

2) 50

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (C) NO. 50 OF 2008

IN THE MATTER OF:

BOMBAY NATURAL HISTORY SOCIETY & ORS.

.....PETITIONERS

VERSUS

UNION OF INDIA & ORS.

.....RESPONDENTS


cjp.org.in

PAPER BOOK

FOR INDEX KINDLY SEE INSIDE

ADVOCATE FOR PETITIONER: MS PURNIMA BEAT KAK

INDEX

| S.No. | Particulars | Pg. No. |
|-------|--|---------|
| 1. | List of Dates | A-J |
| 2. | Writ Petition with Affidavit | 1-82 |
| 3. | Annexure-A List of Legislations on Tribal Land Alienation | 83-85 |
| 4. | Annexure-B (Colly) Charts stating the NPV of forest and carbon value published by Green Indian States Trust and other organizations. | 86-90 |
| 5. | Annexure-C Paper 'Estimating the Carbon Footprint of Deforestation in India' | 91-98 |
| 6. | Annexure-D Chart showing break-up of the forest lands regularized | 99 |
| 7. | Annexure-E Copy of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition Of Forest Right) Act, 2006 | 100-108 |
| 8. | Annexure-F (Colly) Copy of the application under the RTI Act and the response of the Ministry of Tribal Affairs dated 21 st July 2006. | 109-112 |
| 9. | Annexure-G Chart showing the respective Tiger Reserves along with the population residing in each of the reserves. | 113 |

LIST OF DATES

- 1865 Indian Forest Act enacted for the very first time to create forest reservations to meet long term national needs.
- 1878 Indian Forest Act No. VII enacted.
- 1887 Wild Birds Protection Act No. X of 1887 enacted for protection of birds
- 1912 Wild Birds and Animals (Protection) Act No. VIII of 1912 enacted for Protection of birds and animals.
- 1918 Montague and Chelmsford Report briefly deals with the administration of tribal areas and excluded such areas from the reformed Provincial Government areas.
- 1919 Government of India Act adopted which divided the tribal areas into two parts "wholly excluded and partially excluded areas for reform."
- 1927 Indian Forest Act No. 16 enacted consolidating the earlier 1878 Act.
- 1935 Government of India Act enacted which dealt with the excluded and partially excluded tribal areas.
- 1935 Act of 1912 amended vide Wild Birds and Animals (Protection) amendment Act No. XXVII of 1935. New Section 11 added by virtue of which the Provincial Government could declare any area to be sanctuary.

- 1949 Constitution of India adopted and special provisions for the administration of the Schedule and Tribal Areas provided in Part X of the Constitution.
- 1950 President issues Scheduled Areas (Part 'A' and 'B' States) Order declaring the excluded and partially excluded areas under the Fifth and Sixth Schedule of the Constitution.
- 1960-1981 State Legislatures enact legislation or amend existing Acts prohibiting/restricting transfer of tribal land and for restoration of land alienated to non-tribals. (Annexure -A)
- 1972 Wildlife (Protection) Act No. 53 of 1972 enacted. It came into effect from 1st February, 1973.
- 1980 Forest Conservation Act enacted.
- 1982 Wildlife (Protection) Act, 1972 amended vide Wildlife (Protection) Act No. 23 of 1982
- 1986 Wildlife (Protection) Act, 1972 again amended vide Wildlife (Protection) Act No. 28 of 1986 imposing a complete ban on trade in Schedule-I animal articles etc.
- 22.08.1997 Hon'ble Court in W.P. (C) No. 337 of 1995 directs the respondent State Governments to complete the process of determination of rights in National Parks and Sanctuaries within one year. Till date in large

number of sanctuaries and national parks the process for determination of rights are yet pending.

- 13.11.2000 Hon'ble Court in W.P.(C) No. 337 of 1995 orders that "pending further orders, no dereservation of Forests/ Sanctuaries / National parks be effected"
- 2003 Wildlife (Protection) Act, 1972 again amended vide Wildlife (Protection) Act No. 16 of 2003 whereby new sections 18A, 18B, 25A, 26A(3), 29, 34A, 35(4), (5) and (6) and other provisions incorporated to reinforce and strengthen the protection to wildlife and its habitat.
- 13.12.2005 Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights Bill (RFR)) introduced in Lok Sabha wherein the right over forest land was limited to 2.5 hct's per person.
- 21/26.12.2006 Parliament refers the RFR Bill to Joint Parliamentary Committee.
- 19.5.2006 JPC recommends that "the ceiling of 2.5 hct's be removed and it be restricted to the area under actual occupation."
- 21.7.2006 Central Government in response to an RTI application admits that no exercise has been undertaken to ascertain the total number of people who would be entitled to rights over forest land and the quantum of forests that would be diverted. (Annexure - F)
- 01.9.2006 Wildlife (Protection) Act, 1972 further amended by the Wildlife (Protection) Act No. 39 of 2006. Two new

Chapters namely IV-B and IV-C incorporated for the establishment of the National Tiger Conservation Authority and the Tiger and Other Endangered Species Crime Control Bureau respectively.

- 2.1.2007: Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act No. 2 published in the official gazette. (Annexure -A)
- 19.02.2007: Central Government after the passing of Forest Conservation Act, 1981 has as of 19.2.2007 regularized encroachment on 367573.6198 hect. of forest land. (Annexure -D)
- 31.12.2007: Provisions of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act brought into force.
- 1.1.2008: Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Rules notified by the Central Government).

Present petitioners being aggrieved by the provisions of the said Act and by the non implementation of the laws directing restoration of land allotted by the Tribals file the present petition seeking to raise the following issues of general public importance:-

- (i) Whether the enactment of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act is beyond the legislative competence of the Parliament? Particularly keeping in view Entry No. 18, 35 and 45 of List II of the Seventh Schedule to the Constitution, which entries have placed 'land' and rights over land within the exclusive domain of the State legislature.
- (ii) Whether the term 'Forests' as found in Entry No. 17-A of List III of the Seventh Schedule to the Constitution would include the land beneath the forest? If not, whether the legislative exercise of power by the Parliament in enacting the Forest Dwellers (Recognition of Forest Rights) Act is an colourable exercise of the said power?
- (iii) Whether 'Natural Heritage/Ecology/biodiversity/natural resources' which includes all forests land and wildlife, falls within the compendious expression "right to life and liberty", as enshrined in Article 21 of the Constitution of India? And whether, the right to Natural Heritage/Ecology/biodiversity/ natural resources is fundamental to all the persons, within the territorial boundaries of the country?

- (iv) Whether Sections 3, 4 and 5 of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 impinge upon the fundamental rights of the non-beneficiaries to Natural Heritage/ecology / biodiversity / natural resources?
- (v) Whether the RFR Act would actually correct "a historical injustice" or would in reality continue to perpetuate a situation in which the tribals are forced to live at subsistence level? Wherein the tribals have no access to public health facilities, education, power, sanitation, public distribution system, etc. without any other source of income or livelihood other than selling or transferring the land that may be allotted to them under the said Act.
- (vi) Whether the provisions of Sections 3, 4 and 5 of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 are arbitrary or of an excessive nature so as to go beyond the requirements of the interest of the general public? Particularly keeping in view the ecological importance and benefits derived from forests, water and wildlife, changing climatic conditions, values of

human life, philosophy of the constitution, and the prevailing conditions.

- (vii) Whether there is a direct and proximate nexus between the restrictions imposed on the right to Natural Heritage/Ecology/biodiversity / natural resources of the non-beneficiaries and the object which is sought to be achieved by the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006? Particularly keeping in view the alleged mitigation of "historical injustice" as stated in the preamble vis-à-vis sub-section (3) and (6) of Section 4 of the said Act, which confers a right to possess and own forest land up to 4 hectares which has been occupied, whether legally or unauthorisedly before 13th December, 2005?
- (viii) Whether the provisions of Sections 3, 4 and 5 of the RFR Act are violative of the Precautionary Principle, the Public Trust Doctrine, the Basic Structure of the Constitution of India and the Rule of Law?
- (ix) Whether sub-clauses (a), (f) and (g) of sub-section (1) of Section 3 read with sub-section (5) of Section 4 of the RFR Act are ultra vires Article 14 of the

Constitution? In as much as, first, the said provisions discriminate between the non-forest landless citizens on the one hand and those citizens who have unauthorisedly occupied forest land on the other hand. Secondly, it permits a forest dweller or a Schedule Tribe to claim 4 hectares of occupied forest land in addition to such lands which already may be legally in his possession.

- (x) Whether the provisions of sub-section (a) (b) and (d) of Section 5 and sub-section (1) of Section 6 read with sub-clauses (a) and (d) of sub-section (2) of Section 14 of RFR Act suffer from excessive delegation of power?
- (xi) Whether the Gram Sabha which has been defined in the said RFR Act to mean "a village assembly which shall consist of all adult members of a village" can preside over and decide its own cause in determining the extent of forest land occupied by its individual members and community forest rights as contemplated in sub-section (1) of Section 6 of the said Act?
- (xii) Whether the function of determining alleged individual rights and community forest rights, as

contemplated in Chapter-IV of the said RFR Act can be delegated to authorities other than judicial/legal and administrative?

- (xiii) Whether the Central and the State Governments are under an obligation to ensure quick restoration of the lands in Scheduled and Non-Scheduled Areas belonging to Scheduled Tribes, which have been alienated to non-tribals in violation of their respective State tribal land alienation and restoration laws specifically enacted for the said purpose?
- (xiv) Whether the neglect, omission and failure of the respondent governments to restore the said land to the tribals as provided for in their respective tribal land alienation and restoration Acts is violative of Articles 14 and 21 of the Constitution and in disregard of Articles 39(b), 46 and 51A(g) of the Constitution?
- (xv) Whether the respondent governments are under an obligation to take effective measures for speedy disposal of cases filed by the tribals for the restoration of their lands from non-tribals in such Areas?
- (xvi) Whether the failure, omission and neglect of the respondent governments to enforce their respective

tribal land restoration laws could justify conferring of rights over forest lands other than those lands which are covered by the respective tribal land alienation laws, to the tribals ?

(xvii) Whether the respondent governments are under an obligation to complete the survey and demarcation of notified forest lands and complete the legal process as contemplated under the Indian Forest Act in respect of those forest lands where it has yet not been completed?

(xviii) Whether the RFR Act would actually correct "a historical injustice" or would in reality continue to perpetuate a situation in which the tribals are forced to live at subsistence level? Wherein the tribals have no access to public health facilities, education, power, sanitation, public distribution system, etc. without any other source of income or livelihood other than selling or transferring the land that may be allotted to them under the said Act.

.1.2008: Present petition filed.

DRAWN BY
RAJ PANJWANI
ADVOCATE

ADVOCATE FOR THE PETITIONER

IN THE SUPREME COURT OF INDIA

WRIT PETITION (C) NO. 11 OF 2008

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

AND

IN THE MATTER OF ARTICLE
14, 21, 32, 39(B), 46, 48A, 51A (g),
244, 244A, FIFTH AND SIXTH
SCHEDULE OF CONSTITUTION
OF INDIA



AND

IN THE MATTER OF PUBLIC
INTEREST LITIGATION

IN THE MATTER OF:

1. Bombay Natural History Society
Hornbill House, SBS Road,
Mumbai 400001
Through Dr. Asad R. Rahmani, Director.
2. Wildlife Trust of India
B-5/22, Safdarjung Enclave,
New Delhi
Through Dr. M. K. Ranjitsinh, Chairman.
3. All Assam Tribal Youth League
Solapar, Guwahati, Assam
Through Mr. Preetam Ferenga
Brahma, Secretary General.

4. Wildlife Society of Orissa
Shantikunj, Link Road, Cuttack,
Orissa.
Through Mr. Biswajit Mohanty, Secretary ...Petitioners

VERSUS

1. Union of India
Through:
 - (i) Ministry of Environment and Forest
Paryavaran Bhawan,
CGO Complex, Lodhi Road
New Delhi
 - (ii) Ministry of Tribal Affairs
Shastri Bhawan
New Delhi
 - (iii) Ministry of Rural Development
Shastri Bhawan
New Delhi
2. The Chief Secretary
State of Andhra Pradesh
Hyderabad (A.P.)
3. The Chief Secretary
State of Arunachal Pradesh
Itanagar (Arunachal Pradesh)
4. The Chief Secretary
State of Assam
Dispur (Assam)
5. The Chief Secretary
State of Bihar
Patna (Bihar)
6. The Chief Secretary
State of Chhattisgarh
Raipur (Chhattisgarh)
7. The Chief Secretary
State of Goa
Panaji (Goa)

8. The Chief Secretary
State of Gujarat
Gandhinagar (Gujarat)
9. The Chief Secretary
State of Haryana
Chandigarh (Haryana)
10. The Chief Secretary
State of Himanchal Pradesh
Shimla (Himanchal Pradesh)
11. The Chief Secretary
State of Jammu & Kashmir
Sri Nagar (Jammu & Kashmir)
12. The Chief Secretary
State of Jharkhand
Ranchi (Jharkhand)
13. The Chief Secretary
State of Karnataka
Bangalore (Karnataka)
14. The Chief Secretary
State of Kerala
Thiruvananthapuram (Kerala)
15. The Chief Secretary
State of Madhya Pradesh
Bhopal (Madhya Pradesh)
16. The Chief Secretary
State of Maharashtra
Mumbai (Maharashtra)
17. The Chief Secretary
State of Manipur
Imphal (Manipur)
18. The Chief Secretary
State of Meghalaya
Shillong (Meghalaya)
19. The Chief Secretary
State of Mizoram
Aizawl (Mizoram)

20. The Chief Secretary
State of Nagaland
Kohima (Nagaland)
21. The Chief Secretary
State of Orissa
Bhubneshwar (Orissa)
22. The Chief Secretary
State of Punjab
Chandigarh (Punjab)
23. The Chief Secretary
State of Rajasthan
Jaipur (Rajasthan)
24. The Chief Secretary
State of Sikkim
Gangtok (Sikkim)
25. The Chief Secretary
State of Tamil Nadu
Chennai (Tamil Nadu)
26. The Chief Secretary
State of Tripura
Agartala (Tripura)
27. The Chief Secretary
State of Uttar Pradesh
Lucknow (Uttar Pradesh)
28. The Chief Secretary
State of Uttarakhand
Dehradun (Uttarakhand)
29. The Chief Secretary
State of West Bengal
Kolkata (West Bengal)
30. The Chief Secretary
Union of Pondicherry
Pondicherry
31. The Chief Secretary
Union Territory of Chandigarh
Chandigarh

- 32. The Chief Secretary
Union Territory of Daman & Diu
Moti Daman (Daman & Diu)

- 33. The Chief Secretary
Union Territory of Lakshadweep
Kavaratti (Lakshadweep)

- 34. The Chief Secretary
Union Territory of Andaman & Nicobar Islands
Port Blair (Andaman & Nicobar Islands)

- 35. The Chief Secretary
Union Territory of Dadra & Nagar Haveli
Silvassa (Dadra & Nagar Haveli)

- 36. The Chief Secretary
State of Delhi
Delhi Secretariat
Players Building, I.T.O
New Delhi

... Respondents

To,


cjp.org.in

The Hon'ble Chief Justice of India
and his companion Justices of the
Supreme Court of India

The petitioners above named

MOST RESPECTFULLY SHOWETH:

1. The petitioner No.1 is the Bombay Natural History Society, which is a registered Trust having its office at Hornbill House, S B S Road, Mumbai 400001. Dr. Asad Rahmani, Director has been authorized to sign and file the present petition.

2. The petitioner no. 2 is the Wildlife Trust of India which is a registered non-government organization (Trust) having its registered office at B-5/22, Safdarjung Enclave, New Delhi. Dr. M. K. Ranjitsinh, Chairman has been authorized to sign and verify the petition.
3. The petitioner No. 3 All Assam Tribal Youth League is a Non- Government Organization having its office at Solapar, Guwahati, Assam. Mr. Preetam Ferenga Brahma, Secretary General has been authorized to sign and file the present petition.
4. The petitioner No. 4 is the Wildlife Society of Orissa, which is a registered society having its office at Shantikunj, Link Road, Cuttack, Orissa. Mr. Biswajit Mohanty, Secretary, has been authorized to sign and file the petition.
5. The authorized signatories of each of the petitioners are also presenting the present petition in their individual capacity as citizens of India.
6. The petitioners at the threshold state that they are nature conservation organizations that seek to promote ecological security and which it believes can be achieved by adhering to the principle of Sustainable Development, in particular the Precautionary Principle

as enunciated by the Hon'ble Court. The petitioners affirm the principle of Public Trust Doctrine and have their reservations on the principle of 'eminent domain', particularly on its application to areas which are crucial for India's ecological, water and climate security including forest lands, grasslands and catchment areas.

7. The petitioners by this petition seek to challenge the vires of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter referred to as RFR Act) which received the assent of President of India on 29th December, 2006 and which was published vide notification dated 2nd January, 2007. The said Act came into force with effect from 31st December, 2007. The petitioners are challenging in particular the provisions contained in Chapters II and III of the said Act.

8. The petitioners further seek effective enforcement of laws made pursuant to the provisions contained in Article 244 and 244A read with the Fifth and the Sixth Schedules of the Constitution, in particular sub-clause (2) (a) of Clause 5 of the Fifth Schedule and sub-clause (1) (a) of Clause 3 of the Sixth Schedule which prohibit and restrict the transfer of lands by or among members

of the Scheduled Tribes in Scheduled Areas. The non-implementation of the said constitutional obligations is not only in violation of Articles 14 and 21 of the Constitution but has also seriously and adversely impacted inter-generational equity, intra-generation equity and intra-specie equity by the resulting ever-increasing pressure and encroachments on the limited available eco-fragile areas. Hence, the present petition.

9. The petitioners in this petition seek to raise the following important issues of general public importance:

- (i) Whether the enactment of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act is beyond the legislative competence of the Parliament? Particularly keeping in view Entry No. 18, 35 and 45 of List II of the Seventh Schedule to the Constitution, which entries have placed 'land' and rights over land within the exclusive domain of the State legislature.
- (ii) Whether the term 'Forests' as found in Entry No. 17-A of List III of the Seventh Schedule to the Constitution would include the land beneath the

forest? If not, whether the legislative exercise of power by the Parliament in enacting the Forest Dwellers (Recognition of Forest Rights) Act is a colourable exercise of the said power?

- (iii) Whether 'Natural Heritage/Ecology/biodiversity/natural resources' which includes all forests land and wildlife, falls within the compendious expression "right to life and liberty", as enshrined in Article 21 of the Constitution of India? And whether, the right to Natural Heritage/Ecology/biodiversity/ natural resources is fundamental to all the persons, within the territorial boundaries of the country?
- (iv) Whether Sections 3, 4 and 5 of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 impinge upon the fundamental rights of the non-beneficiaries to Natural Heritage/ecology / biodiversity / natural resources?
- (v) Whether the RFR Act would actually correct "a historical injustice" or would in reality continue to perpetuate a situation in which the tribals are forced

to live at subsistence level? Wherein the tribals have no access to public health facilities, education, power, sanitation, public distribution system, etc. without any other source of income or livelihood other than selling or transferring the land that may be allotted to them under the said Act.

- (vi) Whether the provisions of Sections 3, 4 and 5 of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 are arbitrary or of an excessive nature so as to go beyond the requirements of the interest of the general public? Particularly keeping in view the ecological importance and benefits derived from forests, water and wildlife, changing climatic conditions, values of human life, philosophy of the constitution, and the prevailing conditions.
- (vii) Whether there is a direct and proximate nexus between the restrictions imposed on the right to Natural Heritage/Ecology/biodiversity / natural resources of the non-beneficiaries and the object which is sought to be achieved by the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006? Particularly

keeping in view the alleged mitigation of "historical injustice" as stated in the preamble vis-à-vis sub-section (3) and (6) of Section 4 of the said Act, which confers a right to possess and own forest land up to 4 hectares which has been occupied, whether legally or unauthorisedly before 13th December 2005?

(viii) Whether the provisions of Sections 3, 4 and 5 of the RFR Act are violative of the Precautionary Principle, the Public Trust Doctrine, the Basic Structure of the Constitution of India and the Rule of Law?

(ix) Whether sub-clauses (a), (f) and (g) of sub-section (1) of Section 3 read with sub-section (6) of Section 4 of the RFR Act are ultra vires Article 14 of the Constitution? In as much as, first, the said provisions discriminate between the non-forest landless citizens on the one hand and those citizens who have unauthorisedly occupied forest land on the other hand. Secondly, it permits a forest dweller or a Scheduled Tribal to claim 4 hectares of occupied forest land in addition to such lands which already may be legally in his possession.

- (x) Whether the provisions of sub-section (a) (b) and (d) of Section 5 and sub-section (1) of Section 6 read with sub-clause (a) and (d) of sub-section (2) of Section 14 of RFR Act suffer from excessive delegation of power?
- (xi) Whether the Gram Sabha which has been defined in the said RFR Act to mean "a village assembly which shall consist of all adult members of a village" can preside over and decide its own cause in determining the extent of forest land occupied by its individual members and community forest rights as contemplated in sub-section (1) of Section 6 of the said Act?
- (xii) Whether the function of determining alleged individual rights and community forest rights, as contemplated in Chapter-IV of the said RFR Act can be delegated to authorities other than judicial/legal and administrative?
- (xiii) Whether the Central and the State Governments are under an obligation to ensure quick restoration of the lands in Scheduled and Non-Scheduled Areas belonging to Scheduled Tribes, which have been

alienated to non-tribals in violation of their respective State tribal land alienation and restoration laws specifically enacted for the said purpose?

(xiv) Whether the neglect, omission and failure of the respondent governments to restore the said land to the tribals as provided for in their respective tribal land alienation and restoration Acts is violative of Articles 14 and 21 of the Constitution and in disregard of Articles 39(b), 46 and 51A(g) of the Constitution?

(xv) Whether the respondent governments are under an obligation to take effective measures for speedy disposal of cases filed by the tribals for the restoration of their lands from non-tribals in such Areas?

(xvi) Whether the failure, omission and neglect of the respondent governments to enforce their respective tribal land restoration laws could justify conferring of rights over forest lands other than those lands which are covered by the respective tribal land alienation laws, to the tribals?

- (xvii). Whether the respondent governments are under an obligation to complete the survey and demarcation of notified forest lands and complete the legal process as contemplated under the Indian Forest Act in respect of those forest lands where it has yet not been completed?

10. TRIBAL AREAS AND FORESTS

- (a) The Indian Forest Act introduced by the British in 1865 was a first attempt at forest legislation. The aim was to create forest reservations to meet national and regional long-term needs for resources such as water supply, soil conservation etc. The interests of the agriculturists presumably were amply safeguarded during the creation of the reserve forests. In the hill region 50 per cent of the forest area was generally excluded from reservation and in the plains the non-reserved area set aside as village commons were about three times as large as the reservation. In tribal areas, the needs of the tribes were identified and provided for within the reserved forest.
- (b) In the year 1878, the Indian Forest Act VII was passed, extending to all provinces of British

India, except Madras, Burma, the Hazara district in Punjab, Ajmer, Coorg, Berar and Baluchistan. When the Indian Forest Act of 1878 was first drafted, it was intended to create only one class of demarcated state forest, viz. reserved forests, originally so-called because the areas were reserved for cultivation; but as their formation would take time, provision was also made for the protection of the government forest areas generally, until it could be decided what areas should be maintained permanently as forests by constituting them demarcated or reserved forest. The constitution of reserved forests was surrounded by every safeguard against any possible infringement of private rights and secured a permanent settlement, whereas the second class of demarcated state forests, known as protected forests offered but an insufficient guarantee for their stability and protection. Existing rights were recorded in such forests, but not settled.

- (c) In the settlement of 1868 the state divided the forests into three classes. While first class

forests were closed totally for protection, in the second-class villagers had restricted rights of pasturage and collection of timber. The third class forests were meant for the exclusive use of the peasants.

- (d) With the disappearance of un-administered village forests the reserve forests, which had been set apart to meet the demands of the urban population and the national needs, had to support the growing demands of the increasing population. Up to 1947 and even in the aftermath of independence the major concern of the government was to meet the increasing demand for food for the teeming millions. Grow more food was the call of the day. Since the time of forest reservation the human population has increased many folds, coupled with a phenomenal increase in the cattle population. Large areas of forest lands were released for agriculture and other developmental activities.
- (e) Most of this area was obtained by clearing the non-reserve forests, which were originally intended to meet the fuel wood and fodder

demands of the rural population. To give a fillip to agriculture large dams and reservoirs were constructed. Since dams are constructed in valley-bottoms and hence on the most fertile forest land, this construction has become a part of the destructive process. In addition to the loss of vegetation due to submergence, the villagers uprooted were resettled elsewhere, which resulted in further deforestation. Various reserve forest areas have also been released for agriculture. Forest cover has thus decreased, apparently owing to the lack of foresight and priorities of the policy makers.

11. The Montague and Chelmsford Report, 1918, briefly touched the administration of tribal areas and political reform and excluded them from the reformed Provincial Governments. The Government of India Act, 1919, divided the area into two parts "wholly excluded and partially excluded areas for reform". The former were small and the latter were given joint responsibility of the Governor and the Governor General-in-Council. The Montague Chelmsford Report of 1918 suggested that the backward areas where primitive tribes live

should be excluded from proposed political reform and administration was entrusted to the Governors of the Provinces.

12. Pursuant to Simon Commission Report, the Government of India Act, 1935 dealt with excluded and partially excluded areas as per the 1936 Order issued under Section 91 of the Government of India Act, 1935.

Simon Report is worth-extracting here and reads thus:

"There were two dangers to which subjection to normal laws would have specially exposed these people, simple, unsophisticated and frequently improvident. There was a risk of their agricultural land passing to the more civilized section of the population, and the occupation of the tribals was for the most part agricultural; and secondly, they were likely to get into the 'wiles of the money-lenders'. The primary aim of Government policy then was to protect them from these two dangers and preserve their tribal customs; and this was achieved by prescribing special procedures applicable to these backward areas".

Therein also, "Scheduled Districts" defined in 1874 Act were treated as excluded and partially

excluded areas. The administration thereof was exclusively vested in the Governor of the Province under Section 92 of the Government of India Act, 1935.

13. The Government of India (Adoption of Indian Laws) Order, 1937 repealed the 1874 Act and brought excluded and partially excluded areas directly under the governance of the Governor under Section 92 of the Government of India Act, 1935. Thus, they became the Scheduled areas by virtue of the Scheduled Areas (Part 'A' States) Order, 1950 issued by the President of India. After the advent of the Constitution, Fifth and Sixth Schedules were engrafted as part of the scheme of the Constitution by the founding fathers. The Fifth Schedule empowers the President of India who there under issued Scheduled Areas (Part 'A' States) Order, 1950 declaring specified areas therein to be Scheduled Areas within the states specified in Part 'A' of the First Schedule to the Constitution of India. Therein also East Godavari, West Godavari and Vishakapatnam Agencies (Vizianagram and Srikakulam Districts are part of it) were declared to be Scheduled Area in Madras Province. Equally, by Scheduled Areas (part 'B' States) Order, 1950 which became effective from December 7,

1950, the President exercised the power declaring certain specified areas as Scheduled Areas in part 'B' states including the State of Hyderabad (Adilabad, Karimnagar, Nizamabad, Warangal, Khammam, Mehboob Nagar Districts).

It would, thus, be clear that right from the inception of the colonial administration, the Agency areas were treated distinctly from other areas. Tribals were protected from exploitation, their rights and title to enjoy the lands in their occupation and their autonomy, culture and ecology were preserved; infiltration of the non-tribals into tribal areas was prohibited.

14. CONSTITUTION

(a) Chapter VI, Part X of the Constitution deals with "Scheduled Tribes and Tribal Areas". Article 244 provides that the provision of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes.

(b) That before the Draft Constitution became paramount law and the Fifth Schedule as its integral part, the members of the Constituent Assembly deliberated to protect the land in their possession, the precious asset to the tribals, for their economic

empowerment, economic justice, social status and dignity of their person by retention of such land with the tribals.

(c) The draft Constitution 1948, clause (6) as originally proposed reads as under: -

“(i) Alienation of allotment of land to non-tribals in Scheduled Areas, it shall not be lawful for a member of Scheduled Tribes to transfer any land in person who is not a member of the Scheduled Tribes; (ii) no land in Scheduled Area vested in the State within such area shall be allotted to person who is not a member of the Scheduled Tribes except in accordance with the rules made in that behalf by the Governor in consultation with the Tribal Advisory Council for the State”.

The text ultimately approved by the Constituent Assembly as part of the Constitution reads as under:-

“(1) The Governor may make regulations for the peace and good government of any area in the State which is for the time being a Scheduled Area.

(2) In particular and without prejudice to the generality of the foregoing powers, such regulations may: -

- (a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in sub area;
- (b) regulate the allotment of land to members of the Scheduled Tribes in such area;
- (c) regulate the carrying on the business as money-lender by persons who lend money to members of the Scheduled Tribes in such area."

The Fifth Schedule, as extracted hereinbefore, manifests the concern of the founding fathers that land in the Scheduled Area covered by the Fifth Schedule requires to be preserved by prohibiting transfers between tribals and non-tribals and regulate the allotment of land to the members of the Scheduled Tribes in such area and to regulate the carrying on of the business by money-lenders in such area.

15 WILDLIFE LEGISLATIVE HISTORY

- (i). Birds were the first to get the attention of the British in India. The first legislation for protection of birds was enacted by the British in 1887 which was known as the Wild Birds Protection Act, 1887 (Act No. X of 1887).

However, the purpose of this Act was limited as it prohibited the possession or sale of only certain kinds of wild birds during the breeding season. This Act did not have the desired effect, as killing of birds was not prohibited. As a consequence of wanton killing of birds and animals a more comprehensive legislation was needed. In order to remedy the situation, the British enacted a legislation called the Wild Birds and Animals (Protection) Act, 1912 (Act No. VIII of 1912). Section 3 of that Act empowered the Provincial Government to declare the whole year or any part thereof, what may be called as close time, during which specified kind of wild birds or animals would not be killed and it was made unlawful to capture or kill or sell or buy or possess any such bird or animal. Section 4 made contravention of S. 3 punishable with fine. In the year 1935 the Act was amended by the Wild Birds and Animals (Protection) Act No. XXVII of 1935. By that Amendment Act, amongst other additions and alterations, section 11 was added by virtue of which the Provincial Government could declare any area to be a sanctuary for the birds or animals and their killing was made unlawful. Any violation of S. 11 was made punishable with fine. It is noteworthy that for the first time the concept of sanctuary was introduced in India but the provisions of

that Act also proved to be inadequate for protection of wild life and birds. For the next thirty-seven years nothing much was done to improve the situation. There was rapid depletion of wild life and birds, and a need was felt to enact a more comprehensive and effective legislation for protection of wild life. But there was a difficulty. The subject of wild life being a State subject falling in Entry 20, List 11 of Seventh Schedule of the Constitution, there was no way for the Parliament to enact a law in regard to the aforesaid subject except by invoking the provisions of Art.252 of the Constitution.

- (ii). Having regard to the importance of the matter, the legislature of the States of Andhra Pradesh, Bihar, Gurarat, Haryana, Himachal Pradesh, Madhya Pradesh, Manipur, Punjab, Rajasthan, Uttar Pradesh and West Bengal passed resolutions in pursuance of Art. 252 of the Constitution empowering the Parliament to pass the necessary legislation in regard to the protection of wild animals, birds and for all matters connected therewith. Thus, armed with the resolutions, the Parliament enacted the Wild Life (Protection) Act, 1972. It came into effect from February 1, 1973. For the purpose of the present petition it will be advantageous to refer to the

original Statement of Objects and Reasons of the Act, which reads as follows:-

"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 provided punishments which are not commensurate with the offence and the financial benefits which accrue from poaching and trade in the wild life produce. Further, such laws mainly relate to control of hunting and do not emphasize 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.

(iii). 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 for all matters connected, therewith or ancillary and incidental thereto.

- (iv). Legislation in respect of the aforesaid subject-matter is relatable 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 Arts. 249 and 250 of the Constitution) resolution in pursuance of Art. 252 of the Constitution empowering Parliament to pass, the Legislatures of the State of Andhra Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Madhya Pradesh, Manipur, Punjab, Rajasthan, Uttar Pradesh, and West Bengal have passed such resolutions.
- (v). 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) Regular 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.
- (vi). The working of the legislation proved inadequate in certain matters despite minor changes having been effected by the Amendment Act 23 of 1982. Major changes were effected in the Principal Act in 1986 by Wild Life (Protection) Amendment Act, 1986 (Act No.28 of 1986). It received the assent of the President on May 23, 1986 and was published in the Gazette of India dated 26th May, 1986, Part II-S. 1, Ext. p. 1 (No.33).
- (vii). Again by Wild Life (Protection) Amendment Act, 1991 (Act No.44 of 1991), which received the assent of the President on September 20, 1991 and was published in the Gazette in India dated September 20, 1991, Part Z.1 Ex.PT (No.6), extensive amendments were made in the Principal Act.
- (viii). In order to appreciate the necessity to carry out the amendments in the Principal Act it would be advantageous to have an insight into the purposes of the Amendment Act, 1991 which is reflected in the Statement of Objects and Reasons of the Amendment Bill:-

"The Wild Life (Protection) Act, 1972 provide for the protection of wild animals and birds.

2. In the implementation of the Act over 18 years, the need for amendment of certain provisions of the Act to bring them in line with the requirements of the present times has been felt. The Indian Board for wild life also endorsed the need for these amendments. Ministry of Environment and Forests has worked out the proposals for amendment of the Act on the basis of recommendations of the Standing Committee of Indian Board for Wild Life and various ministries of the government.

"3. Poaching of wild animals and illegal trade or products derived therefrom, together with degradation and depletion of habitats have seriously affected wild life population. In order to check this trend, it is proposed to prohibit hunting of all wild animals (other than vermin). However, hunting of wild animals in exceptional circumstances, particularly for the purpose of protection of life and property and for education, research, scientific management and captive breeding, would continue. It is being made mandatory for every transporter not to transport any wild life product

without proper permission. The penalties of various offences are proposed to be suitably enhanced to make them deterrent. The Central Government officers as well as individuals now can also file complaints in the courts for offences under the Act. It is also proposed to provide for appointment of honorary Wild Life Wardens and payment of rewards to persons helping in apprehension of offenders.

"4. To curb large scale mortalities in wild animals due to communicable diseases, it is proposed to make provisions for compulsory immunization of livestock in and around National Parks and Sanctuaries.

"5. Realising the need to protect offshore marine flora and fauna, the provision of National Parks and Sanctuaries are proposed to be extended to the territorial waters. It is also being provided that while declaring any part of territorial waters as a sanctuary, due precaution shall be taken to safeguard the occupational interests of local fisherman.

"6. While making the provisions of the Act more effective and stringent, due regard has also been given to the rights of the local people, particularly the tribals.

It is being provided that except for the areas under reserve forests, (where the rights of the people have already been settled) and the territorial waters, no area can be declared a sanctuary unless the rights of the people have been settled.

The Bill seeks to achieve the aforesaid objects."

- (ix). It would also be useful to set out the extracts from the statement of the Minister of State of Environment and Forests in the Lok Sabha, which he made at the floor of the House while moving the Bill:

"THE MINISTER OF STATE OF THE MINISTRY OF ENVIRONMENT AND FORESTS (SHRI KAMAL NATH):

I beg to move:

"That the Bill further to amend the Wild Life (Protection) Act, 1972, as passed by Rajya Sabha be taken into consideration."

xx xx xx

Wildlife in our country has suffered serious depletion on account of pressures exerted by the rapid growth of population and the consumption oriented approach, regardless of the need to maintain essential bio-

diversity and ecological processes, balances and life support systems which are so vital for land productivity, food security and human survival. Setting up a network of effectively managed National Park and Sanctuaries is the highest priority of Wildlife Conservation. With this point in view, the provisions with regard to Management of Parks and Sanctuaries are being made more effective and stringent. Realizing the need protect off shore marine flora and fauna, the legal provisions of National Park and Sanctuaries are proposed to be extended to territorial waters as well.

“As already mentioned, wildlife populations and habitats have degraded to a great extent under the pressure of human activities. We can no more afford to kill wild animals for the sake of pleasure of a few persons, thus disrupting life forms and linkages vital for the preservation of bio-diversity. Wildlife is also in no position to bear the burden of capturing of wild animals for commercial purposes.

xx xx xx

“Poaching of wild animal and illegal trade, has over the years, taken serious dimensions because of the exponential rise in the price of wild animals and their

products. The job of a poacher gets more and more lucrative as a particular species gets rarer. Therefore, proposals have been made in the Bill to make the penalties for various offences more deterrent."

- (x). The Wildlife (Protection) Act, 1972 was further amended by Act No.16 of 2003, which received the assent of the President on 17th January, 2003 and was published in the official gazette dated 20th January, 2003. The Parliament by the said 2003 amendment brought about several changes including the establishment of the National Board for Wild Life. The relevant changes that were brought about for the purposes of this petition where the incorporation of Sections 18A, 18B, 25-A, 29 and a proviso to clause (a) of Section 33. The Parliament by incorporating Section 18A by the said amendment extended the protection of Section 27 to 33-A even to those areas where the State Government had only declared its intention to constitute it as a sanctuary. It further strengthened the provisions of Section 29 prohibiting destruction or removal of any wild life from such protected areas. It further imposed restrictions on construction of commercial tourist lodges, hotels, zoos and safari parks

within a sanctuary by suitably amending Section 33 of the said Act.

- (xi). The Parliament further amended the principal Act by the Wildlife (Protection) Amendment Act No.39 of 2006. A new chapter IV B was inserted which provided for declaration of Tiger Reserve Areas; for the establishment of a National Tiger Conservation Authority and other related enabling provisions.

- (xii). The Central Government much prior to the aforesaid 2006 amendment had launched in 1973 a Project Tiger Scheme.

The main objective of Project Tiger was to ensure a viable population of tiger in India for scientific, economic, aesthetic, cultural and ecological values and to preserve for all time areas of biological interest as a natural heritage for the benefit, education and enjoyment of the people.

Initially, the Project had started with 9 tiger reserves, covering an area of 16,339 sq. km., with a population of 268 tigers. At present there are 27 tiger reserves covering an area of 37761 sq. km.

That as per the said Tiger Project, Tiger Reserves were constituted on a 'core-buffer' strategy. The core area is kept free of biotic disturbances and forestry operations, where collection of minor forest produce, grazing, human disturbances are not allowed. The approach adopted by Project Tiger to achieve its objects were as under:-

- a) Elimination of all forms of human exploitation and disturbance from the core and rationalization of such activities in the buffer.
- b) Limitation of the habitat management to repair damage done by man.
- c) Researching facts about habitat and wild animals and carefully monitoring changes in flora and fauna.

Thus, it is obvious that the object of the principal Wildlife Protection Act, the various Amendment Acts prior to 2006 and the Project Tiger Scheme was to arrest depletion of animal life and its habitat so as to maintain the biodiversity, ecological balance and security which is necessary for welfare of humanity. A writ petition (Civil) No. 514 of 2006 challenging the vires of some of

the provisions incorporated by the 2006 Amendment Act has been filed and is pending before the Hon'ble Court.

16. **NATURAL HERITAGE**

- i) The Hon'ble Court in its judgment delivered on 30th Oct., 2002, Re: Kudremukh National Park in I.A. 570 has extensively dealt with the importance of environment and nature. Relevant extracts of which are produced hereunder:

"By destroying nature, environment, man is committing matricide, having in a way killed Mother Earth. Technological excellence, growth of industries, economical gains have led to depletion of natural resources irreversibly. Indifference to the grave consequences, lack of concern and foresight have contributed in large measures to the alarming position.

"About one and half century ago, in 1854, as the famous story goes the wise Indian Chief of Seattle replied to the offer of the great White Chief in Washington to buy their land. The reply is profound....

"What is without the beasts? If all the beasts were gone, man would die from a great loneliness of spirit. For

whatever happens to the beasts soon happens to man.

All things are connected.....

"This we know: The earth does not belong to man, man belongs to the earth. This we know: All things are connected like the blood which unites one family....

"Whatever befalls the earth befalls the sons of the earth. Man did not weave the web of life; he is merely a strand in it. Whatever he does to the web he does to himself.

"The words of Pythagoras who said:

"For so long as man continues to be the ruthless destroyer of lower living beings, he will never know health or peace. For so long as men massacre animals, they will kill each other. Indeed, they who sow the seeds of murder and pain cannot reap joy and love.

"Ecologists are of the opinion that the most important ecological and social problem is the wide spread disappearance all over the world of certain species of living organisms. Ecologists forecast the extinction of animal and plant species on a scale that is incompatibly greater than their extinction over the course of millions of years. It is said that over half the species which became extinct over the last 2000 years did so after 1900. The International Association for the Protection of

Nature and Natural Resources calculates that now, on average, one species or sub-species is lost every year. It is said that approximately 1,000 birds and animal species are facing extinction at present. It is for this that the environmental questions have become urgent and they have to be properly understood and squarely met by man. Nature and history are two components of the environment in which we live, move and prove ourselves."

- (ii) The Hon'ble Court in *State of Bihar v. Murad Ali Khan* (1988) 4 SCC 653 had the occasion to notice the purpose of the Wildlife (Protection) Act. In this regard, the Hon'ble Court observed as follows.

"The preservation of the fauna and flora, some species of which are getting extinct at an alarming rate, has been a great and urgent necessity for the survival of humanity and these laws reflect a last ditch battle for the restoration, in part at least, a grave situation emerging from a long history of callous insensitiveness to the enormity of the risks to mankind that go with the deterioration of environment. The tragedy of the predicament of the civilized man is that "Every source from which man has increased his power on earth has

been used to diminish the prospects of his successors. All his progress is being made at the expense damage to the environment which he cannot repair and cannot foresee".

Environmentalists' conceptions of the ecological balance in nature is based on the fundamental concept that nature is "a series of complex biotic communities of which a man is an interdependent part" and that it should not be given to a part to trespass and diminish the whole. The largest single factor in the depletion of the wealth of animal life in nature has been the "civilized man" operating directly through excessive commercial hunting or, more disastrously, indirectly through invading or destroying natural habitats."

- (iii) That the Hon'ble Court in its judgment dated 26th September, 2005 in I.A. No. 826 and 566 in W.P.(C) No. 2002/1999 reported in 2006 (1) SCC 1 (Para 68) have held "that the natural resources are not the ownership of any one state or individual, the public at large is its beneficiary". The Hon'ble Court further held (Para 75) that "It is clearly a constitutional imperative to preserve and enhance forest cover as a natural gene pool

reserve." The Hon'ble Court in paras 86 and 87 of the said judgment observed that;

"The national development agenda must recognize the necessity of protecting the long-term ecological security. The problem area is the growing population, high degree of mechanization and steep rise in energy use which has led to activities that directly or indirectly affect the sustainability of the environment.

"It is recognized that the sustainable use of biodiversity is fundamental to ecological sustainability. The loss of biodiversity stems from destruction of the habitat, extension of agriculture, filling up of wetlands, conversion of rich biodiversity sites for human settlement and industrial development, destruction of coastal areas and uncontrolled commercial exploitation. It is thus evident that the preservation of ecosystems, biodiversity and environment whether examined on common-law principle or statutory principle or constitutional principle, eyeing from any angle, it is clearly a national issue to be tackled at the national level. All initiatives are required to be seriously pursued."

The Hon'ble Court in the said Judgment after narrating

The objective of the National Forest Policy, 1988 (Para 7) is that the policy has a statutory flavour. The non-fulfillment of the aforesaid principle aim would be violative of Articles 14 and 21 of the Constitution". That one of the main objectives of the Forest Policy, 1988, as contained in para 4.8.1 of the said Policy is "The encroachment on forest lands has been on the increase. It should not be arrested and effective action plan to prevent its continuation. There should be no regularization of existing encroachments". Again in para 4.16 of the policy it has been observed that "Forests are a national asset to be protected and conserved for the well-being of the people and the nation".



- (iv) Petitioners submit that the preservation of natural heritage is a critical component of right to life. The protection of wild life and its habitat has seeds in the history of time, and in the history of moral, ethical and ecological principles evolved by every society through various ages. A society, which does not have ethical and moral values and fails to live in harmony with nature, withers and perishes. The sooner this truth is realized, the better it would be for the welfare of the people. It has come to us through centuries to show

compassion towards animals and birds, as all are considered to have come from the same source.

17. DIRECTIVE PRINCIPLES:-

- (i) Article 48-A in Part IV (Directive Principles) of the Constitution of India, 1950 brought by the constitution (42nd Amendment) Act, 1976, enjoins that "State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country". Article 47 further imposes the duty on the State to improve public health as its primary duty. Article 51-A (g) imposes "a fundamental duty" on every citizen of India to protect and improve the natural "environment" including forests, lakes, rivers and wild life and to have compassion for living creatures.

It is, therefore, not only the duty of the State but also the duty of every citizen to preserve natural resources, biodiversity, wilderness, wildlife and its habitat. The State, in particular has duty in that behalf and to shed its extravagant unbridled sovereign power and to forge a policy to maintain it.

- (ii) Environmental protection has now become a matter of grave concern for human existence. Promoting

environmental protection implies maintenance of the environment as a whole, comprising both man-made and the natural environment. There is a constitutional imperative on the Central Government, State Governments and the Panchayati Raj Municipalities, not only to ensure and maintain a proper environment but also an imperative duty to take adequate measures to promote, protect and improve the environment man-made and natural.

(iii) Directive principles are fundamental in the governance of the country and should be given priority. They can be effective only when they are given priority and pre-eminence over the fundamental rights of a few, in order to sub serve the common good of the people. If unbridled exercise of fundamental right results in the detriment of the community at large, it can be restricted, abridged or prohibited in order to promote common good of the people as envisioned by Part IV of the Constitution relating to the Directive Principles of State Policy.

(iv) The Directive Principles of State Policy has laid down the path for the country to follow in order to achieve its goals. The Directive Principles form the fundamental

feature and the conscience of the Constitution and the Constitution enjoins upon the State to implement these principles.

(v) Thus, it is clear that the Directive Principles are fundamental in the governance of the country and they can be effective if they are to prevail over fundamental rights in order to sub serve the common good. While the most cherished freedoms and rights have been guaranteed, the Government has been laid under a solemn duty to give effect to the Directive Principles.

(vi) It was in fulfillment of this duty that the Principal Wildlife Protection Act and the earlier Amendment Acts have been enacted to conserve nature, wilderness and wildlife. The destruction or depletion of the other forms of life would create ecological imbalances endangering human life. No one can be given the privilege to endanger human life as that would violate Article 21 of the Constitution. It is extremely essential for the survival of man to co-exist with nature and to preserve and protect wildlife and the habitat, which unfortunately today constitute the only reasonably safe havens for the long-term survival of biodiversity, the faunal and floral species and the local communities.

18. PUBLIC TRUST DOCTRINE:-

- (i) The notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land. The need to protect the environment and ecology has been summed up by David B. Hunter (University of Michigan) in an article titled "An Ecological Perspective on Property" which advocates protection of the public's interest in environmental and natural resources, published in Harvard Environmental Law Review, Vol. 12 1973, p.311 in the following words:
- "Another major ecological tenet is that the world is finite. The earth can support only so many people and only so much human activity before limits are reached. This lesson was driven home by the oil crisis of the 1970s as well as by the pesticide scare of the 1960s. The current deterioration of the ozone layer is another vivid example of the complex, unpredictable and potentially catastrophic effects posed by our disregard of the environment limits to economic growth. The absolute finiteness of the environment, when coupled with human dependency on the environment, leads to the

unquestionable result that human activities will at some point be constrained."

- (ii) This Hon'ble Court in Kamal Nath's case reported in 1997 (1) S.C.C. 388 (406), had further held that:

"There is a commonly-recognised link between laws and social values, but to ecologists a balance between laws and values is not alone sufficient to ensure a stable relationship between humans and their environment. Laws and values must also contend with the constraints imposed by the outside environment. Unfortunately, current legal doctrine rarely accounts for such constraints, and thus environment stability is threatened.

Historically, we have changed the environment to fit our conceptions of property. We have fenced, plowed and paved. The environment has proven malleable and to a large extent still is. But there is a limit to this malleability, and certain types of ecologically important resources—for example, wetlands and riparian forests—can no longer be destroyed without enormous long-term effects on environmental and therefore social

(ii) Total Population viz a-viz Schedule Tribe Population

(Source: Census of India)

| Year | Total Population | Schedule Tribes Population | % of Total Population |
|------|------------------|----------------------------|-----------------------|
| 1951 | 356,879,394 | 19,116,498 | 5.36 |
| 1961 | 439,234,771 | 29,879,249 | 6.80 |
| 1971 | 548,159,652 | 37,998,041 | 6.93 |
| 1981 | 683,329,997 | 51,228,638 | 7.56 |
| 1991 | 838,583,988 | 67,758,380 | 8.0 |
| 2001 | 1,028,610,238 | 84,326,240 | 8.20 |

(iii) Orders issued under Article 244(2) read with Fifth Schedule of the Constitution declaring Scheduled Areas are as under:-

"The following Orders are in operation at present in their original or amended form:

| S.N. | Name of Order | Date of Notification | Name of State (s) for which applicable |
|------|--|----------------------|--|
| 1. | The Scheduled Areas (Part- A States) Order, 1950 (C.O.9) | 26.1.1950 | Andhra Pradesh |
| 2. | The Scheduled Areas (Part-B States) Order, 1950 (C.O. 26) | 7.12.1950 | Andhra Pradesh |
| 3. | The Scheduled Areas (Himachal Pradesh) Order, 1975 (C.O.102) | 21.11.1975 | Himachal Pradesh |

| | | | |
|----|---|-----------|--|
| 4. | The States (Mergers) Order, 1956 (State of Jammu and Kashmir) Republic of India (Mergers) Order, 1956 | 1.12.1956 | Gujarat & Orissa |
| 5. | The States (Mergers) Order, 1956 (State of Rajasthan) Order, 1956 (S.O. 111) | 1.1.1956 | Rajasthan |
| 6. | The States (Mergers) Order, 1956 (Maharashtra) Order, 1956 (S.O. 125) | 1.12.1956 | Maharashtra |
| 7. | The States (Mergers) Order, 1956 (Chhattisgarh, Jharkhand and Andhra Pradesh) Order, 1956 (S.O. 125) | 1.12.1956 | Chhattisgarh, Jharkhand and Andhra Pradesh |


cjp.org.in

different states and Union Territories in India is annexed herewith as ANNEXURE - A

(v) Legal cases pending before concerned authorities/Committee

Ministry of Rural Development, Government of India publishes every year its Annual Report. The Chapter on Land Reforms of the said Report states the status of pending cases. The particulars enumerated in various Annual Reports are as under:-

| Year | No. of cases Registered | Total area of land sub- | No. of cases disposed off in | Total area of land in cases | No. of cases decided against | Total area of land in cases |
|------|-------------------------|-------------------------|------------------------------|-----------------------------|------------------------------|-----------------------------|
|------|-------------------------|-------------------------|------------------------------|-----------------------------|------------------------------|-----------------------------|

| | (in lacs) | judice (acres in lacs) | favour of Tribals | decide d . in favour of Tribals. | Tribals | decide d against Tribals |
|---------|-----------|------------------------------|----------------------|--|---------|-----------------------------------|
| 1998-99 | 4.65 | 9.18 | 2.02 | 5.31 | - | - |
| 2000-01 | 3.75 | 8.55 | 1.62 | 1.47 | - | - |
| 2001-02 | 3.75 | 8.55 | 1.62 | 1.47 | 1.54 | 3.63 |
| 2002-03 | 3.75 | 8.55 | 1.62 | 1.47 | 1.54 | 3.63 |
| 2003-04 | 3.75 | 8.55 | 1.62 | 1.47 | 1.54 | 3.63 |
| 2004-05 | 3.75 | 8.55 | 1.62 | 1.47 | 1.54 | 3.63 |
| 2005-06 | 3.75 | 8.55 | 1.62 | 1.47 | 1.54 | 3.63 |

(vi) Scheduled Areas are located in 187 Tribal Districts across the country. The said Districts for the purpose of disbursement of Central Tribals Sub-Plan 100% grant in aid funds have been further sub-divided as under:-

- (a) Integrated Tribal Development Projects (ITDP) areas (195 Nos.), which are generally contiguous areas of the size of tehsil or block or more in which the ST population is 50% or more of the total population.
- (b) Modified Area Development Approach Projects (MADA) pockets (259 Nos.), which are identified pockets having 50% or more ST

population and a minimum total population of 10,000.

(c) Clusters (82 Nos.), which are identified pockets having 50% ST population and a minimum population of 5,000.

(d) Primitive Tribal Groups (75 in numbers), characterized by a low rate of growth of population, pre-agricultural level of technology and extremely low level of literacy.

(e) Dispersed tribal population outside the categories at S.No. 1 to 4 above.

(vii) Funds released by the Central Government to the State Governments under the Special Central Assistance to Tribal Sub-Plan under the Vth to Xth Five Year Plan period:-

| Five Year Plan | Amount (Rs. in Crores) |
|----------------|---------------------------|
| V | 119.31 |
| VI | 480.11 |
| VII | 846.95 |
| VIII | 1484.12 |
| IX | 2009.61 |
| X | 2136.39 |
| Total | 7389.49 |

Source - Annual Report 2005-06 - Ministry of Tribal Affairs

- (a) Funds released to State Governments under Article 275 (1) of the Constitution during the IXth and Xth Five Year Plan:-

| | | |
|-----------|---|--------------------|
| IXth Plan | - | Rs. 741.29 Crores |
| Xth Plan | - | Rs. 1244.43 Crores |
| Total | | Rs. 1985.72 Crores |

20. **TRIBAL DISTRICT FOREST FIGURES**

- (i) Tribal districts across the country (187 in number) show a 10,190 sq. km. reduction in dense forest cover - a loss of 4% in just 2 years

LOSS IN DENSE FOREST COVER IN TRIBAL DISTRICTS 2001 -2003 (sq.km.)

| State and # of Tribal Districts | FSI 2001 Report | FSI 2003 Report | Loss in Dense Forest Cover (%) |
|---------------------------------|-----------------|-----------------|--------------------------------|
| Assam (16) | 7,233 | 5,302 | 1,931(26.7%) |
| Madhya Pradesh (18) | 27,833 | 24,372 | 3,511(12.6%) |
| Jharkhand (8) | 7,826 | 7,368 | 458 (5.8%) |
| Andhra Pradesh (8) | 17,062 | 16,370 | 692(4%) |
| All States/ Uts (187) | 257,048 | 246,858 | 10,190(4%) |

Source: State of Forest Report 2001: State of Forest Report, 2003, Dehra Dun, FSI.

- (ii) Decrease in forest cover in Tribal Districts (Name, District, %): Dhule (MAH), 1995-99, 22.2%, Raipur (CHA), 1991-99, 9.2% | Karimnager (A.P.), 1991-99, 20.4%, West Nimar(M.P.), 1991-99, 47.8%, Kokrajhar (Assam), 1991-99, 20.8%, (Data from FSI).

In Assam, 25% of RF land is under encroachment. The situation with P.As is no better, with 22% under encroachment.

21. FOREST FACTS

- (i) India's geographical area : 3,287,263 sq. km.

Forest Area : 20,64% (2003).

6.3% reduction (26,245 sq.km.) in Dense Forest in just 2 years:

NET CHANGE IN FOREST COVER, 2001-2003 (sq.km.)

| Year | Dense Forest | Open Forest | Total Forest | Scrub |
|--------|--------------|-------------|--------------|--------|
| 2001 | 416,809 | 258,729 | 675,538 | 47,318 |
| 2003 | 390,564 | 287,769 | 678,333 | 40,269 |
| Change | -26,245 | 29,040 | 2,795 | -7,049 |

Source: State of Forest Report, 2001: State of Forest Report, 2003, Dehra Dun, FSI.

The economic value of the many functions performed by India's forests is immense - it comprises *inter alia* flood loss mitigation, drought prevention through freshwater capture and augmentation, soil conservation and nutrient recycling for agriculture, carbon storage to mitigate Global Warming, providing non-timber forest products to be harvested by the poor, the medical values of plant biodiversity, future eco-tourism income, air cleansing and improved health, and recreation benefits, to name a few. However, most of these goods and services of India's forests are not traded in any markets, so they are not priced and are not included in "GDP" as published by the Government. By a term of classical economists, these values are called "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 state-wise India's forests are conservatively worth Rs 8 lacs - Rs 36 lacs per hectare in terms of their value to India's economy. Charts published by Green Indian States Trusts and that of other organizations stating the NPV of

forest and carbon value are annexed as Annexure B (Colly). The Supplementary NPV Report of January 2007 of the Central Empowered Committee in I.A. No. 826 in I.A. No. 566 in W. P. (C) No. 202/1995 gives an average value of Rs 8 lacs per hectare. It is submitted that to pass these valuable public assets on to private ownership, no matter how well meaning and socially desirable, is an economic folly for India, if cheaper 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 in significant excess of the gains to the few.

- (ii) 300 rivers originate from Indian forest areas
- (iii) Forests meet nearly 40% of the energy needs of India, of which 80% is utilized in rural areas (Report of the National Forest Commission, 2006). Over 25% of all fodder of livestock is obtained from forests (280MM tones), 78% of all forests report grazing of livestock.
- (iv) Free removal from forests is approx. worth Rs.40,000 crore annually (270MM tonnes), to meet to livelihood needs of 300MM people and 270MM cattle (60# of the livestock).

- (v) A total of 400 M people live in and around forests in 1.73 lakh villages. An estimate suggests there are 7,000 forest villages (*Indian Express*, Dec. 16, 2006), another indicates there are 3,000 recorded forests villages (*Frontline*, Jan. 12, 07).
- (vi) Between 1950 and 1983, 43 lakh ha. of forest land were diverted to agriculture. Land diversion reduced after passage of Forest Conservation Act (1980).
- (vii) M.P. accounts for 11.27% of the forest cover of the country, followed by Arunachal Pradesh (10.03%), Orissa (7.13%), Maharashtra (6.91%) and A.P. (6.55%).
- (viii) Deforestation contributes an estimated 18% of GHG emissions globally as per Stern Review and over 26% in India (per 2002/03, currently available published official deforestation and forest degradation information from 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 recent Bali conference. It is submitted that by introducing a law which will add to, not reduce, deforestation in India, the Government is

precluding the opportunity of significantly benefiting the Indian economy 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 - see attached). CO₂ emissions from deforestation in India are very material, being of the same order of magnitude as those of India's organized Power sector. It is estimated that the Carbon footprint of India's Power Sector in 2006 is at 470-MT CO₂, versus deforestation emissions 2002-03 of 433 MT CO₂. A paper 'Estimating the Carbon Footprint of Deforestation in India' is annexed as Annexure C.

- (ix) That the Central Government after the passing of Forest Conservation Act 1981 has on numerous occasions regularized encroachments on forest lands. As of 19.2.2007 the Central Government has approved 367573.6198 ha. of forest land in ten states. The break-up of the lands so regularized are annexed herewith as ANNEXURE - D.

22. HISTORIC INJUSTICE (SITUATION IN MADHYA PRADESH)

- (i) The wholesale settlement of rich valley and plateau lands, encouraged by the return of peace after the defeat of the

Pindaris by the British (1818), concluded a historical process of ingress of caste Hindus to the Narmada driven out of Northern India by Mughal rule.

- (ii) The earliest British settlement in 1861 was made to protect Indian forests from wholesale destruction by outside settlers and railway contractors and not to deprive natives of their rights. Between the time the forests were surveyed for protection and a cut off date announced, most of the teak from the northern part of the C.P. was felled.
- (iii) "A settlement was made whereby those who could prove any type of title over the land and it recorded in their name, the hill chiefs were given full ownership over the hill forests in their possession, and the rest of the forests were declared to be government property (MNB, from Capt J. Forsyth, "The Highlands of Central India," 1889).
- (iv) Under the state Land Alienation Acts, 4.65 lakh cases of land alienation were registered from 11 states, for land covering 9.18 lakh acres. 2.02 lakh cases were disposed in favour of tribals, of which 4.61 lakh acres were restored (Min. of Rural Development, 1998-99). This is an incomplete process, with still no Central law in place.

- (v) At the time of Independence, undivided M.P. had 1.95 lakh sq. km of forests. Then under the Abolition of Proprietary Right Act, M.P. malguzari was abolished. In the absence of the malguzar, the village commons and forests were exploited by all and sundry. By the time forests were notified as PF in 1961, 40 lakh ha. of village forests were lost, including 28 lakh ha. to outright encroachment. Since Independence, in undivided M.P. has lost 60,000 sq. km - the size of Haryana, more than the size of 11 states in India.
- (vi) In spite of five forest settlements since Independence, injustice compounds injustice, as the benefits of forest settlement are cornered by non-tribals. M.P. as of 19.2.2007 has regularized 224874.70 ha. of encroachments on forest land. Where will this cycle end? The remaining forests are a critical life support of tribal populations.

23. INTEGRITY OF FORESTS

- (i) The RFR Act states that forest dwellers are "integral to the very survival and sustainability of forest ecosystems". The Indian experience suggests completely otherwise: that human intervention, unsustainable, intense and growing resource use, growing human populations and land alienation, have all resulted in the reduction of forest cover

and quality. The Forest Department simply cannot stem this tide of humanity from the remaining forests.

- (ii) The most stark evidence of forest destruction is from West Nimar and Jhabua in M.P., where for political factors politicians after Independence encouraged tribals to encroach on forest land ('jhaad hamarey, zamin hamari'). Today, all forest cover, once as good as elsewhere in the Satpuras, has vanished, and tribals migrate outside to look for work.
- (iii) Dense forests are losing their crown density continuously. 42% of the forest cover of the country is degraded, 70% of forests are not regenerating, 55% are prone to fire.
- (iv) The supply of fuelwood in India is already 4-5 times what the forests are able to produce sustainably. Over 90,000 cu.m. of timber is lost to illicit felling annually.
- (v) Tribal people are often used to facilitate encroachments by non-tribal interests to convert forest land into private property. This is precisely what has happened to the extensive lands parceled out as 'inalienable' grants to tribals and forest dwellers after Independence. The tribal lands were largely alienated, sending the tribals back to the remaining forests as encroachers.

(vi) The privatization of land is the start of land alienation of tribals and goes against traditional tribal life. The very existence of Reserve Forests (with modest but growing encroachments and ongoing losses to development projects) has at least preserved tribal ways of life and provided succor of the last resort. 60% of tribal populations in Central Indian States depend on forests for some source of food (ASCI, RNFC).

(vii) It is submitted that the ecological security, environmental stability and the ecological integrity of India is under great threat. Having regard to the country's vast population, the growth of its economy and the inevitable consequences of global climate change, it is imperative that the ecological integrity and biodiversity of the Nation's forest resources be preserved. The impugned Act destroys the integrity of the last remaining forests by enabling alienation in perpetuity of vast tracts of forest lands. It is submitted that the impugned statute will result in the destruction of wild life, wild life habitats and will seriously erode the ecological integrity of the last remaining forests in India.

24. **FOUNDATIONS**

- (i) That the enactment of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights)

Act is beyond the legislative competence of Parliament. Particularly keeping in view Entry No. 18, 35 and 45 of List II of the Seventh Schedule to the Constitution, which entries have placed 'land' within the exclusive domain of the State legislature. A copy of the RFR Act is annexed herewith as Annexure-E.

- (ii) That the term 'Forests' as found in Entry No. 17-A of List III of the Seventh Schedule to the Constitution would not include the land beneath the forest. The legislative exercise of power by Parliament in enacting the Forest Dwellers (Recognition of Forest Rights) Act is colourable exercise of the said power.
- (iii) That 'Natural Heritage/Ecology' which includes all forests land and wildlife, falls within the compendious expression "right to life and liberty", as enshrined in Article 21 of the Constitution of India. The right to Natural Heritage/Ecology is fundamental to all the persons, within the territorial boundaries of the country.
- (iv) That Sections 3, 4 and 5 of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 impinge upon the fundamental rights of the non-beneficiaries to Natural Heritage/ecology.

(v) That the provisions of Sections 3, 4 and 5 of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 are arbitrary and of an excessive nature so as to go beyond the requirements of the interest of the general public. Particularly keeping in view the ecological importance and benefits derived from forests, other natural resources and wildlife, changing climatic conditions, values of human life, philosophy of the constitution, and the prevailing conditions.

(vi) That there is a no direct and proximate nexus between the restrictions imposed on the right to Natural Heritage/Ecology of the non-beneficiaries and the object which is sought to be achieved by the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. Particularly keeping in view the alleged mitigation of "historical injustice" as stated in the preamble vis-à-vis sub-section (3) and (6) of Section 4 of the said Act, which confers a right to possess and own forest land up to 4 hectares which has been occupied, whether legally or unauthorisedly before 13th December, 2005.

(viii) That the provisions of Sections 3, 4 and 5 of the RFR Act are not in consonance with the principles of Precautionary Principle and the Public Trust Doctrine. Particularly, when

the said twin principles have been held to be a part of Article 21 of the Constitution.

- (ix) The impugned Act not only violates Articles 14 and 21 of the Constitution of India, but also violates the Basic Structure of the Constitution of India. It is submitted that all powers exercised by various functionaries under the Constitution of India are a public trust. These powers, including the Parliamentary prerogative to enact laws, must be exercised consistent with provisions of the Constitution and must not fall foul of the Basic Structure doctrine. The Union Government as well as the governments of the States and Union Territories hold land and natural resources that are vested in the state in trust for and on behalf of the people of India. Lands as well as natural resources such as forests and forest lands cannot be handed over by the state to individuals, unless such grants made are backed by law. In this situation, the law itself must be constitutional and otherwise valid. It is submitted that the state cannot distribute and grant vast tracts of forest lands to persons who in the eyes of law are encroachers or are otherwise not entitled to exercise any right with respect to such lands. It is submitted that having regard to successive forest and wildlife laws enacted in India and statutory notifications issued

thereunder, in the eyes of law, the persons who are being granted entitlements under the impugned statute are persons who were in breach of these laws. It is respectfully submitted that it would not be permissible for the state as a trustee of public lands (including forest lands) to grant these lands to forest encroachers, since such grants are in breach of the duty of the state to the people of India. The impugned provisions are destructive of the Rule of Law. The impugned provisions benefit and reward persons who in the eyes of law were violators of the law. This is destructive of the Rule of Law and the Basic Structure.

- (x) That sub-clauses (a) and (b) of sub-section (1) of Section 3 read with sub-section (b) of Section 4 of the RFR Act are ultra vires Article 14 of the Constitution. In as much as, first, the said provisions discriminate between the non-forest landless citizens on the one hand and those citizens who have unauthorisedly occupied forest land on the other hand. Secondly, it permits a forest dweller or a Schedule Tribe to claim 4 hectares of occupied forest land in addition to such lands which already may be legally in his possession.
- (xi) That the provisions of sub-section (a) (b) and (d) of Section 5 and sub-section (1) of Section 6 read with sub-clauses (a)

and (d) of sub-section (2) of Section 14 of the said RFR Act suffer from excessive delegation of power.

- (xii) That the Gram Sabha which has been defined in the said RFR Act to mean "a village assembly which shall consist of all adult members of a village" can not preside over and decide its own cause in determining the extent of forest land occupied by its individual members and community forest rights as contemplated in sub-section (1) of Section 6 of the said Act.

It is submitted that the grant of forest land under the impugned Act is impermissibly required to be determined by the persons who are to enjoy the entitlements. This scheme is fundamentally flawed and is illegal inasmuch as the state having no information or knowledge of the extent of the encroachment is leaving it to the encroachers or illegal occupants to determine and delimit the extent of their entitlements. The statutory scheme is arbitrary, irrational and amounts to a fundamental breach of the principle of trust law that must inform any action by which vast tracts of forest lands or other natural resource are being granted to private parties in perpetuity.

- (xiii) That the function of determining alleged individual rights and community forest rights, as contemplated in Chapter-

IV of the said RFR Act cannot be delegated to authorities other than judicial/legal and administrative.

(xiv) Section 3(1) of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 defines the various forest rights enumerated therein. Sub-clause (a) confers the "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;"

Section 2 (d) of the RFR Act defines "forest dwelling Scheduled Tribes" as the members or community of 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".

Section 2(c) defines "other traditional forest dweller" to mean 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".

Section 3 (1) (g) of the RFR Act further confers rights for conversion of Pattas or leases or grants issued by any local authority or any State Government on forest lands to tribals.

Section 4(3) of the RFR Act vests and declares that "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, 2001."

Section 4(6) of the RFR Act limits the right to forest land and provides that "Where the forest rights recognized 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.

The conjoint reading of the above provisions shows that every person holding forest land irrespective of any title to it would be entitled to 4 hectares of forest land in all those cases where a person is in occupation of forest land over and above the four hectare limit. In other words even encroachers who had no legal title to it would get a right over such encroached land. The terms "primarily resided in" and "for bona fide livelihood needs" as used in section 2 (o) of the RFR Act while defining "other traditional forest dweller" are ambiguous and unclear. Under the said definition a person who has not encroached the forest and has a residence outside the forest would also be entitled to land. Secondly, there is no rational basis to arrive at a figure of 4 hectares of land per person. The Bill of the said Act was introduced in the Lok Sabha on 13th December, 2005 wherein the right over forest land was limited to 2.5 hectares per person. The said Bill was subsequently referred to a Joint Committee of both the Houses of Parliament by the Lok Sabha on 21st December, 2005 and Rajya Sabha 26th December, 2005. The said JPC submitted its recommendations on 19th May, 2006. JPC in its report 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 holdings 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 Resettlement Schemes the area allocated is 2 hectares or less.

- (xv) Sub-clause (c) and (d) of Section 3 (1) of the RFR Act confer ownership right to collect forest produce, fishing and other products of water bodies, grazing etc. within or outside village boundaries. 'Village' has been defined in Section 2 (p) (iii) to include "Settlements and unsurveyed villages, whether notified as village or not."

The provisions of 3 (1) (c) & (d) are not in conformity with the principle of precautionary principle but are also contrary to the provisions of the Wildlife (Protection) Act and the Indian Forest Act.

- (xvi) Section 3(1) (i) read with Section 4 (1) (b) of the RFR Act declares and confers "right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use".

Section 2 (a) of the RFR Act defines "Community Forest Resource" to include Reserve Forest Protected forests, National Parks and Sanctuaries.

Section 5 (a) and (d) of the RFR Act empowers the Gram Sabha to protect the wildlife, forest, biodiversity and to regulate access to community forest resource and stop any activity which adversely affects the wild animals, forest biodiversity. The aforesaid provisions read with the definition of 'village' transfers the control and management of the country's natural heritage to the Gram Sabha/Inhabitant and which transfer is violative of Articles 21 and 31 of the Constitution.

(xvii) Section 4 (2) to (6) prescribes the prior conditions to be fulfilled before resettlement. The said conditions are arbitrary and unimplementable. The pre-conditions are such that would frustrate the very object and purpose of the Wildlife Protection Act.

Sec 4(D) FRA
 (xviii) Section (5)(7) of the RFR Act arbitrarily excludes the application of the Forest (Conservation) Act, 1980 and the operation of the Hon'ble Courts judgments/orders on 'net present value' and 'compensatory afforestation'.

(xix) That the RFR Act by conferring rights on forest land would lead to conversion of forest land to revenue land and that too without undertaking any exercise to ascertain the total number of people who would be entitled to rights over the forest land and quantum of forest that would be diverted towards revenue land.

Hence, the Act is violative of Article 14 as it is arbitrary in its scope and application. The Ministry of Tribal Affairs, Government of India has in its reply dated 21st July 2006 under the RTI Act has admitted that "the figures in this regard are not available in this Ministry".

A true and typed copy of the application submitted under the RTI Act together with the response of the Ministry of Tribal Affairs dated 21st July 2006 is hereto annexed and marked as ANNEXURE - F(Colly).

(xx) Section 3 (2) of RFR Act contemplates that the Central Government shall provide for the diversion of forest land for 13 activities ranging from electric and telecommunication lines, minor irrigation canal, roads etc., subject to the condition that forest land to be diverted for the said purposes would be less than 1 hectare in each case and should not involve felling of more than 75 trees. It is submitted that this provision would be ecologically disastrous as it will result in

fragmentation of vital wildlife habitats and will affect the continuity of forests. This would also apply to the stipulation of 75 trees per hectare. The uniform application of this norm would also be ecologically disastrous. The density and number of trees per hectares depends on various factors such as altitude, location, soil type etc. Some of the most vital ecosystems such as high altitude areas, grasslands and wetlands normally would not necessarily have '75 trees per hectare' but nonetheless are very important from the ecological point of view.

(xxi) It is submitted that having regard to the devastating ecological impact of the impugned Act, it is incumbent that an exhaustive environment impact assessment exercise be carried out before giving effect to the provisions of the Act. It is submitted that the EIA exercise would clearly show the adverse impact of the statute. It is submitted that the destructive effect of the statute on the Nation's forest and wild life habitats violates Article 21 of the Constitution of India and even otherwise is *ultra vires* and illegal.

(xxii) The number of villages and people within the core area of Tiger Reserves as of 2002 was 3, 72,716 as per the report of Project Tiger, Government of India, 2001-02.

Hereto annexed and marked as ANNEXURE - G is the chart showing the respective Tiger Reserves along with the population residing in each of the reserves.

(xxiii) The Hon'ble Court in Menaka Gandhi V/s. U.O.I. (1978)

1 SCC 248 has held that the expression "personal liberty" in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19. Any law interfering with personal liberty of a person must satisfy a triple test: (i) it must prescribe a procedure; (ii) the procedure must withstand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation; and (iii) it must also be liable to be tested with reference to Article 14.

As the test propounded by Article 14 pervades Article 21 as well, the law and procedure authorizing interference with person liberty must also be right and just and fair and not arbitrary, fanciful or oppressive. If the procedure prescribed does not satisfy the requirement of Article 14 it would be no procedure at all within the meaning of Article 21.

It is submitted that legislative intrusions into the right to preserve natural heritage must be tested on the touchstone of reasonableness as guaranteed by the constitution and for that purpose the Hon'ble Court can evaluate the proportionality of the intrusions vis-a-vis the purpose sought to be achieved. (District Registrar V/s. Canara Bank (2005) 1 S.C.C. 496 para 34). If the legislative intrusions are beyond the permissible constitutional limits then such an enactment would necessarily, has to be struck down as violative of Article 14 and 21 of the Constitution.

(xxiv) That the Central and the State Governments are under an obligation to ensure quick restoration of the lands in Scheduled and Non-Scheduled Areas belonging to Scheduled Tribes which have been alienated to non-tribals in violation of their respective State tribal land alienation and restoration laws specifically enacted for the said purpose.

(xxv) That the neglect, omission and failure of the respondent governments to restore the said land to the tribals as provided for by their respective tribal land alienation and restoration Acts is violative of Articles 14 and 21 of the Constitution and in disregard of Articles 39(b), 46 and 51A(g) of the Constitution.

(xxvi) That the respondent governments are under an obligation to take effective measures for speedy disposal of cases filed by the tribals for the restoration of their lands from non-tribals in such Areas.

(xxvii) That the failure, omission and neglect of the respondent governments to enforce their respective tribal land restoration laws would not justify conferring of rights over forest lands other than those lands which are covered by the respective tribal land alienation laws, to the tribals.

(xxviii) That the respondent governments are under an obligation to complete the survey and demarcation of notified forest lands and complete the legal process as contemplated under the Indian Forest Act in respect of those forest lands where it has yet not been completed.

25. QUERIES

The petitioner seeks the following better and material particulars from the respondents so as to enable the Hon'ble Court to issue appropriate directions. The particulars sought for are relevant and material, and shall throw a flood of light on the issues raised in this petition. The petitioner requests each of the respondents to specifically provide preferably as of 2006-2007 the information sought hereunder:

- (i) Total area of Scheduled Areas in the State.
- (ii) Extent of land in possession of non-tribals in the Scheduled Area of the State.
- (iii) Area of land that has been restored to the tribals from non-tribals. Please give year wise break-up since 1970.
- (iv) Total No. of cases filed by tribals seeking restoration of land alienated to non-tribals.
- (v) Total No. of cases allowed/disallowed and No. of cases which are pending.
- (vi) Total area of land sought to be restored by the tribals in the allowed cases and the extent of land actually restored.
- (vii) Total Area of land sought to be restored in the disallowed cases.
- (viii) Total Area of land in the aforesaid pending cases.
- (ix) Total Area of forest land other than the land mentioned in Clause (vi) above which has been banded over rights allowed by the State till date to tribals and non-tribals.

- (x) Amount of money received from the Central Government under various schemes for the welfare of tribals and development of scheduled areas under the V to X Plan. Also the amount of money invested by the State Government for the welfare of the tribals other than the Central Government funds, during the said period.
- (xi) Total area of Reserve Forests and Protected Forest lands respectively in actual possession of the tribals and non-tribals as per reports if any, of 1950, 1960, 1970, 1980, 1990 and 2000. Please state break-up of Reserve Forest and Protected Forest and that of tribals and non-tribals separately.
- (xii) Total area of land notified as National Park/Sanctuary Area and of land in actual possession of tribals and non-tribals in such notified areas as on the date of the notification and as per the last survey report.
- (xiii) Total number of National Parks and the number of National Parks wherein the final notification has yet not been issued.

- (xiv) Total number of Wildlife Sanctuaries and the number of Wildlife Sanctuaries wherein the final notification has yet not been issued.
- (xv) Total number of cattle within the respective National Park and Sanctuary in the State.
- (xvi) Total area of un-demarcated or un-surveyed notified and un-notified forests in the State. Please state the date of notification.
26. The Petitioners crave leave of the Hon'ble Court to raise such other grounds and facts as may be required in the circumstances of the case. The petitioners reserve their right to challenge the 2008 Rules framed under the RFR Act.
27. That the Petitioners have not filed a similar petition before this Hon'ble Court or any other court.

PRAYERS:-

It is, therefore, humbly prayed that the Hon'ble Court may please to issue a writ or an order:-

- (i) declaring that the enactment of the Schedule Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is beyond the legislative competence of the Parliament;

- (ii) declaring that Section 3, 4 and 5 of the Schedule Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 are ultra-vires Articles 14 and 21 of the Constitution of India;
- (iii) declaring that sub-section (1) of Section 6 of the Schedule Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is ultra-vires Article 14 of the Constitution of India;
- (iv) declaring that the provisions of sub-section (b) and (d) of Section 5 and sub-section (1) of Section 6 of Schedule Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 confer excessive delegation of power and violate Article 14 of the Constitution of India.
- (v) to direct the respondent governments to provide competent legal aid to the tribals for preparing and enforcing their right for restoration of lands alienated in contravention of their respective State Acts;
- (vi) to direct the respondent governments to increase the awareness of the tribals of their rights under the

Tribal Land Restriction on Alienation and Restoration Laws, enacted by the respective States;

- (vii) to direct the respondent governments to set up additional or special fast track Courts for disposal of cases and appeals relating to tribal land alienation;
- (viii) to direct the respondent No. 1 Central Government to prepare a draft model law on prevention of tribal land alienation and restoration of alienated lands as decided by it in 1998-99 and the recommendations for which had been submitted in April, 2000 by the Expert Group constituted by the Central Government for the said purpose;
- (ix) to set up a mechanism to maintain the progress of restoration of lands to the tribals by an assessment of total area alienated and to fix realistic annual targets for restoration of such lands by the respective respondent governments;
- (x) to direct the respondent governments to complete the survey and demarcation of un-demarcated forest lands within their respective territories and to complete the legal process as provided under the Indian Forest Act or any other State Act applicable to such forest areas;

(xi) to direct the respondent governments to take effective and meaningful steps for restoration of forest lands which have been unauthorisedly diverted for purposes other than forestry and for protection of forest land from any further unauthorized diversion.

(xii) To direct each of the respondents to place before the Hon'ble Court the better and material particulars as sought for in Paragraph No. 25 above;

(xiii) To pass such other orders as the Hon'ble Court deems just and fair in the circumstances of the case.

FOR THIS ACT OF KINDNESS THE PETITIONER SHALL
EVER PRAY.

DRAWN BY

RAJ PANJWANI,
ADVOCATE,
339, LAW CHAMBER,
DELHI HIGH COURT,
NEW DELHI.

DATE 30/1/2008

Ms. PURNIMA BHAT KAK
ADVOCATE FOR THE PETITIONER

IN THE SUPREME COURT OF INDIA

[CIVIL ORIGINAL JURISDICTION]

W.P. (C) NO..... OF 2007

In the matter of:-

Bombay Natural History Society and Ors.

..Petitioner

Versus

Union of India and Ors

...Respondents

AFFIDAVIT

I, Dr. M. K. Ranjitsinh, s/o HH Maharana Raj Sahab Pratapsinhji Amarsinhji, aged about 68 years, resident of 'Krishnasar' 5-Tiger Lane (W6 Lane) Sainik Farm, New Delhi- 62, do hereby solemnly affirm and state as under:-

1. That I am the Chairman of Wildlife Trust of India, petitioner no. 2 in the above mentioned matter and am fully conversant with the facts and circumstances of the case, and am competent to sign and swear this Affidavit.

2. That I have read the contents of the accompanying Petition/and state that the averments made therein are true and correct to the best of my knowledge and belief.

That the Annexures are the true copies of their respective originals.

Para 1 to 27 and pages 1 to 81



ATTESTED
[Signature]
DIPANKAR BAG
ADVOCATE
NOTARY PUBLIC
REGD. NO. 916
GOVT. OF INDIA
14, LAWYERS CHAMBERS
SUPREME COURT OF INDIA
NEW DELHI

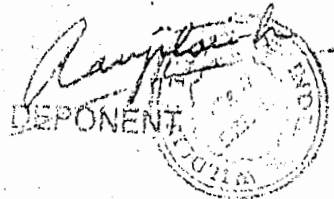
VERIFICATION

[Signature]
I, the deponent above named do hereby verify that the contents of the above paragraphs are true to best of my knowledge.

10 JAN 2008

Verified at New Delhi on the 10 day of JANUARY, 2008.

10 JAN 2008




IMPORTANT LEGISLATIONS ON LAND ALIENATION IN
DIFFERENT STATES AND UNION TERRITORIES OF INDIA

| S. No. | States/ Union Territories | Act/ Regulations |
|--------|----------------------------|---|
| 1. | Andhra Pradesh | 1. The Andhra Pradesh (Scheduled Areas) Land Transfer Regulation, 1959. 2. The Andhra Pradesh (Scheduled Areas) Land Transfer (Amendment) Regulation, 1970, 1971 and 1978. |
| 2. | Assam | The Assam Land and Revenue Regulation, 1886. |
| 3. | Bihar and Jharkhand | 1. Chota Nagpur Tenancy Act, 1908 2. Santhal Pragana Tenancy (Supplementary Provisions) Act, 1949. 3. Bihar Scheduled Areas Regulations, 1969. |
| 4. | Gujarat | 1. Mumbai Land Revenue Code, 1879. 2. Mumbai Land Revenue (Gujarat Section Amendment) Act, 1980. |
| 5. | Himachal Pradesh | The Himachal Pradesh Transfer of Land (Regulation) Act, 1968. |
| 6. | Karnataka | 1. Land Revenue (Amendment) Rule, 1960. 2. The Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfers of Certain Lands) Act, 1978. |
| 7. | Kerala | 1. Kerala Land Assignment Rules, 1964. 2. The Kerala Scheduled Tribes (Restoration of Transfer of Land and Restoration of Alienated Lands) Act, 1978. |
| 8. | Madhya Pradesh (undivided) | Madhya Pradesh Land Revenue Code, 1959. |
| 9. | Maharashtra | 1. Maharashtra Land Revenue Code and |

| | | |
|-----|-------------------|--|
| | | Amendment Act, 1974. 2. The Maharashtra (Restoration of Lands to Scheduled Tribes) Act, 1974. |
| 10. | Manipur | Manipur Land Revenue and Land Reforms Act, 1960 |
| 11. | Orissa | 1. The Orissa Scheduled Areas Transfer of Immovable Property in the Scheduled Areas Regulation, 1956 (Regulation 2 of 1956). 2. The Orissa Scheduled Areas Transfer of Immovable Property (Scheduled Tribes Regulations) Amendment, 1965. |
| 12. | Rajasthan | 1. Rajasthan Tenancy Act, 1955 (Sections 42, 43, 46A and 49A). 2. The Registration (Rajasthan Amendment) Act, 1976. |
| 13. | Tamil Nadu | The Revenue Boards Order (A 10 years Binding for Land Alienation in Tamil Nadu). |
| 14. | Tripura | 1. Tripura Land Revenue and Land Reforms Act, 1968 (Section 137). 2. Tripura Land Revenue and Land Reforms Act, 1974 |
| 15. | Uttar Pradesh | 1. Uttar Pradesh Jamindari Vinash and Bhumi Vyavastha (Sansodhan) Adhiniyam, 1969 (Section 157). 2. Uttar Pradesh Alienation of Land Reforms Act, 1950 as amended by the U.P. Land Laws (Amendment and Ordinance, 1981). |
| 16. | West Bengal | 1. West Bengal Land Reforms Act, 1955. 2. West Bengal Land Reforms (Amendment) Act, 1955. |
| 17. | Arunachal Pradesh | Bengal Eastern Frontier Regulation, 1873. |
| 18. | Nagaland | 1. Bengal Eastern Frontier Regulation. |

| | | |
|-----|-----------------------------|---|
| | | 1873 and 1886. |
| | | 2. Nagaland Revenue Regulation (Amendment) Act, 1971. |
| 19. | Meghalaya | Meghalaya Transfer of Land (Regulation) Act, 1971. |
| 20. | Andaman and Nicobar Islands | Andaman and Nicobar Islands (Protection of Aboriginal Tribes) Regulation, 1956. |
| 21. | Lakshadweep | Lakshadweep (Protection of Scheduled Tribes) Regulation, 1964. |
| 22. | Dadra and Nagar Haveli | Dadra and Nagar Haveli Land Reforms Regulations, 1971. |

Source: Collected from various sources

— TRUE COPY —

 cjp.org.in

| GAISP Monograph Ref | M1 (EE paper) | M1 (EE paper) | M1 (EE paper) | M4 | M4 | M4 | M7 | | area under dense forests in 2003 (in ha per FSI) | area under open forests in 2003 (in ha per FSI) | Total forest cover in 2003 (in ha per FSI) |
|--------------------------------|---|---|--|--|---|--|--|-------------------------|---|--|---|
| State | Value of Timber and Fuelwood (in Rs/ha) | Net present value of nt/ps (in Rs/ha) | Net present value of fodder (in Rs/ha) | Value of Eco- tourism (in Rs/ha) | Value of Bio- prospecting (in Rs/ha) based on total # of species) | Value of Fragility Species (in Rs/ha) | Value of Ecological Services of Forests (in Rs/ha) | Total NPV (in Rs/ha) | | | |
| Andaman and Nicobar Islands | 102,068 | 588 | 1,786 | 929 | 217,813 | 0 | 139,599 | 462,782 | 628,400 | 68,000 | 696,400 |
| Andhra Pradesh | 108,422 | 5,955 | 6,342 | 37,030 | 44,643 | 437,438 | 141,460 | 781,280 | 2,427,900 | 2,004,000 | 4,431,900 |
| Arunchal Pradesh | 119,322 | 371 | 1,114 | 148 | 34,291 | 437,438 | 147,182 | 739,916 | 5,351,100 | 1,450,800 | 6,801,900 |
| Assam | 92,276 | 634 | 2,929 | 5,297 | 100,760 | 2,593,080 | 155,056 | 2,865,063 | 1,391,200 | 1,476,400 | 2,867,600 |
| Bihar | 64,112 | 6,141 | 462 | 26,397 | 90,974 | 2,593,080 | 135,656 | 2,834,823 | 1,470,800 | 1,156,600 | 2,627,400 |
| Goa | 228,363 | 1,933 | 3,249 | 10,060 | 520,932 | - | 131,096 | 885,573 | 125,500 | 90,100 | 215,600 |
| Gujarat | 68,612 | 896 | 4,190 | 62,720 | 133,171 | 2,593,080 | 144,763 | 3,383,996 | 531,500 | 380,100 | 911,600 |
| Haryana | 20,707 | 6,072 | 3,028 | 7,591 | 652,142 | - | 134,343 | 826,190 | 52,000 | 99,700 | 151,700 |
| Himachal Pradesh | 802,154 | 19,358 | 7,316 | 272,310 | 151,152 | - | 135,514 | 1,401,704 | 597,500 | 537,700 | 1,135,200 |
| Jammu and Kashmir | 709,798 | 2,955 | 9,075 | 39,704 | 205,201 | - | 131,855 | 1,098,921 | 1,649,700 | 1,072,000 | 2,721,700 |
| Karnataka | 266,789 | 1,152 | 4,286 | 70,054 | 73,315 | 437,438 | 13,653 | 923,241 | 2,236,100 | 1,398,800 | 3,634,900 |
| Kerala | 239,228 | 564 | 7,194 | 377,657 | 212,721 | 437,438 | 134,841 | 1,410,892 | 982,500 | 594,200 | 1,576,700 |
| Madhya Pradesh | 121,945 | 35,714 | 6,117 | 5,267 | 0 | 437,438 | 134,154 | 751,185 | 2,834,700 | 1,447,800 | 4,282,500 |
| Maharashtra | 228,130 | 1,061 | 3,171 | 17,720 | 32,891 | 261,114 | 130,653 | 785,859 | 652,800 | 1,468,100 | 2,120,900 |
| Manipur | 23,674 | 1,535 | 3,080 | 29,830 | 240,710 | 437,438 | 13,111 | 888,959 | 130,100 | 1,031,800 | 1,161,900 |
| Mizoram | 36,513 | 3,831 | 7,730 | 248,567 | 319,300 | 437,438 | 13,111 | 1,101,490 | 740,200 | 1,021,200 | 1,761,400 |
| Nagaland | 118,315 | 8,935 | 1,829 | 471 | 131,166 | 437,438 | 13,111 | 848,669 | 892,300 | 3,150,400 | 4,042,700 |
| Nagaland | 95,179 | 17 | 7,891 | 333,092 | 162,165 | 437,438 | 13,111 | 1,281,101 | 170,200 | 790,200 | 960,400 |
| Orissa | 60,965 | 10,027 | 1,629 | 31,492 | 10,836 | 437,438 | 13,111 | 721,978 | 2,817,000 | 2,049,600 | 4,866,600 |
| Punjab | 10,465 | 12,757 | 2,861 | 29,836 | 722,539 | - | 13,111 | 911,238 | 74,100 | 83,700 | 157,800 |
| Rajasthan | 12,136 | 1,598 | 2,221 | 145,502 | 170,068 | 361,134 | 13,111 | 830,785 | 449,500 | 1,133,000 | 1,582,500 |
| Sikkim | 88,625 | 4,048 | 741 | 13,266 | 1,155,200 | 437,438 | 13,111 | 1,845,327 | 236,200 | 96,000 | 332,200 |
| Tamilnadu | 308,027 | 2,817 | 7,079 | 210,641 | 262,553 | 437,438 | 13,111 | 1,368,420 | 1,260,700 | 1,053,500 | 2,314,200 |
| Tripura | 21,490 | 38,355 | 7,756 | 411,610 | 239,573 | 437,438 | 13,111 | 1,324,177 | 591,600 | 591,200 | 1,182,800 |
| Uttar Pradesh | 123,560 | 8,822 | 2,786 | 64,989 | 76,728 | 2,593,080 | 135,221 | 2,941,187 | 2,441,800 | 1,416,500 | 3,858,300 |
| West Bengal | 64,474 | 1,625 | 11,282 | 580,625 | 332,712 | 2,593,080 | 13,293 | 3,615,000 | 494,500 | 629,800 | 1,124,300 |
| India | 152,830 | 7,631 | 2,958 | 65,113 | 117,391 | 773,077 | 144,332 | 1,263,332 | 2,032,700 | 28,752,500 | 30,785,200 |

VOLUME ACCOUNT SUMMARY

87

| | VOLUME ACCOUNT | | VALUE ACCOUNT | | | | | |
|-------------------------------|----------------|------------|-----------------|-----------------|----------------|----------|----------|----------|
| | Timber | Carbon | Timber | Carbon | Ntfp | Timber* | Carbon* | NTFP* |
| | 000. Cum | 000 tonnes | Million. Rupees | Million. Rupees | Million Rupees | % of GDP | % of GDP | % of GDP |
| Opening Stocks | 5,068,313 | 3,558,126 | 10,318,016 | 3,202,313 | 825,069 | 55.65 | 17.27 | 4.45 |
| Changes due to econ. Activity | (409,263) | (236,280) | (819,963) | (212,652) | - | -2.21 | -0.57 | |
| Logging/harvest/Logging dama | 355,469 | 229,034 | 752,652 | 203,131 | - | 2.03 | 0.56 | |
| Afforestation | 10,786 | 5,152 | 31,615 | 4,637 | - | 0.09 | 0.01 | |
| Shifting cultivation | 14,002 | 6,883 | 20,449 | 6,194 | - | 0.06 | 0.02 | |
| Forest encroachments | 41,672 | 5,515 | 59,642 | 4,963 | - | 0.16 | 0.01 | |
| Grazing | 8,905 | - | 18,836 | - | - | 0.05 | 0 | |
| Other volume changes | 843 | 785 | 1,649 | 6,238 | - | 0.004 | 0.02 | |
| Forest fires | 158 | 45 | 292 | 40 | - | 0.001 | 0.0001 | |
| Stand mortality | 685 | 3 | 1,357 | 3 | - | 0.004 | 0 | |
| Other accum | 242,260 | 1,778,920 | 432,230 | 161,028 | - | 1.17 | 0.43 | |
| Natural growth | 182,239 | 130,865 | 355,909 | 117,779 | - | 0.96 | 0.32 | |
| Regeneration | 91,990 | 48,983 | 153,824 | 44,084 | - | 0.41 | 0.12 | |
| Transfer of land | (31,969) | (923) | 155,701 | (835) | - | 0.42 | -0.002 | |
| Omissions and errors | 4,772 | - | 8,489 | - | - | 0.02 | 0 | |
| Net Changes | (167,845) | (58,145) | (380,803) | (115,968) | 4,152 | -1.03 | -0.31 | 0.01 |
| Closing Stocks | 4,905,240 | 3,499,981 | 9,937,213 | 3,086,346 | 829,221 | 53.6 | 16.65 | 4.47 |

* - values for 1 year only

MONETARY ACCOUNT

| States | Monetary accounts for timber | | | | | Monetary accounts for carbon | | | | | Monetary accounts for ntfps | | | |
|--------|------------------------------|----------------------------------|----------------------|---------------------|-------------|------------------------------|---------------|----------------------------------|----------------------|---------------------|-----------------------------|------------------------|-------------------------------------|------------------------|
| | Opening stock | Changes due to economic activity | Other volume changes | Other accumulations | Net changes | Closing stock | Opening stock | Changes due to economic activity | Other volume changes | Other accumulations | Closing stock | Value of opening stock | ntfps due to changes in forest land | Value of closing stock |
| A&N | 70,733 | (6,173) | 39 | 2,655 | (3,196) | 67,538 | 449,040 | (31,931) | 1 | 16,852 | 428,753 | 1,645 | 8 | 1,653 |
| AP | 483,965 | (41,355) | 82 | 27,422 | (13,138) | 470,827 | 170,679 | (10,990) | 2,812 | 10,716 | 166,046 | 54,888 | (268) | 54,620 |
| AR.P | 811,924 | (35,225) | 48 | 31,583 | (3,606) | 808,318 | 374,516 | (13,937) | 460 | 14,721 | 372,853 | 10,108 | (4) | 10,104 |
| AS | 255,734 | (29,088) | 16 | 10,699 | (17,871) | 237,864 | 103,944 | (5,715) | 231 | 4,349 | 95,681 | 9,875 | 40 | 9,915 |
| BI | 181,803 | (9,005) | 79 | 5,751 | (2,385) | 179,418 | 91,812 | (3,359) | 65 | 3,255 | 90,607 | 18,726 | (55) | 18,671 |
| GOA | 47,842 | (14,904) | 5 | 1,749 | (11,887) | 35,955 | 32,433 | (8,996) | - | 1,195 | 24,275 | 1,086 | 32 | 1,117 |
| GUJ | 103,961 | (14,109) | 18 | 3,436 | (10,507) | 93,454 | 49,630 | (1,535) | 1 | 2,286 | 44,614 | 7,705 | (105) | 7,601 |
| HAR | 3,632 | (1,024) | - | (565) | (1,679) | 1,953 | 9,540 | (2,410) | - | 355 | 5,130 | 1,947 | (263) | 1,684 |
| HP | 1,151,893 | (123,575) | 90 | 15,309 | (112,229) | 1,039,665 | 86,218 | (3,165) | 1 | 1,189 | 77,818 | 38,159 | (19) | 38,141 |
| J&K | 1,507,399 | (113,366) | 85 | 43,172 | (66,882) | 1,440,417 | 113,589 | (7,291) | - | 3,253 | 108,542 | 25,547 | 36 | 25,583 |
| KAR | 986,860 | (129,296) | 206 | 35,102 | (93,343) | 893,536 | 201,850 | (21,551) | 9 | 10,027 | 182,758 | 20,128 | (295) | 19,833 |
| KER | 372,238 | (55,019) | 72 | 49,285 | (4,886) | 367,352 | 56,934 | (5,310) | 5 | 7,533 | 56,166 | 12,071 | 13 | 12,084 |
| MAH | 579,019 | (43,798) | 139 | 17,588 | (26,135) | 552,884 | 183,904 | (11,871) | 5 | 8,477 | 175,508 | ### | (2,581) | 196,043 |
| MANI | 386,133 | 2,775 | 38 | 25,833 | 30,629 | 416,762 | 37,411 | 660 | 328 | 4,574 | 40,379 | 7,161 | 124 | 7,285 |
| MEGH | 44,685 | (5,248) | 11 | 11,284 | 4,949 | 49,634 | 33,239 | (3,928) | 161 | 8,406 | 36,976 | 7,193 | 579 | 7,772 |
| MIZ | 63,676 | (5,024) | 4 | 3,279 | (2,819) | 61,057 | 57,984 | (5,167) | 553 | 2,977 | 55,424 | 20,226 | 1,082 | 21,308 |
| MP | 1,582,019 | (42,308) | 493 | 22,219 | (20,855) | 1,561,164 | 512,639 | (12,255) | 1 | 13,359 | 505,881 | ### | (1,747) | 179,908 |
| NAG | 124,348 | (5,991) | 10 | 9,890 | 4,284 | 128,632 | 39,064 | (1,556) | 567 | 3,308 | 40,410 | 10,553 | 209 | 10,761 |
| ORI | 297,740 | (9,730) | 61 | 9,004 | (884) | 296,856 | 170,494 | (4,128) | 1 | 6,112 | 169,988 | 71,576 | (692) | 70,884 |
| PUN | 2,545 | (365) | - | (765) | (1,105) | 1,440 | 5,891 | (709) | - | 292 | 3,333 | 3,799 | (1,331) | 2,468 |
| RAJ | 19,896 | (2,273) | 1 | (129) | (2,475) | 17,420 | 41,592 | (4,092) | - | 1,880 | 36,417 | 6,250 | (207) | 6,043 |
| SIK | 28,298 | (1,457) | 2 | 1,546 | 104 | 28,402 | 17,416 | (741) | 0 | 1,324 | 17,480 | 1,529 | 33 | 1,562 |
| TN | 661,703 | (49,291) | 28 | 60,247 | 11,008 | 672,711 | 84,361 | (5,104) | 0 | 7,683 | 85,784 | 21,260 | 1,149 | 22,409 |
| TRIP | 15,183 | (985) | 1 | 3,888 | 2,948 | 18,131 | 21,482 | (1,720) | 1,028 | 5,501 | 25,652 | 32,605 | 4,744 | 37,349 |
| UP | 465,624 | (70,969) | 117 | 33,690 | (36,642) | 428,582 | 209,653 | (28,152) | 12 | 15,169 | 193,154 | 43,745 | 1,044 | 44,788 |
| WB | 68,942 | (12,162) | 5 | 9,149 | (2,102) | 66,840 | 47,030 | (6,680) | 0 | 6,241 | 45,596 | 17,009 | 2,625 | 19,633 |
| Total | 10,318,016 | (819,963) | 1,649 | 432,320 | (380,803) | 9,937,213 | 3,202,313 | (212,652) | 6,236 | 161,028 | 3,086,346 | ### | 4,152 | 829,221 |

| ANNUAL VALUE OF TIMBER | | | | | | | | | |
|------------------------|--|--|---------------------------|--------------------------------|---|--------------------------|---|--------------------------|---------------------------------------|
| States | Annual Value of timber and fw this study-net price method (Rs Mio) | Annual Value of timber and fw this study-weighted net price (Rs Mio) | Area - Opening Stock (Ha) | Rs. Millions | | Rs. Per Hectare | | from "M1" | |
| | | | | Net Price Method - Annuity NPV | Weighted Net Price Method - Annuity NPV | Net Price Method - Rs/Ha | Weighted Net Price Method - Annuity Rs/Ha | Monetary Values (Rs Mio) | Weighted Net Price Timber + Fuelwood) |
| | | | | A&N | 4,664.8 | 2,881.8 | 693,000 | 116,620 | 72,045 |
| AP | 119,375.0 | 9,478.9 | 4,463,700 | 2,984,375 | 236,973 | 668,588 | 53,089 | 588,368 | 131,812 |
| AR.P | 39,492.2 | 15,790.3 | 6,804,500 | 987,305 | 394,758 | 145,096 | 58,014 | 1,413,064 | 207,666 |
| AS | 27,971.0 | 7,250.8 | 2,771,400 | 699,275 | 181,270 | 252,318 | 65,407 | 395,038 | 138,933 |
| BI | 26,526.3 | 3,586.0 | 2,835,700 | 663,158 | 89,650 | 233,850 | 31,615 | 586,752 | 206,916 |
| GOA | 13,853.6 | 7,372.3 | 209,500 | 346,340 | 184,308 | 1,653,174 | 879,749 | 15,876 | 75,779 |
| GUJ | 38,802.3 | 5,341.4 | 1,515,200 | 970,058 | 133,555 | 640,217 | 68,130 | 168,537 | 111,231 |
| HAR | 1,302.5 | 510.0 | 175,400 | 32,563 | 12,750 | 185,647 | 72,691 | 18,903 | 107,773 |
| HP | 113,374.4 | 60,628.0 | 1,436,000 | 2,834,360 | 1,515,700 | 1,973,788 | 1,055,501 | 520,981 | 362,800 |
| J&K | 155,270.5 | 53,805.8 | 2,123,700 | 3,881,763 | 1,345,145 | 1,827,830 | 633,397 | 2,638,821 | 1,266,102 |
| KAR | 328,071.2 | 64,077.7 | 3,699,100 | 8,201,780 | 1,601,943 | 2,217,237 | 433,063 | 704,453 | 190,439 |
| KER | 126,211.0 | 26,739.9 | 1,556,000 | 3,155,275 | 668,498 | 2,027,812 | 429,626 | 569,138 | 365,770 |
| MAH | 64,294.7 | 20,852.9 | 4,748,200 | 1,607,368 | 521,323 | 338,521 | 109,794 | 397,021 | 83,615 |
| MANI | 2,395.0 | 1,880.2 | 1,692,600 | 59,875 | 47,005 | 35,375 | 27,771 | 210,903 | 124,603 |
| MEGH | 4,256.2 | 2,726.2 | 1,558,400 | 106,405 | 68,135 | 68,278 | 43,734 | 225,989 | 145,013 |
| MIZ | 1,799.8 | 2,700.5 | 1,749,400 | 44,995 | 67,513 | 25,720 | 38,592 | 262,213 | 149,887 |
| MP | 77,474.5 | 21,079.8 | 13,371,300 | 1,936,863 | 526,995 | 144,852 | 39,412 | 1,495,737 | 111,862 |
| NAG | 1,046.2 | 952.0 | 1,334,500 | 26,155 | 23,800 | 19,599 | 17,834 | 698,294 | 523,255 |
| ORi | 29,804.3 | 4,034.0 | 4,883,800 | 745,108 | 100,850 | 152,567 | 20,650 | 389,100 | 79,672 |
| FUN | 243.7 | 172.5 | 243,200 | 6,093 | 4,313 | 25,051 | 17,732 | 2,257 | 9,278 |
| RAJ | 3,908.8 | 1,092.7 | 1,636,700 | 97,720 | 27,318 | 59,706 | 16,691 | 19,051 | 11,640 |
| SIK | 115.4 | 674.5 | 319,300 | 2,885 | 16,863 | 9,035 | 52,811 | 17,625 | 55,199 |
| TN | 104,562.8 | 22,390.8 | 2,148,200 | 2,614,070 | 559,770 | 1,216,865 | 260,576 | 69,415 | 32,313 |
| TRI | 291.5 | 75.5 | 706,500 | 7,288 | 1,888 | 10,315 | 2,672 | 24,583 | 34,795 |
| UP | 4,543.2 | 34,785.6 | 3,768,400 | 113,580 | 869,640 | 30,140 | 230,772 | 421,472 | 111,844 |
| WB | 25,437.0 | 5,445.7 | 1,069,300 | 635,925 | 136,143 | 594,711 | 127,319 | 55,620 | 52,016 |
| Total | 1,315,087.9 | 376,325.8 | 67,513,000 | 32,877,198 | 9,408,145 | 486,976 | 139,353 | 11,968,506 | 177,277 |

- TRUE COPY -

Estimating the Carbon Footprint of Deforestation in India

Haripriya Gundimeda^a and Pavan Sukhdev^b

a: Associate Professor, Department of Humanities and Social Sciences, Indian Institute of Technology Bombay, Mumbai – 400 076. Email: haripriya@hss.iitb.ac.in

b: Director, Green Accounting for Indian States Project, Green Indian States Trust, Chennai. Email: pavan.sukhdev@db.com

Introduction

In the current debate on climate change and the Kyoto Protocol commitment to reduce the levels of greenhouse gas emissions below 1990 levels, there has been increased attention to estimating the impact of economic activities in generating greenhouse gases in the atmosphere. This has been generally referred to as estimating their 'carbon footprint'. A 'carbon footprint' can be defined as the total amount of CO₂ and other greenhouse gases emitted over the full lifecycle of a process or product. It is usually expressed as tonnes of CO₂ equivalent, after accounting for the higher global warming effects of other greenhouse gases. Efforts are being made throughout the world to estimate the carbon footprints for different economic activities, however, the carbon footprint of deforestation has not received much attention. The *Stern Review* brought this issue to global attention recently by estimating that 18% of global greenhouse emissions were attributable to deforestation. Deforestation is now widely viewed as a material contributor to CO₂ emissions and hence global warming, however, there is a dearth of both academic literature and public debate on this subject in India. Furthermore, whilst a true accounting framework for carbon fluxes is needed to address this issue appropriately, most popular literature focuses only on the "area" of forest loss, i.e. land-use changes (as against biomass density changes due to logging). Secondly, the opposite side of the carbon flux equation – natural growth and regeneration – is not adequately addressed either.

The objective of this paper is to present an estimate of the carbon footprint of deforestation in India based on existing and related research, using a comprehensive accounting framework which includes losses due to logging, cultivation, forest fires etc, not of afforestation, and estimating also the natural growth and regeneration that takes place where Nature is allowed to follow its own course. India's forests merit particular attention as they are officially estimated to occupy 21% of the land mass, they house considerable bio-diversity, and (especially in peninsular India) they are a critical part of the hydrological cycle. The true contribution of forests to India's adjusted GDP (after accounting for their many positive economic externalities – such as water recharge, flood loss mitigation, soil erosion prevention, carbon

storage, non-timber forest products, timber, fuel-wood, and biodiversity values) is estimated to be an order of magnitude higher than the 'official' contribution of forestry to unadjusted GDP (see GAISP, Monograph 1, 2005, & Monographs 4 and 7, 2006).

Forests merit attention generally as they store large quantities of carbon in vegetation and soil, exchange carbon with the atmosphere through photosynthesis and respiration, and act as sources of atmospheric carbon if they are disturbed by some human activities (e.g., harvesting, clear cutting for conversion to non-forest purposes, poor harvesting procedures) or natural causes (e.g., wildfires). However, they become atmospheric carbon sinks during land abandonment, regrowth after disturbance and due to afforestation and forest conservation. The net flux of carbon between the forest sector and the atmosphere determines whether the 'carbon footprint' is positive or negative.

Accounting for carbon fluxes requires detailed analysis (eg: Haripriya, 2003). This is because any disturbance of forests (such as harvesting for timber and fuelwood collection, deforestation, fires, mortality etc.) involves fluxes of carbon between the atmosphere, live biomass, dead biomass, forest soils and forest products. When forests are subjected to various disturbances, some of the carbon remains in the biomass itself, some remains *in situ* and a part of it is transferred to the atmosphere as CO₂, CO and CH₄. Some of the carbon enters wood products and forms part of the forest product sector. Not all the carbon that enters the forest product sector is released immediately. In fact only part of it is released, depending on the use to which it is put. Some of the carbon that has been left on-site forms part of the soil carbon pool, and the rest remains on site as stumps and deadwood. Of the portion of woody slash burnt on site, a small fraction of the carbon remains as charcoal which resists decay for well over 100 years or more and forms part of the top 30 cms soil pool. One can assess whether forests are net sources or sinks of carbon only after taking into account the net fluxes of carbon between the forest sector and the atmosphere. A study by Haripriya (2003) used a detailed methodology to assess the net carbon sequestered in Indian forests by accounting for all the fluxes of carbon between forest biomass (live and dead), soils, forest products and the atmosphere. While deriving the carbon foot print of deforestation, we developed volume accounts of timber (taken from Gundimeda et al. (2006), converted them into estimates biomass based on Haripriya (2002) and then to estimates of carbon dioxide. For determining how much carbon dioxide is emitted into the atmosphere (i.e, the carbon foot print) we used the coefficients of various disturbance matrices obtained in Haripriya (2003).

2. Carbon Footprint of Deforestation

India has a total land area of 329 million hectares of which around 21% is classified as forestland (Forest Survey of India (FSI, 2003). The total growing stock of the trees inside forests is 4829 million cubic metres and the average growing stock in Indian forests is 72cum/ha (cubic meters per hectare), which is much lower than the world average. The forest cover in different states is diverse - ranging from 3 % to 87 % of their geographical area. Of the total forest cover in India, 58% are classified as "dense" (crown density greater than 40%), 42% are open forests (crown density from 10 - 40%). Table 1 gives the forest area in India during the period 2001-03. In Table 1 we also gave the details of causes of the changes in the forest area. Looking at the Table.1, it appears that the country's forest cover has gone up by 272,200 hectares but in reality *open* forests have increased and *dense* forests have decreased which has implications for release of carbon dioxide. The loss in forest area attributable to deforestation is only 5,74,100 hectares. As we think that the change in area published in official statistics may not reflect all the disturbances within the forests, we wanted to consider all the disturbances in the forests that would result in change in the stock of timber and fuelwood, and hence carbon content

Table 1. Forest area changes during 2001 and 2003 (Area in hectares).

| | Area in (000) hectares |
|------------------------------------|------------------------|
| Forest area in the year 2001 | 67513 |
| Dense | 41655.1 |
| Open | 25857.9 |
| Change in forest land | 272.2 |
| Dense | -2622.4 |
| Open | 2894.6 |
| Causes of changes | |
| Natural or artificial regeneration | 3914.28 |
| Afforestation | 1443.07 |
| Deforestation | -574.1 |
| Shifting cultivation | -383.2 |
| Forest degradation | 4127.85 |
| Forest area in the year 2003 | 67785.2 |
| Dense | 39032.7 |
| Open | 28752.5 |

Source: Gundimeda et al. (2006)

In this paper we wanted to consider all the disturbances in the forests that would result in change in the stock of timber as the change in area as published by the official statistics may not be able to reflect all the disturbances within the forests. Hence, we considered the amount of volume disturbed by constructing physical volume accounts and then converted them into units of carbon dioxide. The carbon dioxide

released or sequestered is not directly visible but the volume of timber lost or gained can be. Hence, we derived the 'carbon footprint' of deforestation indirectly from the volume accounts. In this paper, by meaning deforestation we meant all forms of disturbances, not only clear felling. From the total volume of timber lost or gained we derived equivalent area lost by dividing the total volume of timber lost or gained with the total growing stock per ha. To estimate the 'carbon footprint', we first disaggregated the volume of timber lost or gained by the reason for such a change, which can be seen in the format given in Table 2 and is borrowed from Gundimeda *et al* (2006).

Table 2: Framework for estimating carbon footprint of deforestation

| | |
|--------------------------------------|--|
| • Opening stock | |
| • Changes due to economic activities | |
| | - Logging and logging damage |
| | - Forest encroachment and shifting cultivation |
| | + Afforestation |
| | - Loss due to livestock grazing |
| • Other accumulations | |
| • Changes due to natural causes | |
| | + Natural growth |
| | + Natural regeneration |
| • Changes due to reclassification | |
| | + Net transfer of land |
| • Other Volume changes | |
| | - Stand mortality |
| | - Forest fires and pest damage |
| • Closing stocks | |

The opening stocks represent the growing stock of timber present in 2001. The changes due to economic activity affecting timber include Logging (both recorded and unrecorded), logging damage, forest encroachments and shifting cultivation, afforestation and volume lost due to heavy grazing. Other Accumulations include accumulation of timber due to natural processes consisting of the natural growth through mean annual increment and natural regeneration. Changes in forest stock due to reclassification include the transfer of forestland for non-forest purposes (for example, for agriculture, residential or industrial purposes) or transfer from agriculture to forests. Other volume changes comprise reductions

due to forest fires, stand mortality and insect infestation. The difference in the volume of stocks between the two periods gives the amount of timber or CO₂ lost or gained depending on the sign.

The volume estimates were first converted to amount of biomass using the estimates from Haripriya (2000, 2002) and then converted to carbon assuming a carbon content of 0.5 Mg C per Mg oven dry biomass. These estimates are multiplied by 44/12 to obtain the CO₂ equivalent. As mentioned earlier, the entire carbon is not released to the atmosphere immediately. It depends on the type of disturbance. Hence, one has to consider respective carbon balances by different methods. For example, timber can be logged either through selective harvesting or through clear cutting. Haripriya (2003) has assumed that when the logging is done by clear-cutting (shifting cultivation or transfer of forest land for nonforest purposes) only 80% of the stem biomass is transferred to the wood products, whereas 2% remains on the stem, 8% is transferred to soils and 10% is released to the atmosphere. When the forest is subject to partial cutting (logging), 85% of the stem biomass is transferred to wood products, 10% remains on the stump and 5% is transferred to the soils. The amount of carbon remaining on the stem or transferred to soils gives the amount of logging damage. However, no carbon loss is assumed from grazing because the carbon increases due to regeneration (if any) on the grazed land is assumed to be offset by loss in carbon due to surface fires and grazing.

Our assumption is that when the forest is affected by fire, only 20% of the stem biomass remains, 50% is burnt and the carbon transferred to the soils (immediate and releases that eventually occur in future as a result of fires today) and 30% is released into the atmosphere. In the category "other volume changes" we include the effects of fire. However, we have not focused on these changes as they are not caused by economic activities. They are not included in our estimates when we refer to "deforestation".

For estimating the carbon footprint we have used only the proportion of carbon dioxide released to the atmosphere. Using these coefficients and the volume and carbon accounts derived in Haripriya (2006), the carbon foot print of deforestation in India is given in Table 3 for the period 2001-03. Table 3 gives the changes in stocks of timber, carbon and its equivalence in terms of CO₂ gained or lost. From the table it can be seen that as a result of various disturbances on forests, a net amount of around 213 MT CO₂ is lost to the atmosphere. Therefore instead of forests being net sinks of CO₂, in India due to extensive deforestation and disturbances they are a net source of carbon dioxide.

Table 3. Carbon footprint of deforestation in Indian forests for 2001-03

| | Timber (000 cum) | Carbon (000 tonnes) | CO ₂ released or sequestered (000 t) |
|--------------------------------------|---------------------|------------------------|---|
| Opening Stocks | 5068313 | 3558126.0 | 13046462 |
| Changes due to econ. Activity | -409263 | -236280.2 | -866360 |
| Logging/harvest/Logging damage | 355469 | 229034 | 839791.3 |
| Afforestation | 10786 | 5152 | 18890.67 |
| Shifting cultivation | 14002 | 6883 | 25237.67 |
| Forest encroachments | 41672 | 5515 | 20221.67 |
| Grazing | 8905 | 0 | 0 |
| Other volume changes | 843 | 785 | 2878.333 |
| Forest fires | 158 | 44.7 | 165 |
| Stand mortality | 685 | 3.2 | 11 |
| Other accumulations | 242260 | 178920.1 | 656040 |
| Natural growth | 182239 | 130865.2 | 479338.3 |
| Regeneration | 91990 | 48983 | 179604.3 |
| Transfer of land | -31969 | -927.7 | -3402.67 |
| Omissions and errors | 4772 | 0 | 0 |
| Net Changes | -167845 | -58145.4 | -213200 |
| Closing Stocks | 4905240 | 3499981 | 12833264 |

3. Policy Implications

In this paper, covering the two-year period 2001-2003, we have separately estimated the CO₂ foot print of deforestation in India (866.36 Mt CO₂), as well as the carbon capture that takes place through natural growth & re-generation (656.04 Mt). Forests are generally viewed as sinks of carbon dioxide. However, forests if not managed properly can also be net source of carbon dioxide emissions, and it appears this is

the case in India. The results of our paper indicate the net carbon footprint of Indian forests is around 213 Mt CO₂ i.e. instead of acting as a sink for carbon dioxide, they are a source of CO₂ emissions.

As explained above, we have used a detailed analysis of carbon fluxes to account for emissions due to deforestation. Such analysis is also available at the State level in India. (ISEE, GAISP). Considering the social and economic values of forests on the one hand and the significant cost externalities of deforestation on the other, and recognizing that the economic values of forests are not market values, it appears surprising that a pro-forest policy framework is not in place which explicitly targets payment of some component of the economic benefits of forest conservation to the owners and occupiers of forest land: respectively, State Governments & forest-dwelling communities. It is also surprising that these benefits are not explicitly enumerated and accounted for, and the Green Accounting for Indian States Project (GAISP) was conceived to address precisely this lacuna of measurement.

Therefore as a start, it is recommended that Green Accounting at the State level should be instituted to reflect the economic benefits of forests forgone through conversion to other uses. Following from that, State Government budgets should re-address expenditure on conservation and regeneration of forests, including non-forestry expenditures such as on setting up capacity for providing alternative livelihoods (sustainable forestry, sustainable agriculture, watershed management including rainwater harvesting, low-impact eco-tourism and ancillary industries, etc) and in some cases voluntary and equitable relocation of forest-dwelling communities to farmlands outside the forest.

In summary, CO₂ 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 CO₂, versus deforestation emissions 2002-03 of 433 Mt CO₂). On the other hand, natural growth and regeneration of forests in India is also very high, since they are tropical forests. Optimal forest management would focus on enabling the latter with appropriate capacity building and incentives, whilst restricting the former through appropriate conservation laws and policy instruments.

References

- Atkinson, G and Gundimeda, H. (2006), India's forest wealth, Ecological Economics. Forthcoming.
- FSI (Forest Survey of India), 2001, State of Forest Report. Dehradun: FSI
- FSI (Forest Survey of India), 2003, State of Forest Report. Dehradun: FSI
- Haripriya, G.S., 2003. "Carbon Budget of the Indian Forest Ecosystem". Climatic Change 56(3), 291-319.

- Haripriya, G. S., 2002a. " Estimation of biomass from the truncated stand tables in India", *Forest Ecology and Management*, vol. 168 (1-3), 1-13.
- Haripriya, G. S., 2000b. "Estimation of Biomass in Indian Forests", *Biomass and Bioenergy*, vol. 19(4), pp. 245-258.
- Gundimeda, H., S. Sanyal, R. Sinha, P. Sukhdev (2006), *The Value of Timber, Carbon, Fuelwood and Non-timber Forest Products in India's Forests*, *Ecological Economics*.

-TRUE COPY-


cjp.org.in

State-Wise Status of Regularisation of Encroachment of Forest land

As on 19.02.2007

| Name of State | Regularization of eligible encroachments of forest lands | | Total approved forest area in hectare | Date of approval |
|-----------------------------|--|---------------------------------------|---------------------------------------|--------------------------------|
| | Finally approved area in hectare | In-principle approved area in hectare | | |
| 1 Madhya Pradesh | 118309.391 | 106565.40 | 224874.79 | 5.7.1990, 6.7.1990 & 28.5.2001 |
| 2 Gujarat | 31988.11 | 0 | 31988.11 | 10.11.94 & 2.8.2000 |
| 3 Kerala | 28588.159 | 0 | 28588.16 | 31.1.1995 |
| 4 Arunachal Pradesh | 0 | 13419.29 | 13419.29 | 23.10.1992 |
| 5 Karnataka | 14849.23 | 0 | 14849.23 | 15.5.1996 |
| 6 Andaman & Nicobar Islands | 1367 | 0 | 1367.00 | 19.8.1988 |
| 7 Orissa | 0 | 1921.3118 | 1921.3118 | 22.11.2001 & 19.05.2006 |
| 8 Tripura | 27.4 | 0 | 27.40 | 31.12.1983 |
| 9 Chhattisgarh | 50530.807 | 0 | 50530.81 | 5.7.1990 & 6.7.1990 |
| 10 West Bengal | 7.52 | 0 | 7.52 | 22.5.2002 |
| Total | 245667.617 | 121906.0028 | 367573.6198 | |

Source: Reply to Parliament question by MoEF

- TRUE COPY -



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 2]

नई दिल्ली, मंगलवार, जनवरी 2, 2007 / पौष 12, 1928

No. 2]

NEW DELHI, TUESDAY, JANUARY 2, 2007 / PAUSA 12, 1928

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 2nd January, 2007/Pausa 12, 1928 (Saka)

The following Act of Parliament received the assent of the President on the 29th December, 2006, and is hereby published for general information:—

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

No. 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 (con) 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

Short title and commencement.

1. (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.

Definitions.

2. 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 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 protected 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 Tribes 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 *tenango* 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, tassar, 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 (e) of section 2 of the Biological Diversity Act, 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; 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 and found wild in nature.

CHAPTER II

FOREST RIGHTS

3. (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 *pistar*, by whatever name called, including those used in or while 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 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;

Forest rights of
Forest dwelling
Scheduled
Tribes and
other traditional
forest dwellers

18 of 2003.

40 of 1996.

53 of 1972.

(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, 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 subsection 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.

CHAPTER III

RECOGNITION, RESTORATION AND VESTING OF FOREST RIGHTS AND RELATED MATTERS

4. (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 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;

(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.

Recognition of and vesting of forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers.

105

(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.

Duties of holders of forest rights.

5. 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 wild life, 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.

CHAPTER IV

AUTHORITIES AND PROCEDURE FOR VESTING OF FOREST RIGHTS

Authorities to vest forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers and procedure thereof.

6. (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 (1) 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.

(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. 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:

Offences by members or officers of authority and Committee under this Act.

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.

8. 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.

Cognizance of offences.

CHAPTER VI

MISCELLANEOUS

9. 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.

Members of authorities, etc., to be public servants.

Protection of action taken in good faith.

10. (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.

Nodal agency

11. 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.

Power of Central Government to issue directions

12. In the performance of its duties and exercise of its powers by or under this Act, every authority 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.

Act not in derogation of any other law

13. 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.

Power to make rules

14. (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

108

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.

K. N. CHATURVEDI,
Secy. to the Govt. of India.

— THREE COPY —



109

ANNEXURE - B (C11)

Application Form under Right to Information Act, 2005

To be Submitted In Ministry of Tribal Affairs, Shastri Bhawan, New Delhi

1(a) NAME and ADDRESS OF THE APPLICANT : RAHUL CHOUDHARY
C-106, Sec-40, (Golf Links), Noida

(b) E Mail Address: rahulchoudhary@rediffmail.com

(c) Phone / Fax No. : 9312494881 / Fax : 0120 - 435060

2. Date of Submission of Application : 17 July 2006

3. Subject Matter : SCHEDULED TRIBES (RECOGNITION OF FOREST RIGHTS) BILL

4. Details of Information Requested : Q (1) Copies of the public comments received in response to the Scheduled Tribes Recognition of forest rights) Bill.

Q 2) Estimate of figures of the total number of families are benefited by the proposed bill.

Q 3) Total forest land estimated to be diverted for regularization of encroachment after 25th October, 1980.

5. Period of which information relates

(Maximum period in each application should not exceed 3 years)

3 Years

6. Fee enclosed (in cash)

Rs. 10

7. Due dates by which information is to be furnished

(30 days from submission of application)

30 July 2006


cjp.org.in

8. How the applicant would like his information to be sent:

(a) By post

(b) To be collected by hand

(c) By e-mail

(d) By fax

TRUE COPY -



F.No. 11036/10/2006-PC&V
Government of India
Ministry of Tribal Affairs

Room No.603, 'A' Wing
Shastri Bhawan, New Delhi
July 21, 2006

To

Shri Rahul Choudhary
C-106, Sector-40
(Golf Links)
NOIDA

Subject: Scheduled Tribes (Recognition of Forest Rights) Bill, 2005

Sir,

I am directed to refer to your application dated 4.7.2006 on the above subject and to say that this Ministry has received a large number of suggestions/comments on the Scheduled Tribes (Recognition of Forests Rights) Bill, 2005 from the members of the public, the social activist, academicians, anthropologists, the experts working for the cause of environmental protection and welfare of tribal people and other stake holders which contain 3943 pages. As per Right to Information (Regulation of Fee and Cost) Rules, 2005, for providing information / copies, the fee shall be charged @ Rs 2 for each page created or copied.

2. You are, therefore, advised to deposit Rs. 7886/- (Rs. Seven Thousand Eight Hundred Eighty Six only) by way of cash/demand draft or bankers' cheque in favour of the Pay and Accounts Officer of the Ministry of Tribal Affairs.

3. In this connection, your attention is also invited to Section 7(3) of the Right to Information Act, 2005, which is reproduced below:-

"7(3) Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the Central Public Information Officer or State Public Information Officer, as the case may be, shall send an information to the person making the request, giving-

(c) The details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed under sub-section (1), requesting him to deposit that fees, and the period intervening between the dispatch of the said

112
intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days referred to in that sub-section.

"(d) information concerning his or her right with respect to review the decision as to the amount of fees charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other forms."

4. Regarding information on Question 2 and Question 3 in your application, it is informed that the figures in this regard are not available in this Ministry.

Yours faithfully,

(Pradeep Kumar)
Under Secretary to the Govt. of India

TRUE COPY
cjp.org.in

| No of villages and people in the core area and in the tiger reserve | | | | | | | | |
|---|-----------------------|----------|----------|------------|-----------------------|----------|---|------------------|
| Source: Joining the dots, Tiger Task Force Report updated 2005 | | | | | | | Source: Project Tiger report till 2001-2002 | |
| State | Tiger Reserves | Core | | | Overall tiger reserve | | | Tiger population |
| | | Villages | Families | Population | Villages | Families | Population | |
| Arunachal Pradesh | Namdhapa | 2 | 52 | 260 | 2 | 52 | 260 | 61 |
| Arunachal Pradesh | Nameri | 0 | 0 | 0 | 2 | 630 | 3150 | 26 |
| Arunachal Pradesh | Pakhui | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Assam | Manas | 0 | 0 | 0 | 167 | 5845 | 29225 | 65 |
| Bihar | Valmiki | 0 | 0 | 0 | 20 | 700 | 3500 | 53 |
| Chattisgarh | Indravati | 56 | 1300 | 7956 | 56 | 1300 | 7956 | 29 |
| Jharkhand | Palamau | 3 | 105 | 525 | 164 | 5740 | 28700 | 32 |
| Karnataka | Bandipur | 54 | 2592 | 12960 | 54 | 2592 | 12960 | 82 |
| Karnataka | Bhadra | 0 | 0 | 0 | 5 | 67 | 335 | 35 |
| Kerala | Periyar | 0 | 0 | 0 | 4 | 599 | 2995 | 36 |
| Madhya Pradesh | Sandhavgarh | 6 | 210 | 1050 | 75 | 2625 | 13125 | 56 |
| Madhya Pradesh | Bori-Satpura-Pachmari | 6 | 224 | 1122 | 60 | 2114 | 35548 | 35 |
| Madhya Pradesh | Kanha | 19 | 665 | 3325 | 169 | 5915 | 29575 | 127 |
| Madhya Pradesh | Nagarjunasagar | 24 | 840 | 4200 | 149 | 8432 | 43978 | 67 |
| Madhya Pradesh | Panna | 45 | 1565 | 7825 | 45 | 1565 | 7825 | 31 |
| Madhya Pradesh | Pench | 0 | 0 | 0 | 99 | 3465 | 17325 | 40 |
| Maharashtra | Melghat | 19 | 1585 | 7925 | 58 | 2950 | 24607 | 73 |
| Maharashtra | Pench | 1 | 52 | 239 | 1 | 52 | 239 | 14 |
| Maharashtra | Tadoba - Andhari | 0 | 0 | 0 | 6 | 210 | 1050 | 38 |
| Mizoram | Dampha | 0 | 0 | 0 | 61 | 2135 | 10675 | 4 |
| Orissa | Simlipal | 7 | 245 | 1225 | 65 | 2275 | 11375 | 99 |
| Rajasthan | Ranthambore | 4 | 140 | 700 | 25 | 875 | 8643 | 35 |
| Rajasthan | Sariska | 11 | 6337 | 34185 | 27 | 7793 | 43506 | 22 |
| Tamil Nadu | Kalakad | 15 | 1703 | 9580 | 16 | 1728 | 9700 | 27 |
| Uttar Pradesh | Dudhwa | 1 | 35 | 175 | 37 | 1295 | 6475 | 76 |
| Uttaranchal | Corbett | 0 | 0 | 0 | 25 | 875 | 4375 | 137 |
| West Bengal | Buxa | 0 | 0 | 0 | 89 | 3122 | 15608 | 31 |
| West Bengal | Sundarbans | 0 | 0 | 0 | 0 | 0 | 0 | 245 |
| Total | | 273 | 17650 | 93252 | 1487 | 64951 | 372710 | 1576 |