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The Fading of India's Environmental Jurisprudence

Context

- From the Aravalli ranges to coastal mangroves, India stands at a profound moral and constitutional crossroads.
- Amitav Ghosh's *The Hungry Tide* offers a powerful metaphor for the present moment: nature remembers what law and power attempt to erase.
- Environmental safeguards are increasingly diluted in the name of **development**, raising concerns that the Constitution may become a silent witness to **ecological loss**.
- Such damage is neither abstract nor distant; its consequences, like the tide, return with relentless force.

Policy Shifts and Judicial Retreat in Environmental Protection

- Recent regulatory changes reflect a weakening of environmental safeguards.
- On December 18, 2025, non-coal mining projects were permitted to undertake Environmental Impact Assessments (**EIA**) without specifying land location or area, reversing the principle of prior scrutiny.
- This was compounded by the Supreme Court's recall of *Vanashakti vs Union of India* (2025), which had prohibited **retrospective** environmental clearances.
- Although a suo motu stay by Chief Justice Surya Kant temporarily restored institutional credibility, the broader trend reveals increasing **judicial** leniency, treating environmental law as a procedural formality rather than a substantive safeguard.

The Aravalli Controversy: Redefining Ecology Through Reductionism

- The Aravalli ranges illustrate this shift most starkly. As the ecological backbone of north-western India, they prevent desertification, recharge groundwater, stabilise soil, and sustain **biodiversity**.
- Earlier rulings, notably *M.C. Mehta vs Union of India* (2004) and subsequent orders up to 2010, recognised irreversible damage caused by unregulated mining and rejected narrow, height-based definitions.
- However, In issue relating to Definition of Aravalli Hills and Ranges (2025) accepted a 100-metre elevation criterion, ignoring hydrology, ecological continuity, and geomorphology.
- This **reductionist** approach departs from the **precautionary** principle articulated in *Vellore Citizens' Welfare Forum vs Union of India* (1996) and effectively removes protection from vast ecologically significant areas.

Constitutional Implications: Articles 21, 48A, 14, and Environmental Rights

- These developments have serious **constitutional** implications.
- The right to a clean and healthy environment has been read into **Article 21**, while **Article 48A** obligates the state to protect and improve the environment, and **Article 51A(g)** places a corresponding duty on citizens.
- Judicial interpretations that enable ecological exclusion hollow out these provisions.
- Moreover, selective protection based solely on altitude creates an arbitrary classification with no rational nexus to ecological goals, violating the equality principle under **Article 14**.
- Such arbitrariness undermines both environmental justice and constitutional coherence.

Judicial Leniency and the Erosion of Environmental Deterrence

- The dilution of protection extends beyond the Aravallis. Courts and regulatory bodies increasingly approve projects based on assurances of **mitigation** rather than strict enforcement.
- Despite *Common Cause vs Union of India* (2017) clearly rejecting the legalisation of environmental violations after the fact, **post-facto** and conditional clearances have become routine.
- This erosion weakens the **deterrent** function of environmental law and signals that compliance is negotiable.

Mangroves, Coastal Ecology, and the Illusion of Compensation

- The consequences are especially visible in coastal ecosystems. **Mangroves** function as flood buffers, carbon sinks, and biodiversity reservoirs.
- Judicial approvals allowing the felling or transplantation of tens of thousands of mangrove trees for infrastructure represent a serious ecological setback.
- Reliance on **compensatory** afforestation ignores ecological science: mature mangrove ecosystems take decades to develop and cannot be recreated elsewhere.

Infrastructure in Fragile Ecosystems: The Char Dham Project

- A similar pattern emerges in the Himalayan region through the Char Dham highway project.
- A 2025 study identified 811 **landslide**-prone zones along the route, underscoring the fragility of the **Himalayan ecosystem**.
- Although ecological importance was acknowledged in *Citizens for Green Doon vs Union of India* (2021), wider roads were permitted on strategic grounds.
- Subsequent floods and disturbances raise serious questions about this balancing exercise, especially regarding **intergenerational responsibility**.

Procedural Inequality and Corporate Advantage

- Environmental governance increasingly favours economically powerful actors.
- Large corporations navigate clearance processes with ease, while public objections are marginalised and hearings curtailed.

- Environmental compliance becomes a checklist, undermining **procedural** fairness and public trust. This imbalance violates **equality** guarantees and entrenches perceptions of regulatory capture.

The Judiciary's Changing Role and the Need for Institutional Reform

- Indian courts have historically been custodians of environmental rights.
- In *M.C. Mehta vs Kamal Nath* (1996), the Supreme Court affirmed the **public trust** doctrine, recognising natural resources as held by the state for the people.
- Departures from this jurisprudence necessitate reform, including regular sittings of the Supreme Court's Green Bench and similar benches in High Courts.

Conclusion

- Ease of doing business must not become ease of environmental destruction.
- When law forgets what nature remembers, the **Constitution risks standing mute before irreversible loss**. Environmental harm is cyclical, cumulative, and unforgiving.
- Restoring environmental justice requires reaffirming constitutional duties, ecological science, and fairness, recognising development as a process constrained by environmental limits rather than a justification for their erosion.

The Fading of India's Environmental Jurisprudence FAQs

Q1. Why is environmental justice described as being at a crossroads in India?

Ans. Environmental justice is at a crossroads because development priorities increasingly override ecological protection and constitutional safeguards.

Q2. What was the significance of the Supreme Court recalling *Vanashakti vs Union of India* (2025)?

Ans. The recall allowed retrospective environmental clearances, weakening the preventive nature of environmental law.

Q3. Why is the 100-metre definition of the Aravalli ranges problematic?

Ans. The height-based definition is problematic because it ignores ecological continuity and excludes large environmentally significant areas from protection.

Q4. How do compensatory afforestation measures fail in the case of mangroves?

Ans. Compensatory afforestation fails because mature mangrove ecosystems cannot be recreated elsewhere within meaningful ecological timeframes.

Q5. What constitutional principle is violated by unequal environmental clearances for corporations?

Ans. Unequal environmental clearances violate the principle of equality and non-arbitrariness under Article 14 of the Constitution.

Source: **The Hindu**

More Money for Defence, Now Fix the Process

Context

- India's latest **defence budget** represents a notable shift after years of stagnation, marking the first sustained double-digit increase in allocation and reaching 2% of GDP.
- In an unstable global environment, this increase signals **strategic** intent and a renewed emphasis on preparedness.
- However, higher spending alone does not guarantee improved outcomes.
- The real test lies in whether the allocation can translate into faster acquisition, stronger domestic capacity, and long-term **capability** through systemic **reform** rather than incremental adjustment.

Key Feature of the Budget Regarding the Defence

- A key feature of the budget is the renewed focus on **modernisation**, particularly through a significant rise in **capital expenditure**.
- This shift corrects years of imbalance in which revenue expenses dominated at the cost of future readiness.
- The Indian Air Force and Army benefit from substantial increases aimed at platforms, heavy vehicles, and weapons, strengthening operational credibility across multiple theatres.
- At the same time, the weakened **currency** reduces the purchasing power of these allocations, especially for imported systems, partially offsetting the headline gains.

The good and the bad

- The emphasis on domestic manufacturing is reinforced by reserving a large share of acquisition spending for local firms, further advancing **indigenisation**.
- Defence **exports** have expanded rapidly over the past decade, reflecting growing industrial competence and policy continuity.
- This progress shows that domestic production is no longer aspirational but achievable.
- However, not all services benefit equally. Despite its expanding role in the Indian Ocean, the Navy receives a comparatively modest increase, largely because of its ability to absorb funds efficiently.
- This exposes a paradox in allocation logic, where institutional **efficiency** may unintentionally constrain future growth.
- Another structural issue is the continued burden of **pensions**, which consume a substantial share of overall spending.
- Historically treated separately, their inclusion today limits flexibility and distorts comparisons with earlier periods when defence allocations were significantly higher as a share of GDP.

Bureaucracy and delays

- Beyond allocations, entrenched **bureaucracy** remains a central obstacle. Procurement procedures, particularly cost-focused **procurement** norms, favour established firms and disadvantage smaller players critical for **innovation** in a technology-driven sector.

- Without assured demand, predictable timelines, and long-term planning, private participation remains constrained.
- Chronic **delays** in major acquisition programmes further weaken outcomes.
- Projects approved decades ago continue to face shifting timelines, eroding deterrence and forcing repeated extensions of legacy platforms.
- These delays also result in underutilisation of allocated funds, with large sums returning unspent at the end of the fiscal year.
- The absence of a non-lapsable modernisation fund compounds this problem, allowing short-term fiscal convenience to override sustained capability development.

Challenges and the Way Ahead: R&D lies scattered

- Investment in **R&D** has increased, but **research** remains fragmented and poorly integrated with production and deployment.
- Despite the dual-use nature of many technologies, translation into operational advantage is limited.
- Overall spending on research remains low compared to global peers, and private-sector participation is minimal.
- Without unified direction and stronger collaboration with **industry**, incremental funding increases are unlikely to yield transformative results.
- The broader conceptual challenge lies in how defence spending is perceived.
- Framed narrowly as a trade-off against welfare, its wider contribution to **infrastructure, employment, and growth** is often overlooked.
- Programmes such as border connectivity and indigenous shipbuilding demonstrate strong multiplier effects across the **economy**, supporting long-term development alongside security.

Conclusion

- The current budget reflects ambition and improved prioritisation, but outcomes will depend on execution.
- Aligning spending with industrial capacity, accelerating decision-making, integrating research, and revisiting outdated financial structures are essential.
- If pursued seriously, these changes can convert higher allocations into durable strength, reinforcing national **autonomy** in an increasingly contested world.

More Money for Defence, Now Fix the Process FAQs

Q1. Why is the recent increase in India's defence budget significant?

Ans. The increase is significant because it signals strategic intent and restores emphasis on military preparedness after years of declining allocations.

Q2. What major shift has occurred within defence spending priorities?

Ans. Defence spending has shifted toward higher capital expenditure, strengthening long-term modernisation and capability development.

Q3. Why do procurement delays weaken defence preparedness?

Ans. Procurement delays weaken preparedness by postponing the induction of critical platforms and forcing reliance on outdated equipment.

Q4. How does fragmented research and development affect defence capability?

Ans. Fragmented research and development limits the conversion of innovation into operational military advantage.

Q5. Why should defence spending be viewed beyond the “guns versus butter” debate?

Ans. Defence spending should be viewed as a growth driver because it supports infrastructure, employment, and industrial expansion.

Source: **The Hindu**

Sovereign Gold Bonds (SGBs) - Budget 2026 Undermines Reform Momentum by Retrospective Taxation

Context

- The Union Budget 2026-27 (Budget 2026) received an unusually high approval rating — over 95% positive commentary — described as “businesslike, calm, short, boring and good.”
- However, after the initial euphoria settled, a controversial provision emerged – the imposition of a retrospective long-term capital gains (**LTCG**) tax of 12.5% on Sovereign Gold Bonds (SGBs) effective April 2026.
- The episode reopens an old debate in Indian fiscal policy — retrospective taxation, **investor confidence**, and policy credibility.

The “Googly” - Retrospective Tax on Sovereign Gold Bonds (SGBs)

• Background of SGB scheme

- It was introduced in 2015-16 when global gold prices were stable or low.
- **Objective:**
 - Reduce physical gold imports
 - Improve Current Account Deficit (CAD)
 - Provide investors paper gold with 2.5% annual interest
- **Original understanding:** Capital gains tax exemption if held till maturity, and the investor bears gain or loss.
- The scheme was discontinued in **2024**, prior to the global gold price surge.
- **What has changed?** From April 2026, retrospective LTCG tax (12.5%) will be imposed on capital gains from SGBs. It applies even to bonds purchased under earlier tax-exempt terms.

Why the Move is Problematic

- **Retrospective taxation (A policy red flag)**

- Retrospective taxation violates the principle of tax certainty, undermines predictability in fiscal policy, and damages rule of law and investor trust.
- India has past scars. **For example**, the 2012 retrospective tax amendment, which was widely criticized internationally, hurting India's investment climate.
- The current move revives those concerns.

- **Marginal revenue gain, disproportionate cost**

- **For example**, this new tax will net about Rs 200 crore a year — about .005% of India's tax receipts in 2025-26.
- In contrast, SGBs reportedly saved substantial forex by reducing gold imports, improved CAD and supported rupee stability.
- The government made an estimated **fiscal gain** of Rs 50,000 crore from borrowing from the investor (at an annual rate of 2.5%) rather than 7% from the market.
- This trade-off appears economically inefficient.

- **Impact on investor confidence**

- Investor confidence depends on stability, contract sanctity, and policy continuity.
- The move signals the government may alter terms **ex post facto** when gains accrue to investors.
- This is particularly damaging at a time when –
 - Private investment share in GDP has fallen from about 30% peak to 20%,
 - Net FDI is barely positive,
 - Recent quarterly net FDI flows are negative, and
 - The FDI as a percentage of GDP is at its lowest since the 1990 crisis.
- The retrospective tax may further worsen India's investment climate.

Broader Structural Issues Highlighted

- **Decline in private investment**

- Persistent stagnation in domestic private capital formation, capital flight tendencies (Indians investing abroad), and foreign investors are cautious.
- **Reasons cited:**
 - 2012 retrospective tax amendment.
 - Model Bilateral Investment Treaty (**BIT**), 2015: Provides for a 5-year cooling period (meaning a divorce agreement between a foreign and a domestic firm could only be achieved after 5-years), and restrictive dispute resolution (mandatory domestic adjudication).
 - **Revised BIT** (3-year cooling, possible international arbitration) shows partial correction.

- The deeper problem is policy **overconfidence** and bureaucratic **rigidity**.

- **Budget-making process - The secrecy question**

- The economists criticize: Colonial-era legacy of secretive Budget preparation. Lack of collaborative and consultative policymaking.
- Suggested reform: Open, participatory budget process; **pre-budget** consultations with stakeholders, and greater transparency in tax changes.
- Major reforms today (GST, trade deals, deregulation) are increasingly happening outside the Budget — a structural shift in governance style.

Positive Features of Budget 2026 Excluding Retrospective Tax

- **Policy continuity:** Income tax reforms announced earlier, ongoing GST rationalization, deregulation backed by NITI Aayog.
- **Trade openness:** New trade agreements, increased economic openness, movement away from aggressive “self-reliance” rhetoric toward pragmatic integration.
- **Structural reforms outside budget:** Trade and regulatory reforms de-linked from Budget speech, more continuous reform process (unlike 1991’s one-shot Budget reform).

Key Challenges for India

- Restoring private investment momentum
- Reversing FDI decline
- Ensuring tax certainty and contract sanctity
- Reforming BIT framework
- Improving regulatory predictability
- Strengthening institutional decision-making processes

Way Forward

- **Make retrospective taxation legally impermissible:** Amend tax law to prohibit ex post facto taxation, institutionalize tax stability principles.
- **Improve budget governance:** Transparent, consultative budget drafting; white papers before major tax changes; strengthen Parliamentary scrutiny.
- **Reform investment framework:** Further liberalize BIT provisions, fast-track dispute resolution, strengthen commercial courts and arbitration mechanisms.
- **Focus on investment revival:** Improve ease of doing business, reduce compliance burdens, encourage domestic capital formation, strengthen financial sector depth.
- **Signal policy credibility:** Reverse or grandfather retrospective SGB tax, restore investor trust proactively.

Conclusion

- Budget 2026 stands as a **paradox**. On the surface, it reflects administrative maturity, fiscal stability, and reform continuity. Yet, the retrospective taxation of Sovereign Gold Bonds (SGBs) introduces a serious credibility risk.
- In an economy grappling with declining private investment and weak FDI flows, **policy certainty** is more valuable than marginal tax revenue. Economic growth depends not merely on macro numbers but on **trust** between state and investor.
- India aspires to become Viksit Bharat. That journey demands not just bold reforms — but **predictable**, principled policymaking. And in taxation, certainty is not a luxury. It is the foundation.

Sovereign Gold Bonds (SGBs) FAQs

Q1. How does retrospective taxation affect investor confidence in an emerging economy like India?

Ans. Retrospective taxation undermines tax certainty and contract sanctity, thereby eroding investor confidence.

Q2. What is the role of Sovereign Gold Bonds (SGBs) in India's macroeconomic stability?

Ans. SGBs reduced physical gold imports, improved the current account balance, and stabilized the rupee.

Q3. Why is policy predictability critical for reviving private investment in India?

Ans. Policy predictability reduces regulatory risk, enhances ease of doing business, and encourages long-term capital formation.

Q4. What is the impact of India's Model Bilateral Investment Treaty (2015) on FDI inflows?

Ans. The restrictive provisions of the 2015 Model BIT increased dispute resolution uncertainty, contributing to declining FDI inflows.

Q5. How can reforms in the Budget-making process strengthen fiscal governance in India?

Ans. A transparent and consultative budget process can improve policy credibility, enhance accountability.

Source: IE

Source: <https://vajiramandravi.com/current-affairs/daily-editorial-analysis-6-february-2026/>

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