

LISTING PROFORMA

IN THE SUPREME COURT OF INDIA

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1. Nature of the matter: Civil
2. Name(s) of Petitioner(s)/Appellant(s): Wildlife First & Ors.
3. Name(s) of Respondent (s): Union of India & Ors.
4. Number of case: WP (C) No. \_\_\_\_\_ of 2008.
5. Advocate(s) for Petitioner(s): P.K. Manohar.
6. Advocate(s) for Respondent (s):
7. Section dealing with the matter: X.
8. Date of the impugned Order/Judgment: N.A.
- 8A. Name of Hon'ble Judges: N.A.
- 8B. In Land Acquisition Matters :
  - i) Notification/Govt. Order No. u/s. 4,6) dated.....issued by Centre/State of: N.A.
  - ii) Exact purpose of acquisition & village involved: N.A.
- 8C. In Civil Matters :-
  - (i) Suit No., Name of Lower Court.: N.A.

Date of Judgment: N.A.
- 8D. In Writ Petitions:-

"Catchword" of other similar matters: N.A.
- 8E. In case of Motor Vehicle Accident Matters :

Vehicle No.: N.A.
- 8F. In Service Matters
  - (i) Relevant service rule, if any.: N.A.
  - (ii) G.O./Circular/Notification, if applicable or in question: N.A.
- 8G. In Labour Industrial Disputes Matters :

I.D. Reference/Award No. if applicable : N.A.
9. Nature of urgency: Request for Interim reliefs
10. In case it is a Tax matter :
  - a) Tax amount involved in the matter: N.A.
  - b) Whether a reference/statement of the case was called for or rejected: N.A.
  - c) Whether similar tax matters of same parties filed earlier (may be for earlier/other Assessment Year)? : N.A.
  - d) Exemption Notification/Circular No.: N.A.
11. Valuation of the matter: Nil
12. Classification of the matter: PIL MATTER

(Please fill up the number & name of relevant category with sub category as per the list circulated)

No. of Subject Category with full name: 08 -- LETTER PETITION & PIL

No. of sub-category with full name: 0805 -- Ecological Imbalance: Protection of Forest

13. Title of the Act involved (Centre/State): Constitution of India & Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

14. (a) Sub-Classification (indicate Section/Article of the Statute): Articles 14 & 21

(b) Sub-Section involved: Nil

(c) Title of the Rules involved (Centre/State): Nil

(d) Sub-classification (indicate Rule/Sub-rule of the Statute): Nil

15. Point of law and question of law raised in the case: Whether the impugned Act is **ultra vires** the powers of parliament and whether the impugned Act is **unconstitutional**

16. Whether matter is not to be listed before any Hon'ble Judge?

Mention the name of the Hon'ble Judge: N.A.

17. Particulars of identical/similar cases, if any W.P. ( C ) No. 50 of 2008 BNHS Vs. UOI.

a) Pending cases: Yes Listed on 28.3.2008

b) Decided cases with citation: N.A.

17A. Was SLP/Appeal/Writ filed against same impugned Judgment/order earlier? If yes, particulars: NA

18. Whether the petition is against interlocutory/final order/decreed in the case. NA

19. If it is a fresh matter, please state the name of the High Court and the Coram in the impugned Judgment/Order: N.A..

20. If the matter was already listed in this Court : No.

a) When was it listed?: N.A.

b) What was the Coram?: N.A.

c) What was the direction of the Court: N.A.-

21. Whether a date has already been fixed either by Court or on being mentioned for the hearing of matter? If so, please indicate the date fixed: No

22. Is there a caveator? If so, whether a notice has been issued to him?: N.A.

23. Whether date entered in the Computer?: N.A.

24. If it is a criminal matter, please state :

a) Whether accused has surrendered: N.A.

b) Nature of offence, i.e. convicted under Section with Act: N.A.

c) Sentence awarded: N.A.

d) Sentence already undergone by the accused: N.A.

24 e) (i) FIR/RC/etc.: N.A.

Date of Registration of FIR etc.: N.A.

Name & place of the Police Station: N.A.

(ii) Name & place of Trial Court: N.A.

Case No. in Trial Court and Date of Judgment: N.A.

(iii) Name and place of 1st Appellate Court: N.A.

Case No. in 1st Appellate Court & date of Judgment: N.A.

Date 25/03/2008.

P.K. MANOHAR  
Advocate for Petitioner

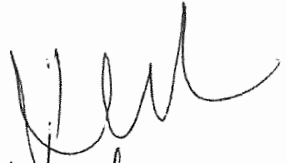
CHECK LIST

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1. Whether the contents of the Petition/appeal, applications and accompanying documents are clear, legible and typed in double space one side of the paper. Yes/No
2. Whether the particulars of the impugned order and the orders passed by the Court(s) below are uniformly written in all the documents. Yes/No- N/A
3. Whether the petition / appeal contains a statement in terms of Order XVI / XXI of Supreme Court Rules as to whether the Petitioner has filed any petition against the impugned order / judgment earlier, and if so, the result thereof stated in the petition. Yes/No
4. Whether the addresses of the parties and their representation are complete and set out properly. Yes/No
5. Whether the cause title of the petition / appeal corresponds to that of the impugned Judgment and names of parties has been filed. Yes/No- N/A
6. Whether the detailed cause title has been mentioned in the impugned and if not, whether memo of parties has been filed. Yes/No N/A
7. Whether the petition and applications bear the signatures of counsel/petition. Yes/No
8. Whether the prescribed court fee has been paid. Yes/No
9. Whether the affidavit of the petition in support of the petition/appeal and applications has been filed. Yes/No
10. Whether the Vakalatnama has been properly executed by the petitioners / appellants and accepted by the Advocate and Memo of Appearance filed. Yes/No
11. Whether the Annexures referred to in the petition/List of dates are true copies of the documents before the Court below and are filed in chronological order. Yes/No



12. Whether the Petition / appeal is confined only to the pleadings in the Court/tribunal below and  
If not whether application for taking additional grounds/ documents with affidavit and court fee has been filed. ~~Yes/No/NA~~  
Yes/No/NA
13. If there are any vernacular documents / portion/ lines, whether application for exemption from filing Official Translation, with affidavit and court fee, has been filed. Yes/No/NA
14. If the Petition/appeal is time barred, whether application for condonation of delay mentioning the no of days of delay, with affidavit and court fee has been filed. Yes/No/NA
15. If a party in the court below has died, whether application for bringing LRs. On record indicating the date of death, relationship, age and addresses along with affidavit and court fee has been filed. ~~Yes/No/NA~~  
Yes/No/NA
16. In SLP/Appeal against the order passed in Second Appeal whether copies of orders passed by the Trial Court and First Appellate Court have been filed. ~~Yes/No/NA~~  
Yes/No/NA
17. In matters involving conviction whether separate proof of surrender in respect of all convicts or application for exemption from surrendering has been filed. Yes/No/NA
18. Whether paragraphs and pages of paper book have been numbered consecutively and correctly noted in Index. Yes/No/NA-

  
P. K. Manohar.  
Advocate for the Petitioner



## SYNOPSIS AND LIST OF DATES

The present Writ Petition challenges the Legality and Constitutional validity of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2008 as being violative of the petitioners fundamental rights guaranteed under Articles 14 and 21 read with Article 48A and 51A(g) of the Constitution of India. ①

The petitioners are also challenging the validity on the ground that the Parliament lacks legislative competence to enact the impugned Act since the pith and substance of the impugned Act relates to rights in and over land and creating tenurai rights on forest lands which is a subject falling squarely under entry 18 of List II and therefore beyond the competence of the Parliament. ②

The petitioners are also challenging the validity of the impugned Act on the ground that it is against the principles of sustainable development and therefore violative of the right to life and threatening the ecological and environmental security of the nation and therefore violative of the fundamental rights guaranteed under Articles 14 and 21 of the Constitution. ③

The impugned Act proposes to confer forest rights on scheduled tribes and other traditional forest dwellers. The definition of the said two classes is vague and confusing and renders the impugned Act incapable of being implemented. The impugned Act also contemplates that besides the reserved forests the forest rights will also be granted in the protected areas i.e. the national parks and sanctuaries declared under the Wild Life (Protection) Act, 1972. This in the respectful submission of the petitioners would totally destroy the protected areas network assiduously created for carrying out the mandate of Article 48 A and 51 A (g) of the Constitution.

carefully  
created  
areas  
destroyed

That under the impugned Act the right to exploit minor forest produce except timber will also be granted by the Gram Sabhas. Since sale of minor forest produce will also be permitted and will not be restricted to bona fide personal use. There is nothing to prevent exploitation on a commercial scale at unsustainable levels which will destroy the forests of India.

That the impugned Act will also reopen the reserved forests and rights to the people would be granted in them even though these have been created and established after following the due process of law.

The impugned Act further proposes to make the Gram Sabhas the authority for determination and conferment of forest rights. The

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Gram Sabha is defined as a village assembly comprising of all adult members of the village. Under the impugned Act the procedure prescribed for verification of claims requires application of mind to examine documents such as maps, sanads, reports, judgments, etc. The Gram Sabha is also empowered to adjudicate upon competing claims before making its recommendations. The petitioners submit that the procedure of determination of forest rights is against the principles of natural justice and all known principles of law. The Gram Sabhas will be determining the nature and extent of the rights of its members and of itself, which is illegal. The Gram Sabha as a body is ill equipped to determine complicated questions of facts and law and pertaining to rights based on evidence both oral and documentary. Since the Gram Sabha is incapable of functioning as a judicial body the adjudication of claims by the Gram Sabhas will lead to serious complications and would adversely affect the protection of forests.

That it cannot be denied that the forest are under tremendous pressure and are being rapidly lost. The regularisation of encroachments has been implemented since many decades by the States. Since there is no will to protect the forest the encroachments continue in the hope that one day the government will regularise the same. This has only resulted in fresh encroachments and loss of large areas, which were under forests. Under the impugned <sup>act</sup> the cut off date for regularisation has been fixed as 13.12.2005. Previously



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under the Forest Conservation Act, the cut of date for regularisation  
was 1978. The whole exercise of distributing the forest land under  
the impugned Act will be done in an arbitrary manner which is  
unsustainable and will destroy the last remaining forests of India.

The petitioners are also challenging the impugned Rules on the  
ground that they are ultra vires, arbitrary, unreasonable and violative  
of the of the petitioners fundamental rights guaranteed under Article  
14 and 21 of the Constitution of India.

The petitioners submissions that the impugned Act is  
unconstitutional and destructive of the basic structure guaranteed  
under Article 14 and 21 of the Constitution of India in as much as  
there is no fundamental right greater than the right to life with  
ecological and environmental security necessary to sustain it.

Hence this writ petition.

#### LIST OF DATES

1927	The Indian Forest Act, 1927 enacted
1972	The Wild Life (Protection) Act, 1972 enacted
1976	42 <sup>nd</sup> Amendment to the Constitution whereby Articles 48A and 51A were introduced and the

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subject 'Forest' and protection of animals and birds were shifted from the Sytate List to the Concurrent List.

1980 The Forest (Conservation) Act, 1980 enacted

1986 The Environment (Protection) Act, 1986 enacted

1988 The National forest Policy , 1988 formulated

29.12.2006 The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

1.1.2008 The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rule, 2008

That an identical petition challenging the impugned Act has been filed by the Bombay Natural History Society and others in this Hon'ble Court as W P (C) No. 50 of 2008.

24.3.2008 Hence this Writ Petition

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NOS. 109 OF 2008

In the matter of:

1. Wildlife First, Through its  
Trustee and Authorized Signatory  
Praveen Bhargav, No. 1 2 3 5,  
1<sup>st</sup> Floor, 26<sup>th</sup> 'A' Main, 4<sup>th</sup> 'T' Block,  
Jayanagar, Bangalore- 41.
2. Nature Conservation Society,  
through its President, Secretary,  
Kishor Rithe, Pratishtha,  
Bharat Nagar, Akola Road,  
Amravati, Maharashtra - 444607.
3. Tiger Research and Conservation Trust,  
through its Trustee and President,  
Harshwardhan, Dhanwatey,  
59-60 Shivneri, Ramdaspath,  
Nagpur-440010.

Petitioners

Versus

1. Union of India, through  
the Cabinet Secretary, South Block,  
New Delhi -110003. contesting  
Respondents
2. The Ministry of Environment and Forest,  
Through its Secretary,  
Paryavaran Bhavan, Lodhi Road ,  
New Delhi. contesting  
Respondents
3. Ministry of Tribal Affairs,  
through its Secretary,  
Shashtri Bhawan  
New Delhi. contesting  
Respondents



**MEMORANDUM OF WRIT PETITION UNDER ARTICLE 32 OF  
THE CONSTITUTION OF INDIA.**

To,

The Hon'ble Chief Justice of India  
And His Companion Justices of the  
Hon'ble Supreme Court of India

The humble petition of the  
Petitioner above named.

**MOST RESPECTFULLY SHOWETH:**

1. This is a writ petition under Article 32 of the Constitution of India challenging the legality and Constitutional validity of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, hereinafter referred to as the 'Impugned Act', and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Impugned Rules, 2008, hereinafter referred to as the Impugned Rules, as unconstitutional being violative of the petitioners fundamental rights guaranteed under Article 14 and 21 read with Articles 48A and 51A(g) of the Constitution of India. The petitioners are also challenging the provisions of the Impugned Act as being arbitrary, illegal, unreasonable, ambiguous, void and against public interest and destructive of the right to life guaranteed under Article 21 of the Constitution. The petitioners are also challenging the Impugned Act as being ultra vires the powers of the Parliament

under the Constitution and therefore unconstitutional. The petitioners are also challenging the directions issued by the Central Government in modifying or amending the provisions of the Government of India allocation of business rules, 1961 whereby the Forests to the extent its relates to the impugned Act has been transferred to the Ministry of Tribal Affairs from the Ministry of Forest and Wildlife as being arbitrary, malafide, unreasonable and being violative of Articles 14 and 21 of the Constitution of India.

#### **About the Petitioners**

2. The petitioner No. 1 is a Bangalore based wildlife conservation organization working in the field of forest and wildlife conservation. It is also working with the tribal communities in the Western Ghats in the State of Karnataka. In recognition of its work in the field of forest and wildlife conservation the said petitioner has been nominated as one of the non-official members to the National Board for Wildlife headed by the Hon'ble Prime Minister of India. The said petitioner is concerned with the disastrous effect of the impugned Act on the forest and wildlife of the country. The impugned Act will also have serious adverse impact on the scheduled tribes and the tribal people in particular.

3. The Petitioner No. 2 is a society established in 1990 at Amravati. The society is a non-profit organisation working in Central India with its focus towards conservation of wildlife and Bio-

diversity of the region through education, research, protection and consultation with various sections of the society. The said petitioner have successfully campaigned against illegal sandal wood oil extraction units operating in Maharashtra, illegal mining around Tadoba-Andhari Tiger Reserve and illegal felling of trees around the National Parks and Sanctuaries besides other forests and wildlife and environment related issues.

4. The petitioner No. 3 is a Nagpur based Public Charitable Trust involved in research, monitoring, surveys, setting up training camps for human resource development, resettlement of villages from the protected areas, specially in and around the Tadoba – Andhari Tiger Reserve (TATR) and the Pench Tiger Reserve and in the surrounding areas in the Vidharba region of Maharashtra, since the year 2000. Presently it is assisting the Forest Department in finding solutions to the sudden increase in the incidents of Man – Animal (Tiger) conflict in the North Chandrapur Forest Circle areas of the Vidharba.

5. The 1<sup>st</sup> respondent is the Union of India represented through the Chief Secretary. The said respondent has been instrumental in preparing the impugned Act. Both the Ministry of Environment and Forests and the Ministry of Tribal Affairs are directly under it.



6. The 2<sup>nd</sup> Respondent is the Ministry of Environment and Forests which is in-charge of laying down policies and guidelines on the preservation and protection of forests, wildlife and environment and is responsible for the implementation of the Forests (Conservation) Act, 1980, Wild Life (Protection), Act, 1972 and the Environment (Protection) Act, 1986.

7. The 3<sup>rd</sup> respondent is the Ministry of Tribal Affairs. Though the said Ministry is in-charge of the Welfare of the Tribals, it has been made the nodal agency for overseeing the implementation of the provisions of the impugned Act.

#### **The impugned Act**

8. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill 2006 was introduced in the Lok Sabha on 13<sup>th</sup> December 2005 and was passed by the Lok Sabha on 15<sup>th</sup> December 2006. The Bill was thereafter placed and passed by the Rajya Sabha on 18<sup>th</sup> December, 2006. The Bill obtained the assent of the President on 29<sup>th</sup> December, 2006. Thereafter the Rules were made and notified in the Official Gazette on 1<sup>st</sup> January, 2008.

9. The objects and reasons of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 as set out in the impugned Act are:

*"Whereas the recognized rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers include the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling Scheduled Tribes and other traditional forest dwellers;*

*And whereas the forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem.*

*And whereas it has become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes and other traditional forest dwellers including those who were forced to relocate their dwelling due to State development interventions."*

10. The salient features of the impugned Act comprising of six chapters are as under:

(i) **Chapter I** under the heading 'Preliminary' provides that the impugned Act extends to the whole of India except the State of Jammu and Kashmir and that the same will come into force on such date as the Central Government may by notification in the Official Gazette, appoint.

Section 2 provides the definition Clause. It defines the terms (a) Community Forest Resource; (b) Critical Wildlife Habitat; (c) Forest Dwelling Schedule Tribes; (d) Forest Land; (e) Forest Rights; (f) Forest Villages; (g) Gram Sabha; (h) Habitat; (i) Minor Forest Produce; (j) Nodal Agency; (k) Notification; (m) Scheduled Area; (n) Sustainable Use; (o) Other Traditional Forest Dwellers; (p) Village and (q) Wild Animal.

(ii) **Chapter II** prescribes the forest rights under the impugned Act.

Section 3 (1) provides that the following shall be the forest rights of the forest dwelling scheduled tribes and other traditional forest dwellers on all forest lands. The rights as enumerated in the said section are:-

(a) right to hold and live in the forest land under the individual or common occupation for habitation or for



self cultivation for livelihood by a member of the forest dwelling scheduled tribe or other forest dwellers;

- (b) community rights such as nistar, by whatever called including rights under the princely state, zamindari or such intermediary regimes;
- (c) right of ownership, access to collect, use, and dispose of minor forest produce which have been traditionally collected within or outside village boundaries;
- (d) other community rights of uses or entitlements such as fish and other products of water bodies, grazing and traditional seasonal resources access of nomadic or pastoralist communities;
- (e) right of community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;
- (f) right in or over disputed land;
- (g) right for conversion of pattas or leases or grants issued by any local authority or any State Government on forest land to titles;
- (h) right of settlement and conversion of all forest villages, old habitations, unsurveyed villages and other villages in forests into revenue villages;
- (i) right to protect, regenerate or conserve or manage any community forest resource for sustainable use;

- (j) right recognized by State laws or laws of autonomous district council as rights of tribals under any traditional or customary law;
- (k) right of access to bio diversity and intellectual property and traditional knowledge related to bio-diversity and cultural diversity;
- (l) any other traditional right customarily enjoyed by the forest dwelling scheduled tribes or other traditional forest dwellers; and
- (m) right to in situ rehabilitation.

Section 3(2) provides for diversion of forest land and felling of up to 75 trees per hectare for non-forestry activity that includes schools, dispensary or hospital, fair price shops, electric and telecommunication lines, water pipelines, minor irrigation canals, vocational training centers, roads, community centers, etc. notwithstanding anything contained in the Forest (Conservation) Act, 1980. This is however subject to an extent of one hectare for each case i.e. school, canal, electric line etc.

(iii) **Chapter III** relates to recognition restoration and vesting of forest rights and related matters.

Section 4 (1) recognizes and vests forest rights in the forest dwelling scheduled tribes and other traditional forest dwellers the

forest rights recognized under the impugned Act notwithstanding anything contained in any other law for the time being in force.

Section 4(2) provides that the forest rights recognized under the impugned Act in critical wildlife habitats of national parks and sanctuaries may be subsequently modified or re-settled in accordance with conditions specified therein.

Section 4(3) provides the cutoff date for such vesting in respect of forest dwelling scheduled tribes and other traditional forest dwellers is provided subject to occupation of forest land before 13<sup>th</sup> December, 2005.

Section 4(4) provides that the right conferred shall be heritable but not alienable or not transferable.

Section 4(5) puts a ban on eviction of forest dwelling scheduled tribes and traditional forest dwellers until the process of recognition and verification is complete.

Section 4(6) provides that the area to be vested in an individual and family shall be restricted to the area under actual occupation and shall not exceed 4 hectares.



Section 4(7) provides that forest rights shall be conferred free of encumbrances and procedural requirements including clearances under Forest (Conservation) Act, 1980.

Section 5 prescribes the powers of the holder of forest rights and includes:-

- (a) protect the wildlife, forest and biodiversity;
- (b) ensure protection of catchment area, water sources and other ecological sensitive areas;
- (c) ensure preservation of habitat of forest dwelling scheduled tribes and traditional forest dwellers; and
- (d) ensure that the decision taken by Gram Sabha are complied with.

(iv) Chapter IV prescribes the authorities and procedure for vesting of forest rights.

Section 6(1) provides that the Gram Sabha shall be the authority to initiate the process for determining the nature and extend of individual and community forest rights that may be given to the forest dwelling scheduled tribes and other traditional forest dwellers.



Section 6(2) provides an appeal to the Sub Divisional Level Committee by persons aggrieved by the resolution of the Gram Sabha.

Section 6(3) requires the State Government to constitute a Sub Divisional Level Committee.

Section 6(4) provides an appeal to the person aggrieved to the District Level Committee from the Sub Divisional Committee.

Section 6(5) provides that the District Level Committee shall be the final authority to finalise and approve the records the forest rights.

Section 6(6) provides that the decision of the District Level Committee of the record of forest rights shall be final and binding.

Section 6(8) provides that the Sub Divisional Level Committee and the District Level Committee and the State Level Monitoring Committee shall consists of the officers of the department of Revenue, Forest and Tribal Affairs of the State Government and three members of the Panchayat Raj Institution.

(v) **Chapter V** prescribes the offenses and penalties.

(vi) **Chapter VI** contains the miscellaneous provision.

Section 11 <sup>MOTA</sup> provides that the Ministry of the Central Government dealing with Tribal Affairs shall be the nodal agency for the implementation of the impugned Act.

Section 13 <sup>NON-OBSTACLE</sup> provides that the provision of the impugned Act shall be in addition to and not in derogation of the provisions of any other law for the time being force, save as provided in the said Act.

Section 14 prescribes the Rule making powers of the Central Government.

A True copy of the said impugned Act dated 29.12.2006 is annexed hereto and marked ANNEXURE P-1.

**The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007**

11. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007, which were notified on 1.1.2008 provides as under:

Rule 2 defines certain terms in the impugned rules. Some of the important definitions are set out herein below:

(b) "bonafide livelihood needs" is defined as means fulfillment of sustenance needs of self and family through production or sale of produce resulting from self cultivation of forest land as provided under clause (a), (c) and (d) of sub-section 1 of Section 3 of the impugned Act;

(c) "claimant" means an individual, group of individuals, family or community making a claim for recognition and vesting of rights listed in the impugned Act;

(d) "disposal of minor forest produce" under clause (c) of sub-section (1) of the impugned Act shall include local level processing, value addition, transportation in forest area through head-loads, bicycle and handcarts for use of such produce or sale by gatherer or community for livelihood;

(e) "Forest Rights Committee" means a committee constituted by the Gram Sabha under impugned Rule 3;

Rule 3 provides for the working of the Gram Sabha and the Forest Rights Committee.

(1) provides that the Gram Sabhas shall be convened by the Gram Panchayat and in its first meeting elect from amongst its members, a committee not less than ten but not exceeding fifteen persons as members of the Forest Rights Committee in which at least one-third shall be the Scheduled Tribes and provided that not less than one-third of such members shall be woman. It further provides that where there are no

Scheduled Tribes, at least one-third of such members shall be woman.

(2) The Forest Rights Committee shall decide on a chairperson and a secretary and intimate it to the Sub-Divisional Level Committee.

(3) Provides for exclusion of the member of the Forest Rights Committee from participating in the verification proceedings when he is also a claimant and his claim is being considered.

Rule 4 provides the functions of Gram Sabhas

(1) The Gram Sabhas shall:

- (a) initiate the process for determining the nature and extent of forest rights, receive and hear claims;
- (b) prepare list of claimants of forest rights and maintain a register containing details of claims and the claimants as the Central Government, by order determine;
- (c) pass a resolution on claims on forest rights after giving opportunity to interested persons and concerned



authorities and forward the same to the Sub-Divisional Level Committee;

- (d) consider resettlement packages under clause (e) of Sub-Section 2 of Section 4 of the impugned Act and pass appropriate resolutions; and
- (e) constitute committees for the protection of wildlife, forest and biodiversity, from amongst its the members to carry out provisions of Section 5 of the impugned Act.

(2) Provides Coram for the meeting which shall not be less than two thirds of all members of Gram Sabha provided there is heterogeneous population of Scheduled Tribes and non Scheduled Tribes. The members of Scheduled Tribes, primitive tribal groups (PTGs) and pre-agricultural communities shall adequately represented.

Rule 5. Provides for the Constitution of the Sub – Divisional Level Committee with the following members.

- (a) Sub-Divisional Officer or Equivalent Officer – Chairperson;

- (b) Forest Officer in charge in Sub-Division or Equivalent Officer- Member;
- (c) Three members of the Block or Tehsil level Panchayat to be nominated by the District Panchayat or Autonomous District Council or Regional Council with representation from the Scheduled Tribes, traditional forest dwellers and woman as the members;
- (d) a representative of the Tribal Welfare Department in charge of the Sub-division.

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Rule 6 Provides for the Constitution of the Sub-divisional Level Committee, which will;

- (a) provide information to Gram Sabhas about the duties of the right holders towards the protection of wildlife, forest and biodiversity with reference to critical flora and fauna which need to be conserved and protected;
- (b) provide forest and revenue maps and electoral rolls to the Gram Sabha or the Forest Rights Committee;
- (c) collate all the resolutions of the concerned Gram Sabhas;

- (d) consolidate maps and details provided by the Gram Sabhas;
- (e) examine the resolutions and the maps of the Gram Sabhas to ascertain the veracity of the claims;
- (f) hear and adjudicate disputes between Gram Sabhas on the nature and extent of any forest rights;
- (g) hear petition from persons, including State agencies, aggrieved by the resolutions of the Gram Sabhas;
- (h) co-ordinate with other Sub-Divisional Level Committees for inter sub-divisional claims;
- (i) prepare block or tehsil-wise draft record of proposed forest rights after reconciliation of government records;
- (j) forward the claims with the draft record of proposed forest rights through the Sub-Divisional Officer to the District Level Committee for final decision;
- (k) raise awareness among forest dwellers about the objectives and procedures laid down under the Act and in the said rules;



- (l) ensure easy and free availability of proforma of claims to the claimants as provided in Annexure – I (Forms A & B) of these rules; and
- (m) ensure that the Gram Sabha meetings are conducted in free, open and fair manner with requisite quorum.

Rule 7 Provides for the Constitution of the District Level Committee of which the District Collector is the Chairperson and the DFC, three members of the District Panchayat and an officer of the Tribal Welfare Department, as its members.

Rule 8 sets out the functions of the District Level Committee. Its function primarily relates to strict implementation of the impugned Act.

Rule 9 Provides for the Constitution of the State Level Monitoring Committee under the Chairmanship of the Chief Secretary with Secretaries of the Revenue, Tribal and Social Welfare, Forest Departments, Secretary Panchayati Raj, three ST members and the Commissioner Tribal Welfare as its members.

Rule 10 sets out the functions of the State Level Monitoring Committee. The primary functions relates to monitoring the implementation of the impugned Act and Rules.

Rule 11 prescribes the procedure for filing determination and verification of claims.

Rule 12 sets out the process of verification.

Rule 13 sets out the evidence for recognition and vesting of forest rights.

Rule 14 provides for an appeal from the resolution of the Gram Sabha to the Sub-Divisional Level Committee.

Rule 15 provides for an appeal against the decision of the Sub-Divisional Level Committee, to the District Level Committee.

A True copy of the said impugned Rules dated 1.1.2008 is annexed hereto and marked **ANNEXURE P-2**.

12. The petitioners submit that the impugned Act is ultra virus the Constitution and powers of the Parliament to legislate on the subject 'Land' covered under the impugned Act. Since the subject matter of the impugned Act does not fall in either of the subjects covered under List I or List III, the Parliament could not have legislated the impugned Act. The subject 'Land' falls entirely in list

II and within the exclusive powers of the State legislature. That the purported entry under which the present impugned Act is enacted by Parliament is entry 17A of list III. The entry reads as under:

*"17A. Forests"*

It may be noted that the entry deals with forests. Therefore the power to legislate on forest related matters and cannot be read or understood to change the very character of forests i.e. into agriculture or into revenue land or giving tenural rights on forest lands, etc,

As against this the other entry in the State list is item 18 of list II, which reads as under:

*"18. Land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer alienations of agricultural land; improvement; agricultural loans; colonization."*

Entry 45 of list II provides:

*"45. Land Revenue including the assessment and collection of revenue, the maintenance of land records, survey for*



*revenue purposes and record of rights, and alienation of revenues."*

13. It is submitted that the subject covered under the impugned Act being right in and over forest land the same will not be covered under the entry 'Forests', but in pith and substance would fall entirely under entry 'land' and 'Land Revenue' in List II of the Seventh Schedule. The impugned Act is in fact dealing with land i.e. right in and over land being is the main right conferred under the impugned Act. The right to conversion of forestland into revenue land and title to land will not fall within the subject 'forest'. It is therefore submitted that the impugned Act is a colorable piece of legislation without legislative competence and is, therefore, null and void and unconstitutional.

14. The petitioners respectfully submit that even otherwise the subject 'Forest' in List III must take its color from Article 48A of the Constitution and must be understood to mean only protection, preservation and management of the forest. It is also relevant to note that the entry 17A in List III mentions 'forests' and not 'forest land' and therefore it is submitted that the subject forest is limited only to protecting, propagating and managing the forests and not for creating interest in or distributing forest land for non forest purposes such as distribution of lands by granting pattas, ownership rights for agriculture and for creating tenural rights.

**Subject 'Forest' transferred from MoEF to Ministry of Tribal Affairs**

15. That the petitioners are also questioning the action of the 1<sup>st</sup> respondent in transferring the subject 'Forest' from the MoEF to the Ministry of Tribal Affairs immediately prior to the introduction of Schedule Tribes (Recognition of Forest Rights) Bill, 2005 as arbitrary and with the malafide intention of pushing through the forests rights bill. That all along the subject forests has remained under the Ministry of Environment and Forests. In order to avoid any objection or hindrance to the preparation of the impugned Act, the Ministry of Tribal Affairs had proposed an amendment in the Government of India (Allocation of Business) Rules, 1961 to make it the nodal Ministry for the preparation and implementation of the impugned Act. [The 3<sup>rd</sup> respondent persuaded the 1<sup>st</sup> respondent to transfer the subject "*all matters concerning tribal-forests Interface including recognition of forest rights of the forest dwelling Scheduled Tribes*" to itself.] All along the 2<sup>nd</sup> respondent has been framing the Policy and guidelines for forests and wildlife and is also responsible for their implementation. The motive or intention in transferring the subject 'forest' from the 2<sup>nd</sup> respondent to the 3<sup>rd</sup> respondent, overruling the strong objections raised by the 2<sup>nd</sup> respondent, is questionable. These objections are contained in letter of the 2<sup>nd</sup> respondent, dated 30/3/2005, in response to the then proposed (The Schedule Tribes (Recognition of Forest Rights) Bill, 2005. In Para 6 of the said letter the 2<sup>nd</sup> respondent has stated



the subject "Forests" is the business allocated to the Ministry of Environment and Forests as per Government of India (Transaction of Business) Rules, 1961 and hence it is implied that settlement of rights over forest lands is also the mandate of the Ministry of Environment and Forests and of no other Ministry including the Ministry of Tribals Affairs".

16. That without prejudice to the above, the petitioners further submit that the impugned Act is unconstitutional as it is violative of their fundamental rights guaranteed in Articles 14 and 21 read with Articles 48A and 51A(g) of the Constitution in as much the "forests" have to be safeguarded in the interest of the nation.

17. It is submitted that the impugned Act is unconstitutional for the reason that it is destructive of the very forests, which the State is under a constitutional duty to protect and preserve. Article 48A of the Directive Principles of State policy under the Constitution provides that the State shall endeavor to protect and improve the environment and safeguard the forests and wildlife of the country. It is well settled that though the Directive Principles are not enforceable in a court of law, they are paramount and guiding principles for the Governments while enacting legislations. Similarly, Article 51A (g) casts a duty on every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. That



Article 21 of the Constitution, which guarantees the right to life with human dignity includes the right to a clean and unpolluted environment and guarantees environmental and ecological security. Therefore, the impugned Act, which tends to create ownership rights and distribute the forest lands amongst groups of people which will lead to reducing the area under forest and destroying the forests which are the common heritage of mankind affecting the rights of the present and future generations is unconstitutional. The impugned Act is against the principles of sustainable development which includes the principle of public trust and inter-generational equity and therefore unconstitutional and liable to be struck down.

18. That if the impugned Act is implemented it would be totally destructive of the forests which the State and every citizen is under a constitutional duty to protect and preserve for the present and future generations. The impugned Act is incapable of being implemented since the right holders are incapable of precise identification and their numbers are unknown and their claims for forest rights would be far in excess of the sustainable carrying capacity of the remaining forests, which are already under intense pressure from over exploitation. Further, the subsequent inclusion of a new category of persons called 'Other Traditional Forest Dwellers' is arbitrary and unjustifiable since this category of persons including socially powerful and dominant castes / groups /

individuals who are traditionally not forest dependant at all. That every law to be valid must be based on the principle of sustainable development. There is no independent study to support the fact that the rights proposed to be conferred upon Scheduled Tribes and Other Traditional Forest Dwellers in view of vast numbers of claimants will be sustainable and not be destructive of forests or cause irreparable loss to the forests. On the contrary there is hard scientific evidence that has clearly established the negative human induced ecological impacts and anthropogenic disturbance on a spatial scale. Several peer reviewed scientific studies by scientists published in respected journals of international repute have documented the nature and extent of damage on forests due to a variety of human activity including settlements honeycombing Protected Areas and other critical wildlife habitat, commercial minor forest produce collection affecting species diversity and regeneration, livestock grazing depressing wild herbivore densities and dung export and extensive local hunting by people living inside Protected Areas. The Impugned Act will now give fresh impetus and legitimizing such activities under the pretext of correcting historical injustices and without any checks and balances. That the forests which are nature's treasures have been bestowed upon the entire mankind irrespective of whether the person is residing in or out side the forest and this valuable natural heritage cannot be monopolized and handed over to any groups of people without any



safeguards least of all to those who according to the impugned Act are "Other Traditional Forest Dwellers".

19. That the forests provide the environmental and ecological security to life and their destruction would adversely effect the environment, which includes quality of air, water and the biodiversity, threatening life on the planet particularly when the threat of global warming is looming large over the horizon. The United Nations, the international community and other expert bodies have raised an alarm over the rapid decline of forests and their adverse impact on climate change. The implementation of the provisions of the impugned Act will result in severe fragmentation and destruction of the remaining forests and this would directly threaten nature's life supporting systems and the life itself, which is a guaranteed fundamental right and one of the most important basic structure of our Constitution. That fragmentation of the remaining forests by indiscriminate distribution of forest land would drastically reduce the effectiveness of the positive role which the forests play in maintaining the natural balance.

20. The fact that the impugned Act makes no distinction between fragile ecologically biodiversity rich forests and relatively degraded forests and imposes no restriction on diversion of forest land in such eco-fragile areas even on steep hill slopes highlights the lack



of proper application of mind and due regard to the National Forest Policy, 1988 that has evolved after considerable debate.

21. That it is necessary to understand the true importance and meaning of forests. Standing timber by itself cannot make a forest. Even plantations cannot substitute a natural forest. Afforestation, plantation silvicultural operations may create a green cover but cannot replicate the rich diverse matrix of plant and animal along with the microbes and the biodiversity found only in natural undisturbed forest ecosystem. It takes millions of years of evolutionary process for a natural forest to come about. These forests survive on a few inches of humus or top-soil, which is created by the decomposed leaves and other biomass within the forests. This top soil which is critical for ensuring the productivity and bio diversity in a forest is vulnerable to disturbances such as grazing, felling of trees, fires, clearing of ground vegetation etc. Once the forest cover is cleared, the loss of the humidity due to increase in availability of sunlight adversely affects the fertile topsoil, as a result the regenerative capacity of the forest is lost forever. The topsoil besides holding the moisture also holds rich nutrients, which provides the substratum for growth of all the varieties of plants, including the microbes upon which the myriad of life forms survive. The intricate relationship and interdependence between plants and animals is a complex science and still not fully understood. That is also the reason why after clear felling and

clearing the under growth the soil loses its fertility in a few years and thereafter becomes unproductive resulting in the creation of wastelands and uncultivable lands. It is scientifically established that the forest ecosystem is extremely fragile and once the land is clear felled it can sustain agriculture only for a few years.

22. That though during the colonial period the forests had been felled for timber and for raising plantations, large areas were set aside and notified as Reserve Forests or Protected Forests under the Indian Forest Act, 1927. However, before reserving any forest the rights of owners were settled by following the procedure prescribed under the said Act. The rights that have been settled decades ago cannot be reopened except in accordance with law. In most cases, persons including tribals who have been able to establish their title and occupation were protected and their rights were recorded under the Act. By and large proper records of the settlement proceedings were prepared and maintained by the Settlement Officer and every right granted or refused were properly recorded. Therefore it is not correct to generalize that the rights of tribals and of other traditional forest dwellers were totally overlooked in the past and therefore the enactment of the impugned Act was necessary.



### **The 42nd Amendment of the Constitution**

23. It is however the recent understanding of the importance of the natural forest ecosystem and the biological diversity it protects and preserves, that has changed the thinking among scientists and policy makers that it is paramount interest of mankind to protect and preserve the remaining forests. Realizing the important role of the forests in the environmental and ecological security of the nation and concerned with the indiscriminate and wanton destruction of the forests and its ecosystems, the Parliament and the State Governments have enacted several laws for protecting and preserving the forests. With this object in mind the Parliament in its wisdom had enacted the Wild Life (Protection) Act 1972, the Forest (Conservation) Act 1980, the Environment (Protection) Act 1986 and the Biological Diversity Act, 2002. That the Central Government has also framed the National Forest Policy in 1988. That by the Constitution 42<sup>nd</sup> Amendment Act, 1976 the subject 'Forest' and 'Protection of wild animals and birds' was consciously shifted from State List to the Concurrent List to enable the Parliament to protect and safeguard the forests and wildlife. By the same amendment Articles 48A and 51A (g) have been added to part IV of the Constitution for the protection of the forests and wildlife of the country. The said Constitutional amendments reflect the concern of the Parliament and the people of India in the loss of forests and wildlife of the country. Under these circumstances the enactment of the impugned Act which has the effect of override the



provisions of the Indian Forest Act, 1927, the Wild Life (Protection) Act, 1972 and the Forest (Conservation) Act, 1980 defies reasons.

### **Doctrines of Sustainable Development and Public Trust**

24. That Protection of the Environment as a whole and the forests in particular has become a priority with the major threats to the environment such as climate change depletion of natural resources destruction of water systems and biodiversity and global warming. Sustainable development is a concept wherein the development needs of the present generation are met without compromising the needs of the future generations. The concept of sustainable development has been recognised as a fundamental principle of Indian Environmental Law and has been read as a part of Article 21 of the Constitution, which guarantees a right to a decent environment. It is well established that the public has a right to expect certain lands and forest areas to be retained with their natural characteristics. This involves the application of the public trust doctrine that certain common properties such as rivers, sea shores, forests and the air were held by the Government in trusteeship for the free and unimpeded use of the general public. These natural resources is of great importance to the people as a whole and it would be wholly unjustified to make them subject to private ownership. These resources being a gift of nature should be preserved and safeguarded for the benefit of the entire

mankind. The doctrine of public trust enjoins upon the Government to protect the resources for the enjoyment of the general public. The public trust doctrine is a part of the English common law which has been adopted by our legal system. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless it is in good faith for public good and in public interest.

25. That forest land or land with tree cover should not be treated merely as a resources readily available to be utilized for various projects and programmes, but as a national asset which requires to be properly safeguarded for providing sustained benefits to the entire country.

### **History of forest legislation and forest management in India**

26. The systematic management of forests in the country began with the appointment of Dietrich Brandis, a trained German Forester, as the first Inspector General of Forests (IGF) in 1864. The objective of management of forests gradually changed from obtaining supplies of timber for various purposes to protecting and improving forests and treating them as a biological growing entity. That the first Indian Forest Act was enacted in 1865 and subsequently it was substituted by the Indian Forest Act 1878

which was extended to most of the territories under the British Rule.

27. That in 1921, the Indian Forest Act, 1878 was repealed and substituted with the present Indian Forest Act, 1927. The revised Act made provisions for regulations of fellings in forests even under private ownership. The impugned Indian Forest Act, 1927 was adopted by the Government of India Law Adaptation Order, 1949 after attaining Independence in 1947. The Law Adaptation Order, 1949 has been ratified by the Parliament vide Law Adaptation Act, 1952. Large tracts of Reserve Forests (RF) and Protected Forests (PF) were notified under the provisions of Indian Forest Act, 1865 and 1878. The Princely States have also issued notifications classifying forests as Reserve Forests (RF) and Protected Forests (PF) and these notifications have been subsequently ratified by several States particularly the States of Uttar Pradesh and Madhya Pradesh.

#### **Indian Forest Act, 1927**

28. That the Indian Forest Act, 1927 was enacted with the following purpose as stated in the preamble :

*"An Act to consolidate the law relating to forests, the transit of forest - produce and duty leviable on timber and other forest - produce"*



That the Indian Forest Act, 1927 provides for notification of reserve forests by following the procedure laid down in Sections 4 to 20. Section 5 bars accrual of rights, Sections 6 and 7 provides for issuing proclamation and inquiry by the Settlement Officer. Section 9 provides for extinction of rights, Section 11 confers the power to acquire land over which rights have been claimed. Section 12 deals with claims to pasture or to forest produce. Section 14 deals with recording admission of claims, Section 15 provides for continued exercise of rights so admitted, Section 16 provides for commutation of rights, Section 17 provides for filing appeal against the order passed by the Settlement Officer. Section 20 provides for the final notification of the reserve forest. Section 24 prohibits alienation of rights without sanction. Section 26 lays down the acts that are prohibited in a reserve forest. Section 28 provides for formation of village by which the government may assign to any village - community the rights of government over any land, which has been constituted as a reserve forest. Section 29 to 34 provides for the notification of the Protected Forests and related matters. Chapter V deals with control over forests and lands, which are not Government properties for special purposes. Chapter VI deals with duty on timber and other forest produce. Chapter VII deals with Control of timber and other forest produce in transit. Chapter VIII deals with collection of drift and stranded timber. Chapter IX deals with penalties and procedures. Chapter X deals with cattle trespass

and Chapter XI deals with Forest Officers. Chapter XII deals with Subsidiary Rules and Chapter XIII with Miscellaneous matters. It is necessary to mention that the Indian Forest Act is a complete code which provides a legal frame work and machinery for identification and settlement of rights.

### The Wild Life (Protection) Act, 1972

29. That the Wild Life (Protection) Act, 1972 was enacted by the Parliament with the object of preserving the diversity in fauna and flora found in the country. The objects and reasons of the impugned legislations reads as under:

*"The rapid decline of India's wild animals and birds, one of the richest and most varied in the world, has been a cause of grave concern. Some wild animals and birds have already become extinct in this country and others are in the danger of being so. Areas which were once teeming with wild life have become devoid of it and even in Sanctuaries and National Parks the protection afforded to wild life needs to be improved. The Wild Birds and Animals Protection Act, 1912 (8 of 1912), has become completely outmoded. The existing State laws are not only out-dated but provide punishments which are not commensurate with the offence and the financial benefits which accrue from poaching and trade in*

wild life produce. Further such laws mainly relate to control of hunting and do not emphasis the other factors which are also prime reasons for the decline of India's wild life, namely, taxidermy and trade in wild life and products derived therefrom.

2. Having considered the relevant local provisions existing in the States, the Government came to the conclusion that these are neither adequate nor satisfactory. There is therefore, an urgent need for introducing a comprehensive legislation, which would provide for the protection of wild animals and birds and for all matters connected therewith or ancillary and incidental thereto.

3. Legislation in respect of the afore mentioned subject-matters relating to entry 20 of the State list in the Seventh Schedule to the Constitution, namely, protection of wild animals and birds and Parliament has no power to make a law in this regard applicable to the State (apart from the provisions of articles 249 and 250 of the Constitution) unless the Legislatures of two or more States pass a resolution in pursuance of article 252 of the Constitution empowering Parliament to pass the necessary legislation on the subject. The Legislatures of the States of Andhra Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Madhya Pradesh,



Manipur, Punjab, Rajasthan, Uttar Pradesh and West Bengal have passed such resolutions.

4. The Bill seeks to –

- (a) constitute a Wild Life Advisory Board for each State;
- (b) regulate hunting of wild animals and birds;
- (c) lay down the procedure for declaring areas as Sanctuaries, national Parks, etc.,
- (d) regulate possession, acquisition or transfer of, or trade in wild animals, animal articles and trophies and taxidermy thereof;
- (e) provide penalties for contravention of the Act.

The said Act proposed the setting up of protected areas for the protection and preservation of the rich wild life and different types of eco systems in the Country. Section 18 of the said Act provides that the State Government may, by notification, declare its intention to constitute any area other than an area comprised within any reserve forests or the territorial waters as a sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance for the propose of protecting, propagating or developing wildlife or its

environment. Sections 19 to 24 provides the machinery for enquiry and determination of rights of any person in or over the land within the limits of the sanctuary. Sections 25 provides the acquisition of lands or rights within the sanctuary. Section 25A, which was inserted by Acts 16 of 2003 w.e.f. 1.4.2003 provides that the proceedings under 19 to 25 shall be completed as far as possible within two years from the date of notification and that the notification shall not lapse if for any reason the proceedings are not completed within two years. Similarly under Section 35 the State Government made declare an area as a national park. Section 27 provides restriction of an entry to a sanctuary, Section 28 confers power upon the Chief Wildlife Warden to grant permit of entry into the sanctuary, Section 29 prohibits destruction exploitation or removal without permission of any wildlife from a sanctuary. The provisions of the Wild Life (Protection) Act, 1972 reflects the concerns of the Parliament in protecting diverse ecosystems, rich variety of animals and plants in public interest and the urgent need to protect them from being exploited.

30. The Wild Life (Protection) Act, 1972 was subsequently amended in 1982, 1986, 1991, 1993, 2002 and 2006. All these amendments were made with the object to further strengthen the protection for animals and plants and their habitats or the ecosystem. The preamble of the said Act amended in 2003 mentions 'ecological and environmental security', which reflects the

underlying importance of the said Act. The amended preamble of the Act reads as under:

*“An Act to provide for protection of wild animals, birds and plants and for matters connected therewith or ancillary or incidental thereto with a view to ensuring the ecological and environmental security of the country.”*

#### **The National Wildlife Action Plan - (2002-16)**

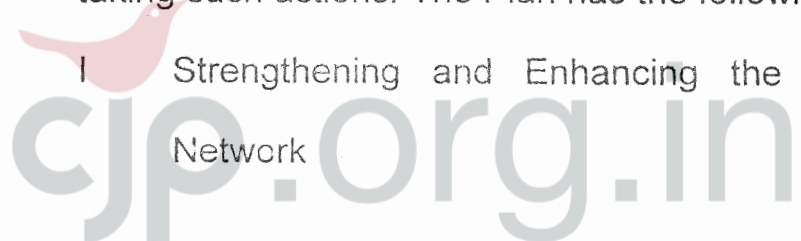
31. That the first National Wildlife Action Plan (NWAP) was adopted in 1983, based upon the decision taken in the XV meeting of the Indian Board for Wildlife. The National Wildlife Action Plan (2002-16) has been launched with the following background:

*“ The First National Wildlife Action Plan (NWAP) was adopted in 1983, based upon the decision taken in the XV meeting of the Indian Board For Wildlife held in 1982. The plan had outlined the strategies and action points for wildlife conservation which are still relevant. In the meanwhile, however, some problems have become more acute and new concerns have become apparent, requiring a change in priorities. Increased commercial use of natural resources, continued growth of human population and livestock populations and changes in consumption patterns are*



causing greater demographic impacts. Biodiversity conservation thus has become of focus of interest. The National Forest Policy was also formulated in 1988, giving primacy to conservation. Hence this new National Wildlife Action Plan.”

The Plan provides details of the actions that are required to be taken, prescribes time frame within which such actions has to be taken and identifies the agency (s) responsible for taking such actions. The Plan has the following Chapters:



- I Strengthening and Enhancing the Protected Area Network
- II Effective Management of Protected Areas
- III Conservation of Wild and Endangered Species and their Habitats
- IV Restoration of Degraded Habitats outside Protected Areas
- V Control of Poaching, Taxidermy and Illegal Trade in Wild Animal and plant Species

- VI Monitoring and Research
- VII Human Resource Development and Personnel Planning
- VIII Ensuring Peoples Participation in Wildlife Conservation
- IX Conservation Awareness and Education
- X Wildlife Tourism
- XI Domestic Legislation and International Conventions
- XII Enhancing Financial Allocation for Ensuring Sustained Fund Flow to the Wildlife Sector
- XIII Integration of National Wildlife Action Plan with Other Sectorial Plans

That a National Wildlife Action Plan Monitoring Committee has also been constituted by the 2<sup>nd</sup> respondent which monitors the timely implementation of the priority projects identified under the said National Wildlife Action.

### The Forest (Conservation) Act, 1980

32. The Forest (Conservation) Act, 1980 hereinafter referred to as the F.C. Act, was enacted by the Parliament under the shadows of the extensive loss of forest cover and biodiversity due to deforestation. The objections and reasons read as under:

*“Deforestation causes ecological imbalance and leads to environmental deterioration. Deforestation had been taking place on a large place on a large scale in the country and it had caused widespread concern.*

*cip.org.in*

*With a view to checking further deforestation, the President promulgated on the 25<sup>th</sup> October 1980, the Forest (Conservation) Ordinance, 1980. The Ordinance made the prior approval of the Central Government necessary for de-reservation of reserved forests and for use of forest-land for non-forest purposes. The Ordinance also provided for the constitution of an advisory committee to advise the Central Government with regard to grant of such approval.”*

33. Section 2 of the F.C. Act provides that notwithstanding any other law for the time being in force no State Government or any authority shall de-reserve a forest, use forest land for non forest purposes, assign by way of lease or otherwise any forest land,



clear felling of any forests land without permission from the Central Government. The permission to use forestland for non-forest use or de-notification of any forest under the F.C. Act is allowed only subject to compensatory afforestation, etc. The Central Government has framed comprehensive guidelines in 1990 to effectively deal with the problems of genuine persons occupying the forest land prior to 1980.

#### The National Forest Policy, 1988

34. The Preamble of the National Forest Policy 1988 states as under:

*“Resolution dated 12<sup>th</sup> May, 1952, the Government of India in the erstwhile Ministry of Food and Agriculture enunciated the a Forest Policy to be followed in the management of State Forests in the country. However, over the years, forests in the country have suffered serious depletion. This is attributable to relentless pressures arising from ever-increasing demand for fuel wood, fodder and timber; inadequacy of protection measures; diversion of forest land for non-forest uses without ensuring compensatory afforestation and essential environmental safe-guards; and the tendency to look upon forests as revenue earning resource. The need to review the situation and evolve, for*

future, a new strategy of forest conservation has become imperative. Conservation includes preservation, maintenance, sustainable utilization, restoration, and enhancement of the natural environment. It has thus become necessary to review the National Forest Policy."

The Basic Objectives of the Policy are :

- (a) Maintenance of environmental stability through preservation and, where necessary, restoration of the ecological balance that has been adversely disturbed by serious depletion of the forests of the country;
- (b) Conserving the natural heritage of the country by preserving the remaining natural forests with the vast variety of flora and fauna, which represents the remarkable biological diversity and genetic resources of the country;
- (c) Checking soil erosion and denudation in the catchment areas of rivers, lakes, reservoirs in the interest of soil and water conservation, for mitigating floods and droughts and for the retardation of siltation of reservoirs;
- (d) Checking the extension of sand-dunes in the desert areas of Rajasthan and along the coastal tracts;

- (e) *Increasing substantially the forest/tree cover in the country through massive afforestation and social forestry programmes, especially on all denuded, degraded and unproductive lands;*
- (f) *Meeting the requirements of fuel wood, fodder, minor forest produce and small timber of the rural and tribal populations;*
- (g) *Increasing the productivity of forests to meet essential national needs; and*
- (h) *Encouraging efficient utilization of forest produce and maximizing substitution of wood."*

35. The basic objective leading to the laying down of the National Forest Policy 1988 was to lay down new strategies of forest conservation since the 1952 Forest Policy was exploitation oriented and the depletion of forests was continuing at a furious pace. Conservation includes preservation, maintenance, sustainable utilization, restoration and enhancement of the natural environment. The principle aim of the Forests Policy is to ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium, which are vital for sustenance of all life forms, human, animal and plants. The derivation of direct economic benefit must be subordinate to the principle aim.



36. Since the Forest Policy has a statutory flavor its non-fulfillment would be violative of Articles 14 and 21 of the Constitution. Some of the basic objectives are (i) Maintenance of environmental stability through preservation and where necessary, restoration of ecological balance, (ii) Conserving the natural heritage by preserving the remaining natural forests with the vast variety of flora and fauna representing the remarkable biological diversity and genetic resource of the country. It is recognised that one of the essentials for forests management is the conservation of total biological diversity, the network of national parks, sanctuaries, biosphere reserves and other protected areas to be strengthen and extended adequately. The Forest Policy intends to have a minimum of 33% of the total land area under forests or tree cover in the plains, 66% in the hills in order to prevent erosion, land degradation and to ensure the stability of fragile ecosystem. Clause 4.3 of the Policy states that schemes and projects which interfere with forests that clothe steep slopes, catchments of rivers, lakes and reservoirs geologically unstable terrain and such other ecologically sensitive areas should be severely restricted. Tropical rain/moist forest, particularly in areas like Arunachal Pradesh, Kerala, Andaman and Nicobar Islands should be totally safeguarded. That the ban on commercial exploitation of forests of the Andaman Islands by this Hon'ble Court's order dated 31.10.2002 passed in the Forest Matter to save the critical rain

forests which were being heavily exploited, was also with a view to implement the National Forest Policy.

### **Report of the Planning Commission**

37. The report of the Planning Commission (Chapter IX) relating to forests and environment in the 25<sup>th</sup> 5-year plan 2002-2007 has noted the sustainability is not an option but imperative since without it environmental deterioration and economic decline will be feeding each other leading to poverty, pollution, poor health, political upheaval and unrest. The rapid increase in green house gases in the atmosphere land degradation, deteriorating conditions of fragile ecosystems, deforestation, loss of biodiversity, and environmental pollution has become subjects of serious global concern. The overall impact of these phenomena is likely to result in depletion of ozone layer, change of climate, rise in sea level, loss of natural resources, reduction in their productivity ultimately leading to an ecological crisis affecting livelihood options for development and overall deterioration in quality of life. The report notices the need to tackle environmental degradation in a holistic manner in order to ensure both economic and environmental sustainability. Forests play an important role in environmental and economic stability. The country's forest resources are under tremendous pressure. India's biological diversity is reflected in the heterogeneity of its forest cover. It is



one of the 12 mega diversity countries of the world. The biological diversity is being conserved through a network of biosphere reserves, national parks and sanctuaries however the challenges for conservation emanates from population pressure adverse impact of industrialization and threat from illegal trade.

### **Biological Diversity Act, 2002**

38. In compliance with the obligation under the United Nations Convention on Biological Diversity, the Parliament enacted the Biological Diversity Act, 2002. The Act provides for conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the use of biological resources, knowledge and for matters connected therewith or incidental thereto. The Act defines biological diversity to mean the variability among living organisms from all sources and the ecological complexes of which they are part and includes diversity within species or between species and of ecosystems. Sustainable use is defined as use of components of biological diversity in such manner and at such rate that does not lead to long term decline of biological diversity thereby maintaining its potential to meet the needs and aspirations of present and future generations.

39. Under the Biological Diversity Act, Chapter IX deals with duties of Central and State Governments. Section 36 provides that



Central Government shall develop national strategies, plans, programmes for the conservation and promotion and sustainable use of biological diversity including measures for identification and monitoring of areas rich in biological resources, promotion of *in situ* and *ex situ* conservation of biological resources, incentives for research, training and public education to increase awareness with respect to biodiversity. Sub section 2 empowers the Central Government to issue directions to the State Governments to take immediate measures to prevent threat, abuse or neglect of any area rich biological diversity, biological resources and their habitats.

40. Section 37 of the Biological Diversity Act empowers the State Governments to notify areas of biodiversity importance as biodiversity heritage sites. Section 38 empowers the Central Government notify any species which is on the verge of extinction and prohibit or regulate the collection thereof for any purpose and take appropriate steps to rehabilitate and preserve these species.

41. The emphasis of the Biological Diversity Act is to conserve to protect and preserve the biological diversity of the country. Towards that end the Act has provided for the establishment of National Biodiversity Authority, primarily to advise the Central Government and the State Government in respect of conservation of biodiversity, sustainable use and equitable sharing of benefits

arising out of utilization of biological resources. The Act therefore recognises the importance of biological diversity and for maintaining life sustaining system of the biosphere and recognizing that the conservation of biological diversity is a common concern of human kind and it is being significantly reduced by certain human activities.

### **Report of the National Forest Commission**

42. The National Forest Commission was constituted by the Ministry of Environmental Forests, Government of India, pursuant to the recommendation made by the Indian Board for Wildlife in its 21<sup>st</sup> meeting held on 21.1.2002 under the Chairmanship of the Hon'ble Prime Minister of India, to review the working of forests and wildlife sectors with the following terms of reference:

- i) review and assess the existing policy and legal framework and their impact in a holistic manner from the ecological, economic, social and cultural viewpoint;
- ii) examine the current status of forest administration and the forestry institutions both at all India and State level to meet the emerging needs of the civil society;

- iii) suggest ways and means to make forest administration more effective with a view to help achieve the above policy options; and
- iv) establish meaningful partnership and interface between forestry management and local communities including the tribals.

43. The Commission was headed by Mr. Justice B. N. Kripal, former Chief Justice of India (Chairperson) and six other members. The committee after meeting and consulting various stake holders published its report on 1<sup>st</sup> March 2006. It recognised the paradigm shift in the tenets of forest management from timber primacy to ecological and stake holder – oriented forestry taking cognizance of the recommendations of the Forest Policy 1988, Stockholm Conference 1972 and Rio de Janeiro Conference 1992 and of the continued pressure of encroachers and poachers on forest and wildlife despite the enactment of the Wild Life (Protection) Act, 1972 and the Forest (Conservation) Act 1980.

44. That the National Forest Commission in its final recommendation in Chapter 20 at page 378 has observed that the impugned Act would be harmful to the interests of the forest and the ecological security of the country. The relevant recommendations are reproduced as under:



"340. The National Forest Commission is of the considered opinion that the proposed Scheduled Tribes (Recognition of Forest Rights) Act would be harmful to the interests of forests and to the ecological security of the country. It would be bad in law and would be in open conflict with the rulings of the Supreme Court. Another legislation, therefore, needs to be framed providing the forest dwelling communities a right to a share from the forest produce on an ecologically sustainable basis and Ministry of Environment and Forests could be asked to do the needful, after taking into account the inputs of the State Governments as recommended by the Sarkaria Commission as a subject under the concurrent list."

#### **Intervention of the Hon'ble Supreme Court for protection of the forests**

45. That inspite of the Forest (Conservation) Act, 1980 and the National Forest Policy, 1988, the forests were being plundered at an unprecedented pace. Even protected areas such as Sanctuaries and National Parks were not spared as these were also being commercially exploited by allowing illegal mining and collection of minor forest produce on commercial scale. The country has lost large number of its endangered animals and plants

and poaching of wild animals within such protected areas have become rampant. The loss of the national animal the tiger, the rhino, etc. within the Indian forests has been a matter of concern and national debate. In spite of the several laws for the protection the forests, wildlife and biodiversity ecosystems, there was no improvement in the situation. The provisions of the Forest (Conservation) Act, 1980 were being flouted with impunity and there was no machinery to effectively check the rampant violations. It was therefore that on a public interest petition WP(C) No. 202 of 1995 this Hon'ble Court took upon itself the onerous task of ensuring compliance with the provisions of the Forest (Conservation) Act, 1980 and the Wild Life (Protection) Act, 1972 and the National Forest Policy, 1988. Several orders have been passed in the matter and this Hon'ble Court is monitoring the implementation of the laws for the protection of the natural forests on a regular basis. The Central Government has constituted the Central Empowered Committee under the Environment Protection Act to ensure the implementation of the orders of the Hon'ble Supreme Court and to report any violations brought to its notice. The petitioners respectfully submit that but for the intervention of this Hon'ble Court the nation would have lost most of its forests and wildlife.

Important orders passed by this Hon'ble Court prohibiting regularization of encroachments and on protection of forestland.

46. That this Hon'ble Court passed several landmark Judgments/order in the said petition. Some of important orders are setout herein below:

- i) By order dated 12/12/1996 this Hon'ble Court gave an extended meaning to the term forest and expanding the scope of applicability of the F.C. Act 1980 to all types of forests i.e. notified, forests recorded in Government record and the deemed forests (forest like area) irrespective of ownership. The impugned order directed the State Government to constitute expert committees to identify forest areas to regulate wood based industries in terms of their numbers and sustainable capacity of the forests of the State. Banned felling of trees in tropical wet evergreen forest of Tirap and Changlang in the State of Arunachal Pradesh.
- ii) By order dated 23/11/2001 in I.A. No. 502 in I.A. No. 703 filed by the Amicus Curiae this Court has restrained the Union Government from permitting regularization of any encroachments whatsoever without the leave of this Hon'ble Court.



- iii) That in I.A. No. 703 filed by the Amicus Curiae this Hon'ble Court has injuncted the Union of India from implementing a series of decisions taken by the Ministry of Environment and Forests, in respect of regularization of rights of the tribals on the forestlands vide order dated 5.2.2004 the notification dated 3.2.2004 and Corrigendum dated 9.2.2004 and delegation of powers to the Regional Empowered Committee's for approving diversion of forestland for non-forest use up to 4 hectares, order permitting conversion of 1,68,840.291 ha. of "forest" into "revenue land" on which the encroachments were earlier regularized in the State of Madhya Pradesh, order dated 6.2.2004 permitting diversion of 14,539 ha. of forestland for relocation of tribals in Tripura and diversion of 11,285.127 ha. of forestland and grant of pattas and conversion of forest villages into revenue villages in Madhya Pradesh.
- iv) By an order dated 7.5.2002 in I.A. No. 502 this Hon'ble Court prohibited felling of trees from the forest of Little Andaman Islands, the national park and sanctuaries, the tribal reserves in the entire Andaman and Nicobar Islands and strictly prohibited regularization of encroachments in any form, including allotment/use of forest land for agricultural or horticultural purposes. Further all post 1978

forest encroachment were directed to be completely removed within 3 months.

- v) By an order dated 15.1.1998 in I.A. No. 60 this Hon'ble Court had ordered investigation through the CBI against persons and Officials of the Revenue and Forest Department who had connived in large scale felling of trees on lands owned by tribals in the Bastar District, in the then State of Madhya Pradesh.
- vi) By an order dated 29/10/2002 in I.A. No. 276 this Hon'ble Court directed removal of encroachments in Thatkola Reserve Forest in the State of Karnataka.
- vii) By judgment dated 26.9.2005 in I.A. No. 566 this Hon'ble Court held the recovery of the Net Present Value (NPV) of Land in all the cases of diversion of forest land for non forest which have been approved after 30.10.2002 as legally valid.
- viii) That this Hon'ble Court in Writ Petition (C) No. 337 in Center for Environmental Law (WWF-I) Vs. Union of India, by order dated 13.11.2000 has prohibited de-reservation of national parks, sanctuaries and forests till further orders.

### **Adverse impact of the impugned Act on the forests**

47. It is therefore necessary to understand the implications of the impugned Act in light of the above developments in environmental law and policy in the Country. There is no explanation as to how the conferring of forest rights on forest dwelling scheduled tribes and traditional forest dwellers would further the cause of conservation and preservation of our national heritage. Further it is difficult to understand the reason why the forests rights have been conferred upon a new class of persons known as "Other Traditional Forest Dwellers". The other traditional forest dwellers comprise of people brought as labour for extraction of timber, raising plantations etc. and people encroaching on forests land for cultivation/ extraction for personal needs. It therefore cannot be expected of such people to protect the forests on the ground that they are used to living in harmony with nature and would not exploit the forests.

48. The fact remains that over the last over 50 years of independence with an exponential growth of population and ill planned developmental activities, the forests have only disappeared and the proof of the fact is that the new laws or the amendments to the existing forest and wildlife laws have been steadily strengthened over last many years and even now the protection efforts need to be strengthened and not relaxed.



49. It is submitted that the present legislation is unmindful of the fact that over the last 50 years we have not been able to protect and save our dwindling forests as a result the good natural forest with high crown density have shrunk to less than 10% of the total geographical area of India. That the implementation of the impugned Act would fragment and open up the last of the remaining forests to encroachers, exploiters and mostly middle man and the land mafia which would become impossible to contain and control since we have a large population with an insatiable appetite for agricultural land and forest produce. Therefore even if the entire forest available is distributed among the land less and poor, it would be insufficient to meet even a fraction of the demand for land. It is, therefore, necessary in national interest and in the interest of the Tribals that the last of the remaining natural forests and wildlife habitats are preserved for the present and future generations. It is mere shortsightedness and for short-term political gains that the present Forest Rights Act has been enacted and the same is not in public interest nor in the interest of the tribals. Once the forests are opened up and the protection removed, as is being envisaged under the impugned Act, the unregulated over exploitation of the forest produce on an unsustainable basis, mainly by traders and middle men, driven by ruthless market forces, will completely destroy the forest and in the end we would continue to find increasing number of even the so called the 'Other Traditional Forest Dwellers' and also the tribal people totally impoverished.

## Views of The Ministry And Environment and the Forest

50. It is relevant to note that the 2<sup>nd</sup> respondent all along in the past has been viewing encroachment on forest land as a serious problem. This is evident from the letter dated 3.5.2002 under the heading "Eviction of illegal encroachment on forest lands in various States/UT's time bound action plan", addressed to all the Chief Secretaries, Secretary Forests, and the Principal Chief Conservator of Forests of all the States / UT's. The opening paragraph of the impugned letter is important and is reproduced below:

*"I am directed to draw your attention to the problem of encroachments of forest lands which is assuming a serious proportion in the country. These encroachments have been attracting the attention of Central Government and State Governments have been requested from time to time to take prompt action against the encroachers under various Acts and Rules. Such encroachments are generally done by the powerful lobbies and cause great harm to forest conservation particularly when these are carried out in the remote areas in a honey comb pattern. These encroachments are also seriously threatening the continuity of the Wild Life corridors between the various National Parks and Sanctuaries. Somehow, timely action is not being taken by the frontline staff for the eviction of the encroachers which further*



*emboldens others also for similar actions. As per the information received from various States approximately 12.50 lakh hectares of forest land is under encroachment. There may be many more unrecorded instances which will add to the over all tally.*

*Hon'ble Supreme Court has also been greatly concerned with this pernicious practice and in their order of 23.11.2001 in IA No. 703 in W.P. No. 202/95 have restrained the Central Government from regularization of encroachments in the country. There is now a need to frame a time bound programme for eviction of the encroachers from the forest lands for which following steps are suggested."*

The impugned letter goes on to give a specific suggestions and measures that are required to be taken to evict illegal encroachments.

51. Thereafter in a complete reversal of its earlier stand the MoEF vide letter dated 21.12.2004 with the subject "Traditional rights of tribals on forest lands – discontinuance of eviction of tribals thereof" has communicated as under:

*"In view of the above, and without prejudice to Supreme Court's order dated 23.11.2001 and 23.2.2004, it has been*



found appropriate to request the State / UT Governments, that as an interim measure, they should not resort to the eviction of tribal people and forest dwellers other than in-eligible encroachers, till the complete survey is done for the recognition of such people and their rights, after setting up of District level Committees involving a Deputy Collector, a Sub-Divisional Forest Officer, and a representative of Tribal Welfare Department, by the State/UT Governments as reiterated in guidelines dated 18.09.1990 and 30.10.2002 of the Central Government. The State/UT Governments are advised to exclude such tribals/forest dwellers, other than ineligible encroachers, from the eviction drives. Simultaneously, it is also clarified here that this interim measure does not stop the State /UT Governments from evicting the ineligible encroachers from forest lands.

*Suitable instructions may be issued to forest functionaries at all levels to keep the above in view while dealing with eviction of in-eligible encroachments from forest lands”.*

52. Thereafter the 2<sup>nd</sup> respondent vide Office Memorandum dated 30.3.2005 addressed to the Joint Secretary, Ministry of Tribal Affairs have strongly opposed the introduction of the then proposed Scheduled Tribes (Recognition of Forest Rights) Bill, 2005. The Memorandum states that:

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*"The approach adopted in the proposed Bill requiring denotification of vast tracts of forestlands, and elimination of all legal protection for the forest cover, will lead to irreparable ecological damage of immense proportion. Decimation of forest as a result of enactment of the proposed Act, is likely to lead to more frequent and intense natural calamities like floods and, soil erosion, adversely affecting livelihoods of people. The precious biological diversity, wildlife, and the natural resource base for maintenance of carbon, nitrogen and oxygen cycles, are also likely to be affected adversely and irreparably."*

The Office Memorandum in para 16. also states that *" The proposed Act is likely to encourage fresh encroachments and destruction of forests and it is feared that the situation may also become difficult to control."*

53. It is therefore clear from the above letters and Office Memorandum that the 2<sup>nd</sup> respondent which is the custodian of the forest wealth of the nation has been compelled to change its views on encroachments in the forests and any remaining objection has been gagged by making the 3<sup>rd</sup> respondent the nodal agency for implementing the impugned Act. This sudden change in stand was on account of tremendous political pressure and is against public



interest. This is so particularly since the Guidelines of 1990 under the F. C. Act have sufficient provisions to address the problems of the genuine forest dwellers.

### **Area Under Forest Cover**

54. That the recorded forest area in the country is 7,74,740 sq. km. or 23.57% of the geographical area, out of the which 3,99,919 sq. km. is Reserved Forest i.e. 51.6 % of the total forest area, 2,38,434 sq. km. of Protected Forest i.e. 30.78% and the balance 1,36,187 sq. km. is un-demarcated protected forest i.e. 17.60% of the total forest area. The Forest Survey of India under the 2<sup>nd</sup> respondent carries out assessment of the forest cover in the country by using satellite imagery data on a two year cycle for the entire nation. As per the report of 2003, the area under forest cover, which includes every type of tree cover, natural or man made is 6,78,333 sq. km. i.e. 20.64% of the geographical area. Out of this only 51,285 sq. km. or 1.56% of the geographical area is very dense forest, 3,39,297 sq. km. or 10.32% of the geographical area is having moderately dense forest cover and 2,87,769 sq. km. or 8.76% of the geographical area is open / degraded forest.

### **Loss of forest cover in tribal districts**

55. That out of 593 districts in the country 187 districts are classified as tribal districts, which have an area of 4,07,298 sq. km.

under forest cover, which constitutes 60.04% of total forest cover of the entire country. The total forest cover of 4,07,298 sq. km. in the tribal districts constitutes 36.91% of the geographical area of these districts out of which, as per the 2003 assessment 36,932 sq. km. or 9.06% is very dense, 2,09,926 sq. km. or 51.54% is moderately dense and 1,60,440 sq. km. or 39.39% is degraded. The FSI reports show that the maximum loss of forest has been experienced in the tribal dominated districts. The following table at page 67 reproduced from the report of Forest Survey of India, Dehra Dun shows steady decrease in the forest cover between 1993 and 2005, especially in the tribal dominated districts in these states. That between 1993 and 2005 huge losses in forest cover have been experienced by States of Assam, Andhra Pradesh, Madhya Pradesh including Chattisgarh as is evident from the following table. Assam lost a staggering 51.12% of the forests within a period of 12 years (1993 to 2005). During the same period the State of Madhya Pradesh including Chattisgarh lost 19.76%, Andhra Pradesh lost 13.36% and Gujarat 17.10%.

56. That the destruction of vast tracts of forests has serious adverse impact upon the perennial water sources such as streams, rivers and lakes and in turn results in frequent occurrence of floods and droughts with devastating consequences. The cumulative impact of loss of forest cover leads to water, fodder and food security and adversely affects agriculture and animal husbandry

activity on which lakhs people depend, besides causing untold human misery.

57. That the world renowned environmentalist Norman Meyers has forcefully articulated his views on the causes of floods and droughts in an article in the Journal, the World Forest Resource Management in the following words:

*" In much of the Himalaya there is widespread deforestation in montane catchment areas, leading to environmental 'backlash effects' in the form of flooding and droughts, soil erosion, sedimentation and siltation, and a host of other similar problems in the flood plains of Ganga and Brahmaputra among other major rivers. Primarily because of deforestation in their headwater regions, the river systems are increasingly subject to disruption, leading to floods followed by droughts. All in all, these plains have been described as the 'greatest single ecological hazard on earth'. Forest cover early in this century amounted an estimated 60 percent of land area, but it has now dwindled to only one quarter as much. In India it being reduced so rapidly that there may be little left by the end of the century (2000). The Himalayan forests normally exert a sponge effect, soaking up of abundant rainfall and storing it before before releasing it in regular amounts over an extended period. When the forest is*



cleared, rivers turn muddy and swollen during the main wet season, before shrinking during drier periods. An increasing proportion of rainfall is therefore released, shortly after precipitation, in the form of floods. Flood disasters are becoming more frequent and more severe. Siltation in Ganga system is so pronounced that a number of river beds are rising at a rate between 15 cm to 30 cm per year, grossly aggravating floods. The situation in the Himalaya, already critical, appears likely to grow steadily worse. By way of response there is need for three separate sets of measures: planting trees for both fuel wood and fodder on denuded slopes; planting bulky forage grasses in eroded gullies and along drainage lines; and permitting livestock to graze only when they are tethered, and near to terraces."

58. That similar view is echoed by an Oxfam report on floods in India, which points out:

"Floods are now an annual feature, and there are many flash floods. The problem in the main is due to reduced and inadequate capacity of the river channels due to silting caused by devastation of forests in the catchment areas which leads to heavy soil erosion and heavy run off."

Forest Cover in Tribal Areas							
State / UT	1993	1995	1997	1999	2001	2003	2005
Andhra Pradesh	29,208	29,076	25,621	25,214	25,401	25,325	25,303
Arunachal Pradesh	68,661	68,621	68,602	68,847	68,045	68,019	67,777
Assam	24,508	24,061	23,824	19,603	12,306	12,052	11,978
Bihar & Jharkhand	13,971	13,930	13,872	13,826	13,629	13,633	13,637
Gujarat	8,306	8,270	8,230	8,181	7,571	6,970	6,885
Himachal Pradesh	2,772	2,772	2,776	3,100	3,143	3,206	3,195
Karnataka	10,424	10,435	10,445	10,442	12,428	12,312	12,195
Kerala	9,368	9,368	9,366	9,381	12,316	12,169	12,180
Madhya Pradesh & Chhattisgarh	101,022	100,895	98,709	99,195	82,992	81,405	81,052
Maharashtra	27,772	27,769	29,168	28,612	28,782	28,756	29,015
Manipur	17,621	17,558	17,418	17,384	16,927	17,219	17,086
Meghalaya	15,769	15,714	15,657	15,633	15,584	16,839	16,988
Mizoram	18,697	18,576	18,775	18,338	17,494	18,430	18,684
Nagaland	14,348	14,291	14,221	14,164	13,345	13,609	13,719
Orissa	25,760	25,720	25,424	25,512	32,840	33,011	33,049
Rajasthan	6,065	6,140	6,149	6,220	6,052	6,272	6,275
Sikkim	3,119	3,127	3,129	3,118	3,193	3,262	3,262
Tamil Nadu	6,815	6,812	6,809	6,813	6,005	6,478	6,610
Tripura	5,538	5,538	5,546	5,745	7,065	8,093	8,155
Uttar Pradesh	1,313	1,310	1,310	1,314	1,463	1,314	1,314
West Bengal	4,429	4,474	4,509	4,513	10,328	11,709	11,795
Andaman & Nicobar	7,624	7,615	7,613	7,606	6,930	6,964	6,629
D & N Haveli	-	-	-	-	219	225	221
Daman & Diu	1	1	1	1	3	3	3
Lakshadweep	-	-	-	-	27	23	25
<b>Total</b>	<b>423,111</b>	<b>422,073</b>	<b>419,171</b>	<b>414,761</b>	<b>406,089</b>	<b>409,301</b>	<b>409,037</b>

Sources : State of Forest Report 2001 :

State of Forest Report, 2003, Forest Survey of India, Dehra Dun.

### Loss of Forests and Global Warming

59. That the dwindling forests not only in India but all over the world has become a serious cause for concern for the very survival of the Planet and there is now an imminent and increasing threat of Global Warming due to increase in the levels of carbon dioxide. According to a study conducted by the Geneva based Inter-governmental Panel on Climate Change (IPCC) the temperatures in South Asia may rise 3 to 4 degrees in the next 50 years. This will increase incidence of malaria and typhoid and have serious adverse impact on wheat, maize and rice production.

60. That the deforestation contributes an estimated 18% of Green House Gases emissions globally (Stern Review), and over 26% in India (from 2002/03, latest available published official deforestation and forest degradation information form FSI). 'Avoided deforestation' is being considered as a possible eligible source of carbon credits in the new, post-2012, revised Kyoto Protocol framework. A proposal to this effect has been favourably reviewed at the recently concluded at the Bali conference. By introducing a law which will add to, not reduce, deforestation in



India, Government is precluding the opportunity of significantly benefiting India with these carbon credits from reducing existing levels of deforestation and forest degradation, a "double-whammy" against the Public Interest (these new credits are estimated at several billion dollars worth for India, and "in the hundreds of billions" globally. The CO<sub>2</sub> emissions from deforestation in India are very material, being of the same order of magnitude as those of India's organized Power Sector. (Carbon footprint of India's Power Sector in 2006 is estimated at 470 MT CO<sub>2</sub>, versus deforestation emissions 2002-03 of 433 MT CO<sub>2</sub>).

61. Receding glaciers, unprecedented melting of arctic ice, unpredictable climate changes leading to unprecedented rise in temperatures, increasing frequency of devastating floods droughts and killer hurricanes and typhoons in many parts of the world and rising levels of the seas are only warning signals towards what is in store if steps are not urgently to check destruction of the forests. Forests reduce absorbing the excess CO<sub>2</sub> and act as carbon sink (carbon dioxide sequestration). It is therefore imperative that all efforts should be made to ensure that no further reduction or fragmentation of forest takes place.

**Tribal – Forest Interface Guidelines of 1990 issued by the MoEF**

62. That Tribal – Forest Interface Guidelines of 1990 were issued after detailed examination by the State Forest and Tribal Welfare Departments, followed by the examination by the Central Government in the MoEF and the Ministry of Tribal Affairs, the Committee of Secretaries, Group of Ministers which were approved by the Cabinet on 11.8.1990. These guidelines provides for recognition of traditional tribal rights, whether recorded or unrecorded which unfortunately were not properly implemented by the States. These guidelines provide for:

- a) regularization of encroachments taken place on forest land prior to October, 1980;
- b) settlement of claims in respect of forest areas wherever these were notified as deemed reserve forest without observing the process of settlement laid down under the act;
- c) recognition of claims in tribal areas where incomplete or incorrect records / maps or where there was lack of proper information provided such settlements had taken place after 1947; and
- d) conversion of forest villages in to revenue villages, settlement of rights in respect of Eksali plots (yearly plots), Dali lands,

pattas granted by the Revenue Department in Orange areas agro forestry or tree planting leases.

63. The implementation of the above guidelines were subject to two main conditions (a) the decision to regularize encroachments on forest land should have been taken prior to 1980 and (b) Compensatory Afforestation on equivalent non – forest land will have to be carried out. However, due to improper identification of non-forest lands and paucity of funds required for undertaking Compensatory Afforestation as also the decisions to regularize encroachments on forest land after 1980 has rendered the pace of settlement of rights under the said guidelines unsatisfactory. Even so the said guidelines did provide a complete code and has all the provisions to resolve the contentious issues of settlement / recognition of the rights of the tribals on forest lands, because these were reviewed by the successive Governments after they were issued in 1990 and no change was made to them because they were found to be comprehensive and addressed all the concerns. These were reconfirmed by the then Prime Minister on 21.2.1992. Thereafter, a proposal was moved by the Ministry of Tribal Affairs and the Cabinet on 24.1.1992 reiterated its earlier decision and retained the said guidelines.



64. That in furtherance of the above guidelines extensive area under forests have been diverted for regularization. The state-wise important diversions are as follows:

Madhya Pradesh	1.03 lakh Ha. in July, 1990
	0.65 lakh ha. in 2001
	1.06 lakh ha. for which in principle approved have been given
Kerala	28,588 ha. on 12.1.1995
Arunachal Pradesh	3,419 ha. on 23.10.1992
Karnataka	14,848 ha. on 15.5.1996
Andaman & Nicobar Islands	1,367 ha. on 19.8.1988
Gujarat	10,900 ha. on 10.11.1994
	21,082 ha. on 2.8.2000

#### **Distribution of forest lands in Maharashtra**

65. That all the states have in the past distributed forest land to landless persons and encroachers. In the state of Maharashtra forests were de-reserved and cleared for distribution amongst the landless and others. Some of the orders are as under:

- (i) By an Order dated 3<sup>rd</sup> September, 1960 -- the forest land in compact block of 300 acre or more with a

gradient of less than 10% and containing up to 20 trees per acre of timber species should be transferred to the Revenue Department for distribution amongst the landless cultivators.

- (ii) By an Order dated 3<sup>rd</sup> September, 1960 - forest lands leased annually for cultivation, excluding on agri-silvi basis and those are for afforestation schemes should be transferred to the Revenue Department for disposal to landless for cultivation.
- (iii) By an Order dated 3<sup>rd</sup> September, 1960 - land under unauthorized cultivation in Nasik district should be transferred to the Revenue Department for distribution to landless cultivators.
- (iv) By an Order dated 1<sup>st</sup> September, 1961 - forest land under unauthorized cultivation in Thane district should be transferred to the Revenue Department for distribution to the landless cultivators.
- (v) By an Order dated 16<sup>th</sup> April, 1959 - all encroachments made upto 31<sup>st</sup> December, 1958 in Chanda district were decided to be regularized subject to fulfillment of certain conditions.

- (vi) By an Order dated 20<sup>th</sup> October, 1965 - a scheme was formulated for use of about 10,000 acre of forest land, released for cultivation in Yeotmal, Akola, Dhulia, Buldhana, Aurangabad, Bhir, Nanded districts for settlement of about 1,000 families of agricultural labourers.
- (vii) By an Order dated 5<sup>th</sup> January, 1970 - it was decided to disforest about 40,000 acre of forest land in Thane district for distribution amongst landless persons.
- (viii) By an Order dated 16<sup>th</sup> April, 1970 - district-wise committees were set up for carrying out survey of forest land etc. for the purpose of distribution for cultivation.
- (ix) By an Order dated 19<sup>th</sup> May, 1990 - it was decided that all available waste lands and forest land, including those that will be available in proposed survey, should be distributed to landless persons by 31<sup>st</sup> January, 1971.
- (x) By an Order dated 14<sup>th</sup> August, 1972 - it was decided to regularize all encroachments taken place upto 15<sup>th</sup> August, 1972 on forest land in-charge of the Revenue Department or transferred to it.



(xi) By an Order dated 27.12.1978 - it was decided to regularize all encroachments taken place on forest land and existing as on 31.3.1978.

(xii) By an Government of Maharashtra Order dated 12<sup>th</sup> September, 1979 - it was decided to regularize all encroachments taken place on forest land upto 31.3.1978 including the encroachments which were not subsisting as on 31.3.1978.

66. It is submitted that while constituting a reserved forest under the Forest Act the right for grazing, collection of fire-wood and small-wood, building material, right of way etc. were meticulously recorded and settled. It is incorrect to state that the rights of tribals and forest dwellers were not recorded and therefore the need to bring about the present impugned Act. Records of rights and settlements are meticulously prepared and maintained and are still available with the state forest departments. For example in Dhule district of Maharashtra (earlier known as Khandesh) about 4,000 sq. km. area has been constituted as reserved forest during the period between 1879 to 1910 under Section 34 or Section 19 of the Indian Forest Act, 1878 (VII of 1878) after forest rights were settled by the Forest Settlement Officer and approved by the Government. During settlement, number of rights have been admitted in favour of Bhils of Khandesh under Section 14 (c) of Indian Forest Act,

1878 (corresponding Section is 15 (c) of Indian Forest Act, 1927) and are regulated by the rules framed by the State Government. These rules are included in Part - IV of Bombay Forest Manual, Volume III. Similarly, number of privileges to the villagers staying in and around these reserved forests have been agreed by the State and are contained in Para - V, sub-para (c) of the Bombay Forest Manual, Volume III published in 1950.

67. These statutory rights and privileges were being freely exercised in the reserved forest. However, due to large scale regularization of encroachments, distribution of forest land, unlawful cultivation, un-regulated grazing and fire-wood collection, encroachment of forest land etc. hardly any traditional forest areas are left for grazing, collection of forest produce and enjoyment of other rights / privileges.

68. It is submitted that regularization of encroachments only encourages fresh encroachments. Every decision to grant land ownership over forest area has led to a fresh wave of new encroachments. Every scheme for the distribution forest land was treated as a one time measure on the assurance that the protection laws will be strictly enforced and no fresh encroachments will be allowed. Unfortunately, the promise is never kept and the regularization only encourages a fresh wave of encroachment on the belief that at some point of time the government will have to



regularize the same. This becomes a vicious circle and the loser is only the Nation and its people. Time and again forest land has been distributed to new encroachers in the name of rectifying colonial injustice. This has resulted in severe depletion of the forests and worse the honeycombing and fragmentation of the forests. The impugned Act will only fuel more encroachments resulting in complete decimation of forests in the country. It is submitted that strict enforcement of the protective forest laws is the only way to save the forests.

#### Distribution of forest land in Madhya Pradesh

69. It is submitted that every state has adapted the easy populist way to deal with encroachments by granting amnesty and regularizing the encroachments as a one-time measure only to repeat the same every few years. By way of illustration the regularizations in Madhya Pradesh are stated herein below:

- i) The Government of Madhya Pradesh vide order dated 5<sup>th</sup> April, 1956 decided to settle all encroachments up to 25.3.1954 by landless person on revenue and forest land (excluding reserve forest) in the former Indian States of the Mahakoshal Region. On 28<sup>th</sup> October, 1957 it was decided to settle encroachments taken place prior to 15.8.1957 in Vindhya Pradesh, Bhopal



and Madhya Bharat Regions of the State in favour of encroachers who did not possess more than 15 acre of land, including the encroached land. The State Government vide order dated 17<sup>th</sup> November, 1965 issued orders that encroachments up to 31.10.1965 can be settled subject to the conditions that the encroacher does not have more than 15 acre of land including the encroached land, the land is not required for nistar or other communal purposes. The land initially was to be given on five years lease. Later on, it was clarified that if the encroacher had paid the full premium, the land could be settled with him with *Bhoomi-swami* rights. During May, 1972 it was decided that encroachments taken place between 31.10.1965 to 31.12.1970 are to be settled after examining each case on merit. The total land with the encroacher should not exceed 5 acres. These instructions were issued vide orders dated 30.10.1972 and 04.1.1973.

- ii) Earlier, vide Government order dated 29.9.1962 Mr. Shankhadhar Singh was appointed as Officer on Special Duty with the task of studying the problems of encroachment in Khargone, Bastar, Bilaspur, Durg, Shahdol, Sidhi, Chhatarpur, Surguja, Balaghat and Raipur districts and to make recommendation for their

settlement. His report was submitted on 27<sup>th</sup> June, 1963 wherein the problem of encroachment in all the districts was found to be grave. On 10<sup>th</sup> May, 1965, the Council of Ministers decided to settle the encroachments in Khargone district. In respect of other districts, based on the principles decided for Khargone district, the Council of Ministers decided to settle the encroachments on 16<sup>th</sup> April, 1967. The decision was intimated to the concerned Collectors on 28<sup>th</sup> April, 1967.

iii) The Government of Madhya Pradesh vide Government order dated 24.4.1978 decided to regularize all encroachments taken place on forest land upto 31.12.1976. It was decided that encroachments taken place on forest land thereafter will not be regularized, such encroachments will be removed and under no circumstances new encroachments in the forest land will be permitted. During 1989, a proposal for regularization of encroachments over 2.73 lakh ha. of forest land was submitted under the FC Act. After considering the proposal, the MoEF vide orders dated 5<sup>th</sup> July, 1990 and 6<sup>th</sup> July, 1990 has approved diversion of 1.04 lakh ha. of forest land for regularization of encroachments. The impugned

approval has been granted by the MoEF with the following main conditions:-

- a) diversion of forest land for regularization of encroachments approved under this order shall be restricted to only those areas which are in physical possession of the encroachers;
- b) regularization of encroached forest shall be done only in favour of eligible encroachers as per the eligibility criteria laid down by the State Government vide their order 24.4.78;
- c) scattered encroachments shall not be regularized insitu. Instead such encroachments shall be consolidated / relocated near the outer boundaries of the forest area;
- d) the outer limits of the area to be regularized shall be demarcated on the ground through natural boundaries or by erecting permanent boundary marks, as the case may be;
- e) pattas to the eligible encroachers shall be awarded by the State Government only after



taking back forest area which they may be possessing in excess of their entitlement as per eligibility criteria. Such areas should preferably be consolidated by suitably readjusting the individual plot boundaries;

f) forest land which is in possession of "ineligible" encroachers or has been encroached subsequent to the cut off date fixed by the State Government for regularization should be got vacated;

g) compensatory afforestation should be carried out in respect of the area over which encroachments are regularized; and

h) cultivation should be avoided on steep slopes and in such encroached areas, tree crops should be planted.

70. It was specifically directed that the forest land is to be released only after the fulfillment of the above condition and that the maps of the area demarcated for regularization and list of encroachers will be provided to the Regional Office of the MoEF for carrying out 2% test checking. Without taking any cognizance of the conditions stipulated by the MoEF, the land rights were granted

to the encroachers, excess land was not taken back, ineligible encroachers were not evicted and no details were made available to the MoEF.

71. For regularization of encroachments, under Grow More Food Scheme, Singhdeo Scheme etc. about a lakh hectare of forest land has been diverted and handed over to Revenue Department for distribution up to the year 1975. For regularization of encroachments another 44,367.29 ha. of forest land was distributed for regularization of encroachments taken place up to 31.12.1976.

72. The scope of regularization of encroachment was subsequently expanded. It was decided to distribute land to adult sons of the encroachers. During 1989 itself, when the proposal was under consideration of the MoEF, the State Government issued instructions not to remove encroachment taken place on forest land between 1977-1980. During 1995 another proposal for regularization of encroachments over 1.83 lakh ha. of forest land was submitted by the State Government.

**Site Inspection Report of the Regional Chief Conservator of Forests (Central) MoEF, Bhopal**

73. During site inspection carried out by the Regional Office of the MoEF, it was found that the list of encroachers and the area

encroached by them has been prepared on the basis of statements given by the encroachers and gram panchayat pradhans. The gram panchayat pradhans have signed *blank certificates* giving the encroachers a chance to fill in the date of encroachment and area encroached at their sweet will. The reports recommends that the areas regularized and the people occupying these lands have not benefited because the poor productivity of the encroached lands in absence of proper irrigation facilities. There are no employment opportunities to sustain them and the people continue to live below poverty line. Unless every adult encroacher / person is guaranteed employment at minimum wages rates for about 300 days a years the conditions of such persons will not improve.

74. The decision taken from time to time for distribution of forest land for regularization of encroachments has result in substantial reduction in forest area in the state of Madhya Pradesh. The total area under reserved forest, protected forest and unclassified forest during 1956-1957 was 1,72,460 sq.km. which reduced to 1,55,414 sq.km. during 1980-1981 i.e. by 17,046 sq.km. (17.05 lakhs ha.).

75. The tribal communities were and still are enjoying a number of "nistar concessions" for collection and use of minor forest produce for their sustenance and livelihood. Some of the different types of privileges and concessions enjoyed in the State of Madhya Pradesh are:



- i) Supply of minor forest produce (MFP) e.g. mahul patta, medicinal herbs, sal patta, bamboo, salai for marriage ceremony. Mahua, achar, aonla, and other forest produce required for their sustenance except timber.
- ii) Free collection of firewood on head loads.
- iii) Collection of firewood by bullock-carts at highly subsidized rates.
- iv) Transportation of firewood from departmental felling coupes at highly subsidized rates.
- v) Free collection of vegetative material for erecting fencing on agricultural plots and basket making.
- vi) Tribal and rural communities are allowed to collect non-nationalised forest produce without any restriction.
- vi:) In case of nationalised forest produce, the only restriction is to sell these MFPs to the State Government or State PSUs at proclaimed support price. These support prices are extremely lucrative and sometimes the State Government or State PSUs suffer

losses due to this trade. Now all the profits of MFP trade is being distributed to actual MFP collector / MFP Society after sale of the commodity. Tribal communities are unable to sell MFP effectively since they do not understand marketing mechanisms.

- viii) Free grazing for cattle up to 20 cattle units and all members of family Bovidae i.e. cow family.

76. In Madhya Pradesh alone "nistar concessions" are costing State exchequer about Rs.1,500/- crore per annum. The "nistar concessions" are the root cause of forest deterioration because the collection of minor forest produce has already reached unsustainable levels due to heavy population pressure and excessive commercial exploitation and therefore the forests cannot be subjected to further indiscriminate exploitation.

77. That the tribals and non-tribals who were in occupation and cultivating land inside forest areas (forestlands) their lands have already been regularized ever since 1870 during the British period and thereafter between 1947 to 24.10.1980 i.e. the date on which the F.C. Act came into force. From the above examples it can be seen that a successive wave of fresh encroachments followed every decision of regularization of encroachments before every general election for political / electoral gains.

### Impact of the Impugned Act on Schedule Tribes

78. It is submitted that only the primitive pre-agricultural tribal communities are the genuine forest dwellers who continue to have a healthy relationship with their forest and their life and culture revolves around the forests in the distant past. They have an interest in the forests since it is the land of their ancestors and gods. They still treat forests and wild life with respect and exploitation was limited to their own personal needs. However, increased populations, reduced forest area, changing cultural values and new commercial market linkages that have developed between traditional forest exploitation and global market for wildlife and forest products have severely undermined the whatever traditional balance tribal communities may have had with their forest habitats. The tribal communities who have taken agricultural way of life and have been exposed to market forces have a totally different life style, which is similar to life style seen in any remote village in rural India. It is respectfully submitted that even during the colonial period special provisions were made to protect and preserve the unique tribal culture. Even under the Constitution the tribals are recognized as a class and protected. Several states have enacted various enactments to protect the interest of the tribals. In spite of all these laws the primitive tribals are still being exploited and cheated of their land and property. The impoverishment of the simple tribals by other non tribal



communities compelled the states to enact stringent laws prohibiting transfer of tribal lands to non tribals. The lands already transferred were declared illegal. All lands were re-vested in the original tribals. However the implementation of such Acts, which protect the genuine primitive tribals is hindered from powerful non tribal groups. The non – tribal beneficiaries under the impugned Act being the 'other traditional forest dwellers' will severely hit the interests of the genuine primitive tribal communities as most of the benefit will be cornered by the non-tribal communities, as has happened in the past and still continues till today.

79. That in view of the above protection have been given to genuine Scheduled Tribes by making special provisions in the Constitution of India such as Part X Article 244 provides for the Administration of Scheduled Areas and Tribal Areas and Article 244-A Formation of Autonomous State comprising certain tribal areas in Assam and creation of local legislatures or Council of Ministers or both therefore. In Part XVI in the Special Provisions Relating to Certain Classes, Article 339 provides for Control of Union over the administration of Scheduled Areas and the welfare of the Scheduled Tribes, etc. The states have enacted special Acts for the protection of the Scheduled Tribes and for safeguarding their lands and also for granting them pattas or rights over the lands. It is therefore submitted that to the extent that the forests rights under the impugned Act has been extended to 'other

traditional forests dwellers' is unconstitutional, arbitrary and destructive of the forests and ecosystem which directly violates Articles 14 and 21 of the Constitution of India. The inclusion of "other traditional forest dwellers" as claimants of the rights under the impugned Act will further dis-empower and exploit the genuine tribals. The Extension of Panchayat Raj to Scheduled Areas (PESA) enactments have adversely affected the interests of the tribal communities as the protection afforded to them in the Scheduled Areas from other communities have been substantially diluted as the Panchayat Raj Institutions have been introduced in the Scheduled Areas where even the non tribals are eligible to be elected, which clearly is detrimental to the interests of the Scheduled tribes living the Scheduled Areas. That the introduction of the impugned Act will be detrimental to the interests of the Scheduled tribes as a number of State enactments for the protection of the rights of the tribals will be severely compromised and the benefits will, as always has been the case in the past, will be cornered by the non-tribals. Some of the state laws enacted for the benefit and the protection of the interests of the Tribals are discussed below.

**Andhra Pradesh (Scheduled Areas) Land Transfer Regulation, 1959**

80. The Andhra Pradesh (Scheduled Areas) Land Transfer Regulation, 1959 provided comprehensive protection to Tribals against exploitation by non-Tribals. The Regulation came into force in the district of Srikakulam, Visakhapatnam, East and West Godavari. It was extended to the Scheduled Areas of Mahabubnagar, Adilabad, Warangal and Khammam Districts by Regulation – of 1963 to bring uniformity in law throughout the Scheduled Areas of the state.

81. The Salient Features of Regulation I of 1959 and Regulation-II of 1963 are:

- i) In the Scheduled Areas, any transfer of land by a member of a scheduled Tribe to anybody other than a member of a scheduled Tribe is considered null and void.
- ii) Where a transfer of land is made in favour of any member other than that of a scheduled Tribe, the Agent or the Agency Divisional Officer, on application by any interested person, may restore the property to the transferor or to his heir.



- iii) No land situated in Scheduled Areas, owned by a member of a scheduled Tribe, shall be liable to be attached and sold in execution of a money decree.

### **Modes adopted to circumvention the Regulation**

82. A study conducted in various parts of the State by the Tribal cultural Research and Training Institute, Hyderabad, brought to light the following types of land transfers in the Scheduled Areas in spite of the operation of the land transfer regulation.

- i) Benami transfers.
- ii) Transfer of land from tribal to non-tribal in the form of lease and mortgage.
- iii) Encroachment is another mode of dispossessing the tribal from their land and this is adopted by non-tribal taking advantage of lack of land records.

#### **iv) Concubinage or Marital Alliances**

This is a new form of circumvention of law that has emerged on a comparatively large – scale in the alienation of land from tribal. Large areas of fertile lands were purchased by non-tribal and registered in the names of the tribal women whom they kept as their mistresses.

- v) Tribal servants.
- vi) Acquisition of lands by non-tribal in the names of the their tribal farmer servants who are under verbal contract with them.

- vii) Legislators and Samithi Presidents.

The Samithi Presidents of tribal Panchayat Samithis and Tribal MLAs lend their names for registering lands purchased by non-tribal in exchange of the political and monetary incentives offered by the latter.

- viii) Fictitious Adoption of Non-Tribal into Tribal Families.

Acquisition of lands in the names of non-tribal boys who become tribal overnight after the execution of bogus adoption deeds in the name of a tribal is another important method used by the non-tribal to grab tribal lands. The village officers invariably act as accomplices in these nefarious activities of the non-tribal for a consideration.

### **Maharashtra Restoration of Lands to the Scheduled Tribes Act, 1975**

83. The Act provides for the restoration to the original Adivasi land holders of all the lands which have gone into the hands of non-Adivasis between 1<sup>st</sup> April 1957 to 6<sup>th</sup> July 1974, as a result of validly effected transfers (including exchanges). The Act has also made certain provisions in regard to compensation. Accordingly, in

respect of valid transfers the compensation would be equal to 48 times the assessment or the consideration paid by non-Adivasis at the time of transfer, whichever is higher plus the value of improvements, if any.

84. Maharashtra Land Revenue Code, 1966 provides that no occupancy of a tribal shall be transferred in favour of any non-tribal by way of sale (including sale in execution of a decree of a Civil Court or an award or order of any Tribunal or Authority), gift, mortgage lease or otherwise without the previous sanction of the Collector in case of a lease or mortgage executed for a period not exceeding 5 years and without the previous approval of the State Government in all other cases. That an enormous amount of data has been collected on the reasons for illegal transfers of tribals lands which have taken in favour of non-tribals. The main reason for Adivasis to transfer the land in favour of non-tribals is for the repayment of debts. The other reasons for transfer are the money needed for buying food, cloths, house, agricultural implements, for celebrating certain festivals and performing ceremonies etc. As in the other tribal dominated areas the main mode of transfers of tribals land in favour of non-tribals is through benami transfers. That even if the lands are taken away from the non-tribals and restored to the tribals, such an exercise remains on paper but the physical repossession of the land is difficult, because of the poor economic condition, ignorance and political inexperience of the



tribals and the use of coercion, and threats of retaliation by non-tribals.

### **State of Gujarat**

85. In Gujarat, generally speaking, the Scheduled Tribes hold land on new and impartible tenure, either as a result of confirmation of occupancy under the Bombay Tenancy and Agriculture Lands Act, 1948, or under the Land to the Tillers Act of 1957 or under the general orders of the Government relating to the disposal of waste lands. Section 73A of the Bombay Land Revenue Code, 1879 prohibits the transfer of occupancy held by a tribal cultivator in Scheduled Areas and in areas where survey settlement has not yet been introduced, without the written permission of the competent officer. In case such a transfer does take place unauthorisedly, the transferee is liable to be summarily evicted and the land is returned to the original occupant. However, it is known fact that in spite of the above legislation, alienation of tribal lands continue to take place.

### **Kerala Scheduled Tribes (Restriction on Transfer of Land and Restoration of Alienated Lands) Act, 1975**

86. That the implementation of the Kerala Scheduled Tribes (Restriction on Transfer of Land and Restoration of Alienated Lands) Act, 1975 makes an interesting case study. The said Act

was unanimously passed by the Kerala Legislative Assembly and was included in the 9th Schedule of the Indian Constitution. It has never been implemented and every effort has been made to sabotage it. The state has gone out of the way to protect the encroachers who had grabbed tribal lands.

87. Initially the impugned Act was hailed as a revolutionary attempt on the part of the State Government to restore the land taken away from the tribals by the settlers. It was declared that *"the Government would treat all alienated tribal lands as "stolen property" and assured that the government was fully committed to restore it to its traditional rightful owners - the tribals."*

88. That between 1975 and 1986, nothing was done by the successive Governments to implement the Act. In 1986, the Rules were formulated to implement the Act with the retrospective effect from January 1982 (bypassing 1950 fixed by Debar Commission and 1960 fixed by the parent Act). In 1988, Nalla Thampi Thera of Mananthavady, Wayanad, moved a writ petition before Kerala High Court pleading to direct the State Government to implement the Tribal Land Act of 1975.

89. That the Kerala High Court on 15.10.1993 directed the State Government to implement the 1975 Act. But the Governments sought repeated extension to scuttle the implementation of the law.

That on 9.8.1996 the Principal Secretary of SC/ST Welfare informed the High Court through an affidavit about the Government's inability to implement the 1975 Act due to "organised resistance" from the powerful encroacher - settlers in the tribal belt. But no force was used to evict the encroachers or meet the "organised resistance."

90. That on 14.8.1996, rejecting the claim of the Government, the High Court of Kerala firmly gave a final directive to implement the Act within six weeks ending September 30, 1996. The High Court also directed that the "RDOs should effect delivery of possession of alienated tribal lands to its original owners in cases where no appeals were pending against orders for restoration of land and where no compensation was payable," and that adequate law enforcement machinery could be used to carry this out and that the RDOs (Revenue District Officer) had to file affidavits by 30.9.1996.

91. Thereafter the Government brought the Kerala Scheduled Tribes (Restriction on Transfer of Land and Restoration of Alienated Lands) Amendment Bill, 1996, in a hurried attempt to avoid contempt proceedings against the RDO's. The amendment was to scuttle the spirit of the 1975 parent Act. It was described by the tribals as the "great betrayal."



92. That In 1998, delegation led by the then Chief Minister and then leader of the Opposition, went to Delhi seeking Presidential assent to the widely condemned anti - tribal amendment Bill of September 1996, the same was rejected by the President on the ground that an Act included in the 9th Schedule of the Constitution could not be amended by the State Assembly.

93. That in 1999, a second amendment was passed in the assembly to bypass the Presidential assent. However, the High Court rejected both the 1996 and 1999 amendment Acts. In 2000 and 2001, the State Government filed appeals before this Hon'ble Court of India.

94. That the apprehensions of the petitioners that the impugned Act will only be used by powerful non-tribals groups to grab forest lands at the expense of the genuine pre-agricultural tribals is borne out from the Kerala experience. The petitioners are also aware that similar exploitation of the genuine tribal communities is continuing on a massive scale all over India and that the impugned Act has been enacted to blunt the implementation of the protective enactments in favour of the genuine tribals by enlarging the beneficiaries to include 'other traditional forest dwellers', an action which has placed political gains above the interest of the genuine tribals and also above the environment.

### Economic loss due to loss of forests

95. That the economic value of the many benefits derived from the forests is immense – they include *inter alia* flood loss mitigation, drought prevention through fresh water capture and augmentation, soil conservation, and nutrient cycling for agriculture, carbon storage to mitigate Global Warming, providing non-timber forest produce to be harvested by the poor, genetic diversity including the medicinal value of plant bio-diversity, future eco-tourism income, air cleansing and improving health, recreation benefits, to name a few. However, most of these goods and services of the forests are not traded in any markets, so they are not priced and are not included in the “GDP” as published by the Government. The classical economists call these values “externalities”, however, that does not make them any less valuable to India’s citizens, nor does it mean that the loss or degradation of these Public Assets (Forests) should be ignored simply because these goods and services “*are externalities and not part of GDP*”. Economic valuation studies published recently have shown that India’s forests are conservatively worth at Rs. 8 lakhs–Rs. 36 lakhs per hectare in terms of their value to India’s economy. The Supplementary Report on Net Present Value the Central Empowered Committee before this Hon’ble have computed and recommended gives an average value of Rs. 8 lakhs per hectare. To pass these valuable public assets on to private ownership, no matter how well meaning and socially desirable, will be an



economic folly for India when cheaper alternative solutions are available to solve Tribal poverty. The Public Interest cannot be deemed to be served by an uneconomic privatization of certain Public Assets (Forests) where the losses to the many are measurably significantly in excess of the gains to the few.

96. That at this stage it is necessary to quote our late Prime Minister Smt. Indira Gandhi who requires to be credited with having re-introduced the concept of the protected areas and giving them legal sanctity, in her address to the Project Tiger:

*"But the tiger cannot be preserved in isolation. It is at the apex of a large and complex biotope. Its habitat, threatened, by human intrusion, commercial forestry, and cattle grazing must first be made inviolate. Forestry, practices designed to squeeze must first be made inviolate. Forestry, practices designed to squeeze the last rupee out of our jungles, must be radically reoriented at least within our National Parks and Sanctuaries and pre-eminently in our Tiger Reserves. The narrow outlook of the accountant must give way to a wider vision of recreational, educational, and ecological value of totally undisturbed areas of our wilderness. Is it beyond our political will and administrative ingenuity to set aside about one or two per cent of our forests in their pristine glory for this purpose?"*



- Mrs. Indira Gandhi in the message for the inauguration of  
"Project Tiger"

This aptly sums up the issue and it will be a sad day when we will have lost everything and the biggest losers would be the tribals themselves.

### International Treaties and Conventions

97. That there are several international conventions and treatise reflecting global concern for the protection of the environment and the forests in particular to which India is a signatory, some of which are briefly listed below:

- I 1972 Stockholm – World Conference on Human Environment
- II 1980 The World Conservation Strategy, which was formulated by the IUCN (i.e. the World Conservation Union), the UNEP (United Nations Environment Programme) and the WWF (World Wildlife Fund) with the objective of:
  - i) maintenance of essential ecological processes and life supporting systems;
  - ii) preserving genetic diversity; and

- iii) ensuring sustainable utilization of species and ecosystems.

III 1992 First Earth Summit at Rio Declaration UN Conference on Environment resulted in publication of five documents enunciating 27 principles, which include:

- i) rights and responsibility while pursuing human development and well being;

- ii) Agenda 21 is a blue print on how to make development socially, economically and environmentally sustainable;

- iii) statement of principles to guide the management, conservation and sustainable development of all kinds of forests;

- iv) two conventions were signed:

- a) UN framework for Convention on Climate Change- to stabilize the greenhouse gases in atmosphere at safe levels; and
- b) The Convention on Bio diversity.

The signing of (a) led to the Kyoto Protocol which is in fact an Amendment to the UN's framework for Convention on Climate Change, assigning mandatory targets for the reduction of green house gas emissions to signatory nations.

IV. Second Earth Summit in 2002 at Johannesburg on Sustainable Development

V. Bali Conference 2007

#### Challenging the Impugned Act

98. That the objects and reasons of the impugned Act assumes that; i) the forest dwelling scheduled tribes and other traditional forest dwellers have been residing in forests for generations but whose rights could not be recorded; ii) that the recognized right includes the responsibility to use the forest sustainably and to strengthen the conservation regime of the forest; iii) that forest rights on ancestral lands and their habitats were not adequately recognized during the colonial period and in independent India and iv) that it is necessary to address the long standing insecurity of tenural and access rights. The petitioners respectfully submit that the impugned assumptions are totally flawed, incorrect and without any scientific basis. It overlooks the fact that there is lack of political will to save the forests and to treat it as a national treasure for the good of the people. Narrow political interests have



plundered our forests and what little is left is proposed to be distributed under the impugned Act. That the said statement may hold good only in the case of pre-agricultural / primitive tribal communities but not in the case of other scheduled tribes and other traditional forest dwellers, whose life style is similar to that found everywhere in rural India.

99. That the petitioners submit that the impugned Act is a fraud upon the Constitution. The respondents are attempting to cover up its utter failure and incompetence in preventing encroachments into the forests predominantly by non-tribals. The respondents are also covering up their failures of not providing the poor and the landless employment opportunities, which would have helped to improve their economic condition and now want to wash their hands by parceling out forest purely for political gains. Instead of taking a tough stand on encroachments the respondents are finding easy way to get out of a difficult situation by regularize the encroachments and thereby rewarding dishonesty and fraud.

100. That the respondents and in particular the Ministry of Tribal Affairs has spent thousands of crores of rupees for the development of the Tribals and to bring them into the mainstream. However, they have failed to ensure a fair deal to the genuine tribals. Had the respondents taken proper steps after the independence the problem could have been contained. Instead the

respondents are guilty of criminal negligence in failing to prevent encroachments on forest lands and tacitly encouraging and abetting encroachments and thereby creating a crises situation. The respondents are themselves to be blamed for the mess and cannot be allowed now to destroy the remaining forests in the name of rectifying or correcting historic injustice.

101. That there is no scientific basis to hold that the forest dwelling scheduled tribes and other traditional forest dwellers are integral to the very survival and sustainability of the forest ecosystem under the present circumstances of high population densities and market linkages that have developed for forest and wildlife products globally in recent decades. The fear expressed by the petitioners is not a figment of imagination but a stark reality and can be seen including the recent indiscriminate illegal encroachments in the forest in Munnar in the State of Kerala, where forged and fabricated patta / leases and documents of title are printed and openly sold with the connivance of unscrupulous revenue authorities. Attempts were made to re-possess the said lands but the damage to the forests has already been done. Since the original records have conveniently been destroyed, large tracts of forests, which are critical as watersheds in this heavy rainfall area, have been grabbed by powerful encroachers and the land mafia, and totally destroyed. This has been ecologically catastrophic as the entire watersheds and catchment areas have

been destroyed along with rich evergreen forests in these high altitude areas. In spite of the State's effort to recover the land the entire matter has bogged down in litigation and mud slinging between the political groups and vested interests. The ultimate loss is to the forests and the citizen of India. Similar situation exists everywhere in all the States in the country.

102. The petitioners respectfully submitted that initially the draft bill of the impugned Act contained only one category that is Scheduled Tribes. However subsequently under political pressure another class of people termed as "Other Traditional Forest Dwellers" was introduced into the Act. It is necessary to appreciate that the class of people who fall in the category of "Other Traditional Forest Dwellers" is large and have no symbiotic relation with the forests as claimed. In fact the tribals have always been on the receiving end and over generations their lands have been stolen from them by illegal means by the non tribals. Therefore it is arbitrary and illegal to treat the tribals and non tribals on the same plane for conferring forest rights. The petitioners submit that the impugned has the effect of rendering unworkable the Indian Forest Act, 1927, the Wild Life (Protection) Act, 1972 and the Forest (Conservation) Act, 1980, which are all legislations made for the protection of the Environment, Forests, wildlife and the diverse ecosystems to ensure the ecological and environmental security of the Nation.



103. That under the impugned Act every person would be entitled to the area under their occupation to the extent of 4 hectares (almost 10 acres) of forest land. There is no way to prevent a person from claiming the maximum of 4 hectares as the tendency will be to grab as much land as one can since such a precious and scarce resource is being gifted freely. There is no way the authorities would be able to restrict the claimants from occupying more than of 4 hectares of forest land as is seen wherever the encroachments have been regularised in the past and which has graphically recorded in the Site Inspection Report of the Regional Chief Conservator of Forests of the MoEF referred to in para 72 at page 82 onwards hereinabove. Therefore, loss of huge areas of forest lands is bound to take place over and above the areas offered as rights under the impugned Act for the reason that it aims at legitimising encroachments on forest lands. Since the Gram Sabha is to decide the extent of occupation the procedure of determination of rights cannot be just and fair.

104. That the procedure prescribed for the vesting of forest rights is totally unconstitutional and against all principles of law. The impugned Act makes the Gram Sabha the primary authority to initiate the process of determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling scheduled tribes and other traditional forest

dwellers within the local limits of their jurisdiction. The resolution or the Gram Sabha determining the forest rights is final subject to an appeal by a person aggrieved within 60 days. Valuable rights are to be conferred merely on the resolution of the members of the Gram Sabha, which is untrained and incompetent to consider and determine the rights based of the documents prescribed under the impugned Rules.

105. The petitioners are also challenging the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Impugned Rules, 2007 as being ultra vires the impugned Act. The impugned rules are also arbitrary, unreasonable and against public interest and violative of the fundamental rights under the Constitution.

106. That the petitioners have not filed any other similar writ petition challenging the impugned Act and Rules either in this Hon'ble Court or any High Court.

107. That the present writ petition under Article 32 of the Constitution is the only legal remedy available to the petitioners to challenge the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2008.



108. That the petitioners are therefore moving the present writ petition under Article 32 of the Constitution of India challenging the impugned Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007, as being arbitrary, unreasonable, illegal and unconstitutional being violative of the petitioners' fundamental rights guaranteed to them under Article 14 and 21 of the Constitution read with Articles 48A and 51A(g) of the Constitution of India on the following amongst other grounds taken without prejudice to one another.

#### GROUNDS.

1. Because Parliament has no legislative competence to enact the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The impugned legislation in pith and substance falls within the subject 'Land' in entry 18 of List II (State List) and therefore within the exclusive domain of the State legislature.
2. Because the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is a colorable piece of legislation without legislative competent and is beyond the



scope of the Parliament and therefore ultra virus the Constitution and therefore illegal, null and void and inoperative.

3. Because the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 in pith and substance deals with right in and over land which is squarely covered under the subject 'Land' as entry 18 of List II i.e. the State List and not under 'Forest' entry 17A of List III i.e. the Concurrent List. The entry 17A being 'Forest' and not 'Forest land' the impugned Act is unconstitutional.

4. Because the subject 'Forest' in entry 17A of List III i.e. the Concurrent List has to take its color from the Article 48A and must be read to mean only limited to the protection, preservation, safeguarding and regulating the forests and wildlife and not to treat it as any other land available for free distribution.

5. Because the Impugned Act to the extent it applies to protected areas like sanctuaries and national parks notified under Sections 18, 26-A and 35 of the Wild Life (Protection) Act, 1972 is unconstitutional being violative of Article 14, 21 read with Articles 48A and 51A (g) of the Constitution of India.

6. Because the Wild Life (Protection) Act, 1972 being a special Act would prevail upon the Scheduled Tribes and Other Traditional

Forest Dwellers (Recognition of Forest Rights) Act, 2006, which is a general Act. Further to the extent the Tribal Rights Act is inconsistent with the Wild Life (Protection) Act, 1972 the provisions of the Wild Life (Protection) Act, 1972 will prevail.

7. Because the Wild Life (Protection) Act, 1972 was enacted by the Parliament with the specific purpose of protecting endangered fauna and flora and its environment, recognizing the importance of such ecosystems for the nations ecological security and well being of the people of the country. The Wild Life (Protection) Act, 1972 is a legislation in public interest and has not been enacted for the benefit of any section of society, but for everyone including the tribals and other under privileged members of the society. The Protected Areas (national parks and sanctuaries) are national treasures, which have to be preserved and protected in the interest of the nation and its people. Therefore any law that attempts to distribute or create interests in such protected areas in favour of any section or class of society is detrimental to public interest and the ecological security of the nation as a whole and is liable to be struck down as unconstitutional. The Protected Areas, which are considered so crucial for the survival of the future generations, cannot be distributed amongst groups of people on the ground that some injustice was done to them.



8. Because the conferment of rights in Protected Areas i.e. in national parks and sanctuaries will render the provisions of the Wild Life (Protection) Act, 1972 unworkable. That the rights conferred upon the 'forest dwelling scheduled tribals' and 'other traditional forest dwellers' regarding commercial collection of minor forest produce is directly in conflict with provisions of the Wild Life (Protection) Act, 1972 particularly sections 27, 29, 30 and 31. That indiscriminate commercial extraction or collection of minor forest produce within an area declared as a national park or sanctuary would be in violation of the provisions of Section 29 and will be destructive of the very purpose for which such area has been notified as a national park or a sanctuary. This is clearly against public interest and violative of the petitioners fundamental rights guaranteed under Article 21 read with articles 48A and 51 of the Constitution.

9. Because the Wild life (Protection) Act, 1972 is a legislation for protecting the wild flora and fauna and the habitats of wildlife (environmental) which is in tune with Article 48A of the Constitution. It is a legislation in public interest and in furtherance of the principles of sustainable development.

10. That the Wild Life (Protection) Act, 1972 provides a complete machinery for settlement of rights. No steps were taken by the State Governments to settle any right under the Act in spite of



lapse of 35 years and in spite of several orders of this Hon'ble Court directing settlement of rights of people living within the Protected Areas. The impugned Act is an attempt to get around the orders of this Hon'ble Court, the provisions of the Wild Life (Protection) Act, 1972 and to cover the utter failure of the States Governments to settle the rights in the Protected Areas is clearly arbitrary and unconstitutional.

11. Because the petitioners respectfully submit that the impugned Act in so far as it includes within Section 2(d) "Forest Land" lands within sanctuaries and national parks is unconstitutional and contrary to and inconsistent with the Wild Life (Protection) Act, 1972.

12. Because the impugned Act assumes that the i) the forest dwelling scheduled tribes and other traditional forest dwellers have been residing in forests for generations but their rights could not be recorded; ii) that the recognized right includes the responsibility to use the forest sustainably and to strengthen the conservation regime of the forest; iii) that forest rights on ancestral lands and their habitat were not adequately recognized during the colonial period and in independent India and iv) that it is necessary to address the long standing insecurity of tenurial and access rights. The said assumption / premise is unfounded and not supported by any scientific data or examined by experts or based on any

credible report, therefore the impugned Act is arbitrary exercise of the power and is thus illegal and unconstitutional.

13. Because the impugned Act could have conferred forest rights only on the forest dwelling scheduled tribes and other traditional forest dwellers who have been in occupation of the forest land during the colonial period or atleast during the framing of the Constitution. All others who have occupied forest lands after 1950 cannot be considered to have any forest rights on ancestral land and their habitat during the colonial period as well as independent India. Therefore conferring forest rights to persons who were not occupying forest lands for generations is against the object and purpose of the Act and therefore arbitrary, illegal and against equality guaranteed under Article 14 of the Constitution.

14. Because after the lapse of over 75 years it is next to impossible to ascertain and establish the genuineness of a claim to forest land on the ground of bonafide occupation for livelihood over several generations.

15. Because the inclusion of the protected areas within the term community forest resource in 2(a) and forest land in 2(o) is neither in the interest of conservation of the biodiversity and maintenance of ecological balance and would destroy the conservation regime.



16. Because the phrase 'primarily resides in and who depend on the forest lands for bonafide livelihood needs' is unreasonable and vague. The terms 'primarily resides' and 'bonafide livelihood needs' are not defined under the impugned Act and the same is capable of being misused and misunderstood.

17. Because the term 'minor forest produce' is very wide and includes all plant matter excluding timber and giving rights to exploit and sell the same in all types of forest will be detrimental to the health of the forests and to the very existence of the forests and a threat to the environmental and ecological security of the country. Further, such indiscriminate commercial exploitation will be disastrous to the Protected Areas and the wildlife and therefore illegal and unconstitutional.

18. Because the appointment of the Ministry of Tribal affairs as the nodal agency for the implementation of the impugned Act is arbitrary, illegal, unreasonable and malafide.

19. Because the forest rights under section 3 of the impugned Act is arbitrary, unreasonable, unsustainable, vague and against public interest and therefore unconstitutional.

20. Because the forest right conferred under Section 3(1) (c) is bad on the ground that the forest rights are extended to the right of



ownership access to collect use and dispose of minor forest produce which has been traditionally collected within or outside village boundaries, being against the interest of conservation and protection of the forest and ecosystem which would have a direct bearing upon the environmental and ecological security of the nation. Disposal of minor forest produce involves commercial exploitation and the same would be unsustainable and indiscriminate and also against public interest.

21. Because it would be impossible to regulate the extent of exploitation and to determine what is bonafide livelihood needs.

22. Because forest rights under 3 (1)(g), (h) are bad on the ground that the conversion of patta or leases or grants into title and the right to conversion of forest villages, all habitations, unsurveyed villages and other villages into revenue villages would directly fragment and diminish the area under forest. Once ownership rights are conferred upon a person in the forests it would become impossible to restrict or regulate the enjoyment of the impugned property. He would be free to sell or dispose of the impugned property as he pleases. That inspite of specific restrictions imposed on selling or alienating such rights under the impugned Act by permitting transfer only by inheritance, these have never been successful and the lands have been transferred through a number of methods to circumvent the laws, which have been made to

prevent such transfers. Similarly, once forestlands are converted into revenue lands the restrictions on transfer, sale will automatically be removed. This would result in a drastic reduction in the forest area and cause fragmentation and honey combing of forests which be against the principles of Article 48 A of the Constitution and violative of Article 21 of the Constitution.

23. Because the rights covered under 3 (1)(i) which confers the right to protect, regenerate or conserve or manage any community forest resource is arbitrary and illegal on the ground that conservation and management needs special skills and knowledge and can be carried out only by trained independent authorities. The definition of community forest resources is wide enough to cover reserve forest, protected forests, protected areas such as sanctuaries and national parks and therefore these should be left to the authorities who are supposed to manage the forests that is the Forest Department comprising of trained officers of the Indian Forest Service The Gram Sabha hardly possess any expertise in the complex field of conservation and management of fragile ecosystems covered under the system of protected areas under the Wild Life (Protection) Act, 1972.

24. Because section 3(m) is arbitrary and unreasonable. The right is capable of being misused since all persons who have been



evicted after collecting compensation will return back claiming in-situ rehabilitation.

25. Because section 4 is arbitrary, illegal and unreasonable and against the principles of sustainable development.

26. Because the impugned Act can be implemented only after the identification of critical wildlife habitats in the National parks and Sanctuaries. If the rights are first allowed in the Protected Areas and thereafter the exercise to identify critical wildlife habitat is undertaken and a complicated exercise to relocate people from these areas will be undertaken, is not workable as is envisaged under the impugned Act.

27. Because section 4 (2) provides that forest rights recognised under the impugned Act in critical wildlife habitat of national parks and sanctuaries may be subsequently modified or resettled, provided that no forests rights holders shall be resettled or have their rights in any manner affected for the purpose of creating inviolate areas for wildlife conservation except by following the conditions stipulated therein. The conditions specified are so onerous that it will make the resettlement impossible in practice. This will totally destroy the Protected Areas declared under the Wild Life (Protection) Act, 1972.



28. Because Section 4(1)(4) further provides that the rights conferred under the Section are heritable but not alienable. This would render the holding totally unviable since a small extent of land would after some decades become uneconomical and insufficient to meet the demands of the expanding family. Further, it would be impossible to restrict the occupation only to the area so recognize since the natural growth in the family would result in fresh demands for extending the date of occupation and also the area under cultivation. The process would be totally detrimental to the interest of conservation of the forests and the natural ecosystem.

29. Because there is no justification in providing under Section 4 (3) that the recognition and vesting of forest rights shall be subject to the scheduled tribes or tribal communities or other traditional forest dwellers having occupied forest land before 13<sup>th</sup> day of December 2005. There is no co-relation or nexus between the date 13.12.2005 and the vesting of traditional forest rights.

30. Because Section 5 empowers the holder of forest right, Gram Sabha and village level institution to protect wildlife, forest and biodiversity, catchment areas, water sources and ecologically sensitive areas. This overlooks the facts that management of wildlife and ecosystems is a specialised job requiring expertise in the field. Taking note of the extent of social inequity, misuse of

authority within the system and with practically no monitoring system of harvest of resources available, which are common property and assets of the nation as a whole, the impugned Act would further enable indirect exploitation of the forest dwelling communities by economically and socially dominant communities. That all these being the common heritage of mankind and every citizen of the country having a stake in them, it would therefore be illegal unwise and arbitrary to place such valuable national resources primarily with the right holders and Gram Sabhas when the conflict of interest is apparent.

31. Scientific studies have also demonstrated that the tribal communities do not economically benefit from harvest of forest resources but has been more beneficial to the politically and socially dominant communities.

32. Because large number of animals and plants are highly endangered and it would be unwise to experiment with their very survival by putting their last remaining habitats at risk through unproven management strategies practiced by untrained and new agencies.

33. Because large number of animals and plants are highly endangered and it would be unwise to experiment with them by



putting them in the hands of trained people who have vested interest by being claimants over areas which are inhabited by the endangered species.

34. Because the Gram Sabha is incompetent, untrained and unsuitable for determining the nature and extent of individual or community forest rights. It is submitted that process of recognition of forest rights involves an element of adjudication and appreciation of evidence, maps, documents, consideration of decisions of Courts and recording of evidence. These are quasi judicial functions, which requires expertise in legal procedure and law. The vesting of forest rights under the impugned Act having been left to the Gram Sabha, an untrained body of persons, is illegal and unconstitutional. The impugned Act suffers from serious flaw in because of the absence of an impartial and independent tribunal clothed with judicial powers to adjudicate upon the claims and counter claims. The system of recognition of rights by the Gram Sabha is arbitrary and unsatisfactory since it will not be in a position to discharge its functions judiciously and fairly for the reason that it would be deciding the claims of its own members.

35. Because the constitution of Sub-Divisional Level Committee and the District Level Committee is illegal, arbitrary and against all principles of justice. The Committee comprising of persons belonging to the revenue, forests and tribal affairs are incompetent to discharge a judicial function like deciding the petition against the



resolution of the Gram Sabha and the Sub Divisional Level Committee. Further their decision is made final and binding. The petitioners apprehend that these Committees will grant pattas and rights indiscriminately to all the claimants. It is submitted that forest rights are valuable rights created in the forests and every citizen has a right to protest or object to the same. There is no machinery to hear independent parties or NGOs and therefore the entire process appears to be one sided. In the normal case under the Indian Forest Act, 1927 or the Wild Life (Protection) Act, 1972 or the Land Acquisition Act the settlement officer is an independent authority before whom the State represents its interests while the owner of the land or claimant represents the other side. There is a *lis* and the settlement officer decides the same. In the instant case since the authorities comprise of officers of the revenue, forests and tribal affairs and appeal or petition can be filed only by a person aggrieved by a resolution passed by the Gram Sabha, there is no authority or agency to represent the case of State or to counter the claim put forth by a member of the Gram Sabha claiming possession of the forest land. In absence of an independent authority or tribunal, the implementation of the impugned Act will create serious problems in deciding claims and counter claims and objections and whether the claim is genuine or not, and as to whether the forest right claimed should be admitted.

36. Because the Gram Sabha and the appellate authorities cannot nullify judgments and orders of the Courts which has attained finality.

37. Because fixing a date 13.12.2005 for vesting of rights under the impugned Act is arbitrary, unreasonable and vague. In fact the impugned Act has been enacted with the object of recognizing the fact of the occupation of forests by forest dwelling scheduled tribes and other traditional forest dwellers over several generations. Therefore conferring forest rights on forest dwelling scheduled tribes who have occupied forest lands on or immediately before 13.12.2005 has no nexus with the object desire to be achieved and is therefore arbitrary and against Article 14 of the Constitution.

38. Because the Act does not contemplate any role of any independent agency in the recognition of forest rights in favor of the tribals. Since the primary documents regarding forest rights are to be prepared by the Gram Sabha there would be no agency or authority to dispute the claim and each member would be free to claim the maximum extent of land to be under their possession. Once all the claims are recognised the decision or resolution would be sent by the Gram Sabha to the sub-divisional level committee who would normally be bound to accept the resolution except were any of the claim is objected to by a person aggrieved. Since the person aggrieved would normally be a person whose claim has



been rejected or disallowed, there is no scope or opportunity for any agency much less the forest department to object or dispute the claim of occupation.

39. Because the entire procedure of recognition and conferment of forest rights is against the interest of conservation and sustainable development. Under our judicial system it is not permissible for the claimants or stakeholders to decide upon the extent of their rights. This would be a mockery of the rule of law and justice delivery system followed in the country.

40. Because Section 6 (6) is illegal and unconstitutional for it makes the decision of the District Level Committee on forest rights as final and binding.

41. Because Section 6(8) requiring that the Sub-Divisional Level Committee, District Level Committee and the State Level Monitory Committee shall consists of officers of the department of revenue, forest, tribal affairs and three members of Panchayat Raj institutions. It is submitted that such a committee will be highly biased in favour of the claimant since all of them have a vested interest in ensuring that their supporters or persons belonging to their Panchayat should all be granted forests rights and therefore there would be no independent or impartiality in the procedure followed by the committees.



42. Because in the entire process of recognition of forests rights there would be no person who would represent the forest or the right of the society as a whole who would be directly or indirectly affected by the conferment of rights. In the absence of the independent officials of the forest or revenue departments who have all the records and documents with respect to the area in occupation of a particular person to be represented separately before the committee so that the true facts may be brought out without which the entire process is unfair just and inequitable.

43. The present Act will make it impossible for any agency to ensure that the forests are given only to the genuine tribals and forest dependant dwellers and not to those illegal encroachers. The process of identification of genuineness of claims is an impossible task keeping in mind the number of claimants and the composition of the authority vesting forest rights. Further the right to ownership and the right to convert forests lands/villages into revenue villages will destroy completely the forests, which the State Governments and the citizen is duty bound to protect. It is one thing to suggest that certain areas of forests land may be de-notified so as to accommodate and create land for tribals and other forest dwelling people and this would help in protecting the forest while providing a secure source of livelihood to tribals and other living in the forests. However, offering in situ recognition of rights over forests across

the board without any safeguards whatsoever is illegal and unscientific as it will cause further fragmentation of large forest blocks, which has been identified as the most serious threat to biodiversity conservation including migration and gene flow.

44. Because the importance of conserving and managing existing natural forests and forest soils which are very large stores of carbon has been overlooked, That to develop and protect forests, a scientific management is necessary so as to enhance productivity density and health. Forestry projects have to lay emphasis on management and rejuvenation of natural forests. The fragile ecosystems should be properly managed in order to safeguard the livelihood of millions of people.

45. Because it is recognised that sustainable use of biodiversity is fundamental to ecological sustainability. The loss of biodiversity stems from fragmentation and destruction of the habitats extension of agriculture, filling up and draining of the wet-lands, conversion of rich biodiversity sites for human settlements. It is thus evident that the preservation of ecosystem, biodiversity and environment whether examine on common law principles or statutory principles or constitutional principles is a national issue to be tackled at the national level.



46. Because the shift in approach of legislations is evident from the FC Act of 1980 when compared with the schemes underlying the Forest Act 1927 and the Forests Policy of 1952. Considering the compulsions of the States and large depletion of forests, the legislative measures of taking out forests and wildlife from the State list and incorporating it in the concurrent list thereby shifting the responsibility from the States to the Centre.

47. Because the damage to the environment is damage to the country's assets as a whole. Ecology knows no boundaries. It can have impact on the climate impacting future generations. Despite the FC Act and the Forests Policy, forests have been rapidly depleting. The Forests Policy recognised this fact and was evolved to check the menace of fast eroding of forests despite various environmental laws enacted between 1970 – 1986 depletion of forests has not halted. The State of Forests reports published by the Forests Survey of India amply supports this conclusion.

48. Because the importance of conserving and managing existing natural forests and forest soils which are very large stores houses of carbon, as it will significantly reduce green house gas emissions to develop and protect forests, a scientific management is necessary so as to enhance productivity density and health. Forestry projects have to lay emphasis on management and



rejuvenation of natural forests. The fragile ecosystem should be properly managed in order to safeguard the water and food security of the millions of people.

49. Because the principles, which are imperative for the preservation of forests and ecosystems are (1) the precautionary principles, (2) polluter pays and (3) the public trust doctrine. The U.N. General Assembly in the declaration on the right to development, 1986 declares sustainable development to be an inalienable human right. In the 1992 Rio Conference it is declared that human beings are at the centre of concerns for sustainable development. Human beings are entitled to healthy and productive life in harmony with nature. In order to achieve sustainable development, environmental protection shall constitute an integral part of developmental process.

50. Because there is also no rational basis to arrive at a figure of 4 hectares of land per person. The Bill of the impugned Act was introduced in the Lok Sabha on 13<sup>th</sup> December, 2005 wherein the right over forest land was limited to 2.5 hectares per person. The impugned bill was subsequently referred to a Joint Committee of both the Houses of parliament (JPC) by the Lok Sabha on 21<sup>st</sup> December, 2005 and Rajya Sabha 26<sup>th</sup> December, 2005. The impugned JPC submitted its recommendations on 19<sup>th</sup> May, 2006 in which was recommended that "the ceiling of 2.5 hectares be

removed and it be restricted to the area under actual occupation". Subsequently, the Central Government incorporated and raised the limit to 4 hectares per person. It is submitted that as per 1995-96 Agricultural census 80.30% of land holding in the country is less than 2 hectares and the average size of all the land holding is 1.41 hectares. That under the Rehabilitation and Re-settlement Schemes the area allocated is 2 hectares or less, therefore there is no rational for granting forest rights over 4 hectares of forest land and therefore, it is totally arbitrary and illegal.

51. Because the impugned Act is unconstitutional to the extent that it equates forest dwelling scheduled tribes with other traditional forest dwellers. The two categories having no common traits and could not have been treated equally in the conferment of forest rights. The forest dwelling scheduled tribes are identified and recognised under the Constitution. It is well documented that the tribals have always been exploited by the non-tribals. The tribals have been robbed and cheated over the ages of their lands, culture and rights by the non-tribals and in order to protect them from such exploitations, special acts have been enacted providing protection of tribal lands from being transferred or taken over by non-tribals. It is an accepted fundamental right that unequal cannot be equated for conferment of rights. The impugned Act is therefore unconstitutional and illegal.



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52. Because one of the objects of the Act is to recognise forest rights of forest dwelling scheduled tribes and other traditional forest dwellers who have been residing in such forests for generations and whose rights could not be recorded. This presupposes that such tribals and forest dwellers have been residing in the forests over generations and their rights could not be recorded. Therefore the impugned Act is only giving such forest dwelling scheduled tribes and other traditional forest dwellers an opportunity to have their rights recorded. This does not mean that every person in occupation of forest land on or before 13.12.2005 should get the forest rights as stated in the Act.

53. Because under the Indian Forest Act, 1927 forests were notified as reserve forests. Prior to such reservation the procedure prescribed under Sections 4 to 20 were required to be complied with. The impugned Sections provide for a notice and enquiry by the forest settlement officer who after scrutiny of all the claims decides as to whether any right has been proved or established and thereafter such rights claims and privileges were recorded. The impugned Act appears to have been enacted for the benefit of those forest dwelling scheduled tribes and other traditional forest dwellers who could not due to whatever reason submit their claims before the settlement officer. It presupposes the occupation of forest land on the impugned day of notification. Therefore the fixing



of 13.12.2005 as the cutoff date for recognition of right is arbitrary, illegal, unreasonable and unconstitutional.

54. Because with respect to other traditional forest dwellers Section 2 (o) provides that any member or community should have resided in the forests atleast for 3 generations. That means any person or community having resided in the forests on or before 1980 would be eligible to claim forest rights under the impugned Act. However, the forests have been notified as reserve forests nearly 50 to 60 years prior to 13.12.2005. There is no justifiable reason as to why the rights under the impugned Act should not have been restricted only to those families who have been residing in the forest on the date of the notification of the land as a reserve forest. The Act is therefore arbitrary and malafide and against public interest.

55. Because the impugned Act is a devise to cover up the inefficiency, negligence and contempt for law and the legal process, by the respondents in failing to prevent large scale encroachment on to the forest lands. This Hon'ble Court has consistently held that encroachers on to public land should not be recognised or regularized. The impugned Act has been brought into force only to regularize illegal encroachment of public land against public interest. It has become the order of the day to encourage illegal occupation/ encroachment of public property or

land and thereafter regularize the same on the ground that it is not possible to evict or rehabilitate such people. This method is illegal and against the Rule of law. It places a premium on illegal occupation of forests land since the encroacher is confident that some day his illegal occupation will be regularized.

56. Because the present Act is a pure political decision in order to obtain political mileage to the parties in power and against public interest. Forests have always been considered a liability by successive Governments. Since people are vote banks it makes political sense to confer /recognize forest rights on people even though they have broken the law and encroached upon public property. This being a vicious circle encouraged by vested interest must be strongly deprecated by holding the Act illegal and unconstitutional and against national interest.

57. Because the mere reading of the statement of objects and reasons makes it clear that the impugned Act has been enacted with the sole purpose of getting over the various orders and directions passed by this Hon'ble Court. This Hon'ble Court has in the several orders and directions, directed the respondents to remove unauthorized and illegal occupants of the reserve forests, sanctuaries and national parks. The impugned order and directions have not been implemented by the respondents thereby encouraging further encroachments.



58. Because there has been utter failure on the part of the respondents in protecting the valuable forests resources of the country from unscrupulous encroachers. The forests are held in trust by the Government and the same cannot be allowed to be destroyed by permitting encroachments and thereafter regularizing the same for meeting narrow political ends. Destruction of the forests will lead to catastrophic consequences affecting ecological and environmental security of the nation.

59. Because it has become a trend to grant immunity to people violating the law for narrow political gains without keeping in mind the national interests. Encroachments by vested interest cannot be condoned and regularized merely in the name of correcting historical injustice. By the impugned Act valuable natural assets of the nation are being distributed in the name of correcting historical injustice to persons who have encroached upon forestland for their personal gains.

60. Because the impugned Act sends out a very dangerous signal that the forest assets of the nation is available and any person encroaching or occupying the same will be protected in due course on the ground that the State is incapable of removing such encroachment / occupation and at some point of time the occupation would be regularize and ownership rights conferred.



The rights were settled under a legal process and every person establishing his right or position on the land at the time of declaration of the forest as a reserve forest, were settled and recorded. Subsequently, again under the Wild Life (Protection) Act, 1972 an opportunity was given on all those persons who are in legal occupation to have their rights recorded. Thereafter again 1980 under the Forest (Conservation) Act, 1980 large tracts of forestlands were regularized in the name of persons who were in possession and occupation of forest land prior to 1978. Having failed to stop the rampant encroachments on to the forest lands, the respondent have again come out to the present Act to regularize all encroachments on or before 13.12.2005. This is a clear fraud on the Constitution and the law abiding citizens of the country.

61. Because part of the forest lands have been taken over by the State Governments under various land reforms measures. It was expressly stated that the forests lands would be maintained as forests and would not be available for distribution for agriculture. However the stark reality is that most of the forests lands taken over have been encroached by vested interest in the name of tribals and poor forest dwellers. The ultimate loss is to the nation and its people.

62. Because the procedure for determination of right is arbitrary and contrary to law. It is one of the basic principles of the rule of law that a person interested in the subject matter should not sit as a judge to determine their own rights. In the present Act the members of the Gram Sabha who are themselves claimants and applicants for rights under the Act in their individual capacity, collectively decide the nature and extent of the right to be conferred upon them. This is clearly arbitrary and contrary to all principles of natural justice and law and therefore un-constitutional.

63. Because the Gram Sabha which is the body under the Act to determine the individual and collective rights of claimants is biased and incompetent to exercise any quasi-judicial function since they have substantial interest in the claim and cannot act impartially. The entire procedure prescribed under the Act for conferment of right is illegal, arbitrary, irrational and outside the accepted norms of fair play and the rule of law.

64. Because the Gram Sabha is as a body disqualified to determine rights since most of them have an interest in the subject matter to be determined by the Gram Sabha.

65. Because the clubbing of forest dwelling 'schedule tribes' with 'other traditional forest dwellers' is contrary to the constitutional safeguards provided in respect of the tribal communities. Part X of



the Constitution deals with scheduled tribes and tribal areas. Article 224 of the Constitution makes applicable to the Scheduled Areas and scheduled tribes the operation of the provisions of the Fifth Schedule and the Sixth schedule. The Fifth and Sixth Schedule to the Constitution provides a special scheme for the administration and control of schedule areas and scheduled tribes through Tribal Advisory Council keeping in view the interests and welfare of the scheduled tribes. Article 366 of the Constitution defines such scheduled tribes or tribal communities as deemed under Section 342 of the Constitution. Section 342 under the heading "Scheduled tribes" empowers the President to notify tribal communities are scheduled tribes for the purpose of the Constitution. There is no definition of any category of persons known as 'other traditional forest dwellers' in the Constitution. Therefore providing for a separate category of persons to be called the 'other traditional forest dwellers' and placing them along with the schedule tribes is therefore arbitrary and detrimental to the genuine forest dependant dwellers i.e. the forest dependant scheduled tribes.

66. Because Section 4(6) is arbitrary for the reason that there is no mechanism provided for ascertaining the area under actual occupation of an individual or community. The lands being undemarcated and there being practically no documents recording the area under occupation, it would be impossible to verify the area under actual occupation and every individual or community would



claim possession of an area of 4 hectares i.e. almost 10 acres. This would result in fragmentation and destruction of large tracts of forests resulting in loss of forest - land threatening the ecological security of the nation.

67. Because Section 4(7) is unconstitutional and arbitrary for the reason that the Forest (Conservation) Act, 1980 has been brought into force with the object of preserving the forests, recognizing the fact that deforestation causes ecological imbalances and leads to environmental deterioration. That deforestation have been taken place on a large scale causing wide spread concern since loss of forests and biodiversity would impact the environment on multi-dimensional plane affecting every part of the environment and its ramification would be felt not only on the people dependent on the forests but also to all others and the nation as a whole.

68. Because the very purpose and object of the Forest (Conservation) Act, 1980 and the sound principle behind charging of the Net Present Value and Compensatory Afforestation money has been overlooked for the reason that the environmental security of the nation is much more important than the livelihood of a small section of the society. The larger good of the nation must prevail over narrow personal interests of a small section of the public and must be protected. Even if the Government desires to give forest land to the forest dwelling scheduled tribes and other traditional

forest dwellers, there is no reason why the Government should not ensure that the forest land lost is restored or compensated by afforestation for the larger good of the nation.

69. Because the impugned act overlooked the fact that the environmental security cannot be overlooked while considering conferment of rights to the deprived forest dwelling scheduled tribes and other traditional forest dwellers. All citizens have an equal right to the enjoyment of clean, natural environment and anything that would adversely affect the environment as whole cannot be permitted merely on the ground that the same is necessary for protecting the interest of forest dwelling scheduled tribes and other traditional forest dwellers.

70. Because it is the duty of the Government to ensure that every citizen has an opportunity to develop and enjoy the fruits of development. However it is not permissible to sacrifice the interest of the majority for providing benefits to a minority. The Government should consider the larger interest of the nation and ensure that while helping the forest dwelling scheduled tribes and other traditional forest dwellers to develop, the same is not at the cost of the majority and the nation.

71. Because Section 5 is unconstitutional and arbitrary since it makes the Gram Sabha which is the village level institution the



protector of wildlife, forest and biodiversity, the authority to protect the catchment areas, water sources, etc. The Gram Sabha is ill equipped and incapable of protecting the forest and the same can be done only by independent personnel's, which have the expertise and knowledge required to appreciate, understand and protect the forests and its biodiversity.

72. Because Section 6 is unconstitutional since Forest Rights Committee elected from within the Gram Sabha cannot be conferred the authority to determined the nature and extend of individual or community forests rights of forest dwelling scheduled tribes and other traditional forest dwellers. The Gram Sabha as defined under Section 2(g) of the Act comprises of the general assembly of the village comprising of all adult members. It is practically impossible for such a body to take a decision on such a vital matter. The impugned power can be properly exercised only by a person or tribunal which is an independent body having the requisite knowledge and training to recognize the rights as prescribed under the Act.

73. Because the identification and determination of the rights to be vested under the Act upon forest dwelling scheduled tribes and other traditional forest dwellers requires special skills and cannot be expected of from the Forest Rights Committee of the Gram Sabha. Such determination of rights in its very nature requires the



authority to scrutinize documents, verify documents, appreciate judgments orders and documents conferring titles, maps, etc. which is a specialize job and can be performed effectively only by a judicial tribunal having requisite knowledge of the area and the condition prevailing in the State. The Forest Rights Committee of the Gram Sabha or other representatives of the people cannot perform the impugned function effectively.

74. Because in the process of determination of rights, the authority has to first determine whether the claimant is a member of the schedule tribes primarily residing and depending on the forests for bonafide livelihood. Similarly in the case of other traditional forest dwellers, it involves appreciation of documents and facts, which cannot be done by the Forest Rights Committee of the Gram Sabha or by a group of untrained officers of the revenue and forest department. This is a quasi – judicial function and can be performed only by a trained authority like a tribunal and not by the Forest Rights Committee of the Gram Sabha.

75. Because the determination of civil rights under our constitution is left to a judicial body managed by the courts and tribunals set up in exercise of the judicial powers of the State. The impugned power can be exercise properly only by such specialized trained institution. The Forest Rights Committee of the Gram Sabha as defined would be incapable of determining rights

between competing claims. The procedure prescribed under Chapter IV is contrary to the rule of law and divests the powers of the civil courts from exercising the jurisdiction vested in them.

76. Because the Gram Sabha cannot decide rights, which have been decided by a competent court or tribunal. The rights in reserve forests have been settled by forest tribunals which have attained finality and many such orders have been affirmed by the High Courts and the Supreme Court. Such orders which have attained finality cannot be reviewed by the Gram Sabha and rights which have been refused by the Forest Tribunals and Courts cannot be set aside and reopened and restored by the Gram Sabha under the impugned Act.

77. Because the rights in and over forest lands is a very valuable right and the system of recognition of right and its confirmation by the Sub Divisional Committee and the District Level Committee is very unsatisfactory and cannot substitute the determination of right by a properly constituted Tribunal or Court.

78. Because before a Tribunal or a Court the claims can be adjudicated in a proper legal manner wherein opportunity is provided to the department to dispute a claim and an independent Court or Tribunal on the basis of the documents produced and on



the basis of the provisions of law, would be able to determine the question in issue in a judicial manner.

79. Because the entire judicial system has been given a go by and the procedure prescribed under the impugned Chapter is totally arbitrary and against all established principles of law and justice.

80. Because the procedure prescribed for the determination of rights is arbitrary and unfair and sure way to destroy the entire forest lands which the Central Government and the Parliament has over the last 40 years been trying to protect and preserve through the National Forest Policy, 1988, the amendment of the constitution by inserting Articles 48A and 51A to the Constitution of India, enactment of the Forest (Conservation) of Act 1980, the Wild Life (Protection) Act, 1972, the Environment (Protection) Act, 1986 etc. The Parliament, the States and the citizen have been of late concerned about the State of our environment and the wanton destruction of our forests in the name of development and the serious consequences and entails such destruction upon our environment security and sustainability. Therefore, there has been no improvement in the forest cover or the manner in which we have been treating our forests to come to a conclusion that it would be environmentally safe to covert the forest into revenue land by



giving ownership right to forest dwellers and to further open up illegal occupation of forest land.

81. Because the impugned Act is arbitrary, illegal, unconstitutional and against the Directive Principles of State Policy to protect and preserve the forest under Article 48A and the Fundamental Duties of every citizen under 51A (g) and Article 21 the right to life.

82. Because the impugned Act instead of promoting protection and preservation of the forest attempts to distributes forest land among the forest dwellers and thereby destroy the forests which is violative of Article 21 of the Constitution read with Article 48A and 51A(g) of the Constitution.

83. Because environmental security is the very basis of the right to life and any threat to the ecological and environmental security directly violates Article 21 of the Constitution, which is recognized as a basic feature of the Constitution and beyond the amending powers of the Parliament.

84. Because the forests play a critical role in ensuring the ecological and security of the Nation and no authority has the power to interfere with or destroy the same.

85. Because the impugned act is neither in public interest nor in the interest of the forest dependant scheduled tribes and forest dwellers. The Act indirectly promotes encroachment on forest lands by vested interest and land grabbers and there is no machinery under the Act to distinguish the claims of the genuine forest dwellers and those claiming land on false and fabricated documents.

86. Because there is no machinery or mechanism under the Act to identify persons who are primarily residing in and dependent on the forest and those who are illegally occupying the forest land.

87. Because under the pretext of conferring rights to continue bonafide activities of forest dwelling scheduled tribes and other traditional forest dwellers, the Act attempts to change the nature of forest lands by conferring a right under 4(1)(g) and (h) to conversion of lease hold rights into ownership and thereafter for conversion into revenue land. This indirectly results in changing the nature of forest thereby de-notifying forestland which is not permissible under the existing laws.

88. Because there is no rational justification to prescribe 13.12.2005 as the date of vesting of rights under the Act. The Forest (Conservation) Act, 1980, which came into force in 1980 recognized all bonafide genuine forest dwellers and provided for



their protection. There is no justification to include persons who have occupied forest land after 1980 and up to 2005. The State Governments have failed in their constitutional responsibility to ensure that after 1980 no encroachment take place on forest land. Therefore the encroachments cannot be allowed to regularize, which have come about due to negligence or inaction of the States. The State Government cannot be permitted to squander away valuable forest land, which are a natural heritage and belong to the people of the country, to encroachers in the name of recognition of rights.

89. Because Article 21 requires that all developmental activities must be sustainable. Even the impugned Act in its object and reason recognizes the fact that the land be used on a sustainable basis by conservation of biodiversity and maintenance of ecological balance to strength the conservation regime of the forest while ensuring livelihood and food security of the people. There is no independent expert study on the sustainability of the recognized forest rights under the Act upon the natural environment and ecosystem. There has been no study as to the impacts of grant of right of residents, cultivation, right to minor forest produce which includes everything except standing timber particularly in light of the fact that there is immense commercial demand for forest produce which outstrips their availability on a sustainable basis in the forests.



90. Because the Act conferring forest rights appears to be short sighted since the available forests are far below the desired extend and is about 10 to 12 percent of the land area and if not taken care of the entire forest land would be converted into waste land within a short period of time.

91. Because the Act by enlarging the people entitled to forest rights from schedule tribes to 'other traditional forest dwellers' has created a demand, which will far exceed the available of the forest land. There is no procedure under the Act to restrict the exploitation to a sustainable limit depending on the availability of the material in the forest. That is to say if the available forest can only sustain 100 heads of cattle for grazing, opening up the same for a 1,000 heads of cattle would irreparably destroy the available forest and this is not permissible in law. Before distribution of forest rights in respect of minor forest produce it is necessary in national interest to first study and assess the availability of each forest produce in a particular area and the sustainability of the demand and thereafter determine the extent of rights and the number of persons to whom such rights may be conferred.

92. Because the impugned Rules are ultra vires and beyond the scope of the impugned Act and therefore bad in law and liable to be quash and set aside.

93. Because the definition of 'bonafide livelihood needs' in Rule 2(b) is unreasonable and vague for the reason that the qualifying words in the Rules are "produce resulting from self-cultivation of forest land" Clauses 3(1) (d) does not contain an element of self-cultivation and therefore could not have been brought under the definition of 'bona fide livelihood needs'.

94. Because Rule 2(e) is contrary an inconsistency with the Act in as much as the Act provides in Rule 6 (1) that the Gram Sabha shall be the authority to initiate the process for determining the nature and extend of individual or community forest rights that may be given to the forest dwelling scheduled tribes and other traditional forest dwellers. The Act does not contemplate any committee like the Forest Right Committee mentioned in 2(1) (e) of the impugned Rules. Therefore providing for the Forest Right Committee is contrary to the Act.

95. Because no powers or duties or functions are prescribed for the Forest Rights Committee and therefore there was nothing in the Rules or the Act which provides for the method or powers of the Forest Rights Committee. The Constitution of the committee is therefore illegal and contrary to the Act.



96. Because Rule 3 provides the method of selection of the Forest Rights Committee but it does not provides any minimum qualification. Since the Committee is required to evaluate and appreciate the various documents mentioned in Rule 13, some minimum qualification ought to have been prescribed.

97. Because Rule 3 (3) is arbitrary since it does not contemplate or provide for the situation were the Gram Sabha itself it's the claimant. Since the committee comprise of members of the Gram Sabha, it cannot and should not hear claims on behalf of the Gram Sabha.

98. Because Rule 4 is arbitrary and unworkable for the reason that it is required to determine the nature and extend the forest right and to receive and hear the claims relating thereto. It is unreasonable and impossible for the Gram Sabha, which under the Act comprise of the village assembly to hear and determine the nature and extent of forest rights. It is impossible, illegal and beyond all principles of law that the general body of the village decided its own right.

99. Because Rule 4 is unconstitutional for the reason that under our Constitution, which is based on the rule of law it is not permissible for the claimant to adjudicate or determine the extent and nature of its claim. It is not legally permissible for a person to



act is a judge in his own cause. Therefore Rule 4 is unconstitutional and bad in law.

100. Because Rule 4 contemplates only a small representation of Scheduled Tribes and primitive Tribes. From time immemorial it has been the grievance of the scheduled tribes and the primitive tribes that they have been discriminated against and deprived / denied of their land and rights by non-tribal dominant social groups. The implementation of Rule 4 would only further the interest of non-tribals and continue the oppression and exploitation of the tribals and primitive tribal groups. Even the Gram Sabha is required only to have an adequate representation.

101. Because under Rule 4 adequate representation is not defined, which leads to uncertainty and would further the oppression and exploitation of the tribals.

102. Because the sub-divisional level committee comprises of only one member from the Forest Department while the majority belong to the revenue or Panchayat. The function of the Sub Divisional Level Committee is to provide information on the protection of wildlife, forest and biodiversity with reference to flora and fauna, which needs to be conserved and protected, where as there is insufficient representation of the forest department and experts in the field of wildlife and biodiversity management. The

Sub Divisional Officer, members of the Panchayat or an officer of the Tribal Welfare Department cannot have the requisite expertise and knowledge in the field of forestry, wildlife and biodiversity management.

103. Because Rule 6 is arbitrary, illegal and unreasonable and against public interest since the Sub Divisional Level Committee cannot be conferred the powers to provide and decide ways and means to protect the forests, wildlife and biodiversity since the forest and wildlife is field of natural sciences etc.

104. Because the Sub Divisional Level Committee is required to hear and adjudicate disputes between the Gram Sabha, claimants, state agencies and persons aggrieved. The committee is not equipped to adjudicate and decide complicated question of facts and law, which are likely to arise in matters relating to forest rights.

#### PRAYER

The petitioners therefore most humbly pray that this Hon'ble Court may be graciously pleased to:



- a) Issue an appropriate writ order or direction in the nature of a writ of mandamus quashing and setting aside the impugned Scheduled Tribes and Other Traditional Forest Dwellers (Recognition Of Forests Rights) Act, 2006.
- b) Declare that the Parliament has no legislative competent to enact the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition Of Forests Rights) Act, 2006 and therefore the Tribal Rights Act is unconstitutional and colorable exercise of powers.
- c) Declare that the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition Of Forests Rights) Act, 2006 is unconstitutional to the extent that it in Section 2(a), 2(d) includes protected areas such as Sanctuaries and National Parks within the definition of community forest reserve and forest land.
- d) Declare that the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition Of Forests Rights) Act, 2006 is unconstitutional and against public interest to the extent it includes within its scope areas declared as Sanctuaries and National Parks under the Wild Life (Protection) Act, 1972.



- e) Declare that the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forests Rights) Act, 2006 is unconstitutional to the extent that it extends the *forests rights* to other traditional forest dwellers forests rights under section 3(1) and 4(1) (b).
- f) Declare that the procedure for vesting of forests rights and the authorities of the Gram Sabha, the Sub Divisional Level Committee and the District Level Committee and their composition are unconstitutional.
- g) Declare the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition Of Forests Rights) Act, 2006 unconstitutional being violative of the fundamental rights guaranteed under article 21 reads with articles 48A and 51A of the Constitution.
- h) Declare that the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forests Rights) Act, 2006 is unconstitutional since the same is against the principles of sustainable development and is a violation of the directive principles contained in Article 48A and the fundamental duties under Article 51 A of the Constitution.

- i) Declare that the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition Of Forests Rights) Act, 2006 is unsustainable and contrary to the Wild Life (Protection) Act, 1972 and the Forest (Conservation) Act, 1980 and against public interest.
- j) Declare that the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition Of Forests Rights) Rules, 2008 as ultra vires the impugned Act and unconstitutional.
- k) Declare that the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition Of Forests Rights) Rules, 2008 are arbitrary, unreasonable, vague illegal and against public interest and therefore invalid and void.
- l) Declare that the extension of the date of occupation of forestland to 13.12.2005 is arbitrary, unreasonable, unfair and therefore unconstitutional.
- m) Pass such other and further orders.

Drawn on: March, 2008

Drawn By

Filed on : March, 2008

P. K. MANOHAR

Advocate for the Petitioner



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IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
WRIT PETITION (C) NO. OF 2008

in the matter of:

WILDLIFE FIRST

Petitioners

through Praveen Bhargav, Trustee  
#1235, 1<sup>st</sup> Floor, 26<sup>th</sup> 'A' Main, 4<sup>th</sup> 'T' Block,  
Jayanagar, Bangalore – 560 041

& OTHERS

Versus

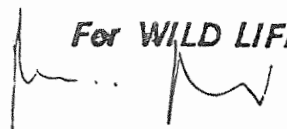
UNION OF INDIA & OTHERS

Respondents

AFFIDAVIT

1. Praveen Bhargav, S/o. late V. S. Bhargav, aged about 44 years, do hereby solemnly affirm and state as under:
2. I am the Trustee of the 1<sup>st</sup> Petitioner in the above Writ Petition and as such I am conversant with the facts and circumstances of the case. I am competent to swear this Affidavit.
3. I have gone through a copy of the accompanying Writ Petition at pages 1 to 151 having paras 1 to 104 and the Synopsis and List of dates at pages A to B... and I say that the contents thereof are true and correct to the best of my knowledge.



For WILD LIFE FIRST  
  
Trustee/Authorised Signator/



4. I have gone through a copy of the application for interim orders at pages 181 to 183 having paras 1 to 4 and I say that the contents thereof are true and correct to the best of my knowledge.

5. I say that the Annexures to the Petition are true and correct copies of their respective originals.

Dated this the 18/2/08

For WILD LIFE FIRST  
*[Signature]*  
Trustee/Authorised Signatory

DEPONENT

Verification

I, the above named deponent do hereby solemnly affirm and state that the contents of the above affidavit in paras 1 to 5 are true and correct to the best of my knowledge.

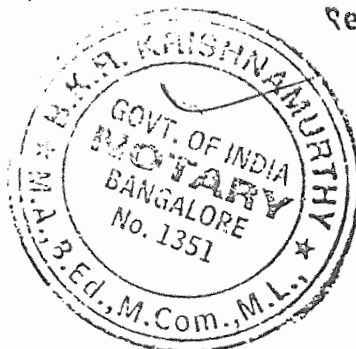
Verified this the 18th Feb-08

For WILD LIFE FIRST  
*[Signature]*  
Trustee/Authorised Signatory

DEPONENT

Notarial
Page No. 4787
Page No. 26
Date: 18.2.08

SWORN TO BEFORE ME  
*[Signature]* 18/2/08  
B.K.R. Krishnamurthy  
M.A., M.Ed., M.Com., M.L.,  
ADVOCATE AND NOTARY  
Reg. No. 1351, GOVT. OF INDIA  
City Civil Court Complex  
BANGALORE-560 009



Annexure P1

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The  
Scheduled Tribes and  
Other Traditional  
Forest Dwellers  
(Recognition of Forest  
Rights) Act, 2006

(2 of 2007)

*with*  
SHORT NOTES

**Universal**

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THE SCHEDULED TRIBES AND OTHER  
TRADITIONAL FOREST DWELLERS  
(RECOGNITION OF FOREST RIGHTS)  
ACT, 2006

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**THE SCHEDULED TRIBES AND OTHER  
TRADITIONAL FOREST DWELLERS  
(RECOGNITION OF FOREST RIGHTS)  
ACT, 2006**

**INTRODUCTION**

This Act attempts to balance forest dwellers' customary rights, which have been ignored so far, with economic and environmental objectives of today. It seeks to recognize forest rights and interests of FDSTs (Forest Dwelling Scheduled Tribes) and other traditional forest dwellers, who have been occupying the forest land. While this, on one hand, will maintain ecological balance and conservation of bio-diversity, on the other hand, will ensure livelihood and food security of such tribes/dwellers including those who were forced to relocate their dwelling due to state intervention.

Thus, the aim of the Act is to harmonize the potentially conflicting interest of recognizing forest rights of FDSTs and other traditional forest dwellers while protecting forests and wildlife resources.

**ACT 2 OF 2007**

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill having been passed by both the Houses of Parliament received the assent of the President on 29th December, 2006. It came on the Statute Book as THE SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FORESTS RIGHTS) ACT, 2006 (2 of 2007).

**THE SCHEDULED TRIBES AND OTHER  
TRADITIONAL FOREST DWELLERS  
(RECOGNITION OF FOREST RIGHTS)  
ACT, 2006**

(2 of 2007)

[29th December, 2006]

*An Act to recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.*

*WHEREAS the recognised rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers include the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling Scheduled Tribes and other traditional forest dwellers;*

*AND WHEREAS the forest rights on ancestral lands and their habitat were not adequately recognised in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem;*

*AND WHEREAS it has become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes and other traditional forest dwellers including those who were forced to relocate their dwelling due to State development interventions.*

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

CHAPTER I  
PRELIMINARY

**1. Short title and commencement.**—(1) This Act may be called the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

**2. Definitions.**—In this Act, unless the context otherwise requires,—

(a) "community forest resource" means customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities, including reserved forests, protected forests and protected areas such



Sec. 2] *The Scheduled Tribes and Other Traditional Forest Dwellers  
(Recognition of Forest Rights) Act, 2006*

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as Sanctuaries and National Parks to which the community had traditional access;

- (b) "critical wildlife habitat" means such areas of National Parks and Sanctuaries where it has been specifically and clearly established, case by case, on the basis of scientific and objective criteria, that such areas are required to be kept as inviolate for the purposes of wildlife conservation as may be determined and notified by the Central Government in the Ministry of Environment and Forests after open process of consultation by an Expert Committee, which includes experts from the locality appointed by that Government wherein a representative of the Ministry of Tribal Affairs shall also be included, in determining such areas according to the procedural requirements arising from sub-sections (1) and (2) of section 4;
- (c) "forest dwelling Scheduled Tribes" means the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for *bona fide* livelihood needs and includes the Scheduled Tribe pastoralist communities;
- (d) "forest land" means land of any description falling within any forest area and includes unclassified forests, undemarcated forests, existing or deemed forests, protected forests, reserved forests, Sanctuaries and National Parks;
- (e) "forest rights" means the forest rights referred to in section 3;
- (f) "forest villages" means the settlements which have been established inside the forests by the forest department of any State Government for forestry operations or which were converted into forest villages through the forest reservation process and includes forest settlement villages, fixed demand holdings, all types of taurgya settlements, by whatever name called, for such villages and includes lands for cultivation and other uses permitted by the Government;
- (g) "Gram Sabha" means a village assembly which shall consist of all adult members of a village and in case of States having no Panchayats, Padas, Tolas and other traditional village institutions and elected village committees, with full and unrestricted participation of women;
- (h) "habitat" includes the area comprising the customary habitat and such other habitats in reserved forests and protected forests of primitive tribal groups and pre-agricultural communities and other forest dwelling Scheduled Tribes;
- (i) "minor forest produce" includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like;
- (j) "nodal agency" means the nodal agency specified in section 11;
- (k) "notification" means a notification published in the Official Gazette;
- (l) "prescribed" means prescribed by rules made under this Act;



- (m) "Scheduled Areas" means the Scheduled Areas referred to in clause (1) of article 244 of the Constitution;
- (n) "sustainable use" shall have the same meaning as assigned to it in clause (o) of section 2 of the Biological Diversity Act, 2002 (18 of 2002);
- (o) "other traditional forest dweller" means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for *bona fide* livelihood needs.
- Explanation.*—For the purpose of this clause, "generation" means a period comprising of twenty-five years;
- (p) "village" means—
- (i) a village referred to in clause (b) of section 4 of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (40 of 1996); or
  - (ii) any area referred to as a village in any State law relating to Panchayats other than the Scheduled Areas; or
  - (iii) forest villages, old habitation or settlements and unsurveyed villages, whether notified as village or not; or
  - (iv) in the case of States where there are no Panchayats, the traditional village, by whatever name called;
- (q) "wild animal" means any species of animal specified in Schedules I to IV of the Wild Life (Protection) Act, 1972 (53 of 1972) and found wild in nature.

## CHAPTER II FOREST RIGHTS

**3. Forest rights of Forest dwelling Scheduled Tribes and other traditional forest dwellers.**—(1) For the purposes of this Act, the following rights, which secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands, namely:---

- (a) right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers;
- (b) community rights such as nistar, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes;
- (c) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;
- (d) other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and

Sec. 3] *The Scheduled Tribes and Other Traditional Forest Dwellers  
(Recognition of Forest Rights) Act, 2006*

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traditional seasonal resource access of nomadic or pastoralist communities;

- (e) rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;
- (f) rights in or over disputed lands under any nomenclature in any State where claims are disputed;
- (g) rights for conversion of Pattas or leases or grants issued by any local authority or any State Government on forest lands to titles;
- (h) rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests, whether recorded, notified or not into revenue villages;
- (i) right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;
- (j) rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any State;
- (k) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;
- (l) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in clauses (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal;
- (m) right to in situ rehabilitation including alternative land in cases where the Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement to rehabilitation prior to the 13th day of December, 2005.

(2) Notwithstanding anything contained in the Forest (Conservation) Act, 1980 (59 of 1980), the Central Government shall provide for diversion of forest land for the following facilities managed by the Government which involve felling of trees not exceeding seventy-five trees per hectare, namely:—

- (a) schools;
- (b) dispensary or hospital;
- (c) anganwadis;
- (d) fair price shops;
- (e) electric and telecommunication lines;
- (f) tanks and other minor water bodies;
- (g) drinking water supply and water pipelines;
- (h) water or rain water harvesting structures;



- (i) minor irrigation canals;
- (j) non-conventional source of energy;
- (k) skill upgradation or vocational training centres;
- (l) roads; and
- (m) community centres:

Provided that such diversion of forest land shall be allowed only if,—

- (i) the forest land to be diverted for the purposes mentioned in this sub-section is less than one hectare in each case; and
- (ii) the clearance of such developmental projects shall be subject to the condition that the same is recommended by the Gram Sabha.

#### COMMENTS

Sub-section (1) of this section enumerates various forest rights of FDSTs and other traditional forest dwellers on all forest lands. Sub-section (2) authorizes the government for diversion of forest land in certain cases, provided felling of trees do not exceed seventy five trees per hectare, and forest land to be diverted is less than one hectare in each case.

#### CHAPTER III

#### RECOGNITION, RESTORATION AND VESTING OF FOREST RIGHTS AND RELATED MATTERS

**4. Recognition of, and vesting of, forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers.—**(1) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government hereby recognises and vests forest rights in—

- (a) the forest dwelling Scheduled Tribes in States or areas in States where they are declared as Scheduled Tribes in respect of all forest rights mentioned in section 3;
- (b) the other traditional forest dwellers in respect of all forest rights mentioned in section 3.

(2) The forest rights recognised under this Act in critical wildlife habitats of National Parks and Sanctuaries may subsequently be modified or resettled, provided that no forest rights holders shall be resettled or have their rights in any manner affected for the purposes of creating inviolate areas for wildlife conservation except in case all the following conditions are satisfied, namely:—

- (a) the process of recognition and vesting of rights as specified in section 6 is complete in all the areas under consideration;
- (b) it has been established by the concerned agencies of the State Government, in exercise of their powers under the Wild Life (Protection) Act, 1972 (53 of 1972) that the activities or impact of the presence of holders of rights upon wild animals is sufficient to cause irreversible damage and threaten the existence of said species and their habitat;



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- (c) the State Government has concluded that other reasonable options, such as, co-existence are not available;
- (d) a resettlement or alternatives package has been prepared and communicated that provides a secure livelihood for the affected individuals and communities and fulfils the requirements of such affected individuals and communities given in the relevant laws and the policy of the Central Government;
- (e) the free informed consent of the Gram Sabhas in the areas concerned to the proposed resettlement and to the package has been obtained in writing;
- (f) no resettlement shall take place until facilities and land allocation at the resettlement location are complete as per the promised package;

Provided that the critical wildlife habitats from which rights holders are thus relocated for purposes of wildlife conservation shall not be subsequently diverted by the State Government or the Central Government or any other entity for other uses.

(3) The recognition and vesting of forest rights under this Act to the forest dwelling Scheduled Tribes and to other traditional forest dwellers in relation to any State or Union territory in respect of forest land and their habitat shall be subject to the condition that such Scheduled Tribes or tribal communities or other traditional forest dwellers had occupied forest land before the 13th day of December, 2005.

(4) A right conferred by sub-section (1) shall be heritable but not alienable or transferable and shall be registered jointly in the name of both the spouses in case of married persons and in the name of the single head in the case of a household headed by a single person and in the absence of a direct heir, the heritable right shall pass on to the next-of-kin.

(5) Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete.

(6) Where the forest rights recognised and vested by sub-section (1) are in respect of land mentioned in clause (a) of sub-section (1) of section 3 such land shall be under the occupation of an individual or family or community on the date of commencement of this Act and shall be restricted to the area under actual occupation and shall in no case exceed an area of four hectares.

(7) The forest rights shall be conferred free of all encumbrances and procedural requirements, including clearance under the Forest (Conservation) Act, 1980, requirement of paying the 'net present value' and 'compensatory afforestation' for diversion of forest land, except those specified in this Act.

(8) The forest rights recognised and vested under this Act shall include the right of land to forest dwelling Scheduled Tribes and other traditional forest dwellers who can establish that they were displaced from their dwelling and cultivation without land compensation due to State development interventions, and where the land has not been used for the purpose for which it was acquired within five years of the said acquisition.



COMMENTS

This section deals with vesting of and recognition of forests rights in forest dwelling of Scheduled Tribes and other traditional Forest Dwellers. Such rights are heritable but neither alienable nor transferable.

**5. Duties of holders of forest rights.**—The holders of any forest right, Gram Sabha and village level institutions in areas where there are holders of any forest right under this Act are empowered to—

- (a) protect the wildlife, forest and biodiversity;
- (b) ensure that adjoining catchments area, water sources and other ecological sensitive areas are adequately protected;
- (c) ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage;
- (d) ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with.

COMMENTS

This section deals with the duties of forest right's holders like protecting biodiversity, ecological sensitive areas, habitats of forest dwelling scheduled tribes and other traditional forest dwellers or any activity which adversely affects them.

CHAPTER IV

**AUTHORITIES AND PROCEDURE FOR VESTING  
 OF FOREST RIGHTS**

**6. Authorities to vest forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers and procedure thereof.**—(1) The Gram Sabha shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers within the local limits of its jurisdiction under this Act by receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim in such manner as may be prescribed for exercise of such rights and the Gram Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee.

(2) Any person aggrieved by the resolution of the Gram Sabha may prefer a petition to the Sub-Divisional Level Committee constituted under sub-section (3) and the Sub-Divisional Level Committee shall consider and dispose of such petition:

Provided that every such petition shall be preferred within sixty days from the date of passing of the resolution by the Gram Sabha:

Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.



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(3) The State Government shall constitute a Sub-Divisional Level Committee to examine the resolution passed by the Gram Sabha and prepare the record of forest rights and forward it through the Sub-Divisional Officer to the District Level Committee for a final decision.

(4) Any person aggrieved by the decision of the Sub-Divisional Level Committee may prefer a petition to the District Level Committee within sixty days from the date of decision of the Sub-Divisional Level Committee and the District Level Committee shall consider and dispose of such petition:

Provided that no petition shall be preferred directly before the District Level Committee against the resolution of the Gram Sabha unless the same has been preferred before and considered by the Sub-Divisional Level Committee:

Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.

(5) The State Government shall constitute a District Level Committee to consider and finally approve the record of forest rights prepared by the Sub-Divisional Level Committee.

(6) The decision of the District Level Committee on the record of forest rights shall be final and binding.

(7) The State Government shall constitute a State Level Monitoring Committee to monitor the process of recognition and vesting of forest rights and to submit to the nodal agency such returns and reports as may be called for by that agency.

(8) The Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee shall consist of officers of the departments of Revenue, Forest and Tribal Affairs of the State Government and three members of the Panchayati Raj Institutions at the appropriate level, appointed by the respective Panchayati Raj Institutions, of whom two shall be the Scheduled Tribe members and at least one shall be a woman, as may be prescribed.

(9) The composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of their functions shall be such as may be prescribed.

CHAPTER V

OFFENCES AND PENALTIES

7. Offences by members or officers of authorities and Committees under this Act.—Where any authority or Committee or officer or member of such authority or Committee contravenes any provision of this Act or any rule made thereunder concerning recognition of forest rights, it, or they, shall be deemed to be guilty of an offence under this Act and shall be liable to be proceeded against and punished with fine which may extend to one thousand rupees:

Provided that nothing contained in this sub-section shall render any member of the authority or Committee or head of the department or any person referred to in this section liable to any punishment if he proves that the offence was



committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

COMMENTS

As per this section, any authority or committee or officer or member who infringes any provision or rule of this act, shall be punished with fine upto one thousand rupees, except if the offence is committed without his knowledge or other due diligence has been exercised by him to prevent it.

8. Cognizance of offences.—No court shall take cognizance of any offence under section 7 unless any forest dwelling Scheduled Tribe in case of a dispute relating to a resolution of a Gram Sabha or the Gram Sabha through a resolution against any higher authority gives a notice of not less than sixty days to the State Level Monitoring Committee and the State Level Monitoring Committee has not proceeded against such authority.

COMMENTS

The court will take cognizance of any offence under section 7 only after, a notice of sixty days or more is given by any FDST against resolution of Gram Sabha or by Gram Sabha against any higher authority to the State Level Monitoring Committee.

CHAPTER VI  
MISCELLANEOUS

9. Members of authorities, etc., to be public servants.—Every member of the authorities referred to in Chapter IV and every other officer exercising any of the powers conferred by or under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

COMMENTS

Every member of the authorities is a 'public servant' under this Act. Any other officer who is exercising any of the powers conferred by or under this Act, will be deemed to be a public servant.

10. Protection of action taken in good faith.—(1) No suit, prosecution or other legal proceeding shall lie against any officer or other employee of the Central Government or the State Government for anything which is in good faith done or intended to be done by or under this Act.

(2) No suit or other legal proceeding shall lie against the Central Government or the State Government or any of its officers or other employees for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

(3) No suit or other legal proceeding shall lie against any authority as referred to in Chapter IV including its Chairperson, members, member-secretary, officers and other employees for anything which is in good faith done or intended to be done under this Act.

11. Nodal agency.—The Ministry of the Central Government dealing with Tribal Affairs or any officer or authority authorised by the Central Government in this behalf shall be the nodal agency for the implementation of the provisions of this Act.

12. Power of Central Government to issue directions.—In the performance of its duties and exercise of its powers by or under this Act, every authority



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referred to in Chapter IV shall be subject to such general or special directions, as the Central Government may, from time to time, give in writing.

COMMENTS

The Central Government is empowered to issue directions and every authority is subject to such directions.

13. Act not in derogation of any other law.—Save as otherwise provided in this Act and the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

14. Power to make rules.—(1) The Central Government may, by notification, and subject to the condition of previous publication, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

- (a) procedural details for implementation of the procedure specified in section 6;
- (b) the procedure for receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim for exercise of forest rights under sub-section (1) of section 6 and the manner of preferring a petition to the Sub-Divisional Committee under sub-section (2) of that section;
- (c) the level of officers of the departments of Revenue, Forest and Tribal Affairs of the State Government to be appointed as members of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee under sub-section (8) of section 6;
- (d) the composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of their functions under sub-section (9) of section 6;
- (e) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

COMMENTS

The Central Government is empowered to make rules for carrying out provisions of the Act.

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Annexure p-2

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(TO BE PUBLISHED IN THE GAZETTE OF INDIA,  
EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)  
OF DATED 1<sup>st</sup> JANUARY, 2008)

GOVERNMENT OF INDIA  
MINISTRY OF TRIBAL AFFAIRS

New Delhi, the 1<sup>st</sup> January, 2008

NOTIFICATION

G.S.R. \_\_\_\_\_ (E).-- WHEREAS the draft Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007 were published, as required by sub-section (1) of section 14 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) under the notification of the Government of India in the Ministry of Tribal Affairs number G.S.R.437(E), dated the 19<sup>th</sup> June, 2007 in the Gazette of India, Part II, Section 3, sub-section (i) of the same date, inviting objections and suggestions from all persons likely to be affected thereby, before the expiry of the period of forty-five days from the date on which the copies of the Gazette containing the said notification are made available to the public;

AND WHEREAS copies of the said Gazette were made available to the public on 25.06.2007;

AND WHEREAS the objections and suggestions received from the public in respect of the said draft rules have been duly considered by the Central Government;

NOW, THEREFORE, in exercise of the powers conferred by sub-sections (1) and (2) of section 14 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007), the Central Government hereby makes the following rules for recognizing and vesting the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers residing in such forests, namely:-

1. **Short title, extent and commencement.**- (1) These rules may be called the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007.

(2) They shall extend to the whole of India except the State of Jammu and Kashmir.

(3) They shall come into force on the date of their publication in the Official Gazette.



**2. Definitions.-** (1) In these rules, unless the context otherwise requires,-

- (a) "Act" means the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007);
- (b) "bonafide livelihood needs" means fulfillment of sustenance needs of self and family through production or sale of produce resulting from self-cultivation of forest land as provided under clauses (a), (c) and (d) of sub-section (1) of section 3 of the Act;
- (c) "claimant" means an individual, group of individuals, family or community making a claim for recognition and vesting of rights listed in the Act;
- (d) "disposal of minor forest produce" under clause (c) of sub-section (1) of section 3 of the Act shall include local level processing, value addition, transportation in forest area through head-loads, bicycle and handcarts for use of such produce or sale by the gatherer or the community for livelihood;
- (e) "Forest Rights Committee" means a committee constituted by the Gram Sabha under rule 3;
- (f) "section" means the section of the Act;

(2) The words and expressions used and not defined in these rules but defined in the Act, shall have the meanings respectively assigned to them in the Act.

**3. Gram Sabha.-** (1) The Gram Sabhas shall be convened by the Gram Panchayat and in its first meeting it shall elect from amongst its members, a committee of not less than ten but not exceeding fifteen persons as members of the Forest Rights Committee, wherein at least one-third members shall be the Scheduled Tribes:

Provided that not less than one-third of such members shall be women:

Provided further that where there are no Scheduled Tribes, at least one-third of such members shall be women.

(2) The Forest Rights Committee shall decide on a chairperson and a secretary and intimate it to the Sub-Divisional Level Committee.

(3) When a member of the Forest Rights Committee is also a claimant of individual forest right, he shall inform the Committee and shall not participate in the verification proceedings when his claim is considered.

**4. Functions of the Gram Sabha.-** (1) The Gram Sabha shall -

- (a) initiate the process of determining the nature and extent of forest rights, receive and hear the claims relating thereto;
- (b) prepare a list of claimants of forests rights and maintain a register containing such details of claimants and their claims as the Central Government may by order determine;
- (c) pass a resolution on claims on forest rights after giving reasonable opportunity to interested persons and authorities concerned and forward the same to the Sub-Divisional Level Committee;

- (d) consider resettlement packages under clause (e) of sub section (2) of section 4 of the Act and pass appropriate resolutions; and
- (e) constitute Committees for the protection of wildlife, forest and biodiversity, from amongst its members, in order to carry out the provisions of section 5 of the Act.

(2) The quorum of the Gram Sabha meeting shall be not less than two thirds of all members of such Gram Sabha:

Provided that where there is a heterogeneous population of Scheduled Tribes and non Scheduled Tribes in any village, the members of the Scheduled Tribe, primitive tribal groups (PTGs) and pre-agricultural communities shall be adequately represented.

(3) The Gram Sabha shall be provided with the necessary assistance by the authorities in the State.

**5. Sub-Divisional Level Committee.-** The State Government shall constitute Sub-Divisional Level Committee with the following members, namely:-

- (a) Sub-Divisional Officer or equivalent officer - Chairperson;
- (b) Forest Officer in charge of a Sub-division or equivalent officer - member;
- (c) three members of the Block or Tehsil level Panchayats to be nominated by the District Panchayat of whom at least two shall be the Scheduled Tribes preferably those who are forest dwellers, or who belong to the primitive tribal groups and where there are no Scheduled Tribes, two members who are preferably other traditional forest dwellers, and one shall be a woman member; or in areas covered under the Sixth Schedule to the Constitution, three members nominated by the Autonomous District Council or Regional Council or other appropriate zonal level, of whom at least one shall be a woman member; and
- (d) an officer of the Tribal Welfare Department in-charge of the Sub-division or where such officer is not available the officer in-charge of the tribal affairs.

**6. Functions of the Sub-Divisional Level Committee.-** The Sub-Divisional Level Committee (SDLC) shall -

- (a) provide information to each Gram Sabha about their duties and duties of holder of forest rights and others towards protection of wildlife, forest and biodiversity with reference to critical flora and fauna which need to be conserved and protected ;
- (b) provide forest and revenue maps and electoral rolls to the Gram Sabha or the Forest Rights Committee;
- (c) collate all the resolutions of the concerned Gram Sabhas;



- (d) consolidate maps and details provided by the Gram Sabhas;
- (e) examine the resolutions and the maps of the Gram Sabhas to ascertain the veracity of the claims;
- (f) hear and adjudicate disputes between Gram Sabhas on the nature and extent of any forest rights,
- (g) hear petitions from persons, including State agencies, aggrieved by the resolutions of the Gram Sabhas;
- (h) co-ordinate with other Sub-Divisional Level Committees for inter sub-divisional claims ;
- (i) prepare block or tehsil-wise draft record of proposed forest rights after reconciliation of government records;
- (j) forward the claims with the draft record of proposed forest rights through the Sub-Divisional Officer to the District Level Committee for final decision;
- (k) raise awareness among forest dwellers about the objectives and procedures laid down under the Act and in the rules ;
- (l) ensure easy and free availability of proforma of claims to the claimants as provided in Annexure-I (Forms A & B) of these rules;
- (m) ensure that the Gram Sabha meetings are conducted in free, open and fair manner with requisite quorum.

**7. District Level Committee.-** The State Government shall constitute District Level Committee (DLC) with the following members, namely:-

- (a) District Collector or Deputy Commissioner - Chairperson;
- (b) concerned Divisional Forest Officer or concerned Deputy Conservator of Forest - member;
- (c) three members of the district panchayat to be nominated by the district panchayat, of whom at least two shall be the Scheduled Tribes preferably those who are forest dwellers, or who belong to members of the primitive tribal groups, and where there are no Scheduled Tribes, two members who are preferably other traditional forest dwellers, and one shall be a woman member; or in areas covered under the Sixth Schedule to the Constitution, three members nominated by the Autonomous District Council or Regional Council of whom at least one shall be a woman member; and
- (d) an officer of the Tribal Welfare Department in-charge of the district or where such officer is not available, the officer in charge of the tribal affairs.

**8. Functions of District Level Committee.-** The District Level Committee shall -

- (a) ensure that the requisite information under clause (b) of rule 6 has been provided to Gram Sabha or Forest Rights Committee;



- (b) examine whether all claims, especially those of primitive tribal groups, pastoralists and nomadic tribes, have been addressed keeping in mind the objectives of the Act;
- (c) consider and finally approve the claims and record of forest rights prepared by the Sub-Divisional Level Committee;
- (d) hear petitions from persons aggrieved by the orders of the Sub-Divisional Level Committee;
- (e) co-ordinate with other districts regarding inter-district claims;
- (f) issue directions for incorporation of the forest rights in the relevant government records including record of rights;
- (g) ensure publication of the record of forest rights as may be finalized; and
- (h) ensure that a certified copy of the record of forest rights and title under the Act, as specified in Annexures II & III to these rules, is provided to the concerned claimant and the Gram Sabha respectively ;

**9. State Level Monitoring Committee.** - The State Government shall constitute a State Level Monitoring Committee with the following members, namely:-

- (a) Chief Secretary - Chairperson;
- (b) Secretary, Revenue Department - member;
- (c) Secretary, Tribal or Social Welfare Department - member;
- (d) Secretary, Forest Department - member;
- (e) Secretary, Panchayati Raj - member;
- (f) Principal Chief Conservator of Forests - member;
- (g) three Scheduled Tribes member of the Tribes Advisory Council, to be nominated by the Chairperson of the Tribes Advisory Council and where there is no Tribes Advisory Council, three Scheduled Tribes members to be nominated by the State Government;
- (h) Commissioner, Tribal Welfare or equivalent who shall be the Member-Secretary.

**10. Functions of the State Level Monitoring Committee.**- The State Level Monitoring Committee shall -

- (a) devise criteria and indicators for monitoring the process of recognition and vesting of forest rights;
- (b) monitor the process of recognition, verification and vesting of forest rights in the State;
- (c) furnish a six monthly report on the process of recognition, verification and vesting of forest rights and submit to the nodal agency such returns and reports as may be called for by the nodal agency;
- (d) on receipt of a notice as mentioned in section 8 of the Act, take appropriate actions against the concerned authorities under the Act;
- (e) monitor resettlement under sub-section (2) of section 4 of the Act.

**11. Procedure for filing, determination and verification of claims by the Gram Sabha.-** (1) The Gram Sabhas shall -

(a) call for claims and authorize the Forest Rights Committee to accept the claims in the Form as provided in Annexure-I of these rules and such claims shall be made within a period of three months from the date of such calling of claims along with at least two of the evidences mentioned in rule 13, shall be made within a period of three months:

Provided that the Gram Sabha may, if consider necessary, extend such period of three months after recording the reasons thereof in writing.

(b) fix a date for initiating the process of determination of its community forest resource and intimate the same to the adjoining Gram Sabhas where there are substantial overlaps, and the Sub-Divisional Level Committee.

(2) The Forest Rights Committee shall assist the Gram Sabha in its functions to -

- (i) receive, acknowledge and retain the claims in the specified form and evidence in support of such claims;
- (ii) prepare the record of claims and evidence including maps;
- (iii) prepare a list of claimants on forest rights;
- (iv) verify claims as provided in these rules;
- (v) present their findings on the nature and extent of the claim before the Gram Sabha for its consideration.

(3) Every claim received shall be duly acknowledged in writing by the Forest Rights Committee.

(4) The Forest Rights Committee shall also prepare the claims on behalf of Gram Sabha for community forest rights in Form B as provided in Annexure I of these Rules.

(5) The Gram Sabha shall on receipt of the findings under clause (v) of sub-rule (2), meet with prior notice, to consider the findings of the Forest Rights Committee, pass appropriate resolutions, and shall forward the same to the Sub-Divisional Level Committee.

(6) The Secretary of Gram Panchayat will also act as Secretary to the Gram Sabhas in discharge of its functions.

**12. Process of verifying claims by Forest Rights Committee.-** (1) The Forest Rights Committee shall, after due intimation to the concerned claimant and the Forest Department -



- (a) visit the site and physically verify the nature and extent of the claim and evidence on the site;
- (b) receive any further evidence or record from the claimant and witnesses;
- (c) ensure that the claim from pastoralists and nomadic tribes for determination of their rights, which may either be through individual members, the community or traditional community institution, are verified at a time when such individuals, communities or their representatives are present;
- (d) ensure that the claim from member of a primitive tribal group or pre-agricultural community for determination of their rights to habitat, which may either be through their community or traditional community institution, are verified when such communities or their representatives are present; and
- (e) prepare a map delineating the area of each claim indicating recognizable landmarks.

(2) The Forest Rights Committee shall then record its findings on the claim and present the same to the Gram Sabha for its consideration.

(3) If there are conflicting claims in respect of the traditional or customary boundaries of another village or if a forest area is used by more than one Gram Sabha, the Forest Rights Committees of the respective Gram Sabhas shall meet jointly to consider the nature of enjoyment of such claims and submit the findings to the respective Gram Sabhas in writing:

Provided that if the Gram Sabhas are not able to resolve the conflicting claims, it shall be referred by the Gram Sabha to the Sub-Divisional Level Committee for its resolution.

(4) On a written request of the Gram Sabha or the Forest Rights Committee for information, records or documents, the concerned authorities shall provide an authenticated copy of the same to the Gram Sabha or Forest Rights Committee, as the case may be, and facilitate its clarification, if required, through an authorised officer.

**13. Evidence for determination of forest rights.-** (1) The evidence for recognition and vesting of forest rights shall, inter alia, include -

- (a) public documents, Government records such as Gazetteers, Census, survey and settlement reports, maps, satellite imagery, working plans, management plans, micro-plans, forest enquiry reports, other forest records, record of



rights by whatever name called, *partis* or leases, reports of committees and commissions constituted by the Government, Government orders, notifications, circulars, resolutions;

- (b) Government authorised documents such as voter identity card, ration card, passport, house tax receipts, domicile certificates;
- (c) physical attributes such as house, huts and permanent improvements made to land including levelling, bunds, check dams and the like;
- (d) quasi-judicial and judicial records including court orders and judgments;
- (e) research studies, documentation of customs and traditions that illustrate the enjoyment of any forest rights and having the force of customary law, by reputed institutions, such as Anthropological Survey of India;
- (f) any record including maps, record of rights, privileges, concessions, favours, from erstwhile princely States or provinces or other such intermediaries;
- (g) traditional structures establishing antiquity such as wells, burial grounds, sacred places;
- (h) genealogy tracing ancestry to individuals mentioned in earlier land records or recognized as having been legitimate resident of the village at an earlier period of time;
- (i) statement of elders other than claimants, reduced in writing.

(2) An evidence for Community Forest Rights shall, inter alia, include –

- (a) community rights such as *nistar* by whatever name called;
- (b) traditional grazing grounds; areas for collection of roots and tubers, fodder, wild edible fruits and other minor forest produce; fishing grounds; irrigation systems; sources of water for human or livestock use, medicinal plant collection territories of herbal practitioners;
- (c) remnants of structures built by the local community, sacred trees, groves and ponds or riverine areas, burial or cremation grounds;

(3) The Gram Sabha, the Sub-Divisional Level Committee and the District Level Committee shall consider more than one of the above-mentioned evidences in determining the forest rights.

**14. Petitions to Sub-Divisional Level Committee.-** (1) Any person aggrieved by the resolution of the Gram Sabha may within a period of sixty days from the date of the resolution file a petition to the Sub-Divisional Level Committee .

(2) The Sub-Divisional Level Committee shall fix a date for the hearing and intimate the petitioner and the concerned Gram Sabha in writing as well as through a notice at a convenient public place in the village of the petitioner at least fifteen days prior to the date fixed for the hearing.

(3) The Sub-Divisional Level Committee may either allow or reject or refer the petition to concerned Gram Sabha for its reconsideration.

(4) After receipt of such reference, the Gram Sabha shall meet within a period of thirty days, hear the petitioner, pass a resolution on that reference and forward the same to the Sub-Divisional Level Committee.

(5) The Sub-Divisional Level Committee shall consider the resolution of the Gram Sabha and pass appropriate orders, either accepting or rejecting the petition.

(6) Without prejudice to the pending petitions, Sub-Divisional Level Committee shall examine and collate the records of forest rights of the other claimants and submit the same through the concerned Sub-Divisional Officer to the District Level Committee.

(7) In case of a dispute between two or more Gram Sabhas and on an application of any of the Gram Sabhas or the Sub-Divisional Level Committee on its own, shall call for a joint meeting of the concerned Gram Sabhas with a view to resolving the dispute and if no mutually agreed solution can be reached within a period of thirty days, the Sub-Divisional Level Committee shall decide the dispute after hearing the concerned Gram Sabhas and pass appropriate orders.

**15. Petitions to District Level Committee.-** (1) Any person aggrieved by the decision of the Sub-Divisional Level Committee may within a period of sixty days from the date of the decision of the Sub-Divisional Level Committee file a petition to the District Level Committee.

(2) The District Level Committee shall fix a date for the hearing and intimate the petitioner and the concerned Sub-Divisional Level Committee in writing as well as through a notice at a convenient public place in the village of the petitioner at least fifteen days prior to the date fixed for the hearing.

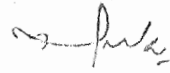
(3) The District Level Committee may either allow or reject or refer the petition to concerned Sub-Divisional Level Committee for its reconsideration.

(4) After receipt of such reference, the Sub-Divisional Level Committee shall hear the petitioner and the Gram Sabha and take a decision on that reference and intimate the same to the District Level Committee.

(5) The District Level Committee shall then consider the petition and pass appropriate orders, either accepting or rejecting, the petition.

(6) The District Level Committee shall send the record of forest rights of the claimant or claimants to the District Collector or District Commissioner for necessary correction in the records of the Government.

(7) In case there is a discrepancy between orders of two or more Sub-Divisional Level Committees, the District Level Committee on its own, shall call for a joint meeting of the concerned Sub-Divisional Level Committees with a view to reconcile the differences and if no mutually agreed solution can be reached, the District Level Committee shall adjudicate the dispute after hearing the concerned Sub-Divisional Level Committees and pass appropriate orders.



Dr. Bachittar Singh, Joint Secretary  
[ F. No.17014/ 02/ 2007-PC&V (Vol.VII) ]



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ANNEXURE - I  
[See rule 6(l)]  
FORM - A  
CLAIM FORM FOR RIGHTS TO FOREST LAND  
[See rule 11(l)(a)]

1. Name of the claimant (s):
2. Name of the spouse
3. Name of father/ mother:
4. Address:
5. Village:
6. Gram Panchayat:
7. Tehsil/ Taluka:
8. District:
9. (a) Scheduled Tribe : Yes/ No  
(Attach authenticated copy of Certificate)  
(b) Other Traditional Forest Dweller: Yes/ No  
If a spouse is a Scheduled Tribe (attach authenticated copy of certificate)
10. Name of other members in the family with age:  
(including children and adult dependents)

Nature of claim on land:

1. Extent of forest land occupied
  - a) for habitation
  - b) for self-cultivation, if any:  
(See Section 3(1)(a) of the Act)
2. disputed lands if any:  
(See Section 3(1)(f) of the Act)
3. Pattas/ leases/ grants, if any:  
(See Section 3(1)(g) of the Act)
4. Land for *in situ* rehabilitation or alternative land, if any:  
(See Section 3(1)(m) of the Act)
5. Land from where displaced without land compensation:  
(See Section 4(8) of the Act)
6. Extent of land in forest villages, if any:  
(See Section 3(1)(h) of the Act)
7. Any other traditional right, if any:  
(See Section 3(1)(l) of the Act)
8. Evidence in support:  
(See Rule 13)
9. Any other information:

Signature/ Thumb Impression  
of the Claimant(s):

FORM - B  
CLAIM FORM FOR COMMUNITY RIGHTS

[See rule 11(D)(a) and (d)]

1. Name of the claimant(s):
  - a. FDST community: Yes/ No
  - b. OTFD community: Yes/ No
2. Village:
3. Gram Panchayat:
4. Tehsil/ Taluka:
5. District:

Nature of community rights enjoyed:

1. Community rights such as *nistar*, if any:  
(See Section 3(1)(b) of the Act)
2. Rights over minor forest produce, if any:  
(See Section 3(1)(c) of the Act)
3. Community rights
  - a. uses or entitlements (fish, water bodies), if any:
  - b. Grazing, if any
  - c. Traditional resource access for nomadic and pastoralist, if any:  
(See Section 3(1)(g) of the Act)
4. Community tenures of habitat and habitation  
for PTGs and pre-agricultural communities, if any:  
(See Section 3(1)(e) of the Act)
5. Right to access biodiversity, intellectual  
property and traditional knowledge, if any:  
(See Section 3 (1)(k) of the Act)
6. Other traditional right, if any:  
(See Section 3(1)(l) of the Act)
7. Evidence in support:  
(See Rule 13)
8. Any other information:

Signature/ Thumb Impression  
of the Claimant (s):

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The Scheduled Tribes and Other Traditional Forest Dwellers  
(Recognition of Forest Rights) Rules, 2007  
Government of India  
Ministry of Tribal Affairs

**ANNEXURE – II**

[See rule 8(h)]

**TITLE FOR FOREST LAND UNDER OCCUPATION**

1. Name(s) of holder (s) of forest rights (including spouse):
2. Name of the father/ mother:
3. Name of dependents:
4. Address:
5. Village/gram sabha:
6. Gram Panchayat:
7. Tehsil/ Taluka:
8. District:
9. Whether Scheduled Tribe or Other Traditional Forest Dweller
10. Area:
11. Description of boundaries by prominent landmarks including khasra/ compartment No:

This title is heritable, but not alienable or transferable under sub section (4) of section 4 of the Act.

We, the undersigned, hereby, for and on behalf of the Government of (Name of the State).....affix our signatures to confirm the above forest right.

**Divisional Forest Officer/ Deputy  
Conservator of Forests**

**District Tribal Welfare Officer**

**District Collector/ Deputy Commissioner**



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ANNEXURE - III  
[See rule 8(h)]  
TITLE TO COMMUNITY FOREST RIGHTS

1. Name(s) of the holder (-s) of community forest right:
2. Village/ Gram Sabha:
3. Gram Panchayat:
4. Tehsil/ Taluka:
5. District:
6. Scheduled Tribe/ Other Traditional Forest Dweller:
7. Nature of community rights:
8. Conditions if any:
9. Description of boundaries including customary boundary and/or by prominent landmarks including khasra/ compartment No:

Name(s) of the holder (s) of community forest right:

- 1.....
- 2.....
- 3.....

We, the undersigned, hereby, for and on behalf of the Government of (Name of the State).....affix our signatures to confirm the forest right as mentioned in the Title to the above mentioned holders of community forest rights.

**Divisional Forest Officer/ Deputy  
Conservator of Forests**

**District Tribal Welfare Officer**

**District Collector/ Deputy Commissioner**

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IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I. A. NO. OF 2008

IN

WRIT PETITION (C) NOS. OF 2008

In the matter of:

Wildlife First & Ors.

Petitioners

Versus

Union of India & Ors.

Respondents

APPLICATION FOR STAY

To,

The Hon'ble Chief Justice of India  
And His Companion Justices of the  
Hon'ble Supreme Court of India

The humble petition of the  
Petitioner above named.

MOST RESPECTFULLY SHOWETH:

1. The petitioners have filed the accompany petition under Article 32 of the Constitution of India challenging the legality and Constitutional validity of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Impugned



Rules, 2007, as unconstitutional being violative of the petitioners fundamental rights guaranteed under Article 14 and 21 read with Articles 48A and 51A (g) of the Constitution of India. All the facts that are relevant for this application are set out in the accompanying petition and the petitioners craves leave to refer and rely upon the same for the purpose of this petition.

2. The petitioners have a good case in law and are likely to succeed before this Hon'ble Court and it is therefore, only just and proper that pending hearing and final disposal of the accompanying writ petition, the operation of the impugned Act and Rules are stayed.
3. That the Impugned Act if implemented pending consideration of the accompanying petition, irreparable loss and hardship will be costed to the petitioner since larges tracts of forests are likely to be distributed amongst the people who claim to be traditional forest dwellers and other encroachers.
4. The balance of convenience is in favour of granting the stay and the respondent s are not likely to be affected adversely by the same.



## PRAYER

The petitioners therefore, most humbly prayed that this Hon'ble Court may be graciously pleased to :

- a) Grant ad-interim ex-parte stay of the operation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, and
- b) Grant ad-interim ex-parte stay of the operation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Impugned Rules, 2007.
- c) Confirm the stay after notice to the respondents.
- d) Pass such other or further orders may deem fit and proper in the facts and circumstances of the case.

P. K. MANOHAR  
Advocate for the petitioner

Dated 26.3.2008