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# Illegal Coal Mining in Dehing Patkai Elephant Reserve in Assam and Consequent Violation of the Provisions of Forest Conservation and Wildlife Protection Laws

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## ABSTRACT

*The Constitution of India, which is the supreme law of the land, under the Indian Legal System, is a green document, itself, that provides for adequate protection and conservation for ecology, environment and biodiversity. Apart from that, from the jurisprudential point of view, the Constitution of India is also a supreme document of trust and the State as a “trustee” of all natural resources is under a legal duty to protect them. The theory of Public Trust Doctrine, as such, emphasizes the State’s affirmative duty to protect the fragile ecosystems. But to the utter disregard of the mandates of the Constitution and the theory of Public Trust Doctrine, the vast tracts of the Elephant Reserve besides the Dehing Patkai Wildlife Sanctuary in the Tinsukia and Dibrugarh districts of Assam have been lost due to rampant illegal mining, logging and encroachments. It needs to mention that the Dehing Patkai Wildlife Sanctuary, also known as the “Amazon of the East”, constitutes the last vestiges of the State’s rainforest. Facts remain that a proposal for coal mining by the North-Eastern Coal Fields (NECF) of Coal India Limited (CIL) inside the ecosensitive zones of Dehing Patkai Elephant Reserve was granted approval by the National Board for Wildlife (NBWL) despite a Rs. 43.25 crores penalty on CIL by the Assam Forest Department. Altogether four Public Interest Litigations including one of the Gauhati High Court, itself, have been filed on the issues of mining in the Dehing Patkai Region. In the meantime, the Supreme Court of India calls for finding middle path between ecology and economy. The aim of this paper is to study the ecological issues of the Dehing Patkai Rain Forests, and, thereby, establishing the fact that the State has got an affirmative duty as a “trustee” to protect and preserve the elephant corridors, as well as, the environment. The paper also focuses on the mandates of Public Trust Doctrine and the provisions of forest conservation and wildlife protection laws which need to be taken into consideration by the Apex Court while maintaining a balance between environment and development.*

**Keywords:** *Public Trust Doctrine, Affirmative Duty, Ecological Crisis, Dehing Patkai Wildlife Sanctuary, Public Interest Litigation, Right to Life, Forests Conservation and*

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*Wildlife Protection Laws.***I. INTRODUCTION**

Deforestation refers to the decrease in the forest cover across the world that are lost for non-forest activities, such as, agricultural croplands, urbanization, or mining activities. The destruction of forests and wildlife, as such, is not just a biological issue, rather anthropogenic in nature due to massive human impacts on the environment, in view of, rampant felling of trees which has resulted in habitat destructions and biodiversity loss. Greatly accelerated by human activities, deforestation has been negatively affecting the natural ecosystems, biodiversity and the climate. According to the theory of “Public Trust Doctrine”,<sup>2</sup> the State is only a trustee of the environment.<sup>3</sup> It is the legal duty of the State, as such, to protect the “trust corpus”.<sup>4</sup> Thus, the Public Trust Doctrine emphasizes the State’s “affirmative duty” to protect and preserve the environment.<sup>5</sup> In the recent times, our contemporary concern about the environment, such as, pollution of air, water, and land, loss of forest cover or biodiversity bear a very close conceptual relationship to this legal theory for it enjoins upon the government to protect and preserve the natural resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes.<sup>6</sup>

Professor Joseph L. Sax of the University of Michigan, United States of America, was the proponent of the modern public trust doctrine.<sup>7</sup> According to him, the public trust doctrine has vast potential and may serve as a touch stone to test executive action with a significant environmental impact.<sup>8</sup>

In the United States of America, the public trust doctrine as an environmental protection theory developed over several years. In *M.C. Mehta –Vs- Kamal Nath*,<sup>9</sup> the Apex Court simply imported this doctrine from American case law and declared that it was a part of the law of the land.

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<sup>2</sup> Shyam Divan and Armin Resencranz, *Environmental Law and Policy in India : Cases, Materials and Statutes*, (2001), p. 168.

<sup>3</sup> *Ibid.*

<sup>4</sup> “Trust Corpus” meaning forests, wildlife, air, water, seas, rivers, mountains etc.

<sup>5</sup> Dr. L. Solomon Raja and Dr. A. David Ambrose, *Environmental Law*, (2001), p. 109.

<sup>6</sup> *Supra* n.2 at pp. 168, 169. See also the verdict of the Apex Court in the *M.C. Mehta –Vs- Kamal Nath*, (1997) 1 SCC 388.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> (1997) 1 SCC 388.

## II. THEORY OF PUBLIC TRUST DOCTRINE UNDER THE INDIAN LEGAL SYSTEM

The public trust doctrine was articulated for the first time, in India, in *M.C. Mehta –Vs- Kamal Nath*.<sup>10</sup> This doctrine is now accepted as part of Indian law<sup>11</sup> and it is actively applied to protect the environment.

In *M.C. Mehta –Vs- Kamal Nath*<sup>12</sup>, also known as *Span Motels Case*, the Supreme Court reviewed a number of U.S. Court decisions, particularly the judgement of the Supreme Court of California in the *Mono Lake Case*.<sup>13</sup> In *Mono Lake*, the environmentalists filed a suit against the city of Los Angeles which was drawing water from streams that fed Mono Lake, a large saline lake rich in brine shrimps and bird life.<sup>14</sup> As a result of the diversion, the lake level was falling, marring the scenic beauty and imperiling the birds.<sup>15</sup> The Supreme Court of California upheld the plaintiff's claim that the public trust doctrine could be used to supersede Los Angeles's water diversion.<sup>16</sup>

While taking cognizance of the *Span Motels Case*, the Supreme Court of India borrowed the concept of public trust doctrine from American Case Law.<sup>17</sup> His Lordship Justice, Kuldip Singh observed that the Indian Legal System based on English Common Law, includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public, at large, is the beneficiary of the sea shore, running water, air, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.<sup>18</sup>

The Apex Court finally held that the Himachal Pradesh Government committed patent breach of trust by leasing the ecologically fragile land to the Motel Management.<sup>19</sup>

As per the terms of the verdict, the Motel had to pay compensation by way of cost for the restitution of the environment and ecology of the area.<sup>20</sup>

The Supreme Court also directed the Himachal Pradesh Government to take over the area and

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<sup>10</sup> Ibid.

<sup>11</sup> *M.I. Builders Pvt. Ltd. –Vs- Radhey Shyam Sahu*, AIR, 1999 SC 2468.

<sup>12</sup> *Supra n. 9*.

<sup>13</sup> *National Audubon Society –Vs- Superior Court of Alpine Country*, 33 Cal. 3d 419.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> *Span Motels Case*

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

to resolve it to its original natural conditions.<sup>21</sup>

### III. SUPREMACY OF THE INDIAN CONSTITUTION AS A HUGE DOCUMENT OF TRUST

Indian Constitution is amongst the few in the world that contains specific provisions on environmental protection. It puts duty on the State,<sup>22</sup> as well as, citizens<sup>23</sup> to protect and improve the environment. The Directive Principles of State Policy<sup>24</sup> and the Fundamental Duties<sup>25</sup> chapters explicitly enunciate the national commitment to protect and improve the environment. Judicial interpretation has strengthened this constitutional mandate.<sup>26</sup>

Indian Constitution, itself, as such, is a supreme document of trust. The State as a trustee of all natural resources is under a legal duty to protect them. The fundamental rights, enshrined in Part-III of the Constitution, embody the rights of the beneficiaries and the Directive Principles of State Policy, in Part-IV, embody the duties of the trustee i.e., the State.

The United Nations Conference on the Human Environment, 1972<sup>27</sup> was the starting point for India's legislations for ecology, environment and biodiversity. Following this Conference, the Parliament of India enacted a number of comprehensive and scientific legislations relating to water, air and forests and wildlife and, thereby, initiating appropriate steps, in this regard, to implement the decisions taken by the Government of India in the said Conference. The role of the judiciary was very crucial in this phase. Because the judicial interpretation of Article-21 of the Constitution of India, in its historic judgement, delivered by the Apex Court in the famous Maneka Gandhi's<sup>28</sup> Case, was the epicenter of evergrowing environmental jurisprudence of India. Facts remain that the pronouncement of the Supreme Court on the "right to live" which accorded a new dimension to the "right to life" became a judicial breakthrough in the area of environmental protection in the post Maneka Gandhi cases<sup>29</sup> involving issues of forests, wildlife and biodiversity. On the foundation of the "affirmative duty doctrine"<sup>30</sup> enunciated in the Maneka Gandhi's case, the Supreme Court enunciated the

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<sup>21</sup> Ibid.

<sup>22</sup> Directive Principle of State Policy in Article 48-A of the Constitution of India.

<sup>23</sup> Article 51-(A) (g) of the Constitution of India concerning the fundamental duty of every citizen of India to protect and improve the environment.

<sup>24</sup> Part-IV of the Constitution of India.

<sup>25</sup> Part-IV-A of the Constitution of India.

<sup>26</sup> Sachidanand Pandey –Vs- State of WB, AIR 1987 SC 1109.

<sup>27</sup> Held at Stockholm, Sweden from 5<sup>th</sup> to 16<sup>th</sup> June, 1972.

<sup>28</sup> AIR 1978 SC 597.

<sup>29</sup> M.C. Mehta –Vs- Union of India, AIR 1987 SC 1086; Sachidanand Pandey –Vs- State of WB, AIR 1987 SC 1109.

<sup>30</sup> The State has a positive duty to protect the life and liberty of the citizen of India as pronounced by the Apex Court in the Maneka Gandhi's Case, AIR 1978 SC 597.

theory that it is open to the Court to enforce the duty implied by Article 48-A<sup>31</sup> through the device of issuing directions under Article-32(2)<sup>32</sup> of the Constitution. The decision of the Supreme Court made the directive principle of state policy contained in Article-48-A judicially enforceable. In the famous Oleum gas Leak Case,<sup>33</sup> the Apex Court while rejecting the “rule of strict liability”<sup>34</sup> introduced a new rule called the “rule of absolute liability” for the industries engaged with hazardous activities. The Supreme Court, while taking recourse to an ecocentric approach to environment and development, started passing directions for the protection and preservation of fragile ecosystems including forests, wildlife, wetlands, mountains, rivers, hillocks etc. The Apex Court also declared the “public trust doctrine” as an integral part of environmental jurisprudence of India in a number of public interest litigations involving issues of ecology and environment.<sup>35</sup> The Court recognized the citizen’s “right to live in a healthy environment” as a solidarity-right emanating from Article 21 of the Constitution.<sup>36</sup> Apart from that, the “right to information concerning the environment” was also recognized as a basic procedural human right.<sup>37</sup> According to the Court, this right promises environmental protection essentially by way of democracy and informed debate. A strong argument, in this regard, is that the democratic decision making always lead to environmentally friendly policies.<sup>38</sup>

#### **IV. GROWTH AND DEVELOPMENT OF COMPREHENSIVE ENVIRONMENTAL LEGISLATIONS IN INDIA**

The development of legislative environmentalism, in India, can be divided into three phases, namely, Phase-I<sup>39</sup>, Phase-II<sup>40</sup> and Phase-III<sup>41</sup> periods, as stated below:

##### **Phase-I : (Stockholm and thereafter)**

- (i) The Wildlife (Protection) Act, 1972;

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<sup>31</sup> Directive Principles of State Policy in Part-IV of the Constitution of India.

<sup>32</sup> Extra-ordinary jurisdiction of the Apex Court to issue directions or orders or writs including writs in the nature of habeas corpus, mandamus, certiorari, prohibition and quo-warranto.

<sup>33</sup> M.C. Mehta –Vs- Union of India, AIR 1987 SC 1086.

<sup>34</sup> Ryland –Vs- Fletcher (1868) HL 1.

<sup>35</sup> Subhash Kumar –Vs- State of Bihar, AIR 1991 SC 420; Chhatriya Pradushan Mukti Sangharsh Samiti –Vs- State U.P., AIR 1990 SC 2060.

<sup>36</sup> The Supreme Court of India following the U.S. Supreme Court applied to doctrine of emanation and, thereby, introducing a new fundamental right, namely, the right to live in a healthy environment from Article-21 of the Constitution of India.

<sup>37</sup> This procedural right is emanating from Article-19(1)(a) of the Constitution of India.

<sup>38</sup> Environment Impact Assessment (EIA) is a democratic process involving the local people likely to be affected by a proposed project to participate in the decision making process of the Government.

<sup>39</sup> Stockholm Conference, 1972.

<sup>40</sup> Rio Earth Summit, 1992.

<sup>41</sup> Copenhagen Summit, 2009

- (ii) The Water (Prevention & Control of Pollution) Act, 1974;
- (iii) The Constitution (42<sup>nd</sup> Amendment) Act, 1976;
- (iv) The Water (Prevention & Control of Pollution) Cess Act, 1977;
- (v) The Forest (Conservation) Act, 1980;
- (vi) The Air (Prevention & Control of Pollution) Act, 1981;
- (vii) The Environment (Protection) Act, 1986;
- (viii) The Public Liability Insurance Act, 1991;

**Phase-II: (Rio and thereafter) :**

- (ix) The Protection of Human Rights Act, 1993;
- (x) The National Environment Tribunal Act, 1995;
- (xi) The National Environment Appellate Authority Act, 1997;
- (xii) The Protection of Plant Varieties and Farmer's Rights Act, 2001;
- (xiii) The Biological Diversity Act, 2002;
- (xiv) The Right to Information Act, 2005;

**Phase-III : (Copenhagen and thereafter) :**

- (xv) The National Green Tribunal Act, 2010, the Parliament, thereby, repealing the earlier two legislations of 1995 and 1997. This new legislation draws inspiration from the India's Constitutional provision of Article 21 which assures the citizens of India the right to a healthy environment.

The National Green Tribunal (NGT) came to be established, in India, under the National Green Tribunal Act, 2010. It started functioning w.e.f. 18<sup>th</sup> of October, 2010 and has already seen a large number of cases being transferred from the erstwhile National Environment Appellate Authority and from the various Courts including the Supreme Court of India.

There are, at present, four circuit branches of NGT with eastern branch at Kolkata, the western branch at Pune, the central (northern) one at Bhopal and the southern branch in

Chennai. New Delhi is the principal place of sitting of the National Green Tribunal besides the above Bhopal, Pune, Kolkata and Chennai circuit branches.

## V. WHEN PROTECTORS TURN PREDATORS: DEHING PATKAI ECOLOGICAL CRISIS

However, at a time when rapidly dwindling elephant habitat has logged global attention, the Dehing Patkai Elephant Reserve, in Assam, is being pushed to the brink by coal mining, logging and encroachment.<sup>42</sup>

Significantly, the elephant reserve created in the year 2003<sup>43</sup> comprises the State's last remaining rainforests that shelter wide ranging fauna, such as, the tiger and six other species of wild cats, six primate species including India's only ape hoolock gibbon, over 350 bird species including State bird white winged wood duck, reptiles, insects and rare orchids.

Vast tracts of the Elephant Reserve that comprises several dozen Reserve Forests (RF) and the Proposed Reserve Forests (PRF), besides the Dehing Patkai Wildlife Sanctuary, have been lost due to rampant illegal logging, rate hole mining<sup>44</sup> and organized encroachments. The open cast mining has also done irreversible damage to the forest belt across the Ledo-Margherita area.<sup>45</sup>

The Supreme Court of India observed that<sup>46</sup> –

*“Elephants are big, powerful but fragile. The elephant is a gentleman and man must give way to the elephant. We are not going to allow anyone to come in the path of the elephant.”*

But inspite of such clear directives by the Apex Court, in the recent times, elephant corridors continue to bear the burnt of commercial, industrial and anthropogenic pressures resulting in blockages of these time-tested paths used by the pachyderms and, thereby, triggering man-elephant conflicts.

A case in point happens to be the two major elephant corridors – “Golai” and “Bogapani” in Dehing Patkai Elephant Reserve in Dibrugarh and Tinsukia districts where expanding commercial and residential space have robbed the elephants of their right of passage for no fault of theirs.<sup>47</sup>

The Golai elephant corridor connecting the east and west blocks of the reserve presents a

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<sup>42</sup> m.hindustantimes.com; indianexpress.com.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> The Supreme Court observation in the Nilgiri Elephant Corridor case upholding the 2011 Madras High Court order on Tamil Nadu Elephant Corridor : [www.thehindu.com](http://www.thehindu.com)

<sup>47</sup> [www.thehindu.com](http://www.thehindu.com)

pathetic site today with large structures including an Indian Oil Corporation (IOC) dispatch terminal, hotels and residential buildings effectively blocking what had been an unhindered elephant path since ages.<sup>48</sup>

In spite of the hindrances, as stated above, the elephants still use the nearby areas to cross over the road but they have to move through villages and tea gardens often coming into conflict with humans.

## **VI. GEOGRAPHY AND ECOLOGY OF DEHING PATKAI WILDLIFE SANCTUARY**

The Dehing Patkai Wildlife Sanctuary, also known as, Jeypore Rainforest is located in the Dibrugarh and Tinsukia districts of Assam and covers an area of 111.19 sq.m. The sanctuary and the sprawling 937 sq.km elephant reserve constitute the last vestiges of the State's rainforests.<sup>49</sup>

Dehing is the name of the river that flows through this forest and Patkai is the hill at the foot of which the sanctuary lies. Dehing Patkai is also popularly known as "Amazon of the East".<sup>50</sup> The rainforest has a significant ecological and cultural importance in the lives of the people of Assam. Ecologically, the rainforest is the home of several rare and evergreen species of plants, animals, birds, insects and reptiles. A large number of Asiatic elephants also live in the rainforest which houses a number of corridors for the mammals in and around the *Saleki* proposed reserve forests, the area where illegal mining is going on for the last 16 years since 2003.<sup>51</sup>

Dehing Patkai Wildlife Sanctuary, the core area of Dehing Patkai Elephant Reserve presents an appalling picture of neglect making it extremely vulnerable to all sorts of illegal activities inside the protected forests.

## **VII. LEGITIMACY TO ILLEGAL MINING BY THE NATIONAL BOARD FOR WILDLIFE (NBWL)**

Facts remain that a proposal for coal mining by the North-Eastern Coalfields (NECF) inside the Dehing Patkai Elephant Reserve, in Assam, was granted approval by the National Board for Wildlife (NBWL) on April 24, 2020 despite a Rs.43.25 crore penalty imposed on Coal India Limited (CIL) by the Assam Forest Department.<sup>52</sup>

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<sup>48</sup> Ibid.

<sup>49</sup> [www.drishtias.com](http://www.drishtias.com); [indianexpress.com](http://indianexpress.com)

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> [www.downtoearth.org.in](http://www.downtoearth.org.in); [www.outlookindia.com](http://www.outlookindia.com)

It needs to mention that NECF the Assam based coal producing company is a unit of CIL.

The above proposal of NECF granted approval by the NBWL called for the diversion of 98.59 hectares of forest land in the *Saleki* proposed reserve forest area, a part of the large elephant reserve.<sup>53</sup>

This 98.59 hectares of forest land, however, included NECF mined illegally for several years according to a site inspection report by the Shillong Regional Office of the Union Ministry of Environment, Forests and Climate Change (MOEF & CC).<sup>54</sup>

The report submitted to the MOEF & CC on November 25, 2019 said that NECF obtained a 30 year mining lease. The lease expired in 2003 and NECF applied for a renewal only in 2012, while it continued mining operations. According to the report such unauthorized mining activities were in violation of the Assam Forest Regulation, 1891. The report called on the MOEF & CC to take necessary action on the gross violations committed by the user agency.<sup>55</sup>

### **VIII. PUBLIC INTEREST LITIGATIONS AGAINST ILLEGAL COAL MINING IN DEHING PATKAI ELEPHANT RESERVE**

Altogether four Public Interest Litigations (PIL) including one of the Gauhati High Court, itself, have been filed on the issues of mining in the Dehing Patkai region.<sup>56</sup>

The petitions have been filed in the Gauhati High Court opposing the opencast mining in the proposed *Saleki* Reserve Forest in Dehing Patkai Elephant Reserve.

The plea was filed online against the opencast project by North Eastern Coal Fields, a unit of Coal India Limited near the Dehing Patkai Wildlife Sanctuary. The sanctuary, as stated earlier, is referred to as the “Amazon of the East” and it is spread over a huge area in the upper Assam region.<sup>57</sup>

According to the petitioners the illegal mining carried out by CIL in the *Saleki* proposed reserve forest is violative of the right to life of the citizens of the State guaranteed under Article 21 of the Constitution of India.

The instant petitions are being filed under Article 226 of the Constitution espousing the cause of the people of the State of Assam to safeguard the flora and fauna particularly the wildlife

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<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> [www.pratidintime.com](http://www.pratidintime.com); [m.economicstimes.com](http://m.economicstimes.com)

<sup>57</sup> Ibid.

of the Dehing Patkai Forest Reserve and to protect the ecological balance of the entire State.

The PILs sought to declare the Dehing Patkai Wildlife Sanctuary as a heritage site under the Biological Diversity Act, 2002.

The Gauhati High Court has issued notices to the State government, Central government and CIL seeking the reason for permitting coal mining in the wildlife sanctuary.<sup>58</sup>

In the meanwhile, the Supreme Court of India on June 11, 2020 directed the centre to come out with a proposal to seek for an alternative site for coal mining in place of Saleki proposed reserve forest within three weeks.<sup>59</sup> The Standing Committee of NBWL had earlier on April 7 accorded approval to North Eastern Coal Fields of CIL for mining in the Saleki RPF. Saleki's total lease area of 98.59 hectares is situated within the 10 km. eco-sensitive zone of the 111.19 sq.km. Dehing Patkai Wildlife Sanctuary and also near to an elephant corridor.<sup>60</sup>

The Apex Court, thereby, calls for finding middle path between ecology and development. The Court observed that saving the environment should not come at the cost of economic development adding that a balance should be struck between the two.<sup>61</sup>

The above observation by the top Court came on a plea filed by a lawyer seeking a ban on mining in the Saleki forest reserve, situated close to the Dehing Patkai Wildlife Sanctuary in Asam.<sup>62</sup>

Faced with conflicting positions between environment and development, the Supreme Court Bench consisting of Chief Justice of India (CJI) SA Bobde and Justices AS Bopanna and Hrishikesh Roy said "*we are conscious of the fact that our orders in favour of environment affect economic development adversely. There has to be some method by which economic development is not retarded as this has a direct impact on poverty in the country.*"<sup>63</sup>

The Bench further said that it was aware of the constitutional duty to protect the environment but at the same time, it cannot be oblivious to the economic impact.<sup>64</sup>

The Apex Court, therefore, directed the centre to come out with a proposal for an alternative site in three weeks.

As reported, the NBWL on July 22, 2020 ordered the CIL to stop all mining activities inside

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<sup>58</sup> Ibid.

<sup>59</sup> Supra n.42

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

the Dehing Patkai Forest in Assam.<sup>65</sup>

Facts remain that earlier the NBWL had recommended the CIL's proposal of legalizing the illegal mining, which the company was indulging from 2003 to 2019 inside the forest, for approval provided it fulfills certain conditions. Reportedly the North Eastern Coal Fields, a unit of CIL failed to fulfill the conditions leading to violation of the provisions of the Forest (Conservation) Act, 1980.<sup>66</sup>

The Supreme Court of India recently played a pro- environment role in a leading case observing<sup>67</sup> thus, as follows:

*“Elephants are big, powerful but fragile. The elephant is a gentleman and man must give way to the elephant. We are not going to allow anyone to come in the path of the elephant”.*

## **IX. INTERVENTIONAL JURISPRUDENCE IN THE AREA OF FORESTS, WILDLIFE AND BIODIVERSITY**

In a case where the Apex Court intervened to protect the forest wealth and wildlife from the ravages of mining in and around Sariska Wildlife Sanctuary in the Alwar district of Rajasthan,<sup>68</sup> the Court viewed its constitutional role thus:

*“This litigation concerns environment. A great American judge emphasizing the imperative issue of environment said he placed Government above big business, individual liberty above the Government and environment above all. The issues of environment must and shall receive the highest attention from this Court.”*

In Animal and Environment Legal Defence Fund –Vs- Union of India, the Supreme Court of India,<sup>69</sup> held that on the promulgation of the Constitution, the right to safeguard forests and wildlife has received constitutional sanction. Moreover, in order to maintain ecological stability, the Court observed that it could not afford to allow any further shrinkage in the national forest cover.

T.N. Godavarman Thirumulkpad –Vs- Union of India,<sup>70</sup> is a leading case regarding judicial intervention to conserve biodiversity. The Supreme Court of India issued interim directions on 12.12.1996 to conserve our biodiversity wealth. The interim directions were issued in a

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<sup>65</sup> Supra n. 52

<sup>66</sup> Ibid.

<sup>67</sup> Supra n. 46

<sup>68</sup> Tarun Bharat Sangh, Alwar –Vs- Union of India, 1992 Supp(2) SCC750.

<sup>69</sup> (1997)3 SCC 549.

<sup>70</sup> AIR 1997 SC 1228.

Public Interest Litigation filed by T. N. Godavarman Thimmulpad under Article 32 of the Constitution of India vide Writ Petition (Civil) number 202 of 1995.

The Supreme Court passed orders for the protection of the forests by prohibiting new felling and movement of timber. The interim directions issued by the Apex Court have made it mandatory on the part of Union of India and State Governments to take measures to protect forests wealth and conserve the richness of floral and faunal biodiversity. The interim directions also touched upon complex issues concerning interpretations of the term "forest" for the purpose of the Forest (Conservation) Act, 1980 and the National Forest Policy, 1988.

Forests help in maintaining the ecological balance. They render the climate equable, add to the fertility of the soil, prevent soil erosion and promote perennial stream flow in rain-fed river. The Supreme Court took note of this role in Rural Litigation and Entitlement Kendra – Vs- State of U.P.<sup>71</sup> Convinced of the need to stop mining that caused an ecological imbalance in a forest area, the Court said :

*"The trees in the forest draw water from the bowels of the earth and release the same into the atmosphere by the process of transpiration and the same is received back by way of rain as a result of condensation of clouds formed out of the atmospheric moisture. Forests, thus, help the cycle to be completed. Trees are responsible to purify the air by releasing oxygen into the atmosphere through the process of photosynthesis. It has, therefore, been rightly said that there is a balance on earth between air, water, soil, plant. Forests hold up mountains, cushion the rains and they discipline the rivers and control the floods. They sustain the springs; they break the winds; they keep the air cool and clean....."*

Wetlands are bogs; swamps and marshes. They provide numerous ecosystem services including water purification, maintaining surface moisture, curbing soil erosion, reducing the impacts of floods and droughts and re-charging wells. Wetlands support a host of wildlife, such as, birds, fish, reptiles, amphibians and insects. There is no specific statute regulating wetland use of conversion, leaving the field open to judicial control on a case to case basis. The pioneering judgment in this field was delivered by the Calcutta High Court, which responded to a petition filled by an NGO concerned about the rapid dredging and filling of the marshes near Calcutta. Convinced of the need to stop further damage to the wetlands, the Court observed:<sup>72</sup>

*"In the Calcutta wetlands we find that there are 40 species of algae and 2 species of fern, 7*

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<sup>71</sup> AIR 1988 SC 2187.

<sup>72</sup> People United for Better Living in Calcutta (PUBLIC) –Vs- State of WB, AIR 1993 CAL 215.

*species of monocods and 21 species of dicods. Latest data suggest the presence of about 155 species of summer birds of which 64 species are resident birds and 91 are migratory. There are 90 species of winter birds of which 44 are residents and 46 are migratory. Calcutta wetlands present a unique ecosystem apart from the material benefit to the society at large ..... Wetlands also help in mitigating floods, recharging aquifers and in reducing surface run-off and consequent erosion.....”*

## **X. CONCLUSION**

In India executive inaction is well known. The forest department, inspite of having its sufficient forest officials and forest protection force alongwith adequate maintenance fund, is not able to save the country's fast depleting bio-diversity. Precisely, it is in this background that the role of the judiciary becomes important.

India is fortunate in having an Apex Court that can respond effectively to cries for help. The fight against environmental degradation does not belong to the government alone. The common citizen must understand the gravity of the environmental problems and engage themselves wholeheartedly for their solution. Success of the environmental protection movement largely depends upon the public participation with full awareness of their rights as per exhaustive interpretation of Article 21 by the Supreme Court of India in its landmark judgement in the Maneka Gandhi's case.

Saving the elephant corridors from destruction is a complex exercise as many of those fall outside the forest land. Therefore, a concerted action by the civil and forest officials can effectively save these fragile ecosystems. Both civil and forest officials need to work together to protect the corridors that often fall on patta land and crop land and often bisected by roads or railway tracks. Two important corridors, namely, Golai and Bogapani are narrow strips of land that often pass through crop land and tea gardens etc.

According to Project Elephant guidelines and strong directives by the Apex Court and the NGT, in this regard, civil authorities need to be proactive in securing the elephant corridors falling in non forest. Unfortunately implementation of the guidelines and even the directives by the courts remains lax.

NGT had made several important directives asking the authorities concerned to take certain steps for facilitating unhindered elephant movement in the Golai and Bogapani corridors. But these have not been implemented in practice. Therefore, concerted efforts by the non-governmental organizations, citizens, engineers, scientists, lawyers and the government agencies can only save the fragile ecosystems.

In Dehing Patkai case, the Apex Court calls for finding middle path between ecology and economy. The Supreme Court has taken recourse to a sustainable approach while maintaining a balance between two conflicting interests, namely, environment and development. Development is necessary for the economy of the country but at the same time environment and ecosystems have to be protected for the public trust doctrine which enjoins upon the State to protect the natural resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes is crystal clear about the Government's statutory and constitutional obligations to protect and preserve the fragile ecosystems of the State. Dehing Patkai Wildlife Sanctuary constitutes the last vestiges of the State's rainforests. The Sanctuary and the Elephant corridors, as such, need to be protected and preserved by the Government.

The State is a "trustee" within the meaning of the Public Trust Doctrine. The State, as such, cannot claim ownership over its natural resources. The National Board for Wildlife (NBWL) approval given to Coal India Limited (CIL) for coal mining in the Dehing Patkai region violates the mandates of the public trust doctrine, as well as, the provisions of Article 48-A of the Constitution and the legal provisions of the Forest (Conservation) Act, 1980 and the Wildlife (Protection) Act, 1972.

The Apex Court, as such, keeping in view, the constitutional commitments towards the environment and the mandates of public trust doctrine needs to review its decisions, thereby, giving top priority to the rainforests in the maintenance of ecological balance.

In the Sariska National Park Case, the Apex Court did not allow developmental activities within the green zone of the park. The Court while referring to an observation made by an American Judge held that he placed Government above big business, individual liberty above the Government and environment above all. The Supreme Court, further, observed that all the issues of environment must and shall receive the highest attention from this Court.

The Top Court, in such a situation, needs to adopt a pro- environment role in the Dehing Patkai Case and should not compromise with the environment for the purpose of development is not to develop things but to develop man and environment.

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