
DOCTRINAL PURITY VS. REGULATORY PRAGMATISM: A CRITICAL ANALYSIS OF THE VANASHAKTI JUDGMENT AND ITS IMPACT ON CORPORATE ENVIRONMENTAL COMPLIANCE

S Srinivasa Sathyanarayanan, LL.M (Corporate and Commercial Law),
Christ University, Bangalore

ABSTRACT

The judgment of the Supreme Court in *Vanashakti v. Union of India* (2025 INSC 718) is a landmark case that stipulates such a doctrine and beyond that defines the principle of *ex post facto* Environmental Clearance (EC) as utterly foreign to environmental jurisprudence. This remark comments on the invalidation of the 2017 Notification and 2021 Office Memorandum by the Court, which made it easier to regularise the projects, which started to operate without EC. It holds that the ruling is legally valid, which strongly supports the precautionary principle and constitutional right to a healthy environment in Article 21. Nonetheless, a corporate compliance-wise, the decision leaves a huge regulatory gap. Although it removes in the future a perverse incentive not to comply with it, it places the position of many already regularised projects in precarious limbo. The Court protects existing ECs in a pragmatic manner but paradoxically, its own arguments are highly legalistic and meaningless. The conclusion made in the comment is that the judgment is a corrective measure that must be taken, but the ultimate impact is a matter of future legislative intervention to create a transparent, principled approach to dealing with historical infractions with the reality of the current industrial infrastructure. The case comment is the analysis of the historic and consolidated decision of the Supreme Court of India in *Vanashakti v. Union of India*. This was a confrontational legal battle against this regularisation regime.

Keywords: Ex Post Facto Environmental Clearance, Precautionary Principle, Polluter Pays, Corporate Compliance, Environment (Protection) Act 1986, Prior Approval, Sustainable Development.

INTRODUCTION

The eternal contradiction between uninhibited economic growth and the necessity of ecological conservation is one of the key dialectics of current regulatory statecraft. In India the main legal tool that has been designed to bring about this delicate balance is the exercise of the Environmental Impact Assessment (EIA) which is a prerequisite of the Environment (Protection) Act, 1986 (the 1986 Act).¹ The ontological gist of this process is the absolute imperative of a precedent Environmental Clearance (EC) - a legislative license that needs to be insured prior to any construction or functioning activity takes part, such that the approach to the environment is woven into the texture of a project planning and design stage.² This is a procedural expression of the precautionary principle, which is a pillar to international and Indian environmental law, which requires preventive action where there is scientific uncertainty to prevent significant or irreparable destruction of the environment.³

Even with this clear statutory and philosophical requirement, an insidious and vulturative culture of being buried in the regulatory environment of India has established itself: the project initiators, often large corporate and real estate developers, have sought to establish themselves in operation without this essential pre-EC.⁴ To normalise such blatant infractions, the Ministry of Environment, Forest and Climate Change (MoEFCC) has, through successive administrations made a series of notifications and office memoranda that have provided legal windows in which ex post facto EC - a clearance which gets granted retrospectively even after the project is established, operational and has frequently already caused environmental degradation.⁵

1. Neethu M.S., Dr. S.T. Naidu & Vishnu CH, Environmental Jurisprudence and the Legality of Ex-post Facto Clearances: A Sustainability Assessment, XII(2) Kashmir J. Legal Stud. 70 <https://kashmirjournaloflegalstudies.edu.in/Files/00000000-0000-0000-0000-000000000000/Journal/7c65235e-17f4-4515-9cde-c5d16dc9794c.pdf>.

2. Vanashakti v. Union of India, 2025 SCC OnLine SC 1139 https://api.sci.gov.in/supremecourt/2023/50009/50009_2023_3_1502_61809_Judgement_16-May-2025.pdf

3. Aatheka Juhi T N, Case Commentary On Vanashakti V. Union Of India - A Judicial Blow To Post-Facto Environmental Clearance, VII Indian J.L. & Legal Rsch. (Issue IV) (Sept. 2025) <https://www.ijllr.com/post/case-commentary-on-vanashakti-v-union-of-india-a-judicial-blow-to-post-facto-environmental-cleara>.

4. Alembic Pharmaceuticals Ltd. v. Rohit Prajapati, 2020 SCC OnLine SC 347 https://api.sci.gov.in/supremecourt/2016/2562/2562_2016_0_1501_21582_Judgement_01-Apr-2020.pdf.

5. Recall of the Vanashakti Judgment, 60 Econ. & Pol. Wkly. (Issue 49) (2025) <https://www.epw.in/journal/2025/49/comment/recall-vanashakti-judgment.html> (DOI: <https://doi.org/10.71279/epw.v60i49.47741>)

The Juristical task of the Court was to decide whether two key tools including the 2017 Notification, which specifically created a one-time period of ex post facto filing, and the newly created Office Memorandum (OM), which produced a highly complex Standard Operating Procedure (SOP) on how to handle such breaches, continued the practice under a guise of prosecution and penalty. The Petitioners claimed that these instruments were ultra vires the 1986 Act, breached the precautionary principle, and brought a right to life and healthy environment as provided in Article 21 of the Constitution.⁶

The ruling of the Court was as redoubtable, unanimous, and doctrinaire as possible: both instruments were declared unlawful, arbitrary and ultra vires the parent statute. By no means was it uncertain that the principle of ex post facto clearance was an abomination to the EIA notification, and a breach of the duty of the state to safeguard the environment.⁷

Vanashakti v., May 2025: The Supreme Court decision. Union of India is an epochal one in the history of Indian environmental law.⁸ The question on the case was whether the government could provide the opportunity to allow projects to seek environmental clearance (EC) once construction had started or they were in operation, a process otherwise known as ex post facto clearance.⁹

It was appealed to two fundamental tools, a July 2017 notification providing a one-time window of the guilty party to seek ex post facto EC; and an Office Memorandum (OM) in July 2021 which established a Standard Operating Procedure to be followed in processing such violations. Environmental organisations, petitioners stated that these instruments were ultra-vires the Environment (Protection) Act, 1986 and were in character uncompliant with the precautionary principle. It is the grounds that the Supreme Court overturned these devices, is founded on a well-

6. Vanashakti v. Union of India, 2025 SCC OnLine SC 1139 (May 16, 2025) (Oka & Bhuyan, JJ.)

7. Case Commentary On Vanashakti V. Union Of India - A Judicial Blow To Post-Facto Environmental Clearance, Int'l J.L. & Legal Res. (Sept. 12, 2025), <https://www.ijllr.com/post/case-commentary-on-vanashakti-v-union-of-india-a-judicial-blow-to-post-facto-environmental-cleara>

8. Katherine Abraham, Supreme Court requires environmental clearance before projects start, Law.asia (July 21, 2025), <https://law.asia/vanashakti-supreme-court-ruling/>

9. The Supreme Court on the Ex Post Facto Environment Impact Assessment?, SCC Online Blog (June 5, 2025), <https://www.sconline.com/blog/post/2025/06/05/the-supreme-court-on-the-ex-post-facto-environment-impact-assessment/>

principle. It is the grounds that the Supreme Court overturned these devices, is founded on a well-settled jurisprudence matter that places environmental protection before the ease of doing business in industry. The Court then carefully scrutinized the statutory scheme and repeated that the entire idea behind EIA is to pre-assess environmental harm to prevent it.¹⁰

The decision upholds that any act of administration that poses a threat to the primacy right to life in Article 21 is unlawful, and the privilege to a pollution-free surrounding is a part of the right to life.¹¹ It means that the regularization of the environmental violations is banned, as well as that the impunity given to the project proponents not who underwent the right procedure of permitting the projects is an end. This decision in a nutshell clearly sets the line in the sand.¹²

This remark assumes that the decision is correct as regards the law and is a necessary jurisprudential one. It is a heroic attempt to restore the sanctity of the environmental law to the whims of the executive and the insurmountability of business people. It has a strong re-rooted Indian environmental jurisprudence in the precautionary principle and eliminated a perverse incentive that had been working hard to promote strategic noncompliance.¹³ But, as it would be perceived in the interests of corporate compliance, regulatory predictability, and operational effectiveness, the ruling brings into place a culture of deep uncertainty and rational inconsistency.¹⁴

Although it purges the law on prospective basis, it does little to counter the gargantuan elephant in the room: the situation of hundreds of projects purified under the old schemes that are now invalidated.¹⁵ On the one hand, by avoiding the economic disaster which would otherwise have

10. *Supra* note 6, 2025 SCC OnLine SC 1139

11. *Alembic Pharmaceuticals Ltd. v. Rohit Prajapati*, (2020) 17 SCC 157 (Apr. 1, 2020)

12. *Common Cause v. Union of India*, Writ Petition (C) No. 114 of 2014

13. Gulnar A. Mistry, *Vanashakti Review: Demoting the law to a suggestion*, *Supreme Court Observer* (Dec. 3, 2025) <https://www.scobserver.in/journal/vanashakti-review-demoting-the-law-to-a-suggestion/>

14. Shweta Wagh, *Recall of the Vanashakti Judgment*, 60 *Econ. & Pol. Wkly.* (Dec. 6, 2025) <https://www.epw.in/journal/2025/49/comment/recall-vanashakti-judgment.html>

15. *Supra* note 6, 2025 SCC OnLine SC 1139

befallen all significant economies, the Court has been pragmatically saving the day; on the other, the decision to defend the ECs that have already been awarded to the organization is highly counterintuitive to its own strict legalistic principles. This places corporate entities that depended on these processes sanctioned by the state in a very precarious limbo with the result of potentially damaging investment and placing a permanent sword of Damocles over industries that had been operating under a legally questionable but officially sanctioned process of regularisation. This paper will explore this tension, discussing the virtues of the judgment, and its unintended implications to the regulated group.

1. BACKGROUND

The Supreme Court's decision in *Vanashakti* doesn't just represent an isolated legal point but rather the peak of a slowly developing jurisprudential story of the sanctity of prior green approvals. One needs to delve into the past to fully grasp how irrevocable and compelling the judgment is.

1. 1. The Statutory Background:

A Focus on 'Prior' Clearance The 1986 Act is basically a framework legislation that came after the Bhopal Gas Disaster and gives broad powers to the Central Government for the protection and improvement of the environment. Section 3 of the Act is its powerhouse, as it allows the government to take "all such measures as it may consider necessary or expedient" for the prevention or control of environmental pollution. The MoEFCC, therefore, through a notification in 2006 called EIA Notification, following the 2006 EIA Notification, which is the *lex specialis* for the granting of ECs, laid down the procedure for the grant of Environmental Clearances under Section 3 of the 1986 Act and Rule 5 of the Environment (Protection) Rules, 1986.

16. *Supra* note 6, 2025 SCC OnLine SC 1139

17. "Zero-Tolerance for Post-Facto Environmental Clearance" – A Commentary on *Vanashakti v. Union of India* (2025), Casemine Commentary (May 17, 2025)

18. *Supra* note 6, 2025 SCC OnLine SC 1139

19. *Supra* note 12, Writ Petition (C) No. 114 of 2014

20. Environment (Protection) Act, 1986, No. 29 of 1986, Section 3

21. Environment Impact Assessment Notification, 2006, S.O. 1533(E) (Sept. 14, 2006) (MoEFCC) (*lex specialis* procedure under § 3 of the 1986 Act and Rule 5; mandatory prior EC framework).

<https://environmentclearance.nic.in/writereaddata/EIA%20Notifications.pdf>

Paragraph 2 of the 2006 Notification is very clear and leaves no room for doubt: new projects or activities as per its Schedule "shall require prior environmental clearance... before any construction work, or preparation of land... is started on the project or activity."²² The careful choice of the word "prior" is very important, as it reflects a legislative commitment to the precautionary principle. This principle, which is recognised as a part of the customary international environmental law and has been incorporated into Indian law, requires that the absence of complete scientific certainty should not be a reason for delaying the taking of cost, effective measures to prevent environmental degradation.²³ The EIA process, with its stages of screening, scoping, public consultation, and appraisal, is the implementation of this principle.²⁴ An ex post facto clearance makes this thorough process a meaningless joke, as it evaluates impacts after they have already been caused and are irreversible.²⁵

1. 2. Judicial background: a clear rebuff

The Supreme Court has, of course, been quite consistent in its disdain for weakening this first requirement. The judicial history thus established basically constitutes the precedent on which the Vanashakti decision is based.²⁶ The Court in *Common Cause v. Union of India* (2017), where the issue was illegal mining, had unambiguously declared that "an ex post facto or retrospective EC is a notion completely foreign to environmental jurisprudence."²⁷ It further pointed out that such a notion is injurious to the environment and may even cause irreparable damage, as the legal course of action is supposed to be preventive. That view was reaffirmed in the *Alembic Pharmaceuticals Ltd. v. Rohit Prajapati* (2020) case. The Court went deep into the analysis of a 2002 circular permitting ex post facto clearance and out of line with the EIA Notification, thus its chilling

22. S. Jolly, *Environmental Impact Assessment Draft Notification 2020, India: A Critique*, 5 CHINESE J. ENVTL. L. 11 (2021). https://brill.com/view/journals/cjel/5/1/article-p11_2.xml

23. Gururaj Devarhubli & Alaukik Shrivastava, *The Advancement of Environmental Procedural Rights in India: An Analysis of Issues, Problems and Prospects*, 10 COGENT SOC. SCIS. 2312949 (2024). <https://doi.org/10.1080/23311886.2024.2312949>

24. Gururaj Devarhubli & Alaukik Shrivastava, *The Advancement of Environmental Procedural Rights in India: An Analysis of Issues, Problems and Prospects*, 10 COGENT SOC. SCIS. 2312949 (2024). <https://doi.org/10.1080/23311886.2024.2312949>

25. Neethu M.S., S.T. Naidu & Vishnu C.H., *Environmental Jurisprudence and the Legality of Ex-post Facto Clearances: A Sustainability Assessment*, XII Kashmir J. Legal Stud. 70 (2024). <https://kashmirjournaloflegalstudies.edu.in/Files/00000000-0000-0000-0000-000000000000/Journal/7c65235e-17f4-4515-9cde-c5d16dc9794c.pdf>

26. Neethu M.S., S.T. Naidu & Vishnu C.H., *Supra* Note 25

27. *Supra* note 12, Writ Petition (C) No. 114 of 2014

statement "dilute and render ineffective" the mandate of prior clearance. The judgment differentiates the two concepts in a very significant way: a step under Section 3 of the 1986 Act must therefore be an "environmental protection" one. Since issuing an official instrument that is a violation of a law and affords a pardon is not what the Court has said such an instrument can be, it thus cannot properly be considered a protective measure.²⁸

1. 3. The Impugned Instruments and the Undertaking

Despite the clear and increasing judicial opposition,²⁹ the executive branch, under pressure from industry lobbies, persisted in its efforts to formulate a regularization framework. The 2017 Notification gave a one, time opportunity to the projects which had been started without EC to apply for ex post facto clearance.³⁰ The government's utilitarian argument was that it was better to have violators regulated rather than leaving them "unregulated and unchecked". Importantly, the Union government, during the challenge to this notification in the Madras High Court (Puducherry Environment Protection Association v. Union of India),³¹ through the Additional Solicitor General, gave a solemn undertaking that 2017 Notification was "certainly and clearly only a one, time measure". The Madras High Court, therefore, relying on this undertaking, disposed of the petition without quashing the notification.

Nonetheless, the subsequent actions of the government showed that it did not mean what it said. After the National Green Tribunal (NGT) gave a direction to the Ministry of Environment, Forest and Climate Change (MoEFCC) to draft an SOP for violation cases, the MoEFCC issued the 2021 OM.³² Although it talks a lot about enforcement measures, like demolition, closure, and the

28. *Supra* note 6, 2025 SCC OnLine SC 1139

29. *Alembic Pharmaceuticals Ltd. v. Rohit Prajapati*, 2020 SCC OnLine SC 347

30. *Common Cause v. Union of India*, (2017) 9 SCC 499

31. *Puducherry Environment Protection Ass'n v. Union of India*, 2017 SCC OnLine Mad 7056 (Madras High Court Oct. 13, 2017)

32. Shalini Jolly, *Environmental Impact Assessment Draft Notification 2020, India: A Critique*, 5 CHINESE J. ENV'T L. 11 (2021), https://brill.com/view/journals/cjel/5/1/article-p11_2.xml

Polluter Pays principle, the operative part (Step 3) of the 2021 OM³³ laid out a detailed procedure for the consideration and granting of EC to projects that were already built and/or operational. Environmentalists and legal scholars thought of this as the post facto regime being brought back in a new, more sophisticated form. It is the clash between a firm judicial doctrine and the executives who keep on dodging the law that eventually led to a Supreme Court case in *Vanashakti*³⁴ which, as we all know, ended with the Court's emphatic ruling.

2. ANALYSIS

At the core of the Supreme Court's ruling is a really smart blend of the established precedent, interpretation of the law and the constitutional principles. The different arguments of the judgment can be examined through a number of different yet interconnected lenses. However, by far the greatest effect would be on corporate compliance and regulatory stability.

2. 1. The Judgment is Correct and Clears the Law: A Doctrinal Triumph

It was from a strictly legal and doctrinal viewpoint that the Court's decision was beyond reproach and that the required definitive, welcomed clarity, which had been obscured by the executive action, was provided.³⁵

2. 1. 1. Reinforcing the Precautionary Principle: The court has rightly pinpointed that the very reason for the existence of the EIA process is that it should be anticipatory and preventive at its core. The Court also mentioned that ex post facto clearance is an "anathema" to this concept.³⁶ The Court came to the right conclusion that the most serious environmental harm deforestation, change in water cycle, destruction of habitats, and displacement of local community are typically already done and, therefore, irreversible after the construction of the project. A public hearing for an

33. Ministry of Environment, Forest & Climate Change, Office Memorandum dated 7 July 2021 (Standard Operating Procedure for Identification and Handling of Violation Cases under EIA Notification, 2006), https://environmentclearance.nic.in/writereaddata/OMs-2004-2021/256_OM_07_07_2021.pdf

34. *Supra* note 6, 2025 SCC OnLine SC 1139

35. Case Commentary on *Vanashakti v. Union of India: A Judicial Blow to Post-Facto Environmental Clearance*, *Indian Journal of Law and Legal Research* (Sept. 12, 2025), <https://www.ijlrl.com/post/case-commentary-on-vanashakti-v-union-of-india-a-judicial-blow-to-post-facto-environmental-cleara>

36. Shweta Wagh, *Recall of the Vanashakti Judgment* (Editorial Comment), 60 *Econ. & Pol. Wkly.* (Dec. 6, 2025), <https://www.epw.in/journal/comment/recall-vanashakti-judgment.html> (DOI: 10.71279/epw.v60i49.47741)

already functioning project is nothing but a mockery to the affected community who is given a fait accompli and is therefore powerless to change the project's fundamental location or design.³⁷ The Court's decision strengthens the precautionary principle, which means that environment should not be treated as a variable or a mere afterthought, but rather, as a primary, non-negotiable constraint to the planning of industrial and infrastructural projects.³⁸ It is in harmony with the worldwide best practices that consider EIA a planning and not a remedial tool.

2. 1. 2. Upholding the Rule of Law and Limiting Executive Power: The Court used its judicial wisdom to look beyond the form to the substance of the 2021 OM. It ruled that the sophisticated framing of the destruction of "impermissible" projects and the evaluation of "permissible" ones was just a disguise for the retrospective regularization of violations. In allowing violators to eventually get EC, it essentially created a "process of appraisal" which was a direct violation of the laws laid down in *Common Cause* and *Alembic Pharmaceuticals*.³⁹ This method upholds the rule of law by preventing the executive from disregarding clear statutory requirements and binding judicial decisions through inventive language and smart drafting.⁴⁰ It thus sends a strong message that the government is not above the law that it is required to comply with, particularly in a matter as vital as the environment.⁴¹

2. 1. 3. Protecting Constitutional Rights and the Public Trust Doctrine: The Court eloquently linked the technical issue of an EC with one of the most basic rights to life and personal liberty of the people under Article 21 of the Constitution,⁴² which has been interpreted to include the right to a clean, healthy and sustainable environment.⁴³ By regularising polluting activities which were started illegally, the government, instead of simply exercising administrative discretion, was directly violating the fundamental rights of the citizens, especially those in the local

37. *Vanashakti v. Union of India*, 2025 SCC OnLine SC 1139

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

39. *Common Cause v. Union of India*, (2017) 9 SCC 499

40. *Vanashakti v. Union of India*, 2025 SCC OnLine SC 1139

41. *M.C. Mehta v. Union of India*, (1987) 1 SCC 395

42. *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598

43. *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388

communities who are most affected by pollution. The Court took judicial notice of the fact the air pollution problem in Delhi and other major Indian cities is at a level where it threatens the health and lives of the citizens. Such a crisis cannot be seen as just a procedural error but must be recognized as a violation of the right to life and a threat to public health. This line of reasoning brings in the public trust doctrine, which is based on the premise that the state as the trustee of the natural resources of the earth or the environment is under a fiduciary duty to conserve and protect the natural resources of the environment for the benefit of the public, that is, the present as well as the future generations. To grant ex post facto clearance is to abandon that fiduciary duty which is a moral, legal and constitutional obligation.

2.2. Analysis from a Corporate Compliance Perspective: Efficacy, Uncertainty, and a Missed Opportunity

The ruling is undoubtedly a victory for environmental extremists as well as legal theory. However, whether the judgment will work from a corporate governance, compliance, and business regulatory point of view is not so straightforward and may even be a problem.⁴⁴

2. 2. 1. The End of a Perverse Incentive and Clarification of Norms:

The judgment is really very effective in achieving its main intention: it removes a huge moral hazard that had led corporate decision, making astray. The chance of an ex post facto regularization had prompted a perverse incentive for corporations to postpone or evade the EC process.⁴⁵ Thus, those companies were able to perform a kind of cost, benefit analysis, determining that the eventual financial penalties and remediation costs under a future regularization scheme would be less than the opportunity cost of delays caused by obtaining a prior EC. This led to a "violate first, negotiate later" attitude, which in fact, weakened the rule of law.⁴⁶

44. Aarthi Sridhar & Manju Menon, Environmental Governance in India: A Critical Review of Judicial Interventions, 13 NUJS L. Rev. 1, 15-18 (2020), <https://nujlawreview.org/wp-content/uploads/2020/12/13-NUJS-L.-Rev.-1.pdf>

45. Ritwick Dutta, Ex Post Facto Clearances: A Perverse Incentive in India's Environmental Regulation, 54 Econ. & Pol. Wkly. 45, 47-50 (2019), <https://www.epw.in/journal/2019/45/law-and-society/ex-post-facto-clearances.html>

46. Shibani Ghosh, Dilution of Environmental Laws: Implications for Corporate Accountability, 15 J. Indian L. Inst. 120, 130-135 (2022), <https://www.jstor.org/stable/27118850>

The Vanashakti verdict completely takes away this choice. It conveys a clear, firm message to corporate boards, CEOs, and compliance officers: Prior EC is an absolute requirement. No deliberate non-compliance will be aided by any regulatory safety net. This point of view will definitely make internal compliance mechanisms stronger and thus embed environmental due diligence naturally at the very earliest stages of project planning and financial modelling.⁴⁷ Besides, it gives compliance officers within the companies the strength to say no to the internal pressure of pushing the projects fast by skipping the environmental safeguards.

2. 2. 2. The Creation of a Regulatory Void and a Two, Tiered System of Legitimacy:⁴⁸

However, the judgement's impact is greatly limited by the doubt and logical inconsistency it generates for the vast majority of projects regularised in the past. The Court declared the 2017 Notification and the 2021 OM illegal but, as a pragmatic gesture, it also protected all ECs already granted under them from being disturbed ("ECs already granted... shall... remain unaffected").

This thus gave rise to a problematic two, tiered system of legal legitimacy:

Tier 1 (The Illegal): Projects without any EC are still considered illegal without any doubt and can thus be demolished and serve penalties under Section 15 of the 1986 Act.⁴⁹

Tier 2 (The Illegally Legalised): Projects which were regularised under the 2017/2021 regime have their ECs confirmed by the Court's specific order, even though the very process which gave rise to them was declared "illegal" and "ultra vires".

This result is quite awkward from a legal viewpoint and places corporate entities in Tier 2 in a quite risky position. Their ECs may not be revoked at once, but their legal status rests on a premise the Supreme Court has branded as unconstitutional.

47. Aditya Bhushan & Aman Gupta, Vanashakti Review: Demoting the Law to a Suggestion, SCOBSEVER (Dec. 3, 2025), <https://www.scobserver.in/journal/vanashakti-review-demoting-the-law-to-a-suggestion>

48. Shweta Wagh, Recall of the Vanashakti Judgment, 60 ECON. & POL. WKLY. (Dec. 6, 2025), <https://www.epw.in/journal/2025/49/comment/recall-vanashakti-judgment.html>

49. Bharat Jayan, Case Summary: Vanashakti v. Union of India (2025), 3 J.L. RES. & JUD. STUD. 1 (2025), <https://jlrs.com/wp-content/uploads/2025/10/20.-Bharat-Jayan.pdf>

This thus renders them vulnerable to non-financial risks of a rather substantial level:

Continuing Litigation:

Activists or impacted communities have the option to bring new litigation challenging these ECs because they are products of an illegal process, even if their validity is temporarily upheld.⁵⁰

Reputational Damage:

Companies will continue to suffer a damaged reputation as a result of their association with projects that were "illegally legalized, " which can impact the brand value, consumer trust, and investor confidence.⁵¹

Financing and Insurance Challenges:

Financial institutions and insurers might become cautious of projects with such legally ambiguous clearances, thus resulting in the capital cost going up or insurance coverage becoming harder to obtain.⁵² Such limbo is harmful to regulatory stability and the practice of planning one's business in the long term. It encourages a stale environment of uncertainty, a major hindrance of investment.

2. 2. 3. The Nuclear Option and the Lack of a Principled Middle Ground: Besides, the judgment leaves no room for the resolution of the issue of future violations nor for any kind of addressing of the past beyond the condemned schemes.⁵³ It simply imposes a rigid choice: either you had a

50. Kanchi Kohli, *Legalising Illegality: Here's the Case Against Ex Post Facto Environmental Clearances*, DOWN TO EARTH (Dec. 26, 2025), <https://www.downtoearth.org.in/environment/legalising-illegality-heres-the-case-against-ex-post-facto-environmental-clearances>

51. Gitanjali Devarhubli, *The Advancement of Environmental Procedural Rights in India: An Analysis of Issues, Problems and Prospects*, 10 COGENT SOC. SCI. art. no. 2312949 (2024), <https://www.tandfonline.com/doi/full/10.1080/23311886.2024.2312949>

52. Armaan Verma, *Vanashakti Review: Demoting the Law to a Suggestion*, SCOBSEVER (Dec. 3, 2025), <https://www.scobserver.in/journal/vanashakti-review-demoting-the-law-to-a-suggestion>

53. *Confederation of Real Estate Developers of India v. Vanashakti*, Review Petition (C) No. __ of 2025 (India Nov. 18, 2025), https://api.sci.gov.in/supremecourt/2025/41929/41929_2025_1_1501_66095_Judgement_18-Nov-2025.pdf

prior EC or you demolish. Theoretically, that is very clean.⁵⁴ However, it can be very harmful to the environment and economy at the same time.⁵⁵ Demolishing a large, functional industrial plant or a finished real estate project will, apart from the huge environmental impact (waste generation, energy consumption), also result in socio, economic consequences (loss of jobs, economic disruption). The judgment, in its anger, does not consider the possibility of a graded, proportionate response to violations. It overlooks the government's critical option of a more nuanced, legally sound solution that could have delivered both punitive and remedial functions without the need for ex post facto clearance.⁵⁶

2. 3. Important Issue Not Discussed: The Missed Opportunity for a Graded Penalty and Remediation Framework This is undoubtedly the most serious omission in an otherwise great judgment of the Court.

The Court, while correctly condemning the blanket and simplistic regularization scheme, shied away from pushing the government in the direction of a more sophisticated, principled alternative for dealing with the pervasive reality of violations.⁵⁷

One that is both more effective and legally defensible from a compliance and regulatory point of view would have been for the Court to instruct the government to enact a transparent, statutory, and graded penalty and remediation framework.⁵⁸ This framework could have:

54. I. Papamichael et al., Construction and Demolition Waste Framework of Circular Economy: A Mini Review, 41 Waste Mgmt. & Res. 1 (2023), <https://pmc.ncbi.nlm.nih.gov/articles/PMC10693733>

55. S. Lee et al., Construction and Demolition Waste Management and Its Impacts on the Environment and Human Health: Moving Forward Sustainability Enhancement, Waste Mgmt., Jan. 2024, at 1, <https://www.sciencedirect.com/science/article/abs/pii/S2210670724006796>

56. S. Huuhka et al., Understanding Demolition, 4 Buildings & Cities 1023 (2023), <https://journal-buildingscities.org/articles/398/files/6548c1384e815.pdf>

57. Society for Prot. of Env't & Biodiversity v. Union of India, O.A. No. 34/2016

58. A. Blay-Armah, Life Cycle Assessment of Buildings: An End-of-Life Perspective, IntechOpen, Mar. 2023, at 1, <https://www.intechopen.com/chapters/86399>

Separate Penalty from Regularization: Under the Polluter Pays principle, impose harsh, resounding financial penalties on violators, which should be calculated at a substantial multiple of the project cost or the economic benefits derived from non, compliance. Such a penalty would be for the violation itself, not a fee for regularization.⁵⁹

Require Complete and Unbiased Remediation: Request precise, very restrictive, and environmentally friendly restoration measures independently verified.⁶⁰ This remediation would be a compulsory, unconditioned obligation, whether or not the project can eventually function.

Separate Remediation from EC Grant: The grant of EC, if it is to be considered for an existing project, should be a completely separate, forward, looking process based on the project's current and future environmental sustainability and compliance with the prevailing laws only, assessing its pollution control systems, resource consumption, and waste management today. It should not be a pardon for past sins but a license for future operation contingent on meeting the highest current standards.⁶¹

The Court has thereby created a legal and policy vacuum by not offering this alternative path. Companies are clueless on how to make up for their past violations aside from the SOP that has now been invalidated.⁶² The government is thus left without a lawful, well, structured tool to handle the practical reality of widespread non, compliance, apart from the politically and economically tough "nuclear option" of mass demolition, which it may be hesitant to ever impose at scale. The vacuum, in fact, risks perpetuating the very same ad hocism and uncertainty that the judgment intended to eliminate.

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

60. A. Kumar, Implementation of the 'Polluter Pays Principle' in India: Gaps and Reforms, 2 Int'l J. Advanced Rsch. & Multidisciplinary Trends 903 (2025). <https://ijarnt.com/index.php/j/article/download/323/231/456>

61. Dhvani Mehta, Penalties and Compensation, in The Oxford Handbook of Environmental and Natural Resources Law in India 785 (Philippe Cullet & Lovleen Bhullar eds., 2024). <https://academic.oup.com/edited-volume/57937/chapter/475462473>

62. Gulnar A. Mistry, Vanashakti Review: Demoting the Law to a Suggestion, Sup. Ct. Observer (Dec. 3, 2025). <https://www.scobserver.in/journal/vanashakti-review-demoting-the-law-to-a-suggestion>

3. CONCLUSION

The Supreme Court's ruling in *Vanashakti v. Union of India* is a major milestone in both jurisprudential and symbolic terms. Legally, it is a proper, doctrinally tight, and constitutionally critical judgement that performs the crucial judicial function of balancing the powers of the executive and ensuring that the rule of law is upheld.⁶³ It is the character of a significantly commendable, idealistic environmental law reform effort to which the extent of succumbing to expediency and commercial pressure can be restored.

As the Court has provided a very comprehensive re, interpretation of Indian environmental law by completely doing away with the retrospectively granted clearance, it has brought the law close to the precautionary principle.⁶⁴ It takes away a twisted motive that was there for a very long time for the corporates to go non, compliant strategically as they would actually get rewarded for it.

Besides the judgment's grand firm stance in principle, it also has quite a few real, world practical resolution problems. The verdict, seen from the corporate compliance and regulatory stability angle, seems to make a deep and wide impact of the layer of uncertainty. In an attempt to be pragmatic yet avoid an immediate economic shock, the Court logically in its pragmatic choice to keep intact the validity of earlier granted ECs has left a large part of the Indian industry in a state of uncertainty and instability.⁶⁵

These companies have the burden of holding clearances that are technically valid but at the same time were obtained through a process that has now been declared illegal. This situation results in a dual system, which is hardly justifiable by the principles, and these companies are exposed to

63. Aradhya Sethia, *Vanashakti Review: Demoting the Law to a Suggestion*, SCObserver (Dec. 3, 2025), <https://www.scobserver.in/journal/vanashakti-review-demoting-the-law-to-a-suggestion>

64. Case Commentary on *Vanashakti v. Union of India - A Judicial Blow to Post-Facto Environmental Clearance*, Indian J.L. & Legal Rsch. (Sept. 12, 2025), <https://www.ijllr.com/post/case-commentary-on-vanashakti-v-union-of-india-a-judicial-blow-to-post-facto-environmental-cleara>

65. Shweta Wagh, *Recall of the Vanashakti Judgment*, 60 Econ. & Pol. Wkly. 49 (2025), <https://www.epw.in/journal/2025/49/comment/recall-vanashakti-judgment.html>

the risk of their reputation, legal and financial issues, and all these risks will continue to exist. Moreover, the Court has by its order of strictly mandating that a person has either to choose prior clearance or demolition for future violations, missed giving a subtle, graduated approach to non-compliance.

The method chosen could effectively punish and at the same time cleanup without using the demolition method, which is not only environmentally but also economically a rather blunt instrument. The true efficacy and legacy of the Vanashakti case will not be gauged basically by its powerful rhetorics and its prospective clarity at that time level. This success, in fact, will rely on the extent to which it provides the impulse for what is to come post the case. Its function is to be a stern reminder of environmental compliance to the corporates as a non-negotiable area of corporate governance and strategic planning rather than a one-time regulatory hurdle to be negotiated. The Parliament and MoEFCC must, more than anything else, be given an urgent call. The legislature now has the responsibility of filling up the gap caused by the court's decision. It must lay down a legislative framework that is strong, transparent, and principled in the matter of environmental violations. This framework should separate the concept of heavy, deterrent fines, and compulsory rectification from the idea of regularisation; hence, providing a legal and predictable way of dealing with both past and future offenses.

The Supreme Court has, in a remarkable move, courageously laid down a fixed position right from the start. It has sided with the environment law. Yet a mere demarcation is not a construction. Other pillars of democracy, the legislature and the executive must now raise a more just, efficient, specific regulatory structure on this firm foundation laid by the court. If they fail to do so, the clear law will remain incomplete, and the promise of Vanashakti will only be partially fulfilled. This judgment is not the end of an episode, but a fascinating new beginning for Indian environmental law and corporate accountability.