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**INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH**

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**CONSTITUTIONAL COURT AS LEGISLATOR- ANALYSIS OF T.N.  
GODAVARMAN CASE**- Vikash Kumar<sup>1</sup>**Abstract**

The state has an obligation to take adequate measures to effectively manage natural resources by framing policies & legislation in India. But, many environmentalists argued that the same policy & legislation contributed to the exploitation of the forest.<sup>2</sup> Forest is the most crucial aspect of State revenues and also an integral part of the cosmology. Many times, the government to increase the revenue, started exploiting forests by using the same policies & legislation that was implemented to safeguard the forests. But in India, a plethora of times, the Hon'ble Supreme Court has gone far beyond its traditional roles of interpreting the law to the legislator by making policies & framing guidelines.<sup>3</sup> One such landmark case is the *K.M. Chinnappa, T.N. Godavarman v. Union of India*<sup>4</sup>. In this case, the Hon'ble Apex court reinterpreted the word forests, framed guidelines to cease illegal operations in forests, etc. Many environmentalists believe that this case has reformed the entire country's forest governance and management system.<sup>5</sup> This case is the prime example where the Supreme Court overstepped its constitutional mandate and intervened with the powers of the other organs of the government undermining one of the intrinsic features of the Indian Constitution, i.e., separation of powers. The exercise of such vast powers by the Supreme Court has no precedents in India or in any developing country. The apex court of India has the role of interpreter of laws, but in this case, it acts more as a legislator and administrator. This project will analyze the Godavarman case and its different aspects, including judicial activism, which contradicts the separation of powers.

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<sup>2</sup> Arnab Kumar Hazra, *History of conflict over forests in India*, JULIAN L. SIMON CENTRE FOR POLICY RESEARCH (2002), <http://www.environmentportal.in/files/History%20of%20conflict%20over%20forests.pdf>.

<sup>3</sup> Armin Rosencranz, *Supreme Court and India's Forests*, JSTOR (Feb. 02, 2018), <https://www.jstor.org/stable/40276962>.

<sup>4</sup> 1997 (3) SCC 312.

<sup>5</sup> ARMIN, *supra* note 2.

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### Background of the Case

Time-to-time apex court has played an intrinsic role, acts as a catalyst for protecting the environment, and pronounced many landmark judgments. One such judgment is the *Godavarman case*, famously known as ‘the forest case’ in India.<sup>6</sup> Part of the Nilgiris forest was affected by deforestation and led to illegal timber felling. Aggrieved of this, an environmental activist named Godavarman approached the Hon’ble Supreme Court under writ petition.<sup>7</sup> The apex court clubbed this petition with another writ of environmental concerns and expanded the petition's scope. The petition revolves around control & supervision of the forest, and the entire hearing stressed India’s national forest policy. Interestingly, this case is a landmark not only because of the protection of forests but also for the judicial activism, which goes beyond its constitutional boundaries of the interpreter of laws. In this, the Supreme Court acts as a legislator as well as the administrator by redefining forests, creating quasi-executive structure, involving in micro-management, constituting compensatory afforestation funds, announcing a complete ban on the transportation of timbers, etc.<sup>8</sup> many believes that the court has switched its role to ensure day to day governance of Indian forests which created both positive & negative effects.

### Steps taken by the Hon’ble Supreme Court

This is one of the biggest environment court case in India, and the court has taken many steps to ensure conservation & protection of forests and enhance forest governance in India. A few of them are discussed below.

- Redefined the scope of ‘forests’ under the forest conservation act, 1980 as initially it is only restricted to ‘reserved forests,’ but the court has given the forest a broader interpretation and included all statutorily recognized forests irrespective of their status of reserved, protected or others.<sup>9</sup>

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<sup>6</sup>AsthaPandey, T.N. *GodavarmanThirumulpad v. Union of India & others: A case study*, GLOBAL JOURNAL OF HUMAN SOCIAL SCIENCE (2015), [https://globaljournals.org/GJHSS\\_Volume15/4-T-N-Godavaraman-Thirumulpad.pdf](https://globaljournals.org/GJHSS_Volume15/4-T-N-Godavaraman-Thirumulpad.pdf).

<sup>7</sup> ASTHA, *supra* note 5.

<sup>8</sup>NupurChowdhury, *From judicial activism to adventurism- the Godavarman case in the Supreme Court of India*, ASIA PACIFIC JOURNAL OF ENVIRONMENTAL LAW (Nov., 2014), [https://www.researchgate.net/publication/267811477\\_From\\_Judicial\\_Activism\\_to\\_Adventurism\\_-\\_The\\_Godavarman\\_Case\\_in\\_the\\_Supreme\\_Court\\_of\\_India](https://www.researchgate.net/publication/267811477_From_Judicial_Activism_to_Adventurism_-_The_Godavarman_Case_in_the_Supreme_Court_of_India).

<sup>9</sup> Dr. Madhuri Parikh, *The forest conservation in India and the role of Indian Supreme Court: A Critical Analysis*, IOSR JOURNAL OF HUMANITIES AND SOCIAL SCIENCE (Aug., 2013), <https://www.iosrjournals.org/iosr-jhss/papers/Vol13-issue4/J01345561.pdf?id=3407>.

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- The court ordered mandatory approval from the central government before converting forest land into non-forest purposes and redefined what comes under the ambit of non-forest purposes and includes sawmills in it.<sup>10</sup>
- The Supreme court under this case ordered that all such non-forestry activities which are not approved by the central government or don't have explicit approval from the central government and operating anywhere in India to cease immediately.<sup>11</sup>
- The court suspended the felling of trees and allowed only as per the government's working plan and banned the transportation of the timber from north-eastern states to anywhere in India.<sup>12</sup>
- The court also started taking steps with regard to the administration & management, which includes timber pricing, the utilization of the different funds, and different budgetary provisions for the protection of the wildlife.<sup>13</sup>
- The court created a 'central empowered committee (CEC), a high powered committee answerable to court and provided them a wide range of powers as the central government employees to dispose of the matters only according to the courts.
- Further, the court's approach introduced the concept of continuing mandamus as in the Godavarman case hearing, a large number of interlocutory applications disposed of every month by the Supreme Court.<sup>14</sup>
- Furthermore, the Hon'ble apex court excluded the jurisdictions of all the lower courts on forest matters and became the executor and administrator on forest matters.
- The most important step is the Constitution of 'the compensatory afforestation fund management and planning authority (CAMPA) to manage the funds collected for compensatory afforestation. The 2005 order explains the working details of CAMPA like the determination of net present value (NPV) before commencement & in accordance with the economic principle, the role of the expert committee, flexibilities given to the making of schools & hospitals, etc.<sup>15</sup>

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<sup>10</sup> NUPUR, *supra* note 7.

<sup>11</sup> P.K. Manohar, *The architect of an omnibus forest protection case*, THE HINDU (Jul. 05, 2016), <https://www.thehindu.com/opinion/open-page/The-architect-of-an-omnibus-forest-protection-case/article14470903.ece>.

<sup>12</sup> ARMIN, *supra* note 2.

<sup>13</sup> ARNAB, *supra* note 1.

<sup>14</sup> Mihika Poddar, *Continuing Mandamus- A judicial innovation to bridge the right-remedy gap*, NUJS LAW REVIEW (2017), <http://nujlawreview.org/wp-content/uploads/2017/08/10-%E2%80%933-%E2%80%933-Mihika-Poddar-Bhavya-Nahar.pdf>.

<sup>15</sup> Editor, *T.N. Godavarman Thirumulpad v. Union of India Case Brief*, LAW EXPRESS (Jul. 08, 2021), <https://thelawexpress.com/t-n-godavarman-thirumulpad-vs-union-of-india-case-brief>.

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### Overstepping the Boundaries

As discussed above, the Hon'ble apex court has crossed its constitutional mandate in this case in many instances. First, in the making of CEC, i.e., quasi executive structures and the function that CEC performs was entirely against the separation of powers. Interestingly, the member was nominated by the court. They sent their report to court as well. Second, India's apex constitutional court is involved in micro-management like determining timber pricing, utilizing different funds, banning transportation, fixing sawmills' location, and a few others.<sup>16</sup> Third, in the name of continuing mandamus, the apex court presumes that they have unbridled powers beyond any time frame. Fourth, the court approach to redefined specific terms like forest & non-forestry activities, which is primarily the duty of the parliament to decide as per the Constitution and the judiciary can only review the definition, but in this case, the Supreme court without considering the intent of the legislature widened the ambit of these terms.<sup>17</sup>

Interestingly, the interventionist approach by the apex court overstepped the boundary in this case as both positive and negative aspects. Apart from the positive steps taken by the apex court, there are a few other positive aspects of this interventionist approach as well. First, many states like Bihar became aware and started conducting environmental analysis in their state. Second, the approach increased transparency at different environmental protection bodies.<sup>18</sup> Third, the judicial activism created a notion that any aggrieved can approach the apex court for justice and Supreme Court commitment to ensure the welfare of people. In a hurry to give another landmark judgment, the Supreme Court has inadequately applied his mind to different facts which have negative implications also. First, the amicus curiae, in this case, raised the issue of encroachment because of which the government ordered forceful eviction without sheltering them. Also, many communities which were entirely dependent on forests suffered a lot. This creates hatred in their mind and, in some areas, leads to Naxalism as well.<sup>19</sup> Second, the issue of concentration of powers in the hand of the central government was something against the concept of decentralization that democracy requires for survival. Third, both unsound & unpracticable judgment because during the 90s, India was poor in resources & diversified that made the majority of the court orders unimplemented. Multiple orders created a burden on the MoEF which also impacted their efficiency. Fourth, many critics claimed that the

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<sup>16</sup> *India's forests and the judiciary- The Godavaran Story*, WWF INDIA (Dec., 2009), [http://awsassets.wwfindia.org/downloads/indias\\_forests\\_and\\_the\\_judiciary\\_2.pdf](http://awsassets.wwfindia.org/downloads/indias_forests_and_the_judiciary_2.pdf).

<sup>17</sup> MIHIKA, *supra* note 13.

<sup>18</sup> ARNAB, *supra* note 1.

<sup>19</sup> DR. Abid Ali, *Naxalite movement in India: Causes and Solutions*, INTERNATIONAL JOURNAL OF INFORMATIVE & FUTURISTIC RESEARCH (Apr., 2015), [http://www.rmlnl.ac.in/pdf/6-NAXALITE\\_100620.pdf](http://www.rmlnl.ac.in/pdf/6-NAXALITE_100620.pdf).

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faulty jurisprudence applied by the apex court hampers the process of governance, and the overreach of the judiciary affects the role of the executive.<sup>20</sup> Fifth, the economic loss as invoking a complete ban by the court and not giving chances to assign zones to regulate legal transportation affected many industries in India. Sixth, more dependence on charcoal & firewood because of the ban on timber also affected the internal balance in the forests. Seventh, the ban also included simple activities like basket weaving.<sup>21</sup>

### Supreme Court & Separation of Powers

Now, the first question is that whether overstepping the constitutional mandate is constitutionally defensible or even justified. There are many grounds on which the Supreme Court interventionist approach is justified. First, the drastic condition of forests & non-responsiveness from the government leads to indiscriminate felling of trees in the north-east region.<sup>22</sup> The Court said that the government only considers the forest conservation act as a procedure and even acts in contravention of the act. Second, the government was not showing strong commitment for forest sustainability & evading responses, because of which the court has to use contempt to evoke responses. Third, different states like Maharashtra infringed the court orders, like the ban on sawmill licensing. Fourth, states like Meghalaya use unfair practices like registering different owned forests to plantation forests excluding them from the court's orders.<sup>23</sup> There are also many other instances by virtue of which we can say that the interventionist approach of the Hon'ble apex court is justified.

The second part of the question is whether the approach of the apex court in the Godavarman case is under the limit of the Constitution. The court in *I.C. GolakNath v. State of Punjab*<sup>24</sup> bifurcates the jurisdiction of the organs of the government. It expects that they will operate without overstepping their limits & function within the allotted spheres. The Constitution of India doesn't mention the concept of separation of powers per se, but different constitutional provisions emphasize the separation of powers. In *KeshavanandaBharti v. Union of India*<sup>25</sup>, the apex court considered the separation of powers under the basic structures of the Constitution. This was again highlighted in *Indira Nehru Gandhi v. Raj Narain*<sup>26</sup> by the apex

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<sup>20</sup> R. Shunmugasundaram, *Judicial activism and overreach in India*, CORE AC UK (2007), <https://core.ac.uk/download/pdf/112282.pdf>.

<sup>21</sup> ARMIN, *supra* note 2.

<sup>22</sup>Prakhar Singh, *Populist impulses and a question of judicial overreach*, MINT (Oct. 18, 2019), <https://www.livemint.com/opinion/online-views/populist-impulses-and-a-question-of-judicial-overreach-11571333160706.html>.

<sup>23</sup> ARNAB, *supra* note 1.

<sup>24</sup> 1967 AIR 1643; 1967 SCR (2) 762.

<sup>25</sup> (1973) 4 SCC 225; AIR 1973 SC 1461.

<sup>26</sup> 1975 AIR 865, 1975 SCR (3) 333.

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court. The court in Raj Narain mentioned that separation of powers in India is only applied in the broad sense and rigid separation like in the American or Australian Constitution is not applicable in India. Montesquieu in his book 'the spirit of the laws,' 1748, argued that separation of powers protects individual rights as it distributes the powers in a different hand. Justice Beg J., said that no organ could encroach or perform the functions of others.<sup>27</sup> But, in reality, achieving separation of powers in a rigid sense is undesirable & unpractical. In the contemporary world, no country has accepted the doctrine in the strict sense. The primary objective of separation of power is to avoid absolutism and not strict classification or in other words, decentralization of powers. In India, we have functional overlapping like executive role in the appointment of judiciary & judiciary power to declare laws unconstitutional or executive power to adjudicate on issues.<sup>28</sup> The list of overlaps is long.

In the Godavarman case, the Supreme Court facilitated the role of legislator & administrator with the traditional role of interpreter of the laws. This is not the first time the apex court expanded its power and ended up legislating & administering. One of the landmarks is the KeshavanandaBharti Case, in which the court, while basic structure doctrine not only legislated & included intrinsic features of the Constitution but also restricted the power of the legislature to amend the Constitution. Cases like *Vishaka v. State of Rajasthan*<sup>29</sup> and *D.K. Basu v. State of West Bengal*<sup>30</sup>, where the court has framed guidelines on different matters and filled the void & protected the individual's rights, which is the legislator's duty. Drafters of the Constitution just mentioned that art. 21 of the Constitution is a fundamental right and it protects life & liberty but it was the Supreme Court who expanded the scope of art. 21 and included a plethora of rights under it. Even in 1983, Justice Bhagwati introduced public interest litigation and then framed guidelines for PIL.<sup>31</sup> In environmental jurisprudence, all the principles on which the environment court decides cases are enunciated by the apex court in India like the principle of absolute liability or polluter pays principle.<sup>32</sup> Further under art. 141 of the Constitution of India, any law declared by the apex court is binding on all lower courts; this prima facie justify that even the constituent assembly members understand the need for Supreme court powers as

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<sup>27</sup> (1973) 4 SCC 225; AIR 1973 SC 1461.

<sup>28</sup> Matthew E. Glassman, *Separation of Powers: An Overview*, CONGRESSIONAL RESEARCH SERVICE (Jan. 08, 2016), <https://sgp.fas.org/crs/misc/R44334.pdf>.

<sup>29</sup> (1997) 6 SCC 241.

<sup>30</sup> AIR 1997 SC 610.

<sup>31</sup> Express News Service, *Justice Bhagwati lauded for contribution to PIL Jurisprudence*, INDIAN EXPRESS (Feb. 09, 2019), <https://indianexpress.com/article/india/justice-bhagwati-lauded-for-contribution-to-pil-jurisprudence-5575969/>.

<sup>32</sup> V.M. Bachal, *Judicial interpretation of article 21 of the Constitution of India*, THE INDIAN JOURNAL OF POLITICAL SCIENCE (2011), <https://www.jstor.org/stable/41854035>.

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legislators.

### **Conclusion**

Godavarman's case is not different from the other discussed case. The threat to the environment is considered a threat to the entire mankind and if in these situations the government is not responding positively then the judiciary needs to intervene. In a healthy democracy, checks & balances are mandatory without checks & balances, the organs will start acting arbitrarily. Even in the Godavarman case, the loopholes of law are used to exploit the forests. The judiciary interventionist approach was the need of the hour at that moment of time to safeguard the forests. Now, the argument of the critics that the court has overstepped its constitutional mandate cannot be treated as right because India doesn't follow the rigid separation of powers or power distributed in a water-tight compartment instead, there are overlapping of the functions. These overlapping of the function is to ensure good governance and to not create hurdles in their functioning.

Hon'ble Supreme Court while enunciating different legal principles always supplemented the legislation in India. Even the drafter of the Constitution inserted art. 141 that help apex courts to implement laws derived by them. But, the most crucial question is how much the judiciary can encroach on the legislature's power because there is a thin line of difference between judicial activism and judicial adventurism. In the last few decades, the Hon'ble Supreme Court in a hurry to produce landmark judgment assume that they are supreme but in Indian democracy, the Constitution is supreme. Though in India we don't have a strict separation of powers, that doesn't mean that Court will start making laws or interfering in the executive role. The constitutional court has to understand that they cannot run the government and it should only act as an alarm bell for the organs of the government. The judiciary has to guide the other organs in performing their duties as per the constitutional obligations and not to perform their duties. While exercising judicial activism, the court must ensure proper caution and restraint themselves to cross the constitutional mandate.

Lastly, in my opinion, the court approach in the Godavarman case is valid to a great extent but a few decision was taken without adequate application of mind like the complete ban that impacted the other industries & the economy, giving vast power to the central government, involving in micro-management by the constitutional courts, etc.