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Supreme Court Strikes Down 2021 Office Memorandum on Ex-Post Facto Environmental Clearances While Permitting Limited Statutory Amnesty

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Recent Developments:

- The Supreme Court has **quashed the Union Government's 2021 Office Memorandum (OM)** that created a continuing mechanism for granting **ex-post facto Environmental Clearances (ECs)** to projects that commenced without prior approval.
- The Court held that **retrospective Environmental Clearances cannot be granted through executive instructions**, but recognised that a **narrowly tailored statutory notification** under **Section 3 of the Environment (Protection) Act, 1986** may be issued in exceptional cases based on **overriding public interest**. The judgment will operate **prospectively**, thereby protecting clearances already granted under the 2021 OM.

Environmental Clearance (EC):

Meaning:

- **Environmental Clearance (EC)** is a **prior statutory approval** granted to specified developmental projects after assessing their likely environmental impacts.
- **The Environmental Impact Assessment (EIA) Notification, 2006** mandates that notified projects must obtain **prior EC** before commencement of construction or operations.
- **The EC process** ensures that environmental concerns are integrated into developmental decision-making before irreversible ecological damage occurs.

Environmental Clearance Process:

- The process generally involves **screening, scoping, preparation of EIA Report, public consultation, appraisal by Expert Appraisal Committee (EAC), and grant or rejection of EC**.
- The EC contains legally enforceable environmental safeguards, monitoring requirements, and mitigation measures throughout the project lifecycle.

Background to the Present Judgment:

Issue of Ex-Post Facto Environmental Clearance:

- **Several projects** had commenced construction or operations without obtaining mandatory prior Environmental Clearance.
- **The Central Government** introduced mechanisms to regularise such violations instead of ordering immediate closure.

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Government Measures:

- **March 2017 Statutory Notification:** Introduced a **one-time, six-month statutory amnesty** allowing eligible violators to disclose violations and seek Environmental Clearance after environmental appraisal.
- **July 2021 Office Memorandum:** Introduced a **Standard Operating Procedure (SOP)** creating a continuing administrative mechanism for granting **ex-post facto Environmental Clearances** in violation cases.

Supreme Court Judgment:

Invalidation of the 2021 Office Memorandum:

- **The Court** held that the **2021 OM lacked statutory authority** because it was merely an administrative instruction.
- **The OM** created a **permanent mechanism** for regularising environmental violations, which was inconsistent with the statutory framework.
- **Executive instructions** cannot amend, override, or dilute **delegated legislation** framed under a Parliamentary statute.
- **The 2021 OM** was therefore declared **ultra vires** the **Environment (Protection) Act, 1986**.

Limited Statutory Amnesty Permitted:

- **The Court** clarified that **ex-post facto Environmental Clearance cannot be granted through executive orders**.
- **The Central Government** may issue a **limited statutory notification under Section 3 of the Environment (Protection) Act, 1986** only when:
 - **There exists overriding public interest.**
 - **The notification applies only to clearly identified categories of projects.**
 - **The measure satisfies the constitutional principles of reasonableness and proportionality.**
- **The judgment** therefore prohibits blanket regularisation while permitting narrowly tailored statutory relief in exceptional circumstances.

Prospective Application:

- **Environmental Clearances** already granted under the **2021 OM** will continue to remain valid.
- **The judgment** will apply only to future cases to prevent disruption of ongoing projects.

Office Memorandum (OM) vs Statutory Notification:

Key Differences:

- **An Office Memorandum** is an **administrative instruction**, whereas a **Statutory Notification** is issued under powers conferred by a statute.
- **An Office Memorandum** does not possess the force of law, whereas a **Statutory Notification** is legally enforceable.
- **An Office Memorandum** cannot amend delegated legislation, whereas a **Statutory Notification** may establish a legally valid regulatory framework within statutory limits.
- **Office Memoranda** are issued by Ministries for administrative purposes, whereas **Statutory Notifications** are issued under powers delegated by Parliament.
- **The Court** reaffirmed that environmental regulation must derive authority from **law rather than executive convenience**.

Evolution of Supreme Court Jurisprudence on Ex-Post Facto Environmental Clearance:

Common Cause v. Union of India (2017):

- **The Supreme Court** held that projects requiring Environmental Clearance cannot commence without prior approval.
- **The judgment** strengthened the preventive character of environmental regulation.

Alembic Pharmaceuticals Ltd. v. Rohit Prajapati (2020):

- **The Court** declared that routine **ex-post facto Environmental Clearance** violates the **Precautionary Principle** and preventive environmental governance.
- **The judgment** emphasised that environmental assessment must precede project execution.

Pahwa Plastics Pvt. Ltd. v. Dastak NGO (2022):

- **The Supreme Court** adopted a pragmatic approach by observing that environmental remediation and regulatory compliance may, in appropriate cases, better serve public interest than immediate closure of functioning industries.

Vanashakti Litigation:

- **May 2025 Judgment:** Declared both the **2017 Notification** and **2021 OM** invalid by holding that ex-post facto Environmental Clearance was impermissible.
- **November 2025 Review Judgment:** Recalled the earlier judgment after observing that binding precedents and public interest considerations required reconsideration.
- **July 2026 Judgment:** Distinguished between a **time-bound statutory amnesty** and **permanent administrative regularisation**, permitting only the former under strict statutory safeguards.

Constitutional and Legal Provisions:

Environment (Protection) Act, 1986:

- **Section 3** empowers the Central Government to take measures for environmental protection, including issuing statutory notifications where legally justified.

Environmental Impact Assessment (EIA) Notification, 2006:

- **The Notification** makes **prior Environmental Clearance** mandatory for specified developmental projects before commencement.

General Clauses Act, 1897:

- **Sections 20 and 21** recognise the power to issue, amend, modify, or rescind statutory notifications where authorised by law.

Constitutional Provisions:

- **Article 14** prohibits arbitrary state action and requires equal treatment before law.
- **Article 21** includes the **Right to a Clean and Healthy Environment** as part of the Right to Life.
- **Article 48A** directs the State to protect and improve the environment.
- **Article 51A(g)** imposes a Fundamental Duty upon every citizen to protect and improve the natural environment.

Role of the Jan Vishwas Act, 2023:

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Legislative Significance:

- **The Act** decriminalised several regulatory contraventions under the **Environment (Protection) Act, 1986**.
- **The Supreme Court** observed that legislative preference for regulatory compliance does not authorise unrestricted post-facto environmental approvals.
- **Decriminalisation** cannot dilute statutory environmental safeguards or the requirement of prior Environmental Clearance.

Projects Affected by the Judgment:

Extent of Impact:

- **More than 100 projects** had already received **ex-post facto Environmental Clearance** before the Supreme Court stayed the **2021 OM** in January 2024.
- **Around 150 additional projects** had entered the environmental appraisal process before the legal challenge concluded.

Major Sectors Involved:

- **Coal, iron ore and bauxite mining, greenfield airports, cement plants, steel plants, chemical industries, industrial estates, hospitals, and commercial buildings.**

Significance of the Judgment:

Environmental Governance:

- **The judgment** reinforces the **Precautionary Principle** while recognising legitimate developmental requirements.
- **The ruling** discourages routine legalisation of environmental violations after project commencement.
- **The decision** strengthens the distinction between **executive instructions** and **statutory delegated legislation**.
- **The judgment** establishes **public interest** as the constitutional benchmark for any future statutory amnesty.
- **The ruling** promotes a balanced framework for **environmental protection, sustainable development, regulatory certainty, and administrative flexibility.**

Related Environmental Principles for UPSC:

Key Environmental Principles:

- **Precautionary Principle:** Environmental harm should be prevented even where scientific certainty is incomplete.
- **Polluter Pays Principle:** The polluting entity must bear the cost of prevention, mitigation, and restoration.
- **Sustainable Development:** Development must meet present needs without compromising the ability of future generations to meet their own needs.
- **Inter-Generational Equity:** Natural resources must be conserved for future generations.
- **Public Trust Doctrine:** The State acts as trustee of natural resources and must protect them for public benefit.

Value Addition for UPSC:

Prelims Value:

- **Environment (Protection) Act, 1986 – Section 3**

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- **Environmental Impact Assessment Notification, 2006**
- **Office Memorandum vs Statutory Notification**
- **Ex-Post Facto Environmental Clearance**
- **Precautionary Principle**
- **Polluter Pays Principle**
- **Article 21, Article 48A, Article 51A(g)**
- **Jan Vishwas Act, 2023**

Mains Value (GS-III):

- **The judgment reinforces that environmental governance must remain rule-based, preventive, and legally authorised while allowing narrowly tailored statutory flexibility only when compelling public interest justifies exceptional departures from the general requirement of prior Environmental Clearance.v**