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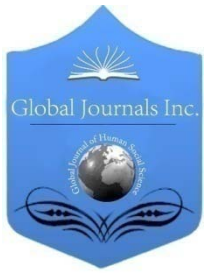

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T. N. Godavaraman Thirumulpad V. Union of India & others: A Case Study

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Environmental law being a field of national importance has attracted a great deal of participation from different NGOs, private organization, apex court and most importantly the common man without whose contribution and support ideal environmental conditions cannot be attained. The Supreme Court of India has always acted as a catalyst to back/support the growth and development of the environment through ensuring the protection of all components of environment by generating new jurisprudences like that of "absolute liability doctrine" and adding international concepts of sustainable development, precautionary principle and polluter pay principle.

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T. N. Godavaraman Thirumulpad V. Union of India & others: A Case Study

Astha Pandey

I. Introduction

Contribution/ role of T.N. Godavaraman Thirumulpad in protection and conservation of environment especially with respect to forests in India has beenprodigious. Popularly known as the "Green Man" he assured through various methods like filing of varied PILs and interceding in numerous projects, that legitimate harmony could be accomplished between consumption of resources and conservation of the same, exclusively conservation of forests.

Environmental law being a field of national importance has attracted a great deal of participation from different NGOs, private organization, apex court and most importantly the common man without whose contribution and support ideal environmental conditions cannot be attained. The Supreme Court of India has always acted as a catalyst to back/support the growth and development of the environment through ensuring the protection of all components of environment by generating new jurisprudences like that of "absolute liability doctrine" and adding international concepts of sustainable development, precautionary principle and polluter pay principle.[1]

With the advent of the case of T.N. Godavaraman Thirumulpad v. Union of India [WP (Civil) No. 202 of 1995]the apex court moved many steps ahead leaving behind its conventional character of interpreter of law, and taking over the roles of policy maker, law maker and administrator. In other words, this case also known as "forest case" in India which is an instance of judicial over-stepping of its own constitutional mandate as subsequent to the admission of this case the Supreme Court took over the supervision and control of day to day governance of the forests of India.[2]

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The problem regarding deterioration of the environment and majorly damage to the forests which are rich in natural resources started with the increasing needs of the people arising due to rapid growth of industrialization, migration of people from rural to urban areas, need for more land for cultivation, housing and other purposes because of over population, etc. Huge chunks of forest lands were being cleared and used for non-forest or commercial purposes like that of mining, illegal felling of timber leading to deforestation etc. Forests which are supposed to be the most valuable assets as sustainability of a nation and its people depends on it for they provide us with eminent natural resources were being exploited to a great extend and that too without the adoption of compensatory measures. Thus, leaving no or very little scope for replenishment of such resources, which is an act of high risk because without such resources the future of the country would be shrouded in the dark clouds of insecurity and scarcity of essential resources.

Noticing such sad state of affairs of the environment especially of the forests, T.N. Godavaraman being an aware and responsible citizen of India could not resist but resort to revolt against such illegal practices by knocking the doors of the Indian Judicial System in seek of some help by the Supreme Court to curb such practices which were causing harm to the forests and environment. He sought to the apex court by filling a PIL (Public Interest Litigation) expecting support of the court and a legal remedy to mitigate the loss being caused to the forests and the natural environment by excessive non forest activities on forest lands.

It is of immense importance to mention here that even after the presence of the provisions of Constitution of India which states that everybody including the central and the state governments is accountable for and has a duty towards protection and conservation of the natural resources, how are such illegal activities of deforestation and depletion of environment and its natural resources taking place on such a large scale right under the nose of the central and state governments. Article 48A mentions that state will venture to secure and enhance the environment and also has a duty to protect the forest and wild life of our nation. Article 51A bestows on all the citizens of India the obligation to conserve and uplift the natural environment comprising of rivers, lakes, forests, wild life and to have benevolence towards all living beings.[3]

[1] M. Sakthivel, "Case Comment: T.N. Godavarman Thirumulpad v. Union of India, MANU /SC/0028 /2014" *available at*: http://rostrumlegal.com/blog/case-comment-t-n-godavarman-thiru-mulpad-v-union-of-india-manu-sc-0028-2014-by-m-sakthivel/ (Visited on August 18, 2015).

[2] Armin Rosencranz and SharachchandraLélé, 'Supreme Court and India's Forest', Vol.43 No. 5, Economic and Political Weekly,2nd Feb 2008, Pgs 11-14, *available at:* http://www.environmentportal.in/files/-epw1.pdf (Visited on August 20, 2015).

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II. T.N. Godavaraman Thirumulpad V. UOI & others WP (Civil) No. 202 of 1995: A Study

In the year 1995 T.N. Godavaraman Thirumulpad filed a writ petition with the Hon'ble Supreme Court of India with an intention or main motive of protecting a part of the Nilgiris forest from the clutches of illegal felling of timber leading to large scale deforestation. This was initiated by the 'Green Man' because while Mr. Godavaraman was travelling through a place called Gudalur he saw enormous areas of forest land wherein trees were being cut in huge numbers and the logs of such timber were being mutilated/stacked for the purpose of selling in the market. A part of this particular forest cover was once owned by family of Mr. Godavaraman, Nilambur Kovilakam. This act of cutting down of trees was a gross violation of varied rules and legislations. Moreover, those responsible for cutting down such trees were only giving a trivial amount as compensation against felling of such valuable trees. For instance, they only paid Rs1000 to the state for 50 logs of rosewood.[4] Becoming aware of this situation, he fulfilled his fundamental duty of protecting and conservation of the forests and its natural resources by filling a PIL with the apex court to protect such forests.

While hearing of the case the court conducted an in depth examination of various environment legislations, like that of the Forest Conservation Act, 1980, Environment (Protection) Act, 1986, etc and also reviewed the role of central and different state governments. In the first major order passed by the Hon'ble Supreme Court which was passed after hearing learned Attorney General for Union of India, learned counsel appearing for the states, parties, and learned Amicus Curiae Shri H.H. Salve, the court held that there was a fallacy in understanding the scope of the Forest Conservation Act, 1980 and the meaning of 'forest'. Therefore in its 1996 order the court freshly interpreted the word 'forest' stating that initially due to the vagueness of the definition of forests few states conveniently defined forest as the areas of "reserved forests" i.e. those areas of forest cover that were the richest in natural resources and came under the category of reserved forests, receiving the maximum amount of legal and environmental security.[5] Whereas, after passing of the 1996 order the apex court elucidated the term 'forest' by its dictionary meaning as land covering all statutorily recognized forest irrespective of whether they come in the category of reserved, protected or other under section 2(i) of the Forest Conservation Act, 1980. Further the court specified that 'forest land' would also include areas considered as forests in government records regardless of ownership, along with those as per the dictionary meaning. Thus, due to this new and broader definition, the word forest was now being defined and provisions of section 2 of the Forest Conservation Act regarding conservation and securing the forests would apply to all forests irrespective of the ownership and classification.[6]

a) Order of the Apex Court Passed in the Year 1996

The first order of 1996 was divided in parts, wherein the first part being General Order which is applicable to all in general, second was specifically applicable to the state of Jammu and Kashmir, third to the state of Himachal Pradesh and Hilly regions of Uttar Pradesh and West Bengal, and the fourth part exclusively meant for the state of Tamil Nadu.

i. *General Guidelines*

The 1996 judgment of this case is considered to be a landmark judgment in the history of this case of "continuing mandamus." In its first part of the order of 1996 the courtimposed a complete ban on tree felling all across the nation. Except those which was approved by the Central Government. The court reiterated that in order to carry out any non forest activity in any area that comes within the purview of forest according to section 2 of the Forest Conservation Act then such activity would be ceased if prior approval of the central government is not obtained. Henceforth, various saw mills, including plywood and veneer mills and mining industries were shut down on the strict orders of the court. In order to maintain ecological balance in the region of wet ever green forests of Tirap and Changlang in the state of Arunachal Pradesh, all saw mills, veneer mills, plywood mills within a distance of 100 kms from the boundary of Assam were shut down in response to the order of the court.[7]

The Supreme Court stated that according to the provisions of Forest Conservation Act, 1980, approval of central government was mandatory to carry out non forest activities which include mining and saw mills. Therefore, the court ceased operation of non forest activities which were operating without attaining the approval of Central Government. Enforced complete ban on cutting down of trees in all of the seven states of

[3] T. N. Godavaraman Thirumulpad v UOI & Ors, AIR2005SC4256, (2006)1SCC 1, *available at:*www.ielrc.org/content/-e0508.pdf, (visited on 1st September 2015).

[4] Interview with T N Godavaraman Thirumulpad, 'Down To Earth', August 31st 2002, *available at:*http://www.doccentre.net/docsweb/-adivasis_&_forests/interview.pdf, (viewed on 1st September 2015).

[5] Armin Rosencranz, Edward Boenig, and Brinda Dutta, The Godavaraman Case: The Indian Supreme Court's Breach of Constitutional Boundaries in Managing India's Forests, *available at:*http://elr.info/sites/default/files/articles/37.10032.pdf (visited on August 30th 2015).

[6] T.N. GodavaramanThirumulkpad v UOI & Ors, (1997) 2 SCC 267, [12th December 1996, WP (Civil) No. 171/96], *available at:*http://www.scconline.com (visited on 4th September 2015).

[7] T.N. GodavaramanThirumulkpad v UOI & Ors, (1997) 2 SCC 267, [12th December 1996, WP (Civil) No. 171/96], *available at:*http://www.scconline.com (Visited on 4th September 2015).

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the North-East region of the country that are rich in forest reserves. It also imposed a ban on transportation or movement of timber anywhere outside the North-East states.[8]The court further gave instructions to each state government for forming an Expert Committee within one month for following purposes:

- Identify areas which are forest irrespective of any classification or ownership.
- Recognize the areas which were initially a part of forest but now are cleared lands due to illegal activities like deforestation.
- Figure out the areas comprising of plantations and segregate those belonging to the government from those of private individuals.

Then the state government is supposed to file a report within 2 months with respect to following things:

- Number of saw mills, veneer mills and plywood mills carrying out functions within a state.
- Authenticity and validity of licenses of such mills.
- Accessibility/ closeness in terms of distance of such mills from nearby forests.
- Source of obtaining timber by such mills.
- The court also directed each state to appoint an Expert Committee within one month to determine the following:
- Viable scope of the forests of the state as being saw mills or timber based industries.
- Number of such existing mills that can be maintained within the state without any threat or unwanted problems in relation to the forests and the environment.
- Most suitable distance of such saw mills present within the state from the forests of that state.
- The Expert Committee so formed would comprise of a Principal Chief Conservator of Forest and another Senior Officer to supervise and inspect whether the order of the apex court is being complied with or not and to file status report within one month of its formation.[9]

ii. *Guidelines Laid Down for the State of Jammu & Kashmir*

The court ordered that the following things must be adhered by the state of Jammu and Kashmir:

- There will be absolutely no cutting down of trees in any kind of forest be it public or private except those private plantations where trees have been either planted by private individuals or by the social forestry department of this state and such cutting down should strictly be in compliance with the law i.e. chopping down of trees in these areas can only be done if prior authorized approval has been granted by the central government.
- In the areas that come within the purview of 'forest' the state government or its forest corporation may clear the trees which are already chopped off and can cut out any standing timber that is either diseased or has dried off, except in the areas covered under the J&K Wildlife Protection Act, 1978 and those banned under any other law applicable.
- An Expert committee to be incorporated by the government of this state with an objective of establishing qualitative and quantitative benchmarks with respect to the removal of trees that have already been chopped off, or cutting down of infected or arid standing timber. This committee would be constituted of an IAS Officer posted in this state, a representative of J&K government, two renowned private specialists and the Managing Director of J&K Forest Corporation who will also act as the member secretary of the committee.
- Slaughtering or removal of any trees or forest land for the execution of any project must be in conformity with the Jammu & Kashmir Forest Conservation Act,1990 and such removal to be exclusively executed by the state's Forest Department and not any private corporation. Moreover, this regulation would also be applicable to the doused regions of the 'Thein' Dam as well.
- The entire amount of timber procured form the areas mentioned above is to be consumed solely to fulfill the timber and fuel wood demands of the local individuals, government and other regional institutions.
- Strict prohibition on the displacement or transportation of timber from the state, save for the purpose of railway or defence. Further this movement would only be permitted after authorized certification has been received by the managing director of the state corporationstating that such timber has been obtained by State Forest Corporation. Subsequently, such motion will be done through either the corporation or the Forest Department of J& K.
- File an affidavit by the state mentioning about the data regarding the portion of timber owned by the private persons which has been bought by them from forest department of the state.
- None of the saw mill, veneer or plywood mill will function up to the range of 8 kilometers from the

[8] Armin Rosencranz and SharachchandraLélé, 'Supreme Court and India's Forest', Vol.43 No. 5, Economic and Political Weekly,2nd Feb 2008, Pgs 11-14, *available at:* http://www.environmentportal.in/files/-epw1.pdf (Visited on 9th September, 2015).

[9] T.N. Godavaraman Thirumulkpad v UOI & Ors, (1997) 2 SCC 267, [12th December 1996, WP (Civil) No. 171/96], *available at:*http://www.scconline.com (Visited on 11th September 2015).

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periphery/borderline of forest region and if any such mill[10] already exists in the aforesaid area then the same shall immediately cease to operate and would be relocated.[11]

iii. *Guidelines for the State of Himachal Pradesh and Hilly Areas of Uttar Pradesh & West Bengal*

The Supreme Court directed the following to be strictly followed by such states:

- Prohibition on cutting down of trees within any area declared as forest whether public or private except for those private plantations which are not considered as forest or those regions Himachal Pradesh where authorized permission has been granted for legitimate personal use.
- State government to remove all already felled trees or those which have been dried or infected from regions apart from those mentioned under section 18 and 35 of the Wildlife Protection Act, 1972.
- An Expert Committee to be formed by the State government consisting of a Representative of Ministry of Environment and forest, Another Person Representing the State Government, Two Prestigious Private Experts and Managing Director of the State Forest Corporation (will act as the Member Secretary). Role of this committee is to establish qualitative and quantitative rules with respect to removal of such trees.
- Clearing of trees from forest in implementation of projects must be in accordance with the Forest Conservation Act, 1980 or any other law applicable and such felling of trees should only be done by State Forest Corporation and not by any private corporation.[12]

iv. *Guidelines for the State of Tamil Nadu*

The Apex Court in its 1996 judgment gave following guidelines exclusively to be complied by the state of Tamil Nadu:

a. Strict ban on deforestation or removal of trees from all regions that are covered under the purview of forest, except where

- Such trees are deliberately grown or planted rather than out bursting on their own, or
- When removal of trees is justified with a reason and is done in a region which was initially not considered as forest.

- Duty of the State Government to form a specialized committee for the purpose of figuring out/identifying all regions that can be covered and termed as forests.
- Growing and cutting down of trees will be permitted if done in accordance with the applicable laws and Government scheme wherein such an activity is carried out by the tribal people who form a part of Social Forestry Programme related to the Patta Lands and not forests.
- With respect to the Plantations of Coffee, Tea, Cardamom, etc following instructions have been laid down by the Hon'ble Court:
  - Cutting down of shady trees in these plantation regions:
  - Would be restricted to those trees that have been grown deliberately or planted intentionally and have not grown automatically.
  - Will only be applicable to the recognized species mentioned in the TANTEA Report.
  - All such activities must be in conformity with the propositions of TANTEA and
  - Must be carried out in surveillance and control of the Statutory Committee formed by the State Government.
  - Report of TANTEA would determine the state government's decision of cutting down Fuel trees that are grown out of the forests. While the trees of eucalyptus and wattle can be chopped off for personal utilization if such utilization is permissible by the statutory authority.
  - The court further instructed the state government to identify the regions of plantation which are a part of forest and are not operative in such plantation. Absolute ban on cutting down of trees in such areas.[13]
  - Prohibiting expansion of any such plantation in order to evade encroachment by plantations on the forests.
- A one-time measure of clearing/removing the trees that had already been chopped off before passing of the interim order by this court on 11 December, 1995 is permitted provided such trees had not been removed from Janmam Land.
- Strict compliance with the ban imposed on cutting down of trees from Janmam Land.
- This order of 1996 is final, binding and is to be operated, implemented and complied with, regardless of any different order passed by any other court or tribunal.
- Altogether, any adverse effect on saw mills or other wood based industries like closing down of such

[10] T. N. Godavaraman Thirumulkpad v UOI & Ors, (1997) 2 SCC 267, [12th December 1996, WP (Civil) No. 171/96], *available at:*http://www.scconline.com (Visited on 11th September 2015).
[11] T. N. Godavaraman Thirumulkpad v UOI & Ors, (1997) 2 SCC 267, [12th December 1996, WP (Civil) No. 171/96], *available at:*http://www.scconline.com (Visited on 11th September 2015).
[12] *Ibid*
[13] T.N. Godavaraman Thirumulkpad v UOI & Ors, (1997) 2 SCC 267, [12th December 1996, WP (Civil) No. 171/96], *available at:*http://www.scconline.com (Visited on 15th September 2015).

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mills due to the implementation and compliance with this order of the Supreme Court will not lead to removal of workers of these industries. Moreover, they would be paid their full due allowances.[14]

b) Pretext of the Court

The court deemed fit to interfere with the functioning and implementation of various regulations under different environmental statutes and with the working of authorized bodies like Ministry of Environment and Forests, etc, because the condition of the forests was highly devastating at that point of time specially in the region of North East where large scale legal as well as illegal deforestation was taking place and the concerned government was behaving in a very insensitive and a careless manner, not taking any required action as per the circumstances. Therefore, the most important resource for survival was highly endangered, leading the court to step forward to protect and conserve such resource i.e. forests.

The court was of the view that both the central and the state governments were not acting in a desired manner as many instances were taking place that made this situation quite clear, one such being in the state of Maharashtra where the senior bureaucrats deliberately did not comply with the court's order of imposing a strict ban on granting licenses to saw mills, leading to committing of the act of contempt. Subsequently, the apex court had to resort to the application of its power of 'contempt' in order to change the attitude of such governments towards the protection and conservation of environment and forests and most importantly to get the orders passed by it implemented in an appropriate manner.

To its extreme shock/ surprise in retaliation of order passed by the court, the government of Meghalaya instead of taking steps to support and implement the court's order requested that all unregistered forests under the ownership of communities, clans and individuals be given the status of "plantation forests" so that such forests could be ostracized from the purview of the term 'forest.'[15] This implied two things, first that the rights of private individuals of utilizing their privately owned lands is not hampered and secondly, it is also a possibility that there was a wrongful intention of ensuring undue advantages to those who are involved in using the forests for non forest purposes as they will be able to execute their heinous activities on such lands if they are excluded from the scope of forests.

c) Meddling (Exceeding) Operational Parameters by the Apex Court

The fundamental functions of the Indian Judiciary bestowed on it by the Constitution of India comprise of interpreting/construing various laws/ legislations, bridging the gap and bringing harmony between the laws and the provisions of the constitution. Further as the Judicial System of the country is also a kind of supervisory/ adjudicatory body it has also been granted few exceptional discretionary/ unrestricted powers like that of 'Judicial Review' to enable the court to revise or review any thing that needs to be set right.

After granting so much power to the judiciary it was necessary to segregate the working of the legislature, executive and the judiciary to avoid unnecessary interference in each other's work. Thus, the constitution laid down the Doctrine of "Separation of Powers" and the importance of constitution and its provisions has been made very clear in the landmark judgment of Keshvananda Bharti v. Union of India. The only basic rule related to the governance in India is that everything or anything done within the country must be accordance with the constitution.

The constitution lays down provisions with respect to all the rights and duties, etc of the citizens. In fact the constitution also guarantees the Right to Healthy and Congenial Environment under Article 21 i.e. Right to Life. As clean environment being an integral and essential factor for sustenance of life therefore conservation, securing and maintenance of environment and its resources is the fundamental duty of the State as well as Central Governments which they did not fulfill and evaded their responsibilities and duties. Hence, the court had to step in between to overcome lacunas and drawbacks of the governments.[16]

First of all, the court engaged in 'micro-management' activities that were out of its operational scope like that of banning timber transportation, relocating saw mills, etc. Then, it formed a quasi-executive body i.e. Central Empowered Committee (CEC) under Section 3(3) of the Environment (Protection) Act, 1986 to keep a check on 'compensatory afforestation', other environmental happenings and to redress the grievances of people with respect to any non compliance with the order of the court. This committee exclusively reports to the court thus defeating the purpose of separation of powers. Finally, this court taking the defense of this case being an "extraordinary case" expanded its power manifold stating that it wanted to assure that no unwanted alteration can be made in the implementation of its order so that the environment and forests are completely

[14] *Ibid*

[15] Armin Rosencranz and SharachchandraLélé, 'Supreme Court and India's Forest', Vol.43 No. 5, Economic and Political Weekly, 2nd Feb 2008, Pgs 11-14, *available at:* http://www.environmentportal.in/files/-epw1.pdf (Visited on 18th September, 2015).

[16] Armin Rosencranz and SharachchandraLélé, 'Supreme Court and India's Forest', Vol.43 No. 5, Economic and Political Weekly, 2nd Feb 2008, Pgs 11-14, *available at:* http://www.environmentportal.in/files/-epw1.pdf (Visited on 18th September, 2015).

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secured from the illegal activities of the exploiters. Moreover this case is going on for almost 20 years now and the court has held this case to be a case of "continuing mandamus" wherein there is continuous intervention of the court in all the activities related to the environment specially forests. Here it can be said that the apex court breached its constitutional mandate as the term "continuous mandamus" is nowhere mentioned in the constitution.[17]

d) Order of the Supreme Court Dated 26/09/2005

In its order passed in 2005 the Supreme Court dealt with following important points discussed in this case:

i. First of all the court stated that there is a great need or requirement for preservation, protection and conservation of Forests from the utilization of such natural resources i.e. forests for non forest purposes as it tends to cause harmful ecological effects.

ii. The court also discussed the issue of payment of some compensatory amount before using any forest land for non forest purposes. In this case the court made it mandatory for all states to make the payment of Net Present Value (NPV) of the amount of land which has to be used for undertaking of any non forest activity.

iii. The court also laid down the importance of enacting the Environmental (Protection) Act, 1986. It stated that the risk of threat to life on earth was due to the deteriorating environmental condition which was result of increasing pollution, los of biodiversity, etc.

iv. It was discussed in this case that necessary steps are essentially to be taken by central government towards compensatory afforestation in order to reinstate the green cover that has been lost due to the excessive deforestation. Therefore, large amount of funds are being submitted to the State Government by such user agencies by which afforestation is done by the government.

v. The MoEF submitted a scheme To ensure compensatory afforestation.

vi. CEC analyzed the scheme submitted by MoEF and made following recommendations:

a. According to the Forest (Conservation) Act, 1980 payment of NPV must also be made along with the amount for compensatory afforestation.

b. All the regulations with respect to the Compensatory afforestation and funds collected towards it will be laid down by the MoEF in consultation with the Central Government.

c. Money paid by the user agencies for safeguarding the biodiversity of a region of diverted forest area that falls within the purview of wildlife area mentioned under sections 18, 26A or 35 of Wildlife (Protection) Act, 1972, then such fund would also be submitted in the 'Compensatory Afforestation Fund' and would only be utilized for the motive of safeguarding/securing biodiversity.

d. Out of the total amount received in the fund the amount left after necessary expenditure will be kept with the state government and in case any amount that is pending to be paid by user agency to the state then that amount also shall be submitted by the state government to the fund and later on such government can recover the amount from the user agency.

e. Funds to be utilized for the purpose of natural regeneration, conservation of forest and its resources, etc.

f. All public or private sector units that require forest resources for production must contribute considerably towards compensatory afforestation.

g. All/Any plantations must utilize local/indigenous species rather than exotic species.

h. Compensatory Afforestation to be managed and controlled by an independent system to enable rightful and organized utilization of funds.[18]

The court in its order of 2005 marked the acceptance of the scheme of CEC by MoEF and presumed that it has been accepted by other states as well as no objection was raised in response to such scheme.

Another important step was constitution of CAMPA under section 3 (3) of the Environmental (Protection) Act. The Compensatory Afforestation Fund Management and Planning Authority (CAMPA) was constituted for the management of funds collected for compensatory afforestation. This executive body, CAMPA has six members and one Chairperson. Following are its powers and functions:

1. Appointment of staff on contract.
2. Managing the day to day financial process.
3. Delegating administrative and financial powers
4. Investment strategies with respect to fund raised, etc.

- Main goals set out by the court are that of protection and conservation of forests and their productivity, maintaining sustainable biodiversity, enhancing surrounding environmental conditions, etc.
- Mr. Salve, Aicus Curiae of the court suggested that TEV i.e. Total Economic Value provides for an

[17] Armin Rosencranz and SharachchandraLélé, 'Supreme Court and India's Forest', Vol.43 No. 5, Economic and Political Weekly, 2nd Feb 2008, Pgs 11-14, *available at:* http://www.environmentportal.in/files/-epw1.pdf (Visited on 18th September, 2015).

[18] T.N. Godavaraman Thirumulpad v. UOI & Ors, AIR 2005 SC 4256 (2006) 1 SCC 1, decided on 26.09.2006, *available at:*www.ielrc.org/-content/e0508.pdf (Visited on 21st September 2015).

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account of both tangible as well as intangible benefits/ values that the forests provide through its natural resources. Combination of use and non use values build up TEV.

- The court in its order of 2005 explained CAMPA and its working in a very detailed manner and made following conclusions:

- Apart from schools and hospitals any other kind of project has to pay NPV before commencement. But the final decision depends upon the Expert Committee.
- Payment to CAMPA is valid and constitutional.
- Amount received must be utilized towards protection, conservation and upliftment of forests, environment and its resources and towards attaining ecological benefits.
- Funds to meet short term as well as long term goals.
- NPV should be in line with the Economic Principles.[19]

- The court further issued few directions to be followed:

- An Expert Committee to be formed comprising of three experts to lay down the parameters on the basis of which forest lands can be segregated on the basis of their value, to constitute diverse methodology for different geographical zone in order to figure out funds required for different areas of forests, to decide who is supposed to pay for compensatory affrestation, which projects can be exempted from contributing towards NPV.
- User agency shall be required to provide undertakings if required by expert body.
- Special Purpose Vehicle to be established after seeking due permission from the court.
- Report of Expert Committee to be sent.
- The clauses of CAMPA can be modified if required from time to time.[20]

e) Order Passed by Hon'ble Court in January 2014

This order passed by the Supreme Court covers the most important or the key point of the case of T.N. Godavaraman i.e. appointment of a "regulator" by the Central Government to carry out the functions and responsibilities like that of 'Environmental Impact Assessment', imposing penalties on polluters, etc, provided under section 3 (3) of the Environment (Protection) Act, 1986.[21]

In its order of 2014 of T.N. Godavaraman case the court explicitly cited the case of Lafarge Umiam Mining Private Ltd v. Union of India (2011) 7 SCC 338 in relation to the court agreeing not to intervene with the working and decisions of MoEF and for providing clearance for the mining activities/ project of the Lafarge Umiam Mining PvtLtd. But subsequently the court in its order dated 6/07/2011 also laid few guidelines to be followed in/ applicable to all future cases. Following guidelines or policies were to be followed compulsorily:

i. Appointment of a "National Regulator" by the Central Government under section 3(3) of the Act of Environment Protection, 1986 for the purpose of approving projects, establishing favourable environmental condition requirements, levying panalties on defaulters/ polluters. When such appointment was not made then the court in the year 2013 requested the learned Solicitor General Mr. Mohan Parasaran to inform the court as to when the direction of the court would be fulfilled/ complied with.

ii. When the matter was listed again on 18/11/2013 then the learned Solicitor General submitted that the court was actually to pay attention of National Forest Policy, 1988 that is related to/ has connection with the forests under section 2 of the Forest Conservation Act, 1980. He further states that the duty of a regulator has been bestowed upon the Central Government and it is the duty of Forest Advisory Committee to analyze and approve proposals after receiving prior approval under section 2 of Forest (Conservation) Act, 1980 from the Central Government as this committee is formulated under section 3 of this act, therefore these statutory duties/ responsibilities cannot be given to any other authority apart from Central Government.

iii. Next submission made by Mr. Parasaran was that Central Government has been bestowed with all powers under section 3 of Environment (Protection) Act like that of taking qualitative as well as quantitative measures for securing and maintaining the environmental standards. The Environment Impact Assessment (EIA) issued on 14/06/2006 by Central Government makes it clear that in order to commence any project an environmental clearance from the central government or state level EIA Authority in some cases is mandatorily required.

[19] T.N. Godavaraman Thirumulpad v. UOI & Ors, AIR 2005 SC 4256 (2006) 1 SCC 1, decided on 26.09.2006, *available at*:www.ielrc.org/-content/e0508.pdf (Visited on 21st September 2015).
[20] Ibid.

[21] M. Sakthivel, "Case Comment: T.N. Godavarman Thirumulpad v. Union of India, MANU /SC/0028 /2014" *available at*: http://rostrumlegal.com/blog/case-comment-t-n-godavarman-thirumulpad-v-union-of-india-manu-sc-0028-2014-by-m-sakthivel/ (Visited on 26th September, 2015).

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Thus, when approval has to be granted by the central government then there is no need for appointment of a national regulator.

iv. Hence this is important to note that Mr. Parasaran considered the guidelines issued by the court as mere "suggestions" and that is why central government did not appoint a regulator under section 3(3) of the EPA thinking it to be just a suggestion and not an order.[22]

v. While on the other hand Amicus Curiae of the court Mr. Harish Salve repeatedly states that the order of the court is in the nature of mandamus i.e. Command of the court and the when the court held that a regulator should be appointed under section 3(3) of EPA then such direction implies that there is a "power coupled with duty" and Central Government has a mandatory duty/responsibility to appoint a "national regulator"

vi. Mr. Salve also mentions that the Lafarge order was passed in 2011 and no objections were raised at that time which means that it could be presumed that UOI understood the guidelines and is ready to follow them. Therefore suddenly after 2 years the central government cannot decline to abide by the order.

vii. The main issue raised in T.N. Godavaraman case's order of 2014 is to come to a decision whether the order of 2011 in the Lafarge Mining case was an order/ command of the court that had to be compulsorily complied with or a suggestion wherein the court issued guidelines and directed a "national regulator" to be appointed under section 3(3) of EPA, 1986.

viii. It was further brought to notice that no proper body exists for the proper working and implementation of National Forest Policy, 1988 read with Forest (Conservation) Act, 1980 (FCA). Therefore the central government has the power as well as the duty to appoint a regulator for proper/ effective applicability of the National Forest Policy, 1988.

ix. The court also laid down the difference between a regulator and a court in its 2014 order.

x. The Department of Management Studies, IIT, Delhi for MoEF, Executive and Government of India prepared a report on "Scope, Structure and Process of National Environment Assessment and Monitoring Authority (NEAMA) that delivers information regarding the issues faced in implementation of EIA 2006 Notification so that measures to improve it can be adopted by the concerned authorities.

xi. The court held in its order of 2014 that there is a need to appoint a "regulator" under section 3 (3) of EPAfor the purpose of providing environment clearances and to act in a fair, independent and judicious manner. Further the court believed that the submissions of Mr. Prasaran were not valid and justified. Therefore giving direction to UOI for appointing a "regulator under section 3(3) of EPA, 1986.[23]

Thus, it was quite evident from the order of 2014 which is a very important order of the WP (Civil) No. 202 of 1995 that the central government in order to grant hustle free clearances to mega projects wanted to avoid the appointment of the regulator when it was given the power and conferred with the duty to appoint a regulator at both state and central level for enabling proper implementation of National Forest Policy, 1988 and in turn protect and conserve the forests and their natural resources.[24]

III. Implications of the Case of T.N. Godavaraman V. UOI & ors.

There are various positive as well as negative aspects that have been brought to light through the case of T.N. Godavaraman Thirumulpad v. Union of India

a) *Positive Aspects*

There are several advantages that came into picture due to this case and due to the active role played by the judiciary. Following are the broad/major positive aspects that are the outcome/result of this case:

i. Curbing of distortion/flaws in the application/proper implementation of the Forest Conservation Act and ensuring its proper and smooth operation.

ii. Complete ban/ arrest of all illegal activities such as mass deforestation for using forest land for non forest purposes, cutting down and transporting large chunks of timber and other valuable resources.

iii. Formulating various New Government Bodies and New Administrators/ Superintendents of Forest

[22] M. Sakthivel, "Case Comment: T.N. Godavarman Thirumulpad v. Union of India, MANU /SC/0028 /2014" *available at*: http://rostrumlegal.com/blog/case-comment-t-n-godavarman-thirumulpad-v-union-of-india-manu-sc-0028-2014-by-m-sakthivel/ (Visited on 28th September 2015).

[23] T. N. Godavaraman Thirumulpad v. UOI & Ors, I.A. Nos. 1868, 2091, 2225-2227, 2380, 2568 and 2937 in WP (Civil) No. 202 of 1995, *available at*:http://supremecourtofindia.nic.in/outtoday/WC2021995.pdf, (Visited on 27th September 2015)

[24] M. Sakthivel, "Case Comment: T.N. GodavarmanThirumulpad v. Union of India, MANU /SC/0028 /2014" *available at*: http://rostrumlegal.com/blog/case-comment-t-n-godavarman-thirumulpad-v-union-of-india-manu-sc-0028-2014-by-m-sakthivel/ (Visited on 28th September 2015).

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Policies [25] like the CECi. e. Central Empowered Committee which was created by the court to overcome the lacunas of the Ministry of Environment and Forest (MoEF) when the MoEF failed to resolve issues related to providing suitable reliefs against the measures taken by the government and other bodies while acting in accordance with the orders passed by the court. Another body called CAMPA i.e. Compensatory Afforestation Management and Planning Agency formed by the MoEF in order to regulate, redistribute and organize/manage the funds collected under the NPV or Net Present Value which was introduced by the Supreme Court in October 2002 according to which the states have to mandatorily pay the net present value of the forest land which has been deflected for the purpose of mining and other projects being undertaken by the public and private companies. This led to rise of sufficient funds for the purpose of compensatory afforestation.

iv. Many states became aware and conscious with respect to the non forest activities being carried out on forest lands. For instance the state of Bihar conducted an analysis so as to figure out the total number of saw mills that could be harmoniously sustained by the state's forests without causing any harm to the natural resources and the forest cover and then accommodated their licensing schemes and policies in accordance with that data.

v. Due to continuous intervention, supervision and control exercised by the apex court with the advent of the case of T. N. Godavaraman, the level of transparency [26] enhanced tremendously leading to avoidance of any type of goof up by other authorized environmental protection bodies in relation to the activities and procedures relating to the environmental activities/ those activities related to the forests like conversion of forest regions for non forest purposes, etc

vi. The close involvement of the apex court in this case portrays the concern of judiciary regarding the welfare of people, environment, resources and also puts forth an inspirational image of "Judicial Activism".

b) Negative Aspects

There are numerous negative effects of this case, the most evident ones being the following:

i. Havoc and complete destruction of the Timber Industries operating in the North-Eastern States and Lack of Judicial insight/ Prudence i.e. the seven north-eastern states of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura commonly known as the seven sisters comprise of most of the part of Indian Forest cover, approx one fourth of the forest land of India and more than 50% of the Timber trade of the country. Due to the strict ban imposed on cutting down of trees, transportation of timber and other non forest activities like mining, etc a huge economic loss was inflicted on these states and timber industries as majority of the industries were shut down and the amount of timber imports increased tremendously. Moreover, instead of giving the state governments of these areas a chance to assign zones for such activities and relocation of such industries, the court without analyzing the intensity of economic loss imposed a complete ban on such activities, leading to serious economic loss to such state governments and industries operating therein.[27]

ii. The ban on cutting down of trees has led to diverse social and ecological impacts along with causing economic adverse impacts to the government. Since the ban was only with respect to the cutting down and transportation of Timber, the slaughtering of trees for obtaining charcoal and firewood has increased considerably. Hence causing harm to the most important resource i.e. the forests.[28]

iii. Another drawback of this case and ban imposed by the court is Breakdown of Working Plans and Establishment of Black Market for Timber because the court stated in its order of 1996 that unless the state governments introduces few working plans approved by MoEF and the Central Government for the issue of mass deforestation and converting forest lands for utilizing them for non forest purposes the court would not remove the ban from cutting down the trees. Since the State Governments have been very sluggish and stagnant in evolving and enforcing such plans there has been a considerable rise in forest management and there have been several evidences or large scale illegal activities with respect to felling and transportation of Timber, like for instance, it has been noticed that more than 60% of Timber in Assam is illegal. Thus,

[25] Armin Rosencranz, Edward Boenig, and BrindaDutta, The Godavaraman Case: The Indian Supreme Court's Breach of Constitutional Boundaries in Managing India's Forests, *available at:*http://elr.info/sites/default/files/articles/37.10032.pdf (visited on 6th October 2015).

[26] Armin Rosencranz and SharachchandraLélé, 'Supreme Court and India's Forest', Vol.43 No. 5, Economic and Political Weekly, 2nd Feb 2008, Pgs 11-14, *available at:* http://www.environmentportal.-in/files/epw1.pdf (Visited on 7th October 2015).

[27] Armin Rosencranz, Edward Boenig, and BrindaDutta, The Godavaraman Case: The Indian Supreme Court's Breach of Constitutional Boundaries in Managing India's Forests, *available at:*http://elr.info/sites/default/files/articles/37.10032.pdf (visited on 8th October 2015).

[28] Armin Rosencranz and SharachchandraLélé, 'Supreme Court and India's Forest', Vol.43 No. 5, Economic and Political Weekly, 2nd Feb 2008, Pgs 11-14, *available at:* http://www.environmentportal.in/-files/epw1.pdf (Visited on 8th October 2015).

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leading to the formation of a huge Black Market for Timber Trade.

iv. Too much intervention by the court in the Duties and Functions of the Ministry of Environment and Forests (MoEF) by formulating the national as well as local guidelines for management of forests has lead to overlapping of actions and responsibilities of both the court and MoEF. Court has put a great deal of pressure on the MoEF to implement proper policies and regulations for tackling the problem of encroachment in the forests and exploitation of its resources, therefore even with insufficient funds and no proper resources the MoEF has to take steps to solve the issue of encroachment as demanded by court's order which has lead to causing great harm and huge loss to the poor people especially in the rural areas as such people who depended on forests for their source of livelihood no longer have a right on such forests. Many innocent people also suffered along with the illegal encroachers because everybody was removed in the process of eviction. Tribal people who are illiterate and did not have proper documents to prove that they were not encroachers also became victims of the mass eviction activity. Also no prior warning or notice was issued before evicting/ removing the people. People were deprived of their homes and livelihood suddenly and by using cruel and harsh means like elephants were used to crush the houses in the state of Assam. All this was a result of too much interference and casting unnecessary pressure by the court on the MoEF and other authorized bodies.[29]

v. The Amicus Curia, Harish Salve in this case informed that despite of court's order many states were letting the encroachers carry out their illegal activities in forest areas, therefore MoEF ordered for mass evictions from such regions leading to huge rebellion and revolts by the dwellers of those areas and development of hatred in the hearts of the tribals (who were to a great extent influenced by Naxalites) for the court/ judiciary.

vi. Monopolization or concentration of all the powers with the centre. Even small plans or working plans of petty relevance had to be first get approval from the Central Government and were under direct supervision and control of the court. Further there was continuous conflict between the MoEF and the court with respect to the prodigious investigating powers the court had given to CEC and regarding the creation of advisory committee which is the only body responsible for implementation of orders of the court. [30] MoEF believed that it had been handicapped by the overpowering attitude of the court.

vii. Reputation of the apex court and the entire Indian Judicial System is being hampered due to such long pendency of this case.

viii. "Judicial Over-Reach" or over stepping its constitutional mandate by the apex court has resulted in aggrieving the government and also sabotaging the work of the executive as well as legislature to some extent because it took extreme steps of banning even those activities that were not harmful like shutting down of saw mills in the name of non forest activities that also included simple tasks of basket weaving, etc. Moreover the court also intervened with the job of the legislature and lead to the through which it redefined the boundaries of forests by freshly defining the term 'forest.'

Therefore with this attitude of crossing the boundaries of Separation of Powers provision of the constitution and continuous interference by way of bringing in a new principle of "continuous mandamus" in the roles, duties and actions of other authorities through the case of T.N. Godavaraman, the apex court has lead to lot of negative consequences as well as negative publicity for itself.

IV. Critical Analysis of T.N. Godavaraman Case

The case of T.N. Godavaraman is an epitome of "continuous mandamus" and a remarkable example of judicial activism as well as judicial overpowering wherein at some points it also depicts the adverse aspects of irrational/unreasonable judicial dominance and lacunas in speedy disposal of cases by the Indian Judiciary. This case majorly focuses on the role played by the Supreme Court of India and how is it overpowering rest of the courts and other relevant authorities. A case of "continuing mandamus" means a case in which the court instead of passing the final judgment has kept the case open for several years and is continuously giving new orders, imposing new bans, or passing any new directions with a motive/an intention to supervise the implementation and adherence of its various orders.

In this case of continuous mandamus the court has exceeded all its limits of delaying the decision in a particular case as the case is going on in the apex court for almost 20 years now and the court still not ready to wind up this case. Instead, at every hearing issues some

[29] Armin Rosencranz, Edward Boenig, and BrindaDutta, The Godavaraman Case: The Indian Supreme Court's Breach of Constitutional Boundaries in Managing India's Forests, *available at:*http://elr.info/sites/default/files/articles/37.10032.pdf (visited on 10th October 2015).

[30] Armin Rosencranz and SharachchandraLélé, 'Supreme Court and India's Forest', Vol.43 No. 5, Economic and Political Weekly, 2nd Feb 2008, Pgs 11-14, *available at:* http://www.environmentportal.in/-files/epw1.pdf (Visited on 10th October 2015).

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new directions and is continuously trying to maintain a strong close control on all types of non forest activities taking place anywhere in or near the forests and also showcasing its undefeatable dominance over other lower courts, authorities and tribunals. Moreover, the court surpassed the boundaries of the doctrine of separation of powers and acted in sheer arbitrary manner interfering from the root level up to the highest level. Therefore, this case portrays both positive (protector of the environment) as well as negative (overstepping its mandate and interfering with the role of other authorities) aspects of the Indian Judicial System.

While the outcomes of the case of T.N. Godavaraman saw a major downfall and shutting down of the majority of timber, other wood based and mining industries due to the stringent ban imposed by the Apex Court on cutting down and transportation of timber. On the other side of it, this case witnessed a spectacular instance of an awareness, when a citizen, Mr. Godavaraman, filed a writ petition enabling the judicial system to step in and secure the trees in the forests from mass destruction i.e. deforestation. Ultimately this case has to a great extent, acted as a catalyst and a huge support system in protection and conservation of forests and its valuable natural resources and ensuring sustainable utilization of such resources so that no harm is inflicted upon the present and the future generations.

The most important contribution of this case towards the environment, is that proper and smooth operation of various legislations enacted to carry out environmental activities.

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