



Environmental clearance process in India: Loopholes and Judicial Interpretations

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Abstract

The environmental clearance (EC) regime in India—centered on the Environmental Impact Assessment (EIA) framework—aims to balance developmental needs with ecological protection. Over three decades the EIA process has evolved from a largely procedural checklist into a politically salient and legally contested institution. Despite this progress, persistent loopholes undermine substantive environmental protection: retroactive or ex-post facto approvals; weak public consultation and information disclosure; institutional overlap and regulatory capture; narrow scoping that excludes cumulative and indirect impacts; and poor monitoring and enforcement after clearances are granted. These weaknesses create incentives for project proponents to commence activities prior to statutory compliance, shift burdens of proof to civil society, and allow environmental harms to become entrenched before remedial measures are required. Recent judicial interventions have both constrained and clarified the EC regime: courts have enforced stricter standards for public participation, curtailed unauthorized ex-post facto regularizations, and emphasized precautionary and polluter-pays principles, while also recognizing limits on judicial policymaking.

This paper analyses the structural and procedural loopholes in India's clearance mechanism, maps the institutional actors and normative tensions, and examines landmark judicial pronouncements that shape contemporary practice. Using official reports, air/forest metrics, peer-reviewed critiques and recent case law, the study argues that legal reform without parallel institutional strengthening and transparent governance will be insufficient. The paper concludes with targeted recommendations: eliminate legalized amnesties, strengthen early-stage scoping and cumulative impact assessment, institutionalize independent post-clearance compliance monitoring, digitize and standardize public disclosures, and create clearer accountability pathways between central/state authorities and implementing agencies. Implemented together, these measures can make ECs a genuine environmental safeguard rather than a procedural formality.

Keywords: Environmental impact assessment; environmental clearance; ex-post facto approvals; public participation; judicial oversight

Introduction

Environmental governance in India operates at the fraught intersection of rapid economic development, heterogeneous ecosystems, dense population pressures, and a robust — albeit contested — legal framework. Since the first formal Environmental Impact Assessment (EIA) regime emerged in the 1990s, environmental clearance (EC) processes have been the principal legal instrument regulating how large projects (mining, infrastructure, industry, energy) proceed in ecologically sensitive and populated landscapes. The EC regime performs three linked functions: (1) anticipatory screening to identify whether a project may cause significant environmental impacts; (2) informed decision-making through scoping, impact analysis and public consultation; and (3) post-clearance monitoring and enforcement to ensure mitigation and compliance.

In practice, however, these functions have often been undermined by procedural shortcuts, administrative discretion, information asymmetries, and governance gaps that favor expedient approvals over precautionary protection.

A central tension in India's EC system lies between development imperative and environmental stewardship. Rapid infrastructural growth and resource extraction have been viewed by policymakers as essential to economic objectives—employment generation, energy security, connectivity—while environmental regulation is frequently characterized in political discourse as a potential bottleneck. This tension is mediated through law and institutions: The

Ministry of Environment, Forest and Climate Change (MoEFCC), state environment departments, expert committees, and tribunals such as the National Green Tribunal (NGT) and the Supreme Court.

The legal architecture—principally the EIA Notification and related rules—sets procedural steps and substantive expectations; yet the effectiveness of law depends heavily on institutional capacity, transparency, and civic engagement.

Over time, multiple loopholes have been identified which limit the EC regime's capacity to prevent environmental harm.

First, the allowance or practical occurrence of post-facto or ex-post facto clearances—where projects commence construction prior to statutory EC and seek subsequent regularization—erodes the precautionary principle and invites non-compliance as a risk-management strategy for project proponents.

Second, public consultation, a cornerstone of participatory environmental governance, is often perfunctory: scoping documents may inadequately disclose impacts; hearings are poorly timed or publicized, and marginalized communities lack effective legal and technical support to contest proposals.

Third, scoping and impact assessment methodology can be narrow—focusing on site-specific, proximate effects while neglecting cumulative, regional, or indirect impacts (for instance, downstream riverine effects, landscape fragmentation, or community displacement).

Fourth, institutional overlaps and inconsistent standards across central and state bodies create opportunities for forum shopping and regulatory capture.

Fifth, post-clearance monitoring and enforcement are weak: compliance conditions attached to ECs are not always independently monitored, reliance on self-reporting dilutes accountability, and penalties for violations are insufficiently deterrent.

These procedural and institutional deficiencies are not merely technical; they generate distributive and intergenerational consequences. Projects approved without rigorous cumulative assessment can degrade air and water quality, fragment habitats, displace livelihood systems, and lock in carbon-intensive infrastructure. Vulnerable communities—tribal populations, fisher folk and peri-urban residents—face disproportionate risks, with limited access to information and redress.

Furthermore, environmental harm externalizes costs onto public health systems and future generations, undermining the sustainability of development itself.

Judicial institutions have been repeatedly called upon to address these governance failures. Indian courts have developed a robust environmental jurisprudence that borrows from global principles such as precaution, intergenerational equity, and the polluter-pays doctrine. Courts have intervened to protect forests and wetlands, ordered rehabilitation for affected communities, and struck down unlawful clearances.

Yet judicial remedies have limits; courts often adjudicate on a case-by-case basis and cannot substitute for systematic institutional reforms.

Indeed, heavy reliance on litigative correction risks judicializing policy and may create uncertainty for legitimate projects that comply with stricter, well-defined rules.

Recent developments have intensified scrutiny of the EC regime. Critiques of the EIA Notification and subsequent amendments have highlighted tendencies toward procedural dilution, proposed relaxations for post-hoc approvals, and inadequate safeguards for public participation. Empirical studies and civil society report document how weak monitoring and data opacity compound the problem: baselines data are sometimes unreliable, monitoring networks are insufficiently dense, and environmental information portals are under-utilized or inconsistently updated. At the same time, official metrics show mixed environmental signals—modest gains in measured forest and tree cover coexist with persistent air and water quality problems in many urban and industrial corridors.

This ambivalence underscores the need to examine the EC process not merely as a legal text but as a socio-institutional system that must integrate science, public reason, and administrative integrity.

This paper proceeds in four parts. After this introduction, the next section summarizes the current environmental status in India, drawing on national reports and international assessments to provide an empirical baseline for discussion. The subsequent section critically examines government policies and recent judicial decisions shaping the EC regime, focusing on how courts have responded to ex-post facto approvals, public consultation failures, and monitoring lacunae. The final section diagnoses core loopholes and offers targeted, actionable recommendations to strengthen EC processes—grounding legal reform in institutional

capacity building, transparency, and meaningful public participation. The objective is pragmatic: to propose reforms that make ECs effective environmental safeguards rather than procedural formalities that rubber-stamp harmful projects.

Current Status of Environment in India

India's environmental status as of recent national and international assessments is mixed: incremental gains in certain indicators coexist with persistent or worsening trends in others. Official forest data report that combined forest and tree cover accounts for about 25.17% of India's geographical area, with modest net gains between reporting periods but worrying declines in dense forest patches and regional disparities in the northeast and mangrove loss in specific pockets. At the same time air-quality metrics place several Indian cities among the world's most polluted, with national average PM_{2.5} concentrations substantially above WHO guideline levels and urban hotspots experiencing acute seasonal spikes; national programmes such as the National Clean Air Programme (NCAP) have registered improvements in select cities but uneven progress overall. Water quality and freshwater stress remain serious concerns: many rivers and aquifers suffer pollution from industrial effluents, agricultural runoff and inadequate sewage treatment, affecting both human health and aquatic biodiversity. Biodiversity indicators show localized threats to endemic species from habitat loss, fragmentation and illegal extraction, even as protected area networks expand nominally. Climate vulnerabilities—glacier retreat in the Himalaya, intensifying monsoon variability, and an increase in heat wave frequency—compound existing pressures, making integrated land-use planning and rigorous impact assessment more urgent than ever.

Government Policies and Judicial Decisions on Environment in Current Scenario

The government's environmental policy architecture combines statutory rules (EIA Notification and related laws), national programmes (NCAP, river cleaning and afforestation drives), and administrative institutions (MoEFCC, state environment departments, and specialized expert committees). While policy initiatives seek to mainstream environmental considerations into development planning, recent reforms and notifications—most notably the EIA 2020 draft and subsequent regulatory moves—have been criticized by academics and civil society for proposing relaxations that could enable ex-post facto regularizations and narrow public consultation, thereby weakening safeguards. The judiciary has increasingly intervened to fill enforcement gaps: landmark rulings in 2025 and earlier struck down governmental amnesties for post-facto environmental clearances and reinforced the necessity of lawful EIA procedures, emphasizing the precautionary principle and rejecting normalization of non-compliance. Tribunals and courts have also insisted on meaningful public consultation, independent monitoring of post-clearance conditions, and adherence to polluter-pays accountability. Nonetheless, judicial oversight cannot fully substitute for institutional reform; courts have remedied specific instances of maladministration but systemic change will require legislative clarity, empowered independent monitoring mechanisms, better data transparency, and capacity building at state and local levels.

Conclusion

The environmental clearance process in India remains a critical but contested mechanism for balancing development and ecological protection. While the framework exists in law, its efficacy is weakened by loopholes such as post-facto approvals, weak monitoring, limited public participation, and institutional overlap. Judicial interpretations have played an essential role in curbing unlawful clearances, strengthening participatory rights, and affirming the precautionary and polluter-pays principles. Yet courts alone cannot secure sustainable outcomes; systematic reform is necessary. Moving forward, India must eliminate ex-post facto amnesties, strengthen early-stage scoping and cumulative impact assessments, establish independent monitoring bodies for compliance, ensure full transparency in public disclosures, and enhance accountability between central and state authorities. Only through these reforms can the EC regime transition from a procedural formality to a substantive safeguard that protects both present and future generations.

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