

Judicial Attitude and Forest Conservation

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Abstract:

India, like most developing countries, is faced with the daunting challenge of developing itself rapidly, while at the same time preserving and protecting its environment. The concepts of industrialisation, urbanisation and globalisation have adversely influenced the natural resources like water, forest, air, etc. There is imminent need to conserve and utilise these resources in a sustainable manner since they are the very basic components of human development. Forests form a very important part of our natural ecosystem. They help in maintaining ecological balance. They render the climate equable, add to the fertility of the soil, prevent soil erosion, and promote perennial stream flow in rain-fed rivers. Additionally, they safeguard gene pools, provide habitat for wild animals, and defend the tribal populace. A successful governance model must strike a balance between development and conservation. This essay examines the problem of protecting India's forests, with a focus on the Supreme Court of India. Through judicial rulings, presidential decisions, and legislative measures, India has guaranteed that its forests are conserved. It is true that a number of legislative measures have been taken to protect forest conservation in India, but the Indian judicial system's role in this regard is unparalleled. The Indian judiciary has been playing a spectacular role over the past 20 years by undertaking the Herculean task of comprehensively conserving and protecting the nation's forests. It has given the environmental situation of a nation a new depth. The following section of this essay examines the numerous laws made by the legislature for forest conservation as well as their shortcomings. The emphasis then changes to critically analysing a number of important court decisions by applying the forest conservation acts. This essay aims to incorporate several legal precedents developed by the judiciary in relation to forest preservation.

Keywords : Judiciary, conservation, forest, legislature, development, environment, human.

Introduction:

The whole vision constitution of India is divided into 3 organs – executive, legislature and judiciary. In this paper we will stress on the role played by the judiciary vis-à-vis executive and legislature. The judiciary generally intrudes in the shape of the regulations and question them on the executive and shape the guidelines which are failed to obliged by the legislature.

The apex court in India has deeply envisaged deeply in the matters of the forests and environment. In the first phase the judiciary has touched the environment cases mainly to safeguard the fundamental right to life (Article 21) and then it has shifted towards and increased the scope to the wildlife and forests. the interference caused by the apex court in this matter led to the invention of the new weapons like PIL, NGT, CAMPA, Mandamus Writ etc.

The most evident benefaction of the apex court was to five definitions of “forest” in the Forest Conservation Case. Despite the India was having its own statutes of the sustaining of forest enacted during the British period in 1865 which got the amendments in 1878 and 1927, still there was no discussion about the definition of forest in the said acts. The definition of “forest” was left unheard until the judgement of T.N Godavarman case in 12-12-1996. For the first time the “Forest” was given wide explanation from the dictionary meaning, it includes the notified and recorded forest areas and hand over the diverse conditions under which we can convert the forest land into non-forest land lack taking of first consent from the Central Government. In this way, the Indian Judiciary assumed a vital job in the forest conservation. Along the side by side not only the judiciary but also the judicial activism in the forms PILs under the article 32 and 226 constitution of India. In this process of safeguarding the environment and promoting sustainable development, wide no. of judgements has been laid down by the High Courts and Supreme Court.

Legislative Statutory Provisions:

The first law for the safeguarding the forest was the Indian Forest Act 1865 and it was basically meant for the acquiring the forest land in lieu of getting timber for the usage of the railways and the state to have claim over that land. With respect to time, it was seen that it was less effective law, so to curb out the problems of this act, new statutory provision The Forest Act 1927 was ratified. This act repealed all the other laws governing in this regard and this new comprehensive act will look after all the forest related issues. This act was enacted to supervise the transportation of timber, duties that were put on the timber and products related to forest. The biggest opening of this act was it didn't provide the ownerships rights for the tribal people who are living in the forest. and in case of disputes are to be sorted out by the forest settlement Officer, related to their consideration of right are not taken into account for the being time.

During the post-independence period, one other act was enacted, "Forest Conservation Act 1980". This was passed to overcome obstacles caused by the Forest Act of 1927. The following are a few of this act's fundamental high points.:

- To limit using forests for purposes other than those of the forest.
- The reduction of deforestation for non-forest purposes.
- The leasing of forest property to businesses or other individuals.
- To stop the cutting down of trees.
- The appointment of advisory committee for taking permission of central government for performing any duty.

To address the rights of the tribal residing in these forests, "*The Schedule Tribe and other Traditional Forest dwellers (Recognition of Forest Rights) Act, 2006*" was enacted. The 1988 National Forest Policy was created in part to enhance forest management. During the critical analysis of the all the above discussed laws it says that wide no. of attempt has been made by legislature for the safeguarding the forests. The only problem lies is that poor implementation of these laws by the authorities. In the same manner the judiciary has assumed the noteworthy job in the interpretation of these laws.

National needs, Forest Conservation and Judicial Attitude:

The global awareness about the environmental protection was announced after the Stockholm Conference in 1972 on "*The United Nations Conference on Human Environment*". India is also covered by the same court's jurisdiction. The amendment brought in Constitution of India in 1976 added the provision for the environment protection. To stop the deforestation was passed the Forest (Conservation) Act 1980. At the centre level department for Forest and Environment was made. The huge no. of the judgements was given by the Indian Judiciary to guarantee the environment protection. With respect to time citizens of India became aware about the importance of forest. Even rebellions against deforestation have been started. The Indian Forest Act of 1927 and the legislation based on its model that was restricted by various States persisted despite all of these shifts in perspective and strategy. They don't mirror an approach of safeguarding the environment. Rather they continue with the pay arranged system of the frontier time.

In "*R.L. & E. Kendra, Dehradun vs. State of U.P.*"¹ also known by the name of "*Doon Valley Case*", it was the first case in the India that was fought among the conflict the development and conservation of environment and the judiciary interpreted this in context of the wide interest of the country. his case emerged from erratic and hazardous limestone quarrying rehearses in "*the Mussoorie Hill Range of Himalayas*". The mines in the Doon Valley region bared the Mussoorie Hills of trees and backwoods spread and quickened soil disintegration. The Supreme Court was cautious in its approach when it pointed out that it is up to the government and the nation, not the court, to decide whether to use resources carelessly at the expense of science and condition or to come to a consensus on the most modern demands. Regardless, the worry of the Court for guaranteeing the backwoods and keeping up the environmental equalization in the Doon Valley was

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¹ AIR 1985 SC 652

clear when it watched “We are not neglectful of the way that natural resources must be tapped for the purposes of the social improvement however one can't overlook while tapping of resources must be done with imperative consideration and care so that ecology and environment may not be affected in any serious way, there may not be exhaustion of water resources and long term planning must be undertaken to keep up the national wealth”². It must be credibly considered that these are limitless human resources that won't run out in a single generation. Despite such laws it has been experienced that in different states forests are being exposed aimlessly.

Constitutional Mandate and Forest Conservation:

Under the 42nd amendment in Constitution of India in 1976, two new things were introduced Article – 48A DPSP and Article 51(A)(g) for the safeguarding and betterment of the environment. The Article provide as follow:

- “Article 48-A”³ – “Protection and improvement of environment and safeguarding of forests and wild life and the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country”.
- “Article 51A(g)”⁴ – “It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures”.

An examination of the above arrangements obviously demonstrates that both State and the residents are under a commitment to secure and defend forests, which will affect the earth. Beginning with the initial phase, "Forest" was covered by Entry 19 in List II of Schedule VII. The Indian Parliament understanding the national earnestness of the forests has furthermore made out upgrades in the VII Schedule. Passage 19 in List II of the VII Schedule has been erased and another section 17-An identifying with woods has been presented in the Concurrent List of the VII Schedule by the Constitution (Forty-second Amendment) Act, 1976. In this manner, state just as Centre can make the law identifying with forests. “The State Government can make laws relating to forest administration provided it is in consonance with the forests policy of centre for preservation and development of the nation's forest resources”⁵.

Interpretation and implications of Forest Act, 1980 by the Supreme Court:

The apex court of India explained the statutes of Forest Conservation Act 1980 with the help of “*T.N. Godavarman Thirumalpad v. Union of India*”⁶. “The Court issued sweeping directives to enforce the FCA”⁷. The misuse of trees and their products was outlawed, and all wood-based businesses were forced to close. Additionally, the Court established Central and State advisory committees to support the directives it issued in this case. The court believed that FCA was set up to prevent environmental injustice caused on by rapid deforestation. The word “forest” was also given definition according to the dictionary meaning and all areas recorded as forest under the act despite of any proprietary rights.

The Court further declared that any non-backwoods movement taking place in a forest in any region of the country is in violation of the demonstration and must end immediately. As a result, all mining and quarrying operations were prohibited in forests. It was decided that wood-based businesses like saw manufacturers also violated the Act. All logging and falling of trees were prohibited, and only in the unlikely event that they complied with the State Government's operating plans where they allowed to proceed. The courts in India use the Godavarman Judgment as precedent to decide similar cases. “*Shree Bhagwati Tea Estates v. Government of India*”⁸ the judiciary observed wide no. of problems noted under ambit of FCA. Initially, the court took a gander at the “*Kerala Private Forests (vesting and Assignment) Act 1971*”. The Kerala government's agrarian revolution included this demonstration, which sought to acquire private forest areas as a result. The acquired

² L. Sanmiha, *Role of Judiciary in Conservation of Forest*, International Journal of Pure and Applied Mathematics , Volume 120 No. 5 2018, 2189-2207

³ The Constitution of India, 1950.

⁴ Ibid.

⁵ Armin Rosencranz, *Environmental law and policy in India: cases, materials, and statutes*, Oxford University Press, New Delhi, 2001.

⁶ AIR 1997 SC 1228

⁷ The Forest Conservation Act, 1980 (Act no. 69 of 1980).

⁸ AIR 1996 SC 201

land was thereafter to be divided among labourers who were without land. The petitioner put this to the test by claiming that it violated FCA rules. "It was fought that this securing for agrarian reason would mean clearing of forests on such land, and this was not passable without the endorsement of the focal government". Additionally, it was suggested that the FCA forbid the leasing of forest land to private entities or individuals, meaning that the acquired land could not be distributed to those who were landless. The Supreme Court dismissed these legal issues and stated that the FCA does not envision a complete boycott; only the Central Government's support is needed. In order to address these concerns, the Apex Court, while upholding the legality of the Kerala Private Forests Act, harmonised the requirement to ration forests with the need to address the concerns of the poor regarding their employment opportunities and the lessened. The issue of illegal mining in forest areas was also noticed by the apex court. "The Supreme Court made it categorically clear that renewal of mining licence after FCA came into force can be made only on getting prior permission from the Central Government"⁹. The Court had resolutely rejected the non-forest exercises and the concession of rent for such activities within forests. Renewing the stone-pounding lease without the Central Government's prior approval was seen as a serious breach of contract under the circumstances "*Dhirendra Aggarwal vs. State of Bihar*"¹⁰. "Similarly, excavations of iron ore and tourism in forest were highly criticised by the Supreme Court"¹¹.

Public Interest Litigation (PIL):

PIL can be entertained under two conditions: "Public Trust Doctrine" and "Locus Standi". The no. of PIL related to the Environment are come under the ambit of "*Article 21 Constitution of India – Right to healthy environment*". Also, any open vivacious individual can approach the higher courts for therapeutic measures. The Hon'ble Supreme Court has even seen that a straightforward post card routed to it very well may be considered as PIL. The higher courts have successfully utilized this instrument to draw consideration of open and requested activities from executive. Hardly any commentators have brought up that in perspective on expansive number of pending cases in different courts, engaging unimportant petitions may squander valuable time of courts. Likewise, in the event of PILs there are no set rules and it exclusively relies upon the courts to let it out or not. Be that as it may, numerous milestone decisions have been conveyed through this component, for e.g., Mussoorie Quarrying Case, Goa Foundation Case etc. "With time the PIL has emerged as effective tool to address any emergent issue of public importance"¹².

Writ of Mandamus:

In order to defend the fundamental liberties listed in Chapter II of the Constitution, the writ of mandamus is issued under Articles 32 and 226 of the Constitution. In such manner the Supreme Court has formulated new apparatus of Writ of Continuing Mandamus which is being issued occasionally to official in TN Godavarman Case (WP(c) 202 of 1995), for most recent 18 years from year 1996. Numerous commentators have raised worries that legal executive has assumed control over crafted by official. Furthermore, the organization of forests is adequately being finished by Hon'ble Court. Too, the court have permitted raising associated matters and viably managing and issuing orders in regard of practically every one of the issues of forests organization in one Writ Petition. In spite of the fact that the faultfinders have raised concerns yet this instrument of Writ of Continuing Mandamus has brought some sense and streamlined numerous authoritative activities of official. Additionally, this has offered solidarity to official to carefully actualize the law.

Central Empowered Committee:

In response to a plea made by the Hon. Supreme Court of India in Writ Petitions (Civil) Nos. 202/95 and 171/96 on September 5, 2002, the Central Empowered Committee (CEC) was established. The "*Central*

⁹ *Ambika Quarry Works vs The State of Gujarat*, AIR 1987 SC 1073.

¹⁰ AIR 1993 Pat 109.

¹¹ Paul V. Ellefson, *Forest Resource Policy and Administration*, McGraw-Hill, 1992 - Business & Economics – page 504 page.

¹² Razzaque, Jona. *Public interest environmental litigation in India, Pakistan, and Bangladesh / by Jona Razzaque* Kluwer Law International; Sold and distributed in North, Central and South America by Aspen Publishers the Hague; New York: Frederick, MD 2004.

Empowered Committee” is set up as a specialist under Section 3(3) of “the Environment (Protection) Act, 1986” to settle and hear complaints on forests and wild life related matters.

The Hon’ble Supreme Court has established the CEC with explicit command as pursue: -

1. “Pending interlocutory application in these two writ petitions and also the reports and promises filled by the States in light of the solicitations made by the Court ought to be assessed by the Committee, and their proposition will be submitted under the watchful eye of Hon’ble Court for requests”.
2. “Any individual having any complaint against any methods taken by the Government or some other authority in showed consistence with the solicitations pass by this Hon’ble Court will be at opportunity to move the Committee for searching for sensible help. The Committee may dispose of such applications in comparability with the request pass by Hon’ble Court. Any application, which can't be appropriately disposed of by the Committee may be implied by it to this Hon’ble Court”.

The CEC is certainly not a statutory body comprised under any resolution of parliament. Be that as it may, the CEC has for all intents and purposes become the insightful wing of the Hon’ble Supreme Court in issues of forests and wildlife preservation and nearly on every one of the issues the report from CEC is being looked for by the Hon’ble court before passing a request. The CEC has for all intents and purposes become the eyes and ears of the court and furthermore it has given extremely intense and genuine picture of ground circumstances on premise of which numerous milestone orders have been passed. For e.g., Kundermukh National Park mining case.

The National Green Tribunal:

The Hon’ble Supreme Court in different decisions e.g., “*A.P. Pollution Control Board v. M.V. Nayudu*” has seen that undeniable Environmental courts are required to be set up. The Law Commission suggested the establishment of the National Green Tribunal in its 186th report after taking this into consideration. The Green courts in nation have been set up by an Act of Parliament, the "National Green Tribunal Act, 2010" to manage matter identifying with condition and forests and wildlife. Fast ecological equality will be provided by the Tribunal's committed ward in natural matters, and this will assist lighten the caseload in the higher courts. It is suggested that the NGT be divided into five separate benches across the country.

Renew of Lease in forest area and Judicial Attitude:

In “*State of Bihar vs Banshi Ram*”¹³, The Supreme Court ruled that where a lease was approved for obtaining a specific mineral before the Act took effect and the lessee had contacted the State Government after the Act took effect to request permission to obtain and transport any new diggers from any area of a forest that was at the time used for non-forest purposes by engaging in mining activities before the Act took effect, the earlier approval of the Central Government. “Before granting permission to start mining operations on a virgin area, section 2 of the Act to be complied with, it is not necessary to seek the prior approval of Central Government for purposes of carrying out mining operations in a forest area, which is broken up or cleared before the commencement of the Act”¹⁴.

USE OF FORESTS FOR NON-FOREST PURPOSES AND JUDICIAL ATTITUDE:

When forest land is attempted to be used for non-forest purposes, Section 2 of the Act is applicable in all cases, not simply those where mining leases are permitted in reference to territories inside the protected forests. Forest conservation includes re-forestation in addition to the protection and security of existing forests. Forests must be normally sliced to address the issues of the nation. In the meantime, re-forestation ought to proceed to supplant the evaporating woods. It is a consistent and coordinated procedure.

In “*M.C. Mehta vs Kamal Nath*”¹⁵, as per the Supreme Court the respondent's hotel received a large portion of the river Beas bank, which was a piece of protected forest, on lease only for commercial use. In fact, the de-renting of the aforementioned zone was recommended by the Board in its report. The Himachal Pradesh Government rented the naturally fragile land to the hotel board, which presented a clear breach of open trust,

¹³ AIR 1985 SC 814

¹⁴ Grossman, R. (2009). Solidarity with Sandino: The Anti-Intervention and Solidarity Movements in the United States, 1927—1933. *Latin American Perspectives*, 36(6), 67–79. <https://doi.org/10.1177/0094582X09350764>.

¹⁵ (1997) 1 SCC 388.

and the earlier endorsement for rent that the Government had previously conceded was suppressed. The polluter pays concept and the precautionary principle were applied in this case, and the motel's board was requested to explain why it should not be subjected to a mandatory pollution fine. "The Court further held that it can, in exercise of its jurisdiction under article 32, award "exemplary damages" in PIL and the person causing "the pollution can be held liable to pay" "exemplary damages" "so that it may act as deterrent for others not to cause pollution in any manner", "Accordingly, the Court directed that a show cause notice be issued to the motel management as to why in addition to damages, exemplary damages be not awarded against it? After considering the reply of the motel management in this regard, the Court quantified rupees ten lacs as the exemplary damages in this case"¹⁶.

Conclusion:

"The judiciary has contributed in insurance and preservation of the forest by propounding the Public trust doctrine and sustainable development". Different laws have been passed with the intention of guaranteeing and protecting forests, but each of these laws has been given life by the various legal professions. By way of important court rulings, like Godavarman, the judiciary has taken on the role of a lobbyist in the assurance and preservation of the forest. The court has filled the gap between the various statutes themselves and the gaps in their application.

¹⁶ United Nations Environment Programme, & United Nations Development Programme (1997). *Joint UNEP/UNDP Environmental Law and Institutions Project in Africa: Mid-term Internal Project Review Report - Activities of the Joint UNEP/UNDP Joint Project Volume 14*. <https://wedocs.unep.org/20.500.11822/29139>.