

## **ROLE OF THE JUDICIARY TOWARDS PROTECTION OF FORESTS**

After the industrial revolution, commercial pressure, local demands and urbanization have resulted in rapid destruction of vegetation cover throughout the world. Protection of forests during the last few years has become not only a matter of national concern but for global importance. Decline in environmental quality has been evidenced by increasing pollution, loss of flora and fauna, excessive concentration of harmful chemicals in the atmosphere and food chains are posing threat to life support system. This has drawn the attention of all the nations including developed, developing and underdeveloped. How could the judiciary remain a silent spectator when the subject has acquired high importance and become a matter of caution and judicial notice. The courts have used their wisdom in deciding several substantive issues relating to the use of forest resources. Since, the last few years the Supreme Court of India has taken the task of comprehensive conservation and protection of forests across the country. In dealing with the issues of saw mill, mining, tribal dependency, minor forest produce, dams, infrastructure projects, the Supreme Court had balancing the competing claims and projects while at the same time trying to interpret and differentiate between the genuine and bonafide needs of the local inhabitants, with that of necessity of biodiversity conservation. Through, series of illuminating judgments, orders and directions, the Supreme Court using its writ jurisdiction and interpreted various legislations through purposeful construction so as to ensure its implementation in its true letter and spirit.

## 6.1 Role of the Court on Rights of Forest Dwellers :

For industrial growth and progress, energy is indispensable; exploitation of resources available from forest cannot be ruled out. In *Banwasi Seva Ashram vs. State of Uttar Pradesh & Ors.*<sup>1</sup> the question that required detailed consideration was related to the claims of the adivasis, living within Dudhi and Rabertsganj tehsils in the district of Mirzapur in Uttar Pradesh, to land and related rights. The land so required by the state was for setting up the Rihand Super Thermal Power Project of the N.T.P.C. Systematic attempt was made to obstruct to the forest dwellers from free movement. The court granted the land that was sought to be acquired by following the process of land Acquisition Act.

The Court, in trying to balance the twin needs of development while upholding the traditional rights of forest dwellers, held :

Indisputable, forests are a much wanted national asset. On account of the depletion thereof, ecology has been disturbed; climate has undergone a major change and rains have become scanty. These have long term adverse effects on national economy as also on the living process. At the same time, we cannot loose sight of the fact that for industrial growth as also for provision of improved living facilities, there is great demand in this country for energy such as electricity..... A scheme to generate electricity, therefore, is of national importance and cannot be differed.<sup>2</sup>

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<sup>1</sup> A.I.R. 1987 S.C. 374

<sup>2</sup> *ibid* Pp 376 – 378

The Court said the concept of sustainable development demanded that the oustees be rehabilitated after examining their rights. Directions regarding demarcation, expeditious settlement of rights, granting of appropriate title deed to the claimants were also given.

In *Fatesang Gimba Vasava & Ors. Vs. State of Gujarat & Ors.*<sup>3</sup> the writ petitions were preferred by the adivasis, known as *Kotwalias* and *Vansfodias* in Gujarat, where the main grievance is that they are being harassed by the officers of the Forest Department with a view to deprive them of the privileges conferred upon them by the State government. These petitioners have their residence in reserved forests and they claim certain privileges in regard to the collection of forest produce including bamboo. According to them, they have privileges to collect a certain quantity of bamboo per family from the reserved forests for the purpose of making *toplas*, *supdas*, *palas* etc. for their livelihood.

While establishing the petitioners – who were *kotwalias* and *vonsfodias* – as tribals, the court quoted the Gujarat Manual, which lays down that ‘Aboriginal or hill tribe’ includes persons who are residents of forest tracts and who depend entirely on manual labour for their living, and usually eke out their subsistence by labour in the forest and by the collection and sale or barter of forest produce. In light of the above the Court held that, Bamboo being a tree would certainly fall within the definition of ‘forest produce’, but *toplas*, *supdas* and *palas* made out of bamboo chips, would not fall within the definition of forest produce.

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<sup>3</sup> A.I.R. 1987 Guj 9

In *Suresh Lohiya vs. State of Maharashtra & Ors.*<sup>4</sup>, the question involved in the case whether bamboo mats are a forest produce under the Indian Forest Act and hence, whether the order of confiscation of bamboo belonging to the appellant was in accordance with law. The owner of the bamboo mat had approached the Supreme Court by way of this appeal. The appeal was allowed and it was held that bamboo mat is not a forest produce in the eyes of the Act, and the order of confiscation passed by the Conservator of Forest was not in accordance with law.

In the *Second Banwasi Seva Ashram vs. State of Uttar Pradesh*,<sup>5</sup> the court imposed more responsibilities on the NTPC to find out alternative plots, render resettlement and subsistence allowance, give free transportation, reserve jobs and provide facilities of roads, water supply, health care and electricity.

People displaced due to implementation of projects should be properly rehabilitated. They can also be assigned lands in reserved forest for cultivation. However such assignment is not without limit.<sup>6</sup> The facts of *State of Orissa vs. Duti Sahu*<sup>7</sup> show that the local people were assigned forest area for cultivation. The Supreme Court, interfered with transit permits granted to them, on the basis of this assignment. It also held that since the grant was only for cultivation, the respondents did not have any right to deforest the land and to cut and take the trees that belonged to the government much less without permission.

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<sup>4</sup> A.I.R. 1987 SC 103

<sup>5</sup> (1992) 2 S.C.C 202

<sup>6</sup> Leclakrishnan. P. : Environmental Law in India (Laxis Nexis, 2002) p – 15

<sup>7</sup> A.I.R. 1997 S.C 1040

In *Pradeep Krishan vs. Union of India*,<sup>8</sup> the Supreme Court suggested :

If one of the reasons for the shrinkage is the entry of villagers and tribals living in and around the sanctuaries and the national parks, there can be no doubt that urgent steps must be taken to prevent any destruction or damage to the environment, the flora and fauna and wildlife in the areas.

Besides felling trees, certain other acts are also prohibited in reserved forests. Nobody can hunt, shoot or fish or trespass or pasture cattle in contravention of the rules. Further, once the State Government declares an area a sanctuary or national park, the limits of rights and claims are determined.<sup>9</sup> In *Animal and Environment Legal Defence Fund vs. Union of India*,<sup>10</sup> the Supreme Court had to resolve a dispute between two neighbouring states on the rights of tribals. The government of Madhya Pradesh allowed fishing permits to the displaced tribal people in Toltadoh reservoir within Pench National Park. The government of Maharashtra objected on environmental grounds such as potential danger of felling trees, harm to crocodiles and turtles in the reservoir, disturbance to water birds and migratory birds and the possibility of lighting fires and throwing garbage and polythene bages around and into the reservoir. The fact that displaced persons were not systematically rehabilitated weighed more in the balance. The court observed :

..... while every attempt must be made to preserve the fragile ecology of the forest area and protect the Tiger Reserve, the right of the tribals formally living in the area to keep body and soul together

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<sup>8</sup> A.I.R. 1997 S.C 2040 at p – 2047

<sup>9</sup> Leelakrishnan. P. : Environmental Law in India (Lexis Nexis, 2002) p – 16

<sup>10</sup> A.I.R 1997 S.C 1071

must receive proper consideration. Undoubtedly, every effort should be made to ensure that the tribals, were resettled, are in a position to earn their livelihood.<sup>11</sup>

The observations in both the cases are relevant in assessing the symbiotic relationship between the tribals and the forest. Tribal people were considered protectors of forest in the past. Only when men from plains began mixing with them and when needs of development started to displace them from their habitat, were the tribals seen as a group posing a threat to the environment. Time was when the tribal people constituted the best friends of the (Forest) Department and served to inform in advance the movement of strangers in the forest and the commission of forest offences. They were also the guides and the eyes and ears to the forest. With the increasing strictures on their access to and use of the resources that their habitat once provided them and which they used to take for granted, they have now tended to identify themselves with the settlers, encroachers and deprecators of forest wealth who pay them a moiety for their services in furtherance of their own nefarious interests.<sup>12</sup>

Similarly, in *Mulla Mohammadali vs. State of Gujarat*,<sup>13</sup> the contractors entered into an agreement with *Jagirdars* to cut standing trees thinking that the latter had proprietary rights alleged to have been granted under the *Chhota Udaipur* State. The old position was clear : *Jagirdars* had no rights to cut trees in reserved forests. This position had not changed. The Supreme Court held that the contractors could have no

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<sup>11</sup> *ibid* p – 1073

<sup>12</sup> Madhav Menon T, 'Law and Tribal Societies in Kerala' in (1985) *Cohn University Law Review* 157 at Pp 170 – 71

<sup>13</sup> A.I.R. 1993 S.C 335

greater rights than those of the *Jagirdars*. The same situation exists in the case of other forest dwellers and tribal people who may not have more or greater rights than those they had before the formal legal system became applicable.

In this way the Indian Judiciary Continued to interpret the existing legislations and extend the meaning of forest, which covered with trees, shrubs, vegetation and its dwellers. Such a wide meaning is necessary for the preservation of forest land, maintenance of ecology and prevention of environmental degradation.

## **6.2 Forest Protection : Some Judicial Perspectives in Mining Cases :**

In *Rural Litigation and Entitlement Kendra, Dehradun vs. State of Uttar Pradesh*<sup>14</sup> is significant as the first case requiring the Supreme Court to balance environmental and ecological integrity against industrial demands on forest resources. The case arose from haphazard and dangerous limestone quarrying practices in the Mussoorie Hill Range of the Himalayas. Miners blasted out the hills with dynamite, extracting limestone from thousands of acres. The miners also dug deep into the hillsides, an illegal practice which resulted in cave-ins and slumping. As a result, the hillsides were stripped of vegetation. Landslides killed villagers and destroyed their homes, cattle and agricultural lands. Mining operations upset the hydrological system of the Dehradun Valley. Springs dried up and severe water shortages occurred in the valley, an area formerly blessed with abundant water supplies. At the same time, mining debris clogged river channels and during the monsoon season severe flooding occurred.<sup>15</sup>

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<sup>14</sup> A.I.R. 1988 S.C 2187

<sup>15</sup> Divan & Rosencranz : Environmental Law And Policy in India (Oxford 2001) p – 308

The Supreme Court played an activist role in this litigation, essentially conducting a comprehensive environmental review and analysis of the national need for mining operations located in the Dehradun Valley. In addition, the court provided for funding and administrative oversight of reforestation of the region. The court appointed an expert committee (the Bhargava Committee) to assess the mines. In March, 1985, the court, upon the recommendations of the Bhargava Committee, ordered that the most dangerous mines and those falling within the Mussoorie city board limits be denied leases and that their operations cease immediately. The second committee (the Bandopadhyay Committee) was empowered to consider plans submitted by the miners to safeguard the environment and to hear the claims of people adversely affected by the mining. In 1987, the court concluded after review of the Bandopadhyay Committee's report that based on ecological considerations alone, mining in the valley should cease.

In *Ambica Quarry Works etc. vs. State of Gujarat & Ors*,<sup>16</sup> the appeal centre around the question of how to strike a balance between the need of exploitation of the mineral resources lying hidden in the forests and the preservation of the ecological balance and to arrest the growing environmental deterioration. The Supreme Court made it categorically clear that renewal of a license can be made only on getting prior permission from the central government. The Forest (Conservation) Act was passed in order to arrest ecological imbalance, a consequence of deforestation.

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<sup>16</sup> A.I.R. 1987 S.C. 1072

In *Samatha vs. State of Andhra Pradesh*,<sup>17</sup> the guidelines for bureaucrats assessing an application to mine in a forest were set out by the Supreme Court. The Court held that, mining operations, though detrimental to forest growth, are part of layout of the industry, provision should be made for investment or infrastructural planning to reforest the area; and to protect environment and regenerate forest. The Ministry of Environment and Forests and all Secretaries of all the State Governments holding charge of Forest Departments have a duty to prevent mining operations are carried on within the reserved forest or other forest area, it is their duty to ensure that the industry or enterprise does not denude the forest to become a menace to human nor a source to destroy flora and fauna and biodiversity. No distinction can be made between the Government Forest and Private forests in the matter of forest wealth of the nation and in the matter of environment and ecology.

*Tarun Bharat Sangh, Alwar vs. Union of India*,<sup>18</sup> or popularly known as **Sariska Case** is another example of prohibition of mining in forest area. Open-cast mining of lime stone and marble in the Alwar District was disturbing aquifers, springs and the water holding capacity of the Aravalli. The use of dynamite had scared and devastated the hills. The court directed the listed mines to stop forthwith. The Central Government was directed to submit a report within 3 months on the state government's proposal to delete 5.02 sq. kms from the protected area. Mines situated outside the protected forests within the tiger reserve were permitted to continue for 4 months, within which period they were permitted to approach the Central Government for permission to continue their operations. If no permission was obtained, they were directed to cease mining activity.

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<sup>17</sup> A.I.R. 1997 S.C. 3297

<sup>18</sup> A.I.R. 1992 S.C. 514

### **6.3 Eco – Tourism And the Role of Judiciary towards Forest Protection :**

There are differing views on the benefits of eco-tourism. While it provides opportunities for nature lovers to experience its beauty and appreciate its importance, its promotion also results in polluting and harming the environment.<sup>19</sup>

Eco-tourism was one of the objects of the project for a biological park, which was examined in *Niyamavedi vs. State of Kerala*.<sup>20</sup> Petitioners contend that the proposed project for Biological Park would result in denudation of forest in the State of Kerala and if the project materializes it would pose threat to the environment and ecology. The project was designed after consulting many experts who gave full support to watching wildlife at close quarters, without interfering with the sanctity of flora and fauna. The Kerala High Court held that the government's decision to establish a park after such consultation was a policy decision which could not be interfered with. According to the Court, the object of a biological park, not being a non-forest purpose, prior approval of the Central Government was not necessary.

In *Nagarahole Budakattu Hakku Sthapana Samithi vs. State of Karnataka*,<sup>21</sup> the establishment of a restaurant with boarding and lodging, in the midst of the Nagarahole National Park was the main issue. On the basis of 18 year lease from the government, the lessee, a private company, renovated old buildings for the establishment of the facility. The Court held that once an area was declared a National Park no one has any right on or over the land unless it is specifically granted.

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<sup>19</sup> Leelakrishnan. P. : Environmental Law in India (Lexis Nexis 2002) p – 22

<sup>20</sup> A.I.R. 1993 Ker 262

<sup>21</sup> A.I.R. 1997 Kant 288

In *Union of India vs. Kamath Holiday Resorts Pvt. Ltd.*,<sup>22</sup> the collector leased out a site in a reserve forest area for putting up a snack bar and restaurant to cater to the needs of the tourists visiting the forest. Since the area leased out was within a Union Territory, the collector did not deem it necessary to comply with the procedure under Sec. 2 of the Forest Conservation Act. The Conservator of Forest challenged the grant of the said lease.

The court directed the collector to send a proposal, incorporating the objections of the Conservator of Forest, to the Central Government as required under the Forest Conservation Act. On receipt of the proposal and after obtaining advice from the Advisory Committee, the Central Government would pass orders. The collector shall, thereafter, abide by the order and the entire exercise was required to be over within a period of three months from the date of the decision.

An artificial deviation of the flow of a river in forest land for the purpose of augmenting facilities of a motel was challenged in *M.C. Mehta vs. Kamalnath*.<sup>23</sup> Quashing prior approval for the lease and imposing on the motel the responsibility of restoration of environment and ecology of the area, the Supreme Court observed :

Our legal system – based on English Common Law – includes the public trust doctrine as part of its jurisprudence. The state is the trustee of all natural resources, which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, air, forests and ecologically fragile lands. The state as

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<sup>22</sup> A.I.R. 1996 S.C 1940

<sup>23</sup> (1997) 1 S.C.C. 388

a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.

On the facts of the case, the court found that the bank of the river, which was part of protected forest, had been leased out for commercial purpose and held that the State Government committed a patent breach of public trust by leasing out the ecologically fragile land for a hotel.<sup>24</sup>

In *Supreme Court Monitoring Committee vs. Mussoorie – Dehradun Development Authority & Ors*,<sup>25</sup> the case involves the question of construction of large residential and commercial buildings taking place in various areas in Mussoorie without the consent of the Central Government and in violation of the order passed by the Supreme Court in *T. N. Godavarman* Case. The petitioner was a monitoring committee appointed by Supreme Court for monitoring the environmental aspects of the Doon Valley. The petitioner filed the writ petition in public interest pointing out that the Mussoorie – Dehradun Development Authority (MDDA) had sanctioned construction plans in a large number of private forest estates in Mussoorie without the permission of the Central Government as required by the Forest Conservation Act.

The Supreme Court held that the term 'Forest land' therefore, has to be understood as including an extensive track of land covered with trees and undergrowth, sometimes intermingled with pasture, that is, it will have to be understood in the broad dictionary sense. Any building activity permitted within the

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<sup>24</sup> *ibid* p – 413

<sup>25</sup> (1997) 11 S.C.C. 605

forest area would certainly be a non-forest activity, which requires the prior approval of the Central Government.

#### **6.4 Godavarman Case : A Highwater Mark in Forest Protection :**

In 1995, T.N. Godavarman Thirumulpad filed a writ petition with the Supreme Court of India to protect a part of the Nilgiris forest from deforestation by illegal timber felling. The Supreme Court clubbed the Godavarman Case with another writ petition with similar issues, and expanded its scope from ceasing illegal operations in particular forests into a reformation of the entire country's forest governance and management.<sup>26</sup> This case represents the single biggest judicial intervention in forest administration in the country. The case was initially filed in the Supreme Court in order to give effect to the provisions of the National Forest Policy of 1988. The Court formed the opinion that the matter requires a further in-depth hearing to examine all the aspects relating to the National Forest Policy.

The balance between environment and development is necessarily to be maintained. This idea of sustainable development had its influence on the judiciary in interpreting the provisions of laws relating to the forest. Various dimensions of this problem came to be examined by courts. *T. N. Godavarman Thirumulpad vs. Union of India*,<sup>27</sup> is a remarkable illustration. In view of the significance of the problem, the Court gave notice to both the Central Government and State Governments enabling them to present their views. The pronouncements of the court can be summarized as follows :

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<sup>26</sup> Rosencranz & Lele : Supreme Court and India's Forests in Economic & Political weekly (Feb. 2, 2008)

<sup>27</sup> A.I.R. 1997 S.C 1228 at Pp 1230 – 1233

- Forest includes the area noted in the government records as forest, irrespective of ownership.
- Mining licence in such an area without prior approval is violative of the FCA. All on-going activity under such invalid licence must cease. The State Governments have to take necessary remedial measures.
- Running sawmills of any kind is a non-forest activity. All saw mills within a distance of 100 kilometers from the border of the State of Arunachal Pradesh are to be wound up.
- Responsibility is imposed on each State Government to report on the number of sawmills, actual capacity of the mills, proximity to the nearest forest and their sources of timber.
- Complete ban on felling of trees in the tropical wet ever-green forests in Arunachal Pradesh is essential 'because of their significance to maintain ecological balance needed to preserve biodiversity'. Felling of forests in other states except in accordance with working plans is suspended.
- Movement of the cut trees and timber is banned with the exception of certified timber required for defence purposes.
- Each State Government should constitute expert committees to identify forest areas, denuded forests and covered by plantation trees and to assess the sustainable capacity of the forest qua saw mills.
- In the State of Jammu and Kashmir, no private agencies should deal in felled trees or in timber. No permission should be given for sawmills within a distance of eight kilometers from the boundary of demarcated forest area.
- In Tamil Nadu the tribals who are part of the social forestry programme in respect of *patta* lands other than forests may continue to grow and cut trees

according to the government scheme and in accordance with the law applicable.

- Plantations are not allowed to expand further and encroach upon forests by way of clearing or otherwise.

The case came back within four months for review of the follow up action as directed by the Court. Interestingly, the Court proceeded to constitute a High Power Committee to oversee the strict and faithful implementation of its orders in the North Eastern region. Directions were given that this Committee should prepare an inventory of all timber, whether in transit or lying in mills and to examine whether the use or sale of timber or timber products could be permitted through the state forest corporations under its overall supervision. That the collection of minor forest produces, including bamboo, could be exempted from the ban, is a significant holding of the Court. Unlicensed saw mills and veneer and plywood industries in the states of Maharashtra and Uttar Pradesh were directed to be closed. All shade trees felled in janmam areas in Tamil Nadu were ordered to be delivered by the plantations to the State Government. However, plantations were permitted to fell fuel trees subject to certain restrictions. No further clearing in janmam lands by plantations was allowed by the court.<sup>28</sup>

#### **6.4.1 Godavarman Case towards Saw Mills And Wood Based Industries :**

The Court in its order dated 12-12-1996 directed that all ongoing activities within any forest without the prior approval of the Central Government must cease forthwith. The Court made it absolutely clear that the running of saw mills of any

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<sup>28</sup> Leelakrishnan P. : Environmental Law in India (Lexis Nexis 2002) p – 25

kind, including, veneer or plywood mills are not permissible without prior Central Government approval. Specifically concerned about the danger to the tropical wet evergreen forest of Tirap and Changlang in Arunachal Pradesh, the Court directed the immediate closure of all saw mills, plywood mills and veneer mills within a distance of 100 kms from the border of Assam. Further, in order to stop the trade in timber the Court directed that there shall be a complete ban on the movement of cut trees and timber from any of the seven North Eastern States to any other State.

Further, each State Government was directed to file within two months a report regarding the number of saw mills, veneer and plywood mills operating within each State, the real owners of these mills, the licensed and actual capacity of the mills, their proximity to the nearest forest and their source of timber. Further, the States were also directed to constitute within one month an Expert Committee to;

- assess the sustainable capacity of the forest of the State *vis-a-vis* saw mills and timber based industries;
- the number of existing saw mills that can be safely be sustained by the State; and,
- the optimum distance from the forest at which the saw mills should be located,

In view of the large number of saw mills operating in the North Eastern Region, the Court constituted a High Power Committee (HPC) on 04-03-1997 in order to oversee the 'strict and faithful implementation' of the orders of the Court.<sup>29</sup>

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<sup>29</sup> Dutta Ritwick & Bhupender Yadav : Supreme Court on Forest Conservation (Universal 2007) p – 5

The order dated 15-01-1998 was very significant and dealt at length with the running of wood based industries specifically in the North Eastern States. The Court in its order observed :

“Even though the proliferation of wood based industries has been the main cause of degradation of forest in the North Eastern States, considering the extent of forest (64% of the geographical area) and the dependence of local people on the forest in the region it is neither feasible nor desirable to ban completely either the timber trade or running of wood based industries. However, their number and capacities are to be regulated ..... and they are also required to be relocated in specified industrial zones. Moreover, industrial requirements have to be subordinated to the maintenance of environment and ecology as well as *bona fide* local needs.”

With a view to regulating the saw mills, the Court directed the State Governments to notify industrial estates for locating wood based industrial units in consultation with the Ministry of Environment and Forest. Some of the important directions issued are as follows :

- Licenses given to all wood based industries shall stand suspended.
- Wood based industries cleared by the HPC will have the option to shift to identified industrial estates.
- Units who do not want to shift shall be allowed to be wound up as per law.
- Licenses of units shall be renewed annually, only when on illegality is attributed.

- Number of wood based industries shall be determined strictly within the quantity of timber that can be felled annually on a sustainable basis as determined by approved working plan from time to time.
- There shall be a complete moratorium on the issue of new licenses for any wood based unit for the next five years.

In its order 12-05-2001, the Court made it clear that movement of timber products including sawn timber, veneer and plywood out side North East Shall be permitted only if sourced from or processed in HPC cleared wood based unit situated inside an approved industrial estate except in case of Mizoram where no industrial estates exist. Round and hand sawn timber shall not be allowed to be transported outside the North East except with prior approval of HPC or Ministry of Environment and Forest.

The issue of wood based Industry and its serious implication was critically examined in respect to the Andaman and Nicobar Islands. The applicants comprising of Society for Andaman and Nicobar Ecology, the Bombay Natural History Society and Kalpavriksh had brought to the attention of the Court, the serious threat to the rain forest of the Andaman and Nicobar Islands as well as the local tribes inhabiting the Islands due to the unrestricted activities of the large number of wood based units functioning in the islands. Considering these impacts the Commission appointed by the Court recommended as follows :

- There should be a complete ban on establishment of any new wood based unit for the next ten years.
- All existing small scale wood based units (Saw Mills) should be relocated within industrial estates, or where industrial estates are not feasible, in

locations contiguous to forest offices or otherwise convenient for the forest department to monitor.

- This relocation should be completed within one year after which non-complying saw mills should be closed down.
- No subsidy of any kind, including transport subsidy should be given to any wood based unit.
- Existing medium and large scale wood based industries can be allowed to function provided they import their entire requirement of wood and other forest based raw material from abroad or the mainland. No subsidies should be allowed to them.
- No timber, either as logs or as sawn timber or plywood-veneer, or in any other form, should be transported out of the Islands through any means whatsoever.

The Court on 07-05-2002 accepted the recommendations of the Commission and further ordered as follows :

- The licenses of all the saw mills and wood based industries shall not be renewed after 31<sup>st</sup> March, 2003. This will not debar the authorities from canceling licenses in accordance with law, if there is no breach of the License conditions by the Licensees before that date.
- The ecology of the area does not permit any kind of industrial activity for which the wood is likely to be consumed. Therefore, licenses of wood based industries shall stand cancelled but they will be permitted to exhaust the existing stock till 31<sup>st</sup> March, 2003.
- The Union of India if it so adopts and thinks appropriate may take steps for re-locating the dislocated wood-based industries in the main land area anywhere in India as long as it is not within the vicinity of forest area. Henceforth for

meeting the local requirements it is only the Government saw mills, which shall operate.

- No fresh wood or logs shall be given to any of the saw mills or the wood based industries till fresh working plans are prepared and submitted to this Court and the approval obtained.

#### **6.4.2 High Power Committee And Central Empowered Committee :**

The increasing number of pending cases before the Supreme Court made it difficult to examine each and every issue in detail and pass appropriate orders. The Forest (Conservation) Act, 1980 did not provide for any opportunity for setting up Tribunals or Authorities to adjudicate on such issues. As saw mill owners, encroachers, contractors and other affected people started approaching the Court, the need was felt to urgently set up a system in place to render justice, faster if not more effectively. Then the court relied upon sec. 3(3) of the Environment (Protection) Act, 1986 on 04-03-1997 constituted a *High Power Committee (HPC)* to oversee the strict and faithful implementation of the orders of the Court in the north-eastern region. The committee was entrusted the task of overseeing the preparation of inventory of all timber in all forms. On 09-05-2002 the Court constitute an Authority at the national level called the *Central Empowered Committee (CEC)*. The task assigned to it included the monitoring of the implementation of the orders of the court, removal of encroachment, implementation of working plan, compensatory afforestation plantations and other conservation issues. The order dated 29-10-2002 conferred additional functions on the CEC. It was directed that no State or Union Territory shall permit opening of any saw mills, veneer, plywood industry without prior permission

of the CEC. It was further directed that there shall be no relaxation of rules with respect to grant of licence without previous concurrence of CEC.<sup>30</sup>

#### **6.4.3 Godavarman Case towards Felling of Trees and Compensatory Afforestation :**

While dealing with the Application of M/s South Eastern Coal Ltd. seeking permission to fell trees for mining operation, the Court dealt at length on the Forest clearance procedure under the Forest (Conservation) Act, 1980 and the Rules framed under it. The Court raised a pertinent question *viz.* whether the present practice which is being followed, namely, of the applicant depositing money with the State Government and requiring it to carry out the afforestation, is satisfactory or not. The Court felt that in order to ensure regeneration of forests, the primary responsibility should be the applicant concerned, the party that is going to use the dereserved forest.

The Courts' order was highly innovative. For example :

- It suggested that the Government must specify the period within which the afforestation must commence and be completed.
- Furthermore, there should be a requirement of "environmental audit" in order to ensure that after the saplings are planted the survival rate is high.
- The Government might consider requiring each applicant who is under an obligation to carry out afforestation to publish the results of the environmental audit every year in a newspaper and forward the same to the Central Government.

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<sup>30</sup> *ibid* Pp 10 – 12

- The Applicant is not only responsible for planting trees rather it should be its responsibility to look after and maintain the same and ensure its survival and full growth.

On 12-05-2001, the Court laid down detailed guidelines for the felling of trees from forest areas as well as non forest area including plantations. As per the order, the felling of trees from forest areas could be allowed only as per the approved Working Plans / schemes, whereas the felling of trees from non forest area could be allowed only as per detailed guideline which are prepared by the State Government with the concurrence of the Central Government.<sup>31</sup>

In respect of diversion of 9.872 hectares of forest land falling inside the Ratpani Wild Life Sanctuary. The Supreme Court in its order dated 24-11-2003 permitted the use of the forest land subject to deposit of 5% of the estimated cost of the project in the tune of Rs. 45.35 crores towards the compensatory afforestation fund for protection and conservation of sanctuary.

#### **6.4.4 Godavarman Case towards Protection of National Parks And Sanctuaries :**

In 1998, the *Amicus Curiae* brought to the notice of the Court the illegal felling of trees in the buffer zone of the **Kanha National Park** and adjoining corridors of East Mandla Forest in the State of Madhya Pradesh. It was submitted that under the garb of removing infected Sal trees, (said to be infected with the Sal Borer epidemic) uninfected trees have also been cut. The Court took a very serious view of this matter and in it's order dated 23-02-1998, restrained the State Government of Madhya

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<sup>31</sup> ibid Pp 13 - 15

Pradesh from felling any tree, even if in the opinion of the State Government, the particular tree or trees are considered to be infected.

On 21-07-1998, the Court considered the application of the State of Madhya Pradesh seeking permission to cut trees for the purpose of catching and killing adult insects by using “trap-tree operation” to prevent further growth of Sal Borer. The Court agreed to the request of the State Government and permitted it to cut Category IV trees for use as “trap-trees” and also injured and wind fallen trees. The Court further directed that not more than one tree per two hectares should be cut. The felling, however, was to be done under the Supervision of the committee appointed by the Court.

A similar issue also related to the *Rajaji National Park* situated in the State of Uttaranchal. An application was filed by the then State of Uttar Pradesh seeking permission for felling and extraction of 203 Sal trees, which were infected by the Sal Borer epidemic. The Court allowed the extraction on the condition that it will be done under the supervision of the scientists of the Entomology Division of the Forest Reserch Institute, Dehradun.

Despite the above specific order, violations were taking place through out the country. In 2001, K.M. Chinappa, representing a local NGO: Wild Life First!, filed an Intervention Application through the *Amicus Curiae*, pointing out before the Court, that despite the orders dated 12-12-1996 and 14-02-2000, mining activities were taking place in the *Kudremukh National Park* in Karnataka by the Kudremukh Iron Ore Company limited (KIOCL), a Government of India, Public Sector Unit.

The Court accepted the time period for stopping mining activities as fixed by the Forest Advisory Committee, constituted under Section 3 of the Forest (Conservation) Act, 1980. It meant that KIOCL was to be given five years to wind up operation from the time its earlier lease expired (it had already expired). This meant mining would be allowed till the end of 2005 by which time the weathered secondary ore available in the already broken area will be exhausted. The Court, however, made it clear that this was subject to fulfillment of the recommendations made by the committee on ecological and other aspects.

A further violation of the order dated 14-02-2000, took place in the famous *Ranthambhore National Park and Tiger Reserve* in Rajasthan, when the Central Empowered Committee was informed that about 600 persons along with about 6,000 livestock had forcibly entered the National Park and were camping within the Core area. The Central Empowered Committee in its order addressed to the Chief Secretary of the State requested the Chief Secretary to immediately take steps to ensure the compliance of the order dated 14-02-2000 wherein the grazing and removal of grasses of trees from National Parks was strictly prohibited. It was further stated that any removal of grass etc. would make the State liable to contempt proceedings.<sup>32</sup>

The legal canons of the Apex Court unfold the panorama of progressive development of environmental awareness. In the seventies, Courts cater the claims of helpless persons on the cost of environmental degradation. In the eighties, first wave of environmental jurisprudence was being recognised. In the nineties the Court further interpreted the environmental values into the existing law. The judiciary played an

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<sup>32</sup> Dutta Ritwick & Bhupender Yadav : Supreme Court on Forest Conservation (Universal, 2007) Pp 17  
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important role in protecting forest and wildlife. Concept of sustainable development implemented by the Court in various ways. Besides several judgments relating to saw mills, mines, compensatory afforestation, the Courts endeavoured to protect the rights of persons affected by development projects and tribal people, who has the symbiotic relationship with forest eco-system. Relying on the doctrine of '**Public trust**' the Court protects and preserves the natural vegetation and upheld the controls on exploitation of wildlife. *Godavarman case* is the second wave of environmental jurisprudence where Supreme Court deals with series of issues like saw mill, mining, dams, infrastructure projects while at the same time trying to differentiate between the genuine and *bonafide* needs of the local people. The Court constitutes two committees to monitor the outcome of the case. The role of the *amicus curiae* has been very crucial at every stage as the case progressed. The term 'Forest' and 'Forest land' also interpreted by the Court Although there is no specific case relating to eradicate the problem of desertification decided by the Court but there are several judgments which eliminating the evils of forest degradation and mismanagement at various levels throughout the country.

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