

## Supreme Court: Mining, Forest Encroachments and Rehabilitation from Kudremukh National Park

V K Sridhar\*

### Abstract

*In contemporary India, competing claims and counter claims over the use and management of natural resources has sought the intervention of the judicial activism, which has been considered as the last resort for addressing environmental problems. The Supreme Court intervention on the issue of forest conservation over the last one and a half decade is unparalleled in terms of its scope and extent. The paper tries to analyze the role of Supreme Court with reference to Kudremukh Iron Ore Company Limited, which has been inconsistent and at odds with its own precedence. It is observed that major issues such as pollution have been primarily raised from the middle class Non-Government Organizations through public interest litigation and paradox is that Supreme Court landmark judgments are leading to certain unforeseen problems. Moreover, there are tensions between the Forest Department and NGOs in the context of rehabilitation of the tribals from Kudremukh National Park!*

### I. Introduction

The close link of forests, wildlife and environment are interconnected, but regulatory system treats them as largely independent from each other.<sup>1</sup> In the last two decades, the Supreme Court of India has been actively engaging in many respects in the protection of environment. The Supreme Court has effectively taken over the day-to-day governance of Indian forests leading to negative social, ecological and administrative effects. The Court's approach in admitting Public Interest Litigations (PIL) on matters concerning Forest conservation can be seen in the larger context of the liberal approach of Indian judiciary to enforce rule of law, enforce fundamental rights of the citizens and constitutional propriety aimed at the protection and improvement of environment. The Supreme Court is interpreting and introducing new environment laws, created new institutions and structures and conferred additional

---

\* Assistant Professor, Department of Political Science, Motilal Nehru College, University of Delhi, New Delhi, Email: vksridhar78@rediffmail.com

<sup>1</sup> Geetanjoy, Sahu (2014): *Environmental Jurisprudence and the Supreme Court: Litigation, Interpretation, Implementation*, Orient Blackswan, New Delhi, pp.12-33.

powers on the existing ones through a series of directions and judgments. Judicial activism of the Supreme Court was essentially to fill the void created due to bureaucratic lethargy and political apathy.

The Court role with respect to forest has undergone a change from being initially concerned with the enlarging the scope of existing conservation laws, Forest Conservation Act 1980, and to some extent the Wildlife Protection Act, 1972, as a reviewing authority over the Ministry of Environment and Forests. This in turn is dependent on the recommendations of the Forest Advisory Committee. The Forest Conservation Act 1980 shifts 'forests' from the "State List" to the "Concurrent List" and prohibits non-forest use of forest land without Central Government approval. This powerful legislation has, to a large extent, curtailed the indiscriminate logging and release of forestland for non-forestry purposes by state governments.

It is observed that the environmental policies and laws followed by the state to protect the land, air, water, forests of the country are often violated for commercial and industrial interests patronised by the political and bureaucratic system. The failure of enforcement agencies to enforce laws has led to social movements and difference of opinions between government institutions, interest and pressure groups and members of civil society and local communities. The Supreme Court intervention in forest issues now has changed the situation requiring more detailed appraisal of the projects for final approval of the Ministry of Environment and Forests. The court decisions are also guided by the orders in Centre for Environment Law, WWF v. Union of India passed in the year 2000 prohibiting the de-reservation of any forest, National Park and Sanctuary without approval of the Supreme Court.<sup>2</sup> The reconstitution of the Forest Advisory Committee and National Board for Wildlife has led to a relatively greater scrutiny of proposals with a marginal increase in the rate of rejection of projects especially in ecologically sensitive areas. The genesis of Godavarman case was the reluctance of the central as well as the state Governments to take tough decisions relating to environment in general and forests in particular. This paper analyses the case of Kudremukh Iron Ore Company Limited in the ecological fragile Western Ghats of Karnataka for continuation of mining.

## II. Mining in Kudremukh

The Kudremukh iron ore deposit is located in the Kudremukh-Aroli-Gangamoola range of the Western Ghats of Chikmagalur district is a 100% Export Oriented Public Sector Unit of Government of India under the Ministry of Steel and Mines.<sup>3</sup> It

<sup>2</sup> Sarin, Madhu (2014): "Undoing Historical Injustice: Reclaiming Citizenship Rights and Democratic Forest Governance through the Forest Rights Act" in Democratizing Forest Governance in India (Ed) by ShaarachchandraLele and AjitMenon, Oxford University Press, pp. 100-146.

<sup>3</sup> In Karnataka, Kudremukh falls approximately at the middle of mid-Western Ghats (the stretch between Goa and Nilgiris). Kudremukh is endowed with some of the most magnificent forests in the country ranging from majestic evergreen forests of the Western Ghats to the scrub jungles of the plains, a wide variety of habitats exists with typical flora and fauna, some of them endemic to the region.

secured a lease area of 5,218 hectares of land in the Bhadra reserve forest on lease from the Government of Karnataka for a period of 30 years from 1969-99. The protest against Kudremukh Iron Ore Company Limited (henceforth KIOCL) gained momentum from 1994 as its lease meant to expire in 1999 and the company was pushing for the extension of lease to continue mining.

The opposition against the company centered on river Bhadra<sup>4</sup> that originates a little distance from the Lakya dam, into which the KIOCL is allowing the waste iron slurry and silt has created pollution to Bhadra River. With over 7000mm of annual rainfall that Kudremukh receives, open cast mining is an extremely dangerous operation here, and results in adverse impacts on a thickly forested and river area. The washing down of large amounts of silt during monsoons has resulted in high rates of siltation of feeder streams and to the Bhadra River. The KIOCL Management argued that mining is an eco-friendly activity and had spent vast sums of money on the preservation of nature and environment in addition to efforts to prevent pollution.<sup>5</sup>

The KIOCL also appointed National Environment Engineering Research Institute to prepare a "Comprehensive Environment Impact Assessment" (CEIA) report, which gave a 'clean chit' to KIOCL for extension of lease in the broken-up area for another 20 years. Another report submitted by the Indian Institute of Science, warned about the loss of habitat and fragmentation of wildlife which are endemic to the region. The enactment of laws both by the Central and State Governments relating to environment has not made much headway in controlling the environmental degradation process and the laws, by and large have remained unenforced and mismanaged. In addition there is a separate petition from environmental activists in the Karnataka High Court for not renewing the contract for KIOCL.<sup>6</sup>

The State High Court of Karnataka disposed writ petition NO. 38716/1999, stipulating the Supreme Court direction in the I.A. No. 207-210/97 that "*in view of the fact that in matters pending in this court and throughout the country, it is appropriate that no aspect of this matter be considered separately by another court in any form*", thereby disposing the matter giving liberty to the parties to approach the Supreme Court. During this period social movements played a bigger role in shaping broader public opinion against the mining. The Karnataka VimochanaRanga (KVR) affiliated to CPI (ML) based its campaigns centered against mining operation at *Gangadikalluguddato* 'Save Tunga origin' in 1994, which gained momentum in places

<sup>4</sup> The 'Gangamoola' is the birthplace of three rivers – Tunga, Bhadra and Nethravathi. The river Tunga, which originates in the midst of the forest, flows northwards and then turning to east joins river Bhadra at Kudali in Shimoga district far away from the mining site. The river Nethravathi first flows westwards turn to southwest, and join the Arabian Sea in an estuary at Mangalore. Only Bhadra River flows downwards towards Balehonnur via, Jambale, Nellibeedu and Kalasa.

<sup>5</sup> See Neeraj, Vagholikar, KaustubhA.Moghe and RitwickDutta (2003): *Undermining India: Impacts of Mining on Ecologically Sensitive Areas*, Kalpavriksh, Pune, p-7.

<sup>6</sup> Mahalakshmi, Parathasarthy (2001): "Escalating Ecocide in the Kudremukh National Park", Fact-Finding Report, *NagarikaSeva Trust*, Guryavanakere, Dakishna Kannada.

such as Sringeri, Koppa, Thirthahalli and Shimoga. The KVR activists undertook a cycle *Jatha*(procession) from Sringeri to Harihar to enlighten the people on the consequences of the mining operation. The movement did not exclusively deal with environment issues, but follow an integrated approach by linking poverty, social justice, inequality, rural development and health issues.

Several prominent public personalities and religious seers of *Pejawar, Sringeri, Dharamstala, Adichunchugiri, Siddaganga and SirigereMaths*<sup>7</sup>, writers K.P. PurnachandraTejasvi, U.R. Anantha Murthy<sup>8</sup> and social worker H. Sudershan played a key role in persuading the Government of Karnataka to stop the mining.<sup>9</sup> The delegation led by U.R. Ananthmurthy<sup>10</sup> submitted a Memorandum to the then Chief minister Mr. S.M. Krishna and pleaded not to renew the mining lease and ordered the Kudremukh Company to “pack off” as company had done enough.<sup>11</sup>

### III. Supreme Court Intervention

The emergence of green attitudes coincides with the Supreme Court’s interpretation of constitutional promises in favour of the poor, the illiterate, and the disadvantaged people, liberated *locus standi* from the narrow clutches of justice and developed a new jurisprudence of social action, known as public interest litigation. These cases pertain to the issue of environmental pollution caused by industrial units due to the failures of the State in protecting the right to a healthy environment and the rights to health are an integral part of the right to life under Article 21 of the Indian Constitution.<sup>12</sup> The Public Interest Litigation (PIL) based judicial activism has transformed from an passive arbiter of ordinary disputes and giving relief to the disadvantaged groups, the Supreme Court gained in stature and legitimacy covering a wide cases such as industrial pollution, violations of Forest Conservation Act<sup>13</sup>. Moreover, there are several instances

<sup>7</sup> In Karnataka, the influence of religious Mutts as people as powerful bodies, which not only control funds but also influence public opinions and intervene for the purpose of patronage distribution. See Atul, Kohli (1987): “Karnataka: Populism, Patronage and piecemeal reform” in *The state and Poverty in India*, 145-85, Cambridge, Cambridge University Press, p-152.

<sup>8</sup> U.R. Ananthmurthy is the most influential representative of the ‘navya’ (modernist) movement in Kannada literature. He joined hands with “*Tungamula Ulisi*”, a movement to protect the source of the River Tunga with K.G. Sridhar who led the movement in thirathalli of Shimoga District.

<sup>9</sup> Praveen, Bhargav and Niren Jain (2004): “Battle for Kudremukh”: *The Hindu* January 4th.

<sup>10</sup> The delegation included the leader of the opposition of the legislative council, Mr. K.H. Srinivasa, Mr. B.L. Shankar, Mr. K.B. Mallikarjun, Mr.A.Jnanendra and Mr. Visvesvara Hedge. The former State Government official, Mr. Yellappa Reddy, and the noted environmentalist, Mr. UllasKaranth was also part of the delegation. *The Hindu*, July 19, 2001.

<sup>11</sup> Harsh, Sethi (2001): “Movements and Mediators”, *Economic and Political Weekly*, January 27, Vol.XXXVI, No.4, pp. 269-270.

<sup>12</sup> S.P. Sathe (2002): *Judicial Activism in India: Transgressing Borders and Enforcing Limits*, New Delhi, Oxford University Press, p-224.

<sup>13</sup> The Forest Conservation Act of 1980 was enacted in order to check rapid deforestation due to forestlands being released by state governments for agriculture, industry and other development projects (allowed under the Indian Forest Act) the federal government enacted the Forest Conservation Act in 1980 with an amendment in 1988. The Act made the prior approval of the Central government for de-reservation of reserved forests, logging and for use of forestland for non- forest purposes.

that NGOs and lawyers have been capable of producing the facts and materials to convince the court of the importance of a particular environmental problem. For instance, in the Dehradun limestone quarry case, TarunbharatSangh, Alwarvs Union of India, Delhi Industrial relocation case and Delhi vehicular pollution case.

The Supreme Court intervention in Writ Petition 202 of 1995, T.N. GodavarmanThirumulpadvUnion of India<sup>14</sup>, asserted that FCA applied to “all areas that are forests in the dictionary meaning of the term irrespective of the nature of ownership and classification thereof”. Initially the definition of “forest land” was assumed to be only that land which has been legally notified as forest as per the Indian Forest Act or Reserved or Protected Forest.<sup>15</sup> In the process of hearing over 800 interlocutory applications since 1996, the court has assumed the role of policymaker, administrator of policy and interpreter of law.

The cases are being heard under the “continuing manadamus” where the courts rather than passing final judgments, keeps on passing orders and directions with a view to monitor the functioning of the executive. The irony of this judicial environmental activism has been a further centralisation of power over the country’s forest lands and transcending judicial boundaries into the legislative and executive domains are continuing to overrule them. On the other side of the legislation the Supreme Court orders have curtailed the indiscriminate logging and release of forest land for non-forestry purpose by state governments. While the federal Government imposed such restrictions, it did not simultaneously evolve a mechanism to compensate State Governments for loss of timber logging revenues.<sup>16</sup>

In 2001, K M Chinnappa, a retired forest officer and trustee of the NGO Wildlife First, in association with the Delhi based NGO, LAW, filed an Interlocutory Application in I.A 670 with the Supreme Court in the GodavarmanThirumalpadVs Union of India Case in which K.M. Chinnapa appealed for the mines to be closed and the lease areas to be included in the National Park.<sup>17</sup> The main reliefs sought were:

- a) To direct the MoEF to withdraw the illegal ‘temporary working permission’ for mining activities.
- b) Direct KIOCL to stop polluting the Bhadra river due to open cast mining

<sup>14</sup> T.N. GodavarmanThirumalpad, an ex-estate owner in Gudalur, Tamil Nadu a resident of Nilgiri had filed a Public Interest petition to prevent illicit felling of timber from forests nurtured by his family for generations which have since taken over by the government. Armin Rosencranz, Edward Boenig and BrindaDutta (2007): “The Godavarman Case: The Indian Supreme Court’s Breach of Constitutional Boundaries in Managing India’s Forest”, *ELR News and Analysis*, 37, Washington, pp.10032-42.

<sup>15</sup> Sharachchandra Lele (2007): “A Defining Moment for Forests? *Economic and Political Weekly*, Vol. 42 No.25. June 23, pp. 2379-2383.

<sup>16</sup> RitwickDutta and BhupenderYadav (2011): *Supreme Court on Forest Conservation*, Universal Law Publishing Company, New Delhi, p-47.

<sup>17</sup> Praveen, Bhargav and Niren Jain (2004): “Battle for Kudremukh”: *The Hindu*, January 4th.

- c) Take action against KIOCL for illegal encroachment in the forest and for the destruction of forests in the Kudremukh National park
- d) To stop KIOCL from laying a new slurry pipe line in the forest of the National Park.

The State and Central Government agreed to renew the contract period for 20 years and subsequently turned around to five years period. The Karnataka Government predicament stems from the fact that it cannot be instrumental in the closure of profit making company, with nearly annual earnings of \$150 million foreign exchange. The company is boosting states revenue by payment of royalty, sales tax and entry tax to the tune of Rs 2.5 crores annually.<sup>18</sup> The decision on the renewal was still pending; the MoEF promptly went ahead, issued a year's Temporary Working Permission (TWP) to KIOCL in 1999, and extended by another year, because of the Karnataka Government's submission that the area concerned would not form a part of the area notified as a national park. The TWP was conditional, with one of the conditions being the State government's final notification on the constitution of the KNP by September 30, 2000.

The Court observed: *"Before we part with the case, we note with concern that the state and the Central Government were not very consistent in their approach about the period for which the activities could be permitted. Reasons have been highlighted to justify the somersault. Whatever is the justification, it was but imperative that due application of mind should have been made before taking a particular stand and not to change colour like chameleon, and that too not infrequently."*<sup>19</sup>

The increasing number of pending cases before the Supreme Court made it difficult for the court to examine each and every issue in detail and pass appropriate orders. The Forest Conservation Act, 1980 did not provide any opportunity for setting up Tribunals or Authorities to adjudicate on such issues. The affected people started approaching the court, the need was felt to urgently set-up a system in place to render justice faster if not more effectively. This led to the setting up of High Powered Committees, Empowered Committees, Forest Protection Authority and later on the Central Empowered Committee.

The Supreme Court has constituted the Central Empowered Committee (henceforth CEC) as an advisory for the Honorable Court orders and to place the non-compliance cases before it, including in respect of encroachments removals, implementations of

<sup>18</sup> The Mangalore port receives Rs 3 crores annually by way of port charges and another Rs 2.5 crores as land rent charges as the ore and pellets are exported to China, Iran, Australia, Turkey and Japan and the company signed fresh contracts in 2000-01. The company has so exported 210 million tones of ore concentrate and its mining zone has a stockpile of weathered ore of about 140 million tones and beneath it another 350 million tones of primary ore, enabling operations for another 20 years.

<sup>19</sup> K.N. Murthy and D.V.R. Seshadri (2011): "Kudremukh Iron Ore Company Limited (KIOCL): The Death Knell and Beyond", *Vikalpa*, Vol.36, N0.2, April-June, pp.133-137.

working plans, compensatory afforestation, plantations and other conservation issues. The wide ranging powers were conferred on CEC and it could undertake field visits, conduct public hearings, meet NGOs etc. and CEC was also empowered to pass interim orders in situations demanding immediate public action. The CEC may decide its own procedure for dealing with the pending affidavits filed by the states and their recommendations placed before the honorable Supreme Court for order. The process prescribed under this notification could bring together local communities, project affected people, government agencies, project proponents, planners, consultants, and NGOs in decision-making processes. The convergence of these actors for environmentally sustainable and locally appropriated decision-making has occurred partially in few cases.

The KIOCL Case was referred to the Central Empowered Committee for hearing the parties and taking note of the materials placed before it. The recommendations done by CEC were based on a documentary film named “*Mindless Mining*” made by filmmaker ShekarDattatri.<sup>20</sup> The film has been submitted as audio visual evidence in the Supreme Court to stop mining inside the national park filed by wildlife first. The film claimed that farmers using the Bhadra Reservoir command Area (located downstream of mining) will be losing irrigation potential due to heavy siltation in the reservoir from the mining site at Kudremukh. The documentary was used by CEC to stop mining operation by KIOCL and “Restoration and Winding up” has to start so that the company can restore all mined lands, plants and protect the region from further degradation. The exploitation of the Kudremukh iron ore follows no principles in law; the valuable rainforest has a greater value to human life than iron ore.<sup>21</sup>

The Supreme court in the final judgment ordered all mining operations to cease as per the recommendation made by CEC that the company to be closed by 2005.<sup>22</sup> The Supreme Court orders is not against mining per se but against mining which is in violation of the Forest Conservation Act, 1980 and also mining in National Parks and Sanctuaries. The Supreme Court final order for closing the company draws attention to the importance of Sustainable Development and the need for balance between Ecology and Development has to be maintained for future generation. The pro-environment stance of Supreme Court has affected the workers’ rights. The KudremukhShramShakthiSanghatan<sup>23</sup> filed Application NO.1374/2005 for reconsideration of the judgment stating that it was against the principles of natural

---

<sup>20</sup> See Shaker Dattari (2007): “Wildlife Films do they have a future in India”, *Sanctuary Asia*, Vol. XXVII, No.1, Mumbai, pp. 18-29.

<sup>21</sup> Memorandum submitted by KudremukhShram Shakti Sanghatan to ValmikThapar to honourable Chairman and Members of the Central Empowered Committee during his visit to Kudremukh on 30 September 2002.

<sup>22</sup> Ritwick, Dutta (2003): “Courts and Environmental justice: Critical issues”, *Social change*, Vol.33, No.2&3, June-September, pp. 24-5.

<sup>23</sup> Circular of KudremukhShram Shakti Sanghatan dated 26/12/2005.

justice<sup>24</sup> and prayed that the same to be heard with 1010/2003 filed by KIOCL<sup>25</sup> as the subject matter of both the applications were substantially similar. The trade unions working in KIOCL have opposed the closing down of the company and organised nationwide strikes, *bandhs*, rallies but these have not had any effect in terms of changing the policies. The traditional forms of protest have lost their strength where protection of labour rights is concerned.<sup>26</sup> The Supreme Court has become the most powerful institution of the state because it enjoys enormous power and the arbiter of disputes between citizens and the state, and between states and the union, and directs the government in closing down industries.<sup>27</sup> Kudremukh region is rich in biodiversity and is recognized as one of the 18 mega-biodiversity centers of the world because of its tropical and subtropical climate. In India Eastern Himalayas and Western Ghats are known as the hot spots areas to identify the density of species and the degree of threats to it. The awareness of ecological hot spots is a recent development but none of these considerations appeared to have weighted in when Kudremukh Iron Ore Company limited started its mining operations. The issue of mining was also interconnected with the declaration of Kudremukh National Park, which includes the entire KIOCL lease area of 37sq km was not included in the area that was notified as a National Park and did not include any of the patta lands, revenue lands, *gomaal* lands.<sup>28</sup>

<sup>24</sup> The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that no one shall be a judge in his own cause and no decision shall be given against a party without affording him a reasonable hearing has changed with quasi-judicial enquires must be held in good faith, without bias and not arbitrarily or unreasonably.

<sup>25</sup> On 19-11-2003 the Kudremukh Iron Ore Company filed application No. 1010/2003 praying the court to appoint an independent committee to examine the matter on the ground that an interested person was a member of the CEC and also with a prayer to allow the KIOCL to continue the mining for 20 years producing evidence in abundance in support of it.

<sup>26</sup> V.K. Sridhar (2013): "Social Movements and Mining: The Case of Kudremukh Iron Ore Company Limited", *The Indian Journal of labour Economics*, Vol.56, No.3, pp. 463-480.

<sup>27</sup> The judicial orders of the Supreme Court resulted in the closure of polluting and non-conforming industries in Delhi the capital city, throwing out of work an estimated 2 million people in a population of 12 million people through public interest litigation by bourgeois environmentalism. See AmitaBaviskar, (2003): "Between violence and desire: space, power and identity in the making of metropolitan Delhi", No. 175, *International Social Science Journal*, pp. 89-98.

<sup>28</sup> *Gomals/ Gauchars* are revenue/village lands used and managed by the local communities by the village as common grazing grounds belong to all. *Betta* lands or *Soppinabetta* are an individual owning an acre of areca plantation was given privilege over to mulching material in their arecanut gardens. *Kans* are protected forests which is given for the privilege for coffee, pepper, Gum and Honey and also Green Manure as per the section 134(3) and 138(3) of the Karnataka forest Manual. *Paisari lands* are revenue wastelands under the control of the revenue department, allotted to the landless for housing and crop cultivation under '*Darkhast*' (literally meaning 'request') grant of land to the landless on request. *Kharab land* is a wasteland; non-arable land that is in procession of the Government. *Bhanelans* is part of the protected forest land granted for service of holding of wet land which is allotted to be held free of revenue by cultivator for grazing and to supply leaf manure and fire wild and small timber required for agricultural and domestic purposes of the cultivator. *Kumki/ Hadi* (Hadya) lands are also government forestlands under the private control and use of the local farmers. *AmrutMahalkavals* are government lands used and control by the Animal Husbandry Department (AHD). *DevaraKadu/ Sacred Forests* are forests set apart for some object of worship are still managed and used by the local committees, through temple committees. See Srinidhi, A.S. and S.Lele (2001) "Forest Tenure Regimes in the Karnataka Western Ghats: A compendium", *Institute for Social and Economic Change*, Bangalore.



#### IV. Kudremukh National Park

Kudremukh was initially notified as a national park when Government of Karnataka identified *lion-tailed macquae* as an endangered species specific to the region.<sup>29</sup>The *lion-tailed macques* was used as a 'flagship' species to conserve the entire biotic conservation of wildlife population in the region.<sup>30</sup>In 1987, the first notification brought the mining area under the purview of the Wildlife (Protection) Act, 1972 which disallows any non-forestry operations, including mining, within a protected area.<sup>31</sup>

Kudremukh National park which is spread over an area of 563 sq. kms and falls in three districts namely, Dakshina Kannada district (158 Sq. Kms), Udupi district (89 Sq. Kms) and Chikmagalur district (316 Sq. Kms.). The final notification of the Kudremukh National Park was issued in 2001 when the Assistant Commissioners under the Wildlife Protection Act initiated the 'settlement processes'.<sup>32</sup>The legal lands holding at the time of notification of Reserve Forest were treated as enclosures.<sup>33</sup> These enclosures are located within the overall area of National Park, which are not notified for the purpose of the National Park. This has affected the tribals<sup>34</sup> namely Gowdlu, Malekudiya and Marathi Naiks traditionally living in the purview of Kudremukh national park consists

<sup>29</sup> With regard to the declaring an area as a National Park, Section 35 of the Wildlife Protection Act, 1972 provides "whenever it appears to the State Government that an area, whether within a sanctuary or not, is by reason of its ecological, faunal, geo-morphological or zoological association or importance, needed to be constituted as a National Park for the purpose of protecting, propagating or developing wildlife therein or its environment, it may be notification, declare its intention to constitute such a rea as a National Park".

<sup>30</sup> The major policies on reserved forests were declared during the period 1914-16 with reference to KNP which included two Reserved Forests and three State Forests, which were brought together to constitute the national park. The Western Ghats cover 38,019 sq. km in the state of Karnataka and has 5 national parks and 15 wild life sanctuaries and a part of Nilgiri Biosphere reserve.

<sup>31</sup> Valmik, Thapar (2003): *Battling for Survival: India's Wilderness Over Two Centuries* (Ed), Oxford University Press, p-244.

<sup>32</sup> The process involves conducting an inquiry into the rights (habitations, agriculture, use of forest resources etc) exercised by people in or over extinguishing these rights after giving compensation. The national park was reduced to 563.29 sq. kms, from the original 600.32 sq. kms which does not include any of the revenue villages, patta lands, revenue lands, gomal lands and such other areas, which do not form any part of the above mentioned state forests and Reserve Forests.

<sup>33</sup> The major policies on reserved forests were declared during the period 1914-16 with reference to KNP which included two Reserved Forests and three State Forests, which were brought together to constitute the national park. The Indian forest Act of 1927 which set aside forests for different purposes and gave them an administrative designation indicating their purpose. Many forest areas that were declared "reserve forest" under IFA have received additional protecting and have been named as a sanctuary or national park under the wildlife protection Act of 1972 in recognition of their values as critical habitat for wildlife.

<sup>34</sup> According to 2001 census, there are 34.6 lakhs tribes in the state. The tribal population is concentrated in the 5 districts of the state: Bellary, Bidar, Chitradurga, Mysore and Raichur. The Malekudiyas speak *tulu* language which is a dialect spoken by all communities in the region of Dakishna Kannada. The Marathi Naiks and *Gowdlu* speak Kannada language in the Chikmagalur district.

of 90 hamlets belonging to 40 revenue villages, with 1299 families, who does not possess *patta*<sup>35</sup>(land rights certificate) are labeled as encroachers.<sup>36</sup> The rights of the local communities have been ignored in the original demarcation of forest boundaries, when such sanctuaries were set up, leading to much conflicts.<sup>37</sup>

In 1990, the 29<sup>th</sup> report of the Schedule Castes and Scheduled Tribes Commission had drawn out a clear, unambiguous framework to settle the encroachment issue, keeping in mind both conservation interests and livelihood security for Adivasi and forest dwellers. In a set of six guidelines, it suggested that all encroachments made prior to the Forest Conservation Act be settled and those made after that be carefully examined, distinguishing the claims of the tribal people from those of encroachers. Besides making it mandatory for the states to come up with schemes to provide alternative means of livelihood to those affected, the recommendations also sought to involve village communities in setting disputes and ensuring lasting solutions. However, the report has been consistently ignored by policy makers on the question of encroachment.<sup>38</sup>

## V. Forest Encroachment

In 2001 the solicitor General and Amicus Curiae filed interlocutory applications (IA) 703 in the Godavarman case regarding encroachments.<sup>39</sup> The Supreme Court directed the chief Secretaries of Orissa, West Bengal, Karnataka, Tamil Nadu, Assam, Maharashtra, Madhya Pradesh, Chattisgarh and Kerala to file a reply to this IA in relation to the steps required to be taken by them to prevent further encroachment of forest land to indicate the steps already taken to clear earlier encroachments.<sup>40</sup> The Ministry of Environment and Forests (MoEF) used the above references in the court proceedings to issue a directive to all states/Union territories on 3<sup>rd</sup> May 2002, to summarily evict “all illegal encroachment of forestlands” before 30<sup>th</sup> September 2002. The 2002 order reiterated the 1990 circular directive of the MoEF that 1978 should be the cut-off year for legalising encroachment and those who encroached later should be evicted subject

<sup>35</sup> Earlier the lands were administered by village elders and there was no concept of ‘exclusive title or possession’, within the community, but it was based on mutual respect and recognition to an individual family. See Prabhu, Pradip (2002): “land Alienation, land reforms and Tribals in Maharashtra”, in *Land Reforms in India: Issues of Equity in Madhya Pradesh*, Vol. VII, (ed) Praveen K. Jha, New Delhi, Sage publications, p-249.

<sup>36</sup> The Government of Assam and Maharashtra obeying the Supreme Court began eviction drive were the Assam’s forest department used elephants to raze down huts and homesteads on land recorded as forest. In certain areas however they could be treated as encroachers on forestland owing to “faulty settlement” by state governments. See Akhileshwar, Pathak (1994): “State, Environment and Law”, *Economic and Political Weekly*, December 10<sup>th</sup>, pp. 3138-41.

<sup>37</sup> SharachchandraLele (2011): Rethinking Forest Governance: Towards a perspective beyond JFM, the Godavarman and FRA, *The Hindu Survey of the Environment*, pp.95-103.

<sup>38</sup> Madhu, Sarin (2010): “Democratizing India’s Forests through tenure and governance reforms”, *Social action*, Vol.60, April-June, pp. 105-120.

<sup>39</sup> Archana, Prasad (2003): “Forest Encroachments: Guidelines and Implications of Recent orders”, *People’s Democracy*, Vol.XXVII, No.01, January5th, New Delhi.

<sup>40</sup> Archana Prasad (2004): Environmentalism and the left, *Leftword Books*, Delhi, pp.34-40.

to certain conditions.<sup>41</sup> It ignores the other circular of 1990 such as “Review of Disputed claims over forest land arising out of forest settlement<sup>42</sup> and Disputes regarding pattas/leases/grants involving forest land, which has a considerable bearing on deciding what, constitutes an ‘encroachment’.

The Supreme Court orders created fears among tribals all over the country and this led to a clarification by MoEF wherein it acknowledged that not all occupation of forest lands was illegal or an encroachment, and so they could not be evicted until their rights were verified. This led the Government of India to introduce the Schedule Tribes (Recognition of forest Rights) Act, 2006 to strengthen the tribal empowerment process.<sup>43</sup>

The Supreme Court strategy of appointing committees, which are supposedly expert bodies, has also resulted in different set of problems while solving disputes. In Karnataka forest encroachments have occurred since Independence, with the last two decades witnessing a rising trend. The commercial crops such as coffee, cardamom, areca nut, groundnut, rubber and agricultural crops such as paddy, jowar and ragi around the Kudremukh National Park has led to the encroachment in pockets in the midst of thick reserve forest. The issue is so complex that Forest Department indicates only five categories of forests: Reserve forests, Protected forests, Unclassified forests, Village forests, and Private lands, but there are dense forest patches which are classified as

---

<sup>41</sup> The regularisation has to be done on the condition that it was only to be done to an extent of 3 acres or 1.2 ha in individual cases (including forest encroachment), and in the case of persons belonging to the Schedule castes and Scheduled tribes (SC/ST), Landless marginal agricultural labourers and those holding an insufficient extent of land- up to 3 acres of agricultural land. The person concerned should be a domiciled for at least 10 years in a village adjacent to which the forestland encroached by her/him. In the case of landless marginal agricultural labourers the encroacher or his family should not hold or own any agricultural land anywhere in Karnataka and the total annual family income should not exceed Rs. 8,000. The order of the Government of India had decreed that encroachments should not be regularised in the midst of forests, on steep slopes or in the middle of national parks or sanctuaries. Eligible encroachers from these areas are relocated on the fringes of forests, on areas recovered from encroachers.

<sup>42</sup> Forest settlement refers to the settlement of rights process followed by the government when it acquired forest land and notified them under various categories. The process involves conducting an inquiry into the rights (habitations, agriculture, use of forest resources etc) exercised by people or over the forest being notified and documenting them. For certain categories of forests the process also involved extinguishing these rights after giving compensation. See Syed Ajmal Pasha (1994): “Uncultivated Lands: Institutional Aspects of their use and Management in Karnataka”, *Institute for Social and Economic Change (ISEC)*, Bangalore.

<sup>43</sup> MadhuSarin (2002): Who is encroaching on whose Land? *Seminar*, No.519, November, pp. 1-10.

grazing land in the Karnataka land Revenue Act.<sup>44</sup> The revenue department in order to spread cultivation has been a facilitator because as revenue is linked to taxation and the extent of land under cultivation.<sup>45</sup>

Coffee is the major crop in Chikmagalur district and cultivated both in large and small holdings. Indian coffee comes from 1.57 lakh holdings were 70 percent of these are than 2 hectares in size and are categorized as “small holdings”. The second category is “large holding” are those which are more than 10 hectares in size to 100 hectares constitute 1.6 percent of all holdings and carve up 23.5 percent of all land under coffee. The third category constitute holding size above 100 hectares are generally called as “company estates” constitute only 0.1 percent or 105 such holdings.

The monopolisation of Land by the smallholdings under coffee cultivation during 1980-81 was 17,894, which have doubled by 30,836 and the large holdings from 1,429 to 1,878 in 2001. The issues of forest encroachment for coffee cultivation have cleverly turned the crisis against the labourers by arguing that it would adversely affect the workers in the coffee estates. The peasants fear that much of the eviction process will concentrate on them as they don't have political influence to protect their interests in contrast to the large estate owners of more than 100 acres do not face the risk of investing in a single crop because the gross income they receive from cultivation of coffee is high due to the high volume of their production.

The Supreme Court orders with regard to forest encroachments has identified B.L. Shankar, his brother and his father-in-law, all of whom are partner-owners of a coffee estate, which owns the land comprising Survey No. 3 of Kenjigegudda Coffee Estate Village (KGCEV) in the Thatkola reserve forest. Shankar and his relatives had encroached on an area of 27.67 acres in Survey No.4 of KGCEV in the Thatkola reserve forest. According to the Survey of India report, 147 instances of encroachment (accounting for 611.23 acres) had taken place in the Thatkola reserve forest. Of these 147,100 persons had encroached upon 3 acres or less (accounting for a total of 118.613 acres), 19 persons had encroached on between 3 and 5 acres (totaling 79.96 acres), and 10 had encroached on between 5 and 10 acres (59.5 acres). Interestingly, the majority of the encroachment (adding up to 353.16 acres) was committed by just 18 people, each of whom had encroached on an area in excess of 10 acres. Despite

<sup>44</sup> Betta lands or *Soppinabetta* are an individual owning an acre of areca plantation was given privilege over to mulching material in their areca nut gardens. *Gomals/ Gauchars* are revenue/village lands used and managed by the local communities by the village as common grazing grounds belong to all. *Kumki/ Hadi* (Hadya) lands are also government forestlands under the private control and use of the local farmers. *Gomals/ Gauchars* are revenue/village lands used and managed by the local communities by the village as common grazing grounds belong to all. *AmrutMahalkavals* are government lands used and control by the Animal Husbandry Department (AHD). *DevaraKadu/ Sacred Forests* are forests set apart for some object of worship are still managed and used by the local committees, through temple committees. V, Vijyalakshmi (2003): “Schedule Tribes and Gender: Perceptions from Karnataka”, Working paper No.128, *Institute for Social and Economic Change*, Bangalore, p-2.

<sup>45</sup> Ravi, Sharma (2003): “Eating up Forest Land”, March 28, Vol.20, No.6, *Frontline*, pp.50-54.

Supreme Court to evict encroachers in the Thatkola reserve forest the state Government is yet to act on the orders and the process of surrender remains on paper and the encroachers still enjoy the fruits of the land.<sup>46</sup> There is a constant demand from political parties to permit regularisation, because besides plantations, in many of these encroached areas there are schools, colleges, roads, government offices and even houses built under various government schemes for weaker sections of society. The issue has been turned against the tribal communities that have traditionally and customarily cultivated lands but do not have the title deeds has been labeled as ‘encroachers’, and to club them in the same category as powerful vested interests. The rural land owners employ a collective strategy reflecting their class interests aimed at bargaining with the state.<sup>47</sup> The nexus between the State and coffee planters from colonial times<sup>48</sup> have always rescued planters in crisis have largely remained indifferent to the Supreme Court verdict on eviction.<sup>49</sup>

The issue of encroachment has also led to unforeseen problems like rehabilitation of tribals from the Kudremukh National Park by giving incentives or packages to relocate human population to less ecologically sensitive areas is seen as a magic solution which benefits both human and wildlife.<sup>50</sup> The tribals in wildlife-rich areas are seen as enemies of the conservationist cause and are physically displaced or denied access.<sup>51</sup> The forest department continues to have very little power and finances, compared to other government agencies that handle ‘development’ or ‘commerce-related activities’ has seen a steady rise of NGOs in relation to the already entrenched interests of the forest department. The centralization of forest management increases the distance between the administrators of forest policy and tribal people.

## VI. Kudremukh National Park and Rehabilitation process

The collaborations between NGOs and Forest department with regard to rehabilitation package for tribals did not take off due to the allegations and contestation.<sup>52</sup> The District Conservator of Forests (DCF) raided the office of the NGO which had been aiding rehabilitation of communities living within the park. The DCF also filed cases against Environment activists for trespassing into national park, their sources of funding, registration details, permission sought to conduct surveys. The matter was

<sup>46</sup> K.P. Kannan (1989): “Towards Understanding the Dynamics of Rural Labour Markets: An approach based on Indian evidence, Occasional papers, *Indo-Dutch programme on Alternatives in Development (IDPAD)* pp.26-7.

<sup>47</sup> Muzaffar, Assadi (2004): “Forest Encroachments, Left Adventurism and Hindutva”, *Economic and Political Weekly*, February 26, Vol.39 No. pp. 882-885.

<sup>48</sup> V.K.Sridhar (2014): Land Revenue and Commercialization of Coffee Cultivation in the Princely Mysore State: 1800-1881, *Journal of OKD Institute of Social Change and Development*, Vol. XI, No.1, 2014, pp. 90-107.

<sup>49</sup> Karnataka Growers Association (2006): Letter written to Shri Kamal Nath regarding Relief package for coffee grower, dated 27<sup>th</sup> May, *Saklespur*, Karnataka.

<sup>50</sup> Interview with Praveen Bhargava, a conservationist on 5/12/06, Bangalore.

<sup>51</sup> The National Parks and wildlife sanctuaries form only 5% of our country’s land area and within these areas we have human habitations, roads, dams, mines, power plants and other activities which have been the biggest threats to forests and wildlife.

<sup>52</sup> Harsh, Sethi (2001): “Movements and Mediators”, *Economic and Political Weekly*, January 27, Vol.XXXVI, No.4, pp. 269-270.

taken up by the CEC and held that raid was not justified and asked the State Government to take disciplinary action against the DCF considering the as “illegal and without justifications”.

In 2004 the Karnataka government presented the rehabilitation plan for voluntary resettlement of 201 families, inside the national park where infrastructure development was not possible and hence they needed to be relocated. The rehabilitation plan was sent to the Planning Commission in 2006. The Commission gave recommendations along the lines of the Tigers Task Force appointed by the then Prime Minister to look into the tiger crisis in the country and to prepare a tiger conservation plan. The forest department however asserted that relocation is not the solution to Kudremukh National Park, as people have been residing for centuries and the reserve forest is about hundred years old and relocation needs huge resources and net outcome will be social and cultural displacement of the people. The conservation induced displacements affects the tribal groups although there has been several cases of non-tribal relocations such as the Corbett Tiger Reserve, and Bhadra Tiger Reserve which has been as successful model for relocation.<sup>53</sup> The Tiger Task Force recommends minimizing conservation induced displacement or treating it as a last resort for protecting habitats and species due to the poor record of the government in effective relocation. The Tiger Task Force (TTF) estimates that there are 1,500 villages within the 28 tiger reserves and roughly 65,000 families (around 325,000 people) have to be resettled to create people free core areas in these reserves.<sup>54</sup>

The impression that the forest department is bent on evicting the tribals has caused a fear complex among the tribal population who are alienated from their land and livelihood are getting influenced by the Maoist ideology.<sup>55</sup> The social movements of various kinds prioritized human inhabitants of remote settlements located within the KNP. The Naxalite opposed the KIOCL mining strongly but when the issue of KNP came up they simultaneously demanded the abolition of the KNP and Wildlife protection laws, which they termed as “anti-people”. The issue has been taken up by the Maoist Movement<sup>56</sup> against the Indian state with regard to eviction of tribal people from the

<sup>53</sup> Tiger Task Force (2005): *Joining the dots*, Ministry of Environment and Forests, Government of India, New Delhi.

<sup>54</sup> AsmitaKabra(2013): Conservation-induced Displacement: The Anatomy of a Win-Win Solution, *Social Change*, 43(4), pp. 533-550.

<sup>55</sup> ‘Naxalities’ or ‘Maoism’ are identified with leftist groups in parts of eastern and central India have been waging armed struggles for land rights.

<sup>56</sup> In November 2004 the CPI (Maoist), programme jointly drafted by the erstwhile People’s War Group in parts of Andhra Pradesh, Orissa, Chattisgarh and Maharashtra and Maoist Communist center (MCC) which was once known as the Maoist center of Communist Revolutionaries. They have come together to establish the guerilla zones and the base area in strategically favorable areas where they can organize and arm the vast peasant masses on the basic slogan of “revolution” directed against imperialism, feudalism, and comprador bureaucratic capitalism. After the merger of the two major naxalite formations in the country, the party changed its name to Communist Party of India (Maoist) which accepts Marxism-Leninism-Maoism as its guiding ideology and is committed to “new democratic revolution” in India before passing on to achieve its socialist goal. Guha, Ramachandra (2007): “Adivasis, Naxalities and Indian Democracy”, *Economic and Political Weekly*, August 11, Vol.XLII, No.32, pp. 3305-12.

forests.<sup>57</sup> In turn the State government has set up the Anti-Naxalite Force a force reconstituted from the Special Task Force<sup>58</sup> and the police-led operations only intensified, and each encounter followed by a retaliatory strike.<sup>59</sup>

## VII. Conclusion

The Supreme Court has used the national interest argument to justify the centralization of powers in its own hands. The initial orders may have been justified, the implications of this sweeping and continuing intervention by the judiciary are far more doubled edged than celebratory accounts of the Godavarman case suggest and should move beyond judicial adventurism and focus on improving the quality of forest-related jurisprudence. In the name of public interest, the court, lawyers, environmentalists, middle class urban citizens and NGOs worked in collaboration with each other has often marginalises the problems of the other sections of society.

The state politicians have used the FCA as a convenient target and generating an anti-environmentalist rhetoric in state-level politics. The tussle is at multiple levels like local communities who want to use forests for their livelihood purposes, state apparatus in the form the Non-timer forest products or wanting to give it for mining or other short term activities. The communities around the Kundremukh National Park are largely non-tribal and the economy is relatively prosperous and where substantial forest rights were granted to forest dependent households at the individual rather than the community level but in a discriminatory manner. The tribals argue about the large contradiction of land, which is not by the people who own an acre or two but by the big coffee estates with thousands of acres on which the government is very silent. The other reasons for the crisis is due to lack of political support and the geographical location is such that they are dispersed and are unable to press their claims. The creation of more nuanced and locally specific categories that allocate rights and responsibilities across the local, state and central levels in ways that reflects the interests of these actors. Finally Supreme Court should motive state responsibilities for managing forests among the various parts of the government by enforcing the Article 48A of the Directive Principles of State Policy of the Indian Constitution. The state should be encouraged to prepare a comprehensive legislation because the land administration is under the purview of the state government. The repeated u-turns and confusions in the policy framing and execution are at the behest of vested interest in industry and the rural dominant caste with political, economic and social status of the rural elite will make it difficult to formulate a policy frame work and to apply it.

---

<sup>57</sup> Interview with G.V. Kempegowda, District President of the Sri Durga Parameshwari Yuvaka Sangaha, Menasinhadya, on 15/11/2006.

<sup>58</sup> The Tamil Nadu and Karnataka governments formed the special task force in the 1990s to nab Veerappan and in the last fifteen years there were many encounters between the STF and Veerappan group. Even after accomplishing the task of hunting Veerappan, the STF is not disbanded; instead the government has announced that STF operations in the forest area.

<sup>59</sup> The first instance of Naxalities were noticed in 2003 in Edu village of Karkalataluk were Parvathi and Hajima were killed in an police encounter which brought the basic issues of tribal and Naxalites. The biggest loss to the party was SakethRajan, who was the main architect to the political and organizational growth of the party, and his associate Shivalingu in Menasinhadiya of Chikmagalur district. See Awasthi, Kirtiman (2008): "Many Takers of a Park", *Down to Earth*, Vol.16, No.23, April 16-30, pp.23-27.