

Constitution of India and Environmental Governance Administrative and Adjudicatory

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Lecture 33

Forest & Wildlife Law: Introduction to Forest Conservation Act, 1980

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II. FOREST CONSERVATION ACT, 1980



- **BACKGROUND:-** 42nd Constitutional Amendment: Transfer of "Forests" from State List to Concurrent list -Parliament's cognizance of rapid decline in forest cover and inadequacy of efforts at state level in arresting the trend.
- **SALIENT FEATURES:-** S.2. Power of Central Govt.- De-reservation of Reserve Forest and use of forest land for "non-forest purpose", by states only with prior approval of the Central Government;
- Assignment of the forests land by lease or otherwise to any private entity, by states, only with prior approval of centre;
- Clearing of trees, that have grown naturally in forest area, for re-afforestation purpose, only with prior central approval.
- S.3: **ADVISORY COMMITTEE:** to advice the centre in granting approvals under S.2 and on matters concerning forest conservation



This is in brief a law concerning Indian Forest, a law that was made during the British period and continues to operate even long after the independence and this is the law, the primary law concerning the forest. In the year 1980, the Government of India came up with another law, the Forest Conservation Act. Forest was a subject when India became independent as a state subject that means states can alone law. And since there was already a central law earlier, the same was adopted and applied in all the states.

But states had the power of making their own laws, even now they have. The central act and the state acts in many of the states that we have in India but by and large, the state's laws are aligned to the central law. In the year 1976, the constitution was amended; it is called the 42nd amendment of the Constitution. The subject forest was moved from the state list to the concurrent list. And so, by moving the subject from the state list to the concurrent list, the effect was, the centre also can make law, the State can also make law.

But if there is a conflict between the two, the central law will prevail that means, it is a

tendency of centralization, which makes the centre to take over that installation or any kind of a control over a particular subject, which was earlier under the state list, but which was later moved to the central one or the concurrent law. But that is not the real reason. The real reason was that over a period of a couple of decades, it was noted that the forest cover in India was coming down at an alarming rate mainly because of the fact that the forests being under the exclusive management and control of the states, the state did not regulate human activities.

And many times, for various development activities, they diverted forest land with the result the forests in India shrunk. It was an alarming thing because internationally and scientifically it is a well-established theory that one third land area need to come within the forest for a very healthy living, and that was not followed in India at all.

A very healthy forest cover that was in existence before our independence became less than 18 percent of the total land area in India over a period of two and two and a half decades of our independent existence terms. And so the centre thought “Enough is enough, that henceforth, if you want to divert the forest land for a purpose other than for forestry, you have to come to us and we look into the pros and cons before we give either permission, reject permission, and you have to act according to our dictate and this is according to the Forest Conservation Act.”

So, it is a power of the central government of de-reservation of any forest area and use of forest land for a non-forest purpose by that particular state. This can only be done with a prior approval of the central government. And so, if the state wants to lease forest land to any private entity that can only be done with a prior approval of the centre. Clearing of trees that are grown naturally in the forest area for re-forestation proposal can only be done with prior approval of the central government. So, the centre is taking charge and has control over the forest area mainly with conservation objective.

Conservation was a casualty of the while and we want to repair that and reclaim the lost forest land. And for that purpose, we at the centre we would exercise greater vigilance, greater control and come up with the rationale as to how and when under what circumstances the forest land could be put to use for a non-forest purpose. Every small enactment of only 6 sections; section 2 is the primary section, which I explained now. Section three provides for an advisory committee to advise the centre in granting approvals under section 2 and on

matters concerning on its conservation.

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- *Offences and penalties (Ss. 3A & 3B)- Govt. Departments and Authorities are also brought within the purview of this law*

FOREST CONSERVATION CASE :- T.N. GODAVARMAN THIRUMULPAD V. UOI

- *A LANDMARK CASE- NON-PAREIL-RUNNING FOR OVER 2 DECADES-OVER 110 SITTINGS OF S.C. OVER 40 ORDERS PASSED :*

- *Meaning of "Forests"- understood in the light of National Forest Policy, 1988 – purposive interpretation*
- *Freezing of wood-based forest industries*
- *Ban on Timber Felling – Inventorisation – timber Movement from any of the seven north-eastern states banned*
- *Extension of Mining Leases*
- *Directions for sustainable use of forests*



Government departments and authorities are brought within the purview of this law, in terms of penal sanctions, that it is not just a private party who can be held guilty of violation of this law, even governments, the heads of departments can be held liable if they do not conform to this. This is the primary development that has occurred after independence, and long after independence through this particular development of making this law, called the Forest Conservation Act in 1980, by the Government of India.

A small enactment of six sections and then later two other provisions were added to give little bit of dept to this law, the Forest conservation Act. A question is how does this law work? Small enactment with so much of impact in terms of the centre exercising control over that, and how does it happen? Between 1980 and 1993 there was hardly any evidence that is available to show that the centre did exercise its authority over this cause as to reduce the adverse impact of the indiscriminate way of acknowledging the forest resulting in great reduction in the forest cover.

And this subject and the importance of the forest conservation came to its limelight through a case law. And it is very important that we very briefly discuss this particular case, to really understand the implications, the import, and the impact of the working of this law. And also in a way, a general critique of the working of the entire forest law. The case is T N Godavarman Thirumulpad verses Union of India. A case that started in the year 1993, even to this day, that is very interesting, the case is not closed it is still alive but several orders were made. It is a landmark case.

There is no parallel to this particular case, which runs for nearly three decades as of now which has seen even more than as of now 120 odd sittings of the Supreme Court and over 40 to 45 orders passed by the Supreme Court, in the entire history of judicial interventions at the highest-level, Supreme Court level. There is no other case comparable to this, both in terms of time and in terms of the orders that were passed by the court, having such a kind of a lasting impact on forest governance, forest management, use of forest area and things like that.

Not even constitutional, important cases like Golaknath or Keshavnand Bharti can occupy so much of time of the court of law, and we should presently see why it is significant, and what it actually has delivered. In terms of the facts very briefly, Mr. Godavarman a landlord, having had vast areas of land inherited from his predecessors, ancestors, a portion of that land which was a forest land which was taken over by the government under land reforms. One fine morning this gentleman finds that that forest area which was taken over from him saw a lot of activities. To cut a long story short, he observed the trees were being cut there.

And when inquired, nobody was giving him a proper answer as though giving him the impression, mind your business, it is something that the government is doing, who is there to question the government and things like that. And in fact, a little offended for the simple reason, a forest land that was nurtured and developed for decades by his ancestors has gone into the hands of the government with a hope and expectation that this forest cover would be conserved, and here the forest land is being degraded.

He just did not go away. The moment the forest authority said that it is a policy decision that has been taken, and they would be implementing the same and they cannot be questioned and things like that. It brings a writ action in the highest court of law in the Supreme Court of India, and that triggers a major enquiry by the highest court of law.

The court first looks into this problem and it started with a few preliminary questions on that, and suddenly discovers that not only this particular instance, enough justifications and reasoning are not there, when the states do act with regard to the forest area, in diverting the forest plan for various non-forest purposes. Acts about the relevant law, which would govern this and Forest Conservation Act was mentioned, and whether those regulations that were

actually laid out, or confirm to or not, the foreign authorities are not able to give a clear and cogent answer to convince the court.

So, the court suddenly takes a point, not just out of curiosity, but out of great concern. That look, you have such forest land that is being managed by the state and the state agencies are not able to answer the question as to how the forests are being managed, how decisions are made with regard to the forest, and retention of the forest as the forest area, development of the forest area, conservation effect, and diversion of forest for non-forest purpose.

And so the court roves into every of these aspects, and finds that it is a very unsatisfactory state of affairs of forest management by the state, the court directs that all cases concerning the forest conservation of the Godarvarman can be clubbed together, all of them in different courts of law in High Courts, in different states, be put together and brought as one single action. And that is why this Case is called as the Forest Conservation case, and the highest court would consider this.

As was mentioned, more than 120 orders, 120 sittings of the court and over 40 orders were passed by the court. What are the orders? One of the orders just to give a few examples, one of the orders passed by the court was with regards to the definition of the expression forest. We have already seen forests are not defined anywhere in this law, we have different categories of forest; private forests, government forests, you have district forest, you have reserved forest, you have village funds, you have protected forest, but what is a forest?

No definition has been given. Of course, the objective of the lawmaker was to use anything as a forest cover to exercise its control through a declaration with a notification. But the court said that there has to have a clear understanding, a clear perception as to what a forest is. So, it goes by the dictionary meaning of the forest and then looks for the purpose for which forests are created. Remember, the economic, the ecological, social, and human rights dimensions of that.

For these purposes, for these objectives' forests are created and so we declare that as a forest, with all those expressions that are used in various government records of any kind is a forest. Anything that is declared as a forest under the definition that has been given in declaring meaning is following, that it should have the purpose that forests are distinctive ecosystems

which are meant for serving all those objectives that we had discussed earlier and that would be ranked as a forest. That was the meaning that the court gave, which is actually adding to the legislative law, a judicial law and a judicial supply of omissions.

The second thing that the court did was, it found that there were several industries that were there within the forest area, forest based industries, which were not following the conservation ethics, there were violations and the authorities were not paying much attention to those violations and this was also another cause for forest destruction. So what the court did was that till you solve this out, streamline it, rationalize the entire process of what gets it to the forest industries, how we get a demo apparent canonical are marked it, what kind of view authorizations and how it is being put to application and what product comes out of it, till then you freeze all wood based industries.

It banned selling of timber; it wanted a clear inventory on the forest. It was one of the questions that the court asked was to the authorities, including the environment ministry, how much of area of land comes under the forest cover, the government took a lot of time and still was not able to come up with a very clear, exact in terms of square meters or square miles of the area on land coming under the forest jurisdiction.

And so, the court said that there has been a clear administrative lapse, there has been a clear policy lapse, and there has been a clear implementation failure. And so, we are going to actually ban timber selling till you take an inventory of whatever timber that is there in the forest area, the timber movement from any of the 7 north-eastern states because these seven northeast Indian states were actually guilty of poor management of timber movement, leading to destruction of large areas of forest land.

A special committee was constituted to oversee, monitor this particular activity. And even in deciding on mining business within the forest area, there were several discrepancies, and in deciding the extensions, the court laid out certain norms whereby this could be done.

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- Constitution of High Power Committee (- For North East to oversee strict and faithful implementation of Court orders)
- Clarifications as to Minor Forest Produce and protection of interests of forest-dependent communities
- Instructions for preparation of Action plans for forest protection and scientific management of forests by State Governments and implementation after central approval
- CREATION OF CENTRALLY EMPOWERED COMMITTEE (CEC) – to oversee implementation of court orders
- CREATION OF FOREST COMMISSION – to advice Govt., from time to time on matters concerning forest conservation and management
- LAW, BASICALLY COLONIAL IN CONTENT, CONTINUES TO BE WORKED, WITH VERY LITTLE CHANGE, EITHER IN THE STRUCTURE OR IN THE SCHEME OF GOVERNANCE – ROLE FOR THE CENTRE, A POST-1980 PHENOMENON



It started giving directions as to sustainable use of forests. It constituted high power committees for north eastern India and for the entire country for faithful implementation of these many orders as were mentioned, it gave clarifications as what is a minor forest produce, and how forest dependent communities were dependent on this forest produce, they need to be protected, their interest be protected, their claims and entitlements for the livelihood purposes are to be met, very detailed administrative processes that a state agency that should be performed were being taken over.

And by way of administrative inspections through the writ mandamus, mandamus on these states to carry out these activities before the forest conservation becomes a reality. The court did not close the case, because the court was concerned that once they decide a case, all of those assurances given by the government, there is no guarantee that implementation of its orders would be done both in its letter and spirit, and so it created what was called as a Centrally Empowered Committee, a new body was created called as CEC to oversee the implementation of its orders because we as a court, we pass orders, but we are not there execute it, we are not there to implement it, we are not there to audit it.

And for doing that you should have done it, since you are not doing it as an administration, we are creating a body, a very high-powered committee, which will be the eyes and ears of the court, which will ensure the execution of our orders. And we will take the position of the Supreme Court to that extent so that our burden of dealing with forest cases on a day to day basis would be reduced and then act on our behalf in dealing with that, this is a very rare

thing.

In addition to that the court also created what is called as the forest commission to advise the government from time to time on matters concerning forest conservation and management. This is a very rare thing that has never occurred in the entire history of not just first administration, but in the history of governments because the impression that people had was the courts of law are there to resolve disputes, and here the court forms that administration has not really performed its task. And so, it took upon itself the responsibility of giving directions to be implemented by different parts of the government.

And for that reason, this particular case is a very important landmark case, which fuses both administrative and judicial functions to meet the hands of justice, the court of law assumed for itself, and perform as one shining example of a deeper engagement and involvement of the court of law in policy, law, implementation, monitoring, and ensuring that the basic objective of the forest law is acted if you take an overall view of this entire Forest Act Of 1957 and the Forest Conservation Act of 1980, basically, this law is colonial in its content, because it talks about centralization of powers, involving people has not been much of a major feature here. It continues to be about with very little change, either in the structure or in scope of governance here, the role for the centre, which actually is a 1980 phenomenon has further centralized the power of forest administration and governance.

Then we locate the people, what is the status and the position? Do they have anything to do with the forests, do they have rights or anything like that, is something which we will be taking up in the third part of our inquiry. In the first two parts, we discussed about the forest law and the forest conservation law, the first two aspects of this module.

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7.C. FOREST RIGHTS AND CAMPA



In the third module, we are going to begin that people into the whole stream of forest management, and how did that occur and with what effect is what we are going to see in this third instalment of our discussion in this module which is devoted for a discussion over forest rights, and something that is described as Campa.