

## **A Critical Examination of the Role of Judiciary in Forest Conservation**

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### **Introduction:**

In India, natural resources are adversely affected through the process of industrialization. In today's world, there is need to conserve and use the resources in sustainable manner. In India, there are various laws enacted for the protection and conservation of the forest and various corresponding duties are imposed on individuals. However, vital role is played by the Indian judiciary in protecting and conserving the forest against evil blows of man miniature. The Supreme Court of India in the last two decades has played major role in interpreting various statutes enacted for the preservation of the forest and also laying down the mechanism for the proper implementation of the various policies and statutes enacted for the purpose of protection and preservation of forest.

The Indian judiciary has propounded various doctrines for the purpose of the protection of natural resources including the forest resources. Further, through the various judicial pronouncements, the judiciary has levied duty on the individual as well as state. The role of Indian judiciary in the litigation relating to the conservation of the forest can be termed as "activist". The prominent example of activist role of judiciary in conservation and protection of the forest is the Godavarman Case<sup>2</sup>, wherein the court defined the term „forest“ and also laid down various situations in which no forest can be acquired for non-forest purposes without taking the consent of Central Government.

In the present paper, the author will deal with the present scenario and will extensively study the nature and extent of till date developments in various statutes enacted for the purpose of conservation of the forest. The author will further deal with the vital role played by the India Judiciary in protection and preservation of forests by interpreting the Forest Conservation Act, 1980. This paper further will critically analyse the role played by the Supreme Court of India in preservation and conservation of the forests through Godavarman Case.

### **Legislative provisions:**

The first forest act was enacted in year 1865 for the purpose of the protection of the forest. The purpose behind enacting this act was acquisition of the forest land for providing timber to railway authorities and also establishing the claim of the state over that particular land. Further, in order to make the laws for effective for the protection of the forests, the Forest Act, 1927 was enacted. This act repealed all the previous acts and consolidated all the acts in respect of forests. It regulated the transmission of the timber and also levied duty on timber and other forest produce.<sup>3</sup> The major lacuna in 1927 act was that it did not give common ownership rights to the tribal living on the forest land. Further, all the disputes of the tribal community were resolved through the "Forest Settlement officer", who in most of the cases did not take into consideration the rights of the tribal community.

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<sup>2</sup> 1 (1997) 2 SCC 267: AIR 1997 SC 1228

<sup>3</sup> S.C. Shastri, Environmental Law, 4th Edition

After independence, Forest (Conservation) Act, 1980 was enacted. The major purpose behind enacting this act was to remove lacunas which were found in 1927 Act. The major salient features of the act are as follows:-

1. Restrictions on the use of forests for non-forest purposes.
2. Restrictions and the de-reservation of reserve forests.
3. Regulation concerning the diversion of forest lands by way of lease to industries and individuals.
4. Restriction on the clear felling of trees and
5. Constitution of an advisory committee to grant an approval for the conduct of any activity for which an approval of the Central Government is required.<sup>4</sup>

The legislatures also enacted Schedule Tribe and other Traditional Forest dwellers (Recognition of Forest Rights) Act, 2006 for recognising the rights of the tribal community who have been residing in the forest land for many years. Mainly, it is the outcome of various developments taking place at the international level. In 1988, the government introduced the National forest policy with the objective of bringing stability in the management of the forests.

The analysis of the above laws indicates that various efforts have been taken by the legislatures for the protection of the forest. The major problem lies in the implementation of these laws. The judiciary has played major role in interpreting and implementing the laws stated above. The role played by the judiciary is explained in the next chapter.

#### **Forest Clearance Process:**

The Forest (conservation) rules, 2003 (herein after referred as FC rules) lays down the procedure to be followed for obtaining the consent of the Central government for the purpose of the acquisition of the forest for non-forest purposes.

As per the rules, the user agency who wants to acquire the forest land for the non-forest purpose is required to prepare the proposal in the format prescribed in the FC rules and it would be submitted to the nodal officers. The nodal officer would verify the format given by the user agency within 10 days of presentation and if the proposal is found appropriate by the Nodal officers then he would send acceptance letter to the user agency.

Once the acceptance letter is given by the nodal officer, the details of the proposal along with all the relevant documents and information will be sent to the DFOs. DFOs would verify the proposal and would give his recommendations and site inspection report to District Collector.

District Collector would further verify the proposal along with recommendations and site inspection report of DFO and would forward his recommendations and site inspection report to CC/CCF. CC/CCF after necessary inspection would forward his recommendations and inspection report to the Nodal Officers. Nodal officers would after verification of all the documents would forward his recommendations and site inspection report to state secretary, who will after verification of the documents would send his recommendations and site inspection report to the regional officer, Delhi if the forest land is to be diverted is from 0-40 hectares, but if the forest land to be diverted is more than 40 hectares, recommendation and site inspection report of the Nodal Officers will be sent directly to Head Office (MoEF), Delhi).

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<sup>4</sup> Section 2 of the Forest Conservation Act, 1980.

The regional officer would decide the validity of the proposal regarding the diversion of forest land for non-forest purpose up to 5 hectare without doing consultation with State Advisory Group. The meeting of State Advisory group would be conducted if there is diversion of forest land more than 5 hectares but less than 40 hectares. Further for all mining related proposals, meeting of State advisory group is to be conducted. The proposal along with the recommendation of State Advisory group and all the relevant documents including the recommendations and site inspection report of DFO, CCF, Nodal officers, State secretary would be sent to competent authority of MOEF for the purpose of the approval. Head office of Delhi would verify all the documents and would conduct the meeting of FAC. On the basis of recommendations of FAC, decision would be taken regarding the acceptance or rejection of the proposal. If the proposal is accepted, then it would be made available in the public domain.

**Judicial approach in conservation of forests:**

- Interpretation of Forest Conservation Act, 1980

Section 2(2) of Forest Conservation Act restricts that no forest land can be used for any non forest purpose without the consent of the Central Government. The term non forest purpose means the breaking up or clearing of any forest land or portion thereof for-

1. The cultivation of tea, coffee, spices, rubber, palms, oil bearing, plants, horticulture crops or medical plants;

2. Any purpose other than reforestation

But does not include any work relating or ancillary to conservation, development and management of forests and wild-life, namely, the establishment of check-posts, fire-lines, wireless communication, and construction of fencing, bridges and culverts, dams, water hotels, trench marks, boundary marks, pipelines or other like purposes.<sup>5</sup> There are many cases, wherein the court had to deal with the questions relating to interpretation of Section 2(2) and various other provisions of FCA Act, 1980. Some of the important cases regarding the interpretations of FCA Act, 1980 are as follows:-

T.N. Godavarman Thirumulkpad v. Union of India is the landmark case of the Supreme Court of India in history of conservation of Forest in India by the Judiciary. In the instant case, the felling of the trees was taken as serious threat to botany of India. Under this particular case, the Supreme Court of India has made more than 120 pronouncements for the protection and conservation of forest in India. This case is the example of the activist role played by the Indian Judiciary for the protection and conservation of the forest.

In the case in hand, various writ petitions were filed which were heard and decided jointly by the court. Many of the writ petitions were relating to the issue of existence of wood based industry in the forest area. The case is mainly related to interpretation of Section 1 and Section 2(2) of Forest Conservation Act, 1980. In the instant case, the court held that installation of saw machines and building hotels, homes etc. in the river based area located in the forest would be considered that forest land is utilised for non-forest purpose and removal of such area for the purposes stated above would require the consent of the Central Government under Forest Conservation Act, 1980. The court further defined the term „forest“ which is nowhere defined in the Act.

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<sup>5</sup> Explanation to Section 2, Forest Conservation Act, 1980.

The court held that the term forest must be interpreted as per the dictionary meaning and the terms „forest“ must include all areas which are recorded as forest in records of the government without having regard to the ownership of the forest. It means private forest land are also to be considered as forest and those land can also not be utilised for non-forest purpose without taking prior approval of the Central Government.

Further, the court held that all the state governments should formulate the working plans for the preservation and protection of the forest and felling of trees in the forest area should only be in consonance with the working plans formulated by the state government. If the state governments have failed in formulating the plans, then no felling of trees should take place without taking the prior approval from the Central Government. The Court also banished the transfer of cut trees and timber from any of the seven North-Eastern State to any other state through any mode of transport. However, the ban put by the court was not applicable to the certified timber which is required by the government for defence or any other purposes. The Court also gave various directions to the State Government for the constitution of the expert committee for the purpose of identifying the area of forests in the various states, existence of wood based industries and saw mills in the forest area, the capacity of such industries, the distance between those industries and Forest area and also the source of the timber.

The Supreme Court of India further proscribed the operation of wood based industries and saw mills in forest area and stated that operation of such industries in the areas of the forest would be considered as use of forest for non-forest purpose and hence, the forest clearance process is to be followed. The court directed that the state government that workers employed in those industries are required to be paid all the wages and they cannot retrench from their employment for this particular. The direction was also given to the competent authority of railway by the apex Court to find out the alternative of wood which can be used for the purpose of sleepers. Further the Supreme Court also held that no prior approval of Central government is to be taken if felling of tree is taking place on non-forest land as FCA, 1980 is not applicable to non-forest land.<sup>6</sup>

There are various other cases in which the Court had occasion to interpret the FCT Act, specifically in respect of „non-forest purpose“. In *Goa Foundation v. Conservator of Forests*<sup>7</sup>, Tata Housing Development Corporation wanted to construct the colony near to the area of River Mondovi. The major issue in the case was that whether the construction of colony near to the river Mondovi would constitute utilisation of forest land for non-forest purposes. The answer was given in positive by the Court and no permission was given to Tata housing Development Corporation to the construct the colony in that particular area as no prior approval of the Central Government was taken. Further in *Bhagwati Bhoi v. State of Orissa*<sup>8</sup>, the question arose whether the utilisation of the private forest land for non-forest purpose is covered under FCA, 1980 or not. The court held that it is applicable to private forest land also and approval of Central government is to be taken for use of private forest land for non-forest purposes.

The FCA Act does not put complete ban on acquisition of forest land for non-forest purposes, but it only states that prior consent of central government is to be taken

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<sup>6</sup> T.N. Godavarman Thirumuplad v. Union of India, (2011) 1 SCC 744.

<sup>7</sup> (1999 (2) Bom. CR 695).

<sup>8</sup> AIR 2000 Ori 201.

for the said purpose.<sup>9</sup> Another important issue regarding the interpretation of the term „non-forest purpose“ was also raised in the case of Rural Litigation and Entitlement Kendra, Dehradun vs. State of U. P.<sup>10</sup> In the instant case the question was raised whether mining operations carried out in the Forest area to be considered as utilisation of forest for non-forest purposes. In the case in hand, mining operation in the forest area was causing felling of many trees. Further, such activities also affected the agriculture land below the hills where the mining activities were carried out. It also caused the problem of traffic to the local population. The court held that no mining operations are to be carried out in the forest land without taking the prior approval of the Central government as it amounts to use of forest land for-non forest purposes and it is completely restricted under FCA, 1980.

The Court also held in the case of Ambica Quarry works v. State of Gujarat<sup>11</sup> and Upendra Jha v. State<sup>12</sup> that after enforcement of FCA, 1980, renewal of licence for carrying out mining activities in the area of forest can only be done after getting the approval of Central Government. In Tarun Bharat Sangh, Alwar v. Union of India and others<sup>13</sup>, the Government of Rajasthan permitted the various persons for carrying out the mining activities in the protected area of forest without taking the consent of the Central Government. The court looked into the matter and appointed the committee for making investigation on the matter. The report of the committee alleged the violation of FCA, 1980 and on the basis of the report the court directed the government of Rajasthan for the withdrawal of the mining activities carried out in the protected areas of Forest in Rajasthan.

- Public Trust Doctrine

The public trust doctrine is part of the Indian jurisprudence. All the natural resources including the forests are in the ownership of the public. The state plays the role of the trustee of natural resources and as a trustee; it is the duty of the state to protect all the natural resources including the forest. This doctrine was propounded by the Supreme Court of India in the case of M.C. Mehta v. Kamal Nath<sup>14</sup>, in which the forest land was given for the purpose of the construction of motel without taking the consent of the Central Government. Further, for the construction of land, the flow of the river „bias“ was diverted in order to protect the motel from future floods. This was challenged before the Court. The court applied the public trust doctrine and held that as trustee of natural resources, the government is under an obligation to protect the natural resources and in the instant case, the government has failed in fulfilling its obligation. The court denied the construction of motel in the place of the forest land.

In T.Damodar Rao v. S.O. Municipal Corporation, Hyderabad<sup>15</sup> and Sachidanand Pandey v. State of West Bengal<sup>16</sup>, it was held that “protection of environment is not only

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<sup>9</sup> Shree Bhagawati Tea Estates v. Government of India (AIR 1996 SC 201).

<sup>10</sup> AIR 1987 SC

<sup>11</sup> AIR 1987 SC 1073.

<sup>12</sup> AIR 1988 Pat 263

<sup>13</sup> AIR 1992 SC 514

<sup>14</sup> (1997) 1 SCC 388.

<sup>15</sup> AIR 1987 AP 171.

<sup>16</sup> (1987) 2 SCC 295.

the duty of the citizen but it is the obligation of the state and all other states including courts”.

The public trust doctrine was also applied by the Court in the case *MI Builders v. Radhe Shyam Sahu*<sup>17</sup>, wherein the national park was given for the construction of underground mall. No valid reason was given by the government for giving national park for construction of mall. The only reason given by the government was that in order to avoid overcrowding, the national park was given for the construction of mall. However, the government was not able to prove it with the evidences. The court by applying the public trust doctrine held that, as the national park holds historical importance, it cannot be given for the construction of mall.

**Conclusion:**

The judiciary has contributed in protection and conservation of the forest by propounding the doctrine of Public trust doctrine and sustainable development. There are various laws enacted for the purpose of the protection and conservation of the forests; however the various judicial pronouncements have given life to all such laws. By giving case laws such as *Godavarman*, the judiciary has played the role of activist in the protection and conservation of the forest. The court has breached the gap between the lacunas in the implementation of the laws and various laws itself. Following the direction given by the Supreme Court of India regarding constitution of CAFA, our legislature has come out with Compensatory Afforestation Fund Act, 2016.

Further, from the analysis of various case laws cited above, it can be stated that the judiciary has tried to balance the economic development and protection of environment. The judiciary has also enacted various laws by giving pronouncements in relation to the question of the protection of the forest. This makes it clear that the judges do make law. All case laws cited above clearly indicate that the Apex Court of India has played unique role in protection and conservation of forest in India.

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<sup>17</sup> (1999) 6 SCC 464.