

Deforestation and Judicial intervention in India

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ABSTRACT

Judiciary in India has played a vigorous role in addressing the concern of deforestation in India. Supreme Court's ruling is an important step in helping to reduce the rate of deforestation in India, and to protect the forests that remain.

The concepts of industrialization, urbanization and globalization have negatively prejudiced the natural assets like water, woods, air, etc. Since these resources are essential to human growth, there is an urgent need to protect and use them in a sustainable way. Indeed, forests are a crucial component of our natural ecology. They contribute to preserving ecological equilibrium. They protect the tribal populace, protect gene pools, and shelter wild animals. A successful governance model must strike a balance between development and conservation.

Through court rulings, administrative decisions, and legislative measures, India has ensured the preservation of her forests. Though a lot of legislative measures have been made for the maintenance of forests in India, but the input of the judiciary in this regard is beyond compare. Finding means for the Indian government to encourage the preservation of the country's woods is crucial for both the future of the forests and the stability of India. Indian woods may decline as a result of the country's expanding population and associated demands for resources and consumption. Any large decline would result in increasing resource scarcity, which would put more pressure on the government.

Keywords- natural ecosystem, sustainable manner, conservation of woods, Indian Judiciary.

I. DEFORESTATION AND JUDICIAL INTERVENTION IN INDIA

Clear-cutting trees in an area where a forest once grew is referred to as deforestation. Deforestation can refer to both the normal decline in tree cover and the possible loss of forests as a result of human population practices. Deforestation has a long history in India and is still a significant environmental issue.

India's primary causes of deforestation are: Deforestation in India is primarily caused by the expansion of cropland, particularly for crops like rice and others that need a lot of water. As trees are frequently cut down to provide room for cattle, grazing by livestock is another significant reason of deforestation. In India, the use of wood for cooking and heating is another significant cause of deforestation. Forests must frequently be cleared for railroads and other infrastructure projects, and mining

for coal and other minerals frequently causes deforestation.

In India, deforestation has a tremendous negative impact. Millions of acres of forest have been lost due to deforestation, which has also increased air pollution, water scarcity, and climate change. Numerous plant and animal species are at danger of extinction due to deforestation.

In India, the issue of deforestation has been addressed in part by the judiciary. Urbanisation, industrialization, mining operations, and the use of wood for home and other reasons have all led to indiscriminate tree cutting, severely depleting forests. Deforestation is the term for this. Forest land is converted to non-forest use as a result of deforestation.

Causes of Deforestation

➤ Agriculture is the primary driver of deforestation, according to the UNFCCC.

➤ Deforestation is a result of industrial logging, commercial agriculture, shifting cultivation, and subsistence farming.

➤ Developmental Deforestation is essential for projects like reservoirs and hydropower projects, among others.

➤ Requirements for Raw Materials

➤ Overgrazing by livestock

➤ Additional factors including mining, excessive urbanisation and population, floods, and forest fires brought on by climate change, etc.

Effects:

➤ Deforestation negatively effects the water cycle, wind flows, water vapour fluxes, and solar energy absorption, all of which have an impact on climate.

➤ Loss of forest area is commonly regarded as one of the main reasons of the heightened greenhouse effect and contributes to global warming. Trees absorb water from the soil through their roots and release it into the atmosphere.

➤ A short-term economic benefit from the conversion of a forest to agriculture or from the overexploitation of wood products frequently results in a loss of long-term earnings and biological output when the trees stop transpiring this water when a portion of a forest is cut down.

Government programmes:

➤ Botanical Survey of India (BSI) and Zoological Survey of India (ZSI) are responsible for conducting surveys and inventories of the country's floral and faunal resources. For the purpose of planning and monitoring, the Forest Survey of India evaluates the forest cover to create an accurate database.

➤ The Biological Diversity Act 2002 and the Biological Diversity Rules 2004 have been enacted, with the target of preserving country's biological assets and controlling admittance to them to guarantee reasonable allocation of the payback resultant from their use.

➤ Prior to beginning operations, industries must obtain "Consent for Establishment" and "Consent to Operate" from the relevant State Pollution Control Boards (SPCBs) in harmony with the guidelines of the Water Pollution Act 1974 (Prevention and Control) and the Air Pollution Act, 1981 (Prevention and Control).

➤ Developmental project environmental impact assessments and environmental management plans prepared in accordance with the guidelines of the environmental impact assessment notification from September 2006.

➤ The utilisation of enhanced fuel quality and the adoption of cleaner technology.

➤ Regular checks for environmental compliance at industrial facilities.

➤ The Ministry of Environment and Forests, GoI, established course of action for the engagement of rural population and volunteer agencies in the revival of tainted woodland on June 1, 1990, taking note of this factor. This was done as part of the JFM (joint forest management) plan. Joint forest management refers to the process when

the local populace and the Forest Department collaborate to preserve and manage the forests.

➤ The National Mission for a Green India, which aims to improve ecosystem services and the quality of the forest cover over 4.9 million hectares (MHA) of primarily forested land, including 0.4 MHA of degraded grasslands and 1.5 MHA of moderately dense forest cover.

➤ Increasing forest cover and ecosystem services through eco-restoration and afforestation.

➤ Desertification results from the destruction of a land's biotic potential. This issue develops as a result of excessive grazing, careless tree removal, and overuse of the land's resources. Soil, water, and wind erosion are among the severe consequences of deforestation in India, which is thought to cost more than 16,400 crores annually. The production of our crop areas is significantly impacted by deforestation. However, the effect of the firewood scarcity on the production of our croplands is just as significant.

➤ People start using cow dung and crop wastes as fuel, primarily for cooking, when firewood becomes scarce. As a result, every component of the plant is gradually consumed, and nothing is returned to the earth.

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When forests are lost, the natural biological balance that keeps things in check disintegrates, with disastrous results like floods or droughts. Trees increase rainfall in an area while also storing rainwater that falls to the ground. Forests are rapidly disappearing from our country. Plants also limit evaporation, allowing water to stay in the soil for a long time. India's environment has been severely harmed by extensive and ongoing deforestation, overgrazing, and the nation's growing land-hunger. As a result, the country may soon have more waste land than arable land. Large-scale deforestation, especially during the post-independence era, has negatively impacted the weather, with nearly every year experiencing more breaks than usual.

At the same time, excessive grazing has almost completely eliminated the forests' ability to regenerate. Extreme land erosion and landslides have been brought on by deforestation and overgrazing. In India, water erosion caused by the lack of trees results in an average annual loss of top soil of roughly 6,000 million tonnes.

Only 0.50 percent of the world's forest land is in India. Every year, India loses around 1.5 million hectares of its forest cover. If this pattern holds, our nation's forests could be worth nothing in about 20 years. India lost 4.1 million hectares of forest over a 25-year period (1951–1976). Large-scale deforestation has been carried out for road building, industrial applications, valley projects, fuel, and fodder.

Forests have been cleared for cultivation (24.32 lakh hectares), increasing the actual firewood usage from 86.3 million tonnes in 1953 to roughly 135 million tonnes in 1980. 3.4 million hectares of forests were thus lost overall during this time. Due to deforestation, over 1% of India's land area becomes barren each year. Due to deforestation, rainfall in the Himalayan range has decreased by 3 to 4%. Without afforestation, the national endeavour to connect rivers could result in no net gain in forest value.

II. THE INDIAN JUDICIARY'S RESPONSIBILITY IN COMBATING DEFORESTATION

The Indian Supreme Court directed the state governments to create action plans to address the issue of deforestation in a judgement that was published in 2012. The action plans are meant to slow down deforestation in India and safeguard the forests. A map of the woods that are at risk of being cut down, a list of the projects that are causing deforestation, and a strategy for how the state government would address the issue of deforestation were all to be included in the action plans. By January 31, 2013, the action plans were to be delivered to the Indian Supreme Court.

III. INDIAN ECOLOGICAL SECURITY PROCEDURE

The main primary authorized frameworks for environmental preservation are Common Law, Constitution, and Environmental laws, mainly FCA Act of 1980 (Forest Conservation).

Common Law: Common law, which is a derivative from the legal order of Britain, has been in effect ever since the colonial era. Alike to British and American systems, Indian forest law acknowledges annoyance, encroachment, carelessness, and stern liability as the major basis of action available for safeguarding the atmosphere.

Nuisance: A legal duty of concern, violation of that task by the defendant, a fundamental linkage demonstrating how that violation contributed to the damage are all prerequisites for negligence.

Negligence procedures in environmental contexts are complex because it is essential to prove a fundamental correlation between the violation and the

damage. This is problematic due to the inherent problems in determining the origins of pollutants.

Trespass: Trespass is also a legal ground of action. "An intentional invasion of the plaintiff's interest in the exclusive possession of property" is a requirement for trespass. Private nuisance and trespass are very similar. However, it varies depending on the type of damage involved. Trespassing causes direct harm, whereas private annoyance causes consequential harm.

Strict responsibility: In India, environmental protection actions rarely use the strict responsibility rule that was developed from the English decision *Rylands v. Fletcher*.

According to the rule, "the person collects and keeps on his land anything likely to cause mischief if it escapes, must keep it in at his peril; and if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape." Few defences are available to defendants because of the strict liability. In *M.C. Mehta v. Union of India*, the Indian Supreme Court outlined a stricter strict liability rule in recognition of the challenges in applying the *Rylands* rule. The notion establishes the enterprise's absolute culpability for any damage caused by a risky activity it engages in.

IV. THE CONSTITUTION OF INDIA

The essential legal principles of Indian society are contained in the Indian Constitution. There are twenty-two portions to the document. Part III, FR (Fundamental Rights); Part IV DPSP (Directive Principles); and Part IVA FD (Fundamental Duties) are the pertinent portions for these objectives.

In the interest of society, Part IVA duties specify social guidelines for Indian citizens to follow. Every Indian citizen is required, according to Article 51A (g), "to protect and improve the natural environment, including forests." These guidelines are non-justifiable, like the DPSPs but they do serve as a guide for the Supreme Court in determining the obligations of government.

In accordance with Art 32 of the Indian Supreme law of land, people have "the right to move the Supreme Court by appropriate proceedings for the enforcement of fundamental rights." Court applies Art 21 to increase the scope of substantive rights that can be enforced under Art 32. By defining the right to life in the way it did and making it its preferred strategy for defending constitutional rights, the Court has encouraged the tendency to file PILs (public interest litigations).

V. ENVIRONMENTAL LEGISLATION

The 1927 Indian Forest Act

In order to enhance the Forest Act of 1875 and make forest regulations more effective, a new comprehensive Forest Act that superseded all previous laws was passed in 1927. The Act is divided into 86 parts and 13 chapters. The Act's main objectives are:

- 1) To integrate the laws managing forests.
- 2) Command and management of the flow of forest products.
- 3) To charge a fee for wood and other forest products.

The 1980 Forest Conservation Act

The Parliament passed a new law known as the FC Act in 1980 (Forest Conservation) in response to the rapidly declining forest cover in India and to achieve the constitutional requirement under Article 48-A. Deforestation contributes to ecological imbalance and the degradation of the environment.

On October 25, 1980, the President signed into law the Forest (Conservation) Ordinance, 1980 in an effort to stop further deforestation. The Ordinance states that prior Central Government approval is required for both the de-reservation of set aside forest area and the utilization of woodland for other purposes. The law also directed the organization of a committee to counsel the Central Government on whether to provide such sanction. ***Act of 2006 concerning STs and the Other Conventional Forest Dwellers***

Recognition of Forest Rights Act, 2006 was adopted by Indian Council of States and House of People on Dec 18, 2006. This statute intended to give possession rights over forest land to long-time forest resident. Due to the continuance of colonial forest restrictions in India, groups that have lived in woods for decades have been denied access to land and other resources. The Act was set to take effect on December 31, 2007, just over a year after it was approved.

The Supreme Judicial Court's contribution in Forest Preservation

The courts sought to protect the privileges of people who were harmed by development strategy and tribal members who are an essential component of the forest ecosystem in addition to stressing the worth of forests.

In an effort to resolve the conflict between environmental protection and economic growth, they supported the management and utilization of forest resources. In creating the Indian jurisprudence for forest conservation, the Supreme Court of India must be specifically cited. The independent judiciary, which is endowed with the authority of judicial review, has made a significant contribution to India's efforts to conserve its forests and wildlife.

PIL: A Powerful Instrument for Forest Conservation

Safeguard of tribal rights, the maintenance of forests, the preservation and security of wildlife, and the use of PILs (Public Interest Litigation) to achieve forest preservation are some of the topics that the Supreme Court has addressed. The court has also discussed how to strike a balance between the right to trade and do business freely, the need to preserve forests and wildlife, and issues relating to biodiversity. The FCA 1980's provisions have been construed by the Supreme Court with the aid of PIL.

Elucidation and Execution of Forest Act, 1980 by the Supreme Judicial Court: The Forest Conservation Act of 1980 has been carefully interpreted and applied by the Supreme Judicial Court in the case of T.N. Godavarman Thirumalkpad v. Union of India. In order to make the FCA effective, the Court issued broad orders. An embargo on the exploitation of forests and forest products was established, and all wood-based companies were shut down. The Court also set up Union and State task forces to carry out the orders it made in this case. The FCA was put in place, the court agreed, to correct the ecological imbalance caused by widespread deforestation. The word "forest" used in the FCA was also defined by the court. The Court ruled that all woods must be subject to the provisions of the act, regardless of who owns them or how they are classified. The term "forest" will refer to any region listed as forest in the government description, regardless of possession, in addition to forest in the dictionary definition.

Supreme Court's Function in Forest Conservation

By enunciating a web of concepts, expanding the locus standi's application, allowing public interest litigation, and interpreting constitutional commandment from an ecological point of view, in India the evolution of forest law has been aided by the courts. The requirements of the Forest Law were only expressed in writing, but judicial interpretation has given them life. The notion that judges merely find or interpret the law is false in relation to the environmental rule in India.

The best examples of this are the Godavarman case and Centre for Environmental Law, WWF-India v. Union of India. By creatively interpreting Indian forest regulations, the Supreme Judicial Court has attempted to bridge up the space between the letter of the law and its actual application. The judiciary has fulfilled the job of the law-maker by creating a number of committees and giving them the authority to carry out the requirements of the forest laws.

The need for both the preservation of natural assets and the pursuit of economic growth provide a challenge to a growing nation like India.

In such state of affairs, the Supreme Judicial Court has made an effort to balance the situation by permitting large projects and dams in the favour of the nation's advancement, while also making efforts to look into the ecological impact evaluation of these projects, safeguarding the rights of the forest dwellers, and other issues.

We can infer that judges do indeed create laws. The judicial process includes the creation of laws. There is no longer any question that the significant amounts of law that regulate both the State's operations and the lives of its citizens come from the choices of the Supreme Court ***India's environmental protection history***

Since the dawn of time, the idea of environmental conservation has been ingrained in Indian culture. It is crucial to examine earlier Indian traditions

and environmental protection practices in order to comprehend the current legislative framework for environmental protection.

Despite the fact that environmental issues brought on by industrialization have risen to the top of the scientific, political, ethical, and social agendas at the local, national, regional, and international levels in recent decades, liberal democracies have seen a general consensus about the need for greater public participation in environmental law and policy.

The Rio Declaration said that "environmental issues are best handled with the participation of all concerned citizens at the relevant level".

The latest espousal of the Aarhus Convention, lauded by Kofi Annan as "the most ambitious venture in environmental democracy undertaken under the auspices of the UN," serves as a signal of the significance attached to this remark at the European level.

Four historical phases can be distinguished in the intensification of the concept of environmental security in India:

(i) Ancient law and policy (500 BC–1638 AD):

Even the Indus valley Civilization, which flourished in northern India around 5,000 years back, can be said to have been conscious of the environment. This is clear from the archaeological data acquired from Mohenjo-Daro and Harappa, two of the civilization's most important cities. The core of Vedic (1500–500 BC) civilization was environmental preservation and cleanup.

The Charka Samhita, a therapeutic science content written between 900 and 600 BC, has numerous directions on how to handle water to preserve its purity. Kautilya's Arthashastra, an ancient work on statecraft, economics, and military strategy, outlined a number of punishments for killing animals, destroying forests, and cutting down trees. The ordinary man was subject to these environmental ethics of nature protection, but monarchs were also subject to them.

(ii) Mediaeval Indian laws and policies (1638–1800 AD):

The Mughal emperors considered woodlands simply hunting grounds. However the Mughal Emperor Akbar was the first to noticeably advance environmental legislation. Nobody else was permitted to engage in shikar or go hunting under Akbar's rule, except from the emperors.

However, throughout the mediaeval era, no serious steps were taken to prevent environmental degradation, since the rulers were majorly interested in expansion of boundaries. There were no limitations on cutting trees and killing animals. The size of the woodlands reduced throughout this period.

(iii) Laws in British India (1800-1947 AD):

➤ Shore Nuisance (Bombay and Kolaba) Act, 1853 imposed restrictions on the fouling of seawater. The Merchant Shipping Act of 1858 dealt with prevention of sea pollution by oil.

- The Fisheries Act, 1897
- The Bengal Smoke Nuisance Act of 1905
- Bombay Smoke Nuisance Act of 1912
- Wild Birds and Animals Protection Act, 1912

Laws passed following Independence (1947)

- The 1950 Indian Constitution does not specifically address environmental issues or the prevention and management of pollution.
- The Stockholm Declaration of 1972 is what got the Indian government interested in the border-based approach to environmental protection.
- The Central Government of India passed extensive (special) environmental regulations.
- The Ministry of Environment and Forests (MoEF) was established in 1985 after the National Council for Environmental Policy and Planning was established in 1972.
- The Wildlife (Protection) Act of 1972 sought to regulate wildlife in a logical and contemporary manner.
- The Water (Prevention and Control of Pollution) Act of 1974 calls for the formation of pollution control boards at the national level and in each state to serve as gatekeepers for pollution prevention and control.
- The 1980 Forest (Conservation) Act sought to prevent deforestation, divert forest area away from forestry, and advance social forestry.
- The Air (Prevention and Control of Pollution) Act of 1981 sought to use pollution control boards to control air pollution.
- The Environment (Protection) Act, 1986 is a piece of legislation that establishes a singular focus on environmental protection in the nation and seeks to close legal gaps.
- The Public Liability Insurance Act of 1991 mandates insurance for the aim of giving victims of accidents that occur while handling timely redress.
- The Biological Diversity Act, passed in 2002, is a significant law that targets to defend the biodiversity in the area surrounding communities.

The 2006 National Environment Policy: Goals

- Protection of Vital Resources for the Environment
- Livelihood security for the poor is a component of intra generational equity.
- Environmental concerns should be included into social and economic growth,
- Environmental resources should be used efficiently, and resources for environmental conservation should be improved.

VI. CONCLUSION

The mandate of the right to life encompasses the right to a uncontaminated surroundings, access to safe consumption water, according to the Hon. Supreme

Court's rulings in a number of cases. Among these rulings are the well-known Taj Mahal Case, the Dehradun Valley Case, the Smoking in Public Places Case, the Pollution in Delhi Case, the Public Health Case, the Public Park Case, and numerous other significant rulings on Sustainable development. In a summary, laws and judicial interpretations have resulted in quick changes in environmental policy, but further growth and development in this area is still required.

The government is in charge of maintaining the environment and the nation's forest and wildlife, as stated in Article 48A of the Supreme law of land. Additionally, under Article 51(A)(g) every citizen has a basic duty to safeguard and recover the atmosphere as well as to have empathy for all existing creatures.

According to the courts, the state must use these Articles as a guide when enacting laws because they are fundamental. The fundamental rights to life protection and individual liberty have been interpreted by the courts to include the right to a safe and healthy environment.

Due to the regular filing of PILs in courts on the basis of the fundamental right to a clean environment, concerned citizens and non-governmental organisations have significantly influenced Indian environmental law.

The courts are quite pro-active and may sometimes even bring up environmental matters on their own will after reading about them in the press. They frequently have a tendency to influence environmental policy, if not directly dictate them, particularly when the administration has betrayed its obligations. Many people may also learn about the status of environmental projects and the environmental licences for those projects according to the Right to Information Act of 2005.

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