Daily Editorial Analysis 14 August 2026

August 14, 2026 • vajiramandravi.com

Evolution of Environmental Jurisprudence in India

Context

- India's environmental governance has evolved from limited constitutional recognition at Independence to a robust framework shaped by constitutional **amendments**, international commitments, and judicial **activism**.
- The Supreme Court played a pivotal role in developing environmental jurisprudence while questioning its recent inconsistency in balancing environmental protection with developmental projects.

Constitutional Foundations of Environmental Protection

- **Early constitutional position:**
    - The original Constitution did **not explicitly mention** the term "environment", though certain provisions indirectly addressed conservation.
    - A major shift occurred after India's participation in the 1972 United Nations Conference on the Human Environment (**Stockholm Conference**).

- **42nd Constitutional Amendment Act, 1976:**
    - Drawing inspiration from the Stockholm Declaration, Parliament introduced key constitutional provisions.
        - **Article 48A** (Directive Principles of State Policy): Directs the State to protect and improve the environment and safeguard forests and wildlife.
        - **Article 51A(g)** (Fundamental Duties): Imposes a duty on every citizen to protect and improve the natural environment.
    - Despite political opposition to the 42nd Amendment after the Emergency, these environmental provisions were retained, reflecting their enduring constitutional significance.
- The **Bhopal Gas Tragedy (1984)** marked a turning point, prompting the judiciary – the **architect** of Indian environmental jurisprudence, to actively develop environmental law through innovative legal principles.

Innovative Legal Principles Devised by the SC

- **Doctrine of Absolute Liability:**
    - **Case**: Union Carbide Corporation vs Union of India.
    - Enterprises engaged in hazardous or inherently dangerous activities are absolutely liable for any harm caused. Liability exists irrespective of negligence or fault.
- **Polluter Pays Principle:**
    - **Case**: Indian Council for Enviro-Legal Action vs Union of India.
    - Adopted from international environmental law, it highlights that polluters must bear the full cost of environmental restoration and compensation.
- **Precautionary Principle:**
    - **Case**: Vellore Citizens' Welfare Forum vs Union of India.
    - The Supreme Court held that the State must anticipate, prevent and attack environmental degradation. Preventive action should precede scientific certainty regarding environmental harm.
    - According to experts, the precautionary principle is superior to the polluter pays principle, since prevention is more effective than post-damage compensation.
- **Sustainable Development:**
    - The Court recognised environmental protection and economic development are **complementary** rather than contradictory.
    - Precautionary Principle and Polluter Pays Principle are essential components of sustainable development, now recognised as part of customary international law.
- **Public Trust Doctrine:**

    - **Case**: M.C. Mehta vs Kamal Nath (Span Motel Case).
    - Natural resources are held by the State in trust for the public. Governments cannot permit their misuse for private interests.

- **Inter-generational Equity:**

    - The Court emphasised that present generations hold natural resources in trust for future generations. Environmental protection is an obligation across generations.

Judicial Inconsistency in Environmental Cases

- While the Supreme Court has historically strengthened environmental protection, concerns have emerged regarding inconsistency.
- According to Justice Gautam Patel:
    - Courts have generally supported environmental causes raised by non-governmental organisations (**NGOs**).
    - However, judicial scrutiny has often been less rigorous in cases involving large infrastructure and development projects.
    - This creates a **contradiction** between the Court's stated environmental principles and their practical application.
- Such inconsistency weakens environmental governance and public confidence.

Environment and Development – A False Dichotomy

Experts reject the notion that environmental protection obstructs development.

Key Arguments

- Development and ecology are not mutually exclusive.
- **Sustainable development** is embedded within India's constitutional framework.
- Infrastructure projects can proceed without compromising environmental safeguards, provided legal norms are strictly followed.

Role of constitutional courts

- The courts should –
    - Avoid dismissing environmental challenges merely because many projects face litigation.
    - Distinguish frivolous **Public Interest Litigations (PILs)** from genuine environmental concerns.
    - Examine whether projects comply with statutory environmental requirements rather than presume developmental necessity.
- The guiding judicial question should be – "Has the project complied with environmental norms?"
- This approach reinforces both **rule of law** and constitutional accountability.

Conclusion

- India’s environmental jurisprudence owes much of its evolution to the Supreme Court, which transformed constitutional ideals into enforceable legal principles.
- Going forward, consistent judicial application of the precautionary principle, sustainable development, and public trust doctrine is essential to ensure that **economic growth** proceeds within the **constitutional framework** of environmental protection.

Environmental Jurisprudence in India FAQs

Q1. How did the 42nd Constitutional Amendment strengthen environmental protection in India?

Ans. It inserted Article 48A and Article 51A(g), making environmental protection a constitutional responsibility.

Q2. What is the significance of the Precautionary Principle in Indian environmental jurisprudence?

Ans. It requires the State to anticipate and prevent environmental harm before it occurs.

Q3. What is the difference between the Precautionary Principle and the Polluter Pays Principle?

Ans. The former focuses on preventing environmental damage, whereas the later mandates compensation and restoration after damage has occurred.

Q4. What is the Public Trust Doctrine?

Ans. It holds that the State acts as a trustee of natural resources and must protect them for public use.

Q5. Why is judicial consistency important in environmental governance?

Ans. To ensure that development projects comply with constitutional and statutory safeguards.

Source: IE

Europe’s AI Rules May Become India’s Opportunity

Context

- The Government of India is considering standalone legislation to govern Artificial Intelligence.
- Meanwhile, the **European Union’s AI Act** — in force since August 2024 and applicable from August 2, 2026 — is already shaping the global AI supply chain.
- The Act follows a risk-based approach: **prohibiting** certain AI systems, **regulating** high-risk ones, and **applying lighter checks** for limited-risk uses.
- While Indian firms know the Act applies whenever their AI systems produce results in Europe, the more important story lies deeper than a compliance checklist.
- This article highlights how the European Union’s AI Act could create new opportunities for India’s technology and professional services sectors.
- It examines the compliance challenges posed by the Act’s risk-based framework, particularly for India’s customised and adaptive IT services, while exploring opportunities in AI compliance, conformity assessment,

and skilled service exports.

The Core Mismatch: How the Act Views Software

- The Act assumes AI, once built and approved, functions like a finished, static product.
- India’s tech industry has never worked this way — it thrives on continuous, client-driven customisation.
- This gap between the law’s assumptions and India’s actual business model is what companies need to watch closely.

Understanding the Compliance Process

- Before a “**high-risk” AI system** (used in sensitive areas like hiring or education) enters the European market, it must clear a “conformity assessment” under **Article 43** — proof of meeting standards on testing, documentation and human oversight.
- Most providers self-assess and sign their own declaration; only a narrow category, mainly certain biometric tools, needs independent verification.
- Once approved, the system can run freely — unless it undergoes a “substantial modification.”
- A substantial modification means an unplanned change affecting compliance or altering the system’s intended purpose, which triggers a fresh assessment.

Revised Timelines

- In June 2026, the EU eased its own deadlines: standalone high-risk AI systems now have until December 2027, and high-risk AI embedded in regulated products until August 2, 2028.
- A grandfathering clause exempts systems already on the market before these dates — until they are substantially modified.
- Foreseen changes examined during the original assessment don’t trigger reassessment; unanticipated ones likely do.

Why This Distinction Matters for India

- This framework favours businesses with predictable, standardised product roadmaps, since planned upgrades can be assessed upfront.
- It disadvantages businesses offering bespoke (custom-made or built to individual specifications), adaptive services — exactly the model followed by India’s IT services firms and global capability centres in Bengaluru and Hyderabad.
- Crucially, a firm that substantially modifies someone else’s high-risk AI system may be treated as the new “provider,” inheriting all the original maker’s regulatory obligations.
- For an industry built on on-demand improvement, this means unplanned adaptability could trigger unexpected regulatory burden.

The Opportunity Hidden in Compliance

- High-risk compliance is fundamentally about paperwork and proof — governance measures, technical documentation, and testing regimes carried out at scale.
- Since most providers self-assess against harmonised technical standards (still being drafted), there will be strong demand for skilled legal and technical professionals to do this work.
- India’s professional services firms already support global clients on data protection, financial regulation and technical assurance — this expertise translates directly to AI Act compliance services.

A Longer-Term Vision: India in the EU’s Conformity Ecosystem

- The Act allows conformity assessment bodies in third countries to be recognised as “notified bodies” if the EU has an appropriate agreement with that country.
- India’s newly concluded India-EU Free Trade Agreement (January 2026) includes regulatory cooperation provisions that could serve as the treaty basis for such recognition.
- If secured, this would let India move beyond merely offering compliance services — becoming an active participant in the EU’s official conformity assessment ecosystem.

Conclusion

- Europe’s compliance-heavy AI regulation need not be a barrier for India — it could become a business opportunity.
- By building compliance expertise and leveraging the India-EU trade agreement, India could transform Europe’s regulatory burden into a source of skilled service exports and deeper strategic partnership.

Europe’s AI Rules May Become India’s Opportunity FAQs

Q1. What is the European Union’s AI Act?

Ans: The EU AI Act follows a risk-based framework, prohibiting certain systems, regulating high-risk applications, and applying lighter requirements to limited-risk AI uses.

Q2. Why could the EU AI Act create challenges for Indian IT companies?

Ans: Indian IT firms often provide customised and adaptive services, while the EU framework favours predictable product roadmaps and may require reassessment after substantial modifications.

Q3. What is a substantial modification under the EU AI Act?

Ans: A substantial modification is an unplanned change affecting compliance or altering an AI system’s intended purpose, potentially triggering a fresh conformity assessment.

Q4. How can India benefit from EU AI compliance requirements?

Ans: Indian professional services firms can provide AI compliance expertise, including governance, technical documentation, testing, legal support, and conformity assessment services for European clients.

Q5. How could the India-EU trade agreement benefit India’s AI sector?

Ans: The India-EU trade agreement could support recognition of Indian conformity assessment bodies, allowing India to participate directly in the EU's AI regulatory ecosystem.

Source: TH
