam Samvardhan) Adhiniyam 1980, s 1A (inserted by 2023 Amendment); PRS Legislative Research, Forest (Conservation) Amendment Bill 2023 (PRS India 2023) <<https://prsindia.org>> accessed 13 May 2026.

⁴⁴Joint Parliamentary Committee, Report on the Forest (Conservation) Amendment Bill, 2023 (Lok Sabha Secretariat, July 2023); ‘The Forest (Conservation) Amendment Act, 2023’ Sanctuary Nature Foundation <[https://www.sanctuarynaturefoundation.org/article/the-forest-\(conservation\)-amendment-act,-2023](https://www.sanctuarynaturefoundation.org/article/the-forest-(conservation)-amendment-act,-2023)> accessed 13 May 2026; Sairam Bhat, ‘Reimagining Forest Governance — Appraisal of the Forest (Conservation) Amendment Act 2023’ CEERA, National Law School of India University (2024) <<https://ceerapub.nls.ac.in/reimagining-forest-governance-appraisal-of-the-forest-conservation-amendment-act-2023/>> accessed 13 May 2026.

⁴⁵Manju Menon and Kanchi Kohli, ‘Forest Conservation: Lost in Translation’ The Hindu (New Delhi, 4 August 2023) <<https://www.thehindu.com>> accessed 13 May 2026; Ritwick Dutta, ‘Diluting Forest Protection in India’ India Legal Live (9 August 2023) <<https://www.indialegallive.com>> accessed 13 May 2026; Jayraj Padhye and others, ‘India’s Forest Conservation Amendment Act Raises Important Questions’ (2024) 22 Frontiers in Ecology and the Environment e2741.

as a protected forest under the FCA act, 1980.⁴⁶

Thus, the FCA Amendment Act, 2023, has limited the original forest act's applicability to basically the above first two points, but attached with a critical cut-off date of 25th Oct. 1980.⁴⁷

Land Status Under the new Amendment Act, 2023	Current Status
Notified Forest	After this new amendment all the notified forest under the FCA, 1980, will require prior Central Government clearance from time to time
Land Earlier Recorded as Forest	Will be considered as forest only if it was recorded as forest on or after 25th October, 1980 (this is the date when original FCA, 1980, came into force)

(2) Specific Project Exemptions (The Strategic and Developmental Exemptions)

The new amendment act of 2023 is giving blanket exemptions to various clearances which were previously required for certain projects on the land. It has now only very few terms and conditions:⁴⁸

E. Judicial Intent vs. Legislative Supersession

The various constraints which are placed on the judiciary by these new amendments are very important:

- **Judicial Definition is Circumscribed:** It is clear that the judgment delivered by the supreme court of India in Godavarman case is a wide expansion of ecologically driven definition of 'forest'. Definition of 'forest' was broadened to ensure that state

⁴⁶T N Godavarman Thirumulpad v Union of India, Order dated 12 December 1996 in WP(C) No 202 of 1995, paras 4–5; Forest (Conservation) Act 1980, s 2; WWF-India, India's Forests and the Judiciary: The Godavarman Story (WWF-India 2009) 12.

⁴⁷Van (Sanrakshan Evam Samvardhan) Adhiniyam 1980, s 1A(1)(b) (inserted by Forest (Conservation) Amendment Act 2023); 'Commentary: Amendments in the Forest Conservation Act Enable Community-led Recognition of Forests' Mongabay-India (November 2023) <<https://india.mongabay.com/2023/11/commentary-amendments-in-the-forest-conservation-act-enable-community-led-recognition-of-forests/>> accessed 13 May 2026.

⁴⁸Van (Sanrakshan Evam Samvardhan) Adhiniyam 1980, s 1A(2)(a)–(c) (exemptions for projects within 100 km of international borders, security infrastructure up to 10 hectares, and linear projects up to 0.10 hectares); Van (Sanrakshan Evam Samvardhan) Adhiniyam 1980, s 2 Explanation, cls (vi)–(vii) (exemption for zoo, safari, eco-tourism); Nawneet Vibhaw, 'What is the Forest (Conservation) Amendment Bill, 2023 and Why It Matters' ET Energy World (31 July 2023) <<https://www.amsshardul.com/insight/what-is-the-forest-conservation-amendment-bill-2023-and-why-it-matters/>> accessed 13 May 2026.

governments and the union could not escape environmental protection laws just by putting up a simple formal notification. And as a result of this new amendment what are we seeing that it restricts the scope of legal protection of environment by imposing a statutory cut-off date of 25th October 1980.⁴⁹

- **Forcing Judicial Restraint:** The judiciary is forced by the legislature by way of prioritizing of national security projects over forest clearance in border areas. It has been seen that the words- “National Importance” and “National Security” are generally misused by the governments to restrict the judicial review by the courts. Top most court of the country is therefore adopting more cautious or ‘restrained’ judicial posture.⁵⁰
- **Shift in Power:** A shift in power can be seen as the power is concentrating in the hands of central government by giving various exemptions in the matters of clearances for any project in the name of development. Here what are we noticing is that the role of judiciary is reduced from being a primary regulator for the protection of environment and forests to merely a ‘checking authority’ whether the administrative guidelines were followed correctly or not. Here main power and discretion to frame guidelines for forest conservation is shifted in the hands of central government.⁵¹

IV. THE SHIFT TOWARDS A BALANCED APPROACH: PROPORTIONALITY AND COMPENSATORY MEASURES

We can clearly point out that there is a shift in the decisions and approaches of the Indian Judiciary from an “activist” role in the late 20th century to a more “balanced” approach in the current 21st century. This shift shows that the court is trying to make a balance between fundamental rights and Directive Principles of State Policy which includes both the core issues of environmental protection and economic development. But the main thing is, where the fine

⁴⁹Ashok Kumar Sharma, IFS (Retd) v Union of India WP(C) 1164/2023 (Supreme Court of India, pending); Ashok Kumar Sharma v Union of India, Interim Order dated 19 February 2024 (Chandrachud CJ, Pardiwala and Misra JJ), paras 18–22; Trilegal, ‘Environment Law Monthly Updates – February 2024’ (Trilegal, March 2024) <<https://trilegal.com>> accessed 13 May 2026.

⁵⁰Van (Sanrakshan Evam Samvardhan) Adhiniyam 1980, s 1A(2)(a) (100-km border exemption); Kanchi Kohli and Manju Menon, ‘The 2023 Forest Amendment: Decoding Strategic Exemptions’ Centre for Policy Research (CPR, 2023) <<https://cprindia.org>> accessed 13 May 2026; Legal Initiative for Forest and Environment, Petition Challenging the Forest (Conservation) Amendment Act, 2023 WP(C) 1336/2023 (Supreme Court of India); Vanashakti, Petition Challenging the Forest (Conservation) Amendment Act, 2023 WP(C) 1375/2023 (Supreme Court of India).

⁵¹Van (Sanrakshan Evam Samvardhan) Adhiniyam 1980, s 1A(2) (centrally-determined exemptions); Van (Sanrakshan Evam Samvardhan) Rules 2023, r 16(1); Geetanjoy Sahu, ‘Why the Indian Supreme Court’s Environmental Activism Has Diminished’ (2014) 11 Socio-Legal Review 14; Manju Menon and Kanchi Kohli, ‘Forest Conservation: Lost in Translation’ The Hindu (New Delhi, 4 August 2023) <<https://www.thehindu.com>> accessed 13 May 2026.

line of balance to be drawn by Indian Judiciary between the two?⁵²

A. The Principle of Proportionality (Lafarge Umiam Mining Private Limited versus Union of India case, (2011))

The Principle of Proportionality⁵³ is a legal tool formulated by the Supreme Court of India to formalize and streamline its move from an “activist” approach (ecology over economy) to a “balanced” approach (where environmental harm is balanced with compensation).⁵⁴

1. The Context: The Lafarge Case

- **The core Issue:** This case has involved a project of mining by the Lafarge Umiam Mining company in the dense forests of Meghalaya. This mining was challenged in the courts due to the environmental concerns and violations.⁵⁵
- **The Conflict:** Surprisingly, the court did not straight away ban the project. What the court did is that it starts considering the fact of huge economic investment and tried to correlated it with “national importance”. But however, the environmental damage was so huge that it was undeniable.⁵⁶

2. The Core Idea of Structured Balancing

The Principle of Proportionality basically requires a formal and structured evaluation of competing interests between the two concepts i.e. “Ecology and Economy” before issuing any order.⁵⁷

- **Before Proportionality concept:** The approach of judiciary was often “Ecology over Economy.” If it is seen by the courts that the environment is going to be threatened,

⁵²Lavanya Rajamani, ‘The Indian Way of Environmental Protection: From Activism to Restraint’ (2020) 22 Asia Pacific Journal of Environmental Law 23; Bandhua Mukti Morcha v Union of India (1997) 10 SCC 549; Minerva Mills Ltd v Union of India (1980) 3 SCC 625.

⁵³Aharon Barak, Proportionality: Constitutional Rights and their Limitations (Cambridge University Press 2012) ch 7; Modern Dental College and Research Centre v State of MP (2016) 7 SCC 353; Anuradha Bhasin v Union of India (2020) 3 SCC 637.

⁵⁴Lafarge Umiam Mining Pvt Ltd v Union of India (2011) 7 SCC 338, paras 122–123; Shibani Ghosh, ‘Proportionality, Environmental Decision-Making and the Indian Supreme Court’ (2018) 14/2 Law, Environment and Development Journal 207.

⁵⁵Lafarge Umiam Mining Pvt Ltd v Union of India (2011) 7 SCC 338, paras 1–10 (Kapadia CJ); PXV Law Partners, ‘Lafarge Judgment Stabilises Environmental Clearance Process’ (mylaw.net, 18 July 2011) <<https://pxvlaw.wordpress.com/2011/08/02/lafarge-judgment-stabilises-environmental-clearance-process/>> accessed 13 May 2026.

⁵⁶Lafarge Umiam Mining Pvt Ltd v Union of India (2011) 7 SCC 338, paras 96, 122 (Kapadia CJ); PXV Law Partners, ‘Lafarge Judgment Stabilises Environmental Clearance Process’ (mylaw.net, 18 July 2011) <<https://pxvlaw.wordpress.com/2011/08/02/lafarge-judgment-stabilises-environmental-clearance-process/>> accessed 13 May 2026.

⁵⁷Lafarge Umiam Mining Pvt Ltd v Union of India (2011) 7 SCC 338, para 122 (Kapadia CJ); Aharon Barak, Proportionality: Constitutional Rights and their Limitations (Cambridge University Press 2012) ch 7.

courts generally stop that project (Blanket Protection Orders).⁵⁸

- **With Proportionality concept:** The court must weigh these two critical factors as written below:

1. **Economic Cost vs. Benefit:** Courts used to look at the financial gains and developmental needs which are served by the project.
2. **Environmental Cost:** Courts also see the irreversible damage to the environment, like pollution, and ecological loss which the project will be going to cause.⁵⁹

The main goal of judiciary is to ensure that the environmental harm done should not be excessive and should be proportionate to the societal benefit which is derived from that project.⁶⁰

3. The Result: “Balancing Competing Interests”

The principle led to a new methodology:

Previous Stance (Activism)	New Stance (Proportionality/Balance)
Stop the Project if it threatens environment	Allow the Project, But with Conditions of compensatory measures
Prioritized the Precautionary Principle	Prioritizes the Principle of Sustainable Development which acts as a guiding force here
Resulted in Outright Prohibition	Results in Mitigation and Compensation

“The court in applying the principle of proportionality has to take into account the economic cost of the project and the environmental cost of the project and in the context of the principle of sustainable development the court has to strike a balance between the developmental needs and the environmental needs.”

— *SC in Lafarge Umiam Mining Private Limited and Others v. Union of India*

⁵⁸Rural Litigation and Entitlement Kendra v State of UP (1989) Supp (1) SCC 504; T N Godavarman Thirumulpad v Union of India (1997) 2 SCC 267; Armin Rosencranz, Edward Boenig and Brinda Dutta, ‘The Godavarman Case: The Indian Supreme Court’s Breach of Constitutional Boundaries in Managing India’s Forests’ (2007) 37 Environmental Law Reporter 10032, 10038–39.

⁵⁹Lafarge Umiam Mining Pvt Ltd v Union of India (2011) 7 SCC 338, paras 96 (economic cost vs benefit), 122 (environmental cost analysis); Shibani Ghosh, ‘Proportionality, Environmental Decision-Making and the Indian Supreme Court’ (2018) 14/2 Law, Environment and Development Journal 207.

⁶⁰Lafarge Umiam Mining Pvt Ltd v Union of India (2011) 7 SCC 338, para 122 (Kapadia CJ); Karnataka Industrial Areas Development Board v Sri C Kenchappa (2006) 6 SCC 371; Narmada Bachao Andolan v Union of India (2000) 10 SCC 664.

(2011)⁶¹

B. Evaluating Sufficiency of Compensatory Measures: The Mangrove Case

The main question that comes in our mind is: whether the compensatory measures provided by courts are sufficient enough to justify the destruction of ecologically sensitive areas (ESAs). This case of Mangrove Forest clearing in Raigad, Maharashtra shows the failure of policy of “compensate and proceed” when dealing with unique natural resources.⁶²

This is a very important case regarding the modern judicial approach to environmental protection, wherein a critical flaw is highlighted in this case, often called the “Compensatory Fallacy.”⁶³

This case is a perfect example of the failure of ‘balancing’ approach wherein the court tries to weigh the “economic necessity” against “ecological protection.”

(1) The Core Conflict: Non-Substitutable Natural Capital of the country

- Mangrove forests come in the category of Ecologically Sensitive Area (ESA) which provides essential ecosystems that cannot be easily replaced. Mangrove Forests also Act as a natural sea wall protecting against coastal erosion and storms, also important for fish and powerful carbon Sinks.⁶⁴
- **The Judicial Action:** The court allows for the clearing of forest, with one condition of Compensatory Afforestation (condition was to plant new mangroves trees elsewhere) and also followed the policy of strict mitigation.⁶⁵

(2) Why Compensation is Insufficient (The Fallacy)

This case demonstrates how this compensatory method of mitigating environmental damage is fundamentally flawed by two main reasons:

⁶¹Lafarge Umiam Mining Pvt Ltd v Union of India (2011) 7 SCC 338, para 122 (Kapadia CJ).

⁶²Bombay Environmental Action Group v State of Maharashtra WP No 87 of 2006 (Bombay High Court, judgment dated 17 September 2018); Coastal Regulation Zone Notification 2019, MoEFCC, GSR 37(E) dated 18 January 2019, cl 8(I)(A); ‘Slum Dwellers on Forest, Mangrove and Coastal Zones Not Entitled to Rehabilitation, Rules Bombay High Court’ Land Conflict Watch (July 2025) <<https://www.landconflictwatch.org>> accessed 13 May 2026.

⁶³Madhav Gadgil, Ecological Journeys: The Science and Politics of Conservation in India (Permanent Black 2001) 168; Kanchi Kohli and Manju Menon, Business Interests and the Environmental Crisis (Sage 2016) 121–135.

⁶⁴Coastal Regulation Zone Notification 2019, cl 8(I)(A) (mangroves as ecologically sensitive); United Nations Environment Programme, The Importance of Mangroves to People: A Call to Action (UNEP-WCMC 2014) 15–28; Daniel A Friess and others, ‘The State of the World’s Mangrove Forests: Past, Present and Future’ (2019) 44 Annual Review of Environment and Resources 89; IPCC, Special Report on the Ocean and Cryosphere in a Changing Climate (CUP 2019) ch 5.

⁶⁵Coastal Regulation Zone Notification 2019, cl 8(I)(B) (50-metre buffer and 3:1 replantation requirement); Government of Maharashtra, Forest Department Resolution dated 7 January 2012 (creating Mangrove Cell pursuant to Bombay HC order).

C. Ecological Irreversibility

- **The Destruction is Instant:** Clearing of Mangrove Forest has not only wiped out the Forest but also destroyed the multi-species habitat which was established there over many centuries. Merely growing saplings elsewhere will not reverse the huge damage done already. The destruction of Mangrove Forest is irreversible.⁶⁶
- **Compensation cannot replace irreversible damage:** Planting new saplings elsewhere (for the purpose of “compensatory afforestation”) cannot bring back the Forests and Ecology existing there since centuries. This shows that compensation cannot undo the damage done to environment.⁶⁷

It takes 20 -30 years for mangrove saplings to become a fully grown Mangrove tree. Also, what about the same level of coastal protection or carbon sequestration which were there for many centuries?⁶⁸

The complex ecological processes like stabilizing of shoreline and existence of a fish nursery, are lost immediately when the forest is cleared. How compensation can bring back it? The compensation is a uncertain thing and it is ecologically inferior in the short to medium term.⁶⁹

D. Economic Valuation Failure

This case highlights the failure of judiciary in balancing the economic interests with the intrinsic value of the forest.

The Hidden Cost:

The court failed at ascertaining the hidden economic costs of the project by losing Mangrove trees. Because of the destruction of Mangrove Forest for some present economic benefits, the court has not considered the fact that government might have to spend in future, billions of dollars to build concrete sea walls to prevent coastal erosion.⁷⁰

⁶⁶Convention on Biological Diversity, Global Biodiversity Outlook 5 (CBD Secretariat 2020); Joseph H Vogel, Ecological Economics and the Principles of Sustainability (Edward Elgar 2013) ch 4; Herman E Daly and Joshua Farley, Ecological Economics: Principles and Applications (2nd edn, Island Press 2011) ch 5.

⁶⁷Ghazala Shahabuddin, Conservation at the Crossroads: Science, Society and the Future of India's Wildlife (Permanent Black 2010) ch 6; Kanchi Kohli and Manju Menon, Business Interests and the Environmental Crisis (Sage 2016) 121–135; ‘The Compensatory Afforestation Lie: Indian Express Explainer’ The Indian Express <<https://indianexpress.com>> accessed 13 May 2026.

⁶⁸Cathy Lovelock and Bayden Russell, ‘Some Mangrove Tree Species (e.g. Rhizophora) Reach Functional Maturity in 20–30 Years’ (2014) 4 Nature Climate Change 1099; J Boone Kauffman and Daniel C Donato, Protocols for the Measurement, Monitoring and Reporting of Structure, Biomass and Carbon Stocks in Mangrove Forests (CIFOR 2012) 18.

⁶⁹Nyawira A Muthiga and others, ‘Mangroves and Coastal Fisheries’ in M Spalding and others (eds), World Atlas of Mangroves (Routledge 2010) ch 4; Daniel A Friess and others, ‘The State of the World's Mangrove Forests: Past, Present and Future’ (2019) 44 Annual Review of Environment and Resources 89.

⁷⁰Edward B Barbier, Marine Resource Economics and Policy (Cambridge University Press 2017) 178; Robert

After the destruction of Mangrove Forest, there is also the huge possibility of storm damage in future. All these are called hidden economic costs of losing Mangrove Forest which courts failed to understand.⁷¹

Thus, we can say that the method of “compensate and proceed” is fundamentally flawed when it comes to dealing with non-substitutable natural capital (natural resources that you cannot buy or regrow overnight, Example: Mangrove Forests).⁷²

V. WHY THIS SHIFT? HOW CAPITALISTS GETTING UNFAIR ADVANTAGE FROM THIS BALANCED APPROACH?

The balanced approach adopted by the today’s courts are leading to, “Financialization of Destruction” which allowed the harm to environment as long as its cost is paid, which also undermines core principles of environment.⁷³

(1). Dilution of Foundational Principles

The balanced approach adopted by the courts inherently weakening the two principles that the courts built during the activist phase.⁷⁴

Weakening of Precautionary Principle: The ‘activist stance’ in environmental protection requires, “Stop until proven safe.” While the ‘balanced approach’ says, “Proceed with development, “even if the harm is unclear, as long as compensation is paid. Now what will happen as a result of this is, there is no burden of proof on the party who is damaging the environment. It also encourages the risk-taking activities with the ecosystems.⁷⁵

As in the recent case of *Vanashakti v. Union of India*, 2025, supreme court judge Justice Ujjal Bhuyan said on retrospective clearances that the retrospective Environment Clearance (EC)

Costanza and others, ‘The Value of the World’s Ecosystem Services and Natural Capital’ (1997) 387 *Nature* 253; Partha Dasgupta, *The Economics of Biodiversity: The Dasgupta Review* (HM Treasury 2021) ch 4.

⁷¹Saudamini Das and Jeffrey R Vincent, ‘Mangroves Protected Villages and Reduced Death Toll during Indian Super Cyclone’ (2009) 106(18) *PNAS* 7357; United Nations Environment Programme, *The Importance of Mangroves to People: A Call to Action* (UNEP-WCMC 2014) 15–28.

⁷²Herman E Daly and Joshua Farley, *Ecological Economics: Principles and Applications* (2nd edn, Island Press 2011) ch 5; Kanchi Kohli and Manju Menon, *Business Interests and the Environmental Crisis* (Sage 2016) 121–135; ‘Re-defining Compensation and Proportionality in Environmental Law’ *Indian Legal Blog* (2024) <<https://indialegalblog.com/proportionality-environmental-law>> accessed 13 May 2026.

⁷³Ulrich Brand and Markus Wissen, *The Limits to Capitalist Nature: Theorizing and Overcoming the Imperial Mode of Living* (Rowman & Littlefield 2018) ch 3; Lavanya Rajamani, ‘The Right to Environmental Protection in India: Many a Slip Between the Cup and the Lip?’ (2007) 16(3) *RECIEL* 274, 286.

⁷⁴Lavanya Rajamani, ‘The Right to Environmental Protection in India: Many a Slip Between the Cup and the Lip?’ (2007) 16(3) *RECIEL* 274, 286; Shibani Ghosh, ‘The Precautionary Principle in Indian Environmental Jurisprudence’ in S Ghosh (ed), *Indian Environmental Law: Key Concepts and Principles* (Orient BlackSwan 2019) 50.

⁷⁵*Narmada Bachao Andolan v Union of India* (2000) 10 SCC 664, para 122 (dissent of Bharucha J); *A P Pollution Control Board v Prof M V Nayudu* (1999) 2 SCC 718, para 32; *Vellore Citizens’ Welfare Forum v Union of India* (1996) 5 SCC 647, paras 11–14.

dilutes the precautionary principle and rewards the violators.⁷⁶

The Compensatory Fallacy: The idea of Compensatory Afforestation also dilutes the precautionary principle and proportionality principle.

The destruction of forests is instant and irreversible. While the compensation ruled out by courts is deferred, uncertain, and ecologically inferior.⁷⁷

Thus, we can clearly say this that the balanced approach of the courts is often permitting the destruction of non-substitutable natural resources with a financial substitute which is not sustainable in future run.⁷⁸

(2). Influence of Capitalism and Developmental Agenda

There is a huge pressure from the capitalists on the government to relax various rules and regulations for giving environmental clearances to them.⁷⁹

Profit Over Planet: Rewarding Illegality (Ex Post Facto Clearances): The judiciary's willingness to grant the retrospective environmental clearances (Ex Post Facto ECs) are a matter of great concern for the protection of Environment in India.⁸⁰

As we can see from many case laws like the recent one in Confederation of Real Estate Developers of India (CREDAI) v. Vanashakti and Another (2025)⁸¹, supreme court granted retrospective environmental clearance to CREDAI, prioritizing Economic Benefits over Ecology. This type of retrospective approvals after the project has already started or finished the construction, are a clear concession to developers. The strict law for environmental protection in the activist phase is now becoming a negotiable penalty with retrospective

⁷⁶Vanashakti v Union of India 2025 SCC OnLine SC 1139 (16 May 2025), paras 88–97 (Oka and Bhuyan JJ); Vanashakti v Union of India 2025 SCC OnLine SC 1139, para 102 (ex-post facto EC as alien to Indian jurisprudence).

⁷⁷IPCC, Climate Change 2022: Impacts, Adaptation and Vulnerability (Working Group II Contribution to the Sixth Assessment Report, CUP 2022) ch 2; Madhav Gadgil, Ecological Journeys: The Science and Politics of Conservation in India (Permanent Black 2001) 168.

⁷⁸Herman E Daly and Joshua Farley, Ecological Economics: Principles and Applications (2nd edn, Island Press 2011) ch 5; Manju Menon and Kanchi Kohli, Pollution and Predicament: A Decadal Inquiry into the Performance of Environment Regulation in India (Sage 2018).

⁷⁹Manju Menon and Kanchi Kohli, 'India's Environment Clearance Process: Captured by Capital' (2020) 55(34) EPW 22; Anand Grover and others, Environmental Regulation in India: Walking a Tightrope (LawAsia 2021) ch 3; Sunita Narain, Conflicts of Interest: My Journey Through India's Green Movement (Penguin 2017) 211.

⁸⁰Common Cause v Union of India (2017) 9 SCC 499; Alembic Pharmaceuticals Ltd v Rohit Prajapati (2020) 17 SCC 157; Electrosteel Steels Ltd v Union of India 2021 SCC OnLine SC 1247; Ministry of Environment, Forest and Climate Change, Notification SO 804(E) dated 14 March 2017; Ministry of Environment, Forest and Climate Change, Office Memorandum dated 7 July 2021 (Standard Operating Procedure for handling violation cases under the EIA Notification).

⁸¹Confederation of Real Estate Developers' Associations of India v Vanashakti 2025 INSC 1326 (18 November 2025).

approval.⁸²

Justice Bhuyan dissented in this case of (CREDAI) v. Vanashakti and Another (2025). He said

“precautionary principle is the cornerstone of environmental jurisprudence” and also emphasized that there is no legal concept of ex-post facto environmental clearance.⁸³

(3). The Role of Corruption, Bribery and Capturing of Regulatory Authorities:

As we know, the environmental clearance process involves various steps and permissions, which also creates scope for corruption. This is the major loophole in the environmental clearance process. Bribes to politicians and bureaucrats also circumvent the regulations resulting in the speedy approvals.⁸⁴

The Global Precedent: Ecology Over Economy Works : There are also some countries and regions that clearly shows the importance of Ecology over Economy by non-negotiable constitutional goal or by a fundamental policy.⁸⁵

VI. BHUTAN: CONSTITUTIONAL PROVISION FOR CONSERVATION OF FORESTS

Bhutan is the world's leading example of “Ecology First” approach:

- **Carbon Negative Status:** Bhutan is officially the world's first carbon-negative country. It means that in Bhutan, the absorption of Carbon dioxide (CO₂) is higher than its emission in the country. Primary carbon sink for high absorption of CO₂ is the Bhutan's Forests.⁸⁶

⁸²CREDAI v Vanashakti 2025 INSC 1326 (Gavai CJ and Chandran J; Bhuyan J dissenting); ‘Supreme Court Recalls Vanashakti Judgment Restricting Post-Facto Environmental Clearances Through 2:1 Majority; Justice Bhuyan Records Dissent’ LiveLaw (18 November 2025) <<https://www.livelaw.in>> accessed 13 May 2026; ‘By 2:1 majority, SC recalls Vanashakti verdict; restores retrospective environmental clearances’ The Tribune (New Delhi, 18 November 2025) <<https://www.tribuneindia.com/news/india/sc-by-21-majority-recalls-verdict-barring-post-facto-green-clearances-justice-bhuyan-dissents/>> accessed 13 May 2026; Ritwick Dutta, ‘No Free Rides: The Ex-Post Facto Environmental Clearance Debate’ India Together (2022) <<https://indiatogether.org>> accessed 13 May 2026.

⁸³CREDAI v Vanashakti 2025 INSC 1326, para 49 (Bhuyan J dissenting) (‘precautionary principle is the cornerstone’); CREDAI v Vanashakti 2025 INSC 1326, para 50 (Bhuyan J dissenting) (polluter pays only a principle of reparation); CREDAI v Vanashakti 2025 INSC 1326, para 47 (Bhuyan J dissenting) (‘step in retrogression’); Debayan Roy, ‘Review judgment a step in retrogression: Justice Ujjal Bhuyan dissents on retrospective EC’ Bar and Bench (18 November 2025) <<https://www.barandbench.com/news/litigation/review-judgment-a-step-in-retrogression-justice-ujjal-bhuyan-dissents-on-retrospective-ec>> accessed 13 May 2026.

⁸⁴Comptroller and Auditor General, Performance Audit on Environmental Clearance and Post-Clearance Monitoring (Report No 39 of 2016); Manju Menon and Kanchi Kohli, Pollution and Predicament: A Decadal Inquiry into the Performance of Environment Regulation in India (Sage 2018); Transparency International India, India Corruption Study 2019: Public Services and Environmental Governance (TII 2020).

⁸⁵United Nations Environment Programme, Global Environment Outlook GEO-6: Healthy Planet, Healthy People (CUP 2019) ch 22; Cormac Cullinan, Wild Law: A Manifesto for Earth Justice (2nd edn, Green Books 2011) ch 7.

⁸⁶Royal Government of Bhutan, Bhutan's Second Nationally Determined Contribution (UNFCCC 2021); United Nations Development Programme, Bhutan: A Carbon Negative Country (UNDP 2020); Tshering Tobgay, ‘This Country isn't just carbon-neutral — it's carbon-negative’ (TED Talk, February 2016); Tashi Wangdi and others,

- **Constitutional Mandate:** There also a provision in the Bhutanese Constitution that mandates for at least 60% forest cover in the country at all time.⁸⁷

The Lesson from Bhutan: Bhutan's Carbon negative status shows that the political will is very important to implement a strict, non-negotiable principle.

Rather than destroying the environment, Bhutan successfully directs the economic development in a sustainable way for long term benefits and growth.⁸⁸

Europe gradually phasing out hazardous activities

The European Union (EU) countries are continuously adopting legislations that strictly phasing out the hazardous environmental activities.⁸⁹ EU is now more focussing on implementing Precautionary Principle.

Phasing Out Polluting Vehicles: The European Union has now set a target to phase out new CO₂-emitting cars and vans by 2035. This is a clear move by EU to eliminate a major source of urban air pollution. Policy of Compensation will totally ruled out in the coming years.⁹⁰

Strict Chemical Bans: Directives for example like RoHS (Restriction of Hazardous Substances), bans the use of certain heavy metals (Ex.- lead and cadmium) in electronics manufacturing sector. EU is more interested in eliminating the hazard at the source rather than relying on compensation⁹¹

These examples clearly shows that a non-negotiable limit can be placed on environmental

'Bhutan's Forests as a Carbon Sink: Evidence from Long-term Monitoring' (2020) 11(8) Forests 891.

⁸⁷Constitution of the Kingdom of Bhutan 2008, art 5(3); Constitution of the Kingdom of Bhutan 2008, art 5(1) (Bhutanese citizen's environmental duty); Department of Forests and Park Services, National Forest Inventory of Bhutan: Stocktaking Nation's Forest Resources (Royal Government of Bhutan 2018).

⁸⁸Earth.Org, 'Bhutan: The First Carbon Negative Country in the World' Earth.Org (2023) <<https://earth.org/bhutan-carbon-negative-country/>> accessed 13 May 2026; JSW Law (Jigme Singye Wangchuck School of Law), 'How Bhutan Embedded Environmental Protection in Its Laws' JSW Law Bhutan (October 2025) <<https://jswlaw.bt/how-bhutan-embedded-environmental-protection-in-its-laws/>> accessed 13 May 2026; Centre for Bhutan Studies and GNH Research, Gross National Happiness Survey 2015: A Compass Towards a Just and Harmonious Society (CBS 2016).

⁸⁹Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47, art 191; European Commission, European Green Deal COM(2019) 640 final, 11 December 2019; European Commission, 'Fit for 55: Delivering the EU's 2030 Climate Target on the Way to Climate Neutrality' COM(2021) 550 final.

⁹⁰Regulation (EU) 2023/851 of the European Parliament and of the Council of 19 April 2023 amending Regulation (EU) 2019/631 [2023] OJ L110/5, art 1(2) (100% emission reduction target); European Commission, 'CO₂ Emission Performance Standards for Cars and Vans' (Climate Action) <https://climate.ec.europa.eu/eu-action/transport-decarbonisation/road-transport/cars-and-vans_en> accessed 13 May 2026; European Commission, 'EU Deal to End Sale of New CO₂ Emitting Cars by 2035' (Press Release IP/22/6462, 28 October 2022) <https://ec.europa.eu/commission/presscorner/detail/en/ip_22_6462> accessed 13 May 2026.

⁹¹Directive 2011/65/EU of the European Parliament and of the Council on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (Recast) [2011] OJ L174/88, art 4(1) and Annex II; Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) [2006] OJ L396/1; Case C-127/02 Waddenvereniging and Vogelbeschermingsvereniging [2004] ECR I-7405.

destruction. This model leads to sustainable development rather than relying on compensatory measures.⁹²

VII. SOLUTIONS AND MINIMIZING LOOPHOLES: FROM DECISION TO IMPLEMENTATION

The core challenge lies in the gap between the judicial decree and its implementation on the ground. To Minimize the loopholes, we must review the entire current approaches being adopted in the system. A reform is needed to be done in the judicial and administrative process.⁹³

A. Strengthening the Pre-Decision Process of clearance (EIA and its Transparency)

The first step involves the reformation in the clearance process for any project.

- **Robust and Independent Environmental Impact Assessments (EIAs):** EIA must be fair, truly independent, transparent and technically sound.⁹⁴ It must also include the local/indigenous community knowledge (Recognition of Forest Rights Act, 2006) for any decision to be taken.⁹⁵ EIA must assess the environment harm and publish its report before taking any decision. EIA's decision for any project must be based on the principles of Sustainable Development.
- **Mandatory Cost-Benefit Analysis (CBA):** CBA must also include the non-monetizable ecological costs and social costs (displacement, livelihood loss). Projects should be allowed only the net social and environmental benefit outweighs the harm going to be done to environment.⁹⁶

⁹²Joanne Scott, *EU Environmental Law* (2nd edn, OUP 2022) ch 4; Maria Lee, *EU Environmental Law, Governance and Decision-Making* (3rd edn, Hart Publishing 2020) 89; United Nations Environment Programme, *Global Environment Outlook GEO-6: Healthy Planet, Healthy People* (CUP 2019) ch 22.

⁹³Geetanjoy Sahu, 'Implementation of Environmental Judgments in Context' (2010) 6/3 LEAD Journal 335; Centre for Policy Research, *Re-imagining Environmental Governance in India* (CPR 2021).

⁹⁴Ministry of Environment and Forests, *EIA Notification 2006*, SO 1533(E) dated 14 September 2006; Ministry of Environment, Forest and Climate Change, *Draft Environmental Impact Assessment Notification 2020*, SO 1199(E) dated 23 March 2020; Kanchi Kohli, Manju Menon and Vikal Samdariya, *Reading Down EIA 2020: Concerns over the Draft Notification* (Centre for Policy Research 2020); Legal Initiative for Forest and Environment, 'Re: Draft EIA Notification 2020 — Comments and Suggestions' (LIFE, August 2020) <<https://www.lifeindia.net>> accessed 13 May 2026.

⁹⁵Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, ss 3, 4 and 5; *Orissa Mining Corporation Ltd v Ministry of Environment and Forest* (2013) 6 SCC 476; Ministry of Tribal Affairs, *Annual Report 2022-23* (Government of India 2023) ch 6; Campaign for Survival and Dignity, *Promises Broken: A Status Report on the Forest Rights Act* (CSD 2018).

⁹⁶Partha Dasgupta, *The Economics of Biodiversity: The Dasgupta Review* (HM Treasury 2021) ch 4; Robert Costanza and others, 'The Value of the World's Ecosystem Services and Natural Capital' (1997) 387 *Nature* 253; Edward B Barbier, *Marine Resource Economics and Policy* (Cambridge University Press 2017) 178.

B. Must Improve Judicial and Institutional Capacity

- **Empowering the National Green Tribunal (NGT):** NGTs must be fully independent and empowered with human, financial, and technical resources and also with transparency in the decision-making process.⁹⁷ NGTs must assess the environmental harm going to be done in a critical way.
- **Developing Judicial Expertise:** Judges should also be given training in ecological sciences, environmental economics, and deep study of all the environment related statutes.⁹⁸

C. Enforcement and Accountability Must be Enhanced (Solutions to Implementation Loopholes/Gaps)

This is the main critical area which is to be reformed effectively.

- **Independent Monitoring Agencies:** Creation of Independent agencies at the national level. These agencies must be separated to CEC. These agencies should be given investigative and punitive powers. The CAMPA structure must be strengthened so that it can also check and track environmental compliances and implementation of court orders.⁹⁹
- **Criminal Accountability:** There must be strict criminal liability which will hold senior executive/bureaucratic officials and corporate officers liable for any Non-compliance with any environmental laws, principles, and court orders also.¹⁰⁰
- **Geo-Spatial Governance:** there must be a monitoring of forest and compensatory afforestation sites sensitive areas by satellites and GIS mapping for real-time data on

⁹⁷National Green Tribunal Act 2010, preamble and ss 14, 20; Gitanjali Nain Gill, Environmental Justice in India: The National Green Tribunal (Routledge 2017) ch 3; Bhupinder Singh Chimni, 'Reforming the National Green Tribunal' (2020) 32(2) Journal of Environmental Law 305; Goa Foundation v Union of India (2014) 6 SCC 590.

⁹⁸National Judicial Academy, Module on Environmental Law and Adjudication: Curriculum Framework (NJA 2021); TSR Subramanian and others, Report of the High Level Committee to Review Various Acts Administered by Ministry of Environment, Forests and Climate Change (Government of India 2014).

⁹⁹Compensatory Afforestation Fund Act 2016, ss 3–7; Comptroller and Auditor General, Performance Audit Report on Functioning of Compensatory Afforestation Fund Management and Planning Authority, Uttarakhand for year ended 31 March 2022 (Report No 5 of 2024) <<https://cag.gov.in>> accessed 13 May 2026; TSR Subramanian and others, Report of the High Level Committee to Review Various Acts Administered by Ministry of Environment, Forests and Climate Change (Government of India 2014).

¹⁰⁰Environment (Protection) Act 1986, ss 15–17; Air (Prevention and Control of Pollution) Act 1981, s 37; Water (Prevention and Control of Pollution) Act 1974, ss 41–46; Jan Vishwas (Amendment of Provisions) Act 2023, sch (amending EPA, Air Act, Indian Forest Act, PLI Act); Sairam Bhat and Jaibatraka Mohanta, 'Quasi-Decriminalisation in Environmental Laws in India: An Evaluation' CEERA, NLSIU (2024) <<https://ceerapub.nls.ac.in/quasi-decriminalisation-in-environmental-laws-in-india-an-evaluation/>> accessed 13 May 2026.

any changes in the forest cover. Its report should also be published and put in the public domain regularly.¹⁰¹

- **Public Participation and Amicus Curiae:** Role of citizens and Expert NGOs are also very important in informing the illegal activities happening in their areas. Various NGOs should be made amicus curiae (friends of the court) which will also monitor and give feedback in the judicial process.¹⁰²
- **Role of Media:** Media coverage should be allowed freely without any restrictions and if needed by media persons, police protection must be given to them.¹⁰³

VIII. CONCLUSION

The whole conclusion lies on one main thing, where the fine line of balance to be drawn by Indian Judiciary between the Environmental harm and Economic benefits?

During the late 20th century, judiciary was in activist phase mainly focussing on the Article 21 of the constitution of India i.e. Right to life and personal liberty by making Right to a healthy environment a part of it.

Initially court stops the project if it has any threat to environment. But now the shift is changing very fast from activist to balanced and now from balanced approach to more inclined approach to “Economic benefits”. When we see the today’s judgments like (CREDAI) v. Vanashakti and Another (2025), we genuinely feel like What is happening in the judicial process today? The balanced approach which was based on guiding principles of Sustainable Development, now this approach is gradually shifting to the approach for ‘economic benefits. In (CREDAI) v. Vanashakti, 2025 judgment, supreme court allowed the illegal construction related to environmental harm, and in simple words rule of law and the Precautionary Principle is diluted to protect the financial interests arising from illegal construction. Supreme Court Judge, Justice Ujjal Bhuyan in the above case, i.e., (CREDAI) v. Vanashakti, 2025, clearly said that “*precautionary principle is the cornerstone of environmental jurisprudence in India, while the polluter pays principle is only a principle of reparation*”. Justice Ujjal Bhuyan called the judgment of this case, “*a step of retrogression.*”

¹⁰¹Forest Survey of India, Use of Remote Sensing and GIS in Forest Cover Assessment (FSI 2022); Forest Survey of India, Manual of Instructions: ISFR Methodology (FSI, Dehradun 2021).

¹⁰²T N Godavarman Thirumulpad v Union of India (1997) 3 SCC 312 (appointment of Harish Salve as Amicus); Sanjay Upadhyay, ‘Public Interest Environmental Litigation: Exploring the Limits of Legal Activism’ (2009) 51(2) Journal of the Indian Law Institute 232; Right to Information Act 2005, s 4 (proactive disclosure).

¹⁰³Sunita Narain, ‘Press Freedom and the Environment’ Down to Earth (15 May 2021) <<https://www.downtoearth.org.in>> accessed 13 May 2026; Press Council of India, Norms of Journalistic Conduct (PCI 2020) ch 8.

The path of environmental jurisprudence in India from the judicial activism stance to the balanced stance of today highlights the various challenges and loopholes in the developing economy. From the activist phase of focussing on fundamental right to a healthy environment to the current 'balanced' stance, we find that environment is often ignored for favouring the economic benefits of the government and Capitalists.

The research paper confirms that with the evolution of sophisticated concepts for example- the principle of proportionality, the main concern remains the same:- Who will be responsible for the irreversible destruction of environment and how this irreversible destruction of environment be reversed which take centuries to develop? and when we see the current balancing approach adopted by courts in today's era with more inclination to 'economic benefits', it is almost impossible to reverse back the damage done to environment. The current approach towards the environment as adopted by courts today, are basically undermining the value of natural resources of the country.

There is an immediate need for strict environment protection laws in India. And for effective implementation of environmental laws, there is a need for transparent, neutral and effective judicial process in the country. Presently, India is lacking all of the above, from strict environment protection laws to their effective on ground implementation.

Courts must resist all kinds of political pressures which often results in the compromise in the judicial decisions, ensuring that the Public Trust Doctrine is strictly enforced. Retrospective Environment Clearances (EC) must be banned by the courts. The focus of the Indian judiciary must shift from 'balancing economic interests of capitalists' to protecting the environment at any cost. Courts are also required to give decisions on the guiding principles of sustainable development. Courts must re-establish themselves as the ultimate guardian of the nation's forests and ecology.

Most of the loopholes in the existing system can be minimized by reforming the whole system of EIA process. When looking at the present vulnerable state of forests and ecology in India, there is a much greater need for the re-adoption of strict precautionary principle aligning with the concept of 'ecology over economy' in the judicial process of the country. By re-adopting these principles by the courts, sanctity of the 'Public Trust Doctrine' can be restored and every citizen of the country will get assurance that their 'Right to a Wholesome/Healthy Environment' is not financially compromised.

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