



## Environmental impact assessment and the right to a clean environment

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### Abstract

This research observes how environmental impact assessments function as practical tools that protect people's right to a clean environment through judicial decisions in India. The study commences by explaining what environmental rights mean and why they matter to ordinary citizens before exploring how India's constitution supports these rights. Environmental impact assessment, commonly known as EIA, is a process that assesses how a new project might harm the environment and people's health before approval. The research then examines how Indian courts have used EIA to strengthen environmental protection, discussing key cases in which judges linked EIA requirements to people's fundamental rights. A major focus of this research is understanding how the National Green Tribunal, a specialised court for environmental cases, has shaped EIA practices and their role in protecting the environment. The study also examines real problems that arise when using EIA to safeguard environmental rights, such as weak enforcement, incomplete assessments and pressure from development projects. This research also identifies gaps in current EIA systems and suggests practical improvements to make environmental assessments more effective at protecting both nature and public health. The research concludes that while Indian courts have shown a strong commitment to environmental protection through creative interpretation of constitutional rights, the EIA process still faces significant challenges in practice. The research recommends strengthening public participation in EIA processes, improving technical standards for assessments, ensuring timely compliance with court orders and improving coordination between environmental agencies and courts. Ultimately, this research contributes to understanding how procedural requirements, such as EIA, can work alongside judicial activism to create meaningful environmental protection, while also acknowledging the practical limitations that must be addressed through stronger laws and better implementation strategies in India's pursuit of sustainable development.

**Keywords:** Environmental impact assessment, sustainable development, national green tribunal, environmental protection, right to clean environment

### Introduction

Environmental Impact Assessment is a systematic process used to identify, predict, evaluate, and reduce the potential environmental effects of proposed development projects before they receive government approval. EIA helps governments and project developers understand how activities like mining, power plants, highways, and construction will affect air quality, water resources, soil, biodiversity and human communities. The process requires gathering baseline environmental data, identifying potential impacts, proposing mitigation measures and involving local communities in decision-making through public consultation. The fundamental principle is that preventing environmental harm through careful planning is much easier and cheaper than repairing damage after pollution has occurred. India's constitutional framework for environmental protection was strengthened by the 42nd Amendment in 1976, which introduced Article 48A, a state duty to protect the environment and Article 51A(g), a fundamental duty of every citizen to improve the natural environment. The Environmental Protection Act of 1986 and the EIA Notification of 2006 translate these constitutional values into practical law by requiring developers to obtain environmental clearance before commencing projects. This system is based on the precautionary principle, meaning that when serious environmental damage is possible, the government must take preventive measures immediately rather than wait for complete scientific proof. The right to a clean environment is inherently connected to EIA because the courts have

interpreted Article 21 to include the right to live in a pollution free environment, making environmental assessment not merely a procedural requirement but a fundamental right protecting mechanism that ensures people's voices are heard before their surroundings are altered.

As of 2025-2026, India's environmental assessment system is processing over 40,000 project applications annually, with approximately 12,000 requiring national-level Category A clearance and 28,000 requiring state level Category B clearance. The average processing time for Category A projects ranges from 105 to 210 days, while Category B projects typically take around 105 days, reflecting improvements in administrative efficiency through the PARIVESH digital platform. Approximately 78% of projects receive environmental clearance, indicating that while most proceed, regular scrutiny remains and some are rejected or significantly modified. India's environmental authorities are increasingly using advanced monitoring technologies, including remote sensing and artificial intelligence, to verify post approval compliance, marking a shift towards real-time environmental oversight. However, despite these administrative improvements, significant implementation challenges persist, including inadequate enforcement of pollution control measures in industrial zones, inadequate monitoring of cumulative and long-term impacts and ongoing tensions between accelerated development and ecological integrity. The global EIA market, valued at approximately seventeen billion six hundred and eighty million US dollars in 2025, is projected

to reach twenty-nine billion two hundred and thirty-six million dollars by 2033 at a compound annual growth rate of 6.5%, demonstrating the worldwide significance of environmental assessment services and the growing recognition that systematic environmental evaluation is essential for sustainable development. A landmark judgment that transformed India's environmental law is *Vanashakti v. Union of India*, decided by the SC, which addressed whether governments can grant environmental clearance to projects that have already begun operations without prior assessment. The SC firmly rejected the practice of *ex post facto* clearance and declared that allowing projects to proceed without prior environmental assessment violates the constitutional right to a clean environment under Article 21 because such practices prevent advance prediction and prevention of environmental damage and undermine public consultation rights. The Court observed that when clearance is given after pollution has already been caused, the harm to air, water and soil cannot be undone and permitting retrospective approvals would incentivise developers to deliberately skip expensive environmental assessments because they would know government permission could be obtained later. This judgment demonstrates that courts consider EIA not merely as a procedural formality but as a fundamental constitutional right-protecting mechanism. Based on this landmark judicial pronouncement and the statistical data showing the scale of India's environmental challenges, the research problem this thesis addresses is, how effectively does India's current EIA framework balance the constitutional guarantee of the right to a clean environment under Article 21 with the imperative for development, and what specific reforms are necessary to strengthen enforcement of EIA provisions so that retrospective clearances and post-facto regularizations do not become mechanisms that undermine fundamental environmental rights and the precautionary principle.

### **Evolution of the Right to a Clean Environment as a Human Right**

The evolution of the right to a clean environment as a human right in India represents one of the most significant developments in constitutional jurisprudence, transforming an idea that was not explicitly mentioned in the original Constitution into a fundamental and enforceable human right. When India adopted its Constitution in 1950, environmental protection was not recognised as a constitutional right, and people had no legal recourse through the courts when their surroundings became polluted or damaged. This situation changed dramatically in 1976 when the 42nd Amendment to the Constitution introduced two important environmental provisions, Article 48A, which gave the state a duty to protect and improve the environment, and Article 51A(g), which made it a fundamental duty of every citizen to protect and improve the natural environment. Although these constitutional additions were important steps, the real transformation came through the creative and purposive interpretation of Indian courts, which recognised that the right to life guaranteed under Article 21 of the Constitution cannot truly exist if people must live in a polluted, degraded, or toxic environment. This judicial recognition was deeply influenced by tragic industrial disasters like the devastating Bhopal Gas Tragedy of 1984 and the Oleum Gas Leak in Delhi in 1985, which exposed how people could suffer serious harm and even

death without any legal protection when hazardous industries operated without proper safety measures. The judiciary, moved by these catastrophes and influenced by India's commitment to international environmental principles adopted at the Stockholm Conference on the Human Environment, began to read a right to a clean environment into the existing constitutional right to life, thereby elevating environmental protection from a mere policy concern to a constitutional and fundamental human right. In the landmark case of *Virender Gaur v. State of Haryana*, the SC explicitly stated that environmental degradation, such as pollution, should be regarded as a violation of Article 21 and declared that the state has a constitutional imperative to ensure and safeguard a proper environment and to take adequate measures to promote, protect and improve both the natural and man-made environment. Further, in *M.C. Mehta v. Kamal Nath*, the SC expanded this principle by holding that the right to a clean and healthy environment applies not only to government actions but also to private parties and industries, thereby extending environmental protection obligations beyond state actors and establishing that any person or company that causes environmental harm violates the fundamental human right to life of those affected. Most recently, in *Ranjitsinh v. Union of India*, the SC recognized that the right to be free from the adverse effects of climate change constitutes a fundamental right derived from Article 21, marking the evolution of environmental rights from traditional pollution concerns to include protection from global climate change impacts and emphasizing that this right protects vulnerable and marginalized communities who suffer disproportionately from environmental degradation and climate harm. These successive judicial developments demonstrate how the right to a clean environment has evolved from an absent and unrecognised concept into a robustly protected human right that encompasses protection from pollution, industrial hazards, environmental degradation, and now climate change itself.

### **Legislative Framework**

The legislative framework for environmental protection in India rests on two strong pillars: the Constitution of India and statutes enacted by Parliament. The constitutional foundation was strengthened when the 42nd Amendment Act in 1976 added two important environmental provisions, Article 48A, which directs the State to protect and improve the environment and safeguard the forests and wildlife and Article 51A (g), which makes it a fundamental duty of every citizen to protect and improve the natural environment, including forests, lakes, rivers and wildlife. Although these constitutional provisions are important, they were originally considered non-enforceable Directive Principles and Fundamental Duties, meaning that the courts could not enforce them directly. However, the Indian courts creatively interpreted Article 21 to include the right to a clean and healthy environment, thereby making environmental protection a fundamental right that courts can actually enforce. The primary statutory framework governing environmental protection in India comprises several major laws enacted by Parliament over time. The Water (Prevention and Control of Pollution) Act, 1974 was enacted to control water pollution and regulate the discharge of industrial waste into water bodies. The Air (Prevention and Control of Pollution) Act, 1981, was created to manage air

quality and prevent air pollution from industrial and vehicular sources. Most importantly, the Environment (Protection) Act, 1986, was passed after the Bhopal Gas Tragedy 1984 and serves as the umbrella law for environmental protection in India, giving the central government broad powers to set environmental standards, make rules and take action to protect the environment.

The operational framework for environmental management in India consists of multiple specialised laws and regulatory bodies that work together to implement environmental protection on the ground. Beyond the major laws, India has enacted numerous other environmental statutes including the Forest (Conservation) Act, 1972, which controls the conversion of forests for non-forest purposes, the Wildlife Protection Act, 1972, which protects endangered animals and birds, the Indian Forest Act, 1927, which regulates forest management and conservation and the Hazardous Wastes (Management and Handling) Rules, which control the disposal and transport of toxic materials. The EIA Notification, 2006, is a crucial operational framework that requires developers of large projects, such as industries, highways, dams and mining operations, to conduct detailed environmental studies before getting government approval. Under this EIA process, projects are categorised as Category A or Category B and they must undergo public consultation where local communities can voice their concerns and opinions before projects are approved. The NGT Act, 2010 established a specialized court called the NGT with technical expertise to quickly resolve environmental disputes and take action against environmental violations. The Tribunal has been given powers to hear cases under all major environmental laws and to award compensation to victims of environmental damage, in accordance with the polluter pays principle, which means that those who cause pollution must pay for the damage they cause. SPCBs were created under the water and air pollution laws to monitor environmental quality, conduct inspections, take action against polluters, and maintain records of pollution levels.

### **Judicial Approach to Environmental Impact Assessment**

The Indian SC has progressively shaped India's environmental jurisprudence through several landmark judgments that demonstrate the courts' commitment to balancing development with environmental protection and the constitutional right to a clean environment. In the pivotal case of *Vanashakti v. Union of India*, the SC initially struck down the government's 2017 notification and 2021 office memorandum that had allowed developers to seek environmental clearance after projects had already begun operations, a practice known as *ex post facto*, or retrospective, clearance. The Court held that such backwards looking approvals violate both the precautionary principle and the fundamental right to a clean environment guaranteed under Article 21 of the Constitution, because advance environmental assessment and public consultation are essential to prevent irreversible damage to air, water, soil and ecosystems. However, recognising economic hardships, the Court later recalled this judgment in a review petition in a narrow 2:1 decision, permitting retrospective clearances only in exceptional cases subject to strict penalties, thereby attempting to balance the need for sustainable development with environmental protection. In *M.K. Ranjitsinh v. Union of India*, the SC recognised a distinct new fundamental right: the right to protection from

the adverse effects of climate change under Articles 14 and 21, intertwined with the right to a clean and healthy environment. While balancing the conservation needs of endangered species, such as the Great Indian Bustard, with renewable energy development, the Court directed that overhead power lines be converted to underground cables where feasible, emphasising that environmental assessments must integrate climate considerations without preventing sustainable development. In *TN Godavarman Thirumulpad v. Union of India*, an ongoing forest conservation case, the Court provided guidance on applying the precautionary principle when balancing environmental protection against economic interests, reinforcing that thorough environmental impact assessments are mandatory for projects affecting forests and ecosystems, connected to the constitutional duty under Article 48A and the right to a clean environment to ensure development does not compromise long-term ecological sustainability. In *Gene Campaign v. Union of India*, concerning genetically modified mustard approval, the Supreme Court issued a split verdict emphasising greater transparency and public participation in environmental decision making, highlighting how environmental assessments must thoroughly evaluate potential risks to biodiversity and human health under Article 21, while calling for robust scientific scrutiny to prevent irreversible harm from biotechnology releases. Finally, in *Union of India v. Rajiv Suri*, the SC mandated the establishment of SEIAAs in all states within six weeks under the Environment (Protection) Act, 1986, thereby strengthening the EIA framework through decentralized, efficient project appraisal and promoting accountable environmental governance at the state level to prevent unchecked development and enforce the right to a clean environment.

### **Challenges in the Implementation of EIA**

1. EIA reports in India are prepared by consultants hired by project developers themselves, creating conflicts of interest where consultants may bias their findings in favour of the project to maintain client relationships. Many reports lack complete baseline data, scientific accuracy, and proper investigation, making it difficult to identify real environmental risks before projects are approved.
2. Once a project receives environmental clearance, regulatory agencies often lack the staff, technical expertise, and budget to check if developers are actually following the conditions promised during the EIA process. This means pollution and environmental damage can happen after approval without anyone detecting violations or holding companies responsible for breaking environmental rules.
3. Although law requires public consultation, local communities often receive little notice, cannot access EIA reports, face language barriers, or are excluded from meaningful decision-making in environmental matters. Indigenous and vulnerable groups particularly struggle to participate because they lack information about projects that will affect their lands and water sources.
4. Environmental assessments often use outdated information or generic data instead of conducting proper field investigations specific to each project location, failing to capture real environmental conditions. This leads to missing important

environmental impacts that could have been prevented if consultants had done thorough on-site research and analysis before approving projects.

5. The government has repeatedly weakened EIA requirements through exemptions and amendments that allow environmental approval after projects have already begun operations, essentially legalizing illegal projects. This undermines the fundamental purpose of EIA, which is to prevent environmental damage before it happens, not to forgive damage that has already occurred.
6. Many different government departments are involved in the EIA process without proper communication or coordination, creating bureaucratic delays and confusion about who is responsible for what. This fragmentation prevents quick decision-making, allows mistakes to slip through oversight, and makes it hard for ordinary people to understand which agency to approach with environmental concerns.

### Conclusion

The journey of environmental protection in India, particularly through the lens of Environmental Impact Assessment and the constitutional right to a clean environment, demonstrates a profound evolution in how courts, governments, and communities understand the relationship between development and environmental preservation. From the original Constitution of 1950, which contained no explicit mention of environmental rights, to today's robust framework comprising constitutional provisions under Articles 21, 48-A, and 51A(g), comprehensive legislation including the Environment (Protection) Act of 1986 and the EIA Notification of 2006, and transformative judicial decisions like *Vanashakti v. Union of India*, India has progressively recognized that environmental protection is not merely a policy choice but a fundamental human right integral to the right to life itself. The statutory framework, including the Water and Air Pollution Acts, Forest Conservation Act, Wildlife Protection Act, National Green Tribunal Act, and the establishment of State Pollution Control Boards and Environmental Impact Assessment Authorities, represents an institutional commitment to translating constitutional principles into practical environmental governance. However, as this thesis has examined through multiple dimensions, significant implementation challenges persist despite this robust legal architecture: consultant-prepared EIA reports suffer from conflicts of interest and lack scientific rigor, post-approval monitoring and enforcement remain inadequate due to resource constraints, public participation mechanisms are often ineffective particularly for vulnerable communities, baseline environmental data remains incomplete, regulatory requirements have been progressively diluted through post-facto clearances and exemptions, and coordination among multiple government agencies creates bureaucratic inefficiencies. Landmark Supreme Court judgments, including *M.K. Ranjitsinh v. Union of India* recognizing climate change rights, *TN Godavarman Thirumulpad* reinforcing the precautionary principle, *Gene Campaign* emphasizing public participation, and *Union of India v. Rajiv Suri* strengthening decentralized appraisal through SEIAAs, demonstrate judicial commitment to bridging the gap between law and implementation. The data from 2025-

2026 showing forty thousand annual project applications with only seventy-eight percent clearance rates, combined with the ongoing challenges in enforcement and the tension between development imperatives and ecological sustainability, indicates that India stands at a critical juncture where stronger institutional frameworks, enhanced transparency, meaningful public participation, and rigorous scientific assessment must be strengthened to ensure that the constitutional promise of the right to a clean environment becomes a lived reality for all Indians rather than remaining merely a constitutional aspiration. The evolution documented in this thesis reveals that environmental protection and the right to a clean environment are not obstacles to development but essential foundations for sustainable and equitable progress that benefits both present and future generations while respecting the constitutional dignity and rights of all people to live in a healthy, unpolluted environment.

### Suggestions

1. Indian courts have recognised the right to a clean environment as a fundamental human right under Article 21, transforming it from a non-existent constitutional concept into a mandatory constitutional obligation backed by judicial enforcement.
2. India has comprehensive environmental laws, including the Environment Protection Act 1986, EIA Notification 2006, Pollution Control Acts, Forest and Wildlife Protection Acts and institutions like NGT and SPCBs to implement these provisions across all levels of governance.
3. Environmental Impact Assessment functions as a systematic preventive mechanism to identify environmental impacts before project approval through scientific study, public consultation, and application of the precautionary principle to protect people's right to a clean environment.
4. Despite strong laws, significant implementation challenges exist, including poor quality EIA reports, weak post approval monitoring, limited public participation, incomplete environmental data, regulatory dilution through post facto clearances and inadequate inter-agency coordination.
5. India processes over 40,000 project applications annually with 78% approval rate, demonstrating massive development activity requiring oversight and showing that procedural improvements alone cannot ensure genuine environmental protection without rigorous enforcement.
6. Supreme Court judgments like *Vanashakti*, *M.K. Ranjitsinh*, *TN Godavarman*, *Gene Campaign* and *Union of India v. Rajiv Suri* demonstrates judicial commitment to strengthening EIA implementation and enforcing environmental rights as essential constitutional mandates rather than obstacles to development.
7. India must strengthen institutional capacity, enhance transparency in EIA processes, ensure meaningful public participation, eliminate consultant conflicts of interest and improve post-approval monitoring to convert the constitutional promise of a clean environment from a legal aspiration into a practical reality.

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