

SESSION 9

Legal and Policy Frameworks related to Forest Conservation

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1. Introduction to Conservation Laws and Policies

1.1. Introduction

A forest is a terrestrial ecosystem, a community of plants and animals interacting with one another and with the physical environment. They are natural renewable resources. Depending on the potential of climate and land area, all countries differ in their forest resources.

In recent times, there has been a considerable reduction in the forest cover throughout the world. Today, forests cover only nearly 30 to 40 percent of the world's land.

India is the seventh largest country in the world occupying 2.5 percent of the world area. However, only 1.8 percent of forest covers lies in India. Despite recent efforts to increase forest cover through reforestation, India's forests are in a devastated condition, with less than 18 percent of India under forest cover in 1997.¹ Dense forests cover only 12 percent of land.² The policy requirement is that the forest cover should be 33 percent of the area of the country, and all of this should be closed forest. However, we are far from achieving this figure.

1.2. Importance of Forests

Forests are critical for the quality of global environment. They are of great importance to the sustainability and prosperity of human beings since they yield multiple benefits to society. These include tangible products such as fuel wood, timber, fodder, manure and minor forest products, intangible services such as hydrological benefits, soil conservation, climate change mitigation and habitat for wildlife, and other intangible values such as spiritual or aesthetic values. These benefits flow towards many different beneficiary groups. Only some of these beneficiaries live in physical proximity of the forest. Others live downstream in the watershed, or in the whole region or nation or even world. It is estimated that some 1.6 billion people worldwide depend on forests for their livelihoods. 60 million indigenous people depend on forests for their subsistence.

Forest resources also represent a survival base for as many as 200-300 million small farmers and shifting cultivators around the world. Seasonal harvesting of forest products is of vital importance to most shifting cultivator households especially during the hungry period between harvests. Some 350 million people

¹ Reply by Union Minister of Environment and Forests to Rajya Sabha, 24 March, 1998.

² State of India's Environment: The Citizen's Fifth Report, Centre for Science and Environment, 1999.

that live in or near forests depend on them for income and subsistence. Some additional 1 billion people worldwide, constituting about 20 percent of the global population, depend on varying degrees on forests or agro-forestry farming.

Forests are major stores of carbon and other greenhouse gases such as methane. They play a crucial role in conserving the world's biodiversity. Forests provide habitats for at least two-thirds of the world's species and contain at least 80 percent of the remaining earth's biodiversity.

Forests also play a major role in containing soil erosion and in regulating water supplies. They contribute to reducing sedimentation in dams and reservoirs, to clean rivers and protect fishery resources, to maintaining agricultural productivity. Tree shelterbelts slow wind velocity and lower temperature thus contributing to moisture conservation and agricultural productivity. Trees and forests critically contribute to food security in most of the food-deficient countries of the world.

1.3. Threats

Forests are a precious resource of economic development and environmental stability. However, forests today are under immense threat of deforestation. They are reducing at an alarming rate. This process of deforestation is a serious threat to the economy, quality of life and the future of environment in our country. Some of the major reasons for degradation and decline of forests are:

- Rapid explosion of human and livestock population
- Over utilization of forest resources by local communities
- Conversion of land to non-forestry use
- Expansion of agricultural cropland for farming
- Practice of slash and burn agriculture on invaded lands
- Enhanced grazing by cattle
- Increased demand in fuel-wood, timber, wooden crates, paper, medicines, and other forest dependent products
- Impact of other commercial activity
- Impact of developmental activity
- Impact of chemicals and other hazardous substances
- Illegal forest activities

Illegal forest activities are one of the major contributors of deforestation. Such activities are varied and include, *inter alia*, the unauthorized occupation of public and private lands, illegal logging in protected or environmentally sensitive areas, logging of protected species, poaching, woodland arson, illegal transport of wood and other forest products, smuggling, transfer pricing and other fraudulent

accounting practices, illegal forest industrial processing such as discharging pollutants, etc. Virtually all illegal acts can be associated with corruption. Furthermore, corrupt acts are perpetrated for private gain and are intentional as distinguished from negligent acts, and are surreptitious in nature.

2. Forest Conservation and the Constitutional Mandate

At the time of framing of the Constitution forest was a 'State' subject place under Entry 19, List II of the Seventh Schedule. The forests departments of individual states regulated forests in accordance with the pre-existing Forest Act of 1927, as implemented by state regulations.

However, the Indian Parliament, realizing the national significance of the forests, made certain changes to the Seventh Schedule. In 1976, the Forty-second Amendment Act led to the deletion of Entry 19 from List II of the Schedule. A new entry (Entry 17-A) related to forests was inserted in the Concurrent list or List III of Seventh Schedule. Now, Forestry is a concurrent subject in the Indian Constitution, being under the purview of both the central and state government. Hence, as per the Constitution, both Centre and State may legislate on issues related to forests and protection of wildlife.

The provisions directly related to the conservation of forests were also included in the Constitution of India by the Constitution (Forty-second Amendment) Act, 1976. The Forty-second Amendment introduced a new Directive Principle of State Policy [Article 48-A] under Part IV and a Fundamental Duty [51 (A) (g)] under Part IV A for the protection and improvement of the forests. These provisions provide as under:

1. **Article 48-A – Protection and improvement of environment and safeguarding of forests and wildlife.** The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.
2. **Article 51(A) (g) –** It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.

3. Forest Conservation and Legislative Action

3.1. Introduction

Even prior to the British era, customary rules have regulated the use of forests in India. Certain types of trees were regarded as sacred and never cut. Certain areas under forest were regarded as God's groves and not even deadwood and leaves were taken out from these areas. Even today, some such areas in their natural condition are found in different parts of the country, though their condition is rapidly worsening.³

The history of modern forest legislation in India is more than a century old. The first codification which came to the statute book in relation to the administration of forest in India was the Indian Forest Act, 1865. It empowered the government to declare any land covered with trees or brushwood as government forest and to make rules to manage them. The act was applicable only to the forests in control of the government and did not cover private forests. It made no provision regarding the rights of the users.⁴

The Act of 1865 was replaced by a more comprehensive Indian Forest Act of 1878. Forests were divided into reserve forests, protected forests and village forests. Several restrictions were imposed upon the people's rights over forest land and produce in the protected and reserved forests. The act empowered the local government to levy duty on timber produced in British India or brought from any place beyond the frontier of British India, thus encouraging them to earn revenue from forests. The Act radically changed the nature of common property and made it state property.

The Act was amended from time to time and was ultimately repealed and replaced by the Indian Forest Act, 1927.

3.2. Current Forest Legislations in India

The important forest legislations in India are:

1. The Indian Forest Act, 1927
2. The Wildlife Protection Act, 1972
3. The Forest Conservation Act, 1980

³ Mahdhav Gadgil and V.D. Vartak, Sacred Groves in Maharashtra: An Inventory, in S.K. Jain (ed), *Glimpses of Indian Ethnobotany*, Oxford University Press, Bombay, 1981.

⁴ B.H. Baden Powell, *Forest Law*, Bradbury Agnaw and Co., London, 1893, p. 225.

4. The Scheduled Tribes and other Traditional Forest Dwellers Act, 2006

- **The Indian Forest Act, 1927**

The Indian Forest Act, 1927 was enacted during pre-independence era with the object to consolidate the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce. It also sought to consolidate and reserve the areas having forest cover, or significant wildlife.

The Act contains 86 Sections and still remains in force. However, has been subjected to amendments from time to time to make it more in tune with the current situation. The Forests Act establishes three kinds of forests, namely, Reserve forests, Protected forests and Village forests. Reserved forests are the most restrictive category of forests. These forests are constituted by the State Government on any forestland or wasteland which is the property of the government or on which the government has proprietary rights. Protected forests, constituted by the state government, are forests other than reserved forests over which the government has proprietary rights. Village forests, on the other hand, are those in which the state government assigns to “any village-community the rights of government to or over any land which has been constituted a reserved forest”. The categories are explained in detail as follows:

1. **Reserved Forests** – Reserved forest is dealt with in Chapter II of the Act. It is an area or mass of land duly notified under section 20 or under the reservation provisions of the Forest Acts of the State Governments of the Indian Union. It is within power of a State Government to issue a preliminary notification under section 4 of the Act declaring that it has been decided to constitute such land, as specified in a Schedule with details of its location, area and boundary description, into a Reserved Forest.

Such a notification also appoints an officer of the State Government, normally the Deputy Commissioner of the concerned district, as Forest Settlement Officer. The Forest Settlement Officer fixes a period not less than three months, to hear the claims and objections of every person having or claiming any rights over the land which is so notified to be reserved and conducts inquiries into the claims of rights, and may reject or accept the same. He is empowered even to acquire land over which right is claimed. For rights other than that of right of way, right of pasture, right to forest produce, or right to a water course, the Forest Settlement Officer may exclude such land in whole or in part, or come to an agreement with the owner for surrender of his rights, or proceed to acquire such land in the manner prescribed under the Land Acquisition Act, 1894. Once the Forest Settlement Officer settles all the rights either by admitting them or rejecting

them, as per the provisions of the Act, and has heard appeals, if any, and settled the same, all the rights with the said piece of land, with or without alteration or modification of boundaries, vest with the State Government. Thereafter, the State Government issues notification under section 20 of the Indian Forest Act, 1927 declaring that piece of land to be a Reserved Forest.

2. **Village Forests** – Village forest is dealt with in Chapter III of the Act. It is constituted under section 28. The Government may assign to any village community the rights over a land which may be a part of a reserved forest for use of the community. Usually, forested community lands are constituted into Village Grazing Reserve (VGR). Parcels of land so notified are marked on the settlement revenue maps of the villages.

A Village forest is different from a Forest Village. Though many a times both terms are used interchangeably, both are different in their meaning. While village forest is a legal category under the Indian Forest Act forest village is merely an administrative category. Although forest village is recognized as a forest department, the revenue benefits cannot accrue to such villages as they are not technically under the revenue departments.

3. **Protected Forests** – Protected forest is dealt with in Chapter IV of the Act. It is an area or mass of land, which is not a reserved forest, and over which the Government has property rights, declared to be so by a State Government under the provisions of the section 29. It does not require the long and tedious process of settlement, as in case of declaration of a reserved forest. However, if such a declaration infringes upon a person's rights, the Government may cause an inquiry into the same; but pending such inquiries, the declaration cannot abridge or affect such rights of persons or communities. Further, in a protected forest, the Government may issue notifications declaring certain trees to be reserved, or suspend private rights, if any, for a period not exceeding 30 years, or prohibit quarrying, removal of any forest produce, breaking of land, etc.

There is another type of forests known as Non-government Forests. Though this category is not expressly termed as a separate category, it is dealt with in Chapter V of the Act. It covers the forests and land not being in control of the government. The State government can, by notification, regulate or prohibit the breaking up or clearing of land for cultivation, the pasture for cattle or the firing or clearing of vegetation to protect against storms, winds, rolling stones, floods and avalanches, to preserve soil from erosion, to maintain water supply in springs, rivers and tanks, to protect roads, bridges, railway, lines of communication and to preserve public health.

The State Governments are also empowered under the Act to impose duty on timber and other forest produce as well as control transit of the same. The Act also defines a forest offence and vests power in the State Governments to impose penalties on violation of the provisions of the Act.

- **The Forest Conservation Act, 1980**

In 1980, the Parliament, in response to the rapid decline in the forest covers in India, and also to fulfill the Constitutional obligation under Article 48-A, enacted a new legislation called the Forest Conservation Act, 1980.

Deforestation causes ecological imbalance and leads to environmental deterioration. With a view to check further deforestation, the President promulgated the Forest (Conservation) Ordinance, 1980 on the October 25, 1980. The Ordinance made the prior approval of the Central Government necessary for de-reservation of reserved forest and for use of forest land for non-forest purposes. Ordinance also provided for the constitution of an advisory Committee to advise the Central Government with regard to grant of such approval.

The Ordinance was later on replaced with the enactment of the Forest Conservation Act, 1980 that came into force on October 25, 1980, which is the date on which the Forest Conservation Ordinance was promulgated. The Act too was passed with a view to check deforestation. The basic aim of the Act was to provide for the conservation of forests and for matters connected therewith or ancillary or incidental thereto.

Under the provisions of this Act, prior approval of the Central Government is essential for diversion of forest lands for the non-forestry purposes. In the national interest and in the interest of future generations, this Act, therefore, regulates the diversion of forest lands to non forestry purposes. The basic objective of the Act is, to regulate the indiscriminate diversion of forest lands for non forestry uses and to maintain a logical balance between the developmental needs of the country and the conservation of natural heritage. The, guidelines have been issued under the Act from time to time, to simplify the procedures, to cut down delays and to make the Act more user friendly.

Prior to 1980, the rate of diversion of forest lands for non forestry purposes was about 1.43 lakh hectare per annum. However, with the advent of the Forest (Conservation) Act, 1980, the rate of diversion of forest lands were controlled to a certain extent.

The Act allows the diversion of forest land only for certain purposes such as to meet the developmental needs for drinking water projects, irrigation projects, transmission lines, railway lines, roads, power projects, defense related projects, mining etc. For such diversions of forest lands for non forestry purposes, compensatory afforestation is stipulated and catchment area treatment plan, wildlife habitat improvement plan, rehabilitation plan etc. are implemented, to mitigate the ill effects of diversion of such vast area of green forests.

To monitor the effective implementation of the compensatory afforestation in the country, an authority named as "Compensatory Afforestation Management and Planning Authority (CAMPA)" is being constituted at the national level. A monitoring cell is also being set up in the Ministry of Environment & Forests to monitor the movement of proposals at various stages and the compliance of the conditions stipulated in the forestry clearances by the user agencies.

Clearance from Central Government for de-reservation of Reserve Forests, for use of forestland for non-forest purpose and for assignment of leases has been made mandatory under The Forest Conservation Act, 1980. Under section 2 of the Act, prior approval of Central Government has to be obtained by the State Government or other authority for undertaking any of the above mentioned activities. For this purpose, the proposal has to be sent to the Central Government in the form specified in The Forest Conservation Rules, 1982.

In case the proposal for clearances are rejected, a person aggrieved by an order granting environmental clearance can appeal to National Environmental Appellate Authority set up under National Environmental Appellate Authority Act, 1997 within thirty days from the rejection of the proposal.

- **The Scheduled Tribe and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006**

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 was passed almost unanimously by the Lok Sabha as well as the Rajya Sabha on December 18, 2006.

This legislation, aimed at giving ownership rights over forestland to traditional forest dwellers. The law concerns the rights of forest dwelling communities to land and other resources, denied to them over decades as a result of the continuance of colonial forest laws in India.

A little over one year after it was passed, the Act was notified into force on December 31, 2007. On January 1, 2008, this was followed by the notification of the "Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of

Forest Rights) Rules, 2007" framed by the Ministry of Tribal Affairs to supplement the procedural aspects of the Act.

The Ministry of Tribal Affairs was established as an independent ministry in 1999 to deal specifically with scheduled tribes. The criteria for designating a tribe as "scheduled" include having 'primitive' traits, dwelling in geographical isolation, having a distinct culture, being shy of contact with the outside world and being economically 'backward'. There are more than 600 officially listed scheduled tribes in the country, comprising less than 10% of the country's total population and with little over 2% believed to be dwelling in forests.

The list of rights as provided under the Act includes:

- Right to live in the forest under the individual or common occupation for habitation or for self-cultivation for livelihood
- Right to access, use or dispose of minor forest produce
- Rights of entitlement such as grazing and traditional seasonal resource access
- Rights for conversion of leases or grants issued by any local authority or any state government on forest lands to titles
- Right to protect, regenerate or conserve or manage any community forest resource which the scheduled tribes and other traditional forest dwellers have been traditionally protecting and conserving

The Act grants four types of rights. Section 3(1) of the Act grants **Title rights**, that is, ownership to land that is being farmed by tribals or forest dwellers as on December 13, 2005, subject to a maximum of 4 hectares. Ownership is only for land that is actually being cultivated by the concerned family as on that date, meaning that no new lands are granted. Section 3 (1) also grants **Use rights** over minor forest produce, including the ownership, to grazing areas, to pastoralist routes, etc.

Relief and development rights are granted under Sections 3 (1) and 3 (2) of the Act. It includes the right to rehabilitation in case of illegal eviction or forced displacement and to basic amenities, subject to restrictions for forest protection. **Forest management rights** are granted under Section 3 (1) and Section 5 of the Act with the view to protect forests and wildlife.

➤ **Opposition to the Act**

The Act is one of the most controversial and strongly opposed legislations right from the very beginning. Since the bill was drafted and introduced in the parliament, it has generated a lot of debate. It is perhaps the first and only Act in

the history of India to have been opposed through a TV campaign. In October 2003, Vanshakti, an group based in Mumbai, ran TV advertisements against the Act.⁵

The Act was vehemently opposed by the wildlife conservation lobby and the Ministry of Environment and Forests who termed it as the ideal recipe to ensure the destruction of India's forests and wildlife by "legalizing encroachments". The forest department, together with the timber mafia, too had been blocking it, since it would severely erode their stranglehold over forest products. Corporates are also against it, since the illegal status of tribals and other forest dwellers makes the process of eviction and land acquisition for industrial projects easier.⁶

Some of this opposition has been motivated by those who see the law as a land distribution scheme that will lead to the handing over of forests to tribals and forest dwellers. However, the strongest opposition to the Act has come from wildlife conservationists who fear that the law will make it impossible to create "inviolable spaces", or areas free of human presence, for the purposes of wildlife conservation. Tiger conservation in particular has been an object of concern.⁷ Many conservationists have also given recommendations for the amendment of the Act.⁸

Parliamentarians supporting the Act have been accused by some as pursuing vote-bank politics to appease tribals. There is a view that the Act itself is capable of providing the basis for the extension of the rights to other forest dwellers.

On the other hand, the supporters of the Act argue that it is large developmental projects, such as large dams, power plants and mining activities, etc., that need to be checked, rather than the forceful eviction of traditional forest-dependent communities to save the forests. Several groups contend that it is not tribals who are bringing in commercial activities into forests, but external commercial pressures that are degrading the forest resources and thereby eroding the traditional lifestyles of tribal communities. Meanwhile the more radical green groups warn against the land mafia misusing the provisions of the proposed law into conning unsuspecting tribals vested with land rights to part with their land in

⁵ Sethi, Nitin, *Activists come out with Ads to Slam Forest Act*, Times of India, October 23, 2007.

⁶ Krishnan, Radhika, *Forest Rights Act, 2006 – Misplaced Euphoria*, Liberation, January 2007.

⁷ Thapar, Valmik, *Conflict will go up by 10000 percent*, Daily News and Analysis, December 23, 2007.

⁸ See **Annexure 1- Kalpavriksh Position and Recommendations to the Scheduled Tribe and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006**

prime forest areas. They also fear that the proposed legal provision allowing for the “sale of forest-based products for their household needs”, would translate into large-scale commercialization of forest resources.

However, supporters of the Act take the position that the Act is not a land distribution measure, and further that the Act is more transparent than existing law and so can help stop land grabbing. Regarding wildlife conservation, they have argued that the Act actually provides a clear and explicit procedure for resettling people where necessary for wildlife protection, but also provides safeguards to prevent this being done arbitrarily.

Supporters of the Act and others also argue that the provisions in the Act for community conservation will in fact strengthen forest protection in the country. This is said to be because it will provide a legal right for communities themselves to protect the forest, as thousands of villages are already doing in the face of official opposition.

4. The Policies governing Forests

4.1. Introduction

India is one of the first countries in the world to have stated scientific management of its forests. During the year 1864 the then British India Government started the Imperial Forest Department. The first Inspector General of Forests was Dr. Dietrich Brandis, a German Forest officer who was appointed in 1866. In 1937, the Imperial Forest Service was constituted to organize the affairs of the Imperial Forest Department. In addition, Provincial Forest Service and Executive & Subordinate Services were also constituted for effective management of forest resources the British India Government. Initially, the subject of "Forestry" which was managed by the Federal Government which was later transferred to the "Provincial List" by the Government of India Act, 1935 and subsequently recruitment to the Imperial Forest Service was discontinued.

The Indian Forest Service was constituted in the year 1966 under the All India Services Act, 1951 by the Government of India. The main mandate of the service is the implementation of the National Forest Policies. Since 1935 the management of the forests remained in the hands of the Provincial Governments in pre-independence era, and even today the Forest Departments are managing the forests of the country under the respective State governments.

Systematic management of forests began in the mid-nineteenth century. The first forest policy of India enunciated in 1894 focused on commercial exploitation of timber and gave importance to permanent cultivation. The 1952 revision of the policy recognized the protective role of forests and proposed that one-third of the land area of the country be retained under forest and tree cover. The Forest policy of 1988 focused on environmental stability and maintenance of ecological balance.

4.2. International Conventions and Initiatives signed by India pertaining to Forests

India has participated in international dialogues on forests. The important international conventions concerning forests to which India is a signatory are:

1. International Convention for Regulation of Whaling – Signed in 1946
2. Convention for Protection of World Cultural and Natural Heritage – Signed in 1972
3. Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) - Signed 1973, Ratified 1976
4. Convention on Wetlands of International Importance especially as Waterfowl Habitat, Ramsar – Signed in 1971

5. Convention on Conservation of Migratory Species of Animals, Bonn, 1979
6. United Nations Convention on Laws of the Sea (UNCLOS) – Signed in 1982, Ratified in 1995
7. United Nations Framework Convention on Climate Change (UNFCCC) – Signed in 1992, Ratified in 1993
8. Convention on Biological Diversity (CBD) – Signed in 1992, Ratified in 1994
9. United Nations Convention to Combat Desertification (UNCCD) – Signed in 1994, Ratified in 1996

The provisions on trade and environment measures by the World Trade Organization (WTO) Agreement significantly affect the forestry sector. Moreover, Chapter XI of Agenda 21 and the non-binding Forestry Principles also contain provisions for protection and improvement of forests. Agenda 21 recognizes the need for specific actions to combat deforestation. Chapter 11 of the document identifies four programme areas for action.

4.3. National Forest Policies

Since independence, there have been three forest policy pronouncements in India. They are listed as follows:

1. National Forest policy, 1952
2. The National Commission on Agriculture, 1972
3. National Forest Policy, 1988

The first National Forest Policy Resolution was adopted by the government in 1952. Though the resolution highlighted the ecological and social aspects of forest management, giving secondary importance to the needs of commerce, industry and revenue, it did not call for any change in the forest law and remained only a pious declaration.

The Ministry of Forest was originally a part of the Ministry of Agriculture. In 1972, the Ministry appointed a National Commission on Agriculture. The multi-volume Report of the National Commission on Agriculture, published in 1976, covered forests in the 9th Part.⁹ The commission recommended that the revised national forest policy should be based on important needs of the country. All forest lands should be classified into protection forests, production forests and social forests. It gave the highest priority to production forests and the lowest priority to

⁹ *Report of the National Commission on Agriculture*, Part IX, Forestry, Ministry of Agriculture, Government of India, New Delhi, 1976.

social forests. The object of forest management should be that ‘each hectare of forest land should be in a position to yield a net income of many more times than is being obtained at present.’ It recommended enactment of a revised all India forest act.¹⁰

However, in 1985, the Forest Department was shifted from the Ministry of Agriculture to the Ministry of Environment and Forests (MoEF). The MoEF was established as a nodal agency for planning, coordination and implementation of environmental and forestry programmes. This helped to shift the emphasis from revenue to environmental concerns. In December 1988, the Parliament passed a new forest policy resolution more or less rejecting the recommendations of the National Commission on Agriculture. The resolution stressed the welfare of forest dwelling communities as a major objective of the forest policy, and categorically stated that the life of tribals and other poor living within and near forests revolves around forests and that the rights and the concessions enjoyed by them should be fully protected. Their domestic requirements of fuelwood, fodder, minor forest produce and construction timber should be the first charge on forest produce. However, while the resolution adopted a pro-tribal policy, the old Act of 1927 with all the subsequent amendments remained unchanged.

The National Forestry Action Programme (NFAP) was initiated in 1999. It is a comprehensive long-term strategic plan for the next 20 years. It identifies the issues and programs for achieving sustainable forestry development in India by harmonizing the activities of different stakeholders. The NFAP evolved through coordinated centre-state strategic planning with inputs from many national and international consultants. It identifies five programs:

- (1) Protect existing forest resources
- (2) Improve forest productivity
- (3) Reduce total demand,
- (4) Strengthen the policy and institutional framework and
- (5) Expand the forest area.

➤ **Current National Forest Policy – National Forest Policy, 1988¹¹**

The National Forest Policy, 1988, is the primary policy statement related to forestry reflecting the ethical standards on the natural environment enshrined in the constitution. Forestry and the environment interface with many other sectors, which affect the forest and wildlife resources. The principal aim of the policy is to ensure environmental stability and maintenance of ecological balance including atmospheric stability, which is vital for sustenance of all life forms, human, animal

¹⁰ Kulkarni, Sharad, *The Plight of Tribal*

¹¹ See **Annexure 2-** *National Forest Policy 1988*

and plant. It unambiguously states that the derivation of direct economic benefit must be subordinated to this principal aim, and that conservation includes preservation, maintenance, sustainable utilization, restoration and enhancement of the natural environment.

The main objectives of the National Forest Policy, 1998 are as follows:

- Maintenance of environmental stability through preservation and, where necessary, restoration of the ecological balance that has been adversely disturbed by serious depletion of the forests of the country.
- Conserving the natural heritage of the country by preserving the remaining natural forests with the vast variety of flora and fauna, which represent the remarkable biological diversity and genetic resources of the country.
- Checking soil erosion and denudation in the catchment areas of rivers, lakes, reservoirs in the "interest of soil and water conservation, for mitigating floods and droughts and for the retardation of siltation of reservoirs.
- Checking the extension of sand-dunes in the desert areas of Rajasthan and along the coastal tracts.
- Increasing substantially the forest/tree cover in the country through massive afforestation and social forestry programmes, especially on all denuded, degraded and unproductive lands.
- Meeting the requirements of fuel-wood, fodder, minor forest produce and small timber of the rural and tribal populations.
- Increasing the productivity of forests to meet essential national needs.
- Encouraging efficient utilisation of forest produce and maximising substitution of wood.
- Creating a massive people's movement with the involvement of women, for achieving these objectives and to minimise pressure on existing forests.

Creating a massive people's movement including the involvement of women and indigenous people for forest conservation is an integral feature of the policy. The policy underscores the full protection of customary rights and concessions of tribal communities and other rural poor living within and near forests. It recognizes their requirements for fuel wood, fodder, construction timber, etc. The basic objectives and strategies defined in the policy are still relevant, and guide forest conservation in India.

The National Forest Policy advocates the use of miscellaneous policy instruments including legislation and regulation, voluntary agreements, fiscal incentives, research and educational and extension campaigns for the conservation and sustainable development of forests. The administrative framework of the forestry

sector has changed significantly from regulatory to participatory. The legal framework of the forestry sector can be classified into three categories:

1. The first set of Acts regulates access and use of forest products such as the Indian Forest Act (1927).
2. The second set focuses on conservation such as the Wildlife Act (1972) and the Forest Conservation Act (1980).
3. The third set comprises enabling laws that encourage private investment as well as restrictive laws with regard to land ceilings, tree felling, transit passes and marketing that have discouraged the private sector from engaging in farm forestry and agro-forestry.

5. Forest Management and Social Forestry

5.1. Introduction

Balancing the effective, sustainable management of forest resources with economic, social and environmental factors has emerged as one of the key challenges in natural resource management. The environment and fora in which decisions concerning natural resource management are made are evolving as a result of global trends such as the globalization of the economy; growing awareness of and response to environmental concerns; decentralization and devolution of government control; the need for secured property rights; and increasing pressure for democratization.

Among the responses to these trends is a greater willingness to consider local forest management as a viable alternative to centralized State control. Throughout the world, a large number of forestry activities (national, multilateral, bilateral and non-governmental) with participatory, local or community forestry components are being implemented. Although much remains to be done, participatory approaches are increasingly recognized as essential to sustainable forest management.

The term 'Social Forestry' first used in the National Commission on Agriculture in its report in 1976. Social forestry aimed at raising plantations by the common man so as to meet the growing demand for timber, fuel wood, fodder, etc., thereby reducing the pressure on the traditional forest area. This concept of village forests was developed to meet the needs of the rural people. However, this concept is not new as it has existed through the centuries all over the country.

Social Forestry is an umbrella term for farm forestry where the whole village or community are engaged in communal village planting. It basically includes the participatory forest management methodologies where the forest department sponsors plantations on variety of wastelands and provides technical assistance, subsidies, etc to the local communities who manage such forestry activities on those unproductive and fallow grounds that may be government or community lands.

The social forestry was introduced in late 1970s and early 1980s. With the introduction of Social Forestry, it was the first time in India that the rights of the local communities to forest resources were formally recognized. It was aimed at encouraging rural participation in the management of natural resources as well as to involve them in a drive towards afforestation.

Social forestry, however, was a mixed blessing. It had certain implimental shortcomings. Some villagers perceived the woodlots to be sources of communal incomes rather than sources of fuelwood to meet village needs. *Panchayats* could not impose the discipline required to manage the plantations as the Forest Department extension staff primarily interacted only with the *Panchayat Pradhans* (heads), making little effort to involve local community as a whole. There was also no continuity of management and control of numerous scattered pieces of planted village lands. Moreover, the shares that would go to the forest department, *panchayat*, village, individuals, etc. was not clearly laid down. All these factors with a combination of other practical problems led to the decline of popularity of this concept in the mid-1980s.

However, with the dwindling of Social Forestry, new concepts began to emerge for the efficient management of the forests.

5.2. Participatory Forest Management

Since the eighteenth century forests have been savagely degraded through commercial exploitation during colonization and post-independence felling for supportive infrastructure for national growth. The colonial and post colonial state's custodianship and policing of forests has vitiated human-nature interactions.

In response to this crisis various strategies for ecological restoration have emerged in independent India, some exclusively among community groups, others that involve community groups and state agencies in collaboration. Participatory Forest Management (PFM) has emerged as result of the failure of colonial and post colonial system of governance to conserve the forests.

PFM is a term widely used when describing the forest management systems that are collaborative in nature, involving local community groups and state forest departments, as well as other agencies. Involving local communities is a vital step since the primary stakeholders in a forest are the communities that directly depend on it for their subsistence.

5.3. Joint Forest Management

Joint Forest Management (JFM) is the official term for partnerships in forest management involving both the state forest departments and local communities. JFM was a scheme launched by the Government in 1990 by way of a circular. The scheme provided for an 'arrangement' between the village community, the NGO's and the state government for regeneration and maintenance of forest areas. The policies and objectives of Joint Forest Management are detailed in the Indian

comprehensive National Forest Policy of 1988 and the Joint Forest Management Guidelines of 1990.

Although schemes vary from state to state and are known by different names in different Indian languages, usually in a JFM, the villagers agree to assist in the safeguarding of forest resources through protection from fire, grazing, and illegal harvesting in exchange for which they receive non-timber forest products and a share of the revenue from the sale of timber products of the forest. The committee representing the village or local community is most commonly referred to as the Forest Protection Committee (FPC). In some states, *panchayats* can also enter into a JFM agreement with the Forest Department. Under the JFM, an FPC takes the responsibility for protecting a forest area in return of greater access to forest produce and a share in income earned from that forest area.

Some states have provided a statutory backing to the scheme by amending the provisions relating to village forests under their respective Forests Acts. The novel idea behind the scheme was to involve people in the development and protection of forests and to motivate forest communities to identify themselves with the development and protection of forests from which they derive benefits. JFM aims at involving people in resource generation activities through motivation, and eliciting their participation in forest management and the sharing of benefits through adequate institutional arrangements.

JFM programme in the present form can be traced to the Arabari experiment initiated by foresters in the state of West Bengal. This experiment provided a strong feedback for incorporation of the system in the National Forest Policy of 1988. In many locations people's voluntary groups were engaged in protection of forests without any initiative from the Government. Subsequently, based on the experience, the process of institutionalizing people's participation in forest protection and regeneration began.

➤ **Issues related to JFM**

Following the launch of the JFM programme in India in the last decade, several issues of importance have emerged, like the diversity in institutional and benefit-sharing arrangements, development of technology and silvicultural practices to increase the productivity of degraded forests, etc.

While the scheme is revolutionary, many NGOs facilitating the same have gained an insight into the institutional arrangements, productivity, silviculture, benefit sharing, marketing, etc. NGOs have gained considerable knowledge on the strengths, unique features, weakness, and ambiguities in the manner in which the programme has evolved in different states. Some of these issues are:

- **Fund Allocation** - Most state orders and resolutions have not spelt out provisions for flow of funds for the JFM programme. Budgetary allocations for JFM-related activities by the Forest are lacking. Consequently the JFM programme relies heavily on foreign aid in the form of World Bank funds, etc. which is important but needs to be balanced against long-term sustainability needs. There is lack of coordination and inter-sectoral or interdepartmental linkage is quite poor. Joint departmental implementation is also virtually a missing feature.
- **Gender involvement in JFM institutions** - Field studies suggest that women's participation in JFM-related activities is by and large inadequate. As a first step JFM resolutions of many states need to be altered to ensure women's participation.
- **Institutional and benefit sharing** - Following the June 1990 resolution of the Government of India, the JFM programme was formally introduced in the country, which involved village communities and NGOs in the regeneration, management, and protection of degraded forests. The development of JFM institutions became imperative and various state governments have also provided in their resolutions, the modalities of forest protection, benefit-sharing arrangements, and membership norms. However, to what extent have these arrangements been implemented, is a different question altogether.
- **Legal and statutory provisions** – There is a morass of resolutions, laws, policies, Acts, etc., many of which are conflicting, ambiguous and contradict each other, and lack legal validity or can be superseded on the basis of legal technicalities, are an implementation hurdle.
- **Limited Awareness** - Awareness of the programme and its ramifications should be created through regular discussions and meetings with the people, putting up notice boards in the regional language, or by describing the terms of the JFM agreement and entitlements. Similarly, the schedule of rates for wages should be circulated amongst members and displayed on notice boards. Their involvement in preparing micro-plans and annual work plans would be crucial to villagers being more aware on activities/interventions planned, likely benefits, scope for their participation, etc. this however, is not being done to make the scheme effective.
- **Membership norms, rules and composition of the JFM committees** - Membership composition, rules, and norms as stipulated in the government orders vary across the country. This diversity of resolution structures is important and symbolizes the attempt of each state to keep these in consonance with local needs, socio-cultural situations and the nature of the forest resource base. Nonetheless, certain uniform norms need to emerge which ensure equity, participation of the landless, the marginalized, and

women to ensure people's needs are met, while the integrity of the forest cover is maintained and improved.

- **Microplan** - Many current provisions in the government orders have also created legally ambiguous situations with respect to microplans. Some like Madhya Pradesh even have provisions whereby the microplan would supersede any existing Working Plan for the allocated JFM area. This stipulation has several legal ramifications since currently under a Supreme Court ruling; no forest area can be worked unless it is covered by a working plan duly approved by the Government of India. The Forest (Conservation) Act, 1980, additionally states that all proposals involving clearing of naturally grown trees in forest land or portion thereof, for the purpose of using it for reforestation, can only be sent in the form of a Working Plan / Management Plan. Provisions for forestry operations therefore, cannot take place at the behest of a micro-plan.
- **Role of the Forest Department in the institutional structure** - While JFM has helped bring the people and Forest Department together, several committees are seen to be heavily dependent upon the Forest Department for their day-to-day functioning, convening meetings, record maintenance, preparation of plans, etc. Forest Department officials are also member secretaries of village committees in many states. With powers to disband a badly functioning committee, cancel membership, and nominate NGOs for membership, the relationship is unequal. An important requirement of the JFM institutional design is therefore, making executive/ management committees more accountable and which would take care of record maintenance and day-to-day functioning.
- **Status of JFM committees** - The legal status of JFM committees, the powers they possess to carry out their daily patrolling activities for sharing benefits and, for taking recourse to legal action to protect their own interests, are crucial issues. Field visits have indicated that when the members of protection committees sought to fine offenders, found illicitly felling wood in contravention of rules, they were often challenged and threatened with legal action. In practice, however, it was found that many JFM Committees function by imposing such fines which act as a deterrent to forest violators while the Indian Forest Act, 1927 does not recognize these functions of the Committees.
- **Village funds** - Village funds, with a proportion of revenue derived from the sale of forest produce; to be utilized for forest or village development activities is neither mandatory nor binding on the people or the Forest Department. The current sources include voluntary contributions, money obtained in lieu of protection, membership fees, voluntary labor contributions, the sale of surplus forest produce and of timber harvests, fines generated through social fencing activities, revenue generated against the use of the committee's forests, etc. While community funds need to be

encouraged and diversified, other interventions for promoting greater self-sufficiency at the village level needs to be implemented.

5.4. Community Forest Management

The ever expanding human and livestock populations and large-scale poverty exert unrelenting pressure on forests. In view of the severe degradation of India's forest resources, the Government has attempted to cut down losses to its forests and increase tree cover through Community Forest Management (CFM). This attempt is to further decentralize the management of forests, moving from conventional "State-controlled forest management" to "decentralized community forest management".

CFM refers to processes that enable those people who have a direct stake in forest resources to be part of decision-making in all aspects of forest management, from managing resources to formulating and implementing institutional frameworks. CFM is a component of participatory forestry that focuses on local communities as key stakeholders in managing common property resources.

CFM involves the raising of trees on community land and not on private land. The programme aims to provide for the entire community and not for any individual. The government has the responsibility of providing seedlings, fertilizer but the community has to take responsibility of protecting the trees.

The community institution is created to manage the forests in a sustainable way. It is through the community institution that individual forest users are reached. Its principal function is to provide an institutional framework, which can articulate and represent the interests of all user sub-groups of a forest area in partnership agreement with the Forest Department. The community institution that comes into play in CFM is the Gram Sabha which is the local body that is given usufruct rights over timber, fuel wood, fodder and bamboo produced from the forest area developed, managed and protected by the community.

Under the CFM Scheme, some communities managed the plantations sensibly and in a sustainable manner in order to utilise optimum benefits in a positive way. However, some others took advantage of the common land which was easy to exploit and sold the timber for a short-term individual profit.

6. Panchayati Raj and Panchayat Extension to Scheduled Areas Act, 1996

6.1. Introduction

Panchayati Raj Institutions have been in existence since a long time. The philosophy of Panchayat Raj is deeply steeped in tradition and culture of rural India. It provides a system of self-governance at the village level; however, till the early 90s it did not have a constitutional status. The Constitution (Seventy-third Amendment) Act, 1992 provides a framework on which to build the third level of governance panchayats.

The Constitution (Seventy-third Amendment) Act, 1992 mandates provisions for:

- Establishment of a three-tier structure (Village Panchayat, Panchayat Samiti or intermediate level Panchayat and Zilla Parishad or district level Panchayat).
- Establishment of Gram Sabhas at the village level.
- Regular elections to Panchayats every five years.
- Proportionate seat reservation for SCs/STs.
- Reservation of not less than 1/3 seats for women.
- Constitution of State Finance Commissions to recommend measures to improve the finances of Panchayats.
- Constitution of State Election Commission.

The said amendment also vests power in the State Government to endow Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government such as:

- Preparation of plans and their execution for economic development and social justice in relation to 29 subjects listed in the XI schedule of the Constitution.
- Authority to Panchayat to levy, collect and appropriate taxes, duties, tolls and fees.
- Transfer of taxes, duties, tolls and fees collected by the States to Panchayats.

➤ Gram Sabha

Gram Sabha is a body consisting of persons registered in the electoral rolls of a village or a group of villages which elect a Panchayat. A vibrant and enlightened Gram Sabha is central to the success of the Panchayati Raj system.

The year 1999-2000 was declared as the "Year of the Gram Sabha". State Governments were urged:

- To vest in the Gram Sabha, powers on the lines envisaged in the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996.
- To make a mandatory provision in the Panchayati Raj Act for holding Gram Sabha meetings throughout the country on the occasion of the Republic Day, Labour Day, Independence Day and Gandhi Jayanti.
- To make a mandatory provision in the Panchayati Raj Act specifying separately, the quorum for Gram Sabha meetings, for ordinary meetings, meetings convened for special purposes and re-convened meetings due to cancellation of an earlier meeting for want of quorum.
- To make members of the Gram Sabhas aware of their powers and responsibilities with a view to ensuring mass participation, particularly of the hitherto marginalised, groups, such as women and SCs/STs.
- To lay down procedures for the Gram Sabha to effectively carry out social audit of beneficiary oriented development programmes of the Ministry or Rural Development, particularly the legal powers of the Gram Sabha to order recovery or punishment for financial mismanagement.
- To evolve a plan of action for generating wide publicity for Gram Sabha meetings.
- To evolve guidelines/procedures for holding Gram Sabha meetings and a model list of business for such meetings.
- To generate awareness as to the rights of the Gram Sabha with respect to control over natural resources, land records and conflict resolution.

The Constitution (Seventy-third Amendment) Act, 1992 envisages empowered Panchayats as institutions of self-government at the village level capable of:

- Planning and executing village level public works and their maintenance.
- Ensuring welfare of the people at the village level including health, education, communal harmony, social justice particularly gender and caste based discrimination, dispute resolution, welfare of children, especially the girl child.

The amendment also envisages empowered Gram Sabhas as the Parliament of the People at the grassroots level to whom the Gram Panchayats are solely accountable

6.2. Panchayat Extension to Scheduled Areas Act, 1996

Panchayat Extension to Scheduled Areas Act (PESA) was passed in the year 1996. It was passed with a view to provide for the extension of the provisions of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas.

This Act gave the tribal communities and tribal gram sabha the power to oversee development within their jurisdiction and to act as a watchdog over possible government projects. Not only were the tribal gram sabhas given the power to preserve the local culture and traditions but they were also granted the power to prevent land alienation. They were also granted ownership over certain natural resources such as minor water bodies and forest produce. Hence, under the Act, every Gram Sabha became the owner of natural resources. There could be no acquisition of land for development projects and for resettling or rehabilitating persons affected by such projects without prior consultation of the Parishad.

➤ Problems in Implementation of PESA

The basic premises of the provisions of the PESA were to facilitate participative democracy in tribal areas by empowering Gram Sabha, restore the power to community to manage natural resources including land, water, forest and minerals and evolve an effective deliver-N, system for development in the Scheduled Areas. The State Governments followed the suit by amending their Panchayats Acts. However, the amendments made by the States carried only the letter of the Central Act, not its spirit. For instance, the intent of the Central Act was to make Gram Sabha in Scheduled Areas a living organization wielding full powers to manage the affairs of the community within its territorial jurisdiction. But several States diluted the intent of the Act by assigning more powers to the Gram Panchayat over the Gram Sabha. Even in some matters the States completely overlooked the authority of the Gram Sabha.

It was also noted that 'in the absence of proper definition of certain subjects, the state governments though followed the provisions of the Central Act; it was without defining the subject suitably. For instance following the provisions of the Central Act, the State Governments entrusted to Panchayats at the appropriate level the responsibilities relating to planning and management of minor water bodies In the Scheduled Areas but did not define the term minor water bodies.

The State governments also do not appear to have clear idea about the term 'local self-government'. To what extent the Panchayats in Scheduled Areas are to be given administrative and financial autonomy need to be clarified to the States.

7. Defining the term 'Forests'

7.1. Introduction

The Oxford English Dictionary defines forests as, 'An extensive tract of land covered with trees and undergrowth, sometimes intermingled with pasture (in proper names also a district formerly forest but now cultivated); and the trees growing in such a tract.'

The Encyclopedia Britannica considers a forest to be a, 'Complex ecological system, in which trees are the dominant life form'. A more ecological definition can be seen in Wikipedia.org that states, 'A forest is an area with a high density of trees. These plant communities cover large areas of the globe and function as carbon dioxide sinks, animal habitats, hydrologic flow modulators, and soil conservers, constituting one of the most important aspects of the Earth's biosphere'.

Some other important definitions of 'Forest':

1. **UNITED NATIONS CONVENTION ON COMBATING DESERTIFICATION-** Dense canopy with multi-layered structure including large trees in the upper storey.
2. **UN-FAO-** Land under forestry or no land use spanning more than 0.5 hectares; with trees higher than 5 meters and a canopy cover of more than 10 percent, or trees able to reach these thresholds in situ. NOTE: Forests are determined both by the presence of trees and the absence of other predominant land uses. The term specifically includes forest roads, firebreaks and other small open areas; forest in national parks, nature reserves and other protected areas such as those of specific scientific, historical, cultural or spiritual interest; windbreaks, shelterbelts and corridors of trees with an area of more than 0.5 hectare and width of more than 20 meters; plantations primarily used for forestry purposes, including rubberwood plantations and cork oak stands.
3. **UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE-** Young natural stands and all plantations which have yet to reach a crown density of 10-30 per cent or tree height of 2-5 metres are included under forest, as are areas normally forming part of the forest area which are temporarily unstocked as a result of human intervention such as harvesting or natural causes but which are expected to revert to forest.
4. **KYOTO FOREST:** A forest planted since 1 January 1990 on land that was previously non-forest. A **NON-KYOTO FOREST** or 'pre-1990 forest', refers to forests already in existence on 1 January 1990.

However, no specific definition of the term 'Forest' has been provided in any of the legislations. The definition that exists is the one pronounced by the Supreme Court in the case of *T.N. Godavarman Thirumulpad v Union of India*, (Writ Petition No.202 of 1995) commonly known as Godavarman case, wherein the court expanded the definition of "forests" to include not only forests as mentioned in government record but all areas that are forests as per the dictionary meaning of the term irrespective of the nature of ownership and classification thereof.

Another significant case after the Godavarman in respect to forests is the case titled *CEL, WWF India vs. Union of India* (W.P 337 of 1995). The case concerns largely with the implementation of the Wildlife (Protection) Act. Just in the way the Godavarman case did not limit itself to the Forest (Conservation) Act, 1980 but included within its scope other Acts, similarly the CEL case had impact on other Acts and the most significant being the Forest (Conservation) Act, 1980.

7.2. Judicial interpretation of 'Forest'

Donning the mantle of the principal decision-maker in issues relating to forests and wildlife, the Indian judiciary has played a pioneering role in forest conservation. This has led to fundamental changes in the pattern of forest governance and decision-making. The two landmark cases that have paved way to the forest governance in India are:

1. *T. N. Godavarman Thirumulpad vs. Union of India and ors* (WP No 202 of 1995)- The case, popularly known as the Godavarman case, pertains to the implementation of the Forest Conservation Act, 1980. In this case, the SC reinterpreted the Forest (Conservation) Act, 1980.

In its order dated 12 December 1996, the SC expanded the scope of the term "forest". Prior to this order, the word 'forest' was limited only to government declared forests irrespective of whether it had tree cover or not. Likewise, areas with significant tree cover were not regarded as 'forest' simply because in government records it was not declared as 'forest'. Due to this, large areas under good forest cover were outside the purview of the Forest (Conservation) Act, 1980. However, by its order, the SC expanded the term which now included within its scope not only forests as mentioned in government record but all areas that are forests in the dictionary meaning of the term irrespective of the nature of ownership and classification thereof.

The court's clarification expanded the statutory recognition to forests irrespective of nature of ownership and classification. This implies that forests could be

designated as reserved and protected whether they are privately owned or otherwise under the Forest (Conservation) Act, section 2(1).

The question being debated in the case was the scope of the Forest Conservation Act 1980 (FCA). This Act, which itself is a watershed in forest governance in the country, requires that any conversion of forest land to non-forest uses (which are defined in the Act) must be approved by the central government (i.e., MoEF). Conventionally, in the application of this act, “forest land” was assumed to be only that land which has been legally notified as forest as per the Indian Forest Act or state forest Acts, i.e., typically Reserve or Protected Forest. Even this narrow interpretation of the Act had slowed down and often halted certain kinds of forest land conversions that state governments seemed to have mindlessly engaged in during the 1960s and 1970s. However the Godavarman case highlighted the fact that significant tracts of lands that were physically forested had, due to some quirk of history or anomaly of administration, not been notified as Reserved Forests or Protected Forests and hence were denied the “protection” of the FCA. The Supreme Court, in its landmark order of December 12, 1996, sought to rectify this anomaly by stating that the FCA applied to “all areas that are forests in the dictionary meaning of the term irrespective of the nature of ownership and classification thereof”.

2. *The Centre for Environmental Law (CEL), WWF vs. Union of India and others (WP No 337 of 1995)*- This case pertains to the issue of settlement of Rights in National Parks and Sanctuaries and certain other issues under the Wildlife (Protection) Act, 1972. The most significant orders in the CEL case were the orders dated 22-8-1997 and the order dated 13-11-2000.

The following are excerpts from the order dated 22-8-1997, which have been of immense consequence:

- **On Settlement** – “Even though notification in respect of sanctuaries/national parks have been issued under Section 18/35 in all the States/ Union Territories, further proceedings are required under the Act i.e. issue of proclamation under Section 21 and other steps as contemplated has not been taken. The concerned State Governments/ Union territories are directed to issue proclamation under Section 21 in respect of the sanctuaries/ national parks within two months and complete the process of determination of rights and acquisition of land or rights as contemplated by the Act within a period of one year...”
- **On Poaching** – “In order to effectively control the growing increase of poaching in the Sanctuaries/National Parks the Central Government as well as the Government of the States/ UT’s are directed to ensure that the forest

guards in the Sanctuaries/ National Parks are provided modern arms, communication facilities viz. wireless sets and other necessary equipments in that regards. Necessary steps in this regards shall be taken within six months.”

- **On Denotification** – “As regards denotification of any area which is included in a Sanctuary/national park, it is directed that before placing the proposal before the Legislative Assembly the concerned State Government shall refer the proposal to the Indian Board for Wildlife for its opinion and the proposal shall be placed for consideration before the legislative Assembly along with the opinion of the Indian Board for Wildlife.”

[However this direction of the Supreme Court will no longer be applicable in view of the fact that by virtue of the 2002 amendment of the Wildlife (Protection) Act, 1972, the power to denotify has been taken away from the Legislative Assembly and conferred on the National Board for Wildlife.]

Excerpts from the order dated 13-11-2000

- “this Court while directing to list the above application after five weeks DOTH ORDER THAT pending further orders no dereservation of forest/Sanctuaries/National Parks shall be effected”

By this single order, the Supreme Court divested the Central government (in respect to forests) and the State Legislature (in respect to National Parks and Sanctuaries) of all powers of dereservation/ denotification. Thus while the Godavarman case prohibited non forest use of forest land without Central Government approval, the CEL prohibited dereservation without Supreme Court approval.

Both the *Godavarman* and the *Centre for Environmental Law (CEL), WWF vs Union of India and others* cases have led to fundamental changes that have wide impact on forest management. These cases are being heard for over a decade now and are a part of what is termed as "continuing mandamus", whereby the Courts, rather than passing final judgments, keep on passing orders and directions with a view to monitor the functioning of the executive. These orders have tremendous impact and implication on forest management and governance. For example:

- 1) No forest, National Park or Sanctuary can be de-reserved without the approval of the Supreme Court.
- 2) No non-forest activity is permitted in any National Park or Sanctuary even if prior approval under the Forest (Conservation) Act, 1980 had been obtained.

3) An interim order in 2000 prohibited the removal of any dead or decaying trees, grasses, driftwood, etc from any area comprising a National Park or Sanctuary. It was also directed that if any order to the contrary had been passed by any State government or other authorities, that order shall be stayed.

4) New authorities, committees and agencies have been set up such as the Central Empowered Committee (CEC) and the Compensatory Afforestation Management and Planning Agency.

7.3. Attempts to define the term 'Forest'

The orders of the court in these two cases were pronounced to further the spirit of the FCA. There certainly are significant areas of (currently or till recently) forested lands whose legal status for some reason was not that of Reserved Forest, Protected Forest or Village forest. However, some experts have urged the orders, especially the order dated 12 December 1996 (passed in the Godavarman case) is flawed and inadequate in law since it attempts to move away the definition of forest land from a 'legal forest' to a 'physical forest' by replacing a due process with a single universal definition.¹²

The need to evolve a definition of the word 'Forest' thus received an unprecedented attention after the Supreme Court of India referred to the term Forest in its various pronouncements.

On February 7, 2006, the MoEF of the government of India invited "expressions of interest" for a study to establish the definition of "forests". It was recommended that a holistic definition of the term forest must be evolved.

For this purpose, five institutions were shortlisted by the ministry to act as a consultant. Letter F. No. 15-1/2005-FP dated July 4, 2006 was sent to all the five shortlisted institutions. It outlines two purposes:

- To evolve the definition(s) of forest in Indian context keeping international commitments and different orders of the apex court of the country into consideration.
- To develop ecologically sound and socially desirable definition of forests¹³.

¹² Lele, Sharachchandra, A 'Defining' Moment for Forests, Economic and political Weekly, June 23, 2003.

¹³ The 'international commitments' mentioned in the letter is left completely undefined. Consultants are merely required to keep within their scope, "Forest-related definitions accepted in various international conventions such as cbd, unccd, unfccc and unff etc". In all these conventions, the definitions follow the technicist tenets of 'scientific forestry'. Moreover, when

The MoEF awarded a consultancy to Ashoka Trust for Research in Ecology and the Environment (ATREE), which was one of the five shortlisted institutions, with the objective of evolving the definition(s) of forest in an Indian context keeping international commitments and different orders of the apex court of the country into consideration. An allied objective was to develop ecologically sound and socially desirable definition of forest. The consultant (ATREE) in turn began widespread consultations from February 2007 for the purpose of developing a sound and appropriate definition to the term 'Forest'.

The project team at ATREE prepared a draft document on "Definition of the Forest an Indian Context". This draft document was presented and discussed in a two day meeting on April 30 - May 1, 2007¹⁴. This meeting was an important step in the process of finalizing the recommendations of the study undertaken by ATREE.

An array of forest officials along with Non Governmental Organizations (NGOs) attended the two days meeting. The meeting discussed history of forests in India, the forests of India, the valuation of forests, various National Forest Policies and definition of forests under various forest Acts and forest policies, as well as the international conventions and treaties. All these efforts were aimed to evolve a Definition of Forest.

ATREE proposed to define a forest as "An area under Government control notified or recorded as forests under any Act for the conservation and management of ecological and biological resources."

Explanation: Such forests will include areas with trees, scrubland, grasslands, wetlands, water bodies, deserts, glaciers, geomorphic features or any other area that is necessary to maintain ecological security.

On the basis of consultation made with different stakeholders throughout the country, the possible options for the definition of Forests were derived as under:

Option-1

the terms of reference (in the letter) stated the need to make allowance for the "different orders of the apex court of the country", the reference is to *T N Godavarman Thirumalpad v Union of India*, an ongoing case under whose umbrella all forest cases are today sheltered. In a December 12, 1996 order, the SC provided the definition of 'forest' by bringing all areas into the 'dictionary meaning' of forests. This rewrote the law, by bringing into the ambit areas of forests not under the forest department, but under tree cover.

¹⁴ See **Annexure 3 - Minutes of the Meeting of the Expert Group on Definition of Forests at MoEF New Delhi, on 30th April and 1st May 2007.**

“An area under Government control notified or recorded as forests under any Act for the conservation and management of ecological and biological resources.”

Explanation: Such forests will include areas with trees, scrubland, grasslands, wetlands, water bodies, deserts, glaciers, geomorphic features or any other area that is necessary to maintain ecological security.

Option -2

“An area owned by Government and notified as forest under any act or recorded as a forest in any Government record functioning as ecological, biological, livelihood-support and/or social resource”

Explanation: such forests will include areas having trees, scrub, grasslands, wetlands, water bodies, deserts, glaciers, geomorphic features or any other area fulfilling the functions of a forest.

Option-3

“An area notified as forests in any Act or recorded as forests in any Government record functioning as ecological, biological, social resource or livelihood support system. “

Explanation: (1) such forests will include areas having trees, scrub, grassland, wetland, water bodies, deserts, geomorphic features or any other that is necessary for ecological security of the nation.

(2) This will also include areas recorded as jungle such as Jhupudi Jungal, Doli Land etc and unclassified state forests, community owned or privately owned lands.

However, these definitions exclude areas that may not have trees but are part of the forest system, man-made plantations, and tree crops on private and community-owned land. It also does away with the broad classification of forests as understood by the dictionary meaning. There are certain other shortcomings in this definition. For example riverbeds are presently included in the forest areas and thus covered under the forest Act. But they will be open for exploitation if as explained by ATREE. Similarly there may be certain areas that are snow bound. With the melting of snows, they act as catchment areas. But this snow bound area again fall outside the purview of the definition of forests. Then there are rocky areas that have their own set of vegetations. It may be in the form of lichens or others and they too stand excluded from the proposed definition of forests.

Ecologists weigh the unscientific use of the term against their wish to ensure forest conservation by whatever means possible. Social activists warn that sweeping definitions will antagonize local communities. Foresters seem to be interested in ensuring that their domain does not shrink. Other ministries probably want definitions that will enable easy setting up of development projects like dams and roads. The corporate sector would like definitions that will make the leasing-in of state land for commercial forestry free of legal hassles. In this situation, it may be worth asking whether the issue itself has really been tackled from the right perspective, or is it a case of missing the woods for the trees!¹⁵

¹⁵ Lele, Sharachchandra, A *'Defining' Moment for Forests*, Economic and political Weekly, June 23, 2003.

Annexure 1
*Kalpavriksh Position and Recommendations to the Scheduled Tribe and other
Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006*

**THE SCHEDULED TRIBES AND OTHER FOREST-DWELLERS
(RECOGNITION OF FOREST RIGHTS) ACT 2006:**

***CRITICAL AMENDMENTS, CLEAR RULES, AND ASSESSMENT PERIOD
NEEDED***

Kalpavriksh Position and Recommendations

March, 2007

Kalpavriksh would like to stress that the prime functions of forests as a habitat for wildlife, as providers of ecological security, and as a source of basic survival and livelihood for millions of people, need to be protected. It also recognizes the need for ensuring social justice and welfare of forest-dependent communities, and their central role in forest governance.

Adequate legislation to secure the rights of traditional forest-dwellers in India has long been overdue. We believe that appropriately defined rights, along with clear responsibilities and roles in the management of forests, are a pre-requisite to the long-term conservation and sustainable use of forests, including the conservation of wildlife within and outside protected areas.

The Scheduled Tribes and other Forest Dwellers (Recognition of Forest Rights) Act 2006, is a mixed bag. While a number of provisions will lead to better conservation and enhanced livelihood security in certain situations, other provisions have a strong potential for damage to forests, wildlife & protected areas and increased livelihood insecurity. These would require appropriate amendments.

Key examples of the positive elements of the Act are:

- Greater role and empowerment of Gram Sabha in determining claims, managing forests it has traditionally conserved, checking processes

- destructive of forest-dwellers' habitats, and protecting traditional knowledge.
- Site-specific and knowledge-based determination of critical wildlife habitats, and prohibition on their diversion for any other purpose.
 - Greater livelihood security for traditional forest-dwellers who have been unjustly denied tenure.
 - Displacement and relocation only by consent.

Key issues of concern which need either amendments in the Act or clarification through the Rules are:

- Cut-off date for eligibility of land claims as December 2005 instead of 1980.
- Exclusion of certain development projects and activities (eg. construction of roads) from the purview of forest clearances.
- Unclear relationship with existing forest/wildlife laws and institutional arrangements for enforcement.
- No assignment of conservation responsibilities of right-holders and gram sabhas, and lack of monitoring bodies/institutions to ensure that rights are not damaging to forests.
- Regressive cut-off date for non-ST forest-dwellers, to a period even prior to what the Forest Conservation Act allowed for.

Overall Recommendations

Though the Act has been preceded by considerable public debate, we also view with concern the process by which it was pushed through Parliament without a proper debate and time for MPs to even assess the changes made by the government. **We strongly urge that the process of implementation of and changes in the Act, including the drafting of Rules under it, be fully open to public inputs.**

In particular, we feel it is critical that there be a 6-month preparation period, during which the following be undertaken through the aegis of an empowered committee (set up by the relevant ministries and including publicly known conservationists, social scientists, and representatives of forest-dwelling communities), through an open and transparent process of public consultation and perusal of all available documentation and evidence:

- Consolidate all available mapping of 'encroachments', consolidate the available information 'encroachments' into a single database.
- Draft through an open and participatory process, Rules/Guidelines to operationalise the Act as appropriately amended, and to clarify a number of

provisions that are subject to varying interpretations, including the precise relationship with previous forest/wildlife laws.

On no account should this preparatory period exceed 6 months, as both social justice and conservation requires implementation of the Act, appropriately modified. This should also be a period in which to discuss and bring in the necessary amendments to the Act to enable it to be ecologically more sensitive and fairer to non-ST forest-dwellers, and especially amendments related to the cut-off period and the impact assessment of development facilities.

We also strongly feel that in principle, no further large-scale diversion of forests should be permitted for any development project. This would require an amendment in the Forest Conservation Act also.

Given below is our assessment of the implications of various clauses of the Act, along with recommendations on what needs to be done to strengthen the Act’s positive aspects and undo the negative aspects.

While we believe that the amendments indicated are crucial, we will also engage with the process of implementation as soon as it starts, to put our points across, raise alerts if the Act is having negative impacts, and help in taking the positive provisions forward.

Recommendations for Specific Provisions

Element	Provision	Kalpavriksh Comments and Recommendations <i>(Note: some of these recommendations would require an amendment of the Act, and these are given in italics; others are possible to integrate into Rules or guidelines under the Act)</i>
1. Eligibility of claimants	Scheduled tribes, and other forest-dwellers (of at least 3 generations), with <i>bona fide</i> dependence	<p><i>(i) Definition of ‘other forest dwellers’ is unfair; eligibility should be, as per the Forest Conservation Act, for ‘encroachments’ upto 1980, provided such recognition is not in contradiction to any tribal land alienation related legislation/provisions in the specific area (this is to avoid the alienation of adivasi/tribal lands to non-adivasis/tribals where the latter have encroached on them).</i></p> <p>(ii) The term “bona fide livelihood needs” needs to be defined such that it includes resources essential for survival, and resources essential for basic economic livelihood (including individual or family level sale), but not large-scale commercial enterprises. A key element of the dividing line between these two kinds of livelihood activities must be sustainability (the term “sustainable” as defined in Section 2(n), referring to the Biological Diversity Act).</p>

		<p>(iii) The term “primarily reside in and who depend on the forests or forest lands” needs to be clarified. Are both these conditions (“residing in” as also “dependent on”) to be satisfied to be eligible, or could either be adequate? Secondly, what does “residing in” mean, does it mean surrounded by forest, or could it also mean having forests adjacent to one’s village/fields? This needs careful thought, as there are merits and demerits of both: a very broad definition could bring in various people who really have no strong traditional links with forests, but a very narrow one could leave out many traditionally dependent people who may not today be surrounded by forest but continue to be dependent on it. In all cases, a traditional link with the forest as also a heavy dependence on it for survival and basic livelihood, should be part of determining who should get priority in eligibility.</p>
2. Process of determining claims	Initial enquiry and process by gram sabha, final decision by district committee	<p>(i) This is acceptable, except see below recommendation on composition of sub-divisional and district committees; it should also be mandatory for sub-divisional and district committees to provide transparent and prompt feedback with adequate justification, to gram sabhas, on the decisions taken regarding their claims.</p>
3. Cut-off date	Dec. 2005 for ST; unclear for “other forest-dwellers”, since there is a possible contradiction between Sections 2(o) which specifies that they have to be at least 75 years in occupation, and 4(3) which specifies Dec. 2005 as the date for both STs and other forest-	<p>(i) <i>Given the serious implications of the 2005 cut-off date for forests, especially in that it might become an easy cover for continued encroachments, 1980 should be reverted to as the cut-off date for regularization of land, in consonance with Forest Conservation Act. This should be the cut-off date for both ST and other traditional forest-dwellers.</i></p> <p>(ii) <i>For post-1980 ‘encroachers’ who have been displaced by projects without rehabilitation till 2001, or have for other reasons of sheer necessity had to encroach, provide in situ afforestation or ecological restoration based livelihoods (as recommended by MoEF in its 1990 circulars on ‘encroachment’) or option to move to revenue land elsewhere for which the projects responsible for their displacement should be made to pay. The relocation option should be exercised for such encroachers inside protected areas or other critical wildlife habitats that are identified through a transparent participatory process.</i></p> <p>(iii) <i>For post-2001 ‘encroachers’ who have been displaced by projects without rehabilitation, relocate and provide adequate rehabilitation with full costs being borne by the relevant projects.</i></p>

	<p>dwellers.</p>	<p><i>(Note: the 2001 cut-off date for the second category is to ensure that the Act does not encourage fresh encroachments; with 2005, this is possible since even encroachers after Dec. 2005 would find it easy to claim having occupied land before this date.)</i></p> <p><i>(iv) In principle, prohibit any further large-scale diversion of forests for any kind of projects or processes (an amendment is needed in the Forest Conservation Act for this), since it would be inconsistent to not allow agriculture on forest lands but continue to allow mining, dams, industries, and so on.</i></p>
<p>4. Kind of rights extended</p>	<p>To individual and community land occupied before 1980; to forest resources; to conserve 'community' forests; to protect traditional knowledge; to development facilities with a limit of 1 ha of maximum 75 trees density per project (in case of which, Forest Conservation Act will not apply)</p>	<p><i>(i) Given the serious possibility of misuse of this provision in the absence of any impact assessment requirements, developmental facilities should continue to require clearances as per existing forest and environment laws; however, further decentralization of the clearance process should be considered to reduce delays in responding to claims.</i></p>
<p>5. Rights in important wildlife habitats</p>	<p>Relocation with consent, from critical wildlife habitats (to be</p>	<p><i>(i) Urgently set up an independent group of credible scientists (natural and social, with modern and traditional knowledge) to identify critical wildlife habitats (within and outside current PAs). In identifying such habitats, the list should be based and build on:</i></p> <p><i>a. Existing or already proposed core areas of protected areas,</i></p>

<p>defined by independent scientists and others), where harmonious co-existence is not possible</p>	<p>biosphere reserves, tiger reserves, and other conservation categories</p> <p>b. Other areas outside core areas, already identified in scientific or wildlife literature as being important for conservation of representative ecosystems, representative wildlife populations, or threatened/endemic species</p> <p>(ii) The term “irreversible damage” should be defined as damage that could cause permanent or irreversible changes in or loss of biodiversity, damage that could further threaten a threatened or endemic species, or damage that could further threaten a threatened or unique ecosystem. Additionally, it should include not only ongoing or existing damage, but also, using the precautionary principle, “potential” damage, where this is based on sufficient evidence to believe that given existing trends, irreversible damage can occur soon. The establishment of whether “irreversible damage” is taking place or could take place, should be made possible through rapid assessment techniques, and not have to wait for exhaustive long-term studies. Finally, the determination of “irreversible damage” should be done by committee set up by the state government with representation of reputed ecologists/wildlife scientists, traditional knowledge experts from local communities, and other relevant persons, and should use the best available modern and traditional knowledge on the subject.</p> <p>(iii) The term “co-existence” should be defined as the cohabitation or simultaneous use of an area by both humans and wildlife (in general or in terms of a defined species), in which wildlife conservation (including the continuation of viable wildlife populations) continues to be achieved even as humans are able to sustain their livelihoods and lives as they want. It should be clear that there are no universal formulae for co-existence, with several site-specific factors (ecosystem type and fragility, species composition and sensitivity, resource use intensity and type, management and cultural practices, etc) being important to consider while assessing its possibility.</p> <p>(iv) In the context of relocation, the term “free informed consent” should be defined as including the provision of adequate information in local languages sufficiently in advance (at least 6 months), a decision by at least 51% of the gram sabha or whatever other local process of decision-making that the gram sabha decides, and the absence of any form of coercion or misleading/false promises.</p> <p>(v) An option of relocation with consent for forest dwellers in areas other than “critical wildlife habitats”, with verifiable rehabilitation</p>
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		<p>package satisfactory to the dwellers, should also be provided for.</p> <p>(vi) Where relocation from PAs with the consent of local people is already ongoing or scheduled, it should be allowed to proceed as per schedule, with provision for additional compensation and/or alternatives based on the process of determination of rights as per the Act.</p> <p>(vii) In zones within protected areas that are outside of “critical wildlife habitats”, there needs to be a provision for regulation of activities linked to forest rights in order to secure the conservation objectives of each protected area; such regulation could be carried out by the relevant rights-holders and gram sabhas in association with the PA authorities.</p>
6. Limit to land claims	4 hectares	(i) This is acceptable.
7. Responsibilities for conservation and sustainability	Gram sabha “empowered” to conserve forests and wildlife, and community habitat.	<p>(i) Define the term “empowered” to include “responsible for”, and provide for clear conservation responsibilities for all rights-holders and for communities (gram sabhas or other relevant institutions); reinstate need for rights to be sustainable (with clear definition of sustainability based on the Biological Diversity Act); provide for a function of relevant government agencies and NGOs to build the capacity of communities, local officials, and others, to assess and monitor this; provide also for restriction on extending rights where this may cause serious forest fragmentation, and/or provide conditional rights (finalised through a consultative process between the Gram Sabha and forest and revenue officials) to ensure sustainable land use from an ecological perspective; finally, provide for some kind of redressal in cases where the gram sabha fails to fulfil its responsibility, provided reasonable opportunity is given to it to explain any circumstances beyond its control that forced upon it such a failure.</p> <p>(ii) The legal means of “empowerment” needs to be clarified. An appropriate sharing of powers between the gram sabha and the relevant government department, under each of the relevant laws (Forest Act, Forest Conservation Act, Wild Life Act, and Biological Diversity Act) needs to be worked out. The gram sabha should have powers to proceed against its own members, and the relevant department against those from outside the village, in case of violation of (a) to (d); with a mandated forum for regularly reporting to each other, and being able to get redressal if either has failed to take action</p>

		on a violation. Such a sharing of powers and mutual reporting mechanism should help build collaboration between communities and government officials, to strengthen conservation and sustainability.
8. Composition of sub-divisional, district, and state committees	Representatives of government departments and panchayat raj institutions	(i) Include conservation and social action NGOs on all committees; explicitly provide for all committees to become forums for collaboration amongst government, communities, NGOs, and individual experts.
9. Use of critical wildlife habitats	Prohibition on diversion of such area for any other purpose	(i) This provision needs strong support, as it is the only legal measure so far that does not <i>at all</i> allow governments to give clearance to diversions of wildlife habitats.
10. Diversion of forest lands for non-forest purposes	General provision on gram sabhas being empowered to safeguard their habitats	(i) The provision in the JPC report, for the “free, prior informed consent” of gram sabhas before diversion of forest land for development or other non-forest projects, should be re-inserted. (ii) Additionally, the provision for ‘empowerment’ should include the need for community consent for any diversion of forest land for development purpose (iii) These provisions will be an additional check against destructive ‘development’ projects, while not over-riding the power of other authorities to also stop/regulate such projects.
11. Right to conserve forests	Community has right to conserve any forest it has traditionally conserved	(i) This provision needs strong support, in case of forests that communities have shown the ability or potential to conserve. Rules should specify how to operationalise this. This should include the right to be consulted by any person/agency outside the community, that wants to take up any activity in the relevant community forest, as also the right to refuse such a proposal if the community feels it is detrimental to conservation or to its own livelihood security. It should also include the right to consultation and refusal relating to any new programme/policy/scheme of the government that could undermine the ability of the community to continue conserving and managing the forest.
12. Right to protect traditional knowledge	Community has right to protect traditional	(i) This provision needs strong support; rules should provide clear operational guidelines on how communities will use it. This should include the right to freely use and exchange genetic resources and their associated knowledge as has been done by communities

	knowledge	traditionally, but also the right to use measures to protect traditional or community knowledge as they feel appropriate, and to expect the government to give full support in such measures. This right should include the right to withhold sensitive information if the community feels that its disclosure could constitute a public threat or a threat to the community's own livelihood security.
13. Relationship with existing laws	Is not in derogation of any other law except where they may contradict provisions of this Act; in the case of developmental facilities for villages, overrides the Forest Conservation Act	<p>(i) Further clarity in relationship with other laws is needed; the committee we propose be set up to map encroachments and draft Rules/Guidelines, should systematically look at each provision of this Act and other relevant laws including wildlife, forest, and biodiversity laws, and suggest clarifications.</p> <p>(ii) The spirit of conservation as embodied in these laws, must prevail in all situations of forest/wildlife/biodiversity damage caused by the establishment and enjoyment of rights granted under the Forest Rights Act. In the case of protected areas, it should be specified that the Wild Life Act will apply in all situations of wildlife/habitat related violations.</p>
14. Monitoring	By State level committee.	(i) State committees need to be empowered, and national committee created, to monitor the impact of extension of rights, to frame guidelines on monitoring ecological and social impacts, to regularly update maps and databases on status of encroachments, and to help prevent all further encroachment including through the use of GIS and on ground tools. For this reason, such committees must have representation from ecological/wildlife experts and social scientists (apart from government department officials and representatives of local forest-dwelling communities as already provided for).

Annexure 2
NATIONAL FOREST POLICY 1988
GOVERNMENT OF INDIA
MINISTRY OF ENVIRONMENT AND FORESTS
NEW DELHI

No. 3-1/86-FP
Ministry of Environment and Forests
(Department of Environment, Forests & Wildlife)

**Paryavaran Bhavan, CGO Complex,
Lodi Road, New Delhi - 110003.**

Dated the 7th December, 1988.

RESOLUTION

National Forest Policy, 1988

1. PREAMBLE

1.1. In Resolution No.13/52/F, dated the 12th May, 1952, the Government of India in the erstwhile Ministry of Food and Agriculture enunciated a Forest Policy to be followed in the management of State Forests in the country. However, over the years,* forests in the country have suffered serious depletion. This is attributable to relentless pressures arising from ever-increasing demand for fuel-wood, fodder and timber; inadequacy of protection measures; diversion of forest lands to non-forest uses without ensuring compensatory afforestation and essential environmental safeguards; and the tendency to look upon forests as revenue earning resource. The need to review the situation and to evolve, for the future, a new strategy of forest conservation has become imperative. Conservation includes preservation, maintenance, sustainable utilisation, restoration, and enhancement of the natural environment. It has thus become necessary to review and revise the National Forest Policy.

2. BASIC OBJECTIVES

2.1 The basic objectives that should govern the National Forest Policy - are the following:

- Maintenance of environmental stability through preservation and, where necessary, restoration of the ecological balance that has been adversely disturbed by serious depletion of the forests of the country.
- Conserving the natural heritage of the country by preserving the remaining natural forests with the vast variety of flora and fauna, which represent the remarkable biological diversity and genetic resources of the country.
- Checking soil erosion and denudation in the catchment areas of rivers, lakes, reservoirs in the "interest of soil and water conservation, for mitigating floods and droughts and for the retardation of siltation of reservoirs.
- Checking the extension of sand-dunes in the desert areas of Rajasthan and along the coastal tracts.
- Increasing substantially the forest/tree cover in the country through massive afforestation and social forestry programmes, especially on all denuded, degraded and unproductive lands.
- Meeting the requirements of fuel-wood, fodder, minor forest produce and small timber of the rural and tribal populations.
- Increasing the productivity of forests to meet essential national needs.
- Encouraging efficient utilisation of forest produce and maximising substitution of wood.
- Creating a massive people's movement with the involvement of women, for achieving these objectives and to minimise pressure on existing forests.

2.2 The principal aim of Forest Policy must be to ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium which are vital for sustenance of all lifeforms, human, animal and plant. The derivation of direct economic benefit must be subordinated to this principal aim.

3. ESSENTIALS OF FOREST MANAGEMENT

3.1 Existing forests and forest lands should be fully protected and -their productivity improved. Forest and vegetal cover should be increased rapidly on hill slopes, in catchment areas of rivers, lakes and reservoirs and ocean shores and, on semi-arid, and and desert tracts.

3.2 Diversion of good and productive agricultural lands to forestry should be discouraged in view of the need for increased food production.

3.3 For the conservation of total biological diversity, the network of national parks, sanctuaries, biosphere reserves and other protected areas should be strengthened and extended adequately.

3.4 Provision of sufficient fodder, fuel and pasture, specially in areas adjoining forest, is necessary in order to prevent depletion of forests beyond the sustainable limit. Since fuelwood continues to be the predominant source of energy in rural areas, the programme of afforestation should be intensified with special emphasis on augmenting fuelwood production to meet the requirement of the rural people.

3.5 Minor forest produce provides sustenance to tribal population and to other communities residing in and around the forests. Such produce should be protected, improved and their production enhanced with due regard to generation of employment and income.

4. STRATEGY

4.1 Area under Forests

The national goal should be to have a minimum of one-third of the total land area of the country under forest or tree cover. In the hills and in mountainous regions, the aim should be to maintain two-third of the area under such cover in order to prevent erosion and land degradation and to ensure the stability of the fragile eco-system.

4.2 Afforestation, Social Forestry & Farm Forestry

4.2.1 A massive need-based and time bound programme of afforestation and tree planting, with particular emphasis on fuelwood and fodder development, on all degraded and denuded lands in the country, whether forest or non-forest land, is a national imperative.

4.2.2 It is necessary to encourage the planting of trees alongside of roads, railway lines, rivers and streams and canals, and on other unutilised lands under State/corporate, institutional_ or private ownership. Green belts should be raised in urban/industrial areas as well as in arid tracts. Such a programme will help to check erosion and desertification as well as improve the microclimate.

4.2.3 Village and community lands, including those on foreshores and environs of tanks, not required for other productive uses, should be taken up for the development of tree crops and fodder resources. Technical assistance and other inputs necessary for initiating such programmes should be provided by the Government. The revenues generated through such programmes should belong to the panchayats where the lands are vested in them; in all other cases, such revenues should be shared with the local communities in order to provide an incentive to them. The vesting, in individuals, particularly from the weaker sections (such as landless labour, small and marginal farmers, scheduled castes, tribals, women) of certain ownership rights over trees, could be considered, subject to appropriate regulations; beneficiaries would be entitled to usufruct and would in turn be responsible for their security and maintenance.

4.2.4 Land laws should be so modified wherever necessary so as to facilitate and motivate individuals and institutions to undertake tree-farming and grow fodder plants, grasses and legumes on their own land. Wherever degraded lands should be made available for this purpose either on lease or on the basis of a tree-patta scheme. Such leasing of the land should be subject to the land grant rules and land ceiling laws. Steps necessary to encourage them to do so must be taken. Appropriate regulations should govern the felling of trees on private holding.

4.3 Management of State Forests

4.3.1 Schemes and projects which interfere with forests that clothe steep slopes, catchments of rivers, lakes, and reservoirs, geologically unstable terrain and such other ecologically sensitive areas should be severely restricted. Tropical rain/moist forests, particularly in areas like Arunachal Pradesh, Kerala, Andaman & Nicobar Islands, should be totally safeguarded.

4.3.2 No forest should be permitted to be worked without - the Government having approved the management plan, which should be in a prescribed format and in keeping with the National Forest Policy. The Central Government should issue necessary guidelines to the State Governments in this regard and monitor compliance.

4.3.3 In order to meet the growing needs for essential goods and services which the forests provide, it is necessary to enhance forest cover and productivity of the forests through the application of scientific and technical inputs. Production forestry programmes, while aiming at enhancing the forest cover in the country, and meeting national needs, should also be oriented to narrowing, by the turn of the century, the increasing gap between demand and supply of fuelwood. No such programme, however, should entail clear-felling of adequately stocked natural forests. Nor should exotic species be introduced, through public or private sources,

unless long-term scientific trials undertaken by specialists in ecology, forestry and agriculture have established that they are suitable and have no adverse impact on native vegetation and environment.

4.3.4 Rights and Concessions

4.3.4.1 The rights and concessions, including grazing, should always remain related to the carrying capacity of forests. The capacity itself should be optimised by increased investment, silvicultural research and development of the area. Stall-feeding of cattle should be encouraged'. The requirements of the community, which cannot be met by the rights and concessions so determined, should be met by development of social forestry outside the reserved forests.

4.3.4.2 The holders of customary rights and concessions in forest areas should be motivated to identify themselves with the protection and development of forests from which they derive benefits. The rights and concessions from forests should primarily be for the bonafide use of the communities living within and around forest areas, specially the tribals.

4.3.4.3 The life of tribals and other poor living within and near forests revolves around forests. The rights and concessions enjoyed by them should be fully protected. Their domestic requirements of fuelwood, fodder, minor forest produce and construction timber should be the first charge on forest produce. These and substitute materials should be made available through conveniently located depots at reasonable prices.

4.3.4.4 Similar consideration should be given to scheduled castes and other poor living near forests. However, the area, which such consideration should cover, would be determined by the carrying capacity of the forests.

4.3.5 Wood is in short supply. The long-term solution for meeting the existing gap lies in increasing the productivity of forests, but to relieve the existing pressure on forests for the demands of railway sleepers, construction industry (particularly in the public- sector), furniture and panelling, mine-pit props, paper and paper board etc. substitution of wood needs to be taken recourse to. Similarly, on the front of domestic energy, fuelwood needs to be substituted as far as practicable with alternate sources like bio-gas, LPG and solar energy. Fuel-efficient "Chulhas" as a measure of conservation of fuelwood need to be popularised in rural areas.

4.4 Diversion of Forest Lands for Non-forest purposes

4.4.1 Forest land or land with tree cover should not be -treated merely as a resource readily available to be utilised for various projects and programmes, but

as a national asset which requires to be properly safeguarded for providing sustained benefits to the entire community. Diversion of forest land for any non-forest purpose should be subject to the most careful examinations by specialists from the standpoint of social and environmental costs and benefits. Construction of dams and reservoirs, mining and industrial development and expansion of agriculture should be consistent with the needs for conservation of trees and forests. Projects which involve such diversion should at least provide in their investment budget, funds for regeneration/compensatory afforestation.

4.4.2 Beneficiaries who are allowed mining and quarrying in forest land and in land covered by trees should be required to repair and re-vegetate the area in accordance with established forestry practices. No mining lease should be granted to any party, private or public, without a proper mine management plan appraised from the environmental angle and enforced by adequate machinery.

4.5 Wildlife Conservation

Forest Management should take special care of the needs of wildlife conservation, and forest management plans should include prescriptions for this purpose. It is specially essential to provide for "corridors" linking the protected areas in order to maintain genetic continuity between artificially separated sub-sections of migrant wildlife.

4.6 Tribal People and Forests

Having regard to the symbiotic relationship between the tribal people and forests, a primary task of all agencies responsible for forest management, including the forest development corporations should be to associate the tribal people closely in the protection, regeneration and development of forests as well as to provide gainful employment to people living in and around the forest. While safeguarding the customary rights and interests of such people, forestry programmes should pay special attention to the following:

- One of the major causes for degradation of forest is illegal cutting and removal by contractors and their labour. In order to put, an end to this practice, contractors should be replaced by institutions such as tribal cooperatives, labour cooperatives, government corporations, etc. as early as possible;
- Protection, regeneration and optimum collection of minor forest produce along with institutional arrangements for the marketing of such produce;
- Development of forest villages on par with revenue villages;

- Family oriented schemes for improving the status of the tribal beneficiaries; and

Undertaking integrated are a development programmes to meet the needs of the tribal, economy in and around the forest areas, including the provision of alternative sources of domestic energy on a subsidised basis, to reduce pressure on the existing forest areas.

4.7 Shifting Cultivation

Shifting cultivation is affecting the environment and productivity of land adversely. Alternative avenues of income, suitably harmonised with the right landuse practices, should be devised to discourage shifting cultivation. Efforts should be made to contain such cultivation within the area already affected, by propagating improved agricultural practices. Area already damaged by such cultivation should be rehabilitated through social forestry and energy plantations.

4.8 Damage to Forests from Encroachments, Fires and Grazing

4.8.1 Encroachment on forest lands has been on the increase. This trend has to be arrested and effective action taken to prevent its continuance. There, should be no regularisation of existing encroachments.

4.8.2 The incidence of forest fires in the country is high. Standing trees and fodder are destroyed on a large scale and natural regeneration annihilated by such fires. Special precautions should be taken during the fire season. Improved and modern management practices should be adopted to deal with forest fires.

4.8.3 Grazing in forest areas should be regulated with the involvement of the community. Special conservation areas, young plantations and regeneration areas should be fully protected. Grazing and browsing in forest areas need to be controlled. Adequate grazing fees should be levied to discourage people in forest areas from maintaining large herds of non-essential livestock.

4.9 Forest-based Industries

The main considerations governing the establishment of forest-based industries and supply of raw material to them should be as follows:

- As far as possible, a forest-based industry should raise the raw material needed for meeting its own requirements, preferably by establishment of a direct relationship between the factory and the individuals who can grow

the raw material by supporting the individuals with inputs including credit, constant technical advice and finally harvesting and transport services.

- No forest-based enterprise, except that at the village or cottage level, should be permitted in the future unless it has been first cleared after a careful scrutiny with regard to assured availability of raw material. In any case, the fuel, fodder and timber requirements of the local population should not be sacrificed for this purpose.
- Forest-based industries must not only provide employment to local people on priority but also involve them fully in raising trees and raw-material.
- Natural forests serve as a gene pool resource and help to maintain ecological balance. Such forests will not, therefore, be made available to industries for 'undertaking plantation and for any other activities.
- Farmers, particularly small and marginal farmers, would be encouraged to grow, on marginal/degraded lands available with them, wood species required for industries. These may also be grown along with fuel and fodder species on community lands not required for pasture purposes, and by Forest department/corporations on degraded forests, not earmarked for natural regeneration.
- The practice of supply of forest produce to industry at concessional prices should cease. Industry should be encouraged to use alternative raw materials. Import of wood and wood products should be liberalised.
- The above considerations will, however, be subject to the current policy relating to land ceiling and land-laws.

4.10 Forest Extension

Forest conservation programme cannot succeed without the willing support and cooperation of the people. It is essential, therefore, to inculcate in the people, a direct interest in forests, their development and conservation, and to make them conscious of the value of trees, wildlife and nature in general. This can be achieved through the involvement of educational institutions, right from the primary stage. Farmers and interested people should be provided opportunities through institutions like Krishi Vigyan Kendras, Trainers' Training Centres to learn agrisilvicultural and silvicultural techniques to ensure optimum use of their land and water resources. Short term extension courses and lectures should be organised in order to educate farmers. For this purpose, it is essential that suitable

programmes are propagated through mass media, audio-visual aids and the extension machinery.

4.11 Forestry Education

Forestry should be recognised both as a scientific discipline as well as a profession. Agriculture universities and institutions, dedicated to the development of forestry education should formulate curricula and courses for imparting academic education and promoting postgraduate research and professional excellence, keeping in view the manpower needs of the country. Academic and professional qualifications - in forestry should be kept in view for recruitment to the Indian Forest Service and the State Forest Service. Specialised and orientation courses for developing better management skills by inservice training need to be encouraged, taking into account the latest development in forestry and related disciplines.

4.12 Forestry Research

With the increasing recognition of the importance of forests for environmental health, energy and employment, emphasis must be laid on scientific forestry research, necessitating adequate strengthening of the research base as well as new priorities for action. Some broad priority areas of research and development needing special attention are:

- Increasing the productivity of wood and other forest produce per unit of area per unit time by the application of modern scientific and technological methods.
- Revegetation of barren/marginal/waste/mined lands and watershed areas.
- Effective conservation and management of existing forest resources (mainly natural forest eco-systems).
- Research related to social forestry for rural/ tribal development.
- Development of substitutes to replace wood and wood products.
- Research related to wildlife and management of national parks and sanctuaries.

4.13 Personnel Management

Government policies in personnel management for professional foresters and forest scientists should aim at enhancing their professional competence and status and attracting and retaining qualified - and motivated personnel, keeping in view particularly -the Arduous nature of duties they have to perform, often in remote and inhospitable places.

4.14 Forest Survey and Data Base

Inadequacy of data regarding forest resources is a matter of concern because this creates a false sense of complacency. Priority needs to be accorded to completing the survey of forest resources in the country on scientific lines and to updating information. For this purpose, periodical collection, collation and publication of reliable data on relevant aspects of forest management needs to be improved with recourse to modern technology and equipment.

4.15 Legal Support and Infrastructure Development

Appropriate legislation should be undertaken, supported by adequate infrastructure, at the Centre and State levels in order to implement the Policy effectively.

4.16 Financial Support for Forestry

The objectives of this revised Policy cannot be achieved without the investment of financial and other resources on a substantial scale. Such investment is indeed fully justified considering the contribution of forests in maintaining essential ecological processes and life support systems and in preserving genetic diversity. Forests should not be looked upon as a source of revenue. Forests are a renewable natural resource. They are a national asset to be protected and enhanced for the well-being of the people and the Nation.

(K.P.Geethakrishnan)

Secretary to the Government of India

Annexure 3

Minutes of the Meeting of the Expert Group on Definition of Forests at MoEF New Delhi, on 30th April and 1st May 2007.

List of participants is enclosed as annexure

Monday, 30th April:

Chair: Sri GK Prasad, DGF&SS, MoEF

In his welcome address, Dr. Kamal Bawa, President ATREE mentioned that defining forest is a complex issue. However, we must be able to view the natural habitat and manage it. He felt that there are divergent concepts with respect to use, conservation, management and function of forests. He felt there must be proper legislative framework for the terrestrial landscape.

Dr. S.N.Rai made a presentation regarding the definition of forest study and while referring to the progress made so far through various meetings and consultations, he presented that the emerging views have been in three main aspects.

1. To secure whatever is already notified as forest land,
2. To have enabling policy initiatives to promote planting of trees on private lands.
3. The definition should be so simple and unambiguous that it should be clearly understood by a common man .

He presented the definition evolved by the team:

“An area under Government control notified or recorded as forests under any Act for the conservation and management of ecological and biological resources.”

Explanation: Such forests will include areas with trees, scrubland, grasslands, wetlands, water bodies, deserts, glaciers, geomorphic features or any other area that is necessary to maintain ecological security.

Sri G K Prasad, DGF & SS MoEF in his addressed referred to the orders of the Supreme Court in respect of forest. He also referred to the discussions of the Core Group meeting of 9th April chaired by Secretary MoEF and said that most of the issues were covered on that day. He also mentioned about the special meeting for the Northeast region. In summing up , he said that efforts must be made in such a manner that the forest lands should be secured, the trees outside forest area should also be protected and plantation of trees outside forest areas should be encouraged. He mentioned that the areas planted around the road sides and railway lines were declared 'Protected Forest' with noble intentions to keep them intact, however, now this declaration has become a hindrance for expansion and developmental activities.

Dr. J.P.L. Srivastava PCCF Haryana said that private and community lands should be kept free from application of Forest Conservation Act. He questioned the issue of defining forest on private and community lands. He was of the view that an enabling environment was more important than the law. He mentioned that out of the 2.1 million cubic meters of annual production of timber in Haryana, only 0.15 million cubic meters(7.1 %) comes from the Government owned lands. Dr.Srivastava also narrated the case of Aravallis where private and Govt lands were brought under plantations in an ecological restoration project and the Supreme Court has taken a view that although these are man made plantations on private lands, yet as they have been raised for ecological purposes, the FCA will apply there.

Dr. J.V.Sharma, DIG (FP) MoEF informed that there are excellent private forests in the Mussoorie hills which have been playing a very important role in the ecological security and they should be continued to be kept as forests, and also suggested the following definition:

“An area notified or recorded as forests under any Act for the conservation and management of ecological and biological resources.”

Dr.R.V.Singh supported Dr. Srivastava's point of view and reiterated that FCA should be applied only on Govt owned land. He further elaborated that there could be three definitions, one for FCA, other to cover the orders of the Supreme Court and yet another one to meet the International commitments. He said the objectives of the management today were livelihood, water conservation and water supply, and we should take this into account while defining forests.

Sri. M.C.Ghildiyal mentioned that FCA applies to land, not to trees. He was of the view that definition should have a minimum unit area on which the FCA should apply and there should be flexibility regarding the area which will vary under

different situations from state to state. The determination of the minimum area should be done in consultation with the states.

Dr. S.K. Khanduri Director Planning Commission mentioned that there are state and national Forest Acts and the FCA talks of alienation of land or about the change in management practices. The Supreme Court had said that FCA is not applicable to man made forests. However, in the larger interest, the existing natural forests other than those notified should also be maintained as forests. Only diversion and management change should attract the provisions of FCA on such lands.

Dr.Pankaj Khullar PCCF Himachal Pradesh mentioned about how most of Govt waste lands were declared as Protected Forests in 1952 in Himachal Pradesh. However, they had been variously used and subsequent to the orders of the Supreme Court, there have been difficulties in their management. He was of the opinion that defining the forests only with legal perspective does not serve the purpose. It should be defined based on legal, administrative and the forest cover basis. He was also of the view that ecologically sensitive areas should be covered under forest without attracting the provisions of the FCA.

Dr.P.P.Bhojvaid Senior Fellow TERI was of the view that forest is a tree dominant ecosystem and it has three functions namely, conservation, production and ecological. He was of the view that a single definition will not be sufficient.

Sri Ray Choudhary APCCF West Bengal while deliberating on the suggested definition was of the view that the word 'for' used in the proposed definition to qualify the ecological and biological resources can be spun around in an argument and if the notification or records do not support these aspects, then it can become a matter of debate. He was of the view that privately used lands which contain the forest growth should be managed as such. But there should be some escape from application of FCA.

Dr. Balachandran Ganeshan Ford Foundation was of the view that we should have an open minded and practical approach on the definition and he felt that the socio-economic and cultural part should also be addressed. He was of the view that enabling environment is an economic incentive.

Dr. Bawa said that we should be thinking of post- Kyoto Protocol situation. He said that India and China will be under tremendous pressure on carbon sequestration related issues. He said that forests are very complex ecosystems and climate change will change the structure and boundaries of the forests. He further said that forests when degraded may become grasslands or deserts.

Prof.S.B.Roy Chairman IBRAD was of the view that forests should be defined within the Indian Forest Act and he was of the view that we can not afford to exclude the areas which are recorded as forests and therefore we must take them into consideration. He suggested that we should think of various definitions.

Mr. Subhash Chandra Director Horticulture Delhi mentioned that there has to be a general definition and he said that a forest is a forest, which is a dynamic system. He was of the view that Arunachal Pradesh has 30,000 sq km as Un-classed State Forest and a community can encroach upon such areas. He felt that they can claim the area to be theirs. He expressed that a forest is an inter-generational resource. He was of the view that protection needs were non negotiable and by defining certain areas only as forests we should not dilute it. He was of the view that exceptions for the situation like those in Haryana can be made but it should not become a part of the law.

Dr.Khullar mentioned that plantations and natural forests should be dealt separately.

Dr. Sanjeev Pandey Winrock International was of the view that there can be more than one definition.

Dr. Srivastava while once again reiterating his point mentioned that out of the 31 million ha under agro-forestry, 25 million ha is outside the forest areas in Haryana.

Dr.J.V.Sharma talked about the spirit of the National Forest Policy being 33% as forest and tree cover. He mentioned that the main aspects of NFP was Sustainable Forest Management and social, economic and ecological aspects. He clarified that objective of the present study is to remove the fear among the minds of the people from the application of FCA in agro- forestry and other plantation areas.

Dr. Bhojvaid was of the view that if the plantation has an ecological function, as in case of Haryana, then it should come under the FCA.

Sri Prasad was of the view that we must aim at inclusion, exclusion and also exceptions in respect of forest areas.

Dr. R.C Sharma was of the view that there are lands under the control of the Revenue department in parts of Madhya Pradesh, Chattisgarh and other states which are variously described, but they do have forest vegetation and they should be secured as forest lands. He was simultaneously of the view that entitlement regime of the people should not be interfered with.

Sri. Ghildiyal was of the view that community held land should be covered by the definition.

Dr.Ravi Chellam Director ATREE mentioned that forest and tree cover both should be taken into consideration to meet the target.

Dr. Manoharan WWF- India suggested that the definition should not be so simple and it must have wider consultation. He wondered for how long we are going to have this definition.

Chair: Dr. Pankaj Khullar, PCCF Himachal Pradesh

Prof. S. B. Roy made a presentation on social, cultural and economic issues and he felt that they are all intricately linked and it is difficult to separate them. He felt that the definition will be influenced by the perceptions of the people. He was of the view that ecology and social systems have evolved together. He also felt that all the forests cannot be used for extractive practices. While discussing about the values, norms, cultural and traditional practices in his conclusion, he said that the definition should be a universal definition, understandable by common man without any ambiguity. He further argued that forests have to be defined in the natural form as a system, be it under Govt control or not. The natural system can be defined as a forest and explanation can be given for different purposes.

Dr. Khanduri raised doubts whether social and cultural attributes can be brought into a definition.

Dr. Bhaskar Sinha observed that these norms change with time.

Dr. Bawa mentioned that we should go into the question why the Supreme Court judgment was made and take that into consideration.

Sri. R.K. Upadhyaya CF Tamil Nadu informed that if we want to make it justiciable then a simple definition would be better.

Prof. V B Sawarkar made an excellent presentation tracing the evolution of life on this planet and moved on to the present situation. He emphatically stated that the forest departments have the stewardship of nearly 25% of the land of this country, which is part of an evolutionary process. He very strongly pleaded for securing the forests that we already have. There were some discussions on these aspects but a larger agreement was reached that whatever forest we have must be secured and at the same time there must be a clarity that private people and Govt. is clear about their respective territories and in respect of FCA what is a violation must be made clear.

Dr. Khanduri observed that the list of norms should be illustrated and trees on private lands on eco-sensitive areas should be preserved. He was of the view that Revenue land should also be protected and some of which can also go for other

purposes. He was of the view that we can not wish away the development process and land has to come from the forests in some cases.

Sri M P Rai CCF Punjab narrated the case of Punjab Shivaliks which are ecologically very fragile areas and which are also largely privately held . He was of the view that these areas must be secured as forest lands for their ecological considerations.

Sri Ghildiyal mentioned that whatever has been notified as forest must be secured and this will solve 95% of the problems that we have. He was of the view that the dictionary meaning of forest should be applied to community held areas, and he also felt that a minimum area must be mentioned.

Tuesday, 1st May:

Ms. Amarjeet Ahuja, Addl. Chief Secretary Rajasthan

A presentation was made by Dr.R.C.Sharma on NTFP and he described the forests as open access resource. He mentioned that more than 400 million people depend on NTFP. He said that if well managed, it can be an excellent resource. He discussed about PESA, 1996 and mentioned that under this, people have been give endowment of MFP and not ownership of MFP. He mentioned that NTFP has been defined both by the ministry and the Madhya Pradesh Govt. He drew attention to the Forest Rights Bill and also to the Biodiversity Act. He talked about 'ABC' of forestry and he said that: A- stood for appropriate entitlement regime, while B- stood for benefit sharing arrangement and, C- stood for conservation. He was of the view that without addressing the first two, the third was not achievable. He also mentioned that we do not have models of sustainable use of NTFP anywhere in the world.

Dr. Sinha was of the view that we should adopt the conventional methods while working on the sustainable use model.

Dr. Manoharan informed that he has planned a wider consultation with his field officers and will get back to us on the matter. He also raised a point whether definition was only for India or for the planet as such.

Dr.J.V.Sharma informed that every country has sovereign right over her forest produce. Ms Amarjeet Ahuja mentioned that even though there is definition of MFP, there is a need to reconcile the divergence resulting due to competitive extraction or due to non allocation. She was of the opinion that sustainable harvest must be looked at with respect to locally validated practices. She felt that there was a need to generate sensitivity and sense of security among the users.

There was another presentation by Sri. R.K. Upadhyaya. He dealt with evolution of Forest Policies and the ownership status during the policies of 1894, 1952 and 1988. He also mentioned that in the normal course, statutes should follow the policy, but in case of 1894 and 1988 policy, the laws had come ahead of the

policy. Regarding a single and simple definition, Upadhyaya said that Tamil Nadu has 52 enactments on forests. And in this way, the country will have a very large number of enactments. If we want to simplify the matter and make it justiciable, then we need a single and simple definition. He said although one would be tempted to have three definitions, namely functional, legal and ecological, but at the grassroots level, both among the functionaries of the forest department and at the level of common people, it can cause confusion.

Ms.Ahuja was of the view that a standard definition should be for all and specific areas should be dealt with in proviso. She was of the view that the Govt system must be empathetic so that people can conserve resources on their land.

Sri.Ghildiyal was of the view that we should keep a proviso for the ordinances.

Sri Manoj Dabas made a presentation on agro forestry and plantations. He was of the view that India is not oriented towards production. He said that plantations can help natural forests. He informed that the world over, plantations extended to only about 5%. He was of the view that the laws had not been enacted to reach 33% forest and tree cover as envisaged by the 1988 forest policy.

Sri Ghldiyal mentioned that there was no embargo on raising plantations and the plantations were exempt from the FCA.

Dr. R.V. Singh said that restrictions on felling and transport of material from privately owned land was a hindrance in the spread of agro-forestry.

Chair: Sri G K Prasad

A presentation was made by Dr. R.V. Singh on a revised definition.

‘An area owned by Govt and notified as forest under any act or recorded as a forest in any Govt record functioning as ecological, biological, livelihood-support and/or social resource’

Explanation: such forests will include areas having trees, scrub, grasslands, wetlands, water bodies, deserts, glaciers, geomorphic features or any other area fulfilling the functions of a forest.

In the concluding session, Sri R.K.Upadhyaya articulated about the Public Trust doctrine and mentioned that air, water and forests have to remain in the public domain. He talked about the fundamental rights in the constitution and mentioned that ours is the only constitution in the world where Writ is a fundamental right.

He said that ecology has a direct bearing on human life. He mentioned that forest law is a special law and he did not see any major conflict between the National Environment Policy and the Forest Policy.

There were some discussions on the newly proposed definition. However the majority view was more in favor of Govt control than Govt owned.

Sri.G.K.Prasad once again reiterated his views of the previous day regarding securing forest land and once again narrated his experience of roadside plantations being notified as forest and the difficulties being caused because of that. He also said that the interactions will continue and suggested to put up the definition (all three options suggested by ATREE, R.V.Singh and J.V.Sharma) on the website of the Ministry and also write to all the PCCFs and have their views on the same. It would also be appropriate to have separate consultation on this issue with NE states.

Sri. Manoj Dabas proposed a vote of thanks and the meeting ended with thanks to the chair.

Subsequent to the Meeting:

The members of the team had a meeting for about an hour after the formal closing of the meeting in order to chart the future course of action. The definition suggested by Dr.R.V.Singh was discussed and also the need for introduction of a provisio to provide for statutes and ordinances as an explanation was considered. However, the consensus was to retain the earlier definition suggested by the team but with a minor modification suggested by Dr.Singh [the word appearing as 'scrubland' in the definition proposed by the team to be changed as 'scrub']. It was also agreed that State governments are fully empowered to bring any ecologically sensitive areas under their control under the existing laws and therefore a provosio as an explanation to the definition does not appear to be necessary.
