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“A CRITICAL ANALYSIS INTO EXISTING FOREST LAWS AND GOVERNMENT’S ACTION TOWARDS FORESTS FOR ECONOMIC DEVELOPMENT IN INDIA”

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ABSTRACT

Forests are the major source of renewable resources and are one of the main essentials for survival. Without forests, we will witness the failure of our existence with our bare eyes. The paper delves into the Indian Forest laws that deal with the protection of forest laws, especially relying on the Forest Conservation Act, 1980. Government is the part of the executive, entrusted with the task of proper implementation of the legislative acts and rules and to ensure that the guidelines are followed to its entirety. However, Government must not exceed its power, i.e., the colorable use of legislation. In the present scenario, there have been several instances where in spite of the clear text provided in the provisions of the Act, the concerned Government have exceeded their power, thus leading to nothing but disturbances and losses. The researcher tries to highlight the same and delve deep into these questions and come out with suggestive solutions for the same. This paper depends on doctrinal approach and methodology as for the present study it fits most suitable and helps in backing the arguments with relevant sources. The paper involves both qualitative and quantitative research methodology approach thus making it more scientific and less opinionated. The researcher assures that after reading this article the reader will have a different perspective and will be more aware in terms of forests and its concerned laws in the Country.

Keywords: Forests, Government, Colorable use, disturbances, solutions

CLAIM STATEMENT

It is contended that government's negligence standards overseen by provisions of existing forest laws and policies in India tends to be taking a huge toll on forest cover and climate in India, given the growing infrastructure and development.

RESEARCH QUESTIONS

To what extent Government's discretionary use of powers in presence of Forest Act and SC and ST Act and policies impact forest cover in India for the past 30 years?

How does these laws and policies, actually meant to preserve forest cover, bind the judiciary in taking measures against the Government's negligence standards?

RESEARCH OBJECTIVES

The present study seeks to assess how government's negligence standards can be strictly controlled so that forest areas do not face the brunt of it.

The paper seeks to look for solutions relating to striking a balance between forest cover and development.

INTRODUCTION

This paper deals with the rapidly depleting forest cover in India. The forest laws are meant for the protection of forest areas and other factors constituting it, however there exists certain lacuna in the existing forest laws that is giving Government an undue advantage and allowing them to carry on with their whims and fancies, leading to depletion of the forest cover rather than its protection.

This paper depends on doctrinal approach and methodology as for the present study it fits most suitable and helps in backing the arguments with relevant sources. The paper involves both qualitative and quantitative research methodology approach thus making it more scientific and less opinionated. Secondary research data has been used in relation to quantitative data. The approach to qualitative data is grounded and phenomenological and focus on thematic and textual analysis of

the same, thus leading to flexibility and generation of new ideas. This approach contributes to the objective of the paper as it helps in arriving at a proof-backed result and ideas, making it standard and reliable to nature. The limitation of the present paper is that it does not cover directly and in broad ambit aspects like rights of forest dwellers, animals, etc., it only largely deals with the larger aspect of forest cover. Also, the paper looks into the issues of depleting forest cover, only from the angle of government negligence standards and lack in forest provisions in India.

Due to ever growing population and the self-imposed burden of development, even the resources like forest are under threat. Every year a large number of forests are being cleared in the name of developmental activity-sometimes to provide raw materials to the industries and sometimes for human settlements. A situation has arisen that we have enacted forest conservation laws but we have gone to such an extent that even that proves to be futile.¹

AAREY FOREST TREE FELLING ANALYSIS

Currently, the Aarey forest tree felling case threw more light on this scenario. Government of Maharashtra took an unthoughtful and well criticized decision to cut the tree cover of Aarey forest so as to facilitate metro in that area. Even though this decision was highly being criticized by environmentalists and citizens as it is very well known that these forests serve as green lungs to the entire state. Huge protests were seen and finally the Supreme Court directed that no more trees be cut in the colony for any sort of development until ordered. However, was the government's negligent act rightly considered and punished? Was it even close compared to the action that might have been taken if it was a normal citizen? Well, I highly doubt the same. This even made celebrities to voice their opinions on the matter so as to enlighten the legislature and awaken them. Film producer, Karan Johar tweeted, "Massacre is what it is! We are our worst enemy! Infrastructure can never precede nature! We need to stop!#Savearey". Even famous actress Alia Bhat tweeted, "There's always been a conflict between development and conservation. Yes, the city needs to build infrastructure to support a growing population, but the city also needs trees and parks and greenery. We need to protect nature like life depends on it, because it does. #LetMumbaiBreathe".

¹ Trishla Dubey, *Impact of Ex Post Facto Mining Approvals on Forest Conservation in India*, 6 KIIT Student L Rev5 (2019)

Such tweets and reactions and protests clearly depict that the citizens wish nothing but a balance so that they can enjoy a wholesome environment and a healthy environment, and government is clearly failing in its duty, and that too intentionally. Citizens are uniting for the love of nature and future; however, the government is drifting apart. When the petitions were filed by the environmentalists and others, they even proposed alternative spaces for the car shed, however the government was adamant with their decision as it was costing them less. How can this even be taken as an argument, when the post costs of the actions of the Government are something that cannot even be imagined per se.

RELEVANT DATAS AND FIGURES

In 2010, India had 31.3Mha of natural forest, extending over 11% of its land area. In 2021, it lost 127kha of natural forest, equivalent to 64.4Mt of CO₂ emissions.

From 2001 to 2021, India lost 2.07Mha of tree cover, equivalent to a 5.3% decrease in tree cover since 2000.

India: Tree cover loss by year 30% tree cover threshold; all figures in hectares

Year: Hectares

[2001: 62,361	2002: 53,000	2003: 47,751	2004: 74,129
2005: 62,505	2006: 67,411	2007: 73,907	2008: 85,000
2009: 79,203	2010: 51,317	2011: 88,461	2012: 95,069
2013: 80,866	2014: 139,138	2015: 116,308	2016: 175,363
2017: 189,421	2018: 132,233	2019: 121,155	2020: 137,716] ²

Now let's take a look at a major area where government is indulging in discretionary use of powers, that being mining activities.

² Mongabay. "Deforestation statistics for [India]". Accessed on 31.10.2022 from rainforests.mongabay.com

EX POST FACTO APPROVALS

Governments in India (both at the Union level and State level) have been quite liberal in dealing with forest matters. A lot many times forest areas are encroached or occupied by illegal occupants. These encroachers/occupants use the forest areas for non-forest purposes. Illegal or excessive mining is also one facet of this issue. To make the situation even worse, the governments have been enthusiastically regularizing the unauthorized/illegal mining by way of ex post facto approvals. These are the approvals given by the concerned governments after the work or activity has already been commenced. As a result of this, we are losing large tracts of forest lands to developmental activities causing tremendous harm to our environment.

Section 2 of Forest Conservation Act, 1980

What we must take a note of is, at “First, it mandates the prior approval of the Central Government for any clearance license that is to be acquired be it fresh or for renewal. Second, that prior approval is required for all non-forest purposes. Third, the prior approval is necessary when the forest land is given by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by Government when the land is to be used for non-forest purposes.”³

Despite of the clear and plain language of Section 2, the conditions mentioned therein have been blatantly violated a number of times by the concerned Ministry. There is no proper follow up of the mandate of Section 2, resulting in rapid depletion of forests in India. One of the most frequently used techniques in violation of Section 2 is granting of ex post facto approvals to the mining leaseholders. Ex post facto approvals means that the approvals or environmental clearances are granted by the concerned authorities after the work/mining has already been started. The government has from time to time issued various guidelines simplifying the procedural requirements to get the environmental clearance for non-forest purposes. One such guideline gave general approval to non-forest activities. The approach of governments have been very disappointing in this regard as they have acted in the most callous and insensitive manner, totally neglecting our ecological concerns.

Under the National Forest policy, 1988, not much is mentioned on mining and forests but it has been clearly mentioned that for diversion of forest lands for non-forest purposes including mining,

³ Section 2, Forest Conservation Act, 1980

conservation of trees and forests should be paramount consideration. Projects involving diversion should provide fund for regeneration and compensatory afforestation. No mining lease should be granted to any party, public or private, without a proper mine management plan appraised from the environmental angle and enforced by adequate machinery.

In the new draft policy of 2018 also, under the head goals and objectives, the policy seeks to maintain environmental stability, conserve biodiversity, preserve and conserve natural forests, ensure sustainable development, safeguard forest land from diversion for non-forestry purposes and strict oversight on compliance of the conditions if any legitimate diversion takes place. Clearly, diverting the forest and for non-forest purposes on ex post facto basis would be a violation of both the continuing and the proposed policy for future.

One should not be surprised in India, if he comes across the fact that here the enacted legislations are being superseded to meet the over-arching demands of developmental activities. The judiciary is under tremendous pressure to maintain balance between environment and development, since both are a necessary attribute of a developing economy.

Supreme Court's View on Forest Clearance Issues

In the famous case of environmental law, *M.C. Mehta v. Union of India*,⁴ Supreme Court held that life, public health and ecology have supremacy over unemployment and loss of revenue. Regarding Section 2 of the FCA, 1980, the honorable Supreme Court has in *Rural Litigation and Entitlement Kendra case*⁵, the issue was in relation to the illegal use of the limestone quarries. Arguments were based on the line that such unauthorized operation of quarries is leading to hazard to healthy environment and affecting water springs. In this case thus it was also observed that,

No matter if it's a case of first grant or renewal per se in relation to exercise of option by the lessee, the compliance of Section 2 is mandatory as condition precedent. A number of various other following cases have taken up the same view.⁶ For the purpose of Section 2, fresh grant and renewal of the clearance has been kept on the same parallel footing, meaning thereby that both require prior

⁴ *MC Mehta v Union of India*, (1987) 4 SCC 463

⁵ *Rural Litigation and Entitlement Kendra v. State of U.P.*, 1989 Supp (1) SCC 504 : AIR 1988 SC 2187.

⁶ *Nature Lovers Movement v. State of Kerala*, (2009) 5 SCC 373; *T.N. Godavarman Thirumalpad v. Union of India*, (2002) 10 SCC 606.

approval mandatorily as a condition precedent.⁷ Without obtaining the prior permission of Central Government and conducting proper EIA, the mining operations can't be commenced.⁸ If once in any way commences so except for the one prescribed, they are liable for the breach and misconduct. A case that highlights the State Government's negligence and absence of duty to take care, is Farook Shaikh v. This Petition⁹. Here it was brought to notice that the State Government has illegally allotted 20.76 Hectares of forest land in favor of respondent company (a multi-national company) without any prior approval of the Central Government as is provided in Section 2 of the FCA, 1980.

Even a similar scenario was witnessed in State of M.P. v. Krishnadas Tikaram¹⁰. Here, mining lease was granted in 1966 prior to coming into force of Forest Conservation Act, 1980. For renewal of this lease that was granted in 1966, State Government proceeded without obtaining prior approval of the Central Government. It was held that the said renewal is invalid and hence hereby cancelled the effect of the same.

By the understanding of the same, it is very well clear that the ultimate power lies in the hands of the Central Government. Provided that they remain diligent and observant with granting of the mining lease, a major sect of the forest land can be protected leading to a lot many positive changes in line. It is not that the legislature has not led guidelines for the protection and preservation of the forests, however the executive is falling short in its duty to efficiently give effect to the same.

SOLUTIONS TO THIS ISSUE

Economic and political development is undisputedly the need of the hour but we have to fix this in our minds that be it any kind of development including the economic development, it requires the availability and sustenance of the natural resources. Forest, being one of the most important natural resources and one of the key drivers of the economic development must be protected and expanded. Forests in India are heavily affected by mining which is only one kind of economic activity that might boost up a nation's development but that will be a short-term development. Already, the nations are in the race of finding alternate sources of energy for sustainability that are renewable also and cost very less environmental impairment. Most of

⁷ A. Chowgule and Co. Ltd. v. Goa Foundation, (2008) 12 SCC 646.

⁸ M.C. Mehta v. Union of India, (2004) 12 SCC 118.

⁹ Farook Shaikh v This Petition

¹⁰ State of MP v. Krishnadas Tikaram 1995 Supp (1) SCC 587

the countries will soon have to face “Energy Poverty” and many are already facing so. The Global South is currently facing energy poverty because they focused more on infrastructure development rather than affordable energy resources and preservation of sources. So, for some immediate benefit we must not compromise our environment that is essential for survival and existence of the entire human race. If not sustainable development, we will have to witness with our bare eyes the destruction of our civilization and that of our existence.

Some of the suggestions which the author would like to suggest in relation to all the problems that have been described and discussed above are :

Clearances must only be given as mandated in Section 2 of the Forest Conservation Act, there must not be any act against the said provisions. There should be strict restrictions on the part of State Government as well as the forest departments to refrain from giving environmental clearances against the mandate of Section 2 of Forest Conservation Act, 1980. States and the forest departments should not absent mindedly haste in giving such clearances because its effect on the forests might be grossly detrimental and irreversible.

In relation to mining activities any renewal that has to be given, there must be proper EIA done to give effect to the same. Illegal and unregulated mining should not be allowed at all costs.

The main lacuna is the “extraordinary clause” that creates exception to the compliance of section 2 of the said Act. Supreme Court should remove this clause in its entirety so that no one can take the benefit of this section and not comply with section 2 without any repercussions.

To ensure that all the provisions are very well complied with, Central Government must give effect to the appointment of a National Regulator so that there is continuous checks and balances, plus that accountability and transparency is maintained.

What the researcher stresses upon is an integrated approach by cooperation and all the concerned Ministries of Government

Technology has a lot of pros as well. It is our duty to make positive use of technology so that our sustenance is ensured. If better upgraded technologies are used for mining activities in forest areas, less harm to the forests can be guaranteed. This will ensure that forest land will be protected along with the growing infrastructure and development.