

FOREST AND THE LAW
PROBLEMS AND PERSPECTIVES

THESIS SUBMITTED BY A. PRASANNA
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY
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DECLARATION

I do hereby declare that this thesis entitled "Forest and the Law : Problems and Perspectives" has not previously formed the basis of award of any degree, diploma, associateship, fellowship or other similar title or recognition. This research has been carried out by me under the guidance and supervision of Dr.N.S.Chandrasekharan, Professor and Head, Department of Law, Cochin University of Science and Technology.

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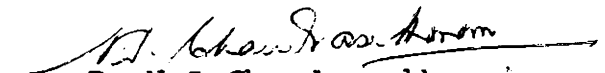

A. PRASANNA

CERTIFICATE

This is to certify that this thesis entitled
"Forest and the Law : Problems and Perspectives"
submitted by Smt.A.Prasanna for the Degree of Doctor
of Philosophy is the record of bona fide research
carried out by her under my guidance and supervision
in the Department of Law, Cochin University of Science
and Technology. This thesis or any part thereof has
not previously formed the basis of the award of any
degree or other similar title or recognition.

Cochin - 682 022

16th March, 1993


Dr.N.S.Chandrasekharan
Supervising Teacher.

P r e f a c e

Forest is essential for the healthy subsistence of human being on earth. Law has been framed to regulate exploitation of forest. It is pertinent to examine whether the law relating to forest is an effective instrument in protecting environmental values of forest. This study is an analysis of the law relating to forest from an environmental perspective. Practical suggestions are also made for the better protection of forest.

The lay out of the thesis is in six parts and eleven chapters. Part I is introductory consisting of two chapters. Chapter 1 highlights the environmental and economic significance of forest. Chapter 2 traces the history of forest protection in India.

Part II in Chapter 3 examines how the environmental consciousness developed in India. Certain important international conferences on environmental protection and their impacts in India are discussed in this chapter.

Part III deals with the legal provisions on forest protection. This part consists of 2 chapters.

Chapter 4 analyses the law relating to Government forest from an environmental perspective. Chapter 5 examines whether the controls imposed on private forests in India are effective in protecting the environmental values of forest.

Part IV consisting of three chapters, deals with the administrative aspects of forest protection. Chapter 6 highlights the problems involved in the enforcement of law and policy relating to forest. Chapter 7 analyses the problems with regard to the prosecution of forest offences. Chapter 8 gives an account of the social forestry programmes in India and brings out the short comings of those programmes.

Part V examines how far the law relating to forest, protects affected interests. Chapter 9 highlights the symbiotic relationship between the forest and the tribal communities and the need to protect the interest of tribal people in forest. Chapter 10 deals with the inter-relationship between the flora and fauna and analyses the existing legal measures for protection of wildlife.

The main conclusions and suggestions of the study are summed up in Part VI, Chapter 11.

Prof. (Dr.) N.S.Chandrasekharan, the Head of the

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C O N T E N T S

	Pages
P r e f a c e	i-iii
C o n t e n t s	iv-viii

PART I

INTRODUCTORY

Chapter 1	SIGNIFICANCE OF FOREST	1-15
Chapter 2	PROTECTION OF FOREST - HISTORICAL RETROSPECT	16-51
	Imperial control over forest	26
	Forest in the British period	31
	Early legislative measures	34
	Forest protection after Independence	41

PART II

RISE OF ENVIRONMENTAL CONSCIOUSNESS

Chapter 3	INTERNATIONAL EFFORTS TO CONSERVE NATURE AND THEIR IMPACT IN INDIA	52-77
	Stockholm conference 1972	54
	Earth summit 1992	59
	Impact of international conferences	61
	Impact on the legislature	61
	Impact on the administrative system	63
	Impact on the judiciary	65

Impact on the people of India	68
Chipko movement	69
Appiko movement	71
Peoples movements against construction of dams	72
Silent Valley movement	73
Anti Tehri movement	74
Koel Karo movement	76
Movement against Narmada Valley project	76

PART III

LEGAL PERSPECTIVES

Chapter 4	FOREST AND THE LAW	78-138
	Forest Legislation and Environmental Protection	93
	Sustainable development	99
	Sustainable development : The U.S. experience	104
	Sustainable development : The Indian experience	110
Chapter 5	CONTROLS OVER PRIVATE FOREST	139-163
	Private forest in Kerala	140
	Private forest in other States	157

PART IV

ADMINISTRATIVE ASPECTS

Chapter 6	PROBLEMS OF ENFORCEMENT : EMPIRICAL STUDY	164-201
	Enforcement machinery	165
	Absence of proper infrastructure	170

	Inadequacy of training programme	172
	Unsatisfactory service conditions	174
	Corruption	175
	Political interference	178
	Problems at check-posts	181
	Absence of inter-State Co-ordination	186
	Absence of inter-departmental Co-ordination	190
	Absence of facilities to keep seized goods	194
	Gracing : Absence of alternative facilities.	195
	Absence of effective measures to control forest fire	196
	Absence of public participation in the management of forest	199
Chapter 7	FOREST OFFENCES : PROBLEMS OF PROSECUTION	202-226
	Errors and omissions on the part of the prosecution	204
	Loopholes in the law	211
	Forest not defined	211
	Offences not properly defined	215
	Abetment not an offence	218
	Conflicts arising from delegation	222
	Heavy burden of proof on the prosecution	223
Chapter 8	SOCIAL FORESTRY PROGRAMMES IN INDIA	227-247
	Objectives	232
	Agencies implementing social forestry	235
	Species used in social forestry	236

PART V

FOREST POLICY - PROTECTION OF AFFECTED INTERESTS

Chapter 9	FOREST AND THE TRIBAL PEOPLE	248-287
	Impact of deforestation on tribal population	253
	Forest legislation and the tribal people	257
	Protection of tribal rights in forest - Attempts at State level	269
	Tribal movements	276
Chapter 10	FOREST AND WILDLIFE	287-332
	Strategies to protect wildlife	292
	Captive breeding	304
	National parks and sanctuaries	309
	Biosphere reserves	314
	Regulation of trade and commerce in wild animals, animal articles and trophies	319

PART VI

Chapter 11	CONCLUSION AND SUGGESTIONS	333-352
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APPENDICES

APPENDIX I	Forest Conservation Act 1980	353-355
APPENDIX II	National Forest Policy 1988	356-369
APPENDIX III	Sandalwood Removal Order, Kerala	370-371

APPENDIX	IV	Karnataka Government Order providing immunity to the forest personnel when they open fire to protect Government property and life	372-380
APPENDIX	V	Extract of the 'Goondas Act', 1982 of Tamil Nadu	381-389
		TABLE OF CASES	390-395
		BIBLIOGRAPHY	396-418

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PART I

INTRODUCTORY

CHAPTER 1

SIGNIFICANCE OF FOREST

From time immemorial, nature and mankind formed inseparable units of the life-supporting system.¹ Primitive human beings were part of the forest² ecosystem. Dwelling in the caves, hunting wild animals, eating wild fruits, roots and leaves, drinking water from wild streams, they lived in harmony with the surrounding habitat.³ But with the advent of civilization, forest tracts were cleared for housing and agricultural purposes.⁴ Man's desire for more comforts urged him to fell trees and use timber for making carts, buildings, furniture,

1. Life-supporting system consists of air, water, land flora and fauna. T.N.Khoshoo, Environmental Concerns and Strategies (1988), p.3.
2. The term 'forest' is derived from the Latin word 'foris' which means 'out of doors' or 'on the outside of a place'. Henry Campbell Black, Black's Law Dictionary (1951), p.779. According to popular English dictionaries, 'forest' means a large uncultivated tract of land, covered with trees and undergrowth and sometimes intermingled with pasture. C.F.Onions (Ed.), The Shorter Oxford English Dictionary Vol.1 (1970), p.735. From the environmental point of view 'forest' includes flora, fauna and the tribal people living in it.
3. The Ramakrishna Mission Institute of Culture, Calcutta The Cultural Heritage of India, Vol.1 (1970), pp.106; 107.
4. See infra, ch.2, n.5.

domestic articles and agricultural implements. Population explosion⁵ and expansion of human settlements⁶ necessitated denudation of more forest for food production and housing. Roads and bridges were also constructed in forest areas,⁷ making access to forest easier and causing greater deforestation. Establishment of forest-based industries, mining of minerals and lime-stones

5. By the mid-twentieth century, the rate of population growth in developing countries had risen to unprecedented levels as mortality rate declined and life expectancy increased due to progress in living standards and scientific inventions. World population growth peaked at 2.1 percent a year in 1965-70 - the most rapid rate of increase in history. The World Bank, The World Development Report 1992 Development and the Environment (1992), p.25. In India, the total population has increased from 235.9 million in 1891 to 843.9 million in 1991. Rapid population growth was found between 1951 and 1981, when the total population of India increased by 323 million. Mahendra K.Premi, India's population; Heading Towards A Billion (1991), pp.2 & 8.
6. In Assam between 1937 and 1946 large areas of reserved forests were cleared for paddy cultivation. Centre for Science and Environment, The state of India's Environment 1982, A Citizens' Report (1982), p.45. In Kerala also forest lands were assigned to agriculturists for bringing about agrarian reforms. See infra, ch.5. n.60. It is reported that between 1980 and 1983, an area of 1685.47 hectares of forest land was converted into agricultural land. Legislative Secretariat, Trivandrum, petitions Committee 6th Report (1986), p.1.
7. It is reported that in India between 1951 and 1972, 3.4 million hectares of forest land was cleared for the construction of dams, roads and buildings for starting industries and for conducting mining operations. See for details, Centre for Science and Environment, op.cit., p.33.

from forests and construction of hydroelectric projects led to the disappearance of large areas of forest.

When the Government found forest and its produce as a valuable source of revenue, it imposed restrictions on the exploitation of forest by private persons.⁸ This, in turn, increased illegal encroachments⁹ and illegal felling of trees.¹⁰ It is only when man started facing ecological catastrophes like floods,¹¹ land slides,¹²

8. See infra, ch.2, nn.100-103

9. The encroachers occupy forest land for years and claim prescriptive rights over the land, when the Forest Department takes steps for their eviction.

10. Illegal felling of trees is done by smugglers and also by coupe contractors even with the connivance of forest guards. K.P.Singh Mahalwar, "Deforestation - A Socio-legal conspectus" in R.K. Sapru (Ed.), Environmental Management in India, Vol.1 (1987), 235 at p.242.

11. Flood is caused by the excessive flow of water and also by soil erosion. Eroded soil which runs off with water gets deposited in down streams resulting in the rising of river beds, ultimately causing floods. Soil erosion and floods can be minimised by planting trees in erodible localities. R.S.Ambasht and M.P. Singh, "Conservation and Management of Degrading Riparian Wasteland" in Pramod Singh (Ed.), Problems of Wasteland and Forest Ecology in India (1989), pp.30-32. See also, Harry A Carpenter and George C Wood (Revised by Paul E.Smith) Our Environment : How we Adapt Ourselves To it (1964), pp.543, 544.

12. Land slides occur due to the combined effect of intensive human activity, excess rain-fall, floods, storms, fluctuations in the level of subsurface water, deforestation and seismicity of the region. In India, land-slides are common in the Himalayan ranges and these kill hundreds of people at a time. S.K. Chadha, "Ecological Havoc in Himalayas" in S.K. Chadha, (Ed.), Himalayan Ecology (1989), 1 at pp.1, 2.

droughts,¹³ desertification,¹⁴ climatic changes¹⁵ and problems of pollution¹⁶ that he began to realise the

13. Drought is a meteorological phenomenon of dry spells resulting from departure of rain-fall from normal. N.D.Jayal, "Drought, Development and Desertification" in R.K.Sapru, Environment Management in India Vol.1 (1987), p.267.

14. Drought gets transformed into desertification, when the moisture retention capacity of the soil goes down, due to decline in organic matter input to the soil or excessive uptake by vegetation. N.D.Jayal "Emerging Pattern of the Crisis in Water Resource Conservation" in J.Bandyopadhyay et.al, India's Environment: Crisis and Responses (1987), 78 at p.82. Dessertification, in extreme cases, leads to total destruction of biospheric potential and conversion of the land into desert. The Thar desert, spreading over the States of Rajasthan, Pubjab and Gujarat has an area of 31.7 hectares. An area of 1.38 mile heetares is affected by the process of desertification. J.Venkateswaralu "Ecological crisis in Agro-Ecosystem" in Bandyopadhyay op.cit., p.91 at p.97. Over exploitation of natural resources may ultimately lead to desertification. Desertification in North-East India is due to deforestation of fragile forest eco-systems. P.S.Ramakrishnan, "Tribal Men in the Humid Tropics of the North-East" in Buddhadeb Chaudhuri et.al, (Eds.), Forest and Forest Development in India (1989), 57 at p.81.

15. See infra, n.30.

16. Environmental pollution is caused by a wide range of human activities. Land, air and water get polluted. Smokes from coal or oil burning, fumes from motor vehicles and poisonous gases from industrial establishments cause air pollution. Disposal of human wastes, nuclear wastes and industrial effluents causes land and water pollution. Pollution causes health hazards like cancer, tuberculosis and asthma in human beings. See R.Kumar, "Environmental Pollution and Health Hazards" in R.Kumar (Ed.), "Environmental Pollution and Health Hazards in India" (1987), pp.2-8, see also S.K.Jindal, "Environment and the Lungs" in R.Kumar op.cit., pp.102-117.

significant role played by forest in maintaining the quality of human environment.¹⁷

Significance of forest

Green plants are the producers of food for man and other living beings. With the help of sunlight, water and carbondioxide, the green leaves containing chlorophyll¹⁸ synthesize carbohydrate¹⁹ and store it in roots, stem and leaves. Herbivorous beings consume this stored food for their subsistence. They, in turn, form the prey of carnivora. The dead remains of plants, animals and other living beings deposited in the soil and decomposed by microbes are again absorbed by plants.²⁰ Nature adjusts the number, size and nature of flora and fauna in such a way that this chain of processes continues indefinitely, maintaining the balance in the

17. Concern for the quality of the environment reached a conscious, rational and coherent form probably during the second half of the 19th century, when the Industrial Revolution had lead to crowding, misery and accumulation of filth in Western Europe and U.S.A. The campaign for environmental reform was initially organised with the motto "pure water, pure air, pure food". Rene Dubos, "Man and His Environment : Adaptations and Interactions" in Smithsonian Institution, Symposium, The Quality of Man's Environment (1968), p.231.

18. The green coloured pigment in the leaves.

19. This food-making process is termed photosynthesis. See G.E.Fogg, Photosynthesis (1970) pp.13-41. See also Eugene Kabinowitch and Govindjee, Photosynthesis (1970), pp.38-41.

20. See for details Eugene P.odum, Fundamentals of Ecology (1971), pp.63-75.

ecosystem.²¹ A tilting of this balance by human intervention may lead to hazardous results.²² Complex inter-relationships exists between plants and animals. The Kayasanur Forest Disease of Karnataka amply proves this

21. A study of the eco-system of tropical rain forest enables one to understand the complex inter-relationship between different species of flora and fauna in the natural state. The rain forest eco-system is a complex one. Its framework is provided by trees of many sizes. Within the shade of large trees grow a range of other kinds of plants, climbers, epiphytes, strangling plants, parasites and saprophytes. Close inter-relationship exists between plants and animals in relation to pollination of flowers and dispersal of fruits and seeds. Some plants, the so-called myrmecophytes provide shelter for ants in modified organs for protecting themselves from enemies. Many plants produce resins, noxious to many insects, as a measure to protect themselves from being eaten. T.C. Whitmore, Tropical Rain Forests of the Far East, (1975), p.12.
22. An incident that has occurred in the Kaibab Plateau of Grand Canyon in U.S.A. proves this point. In this region the deer population was held in check by mountain lions, coyotes and wolves. In 1907, the State of Arizona placed a bounty on these predators and over the next 10-15 years they were effectively eliminated from the area. In the absence of predators, the deer population increased rapidly hitting a peak of about 1,00,000 by 1924. By this time the vegetation was destroyed by overgrazing. This resulted in the death of 60,000 deers due to starvation and diseases. Much of the vegetation could not be recovered even after the vast reduction in deer population. Even today the Kaibab eco system has not been fully recovered. Bernard J. Nebel, Environmental Science, The way the world works (1981), p.53.

phenomenon.²³

Forest gains significance for other reasons also. Trees absorb large quantities of water reaching the earth through rain and a portion of it is returned to the atmosphere in the form of water vapour²⁴ which again reaches the earth through rain.²⁵ They also increase the water retention capacity of the soil by increasing

23. Among some forest workers of Kayasanur village in Shimoga district of Karnataka, a peculiar disease, symptomised by rising fever, severe headache, body pain and subsequent bleeding from nose and anus was noticed in 1956. This disease, later called as the Kayasanur Forest Disease, (K.F.D.) killed about 139 people. The National Institute of Virology in Pune explained the cause of the disease as follows: Small animals like shrews, rats and squirrels carry the ticks which harbour K.F.D. When the forests are cleared, these animals are driven away and the ticks fasten on other living beings like monkeys and even on human beings, causing the disease. The incidence of K.F.D. is thus associated with the felling of trees resulting in tilting the balance of the forest ecosystem. Centre for Science and Environment, The State of India's Environment 1984-85, The Second Citizens' Report (1985), p.259.
24. Plants absorb water through the root hairs. A portion of this is utilised in the food making process (photosynthesis). The rest is returned to the atmosphere in the form of water vapour through the openings on the surface of leaves. This process is called transpiration. K.N.Rao et.al., Outlines of plant physiology (1970), pp.121,122.
25. Cycling of water from the soil to the plants and from the plants to the atmosphere and again to the soil is termed by ecologists as 'water cycle'. David B.Sutton and N.Paul Harmon, Ecology : Selected Concepts (1973), pp.110-113.

its organic content.²⁶ Floods and later droughts will be the result, if all the water reaching the earth through rain is allowed to run off. The leaf canopy of forest catches and re-evaporates about twelve percent of the water reaching the earth through rains, while ten percent of it runs along the tree trunks and reaches the ground by a circuitous course.²⁷ This, in turn, reduces the impact of rain drops on the forest floor so as to prevent soil erosion. The branched root system of trees, along with the grass cover on the forest floor, holds soil and humus from being washed away by the rains.²⁸ The roots of leguminous plants contain nodules which harbour nitrogen fixing bacteria which enhance the nitrogen content of the soil.²⁹

26. The forest litter, the moss-covered and leaf-strewn ground, is capable of absorbing water at the rate of 4,00,00,000 to 5,00,00,000 cubic feet per square mile in 10 minutes. Isaiah Bowman, Forest Physiography (1911), p.4. George C. Wood and Harry A. Carpenter (Revised by Gordon E Van Hooft), Our Environment : How we use and control it (1964), pp.504,505.

27. Isaiah Bowman op.cit., p.4.

28. In India, we are losing over 6,000 million tons of top soil every year. The eroded soil takes along with it 8.4 million tons of soil nutrients, in addition to silting of reservoirs and river beds and damaging crops, houses and public utilities worth Rs.1,000 crores every year by floods. M.L.Dewan, "Horticulture: Vital Role in Himalayan Ecosystem Development" in S.K.Chadha (Ed.), Himalayan Ecology (1989), p.32.

29. See for details Ross H. Arnett and Dale C. Braungart, An Introduction to Plant Biology (1970), pp.109,110.

Forest even regulates climate³⁰ and increases local rainfall.³¹ Forest canopy reduces the intensity of solar radiation reaching the earth by absorbing and reflecting it.³² It reduces the high velocity of wind by causing resistance to wind flow.³³ Forest reduces

30. Studies reveal that a single isolated tree, by evaporating 100 gallons of water per day, accounts for 2,30,000 K. cal. of energy, equivalent to cooling of five average room air conditioners (each 2500 K. cal./hour) running 24 hours a day. Rajkumar Gupta, Plants for Environmental Conservation (1979), pp. 8,9
31. Rain is caused by the condensation of water vapour in the atmosphere at certain heights. Forest increases rainfall by increasing the humidity in the atmosphere and by forcing the vertical ascent of the air. Tall trees obstruct the movement of rain-clouds ultimately causing rainfall. Keith Smith, Principles of Applied Climatology (1975), p.39. Total rainfall in summer in thick forest area is about 10 percent higher than that in sparsely wooded areas. The higher rainfall of Assam region can be attributed to the vast extent of forest cover and the lower rainfall of the Gangetic Valley to the absence of forest cover. A.R.R.Menon, "Impact of Forest on Environment" ACTA ECOL.4:1. 1982, pp.23,24.
32. When solar radiation strikes the forest canopy, some of it is reflected. A large amount is used as heat for evaporation of water through the leaves. The absence of forest cover would result in increase in air temperature which could make conditions uncomfortable in tropics. The radiation intensity on the forest floor may average, less than 1 per cent of that recorded in the open. Keith Smith, Principles of Applied Climatology (1975), pp.35,36.
33. When the tree belt is dense the greater will be the reduction in velocity of wind. Ball Siew Ramdial, The Role of Forests and Trees in Maintaining Quality Environment (1980), p.6.

air pollution by enhancing the quality of air³⁴ and by absorbing poisonous gases,³⁵ thereby reducing the chances of occurrence of ecological catastrophes like the so-called green house effect³⁶ and ozone

34. During photosynthesis, plants absorb carbon dioxide and give out oxygen and water vapour and thereby enhance the quality of air. G.E.Fogg, op.cit., pp.13-41. See also Bassel Kok "Photosynthesis" in Malcom. B. Wilkins, The Physiology of Plant Growth and Development (1969), pp.335-379.
35. Through the openings on the surface of leaves-stomata, plants take in carbon dioxide and pollutant gases in the vicinity of leaves. William H.Smith, Air Pollution and Forests : Interactions Between Air Contaminants and Forest Ecosystems (1981), pp.98, 99. See also T.C.Pokhriyal and B.K.Subba Rao "Role of Forests in Mitigating Air Pollution". The Indian Forester, Vol.112, (1986), 573 at pp.577, 578.
36. The temperature on the earth's surface has been the result of a balance between incoming solar radiation and the out-going energy reflected from the ground. When solar radiation reaches the earth much of the energy gets reflected back to the atmosphere. Part of this out-going energy is absorbed and re-emitted by atmospheric gases like carbon dioxide, methane, nitrous oxide and chlorofluorocarbons (green house gases) causing an increase in temperature over the earth. This phenomenon is called "the Green House Effect", because like the glass roof of a green house, these gases trap heat that would otherwise rapidly go into the space. The increase in concentration of green house gases in the atmosphere may lead to rise in global temperature, melting of polar ice, rise in sea level, droughts, extraordinary heat and desert like conditions. Prodipto Ghosh, "Global Warming : Natures Revenge", Science Reporter June 1992, pp.19-24. See also Document 4, "The Green House Problem" Indian Journal of Public Administration XXXV July-September (1989), pp.703-706. See also World Bank, World Development Report 1992 Development and the Environment (1992), p.61. M.K.Ramesh, "Effectiveness of International Environmental Law concerning global warming and Ozone Depletion", Paper presented in the National Seminar on Law and Environment held in the Department of Law, Cochin University from 14-17 March, 1990. See also P.Subramonian Potti, Legislative Activism and Environmental Development (1992), p.22.

depletion.³⁷ Trees also filter dust and other air-borne particles by providing surface of leaves for settling them.³⁸

The effectiveness of trees in filtering noise³⁹ cannot be ignored. Trees by scattering, diverting and

37. Ozone (O₃) forms a layer in the upper atmosphere at an altitude³ between 16 to 48 k.ms. This layer forms a protective sheath over the earth to save living beings from the damaging ultraviolet radiation from the sun. In 1985, an Antarctic expedition team reported that the loss of Ozone layer over Antarctica was nearly forty percent. Ozone depletion is mainly the result of increasing atmospheric concentration of chlorine, originating from chlorofluoro carbons. The thinning or depletion of ozone layer may increase the intensity of ultraviolet radiations reaching the earth which may increase the incidence of skin cancer, cataract and depression in human immune system. Biman Basu, "Ozone Hole Gets Curiouser",²⁹ Science Reporter, June 1992, pp.16-18. See also M.K.Ramesh *op.cit.* See also V.K.Dhar *et.al.*, "The C.F.C.Dilemma", ²⁸ Science Reporter, June 1991, pp.16-21. Document 3, "Action on Ozone", Indian Journal of Public Administration, XXXV July-September 1989, pp.689-802; World Bank, World Development Report: Development and Environment (1992), pp.62-63 and Subramonian Potti *op.cit.*, p.23.
38. Settlement of particular pollutants on the surface of leaves is harmful to living plants, but it reduces the chances of health hazards in human beings due to inhalation of these pollutants. M. Agrawal *et.al.*, "Responses of plants to particulate pollutants: A Review" in Promod Singh (Ed.), Ecology of Urban India Vol.II (1987), pp.93-101.
39. 'Noise' has been defined as one or a group of loud, harsh, non-harmonious sounds or vibrations that are unpleasant and irritating to the ear. Gurmohinder Pal Singh and M.S. Bains "Management of Noise Pollution" in R.K. Sapru (Ed.), Environment Management in India Vol.2 (1987), 85 at p.86.

diffusing sound waves reduce the intensity of sound waves to tolerable limits.⁴⁰ The health hazards arising out of noise pollution can be considerably reduced by planting patches of trees near the source.⁴¹

40. According to the studies, conducted by the Indian Council of Medical Research and the Department of Science and Technology, noise levels between 85 decibels and 120 decibels are harmful to human health. High levels of noise creates discomfort, distress, annoyance, intense pain, auditory fatigue and reduction in intellectual performance. It disturbs sleep, increases blood pressure and heart-beat. It causes muscular contractions and stops digestion, stomach contractions and flow of saliva and gastric juices. Irritability, tenseness, insomnia and fear are some of the psychological effects of exposure to high level noise. Pramod Singh, "Ecology of Urban India", in Pramod Singh (Ed.), Ecology of Urban India Vol.II (1987), pp.12-15. See also Gurmohinder Pal Singh and M.S.Bains "Management of Noise Pollution" in R.K.Sapru (Ed.), op.cit., pp.85-97. See also M.R.Garg and Param Jeet Singh "Legislative and Legal Aspects of "oise Pollution" in R.K.Sapru op.cit., pp.98-107. It has been estimated that an average forest can attenuate sound at the rate of 7 decibels/30m.of distance at frequencies of 1000 cycles per second or less. H.N.Mathur and P.Soni, "India's Forest Resources" in Desh Bandhu and R.K.Gang,Social Forestry and Tribal Development (1986), 126 at p.148.
41. The effectiveness of trees in filtering noise pollution increases with the density of vegetation. The greater the density the more effective is the scattering, diverting and diffusing of sound waves. Transmission of sound is accelerated by increase in temperature and wind. Trees by reducing the temperature and wind, reduce the velocity of transmission of sound waves and thereby reduce noise. Balsiew Ramdial op.cit., p.4. According to one author, ashok, neem, tamarind and coconut are the noise absorbing plants suitable to be planted on the sides of roads. Pramod Singh, Environmental Pollution and Management (1985), p.123.

Forest, with its flora, fauna and wild streams are objects of aesthetic pleasure. Attractive scenery of the earth with its snow-clad mountains, hills, valleys, rivers and woodlands used to rouse artistic and poetic talents even from the vedic age.⁴²

Forest displays a diversity of species of plants and animals.⁴³ Some of them form sources for scientists to evolve new varieties. Wild varieties of many plants collected from forest were proved to be better for cultivation⁴⁴ than those raised by modern cross-breeding

42. The aesthetic sense of the Aryans was expressed in the vedic hymns. See for details, A.C. Bose, Call of the Vedas (1970), p.286.

43. In India, so far 15,000 species of flowering plants, 67,000 species of insects, 4000 species of molluscs, 6500 species of other invertebrates, 2000 species of fishes, 140 species of amphibians, 420 species of reptiles, 1200 species of birds and 340 species of mammals have been identified. Shaju Thomas, "Biodiversity striking a Balance", 29 Science Reporter, March 1992, p.16 at p.17.

44. Rice (oriza sativa), sugarcane, citrus, banana, brinjal, cucumber, beans, pepper, turmeric, ginger, cinnamon and cardamom are some of the indigenous varieties suitable for cultivation. R.K. Arora, "Erosion of Plant Genetic Resources" in J. Bandyopadhyay et.al., India's Environment: Crisis and Responses (1987), pp.111-115. See also, J.K. Hawkes, "Saving Genes For The Future", 28 Science Reporter, June 1991, pp.8-11.

techniques.⁴⁵ Deforestation endangers plant and animal life. Destruction of forest habitat and illegal hunting of small animals result in scarcity of food for predators. Consequently they migrate to the plains in search of food and are invariably killed or trapped by men.⁴⁶ Protection of forest is essential for the protection of wild life.

Tribal people living in forest depend on forest for food and shelter. They collect fruits and leaves of trees, honey, lac and other minor forest produce for their own use and also for sale. Deforestation deprives the tribal population of their traditional culture and livelihood.⁴⁷

45. During the early seventies, an epidemic known as 'grassy stunt' destroyed more than 1,16,000 hectares of rice in India, Indonesia, Sri Lanka, Vietnam and the Philippines. A botanist collected a single strain of resistant wild rice from M.P., known as Oryza nivara. This variety was found to be the only strain which could resist the virus causing the disease. It was introduced in 1974 and the disease ceased to exist in fields. Darryl D'Monte, Temples or Tombs ? Industry Versus Environment. Three Controversies (1985), p.68.

46. Within the past one year four instances have occurred in Kerala (at Eloor, Kasargode, Punaloor and Kodungalloor) where leopards migrated to the plains and attacked human beings. The leopard found in Eloor was trapped by the authorities of the Zoo, while those found in Punaloor, Trichur and Kodungalloor were killed by officials. Mathrubhumi Book No.69 No.22 (1991), p.36, Malayala Manorama (Kochi), Dec.11, (1991), p.1. Malayala Manorama (Kochi), Feb.18, 1992 p.1. Malayala Manorama (Kochi), Dec.30, 1992 p.1.

47. See infra, ch.9, nn.2-8

Forest and its produce are valuable sources of revenue ⁴⁸ for the State. Forest supplies wood and raw materials for many industries and satisfies the fuel and fodder requirements of the rural poor. ⁴⁹ No doubt, forest needs protection from the environmental and economic point of view and in the interest of tribal community as well.

48. Timber, firewood, charcoal and minor forest produce add to the State revenue. In 1980-81 India earned Rs.464 crores from its forest. Centre for Science and Environment, op.cit., p.34. In Kerala alone revenue from forest for the year 1990-91 was Rs.3731.32 lakhs. Government of Kerala, Economic Review (1991), p.178.

49. 80 percent of the rural households in India use firewood as fuel. R.K.Kapoor, "Rural Ecology : Some Issues" in Pramod Singh (Ed.), Ecology of Rural India Vol.I (1987), 21 at p.24.

CHAPTER 2

PROTECTION OF FOREST - HISTORICAL RETROSPECT

Forest was in abundance in ancient India. The archeological remains of stone age¹ indicate that knives, choppers and axes made of stone² were used for hunting small animals. These weapons were not as good as the axes and swords of today for cutting and felling of trees. Obviously no serious threat to forest existed during that period. The flourishing Dravidian civilisation³ left no evidence of any destruction of forest.⁴

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1. Stone age denotes the period when man used only stone tools. The culture dates back to 5000 B.C. The earliest stone tools-pebbles and flakes - were excavated from North-West Punjab, Rajaputana and Narmada Valley. R.C.Majumdar et.al., (Eds.), The History and Culture of Indian People Vol.1 (1971), pp.127-130. See also Sherwood L. Washburn, "Tools and Human Evolution" in M.F. Ashley Montagu (Ed.), Culture and the Evolution of Man (1972), p.13.
 2. For photographs of some of these, see Walter A. Fairserois Jr. The Roots of Ancient India, The Archeology of Early Indian Civilisation (1971), p.63.
 3. Archeological excavations in Mohanjodaro and Harappa in 1922-23 evidenced the existence of a flourishing Dravidian civilisation in India around 2500 B.C. This civilisation is described by historians as Indus Valley Civilisation. Ramakrishna Mission Institute of Culture, The Cultural Heritage of India Vol.1 (1970), p.111.
 4. The seals found out as a result of archeological excavations in the Indus Valley area bear evidence of the existence of forest in that area. The fauna represented on the seals include buffalo, tiger, rhinoceros, elephant and antelope. J.P.Guha, Seals and Statuettes of Kulli, Zhob, Mohanjo Daro and Harappa (1967), pp.26-31.

With the arrival of Aryans in India⁵ forest tracts were cleared for the purpose of habitation, cultivation and pastorage.⁶ However, the Aryans were not enemies of forest. They loved nature, worshipped natural forces and recited hymns in the form of vedas⁷ to praise them. Aranyani, the queen of forest, received high praise from the Aryans not only for her gifts to man but also for her charm.⁸ The great rishis and sages of ancient India

5. Aryans entered in India between 2000 and 1500 B.C. through Afganistan and settled in Pubjab and Sind before going towards the east and south of India. A. kalyanaraman, Aryatharangini : The Saga of the Indo Aryans Vol.1 (1969), p.1.
6. See for details, M.M.Kunte, The Vicissitudes of Aryan Civilisation in India (1984), p.116.
7. Vedas were written approximately between 1500 B.C. and 1000 B.C. Aryans praised Maruts (Storm God), Agni (Fire God), Vayu (Air God), Surya (Sun God), Varuna (Ruler of the night and water). Indra (God of rain, thunder and lightning) and Rudra (Father of Maruts, later developed into Shiva the God of destruction), conducted Yajnas and offered sacrifices to please them. Vedas were hymns recited during such Yajnas. See H.H. Wilson, Rig -veda samhita Vol.1 (1977), pp.1-50. See also Epiphanius Wilson, Sacred Books of the East (1978), pp.7-48; Dr.J.K.Trikha, Rig-Veda, A Scientific and Intellectual Analysis of the Hymns, (1981), pp.73-92 and Rev.Eric. J. Lott, "India's Religious Resources for a Global Ecotheology" in Bandyopadhyay et.al., (Eds.) India's Environment Crisis and /responses (1987), 172 at p.178.
8. The relevant hymn of Rigveda (English translation) reads:

"I have praised the Queen of Forest
Mother of Wildlife
Redolent of balm sweet - scented
Possessing much food but lacking tilled land".

 A.C. Bose, Call of Vedas (1970), p.209.

who lived in forest led an ideal, pure and pious life⁹ doing no harm to flora or fauna. The rishis were said to be aware of the evil effects of deforestation.¹⁰

The great epics of the Hindus, Mahabharata and Ramayana, also give accounts of dense forests rich in flora and fauna.¹¹

Religion and culture of ancient India are closely linked with protection of flora and fauna. Religious significance assigned to certain species of plants and animals¹² has considerably helped to save their race from extinction.

From time immemorial forest was preserved in their original form in the name of sacred groves due to

9. Damayanti Doongaji, Law of Crime and Punishment in Ancient Hindu Society (1986), p.269.
10. Rishis had warned against deforestation because they thought that this would result in poor rainfall. V.P. Agarwala, Forests in India : Environmental and Production Frontiers (1985), p.27.
11. Khandavaprastha (later Indraprastha) was said to be a forested area with birds and beasts, before the Pandavas entered the place. See C.Rajagopalachari, Mahabharata (English Translation) (1987), p.72. Rama was sent out in exile into the wilderness of Dandaka. See J.Talboys Wheeler, India of the Brahmanic Age, With Reference to The Ramayana Vol.II (1973), p.122. See also Ajit Banerjee, "Indian Forests Through the Ages" in Forest Directorate, Government of West Bengal, West Bengal Forests(1964), 29 at p.37.
12. Infra, nn.13-38.

religious faith of the people.¹³ The tribal communities believe that the concerned forest spirit or deities will get offended if the trees in the sacred groves are cut, the flowers or fruits plucked or the animals harassed or killed. Cutting of plants or even small twigs from these groves is a taboo and the custom is observed vigorously.¹⁴

Sacred groves were also maintained by Hindu families. The belief that the birth stars of persons are associated with particular species of plants,¹⁵ animals¹⁶

13. The sacred groves harbour many plant species of rare occurrence. Hundreds of such groves are present in Western Ghats region of South India. Sacred groves are also kept by the Khasi tribals living in North East parts of India. See for details, V.D.Vartak et.al., "Sacred Groves - A Sanctuary for softy trees and lianas" in Kerala Forest Research Institute (Ed.), Ecodevelopment of Western Ghats (1986), 55 at p.58. See also Shekar Singh, "The Global Environment Debate", Indian Journal of Public Administration Vol.XXXV July-September (1989), p.362.

14. Ibid.

15. Different species of ficus tree, mango tree, jack tree, bamboos, palms, elengi, pear (guava) and rare plants like syzygium jambolum, mimosa catechu, shorea robusta, diospyros embryopteris, and shrychnos nux-vomica are the trees associated with the birth stars of persons. Kerala Jyodisha Parishath, Valiya pan-janjam (Malayalam) 1989-90 (1990), p.11.

16. Horse, elephant, goat, snake, dog, cat, mouse, rat, camel, buffalo, leopard, lion, deer, man-monkey and ox are the animals associated with birth stars.
Ibid.

and birds¹⁷ and their life would prosper if these be protected and worshipped, made our ancestors to plant trees like ficus, elengi, pear and palms in the groves near their houses.¹⁸ Religious significance assigned to plants like ocimum, (thulasi)¹⁹ and to trees like ficus,²⁰ palms and milky trees²¹ also plays an important role in preserving their species. Belief in Serpent God²² has caused preservation of groves and protection of snakes in certain areas.²³

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17. Crow, cock, peacock and crow-pheasant are the birds having association with birth stars of persons.
Ibid.
18. See Malayala Manorama (Kochi) 1991, August 11.
19. Hindu families in India plant thulasi in front of their houses in raised platforms as a symbol of purity and prosperity.
20. Ficus is usually seen near temples and worshipped by devotees.
21. Palms and milky trees are considered to be the abode of evil spirits.
22. Naga or serpent worship dates back to 600 B.C. The Naga was regarded some times as the spirit of a departed ancestor and some times as a guardian of treasures. R.C.Majumdar, et. al., The History and Culture of the Indian People vol.II (1968), pp.471, 472.
23. In Kerala there is a snake temple in Mannarsala in Alappuzha District where serpents are fully protected, worshipped and given offerings.

The custom of totemism²⁴ prevailing in tribal communities helped protecting particular species of plants and animals. In North India, some aboriginal tribes such as the Agariya, Baiswar, Bhuiyar and Dhangar have sections with names derived from plants and animals which members of the sections are forbidden to eat.²⁵ The Oraons and Kharias of Bihar have totemic clans named after jackal, paddy bird, crow, tortoise, sparrow, fish, tiger, monkey and trees like ficus, mahua and paddy.²⁶ The tribes of Central India, Bhil tribes of Bombay and Panta Reddis of Conjeeveram are also having totemic sects which taboo the totems with which they are associated.²⁷ The Ao Naga tribes having a dog clan, taboo the dog as food.²⁸ For another Ao clan, the Wozakumr having the hornbill totem, it is taboo to kill a hornbill bird or even to see a dead one.²⁹ The Mundas of Chotanagpur not only refrained from killing or eating their

24. Tribal communities in ancient India used to associate their clans with the names of plants and animals. Such plant or animal is called the totem of the clan. Members of one totemic clan were supposed to be descended from a common ancestor and no sexual relations between two persons in the same clan were tolerated (exogamy). B.B.Sinha, Society in Tribal India (1982), pp.22, 23.

25. E.A.H.Blunt, The Caste System of Northern India (1969), p.41.

26. The Oraons do not attach great importance to their totem. The Kharias tabooed totem in ancient time. Now the rule is not generally observed. B.B.Sinha op.cit., pp.23 and 28.

27. J.H.Hutton, Castes in India, Its Nature, Function and Origins (1977), pp.11-23.

28. Id., p.255.

29. Id., p.256.

animal totems and burning or cutting or eating their plant totem but also prevented their destruction by members of other castes or tribes in their presence.³⁰

The Hindu Chasa of Orissa regard the injuring of their clan totem as punished by leprosy.³¹ The santals of Bihar believe that to kill a kutis bird may cause attack of goitre and to kill an oriole or uric bird may doom a marriage to failure.³² In tribal areas of Rajabita and Narainpur of Bihar, the killer of a tabooed bird must perform the funeral ceremonies for the dead bird and give a small feast to his kinsmen.³³ The Komatis of Madras believe that if a plant which is a totem is cut or eaten the transgressor will be born as an insect for seven generations.³⁴ A plantain tree is being used as equivalent of a human being in Assam and Oceanica. A plantain tree in many parts of Naga Hills is an euphemism for a slave for decapitation.³⁵

30. B.B. Sinha op.cit., p.26.

31. J.H. Hutton op.cit., pp.255, 256.

32. W.G. Archer, Tribal Law and Justice (1984), p.118.

33. Ibid.

34. K.P. Bahadur, Caste, Tribes and Culture of India Vol. IV Karnataka, Kerala and Tamil Nadu (1978), p.17.

35. J.H. Hutton op.cit., p.257.

The spread of Buddhism³⁶ and Jainism³⁷ had an impact in India in ancient times on protection of flora and fauna. These religions preached non-violence and reverence for all forms of life. Bodhi tree was worshipped and protected by the followers of Buddha.³⁸ A duty was imposed on them to plant trees and look after them until they were safely established.³⁹

Jainism imposed stringent limitations on the way of life.⁴⁰ The followers of Jainism abstained from killing even ants, thus upholding the value of life.

36. Religion founded by Goutama Buddha (567 B.C-487 B.C). See for details, Ramakrishna Mission Institute of Culture, The Cultural Heritage of India (1970), Vol.1 pp.442-517; also Charles Eliot, Hinduism and Buddhism. An Historical Sketch, Vol.1 (1971), pp.185-236 and Christmas Humphreys, Exploring Buddhism (1974), pp.49-86.
37. Religion founded by Vardhamana Mahaveera (599 B.C-527 B.C). See for details R.C.Majumdar op. cit., pp.400, 401. See also V.D.Mahajan, Ancient India (1970), pp.66-71. See also A.Barth, The Religions of India (1969), pp.140-158.
38. Buddha got enlightenment while sitting below a bodhi tree in Gaya. The Buddhists consider bodhi tree as a symbol of Buddha and worship it. R.C.Majumdar, The History and Culture of the Indian people Vol.II (1968), p.474.
39. B.V.Krishnamurthi and Uvs Schoettli, "Environment in India's Religious and Cultural Heritage" in J.Bandyopadhyay et.al., (Eds.), India's Environment Crisis and Responses (1987), 159 at p.162.
40. A.Barth op.cit., pp.140-158.

Christian and Islam religions teach man the duty to use natural resources for his well-being without total destruction.⁴¹

Sikhism also gives due respect to earth and its environment.⁴² It teaches the need to consider earth as temple of law, abode of righteousness to practise truth, to lead a virtuous life and to listen to the voice of conscience.⁴³

41. Christians believe that God created the earth, sky, ocean, trees, wild animals, birds and other living beings and at last man. God sent man to the earth with a condition to lead a righteous life and to use earth's resources for his well-being. When evils multiplied on earth, God decided to end lives by flood but authorised a righteous man to construct an ark and keep a pair of living beings from each race to preserve themselves from extinction. The Creator intended preservation for future and not total destruction. Holy Bible (Old Testament), Genesis 1, 2 and 6. See for English translation, Catholic Biblical Association, The Holy Bible (1966), pp.1-5. Similar incidents are narrated in Holy Quran also. See for English translation, Mohammed Marmaduke Pickthall, The Meaning of Holy Quran (1989), pp.166, 168, 169, 340 and 341.

42. The translated version Guru Nanak's words read as follows:

Thou Thyself art the air, the Guru;
and also water, the father.
And the earth, our mother, too,
whose womb giveth birth to all we need;
And night and day, the two nurses,
in whose lap the world playeth.

Sangat Singh, Japji : The Divine Prayer of Guru Nanak Giving the Quintessence of the Sikh Faith (1987), p.38.

43. Id., p.33.

The Smritis⁴⁴ favour protection of flora and fauna. Manusmriti⁴⁵ imposed a duty on people to make boundaries for their lands with particular species of trees.⁴⁶ Causing of injury to all kinds of trees was punishable with fine in accordance with their usefulness.⁴⁷ A duty was imposed on the king and the kshatriyas to for-bear from hunting.⁴⁸ Killing of animals was made penal in pecuniary terms also.⁴⁹

44. 'Smriti' means what is recollected or remembered. Smritis refer to what is supposed to have been in the memory of sages who were the repositores of divine revelations. Smritis are otherwise called Dharmashastras. Sunderlal. T. Desai (Ed.), Mulla Principles of Hindu Law (1982), pp.4, 13.
45. Of the numerous Smritis, the first and foremost in rank of authority is Manu Smriti. Its probable date of compilation is 200 B.C. Id., pp.20, 21.
46. The trees to be used for marking boundaries were ficus indica, ficus religiosa, butea frondosa, bombax heptaphyllum, valica robusta, palms and milky trees. See for details, Arthur Coke Burnell, Hindu Polity (the ordinances of Manu) (1972), p.218.
47. Id., p.224.
48. Hunting was considered as a practice equally bad as drinking, gambling and indulging in immoral relationships with women. Id., p.154.
49. The fine ranged from 50 to 200 Panas. Id., p.225.

Yajnavalkya Smriti also emphasised man's obligation to protect trees. Cutting of a tree was punishable with a fine of eighty panas whereas cutting of a branch or stem was punishable with a fine of twenty or forty panas respectively.⁵⁰ Punishment was to be doubled if vegetation or tree in sacred places are destroyed.⁵¹

Vishnu Smriti prescribed harsh punishments like mutilation to the person who took away wood, flowers or fruits without permission of the owner.⁵²

Narada Smriti is silent on protection of vegetation but conferred certain privileges on cow, horse and elephant.⁵³

Imperial control over forest

Imperial control over forest in India began in 322 B.C. when the great Mauryan emperor Chandra Gupta Maurya⁵⁴ went on administering the country in accordance with the norms laid down by his scholarly Prime Minister Koutilya in his famous work Arthashastra.

50. Vasudeva Upadyaya, A Study of Hindu Criminology (1978), p.485.

51. Ibid. See also B.V.Krishna Murthy op.cit., p.161.

52. Vasudeva Upadyaya op. cit., p.485.

53. In Judicial proceedings, a charge against a person, relating to a cow, had to be answered immediately. For trespass of elephants and horses no fine was imposed on owner since these animals were of assistance to the king in battle. Julius Jolly, Naradiya Dharmasastra (1981), pp.8 & 79.

54. B.C. 325 to 298.

Under the Koutilyan system of administration, forest was brought under the control and supervision of forest officers⁵⁵ for purposes of industry, study and recreation. Vedic study was conducted in forest areas.⁵⁶ Trees and wild animals were objects of pleasure for the King. The Arthasastra prescribed that the animal park established for the King's recreation was to be adorned with shrubs, bushes and thornless trees with sweet fruits and tamed animals with their nails and teeth removed.⁵⁷ There had to be another park at its border where animals were welcomed as guests and given full protection.⁵⁸

In order to get raw materials for industries a separate category of forest, namely 'produce forest' was maintained.⁵⁹ Kupyadhyaksha, the Director of forest produce had to erect separate factories for each forest

55. Kupyadhyaksha or Director of forest produce, Hastya-dhyaksha or Superintendent of elephants, foresters and forest guards were the officers responsible for the protection of forest. R.P.Kangle, The Koutilya Arthasastra Part II (1972), pp.60, 129 and 174.

56. Arthasastra imposed a duty on the King to grant wilderness to ascetics for conducting vedic studies (Brahmaranyas) and Soma sacrifices (Somaranyas). R.P.Kangle, op. cit., p.59.

57. Ibid.

58. Ibid.

59. R.P. Kangle op. cit., p.129.

produce.⁶⁰ Cutting of trees in produce forest for any other purpose was penalised,⁶¹ with a view to making them available for the construction of buildings, chariots or other necessities.

Elephants were given special protection not for preserving their race from extinction but for making use of them in battles.⁶² Death sentence was to be imposed on any one who killed an elephant.⁶³ The guards of elephant forests were invested with more onerous duties than those exercised by the forest guards in the present system of administration. They had to ascertain the size of herds of elephants moving in the forest, maintain a record of every elephant moving in a herd or alone and catch elephants fit for purposes of battle.⁶⁴

Consideration of revenue was the guiding factor in the management of forest under the Koutilyan system of

60. Forest produce included hard wood, bamboos, creepers, fiber plants, materials for ropes, large leaves, flowers of saffron, bulbous roots, fruits and medicinal plant products, serpents, insects, skin, bones, teeth, horns, hooves and tails of lizard, lion, leopard, bear, tiger, elephant, buffalo, rhinoceros bison and also other animals like deer, beasts and birds. R.P. Kangle op. cit., p.130.

61. Id., p.129.

62. Id., p.60.

63. Ibid.

64. Ibid.

administration. However, fine was imposed for cutting or destruction of prominent trees, trees in city parks that bear flowers, fruits or provide shade, trees at the boundaries in sanctuaries and trees in royal parks.⁶⁵ The great Mouryan emperor Asoka⁶⁶ was interested in having shade trees and fruit bearing trees on the sides of highways.⁶⁷ He also ordained that all living creatures must be respected.⁶⁸

During the reign of the Guptas⁶⁹ forest was made accessible and rajamargas (roads) were constructed through forest for transportation of marketable commodities.⁷⁰ Fruit trees were planted for forestry and domestic purposes. A duty was imposed on the king to plant trees bearing good flowers near the village and wild trees in the forest.⁷¹

65. Id., pp.249, 250.

66. B.C. 273 to 236.

67. Pillar edict VII of Asoka reveals this fact. See for translated text, Vincent A. Smith, Asoka, the Buddhist Emperor of India (1970), p.210.

68. Information contained in Rock edict II. See for translated text, id., p.150. See also K.Prabhakaran Unni "Wild Life of Kerala" Keralaranyam (Malayalam) December, (1963), 49 at p.50.

69. A.D. 320-455.

70. Benoy Kumar Sarkar, The Sukraniti (1914), pp.34, 35.

71. Id., p.165.

The Muslim invasion in India⁷² adversely affected the condition of Indian forest. The Muslims considered forest as a free gift of nature and a property of every one.⁷³ They resorted to hunting in forest and denuded forest to yield pasture for their extensive herds.⁷⁴ During the period of Mughal rule⁷⁵ in India significant reforms were made in the pattern of land use. The great Mughal emperor Akbar abolished the system of jagirs,⁷⁶ converted such assignments into crown's lands and collected the revenues from those lands directly.⁷⁷ Forest was a valuable source of revenue for the State.⁷⁸ Trees

72. The earliest muslim invaders who came to India were the Arabs who conquered Sind in A.D.712. Iswari Prasad, A short History of Muslim Rule in India (1970), pp.29, 30. See also V.D.Mahajan, Muslim Rule in India (1970), p.17.

73. B. Ribbentrop, Forestry in British India (1900), p.36.

74. Ibid.

75. A.D.1526 to 1707.

76. The system of granting lands or assignment of Government revenue from land as consideration for service done. Akbar paid salaries to king's servants instead of jagirs. Iswari Prasad, A Short History of Muslim Rule in India (1970), p.300.

77. V.D. Mahajan, Mughal Rule in India (1972), p.121.

78. A.L. Srivasthava, Akbar, the Great : Evolution of Administration 1556-1605 A.D. Vol.II (1973), p.155.

like sal, teak and sisham were widely used for making furniture, boats and buildings. No effort was made to regulate exploitation of forest on scientific lines. The modern methods of conservation were not known at that time.⁷⁹ However, Akbar showed much enthusiasm in planting trees on the sides of roads to give shade to travellers and to add beauty to the landscape.⁸⁰

The great Maratha leader Shivaji⁸¹ also encouraged gardening and tree planting but permitted clearing of lands for cultivation and killing of wild animals that damaged the crops.⁸²

Forest in the British Period

Revenue considerations were the guiding factors for the British, for imposing control over the forests in India. In the early years of British rule in India, the colonial rulers did not give much regard to the forest wealth of our country. But this attitude changed with the end of the eighteenth century when the shortage of oak trees was increasingly felt in England. Large quantities of teak from India were used for the British Admiralty fleet.⁸³

79. Ibid.

80. Forest Research Institute, Dehradun, One hundred years of Indian forestry 1861-1961 (Souvenir) Vol.1 (1961), p.72.

81. Shivaji's period dates back to A.D.1627-1680.

82. R.C.Majumdar et.al., (Ed.), The History and Culture of Indian People Vol.7 (1974), p.251.

83. V.P. Agarwala, Forests in India: Environmental and Production Frontiers (1985) p.28.

In 1800, a commission was appointed by the East India Company to inquire into the internal circumstances of Malabar and to make regulations regarding felling of trees.⁸⁴ In the same year the commission issued orders prohibiting felling of teak below 21 inches in girth.⁸⁵ In 1805, a forest committee was nominated by the Bombay Government to inquire into the capacity of Malabar forests to supply teak to the king's navy; the committee reported that the more accessible forest had been cut out and it could gradually be built up if protection was afforded.⁸⁶ Based on this report a general proclamation declaring royalty rights over teak trees in India in favour of the East India Company was issued and unauthorised felling of teak was prohibited.⁸⁷

In 1806, Captain Watson was appointed the Conservator of Forest for British India. His duties were to preserve and improve the production of teak and other

84. The Malabar forests were supposed to contain excellent teak timber and this attracted the notice of the Bombay Government to which the province of Malabar was subject to for some years after its acquisition. E.P.Stebbing, The Forest of India Vol.1 (1923), pp.63, 68.

85. Id., p.63. See also G.S.Padhi, Forestry in India : A Critical Study (1982), p.37 and Forest Research Institute, Dehradun, One hundred years of Indian Forestry 1861-1961 Vol.I (1961), pp.72, 73.

86. Ibid.

87. V.P.Agarwala op. cit., p.29.

timber suitable for ship building.⁸⁸ In 1807 the East India Company issued a proclamation asserting sovereignty over the forests of India and forbidding felling of timber by private individuals.⁸⁹ This proclamation enabled the Conservator to establish a timber monopoly throughout Malabar and Travancore. His acts were strongly opposed by proprietors of land and local authorities and accordingly the post of Conservator was abolished.⁹⁰

In 1842 the Madras Government gave orders for raising plantations of teak and the famous teak plantations of Nilambur were planted at the initiation of Mr. Conolly, the then Collector of Malabar.⁹¹

Forest was recognised as a main subject in the administration of the country only in the mid nineteenth century. In 1855, Lord Delhousie, the then Governor General had promulgated for the first time an outline of forest conservancy for the whole of India, declaring monopoly rights over timber standing on State forest.⁹²

88. E.P. Stebbing op. cit., p.64.

89. Dietrich Brandis, Indian Forestry (1897), p.19.

90. Id., pp.19-21.

91. E.P. Stebbing op. cit., p.65.

92. Armin Rosencranz et. al., Environmental Law and Policy in India, Cases, Materials and Statutes (1991), p.34. See also V.P. Agarwala op.cit., p.30.

But that policy was not implemented because of the confusion created by the 1857 struggle for independence.⁹³

The tremendous impetus given to the construction of railway in the mid nineteenth century caused heavy demands of wood for the construction of railway sleepers.⁹⁴ Large quantities of timber were also supplied to the navy, army and public works departments for construction purposes. So during the period from 1858 to 1864 importance was given to raising of plantations on an increasing scale all over India.⁹⁵ During this period exotic tree species like accasia and eucalyptus were largely introduced in Nilgiris in Madras.⁹⁶

Early legislative measures

In 1864 a separate Forest Department was established in Calcutta. For bringing forest under proper management,

93. The strong protest of the Indians against the British rule had led to the famous Sepoy Mutiny of 1857. See Tarachand, History of Freedom Movement in India Vol.II (1967), pp.97-107. See also Vinayak Damodar Savarkar, The Indian War of Independence 1857 (1970), pp.13-24.

94. The first railway line in India - from Bombay to Thana - was opened for traffic in 1854 at the initiation of Lord Dalhousie, the then Governor-General of Bombay. The growth of railways was tremendous between 1859 and 1869. During this period the length of railway line open for traffic had been increased from 432 miles in 1859 to 5,015 miles in 1869. Ramakrishna Mukherjee, The Rise and Fall of The East India Company (1973), p.417.

95. Forest Research institute, Dehradun, One hundred years of Indian Forestry 1861-1961 (Souvenir) Vol.I (1961), p.74.

96. G.S.Padhy, Forestry in India : A critical study (1982), p.38.

the need for a separate enactment was felt. Accordingly, the Government Forest Act 1865⁹⁷ was enacted. This Act was only an enabling one and it empowered the local governments to make rules for the preservation of flora, forest produce and streams within government forests and to prescribe punishments for infringement of those rules.⁹⁸

The Government Forest Act 1865 was later repealed by the Indian Forest Act 1878⁹⁹ which made the law relating to forest more comprehensive. The 1878 Act for the first time divided forests into three categories, reserved forests, protected forests and village forests. Governmental control was absolute in reserved forests. It could settle, transfer or commute the rights of people in reserved forest.¹⁰⁰ In protected forest, governmental control was limited.¹⁰¹ Village forests were forests

97. Act No.7 of 1865. See for text of the Act, George Smoult Fagan et. al., Unrepealed and Unexpired Legislative Acts of the Governor General of India in Council from 1862 to 1865 (1865), pp.677-684.

98. The maximum fine was Rs.500/- Id., S.XII

99. Act No.7 of 1878.

100. Indian Forest Act 1878, S.19. For the text of the Act, see Government of India, Legislative Department, The Unrepealed General Acts of the Governor-General in Council Vol.II (1909), pp.577-604.

101. The State Government by notification in the official gazette could prohibit certain activities in protected forest. Unless so prohibited any activity was permissible in protected forest. Id., Ss.28,29.

assigned to village communities for utilising forest produce for domestic purposes.¹⁰² By establishing governmental control over forest and its produce the British Government tried to earn as much of revenue as possible from forest.¹⁰³

When the Indian Forest Act 1878 was in force in certain territories,¹⁰⁴ the Madras Presidency sought to legislate locally by enacting the Madras Forest Act 1882.¹⁰⁵ Since Malabar was part of the Madras Presidency, the Madras Forest Act 1882 was in force in Malabar area. In native States like Travancore and Cochin, laws passed by

102. Id., s.27.

103. The total revenue earned by the British Government in 1898 from Indian forests was £12,39,912. William Digby, Prosperous British India : A revelation from official records (1969), p.107.

104. The Indian Forest Act 1878 was applicable in the territories respectively administered by the Governor General of Bombay in Council, the Lieutenant Governors of Lower Province, the North Western Province and Punjab (Except the district of Hazara) and the provinces administered by the Chief Commissioners of Oudh, the Central Province and Assam. (See, Indian Forest Act 1878, S.1) For the text of the Act see, Government of India, Legislative Department, The Unrepealed General Acts 1868-78 Vol. 2 (1909), p.577.

105. The Governor of a Presidency could make laws and regulations for the peace and good government of the Presidency. (Indian Councils Act 1861, S.42). See for text of the Act, D.D.Basu, Constitutional Documents Vol.1 (1969), p.48.

106. Madras Act 5 of 1882.

native rulers even before the enactment of the Government Forest Act 1865¹⁰⁷ continued to be in force.¹⁰⁸

109

In 1894 the Government of India issued a Circular stating its policy of preservation and protection of forest. The policy recognised four categories of forest - forest which afforded a supply of valuable timber for

107. See supra, nn.97, 98.

108. Regulation VI of 1010 (M.E.) passed by the Maharaja of Travancore in 1835 made an offence the removal and use of Government royalties like teak unauthorisedly. Many proclamations, notifications and circulars on forest were also issued by the Maharaja's Government. Later, the Travancore regulation II of 1068 was framed on the lines of the Madras Forest Act 1882, to consolidate and amend the law relating to forest and to protect forest from wanton destruction. See for text N.Krishnaswamy Aiyar et.al., Regulations and Proclamations of Travancore Vol.1, 1010-1070 M.E (1927), pp.637-762. In Cochin State, Cochin Regulation III of 1080 consolidated the law relating to forest in 1905. See for the text of the regulation, The Unrepealed Regulations of Cochin State Vol.2, (1911), pp.418-432. Later, the Travancore and Cochin States were merged to form the new Travancore-Cochin State and the Travancore-Cochin Forest Act 1951 (Act 3 of 1952) was enacted for the newly formed State. See for text of the Act, Law Department, Government Secretariat, The Acts and Ordinances of Travancore-Cochin (1952), pp.44-78. With the reorganisation of States in 1956, the Travancore, Cochin and Malabar areas were united to form the State of Kerala and the Kerala Forest Act 1961 was enacted to unify the law relating to forest throughout the State.

109. Circular No.22-F dated 19th October, 1894. See for text, Royal Commission on Agriculture in India Report (1928), Appendix V.

commercial purposes,¹¹⁰ forest the preservation of which was essential on climatic or physical grounds,¹¹¹ minor forest¹¹² and pasture land. Protection afforded to valuable timber yielding forest was on revenue consideration. In order to prevent the devastating action of hill torrents, vegetation on the hill slopes was to be protected.

Collection of fuel and forest produce was to be controlled by the Government in order to prevent over exploitation of forest and to avoid clashes between the people in the use of forest resources. The Government's forest policy was limited to achieve these objects.

The Devolution Act of 1920¹¹³ slightly enhanced the powers of the local Government over the subject forest.¹¹⁴ The Devolution Rules framed in the same

110. Forest Policy 1894, para 5.

111. This class consisted of forests situated on hill slopes. Id., para 4.

112. This class of forest included those tracts which produce only the inferior sorts of timber or the smaller growths of the better sorts. Id., para 9.

113. Act No.38 of 1920.

114. The Devolution Act of 1920 (Act 38 of 1920) was passed by the British Government to relax the control of the Governor General in Council over Local Governments and to transfer certain powers to such Governments. The Act removed the requirement of sanction from the Governor General in Council in order to extend the provisions of the Indian Forest Act 1878 to any territories by the local Government. No such sanction was also required for levying duty on timber by the local Government. Indian Forest Act 1878, S.1 and S.39 read with Devolution Act 1920, S.2 & schedule 1. See for text of the seventh Act 1920, Government of India, Legislative department, The Unrepealed General Acts Vol. IX 1919-1923 (1924), pp.103 and 108.

year under the Government of India Act 1919, gave legislative power over the subject 'forest' to the provinces.¹¹⁵ However, that power was not an absolute one. Provincial legislature could make law on forests including preservation of game, buildings and works executed by the Forest Department, whereas the Central legislature retained the legislative powers as regards deforestation of reserved forests.¹¹⁶ So the Indian Forest Act 1878 continued in force in those territories in which it was in application.¹¹⁷

In 1926 the Royal Commission recommended the utilisation of forest for permanent cultivation and for the construction of irrigation works.¹¹⁸ The object of the

115. The Government of India Act 1919 which gave the provinces more legislative powers provided for the framing of rules for the devolution of authority between the Centre and the Provinces. (Government of India Act 1919, S.45-A (1) (a) and (b). See for text of the Act. D.D. Basu, Constitutional Documents Vol.1 (1965), p.87. The Devolution Rules framed in 1920 divided legislative powers between Centre and the provinces, by incorporating two lists in the 1st schedule of the Rules. The Provincial list, entry 14 read as follows:

"Forests including preservation of game therein and buildings and works executed by the Forest Department; subject to legislation by the Indian Legislature as regards disforestation of reserved forests". See for text, V.D. Sebastian, Indian Federalism : The Legislative Conflicts (1980), p.267.

116. Ibid.

117. Supra, n. 104.

118. Royal Commission on Agriculture in India Report (1928), Reprint (1979), pp.259,260 & 266.

Britishers was to improve the economy through maximum exploitation of forests. The very same policy is reflected in the Indian Forest Act 1927.¹¹⁹ The Indian Forest Act 1927 did not make any significant change in the law relating to forest contained in the Indian Forest Act 1878. The legislative intent was only to shorten the language of the Act by taking advantage of the General Clauses Act of 1897,¹²⁰ to alter the ambiguous of Section 42¹²¹ of the 1878 Act and to omit Assam

119. Act No.16 of 1927. Originally the Indian Forest Act 1927 extended to Bombay, West Bengal, The United Provinces, Bihar, East Punjab, the Central Provinces and Orissa. See Indian Forest Act 1927, S.2 (2). For text of the enactment, see Government of India, Legislative Department, The Unrepealed Central Acts Vol. VIII (1951), p.366. The Act was also made applicable to those provinces which extended the Act to the whole or any specified part of the province by official notification in the Gazette. Indian Forest Act 1927, S.1 (3). Accordingly the Act had been extended to Berar (partially) Province of Coorg, Delhi Province, Ajmir-Merwara, Kondmala District, Angul District, Dadra and Nagar Haveli, Pondicherry, Goa, Daman and Diu, Manipur, Tripura and Vindhya Pradesh. It was also extended to the States of Maharashtra, Madhya Pradesh, Orissa, Punjab and Gujarat. See Rakesh Bagga, (Ed.), Beotras Law of Forests (1989), p.2.

120. Act No.10 of 1897

121. Forest Act 1878, S.42, read as follows:

"The local Government may by such rules prescribe as penalties for the infringement thereof, imprisonment for a term which may extend to six months or fine which may extend to five hundred rupees or both.

Double penalties may be inflicted in cases where the offence is committed after sunset and before sun-rise, or after preparation for resistance to lawful authority, or if the offender has been convicted of a like offence".

from the purview of the forest legislation.¹²²

Forest protection after independence

After independence, the need for setting up a Central Forest Organisation to suit the altered condition was voiced in September, 1948 at a conference of State Ministers in charge of forests.¹²³ In pursuance of the recommendations of the conference, the Central Board of Forestry was constituted in June 1950 to provide guidance to the Government in the formulation of policy and programmes in the field of forestry.¹²⁴

The above paragraph 2 was modified by the 1927 Act as follows:

S.42 (1) . . .

(2) Such rules may provide that penalties which are double of those mentioned in sub-section (1) may be inflicted in cases where the offence is committed after sunset and before sunrise or after preparation for resistance to lawful authority, or where the offender has been previously convicted of a like offence.

122. Since the Assam Regulation VII of 1891 repealed the effect of the Indian Forest Act 1878 in Assam, the latter Act omitted Assam from its extent clause.
123. Government of India, Ministry of Agriculture and Irrigation, Report of the National Commission on Agriculture, Part IX Forestry (1976), p.19.
124. The Central Board of Forestry consists of 36 members. The Union Minister of Agriculture is the Chairman of the Board and the Union Minister of State (in-charge of Forestry) the Vice Chairman and Forest Ministers of all States and Chief Commissioners of Union Territories the members. Id., pp.42, 43.

With the adoption of the Constitution of India in 1950, full legislative competence over the subject 'forest' was vested in the State.¹²⁵ Article 372 of the Constitution provided that the existing law will continue to be in force unless altered, repealed or amended by competent legislature.¹²⁶ Hence in some States the Indian Forest Act 1927¹²⁷ and in some others the respective State legislation¹²⁸ are in force.

125. The Constitution of India 1950 divided legislative powers between the Centre and the States by incorporating three lists in its 7th schedule viz., Union List, State List and Concurrent List. The subject forest was included in entry 19 of State List, giving exclusive legislative competence over the subject forest to the States.

126. Constitution of India Article 372 (1). The relevant portion reads:

" . . . all laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority".

127. The Indian Forest Act 1927 is now in force in the States, Uttar Pradesh, Maharashtra, Madhya Pradesh, Gujarat, Bihar, Punjab, West Bengal, Haryana, Himachal Pradesh, Manipur, Meghalaya, Tripura and Goa, the territories of Delhi, Chandigarh, Dadra and Nagar Haveli, Pondicherry, Daman and Diu.

128. Now the States of Kerala, Tamil Nadu, Karnataka, Andhra Pradesh, Nagaland, Orissa, Rajasthan, Assam, Jammu and Kashmir have their own legislation relating to forest. See for details infra, ch.4, n.25.

With a view to improving the state of forest, the Government of India decided to earmark funds in the Five Year Plans to be utilised for specific forest development programmes.¹²⁹ During the first Five Year Plan period,¹³⁰ programmes were organised for strengthening the forest administration, renovation of over exploited forest areas, afforestation in erodable localities and development of village plantations to improve the fuel supply.¹³¹ A new forest policy¹³² was also formulated in 1952 revising the old policy of 1894.¹³³

The 1952 forest policy aimed at maintaining one third of the total land area of the country under forest cover. Emphasis was given to the regulation of exploitation of forest,¹³⁴ protection of existing forest¹³⁵ and

129. A sum of Rs.9.5 crores was spent during the first five year plan period and about 19.3 crores during the second five year plan period for the development of forestry. Government of India, Planning Commission Third Five Year Plan (1961), p.363.

130. The period from 1951 to 1956.

131. Government of India, Planning Commission, The First Five Year Plan (1952), p.294.

132. See for text, Rakesh Bagga (Ed.), Beotras Law of Forests (1989), pp.3-12.

133. See supra, n.109.

134. The 1952 Forest Policy statement classified forests into protection forests, national forests, village forests and tree lands. National forests containing valuable timber indispensable for defence, communication and vital industries are to be managed on scientific and business lines for maintaining a sustained supply of wood. See Forest Policy 1952, para 13.

135. In order to protect existing forest from deterioration the 1952 policy opposed the practice of using forest land for agricultural purposes. Id., para 8.

extension of trees lands.¹³⁶

The States adopted the new forest policy and started programmes on afforestation,¹³⁷ rehabilitation planting and commercial plantations. More importance, however, was given to industrial plantations.¹³⁸ This is a pointer towards the revenue oriented policy of the Government towards forest.

The Second Five Year Plan¹³⁹ also gave more importance for raising plantations for timber, matchwood, wattle and blue-gum and for more intensive use of forest lands and fuller utilisation of available forest resources.¹⁴⁰

136. The policy envisaged a concerted effort on the part of the Government and other agencies towards planned afforestation with a view to enlarging tree lands. Id., para 16.

137. It is reported that during the first plan period an area of 30,350 hectares (75,000 acres) was afforested. Forest Research Institute, Dehradun op. cit., p.130.

138. New plantations of matchwood extending over an area of about 55,000 acres and of industrial timber over an area of about 3,30,000 acres were undertaken during the first and second five year plan periods. Government of India, Planning Commission, Third Five Year Plan (1961), p.363.

139. The period from 1956 to 1961.

140. Government of India, Planning Commission, Second Five Year Plan, A draft outline (1956), p.98.

The immediate objective of the Third Five Year Plan¹⁴¹ was to increase the output through better techniques of timber extraction, to develop forest communications and to bring about better utilisation through increased use of preservation and seasoning processes.¹⁴²

The Fourth Five Year Plan¹⁴³ also placed thrust on increased production of industrial wood by making schemes for the plantation of quick growing species and economic species like teak and for rehabilitation of degraded forests.¹⁴⁴ During this plan period significant events took place in the international sphere. The United Nations Conference on Human Environment held in Stockholm in 1972 aroused an environmental consciousness all over the world.¹⁴⁵ The conference had its impacts in India also.¹⁴⁶ In 1972, the Central Government established a National Committee on Environment Planning and Co-ordination (NCEPC) to act as a high level advisory

141. The period from 1961-1966.

142. Government of India, Planning Commission, Third Five Year Plan (1961), p.364.

143. The period from 1969-1974. There was an interwell of three years between the Third and Fourth Five Year Plan period. See for details, S.K.Ray, Indian Economy (1987), p.404.

144. Government of India, Planning Commission, Fourth Five Year Plan, A draft outline (1966), p.205.

145. See for details infra, ch.3, nn. 13 - 18.

146. See for details infra, ch.3, nn. 30 - 74.

body to the Government.¹⁴⁷

The Fifth Five Year Plan¹⁴⁸ sought to integrate forest development with the land utilisation plan and to develop communications in forest so as to facilitate optimal exploitation of the available forest wealth.¹⁴⁹

The Sixth Plan,¹⁵⁰ however, struck a different note. The importance of forest in ecodevelopment was recognised. Afforestation programmes were undertaken on a large scale in collaboration with Universities, educational institutions and voluntary organisations.¹⁵¹ During this Plan period the Government of India constituted a high powered committee to review the then existing legislative and administrative measures for the protection of environment.¹⁵²

147. See Dilbir Kaur, "Some Aspects of Environment Management" in R.K.Sapru, "Environment Management in India" Vol.II (1987),p.224, and K.K.Puri, "Environmental Pollution : Policies and Programme" at p.286.

148. The period from 1974-1979.

149. Government of India, Planning Commission, Fifth Five Year Plan 1974-79 (1976), p.10.

150. The period from 1980-1985.

151. Ecodevelopment camps were organised in collaboration with the National Service Scheme of the Ministry of education. Thousands of students were involved in this programme of afforestation. Similar activities are undertaken by Universities and voluntary organisations. Government of India, Planning Commission, Sixth Five Year Plan 1980-85, Mid-term Appraisal (1983), p.120.

152. The committee chaired by Shri.N.D.Tiwari submitted its report in 1980. See for details Government of India, Department of Science and Technology, Report of the Committee for Recommending Legislative Measures and Administrative Machinery for Ensuring Environmental Protection (1980), pp.1-35.

On the recommendation of the committee,¹⁵³ the Government set up a separate Department of Environment with effect from 1st November, 1980.¹⁵⁴ This later became the new integrated Department of Environment, Forests and Wild life in the Ministry of Environment and Forest in 1985.¹⁵⁵

Another significant step taken during the sixth plan period for the protection of forest was the passing of the Forest (Conservation) Act 1980.¹⁵⁶ The Act imposed a mandatory duty on the State Governments and their agencies to seek Central approval before using forest lands for non-forest purpose.¹⁵⁷ A new Forest bill was introduced in the Lok Sabha in 1980, but it was not passed due to opposition from non-governmental organisations and environmentalists.¹⁵⁸

153. Id., p.27.

154. Dilbir Kaur, op. cit., p.224.

155. Harbans Pathak, "Environment Management in India" in R.K.Sapru (Ed.), Environment Management in India, Vol.1 (1987),p.259.

156. Act No.69 of 1980. See for text Appendix I

157. Id., S.2.

158. See for details, P.Leelakrishnan, "Law and Sustainable Development in India", Journal of Energy and Natural Resources Law Vol.9 (1991), 193 at p.198. See also Sharad Kulkarni, "The Forest Policy and the Forest Bill : A critic and suggestions for change" in Walter Fernandes and Sharad Kulkarni (Eds.), Towards a New Forest Policy, Peoples Rights and Environmental Needs (1986), p.92.

The Seventh Five Year Plan aimed at bringing one third of the geographical area of the country under tree cover by the turn of the century.¹⁵⁹ This plan adopted the programmes of conservation forestry,¹⁶⁰ social forestry¹⁶¹ and production forestry.¹⁶² Programmes¹⁶³ were also planned for associating tribal people in forestry activities.¹⁶⁴ Emphasis was also given for forest research and education, conservation of wild life and people's participation in forestry programmes.¹⁶⁵ In order to

159. Government of India, Planning Commission, Seventh Five Year Plan 1985-90 Vol.2 (1985), p.38.

160. A programme of conserving fragile ecosystem and biological diversity. Id., p.39.

161. A programme of planting trees for increasing vegetative cover and for meeting the fuel needs of the people. See for details infra, ch.8

162. The programme of planting trees for meeting the needs of the people and forest based industries. Government of India, Planning Commission, Seventh Five Year Plan 1985-90, Vl.2, (1985), p.39.

163. Tribal people in forest are encouraged to participate in forest development programmes such as planting of seedlings of trees and medicinal plants around their dwelling places. They are also engaged in collection of forest produce. Tribal co-operative societies are being set up in different places for selling the forest produce collected by them at fair price. See for details infra, ch.9 nn. 70-73.

164. Government of India, Planning Commission, Seventh Five Year Plan 1985-90, Vol.2 (1985), p.40.

165. See for details, Government of India, Planning Commission, Seventh Five Year Plan 1985-90 Mid-term Appraisal, (1988), p.224.

develop the waste lands of the country by afforestation programmes, a National Wastelands Development Board (NWDB) was set up in 1985, as a nodal, co-ordinating, monitoring and policy making body at the apex level.¹⁶⁶ For promoting forest research and education, the Council of Forest Research and Education was reconstituted¹⁶⁷ to form the Indian Council of Forestry Research and Education with independent powers and resources. By 1988 degree courses in forestry were instituted in fourteen Agricultural Universities in India. To impart training to the forestry personnel, Indira Gandhi National Forest Academy with an autonomous status was set up in Dehradun.¹⁶⁸ With a view to conserve forest, a National Forest Policy was issued by the Government of India.¹⁶⁹ The policy declares the

166. Ibid.

167. The Council of Forest Research and Education was promoting forestry research and education in India. However, it was functioning as an advisory committee. So the Seventh Planning Commission proposed that the council should be organised on the lines somewhat similar to the organisation of the Indian Council of Agricultural Research, with adequate funds at its disposal and autonomy in its functioning. Government of India, Planning Commission, Seventh Five Year Plan 1985-90, Vol.2 (1985), p.42.

168. Government of India, Planning Commission, Seventh Five Year Plan 1985-90 Mid-term Appraisal (1988), p.223.

169. Ministry of Environment, Forest and Wildlife, Resolution No.3-1/86-FP. dated 7th December 1988, National Forest Policy 1988. See for text, Appendix II.

national goal to have a minimum one third of the land area under forest or tree cover.¹⁷⁰

The Eighth Five Year Plan¹⁷¹ favours development without further destruction of forest. The eighth plan promotes development of wasteland for agriculture rather than clearing of forest for crop production.¹⁷²

The foregoing discussion makes it clear that the concern for the protection of forest and the environment is a development of recent origin. Utilisation of natural resources for human subsistence and welfare without total destruction was the accepted policy in ancient India. The imperial control brought out a revenue policy towards forest, by creating Government monopoly rights over forest. Law was also framed to protect the monopoly rights over forest. The revenue policy towards forest was perpetuated without hindrance in post independent India.

170. Id., para 4.1

171. 1992-1997.

172. Intensive agriculture and diversification of agriculture to horticulture and sericulture are other strategies to promote agriculture. "Approach to the Eighth Plan" Yojana, Vol.36 April 15, (1992), p.17. See also C.kangarajan, "Contours of Eighth Plan" in Yojana Vol.36, May 31, (1992), 4 at p.8 and G.Thimmaiah, "Approach to 8th Plan" in Purshotam D. Vashist (Ed.), Planning India's 8th Plan (1991), 3 at p.9.

However, from the year 1972 onwards, earnest efforts have been made by the Government of India in protecting the environment and in spreading the area of land under forest cover. These efforts are the result of an environmental consciousness roused by developments at international level.

PART II

RISE OF ENVIRONMENTAL CONSCIOUSNESS

CHAPTER 3

INTERNATIONAL EFFORTS TO CONSERVE NATURE AND THEIR IMPACTS IN INDIA

Protection of nature and of the environment was not a subject of serious international concern till the end of the 19th century. Early international efforts focussed upon resource conservation largely for economic and strategic reasons.¹ Exclusive sovereignty over natural resources was asserted.

Gradually nations began to merge their sovereignty by forming international association in order to safeguard forest lands, fish and marine mammals from extinction.² Early in the twentieth century international conferences were convened by voluntary and non-governmental organisations for the protection of nature.³ After the second

1. Lynthon Keith Caldwell, International Environmental Policy, Emergence and Dimensions (1991), p.22.

2. Ibid.

3. Among them the most important were the International Conference for the Protection of Nature held in Paris in 1909 and 1931, the International Congress on the Protection of Flora, Fauna and Natural sites and Monuments held in Paris in 1923 and the International Congress for the Study and Protection of Birds held in Geneva in 1927. A Consultative Commission for the International Protection of Nature was established in Berne in 1913 with signatories from seventeen European countries. However, the activation of the Commission was prevented by the first world war. Id., p.41. See also Digvijay Sinh, The Eco-vote (1985), p.79.

world war the United Nations Educational Scientific and Cultural Organisation (UNESCO)⁴ and the International Union for Conservation of Nature and Natural Resources (IUCN)⁵ took active part in conservation activities, by convening conferences at international level. The famous Biosphere Conference of 1968⁶ led to the formation of the Man and Biosphere Programme⁷ of the UNESCO. The Ramsar Convention of 1971⁸ provided for the conservation

4. A specialised agency of the United Nations Organisation formally established on November 4, 1946. See for details, Stephen S. Goodspeed, The Nature and Function of International Organisation (1967), p.445.
5. An organisation established in 1948 with the co-operation of the governments of Netherlands, Belgium and Luxemburg. See Digvijay Sinh op.cit., pp.80, 85.
6. The "Inter-Governmental Conference of Experts on the Scientific Basis for Rational Use and Conservation of Biosphere" was held in Paris in 1968. It was sponsored by the IUCN, UNESCO, World Wild Life Fund (WWF), International Committee for Bird Preservation (ICBP) and the U.S. Government. 64 countries and 27 organisations participated in the conference. Id., p.82.
7. A programme to conserve representative samples of ecosystem. Under the man and biosphere programme, biosphere reserves were established in different countries. Infra, ch.10 nn. 123-126.
8. The conference on the conservation of wet lands and water fowl was held in Ramsar in Iran. It was convened by the Government of Iran, sponsored by the International Wild fowl Research Bureau and co-sponsored by the F.A.O., UNESCO, International Biological Programme, IUCN, the International Council for Bird Preservation and the World Wild Life Fund. M.A.M, "Ramsar : The Painless Convention". Environmental Policy and Law, vol.1 (1975), p.131.

of wet lands of international importance and water fowls. Later efforts to conserve natural resources and the environment culminated in the United Nations Conference on Human Environment held in Stockholm, Sweden, in 1972.

The Stockholm Conference, for the first time, gave political recognition to the concept of collective responsibility of nations for maintaining the quality of human environment and protection of the earth as a whole.⁹ The conference proclaimed that the natural resources of the earth including air, water, land, flora and fauna, especially representative samples of natural ecosystem, must be safeguarded for the benefit of present and future generations through careful planning or management.¹⁰ The member states were directed to maintain, restore or improve the capacity of the earth to produce vital renewable resources.¹¹ The conference reminded the special responsibility of man to safeguard and wisely manage the forest,

9. The conference adopted twenty six principles for maintaining the quality of environment. These principles covered six main subjects including planning and management of human settlements, environmental aspects of natural resource management, identification and control of pollutants and nuisances of broad international significance, educational, informational, social and cultural aspects of environmental issues, development and environment and international organisational implications of action proposals. See for text, the British Institute of International and Comparative Law, Selected Documents on International Environmental Law (1975), pp.3-5.

10. Stockholm Declaration 1972, Principle 2.

11. Id., Principle 3.

wild life and to use non-renewable resources in a sustainable manner.¹²

The Stockholm Conference differed from other international conferences in many ways. The conference introduced a new environmental element into the conventional interpretation of development. The conference, from its preparatory stage onwards, was action oriented, intended to lead to positive results than mere statement of principles.¹³ Further, the conference gained popular interest and support and succeeded in forming an international consensus on the problems of human environment.

After the Stockholm Conference, a special body called United Nations Environment Programme (UNEP) was constituted within the U. N. Secretariate to stimulate, assist and co-ordinate the international efforts. The United Nations Environment Programme provides an integrative mechanism through which a large number of inter-governmental, non-governmental, national and regional efforts to

12. Id., Principles 4, 5.

13. Stockholm conference adopted 109 recommendations seeking co-operation among the organs of the United Nations and the Governments of member states, inter-governmental agencies and non-governmental organisations for taking action at the national and international level for improving the quality of human environment. These recommendations formed the action plan of the conference. See for text, British Institute of International and Comparative Law, op. cit., pp.6-27.

protect the environment can be reinforced and interrelated.¹⁴
 The UNEP Secretariate was to serve as a centre for environment related activities within the United Nations systems. A number of regional inter-governmental organisations also came up supporting environmental programmes.¹⁵

Some of the proposals raised in Stockholm Conference were converted into conventions at the initiation of the UNESCO and the IUCN. The convention for the Protection of World Cultural and Natural Heritage 1972,¹⁶

14. Lynton Keith Caldwell op. cit., p.56.

15. Council for Europe, The European Economic Community (EEC) the Organisation of American States (OAS), the Organisation of African Unity (OAU), the South Pacific Commission, the Scientific Committee for Antarctic Research and the International Commission for North-West Atlantic Fisheries are some of them. See Digvijay Sinh op.cit., pp.82, 83.

16. The draft convention was prepared by the IUCN in 1971. It was negotiated under the auspices of UNESCO. The object of the convention was to enhance world wide understanding and appreciation of conservation of cultural and natural properties which possess outstanding universal value for mankind. An inter-governmental committee for the protection of the World Cultural and Natural Heritage was established under article 8 of the convention for implementing the convention at the international level. U.S. Government Printing Office, Code of Federal Regulations Vol.36 Parts 1 to 199 (1982), pp.341, 342. See also Paolo-Contini and Peter H. Sand, "Methods to expedite Environment Protection : International Eco Standards" in American Journal of International Law Vol.66 (1972), p.37.

Convention on International Trade in Endangered Species of wild fauna and flora (CITES) 1973,¹⁷ and the Convention on Conservation of Migratory Species of Wild Animals 1979 (Bonn Convention),¹⁸ are some of them.

17. The CITES, signed in Washington is an instrument to regulate the international trade in wild fauna and flora. Endangered species of fauna and flora are listed in 3 appendices of the Instrument. Species threatened to extinction are listed in appendix I. Trade in such species is strictly regulated. Trade in species not yet threatened to extinction but which may soon become so threatened, (appendix II) is exceptionally permitted, but strictly limited to the level that would not endanger the survival of the species. Appendix III provides a mechanism by which a party may by domestic regulation, regulate the export of species not listed in appendix I or II and requests the other parties to enforce the domestic legislation in question. The appendices are subject to amendments from time to time. See for text of the convention, American Journal of International Law Vol.68 (1974), pp.197-211. See also A.O. Adede, "International Environmental Law from Stockholm to Rio— An Overview of Past Lessons and Future Challenges", Environmental Policy and Law Vol.22 (1992), 88 at p.93.
18. The Bonn convention contains provisions relating to ecological management of migratory species. Research and exchange of information, preservation of habitat, removal of obstacles to migration, prevention of pollution and control of the introduction of exotic species are the strategies provided by the convention. See the draft convention in Environmental Policy and Law Vol.3 (1977), p.185. See also Cyrille de Klemm, "Migratory Species - A Review of Existing International Instruments", Environmental Policy and Law Vol.15 (1985), 81 at pp.88, 89.

In 1980, the International Union for Conservation of Nature and Natural Resources (IUCN), the United Nations Environment Programme and the World Wildlife Fund together brought out a World Conservation Strategy to stimulate a more focussed approach to the management of living resources.¹⁹ The strategy aimed at maintaining ecological processes and life support systems, preserving genetic diversity and ensuring sustainable utilisation of species and eco-system.²⁰

Another significant development at international level for the protection of nature occurred in October 28, 1982 when the United Nations General Assembly adopted the World Charter for Nature.²¹ The charter adopted twenty four principles over which national action was required in protecting and preserving the natural environment. The charter imposed an imperative duty on each State to reflect

19. The World Conservation Strategy proposed an integrated method of evaluating land and water resources supplemented by environmental assessment as a means of improving environmental planning. It envisaged review of legislation concerning living resources and suggested general principles for organisation within Government. Greater public participation in planning and decision making concerning living resource use and environmental education programmes and campaigns to build support for conservation were also recommended. Document 2, "World Conservation Strategy: Executive Summary" in Indian Journal of Public Administration Vol. XXXV July-September (1989), pp.685-688.

20. Ibid.

21. See for text, Suresh Jain and Vimla Jain, Environmental Laws in India (1984), pp.546-550. See also Environmental Policy and Law Vol.10 (1983), pp.30, 31.

principles of conservation of resources in the law and practice of each State as well as at the international level.²²

In 1983, the United Nations set up an independent body - the World Commission on Environment and Development - headed by Gro Harlem Brundtland, the Prime Minister of Norway, to formulate policies on environment and development.²³ The commission published its report in 1987, suggesting the strategy of sustainable development to reconcile the conflict between environment and development.²⁴ Responding to the report, the United Nations General Assembly decided to hold a conference on Environment and Development.

'Earth Summit' 1992

The United Nations Conference on Environment and Development was held in Rio de Janeiro, Brazil in June 1992.²⁵ The conference popularly called the "Earth Summit" aimed at generating world wide consensus on a

22. Suresh Jain op. cit., p.549.

23. P.Subramonian Potti, Legislative Activism and Environmental Development (1992), p.8.

24. World Commission on Environment and Development, Our Common Future (1987), p.43. See for details infra, ch.4 n.66.

25. See for details, Indian Express (Kochi), May 27, June 2 to 15, 1992. See also "Earth Summit", The Hindu : Survey of the Environment, 1992 p.5 and "The Earth Wars", India Today, June 15, 1992 pp.70-72.

sustainable use of global resources. The conference adopted Agenda 21, an 800 page document, which delineated the rights and obligations of nations for an environmentally sustainable development. An action plan was framed for the next century to achieve growth without environmental damage.²⁶ India signed the convention on biodiversity and became party to the agreement to preserve diverse biological species and ecosystems. Considering the environmental significance of forest in regulating climate and reducing pollution by the absorption of poisonous gases like carbondioxide, the summit also adopted certain principles for the conservation and sustainable development of forest. A Global Environment Facility (GEF) was also set up with an initial fund of one billion dollars, which is to be utilised to tackle urgent environmental problems like global warming, ozone depletion and conserving forests.²⁷

The earth summit 1992, characterised as the world's last attempt to save the earth from ecological catastrophes, succeeded in taking important decisions on

26. See Maurice F. Strong, "Towards global partnership" in The Hindu Survey op. cit., p.13 at p.15.

27. See for details India Today June 15, 1992 p.71. See also, Sandra Postel, "Future of Earth : It is Now or Never", The Hindu Survey op. cit., p.17 at p.19.

environmental protection at international level.²⁸ The principles adopted in the summit, though not legally binding, reflect a global consensus on the management, conservation and sustainable development of forest. The conference also helped to disseminate knowledge, information and public awareness about the need to protect forest from deterioration.

Impact of International Conferences

International conferences on Environment had their impact in India. The world-wide environmental consciousness roused by the Stockholm conference of 1972 made significant impact on the legislative, executive and the judicial branches as well as on the people in general.

Impact on the Legislature

Inspired by the Stockholm conference, the Union legislature took steps to protect environment. Significant amendments were made in the Constitution of India.²⁹

28. In the words of the Secretary General of the United Nations Conference on Environment and Development, ". . . the decisions taken by world leaders at Rio will reflect the state of political will to initiate the process of fundamental change that are essential to secure our common future. They will inevitably be influenced by current political and economic pressures and priorities". Maurice F.Strong, "Towards Global Partnership", The Hindu, Survey of the Environment, 1992 p.15.

29. See Constitution (42nd Amendment) Act 1976.

A fundamental duty was imposed on the citizens of India by Art.51-A (g) of the Constitution to protect and improve the natural environment including forests, lakes, rivers and wildlife. A directive was given to the States by Art.48-A of the Constitution to protect and improve the natural environment and to safeguard the forests and wildlife of the country. The subjects 'forests' and 'wildlife' were shifted from the State list to the concurrent list of the seventh Schedule of the Constitution so as to enable Parliament to make laws on these subjects.³⁰

Population explosion is the major cause of environmental degradation.³¹ As a step to check the growth of

30. Originally the subjects 'forest' and 'protection of wild animals and birds' were included in entries 19 and 20 of the State list (list II). The Constitution 42nd amendment Act 1976 shifted these subjects to entries 17-A and 17-B of the concurrent list (list III) of the VIIth schedule of the Constitution. The Forest (Conservation) Act of 1980 (Act 69 of 1970) is the outcome of such shift in power. See infra, ch.4 nn. 50-60

31. Increase in population and over-crowding degrades the life supporting systems - air, water and soil. Increased demands for land for settlement and farming ultimately lead to denudation of forest. See United Nations Department of Economic and Social Affairs, Human Settlements : The Environmental Challenge (1974), p.26; Pramod Singh, Environmental Pollution and Management (1985), pp.142, 143; Robert Repetto, "Population Resource Pressure and Poverty" in Roberto Repetto (Ed.) The Global Possible (1991), 131 at p.142 and Erik P. Eckholm, Down to Earth : Environment and Human Needs (1991), p.161.

human population, a new legislative subject - population control and family planning - was inserted in entry 20-A of the concurrent list enabling the Centre to take legislative and administrative measures to control population and thereby pollution.³²

Impact on the administrative system

After the Stockholm conference, the Government of India effected certain reforms in the administrative system. In 1972 itself a high level advisory body - National Committee on Environmental Planning and Co-ordination (NCEPC) - was set up to advise the Government in environmental matters.³³ The committee was empowered to make appraisal of development projects, plan human settlements, survey natural ecosystems like wet lands and take measures to spread environmental awareness.³⁴ The

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32. Adoption of a National Population Policy in 1976 which provided for the extension and popularisation of family planning programmes by the Centre is the result of major efforts made by the Union of India to curb the growth of population. See for text of the National Population Policy 1976, B.P. Singh Sehgal, Population Control and the Law (1989), appendix II.
33. With the formation of the Department of Environment the NCEPC's name has been abridged to National Committee on Environmental Planning (NCEP). Centre for Science and Environment, The State of India's Environment 1982, A Citizens' Report (1982), p.177.
34. Government of India, Planning Commission, The Sixth Five Year Plan 1980-85 (1981), pp.348, 349.

committee was later brought under the control of the Department of Environment which came into being in 1980. Recognising the significance of forests and wildlife in maintaining the quality of human environment, a new integrated Department of Environment, Forests and wildlife was constituted in 1985 under a separate Ministry of Environment and Forests.

The Government of India also adopted a new National Forest Policy in 1988.³⁵ In order to ensure environmental stability and maintenance of ecological balance, the policy declared the national goal to have a minimum of one-third of the total land area of the country under forest or tree cover.³⁶ Promotion of afforestation programmes, management of forests on scientific lines and minimising the utilisation of forest lands for non-forest purpose were some of the strategies designed for achieving this object.³⁷ The policy recognised the symbiotic relationship between tribal people and forest and stressed the need to associate tribal people in protection, regeneration and development of forests.³⁸ The policy marks a

35. Ministry of Environment and Forests, Resolution No.3-1/86-FP dated 7th December, 1988, National Forest Policy 1988. See for text Appendix II.

36. Id., para 4.1

37. Id., para 4.2 - 4.4.

38. Id., para 4.6.

significant change in the approach towards forest by looking upon forest with an environmental perspective.³⁹

Impact on the Judiciary

The Stockholm Conference in 1972 and the constitutional amendments made in pursuance thereof in our country had its impact on the judiciary also. The judicial approach began to reflect a more serious concern over environmental matters including forest protection.⁴⁰ There have even been instances where the court had on its own motion taken steps to convict offenders involved in forest offences.⁴¹

Public interest litigations filed against destruction of forest environment were entertained by courts. For instance, in Rural Litigation and Entitlement Kendra v. State of U.P.⁴² the court treated a letter complaining

39. See P. Leelakrishnan, "Law and Sustainable Development in India", Journal of Energy and Natural Resources Law Vol.9 (1991), 193 at p.200.

40. See also infra, ch.4 nn. 89 - 96

41. See Court on its own motion v. Shankroo 1983 Cri. L.J.63, when it came to the notice of Chief Justice Vyas Dev Misra of the High Court of Himachal Pradesh that the offender convicted for the offence of illicit felling of trees was given only the punishment of a fine, suo moto action was taken by the High Court and notice was issued for enhancement of punishment. Criticising the Sessions Judge for the inadequate punishment imposed, the court observed (at p.63) that the illicit felling of trees has resulted in denuding the wealth of the nation and in causing other miseries to the people and such offence should have been taken seriously.

42. 1985 S.C. 652. See infra, ch.4 nn. 89, 90

about the destructive lime stone quarrying activities going on in Doon Valley in Dehradun district, as a writ petition, and gave appropriate directions for the protection of Doon valley with its flora and fauna from deterioration.

In L.K. Koolwal v. State of Rajasthan,⁴³ it was held that the fundamental duty imposed on the citizens under Art.51-A (g) to protect and safeguard the environment gives them a right to enforce the duty cast on the State to protect and improve the natural environment.⁴⁴ In Kinkri Devi v. State of Himachal Pradesh⁴⁵ it was pointed out that the neglect or failure to abide by the constitutional pointer to the State under Art.48-A or to

43. A.I.R. 1988 Raj.2. The Court accepted as writ petition, a letter received from L.K. Kodwal complaining about the insanitary condition of Jaipur city. Speaking about the right of the citizens D.L.Mehta.J. observed at p.4:

"Maintenance of health, preservation of the sanitation and environment falls within the purview of Art.21 of the Constitution as it adversely affects the life of the citizen and it amounts to slow poisoning and reducing the life of the citizen because of the hazards created if not checked".

44. Id., at p.4.

45. A.I.R. 1988 H.P.4. The petition was filed to restrain the respondents from operating certain mines in Khasra on the ground that ecology and environment were adversely affected. The High Court of Himachal Pradesh gave a direction to the State Government to constitute a committee to examine the ecological hazards of mining operation in the area and submit a report.

perform the constitutional duty of the citizens under Art.51-A (g) to protect and improve the environment is nothing short of a betrayal of the fundamental law which the State and indeed every citizen high or low is bound to uphold and maintain.⁴⁶ In Vilangan Kunnu Samrakshana Samiti v. State of Kerala⁴⁷ the need to preserve forest and to arrest deforestation was stressed and direction was given to the Government to consider the ecological aspects of the place before authorising deforestation for construction of residential quarters.⁴⁸

In Environmental and Ecological Protection Samithy v. Executive Engineer,⁴⁹ the court went a step further in

46. Id., at p.8.

47. 1989 (2) K.L.T. 547. The petition was filed in the High Court of Kerala by a voluntary organisation seeking to quash the Government Order giving sanction to lease 1.5380 hectares of forest land in Vilangan Kunnu in Trissur in favour of the Kerala Cancer Society, for the construction of residential quarters for cancer patients.

48. Id., pp.548, 549. Justice Sankaran Nair observed:
 "Industrial construction activity is not the panacea for soil erosion. Woods and greenery may be. Apart from their ethereal magic and loveliness, that makes life a great experience, they preserve ecology and sustain life Bearing these aspects in mind, the Minister for Revenue, shall consider Ext P.6 representation (representation sent by the petitioner against the construction), also affording a hearing to the representatives of petitioners".

49. 1991 (2) K.L.T. 493.

directing the respondents to forbear from cutting and removing bamboo clusters and other vegetation standing on the banks of river Siruvani in Agali village in the Eastern Attapadi region of Kerala State. Highlighting the evil effects of deforestation, the court observed that Art.48-A and Art.51-A provide perspectives to protect the rights of the citizens under Art.21 to live in a healthy environment.⁵⁰

Impact on the People of India

The world wide environmental consciousness roused by the Stockholm conference had its impact on the people of India also. The awareness that forest needs protection for sustaining human population, made people to revolt against felling of trees and denudation of forest for the construction of dams. The Chipko movement of Uttar Pradesh, the Appiko movement of Karnataka, and the

50. Justice Sankaran Nair observed, at p.501,

"The effect of destruction of vegetation on ecology is no longer a hypothetical issue. . . . Barren stretches of mountains, parched earth cracked under heat, dying rivers and smogs that have replaced the green valleys, perennial rivers and misty dawns of yester years, not to speak of human beings and animals thirsting for water are living examples of the folly of an age. . . . Rights in these regions have been upgraded to constitutional protections under Art.21. The directive principles contained in Art.48-A and that magnificent Article - Art.51-A provide perspectives. Changing times and a materialistic society throw up new challenges. The Courts must meet them to protect the rights of the citizens under Art.21."

peoples' movements in different States against the construction of hydroelectric and irrigation dams are the outcome of environmental awareness.

Chipko Movement

This is a movement started by the villagers of Chamoli District in U.P. in March 1973, against the cutting of forest trees by private contractors. People of Gopeswar hill town in Chamoli district started hugging the earmarked trees when the trees were about to be cut by contractors for the use of a sports goods factory in Allahabad. Later, the same device was used by the villagers in some other areas in U.P. to save trees from the axes of contractors. The movement later became popular under the leadership of Sunderlal Bahuguna⁵¹ and Chandi Prasad Bhatt.⁵²

The Chipko activists fought many battles against the Forest Department through their non-violent activities of conducting processions, raising of slogans and hugging of trees to protect them. They also encouraged students

51. Bahuguna is called the 'Father of the Forests' for his efforts to arrest deforestation. See, T.S. Satyan, "Father of the Forests" in The Week, June 4 (1989), p.51.

52. Centre for Science and Environment, The State of India's Environment 1982, A Citizens' Report (1982), p.42. See also Indian Express (Cochin), September 9, 1984.

to organise educational marches to villages during their vacation. Chipko activists also undertook afforestation programmes in some areas by themselves or in co-operation with some voluntary organisations.⁵³

Chipko movement was defeated by the Government in some places with the help of police.⁵⁴ But still it proved to be a good attempt on the part of the people to protect forest. Unlike other movements rural women began to take the lead in this movement as they are the real sufferers if the trees around them are axed.⁵⁵ Chipko movement was a success in many ways, though it could not withstand the armed resistance of the Government. At least in some instances the Chipko activists succeeded in slowing down the process of deforestation. Secondly, as the movement spread, it disseminated knowledge about the importance of trees and created an awareness among people about the need to protect forest environment. The movement also encouraged people to take active stand in protecting forest through united efforts.

53. See Bharat Doyra, Forests and People, The Efforts in Western Himalayas to Re-establish a Long-lost Relationship (1980), pp.48-77.

54. Id., p.58. See also Indian Express (Cochin), 6th February 1982 p.12.

55. Women have to collect fuel and fodder for domestic needs.

Appiko movement of Karnataka

This is a movement similar to the Chipko movement. It started in Sirsi in Karnataka State. The Appiko activists vowed to protect trees even at the risk of their lives.⁵⁶ The Appiko volunteers succeeded in forcing the Forest Department to reduce felling of marked trees in some areas and to stop the logging work in certain other parts.⁵⁷ Gradually the Appiko movement spread to other villages. In Shimoga district, the local youth grouped together to form an Environment Conservation Centre to watch whether trees were felled unnecessarily.⁵⁸ The Appiko activists demanded that they should be informed by the Forest Department of every felling scheduled to take place in their area and insisted that trees near water sources should not be felled. The officials of the Forest Department of Karnataka found it difficult to ignore these restrictions due to strong protests from Appiko activists.

The Appiko activists undertook other ecological tasks also. They educated the people on how to improve the minor forests in the village. They also involved

56. Indian Express (Cochin), September 9, 1984.

57. Ibid.

58. Ibid.

people in planting indigenous species of trees. The Appiko movement created a wider consciousness about the conservation of Western Ghats.⁵⁹ In Shimoga district in Karnataka, the adults took a vow that they would not fell even a single tree in the forest near their village and would not allow any contractors to fell the trees.⁶⁰

Another movement that arose in Karnataka following Appiko movement was the Vriksha Laksha Andolan (one lakh tree movement) organised by the Vriksha Samraksha Vedike.⁶¹ The Vedike activists inspired a unique culture of gifting saplings on special occasions and asking people to look after them. Vedikes also organised camps for young men, women and school children with a view to give educational training and make the villagers conscious of the issues relating to environment. The forest consciousness among the people of Karnataka grew to such a level that they even protested against the decision of the Government to bring forest lands under eucalyptus cultivation.⁶²

Peoples' movement against construction of dams

In India, construction of some major hydroelectric and irrigation projects adversely affecting the forest

59. Ibid.

60. Indian Express (Cochin), September 7, 1986 p.6.

61. Ibid.

62. Ibid.

environment had to be slowed down or even stopped as a result of popular movements organized by environmentally conscious members of the public.

Silent Valley movement

In Kerala, public uproar reached its highest peak when the State Government decided to construct a hydro-electric project at Silent Valley in Palakkad district. The dam site consisting nearly of 8952 hectares of forest is one of the virgin forests in the country abundant in rare species of flora and fauna.⁶³ The lion tailed macaques of silent valley were said to play an important role in maintaining the ecobalance of the region by eating the poisonous thorny bushes in those forests. Ecologists and environmentalists opined that the deforestation in Silent Valley would endanger the ecobalance and would change the climate of the whole State of Kerala and even outside by diminishing rainfall. Voluntary organisations like the Kerala Sastra Sahitya Parisad conducted demonstrations and protests against this decision of the

63. The study conducted by the Zoological Survey of India revealed that there were 11 new species of wildlife in Silent Valley. Many species of flora and fauna once seen in abundance in Western Ghats are now found only in Silent Valley. Malayala Manorama (Kochi), 1991 July 14 supplement p.1. The evolutionary age of Silent Valley forest is believed to be more than 50 million years, K.S.Manilal, Flora of Silent Valley (1988), p.V.

State Government. They petitioned to the Government, attempted to educate the public about the evils of deforestation by conducting silent demonstrations, street dramas and writing articles in leading newspapers. The uproar created by the public concerning Silent Valley was so high that the Kerala Government promulgated an ordinance and later an Act - the Silent Valley Protected Area (Protection of ecological balance) Act, 1979,⁶⁴ to protect the ecosystem of the area. Later, the project was completely dropped when the State Government declared Silent Valley as a National Park in 1985.

Anti Tehri movement

Serious controversies arose when the State of Uttar Pradesh decided to construct a dam at the confluence of rivers Bhagirathi and Bhilangana, close to Garhwali town of Tehri. Environmentalists expressed the fear that since the site of the dam area is vulnerable to earthquakes, the dam would burst and submerge the

64. Act 14 of 1979. The Act provided for the constitution of a committee by the Government called "The Silent Valley Environmental Monitoring Committee" to advise the monitoring of the environmental impact of the project and the ecological aspects of the area to implement certain environmental safeguards. Provision was also made for the establishment of monitoring stations in the protected area for the purpose of monitoring operations. Id., S.4. See for text, K.L.T. (Statutes) 1979 pp.28-32.

whole towns in the thickly populated valleys in the downstream.⁶⁵

The local authorities and people opposed the construction of the dam due to the fear of displacement, deforestation, earthquakes and environmental hazards. The people started concerted action to pressurise the Government to drop the project. They constituted a committee called the Tehri Bandh Virodhi Sangharsh Samiti which unsuccessfully challenged the construction of the project before the Supreme Court of India.⁶⁶ The dam also became the centre of tussle between the Union Ministry of Power which had spent Rs.600 crores on the project, and the Ministry of Environment and Forests which insisted that the project still required the final clearance from that ministry and could be stopped if found unsound.⁶⁷ The project is still pending for environmental clearance.

65. Armin Rosencranz et.al., Environmental Law and Policy in India : Cases, materials and statutes (1991), p.288. See also Indian Express (Cochin) August 31, 1986, supplement p.8.

66. See infra, ch.4 n.103

67. See Kalpana Sharma, "Peoples Movements : Evolving a New Philosophy" in The Hindu Survey of the Environment, 1992 (1992), p.47.

Koel Karo movement

Serious opposition was also made by the local people on the construction of dams on the northern and southern branches of Koel Karo river in Jharkhand area of Bihar. Opposition to the Koel Karo project reached its peak in 1984 when around 70,000 tribal oustees refused to move from the area marked for submergence and organised strong protests.⁶⁸ They even succeeded in obtaining an injunction from the Supreme Court of India to stay all the land acquisition orders passed by the State Government for five years.⁶⁹ At that point the State Government abandoned the project.

Movement against Narmada Valley Project

The Narmada Valley Project was started in 1978. The project involves 31 major dams on river Narmada and its tributaries. Of these major dams the most controversial are the Sardar Sarovar Project in Gujarat and the Narmada Sagar Project in Madhya Pradesh.⁷⁰ Environmentalists and elite members of the public strongly opposed the construction of these projects since it involved submergence of large areas of forest rich in flora

68. Id., pp.47, 48.

69. Id., p.48.

70. Armin Rosencranz et.al., op. cit., p.302.

and fauna. The project authorities ignored the environmental impacts of such massive deforestation on soil preservation, water replenishment, micro-climatic stabilisation and the preservation of gene pools.⁷¹ The project is pending for environmental clearance from the Ministry of Environment and Forests.⁷² The World Bank has suggested that the Government of India should reconsider the construction of Narmada Sagar Project in the light of environmental issues and displacement problems involved in implementing the project.⁷³

Recently the people of Karnataka are agitating against the construction of the Badthi hydroelectric project in Uttar Kannada District of Karnataka. The Ministry of Environment and Forest has directed the Government to stop the work on the project.⁷⁴

The Government of India, the State Governments and the people all over India are moved by the environmental awareness aroused by international conferences. Yet the law relating to forest remains almost the same as it was in the colonial era. The Indian Forest Act 1927 enacted by the British with a revenue policy is still in force in a majority of the States in India.

71. Id., p.308.

72. Indian Express (Kochi) August 9, 1992 Supt. p.8.

73. Indian Express (Kochi) July 3, 1992 p.6. See also Malayala Manorama (Kochi) June 20, 1992 p.8.

74. Indian Express (Kochi) October 24, 1992 p.3.

PART III

LEGAL PERSPECTIVES

CHAPTER 4

FOREST AND THE LAW

In a vast majority of Indian States the law relating to forest is governed by the provisions of the Indian Forest Act 1927¹ amended suitably by individual States.² The States of Kerala, Tamil Nadu, Karnataka, Andhra Pradesh, Orissa, Rajasthan, Assam, Nagaland and Jammu and Kashmir have enacted separate legislation relating to forest. The provisions in these enactments are more or less similar to that of the Indian Forest Act 1927.³

1. Act No.16 of 1927.

2. The Indian Forest Act 1927 is now in force in Uttar Pradesh, Maharashtra, Madhya Pradesh, Gujarat, Bihar, Punjab, West Bengal, Haryana, Himachal Pradesh, Manipur, Meghalaya, Tripura, Delhi, Chandigarh, Nagar Haveli, Pondichery, Goa, Daman and Diu.

(S.1 of the Indian Forest Act 1927, read with S.12 of the States Reorganisation Act 1956.) In Mizoram the reserved forests are managed under the provisions of the Indian Forest Act 1927 whereas other categories of forest in the Mizo District are governed by the provisions of the Mizo District (Forest) Act 1955 (Act No.4 of 1955) enacted by the Mizo District Council. See for Text, Rakesh Bagga (Ed.), Beotra's Law of Forests (1989) pp.485-508. In Arunachal Pradesh, the provisions of the Assam Forest Regulation are applied. Rakesh Bagga op.cit., p.405.

3. Infra, nn.25-29.

The Indian Forest Act 1927 as well as State legislation relating to forest seeks to ensure protection of forest by bringing forest under the control and supervision of the State Government. Since forest was considered as the property of Government,⁴ there was no need of separate vesting of forests in the Government so as to protect them. However, as the inhabitants of the locality near forest and the tribal people living inside forest were exercising certain rights over forests for years, the Government had to impose fetters on the exercise of such rights so as to protect forest from deterioration. Under the Indian Forest Act, the State Government is authorised to exercise control over such rights by classifying forests into reserved forests,⁵ protected forests⁶ and village forests.⁷ Originally in areas constituted as reserved forests there was only a few or no rights of user vested in persons.⁸ Therefore, it was easy to prohibit the exercise of all rights in reserved forests except those specifically recognised.⁹ In areas

4. The British Government asserted sovereignty rights over forests of India through a proclamation issued by the East India Company in 1807. Dietrich Brandis, Indian Forestry (1897), p.19.

5. Indian Forest Act 1927 S.20.

6. Id., s.29.

7. Id., s.28.

8. Royal Commission on Agriculture in India Report (1928), reprint (1979), p.258.

9. Ibid.

constituted as protected forests, on the other hand, there were many established and acknowledged rights of user.¹⁰ Hence the regulatory scheme permitted the exercise of such rights subject to restrictions as were found necessary in the interest of the right holders and the future generation.¹¹ In other words, in reserved forests everything that is not permitted is an offence, while in protected forests only the commission of prohibited acts constitute an offence. Village forests are those forests which are assigned to village communities.¹² Governmental control is least in village forests when compared to reserved and protected forests.¹³

It appears that in early times the British Government initiated control over Indian forests with a view to earning more and more revenue from forest. The valuable timber yielding trees had to be monopolised by the Government for maintaining a steady supply of timber for its commercial purposes.¹⁴ The Government had to

10. Ibid.

11. Ibid.

12. The object of creation of village forests was to protect the rights of the village communities in forest land against trespass and accrual of new rights. See B.Ribbentrop, Forestry in British India (1900), p.111.

13. The right to collect timber and forest produce in village forests is regulated by the State Government through rules. Indian Forest Act 1927, S.28 (2).

14. See supra, ch.2, nn.83-90.

exercise absolute power to exclude local population from exercising their rights over reserved forests where valuable trees were in abundance. In areas where valuable timber yielding trees were less in number, the exercise of limited rights of user i.e., collection of fuel, fodder or small trees by tribal people living inside forests or by villagers nearby, in no way adversely affected the interest of the Government. The forest resources utilised by the local communities were also renewable resources not subject to exhaustion. That might have been the reason why the Government imposed only limited control over protected forests and village forests.

Reservation takes away the rights of the public including forest dwellers from exercising their rights on such forests. Nobody can fell trees from reserved forests; pasturing of cattle in reserved forest is prohibited; no person can quarry stones, burn charcoal, collect or remove forest produce from a reserved forest.¹⁵ No right of any description can be acquired in or over a reserved forest except by succession or under grants or contracts made by the Government.¹⁶ The Act contains

15. Indian Forest Act S.26.

16. Id., S.23.

no guidelines as to what type of rights can be given in reserved forests through such grants or contracts. This enabled the State Government to exercise wide powers in managing reserved forest.

Exploitation of reserved forest for purposes of revenue was the policy of the Government in the past.¹⁷ Valuable trees were felled for constructing ships and railway sleepers.¹⁸ Large areas of reserved forest rich in flora and fauna were cleared and converted into teak plantations.¹⁹ Forest areas were also assigned to private or quasi-government agencies for the cultivation of food grains²⁰ and cash crops.²¹ Assignments were also made

17., See supra, ch.2, n.103.

18. See supra, ch.2, nn.83-88 and 94

19. The first teak plantation in India was raised in Nilambur in 1842. E.P.Stebbing, The Forests of India Vol.I, (1923) . See also E.P.Stebbing, The Forests of India Vol II (1923), pp.564, 565.

20. In Kerala, during the period from 1st April 1961 to 31st March 1962 alone 14864.56 acres of reserved forests were leased out for cultivation for increased food production. Government of Kerala, Administration Report of the Forest Department for the year 1961-62 (1963), p.146.

21. An official report of the Government of Kerala states: ". . . a vast area known as Cardamom Hill Reserves falling under the Reserve Forest was either leased out or assigned to different agencies for cardamom and other cultivations. The control of this land was taken out of the hands of the Forest Department and vested with Revenue Department, which was more interested in assigning these lands to private persons who used it for non-forestry purposes . . .

Contd.

for the construction of hydroelectric projects without assessing the adverse environmental impacts.²² This destructive exploitation of forest by the Government has led to the present deteriorated condition of Indian forests.²³ Even the British Officials had acknowledged

Quasi-government bodies like Farming Corporation, Plantation Corporation, Rehabilitation Plantation Kerala Ltd., etc. were also given large extent of forests for raising cash crops like Sugarcane, Rubber, Cashew etc."

Government of Kerala, Administration Report of the Forest Department for the year 1980-81 (1984), p.1.

22. In Kerala between 1960 and 1980, 28,500 hectares of forest lands were assigned for hydroelectric projects and about 32,000 hectares for plantations. Kerala Forest Department, Aranyam Vol.III October-December (1988), p.3.

23. One report has correctly pointed out as follows:

"The origin of the current crisis lies in the short sighted policies initiated by the British. The only interest that the former colonial rulers had in the forests of India was in their revenue earning capacity. Unfortunately, even after independence, the same commercial outlook has remained the most dominant theme within the forest departments".

Centre for Science and Environment, The State of India's Environment 1982, A Citizens' Report (1982), p.34. Speaking about the purposes of preservation another author comments:

"The purpose was to declare wealth available to the local people as revenue available solely to the crown. By this means was achieved a massive usurpation and transportation of forest resources to Europe during the First and Second World Wars, and a less substantial but equally significant export during the non-world war period".

Chhatrapati Singh, Common Property and Common Poverty: India's Forests, Forest Dwellers and the Law (1986), p.3.

the defective policy of the British towards Indian Forests.²⁴ There is no justification for the continuance of this policy of destructive exploitation of forest, even after independence.

The States which framed separate legislation on forest have blindly adopted the legislative scheme envisaged in the Central legislation without trying to understand the evil impacts of the over exploitative revenue policy behind the law.²⁵

24. According to Sir Dietrich Brandis, former Inspector General of Forests in British India,

"The first attempt at forest management was a great mistake, an act of injustice which cannot be condemned too severely. Originally started in order to secure a permanent supply (of timber) it degenerated into the attempt to establish without regard to private rights a Government monopoly of timber".

Dietrich Brandis, Indian Forestry (1897), p.19.

25. Provisions for the constitution of reserved forest and protected forest are seen in all State enactments. See for instance Kerala Forest Act 1961 Ss.3, 19 & 30; Tamil Nadu Forest Act 1882 Ss.3-16 and 26; Karnataka Forest Act 1963 Ss.3-19 and 38; Andhra Pradesh Forest Act 1967 Ss.3-15. & 24; Rajasthan Forest Act 1953 Ss.3-20 & 29; Orissa Forest Act 1972 Ss.3-21 & 33; Assam Forest Regulation 1891, Ss.4-17 & 32; Nagaland Forest Act 1968 Ss.3-16 & 31. In Jammu and Kashmir, instead of reserved forests and protected forests the terms 'demarcated forests' and 'undemarcated forests' are used. See Jammu and Kashmir Forest Act 1930, Ss.3 and 10. There is no village forest under the Kerala, Tamil Nadu and Andhra Pradesh legislation on forest. Two more categories of forest viz., district forest and private forests are therein the Karnataka Forest Act. See Karnataka Forest Act 1963, Ss.32 and 37.

The revenue oriented policy of Government towards forest is more evident in the forest legislation of Tamil Nadu, Karnataka and Andhra Pradesh which contain special provisions for protection of valuable species of trees like sandal, catechu, teak and rose wood standing on any land. In Karnataka, every occupant or holder of land is responsible for the due preservation of sandal trees growing there and is under a duty to report to the nearest forest officer or police officer any injury to or theft of such trees.²⁶ Cutting, removal or destruction of sandal tree is totally prohibited.²⁷ Licence is required to possess, store or sell sandal-wood or to manufacture or distil oil from sandal wood.

In Andhra Pradesh, possession of any quantity of sandal wood in excess of ten kilograms is not permitted except under a licence granted by the Divisional Forest Officer.²⁸ In Tamil Nadu valuable trees such as sandal

26. Karnataka Forest Act, 1963 S.85.

27. The offence relating to sandal wood is punishable with imprisonment for a term of seven years and with fine which may extend to twenty five thousand rupees. Karnataka Forest Act 1963, S.86 as amended by Act 1 of 1981.

28. Andhra Pradesh Forest Act 1967, S.32. Under S.36 possession of sandal wood in excess without such licence is punishable with imprisonment for a term not less than three months and not more than one year and with fine not exceeding Rs.10,000/-

teak and rose wood are designated as scheduled timber and enhanced punishments are provided for cutting or destroying such timber.²⁹ The State of Kerala has gone a step further in enacting a separate legislation for the protection of valuable trees; the Kerala Preservation of Trees Act 1986³⁰ prohibits unauthorised

29. Amendments made in the Tamil Nadu Forest Act 1882 in 1979 (by the Act 45 of 1979) incorporated more provisions for the protection of valuable trees. The amendment has created a schedule including six species of valuable trees - blackwood, red sanders, rosewood, sandal wood, silver oak and teak wood - in it and designated them as scheduled trees. If the acts prohibited in reserved forests relate to any scheduled timber, then in addition to compensation for damage done to the forest, the penalty will be imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees; for a first offence, the minimum punishment is one year's imprisonment and the minimum fine is Rs.3,000/-; for second or subsequent offence minimum punishment is two years' imprisonment and Rs.5,000/- as fine. Habitual offenders are to be punished with 2-5 years of imprisonment. Tamil Nadu Forest Act 1882, S.21 as amended by the Amendment Act of 1979.

30. Act No.35 of 1986. Before 1983, the Kerala Restriction on Cutting and Destruction of Valuable Trees Act 1974 imposed restrictions on the cutting and removal of valuable trees like sandal, rosewood and teak. Later, the Act was repealed by the Kerala Preservation of trees and Regulation of cutting in Hill Areas Ordinance 1983 (Ordinance 21 of 1983) which afforded protection to all sorts of trees standing on hill slopes, so as to preserve the landscape, vegetal cover and climate. This ordinance was later replaced by the Kerala Preservation of Trees Ordinance 1984 (Ordinance 15 of 1984) which later became the Kerala Preservation of Trees Act 1986.

felling or destruction of valuable species of trees like sandal, teak, irul, thenpavu, kampakam, chempakam, chadachi, chandनावempu and cheeni. Felling permission is granted only in exceptional cases³¹ that too after assuring effective regeneration by planting equal number of the same or other suitable species of trees. In Tamil Nadu, such restrictions on cutting of trees apply to all trees in hill stations.³² In Uttar Pradesh protection is extended to all trees standing in rural and hilly areas. The Uttar Pradesh Protection of Trees in Rural and Hill Areas Act 1976 imposes a duty on every person to whom felling permission has been granted to plant two trees in place of every tree in the area from where such tree has been felled.³³ Prohibition on felling of trees and the provisions for replanting are of course welcome measures intended to protect forest

31. The authorised officer appointed by the Government will grant permission to cut, uproot or burn such tree if the tree constitutes a danger to life or property or if the tree is dead, diseased or windfallen subject to the condition of regeneration. Kerala Preservation of Trees Act 1986, S.5.
32. The Madras Hill Stations (Preservation of Trees) Act, 1955 (Act No.17 of 1955) prohibits unauthorised cutting or destruction of trees in hill stations. Prohibition is also imposed on cultivation of land with slopes. The Madras Hill Stations (Preservation of Trees) Act 1955 Ss.3, 4. See for Text, Ramkumar, Kerala Laws Manual Vol.4 (1984), pp.470, 471.
33. U.P.Protection of Trees in Rural and Hill Areas Act 1976, S.7.

from destruction. However, these are mandates enforceable only against private persons. The Indian Forest Act 1927 or the State Forest Acts do not preclude the Government from authorising felling of trees from Government forest.³⁴ It can even fell valuable timber from private lands so as to augment the revenue resources of the Government. No duty is imposed on the Government to replant such areas with suitable trees. If at all the Government is able to reforest the area, that will not compensate the loss done due to the felling of trees, since it will take years for a seedling to grow into a fully grown tree. There is no guarantee that the replanted seedlings will attain maturity; the fertility of the soil is decreasing fastly and the seedling may die due to lack of soil nutrients; it may also be destroyed by grazing cattle. No duty is imposed on the Government or private individuals to see that the seedling grows into a mature tree. So in effect the provision for replanting cannot justify the destruction of mature trees for purposes of revenue.

The provisions in the Central and State forest legislation imposing duty on timber and other forest produce,³⁵ also throw light on the revenue oriented

34. The Forest (Conservation) Act 1980 has reversed this trend. See infra, nn. 50-60

35. See Indian Forest Act 1927, S.39; Assam Forest Regulation 1891, S.37 and Rajasthan Forest Act 1953, S.39.

policy towards forest. Wide powers are conferred on the Central Government to impose duty on timber and other forest produce. However, the law does not state whether the funds so raised from forest produce should be earmarked and utilised for the development and improvement of forest environment. Even earmarked funds³⁶ are diverted for other activities undertaken by Government. In effect, apart from augmenting State revenue, duty collected on forest produce has nothing to do with the protection or regeneration of forest.

The provision in permitting compounding of forest offences³⁷ also implies the concern of the Government

36. The States of Kerala, Karnataka and Maharashtra have made provision for the constitution of separate funds for forest development; the State Government is empowered to levy and collect tax at the prescribed rates on sale price in respect of forest produce disposed of by the Government which should constitute a separate fund to be utilised for forest plantations. Kerala Forest Act 1961, ss.75-A and 75-B. See also Karnataka Forest Act 1963, ss.98-A and 98-B and the Maharashtra Forest Development (Tax on Sale of Forest Produce by Government or Forest Development Corporation) (Continuance) Act 1983 (Maharashtra Act No.22, of 1983). See for text, Rakesh Bagga (Ed.), Beotras Law of Forest (1989), p.831.

37. S.68 of the Indian Forest Act 1927 reads,

"(1) the State Government may by notification in the Official Gazette, empower a Forest Officer (a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest offence, . . . a sum of money by way of compensation for the offence which such person is suspected to have committed and

contd.

towards revenue from forest produce. The compounding provisions enable offenders to absolve themselves from criminal liability by paying a sum of money to the Forest Department as compensation for the suspected offence. Acceptance of an amount as compensation from the offender may compensate the loss of revenue from such forest produce. The huge environmental loss that has occurred due to the destruction of a tree can never be compensated in terms of money. Further, the compounding provision hinders judicial intervention in forest offences and removes the deterrent effect of punishment. The provision for compounding may give chances to the offender to bribe the official so that he may get the offence compounded and save himself from criminal liability. It is suggested therefore that compounding should not be permitted and such provisions should be deleted from forest legislation.³⁸

(b) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer.

(2) On payment of such sum of money, or such value or both as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property if any seized shall be released, and no further proceedings shall be taken against such person or property.

(3) . . . and the sum of money accepted as compensation under clause (a) of sub-section (1) shall in no case exceed the sum of fifty rupees."

38. The officials of the Kerala Forest Department favour compounding in minor cases of theft of forest produce since it absolves their liability to hand over the offender to the police, conduct the case and wait for the verdict. View expressed by officials of Idukki district, Kerala when interviewed by the researcher.

It becomes clear that in framing the forest law Government was motivated by revenue considerations rather than environmental considerations.³⁹

Even on revenue considerations forest needs protection. If offenders are permitted to encroach upon forest areas or smuggle valuable timber, ivory and other forest produce, there will be a decline in forest revenue. The punishment of six months' imprisonment or a fine of Rs.500/- as provided in the Central legislation⁴⁰ is

39. One author has pointed out:

"The early forest legislation, namely Forest Act of 1927, which could have aimed at preservation of forest and thus securing of eco-balance has been mainly motivated by other considerations. This legislation which had its origin in the old British colonial era looks at forest as a source of revenue and not as a decisive element in environmental preservation".

G.S.Bajwa, "Environmental Management : Problems and Prospects" in R.K.Sapru (Ed.), Environment Management in India, Vol.II (1987), 207 at p.211.

40. Indian Forest Act 1927, S.26 (1), reads:

"Any person who -

- (a) makes any fresh clearing, . . . ,
- (b) set fire to a reserved forest . . . ,
- or who in a reserved forest -
- (c) kindles, keeps or carries any fire . . . ,
- (d) trespasses or pastures cattle . . . ,
- (e) causes damage by negligence . . . ,
- (f) fells girdles, lops, taps or burns any tree . . . ,
- (g) quarries stone, burn lime or charcoal . . . ,
- (h) clears or breaks up any land . . . ,
- (i) . . . shoots, fishes, poisons water or sets traps or snares; or
- (j) . . . kills or catches elephants . . . ;

shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both, in addition to such compensation for damage done to the forest as the convicting court may direct to be paid".

inadequate to prevent the commission of offences relating to forest. In addition to the prescribed punishment, the convicting court can direct the offender to pay a sum of money as compensation for damage done to the forest.⁴¹

Though from the environmental point of view, damage done to forest by felling of trees or hunting of animals cannot be compensated in terms of money, if larger sums are collected from offenders as compensation for the commission of the offence, it will have some deterrent effect on the offender. Usually, only meagre sums are collected from offenders involved in forest offences.⁴² Even the punishment of three years' imprisonment and the fine of Rs.1,000/- provided in the Kerala Forest Act are not adequate to prevent the commission of forest offences.⁴³ In Tamil Nadu if the offence relates to valuable timber, three years' imprisonment and a fine of Rs.10,000/- can be imposed on the offender.⁴⁴ Offences can be considerably reduced⁴⁵ if such prohibitive fines are extended to all types of forest offences.

41. Ibid.

42. In Magistrate Courts, a fine of Rs.50/- to Rs.100/- and imprisonment till the rising of the court is the usual form of punishment given for illegal felling of trees from forest. The researcher had direct information on this aspect when practising as a lawyer before the Magistrate Courts of Ist class in Kanjira-pally at Kottayam District in Kerala State.

43. Kerala Forest Act 1961, S.27.

44. Tamil Nadu Forest Act 1882, S.21 as amended by the Act 45 of 1979. See supra, n.29.

45. In Kerala the ministry has recently passed an ordinance to prescribe a minimum punishment of at least

Forest Legislation and Environmental Protection

A few provisions in the Central and State legislation relating to forest appear to have a bearing on environment. The State Government is empowered to make rules to prohibit certain activities such as clearing of vegetation, pasturing of cattle or breaking or clearing of land for cultivation in any forest land or waste land, with a view to protecting the land from storms, floods and avalanches, preserving the soil and maintaining public works and public health.⁴⁶ The Government is also empowered to construct necessary works on any forest or waste land for the above purposes. These provisions recognise the environmental values of forest. However it is strange to note that such provisions to safeguard the environment are enforceable only against private individuals and environmental criteria are not at all considered when the activities of the Government adversely affect the forest environment. Unguided discretion is

one year for illegal felling of trees from reserved forest. The ordinance has also enhanced the maximum punishment from 3 years' imprisonment to five years' imprisonment and fine from Rs.1,000/- to Rs.5,000/-. The Kerala Forest (Amendment) Ordinance, No.9 of 1992.

46. Indian Forest Act 1927, S.35. See corresponding provisions in Kerala Forest Act 1961, S.33; Karnataka Forest Act 1963, S.39; Tamil Nadu Forest Act 1962, S.29; Rajasthan Forest Act 1953, S.35; Orissa Forest Act 1972, S.39 and Nagaland Forest Act 1968, S.36.

conferred on the Government to permit developmental activities such as construction of dams, roads and bridges⁴⁷ in reserved forest without assessing the adverse effects of such acts on forest environment. In spite of the restraints imposed by the Forest Conservation Act 1980,⁴⁸ the Government and its agencies have been engaging in such activities.⁴⁹

47. See supra, ch.1 n.7.

48. Act 69 of 1980. See infra, nn. 50-55

49. A writ petition was filed in the High Court of Bombay against the setting up of a broad gauge railway line passing through Goa. It was alleged that the proposed alignment had been planned and undertaken without adequate environmental impact assessment and environment management plan and that the proposed alignment was wholly destructive of the environment and the ecosystem and violates the citizens' fundamental right to life guaranteed under Art.21 of the Constitution. It was prayed that the Konkan Railway Corporation be compelled to procure environmental clearance from the Ministry of Environment and Forests for the alignment. It was also alleged that the alignment passes through the forest land and the Corporation has not secured prior approval of the Central Government for the use of forest land for non-forest purpose. The Court held that since the project has been approved by the Central Government and the Railway Ministry, no further approval is necessary. Rejecting all the contentions of the petitioner the court dismissed the petition holding that no development is possible without some adverse effect on ecology and environment.

Goa Foundation v. Konkan Railway Corporation, A.I.R. 1992 Bom.471 at pp.47-75.

The Forest (Conservation) Act 1980⁵⁰ prohibits the State Government and other authorities from using any forest land for non-forest purpose without the prior approval of the Central Government.⁵¹ Approval of the Central Government is also required for de-reserving forest.⁵² The Central Government may grant approval⁵³ or refuse to grant approval after taking into consideration

50. Act No.69 of 1980. See for text, Appendix I

51. Id., s.2.

52. Ibid.

53. The State Government or other authority which seeks prior approval of the Central Government for using the forest land for non-forest purpose should send its proposal to the Central Government along with the details of the proposal, project or scheme for which the forest land is required, with maps and sketches. Particulars regarding the location of the project and the details of the forest land involved, the details of flora and fauna, land topography of the area and such other details should also be stated in the proposal. If the project for which forest land is required involved displacement of people, the details of proposals for their rehabilitation should be furnished. Similarly if it requires raw materials from any forest area, the details of procurement of raw materials should be furnished. The proposal should also state the steps to be taken to compensate the loss of the forest area, the vegetation and wild life. Detailed opinion of the Forest Department about the out-turn to timber, fuelwood and other forest produce from the forest land involved, the sufficiency of these things in the district and the effect of the proposal on the fuelwood supply to rural population and on the economy and livelihood of the tribals and backward communities and the recommendations of the Forest Department for accepting or rejecting the proposals with reasons should also be furnished.

Forest (Conservation) Rules 1981, Rule 4 read with Annexure paras 1-7.

the ecological characteristics of the place, the nature of flora and fauna and the proposed use of the forest land and the alternatives for the proposed action.⁵⁴

The Forest (Conservation) Act has thus recognised the environmental values of forest and is a welcome measure for arresting deforestation.⁵⁵ The Act has

54. Id., Rule 5.

55. In a number of cases the State Governments had to refuse renewal of mining leases for want of approval of Central Government. Many such refusals were challenged before courts. In Ambika Quarry Works v. State of Gujarat 1986 (2) SCALE 1037, the Supreme Court justified the State Government in rejecting the application for renewal of quarry lease, and held that such renewals could not be claimed as a matter of right after the coming into force of the Forest (Conservation) Act 1980, since the Central Government had not granted its approval for using the land for non-forest purpose. Id., p.1041. However in State of Bihar v. Banshi Ram Modi, the Supreme Court held that if the mining permission was given by the State Government and mining operations have already begun in such area before the coming into force of the Forest (Conservation) Act 1980, no Central approval is required. A.I.R. 1985 S.C.814. In Anupama Minerals v. Union of India, the Andhra Pradesh High Court opined that prior approval of the Central Government has to be sought either by the State Government or by an authority, whoever it is, who proposes to use the forest land or portion thereof for non-forest purpose and that in granting or rejecting such approval, the Central Government need not even give an opportunity to be heard to the petitioner. A.I.R.1986 A.P.225 at pp.231, 237. In Rural Litigation and Entitlement Kendra v. State of U.P. the Supreme Court further clarified the point and stated that whether it is a case of first grant or renewal the compliance of section 2 of the Forest (Conservation) Act is necessary as a condition precedent in the interest of society with reference to ecology and environment. A.I.R.1988 S.C.2187 at p.2201. The same ratio was followed by the A.P.High Court in Hyderabad Abrasives and Minerals v. Govt. of A.P. in upholding the sentence of the lessee for cutting trees violating the provisions of the Forest Conservation Act 1990 F.L.T.119 at p.126.

considerably reduced the powers of the State Government in authorising deforestation. However, the term 'non-forest purpose'⁵⁶ has given chance for abuse of power by the State Government.⁵⁷ The provision which grants exemption from

56. Originally the term 'non-forest purpose' was defined to mean "breaking up or clearing of any forest land or portion thereto for any purpose other than reafforestation". [Forest (Conservation) Act S.2; Explanation as it stood on 1980.] This definition gave chances to the State Government to authorise deforestation for purposes of plantations under the guise of reafforestation. To remedy this evil, the Act was amended in 1988 to include plantation purpose also within the term 'non-forest purpose'. Forest (Conservation) Act 1980 S.2 Explanation as amended by Act 69 of 1988 defines the term 'non-forest purpose' as follows:

"Explanation:- For the purpose of this section 'non-forest purpose' means the breaking up or clearing of any forest land or portion thereof for -

- (a) the cultivation of tea, coffee, spices rubber, plams, oil-bearing plants, horticultural crops or medicinal plants;
- (b) any purpose other than re-afforestation, but does not include any work relating or ancillary to conservation development and management of forests and wildlife, namely the establishment of checkposts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, water holes, trench-marks, boundary marks, pipelines or other like purposes."

57. Breaking up or clearing of vegetation for the cultivation of plantation crops and for purposes other than reafforestation is included within the term 'non-forest purpose'. But works relating or ancillary to conservation, development and management of forest and wild life, including the construction of bridges, culverts, dams and such other purposes are excluded from the purview of 'non-forest purpose' and no sanction from the Central Government is required for using forest for such purposes. Hence the State Government can authorise construction works in forest areas under the

the requirement of approval for assignment of forest land to any authority, corporation, agency or organisation owned, managed or controlled by Government is another loophole in the Forest (Conservation) Act.⁵⁸ This provision should be deleted.

There have also been instances of wilful violation of the Forest Conservation Act.⁵⁹ In order to prevent

guise of managing forest and wildlife. The steps taken by the State of Kerala for constituting the Agasthiavanam Biological Park is an example. Under the guise of managing forest and wildlife, the State Government, in fact attempts to convert the area into a centre of attraction for tourists. Malayala Manorama (Cochin), February 15, 1992.

58. The Forest (Conservation) Act 1980, S.2 (iii), as amended in 1988, grants such exemption. This provision obviously protects the interests of the State Forest Development Corporation and public limited companies. It also enables a subsidiary company of the Forest Development Corporation to obtain a lease of forest land without prior approval of the Central Government. If such a company enters into an agreement authorising a private party to take over the management of leased forest land, it would not be unlawful for that party to reafforest the area after felling existing trees. Thus even without abridging the provisions of the Forest (Conservation) Act, forest can be destroyed.
59. The High Court of Kerala noted one such instance in Scaria Augusthy v. The Special Deputy Collector and others (High Court of Kerala O.P.No.4822 of 1986). Deciding upon the claim of the petitioner encroacher to re-enter the land taken from him for the construction of Idukki Hydro Electric Project, the court directed the Central Government to consider the questions as to how lands in and around the hydro-electric project area could be permitted to be assigned after the enforcement of the Forest (Conservation) Act 1980. Violation of Forest (Conservation) Act has also been noticed in Maharashtra, Orissa, U.P. and Goa. According to an official of the Ministry of Environment and

non-compliance with the provisions of the Act, penal provisions were incorporated in the Act in 1988. The punishment imposed is meagre, it being simple imprisonment up to fifteen days.⁶⁰ Such a punishment is inadequate to enforce compliance.

The prohibitions contained in the Forest (Conservation) Act alone cannot protect forest from deterioration. Suitable strategies have to be evolved and incorporated in the law to promote development with minimum detriment to forest ecosystem.

Sustainable Development

The significance of forest as a major source of revenue for the State and the decisive role of timber in industrial development cannot be ignored.⁶¹ Quarrying

Forests, till 1988 there had been at least 150 cases of violation of the Forest (Conservation) Act. In a majority of these cases development projects have been approved in forest areas without approval of the Central Government. Indian Express (Cochin) September 19, 1988. See also S.N.Dhyani, "Forest Management Policy and Law : A Critical Analysis" in 1990 C.U.L.R., 400 at p. 407.

60. Forest (Conservation) Act S.3-A as amended by Forest (Conservation) Amendment Act 1988 (Act 69 of 1988).

61. In Rajendra Singh v. State of U.P., while allowing the petition challenging the validity of the Government Order allotting available borang trees in reserved forest to bonafide and registered pencil and slate Manufacturers, instead of selling the trees by public auction, the Allahabad High Court pointed out the need to administer reserve forest in such a way as to ensure the greatest benefits to the public and the revenues of the state. A.I.R.1973, All.37 at p.39.

of stones and minerals abundant in forest areas and construction of hydroelectric and irrigation projects in suitable localities in forest are also the needs of the day. However, if forest is over exploited on developmental and revenue considerations, totally ignoring its environmental values, vegetation will soon disappear from the face of the earth, leaving human life in peril. The environmental and developmental factors are not to be viewed as mutually contradictory in nature.⁶² If forest is to be protected on environmental considerations, protection and preservation of forest should be given more

62. According to one author,

"In fact the concepts of development and environmental management (environmental protection) are not opposing to each other as they are understood Environmental pollution has the potential of paralysing the entire development whereas advancements in the economic, scientific and technical and industrial fields will make the development in pollution control easier. Therefore, prohibitory or regulatory laws dealing with various phenomena having the potential of causing environmental pollution should be in equanimity with the positive rules of other social sciences employed for economic, scientific and industrial development of the society".

G.S.Bajwa, "Environment Management Problems and Prospects" in R.K.Sapru, Environment Management in India Vol.II (1987), 207 at pp.209-210.

Another report states:

"Economic development and sound environmental management are complementary aspects of the same agenda. Without adequate environmental protection, development will be undermined; without development environmental protection will fail".

World Bank, World Development Report 1992 Development and Environment (1992), p.25.

importance. However, if a total ban is imposed on the exploitation of forest on environmental considerations, development will remain stunted. How to strike a balance between these interests? Management of forest on scientific lines - conservation⁶³ - will resolve the situation to a considerable extent. Development with conservation ensures sustainable development,⁶⁴ together with environmental protection.⁶⁵ Optimum revenue can be realised

63. Conservation has been defined as the management of resources for the benefit of all life, including human beings of the biosphere, so that sustainable benefit may be derived by the present, while potential maintained to meet the needs and aspirations of the future generations. T.N.Khoshoo, Environmental Concerns and Strategies (1988), p.629.
64. Development that meets the needs of the present without compromising the ability of future generations to meet their own needs. World Commission on Environment and Development, Our Common Future (1987), pp.8, 9 and 43. See also Constance D. Hunt; Peter A. Bobeff and Kenneth A. Palmer, "Legal Issues arising from the Principle of Sustainable Development : Australia, Canada and New Zealand" Journal of Energy and Natural Resources Law, Vol.9 (1991), 1 at p.3.
65. Speaking about the conflicts between development and environment one author suggests,
 "It should not be environment or development; but environment and sustained development. It shall be . . . development based on scientific principles to ensure sustainability bereft of greed and profit. Science and technology compatible with environment, is the remedy to the malady".
 T.N. Khoshoo, op. cit., pp.78, 79.

from the forest resources without destroying their regenerative potentialities, if exploitation is made on proper scientific lines. In cases where developmental activities necessitate clearing of forest land, care should be taken to see that such activities do not endanger the ecosystem and the environment to such an extent as to leave human future in peril. In other words, developmental activities should not go beyond the carrying capacity of the life supporting system. Environmentally sound development should be the policy of the Government and of the decision makers when granting permission to projects involving loss of ecosystem.

The World Commission on Environment and Development suggested the strategy of sustainable development to ensure that development does not endanger environmental resources available for future use.⁶⁶

In order to ensure sustainable development one should make a cost-benefit analysis, before development projects are undertaken. In the past, benefits from human activity had been exaggerated and the costs of environmental loss ignored.⁶⁷ The policy and decision making were clearly

66. World Commission on Environment and Development, Our Common Future (1987), p.43.

67. World Bank, World Development Report 1992 Development and Environment (1992), p.8.

If the net benefit of the project is minimum or nil in view of the environmental costs, the project should be dropped on environmental considerations.⁷²

Sustainable development : The U.S. experience

Developed countries like U.S.A. have already recognised the principles of conservation and sustainable development in the legislation relating to forest.⁷³ The

72. Net benefit of the project = $(B_p + B_e) - (C_p + C_e)$

where B_p represents direct project benefits, B_e environmental benefits, if any, C_p represents direct project costs and C_e the environmental costs.

Richard A. Carpenter et.al., op.cit., p.28.

73. During the 19th century in United States the basic policy of the Government was to encourage development and settlement through the disposal of public lands. Forest was considered as an impediment to progress. Thomas T. Schoenbaum, Environmental Policy Law: Cases Readings and Text (1985), p.295. Timber was used for commercial purposes. The Federal Timber Purchase Act 1799 enabled the Federal Government to purchase two tracts of forest land on the Georgia coast. The Federal Timber Reservation Act of 1817 established in Florida a live-oak timber reserve. The Timber Trespass Act 1831 was enacted to prevent trespass on Government lands and plantations. The Homestead Act 1863 conferred rights on a citizen over public domain if he would live on the land and pay a fee of \$ 16. Conservation efforts started only in 1872 with the establishment of the Yellow Stone National Park. A series of enactments were passed later. The Forest Reserve Act 1891 authorised the President to set apart and reserve any part of the public land as public reservations. These lands later became the national forests. Michael Frome, The Forest Service (1971), p.7-11. The Organic Act of 1897 imposed restrictions on the establishment of national forests. In 1905 the Forest Service was created and given jurisdiction over the national forests. In 1910 the Congress passed the Picket Act authorising the President to make temporary withdrawals of public

could

Congress passed the Multiple Use and Sustained Yield Act 1960, directing the Secretary of Agriculture to develop and administer all unappropriated public domain and National forests on a multiple use and sustained yield basis.⁷⁴ The term 'multiple use' denotes a wide range of uses on national forests like timber production, water shed protection and recreation.⁷⁵ The concept

lands for certain purposes. The Taylor Grazing Act 1934 ended the era of unrestricted entry to the unappropriated public domain and enabled the Secretary of the Interior to determine how those public lands might best serve the public interest. 9 E.L.R. (1979), p.41402 In order to preserve national areas within national forest as such the Wilderness Act 1964 was passed. 9 E.L.R. (1979), pp.41411-41416. See also, Michael Frome, The Forest Service (1971), pp.11-25. The Red Wood National Parks Act 1968 succeeded in creating a National Park in California. See William A. Duerr et. al., Forest Resource Management : Decision-Making Principles and Cases (1979), p.349.

74. Multiple Use and Sustained Yield Act 1960, S.2. See for the text, 9 E.L.R. (Statutes and Regulations) (1979), p.41406.

75. The Multiple Use and Sustained Yield Act 1960, S.4 defines 'multiple use' as follows:

"The management of all the various renewable surface resource of the national forests so that they are utilised in combination that will best meet the needs of the American people; making the most judicious use of the land . . . and harmonious and co-ordinated management of the various resources each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources . . . "

Id., p.41406.

of "Sustained yield"⁷⁶ indicates that non-economic factors as well as the future needs of people should be considered along with the present, in managing the national forests.⁷⁷

With the object of assessing the present and anticipated uses, demand for and supply of renewable resources from the Nation's public and private forests and range-lands, through analysis of environmental and economic impacts, the Congress enacted the Forest and Range-lands Renewable Resources Planning Act in 1974.⁷⁸ The Act supplemented by the National Forest Management Act 1976, the Renewable Resources Extension Act 1978 and the Forest and Range-lands Renewable Resources Research Act 1978, formed a comprehensive legislation in U.S.A. for planning and managing the future of national forests and range-lands.⁷⁹

The National forest system lands are managed scientifically in growing and harvesting timber. Forage

76. According to S.4 (b) of the Multiple Use in Sustained Yield Act of 1960,

"Sustained yield of the several products and services means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land."

Ibid.

77. Id., p.41404.

78. See for text Id., p.41433.

79. See for text E.L.R. op.cit., pp.41433-41442.

is scientifically managed for the use of domestic livestock whose numbers are kept in balance with the carrying capacity of the range. Many forms of land and resource use are granted under permit or lease; physical and resource improvements needed to develop, protect and use all resources are built and maintained. Co-operative forestry programmes are also carried out by the Forest Service for the protection, development and sustained production of all forestry resources public and private.⁸⁰

Forest Management Plans should also comply with the procedural requirements laid down in the National Environmental Policy Act 1969.⁸¹ The Act requires every federal agency to prepare an Environmental Impact Statement (E.I.S.) before proposing any major federal action,⁸² significantly affecting the quality of human environment. E.I.S. should contain the environmental impacts of the proposed action, any adverse environmental effects which

80. U.S. Printing Office, Code of Federal Regulations Vol.36, Part 200 (1982), p.10. See also Robert C. Szaro, "Conserving Biodiversity in the United States Opportunities and Challenges", Dosh Bandhu et.al., (Eds.), Environmental Education and Sustainable Development, (1990) pp. 177, 178

81. See for text, E.L.R. op.cit., p.41009.

82. Action encompasses the making, modification or establishment of regulations, rules, procedure and policy. The Federal action is major if there is a potential that the environment may be significantly affected. U.S. Printing Office, Code of Federal Regulations Vol.40 (1982), p.51.

cannot be avoided if the proposal be implemented, alternatives to the proposed action, the relationship between local short term uses of man's environment and the maintenance and enhancement of long term productivity and any irreversible and irretrievable commitments of resources which would be involved in the proposed action if it is implemented.⁸³ Before preparing the E&I.S. the responsible federal official must consult experts, consider the views of other federal, state and local agencies and the public about the proposed action.⁸⁴

Another welcome measure adopted in USA to ensure sustainable development is the co-ordination between agencies in the forest planning process. All levels of forest planning will be based on principles of protection, conservation and preservation, taking into account ecological and environmental significance of forests. Economic factors will also be considered. Co-ordination with the land and resource planning efforts of other federal agencies, state and local governments be sought in planning.⁸⁵ Planning is done at national and regional levels. A team representing several disciplines will be

83. National Environmental Policy Act 1969, S.102 (c).

84. Ibid.

85. U.S. Printing Office, Code of Federal Regulations Vol.36, (1982), p.55.

used at each level of planning to ensure co-ordinated planning, which addresses outdoor recreation, range, timber, watershed, wildlife, fish and wilderness opportunities. Through interaction among its members the team will integrate knowledge of the physical, biological, economic and environmental design arts in planning process.⁸⁶

Thus the United States legislation provides for an advanced system of management of forests. By incorporating the mandate of Environmental Impact Statement,⁸⁷ and co-ordination of federal state and local agencies in the forest planning process it promotes sustainable development.⁸⁸

86. Id., p.52.

87. Policy and decision makers in developing countries, believe that the EIS as practised under the National Environmental Policy Act delayed needed technological changes. Richard A. Carpenter and John A. Dixon, "Ecology Protects Economics : A Guide to Sustainable Development".²⁷ Environment (1985), p. 8
British industrialists argue that the environmental impact assessment requirements of the U.S. legislation have slowed and stopped many new oil drilling and dam construction projects in the U.S. and if the requirement of EIS, is adopted in Britain, the industrial development in Britain would be unfairly inhibited. Environmental Policy and Law, Vol.7 (1981), p.20.

88. Criticising the activities of the U.S. Forest Service one environmentalist remarked:

"Only in theory has sustainable development been actually recognized in USA. Since 1960, the U.S. Forest Service has been sued repeatedly by environmental groups for disregarding the impacts on biodiversity, soils, water quality, and reforestation while allowing vast commercial timber production, particularly by clear-cutting. Much logging was permitted on lands with slopes so steep where

Sustainable development : The Indian experience

The measures adopted in the U.S. to ensure sustainable development are not incorporated in the law relating to forest in India. However, the Indian judiciary has made some contributions of its own.

In Rural Litigation and Entitlement Kendra v. State of U.P.,⁸⁹ the Supreme Court of India made an attempt to reconcile the conflict between development and environment. The litigation started in 1983 when a letter received from the Rural Litigation and Entitlement Kendra, complaining about the destructive lime stone quarrying activities going on in the Doon Valley of Dehra Dun District, was entertained by the Supreme Court as a public interest litigation. Considering the geographical, environmental and ecological significance of Doon Valley,⁹⁰ the court directed the appointment of several

reafforestation could not practically be carried out".

View expressed by Lori Potter, Managing Attorney, Sierra Club Legal Defense Fund, U.S.A., when interviewed by the researcher at Cochin.

89. A.I.R.1985 S.C. 652. The case led to a series of litigations. See A.I.R. 1985 S.C. 1259; A.I.R.1987 S.C.359; A.I.R.1987 S.C.2426; A.I.R.1988 S.C.2187.

90. In the court's words,

"The Doon Valley has been an exquisite region bounded by the Himalayan and Shivalik ranges and the Ganga and Yamuna Rivers. The perennial water streams and the fertile soil have contributed not only to the growth of dense lush green forests but have helped the yield of basmati rice and leechis. Mussoorie, known as the queen of Indian

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committees⁹¹ to inquire into the problems of ecology and environment if quarrying is permitted in the area. Based on the reports of the committees, the court ordered the closure of certain mines on environmental considerations.⁹² With regard to certain mines situated outside city limits, the court permitted continuance of mining operations. The Court favoured sustainable development⁹³ in taking

Hill Stations situated at a height of 5000 ft. above sea level and Dehra Doon located below the height have turned out to be important places of tourist attraction, centres of education, research and defence complex".

Rural Litigation and Entitlement Kendra v. State of U.P.
A.I.R.1987 S.C.359 at p.362, per Ranganath Misra.J.

91. In the first case, 3 committees - Bhargava Committee, Bandopadhyay Committee and Valdia Committee - were appointed. The Union Government appointed Working Groups on mining of lime stone quarries in U.P. in 1983 and in 1986. Later in 1988 the Court directed the setting up of a monitoring committee to direct the closing of mines. See Rural Litigation and Entitlement Kendra v. State of U.P. A.I.R. 1988 S.C.2187.
92. Mines classified as category B and C in the Bhargava Committee report were ordered to be closed on environmental considerations. Rural Litigation and Entitlement Kendra v. State of U.P. A.I.R.1985 S.C. 652 at p.654, 656.
93. The idea is clear from the following words of Justice Ranganath Misra:
 "It is necessary that the Himalayas and the forest growth on the mountain range should be left unfettered with, so that there may be sufficient quantity of rain. The top soil may be preserved without being eroded and the natural setting of the area may remain in tact We are not oblivious of the fact that natural resources have got to be tapped for the purposes of social development but one cannot forget at the same time that tapping of

such a decision. Since high grade lime stone quarried from Doon Valley is essential for the manufacture of defence armaments, the interests of the defence of the country will be adversely affected if a total ban is imposed on quarrying.⁹⁴ The Court also directed the Government to file an affidavit stating whether it can tap other alternative indigenous sources for meeting the defence needs.⁹⁵ Later in 1988, the court directed the closure of all mines⁹⁶ in the area, exempting three

resources have to be done with requisite attention and care so that ecology and environment may not be affected in any serious way; there may not be any depletion of water resources and long term planning must be undertaken to keep the national wealth. It has always to be remembered that these are permanent assets of mankind and are not to be intended to be exhausted in one generation".

Rural Litigation and Entitlement Kendra v. State of U.P. A.I.R. 1987 S.C. 359 at p.364.

94. In Rural Litigation and Entitlement Kendra v. State of U.P. A.I.R.1987 S.C.2426 the Court observed at p.364:

"While we reiterate our conclusion that mining in the area has to be stopped as far as practicable, we also make it clear that mining activity has to be permitted to the extent it is necessary in the interests of the defence of the country as also for safeguarding the foreign exchange position".

95. Ibid.

96. Rural Litigation and Entitlement Kendra v. State of U.P. A.I.R.1988 S.C.2187. Since the affidavit filed by the Government failed to fulfil the directions given by the Court in its earlier order, (supra, n.94) the Court did not accept the same.

working mines from the ban till the expiry of the period of their lease; the owners of these mines were directed to give an undertaking to preserve ecological and environmental balance while carrying on mining operations.⁹⁷ Reafforestation programmes were also authorised.⁹⁸

In spite of the active role played by the judiciary in protecting and safeguarding the forest in cases like these, it cannot be said that litigation of this type is adequate to ensure environmental protection. The Court can look into only those cases which come before it. There may occur a number of other instances involving environmental degradation, which are not brought before the court. In such cases, the judiciary cannot take any positive action for environmental protection.

Another hurdle in solving environmental problems through the judiciary lies in the constraints inherent in the judicial system itself. Courts need not be experts in environmental matters. So, usually in issues involving conflicts between development and environment, the easier way for the court is to evade the issue relying on the affidavit filed by the Government, than balancing the conflicting interests. Silent Valley case⁹⁹ and Tehri

97. Id., p.2209.

98. Ibid.

99. See infra, n.101.

Dam's case¹⁰⁰ are the best examples of such judicial laxity. In Society for Protection of Silent Valley v. Union of India and Others¹⁰¹ petitions were filed seeking a writ to forbid the State Government from proceeding to construct a hydroelectric project at Silent Valley, an ecologically sensitive area in Palghat district of Kerala State. The petitioners had provided proof of the dangers of deforestation in the area, from available scientific, socio-economic and technical studies on the matter. But the judges refused to intervene in the Government's decision. Holding the view that they could not substitute their judgment for that of the Government on the question whether a national asset is to be more conveniently utilised as a hydro-electric project with prospects of greater power generation, or is to be retained in its pristine glory for preservation of forests and wild life, prevention of soil erosion and avoidance of other deleterious effects on the community.¹⁰²

100. See infra, n.105

101. O.P.Nos.2949 and 3025 of 1979. See for the extract of the judgement (1984), C.U.L.R.pp.133-138.

102. Id., p.136. Contrary view was taken by the same High Court in Vilangan Kunnu Samrakshna Samiti v. State of Kerala (1989) (2) K.L.T.547 and Environmental & Ecological Protection Society v. Executive Engineer 1991 (2) K.L.T. , 493. See for details supra, ch.3 pp.47-50.

Serious environmental problems were raised in the construction of Tehri Dam Project in Uttar Pradesh. In Tehri Bandh Virodhi Sangarsh Samiti v. State of U.P.¹⁰³ the petitioners challenged the soundness of the plan to construct the project. The main grievance of the petitioners was that the dam if allowed to be constructed posed serious threat to the life, ecology and environment of the entire Northern India as the site of the dam was prone to earth-quake¹⁰⁴ and in preparing the plan for the Tehri Dam Project the safety aspect had not been taken into consideration.¹⁰⁵ The case had the fate similar to that of the Silent Valley case of Kerala.¹⁰⁶ The Supreme Court dismissed the petition holding that the Government had considered the inherent danger in the construction of the Tehri Dam Project and applied its mind to the safety of the dam.¹⁰⁷

103. (1991), 2 Comp.L.J. 231 (S.C).

104. The earth quake that occurred in U.P. on October 20, 1991 causing the death of over 2,000 people is an ample proof of the validity of the petitioner's plea. See Rashmi Saksena and K.M.Rakesh, "Who gives a dam" The Week (Nov.3, 1991), pp.34, 35.

105. See Tehri Bandh Virodhi Sangarsh Samiti v. State of U.P. (1991), 2 Comp.L.J.231 at p.232.

106. Supra, n. 101

107. Tehri Bandh Virodhi Sangarsh Samiti v. State of U.P. (1991), 2 Comp. L.J.231 at p.235.

Conflicts between development and environment was the issue in Shri.Sachidanand Pandey v. State of West Bengal.¹⁰⁸ The issue in this case was whether the Government of West Bengal was right in making an allotment of land belonging to the Calcutta Zoological Garden for the construction of a five star hotel. Environmentalists expressed the fear that construction of a multi-storied building in the area would disturb the inmates of the zoo and adversely affect the migration of birds. Still the Court justified the Government's position by holding that the Government had taken the decision after taking into account relevant considerations.¹⁰⁹

Even in cases where courts have tried to balance the interests of development and environment, instances have occurred where the court favoured development than environment. Benwasi Seva Ashram v. State of U.P.¹¹⁰ is an example. In that case the court specifically admitted the environmental significance of forest, but permitted the location of a National Super Thermal Power

108. A.I.R. 1987 S.C.1109.

109. Id., at p.1133.

110. A.I.R. 1987 S.C.374. See for details infra, ch.9. n.54 See also 1992 (1) SCALE 407.

Plant in forest.¹¹¹ Dahanu Taluka Environment Protection Group v. Bombay Suburban Electricity Co.Ltd.¹¹² is yet another instance. The Court favoured construction of a thermal power plant expending 800 hectares of forest area in Maharashtra.¹¹³ In Goa Foundation v. Konkan

111. The Court observed:

"Indisputedly forests are a much wanted national asset. On account of the depletion thereof ecology has been disturbed; climate has undergone a major change and rains have become scanty. These have long term adverse effects on national economy as also on the living process. At the same time we cannot lose sight of the fact that for industrial growth as also for provision of improved living facilities there is great demand in the country for energy such as electricity. In fact, for quite some time the entire country in general and specific parts thereof in particular have suffered a tremendous set back in industrial activity for want of energy. A scheme to generate electricity therefore is equally of national importance and cannot be deferred".

Id. at p.376.

112. (1991) 2 S.C.J. 446.

113. The judicial laxity is evident from the following words of justice Ranganathan,

"It is primarily for the Government concerned to consider the importance of public projects for the betterment of the conditions of living of the people on the one hand and the necessity for preservation of social and ecological balances, avoidance of deforestation and maintenance of purity of the atmosphere and water free from pollution on the other in the light of various factual, technical and other aspects that may be brought to its notice by various bodies of layman, experts and public workers and strike a just balance between these two conflicting objectives. The Courts' role is restricted to examine whether the Government has taken into

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Railway Corporation¹¹⁴ also the High Court of Bombay favoured development than protecting the forest ecosystem of Goa and permitted the construction of railway lines.¹¹⁵

It is clear that seeking solution through judiciary alone will not guarantee protection of forest and environment. Cases like Rural Litigation¹¹⁶ where the

account all relevant aspects and has neither ignored or overlooked any material considerations nor been influenced by extraneous or immaterial consideration in arriving at its final decision".

Id., p. 448.

114. A.I.R.1992 Bom.471. See for details supra, n. 49

115. Rejecting the plea of the petitioner for environmental protection the court observed:

"No development is possible without some adverse effect on ecology and environment, but projects of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment. The balance has to be struck between the two interests and this exercise must be left to the persons who are familiar and specialised in the field. The corporation has set up not only a specialised committee but also engaged the service of a renowned engineer from Goa who is practical not only in experience but also of the surroundings in Goa and when both of them have given green signal to the project, we decline to exercise our writ jurisdiction to frustrate the project"

Id. at p.474.

116. Supra, n. 89

Court ensured protection of forest are not frequent. Even in those cases, the court would not have succeeded in balancing the interests without the help of committees and commissions, which are effective tools in providing expert opinion in environmental matters. However, such processes are time consuming and will delay the judicial decisions and will also expend much money from public exchequer. Because of the absence of effective environmental impact studies in India before development projects are undertaken, courts are forced to adopt such extraordinary measures to ensure environmental protection. Environmental Impact Assessment (EIA)¹¹⁷ should be prescribed in the legislation relating to forest, instead of seeking to discipline the executive in environmental matters through the judicial process.

In 1980, the Tiwari Committee strongly recommended adoption of the system of environmental impact analysis in India with supporting legislation on the lines of the

117. Some authors have correctly stated,

"Environment Impact Assessment/Analysis (EIA) provides a tool for judicious environmental management. EIA consists in establishing quantitative values for selected parameters, chosen to reflect the quality of environment and the effects favourable or unfavourable - before, during and after a particular action".

A.V.Jalota and K.K.Srivastava, "EIA - Strategy for Environment Management : Status of Education and Research" in *Desh Bandhu et.al. (Eds.) op.cit.*, p.424. See also P.Leelakrishnan, "Statutory Control of Environmental Pollution"(1979) C.U.L.R.141, at pp.161-163.

National Environmental Policy Act of U.S.A.¹¹⁸ Accordingly the Planning Commission of India adopted the device of environmental impact assessment in the planning and implementation of development projects affecting ecosystems and other environmental resources.¹¹⁹ Now the Department of Environment, Forest and Wild life of the Central Government prepares the review report of the project and the project is to be cleared by the Planning Commission before its implementation.¹²⁰ It is reported that the Ministry of Environment and Forests had assessed environmental impacts of 341 development projects during 1989-90 period and the project proposals for 105 projects were rejected on environmental considerations.¹²¹ The Tehri Dam Project is still under consideration of the Ministry. The Ministry has set up an Environment cell to keep track of the environmental action plans for the Narmada Sagar Project.¹²² However, these efforts at the

118. Government of India, Department of Science and Technology, Report of the Committee For Recommending Legislative Measures and Administrative Machinery For Ensuring Environmental Protection, (1980), p.23.

119. Government of India, Planning Commission, Sixth Five Year Plan 1980-85 (1980), p.349.

120. O.P. Dwivedi and B. Kishore, "India's Environmental Policies : A Review" in Shekhar Singh (Ed.), Environmental Policy in India (1984), p.56.

121. Government of India, Ministry of Environment and Forests, Annual Report 1989-90 pp.5-13. See the relevant pages summarised in Armin Rosen Cranz, Environmental Law and Policy in India, Cases, Materials and Statutes (1991), pp.46, 49.

122. Ibid.

ministry level alone is not sufficient to tackle the problem of environmental protection. A legislation on the lines of the National Environmental Policy Act 1969 of U.S.A. is the desideratum.

Recently the Central Government has issued notifications under the Environment (Protection) Act 1986,¹²³ making environmental clearance from the Central or State Government mandatory for undertaking, expanding or modernising certain listed projects in any part of India.¹²⁴

123. Notification of the Government of India, Ministry of Environment S.O.No.85 (E) dated 29th January, 1992, issued under S.3 (1) and S.3 (2) (v) of the Environment (Protection) Act 1986 (Act (29) of 1986). S.3 (1) of the Environment (Protection) Act 1986, empowers the Central Government to take all measures necessary or expedient for the purpose of protecting and improving the quality of the environment, preventing, controlling and abating environmental pollution. According to S.3(2)(V) such measures may include "restriction of areas in which industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards".
124. In the notification 48 projects or industries are listed in 2 schedules. Schedule I contains 24 projects including projects relating to atomic powers, thermal power, multi purpose river valley projects, ports, harbour and airports, railway lines, refineries fertilisers, pesticides and insecticides, petrochemicals, explosives, drugs and certain chemical products. With regard to these projects clearance from the Central Government is mandatory. Schedule II contains a list of 24 projects relating to ceramics, coal washing, pipelines, glass and other items for which clearance from State Government is mandatory. Notification of Ministry of Environment S.O.No.85(E) dated 29th January, 1992, para 4 read with Schedule I and II. See for text, The Current Indian Statutes Part 5 (1992), pp.113-116.

Environmental clearance from the Central Government is mandatory for all projects proposed to be located within ten kilometers of the boundary of reserved forests or a designated ecologically sensitive area or within 25 kilometers of the boundary of national parks or sanctuary.¹²⁵ The application for environmental clearance should be accompanied by a detailed project report including an environmental impact assessment report and an environmental management plan prepared in accordance with the guidelines issued by the Central Government in the Ministry of Environment and Forests.¹²⁶ The detailed project report will be evaluated and assessed by the Impact Assessment Agency of the Central Government or of the State Government. The Impact Assessment Agency will prepare a set of recommendations based on technical assessment of documents and data furnished by the project authorities supplemented by data collected during visits to the site or factory and interaction with affected populations and environmental groups.¹²⁷ Environmental clearance will be given subject to these recommendations and conditions.¹²⁸

125. Id., para 2.

126. In the case of projects of mining, pit-head thermal power stations and hydroelectric projects and multi-purpose river valley projects a preliminary site clearance will be required from the Central Government in the Ministry of Environment and Forests before investigations involving cutting of trees, drilling, digging or construction of any sorts temporary or permanent are carried out. Id., para 4

127. Ibid.

128. Ibid.

These provisions for environmental clearance if effectively implemented can bring forth development without doing much detriment to natural resources and the environment. However, care should be taken to see that the requisite of environmental clearance is not reduced to a mere procedural formality in the Department of Environment, Forest and Wild life; otherwise, politically influential persons will not find it difficult to get environmental clearance from the Department of Environment.¹²⁹ Once the Department has granted environmental clearance, affected citizens cannot stand against its implementation. Even seeking remedies through court of law will be of no effect, if the guidelines for Environment Impact Statements are not clearly laid down in detail in the relevant legislation.¹³⁰ It is suggested that instead of issuing notification under a general statute, the guidelines for environmental impact statements should

129. It is alleged that the Union Minister of Environment and Forest, Kamal Nath is putting little resistance to the plan of the Madhya Pradesh Government to establish 54 projects on 27,000 hectares of forest land. It is also alleged that the Minister has ordered his officials to clear the projects, although the State has no firm plans for compensatory afforestation. Indian Express (Kochi) August 3, 1992, p.10.

130. The fate of Silent Valley case, Tehri Dam's case, Goa Foundation's case and similar cases amply prove this fact. See supra, nn. 101-115

be clearly laid down in the legislation as is done in U.S.A. This arrangement will give more scope for judicial intervention in cases where the implementation of arbitrary administrative decisions deteriorate the environment. So, the citizens affected by the project can successfully challenge the implementation of the project before a court of law, if the project authorities fail to comply with the requirements of environmental impact statement as laid down in the statute. In the U.S. the statutory requirement of E.I.S. has proved to be an adequate safeguard against unscientific clearing of forest land.¹³¹ The requirement of sixty days'

131. The effectiveness of the statutory guidelines for E.I.S. in protecting the environment can be illustrated from the following U.S. decisions. In Minesota Public Interest Research Group v. Butz, (1976) 6 E.L.R. 20133, the suit was for permanently enjoying the Forest Service from engaging in or permitting others to log areas contiguous to virgin forests in the Boundary Water Canoe Area of Minnesota. The Court found that six out of the seven active timber sales in the portal zone constituted direct incursions into the virgin forest and the revised E.I.S. filed by the Forest Service was defective for the following reasons:

- (1) The E.I.S. failed to describe the proposed logging objectives with sufficient specificity so as to permit thorough evaluation of possible environmental impacts.
- (2) The E.I.S. did not adequately describe and evaluate the environmental impacts.
- (3) The E.I.S. failed to discuss the order and size of long and short-range cutting practises and their cumulative environmental impact.
- (4) The E.I.S. failed to describe the adverse environmental impacts of alternative logging practices.
- (5) The Forest Service did not disclose the reasoning and supporting data for its environmental conclusions.

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notice for instituting citizen suits¹³² should be relaxed

(6) The E.I.S. failed to describe and comment on a reasoned choice of alternatives to the proposed logging and arbitrarily assigned rankings to alternatives that give no due reasons for the Forest Service's choices.

The Court held (at p.20160) that the E.I.S. violated the National Environmental Policy Act 1969 and it prohibited the Forest Service from logging the portal zone.

In Environmental Defence Fund Inc. v. Corps of Engineers, (1971) 1 E.L.R.20130, the court granted injunction against the construction of an earth embankment dam across the Cossato River in Arkansas on the ground that the E.I.S. filed by the Chief of the Army Corps of Engineers and the Secretary of the Army prior to their decision to execute contracts for the construction of the dam, were inadequate for want of 'detailed statements' regarding the alternatives to the proposed dam.

In California v. Bergland (1980) 10 E.L.R.20098 the court enjoined the Forest Service from allowing development of 47 acres of forest land in California as its E.I.S. failed to provide details to consider the wilderness value, the environmental impact of non-wilderness designations, an adequate discussion of range of alternatives and to give adequate opportunity for public comment after the proposed action was identified.

132. In India S.19 of the Environment (Protection) Act 1986 states:

"No court shall take cognizance of any offence under this Act except on a complaint made by -

- (a) the Central Government or any authority or officer authorised in this behalf by the Government; or
- (b) any person who has given notice of not less than sixty days in the manner prescribed, of the alleged offence and of his intention to make a complaint to the Central Government or the authority or officer authorised as aforesaid".

in cases involving environmental degradation so that court of law can promptly enforce the law to protect and safeguard the environment.¹³³ Effective environmental Impact studies, though time consuming,¹³⁴ will help to promote development in harmony with environmental protection.

Development is not the sole reason for the deterioration of forest and the environment. Rapid population growth¹³⁵ and poverty¹³⁶ contribute in degrading environment in developing countries. Poor and needy often

133. Speaking about the requirement of sixty days' notice for citizens' suits one author states:

"Under the statute a citizen gives notice and waits sixty days to see if the agency sues the pollutor . . . what congress intended was actual compliance not further administrative process after violation occurs".

Ross Sandler, "Hurdles Blocking Citizens' Suits Against Polluters", in Environment Vol.23, No.3 (1981), 44 at pp.44, 45.

134. Mr. Jeffrey Campell, an officer from Ford Foundation, U.S.A. working in Delhi when interviewed by the researcher while attending a seminar at Peechi, Kerala expressed the view that the Environmental Impact Assessment is a cumbersome process which delays development process.

135. The world population is now growing by about 1.7 percent a year. During the period 1990-2030 the world population is likely to grow by 3.7 billion. World Bank, World Development Report 1992, Development and Environment (1992), p.7.

136. The late Indira Gandhi, former Prime Minister of India, while addressing the conference on Human Environment held in Stockholm in 1972 pointed out that poverty and need are the greatest polluters in developing countries like India. O.P. Dwivedi and B. Kishore, "Indian Environmental Policies : A Review in Shekhar Singh (Ed.), Environmental Policy in India (1984), pp.47, 48.

encroach upon forest land for food, shelter and fuel.¹³⁷

In India, Government monopoly over forest has created contempt and apathy in the minds of the rural people towards the Forest Department. They cheat the officials of the Forest Department instead of assisting them in protecting forest from deterioration. This trend can be reversed by involving the members of the public in the programmes of forest management. Public participation is required at the planning and implementation levels in managing forest.

In U.S.A. the members of the public are encouraged to participate throughout the planning process. Public participation in the forest planning process begin with a notice to the news media giving the descriptions of the proposed planning action, the description and map of the geographic area affected, the issues expected to be discussed, the kind, extent and methods of public participation to be used, the time, dates and locations scheduled or anticipated for public meeting, the name, title, address and telephone numbers of the Forest Service Official

137. According to one report,

"The poor are both victims and agents of environmental damage. Because they lack resources and technology, land-hungry farmers resort to cultivating erosion-prone hill sides and moving into tropical forest areas where crop yields on cleared fields usually drop sharply after just a few years".

World Bank op.cit., p.7. See also D. Raghunandan, "Ecology and consciousness" in Economic and Political Weekly, Vol.22 (1987), 545 at p.546.

who may be contacted for further information and the location and availability of documents relevant to the planning process.¹³⁸ Public participation activities include requests for written comments, meetings, conferences, seminars, workshops, tours and similar events designed to foster public review and comment. The Forest Service will state the objectives of each participation activity to assure that the public understands what type of information is needed and how this information relates to the planning process.¹³⁹ A list of individuals and groups known to be interested or affected by the plan will be maintained. They will be notified of public participation activities. Public comments will be analysed individually to determine common area of concern. The results will be evaluated and conclusions will be used to the extent practicable in decisions.¹⁴⁰ These devices if adopted in India will help the Government to implement successfully the programmes for protecting forest with the help and co-operation of the members of the public. The goal of conservation of forest and

138. U.S. Government Printing Office, Code of Federal Regulations Vol.36, (parts 200 to end) (1982), p.53.

139. Id., p.54.

140. Id., p.55.

sustainable development can be achieved only through a joint venture of the Government and the public.

People should also be educated and trained in environmental matters and in the sustainable utilisation of resources. The significant role played by forest in maintaining the quality of human environment¹⁴¹ should be taught to them in educational programmes at all levels.¹⁴² In schools and colleges, forestry and environmental subjects should be included in the syllabus.¹⁴³ They should also be taught the subjects in adult education and literacy programmes. Seminars, workshops and camps should be organised to disseminate knowledge, information and awareness in environmental matters. Such awareness

141. See for details supra, ch.1 nn.19-41.

142. According to one author,

"It was the lack of comprehensive knowledge about the total environment, its components, their inter-relationships and interdependences on the part of humanity on the one hand and his ingenuity in the creation and use of new technology and harnessing of enormous power and energy resources on the other which led humanity to intervene in the environment as a limitless resource".

Abdul Ghafoor Ghaznawi, "Fostering the Compatibility of Environment, Development and Population Through Environmental Education" in Desh Bandhu et. al., Environmental Education and Sustainable Development (1990), 41 at p.43.

143. Environmental education imparted to the members of the public in schools, homes, factories and farms creates environmental sensitivity, awareness, knowledge, skills and ethical responsibilities and civic actions needed for protection and improvement of environment. Id., p.56.

can also be promoted through film shows, exhibitions, street dramas, posters, free distribution of pamphlets and monographs in local language and publicity through mass media including news paper, radio and television.¹⁴⁴

Some Asian countries are far ahead than India in imparting environmental education. In Malasia, Singapore, Indonesia, Philippines, Thailand and Burma joint projects are being launched for training secondary school teachers in environmental education.¹⁴⁵ Similar projects are also launched in Sreelanka to train a group of qualified key personnel competent to disseminate environmental awareness among the public.¹⁴⁶

144. In Kerala, the Kerala Forest Department is freely distributing monographs and journals in Malayalam to impart knowledge about forest and wildlife. In M.C. Mehta v. Union of India A.I.R.1992 S.C.382. Recently the Supreme Court has directed the Central and State Governments and the Union territories to take measures to see that slides on environment are exhibited free of cost in cinema halls, touring cinimas and video parlours, so as to disseminate information on environment. Id., p.384.

145. In this project, four teacher educators, school supervisors and experienced teachers from each country are trained in a three-week subregional training course and then the course is adapted and repeated at national level to train some 50 teacher educators in each country with the hope that it will be further continued at district levels. Abdul Ghafoor Ghaznauri op. cit., p.57.

146. Ibid.

In Nepal a National Committee engaged in conservation efforts is trying to teach teachers and policy makers about case studies of the alarming degradation of nature in the country.¹⁴⁷ The National Committee is also organising many slide shows, film programmes and talks inviting people to the committee's office, so as to develop a consciousness of nature conservation amongst the Nepalese people.¹⁴⁸

China has a very active mass media, spreading information on environmental matters to the public.¹⁴⁹ News papers exclusively devoted to environmental issues are published and circulated widely.¹⁵⁰ Forest camps and tree-planting are also encouraged.¹⁵¹

In India, conservation efforts are encouraged by the Government of India. Students of schools,¹⁵² and

147. Karna Sakya, "Environmental Education in Nepal, An Urgent Challenge" in Desh Bandhu et.al., Environmental Education and Sustainable Development (1989), 117 at pp.122, 123.

148. Id., p.123.

149. Kazi F. Jalal, "Environmental Education For Sustainable Development: Role of ESCAP" in Desh Bandhu et.al., op.cit., p.23 at p.26.

150. Chinese researchers in Environmental Sciences publish the news paper "Voice of Environment" to highlight environmental issues. Another news paper called "China Environment News" exclusively devoted to publishing environmental matters has a circulation over 6,00,000. Ibid.

151. Ibid.

152. In Kerala, 'Forestry clubs' are functioning in 286 schools. Tree planting programmes are implemented by these clubs. They also spread the message of protecting trees. Kerala Forest Department, Aranyam Vol.II No.1 (1987) p.2.

colleges, and the members of the public are actively involved in the tree-planting programmes.¹⁵³ Voluntary organisations like the Indian Environmental Society, the Chipko Movement Environmental Service Group and the Kerala Sastra Sahitya Parishat are also actively involved in campaigns for the protection of forest and the environment.¹⁵⁴ Incentives are also given by the Government to the members of the public to conduct nature camps so as to disseminate environmental awareness.¹⁵⁵

The clashes between forest officials and the public can be minimised and the forest protection measures can be effectively implemented if the members of the public who are aware of the need to protect forest are actively involved in the programmes for the protection and improvement of forest. Management of forest with the co-operation and help from the members of the public has been

153. Government of India, Planning Commission, Sixth Five Year Plan 1980-85 Mid-term Appraisal (1983), p.120. See also supra, ch.2 nn.151, 161-165.

154. Voluntary associations have played commendable role in building public awareness in Malasia and Philippines also. In Malasia, the Environmental Protection Society of Malasia, the Malaysia Nature Society and the Sahabat Alam Malaysia have contributed much in building up public awareness in environmental matters. The Philippines has an "Ecological Balance Brigade" in every community which undertakes work at the village level. There are also several environmental conservation programmes that involve local people in a substantial way. Kazi F. Jalal op. cit., p.26.

155. In Kerala people conducting nature camps are often provided with food and accommodation facilities by the Forest Department at the expense of the Government. The researcher attended such a nature camp in the wild life sanctuary at Parambikulam.

successfully tested in States like West Bengal, Uttar Pradesh and Orissa.¹⁵⁶ In these States the Forest Department seeks co-operation of the villagers living near forest in protecting the forest. The villagers have constituted Forest Protection Committees (F.P.C)¹⁵⁷ and the members of the committee keep watch of the incidents going on in the forest in their locality. Whenever a stranger or smuggler is found inside such forest doing harm to the forest or the trees, the members of the committee will inform the forest officials and help them in preventing the occurrence of offences.¹⁵⁸ In return of their help in protecting forest, the Forest Department employs them in silvicultural and harvesting operations in forest, gives them 25 percent of the final

156. Kamala Chowdhuri, "Government Policies : Structural Changes for Better" Hindu Survey of Environment 1992 (1992), 31 at p.33.
157. A Divisional Forest Officer from Andhra Pradesh when interviewed by the researcher at a seminar in the Forest Research Institute, Peechi on 18th April 1992 said that at least one member from each family living near forest is a member of the Forest Protection Committee. See also Indian Express (Kochi), July 1, 1992, p.11.
158. In West Bengal alone nearly 1,800 Forest Protection Committees protect 2,15,000 hectares of sal forests and plantations. In Uttar Pradesh, as much as 30 percent of forest land and in Orissa, an estimated 10 percent of all reserve and protected forest, are under community protection. Kamala Chowdhuri op. cit., p.33.

harvest and allows them to collect fuel and fodder from forest.¹⁵⁹ Deterioration of forest can be minimised if strategies of this type are adopted in all States in India.

Management of forest with the help and co-operation of the members of the public does not imply that people should be given free access to all forests in the country. Human interference has already deteriorated the condition of forests and what is left in the original form is only very little.¹⁶⁰ So the existing virgin forests in the country should be kept untouched.

In order to reduce the thrust on forest for timber, the members of the public should be encouraged to minimise the use of wood. Substitutes should be found out for

159. Madhav Gadgil and Ramachandra Gupta, "New Forest Policy, For Genuine Friendship", Hindu Survey of Environment 1992 (1992), 26 at p.29. See also B.K. Bardhan Roy "A Model for Forest Management with Peoples' Participation", Tiger Paper Vol.18 July-September (1991), 14 at p.15.

160. India is having only 30 million hectares of natural forest. B.B. Vohra, "Towards a National Land Policy" in Environmental Policy and Law Vol.16 (1986), 20 at p.24.

wood articles in construction works.¹⁶¹ Designers,¹⁶² builders and manufacturers of such goods should be encouraged to popularise such efforts and sufficient incentives should be given to persons coming forward with such plans and programmes.¹⁶³

161. Recently the Central Government have issued certificates under the Environment (Protection) Act 1986 for labelling of household and other consumer products which meet certain environmental criteria (environment friendly goods) along with quality requirements of the Bureau of Indian Standards for that product. The label is known as ECOMARK. Notification No.G.S.R.85 (E), dated February 20, 1991. Current Central Legislation, Vol.17, 1991 pp.183-188. The Government has also notified the criteria for labelling wood substitutes as 'Environment Friendly Products'. Building boards, frames and shutter of buildings and furniture, paper and paper boards made of non-wood raw-materials are eligible to get ECOMARK. Ministry of Environment and Forests, notification No.G.S.R. 589 (E) dated June 10, 1992, Current Central Legislation Vol.18, 1992 pp.389, 390. See also Notification No.G.S.R.109 (E) dated February 19, 1992, Current Central Legislation Vol.18, 1992 p.181.
162. The modern houses with minimum use of wood, designed by Barry Becker, an eminent architect settled in India, are very popular.
163. There is a construction company called 'Nirmidi' in Quilon, Kerala which manufactures concrete frames for doors and windows of houses. Incentives by way of subsidies and tax exemption and loans should be given to the manufacturers of such products as well as the users of such wood substitutes. Economic incentives are effective tools for environmental improvement. See P.V.S. Namboodiripad, "Economic Incentives for Environmental Improvement" in P.Leelakrishnan et. al. (Eds.), Law and Environment (1992), pp.86-91.

The use of wood as fuel should be reduced by installing improved stoves in rural areas, so that the pressure on forest for fuel can be reduced.¹⁶⁴ Rural poor should be given financial assistance by the Government for adopting such devices.¹⁶⁵

Paper and pulp industries should be encouraged to plant trees in their own industrial premises or on waste lands purchased or leased from Government or individuals, so that exploitation of natural forest for wood can be minimised.¹⁶⁶ Care should also be taken to see that natural forest is not cleared for industrial plantations.

164. In rural areas, demand for fire-wood has increased because of the low efficiency chulahs in which fire wood is used. Anil Agarwal, "The Role of Ecological Destruction in the Emerging Patterns of of Poverty" in V.P. Agrawal and S.V.S.Rana (Eds.), Science, Development and Environment, (1987), 14 at p.19.

165. Biogas generated from agricultural wastes can serve as fuel for cooking in rural areas. G.K.Roy, "Biogas from Solid Waste" Science Reporter, June 1989 p.267. L.P.G. supplied entirely by the Government source is the most convenient and cheapest fuel available. V.P.Agrawal op.cit., p.19. The Central Government has declared that biogas, L.P.G. and natural gases are eligible for ECOMARK as wood substitutes for fuel. Ministry of Environment and Forests Notification No.G.S.R.589 (E) dated June 10, 1992. See for text, Current Central Legislation Vol.18, 1992 p.389.

166. Some industries in India have undertaken afforestation programmes on industrial premises. See infra, ch.8 n.63

No more forest should be cleared for growing crops or cereals. In order to meet the demands of the growing population of the country, alternative strategies should be found out. Intensive cultivation on existing agricultural land using better varieties of seeds, seedlings and environmentally friendly fertilisers, insecticides and pesticides¹⁶⁷ can increase crop production and reduce the demands of more land for cultivation.¹⁶⁸ Sustainable agriculture¹⁶⁹ providing sufficient food without causing detriment to forest ecosystem should be the goal of farmers and agriculturists.¹⁷⁰

167. Recently the Central Government has issued notifications containing guidelines to designate aerosol spray as environmentally friendly goods. Notification No.G.S.R.588 (E) dated June 10, 1992. See for text Current Central Legislation Vol.18, 1992 p.388.

168. In developed countries, the average yield per hectare of cereals ranges from five to eight tonnes. M.S.Swaminathan, "Equitable Development : Focus-sustainable growth", Hindu Survey of the Environment 1992 (1992), 122 at p.123.

169. Sustainable agriculture represents a way of providing sufficient food and fibre that complements and indeed enhances our natural resource endowment of forests, soils and wild life. Gordon R. Conway, "The Challenge of Sustainable Agriculture" in Desh Bandhu et.al. (Eds.), op.cit., p.181 at p.184.

170. One author has correctly pointed out,
 "The ultimate goal of sustainable agriculture should be the improvement of food and nutrition security of a country and the livelihood security of its rural families with due considerations to the carrying capacity of the supporting ecosystems".

M.S. Swaminadhan op. cit., p.127. Velayudhan, a farmer from Trichur, Kerala who won the 'Karshaka Sree' award - instituted by 'Malayala Manorama' for the best agriculturist in Kerala - has been practicing eco-friendly agriculture of high degree of productivity. See for details, Malayala Manorama (Kochi) July 26, supplement pp.1, 2.

Local bodies should also adopt the policy of sustainable development in their programmes of development. Planning permission should be granted for purposes of constructions only after ensuring whether it requires destruction of flora and fauna. Each panchayat, municipality or corporation should also take steps to see that one third of its geographical area is under tree cover.¹⁷¹ Planning permission should be refused for construction works involving destruction of trees if the area of tree cover in the locality is less than the required minimum of one third.¹⁷² Steps should also be taken to afforest vacant areas¹⁷³ so as to enhance the quality of environment.

171. In order to have a healthy subsistence of human beings on earth at least 33 percent of the land area on earth should be under forest cover. Shekhar Singh (Ed.), Environmental Policy in India (1984), p.11.

172. In England S.60 of the Town and Country Planning Act 1971 empowers the local planning authority to make orders for the preservation of any tree, group of trees or woodlands in the area. The tree preservation order prescribes the manner of securing replanting of trees in felled areas. Hailsham (Ed.), Halsburys Laws of England, Vol.19 (1977), p.25. Similar powers should be given to panchayats, municipalities and corporations in India.

173. In 1982, the Government of Karnataka created a new Forest Division known as the Green Belt Division, to build up the healthy environment of Mysore City and to restore the once lost beauty of the city. Trees are planted wherever vacant areas are available in and around the city. Khishna Gowda and M.S.Sridhare, "Urban Forestry and Impact on Environment : A case study of Mysore City", Pramod Singh (Ed.) Ecology of Urban India (1987), 169 at p.176.

CHAPTER 5

CONTROLS OVER PRIVATE FOREST

The Indian Forest Act 1927 do not directly impose governmental control over private lands. Rule making powers have been conferred on the State Government¹ to prohibit destructive activities on private lands with a view to preserving soil and preventing floods and land slips. But these provisions were not utilised by the State Governments and no rules were framed for such purposes. The owners of private forests were left free to exploit the forest land under their control. They could fell trees and remove forest produce other than royalties² from the forest under their control. Gradually different States started enacting legislation imposing restrictions on the use and enjoyment of private forest with a view to preventing indiscriminate felling of trees.

1. Indian Forest Act 1927, S.35. See supra, ch.4 n.46

2. In 1806 the British Government declared royalty rights over teak trees. Native rulers also declared certain forest produce as royalties. For example S.31 of the Travancore Regulation II of 1068 (M.E) declared teak, sandal wood, black wood, ebony, ivory and teeth of wild elephants as royalties. See for text, N.Krishna Swamy Aiyar et.al., Regulations and Proclamation of Travancore Vol.1, 1010-1070 M.E.(1927), p.674.

Private forest in Kerala³

In ancient Kerala almost all forest lands were the private property of land lords.⁴ But with Tippu's invasion of Malabar, this condition changed. Tippu Sultan in 1766 brought Malabar, together with its forest, under his control.⁵ Later under the British regime the earlier position was re-established. The British found that the owners of private forest were deprived of possession solely because of the invasion by Tippu Sultan. The British Government felt it unjust to keep such private forest under the control of Government and hence permitted the erstwhile owners to have possession of the forest area.⁶

Malabar formed part of the Madras Presidency in the year 1800. Since the Madras Forest Act 1882 did not

3. The State of Kerala was formed by uniting the territories comprised in the State of Travancore-Cochin and the Malabar area of Madras Presidency. See States Reorganisation Act 1956, s.5.
4. C.K. Karunakaran, Keralathile Vanangal Nootandukaliloode (Malayalam) (The Kerala Forests through Centuries) 1985 pp.47, 48.
5. By the Pact of Seringapatam entered into between Tippu and the British in 1792 A.D., Tippu had to transfer all areas of Malabar except Wynad to the British. In 1803 Wynad also came under the control of the British Government. George Woodcock, Kerala A Portriat of the Malabar Coast (1967), pp.180-183. See also B.H.Baden Powell, Land Systems of British India, Vol.III (1892), pp.7, 8.
6. See summary of the letter D/No.30, 1842 by the Director of East India Company, addressed to the Governor General, referred to in C.K. Karunakaran, op. cit., p.48.

contain provisions imposing control over private forests, the owners of private forests continued to exercise their rights over the land. By 1946, the Madras Government enacted the Madras Preservation of Private Forests Act 1946⁷ to prevent private forests from deterioration. The Act imposed restrictions on the felling of trees and alienation of private forest by the owners.⁸ The revised Act, the Madras Preservation of Private Forest Act 1949,⁹ required that the owner should get the previous sanction of the District Collector to sell, mortgage, lease or otherwise alienate the land or to cut trees from private forest in his possession.¹⁰ However, granting of permission by District Collector was, in effect, only a formality.¹¹ In effect the Madras Preservation of Private Forest Act had been instrumental in effecting destruction with previous permission of the District Collector.¹²

7. Madras Act 18 of 1946.

8. Id., Ss.3 and 4. See for text, 1946 II M.L.J. pp.84, 85.

9. Madras Act 27 of 1949.

10. Id., S.3.

11. A.K. Lohithakshan, "Laws Preventing Deforestation - Problems and Perspectives", Paper presented at the Seminar on Forest and Tribals - Law and Practice held in Kozhikode on 10.6.1985, under the auspices of the Department of Law, Cochin University.

12. Ibid.

Malabar formed the part of the State of Kerala in 1956. Hence the Madras Preservation of Private Forest Act 1949 was supplemented by the Kerala Private Forest (Assumption of Management) Act 1957¹³ in its application to Malabar area.¹⁴ The latter enactment enabled the Government of Kerala to take over the management of private forests in Malabar.¹⁵ Alienation of the forest or its trees, by the owners of private forest without the approval of the Government¹⁶ was prohibited.

Aggrieved by the restrictions imposed by these Madras Preservation of Private Forest Act 1949, the owners of private forests in Malabar challenged the constitutional validity of the enactment in Kammukkutty Haji v. State of Kerala.¹⁷ The petitioner contended that the Act imposed unreasonable restrictions on the petitioner's fundamental right to acquire, hold and dispose of property guaranteed under Art. 19 (1) (f) of the Constitution of India. But the High Court of Kerala upheld the validity of the Act holding that the restrictions imposed by the Act are not absolute but regulatory in character and are

13. Act 13 of 1958.

14. Id., S.4.

15. Ibid.

16. Id., S.7.

17. 1970 K.L.F. 171.

necessary measures for preventing indiscriminate destruction of private forests and hence they are reasonable being in the interest of the general public.¹⁸

In spite of the enforcement of the Madras Preservation of Private Forest Act 1949, settlers who migrated from Travancore area to Malabar destroyed large areas of private forests by cutting trees and setting fire to the forest.¹⁹ The State was eager to assume absolute control over private forests so as to minimise such destruction. However, the fundamental right to property guaranteed under Art. 19 (1) (f)²⁰ and 31²¹ of the

18. Id., p.174.

19. The Pulpalli forests having contiguous extent of several thousands of hectares, the Nilambur forests, forests in the eastern parts of Palghat and Cannanore districts especially in Panathodi and Neeleswaram area became targets of destruction by settlers. Key Note paper presented by Lekshmanan, a retired Forest Tribunal, at a Seminar on Forest and Tribals - Law and Practice held in Kozhikode on 10-6-1985 under the auspices of the Department of Law, Cochin University.

20. Art.19(1)(f) guaranteed to the citizens of India the right to acquire, hold and dispose of property. Art. 19(5) however permitted the State to impose by law reasonable restrictions on this right, in the interests of the general public or for the protection of the interests of Scheduled Tribes. Arts. 19(1)(f) and 19(5) have been repealed by the Constitution (Forty-fourth Amendment) Act 1979. For detailed discussion, see M.P.Jain, Indian Constitutional Law (1987), pp.547, 664 to 673.

21. Art.31(1) declared that no person should be deprived of his property, save by authority of law. The Constitution (Forty-Fourth Amendment) Act 1979 repealed Art.31 and converted it in to a mere civil right. See for detailed discussion. Id., pp.673, 698-702. See also, V.D.Mahajan, Constitutional Law of India (1991), pp.299-309.

Constitution of India, precluded the State from exercising such control.

In 1969, the High Court of Kerala made a declaration relating to private forests. In Venugopal Varma Rajah v. Controller of Estate Duty,²² the Court declared that in the absence of exceptional circumstances such as the land being entirely rocky or barren, all forest lands in the State are agricultural lands in the sense that they can be prudently and profitably exploited for agricultural purposes.²³ This facilitated the enactment of a law by the State legislature for the acquisition of private forests. Article 31-A of the Constitution enables the Government to acquire estates including agricultural lands without payment of compensation.²⁴ Such legislation

22. 1969 K.L.T.320. This was a reference made by the Madras Bench of the Income Tax Appellate Tribunal under S.64(1) of the Estate Duty Act 1953 on the application of the assessee. The assessee, who inherited certain forest lands in Malabar area, claimed that forest lands are agricultural lands and they were not therefore liable to estate duty under the Estate Duty Act 1953. The Court upheld the claim.

23. Id., p.324.

24. Article 246 of the Constitution read with entry 42 of the 7th schedule enables the State legislature to frame laws on the subject 'acquisition and requisition of property'. However, the restraints imposed on the law making power of the State by the fundamental right to property guaranteed under Art.19(1)(f) and 31 of the Constitution entitled the owners to claim compensation for such acquisition. Art.31-A saved among other things the laws for the acquisition of estates from the attack of fundamental rights. These points were clarified by the Supreme Court in State of Bihar

acquiring private forest was also in tune with the Directive Principles contained in Article 39(b) and (c) of the Constitution.²⁵ Accordingly, the Kerala Private Forests (Vesting and Assignment) Act 1971²⁶ applicable to the whole State of Kerala was enacted by the legislature. The Act transferred and vested in the State Government the ownership and possession of all private forests in the State of Kerala.²⁷ The Government could reserve²⁸ part of such vested forest and the rest was to be assigned for cultivation. No compensation was to be paid by the Government to the owners of private forests

v. Kameshwar Singh, A.I.R.1952 S.C.252; Amar Singhji v. State of Rajasthan A.I.R.1965 S.C.504; Vajjaralu v. Special Deputy Collector A.I.R.1965 S.C.1017; Sankara Rao v. State of Mysore A.I.R.1969 S.C.453; Kannan Devan Hill Produce Co. Ltd. v. State of Kerala, 1972 K.L.T.377. See also the decision of the Kerala High Court in Narayanan Nair v. State of Kerala, 1970 K.L.T.659.

25. Art.39 of the Constitution of India reads as follows:
"The State shall in particular, direct its policy towards securing -

(a) . . .

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment".

26. Act 26 of 1971.

27. Id., s.3.

28. Vested forest may be reserved for agricultural research animal husbandry, dairy development schemes, hydro-electric and irrigation projects, soil and moisture conservation, and for construction and maintenance of roads. Kerala Private Forests (Vesting and Assignment) Rules 1974, Rule 3.

for the extinguishment of their right, title and interest over the land vested in the Government.

The constitutionality of the Act was challenged before the High Court of Kerala in Gwalior Rayons Silk Manufacturing Co. Ltd. v. State,²⁹ on the ground that the provisions of the Act were violative of the fundamental rights of the petitioners to acquire, hold and dispose of property.³⁰ The State pleaded that even if the petitioners were deprived of their lands without payment of any compensation, the Act being one passed for bringing about agrarian reforms and one relating to acquisition of estate as envisaged in Article 31-A of the Constitution;³¹ is not liable to be challenged before the court on the ground of violation of fundamental rights.³² The Court, however, took the view that the scheme of agrarian reforms as envisaged in the Act was not genuine but illusory and hence the Act was not protected by Article 31-A of the Constitution.³³ Accordingly, the Kerala Private Forest (Vesting and Assignment) Act 1971 was struck

29. 1972 K.L.T. 628.

30. See supra, nn. 20, 21

31. See supra, n. 24

32. 1972 K.L.T. 628 at pp.630, 631.

33. Id., p.640.

down as unconstitutional and void.³⁴

The State preferred an appeal, before the Supreme Court against this decision. Anticipating the success of the State in the appeal, the owners of private forest tried to realise as much money as they could from the forest land under their control, by cutting and selling the trees. The Government found it necessary to prevent such indiscriminate destruction of private forests. The Kerala Preservation of Private Forest Ordinance³⁵ was therefore promulgated in 1972. This was replaced by the Kerala Preservation of Private Forest Act 1972.³⁶ This Act put restraints on the rights of owners of private forest to sell, mortgage, lease or otherwise alienate the whole or any portion of the private forest.³⁷ Permission of the District Collector was required for cultivation in private forest or cutting trees from it or doing any act adversely affecting its utility as a forest.³⁸ The Government could also impose restraints on customary or prescriptive rights in such forest.³⁹

34. Ibid.

35. Ordinance 7 of 1972.

36. Act 16 of 1972. This Act ceased to have effect on 31st December, 1973.

37. Id., s.3.

38. Ibid.

39. Id., s.5.

In appeal, the Supreme Court declared the Kerala Private Forests (Vesting and Assignment) Act 1971 to be constitutionally valid.⁴⁰ Reversing the decision taken by the High Court of Kerala, the Supreme Court opined that the Act related to acquisition of estate as a step to implementing agrarian reforms and so was saved by Art.31-A of the Constitution.⁴¹ A point was raised by the respondents that the Act if implemented would lead to large scale deforestation leading to soil erosion and silting of rivers and streams and would turn out to be detrimental to the interest of the agricultural community in the long run. The Court declined to express any opinion on the point. Even Justice Krishna Iyer,⁴² a protagonist of environmental protection, did not express his view on this point.

The High Court of Kerala in Ramachandra Menon v. State of Kerala⁴³ agreed that destruction of virgin

40. State of Kerala v. Gwalior Rayons Silk Manufacturing Co. Ltd. 1973 K.L.T. 896.

41. Id., p.909.

42. The Bench consisted of Chief Justice A.N.Ray, Justice D.G.Palekar, Y.V.Chandrachud, P.N.Bhagwati and V.R.Krishna Iyer.

43. 1984 K.L.T. S.N.17. The basic issue in this case was whether the court can give a direction to restrain the State Government from cutting down trees from private forests of Nilambur Kovilakam vested in the State as per the provisions of the Kerala Private Forest (Vesting and Assignment) Act 1971. The policy behind the legislation being clearing of vested forest land for agricultural purpose, the court refused to give such direction.

forests is against public policy. However, after balancing the public interest to protect and improve the forest environment with the public interest to increase food production the court came to a conclusion that the legislative policy behind the Kerala Private Forest (Vesting and Assignment) Act 1971 was to cut and sell trees from certain forest areas for the purpose of converting them into areas fit for cultivation. Deforestation subject to certain restrictions and reservations was thus the accepted policy behind the enactment.⁴⁴

Having received judicial sanction, the State Government began implementing the Act in all vigour. Consequently, most of the private forests⁴⁵ in the State of Kerala came under the absolute control of the State Government. Private forests⁴⁶ held by an owner under personal cultivation,⁴⁷ and falling within the ceiling limits of the

44. Id., pp.9, 10.

45. In Malabar area the term 'private forest' includes any land to which the Madras Preservation of Private Forest Act 1949 applied, whereas in Travancore-Cochin area, "any forest not owned by the Government" is a private forest. Kerala Private Forests (Vesting and Assignment) Act 1971 S.2(f).

46. Private forests held by an owner under his personal cultivation and registered holdings intended for cultivation, both within the ceiling limits of the Kerala Land Reforms Act 1963 were exempted from vesting. Kerala Private Forests (Vesting and Assignment) Act 1971, S.3 (2) and (3).

47. Land held by owner under personal cultivation used for the cultivation of crop plants or plantations is exempted if the land is in Travancore-Cochin area.

Kerala Land Reforms Act 1963,⁴⁸ Nilams, gardens and lands

However in Malabar area the exemption is applicable only if the land is a garden or Nilam or is one which is used principally for the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon or a land principally cultivated with cashew or other fruit bearing trees or agricultural crops. Id., S. 2 (f) (1) read with id., S.3(2). In State of Kerala v. Moosa Haji 1984 K.L.T.494, the High Court of Kerala held that teak plantations of Malabar to which the Madras Preservation of Private Forest Act 1949 was applicable, was not exempted from the purview of the Kerala Private Forest (Vesting and Assignment) Act 1971 and hence the forest vested in the State of Kerala. In Mohammed v. State of Kerala 1986 K.L.T. 681, the Court allowed the appeal filed by the appellant holding that rubber plantations of Malappuram are excluded from the purview of the Kerala Private Forest (Vesting and Assignment) Act 1971 and such exemption would apply even if no rubber trees are seen in certain areas for a temporary period between removal of rubber trees and actual replantation. In State of Kerala v. Nilgiri Tea Estate Ltd. 1988 (1) K.L.T. 113 the Supreme Court of India dismissed the appeal filed by the State, holding that eucalyptus planted by the Nilgiri Tea Company in the Travancore area is not forest for the purpose of vesting under the Kerala Private Forests (Vesting and Assignment) Act 1971. In Gwalior Rayons S.M.W.Co. Ltd. v. The Custodian of Vested Forest 1990 (1) K.L.T.819 the appellant company claimed that the eucalyptus plantations of the company at Kozhikode should be exempted from vesting under the Kerala Private Forest (Vesting and Assignment) Act 1971. The Supreme Court dismissed the appeal holding that Section 2 (f) (1) (i) (c) of the Kerala Private Forests (Vesting and Assignment) Act 1971 excludes from vesting only fruit bearing trees and not other species. In Bhavani Tea Produce Co. v. State of Kerala 1991 (1) K.L.T. 666, partly allowing the appeal, the Court held that the mere fact that some forest was found inside a large tea company's estate, that did not vest the entire estate in the Government under the Kerala Private Forest (Vesting and Assignment) Act 1971.

48. As per the provisions of the Kerala Land Reforms Act 1963 (Act 1 of 1964) in the case of an adult unmarried person or a family consisting of a sole surviving member, the ceiling area should not be less than six and more than seven and a half acres in extent. In other cases, a person or family can hold a minimum ceiling area of 12 acres of land. Kerala Land Reforms Act 1963, S.82.

used principally for the cultivation of tea, coffee,⁴⁹ rubber, cardamom or cinnamon and for ancilliary purposes and lands principally cultivated with cashew or other fruit bearing trees or agricultural crops were exempted from vesting.⁵⁰

Forest Tribunals were constituted to decide disputes that arose between land owners and the Government regarding vesting of private forests.⁵¹ Due to improper adjudication before tribunals⁵² the Government had to

49. Kerala Private Forests (Vesting and Assignment) Act 1971 S.2(f)(1)(i) (A) and (B). In Harrisons Malayalam Ltd. v. State of Kerala, 1992 (2) K.L.T.535, the Supreme Court observed (at p.540) that lands on which firewood trees are necessary to be grown for steady supply of a reasonable quantity of fuel to the employees as well as to the smoke houses or factories in the estates should be granted exemption from vesting under S.2 (f) (1) (i) (B) of the Kerala Private Forest (Vesting and Assignment) Act 1971, as lands used for purpose ancillary to cultivation or for the preparation of crops for the market.
50. Id., S.2(f)(1)(i) (C). This provision was widely misused. According to a Divisional Forest Officer in Kozhikode, interviewed by the researcher, owners of private forests planted old stumps of fruit bearing trees after felling natural trees so as to prove that the land was under cultivation and hence entitled to exemption from vesting.
51. Kerala Private Forest (Vesting and Assignment) Act 1971, ss.7, 8. See also The Private Forests (Tribunal) Rules 1972 Rules 3 to 12.
52. A large number of applications filed before the Tribunals under S.8 of the Private Forests (Vesting and Assignment) Act 1971, had been decided by the Tribunal in favour of the applicants either on the basis of concessions made before the Tribunals without the authority in writing of the custodian of vested forest or the Government or due to the failure to produce

return portions of vested forests to the original owners. Even appeals were not filed in time due to collusion between land owners and the counsels for the State.⁵³ In these circumstances the State Government decided to reopen decided cases and to file appeals in appropriate cases. Accordingly the Private Forest (Vesting and Assignment) Amendment Ordinance⁵⁴ was passed in 1983 which enabled⁵⁵

relevant date and other particulars before such Tribunals. See the Kerala Private Forests (Vesting and Assignment) Amendment Act 1986 (Act 36 of 1986), Preamble, para 1.

53. In a large number of cases decided by the Forest Tribunals appeals could not be preferred before the High Court by reason of the delay in applying for and obtaining the certified copies of those decisions or on the ground that the decisions were made on the basis of concessions made before the Tribunals or on other grounds. Id., para 2.
54. Ordinance No.39 of 1983. Between 1984 and 1986 the ordinance was renewed 8 times (Ordinance 17/84, 32/84 50/84, 8/85, 62/85, 89/85, 34/86 and 66/86.) The constitutionality of Ordinance 17 of 84 was challenged in Bhagavathi Tea Estates Ltd. v. State of Kerala, (1985 K.L.T. S.N.2), on the ground that the Ordinance gives special treatment to Government by conferring additional opportunity of seeking an appeal or review from the decision of the Forest Tribunal or the Courts and thereby violates the fundamental right to equality guaranteed to the citizens of India under Art.14 of the Constitution. However, the High Court of Kerala upheld the validity of the Ordinance 17 of 1984 stating that the Ordinance was only an enabling one and not arbitrary or unreasonable.
55. The Ordinance 39 of 1983 inserted Sections 8B, 8C and 8D in the Kerala Private Forest (Vesting and Assignment) Act 1971. Section 8B enabled the custodian of vested forest to apply for review of decisions of the Forest Tribunal without considering the period of limitation in cases relating to vesting. Section 8C empowered the State Government to file appeal or application for review in the High Court in such cases. S. 8D provided for the stay of decisions and orders liable to be reviewed or appealed.

the State to file an application for appeal or review from the decisions of Forest Tribunal or Court without considering the period of limitation.⁵⁶ The Ordinance which was replaced by an Act in 1986⁵⁷ enabled the State to reopen cases involving disputes over vested forests.⁵⁸ Review petitions filed by the State before the High Court succeeded in establishing the rights of the State Government over vested forests in appropriate cases.⁵⁹

56. Id., S. 8C.

57. The Kerala Private Forests (Vesting and Assignment) Amendment Act 1986 (Act 36 of 1986).

58. In Govindan Thirumulpad v. State of Kerala, 1988 (1) K.L.T.865 the Kerala Private Forests (Vesting and Assignment) Amendment Act 1986 (Act 36 of 1986) was challenged on the ground that the Act is an invalid legislation since it subverts finality of judgements and the principles of res judicata and impairs the writ jurisdiction of the High Court under Art.226. The Court dismissed the petition holding that the Act which enabled the Government to seek review of judgements neither subverted the finality of judgements and principles of res judicata nor intended to impair the writ petition of the High Court.

59. In State of Kerala v. Thomas 1987 (1) K.L.T. 530 the Court allowed the review petition filed by the State and upheld the vesting of 75 acres of private forest in the State since the land was uncultivated and the respondent failed to prove his title over the land. However in State of Kerala v. Ahamadkutty Haji 1987 (2) K.L.T.406 the reopening of the case was futile since the respondent had successfully proved that the land was principally planted with cardamom and hence entitled to exemption from vesting. In another case, State of Kerala v. Thomas 1989 K.L.T. 201 the review petition filed by the State was successful in establishing the rights of the Government over 43 acres of vested forest in Agali village.

A portion of the vested forest was assigned to agriculturists including members of Scheduled Caste and Scheduled Tribes.⁶⁰ This portion was handed over to the Revenue Department after clear felling the area.⁶¹ A major chunk of vested forest still remains under the control of the Forest Department,⁶² while the assigned portion is under the control of the Revenue or

60. In Kozhikode district, upto 1985, 254.5390 hectares of vested forest land was assigned to 241 beneficiaries including 64 Scheduled Castes and Scheduled Tribes. C.Vinodini, "Vested Forest Land Assignment in Kerala with particular Reference to Kozhikode district" paper presented in the Seminar on Forest and Tribals : Law and Practice, held in Kozhikode on 10.6.1985 under the auspices of the Department of Law, Cochin University.
61. During the year 1979-80, 943.74 hectares of vested forest was given to the Revenue Department for assignment. Government of Kerala, Administration Report of the Kerala Forest Department for the year 1979-80 (1983), p.2.
62. The Kerala Private Forests (Vesting and Assignment) Rules 1974 Rule 15 (2).
63. The officials of the Forest Department at Thiruvananthapuram when interviewed by the researcher, stated that since the Forest (Conservation) Act 1980 requires sanction of the Central Government for the use of forest land for non-forest purpose, the State Government has almost stopped the assignment of lands to agricultural labourers and agriculturists.

Agricultural Departments or other agencies.⁶⁴ Lack of co-ordination between these Departments or agencies and

64. Details regarding the area of vested forest retained by the Kerala Forest Department and areas assigned or returned to owners from 1979-80 to 1989-90, contained in the Administration Reports of the Forest Department for the period, are as follows:

Year	Area of land at the beginning of the year (in square miles).	Area Assigned to Revenue Dept. for assignment to Agriculturists (square miles)	Area Assigned for other purpose (square miles)	Area returned to the original owners (square miles)	Area newly added (in sq. miles)
1979-80	1935.0404	9.4374	3.0806	7.2594	
1980-81	1915.2630	-	-	22.4810	40.15
1981-82	1893.1835	.1986	-	1.3031	61.69
1982-83	1890.4724	.7597	2.0382	1.6659	17.76
1983-84	1887.1294	-	.3000	.251376	-
1984-85	1886.5780	-	-	.0597	-
1985-86	1886.5183	-	.1212	.1277	-
1986-87	1881.6974	-	-	.2046	.032376
1987-88	1884.7304	-	-	.0256	.4225 +2.4410
1988-89	1887.5700	-	-	.1300	5.0400
1989-90	1892.4808	-	-	3.9499	-

the Forest Department often creates problems in identifying the land and gives chances for illegal encroachments on vested forest.⁶⁵

Vested forest under the control of the Forest Department are managed like reserved forests under the provisions of the Kerala Forest Act 1961⁶⁶ which favours over exploitation of forest for purposes of revenue. Apart from creating Government monopoly over private forest and earning revenue from such forest, vesting of private forest in the Government has nothing to do with the protection or regeneration of forest.⁶⁷ Vesting of

65. Up to 1980-81 the area of vested forest in Travancore Cochin area was computed as 6844 hectares. However survey conducted in 1981-82 showed that there was only 6646 hectares of vested forest in the area. See Government of Kerala, Annual Administration Report of the Forest Department for the year 1981-82 (1985), p.2. The deficit of 198 hectares might be due to illegal encroachments.

66. The Kerala Private Forests (Vesting and Assignment) Act 1971, S.4. It reads,

"All private forests vested in the Government under sub-section (1) of section 3 shall, so long as they remain vested in the Government, be deemed to be reserved forests constituted under the Kerala Forest Act 1961 (4 of 1962), and the provisions of that Act shall, so far as may be, apply to such private forests".

67. The Kerala Forest Act 1961 framed on the lines of the Indian Forest Act 1927 is not environment oriented. See supra, ch.4 n. 25

private forest in the Government increased clashes between land owners and the Forest Department and accelerated encroachments and illicit felling of trees.⁶⁸ In effect the Kerala Private Forest (Vesting and Assignment) Act 1971 failed to protect forest from deterioration.⁶⁹

Private forest in other States

The States of Tamil Nadu, Karnataka, Andhra Pradesh and Orissa adopted a different approach in managing private forests. In these States no legislation was enacted for vesting private forest in the Government. Instead, restraints were imposed through legislation on the use and transfer of private forests.⁷⁰

68. It is reported that 26,000 acres of vested forest land in Palakkad has been in illegal possession of private parties for 21 years and the Government has not honoured its assurance to the Assembly on their eviction. The Forest Department which is the legal custodian of the land admitted that illegal felling of trees must have taken place after 1971. Indian Express (Kochi), October 17, 1992, p.4.

69. According to one author, the Kerala Private Forest (Vesting and Assignment) Act 1971 itself is a drastic short sighted measure, taken without adequate thought and careful analysis and assessment of the benefit to the State and nation. Key-Note address given by Lekshmanan, Retired Forest Tribunal at the Seminar on Forest and Tribals - Law and Practice, held in Kozhikode on 10.6.1985 under the auspices of the Department of Law, Cochin University.

70. In Tamil Nadu, the Tamil Nadu Preservation of Private Forest Act 1949 (Tamil Nadu Act No. 27 of 1949), S.3 makes it mandatory for the owner of private forest to get the previous sanction of the District Collector if he wants to sell, mortgage, lease or otherwise alienate the whole or any portion of the forest. Such permission is also needed for cutting down trees or doing of any act likely to denude the forest or diminish its utility as a forest. Ss.28-A to 28-D of

In Bihar the position is different. The Bihar Private Forest Act 1947 brought private forests under the control and management of the State Government by declaring them as private protected forests.⁷¹ Forest Officers are empowered to manage private protected forest in accordance with the working plan.⁷² The land-lord's right to fell trees from such forests is taken away.⁷³ However, the Government could authorise felling of trees by conferring rights over private protected forest by grants or contracts.⁷⁴ The revenue accruing from the management of forest is received by the State Government

of Andhra Pradesh Forest Act 1967 contains similar provisions. In Karnataka, permission of the Divisional Forest Officer is required for cutting or girdling of trees or for doing of any act likely to denude the forest or diminish its utility as forest. See Karnataka Forest Act 1963 S.37. In Orissa, the Orissa Preservation of Private Forests Act 1947 imposed similar restrictions on the alienation and use of private forests. Maximum punishment for contravention of the provisions of the Act is a fine of Rs.2000/- for the first offence and imprisonment for two years and Rs.5000/- or both for second or subsequent offences. Orissa Preservation of Private Forests Act 1947 S.5.

71. The procedure for such declaration is similar to that of reservation of forest. A notification showing the Government's intention to constitute private protected forests within specified limits should be issued, objections heard and inquiries conducted by a Forest Settlement Officer before a final notification declaring such lands as private protected forest is issued. Bihar Private Forest Act 1947 Ss.13-30. See for text, Rakesh Bagga (Ed.), Beotra's Law of Forests (1989), pp.570-589.

72. Id., s.35.

73. Id., s.21. However the land-lord is permitted to remove forest produce required for his reasonable agricultural or domestic needs, subject to a maximum fixed by the Conservator of Forests. Id., s.38.

74. Id., s.32.

and the landlord is given allowances at prescribed rates and net profits, if any, accruing from the working and management of private protected forest.⁷⁵ Apart from transferring managerial powers over private forest to the Government, the Bihar Private Forest Act 1947 does not play any significant role in protecting private forest from deterioration.

In Uttar Pradesh private forests are managed by the owners themselves under the superintendence of the Forest Officer. The Uttar Pradesh Private Forest Act 1948⁷⁶ empowers the State Government to prohibit by notification the cutting of trees⁷⁷ in specified forest areas.⁷⁸ The owners of notified forest have to prepare a working plan in the manner prescribed by the forest officer, for the management of forest.⁷⁹ The forest officer can accept or modify such working plan or substitute another working

75. Id., s.42.

76. U.P. Act No.6 of 1949.

77. In Mohd. Karrar Ali v. State of U.P. the Act was challenged on the ground that it violated the property rights of people guaranteed under Art.19(1)(f) and 31(2) of the Constitution of India. But the court upheld its constitutionality observing that the provisions of the Act did not dispossess the owners of the property and there is no acquisition of private property by the State. A.I.R. 1954 All.753 at p.755.

78. The U.P.Private Forest Act 1948, s.4.

79. Id., s.13.

plan for it.⁸⁰ Trained staff assist the owner in managing the forest under the superintendence of the forest officer.⁸¹

The U.P. Private Forest Act provides for limited vesting also.⁸² The management of vested forest is done by the State Government through the forest officer appointed for such forest.⁸³ Permission of the forest officer is required for removal of trees or of forest produce for reasonable agricultural or domestic needs of the landlord.⁸⁴

The position in West Bengal is more or less the same as that of Uttar Pradesh. West Bengal Private Forest Act 1948⁸⁵ imposes a duty on every owner of private forest in a notified area to prepare a working plan for the management of private forest.⁸⁶ Such plan should be submitted

80. Ibid. Deviations from the prescriptions of the working plan and contravention of the provisions of the Act would lead to penal consequences. Fine may extend to one hundred rupees for the first offence and thousand rupees for the second or subsequent offences. Id., S.15.

81. Id., S.14.

82. Any waste land which is not less than 50 acres and lying unclutivated for seven years and is suitable for afforestation can be constituted as a vested forest after notifying the land, hearing objections and conducting enquiries by a Forest Settlement Officer. The procedure is similar to that of the constitution of private protected forests under the Bihar Forest Act. Id., Ss.16-20.

83. Id., Ss.34, 35.

84. Id., S.38.

85. West Bengal Act 17 of 1948.

86. The State Government may notify certain areas for this purpose. Id., S.3(1).

to the Regional Forest Officer who after consultation with the Conservator may accept the working plan with or without modifications or substitute another working plan for it.⁸⁷

If no working plan is submitted, the Regional Forest Officer will prepare the working plan and the private forest should be managed by the owner according to the terms and conditions laid down in the working plan.⁸⁸ The Regional Forest Officer can also take over the control of waste land which remains unclutivated for three years if the owner is unwilling or unable to cultivate it and the land is suitable for afforestation.⁸⁹

The legislation relating to private forest in Uttar Pradesh and West Bengal opened a new trend in the management of private forests. Preparation of working plans by the owners of private forests, its approval by the Forest Department, the duty imposed on the owners of private forest to act according to the terms of the working plan and enforcement of working plans through penal sanctions are welcome approaches towards improvement of the forest environment. However, the law is silent on whether the working

87. See for details id., Ss.3-5.

88. Violation of the terms and conditions in the working plan is punishable, with imprisonment upto 3 months or with fine upto Rs.1000/- or with both, id., S.6.

89. Id., S.11.

plans should recognise the environmental values of forest and proceed to protect the flora and fauna on environmental considerations. The law is also silent on the need for scientific studies before undertaking large scale felling of trees for carrying out development works in forest area. Management of forest under the control and supervision of the Forest Department helps to augment the revenues of the State, but it does not help much in preservation of forest on environmental considerations.

Imposition of Governmental control over private forest has not, on the whole, proved to be a proper measure for protecting forest from deterioration. In Kerala vesting of private forest in the Government has nothing to do with protection and regeneration of forest. The restraints imposed on owners of private forest by legislation in the States of Tamil Nadu, Karnataka and Orissa only helped to increase illegal felling of trees by the owners themselves. Management of forest by the forest officers also opened chances for abuse of power by these officers for their personal gain.⁹⁰ The management of private forest by the

90. Speaking about the Madras Preservation of Private Forest Act 1949 one author has pointed out,

"There is no doubt that the M.P.P.F. Act was enacted with the best of intentions. But in its actual working it was felt that it had not achieved the desired purpose Forest officials were authorised to check cutting and transport of timber but they honoured the rules

owners themselves with the supervision of the Forest Department as is being done in Uttar Pradesh and West Bengal is a better device for the management of private forest than the measures adopted in other States. However, this does not serve to protect the forest environment from deterioration unless the management pattern is designed by looking on forest from the environmental perspective.

more in their breach than in their observance. Thus in actual working the M.P.P.F. Act had not cured the evil of deforestation".

P.Sivaraman Nair, "How Deforestation can be Prevented with Particular Reference to Malabar" paper presented in the Seminar on Forest and Tribals held in Kozhikode on 10.6.1985 under the auspices of the Department of Law, Cochin University.

PART VI

CONCLUSION AND SUGGESTIONS

CHAPTER 6

PROBLEMS OF ENFORCEMENT - EMPIRICAL STUDY^{*}

Policies of Government are crystallized in the form of law. The duty to enforce the law is vested in the administration. Various hurdles may lie in the path of implementing laws. Problems of enforcement vary from law to law and from country to country. If citizens of a country are law abiding, the pains in implementing laws are considerably reduced. Similarly if a legislation gains social acceptance and society is aware of its beneficial effects, implementation of

* An empirical study was conducted by the researcher on the problems involved in implementing the law relating to forest. The study concentrated on the administrative system of the Forest Department in Kerala. The researcher interviewed 274 officials of the Kerala State Forest Department including the Principal Chief Conservator of Forest, 5 Chief Conservators of Forest, 6 Conservators, 26 Divisional Forest Officers, 66 Range Officers, 20 Deputy Range Officers, 70 foresters, 70 guards and 10 temporary watchers. The researcher was able to gather valuable pieces of information from a few forest officials of Karnataka, Tamil Nadu and Andhra Pradesh while attending seminars on different aspects of forest protection. The researcher visited the Forest Service College and the Southern Forest Rangers College at Coimbatore and the Forest School at Walayar, Kerala and interviewed the faculty members to collect information on forest administration and training. The researcher had also made site visits in forest areas of Silentvalley, Parambikulam, Thekkady, Munnar and Wynad.

that legislation is not difficult. Enforcement problems pertaining to a particular legislation depend on the nature of the law, the nature of subjects on whom the law is to be enforced and the nature of the machinery which implements the law.

This study examines the administrative set up and functioning and analyses how far lack of strong and efficient enforcement machinery, insufficiency of interest, public support and co-operation at planning and implementation levels and defects in the law and practice adversely affect forest protection.

Enforcement machinery

11 Forest being a concurrent subject, enforcement machinery has been set up at the Central and State levels. The administrative hierarchy at the Central level starts with the Ministry of Environment and Forests under which functions the Department of Environment, Forests and Wildlife.¹ The Inspector General of Forest in India is

1. The Department of Environment was created in 1980. Later in 1985 a new integrated Department of Environment, Forest and Wildlife came into being. The Department undertakes programmes to preserve and improve the environment. Control of Pollution Control agencies, improvement of barren lands, conservation of natural living resources, spreading of environmental awareness and information relating to environment, promotion of environmental research, undertaking programmes of environmental impact assessment and monitoring are some of the functions discharged by the Department. Harbans Pathak, "Environment Management in India : A Survey", R.K.Sapru, (Ed.), Environment Management in India Vol.1 (1987), 254 at pp.260-263.

the controlling authority in this department over all forestry matters. Under him works the Additional Inspector Generals, Deputy Inspector Generals and Assistant Inspector Generals of Forest and Regional Chief Conservators of Forest to assist him in the discharge of duties. Whenever the Central Government has to give sanction for development projects in forest areas, the Department of Environment will send the matter to the concerned Regional Chief Conservator for inspection and report.² Applications for sanction of the Central Government under the Forest Conservation Act 1980 are to be sent directly to the Department of Environment in certain cases³ and to the Regional Chief Conservators in some

-
2. The Regional Chief Conservators have their offices in Bangalore, Bhopal, Luknow, Bhubaneswar and Shillong.
 3. Every State Government or other authority seeking the prior approval of the Central Government to use forest land for non-forest purpose under S.2 of the Forest Conservation Act 1980 should send its proposal in prescribed form to the Government of India, Ministry of Environment and Forest. The proposal involving clearing of naturally grown trees in forest land or portion thereof for the purpose of using it for re-forestation should be sent in the form of Working Plan/Management Plan. Forest (Conservation) Rules 1981, rule 4, as amended by the Forest (Conservation) Amendment Rules, 1992.

other cases.⁴ Under the Department of Environment Forests and Wildlife function certain major institutions connected with forestry.⁵

The structure of the administrative machinery is the same in all the States. In Kerala, however, unlike other states forest stations have been established to strengthen the administrative machinery.

For the convenience of administration the State Forest Department is divided into Circles, Divisions, Ranges, Sections and Beats.⁶ The Principal Chief Conservator of Forest occupies the top position in the official hierarchy. The overall control of forest administration in the State is vested in him. Under him, the Chief Conservator of Forest and the Conservators of Forest look after the affairs of Circles. Each Circle

4. Proposals involving forest land upto twenty hectares and proposals involving clearing of naturally grown trees in forest land or portion thereof for the purpose of using it for reafforestation should be sent to the Chief Conservator of Forest/Conservator of Forests of the concerned Regional Office of the Ministry of Environment and Forests. Ibid.
5. The Forest Survey of India, Directorate of Forest Education, Botanical Survey of India, Zoological Survey of India, National Eco-development Board, and the National Museum of Natural History are some of them. See Harbans Pathak op.cit., p.261, 262. See also Centre for Science and Environment, The State of India's Environment 1982, A Citizens Report (1982), p.177.
6. The administrative pattern in Kerala is given illustratively.

is divided into smaller units called Divisions headed by Divisional Forest Officers. The Forest Range is the primary unit of administration and the Range Officer is the Chief Executive Officer in the range. He is responsible for carrying out diligently all plans and proposals connected with the management and protection of forests under his charge.⁷ The Ranges are divided into Sections. A Deputy Ranger, or a Forester is in charge of a Section. He is the Chief Protective Officer of the Section and is responsible to the Range Officer for all items of work entrusted to him.⁸ The Sections are divided into Beats. Two Forest Guards are in charge of each Beat. The Range Officers, the Foresters and the Forest Guards form the field staff of the Forest Department. The Guards and the Foresters are primarily responsible for the protection of forest and its produce and for prevention of encroachments, illicit fellings and other offences⁹ in forest. If any irregularity on which action has not been taken is observed, both the Guard and the Forester will be held responsible.¹⁰ The Range Officer is also held responsible

7. Government of Kerala, Kerala Forest Code Vol.1 (1973), p.29.

8. Id., p.31.

9. Id., p.33.

10. Ibid.

when encroachments or illicit felling take place and the cases are not detected on time and action taken.¹¹

In Kerala the Government found that the management of forest with beat as the basic administrative unit is ineffective in preventing the commission of forest offences. So, as a step to strengthen the administrative machinery some of the sections have been reorganised into Forest Stations¹² in the model of police stations as the basic unit in managing forest.¹³ The staff of each Forest Station consists of eight to sixteen Forest Guards, two to four Foresters and one Deputy Ranger. They conduct joint raids or go for patrolling in smaller groups. Forest Stations of Kerala appear to be a better device for protecting forest than the system of administration through beats. This device needs adoption by other States in India.

11. Ibid.

12. As a first step, 11 forest stations were opened in Malappuram District in 1988. Later Forest Stations were opened in Pathanamthitta, Vazhachal, Malayattoor Munnar and Wynad. Government of Kerala, Administration Report of the Forest Department 1989-90 (1991), pp.8, 9. See also, Kerala Forest Protection Staff Association, Forest Diary (1992), pp.17, 18.

13. Now about 70 Forest Stations have been established in different parts of Kerala. The State intends to establish gradually Forest Stations all over the State.

Absence of proper infrastructure

There is a general complaint in all the States that the State Forest Department does not have adequate field staff, weapons, vehicles and communication facilities. Except in the forest stations of Kerala,¹⁴ only two guards are in charge of a Beat consisting of an area of 5 to 25 sq.k.ms. of forest.¹⁵ As the guards have to walk over such a distance to discharge their duties, it is not difficult for the offenders to evade the guards and to fell trees and smuggle forest produce. Often by the time the guards reach the place of commission of the offence the offenders would have escaped. In case the guards detect the commission of the crime and try to arrest the offenders, encounters occur. Two guards with only lathis in their hand is least equipped to deal with offenders armed with sophisticated weapons and vehicles. Lack of communication facilities in forest areas make it difficult for the guards to seek the help of other staff.

14. In the Forest Stations of Kerala, 8 to 16 guards are posted.

15. In Kerala there are only 754 foresters and 1769 guards to protect an area of 9400 sq.k.ms. of forest. Kerala Forest Protection Staff Association, Forest Diary (1992), p.16.

of late there is a slight improvement in the State of Kerala due to establishment of forest stations. The staff in the Forest Stations are provided with weapons, vehicles and communication facilities. However, in areas where there is no Forest Station, the Guards, Foresters and Rangers have problems. There have been instances of forest personnel being killed in encounters with forest smugglers.¹⁶

In Karnataka, forest personnel are given power to use fire arms. They are also immuned from liability wherever they open fire, in self-defence and to protect Government property from forest offenders.¹⁷ In spite of this, murder of forest and police personnel by forest smugglers is not

16. In Achancoil, a guard was killed and drowned by smugglers. In Vellakkattu beat in Chungathara Range two guards were chased and injured. In the same range a guard was killed when he tried to obstruct smugglers from removing a huge log of wood from the reserved forest. See Indian Express, August 7, 1986. In Vazhachal, a forester was stoned to death by smugglers. Indian Express (Kochi), October 31, 1983. There were also instances where officials were shot and killed by smugglers in Kerala-Karnataka border. Mathrubhumi (Kochi), August 28, 1986.
17. Order No.AHFF 30 FSW 88 Bangalore dated 20.9.1991. While discharging their duties if any firing is resorted to by the forest personnel, a magisterial enquiry would be ordered and if it is found that the use of fire arm was unnecessary, unwarranted or excessive use of force, a criminal case can be instituted against the delinquent officers after examination by the Government. See for text, Appendix IV.

unusual in Karnataka.¹⁸ Infrastructural facilities in the Forest Department require improvement in almost all States for protecting forest as well as the lives of forest personnel.

Inadequacy of training programmes.

Considering the special problems involved in implementing forest laws, it is not wise to entrust the new appointees of the Forest Department with the task of protecting forest. Before they start discharging their duties, they should be given adequate training to enable them to understand the nature of the work to be done by them, the problems involved in discharging their duties and the ways to tackle the problems they have to face. But the field staff in the lower rung of the State Forest Department are not given such training. Only the Rangers and other higher officials get pre-service training.¹⁹

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18. In Karnataka, the notorious sandalwood smuggler and poacher Veerappan and his gang has defeated all the efforts on the part of the forest and police officials in Karnataka to arrest him. He and his gang even attacked the Ramapuram police station in Mysore and killed five constables. He made army-style ambush on police officials who trekked to the forest in search of him. He killed nine police officials. Forest officials who tried to trap Veerappan were also killed by him. See Indian Express (Kochi), May 21, 1992, p.1, August 18, 1992, p.9 and August 30, 1992, p.2.
19. In India, Indira Gandhi National Academy at Massoori gives 2 years training to I.F.S. Officers before they are posted to different places. After posting, they will be given 8 months training in the Forest Service

Contd.

For the Guards and Foresters there is only in-service training.²⁰ Some Guards are sent for training only after many years of service in the Department. Persons above 45 years are exempted from training. Further, the training being given to Guards and Foresters is not of much benefit to them as it fails to provide them with sufficient knowledge and expertise to face the problems involved in protection of forest.²¹ Training in horse riding, fire fighting, skilled exercises and weaponry²² should be given to the field staff of the Forest Department before they start discharging duties.

College in Assam, Dehradun or Coimbatore. Two institutions are established to give training to rangers - the Southern Forest Rangers College at Coimbatore and the Eastern Forest Rangers College in West Bengal.

20. Foresters and Guards are trained by individual States concerned. In Kerala Foresters are given in-service training for one year in the Forest School at Walayar. Guards are given six months in-service training at Walayar or in the training centre at Aripa, Thiruvananthapuram.
21. In the in-service training given to Divisional Forest Officers and Range Officers at the Southern Forest Rangers College at Coimbatore, topics relating to management of forests, recent developments in forestry, soil conservation courses, silviculture, waste-land management, live-stock management and agricultural development are taught. A few lectures are also delivered in the law relating to forest.
22. The trainees in the Forest Service College, Coimbatore are given training in weaponry. In Kerala the trainees of the Walayar Forest School are given training in weaponry only for a few days.

Unsatisfactory Service Conditions

The field staff of the Forest Department are not satisfied with their service conditions. The Guards have a general complaint that they are not promoted even after fifteen to eighteen years of service in the Forest Department. They are also aggrieved by the frequent transfers, which adversely affect even the educational prospects of their children.

Most often forest staff are not provided the facility of staff quarters. So they are compelled to live in rented houses. Some of the landlords are involved in illegal smuggling of forest produce, but due to fear of being evicted from the house, the forest personnel have to shut their eyes against such actions of their landlords.

The service conditions of watchmen appointed by the Forest Department on temporary basis are more pathetic. There are persons having thirty years of service who have not been made permanent in the Forest Department in Kerala. They have to guard the timber kept in depots inside forest. They are on duty for twenty four hours. Some watchmen in Chungam Range told the researcher that some times they have to spend the whole night on the top of trees to save themselves from wild animals.

The service conditions of the field staff should be improved considerably. More facilities have to be provided to them. Nobody can expect full hearted co-operation and service from the dissatisfied staff living with inadequate facilities. Adequate incentives by way of promotion should be given to them. Quarter facilities should be made available to all members of the field staff. Frequent transfers which prevent them from leading a settled life should be avoided.

Corruption

The inadequate facilities in the Forest Department for effective implementation of forest laws and the lack of encouragement for the successful discharge of duties by forest personnel often tend to make them corrupt and lenient towards offenders.²³ Some of them shut their eyes against forest offenders for fear of death or hurt. Coupled with this, the financial constraints of the family compel the field staff to accept bribes offered by the

23. Speaking about the problem of deforestation in India, one author states:

"Inactiveness on the part of officers under the law who are the custodians and guardians of forests seems to be the main cause. Strong groups or private contractors fell trees either at the connivance of authorities or by gratifying them by exercise of political pressure. It is true that bureaucrats, officials of forest department, big contractors and industrialists are parties to this collusion devastating the forests".

K.P. Singh Mahalwar, "Deforestation - A Socio-Legal Conspectus" in R.K. Sapru, Environment Management in India Vol.1 (1987), p.238.

depredators of forest.²⁴

In order to prevent the field staff of the Forest Department from acting in collusion with the forest smugglers, the Forest Department has adopted certain measures. Whenever a tree is removed from the forest unauthorisedly the value of the tree, as estimated by the Department, will be ordered to be recovered from the salary of the concerned field staff. This practice may help to make the guards in-charge of Beats more cautious. But it creates discontentment among field staff. They feel that it is not at all just to recover the value of the tree from the insufficient remuneration they get for the onerous service in the department. A retired forest official at Kozhikode, when interviewed by the Researcher explained how this situation is met by the forest guards. In order to defeat the practice of recovering of value of the trees from them, the guards have adopted a technique. Whenever

24. In many parts of Idukki district in Kerala State cannabis plants are grown in reserved forest with the silent consent of the officials of the Forest Department. Mathrubhumi (Kochi), August 17, 1987. It is also reported that there are forest officials in Nagarampara Range of Idukki district in Kerala who have become millionaires by assisting illegal encroachments on forest area. Kerala Kaumudi (Trivandrum), June 20, 1987. Sale of forest land by the officials of the Forest Department was detected in Pathanamthitta district of Kerala State. Malayala Manorama (Cochin), September 3, 1986.

they see stumps of newly cut trees in the area under their control and the offender is not known, they put small quantities of sugar over the stumps. This attracts white ants. When the ants cover the stump and eat it up, the evidence of fresh cut or the stump is easily destroyed.

Imposition of liability on the field staff for the loss of wood is not the proper way to make the field staff more responsible. It only makes them more corrupt and disloyal towards the Department. The field staff of the Forest Department can be made responsible by strengthening them to fight against offenders and giving them adequate incentives for the risky tasks undertaken by them. Considering the difficulties involved in fighting against forest offenders and smugglers, the field staff of the Forest Department should be given a risk allowance. The Government may also provide them risk insurance coverage.

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25. The Principal Chief Conservator of Forest, Karnataka, in an interview told the researcher that in Karnataka the forest officials are given as incentive, ten per cent of the value of the forest produce seized and confiscated in connection with a forest offence. Five percent of it given immediately after seizing, while the rest after successful prosecution of the case.
26. The Government of Kerala has decided to institute risk insurance scheme for the employees of the Forest Department. Under the scheme, the Government will remit the insurance premium on behalf of the employees. If the employee dies or is handicaped permanently, an amount of rupees one to two lakhs will be given as the insurance amount depending on his official cadre. Guards are eligible for an amount of Rs.1 lakh. Foresters are eligible to get Rs.1,25,000/- Officers from the grade of Ranger onwards are eligible to get Rs.2 lakhs. Malayala Manorama (Kochi), August 27, 1992, p.12.

Political interference

Smugglers and encroachers of forest are usually politically influential persons.²⁷ They are not afraid of the administrative machinery. Whenever a load of wood or forest produce illegally collected by an influential forest smuggler is seized by the officials of the Forest Department, the smuggler may approach a politician at higher circles or a minister who may direct the concerned official to release the goods and the offenders. If an honest official refuses to act according to such directions he may be subject to the displeasure of the higher authorities. Influential smugglers may even dare to kill the official who stands in their way.²⁸

In most of the States, Forest Department does not have the maps or other records showing the actual area of forest under its control. So it becomes difficult for the Department to demarcate the boundary lines of forest.

27. It was once reported that in Kerala even close relatives of Ministers were involved in illicit smuggling of timber from forest. See Mathrubhumi (Cochin), July 21, 1987.

28. Veerappan, a smuggler who killed a number of forest and police officials is said to enjoy the patronage of some politicians, foresters and top police officials. Indian Express (Kochi), August 16, 1992 p.3. He even used the services of retired or deserted army personnel. Indian Express (Kochi), August 18, 1992 p.9.

This situation facilitates easy encroachment into forest lands. In Kerala the Forest Department is taking all pains to put cairns as permanent boundaries for forest areas. But encroachers even dare to remove the cairns and put them into the interior forest so as to extend the area encroached by them.²⁹ Armed resistance coupled with political intervention makes eviction practically impossible. Even judicial intervention proved to be futile in evicting encroachers.³⁰ Gradually the Government may legitimise these encroachments by granting concessions in favour of the encroachers. In Kerala a number of such instances have been reported.³¹ Even the committees appointed by the Government to study the problems

29. A Divisional Forest Officer in Idukki district when interviewed by the researcher, revealed that this practice exists.
30. Prosecutions against the encroachers often fail due to the inability of the prosecution to prove that the disputed area is the property of the Government. See infra, ch.7 n.39
31. In 1940, the Government of Kerala granted "Kuthakapattam" rights to encroachers on forest land in Konni Division. In 1950 pattas were granted for 12430 hectares of forest land. Between 1955 and 1968 a number of orders were passed regularising encroachments. In Malabar area between 1940 and 1970 about 3000 acres of forest land was occupied by migrants from central parts of Kerala. In 1972 also a number of 'pattas' were granted in Malabar forest. Jagrada News, Book No.1. Nov.1987 pp.4, 5 Now the Kerala Government is trying to get permission from the Central Government to regularise encroachments till 1977 by granting pattas. "Malayala Manorama"(Kochi), February 28, 1992.

of encroachment and evictions recommended minimum eviction. In some areas encroachers were given rights over forest land even in violation of the Forest Conservation Act of 1980.³³ This practice should not be allowed to continue. Forest areas should be correctly identified and recorded by a joint verification by the Forest and Revenue Departments. Land grabbers should be evicted from forest areas. Landless encroachers should be suitably rehabilitated in housing colonies or flats constructed by the Government so

32. In 1961 the Government constituted the Forest Reservation Committee under the Chairmanship of Sri.K.P.Radhakrishna Menon, to go into the entire question of unauthorised occupations and lease holds within Reserve Forest Area. The committee recommended for minimising the number of evictions and for rehabilitating evicted families. In 1965 when Kerala was under President's rule, Parliament constituted a sub-committee - The Manianganadan Committee - to go into the problems relating to the eviction of encroachers from Government forest lands in Kerala. This committee also favoured restricted evictions. See for summaries of the Radhakrishna Menon Committee Report and Manianganadan Committee Report. C.K.Karunakaran, The Second Working Plan for the Kottayam Forest Division 1974-75 to 1984-85 (1975), pp.105-110.

33. This anomaly was pointed out by Justice Sukumaran in the Kerala High Court decision in Scaria Augusthy v. The Special Deputy Collector and Others (O.P.No.4822 of 1986). See supra, ch.4, n.59

that they do not further encroach into the natural forest.

Problems at checkpoints

Smugglers often amass money by illegally felling and selling timber from forest. As such felling is usually done in deepwoods at night, commission of the offence may not be detected by forest officials at once. However, Forest Officers or Police Officers can catch hold of the culprits with the material objects with them when the illegally felled timber is transported. Since timber can also be collected from private lands, it becomes difficult to identify timber smuggled from Government forests. So the law requires every owner to get a pass from the Forest Department for the transit of forest produce.³⁴

In Kerala Jack, Cashew, Rubber and Tamarind trees can be cut and transported without a pass. Teak, Rose wood, Ebony and Sandal and such other trees require a pass for transit.³⁵ If these trees are transported without

34. The Indian Forest Act 1927 empowers the State Governments to make rules to regulate the transit of forest produce by land and water. Indian Forest Act 1927, S.41. Corresponding provisions are incorporated in S.39 of the Kerala Forest Act 1961.

35. In Kerala, transit pass is required for the transport of timber, charcoal and other forest produce. The owner of timber or forest produce should apply for a transit pass immediately after such collection. Proof as to the land from which it was collected should be furnished along with the application. If the forest produce is collected from the land adjacent to a Government forest land, then the details of the boundaries should be clearly stated. Application for pass in respect of

a pass, the forest officials would seize the wood together with the vehicle and take prosecution steps against the offenders.

Check-posts have been established by the Forest Department in different parts of the State to check illicit transportation of forest produce. But the check-posts often fail to achieve the desired result. In most of the forest Divisions, the check-posts consist of only a thatched shed with two or three forest personnel and two poles on both sides of the road with a connecting chain or a cross bar. When the vehicle with forest produce comes, the guards stretch the chain or keep the cross bar across the road to stop the vehicle. Smugglers who do not have a transit pass may drive the vehicle on smashing the chain or cross bar and hitting the persons who stand in their way. Organised smugglers even attack the forest officials at the check-posts in the process of illicit transit.³⁶

trees other than teak, rosewood, sandal and ebony should be given to the Village officer. If it is teak, rosewood or ebony the application should be given to the Forest Range Officer. In the case of sandal trees, application should be presented before the Divisional Forest Officer. The pass for the transit of teak, rosewood and ebony will be valid for a maximum period of 3 months whereas the pass for the transit of sandal trees will be having only fourteen days validity. See Kerala Forest Produce Transit Rules 1975.

36. The forest officials of Pukkottumpadam range in Kerala had to face such a situation in 1986. When they stopped the vehicle carrying illicit timber the

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Smugglers, by clever techniques, also cheat the forest personnel at the check-posts. Sandal wood may be cut into small pieces and put in sacks kept inside buses. Bundles of leaves kept on the top of buses may contain pieces of rose wood. Furniture made with teak trees may be coated with some powder to give it an appearance of some cheap wood. Teak wood cut into pieces may be transported in motor cars.³⁷

Different techniques are adopted in places where there are lakes or rivers near forest. Smugglers tie the timber into a yatch and pull it through the water in the dead of night to the destination.³⁸ Some smugglers even put bundles of bamboo over such yatches to cheat the officials at the check-post. Even when forest officials notice such illicit transit of timber, it is not easy for one or two officials to seize the timber.

Some smugglers have saw mills near forest. They easily convert the illicit timber into planks. After

smugglers who followed the timber load, in a jeep, with sophisticated weapons in their hands, threatened to kill the forest officials. Before the unarmed officials could speak anything, the smugglers escaped with the illicit timber. In the same place a forest guard was run over by a lorry carrying illicit timber when he tried to stop it. Mangalam Book 17 No.5 (1986), p.5.

37. The Divisional Forest Officer of Chalakkudy division of Kerala, Forest Dept., cited an instance when an ambassador car with smuggled teak was seized. Teak wood was concealed under the seats of the car.

38. Smuggling of timber from Neyyar forest in Kerala is usually done in this manner. Mathrubhumi Book No.69 No.24, p.16.

such conversion the officers of the Forest Department will not be in a position to identify the planks made from the illicit timber. Therefore, unless seizure is done before the timber is converted into planks, the forest officers can take no action against the offenders. The Forest Department has no control or supervision over the saw mills in the forest area. The Forest officials cannot do anything with the saw mills suspected to be involved in conversion of illicitly felled timber. The only alternative before the Forest Department in such cases is to complain before the licensing authorities or police about the illicit business going on in the saw mills. If the licensing authorities do not take any steps to prevent the illicit business, the activity will continue without interruption.

Saw mills in forest areas have to be brought under the control and supervision of the State Forest Department. Then difficulties of this type can be minimised. It should be made mandatory for the owners of saw mills to get a pass from the Forest Department for converting each load of timber into planks or other articles. Another alternative is to invest the Forest Department with the power to issue licence for saw mills situated in forest area, so that forest officials can inspect the mill, seize illicit timber if any and take actions against those who violate conditions

of licence.³⁹ Another remedy is to prohibit the location of saw mills within certain limits of forest area.⁴⁰

Nationalisation of timber trade is another remedy to curb illicit transaction in timber. Timber cut from private lands may be permitted to be sold in the Government saw mills at reasonable prices fixed by Government. But as timber is of wide application in the construction of houses and in making of furniture, total nationalisation of timber trade will create serious practical difficulties. It is not possible for the Government to satisfy the increasing demands of wood articles through departmental

39. One report has suggested:

"The power to issue licences with conditions and incidental powers for inspection, search and seizure should be conferred on the forest officials. Coercive powers such as confiscation of goods, suspension and cancellation of license, closure of the undertaking and the prosecution of the offender coupled with the power of imposing penalties should also be given to the forest officials".

Department of Law, Cochin University of Science and Technology, Legislative and Administrative Aspects of Environmental Control in Western Ghats, Report of the Study (1988), pp.78, 79.

40. A similar prohibition is there, in the case of Abkari licensing, to prevent sale of toddy near schools and sacred institutions. The Kerala Abkari Shops (Disposal in Auction) Rules 1974, Rule 6 (2) provides:

". . . no shop other than a Foreign Liquor Wholesale shop shall be located in or removed to a place

(a) . . .

(b) within 400 meters from any school, temple, church, mosque or burial place . . . "

supply. So processing of wood after it is cut into planks should be left to private agencies. The power to cut wood into planks or logs except for fire wood, should be with the Government. For this purpose, Government saw mills may be established in each locality under the control and supervision of the State Forest Department. Whenever timber is brought to the mills for processing, the forest personnel can ascertain whether it is illicitly felled timber or not. If this system is enforced by all States smuggling of timber from forest can be considerably reduced.

Absence of inter-State Co-ordination

The Indian Forest Act 1927 is not applicable in all the States. Some States have, therefore, enacted separate legislation on forest.⁴¹ Difference in the forest law among States creates problems at the border. For example in Kerala, the law prohibits cutting of sandal trees,⁴² but stacking or storing of sandal is not made punishable. In Tamil Nadu and Karnataka cutting as well as stacking or storing of sandal wood is prohibited.⁴³ This has

41. See for details supra, ch.4 n. 25

42. Kerala Preservation of Trees Act 1986, S.3.

43. Tamil Nadu Forest Act 1882 Ss.21, 56-A, 56-B, 56-C 36-A and Karnataka Forest Act 1963 Ss.84-87. See supra, ch.4, nn.26,27,29

created serious problems in preventing illicit transit of sandal wood at the Kerala-Karnataka and Kerala-Tamil Nadu border. Since the forests in Kerala near the border do not have sandal wood, the Kerala Forest Department does not pay much attention to prevent smuggling of sandal wood in that area.⁴⁴ This has helped the smugglers to stack the sandal wood illicitly collected from Karnataka forest in the Kerala border. A number of factories have also been established in the border regions of Palakkad and Wynad districts of Kerala State, to distill oil from the sandal wood illicitly collected from the Satyamangalam forest of Karnataka.⁴⁵ Trucks, vans and even motor cars are used to carry the illicit sandal wood to the factories at Palakkad. In Tamil Nadu-Kerala border also such illicit activities are going on. Villagers and adivasis also take part by carrying sandal logs by head-load through the forest to the factories at Palakkad.⁴⁶ Sandal wood factories are also functioning in Wayanad⁴⁷ and Kasaragod.⁴⁸ Since the sandal wood do not belong to the

44. Information given by a Divisional Forest Officer in Palgnat district, Kerala when interviewed by the researcher.

45. Mathrubhumi (Kochi), May 21, 1990.

46. Ibid.

47. Indian Express (Kochi), April 23, 1992.

48. Indian Express (Kochi), December 3, 1992.

Kerala State, the Kerala Forest Department shut their eyes. Since stacking and distilling of sandal is not made an offence under the Kerala Forest Act 1961 or the Kerala Preservation of Trees Act 1986,⁴⁹ the forest officials of Kerala cannot arrest and prosecute them for such acts under these enactments. The steep rise in the price⁵⁰ induced the smuggling of sandal oil to Bombay, Luknow and other markets through railway parcel service or in lorries.⁵¹ In some areas sandal lobbies have started even telephone booths to inform persons involved in illicit transporting of sandal oil, the movements of the officials of the Forest Department. There is an allegation that the police officials are bribed to get vital information.⁵² Even a joint venture of the Forest and Police departments of Kerala, Karnataka and Tamil Nadu may not be able to put an end to this assault on the forest wealth of our country. Problems of this type can be avoided if the Centre enacts a forest legislation to

49. See supra, ch.4 n.30

50. Recently the price of sandal oil rose from Rs.1200 to Rs.4000 per k.g. Malayala Manorama (Kochi), December 5, 1992 p.12.

51. The flying squad of the Kerala Forest Department seized from the railway station at Olavakkodu, sandal oil parcelled as sunflower oil to be transported through the railway parcel service. Ibid.

52. Ibid.

be applied uniformly throughout India, and creates a strong enforcement machinery. Since the subject 'forest' has already been transferred from the State list to the Concurrent list,⁵³ Parliament is competent to enact such a law. If a Central Forest Protection Force is constituted with skilled and trained staff in adequate number to enforce the law uniformly in the country without any State territorial barriers, problems of this type can be effectively tackled.

54

Another alternative is to lift Government's monopoly rights over sandal trees. Sandal wood is of much industrial use. Beautiful artistic pieces carved out of sandal wood and the sandal oil distilled from chipped wood are of high demand in markets in India and abroad. If private land owners are free to cut sandal trees on their land and sell the wood in the market, people will come forward with programmes for raising of such trees. If sandal wood is available in plenty in the market, people may rarely undertake the risky expeditions to Government forest in the dead

53. See supra, ch.3 n.30

54. In Kerala the Forest Department will purchase the sandal wood trees on private lands on reasonable terms, if the parties agree. The Department will extract sandal wood, sell it in auction and pay the land owners 70 percent of the proceeds leaving 30 percent to the Department. G.O.MS.126/73/AD dated 3-4-1973 of the Agriculture (Forest) Department, Trivandrum. See for Text Appendix III.

of night in search of sandal wood. Once the scarcity of sandal wood is removed, sandal wood based crafts can be made more extensive and a number of unemployed youths may be accommodated in such works.⁵⁵ People may also be encouraged to cultivate other valuable trees like teak, rose wood, and ebony so that the unlawful intrusion into the Government forest for these trees can be minimised.

Absence of inter-departmental co-ordination

Law confers on forest officials the power to arrest an offender involved in a forest offence, but they have no power to keep the offender in custody or to punish him. The offender has to be produced before the Magistrate within twenty four hours of arrest or to be handed over to the nearest police station. On the way the offenders may escape by assaulting the forest officers. Sometimes other members of the gang may come and rescue the offender, injuring or even killing the forest personnel in-charge of the offender.

55. At present wood-based crafts in South India provide employment to over 2250 craft persons who make items worth Rs.1299.50 lakhs every year. Most of these items including carvings from sandal wood and rose wood have considerable export potential. Indian Express (Kochi), November 1, 1992, supplement p.5.

Problems are there in the service of summons issued by courts to the offenders. In forest cases the processes issued by the court are served through the forest personnel. The duty to handover them to the offender is often vested with the forest guard. When he approaches the offender with summons from the court, the offender may not accept the same. The offender may injure or may even kill the guard.⁵⁶ Problems of this type can be solved if the police is entrusted with such tasks.

Since the Forest and the Police departments function as two independent departments, the Forest Department cannot give binding directions to the police to assist them in arresting forest offenders. When the police personnel refuse to assist the forest personnel, the Forest Department becomes helpless to do anything in the matter. Problems of this type in dealing with offenders can be avoided if the Forest and the Police personnel work in co-ordination under a common controlling agency. Police stations may be established in forest areas or police personnel may be deputed in adequate number to the Forest Department so

56. In Kerala, the Forest Guard 'Suku' in Adimali was struck to death when he approached an accused involved in illegal felling of trees, with the summons. Mangalam Book 17, No.5 (1986), p.4.

that the offender may be arrested and taken into police custody.

In many parts of Kerala reserved forests are used by anti-social elements for cultivation of narcotic plants like cannabis. The limited number of staff in the Forest Department find it difficult to curb such evil practices. Co-ordination is required between the Forest Police, Excise and Revenue Departments and the agencies of the Central Government to arrest such offenders.⁵⁷ Mere arrest of the offender cannot ensure protection of forest. He should be successfully prosecuted and punished. When forest officers having no training, skill or experience in the field of law, prepare the Mahazar and stand as witnesses before courts, they rarely understand the true legal implications of what they do or say. In many cases the prosecution therefore fails on technical grounds.⁵⁸ The result is that often even notorious smugglers escape from conviction and punishment.

57. It is reported that within a period of seven months, the Kerala Forest Department by itself or in Co-operation with the Revenue, Police and Excise Departments conducted 38 raids in the forest areas of Palakkadu, Kozhikkode, Trissur and Idukki districts and destroyed acres of cannabis plantations cultivated for the production of gunja. Malayala Manorama (Kochi) May 12, 1992.

58. See for details infra, ch.7.

In Tamil Nadu, because of the difficulties involved in proving the forest case, the State Government used to arrest and detain notorious forest offenders under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum-grabbers Act 1982.⁵⁹ The Act, popularly known as the Goondas Act, empowers the State Government to order detention of a forest offender⁶⁰ when he is engaged or is making preparation for engaging in any of the activities as a forest offender which affect adversely or are likely to affect adversely the maintenance of public order.⁶¹ The Goondas Act has contributed much in causing the arrest and detention of depredators of forest in Tamil Nadu. Similar legislation may be passed by all States so as to minimise the hurdles in arresting and punishing forest offenders.

59. Tamil Nadu Act No.14 of 1982. See for text, Government of Tamil Nadu, Tamil Nadu Government Gazette Extra Ordinary No.177 Part IV S.2 March 13, 1982 pp.1-13. An extract of the Act is given in Appendix V

60. The Act defines forest offender as follows:

" "Forest offender" means a person who commits or attempts to commit or abets the commission of offences punishable under Chapter II or Chapter III or Chapter V or Chapter VI-B or Chapter VII of the Tamil Nadu Forest Act 1882 (Tamil Nadu Act V of 1882) or under Chapter VI of the Wildlife (Protection) Act 1972 (Central Act 53 of 1972)".

Id., S.2 (ee).

61. Id., S.3(1) read with S.2(a)(ii-a). Public order is deemed to have been affected when there is a grave or widespread danger to life or public health or to the ecological system.

Absence of facilities to keep seized articles

Forest officer has the power to seize or confiscate the goods, vehicles, tools and boats suspected to be involved in a forest offence.⁶² When an order of seizure is made, it is the duty of the forest officer to keep such goods in safe custody till the disposal of the case. But the Department does not have sheds or garages to keep seized goods and vehicles in safe custody. So these are kept in the premises of the forest depots. Before courts of law, it may take months or years to get a final verdict over the case. By that time the goods⁶³ and vehicle would have rusted and ruined. If provision is made for the construction of sheds and garages in the Forest Department or to hand over the interim custody of the vehicles to some other Government Departments having garage facilities, such loss can be minimised. Provision should also be made for plying of seized vehicles which are hypothicated so that the financial institutions that have lent huge amounts for the purchase

62. See for instance the Indian Forest Act 1927, S.52; Kerala Forest Act 1961, S.52; Tamil Nadu Forest Act 1882, S.41; Karnataka Forest Act 1963, S.52; Andhra Pradesh Forest Act 1967, S.44; Orissa Forest Act 1972, S.56; Rajasthan Forest Act 1953, S.52; Nagaland Forest Act 1968, S.49; Jammu and Kashmir Forest Act 1930, S.26.

63. In Kerala there had been instances where the wood kept in the forest depot was carried to distant places by floods. Malayala Manorama (Kochi), January 17, 1993 p.10.

of the vehicle can be saved from loss.⁶⁴

Gracing : Absence of alternative facilities

Gracing of cattle in forest accelerates denudation of forest. The Forest Officials can seize the cattle which trespass into the reserved forest.⁶⁵ But the Department does not have any facility to keep seized cattle in safe custody. No arrangement exists to look after them. Forest guards often do not take any action against cattle trespass in reserved forest because the seizure of cattle will lead to further troubles.

64. In Ram Nish Bansal v. State of Rajasthan 1990 F.L.T.61. While granting a petition filed for interim custody of a hypothecated vehicle seized in connection with a forest offence, the High Court of Rajasthan observed at p.65:

"This is a matter of common knowledge that the vehicles are more spoiled after seizure. It is high time that the State Government should consider for setting up a department for running the vehicle seized in various offences during the course of custody in the courts . . . The huge amount of the financing institutions is invested in the vehicles which are ultimately auctioned at the cost of scrap. It is tax payers' money which has to be saved and even if it is investors' money, it should not be permitted to be wasted in the manner it is done".

65. Trespass of cattle in reserved forest is an offence. Law provides for punishment of persons who violate the law. See Indian Forest Act 1927, S.26(a)(d); Kerala Forest Act 1961, S.27(2)(c); Tamil Nadu Forest Act 1882, S.21(d); Karnataka Forest Act 1963, S.24(c)(ii); Andhra Pradesh Forest Act 1967, S.20(c)(ii); Orissa Forest Act 1972, S.27(2)(a); Rajasthan Forest Act 1953, S.26(1)(d) and Nagaland Forest Act 1968, S.23(a).

Serious problems are also created by the supply of goats or milch cows by agencies of Government to the tribal people living in forest. The tribal members who are not able to look after these animals by keeping them in sheds, let them free to graze in the forest. If the Forest Department takes stringent measures to prohibit such grazing, the tribal member has no other alternative, except to sell the animals to the plainsmen. So the Department is hesitant to adopt such measures. Years of grazing may lead to desertification⁶⁶ of forest land. The problem of grazing has to be taken seriously. Adequate facilities should be given to the people living near forests to graze their cattle in earmarked areas so that the cattle may not trespass into the reserved forest. The scheme of supply of milch cows or goats to tribal members is found to be failure.⁶⁷ The scheme should be dispensed with and more meaningful one introduced in the interest of protection of forest as also of the tribal people.

Absence of effective measures to control forest fire.

Forest fire may be caused by natural phenomena or by

66. According to one report, the 'Thar desert' is spreading due to overgrazing. Centre for Science and Environment, The State of India's Environment 1982 A Citizens' Report (1982), p.13.

67. See supra, ch.9 n.121

operation of human agencies.⁶⁸ Fire lines⁶⁹ are dug by the Forest Department to prevent the spreading of fire. Huts are constructed on the top of hills or trees to watch the occurrence of fire in the surrounding forest area. Guards or temporary watchmen in charge of such huts report such events to the concerned officials of the Forest Department. However such measures are inadequate to protect forest from fires. Fire lines can prevent only the fire on the forest floor. If the fire spreads to the top of trees, Forest Department cannot do anything effective as it does not have sophisticated fire fighting equipments and staff trained in fire fighting. It is not easy in forest areas to inform the fire force immediately. Even if informed, the fire force personnel may not be able to

68. One Divisional Forest Officer in Kerala, when interviewed by the researcher stated that forest fires are often intentionally caused. Farmers having fields down the hilly forest area, put fire to the forest on high altitudes so that the ash may reach their crop fields during rainy season. Intentional fires are also being caused by villagers nearby with a view to using the destroyed trees as firewood or to catch small animals from forest. Forest fires are sometimes caused by antisocial persons, as a protest against forest officials. Such an incident occurred in Nagarhola National Park in Karnataka, when acres of forest, rich in flora and fauna, had been destroyed by forest fire; Malayala Manorama (Kochi), March 19, 1992.

69. Fire spreads due to the presence of dry organic matter over the soil. If long pits are dug in lines - fire lines - on the forest floor, so as to remove the organic content over the soil, spreading of fires, can be checked.

reach the area in time due to inadequate transport and other facilities in the forest. So once a fire occurs in forest considerable portion of the forest is likely to be destroyed.⁷⁰

Advanced countries like the U.K. and U.S.A. have evolved modern techniques to fight forest fires. In the United Kingdom, special fire detecting equipments are used. Wooden or steel fire towers are set on hill tops. Fire watchers and rangers in charge of the tower are equipped with binoculars, maps and a direction scale. These arrangements enable them to ascertain the place on fire from the direction of the smoke.⁷¹ Telephone and radio are linked with the fire control base and as soon as an out-break of fire is sighted trained men rush to the spot to suppress it.

In the United States also, the fire precaution and control programmes are well organised. An elaborate system with communication facilities, towers and aircraft is used to detect the occurrence of smoke. On detection of smoke report is sent to the central despatching stations where the District ranger locates the fire

70. In Kerala between 1977 and 1982, 2321.50 acres of forest were reported to be caught by natural or man-made fires. Kerala Legislative Secretariate, Thiruvananthapuram, The Petitions Committee (1984-86) 6th Report (1986), p.6.

71. Robert P. Gwinn (et.al), The New Encyclopaedia Britannica, Vol.19 (1985) p.411.

on a map. Fire fighting crews immediately rush to the spot to control the fire.⁷²

In India the system of detection of forest fires using air-crafts is being adopted in Uttar Pradesh. It needs to be adopted in other States.⁷³

Absence of Public participation in the Management of forest

Successful implementation of the law depends to a large extent on social sanction behind it. If society is not ready to recognize a particular law it will certainly fail.⁷⁴ This is true with regard to the law relating to forest also. People living near the forest and the tribals in forest consider forest as their own property and try to extract maximum benefit from forest. They graze their cattle, collect forest produce or even clear forest land for cultivation or settlement. They consider the forest legislation as an instrument to curtail their rights in the forest. They fail to see the forest law as a device to protect the forest environment. Because

72. American Corporation, The Encyclopaedia Americana International Edition Vol.11, p.594.

73. R. Purvay, Member of the Faculty, Forest Service College, Coimbatore, when interviewed by the researcher emphasised the need for adoption of that system in other States in India.

74. The legislation prohibiting dowry failed in implementation in most of the States due to this reason.

of this, people often try to violate forest laws. In order to make the public law abiding they should be made aware of the beneficial effects of forest through extensive educational programmes.⁷⁵

In India management of forest is done in accordance with the scheme contained in working plans⁷⁶ prepared by the forest department. These working plans are said to be worked out after careful examination of all relevant factors. But in preparing the plans, members of the public are not consulted. Even the tribal people living in forest are not consulted when the Forest Department takes decisions adversely affecting their interest. The policies and decisions of the Department are taken secretly in the bureaucratic chambers. Even in law making process members of the public are not effectively consulted. Here publication of a bill relating to forest in the official gazette before enactment as law does not ensure effective public participation. Public participation and involvement in management of forest at planning and implementation level⁷⁷ will help to make the public

75. See supra, ch.4 nn. 142, 143

76. A working plan is a written scheme of management aiming at a continuity of policy controlling the systematic treatment of forest. Government of Kerala Kerala Forest Code Vol.1 (1973), p.96.

77. See supra, ch.4 nn. 156 -159

friends of the Forest. It will make enforcement of forest law easier.

Protection of forest can be effectively carried out if the public, and the forest officials show more interest and enthusiasm in implementing the law relating to forest.⁷⁸ Law and policy relating to forest should be framed in such a way as to encourage the officials and the public to participate actively in the protection and regeneration of forest.

78. One author observes,

"The fundamental reason behind denuding of forest is the lack of interest on the part of these two, (forest officials and forest dwellers). The officials are on the look out for money making by allotting illegal tree-felling and the forest dwellers indulge in denuding forests for contractors or on their own. The Government is ignorantly trying to protect forests by means of force".

Shard Kulkarni, "Forests and Tribals" in Desh Baddhu & R.K.Gaig, (Eds.), Social Forestry and Tribal Development (1986), p.103.

CHAPTER 7

FOREST OFFENCES - PROBLEMS OF PROSECUTION

Every year a number of cases are recorded by the State Forest Department for breach of law relating to forest. All these recorded cases do not reach the court. A good number of them are compounded by forest officials.¹

1. Details of the cases recorded by the Kerala Forest Department, of those disposed of by courts, and of compounded and withdrawn by the Forest Department for the period from 1979-80 to 1989-90 are given below:

Year (1)	Total cases during the year (2)	No. of Con- victed cases (3)	Acqui- tted cases (4)	Com- pounded (5)	With- drawn (6)
1979-80	31220	1183	466	1313	-
1980-81	35567	1508	285	1038	-
1981-82	39342	1065	531	1421	1257
1982-83	42223	1190	942	1332	900
1983-84	43855	1126	668	1329	1131
1984-85	45540	1229	990	1522	1053
1985-86	47476	1213	728	1025	522
1986-87	50297	2079	2168	1561	1874
1987-88	48953	1047	1759	1387	786
1988-89	49424	2347	2799	1408	4542
1989-90	43935	883	881	1235	1787
		14870	12217	14571	13852

Source: Administration Reports of the Forest Department, Government of Kerala, for the years 1979-80 to 1989-90.

However, offences relating to seizure of property by officials counterfeiting or defacing of official marks on trees and timber or altering boundary marks of forest, are made non-compoundable.² In Karnataka, offences relating to sandal wood are also excluded from the provision for compounding.³

When an offence is not compounded, prosecution steps are taken against the offender and the case tried summarily. The burden of proving the guilt of the accused is on the prosecution. The accused is presumed to be innocent till the guilt is proved beyond the shadow of doubt. Prosecution does not result in conviction⁴ in many cases. An analysis of the case law

2. Indian Forest Act 1927, S.68 permits compounding subject to these exceptions. Corresponding provisions are incorporated in Kerala Forest Act 1961, S.68; Karnataka Forest Act 1963, S.79; Tamil Nadu Forest Act 1882, S.55; Andhra Pradesh Forest Act 1967, S.59; Orissa Forest Act 1972, S.72; Rajasthan Forest Act 1953, S.68.

3. Karnataka Forest Act 1963, S.79 (1) (a).

4. Out of the 40939 cases decided between 1979-80 and 1989-90, in 14870 cases (36.32%) the accused persons were convicted. Acquittal is made in 12,217 cases (29.84%) and the case is withdrawn in 13,852 cases (33.83%). See for details supra, n.1.

relating to appeals filed before the Supreme Court and the High Courts of different States reveals that the accused persons are relieved of criminal liability mainly due to two factors, namely, errors and omissions on the part of the prosecution on the one hand and loopholes in the law on the other.

(1) Errors and omissions on the part of the prosecution:
Failure to produce notification.

In order to convict an accused for the offence of commission of a prohibited act in a reserved forest, the prosecution should essentially prove two things, namely, (1) the accused has committed the prohibited act and (2) the scene of occurrence is a reserved forest.⁵ A forest is declared to be a reserved forest by a notification

5. In Bhagwan Sahai v. Divisional Forest Officer, A.I.R. 1947 Pat.264 the High Court of Patna set aside the conviction under S.379 of Indian Penal Code for dishonest removal of timber from a jungle with respect to which the provincial government had issued a notification under S.4 of the Forest Act. The Court held that the removal of timber will constitute an offence only if the jungle in question has become a reserved forest by the issue of a final notification under S.20 declaring the Forest reserved.

under the Forest Act.⁶ If the prosecution fails to prove that the prohibited act was committed in a reserved forest, the accused will be acquitted. Mansid Oraon v. The King⁷ decided by the High Court of Patna is an example where the accused escaped liability due to the failure of the prosecution to prove this fact. The accused was prosecuted for the offences of cultivating land and cutting down trees from a land alleged to be included in a reserved forest.⁸ The prosecution relied on a notification issued under S.4 of Indian Forest Act.⁹ Evidence was produced to prove that the land in question fell within the boundary pillars fixed by the State Forest Department. No evidence of final notification declaring the forest as reserved under S.20 of the Indian Forest Act was produced. Can the accused be held guilty of the offence? Chief Justice Agrawala observed that, for the

6. See Indian Forest Act 1927, S.20. The relevant portion reads:

" . . . the State Government shall publish a notification in the official Gazette, specifying definitely, according to boundary marks erected or otherwise the limits of the forest which is to be reserved, and declaring the same to be reserved from a date fixed by the notification".

See also Kerala Forest Act S.19 which provided for declaration of a forest as reserved forest under the Kerala Forest Act.

7. A.I.R.1951 Pat.380.

8. Indian Forest Act, 1927, S.26(b) prohibited such an act

9. The notification under section 4 of the Indian Forest Act is a notification declaring the intention of the

purpose of proving the guilt of the accused it was necessary to show not only that he did the act prohibited but also that the acts were done in reserved forest. The latter has to be proved by showing evidence that there had been a notification under S. 20 (1) of the Forest Act declaring the forest reserved.¹⁰

Union of India v. Abdul Jaleel¹¹ decided by the Supreme Court provides another interesting example. The accused persons were prosecuted for offences under S.26 (1) of the Indian Forest Act 1927 for cultivating and erecting home-steads in reserved forests. The areas in dispute were declared as reserved forests by 3 notifications under Tripura Forest Act (2 of 197 T.E). The Tripura Forest Act was later repealed by the Indian Forest Act 1927. However, no fresh notification under S.20 of the Indian Forest Act 1927 had been issued in respect of the area in dispute. Holding that the forests in Tripura were not reserved forests within the meaning of S.20 of the Indian Forest Act, the court upheld the acquittal of the respondents.¹²

Government to declare an area as a reserved forest. Declaration of an area as reserved forest is done by notification under S.20 of the Act. See supra, n.6.

10. Mansid Oraon v. The King A.I.R.1951 Pat.380 at p.381.

11. A.I.R. 1965 S.C.147.

12. Id., p.149.

In State of Kerala v. Adichan Sasi,¹³ a similar situation arose. The respondent was charged under S.27 (2) (c) and (d) of the Kerala Forest Act 1961 for trespassing into a forest which had been reserved under the Travancore Forest Act 1068. The respondents contended that since the disputed area was declared as a reserved forest by notification under the Travancore Forest Act 1068 (M.E) only and not under the Kerala Forest Act, the former notification cannot be treated as a valid notification declaring the area as reserved forest issued under S.19 of the Kerala Forest Act.¹⁴ However this contention was rejected by the court in view of the saving provisions contained in S.101 (3) of the Travancore-Cochin Forest Act¹⁵ which repealed the Travancore Forest Act and S.85 (3) of the Kerala Forest Act,¹⁶ which repealed the Travancore-Cochin

13., 1975 K.L.T. 839.

14. Id., p.841.

15. S.101 (3) of the Travancore-Cochin Forest Act, 1951 reads:

"All rules prescribed, appointments made, powers conferred and orders issued under the enactments hereby repealed shall, so far as they are consistent with this Act be deemed to have been respectively prescribed, made, conferred and issued hereunder".

16. S.85 (3) of the Kerala Forest Act, 1961 reads:

"All rules prescribed, appointments made, powers conferred and orders issued under the enactments hereby repealed shall be deemed to have been respectively prescribed, made, conferred and issued hereinafter till new rules and enactments are made under the various sections of the Act".

Forest Act. It was held that the area notified as reserved forest under the Travancore Forest Act should be deemed to be a notification issued under the Travancore-Cochin Forest Act 1951 and also under the Kerala Forest Act 1961.¹⁷ But the prosecution could not adduce clear proof that the area where the alleged offence occurred was included in such notification. The Court, therefore, refused to interfere in the order of acquittal of the accused.¹⁸

In A.M. Antony v. Forest Range Officer,¹⁹ the accused was charged under S.27 of the Kerala Forest Act 1961 for trespassing into the reserved forest and for cutting a rosewood tree there. The prosecution produced an uncertified copy of the notification issued under the Madras Forest Act 1882 declaring the disputed area as reserved forest. No such notification under S.19 of the Kerala Forest Act 1961 was produced. Setting aside the conviction and sentence passed against the petitioners, the High Court of Kerala held that before a person can be held guilty under S.27 of the Kerala Forest Act, it has to be proved that the act complained of was done in a reserved forest.²⁰ Oral evidence is not sufficient to prove the fact of reservation.²¹

17. 1975 K.L.T.839 at p.841.

18. Id., p.842.

19. 1977 K.L.T.691.

20. Id., p.693.

21. Id., p.692.

In Chacko Pyli v. State of Kerala²² it had been held that the court will not take judicial notice of the notification declaring a forest reserved.²³ The fact of reservation should be proved by the production of the original gazette containing the notification or a certified copy of the same.²⁴

If a tree is cut from a protected forest, the burden on the prosecution is further extended. The accused can be convicted only if the prosecution successfully proves before the court, not only that the tree is cut from a protected forest but also that the tree is one which is reserved or which belongs to the class of reserved trees. Notification declaring the forest as a protected forest²⁵ as well as the notification declaring any tree or class of trees reserved²⁶ should be produced.

22. 1966 K.L.T. 102.

23. Ibid.

24. The copy should be certified by the Head of the Forest Department. A copy of the notification of reservation signed by the Range Officer was not accepted in State of Kerala v. Kuttan Panicker, 1970 K.L.T. S.N.17.

25. S.29 of the Indian Forest Act 1927 empowers the State Government to declare by notification in the official gazette any forest land or waste land of the Government as a protected forest.

26. S.30 of the Indian Forest Act 1927 enables the State to which the Act applies to declare by notification in the official gazette tree or trees in a protected forest to be reserved and declare portions of such forest closed for exercise of rights by private persons. Such notification may also prohibit activities like quarrying of stone, burning of charcoal, removal of forest

In Janukhan v. The State²⁷ the Patna High Court set aside the conviction of the accused for the offence of cutting trees from a protected forest, on the ground that no notification declaring any tree or class of trees in the alleged protected forest had been produced before the court.²⁸

In Kerala, the Government has noticed that in many forest cases, the case is either dismissed or accused is acquitted due to the failure of the prosecution to produce the notification declaring the forest reserved.²⁹ So the Chief Conservator of Forests issued a circular³⁰ directing the Range Officers to keep the notifications reserving forests and to produce them before the courts for the successful prosecution of forest cases.³¹ This circular

produce, breaking up or clearing of land for cultivation and such activities in protected forest. Similar provisions are seen in the Kerala Forest Act 1961, S.30.

27. A.I.R. 1960 Patna 213.

28. The Court held that notifications are to be proved by the production of the official gazette or a certified copy of the gazette notification. Id., p.214.

29. Exceptions are there like Alipilla v. State of Kerala 1983 Cri.L.J.N.O.C. 185 (KER) where the prosecution produced a certified copy of the notification of reservation. Accepting it as valid evidence the High Court of Kerala upheld the conviction of the accused charged for cutting trees from reserved forest. Id.

30. Circular No.3/86 dated 1.2.1986 issued from the Office of the Chief Conservator of Forests, Trivandrum, Kerala.

31. The circular further stated that if cases are dismissed due to the non-production of notification of reservation, the concerned Range Officer will be held responsible and action will be taken against him. Ibid.

has had its effect. It helped the successful prosecution of forest cases in Kerala. Officials are more careful now to see that no case fails due to non-production of the notifications before courts.³² Such measures may be adopted by all the States in India. A legal cell may be constituted in the Forest Department of each State, to keep up-to-date records, rules, notifications and circulars relating to forest so as to make prosecution of the offenders successful.

Loopholes in the Law

There have been instances where the prosecution failed, because of the defects in the legislation. The Indian Forest Act 1927 and the State legislation relating to forest have not properly defined certain terms. This situation has stood in the way of successful prosecution of forest offences. Delegation of powers under the legislation has also created some problems.

(a) 'Forest' not defined

A person may commit an offence by doing prohibited

32. An analysis of the reported appeal cases relating to forest shows that in Kerala, after 1986 no case is reported which failed due to the non-production of the notification before courts.

act in a reserved forest,³³ protected forest,³⁴ or village forest,³⁵ other forest land or waste land belonging to the Government³⁶ which is proposed to be reserved.³⁷

33. S.26 (1) of the Indian Forest Act 1927 prohibits in reserved forest clearing of vegetation, kindling of fire, trespassing or pasturing of cattle, felling of trees, breaking of land and hunting of animals. Similar prohibitions are incorporated in S.27 of the Kerala Forest Act 1961.
34. Indian Forest Act 1927, S.33 (1) make it an offence the cutting of reserved trees from protected forest, or damaging of such trees, breaking up or clearing of land, quarrying of stones, burning of lime or charcoal in contravention of the prohibition imposed by the State Government. Kerala Forest Act 1961 S.30 makes it an offence, the infringement of rules made for prohibiting destructive activities in protected forest.
35. The provisions relating to reserved forests are applicable to village forests so far as they are not inconsistent with the rules made by the State Government for the management of village forests. Indian Forest Act 1927, S.28. So the doing of an act prohibited in reserved forest will be an offence if committed in a village forest unless the rules made by the State Government permit such activities.
36. S.3 of the Indian Forest Act 1927 empowers the State Government to constitute any forest land or waste land belonging to the Government as a reserved forest.
37. Proposal for reserving forest should be contained in a notification issued by the State Government under S.4 of the Indian Forest Act 1927. S.5 of the Act reads:
- "After the issue of a notification under S.4, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or some person in whom such right was vested when the notification was issued; and no fresh clearings for cultivation or for any other purpose shall be made in such land except in accordance with such rules as may be made by the State Government in this behalf".

Contd.

If the offence is done in a forest which is proposed to be reserved, the prosecution has to prove that the land in dispute is a forest land or waste land.

The Indian Forest Act 1927 and the State legislation relating to forest has not defined the term 'forest'.

Hence courts used to adopt the dictionary meaning of the

term.³⁸ An area may be a Government forest in the records of the Forest Department. However, if such an area is encroached, clearfelled and planted with quick growing species of crop plants like cocoa, tapioca, cardamom or rubber, it becomes practically impossible for the Forest Department to prove that the land was unclutivated at the time of commission of the offence. In cases of this type, the

Making any fresh clearing prohibited by Section 5 is specifically made an offence under S.26(1)(a) of the Indian Forest Act 1927. Corresponding provisions are in Kerala Forest Act 1961, S.7 and 27(1)(a); Tamil Nadu Forest Act 1882, S.7 and 21(a); Karnataka Forest Act 1963, S.6 and 24(a); Andhra Pradesh Forest Act 1967, S.7 and 20(1)(a); Orissa Forest Act 1972, S.5 and 27(1)(a); Rajasthan Forest Act, 1953, S.5 and 26(1)(a); Assam Forest Regulation 1891, S.7 and 25(1); Nagaland Forest Act 1968, S.6 and 24(a).

38. Forest according to dictionary is 'a wild unclutivated land'. C.T.Onions (Ed.), The Shorter Oxford English Dictionary Vol.1 (1970), p.735. In Lakshman v. D.F.O. A.I.R. 1953 Nag.51, the court adopted the dictionary meaning of the term forest to hold that tendu leaves collected from a cultivated land is not a forest produce since the land in question was not a forest land within the dictionary meaning of the term.

prosecution often finds it difficult to prove that the land was a part of natural forest at the time of commission of the offence. The illegal encroacher can easily win the case if he satisfies the court that he was cultivating the land for years. Nagowani v. Emperor³⁹ is an example. The petitioner was arrested by forest officers and prosecuted⁴⁰ for cultivating a small strip of forest land alleged to belong to Government. He successfully proved before the court that he, after his father, was cultivating the land for seven years. Holding that the land in question was occupied land and not forest land, the High Court of Nagpur set aside the conviction of the accused.⁴¹

Exclusion of occupied lands from the definition of forest helps encroachers to evade liability. The State of U.P. has made an improvement by amending the Indian Forest Act 1927 in its application in that State, so as to include the definition of 'forest'⁴² in the Act which is

39. A.I.R. 1929 Nag.190.

40. The accused was charged under S.26(1) of the Indian Forest Act 1927 for breaking up a Government forest land.

41. A.I.R. 1929 Nag. 190 at p.191

42. As per this definition,

" 'Forest' means a tract of land covered with trees, shrubs, bushes or woody vegetation whether of natural growth or planted by human agency, and existing or being maintained with or without human effort, or such tract of land on which such growth is likely to have an effect on the supply of timber, fuel, forest produce, or grazing facilities, or on

much wider than the definition of the term in popular dictionaries. Accordingly, man made forests, occupied lands, denuded forest and lands adjacent to a forest are included in the term 'forest', in U.P. So illegal encroachers cannot easily escape from liability in the State of U.P. by claiming occupancy or prescriptive rights over forest. Similar provision may be adopted by all States in forest legislation.

(b) offence not properly defined

There are also instances where the non-definition of certain offences in the law relating to forest causes the easy escape of culprits in forest cases. In Guhram v. Emperor,⁴³ the accused persons who were found sitting on a Khudno,⁴⁴ in the reserved forest were charged with the

climate, stream flow, protection of land from erosion, or other such matters and shall include -

- i) land covered with stumps of trees of a forest
- ii) land which is part of a forest or lies within it or was part of a forest or was lying within a forest on the first day of July 1952.
- iii) such pasture land, water logged or cultivated land, lying within or adjacent to a forest, as may be declared to be a forest by the State Government".

Indian Forest Act S.38-A(b) as amended by U.P. Forest Amendment Act 5 of 1956, S.3. See for text, S.K. Awasthi, Law of Forests (1984), p.57.

43. A.I.R. 1931 Sind. 156.

44. A sort of temporary shooting box. Ibid.

offence⁴⁵ of shooting in reserved forest. The trial court interpreted the word 'shoots' as 'going for shooting with the intention of shooting' and convicted the accused. But on appeal the High Court interpreted the word 'shoot' to mean 'discharge a fire arm or other weapon'.⁴⁶ So the court held that the accused had not done any shooting but had done only hunting in reserved forest.⁴⁷ Since the rules in contravention of which the hunting was made were not found out, the conviction of the accused was set aside.

Balbir Singh v. Emperor,⁴⁸ is another instance. The accused, carrying a loaded gun, was found going through a road running through the reserved forest. He was prosecuted for offence charged under S.26(1) of the Indian Forest Act for shooting in reserved forest. The

45. The charge was made under the Indian Forest Act 1927 S.26 (1) (1) which prohibited shooting or fishing or setting of traps or snares in reserved forests in contravention of any rules made by the State Government.

46. A.I.R. 1931 Sind 156 at p.157.

47. In hunting there need not be actual killing of the game. It means, to chase or go in quest for prey or sport, to seek or pursue game over or to search. A.M. Macdonald, Chambers Twentieth Century Dictionary (1975), p.637.

48. A.I.R. 1933 All. 630.

magistrate convicted him on the ground that he went through the reserved forest with a loaded gun, with the intention of shooting. But on appeal, the Allahabad High Court acquitted him, holding that the mere fact that a loaded gun was being carried by the accused, did not necessarily show that he was going through the road with the intention of shooting. Further what is made penal in the Indian Forest Act 1927 is not the intention to shoot, but actual shooting itself.⁴⁹

The approach of law towards acts in forest should be different. A person entering the forest area with a loaded gun should be presumed to have the intention to shoot wild animals. If that person is found out before actual shooting, he should not be allowed to escape from liability. It is very rarely that violators of forest environment fall in the hands of forest personnel. If they are allowed to escape from liability it will give them more courage to repeat the act. It is therefore imperative that entry into the reserved forest with deadly weapons should be made an offence so that offenders do not escape, taking benefit of a loophole in the law.

49. Id., p.631.

Defects in defining offences also help offenders to go on with their destructive activities in forest. Umed Singh v. Emperor⁵⁰ is an example. The accused cleared some land in a protected forest. The notification issued by the State Government under the provisions of the Indian Forest Act 1927 prohibited only the breaking of land. Allowing the applications filed by the accused against the State, the court observed that where breaking of land only is forbidden by notification, no offence is committed when there had been only clearing. This result could have been avoided if the notification clearly prohibited breaking of land and clearing. Even in the absence of such specific prohibition the court could have adopted a liberal interpretation of the term 'breaking' so as to bring clearing also within its purview since clearing of land often involves breaking of land.

Abetment is not made an offence.

A number of forest offences are committed by politically influential big guns. They employ agents to carry out their plan of smuggling forest produce. At times

50. A.I.R.1927 All.121. See also Thep Singh v. Emperor
A.I.R.1927 All.767.

these paid agents of big smugglers fall in the hands of the enforcement personnel. But the real culprits, who engage such agents, escape from liability, since the doctrine of vicarious liability is not applied in criminal cases. In other words only small fishes are caught in the net of forest law and the big ones escape. Same is the case with grazing of cattle. The graziers graze cattle in Government forest land with the implied consent of their employers. But if the grazier is caught he will be convicted for trespassing into the Government forest. The owner of the cattle escapes liability.

Saiyyad Kahim v. Emperor⁵¹ is an example. The owner of sheep and goats entrusted them to a grazier who grazed them in the reserved forest.⁵² The lower court held the owner vicariously liable for the offence committed by his servant. On revision the conviction was set aside by the High Court on the ground that a master cannot be held responsible for the criminal acts of his servants unless he expressly commands or is personally involved in the act.⁵³

51. A.I.R.1915 Nag.2.

52. S.26(d) of the Indian Forest Act 1927 makes it an offence to pasture cattle or permits cattle to trespass in a reserved forest.

53. A.I.R.1915 Nag.2 at pp.3-6.

The same view was taken in Emperor v. Wamanrao⁵⁴
 The grazier and owners were convicted by the trial judge
 for the offence of trespassing and pasturing cattle in
 Government forests.⁵⁵ But on revision, the owners got
 rid of liability since the doctrine of vicarious liability
 was not applicable to crimes.

In Emperor v. Mohammed Khan,⁵⁶ the trial court convicted only the graziers, but made the owners to suffer
 loss by ordering the confiscation of cattle.⁵⁷ On appeal the
 conviction of the graziers was upheld and the confiscation
 orders were modified exempting the cattle belonging to comparatively poor owners. The owners of the remaining cattle filed this revision petition to set aside the confiscation order. Upholding the confiscation order the court pointed out that cattle used in committing the offence of theft of grass and instrumental in causing damage to grass and young trees in forest are as much liable to confiscation as cattle drawing a cart containing illicitly felled timber.⁵⁸ The

54. A.I.R.1937 Nag.169.

55. Indian Forest Act 1927, S.26(d).

56. A.I.R.1938 Nag.365.

57. Section 55 of the Indian Forest Act 1927 declares that
 ". . . all tools, boats, carts and cattle used
 in committing any forest offence shall be liable
 to confiscation".

58. A.I.R.1938 Nag.365 at p.366.

same view was taken by the High Court of Bombay, in Karna Laxman Gawali v. State of Maharashtra⁵⁹ while upholding the confiscation of cattle which trespassed into the reserved forest.⁶⁰

Confiscation of cattle involved in illegal grazing is a welcome measure. It has the effect of imposing pecuniary liability on the owner who perpetuates the commission of the offence. However, such measures will have no deterrent effect on affluent persons who can afford the loss. So the forest law should be amended to impose criminal liability on the owners of such cattle. To bring to book the real culprits it is essential that abetment of the criminal act should also be made an offence under the forest laws.

59. 1990 Cri.L.J.163. The petitioners who were owners of certain herds of cattle permitted them to graze in the reserved forest without a grazing licence. The cattle were confiscated by the officers of the Forest Department under S. 61-A of the Indian Forest Act 1927 (as amended in Maharashtra vide Maharashtra Act 7 of 1985). The owners admitted that their cattle trespassed into the reserved forest, but prayed to quash the confiscation and accept fine from them for the damage done to the forest. Rejecting their prayers the court upheld the confiscation.

60. Id., p.165.

(d) Conflicts arising from delegation

There are instances where the delegated legislation hinders the Government from taking steps for the protection of forest. In Kaniram v. State of M.P.⁶¹ the court set aside an order issued by the State of M.P. imposing a total ban on the grant of licences for grazing of camels in the Government forest. The Court held that the order contravened the provisions of the M.P. Grazing Rules 1979 which made a provision for the grant of grazing licences in Government forests.⁶²

In State of Bihar v. K.S.R. Swami,⁶³ the State Government issued a notification under S.29⁶⁴ of the Indian Forest Act declaring a tenement as a protected forest. In the same year a further notification under S.30⁶⁵ of the same Act was made prohibiting the breaking up or clearing of the land in the protected forest. In the next year the Collector gave the respondent permission under Rule 8 of the Protected Forest Rules framed under S.32⁶⁶ of the

61. A.I.R. 1983 M.P.86.

62. Id., p.88.

63. A.I.R. 1966 S.C.1847.

64. See supra, n.25

65. See supra, n.26

66. S.32 of the Indian Forest Act 1927 empowers the State Government to make rules to regulate destructive activities in protected forest.

Indian Forest Act 1927 to go ahead with the work of reclamation and cultivation in the land. The State put forward the argument that the prohibition by the State Government regarding clearing or breaking of land by notification issued under S.30 of the Indian Forest Act should prevail over the permission given by the Collector under Rule 8 for the reclamation of the land by the respondent. Referring to S.34⁶⁷ of the Indian Forest Act which saves acts done in accordance with the rule made under S.32 of the Act, the court declared⁶⁸ that the prohibition by notification of the clearing of land would be ineffective where such clearing was being made in accordance with permission granted by the Collector under Rule 8 made under S.32.

(e) Heavy burden of proof on the prosecution

In many cases prosecution of offenders under the forest legislation fail on the ground that the prosecution did not prove to the hilt the guilt of the offender. In

67. Indian Forest Act 1927, S.34 reads:

"Nothing in this Chapter shall be deemed to prohibit any act done with the permission in writing of the Forest Officer, or in accordance with rules made under S.32, or except as regards any portion of a forest closed under S.30 or as regards any rights the exercise of which has been suspended under S.33, in the exercise of any right recorded under Section 29".

68. A.I.R.1966 S.C.1847 at p.1852.

Sidheswar Panda v. The State⁶⁹ the petitioner in the revision petition was found in possession of 31 pieces of sal timber suspected to have been removed from Government forest. The petitioner failed to produce permit for cutting and removing those logs. The logs also did not have the marking of forest authority indicative of their permission for cutting and removal. However, the court set aside the conviction and sentence of the accused. The Court held that the accused can be convicted only if the prosecution successfully establishes that the timber had been felled and removed from the Government forest, and that the timber in possession of the accused corresponded to the logs illegally removed from the Government forest.⁷⁰ The burden on the Forest Department is very heavy. If the officials of the Forest Department failed to detect the offence at the time of commission itself, or if they failed to identify stumps of illicitly cut trees inside a Government forest, the offender will escape from liability even if he is caught while transporting the timber.

Even in cases where the crime is detected at the initial stage and the offender has confessed his guilt,

69. A.I.R. 1954 Orissa 16.

70. Ibid.

the offender can escape liability by retracting the confession at a later stage.⁷¹ It is suggested that once the prosecution succeeds in establishing a reasonable suspicion against the accused in a forest offence the burden to prove his innocence should be that of the accused. Forest legislation should be amended incorporating such shifting of burden if the culprits are to be prosecuted successfully.

The number of convictions in forest offences can be increased by remedying the flaws of the prosecution as well as the loopholes in the law. Arrangements should also be made for the speedier disposal of cases before courts of law. The inordinate delay in the proceedings before the court often discourage the officials of the Forest Department from filing petitions before courts. They are rather interested in departmental compounding

71. Kunhiraman v. Special Range Officer, 1959 K.L.T. 667 provides the best example. The accused was convicted under the Madras Preservation of Private Forests Act for cutting trees from Malavaram without permit. The accused pleaded not guilty. The Magistrate relied upon the confessional statement of the accused recorded by the Special Forest Range Officer in the course of investigation. The confession was later retracted. The Sessions Judge upheld the conviction. On revision the High Court quashed the conviction of the accused and held that the evidence is not sufficient to prove the guilt of the accused in the absence of corroborating evidence. Id., p.669.

of the offence,⁷² than waiting for the verdict of the court. Further in most of the Forest Divisions, a number of cases filed years before are pending disposal. For speedier and effective disposal of the Forest cases it is necessary to establish a special 'Forest Court' in each State for the trial of forest offences.⁷³ The 'Forest Court' should have its benches in each Forest Division.

72. Compounding of offences absolves the offender from criminal liability. So at times it is used as a weapon by the accused in forest offences. In Himachal Pradesh v. Sabla, 1988 Cri.L.J. 1341 the respondent was convicted for cutting trees from a protected forest. The Sessions Judge acquitted the accused on the ground that the offence had been compounded and no prosecution could be launched. On appeal, the High Court set aside the acquittal on the ground that there was no proof of compounding.

73. In Kerala a 'Forest Court' - a bench of the Magistrate Court has been established in Mancherri exclusively to deal with cases relating to forest.

CHAPTER 8

SOCIAL FORESTRY PROGRAMMES IN INDIA

With a view to extending tree cover all over the country and preventing exploitation of natural forest for purposes of agriculture, industry, fuel and fodder, the idea of man-made forest was evolved. Man-made forest may be categorised into agro forest, production forest and social forest depending on the purpose for which the forest is used. Agroforestry is an age old land use practised by farmers all over the world.¹ It is a combination of forestry and agriculture whereby farmers plant crops of different types between the trees in the forest without destroying them.² Production forestry on the other hand aims at producing wood for industrial use by raising plantations in clear felled areas

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1. Kenneth G. Mac Dicken and Napoleon T. Vergara, "Introduction to Agroforestry" in Kenneth G. Mac Dicken et.al. (Eds.), Agroforestry : Classification and Management (1990), p.1.
 2. Integration of trees into agricultural systems may result in more efficient use of sunlight, moisture and plant nutrients than is generally possible by monocropping of either agricultural or forestry crops. Id., pp.2, 3.

of natural forests.³ Social forestry adopts a via media position. It is a programme of raising of trees, grasses and fodder in the farmers' own lands village common lands, wastelands and degraded forests close to habitation so as to meet the requirements of fuel wood, fodder, small timber for rural housing and agricultural implements and thorns for fencing.⁴

Social forestry as a conceptualised programme is of recent origin.⁵ However, in the mid nineteenth century the Britishers raised teak plantations in South India to ensure regeneration of an exploited forest and to change its character to a more valuable one.⁶ Eucalyptus, wattle, acacia and casuarina were also planted in Madras for fuel.⁷ Plantations were sought to be raised in Punjab, Bombay and North-West Provinces to supply the fuel requirements of those localities.⁸

3. See for details, Government of India, Ministry of Agriculture, Interim Report of the National Commission on Agriculture on Production Forestry-Man-Made Forests, (1972), pp.35-46.
4. Government of India, Ministry of Agriculture, Report of the National Commission on Agriculture, Part IX 'Forestry' (1976), p.120.
5. Social forestry as an evolved concept was popularised in India by the National Commission on Agriculture in 1976. Id., pp.119, 120.
6. E.P.Stebbing, The Forests of India Vol.II (1923), pp.564, 565.
7. Id., pp.563, 564.
8. Id., p.564.

Development of social forestry programmes in India is closely linked with agriculture also. In 1893, the Voelcker Report on the Improvement of Indian Agriculture⁹ pointed out that agriculturalists required firewood to replace cow-dung¹⁰ which was a very valuable manure and that definite action was necessary to create fuel reserves for India.¹¹ Voelcker emphasised that supply of manure to fields should be the primary focus of Government efforts to improve agriculture.¹² Accordingly, the

9. In 1889, the Secretary of State for India sent Dr. J. A. Voelcker, Consulting Chemist to the Royal Agricultural Society to advise upon the best course to be adopted in order to apply the techniques of agricultural chemistry to Indian agriculture and to effect improvements in it. Royal Commission on Agriculture in India Report (1928), Reprint (1979), p.18.
10. In India the use of dried cow-dung as fuel estimated to reach up to 400 million tons (wet weight) deprives the agricultural land of needed nutrients and organic matter. The nutrients wasted in this manner in India alone amount to more than one third of the country's use of chemical fertilizers. Toufiq. A. Siddiqu, Environmental Considerations in Energy Policies (1979) p.174. See also Sandha Goswami, "Fuel wood crisis in Rural Areas" in Pramod Singh (Ed.), Ecology of Rural India (1987), p.109.
11. Prakash. M. Shingi et. al., Development of Social Forestry in India (1986), p.5.
12. Id., p.7.

Forest Policy Resolution issued by the Government of British India in 1894,¹³ recognised a separate category of minor forests producing inferior sort of timber, useful for supplying fuel and fodder for local consumption.¹⁴

In 1928, the Royal Commission of Agriculture also noticed the increased use of cow-dung as fuel by the cultivators all over India.¹⁵ In order to provide fuel wood to cultivators so as to minimise the burning of cow-dung, the Commission recommended establishment of plantations of fuel wood and extension of plantations along canal banks and margins of rivers and streams.¹⁶

After independence, the Government of India undertook massive tree planting programmes. Tree planting festival or Vana Mahotsava was first inaugurated in June 1950 as a national festival to be celebrated throughout the country annually for a week so as to make the people forest-conscious.¹⁷ Millions of trees were planted

13. Circular No.22-P dated 19th October, 1894. See for text, Royal Commission on Agriculture in India (1928) Report Reprint (1979), appendix.V

14. Forest Policy 1894, para 9.

15. Royal Commission on Agriculture in India (1928) Report, Reprint (1979), p.264.

16. Ibid.

17. Nirmal Chandra Sahu, Economics of Forest Resources (1986), p.272. See also, Birla Institute of Scientific Research, Social Forestry in India Problems and Prospects (1986), p.85.

every year all over India during this period.¹⁸

The Forest Policy Resolution adopted by the Government of India in 1952¹⁹ emphasised among other things, the need to create village forests to ensure supply of fire wood and to release cow-dung as manure²⁰ for agricultural crops. The Central Board of Forestry²¹ also highlighted the need to afforest vacant lands on the sides of roads, railway lines or canal banks and suggested that incentives be given for planting and protecting trees on farm lands.²² These tree planting efforts were popularised in 1976 under the name 'social forestry'.²³

18. According to the survey conducted by the National Commission of Agriculture, between 1950 and 1963, 5573 million trees were planted in Vana Mahotsava. Of these only 303.2 million seedlings survived. Government of India, Ministry of Agriculture, Interim Report on Farm Forestry (1972), pp.15, 16.

19. See for text, Suresh Jain and Vimala Jain, Environmental Laws in India (1984), p.104.

20. Id., p.104 (2).

21. See for details supra, ch.2 n.124

22. Government of India, Ministry of Agriculture, Report of the National Commission on Agriculture, Part IX 'Forestry' (1976), Appendix 41.3, pp.47, 48.

23. Id., pp.119, 120.

According to the National Commission on Agriculture programmes of social forestry would include farm forestry, extension forestry and reafforestation in degraded forests. Farm forestry involves planting of trees on bunds and boundaries of the fields of farmers to be taken up by the farmers themselves.²⁴ Extension forestry is to cover mixed forestry on waste lands, panchayat lands and village common lands raising of shelter belts in dry and arid regions and raising of plantations of different quick growing species of trees on the sides of roads, canals, river banks and railway lines.²⁵ Reafforestation in degraded forests involves programmes of tree planting in degraded forests within a reasonable distance of the rural and semi urban complex for the supply of fuel wood and small timber at fair rates to the villagers in the complex.²⁶

Objectives

The objectives of social forestry programmes are fuel supply to the rural areas, replacement of cow-dung, supply of small timber and fodder, meeting of recreational needs and protection of agricultural fields against wind.²⁷

24. Supra, n.22 at p.120. See also, V.Bhaskar and N.Swami Rao, "Place of Farm Forestry in the Production of Firewood, Fodder and Timber in the 21st century - Some Strategies" Karnataka Forest Department, My Forest, December 1985, pp.265-267.

25. Supra, n.22 at p.121.

26. Ibid.

27. Id., p.120.

Incidentally, social forestry plantations serve the purposes of checking soil erosion, promoting conservation of water, increasing the supply of fruits, medicinal plants and useful herbs and providing raw materials for cottage industries.²⁸

Social forestry programme seeks to reverse the trend of deforestation.²⁹ By providing resources for the basic needs of society, it would reduce the pressures on reserved forest for them. By rebuilding the forest wealth in villages, social forestry aims at maintaining the ecosystem and conserving the surface and underground water resources.³⁰

Social forestry plantations adjacent to reserved and protected forests can serve as buffer zones between

28. Dr.L.K. Jha, "Why Social Forestry?" Karnataka Forest Department, My Forest Vol.22 June 1986 , p.83.

29. The latest data furnished by the Forest Survey of India showing a marginal increase of two percent in the forest cover of the country amply proves the progress made by social forestry programmes in afforesting the country's land area. See Government of India, Forest Survey of India, The State of Forest Report 1991 (1992), pp.5 and 7.

30. Vandana Shiva et. al., "The Challenge of Social Forestry" in Walter Fernandes and Shreed Kulkarni (Eds.), Towards a New Forest Policy, Peoples Rights and Environmental Needs (1986), 49 at p.69.

forest and villages.³¹ Social forestry plantations on the sides of roads would protect the road from being covered with moving sand from adjoining lands in arid and desert areas.³² Road side plantations abate noise pollution³³ and provide comfort to travellers. Social forestry plantations along the sides of canals would prevent water logged conditions and formation of alkali soils and would also stabilise canal banks against soil erosion. Trees planted along the sides of railway lines help in stabilising railway tracks. Social forestry provide employment to rural poor.³⁴

31. For this reason local people resist the implementation of social forestry programmes in some areas. For example, in Darjeling District in West Bengal, the Forest Development Corporation had to face stiff resistance from the local people against the implementation of social forestry programmes. They feared that the corporation might finally move for declaring the social forestry zones as reserved, after fencing them for five years on the plea of saving plants from cattle grazing. J.J.Roy Burman, "Hazards of Social Forestry Implimentation : Need For Anthropological Intervention" in Buddhadeb Chaudhuri et.al., Forest and Forest Development in India (1989), 175 at p.177.
32. K.M. Tiwari and K.V. Singh, Social Forestry Plantations (1984), p.8.
33. Each 30 meter width of trees can absorb about 6-8 decibels of sound intensity. Noise generated from high speed traffic on national highways can be reduced to tolerable limits by planting about 20 to 30 meters wide belts of trees and shrubs. Ibid.
34. See for details, S.D. Thapar, India's Forest Resources (1985), p.39.

Agencies implementing social forestry

Governments of different States are actively implementing social forestry programmes through their Forest Departments.³⁵ Almost all States in India have established separate social forestry wings in Forest Departments to implement social forestry programmes. In Kerala, the Forest Department distributes free of cost, seedlings to members of the public. In Tamil Nadu an individual will get 500 seedlings from the Forest Department free of cost and also cash incentives up to the end of the second year of planting, depending on the number of surviving plants.³⁶ Non-governmental voluntary organisations involved in social and economic upliftment of the rural poor also take up social forestry programmes.³⁷

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35. The social forestry programmes are financed by foreign agencies like the World Bank, U.S. Agency for International Development (USAID) Canadian International Development Authority (CIDA) and the Swedish International Development Authority. Centre for Science and Environment, The State of India's Environment 1984-85, The Second Citizens' Report (1985), p.51.
36. Birla Institute of Scientific Research, Social Forestry in India, Problems and Prospects (1986), p.86.
37. Several such organisations like 'Dasholi Gram Swarajya Seva Sangh', Gopeswar; 'Friends of Trees', Bombay; 'Tree Lovers', Bangalore; 'Bombay Natural History Society', Bombay; 'Youth Hostels Association', New Delhi and the 'Society for Promotion of Waste Land Development', New Delhi have included afforestation in their programmes. Bharat Heavy Electricals Limited, Bharat Electronics Limited, Tata Electrical and Locomotive Company and Tata Iron and Steel Company have actively joined in this venture. Id., p.84.

Species used in social forestry

The species of trees selected in social forestry programmes depends on the purpose which the tree is required to serve and the physical and climatic characteristics of the locality. Usually seedlings of fast growing species of trees which are able to satisfy the fuel and fodder needs of the people are distributed in social forestry programmes. Acasia, eucalyptus, polyalthia, casuarina, subabul, alianthus and leucaena are the common species used in many States in India.³⁸

A lot of controversies have arisen regarding planting of eucalyptus seedling in social forestry programmes. It is alleged that, since the wood of eucalyptus is widely used in paper and pulp industries, the real beneficiaries of these trees are rather the industrialists than the rural poor and the tribal people living in forest.³⁹ It

38. Planting of eucalyptus, casuarina and babul trees, in Tamil Nadu proved to be a profitable business for farmers. R.Jansi Rani et.al., "Socio-Economic Analysis of Social Forestry Plantations", paper presented in the National Seminar on Socio-Economic Research in Forestry held from 18-20 May, 1992 at Forest Research Institute, Peechi, Kerala.

39. One author writes,

" . . . the two most significant beneficiaries of social forestry are the paper factories and the Forest Department. The former gets raw materials they need . . . and the latter obtain the revenue demanded by their political masters with substantial budget increases for implementation of the schemes There is nothing in the present policy for the most needy, including the tribal and hill dwelling people.

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is also proved that eucalyptus is not an ecologically suitable species to be used widely in social forestry programmes since it reduces the fertility of the soil by absorbing all available water in the subsoil and inhibits the growth of other plants and micro-organisms in the soil due to the inhibitory alkaloids present in its leaves.⁴⁰ The branched and tangled root system of eucalyptus trees make the soil unfit for planting even

S.K. Roy, "Social Forestry - For whom?" in Desh Bandhu and K.K. Garg (Eds.), Social Forestry and Tribal Development (1986), p.1. Another author points out,

"The social forestry programmes are contrary to stated objectives, geared to industrial needs rather than to the needs of the rural poor and the forest dwellers".

S.K.Ramaswamy, "People, Government and Forests - New Ethic Needs" Consumer Confrontation Vol.6 (1986), 4 at p.5.

40. It is proved that eucalyptus tree has the inherent capacity for 'luxury consumption' of water. Its roots form a network of feeder roots just below the soil surface to absorb all available moisture. It also does not allow any plant to grow under it due to the presence of inhibitory alkaloids present in its leaves which remain concentrated in the top soil layers containing leaf litter. R.P.Gupta, "Role of Eucalyptus in soil and water conservation with reference to Social/Agro forestry" in J.K. Sharma et.al., (Eds.), Eucalyptus in India Past, Present and Future (1986), 139 at p.142. See also Indian Express (Kochi) June 9, 1985 and R.K.Kohli and R.K.Gaba "Eucalyptus : A Threat to Natural Eco Systems" in Pramod Singh (Ed.), Problems of waste land and Forest Ecology in India (1989), p.305.

after the trees have been cut.⁴¹ It is also alleged that eucalyptus plantations destroy the habitat of birds and animals.⁴² For these reasons voluntary organisations are strongly protesting against the use of eucalyptus in social forestry.⁴³ The supporters of eucalyptus plantations say that the roots of eucalyptus do not grow below 3 meters so as to endanger water tables. They point out, seedlings of eucalyptus require no fencing for protection since these are not eaten by cattle and the survival of seedlings is hundred percent.⁴⁴ It is suggested that planting of eucalyptus may be limited to waste lands or hill slopes or other areas where the soil is not fit for the growth of any other species of plants. It can be successfully used to afforest waste lands having deteriorated alkali soils.⁴⁵

41. Pramod Singh, "A collapsible Forest Ecology in India" in Pramod Singh (Ed.), Problems of Wasteland and Forest Ecology of India (1989), 227 at p.234.

42. Birds shirk its branches while animals avoid their stands due to lack of proper cover. R.K. Kohli and R.K. Gaba, "Eucalyptus : A Threat to Natural Eco-system", Pramod Singh, op.cit., 305 at pp.308, 309.

43. In Karnataka, voluntary organisations opposed the decision of the State Government to plant eucalyptus in 25000 acres of degraded forest in Shimoga and Chikamangalore. Pramod Singh op.cit., p.234.

44. Ibid.

45. See for details, K.K.Mehta "Growing Eucalyptus on Alkali Soils" in Pramod Singh op.cit., pp.313-325.

It can be planted on both sides of canal bunds to check the seepage loss and erosion of unlined bunds.⁴⁶

Monoculture⁴⁷ is also objectionable in social forestry. It is said that monoculture has a negative impact on forest environment.⁴⁸ The climatic conditions in natural forest which favour the growth of a variety of flora and fauna within the shade of the leaf canopy are lacking in the case of monoculture.⁴⁹ Monoculture also promotes breaking of trees by wind and creates favourable conditions for the spreading of diseases and pests.⁵⁰ If trees having more leaves and spreading crown are selected and planted in mixed plantations, instead of monoculture, it can create climatic conditions more or less identical to that of a natural forest. This

46. P.P.Singh and Afros, "Effect of Man and His Environment of Major Engineering works : A case study" in V.P.Agrawal and S.V.S.Rana, (Eds.), Science, Development and Environment (1987), 87 at p.96.
47. 'Monoculture' means planting of the same species of trees on the same plot.
48. According to global experts "a monoculture is an ecological desert" S.K.Roy op.cit., p.2. In the view of another author, the replacement of natural forests in Himalayas by the monoculture of chirpins has been the single biggest factor in impoverishing the Himalayas, its people and the country. Pramod Singh op.cit., p.236.
49. T.C.White more, Tropical Rain Forests of the Far East (1975), pp.4 to 12.
50. The biggest forest plantation disaster caused by indigenous 'pink disease' of eucalyptus in Western Ghats amply illustrates the point. R.K.Kohli and R.K.Gaba op. cit., p.308.

would promote the growth of more flora and fauna, more deposit of humus and more yield of fuel and fodder and gradual natural regeneration of forest.⁵¹

Another serious criticism levelled against the social forestry programmes in India is that instead of involving rural communities in raising and protecting useful species of trees on common and waste land, social forestry encourages farmers to convert land from food crop cultivation to farm forests⁵² or to replace useful trees by plantations.⁵³ In some areas supply of fuel and fodder trees in farm forestry fails to seek

51. One author has correctly observed:

"The maintenance of life support system is a function performed mainly by the crown of trees. It is this component of trees that can contribute positively towards the maintenance of the hydrological and nutrient cycles. Trees which provide a lot of leaves, twigs and branches enrich the soil much better than those which provide poles and timber alone".

N.C. Saxena, "Social Forestry : Why did it fail?" The Hindu Survey of the Environment 1992, (1992), 35 at p.37.

52. There has been instances in Gujarat where farmers have converted valuable agricultural lands with irrigation facilities to eucalyptus plantations. S.K.Roy op.cit., p.3. See also, Centre for Science and Environment, The State of India's Environment 1984-85 The Second Citizens' Report (1985) p.53.
53. In Orissa and Chattisgarh teak and other commercial varieties planted in social forestry schemes have replaced the natural sal trees which were of immense use for the tribal communities. Walter Fernandes, "Tribals, Wasteland Development and Community Organisation" in Pramod Singh (Ed.), Problems of Wasteland

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co-operation from small farmers.⁵⁴ An ordinary Indian farmer having a small plot of land would like to plant on his land only trees capable of yielding fruits, timber fodder and fuel. If the Forest Department gives him hundred or thousand seedlings of eucalyptus, acacia or casuarina he will be in a dilemma. But if he is given the required number of seedlings of coconut, mango or jack tree he will some-how manage to accommodate them on his land and nourish them properly. So it is suggested that species of trees supplied to farmers should be capable of multiple use as per their choice.⁵⁵ In Karnataka,

and Forest Ecology in India (1989), 205 at p.215. In Punjab and Haryana also farm lands were planted with eucalyptus under the expectation of getting good income after six years. N.C.S, "Eucalyptus - Five Year Wonder" The Hindu Survey of the Environment 1992 (1992), 38.

54. In many parts of Kerala, small farmers refuse to plant seedlings of eucalyptus, acasia and casuarina supplied by the Forest Department in social forestry programmes, because they have absolutely no wasteland. Any social forestry planting would require cutting down existing plants. Information gathered from the Kerala Sastra Sahitya Parisad (KSSP), which has been actively involved in social forestry programmes.
55. According to one author, in order to strengthen the economy of fuel gatherers, social forestry should be extended to reserved and protected forest lands by changing the nature of species from teak, eucalyptus and other 'timber only' trees to usufruct based trees such as neem, mahua, karanj, sal, arjun and palmyra supplemented with grasses, shrubs and bushes to yield fuel wood and fodder in the shortest possible time. see for details, N.C.Saxena, "Social Forestry, why did it fail"? The Hindu Survey of the Environment, 1992, (1992), 35 at p.36.

considerable research is going on for identifying high superior quality seedlings of tamarind to be supplied to people in social forestry programmes.⁵⁶

Social forestry programmes need proper supervision, and implementation. In almost all the States there is a general complaint that the State Forest Department is not paying adequate attention to see that the trees planted in social forestry programmes attain maturity.⁵⁷ Except in certain States⁵⁸ people are not given adequate incentives for protecting the seedlings planted in social

56. R.S.Kulkarni, S.Ganga Prasad, G.S.K.Swamy and K.R. Melunta, "Enhancing Economic Benefits of Tamarind Through Clonal Orchards" Paper presented in the National Seminar on 'Socio-Economic Research in Forestry' held from 18-20 May, 1992 at Forest Research Institute, Peechi, Kerala.
57. Opinion expressed by economists and environmentalists from different parts of India in the National Seminar on 'Socio-Economic Research in Forestry' held from 18-20 May, 1992 in Forest Research Institute, Peechi Kerala.
58. See supra, n.36. In Tamil Nadu farmers are given cash incentives for planting seedlings up to the end of 2nd year of planting. Total admissible amount for 500 surviving plants is Rs.155/- In West Bengal a farmer who has planted at least fifty seedlings will get forty paise per seedling as an incentive for planting. The amount will be paid in three instalments. During the first year, fertiliser and pesticide costing 16 paise per plant are supplied and during the second year 10 paise per plant and in the third year 14 paise per plant are given in cash. Birla Institute of Scientific Research, Social Forestry in India, Problems and Prospects (1986), p.86.

forestry.⁵⁹ In order to ensure the success of social forestry programmes it is essential that apart from supply of seedlings of their choice, adequate incentives by way of manure and financial assistance for planting trees, should be given to farmers. Land holders choosing to offer farm forestry should be given exemption from land revenue. Laws regulating felling of trees⁶⁰ should be liberalised in the case of farm forestry plantations so that the owners can use the wood or transport them without fear of being questioned by forest officials.⁶¹

Social forestry programmes in order to be more fruitful should be made more extensive. Local authorities, public corporations, companies and voluntary organisations should be actively involved in implementing the

59. The Government of India instituted four trophies in 1950 - Rajendra Shield, Jawahar Shield, Patel Shield and Munshi Shield for the best district, village, institution and university respectively undertaking tree planting programmes. But for some years these awards had not been given owing to the indifference on the part of the district/village/institution or university and due to lack of suitable monitoring system. Birla Institute of Scientific Research, Social Forestry in India, Problems and Prospects (1986), p.85. In 1985 the Government of India instituted the 'Indira Priyadarshini Vrikshmitra Awards' for individuals, panchayats, educational agencies and governmental agencies not above the district level who have made outstanding contribution in the case of waste land development afforestation programmes and invoking of public awareness about the need to protect forest.

60. See for details supra, ch.4 nn.30-33

61. Similar suggestions are made by V.S.Saxena, "Social Forestry in Tribal Development", Desh Bandhu and R.R.Gang (Eds.), Social Forestry and Tribal Development (1986), 38 at p.49.

programme. Industrial establishments should be encouraged to plant suitable species of trees in and around their premises so that problems of pollution may be minimised⁶² and the timber used for their own industrial use or sold as fuel.⁶³ Social forestry programmes should also be co-ordinated with the programmes of soil conservation, and waste land development. If all the waste lands in the country be reclaimed and used for social forestry plantations, the problems of scarcity of fuel wood can be minimised.

Officials of the Forest Department should be educated and trained in matters relating to choice of plant species in social forestry and in planting them properly.⁶⁴ The Government should appoint officers trained and skilled

62. Plants reduce pollution by absorbing poisonous gases. See supra, ch.1 nn.34, 35.

63. It is reported that the Visakhapatnam Steel Plant has decided to afforest 3,600 hectares of its premises. So far 2234 lakhs plants have been planted in nearly 1700 hectares since 1986 when the programme was taken up. The plants have been selected keeping in view the economic viability and the capacity to absorb gaseous pollutants. The Hindu (Coimbatore), August 1, 1992, supplement p.24D.

64. In Karnataka the forest officials are taught in social forestry studies for one and a half months during their training period. G.V. Narayana, "Report on the Training in Social Forestry" in Karnataka Forest Department, My Forest, vol.22 June 1986, p.89. The new syllabus of 1991 for inservice training for forest guards in Kerala includes topics on social forestry.

in forestry matters, in panchayat, village, taluk and district levels to guide people and to supervise in social forestry programmes.

The success of social forestry depends on the participation and co-operation given by the public. In many States, the poor villagers are reluctant to let the Forest Department to afforest their common lands for fear that the Government may later declare the afforested area as Government land.⁶⁵ poor rural families even doubt whether the acceptance of saplings freely distributed by the Forest Department will enable the department to exercise control over their land. It is the duty of the Forest Department to clear such baseless doubts and fears and convince the villagers that the main aim of social forestry is their welfare.

Tribal population living in forest should also be actively involved in social forestry programmes. If the Forest Department supplies them seedlings of trees which

65. Due to this reason in many villages in Gujarat, Madhya Pradesh and Uttar Pradesh, social forestry failed to induce co-operation from villagers. Centre for Science and Environment, The State of India's Environment 1984-85 The Second Citizens' Report (1985), p.59.

are of immense use to the tribal communities,⁶⁶ they will find enthusiasm in planting such trees.⁶⁷ As the tribal people live in close association with forests, they would be having practical knowledge about the suitability of particular species of trees to their locality. This knowledge can be fruitfully utilised in selecting the species of seedlings in social forestry programmes. Engagement of tribal people in works connected with social forestry will get them employment opportunities and will help to develop a healthy relationship between them and the Forest Department. Women should also be actively involved in social forestry programmes. Since women are the real sufferers if fuel wood is scarce, they may do the work with more care and devotion than men.⁶⁸

66. For example the sal tree is closely linked with tribal economy. They eat its seeds and flowers, use its leaves for plates, fruits and bark as medicine and branches as timber. The tree also has a religious meaning to them. Walter Fernandes, "Tribals, Wasteland Development and Community Organisation" in Pramod Singh (Ed.), Problems of Wasteland and Forest Ecology in India (1989), 205 at p.215.

67. In Kerala, in Wyanad district the tribal people are encouraged to plant medicinal and vegetable gardens around their huts. See infra. ch.9 n.73

68. There are four lady forest guards in Goa to take the message of social forestry to the doorstep of the beneficiaries. V.S.Saxena, "Social Forestry in Tribal Development" in Desh Bandhu and R.K.Gang op.cit., p.38 at p.47.

Since the main aim of social forestry is to meet the fuel and fodder demands of the rural poor, the Government should assure that the real benefits accruing from social forestry plantations are available to the poor and needy. Instead of auctioning the trees to timber and pulp industries the government should supply them to the rural people who depend on forest for fuel. For this purpose, fuel wood depots may be opened in each village from where the villagers can get fuel wood at concessional rates or free of charges depending on their income limits. Once the local people enjoy the benefits of social forestry, they will try to involve themselves more in such programmes.

In order to sustain human civilisation, at least 33 percent of the land area of the country should be under forest cover.⁶⁹ India is having only 19.44 percent of its geographical area under forest cover.⁷⁰ In order to make up the deficit, the existing forest should be protected from further deterioration and afforestation programmes should reach the maximum possible level. No doubt a properly managed social forestry can not only protect existing forest from the thrust of fuel and fodder demands but also extend the area of forest cover all over the country.

69. P.R.Dubhushi in S. Nar Singh (Ed.), Environmental Policy in India (1984), p.11.

70. Government of India, Forest Survey of India, The State of Forest Report 1991 (1992), p.7.

PART V

FOREST POLICY - PROTECTION OF AFFECTED INTERESTS

The agricultural tribes³ use forest for shifting cultivation⁴ or settled agriculture. Timber, bamboo, cane and leaves collected from forest are used by the tribal people for making huts, agricultural implements and household utensils. Forest also provides them firewood for cooking and fodder for their cattle.

3. Santals, Mundas, Oraons, Hos and Kharwars in Bihar, Badagas in Nilgiris and the Muthuwans, Kurichians and Kanikkars in Kerala are agricultural tribes. B.B.Sinha op.cit., pp.21-52. See also K.P.Bahadur op.cit., pp. 35-51. See also P.R.G. Mathur, "Kurichians and Customary Law" in P.Leelakrishnan et.al. (Eds.), Tribal Welfare Law and Practice (1985), p.223 and N.S.Gopala-krishnan, "Impact of Welfare Schemes on Kanikkars : An Empirical Study" in P.Leelakrishnan et.al., op.cit. 237 at p.242.
4. According to this practice the cultivators clear patches of forest land, burn the leaves and bushes, and sow seeds on the land. After two or three seasons they move to another area and start agriculture in the same pattern. This practice of shifting cultivation is called Jhum in Assam, Podu in Orissa, and Penda in Madhya Pradesh. See Nirmal Kumar Bose op.cit. pp.12, 13. Among the tribal people in Karbi District in Assam, there is a tendency to shift the entire village to the new Jhum site. B.N.Bordoloi, "Application of Science and Technology for Environmental Planning in the Tribal Areas of Assam", Pramod Singh (Ed.), Ecology of Rural India, Vol.1, 1987, p.258. About 35 million sq.k.m. of land inhabited by over 120 million people is under shifting cultivation in the world. See J.Pathy, "Shifting Cultivators : Bearing the Brunt of "Development" in Budhadeb Choudhuri and Asok Kumar Maiti (Eds.), Forest and Forest Development in India (1989), p.253. It has been estimated that about 26 lakhs of people practise shifting cultivation in various parts of India and 14 lakhs acres of land are used for this purpose with varying crop patterns. P.K.Bhowmick, "Forestry, Tribe and the Forest Policy in India" in L.P.Vidyarthi (Ed.), Tribal Development and its Administration (1986), 29 at p.30.

Tribal medicines are remarkable.⁵ The tradition-
ally acquired knowledge of some of the tribal physicians⁶
about the medicinal plants in forest far outweigh the⁷
knowledge of learned ayurvedic physicians in the plains.
There are tribal members who did not even consult a
doctor from outside throughout their life.⁸

The tribal people play an important role in pro-
tecting forest and its fauna. Tribal communities having
distinct totemic clans taboo the totem animal or plant.⁹

5. The plant drugs used by tribals of north-east India are said to cure a wide variety of diseases like arthritis, bronchitis, blood and skin diseases, eye diseases, ulcers of the lungs and spleen, diabetes and blood pressure. Centre for Science and Environment, The State of India's Environment 1982, A Citizens' Report (1982), p.121.
6. Adivasi Moopans in Kerala are said to cure almost all diseases through herbal panacea. Muthu, a tribal doctor in Neriamangalam, Kerala laments on the disappearance of many medicinal plants that flourished in forest in the past due to deforestation. Indian Express (Kochi), July 17, 1992 p.4.
7. Modern ayurvedic researchers are now trying to retrieve the valuable bits of information from tribal medicine. At the University of Health Science and at the Regional Ayurvedic Research Centre of the Central Council for Research in Ayurveda and Siddha, experts are studying ways to adopt indigenous medical systems to modern medical needs. C.V.Ramana Rao, "Salvaging Folk Medicine" Indian Express (Kochi), April 5, 1992 supplement p.5.
8. Information gathered from the Muthuvans of Munnar, Kerala when interviewed by the researcher. See also Malayala Manorama (Kochi), September 30, 1992 supplement p.1.
9. See for details, supra, ch.2. nn.24-35.

Customary hunting rules of certain tribes prohibit killing of certain animals and birds.¹⁰ A good number of trees in virgin forest are kept untouched and worshipped by tribal members.¹¹ 'Tree marriages',¹² are practised in some tribal communities. On such marriage a duty is cast on the tribal bride-groom to protect the tree which he has married ceremoniously. The tribal people regard certain forests as sacred.¹³ They worship the forest diety and in the festival of the forest diety they take a vow to protect trees.¹⁴

10. For example the customary rules of hunting prohibit Santhals from killing any kind of monkey, wild dog, certain species of snakes and lizards, birds like parrot, weaver bird, oriole, kutis bird, and uric. W.G.Archer, Tribal Law and Justice (1984), p.118.

11. P.K.Bhowmick, "Forestry, Tribe and the Forest Policy in India" in L.P.Vidyarthi (Ed.), Tribal Development and its Administration (1986), 29 at p.31.

12. Youths of Lodha tribes of north-east India used to marry a mango tree or a mahua tree. The marriage ceremonies are completed when the chief conductor of marriage ties a yellow thread around the tree and the palm of the bride-groom together and applies three vermilion dots above the fingers. Later the thread is untied. From that day onwards the particular mango or mahua tree becomes taboo to the bride-groom. He will not take fruit or pluck leaves or cut branches of that tree. Id., pp.30, 31.

13. Such forests are called Devaranyas (God's groves) and the tribal people do not cut trees or collect fruits from trees in such forest. Instead they use only the fallen fruits and the fallen trees in such forest. Sharad Kulkarni, "Towards a Social Forest Policy", Budhadeb Choudhuri and Asok Kumar Maiti (Eds.), Forest and Forest Development in India (1986), 139 at p.140. See also supra, ch.2 nn.13, 14.

14. Indian Express (Cochin) September 9, 1984, supplement.

With a thorough knowledge about the ecosystem, water resources,¹⁵ forest paths and forestry operations, the tribal people had been good friends of the Forest Department. They can easily detect the movements in forest and hence are able to spot quickly and report to the Forest Department illegal felling of trees, hunting and poaching. But now the Forest Department does not get much co-operation from the Tribal people.¹⁶ If the Forest Department can get the co-operation of tribal members, the task of forest management will be easier.

15. A forest official from Idukki district, Kerala told the researcher that the way to reach the site for Idukki dam in Kerala was shown by a Tribal man called Kollumban.

16. The loss of tribal rights in the forest has filled contempt and hatred in the minds of tribal people towards forest officials. One author observes,

"The consequences of the increasing alienation of tribal people from the officers of the Forest Department have been disastrous to the protection of forests themselves. Time was when the tribal people constituted the best friends of the Department and served to inform in advance, the movement of strangers in the forest and the commission of forest offences. They were also the guides and the eyes and ears of the forest. With the increasing strictures in their access to use the resources that their habitat once provided them and which they used to take for granted, they have now tended to identify themselves with the settlers, encroachers and depredators of forest wealth who pay them a moiety for their services in furtherance of their own nefarious interests".

T.Madhava Menon, "Law and Tribal Societies in Kerala", P. Leelakrishnan, et.al. (Ed.), Tribal Welfare - Law and Practice (1985), 157 at p.170.

Forest provides habitat for tribal people. The tribal people protect forest from deterioration. Both are mutually dependent and are part and parcel of the same environment.¹⁷

Impact of deforestation on tribal people

Developmental activities like construction of roads, dams, bridges and buildings, starting of forest based industries, carrying out of mining operations, cultivation, settling of refugees and illegal encroachments, result in destruction of forest.¹⁸ Destruction of flora and fauna spoil the tribal habitat and affect their livelihood.¹⁹ Serious displacement problems may

17. One author has pointed out:

" . . . the local tribal communities have a symbiotic relationship with forests and, the existence of both is mutually beneficial".

K.M. Tiwari, "Forest and Tribals", Desh Bandhu and R.K.Gang (Eds.), Social Forestry and Tribal Development (1986), p.14.

18. Supra, ch.1, nn.6-10.

19. Speaking about the impact of construction of dams on tribal habitat one report has correctly pointed out:

"The sudden influx of modern system, destruction of the surrounding nature in which their lives are dependent, and ultimately displacement and resettlement, leaves a tradition bound tribal family totally bewildered, powerless and on the verge of total social, cultural and economic collapse".

Centre for Science and Environment, The State of India's Environment 1982 - A Citizens' Report (1982) p.68.

also arise.²⁰ Construction of dams cause health hazards to the tribal people.²¹ Reservoirs provide breeding grounds for mosquitoes causing malaria and filariasis among the people living in the vicinity.

Illegal encroachments also adversely affect the interests of tribal members. Many of the encroachers enter forest land under oral lease of land from the tribals.²² In the records the tribals may be possessing

20. The past experience of construction of major irrigation projects shows that the displaced villagers continued to suffer for decades and the promises made by the authorities were never kept. Indian Express (Kochi), June 28, 1992, p.2.
21. Among the villagers living near the Nagurjuna Sagar Dam in Andhra Pradesh, a type of crippling disease called 'genu valgum', characterised by knock-knees is common. The National Institute of Nutrition (NIN) at Hyderabad explained the cause of the disease as follows: Water seepage from the dam's reservoir and canals has increased the level of the sub-soil water. As a result, the alkalinity level of the soil has increased. This in turn has changed the composition of fluoride, calcium, molybdenum and trace metals in the soil. The Sorghum plants growing in this area absorb more molybdenum and fluoride. This in turn causes skeletal fluorosis in people living on Sorghum as staple, resulting in deformity of legs. Centre for Science and Environment, op.cit., p.135.
22. The money lenders demand very high interests for the loans given to tribals which makes it impossible for the latter to repay the loan. In consideration for the debt, the tribal members had to lease their lands in favour of the money lenders. In Attapadi between 1960 and 1981 out of the 16000 acres of forest land under the possession and enjoyment of tribals, 10016 acres were lost by this way. Malayala Manorama (Kochi), November 20, 1992, p.6.

the land, but in actual practice the encroacher will be the occupier and earner of yields from the land. In some areas the encroachers occupy tribal lands by force or by threat. If the tribal people refuse to leave the encroached area, these encroachers even dare to evict them forcefully and burn the huts and agricultural lands of the tribal people. Illegal encroachments of this type were common in the forest of Kerala.²³

Development projects in forest has led to the exploitation of tribals by plains-men and the bureaucrats. Violation and exploitation of tribal women are not rare.²⁴ Only a few women dare to go and complain

23. Information gathered from a forest official from Nagarampara in Idukki district of Kerala State when interviewed by the researcher. See also Indian Express (Kochi), April 12, 1992, p.2. See also Kerala Kaumudi (Thiruvananthapuram), June 21, 1987 p.2.

24. Exploitation of tribal women by forest and police officials and other plains-men often occur in the Attappadi-Agali area of Palakkad district in Kerala. According to customs prevailing in tribal communities unchaste women are outcaste from their society and the only way before them is to sustain themselves by practicing prostitution. In Attappadi-Agali area a co-operative farming society was started under the Western Ghats Development Programme to rehabilitate 85 such prostitutes. Out of them forty five are engaged in various works like brick-making whereas the rest still continue to practise prostitution. Information given by an officer from the Tribal Information Office, Agali, when interviewed by the researcher. See also Malayala Manorama (Kochi), November 18, 1992, p.6.

before authorities.²⁵ Deforestation creates problems for tribal women and others living near forest²⁶ for they have to walk long distances for collection of fire wood to cook the food.

Deforestation affect the tribal habitat, and their livelihood, culture, health, employment, personality and convenience. Deprived of their natural way of life, some tribal people work as daily labourers in the lime-stone quarries or in the fields of landlords and many turn out to be bonded labourers.²⁷ Financial constraints and the increased demands of life often compel tribal people

25. Alleged rape of Madura, a tribal woman by two police men had created a hue and cry among the people as well as in the legislature. This incident led to the amendment of criminal law shifting the burden of proof in rape cases from the prosecution to the accused. See Thukaram v. State of Maharashtra, 1978 Cr.L.J. 1864. See also I.P.C. Section 375 to 376 D and Indian Evidence Act, S.114-A as amended by the Criminal Law (Amendment) Act 1983.
26. The poor villagers and tribal people depending on forest for food, drugs, fodder, fuel and organic manure are rightly called as 'the ecosystem people' by Madhav Gadgil since their subsistence depends on forest ecosystem. Madhav Gadgil "Restoring India's Forest Wealth", Science Reporter, June 1992, 9 at p.10.
27. In the State of Orissa alone, it is estimated that there are 3.5 lakh bonded labourers including a large percentage of tribals. Walter Fernandes et.al., Forest Environment and Tribal Economy (1988), p.21.

to work for forest smugglers and encroachers.²⁸ Some die of diseases caused by poverty and starvation.²⁹

Forest Legislation and the Tribal People

In the pre-independent India, the Britishers had adopted the policy of non-interference in tribal areas. Areas of tribal concentration were treated as separate and distinct from the rest of the country and special provisions were made for the areas by designating them as backward tracts,³⁰ excluded areas³¹ and partially

28. From the Palghat District of Kerala State, the tribal people are said to be recruited by agents from the plains for the smuggling of sandal wood from the forests of Tamil Nadu. The smugglers advance money to the tribal members for such smuggling. The tribal member who spends this money before they start the dangerous journey in search of sandal wood are compelled to work like slaves for the smugglers. Some agents even ill treat the Adivasis if they refuse to obey their orders. 'Malayala Manorama', (Thiruvananthapuram), August 9, 1986, p.6. See also Malayala Manorama (Kochi), October 9, 1992, p.6.
29. In Kerala, the Malamuthans of Chulottumpara near Areacode in Malappuram are dying one after another due to tuberculosis caused by poverty and starvation. Indian Express (Kochi), July 14, 1992, p.1. See also Indian Express, July 20, 1992 p.4. The condition of tribals in Annapantham girijan settlement in Chalakudy range is also not different. Indian Express, (Kochi), July 29, 1992, p4. Starvation deaths of tribal people have also been reported in Doldala area of Koraput district in Orissa, Indian Express, (Kochi), September 16, 1992, p.1.
30. The Government of India Act 1919 used the term backward tracts for tribal areas and the legislation applicable to Indian territories were subject to certain exceptions and modifications in these areas. The Government of India Act 1919 S.52A(2). See for text D.D.Basu, Constitutional Documents Vol.1 (1969), p.91.
31. Excluded areas and partially excluded areas were those

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excluded areas.³² That arrangement³³ had helped the tribal people to continue their own way of life and keep

areas which His Majesty declared as excluded areas or partially excluded areas (Government of India Act 1935, S.91). Exclusion is for the purpose of Ministerial jurisdiction. The Government of India (Excluded and Partially Excluded Areas) Order 1936 schedule Part I declared the following areas as excluded areas:

- (1) The Laccadive Islands (including Minicoy) and the Amindivi Islands of Madras.
- (2) The Chittagong Hilltracts of Bengal
- (3) The Spiti and Lahaul in the Kangra District of Punjab
- (4) In Assam, the north-east frontier (Sadiya, Balipara and Lakhimpur) Tracts, The Naga Hills District, The Lushai Hills District and the North Cachar Hill sub-division of Cachar District.

See for text, N.Rajagopala Aiyangar, The Government of India Act 1935 with a commentary, critical and explanatory (1935), pp.XVIII,XIX.

32. The Garo Hills, Mikir Hills and the British portion of the Khasi and Jaintia Hills of Assam, Angul, Sambalpur districts and the Ganjam Agency tracts of Orissa, the Chota Nagpur Division and the Santal Parganas District of Bihar, Dehra Dun and portion of Mirzapur district in United Provinces and certain other areas of Madras, Bombay, Bengal and Central Provinces were classified partially excluded areas. The Government of India (Excluded and Partially Excluded Areas) Order 1936, Schedule Part II. Ibid.

33. Section 92 (1) of the Government of India Act 1935 reads:

" . . . notwithstanding anything in this Act, no Act of the Federal Legislature or of the Provincial Legislature shall apply to an excluded area or a partially excluded area unless the Governor by public notification so directs; and the Governor in giving such a direction with respect to any Act may direct that the Act shall in its application to the areas or to any special part thereof have effect subject to such exceptions or modifications as he thinks fit".

Section 92 (2) reads:

"The Governor may make regulations for the peace and good Government of any area in a Province which is for the time being an excluded area, or

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their culture intact. However, the colonial forest legislation did more harm to the tribal population than benefit. Under the guise of protecting the interests of the people of India,³⁴ the Britishers in effect took away the age-old rights of Indian tribes over forest.³⁵

a partially excluded area, and any regulations so made may repeal or amend any Act of the Federal Legislature or of the Provincial Legislature, or any existing Indian Law, which is for the time being applicable to the area in question".

See for text, D.D. Basu, Constitutional Documents Vol.1 (1969), p.193.

34. The National Forest Policy of 1894 declared that the sole object with which the State forests were administered was the public benefit. The Indian Forest Act 1878 did more harm to the public than benefit, since it took away the rights of the public over forest. See for details, supra, ch.2, nn.100-103. See also Gopa Joshi, "Forest Policy and Tribal Development : Problems of Implementation, Ecology and Exploitation" Walter Fernandes and Sharda Kulkarni, Towards A New Forest Policy, Peoples Rights and Environmental Needs (1986), 25 at pp.26, 27.

35. One author has correctly pointed out,

"The British Government was quite clear in its intention when it formed its forest policy. In shaping the policy and in framing the forest legislation, as in building up the Indian Forest Service and Forest Department, its main concern was the revenue and forest produce. Never did the British consider the interests of tribals who were in these forests for generations".

Desmond D. Abreo, People and Forests, The Forest Bill and a New Forest Policy (1985), p.3. Another author has observed:

"The forest Act is not aimed at protecting forest dwellers as living beings amongst other living beings. It is aimed only at the utilisation of living things and their products".

Chhatrapati Singh, Common Property and Common Poverty, India's Forest, Forest Dwellers and the Law (1985), pp.7, 8.

The same policy is being continued even now. Reservation of forests has created Government monopoly over the area comprised in reserved forests.³⁶ Tribal members are not allowed to exercise their traditional rights over forest. If they fell timber or collect forest produce from reserved or protected forests, they are treated as offenders. The tribal agricultural practice of shifting cultivation is prohibited, restricted and controlled by the State Government.³⁷ In effect the forest legislation has treated tribal people as encroachers in forest which had been their home for years. The procedure for reservation of forest gives the tribal people an opportunity to file their claims before the Forest Settlement Officer. But the illiterate tribal members unable to understand the fact of reservation, its consequences and detriments could not and did not utilise this opportunity fruitfully. They did not have the courage to approach Government officials for claiming their rights. Even if the tribal people had claimed their rights over forest, it is doubtful whether they would have been accepted. There was a grave defect in the law in so far as it required the tribal people to

36. See for details supra, ch.4,

37. Indian Forest Act 1927, S.10.

approach the Government asserting their rights. Instead, the law ought to have provided that the officials should approach the tribal people to inquire into their claims and recognise their legitimate claims.

The forest policy of 1952, which revised the policy of 1894³⁸ also did not recognize the rights of tribal people in forest.³⁹ Even the creation of Scheduled Areas⁴⁰ and Tribal Areas⁴¹ as per the provisions of the

38. See supra, ch.2, nn 109, 134

39. The Dhebar Commission stated in 1960,

"The forest policy as laid down in the Resolution of 1952 should be reviewed and the departures made by this policy in relation to release of forest lands for cultivation, supply of villager's needs from the outlying areas in the reserved forests, village forests, grazing and shifting cultivation should be reconsidered. Government should accept in relation to the rights of the tribals in forests at any rate the position that obtained prior to independence. The needs of the village communities should be kept in view and the present approach of Government towards the tribal villages in forest areas be revised".

The Scheduled Areas and Scheduled Tribes Commission 1960 - Report. See for text Virendrakumar, Committees and Commissions in India 1947-73, Vol.IV (1977), 69 at p.75.

40. Scheduled areas are those areas declared to be so by the President. The percentage of tribal concentration should not be less than fifty percent for an area to be so declared. Compactness and reasonable size of areas, underdeveloped nature of the area and marked disparity in the economic standards of tribals living in the areas compared to the people in the surrounding areas are other factors which should be invariably be present before an area can be considered eligible for declaration as Scheduled Area. Id., p.72.

41. Certain areas in the States of Assam, Meghalaya, Tripura, and Missoram are specified as Tribal Areas.

5th⁴² and 6th⁴³ Schedules of the Constitution is not adequate to protect the rights of tribal people inside reserved forest.⁴⁴ In spite of the safeguards of

Constitution of India, Schedule 6, the object of creation of tribal areas is to protect the interest of tribal people by permitting them to develop in their own lines. Government of India, Constituent Assembly Debates, Vol. 9, (1949), pp.1015, 1016.

42. The 5th Schedule read with Art.244 of the Constitution of India deals with the administration and control of Scheduled Areas and Scheduled Tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram. In such areas the schedule provides for the formation of Tribes Advisory Council to advise the Governor on matters pertaining to the Welfare and Advancement of Scheduled Tribes in the State. The Governor is empowered to exempt Scheduled Areas from the applicability of Central or State laws or to modify such laws in such areas. He is also empowered to make regulations for the peace and good Government of any Scheduled Area including laws relating to land allotment to tribals, land alienation by tribals and laws to regulate the money lending practices between money lenders and the tribal members. Constitution of India, Schedule 5 para 1, 4 and 5.
43. The 6th Schedule of the Constitution read with Art.244 provides for the autonomous administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram. In these States, some Tribal Areas are designated as autonomous districts. If there are different Scheduled Tribes in an autonomous district, the Governor may by public notification divide the area into autonomous regions. District Councils consisting of elected and nominated members and regional councils are to be constituted for the administration of these areas. The District and Regional Councils have got wide legislative, executive and judicial powers. They also have got power to raise revenue by assessing and collecting land revenue and by imposing taxes.
44. In autonomous tribal areas, the legislative and managerial powers of the District or Regional Councils are excluded in the case of reserved forests. Constitution of India, Schedule 6, para 3 (a) and (b).

protective discrimination⁴⁵ and the Directive Principles of State Policy⁴⁶ enshrined in the Constitution, the Government has not paid much attention to the need to recognise

45. Article 14 of the Constitution guarantees equality before law or the equal protection of law. Article 15 (1) prohibits discrimination on grounds of religion, race, caste, sex or place of birth. However, under Art.15(4) the State is permitted to make special provisions for Scheduled Castes and Scheduled Tribes. Art.16(4) enables the State to reserve posts in favour of backward classes if they are not adequately represented in the services under the State. Art.335 imposes a duty on the Government to take into consideration the claims of the members of Scheduled Castes and Scheduled Tribes in the making of appointments to services and posts in connection with the affairs of the Union or of a State. Seats should be reserved for Scheduled Tribes in the House of People (Art.330(1)(b)), and the State Legislature (Art.332). In the States of Bihar, Madhya Pradesh and Orissa there are ministers in charge of tribal welfare (Art.164(1) proviso). The Central Government can give grants in aid to States for promoting the welfare of Scheduled Tribes (Art.275 (1)). Art.19(5) enables the State to impose reasonable restrictions on the fundamental rights of citizens, for the protection of the interests of Scheduled Tribes. Appointment of Special Officer for Scheduled Tribes (Art.338) and Commission to report on the administration of Scheduled Areas and welfare of Scheduled Tribes (Art. 339) are also intended to protect the interests of Scheduled Tribes. See for detailed discussion, H.M. Seervoi, Constitutional Law of India (1975), pp.296-318. See also, M.P.Jain, Indian Constitutional Law (1978), pp.605-615.

46. Art.46, of the Constitution of India reads:

"The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation".

See for a detailed discussion, D.D.Basu, Commentary on the Constitution of India (1965), pp.323, 324.

rights of the tribal people.

Committees and Commissions appointed by the Government from time to time have highlighted the need to recognise the rights of tribal people in forests. The Dhebar Commission,⁴⁷ the Harisingh Committee,⁴⁸ the National Commission on Agriculture⁴⁹ and the Committee on Forest and Tribals⁵⁰ and even the Planning Commission of

47. Supra, n.39. According to Dhebar Commission, the Forest Department, which is a branch of the Government should be deemed to have the responsibility of participating in the betterment of tribals side by side with the development of forests. See Virendrakumar, op.cit., p.75.

48. An inter-department committee was set up in May 1965 under the chairmanship of Sri.Hari Singh, to study the dependence of tribal communities on forest and to suggest measures for their welfare. The committee noted that the Government's policy in the matter of forest exploitation was of immense significance to the tribes. Government of India, Report of the Committee on Tribal Economy in Forest Areas (1967), p.27.

49. The National Commission on Agriculture recommended that Tribal welfare should be ensured by satisfying their domestic needs for various forest products and by recognising the priority need of their direct employment in forestry operations, so as to establish a better symbiotic relationship between the tribals and the forests. See Government of India, Ministry of Agriculture, Report of the National Commission on Agriculture, part IX Forestry (1976), pp.26, 27.

50. The Committee on Forest and Tribals in India stated in 1982,

"The crux of the problem of forest management lies in the need for integration of tribal and forest economies. The present atmosphere of confrontation between tribals and foresters should be transformed into one of co-operation and partnership".

Government of India, Ministry of Home Affairs, Report of the Committee on Forest and Tribals in India (1982) p.93.

India⁵¹ have recognised the symbiotic relationship between forest and the tribal people. But forest legislation remains silent on the rights of tribal people in forest. The Forest Bill 1980 was defeated due to opposition by tribal activists and environmentalists.⁵²

The Forest (Conservation) Act⁵³ also fails to protect the interests of tribal people living in forest. There is no provision in the Act which permits the use of forest land for the welfare of tribal people. Since the use of forest land for the welfare of tribal people is a non-forest purpose, Central sanction is required for forest-linked tribal welfare programmes. Since forest and tribals are part and parcel of the same environment, provisions in the Forest (Conservation) Act should not adversely affect the interests of tribal people living in forest. So the programme for the upliftment of tribal

51. Planning Commission observed in 1985 as follows?

"In view of the symbiotic relationship between tribals and the forests, all efforts would be made to associate tribals in particular . . . with the process of protection, regeneration and development of forests. Forestry based schemes would be so formulated so as to be in consonance with the socio-economic fabric of the tribal culture and ethos".

Government of India, Planning Commission, Seventh Five Year Plan 1985-90 Vol.II (1985), p.40.

52. See for details, Shekhar Singh, (Ed.) Environmental Policy in India (1984), p.90.

53. Act No.69 of 1980. See for details supra, ch.4, nn.50-58

people using forest land should be saved from the requirement of Central sanction. The defect in the law continues. Even now when a forest is declared as reserved, the rights of tribal people go unprotected. This situation prompted the judiciary to interfere by giving directions, for example in Benwasi Seva Ashram v. State of U.P.⁵⁴ the Supreme Court of India issued several directions⁵⁵ for giving the adivasis adequate information about

54. A.I.R.1987 S.C.374. On the basis of a letter received from Banwasi Seva Ashram in Mirzapur, U.P. the writ petition under Art.32 was registered. The grievance was that, Adivasis living in certain forest areas in U.P. lost their livelihood due to the declaration of those areas as reserved forest under the Indian Forest Act 1927. With regard to other areas initial notification was issued and proceedings for final declaration of reservation were also taken. Though the court refused to intervene in the case of areas declared as reserved forests with regard to areas in respect of which steps were in progress for declaring them as reserved, the court issued certain guidelines, infra, n. 55
55. The following are some of them. Soon after the initial notification for reservation is issued, demarcating pillars should be raised by the Forest Officers identifying the lands covered by the notification. The fact should be widely publicised by the beat of drums in all villages and surrounding areas concerned. Copies of notice printed in Hindi in abundant number should be circulated through the Gram Sabhas giving reasonable specifications of lands which are covered by the notification. Sufficient number of inquiry booths should be set up within the notified area to enable the people of the area to get information whether their lands are affected by the notification, and to decide whether any claim need be filed. The Gram Sabhas should give wide publicity to the matter at their level. Adequate number of record officers should be appointed. In order to exercise the powers of the appellate authority Additional District Judges should be deputed for each area in dispute. The Forest Settlement Officer should place his findings before

Contd.

the fact of reservation. In U.P. Legal Aid and Advice Board v. State⁵⁶ the Allahabad High Court upheld the decision taken by the Forest Settlement Officer after ascertaining the occupied lands of adivasis from land survey records. The Court also directed the Government that, even if the adivasis did not file objections against reservation of forest and even if the applications and objections moved by the adivasis were defective in stamp duty, their claims should not be rejected.⁵⁷

In Fatesang Gimba v. State⁵⁸ the High Court of Gujarat gave directions to protect the rights of tribal

the Additional District Judge and he should scrutinise the same as if an appeal had been taken against the order of the authority. When the appellate authority finds that claim admissible, the State Government should implement the same. The Court also directed the U.P. Legal Aid and Advice Board and District Legal Aid and Advice Committee of Mirzapur to take appropriate steps to give legal assistance to the claimants. Id., p.377.

56. A.I.R. 1991 All.281. The Forest Settlement Officer had admitted the claims of adivasis by looking into the survey records. This decision was held to be illegal by the District Judge who was the appellate authority, on the ground that since the parties did not file objections, the claims need not be considered. This was challenged by the U.P. Legal Aid and Advice Board and the High Court upheld the claims of adivasis.
57. Id., p.285.
58. A.I.R.1987 Gujarat,9. The writ petition was filed by the adivasis residing in the reserved forests in Surat district of Gujarat State. Their grievance was that, they were being harassed by the officers of the Forest Department with a view to depriving them of their privileges in regard to the collection of bamboos from reserved forests. The Court found that the petitioners

people to collect bamboo from reserved forest, make articles out of it and sell it to dealers of their choice⁵⁹ Judicial pronouncements of this type are beneficial in safeguarding the interests of adivasis, when the legislation relating to forest does not contain such safeguards.

The Forest Policy Resolution⁶⁰ adopted by the Central Government in 1988, however, recognised the symbiotic relationship between forest and forest dwellers.⁶¹ Association of tribal people in the protection, regeneration and development of forest, development of forest villages on par with revenue villages, creation of tribal co-operatives in undertaking forestry works and devising of family oriented schemes for tribal people are some of the strategies suggested by the Central Government for improving the conditions of the tribal people.⁶² However, these policies are not yet reflected in legislation and hence not uniformly implemented.

eke out their subsistence by making bamboo articles and their livelihood will be adversely affected if the Forest Department impose stringent limitations on the collection, removal and sale of bamboos and bamboo articles by adivasis. Accordingly the court allowed the petition directing the Forest Department to permit the adivasis to enjoy such privileges.

59. Id., p.18.

60. Ministry of Environment and Forests, Department of Environment, Forests and Wildlife Resolution No.3-1/86-FP dated 6th December 1988, National Forest Policy 1988. See for text appendix II.

61. Id., para 4.6

62. Ibid.

Protection of tribal people at the State level

Even before the formation of the State of Kerala in 1956 by unifying Travancore-Cochin and Malabar, attempts were made to bring regulatory measures in some areas for protection of Tribal people. The Hillmen Rules framed in 1911 under Section 60 (c) of the Travancore Regulation II of 1068 brought the hillmen residing in Government forests and reserves under the control of the Forest Department of the erstwhile area of Travancore. The rules permitted the hillmen to cultivate the Government forest land, to fell and use timber, firewood, bamboos, reeds, canes and minor forest produce, to catch small animals, birds and animals from it. Each tribal settlement was permitted to hold a gun in the custody of the tribal headman. Only licensed traders in the plains could deal with the hillmen at the settlements and such traders were prohibited from lending or selling or buying anything on credit from the hillmen or acquiring titles to lands occupied or cultivated by the hillmen. The rules also provided for engaging hillmen in forestry works at prescribed rates. The rules imposed a duty on hillmen to assist forest officers, the police and the revenue and other officers in preventing offences in Government forests and reserves.⁶³

63. Rules for the Treatment of Hillmen 1911. See for text Krishnaswamy Aiyar et.al., The Regulations and Proclamations of Travancore Vol.I (1010 M.E) (1927) p.758.

In 1964, new Hillmen Rules were framed under Section 76 (a) of the Kerala Forest Act 1961.⁶⁴ The Hillmen Rules 1964 permitted the Hillmen to cultivate the Government forest land. This right was heritable but inalienable. Under the Rules, the hillmen residing in a Government forest were not permitted to shift their settlements except with the special written permission of the Divisional Forest Officer. The rules recognised the rights of headmanship. The hillmen could not leave their settlements or migrate to another settlement without the permission of his headman.

However, the Hillmen Rules were struck down by the judiciary in Eacharan Ittiathi v. State of Kerala.⁶⁵ Rejecting the contention of the State that the hill tribes living in settlements inside forest are part of 'forest' and fell within that legislative entry in the State list, the court pointed out that the subject "Scheduled Tribes" doesn't find place in the State list (list II) or in concurrent list (list III) of the Seventh Schedule to the Indian Constitution. In the courts

64. Kerala Forest Act 1961 (Act 4 of 1962) §.76 (a). The section enabled the State Government to make rules for the protection, advancement, treatment and management of hill tribes.

65. 1970 K.L.T. 1069.

view, it is covered by the residuary legislative power of the Centre and so only Parliament has got the legislative competence to enact laws for the Scheduled Tribes. Accordingly, the court declared that the State legislature is incompetent to make the law under section 76 (a) of the Kerala Forest Act and the section and the rules framed under it were struck down as illegal and void.⁶⁶

The object of the decision was to save the tribal people from the restrictions imposed by the Hillmen Rules. But besides the restrictive provisions the rules also contained provisions beneficial to the tribal people.⁶⁷ Since the Hillmen Rules were struck down, these beneficial provisions also disappeared from the scene. Further as the court declared that the State legislature is incompetent to make laws for tribal people, it has become impossible to make laws under the Forest Act for the recognition of tribal rights in forest. So the net effect of the decision was that the tribal members who could enjoy certain rights as per the rules were denied the rights after the decision.⁶⁸

66. Eacharan Ittiathi v. State of Kerala 1970 K.L.T.1069 at p.1074.

67. See supra

68. Some authors have remarked,

"Ittiathi attempted to uplift the tribal people from hell to paradise but the attempt misfired landing the tribals in a vacuum".

P. Leelakrishnan, N.S. Chandrasekharan and K.N. Chandrasekharan Pillai, "Tribal People and Forests : The

The rights of tribal people are recognised to a limited extent in Kerala.⁶⁹ They are permitted to collect minor forest produce.⁷⁰ They are also appointed as casual labourers, watchmen and guards in the State Forest Department.⁷¹ Tribal co-operative societies have been established under the control of the Forest Department for selling at fair prices,⁷² the forest produce collected by tribal people. Agro-forestry programmes are launched by the Forest Department, encouraging Adivasis to plant vegetable and medicinal plants on their land.⁷³ Programmes are implemented for the supply

Symbiotic Relationship" in P. Leelakrishnan et.al., Law and Environment (1990), 67 at p.70. According to another author Eacharan Ittiathi was only a tool in the hands of vested interests to get the Hillmen Rules struck down as it contained certain provisions totally unpleasant. C.K. Karunakaran, "Legislative and Executive Measures for Tribal Welfare in Kerala" 1985 C.U.L.R. 203 at p.211.

69. Kerala Forest Department, Aranyam, Vol.II Oct-Dec 1987, p.6

70. According to one author, granting of a few concessions in forest will not solve the problem of tribal upliftment, since the tribal people look upon the forest as their won. Sudha S. Sainis "Tribal Economic Development and Forest Policy" in S.G. Deogaonkar (Ed.), Problems of Development of Tribal Areas (1980), 65 at p.68.

71. Kerala Forest Department, Aranyam, Vol.II October-December 1987, p.7.

72. Id., p.6.

73. The medicinal plant gardens of Wynad district of Kerala State are remarkable. The Forest Department give protection to these plants for three years. After that the adivasis take that responsibility and crop the yield from it. Kerala Forest Department, Aranyam Vol.I, January-March (1986), p.35.

of food grains and oil to tribal people so as to improve the standard of their health⁷⁴ and projects launched for uplifting the tribal people.⁷⁵

In Andhra Pradesh, rules framed under the Andhra Pradesh Forest Act 1967 grant certain concessions to Scheduled Tribes.⁷⁶ They are permitted to remove timber, bamboos and forest produce for domestic and agricultural purposes and to graze their own cattle in protected forests without payment of any fee.⁷⁷

In Maharashtra, provision is made for the utilisation of funds raised from forest produce for the welfare of the people dwelling in forests and the weaker sections of the people dependent on forest produce for their livelihood.⁷⁸

74. The State Government implemented a project in 1987 under which rice, peas and oil worth Rs.9.2 crores supplied by the World Food Programme are distributed to tribal people free of cash for five years. Kerala Forest Department, Aranyam Vol.II October-December (1987), p.7.

75. For example the Pughandhagiri Cardamom Project and the Pookot Lake Dairy Project launched in 1976 in Vythiri taluk of Wynad district under the Western Ghats Development Programme have considerably raised the economic conditions and the standard of living of tribal population. Lakshmy Devi.K.K., Socio-Economic Impact of Western Ghat Development Programme on Tribal Women - case study of Wynad District in Kerala, project report (1988), pp.17-49.

76. The Andhra Pradesh Protected Forest Rules 1970 framed under S.27 (1) read with S.68(1) of the Andhra Pradesh Forest Act (Act 1 of 1967) prohibits certain activities in reserved forest. However the rights of tribal people are protected. See for text, Rakesh Bagga (Ed.) Beotra's Law of Forests (1989), pp.282, 283.

77. Id., Rule 3.

78. The Maharashtra Forest Development (Tax on sale of

Some of the States have enacted laws for preventing grabbing of tribal lands by plainsmen. In Kerala transfer of immovable property by members of Scheduled Tribes to non-tribal members without the previous consent of the competent authority appointed by the Government is prohibited.⁷⁹ In Karnataka also transfer of Tribal lands to non-tribals without the previous permission of the Government is prohibited.⁸⁰ Unlawful holders of tribal lands are liable to be evicted, restoring such land to the original holder, or his legal heir.⁸¹ In Andhra Pradesh transfer of immovable property situated in the Agency Tracts by a member of Scheduled Tribe to non-tribals without Governmental sanction is absolutely null and void.⁸²

Forest produce by Government or Forest Development Corporation) (Continuance) Act, 1983, S.6. See for text, Rakesh Bagga op. cit., p.831.

79. The Kerala Scheduled Tribes (Restriction on Transfer of land and Restoration of Alienated land) Act 1975, The Act by Ss.4-11 provides for the restoration of property transferred by the tribal member to the non-tribal member. See also T.Madhava Menon, "Law and Tribal Societies in Kerala", P.Leelakrishnan et.al. (Eds.), Tribal Welfare : Law and Practice (1985), 157 at p.168.

80. Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Lands) Act 1978 (Act No.2 of 1979) S.4.

81. Ibid. See for detailed discussion V.B.Cutinho "Tribal Protection in Karnataka, An Appraisal" in P.Leelakrishnan, op.cit., p.117-120.

82. Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959. See D.Ramachandra Raju, "Protective Laws in Scheduled Areas of Andhra Pradesh" in P.Leela - krishnan et. al. (Eds.), op.cit., pp.149-153.

Transfer of land by a member of Scheduled Tribe in Scheduled area to a non-tribal is void in Madhya Pradesh whatever may be the consideration.⁸³ In areas other than scheduled areas the non-tribal member is prohibited from purchasing the land belonging to a Scheduled Tribe member except with the permission of the Collector. Laws are also passed for preventing exploitation of tribal people.⁸⁴ However, the Central Government is yet to

83. Madhya Pradesh Land Revenue Code 1959 S.165 (b). See also G.P.Tripathi, "Scheduled Tribes and Tribal Legislation in Madhya Pradesh", P.Leelakrishnan et. al. (Eds.), op.cit., pp.105-111.
84. The Bonded Labour System (Abolition) Act 1975 (Act 29 of 1975) passed by the Kerala Legislature provided for the abolition of bonded labour system among tribal communities. Under this system the tribal communities were forced to work for money lenders without wages. The 1975 Act protected the tribal people from such exploitation. The Central legislation passed in 1976 namely, the Bonded Labour system (Abolition) Act 1976 (Act No.19 of 1976) came to their rescue in other States also. The Minimum Wages Act 1948 has helped the tribal people in protecting them from the bondage of working at lesser rates of wages. In Peoples Union for Democratic Rights v. Union of India, the Supreme Court ruled that payment of wages to the workers less than that prescribed by the provisions of the Minimum Wage Act 1948 is violative of the fundamental right against forced labour guaranteed under Article 23 of the Indian Constitution. A.I.R. 1982 S.C.1473 at p.1485. In Bandhua Mukti Morcha v. Union of India, the Supreme Court gave relief to the bonded labourers including members of Scheduled Tribe working in the stone quarries of Faridabad District in New Delhi, by ordering their release from bonded labour. A.I.R. 1984 S.C.802 at p.828.

enact a uniform law which recognises the tribal rights inside forest. In many parts of India, the tribal craving for the recognition of their rights in forest has led to tribal unrest and rebellion.

Tribal Movements

Initially tribal movements in India emanated as protests against the British rule. The Kuki rebellion⁸⁵ and the Zeliangrong movement⁸⁶ of Manipur tribes were counter products of British colonial rule and their apathy towards tribal people.⁸⁷

85. With the British conquest of Manipur in 1891, the hill tribes were compelled to pay direct house tax to the Government. Forced labour was imposed on them. The Kuki tribes of Manipur revolted against this practice in 1917. This revolt is called by historians as the Kuki rebellion. D.P. Mukherjee, P. Gupta and N.K. Das "The Zeliangrong or Haomei Movement" in K.S. Singh (Ed.), Tribal Movements in India (1982), 67 at p.68.

86. This was a movement launched in 1920 by three tribes - Zemei, Liangmei and Konymei, the prefixes of each of these three names were taken and combined into one name 'Zeliangrong'. The objectives of the movement were revitalisation of the traditional Zeliangrong religion and liberation of the zeliangrong people from British rule. Gangmumei Kalai "The Zeliangrong movement : An Historical study" in K.S. Singh op.cit. pp.53-56. See also ibid.

87. Manipur is still a disturbed area. Clashes are going on between the tribal people and the plainsmen. The All Manipur Students Union is violently agitating to deport the Kuki tribe from Manipur. (Kuki tribal people are of Nepale origin and Bangladeshi Muslims and considered to be foreigners according to Manipuri people) They also demand the repeal of the legal provisions preventing the sale of tribal land to non-tribals. Tapas Ray, "A Monster in Manipur Looming trouble in the State"Frontline July 3, 1992, p.33.

Assam, the centre of elite tribal population, witnessed a number of tribal revolts. The Naga movement which started in 1918 as a movement to protect forest lands in possession of tribals and to get autonomy in administration succeeded in forming a new State - Nagaland⁸⁸. The Garo movement⁸⁹ and Khasi movements⁹⁰ led to the creation of Meghalaya State.⁹¹

In 1930s the Indian National Congress launched a series of forest satyagrahas in North India demanding restoration of the customary rights of the tribal people to extract timber and collect minor forest produce for consumption and sale.⁹² Gandhiji and the congress leaders

88. Nagaland was formed in 1962. See N.K.Das, "The Naga-movement" in K.S.Singh op.cit., pp.39-51.

89. The first sign of concerted political activity among the Garos of Assam manifested itself in 1902 when the Garos protested against the encroachments on their forest holdings. After 1952 elections, the movement for a separate State gained strength. D.M.Majumdar, "The Garo National Council" in K.S.Singh op.cit., pp.203-206 and 209.

90. The Khasis inhabiting the United Khasi and Jaintia Hills launched a solidarity movement in 1898. This was turned into a political movement in 1923 ultimately leading to the formation of an autonomous State of Meghalaya in 1970. P.R.G. Mathur, "The Khasi Solidarity Movement" in K.S.Singh op.cit., pp.181-199.

91. The Constitution (Twenty Second Amendment) Act 1969 inserted Art.244-A in the Constitution of India empowering the Parliament to form the autonomous State of Meghalaya within the State of Assam.

92. Government of India, Ministry of Home Affairs, Report of the Committee on Orientation of Forest Education in India (1983), p.22. See also S.P.Sinha, "Tribal Movements and Agrarian Reforms" in L.P.Vidyarthi, Tribal Development and its Administration (1986), 276 at p.281.

urged local organisers to initiate non-violent resistance against arbitrary laws.⁹³ In Uttar Pradesh employees of the Forest Department had to face physical violence or threat from villagers in the hills.⁹⁴

In 1957, a forest movement was started in Madhya Pradesh by the Kharwar Tribe for the free utilisation of forest and its produce. The tribals refused to pay land revenue and forest dues. The movement was however defeated.⁹⁵

The tribal movements in Tripura which grew into a powerful struggle to preserve tribal identity and to restore tribal lands succeeded in bringing forth constitutional changes,⁹⁶ so as to protect tribal interests.⁹⁷

In Mizoram, the tribal craving for protecting their rights took the shape of an insurgency for about a decade (1966-75) and ultimately led to the creation of

93. Government of India op. cit., p.23.

94. Govind Ballabh Pant, The Forest Problem in Kumaon (1972), p.23.

95. Government of India op.cit., p.23.

96. The Constitution (Forty-Ninth Amendment) Act 1984 extended the ambit of provisions of the Sixth Schedule to the tribal areas of State of Tripura.

97. See for details, Bhabanand Mukherjee and K.S.Singh, "Tribal Movements in Tripura" in K.S.Singh (Ed.), op.cit., pp.318-334.

the Union Territory of Mizoram⁹⁸ and later the State of Mizoram.⁹⁹

The Bodo movement of Assam is also the result of the eagerness of tribal people to preserve at all costs their distinct identity and to improve their economic conditions.¹⁰⁰

In Bihar during 1978-79, hundreds of tribal people were arrested and a few killed in their revolt against the State administration¹⁰¹ and the revolt is still

98. The Mizo movement started as a movement to abolish some of the traditional customs among the tribes, and the domination of the tribal chiefs and to break the shackles of imperial rule. Later the movement assumed a political character demanding separate administrative unit for the tribal people. Accordingly the Constitution (Twenty seventh Amendment) Act 1971 was passed to constitute Mizo Hill district into a Union territory administered by the Centre. See for details, B.B.Goswami and D.P.Mukherjee, "The Mizo Political Movement" in K.S.Singh op.cit., pp.130-148.
99. In 1986, Mizoram was given the status of a State by the Constitution (Fifty Third Amendment) Act 1986.
100. In 1987, the All Bodo Students Union (ALBSU) demanded a separate homeland for the plains tribes. In the 1989 agitation they had demanded a fullfledged State on Assam West Bengal Border. Indian Express (Kochi) March 15, 1989.
101. In Bihar the organised tribal groups demand for a separate State. Centre for Science and Environment, The State of India's Environment 1982 - A Citizens' Report (1982), p.47.

going on.¹⁰² In some parts of Bihar in protest against the tree felling policy of the Government, the tribals organised a movement called Jungle Kato movement in 1980, whereby they indulged in indiscriminate felling of trees in pre-selected areas.¹⁰³

During 1981-82 the tribal people of Bastar district in Madhya Pradesh started agitating on forest based issues. Gainful employment, elimination of contractor/agency system in the collection of minor forest produces and establishment of forest industries in Bastar were the demands of the tribal agitators.¹⁰⁴

In the chipko movement of U.P.,¹⁰⁵ a number of tribal members participated. Unlike other movements, rural women took the lead in this movement.

In Kerala the Kurichia tribe of Kozhikode district revolted to protect their rights over forest land. In October 22, 1986, an irate crowd of over 200 Kurichiyans

102. See for details, Indian Express (Kochi), April 3, 1992 p.3. See also, The Hindu (Coimbatore), September 13, 1992 p.1.

103. Centre for Science and Environment op.cit., p.47.

104. Ibid. See also, Darry D'Monte, Temples Or Tombs? Industry versus Environment : Three Controversies (1985), pp.21, 22.

105. See for details supra, ch.3 nn.51-55.

of the Peruva forests in Kozhikode physically prevented a survey team of the Forest Department from undertaking survey in their areas. The tribals refused to allow the survey even after a police party arrived at the scene. When the police registered a case against fifty one Adi-vasis, hundreds of Kurichians marched to the police station ready to court arrest.¹⁰⁶ The tribal population of Wynad has also started conducting conferences to organise themselves in the efforts to come up in the society.¹⁰⁷

In spite of the measures¹⁰⁸ taken by the Government for the upliftment of tribal people and the organised revolts of tribals against the loss of their rights in forests, the tribal population in many States still remains

106. Indian Express (Kochi), November 4, 1986 p.1.

107. In the 'Adivasi Sangamam' held in Mananthavady recently tribals from Kerala, Tamil Nadu and Karnataka participated. 100 tribals from these States representing Korugas, Irular, Paniyar, Adiyar, Pallikurunbas, Kurichiyar and Tholia tribes participated in the conference. Indian Express (Kochi), October 13, 1992, p.5.

108. During the fifth and sixth five year plan periods the Government of India launched Integrated Tribal Development Projects (ITDP) for the upliftment of tribal people all over India. Family oriented economic benefit schemes and programmes to improve the health of tribal people were also implemented. See K.K.Srivastava, "Planning for Tribal Development" in L.P.Vidyarthi (Ed.), Tribal Development and its Administration (1986), pp.143-160. See also L.M. Prasad, "A Survey of Administration in Tribal Areas With Special Reference to Bihar" in L.P.Vidyarthi op.cit., pp.219-252. Government of Kerala, Tribal Sub-Plan of Kerala 1985-90 (1985), pp.2, 3. Directorate of Advertising and Visual Publicity, Development of Scheduled Castes and Tribes (Monograph), (1983), pp.5-8.

down-trodden, unsophisticated and illiterate.¹⁰⁹ They remain objects of fancy or victims of callousness in certain areas.¹¹⁰ Tribal women and children are the worst sufferers.¹¹¹ In some areas the tribal people die

109. Recent scientific studies and surveys carried out by the Benaras Hindu University in the tribal areas of Varanasi revealed that 30 percent of the tribal children in the area are mentally defective and backward in studies due to lack of nutritive food and the excessive consumption of alcohol and narcotics by the parents. Indian Express (Kochi), September 27, 1992 pp.1 and 3.
110. It is reported that in Narasinghpur in Andhra Pradesh the life of tribal people had been made a hell by one Sardar Singh, his goondas and the police. The tribal people complained that Sardar Singh had forcibly taken their land and forced them to work for him at low remuneration and often for long hours. He has been trying to keep them under his control by creating terror with the help of police. Indian Express(Kochi) September 24, 1991 p.7. In Kerala, it is reported that the parent of an adivasi girl was bludgeoned by forest officials and taken away by the police for attempting to rescue the daughter from being molested by a forest guard and two watchmen of the forest department. Indian Express (Kochi), April 20, 1992 p.4.
111. Doctors working in Mananthavady taluk of Wynad district pointed out that there has been a spurt in sexually transmitted diseases among tribal women because they fall prey to the sexual advances of men outside their colonies. According to Government statistics there are about 170 unmarried tribal women with non-tribal children in Thirunelli and Trissileri area alone. Social activists add that there is not even a tribal colony which does not have an unmarried tribal mother. N.P.Chekkutty, "Victims of Callousness" Indian Express (Kochi), April 12, 1992 supplement p.2. The tribal children seldom go to school and they all suffer from diseases caused by malnutrition and unhygienic living conditions. Ibid.

of starvation and diseases¹¹² whereas in some other areas, compelling circumstances have converted the poor and simple minded folks to terrifying criminals¹¹³ or notorious smugglers.¹¹⁴ In some areas tribals are forcibly evicted by land grabbers¹¹⁵ while some are voluntarily abandoning forest for the well being of future generation.¹¹⁶ Lack of

112. See supra, n.29.

113. The Bewarias and Sansis of Rajasthan and Uttar Pradesh have turned themselves into terror tribes committing decoity in the dead of night. Indian Express (Kochi), May 17, Supplement p.1, (1992).

114. In many parts of India, tribal people indulge in illegal felling of trees for coope contractors or for their own use. Sharad Kulkarni, "Forest and Tribals" in Desh Bandhu and R.K.Gang, Social Forestry and Tribal Development (1986), p.103. The notorious criminal Veerappan of Karnataka is said to be assisted by tribal people in the illicit transit of sandal wood from the Karnataka-Tamil Nadu borders to the distilleries in Palghat. Mathrubhumi (Kochi), May 5, 1990. Tribal people have been arrested for killing tigers, leopards, sambhurs and peacocks from the Ranthambhore National Park of Rajasthan. Indian Express (Kochi), July 19, 1992 Supplement p.2.

115. See supra, n.110. See also Indian Express (Kochi), April 12, 1992 Supplement p.2.

116. The Malampandarams of Pathanamthitta district in Kerala State have been voluntarily leaving forest and migrating to the plains to educate their children so as to equip them to live in the main stream of the society. Malayala Manorama (Kochi), May 29, 1992 p.9. In the tribal areas of Attappadi in Kerala willing tribal members find it very difficult to educate their children as the students have to walk 20 to 26 K.ms. from their settlements to the school. Indian Express (Kochi), June 19, 1992.

proper planning and defective implementation of tribal welfare programmes and the approach of the Government to treat tribal people as enemies of forest are the main hurdles in the upliftment of tribal people.

Now the question is whether the age old rights of tribal people in forest needs legal recognition? If so how far? Solution to these problems depends yet on another question, namely, whether the tribal people be retained in forest or should they be totally assimilated into the main stream of society?¹¹⁸ Assimilation of tribal communities into the main stream of national life is no doubt, better than leaving them in the deep-woods denying

117. Funds are earmarked by the Centre and the States for undertaking tribal welfare programmes. But these funds arrive only at the end of the financial year when the tribal development officers are so busily disbursing the funds that they do not bother to see whether the money has been given to the right people or not. Indian Express (Kochi) April 12, 1992 Supplement p.2. According to the Kanis of Thiruvananthapuram, Kerala, most of the Government assistance does not reach them at all. Now even the banks refuse to give them loans as the place where they live is demarcated for the biological park. Indian Express (Kochi), October 26, 1992 p.2.

118. Two schools of thought exist regarding the development of tribal areas. According to one school, the tribal people should be left alone, left where they are and kept as museum specimens. The other school advocates their total assimilation and consequent detribalisation. The middle policy allows tribals to develop according to their own genius. Gulabkhan Gori, Changing Phase of Tribal Areas of Manipur (1984), p.120.

them opportunities of development. But sudden steps to that end will be detrimental to the tribal people. It will badly affect their livelihood, culture, faith, potentialities and personality. So the assimilation of tribal people into the main stream of society should be by a slow and gradual process without destroying the good aspects of their culture. In order to achieve this end, the tribal right to earn their livelihood from forest, needs recognition till they equip themselves to live without forest. Provisions contained in the Central and State legislation relating to forest should be relaxed in their application to tribal people. Exercising their traditional rights in forest,¹¹⁹ should not be treated as amounting to violation of law. In the present deteriorated condition of Indian forest, the tribal people need not be encouraged to practice shifting cultivation, but they should be trained in doing permanent cultivation adopting modern agricultural practices for better yield.

As far as possible, displacement of tribal people from their habitat should be avoided. Tribal people displaced, when development projects are undertaken,

119. Due to the restrictions imposed on the entry and collection of forest produce from reserved forest and protected forest violation of forest laws become an inevitable structural part of tribal life. Indian Express (Kochi), July 6, 1992, p.11.

should be properly resettled.¹²⁰ Instead of resettling tribal people at places chosen by the government, the tribal members should be permitted to select areas of their choice, so that they can easily adapt themselves to the surroundings.

Forest Department is the competent body to effectively implement the policies of the Government to uplift tribal people in forest. Co-operation and co-ordination from other departments undertaking tribal welfare programmes will make the task easier. Instead of doling out charity on tribal people or thrusting on them a way of life which they are not used to,¹²¹ Government should help them to earn their livelihood in their own way throughout

120. In Banwasi Seva Ashram v. State of U.P. While disposing finally the case relating construction of a project in reserved forest in Mirzapur District of Uttar Pradesh, (See for details supra, n.54) by the National Thermal Power Corporation Limited (NTPC), the Supreme Court of India directed the NTPC to allocate plots of lands to evictees, give them money for housing and monthly subsistence allowance for ten years give preference to the austeas in employment opportunities in the NTPC and establish schools hospitals and water supply facilities in the rehabilitation area. 1992 (1) SCALE 407 at pp.408, 409.
121. Giving monetary benefits to tribals by Government has deprived the tribals of their initiative and made them lazy. Supply of milch cows or goats to tribal members proved to be a failure. They do not know how to look after these animals and to earn a livelihood from the income from them. While discussing the problems of the Kadars of Sholayar one Divisional Forest Officer remarked that, goats supplied to the tribal people there, will meet the demands of meat in the

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the year.¹²² Training tribal people in making useful fancy articles out of bamboo¹²³ and other forest produce which they can collect from forest will reduce the problem of unemployment among the tribal people and will improve the economic conditions of tribal families.

Tribal people are not and have never been destroyers of forest. They do not have sophisticated weapons with them to destroy the flora and fauna. They use the forest and its produce in a sustainable manner. The task of forest protection can be effectively and successfully carried out if it seeks the co-operation and involvement of tribal people. Care should also be taken to see that the tribal members are not made tools by plainmen to smuggle forest produce.

market nearby. Information given by the Divisional Forest Officer, Vazhachal, Kerala when interviewed by the researcher.

122. The Scheduled Areas and Scheduled Tribes Commission had suggested that Forest Department in consultation with Agriculture, Industries and Development Departments in each region should prepare a scheme to provide work for the tribals all the year round. Such works should include services in the Forest Department as forest guards and works for protection, conservation, regeneration and exploitation of forest and forest produce. Union of India, Ministry of Home Affairs, Scheduled Areas and Scheduled Tribes Commission 1960 Report (1961) in Virendrakumar op.cit. p.75.

123. In Kerala, The Bamboo Corporation plans to manufacture containers with bamboo so as to save 24 lakh cubic metres of wood currently being used for the manufacture of containers of apple every year. Indian Express (Kochi), May 3, 1992, p.13.

CHAPTER 10

FOREST AND WILDLIFE

'Wildlife' in the widest sense includes an ever widening group of animals, mammals, birds, fishes, reptiles, amphibians, arthropodes and even plants.¹ In the narrow sense, it denotes only wild fauna.²

From time immemorial, wild animals and other living beings in forest together with forest flora had played a vital role in maintaining the ecobalance.³ Wild animals, birds and insects render valuable service to plants by helping them in pollination⁴ and dispersal of fruits and

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1. John V. Dogge and Howard K. Kasch (Eds.), Encyclopaedia Britanica, Vol.23 (1963), p.600.
 2. Till 1991 the law relating to wild life in India used the term wildlife to denote wild fauna alone. The Wildlife (Protection) Amendment Act 1991 extended the meaning of the term to cover flora also. See infra, n.128
 3. See supra, ch.1, nn.21-23
 4. Birds, butterflies, bees and other insects carry pollen grains from one flower to another and thereby promote cross pollination. William H. Brown, The Plant Kingdom (1969), p.280. See also Ross H. Arnet and Dale C. Braungart, An Introduction to Plant Biology (1970), p.223.

Felling of trees and hunting of wildlife have their adverse impact on human life. Killing of frogs and insectivorous birds may lead to a tremendous increase in the number of mosquitoes and other harmful insects.¹¹ Eradication of snakes may increase the number of rodents which attack crops.¹² Increased hunting of deers and samburs may result in the migration of carnivorous animals to the plains in search of food attacking domestic animals and even human beings.¹³ On the other hand, hunting of predators may result in over population of animals like deers and samburs which may lead to their deaths due to starvation and diseases.¹⁴ Destruction of fauna may even cause diseases in human beings.¹⁵

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11. Export of frogs' legs from India to Western European countries had increased the pest population, adversely affecting agricultural crops. Killing of sparrows in China resulted in reduction in crop harvest by increased insect population. A.V.R. Krishna Murthy, Forests and Wildlife in India (1980), p.210.
 12. A.V.R. Krishna Murthy op.cit., p.210.
 13. Instances of migration of wild animals to the plains are being reported in Kerala. (See for details supra, ch.1, n.43) Recently an instance has occurred in Bangalore where a leopard of Bannerhatta National Park snatched and killed a child from a bus while passing through the national park. Malayala Manorama (Kochi), August 28, 1992, p.16.
 14. Deaths of deers and samburs in Kaibab plateau of Grand Canyon in U.S.A. due to starvation and diseases amply prove this fact. See for details supra, ch.1, n.22
 15. Kayasanur Forest Disease is an example. See supra, ch.1, n.23.

In India, wildlife is facing extinction. Deforestation has considerably destroyed the habitat of wild animals and birds. There was a time when hunting was considered a royal game.¹⁶ It was the duty of the king to destroy ferocious animals so as to save his subjects from their attack.¹⁷ Elephants and horses were used in battles and killed in large numbers.¹⁸

16. Hunting of cheetahs and tigers was a favourite past time of the nobility in India since very early days. One Maharaja is known to have killed 616 tigers during his life time, while another holds the record over 1,100 tigers. "Wildlife Conservation and Management" Forest Research Institute, Dehradun, One hundred years of Indian Forestry 1861-1961, Vol. II (1961), p.123.. It is also reported that the Mughal Emperor Baber often killed wild animals including rhinoceros in the course of his expeditions in North India. Ajit Banerjee, "Indian Forests Through the Ages", Forest Directorate, Government of West Bengal West Bengal Forests, (1964), 29 at p.45.
17. Hiuen Tsang who visited India between A.D.629 and 645 recorded that in the North eastern region of India, there were deep forests where wild oxen, wild elephants, poisonous snakes and fierce beasts used to kill travellers walking through forest road. Id., p.41.
18. The traditional division of army of ancient Hindu rulers was four fold (Chaturanga sena) viz. Infantry Cavalry, War Elephants and War Chariots. C.D.Chatterjee, "Role of Forest in Defence in Ancient India" in Forest Directorate, Government of West Bengal, op. cit., pp.58, 59.

The British army officials, civil servants and tea planters in India were also fond of hunting using high powered weapons.¹⁹ Shooting of tigers was a popular game in India for years.²⁰ Deforestation and the consequent loss of habitat continued to endanger the lives of many wild animals and birds.²¹ High demands for goods made of tusks, skin and horns of animals coupled with development of taxidermy contributed to faster pace of destruction of wildlife.²² It is only when many species

19. In Kathiawar, a cavalry officer was reported to have shot as many as 80 lions. On one occasion he shot 14 lions in the Gir forests within a period of 10 days. Forest Research Institute, op.cit., p.121.

20. In Central India, a particular British 'sports man' shot over 500 tigers during his 21 years stay in the country. From 1850 to 1854 a railway official killed 100 tigers in Rajputana. (Ibid) In 1950s and 1960s tiger shooting was accepted in India as a method of encouraging tourism and earning foreign exchange. V.P. Agarwala, Forests in India : Environmental and Production Frontiers (1985), p.221.

21. Many scientists believe that a larger share of the earth's plant and animal life will disappear in our life time at a greater pace than was lost in the mass extinction that included the disappearance of the dinosaurs, 65 million years ago. Edward C. Wolf, "Avoiding a Mass Extinction of Species", Lester R. Brown et.al., (Eds.), State of The World 1988 (1989), 101 at p.102.

22. Rhinoceros and elephants are hunted for their valuable tusks. The snakes, crocodiles and other animals are caught for their valuable skin. Centre for Science and Environment, The State of India's Environment 1982, A Citizens' Report (1982), pp.165-173.

reached the stage of extinction that strategies were evolved for their protection.²³

Strategies to protect wildlife

Different strategies have been evolved for protection of wildlife. Imposition of restrictions on killing, hunting, poaching and capturing of wild animals and birds, adoption of captive breeding techniques, creation of protected areas called national parks, sanctuaries and biosphere reserves and regulation of trade and commerce in animal, animal articles and trophies are some of them.

Restriction of hunting is the earliest measure adopted for protection of wildlife. Manusmriti condemned hunting as a heinous act and directed the king and the kshatrias to forbear from hunting.²⁴

Arthasastra imposed restrictions on killing of animals.²⁵ Slaughter of calf, bull and the milch cow was totally prohibited.²⁶ Even causing hurt to small

23. Hippopotamus and some baboon species are now seen only in Zoos. Lions and tigers have become rare. The lion-tailed Macaque of South India is the most endangered primate. Even the wolf, jackal, hare, fox and wild dog are threatened to extinction.
ibid.,

24. See supra, ch.2, n.48

25. Fine was imposed for slaughter of animals, birds and fish. R.P.Kangle, Kautilya Arthasastra Part II (1972) p.157.

26. Id., p.158.

animals with wood and other things was punishable.²⁷
 Safety was proclaimed for certain species of animals, birds and fishes, and binding, killing or injuring them was punishable with fine.²⁸ Even death sentence could be imposed for killing of elephants.²⁹

Emperor Asoka brought game laws under the category of Dharmaniyamas or 'laws of piety'.³⁰ Asoka prohibited killing of certain species of birds, fishes and wild-animals throughout his empire and all classes of living creatures on certain specified days.³¹ All hunters,

27. Id., p.249.

28. Sea fish having the forms of an elephant, or a horse or a man or a bull or a donkey or those fishes from lakes, rivers, tanks or canals, birds curlew, osprey, gallinule, swan, ruddy-goose, pheasant, bringaraja, cacora, mattakokila, pea-cock, parrot and madanasarika were the protected species. Id., p.157.

29. Id., p.60.

30. Prof.C.D.Chatterjee "Forestry in Ancient India" in Forest Directorate, Government of West Bengal, West Bengal Forests, (1964), 3 at pp.23, 24.

31. Some of these birds were mentioned in Kock edict I and Pillar edict V. Rock edict I prohibited killing of animals including antelope and peacocks. While Pillar edict V prohibited killing of birds like parrot, mynah, red-crested pochard, brahmini duck, swan, crane, stork, peacock and vulture and animals like porcupine, stag, squirrel, rhinoceros and bats. See for translated text, Vincent A. Smith, Asoka the Buddhist Emperor of India (1970), pp.158 and 204. See also, K.G.Mohanan Pillai, "Impact of Wildlife Legislation in India". Vanarasi Vol.6, January 1988, p.3 and C.D.Chatterjee, op.cit., pp.23, 24. There was also a prohibition for killing primates and carnivorous animal for a total period of 72 days in a lunar year. K.G.Mohanan Pillai op.cit., p.3.

trappers, bird catchers and fishermen were strictly ordered to obey the royal injunctions prohibiting slaughter.³²

The law relating to forest imposed restraints on hunting and capturing of animals. The Government Forest Act 1865³³ indirectly regulated hunting by empowering the local Governments to make rules prohibiting among other things the collection and removal of elephants' tusks, horns, skins and the hiding or storing of the same.³⁴ The Indian Forest Act of 1878³⁵ specifically prohibited, in reserved forests, capturing of elephants, hunting, shooting, fishing, poisoning of water, setting up of traps or snares in contravention of the rules framed by the local Government.³⁶ The same prohibitions are incorporated in the Indian Forest Act 1927.³⁷

32. C.D.Chatterjee op.cit., p.24.

33. Act No.7 of 1865. See for text George Smoult Fagan, Unrepealed and Unexpired Legislative Acts of the Governor-General of India in Council 1862-1865 (1865) pp.677-684.

34. Id., Ss.3, 4.

35. Act No.7 of 1878. See for text, Government of India, Legislative Department, The Unrepealed General Acts of the Governor-General in Council Vol.II (1909), pp.577-604.

36. Id., S.25 (1).

37. Act 16 of 1927, S.26 (1).

Separate legislation for protection of wildlife was enacted by different States in the second half of the 19th century. Madras was to take the lead and elephant was the first to get legal protection from hunting. The Madras Elephants Preservation Act of 1873³⁸ prohibited killing of wild male elephants without license.³⁹ Later the Wild Elephants Preservation Act 1879⁴⁰ passed by the Central Government prohibited killing, injuring or capturing of wild elephants throughout the British empire, except for private defence of person or property.⁴¹

Law was also passed for the protection of other animals and fishes. In the Nilgiri district of Madras Presidency, the Nilgiri Game and Fish Preservation Act 1879⁴² empowered the Governor General in Council to fix by notification closed seasons for shooting, killing,

38. Madras Act No.1 of 1873.

39. Licence was granted by the Government for the destruction of wild male elephants on the condition that the licensee should surrender the tusks of such elephants to Government if called upon so to do. G.O.No.2177 Judicial dated 17th August 1886. See for text Government of Madras, Legal Department, Local Rules and Orders Vol.IV (1952), p.2.

40. Act No.6 of 1879. See for text, V.R.Manohar and W.W.Chitley, The A.I.R.Manual Unrepealed Central Acts (1979), pp.373-377.

41. Id., S.3.

42. Madras Act 2 of 1879. See for text, The Civil Court Manual (Tamil Nadu Acts) Vol.6, (1987), pp.4524-4527.

capturing and selling of specified animals.⁴³ He could also prohibit by notification killing or capturing of animals, birds or fishes not indigenous to the district.⁴⁴ The Governor-General in Council could also make rules for the regulation and control of fishing in any stream or lake within the district.⁴⁵ The Indian Fisheries Act, 1897⁴⁶ was yet another step to prevent the destruction of fish throughout British India. The Act imposed punishment to those who put any poison, lime or noxious material into any water with the intention to catch or destroy fish.⁴⁷

Law was also passed for protection of wild birds. The Wild Birds Protection Act 1887⁴⁸ empowered the local Governments, cantonment and municipal authorities to make rules prohibiting the possession or sale of specified species of wild birds, dead or alive or their plumage during their breeding season.⁴⁹ Later, this

43. Id., S.3.

44. Id., S.4.

45. Id., S.5.

46. Act No.4 of 1897. See for text, Government of India, Reforms Office, Unrepealed Central Acts 1882-1897, Vol.3 (1938), pp.546-548.

47. Id., ss.4, 5.

48. Act No.20 of 1887. See for text, Government of India, Legislative Department, Legislative Acts of the Governor General in Council of 1887, (1888), pp.221-223.

49. Id., S.3.

Act was repealed by the Wild Birds and Animals Protection Act 1912.⁵⁰ The latter Act empowered the Local Government to specify by notification the wild birds and animals to be protected under the Act and declare part or whole of the year as closed time for killing, capturing or selling of such birds and animals.⁵¹ Punishment was imposed if such notified animals were killed during closed time.⁵² This arrangement might have helped endangered species of animals and birds to increase in number beyond the reach of extinction. Similar laws were also passed by native States for protecting wild life.⁵³ In Travancore area hunting was regulated through licence.⁵⁴ The holders of licence had to keep account of the game killed and produce it before the police or judicial officer if required.⁵⁵

50. Act No.8 of 1912. See for text, Government of India Reforms Office, The Unrepealed Central Acts Vol. 6 1911 to 1916 (1938), p.72, 73.

51. Id., ss.2, 3.

52. Id., s.4. However killing or capturing of wild animals for bonafide defence of person or property was exempted Id., s.8.

53. For example in 1914 the Game and Fish Protection Act was passed in by the Maharaja's Government of Travancore, as a step to preserve wild animals and fish. See for text of the Act, K.Ramkumar, Kerala Laws Manual Vol.IV (1984), pp.320-324.

54. Id., s.6.

55. Id., s.10.

The Game rules framed in 1922⁵⁶ prohibited hunting and shooting in reserved forest without licence.⁵⁷ Killing of elephants, monkeys and female or immature animals of bison, ibex, antelope and deer was strictly prohibited.⁵⁸ Restrictions were also imposed on killing and capturing of ibex, antelope, samburs and deers.⁵⁹

The Forest Acts of Kerala,⁶⁰ Karnataka,⁶¹ Tamil Nadu,⁶² Andhra Pradesh,⁶³ Rajasthan,⁶⁴ Assam,⁶⁵ Jammu and Kashmir,⁶⁶ and Nagaland⁶⁷ contain prohibitions against

56. Rules framed under Travancore Regulation II of 1068 (Regulation on Forest) See for text, N.Krishna Swamy Aiyer, et.al., Regulations and Proclamations of Travancore, Vol.2, (1927), pp.712-720.

57. Id., rule 3.

58. Id., rule 14.

59. Ibid

60. Kerala Forest Act 1961, S.27 (2) (f).

61. Karnataka Forest Act 1963, S.24 (1) and (j)

62. Tamil Nadu Forest Act 1882.S.21 (h).

63. Andhra Pradesh Forest Act 1967 S.20 (viii).

64. Rajasthan Forest Act 1953, S.26 (i).

65. Assam Forest Regulation 1891, S.25 (g).

66. Jammu and Kashmir Forest Act (1930), S.6 (g).

67. Nagaland Forest Act 1968, S.23 (g).

hunting and capturing of animals and fishes. In Assam special provisions are made for the protection of rhinoceros.⁶⁸ In Uttar Pradesh⁶⁹ and Madhya Pradesh,⁷⁰ rules have been framed to regulate hunting and trapping of wild animals and fish.

In Kerala, special provisions were incorporated in the Forest Act of 1961⁷¹ for protection of wild elephants.

68. Fine up to Rs.1000/- can be imposed for killing rhinoceros, where as for committing other prohibited acts fine is only Rs.500/-. Assam Forest Regulation 1891, S.25 (g).
69. The U.P. Rules completely prohibit in reserved forests, the poisoning or dynamiting of rivers and other waters, driving or destroying birds or animals in the snow, and poisoning carcasses of animals. Hunting, shooting and fishing in reserved forest are regulated through permits granted by the Divisional Forest Officer on certain conditions. See for text of the rule Upadhyay.C.B Forest Laws (1984), pp.139-147.
70. Madhya Pradesh Forest (Hunting, shooting, fishing, poisoning water and setting traps or snares in Reserved or Protected Forests) Rules 1963, Rules 3-6 prohibit in reserved or protected forest poisoning or dynamiting of rivers, streams or tanks and shooting of big game other than carnivora, wild dog and wild pig. Permit is required for hunting or shooting of any animal. The Conservator of Forest can declare specific areas in forest conditionally or absolutely closed for hunting and shooting.
71. Chapter VII of the Kerala Forest Act 1961 (Ss.48-51) contained special provisions for wild elephants. Before the Kerala Forest Act 1961, the Travancore-Cochin Forest Act 1951 (Act III of 1952) contained similar provisions (Ss.47-51) prohibiting, killing, wounding or capturing of wild elephants without the sanction of the Government. See for text, Government of Travancore-Cochin, The Acts and Ordinances of Travancore-Cochin (1952), pp.64, 65.

Killing, wounding or capturing of wild elephants without the sanction of the Government was prohibited. In Madhavan Nair v. State,⁷² the constitutional validity of these provisions were challenged by the owners of forest lands in Malabar who were carrying on business in timber. As a part of their business in timber they used to catch elephants from the forest belonging to them, for dragging timber. Since the capture of elephants was prohibited by the Kerala Forest Act 1961, the petitioners contended that those provisions infringed their freedom to carry on business or profession guaranteed under Article 19(1)(f) of the Constitution of India. Upholding their claims, the High Court of Kerala struck down⁷³ the impugned sections on the ground of unconstitutionality. However, with the vesting of private forest in the State Government in 1971,⁷⁴ lawful capturing of elephants by private persons came to an end.⁷⁵

72. 1963 K.L.T. 898.

73. Id., pp.918, 919.

74. See for details supra, ch.5

75. All private forests vested in the Government, so long as they remain vested in the Government, are deemed to be reserved forests constituted under the Kerala Forest Act 1961 (4 of 1962) and the provisions of the Act apply to such private forests. The Kerala Private Forests (Vesting and Assignment) Act 1971, S.4. The Kerala Forest Act 1961, prohibits hunting and shooting in reserved forests. The Kerala Forest Act 1961, S.27(2)(f).

The most significant legislation for the protection of wildlife in the country, the Wildlife (Protection) Act 1972 was passed by Parliament at the request of eleven States.⁷⁶ The Act with the significant amendments made in 1986 and 1991 forms a comprehensive legislation for the protection and management of wildlife in the country.

The Wildlife (Protection) Act 1972 imposed prohibitions and restrictions on hunting wildlife. The Act classified wildlife into different categories by including them in five schedules. Till 1991, hunting of animals specified in Schedule I⁷⁷ was totally prohibited while that

76. Under the Constitution of India, wildlife was a State subject (entry 20 of list II of 7th Schedule). So the Centre could pass laws for the States only if resolutions are passed by the legislatures of States under Article 252 of the Constitution requesting the Centre to make laws for the States. When such a resolution was passed by 11 States, viz. Andhra Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Madhya Pradesh, Manipur, Punjab, Rajasthan, Uttar Pradesh and West Bengal the Centre enacted the Wildlife (Protection) Act 1972. The subject wildlife was shifted to entry 17-B of the concurrent list in 1976 by the 42nd amendment of the Constitution. The Wildlife (Protection) Amendment Act 1991 has extended the application of the Wildlife (Protection) Act 1972 throughout India except Jammu and Kashmir.

77. Schedule I of the Wildlife (Protection) Act 1972 consists of endangered species of animals like tiger, leopard, cheetah, wolf, lion-tailed macaque, rhinoceros, amphibians and reptiles including crocodiles, tortoise, birds like pheasants and bustards. See for text, Rakesh Bagga (Ed.), Beotra's Law of Forests (1989), pp.1443-1450.

of animals specified in Schedules II,⁷⁸ III⁷⁹ and IV⁸⁰ was regulated through licence. However in 1991 prohibition on hunting was uniformly extended to all animals mentioned in Schedules I to IV. In cases where the animal has become dangerous to human life or is disabled or diseased beyond recovery, the Chief Wildlife Warden may permit hunting of such animals.⁸¹ Such permits can also be issued to hunt wild animals for purposes of education, scientific research and scientific management of wildlife.⁸²

Enumeration of endangered species of animals in schedules and imposition of restrictions and prohibitions on hunting is a welcome measure to protect such species from extinction. However such specific enumeration often creates difficulties in convicting offenders. Once a person is arrested and charged for committing an offence

78. Animals like elephants, wild dogs, wild yaks, monkeys leopards are included in Schedule II. See for text. Id., pp.1450-1459.

79. Schedule III consists of big game animals like Andaman wild pig, barking deer, four horned antelope, samburs and wild pig. Id., pp.1459, 1460.

80. Schedule IV consists of small game animals like desert cat, desert fox, hares, red fox, and more than 80 species of birds including pelicans, pigeons, swans, sunbirds and cranes. Id., pp.1460-1463.

81. Wildlife (Protection) Act, 1972 s.11

82. Id., s.12.

under the Wildlife (Protection) Act it is the burden of the prosecution to prove that the offence has been done against the particular species of animal which is given special protection under any of the schedule in the Act. Since there may exist thousands of species for a single genus of animal or bird, it is quite impossible for the prosecution to prove such things and the offender will have an easy escape.⁸³ In order to avoid situations of this type, adequate safeguards should be adopted. Once a person is arrested and charged for an offence relating to wildlife it should be his burden to prove his innocence. The respondent should have the burden to prove that the animal hurt by him or the article in his possession does not belong to the species given protection under any of the Schedules in the Wildlife (Protection) Act. He should not be permitted to take advantage of a flaw on the part of the prosecution.

83. This differential treatment of animals created difficulties in convicting offenders. In Rafique Ramzan Ali v. A.A. Jalgaonkar (1984)(2) Cr.L.J. 1460 the High Court of Bombay, set aside the conviction of an accused charged for trading in articles made of skins of lizard and snake without licence, on the ground that the prosecution failed to prove whether the articles seized were made of skin of such species of lizards or snakes which were enumerated in any of the several schedules.

Regulation of hunting alone cannot protect wildlife. There are certain animals and birds that have reached the verge of extinction. Steps are to be taken to increase their number so as to save such species from extinction. Here comes the significance of captive breeding.

Captive breeding

Captive breeding is a device adopted by nations all over the world to conserve endangered species of wild animals and birds. Wild species threatened to extinction are kept in seclusion and favourable conditions for breeding are created so that they may increase in number. After considerable increase in the number of offsprings and after attaining maturity, some of them may be released to the natural habitat so that they can grow and develop naturally. Captive breeding is done in Zoos or like institutions. In Kerala, a project has been launched for the protection of crocodiles.⁸⁴

Historically, zoos had been recognised as places of entertainment, recreation and study.⁸⁵ But now zoos have

84. In Neyyar at Thiruvananthapuram, young ones of crocodiles are kept in tanks and nourished properly. After attaining maturity some of them are released to the natural habitat, so that they may increase in number. Mathrubhumi Book 69 No.23 (1991), pp.22-24.

85. Biman Basu, "Caged conservation," Science Reporter June 1991, 12 at p.13.

turned to be centres for conserving wildlife and imparting and disseminating knowledge about endangered species of animals and birds. Caged or fenced conservation of such species in zoos and nourishment of offsprings bred in captivity protect them from extinction.⁸⁶

In order to improve the conditions of zoos in India, beneficial provisions are incorporated in the law relating to wildlife. The Wildlife (Protection) Amendment Act 1991 provides for the constitution of a Central Zoo Authority⁸⁷ to specify the minimum standards of housing, upkeep and veterinary care of animals kept in zoos and to evaluate and assess the functioning of zoos.⁸⁸ Among other duties, the authority has to identify endangered species of wild animals for purposes of captive breeding and coordinate training of zoo personnel in India and outside India.⁸⁹ Total prohibition was also imposed on molesting, injuring or disturbing of animals in zoos.⁹⁰ In spite of the beneficial legal provisions, caged conservation and captive breeding have their own

86. Id., pp.12-14.

87. Wildlife (Protection) Act 1972, S.38-A incorporated by the Wildlife (Protection) Amendment Act 1991.

88. Id., S.38-C.

89. Ibid.

90. Id., S.38-J.

inherent deficiencies. Captivity may create depression, annoyance and discomfort in living beings, whatever may be the facility inside the cage or fence.⁹¹ Moreover, zoos cannot provide protection to all species threatened to extinction.⁹² However, there are many classic examples of species that have become extinct in natural habitat but are now present in captivity in zoos.⁹³

Release of mature offsprings bred in captivity to the natural habitat may also create problems of adaptability. Since they are not accustomed to the natural way of life, they may not be able to lead a successful life when compared to their naturally bred and brought up offsprings.⁹⁴ Further, since the captive bred offsprings

91. The animals kept in barbed wire enclosures in tourist resorts and zoos are not as happy and enthusiastic like their counterparts in natural forest. Indian Express (Kochi), July 17, 1992, p.5.

92. Biologists estimate that as many as 2,000 species of mammals, reptiles and birds in the world have to be bred in captivity to escape extinction. However, the zoos all over the world can afford protection only to 900 species. Edward C. Wolf, "Avoiding a Mass Extinction of species", Lester R. Brown et.al., (Eds.), State of The World 1988 (1989), 101 at pp.116, 117.

93. Nene or the Hawalian goose, European bison, Pere David's deer, Perzewalski horse, and Golden tamrin are some of the classic examples of such species that would have otherwise become extinct. Biman Basu op. cit., p.15.

94. According to one Chief Conservator of Forest in Kerala release of mature crocodiles of the crocodile project, to the Neyyar Dam proved to be a failure since the crocodiles which were not used to their own way of life in water attacked domestic animals and even human

Protected areas may be created, for giving special attention to particular species of animals or for protecting a variety of animals. "Project tiger"⁹⁸ launched by the Government of India in 1973 for the better protection of tigers succeeded in establishing 18 tiger reserves⁹⁹ in different parts of the country.¹⁰⁰ Similar projects are also being launched for the protection of elephants,¹⁰¹ lion, hangul and brown anteloped deer and crocodiles.¹⁰²

98. The project for the protection of tigers is the result of the efforts of International Union for Conservation of Nature (IUCN) and the Indian Board of Wildlife. One million dollars from World Wildlife Fund has been earmarked for the tiger project in India. A.V.K.G. Krishna Murthy, Forests and Wildlife in India (1980), p.217.
99. The total area of tiger reserves in India reach 28,017 Sq.K.Ms. in 1991. H.S. Panwar, "Status of Management of Protected Areas in India : Problems and Prospects". Tiger paper Vol.18, No.3 (1991), p.19.
100. Each of these reserves is demarcated into two basic zones - the core and the buffer. In the core zone no human activity is allowed. In the buffer zone human activity is minimised and restricted to the exploitation of minor forest produce such as grass, fruits, seeds, honey and dropped wood. The logic is that, left to its own devices, the core area will quickly become super productive and this productivity will spill over into the buffer. Bittu Saghal "Tiger Reserves and People" in Sanctuary Vol.8, No.2, 1988; p.73.
101. 'Project elephant' was started in Kerala in 1991. Under the 8th five year plan, Kerala got 1.2 crores as Central assistance for launching the project. Kerala Forest Department, Aranyam (Malayalam), Vol.7 April-June 1992, p.8.
102. Khoshoo, Environmental Concerns and Strategies (1988), p.510.

National Parks and Sanctuaries

As a part of the effort to conserve wildlife and its habitat, sanctuaries and national parks have been created by nations all over the world.¹⁰³ Usually areas rich in natural flora and fauna are declared and protected as a sanctuary or national park.¹⁰⁴ Legal provisions are more rigid and stringent in the case of national parks when compared to sanctuaries. In a national park, there is a total ban on the destruction, exploitation or removal of wildlife or its habitat except for the improvement and better management of wildlife.¹⁰⁵ In a sanctuary such activities are regulated through permits issued by the State Government through the Chief Wildlife Warden.¹⁰⁶ In other words, in a

103. Today there are about 7,000 nationally protected areas in the world covering some 651 million hectares i.e., 4.9 percent of the earth's land surface. John C. Ryan, "Conserving Biological Diversity" in Lester R. Brown *et.al.* (Eds.), State of the World 1992 (1992), p.15.

104. Any area which is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance can be constituted as a sanctuary. Wildlife (Protection) Act 1972, S.18. Areas of ecological, faunal, floral, geomorphological or zoological association or importance can be declared as a National Park.

105. Id., S.35 (6).

106. Id., S.29 as amended by Wildlife (Protection) Amendment Act 1991.

national park, everything is forbidden unless permitted by law, where as in a sanctuary those acts which are not prohibited by law are permitted subject to certain restrictions.

Sanctuaries and national parks had been created in India even before the enactment of the Wildlife Protection Act and even before independence.¹⁰⁷ However, the management pattern was linked with revenue considerations.¹⁰⁸ Collection of forest produce, raising of

107. The U.P. National Parks Act 1935 (U.P. Act No.1 of 1935), S.3 provided for the constitution of national park for the propagation and preservation of wild animals. See for text, Upadhyay C.B, Forest Laws (1984), pp.487, 488. In 1936, the first national park in India was created and named as Hailey National Park, now known as Corbett National Park in Uttar Pradesh. S.S. Negi, Handbook of National Parks Sanctuaries and Biosphere reserves in India (1991), p.22. In Kerala, the Nelliambathy Wildlife sanctuary is the first one to declare as a sanctuary in 1934. Later in 1950 it was extended and named as the Periyar Wildlife sanctuary. Kerala Forest Department, "Keralathilae Vanyajeevi Samrakshna Kendrangal" (Wildlife sanctuaries of Kerala), Monograph No.13 (1984), p.1, 2.

108. Two schools of thought exist in the management of sanctuaries and national parks. One favours complete protection of wildlife and no interference whatsoever with the ecological factors such as felling of trees, burning of grass and exploitation of fisheries. In other words, nature is left as such without exploitation. The other school of thought while admitting that the interest of wildlife should not suffer, insists on exploitation of forest produce and working of forest for revenue. P.D. Stracey, "Management of Forest Lands for Wildlife" in Government of India, Proceedings of the IV World Forestry Congress (1957), Vol.II, pp.412, 413.

plantations and even cultivation was permitted in sanctuaries.¹⁰⁹ The Wildlife (Protection) Act 1972 with the landmark amendments made in 1991 has imposed stringent limitations on entry into and exploitation of national parks and sanctuaries.¹¹⁰ Now the Chief Wildlife Warden would grant permit for exploitation of wildlife or its habitat only if it is necessary for the improvement and better management of wildlife.¹¹¹ Grazing or movement of livestock is also regulated, controlled or prohibited in the interests of wildlife.¹¹² Provision

109. For eg. in the wildlife sanctuary at Parambikulam in Kerala, teak plantations are seen in abundance. According to the officials of the forest department the area covers only 9 Sq.K.Ms. out of the total area of 285 Sq.K.Ms. (Information gathered by the researcher while conducting field study in the wildlife sanctuary, Parambikulam, Kerala) Formerly the land area inside these teak plantations was leased out for taungia cultivation. Farmers with their gang of labourers used to cultivate tapioca in such areas. This gave them chances to hunt wild animals of the sanctuary. Officials charged with the duty to protect the sanctuary could do nothing but stand helpless witnessing such incidents. V. Sadasivan, "Kattile Kadhakal", (Narration from Forest), Mathrubhumi, Book 69, No.18, (1991), pp.30-33.

110. Wildlife (Protection) Act 1972 S.27, as amended by Act 44 of 1991.

111. Id., S.29 as amended by Act 44 of 1991.

112. Id., S.33 (d).

is also made for the compulsory immunisation of live stocks so as to minimise the mortality rate of wild animals due to communicable diseases.¹¹³ Only registered persons can hold arms even under the Arms Act 1959 if he is residing in or within ten kilometers of a sanctuary.¹¹⁴ These legal provisions, if properly and effectively implemented, are effective in protecting wildlife.

National Parks and sanctuaries are better devices for protecting wildlife¹¹⁵ and its habitat if they are properly guarded. Otherwise they will turn to be a paradise for poachers. Hunting and killing of animals from national parks and sanctuaries have become a common phenomenon in India.¹¹⁶ Carcasses of elephants with their tusks removed are at times found near the sanctuaries in

113. Id., S.33-A.

114. Within three months from the declaration of any area as a sanctuary, every person residing in or within ten kilometers of any sanctuary and holding a licence granted under the Arms Act, 1959, (59 of 1959) for the possession of arms should apply for the registration of his name. Id., S.34.

115. According to 1991 statistics in India there are 68 National Parks and 394 wildlife sanctuaries. In Kerala there are two National Parks, 15 wildlife sanctuaries, one crocodile park (Peruvannamuzhy) and one snake park (Nilambur) and one bird sanctuary (Thatekkadu). Information gathered from the Forest Department, Thiruvananthapuram, Kerala in 1992 Sept.

116. It is reported that a good percentage of the people living in Vazhachal and Chalakkudy division near the Parambikulam wildlife sanctuary in Kerala have guns and are regular hunters. Indian Express (Kochi) March, 14, 1992 p.4.

Kerala.¹¹⁷ Hunting of tigers in National Parks has considerably reduced the population of tigers.¹¹⁸ Some of these incidents are said to occur with the connivance and co-operation of forest officials.¹¹⁹ This state of affairs should not be allowed to continue. Faithful and duty bound forest officials should be posted in sufficient numbers in national parks and sanctuaries so that the goal of protection of wildlife and forest habitat is made effective. Residential quarters should be constructed for forest staff near the premises

117. It is reported that in Kerala, some offenders arrested for hunting elephants admitted that they had killed as many as 77 elephants within a span of two years, for collecting the tusks. Usually the forest officials used to shut their eyes if they see the carcasses of elephants without tusks because of the difficulties to find out the tusks for which they are responsible. Mathrubhumi (Kochi), May 21, 1992 p.1. Hunting and fishing and cutting of trees by encroachers are rampant in Idukki wildlife sanctuary. But the officials usually hesitate to interfere in these affairs since these are the only means for the people living in the area to earn their livelihood. Mathrubhumi Book 69, No.21 (1991), p.35.
118. The tiger population in Katambhore National Park of Rajasthan has dwindled from 44 to 15 within a span of one year due to illegal hunting. Indian Express (Kochi), July 19, 1992 supplement p.2.
119. It is alleged that in the Katambhore wildlife sanctuary some senior officials of the Forest Department organise 'shikar' parties. It is also alleged that many vehicles are allowed into the sanctuary during the monsoons when the sanctuary is officially closed. Indian Express (Kochi), July 1992 supplement p.2.

of sanctuary or national park so that they are available at any time to guard the sanctuary or national park,¹²⁰ and to save visitors to sanctuaries from the attack of wild animals.¹²¹ Steps should also be taken to create buffer zones around national parks and sanctuaries so as to protect the agricultural population and their crops from the attack of wild animals.¹²²

Biosphere reserves

Special protection given to national parks and sanctuaries may help to restore wildlife and its habitat to a considerable extent. There may still exist areas

120. Now the Government do not show much interest in constructing residential quarters for the officials because of the high cost of construction for transporting granite and other materials into forest areas. In Aralam wildlife sanctuary in Kerala the work for constructing staff quarters was discontinued because of reluctance, on the part of the Government to allocate sufficient funds. Now the local people of the area are demanding completion of the staff quarters so that adequate staff are available at site for the protection of the sanctuary. Indian Express (Kochi), June 9, 1992, p.4.
121. A four year old girl was snatched and killed by a leopard from Bannerkhatta national park in Bangalore. The child would have been rescued if the forest personnel with weapons were available at the spot. Malayala Manorama (Kochi), August 28, 1992, p.16.
122. Now the growing human population has brought cultivation right to the edge of forests and many persons have been killed by tigers. V.P.Agarwala, Forests in India : Environmental and Production Frontiers (1985), p.231. In Kerala destruction of agricultural crops by wild animals is rampant. Malayala Manorama (Kochi), October 9, 1992, p.6.

rich in flora and fauna but not declared as a national park or a sanctuary. Protection of such areas is the need of the day in the interest of protecting wildlife and its habitat. Finding out a suitable device to achieve this end is thought of at national and international level. The idea of 'biosphere reserve' is the outcome of the search for such strategies.

The Biosphere Reserve Programme was initiated by the UNESCO in 1973, under the 'Man and Biosphere Programme'.¹²³ Conservation of representative samples of ecosystems and long term 'in situ' conservation of genetic diversity, including plants, animals and micro-organisms are the major aims of this programme.¹²⁴ Biosphere reserves are complementary to the existing network of national parks and sanctuaries. In India the Department of Environment and Forests has been recognised as the nodal agency for the biosphere reserve programme. So far, the Department has identified twelve sites as

123. Document 10, "Biosphere Reserves : Indian Approach" Indian Journal of Public Administration, Vol.XXXV (1989),p 732

124. Ibid. See also T.N. Khoshoo, Environmental Concerns and Strategies (1988), pp.585, 586.

potential biosphere reserves and steps are being taken to implement the programme.¹²⁵

The biosphere reserve programme if fully implemented will be effective in protecting forest and wildlife. Proper implementation of the programme necessitates the enactment of suitable legislation laying down clearly the strategies to be adopted in future for better protection of wildlife and its habitat. The law should be carefully drawn up with demarcation and protection of extensive areas from human intervention.¹²⁶ Since the biosphere reserves are complementary to national parks and sanctuaries,¹²⁷ it will be convenient if the provisions of the Wildlife Protection Act are amended to extend the protective provisions relating to national parks and sanctuaries to biosphere reserves also. Creation of a separate piece of legislation unifying the

125. It is contemplated that once an area is declared as a biosphere reserve, the Central Government would play a key role in the setting up and management of these conservation areas. It would also assume direct responsibility in respect of full financial assistance for the approved items of the programme. Document No.10, "Biosphere Reserves : Indian Approach", Indian Journal of Public Administration, Vol.35 No.3 p.737.

126. According to one author the law should provide for a Biosphere Reserve Government, Administration Council, Secretariat and monitoring the progress by Parliament on the basis of periodical reports. Justice V.R. Krishna Iyer, Environmental Pollution and the Law (1984), part I, p.39.

127. Indian Journal of Public Administration op.cit., p.739.

legal provisions relating to sanctuaries, national parks and biosphere reserves is another alternative. Whether it be a national park, sanctuary or biosphere reserve, the goal remains the same, namely protection of forest along with wildlife. So a law uniformly applicable to all these protected areas and uniformly implemented by a central agency without regard to territorial barriers can effectively protect wildlife and its habitat.

Wildlife includes flora also. The legislation relating to forest has acknowledged it.¹²⁸ The Wildlife (Protection) Amendment Act 1991 declares certain endangered species of plants¹²⁹ as the property of the Government and provides legal protection to them.¹³⁰ Picking up,

128. The long title of the Wildlife (Protection) Act 1972 as amended by the Act 44 of 1991 reads as follows:

"An Act to provide protection of wild animals and birds and plants and for matters connected therewith or ancilliary or incidental thereto".

129. The Wildlife (Protection) Amendment Act 1991 (Act 44 of 1991) has added a new schedule - Schedule VI - in the original enactment. Six endangered species of flora, are included in this schedule. They are Beddome's Cycad, Blue Vanda, Kuth, Ladies slipper orchids, Pitcher plant and Red Vanda. See for text Current Central Legislation Vol.7 (1991), p.137.

130. Wildlife (Protection) Act 1972 as amended by Act 44 of 1991, S.17-H.

uprooting, destruction or acquisition of specified plants and cultivation and dealings in them require licence.¹³¹

It is suggested that, the prohibition against destruction may be extended to all flora in natural forests,¹³² national parks, sanctuaries, wet lands¹³³ and mangroves¹³⁴ so as to ensure natural regeneration of flora together with fauna.

131. Id., Ss.17-A and 17-C.

132. Speaking about sustainable agriculture, one author has observed:

"In situ conservation of land and wild relatives of crop plants has been an important factor in the maintenance of genetic heterogeneity in cultivated plants".

M.S. Swaminathan, "Equitable Development : Focus - Sustainable Growth" in The Hindu Survey of the Environment 1992 (1992), 122 at p.127.

133. Wet lands offer habitat for a variety of birds. Degradation of wet lands have led to the dwindling of pelicans in India and abroad. S.Sridhar, "Pelicans in Peril : A majestic bird 'in the red' " 9 Frontline July 17, 1992, p.77. Cranes and certain migratory birds are also facing extinction due to deterioration of wet lands and increase in hunting. Indian Express July 23, 1992, p.4.

134. Mangroves are salt-tolerant forest ecosystems of the tropical and subtropical intertidal regions. Mangrove ecosystems are rich in plant and animal species brought together over a long evolutionary span. India has approximately 7,00,000 hectares of Mangrove area along the coasts. Mangrove forests provide, a wide range of services, including prevention of damage by coastal storms and promotion of sustainable fisheries. N.Meera Raghavendra Rao, "Conservation challenges to save coastal ecosystems," 9 Frontline July 17, (1992), 73 at pp.74, 75. In Kerala depletion of Mangroves led to the disappearance of crocodiles in estuaries. Considering the importance of Mangroves the State Forest Department in Kerala has declared 3.08 hectares of Mangrove forest in Kochi as a protected area called 'Mangalavanam' in 1990. Indian Express (Kochi) July 13, 1992, p.4.

Regulation of trade and commerce in wild animals,
animal articles and trophies.

The kings, emperors and officials of India in the past killed wild animals for fun, recreation and as a mark of bravery and adventure.¹³⁵ However, modern man is more fascinated by the profits arising out of the dealings in wild animals, animal articles and trophies. Deers, samburs, bisons, wild goats, wild bulls, rabbits and certain birds are killed for their delicious meat.¹³⁶ Bears, pythons and peacock are killed for extracting valuable oil. Large animals like tigers and leopards are killed and the skins converted into trophies to adorn museums or the houses of the affluent people. Skins of snakes, lizards and crocodiles are used for making valuable articles like bags, slippers, shoes and belts. The high demand for articles made of ivory in foreign markets made smuggling of ivory a prosperous business in India.

135. See for details supra, nn.16-18.

136. In Kashmir, a single man killed 58,613 wild fowls over a period of 12 years averaging over 4,500 birds per annum, Forest Research Institute, Dehradun op.cit., p.123. In Kerala, the meat of wild animals and birds are served in big hotels and bars as a special item for regular customers. It is said that a kilogram of gaur meat is worth as much as Rs.150 during festival seasons. Indian Express (Kochi), March 14, 1992, p.4. See also Indian Express (Kochi) July 23, 1992, p.3. It is also said that in Sawai Madhopur city near Ranthambhore National Park in R Rajasthan, meat of sambur and cheetal is sold openly. Indian Express (Kochi), July 19, 1992, supplement p.2.

Wild animals and birds are also viewed as objects of fancy. Parrots, squirrels and rabbits are kept in cages in houses. Snakes and monkeys are played by nomads to earn their livelihood and by adventurous youths for popularity.¹³⁷ Lions, elephants, leopards and monkeys trained in acrobats are used in circuses to rejoice spectators.

The Government soon realised that if the dealings in animals, animal articles and trophies, if unchecked will endanger the lives of many animals. Accordingly provisions are incorporated in the Wildlife (Protection) Act to regulate and prohibit trade and commerce in wild animals, animal articles and trophies. Only regulatory measures were incorporated in the original enactment. Licence was required for dealings in wild animals and animal articles and trophies other than goods made of ivory and feathers of peacock.¹³⁸ However in 1986 total

137. Man's eagerness to enter his name into the guinness book prompted him to stay in a cage with a number of poisonous snakes. Sarpa Yajna was a popular game in the eighties in Kerala. In this venture some youths died of snake bite.

138. Exemption given to articles made of ivory was subject to serious criticisms. Questioning the rationale behind such exemption two learned authors observed:

"The law fumbles on the very area where it ought to have been steady and stern".

N.S.Chandrasekharan and K.N.Chandrasekharan Pillai, "Legal Aspects of Nationalisation of Trade in Wildlife and Animal Articles" [1985] C.U.L.R. 487

prohibition was imposed on such dealings except for goods made of imported ivory and feathers of peacock.¹³⁹ Later in 1991 that exemption was also withdrawn and exemption was limited to articles made of tail feathers of peacock.¹⁴⁰ In order to dispose of existing stock of animal articles in the interest of the public, the Government was enabled to exempt for purposes of export notified public corporations or public limited companies from such prohibition in dealings.¹⁴¹

Dealers engaged in the business of wild animals, animal articles and trophies are to declare their stocks before the Chief Wildlife Warden who will affix identification marks on those goods. Transfer of these goods to

139. The Wildlife (Protection) Amendment Act, 1986 (Act No.28 of 1986) amended S.44 and added a new chapter V-A into the Wildlife (Protection) Act 1972 to effectuate this change.
140. The Wildlife (Protection) Amendment Act 1991 (Act No.44 of 1991) amended S.44 of the Wildlife (Protection) Act 1972 to incorporate this change. The reason for exemption given to the articles made of tail feathers of peacock is not stated in the statement of objects and reasons of the amendment. (See for text Current Central Legislation 1991 Part II p.118, 119). Tail feathers of peacock can be collected from zoos without killing the bird. This may be the rationale behind the exemption.
141. Wildlife (Protection) Act 1972, (as amended by Act 28 of 1986) S.49-B (3). The exemption is applicable only for stocks purchased within two months from the date of commencement of the Wildlife (Protection) Amendment Act 1986. See statement of objects and reasons of the Amendment Act 1986 para 2. See for text Current Central Legislation Part 9, Sept. 1986 p.281.

another person requires permission of the wildlife protection authorities. However, the object of conserving wildlife sought to be achieved through these provisions are often defeated by the illegal techniques adopted by dealers. Besides the declared stock, the dealer may keep an unaccounted stock of animal articles. The declared stock may be used to canvass customers while the unaccounted stocks concealed by the dealer are sold away without the knowledge of Government. The circuitous ways adopted by dealers to take the goods to their destination can be detected by the wildlife protection authorities only if they get information about these ways.¹⁴² It is also quite impossible for the limited number of staff in the Forest Department to find out the unaccounted stocks concealed by dealers. If they can get the co-operation of the revenue, police, customs and excise departments some of the stocks can be unearthed. Whenever these departments conduct raid in houses, if any banned forest produce is found in possession of the person concerned, they should report the matter to the Forest Department so that violators of law can be arrested and punished. The

142. Recently, the Forest Department took into custody the ivory found in a speed post packet. The Department believes that the speed post and railways are becoming accomplices, though unwillingly, in the transportation of several banned forest produce like ivory and sandal. Indian Express (Kochi), July 10, 1992, p.5.

railway and transport departments can also help to detect illicit movement of forest produce. It is suggested that mandatory duty should be imposed on public servants of all departments whether Central or State to co-operate in detecting and preventing illicit movement of forest produce. Once the offence is detected prohibitive punishments should be imposed on the offender so as to dissuade him from repeating commission of the offence.

Originally the penal provisions in the Wildlife (Protection) Act 1972 was inadequate to have any deterrent effect on the offender. In 1991 significant improvements were made in this regard by enhancing the punishment for contravention of the Act from 2 years' imprisonment to 3 years' imprisonment and the fine from Rs.2,000 to Rs.25,000. However this amount is also inadequate when compared to the value of the goods smuggled. Animal articles and trophies illegally exported from India, are sold like hot cakes in foreign countries.¹⁴³ Ivory may

143. The criminals arrested from Kanthambhore National Park for illegal hunting of animals admitted that they used to sell skins and bones of tiger to a smuggler in Delhi who used to smuggle them to Nepal, China and Taiwan. The bones of tiger are used in medicine, teeth and nail are used as ornaments and skins are used for making trophies. Indian Express (Kochi), July 19, 1992, p.2. See also Centre for Science and Environment op. cit., p.172.

cost Rs.5,000/- per k.grm. in the market and the skins of tigers and leopards may cost Rs.1.5 lakhs where as the amount of fine is only Rs.25,000/- It is suggested that the maximum amount of fine should further be enhanced so as to enable the judge to impose suitable penalties depending on the type of the animal killed.

Another loophole in the Wildlife (Protection) Act 1972 is the retention of the provision for compounding of offences.¹⁴⁴ Compounding provision which enables a smuggler to release the property on payment of a maximum amount of Rs.2,000/- is no better device to control illegal hunting and smuggling of wild animals and animal articles. It is not difficult for smugglers to pay a meagre sum of Rs.2,000/- as compounding fees if they are caught by the enforcement personnel. The value of wild animals cannot be estimated in terms of money, since the loss to the ecosystem and the disturbance to ecobalance consequent on their tilting cannot be computed and compensated in terms of money. Further, once an endangered species of wildlife has become extinct, it is impossible to restore the species again. Compounding is more

144. Wildlife (Protection) Act 1972, S.54. The 1991 amendment vested the power to authorise compounding in the Central Government but did not change the quantum of fee for compounding. Wildlife (Protection) Amendment Act 1991, S.38.

advantageous to the traders dealing in animal articles and trophies, since it enables the offender to get rid of all liability once the compounding fee is paid. He can also get the seized property back, if he is having a certificate of ownership over it,¹⁴⁵ and can carry the smuggling operations unhindered. So it is suggested that the compounding provision should be deleted from the Wildlife (Protection) Act.

In order to minimise illicit export of wild animals and animal articles, customs barriers in India and abroad should be strongly guarded and strengthened. Protection of wildlife should be taken as a goal at national and international level. International agreements seeking co-operation in protecting flora and fauna¹⁴⁶ should be

145. Property can be released if it is not Government property. Id., S.54 (2). Certificate of ownership can be granted by the Chief Wildlife Warden under S.49-C of the Wildlife (Protection) Act.

146. For eg. India signed the convention on International Trade in endangered species of Wild Fauna and Flora (CITES) in 1973 in Washington along with 80 other countries to seek international co-operation to protect fauna and flora against over exploitation through international trade and illicit export. See for text of the document, American Journal of International Law Vol.68 (1974), pp.197-211. Since the parties to the 'CITES' convention declared African elephants as an endangered species in 1989, India also banned import of African ivory for commercial purposes by amending the law relating to wildlife. See Wildlife (Protection) Act 1972, S.44 as amended by the Wildlife (Protection) Amendment Act 1991.

honoured and properly enforced against defaulting nations.

Forest along with wildlife needs protection for the healthy subsistence of human beings on earth.¹⁴⁷ On sympathetic considerations also, killing of wild animals and birds should be discouraged. The right to live in this beautiful earth is not the sole privilege of human beings. There are animals which are more intelligent than man.¹⁴⁸ Some animals have even started asserting in their own way recognition of their rights.¹⁴⁹ Human

147. Judiciary has acknowledged this fact. In Babulal v. State 1982 Cri.L.J.41 dismissing a revision petition filed by persons convicted for unlawfully keeping leopard skins in their factory premises, Justice M.L.Jain of the Delhi High Court observed at p.46,

"Preservation of wildlife is vital not only for the animals themselves but also for ecological balance and survival of the human race".

In Forest Range Officer v. Aboobaker 1989 (1) KLT 871 the High Court of Kerala set aside the acquittal of 3 accused persons charged for illegal hunting of a bison from Nilambur forest, protecting the interest of preserving the wildlife of India.

148. Scientists speculate that whales have higher intelligence than human beings, since the whale has a brain six times bigger than human brain with neo-cortex (functioning as the organ of memory) well developed. Anthony D. Amato and Sudhir K. Chopra, "Whales : Their Emerging Right to Life" in American Journal of International Law Vol.85, No.1 (1991), p.21.

149. In Assam, deforestation and loss of vegetation has affected the life style of elephants in Nambor forest in North Cachar hills. The non-availability of food in forest has compelled elephants to stand on the middle of the road running through the forest and put their trunks into the cabins of trucks, buses and cars in search of food. Only when the elephants are

contd.

beings should not leave other living beings to suffer for meeting his selfish ends. Threat to wildlife should be minimised by giving humane treatment to living creatures and by protecting the forest which form the habitat of wild animals. Framing of law and its implementation alone is not sufficient to achieve this object. Much depends on the will of the people. The members of the public and the forest officials should be encouraged to take a sympathetic approach towards wild creatures. They should also be educated on the role played by living creatures in maintaining the ecobalance and made aware of the need to protect wildlife.¹⁵⁰

Farmers living near forest should be discouraged from encroaching into the forest or cultivating up to the edge of forest so that their crops are not destroyed by wild animals.¹⁵¹ They should be encouraged to deviate from

given something to eat do they allow vehicles to pass. Romesh Bhattacharji, "Raiders of the lost woods : The elephants of Nambor forest", Frontline, July 3, 1992 pp.73, 74.

150. The World Congress on National Parks and Protected Area which met in Caracas, Venezuela from 10-22 January 1992, emphasised the vital role of environmental education and the need to urge all governments to strengthen their programmes for protecting national parks, sanctuaries and protected areas. Environmental Policy and Law Vol.22 (1992), pp.87 & 121.

151. In developing countries like India the pressure on forests increases along with the demand for food. Agricultural fields often encroach into forest. Dr. M.S.Swaminathan "Equitable Development : Focus - sustainable development". The Hindu Survey of the Environment 1992 (1992), 122 at p.125.

their traditional way of agriculture and resort to intensive cultivation on small plots of land away from forest adopting modern agricultural methods and techniques. Incentives should also be given for starting cottage industries like sericulture and bee keeping so as to augment the income of farmers without disturbing forest and its fauna. Due regard should also be given to protect the interests of the tribal people by offering them new sources of livelihood.¹⁵²

Voluntary organisations should be encouraged to take part actively in the programmes for conserving wildlife. They can also help the Government in spreading and disseminating knowledge and information relating to wildlife and to make the public conscious of the need to protect forest.¹⁵³ Wildlife protection societies have been established in U.S.A. and U.K. to preserve fauna from wanton destruction.¹⁵⁴ Such societies have been

152. See for details supra, ch.9, nn.121,122

153. In Kerala the Wildlife Wing of the Forest Department has been trying to make people aware of the need to protect forest by displaying postures of wild animals in public places with inspiring slogans under it. News papers and mass media are also contributing much towards this direction by publishing and arranging programmes about conservation of wildlife.

154. F.W. Champion, "The Preservation of Wildlife in India : The United Provinces", Sekhar Singh (Ed.), Environmental Policy in India (1984), p.146.

started in India also but they are not receiving much co-operation from the public.¹⁵⁵

Efforts are being made by the Government of India to conserve wildlife with the participation of the members of the public. In 1983, the Government of India framed a National Wildlife Action Plan¹⁵⁶ to lay down the spheres of activity by which wildlife could be conserved. Management of protected areas with due regard to the needs of the local people and ensuring their support and involvement and restoration of degraded habitats to their natural state are among the things declared to be objectives of the Government in undertaking programmes to conserve wildlife.¹⁵⁷ The Indian Board of Wild Life is also giving due regard to promote public interest in wildlife conservation in harmony with natural and human environment.¹⁵⁸

The Planning Commission of India also has given due regard to the efforts to conserve wildlife. During the

155. Ibid.

156. See for text, Indian Journal of Public Administration Vol.XXXV (1989), pp.710-719.

157. Id., pp.710, 711.

158. The Indian Board of Wild Life (IBWL) was set up by the Government of India in 1952 to devise ways and means for conserving wild life through legislative and practical measures. V.P.Agarwala, Forests in India : Environmental and Production Frontiers (1985), p.219.

7th five year plan period, a new scheme with hundred percent Central assistance was started in Assam for the conservation of rhinoceros.¹⁵⁹ For the first time a Status Report on National Parks and Sanctuaries was prepared as a base document for the assessment of schemes for the protection of wild life.¹⁶⁰ An autonomous wild-life institute was set up in Dehradun to take up research, management training and education in matters relating to wild life.¹⁶¹ The new forest policy¹⁶² adopted during the seventh plan period gave importance to conservation of wild life and stated that forest management plans should include prescriptions for wild life conservation.¹⁶³ The policy also stressed the need to link protected areas in order to maintain genetic continuity between artificially separated sub-sections of migrant wildlife.¹⁶⁴ These policies if effectively implemented through co-ordinated legislative and practical measures can protect wild life from extinction.

159. Government of India, Planning Commission Seventh Five Year Plan 1985-90 Mid-term Appraisal (1988), p.244.

160. Ibid.

161. Ibid.

162. Resolution No.3-1/86 F.P. Ministry of Environment and Forests, Department of Environment, Forests and Wildlife dated 7th December 1988. See for Text Appendix II

163. National Forest Policy 1988, para 4.5.

164. Ibid.

Efforts to conserve wildlife do not imply complete closure of the doors for revenue. Due regard may be given to the revenue funds of the Government without doing detriment to wildlife. Provision should be made for extracting and processing the skins and tusks of wild animals dying naturally. If official marks¹⁶⁵ are affixed on such articles and sold in public auction or to public limited companies, State can earn much revenue. People should be advised to purchase only the goods having official marks on it so as to avoid illegal trade of such articles.

Provision should also be made for collecting and processing ivory collected from domestic elephants dying naturally so that the valuable forest produce is not unnecessarily wasted.¹⁶⁶ They can be lawfully exported

165. The goods can be handled by the State Forest Department or labels like 'ECOMARK' can be affix on it by the officer in charge in the Ministry of Environment and Forests. See for details supra, ch.4, n.161.

166. In Kerala the Guruvayur Devaswom has in possession ivory worth Rs.27.3 lakhs. The Thiruvambady temple of Thrissur has 120 kilo grams of ivory worth Rs.6 lakhs and the Sankaramkulangara temple has about 52 kilo grams of ivory in its possession. Now the ivory has become a worthless burden for them, because of the total ban imposed on trade in ivory by the Wild Life (Protection) Amendment Act 1991. Indian Express (Kochi), July 30, 1992, p.5.

to foreign countries so as to earn valuable foreign exchange.¹⁶⁷ Such lawful export may also reduce the chances of illegal hunting and smuggling of forest produce to meet the demands of foreign markets.

167. Japan used to import ivory for making name seals called 'Hanko'. In 1988, Japan imported 106 tonnes of unprocessed ivory and 26 tonnes of finished ivory. But in 1990, Japan imposed a ban on import of ivory to save elephants from extinction. 1990 F.L.T. p.9.

PART VI

CONCLUSION AND SUGGESTIONS

CHAPTER 11

CONCLUSION AND SUGGESTIONS

Forest is a valuable component of human environment. For healthy subsistence of human beings on earth it is essential that at least one third of the land area on earth should be under forest cover. Forest helps in keeping air and water fresh and climate good. It maintains the ecobalance in nature. It supplies food materials to those who live in forest and raw materials for many industries in the plains. Undoubtedly, forest is to be protected on environmental and economic considerations and also in the interest of tribal people living there.

Forest was in abundance in ancient India. The religion, culture and tradition of ancient India favoured protection of flora and fauna. Only rational utilisation of forest resources for human needs and welfare was made. However, imperial control over Indian forest initiated by Indian rulers and continued by the British regime brought out a revenue oriented policy towards forest. The Britishers favoured over-exploitation of Indian forests to protect the mercantile interests and to meet the demand of

their army and navy. The Forest Acts of 1865, 1878 and 1927 were instrumental in achieving that object. Even after independence, the revenue oriented policy towards exploitation of forest was not changed and the Indian Forest Act 1927 continued to be in force in Indian territories. States which enacted separate legislation on forest relied on the provisions of the Indian Forest Act without analysing the impact of such a law on forest.

The United Nations Conference on human environment held in Stockholm in 1972 aroused a world wide environmental consciousness. It had its impact in India also. The Constitution of India was amended in 1976 to include environmental safeguards. The Forest (Conservation) Act 1980 was passed to arrest large scale deforestations. Department of Environment and Forest was established at the Centre. Judiciary made landmark decisions to ensure environmental protection. The people of India became more and more aware of the environmental significance of forest. They even started revolts against deforestation. In spite of all these changes in outlook and approach, the Indian Forest Act 1927 and the legislation framed by different States on the lines of the Indian Forest Act remained the same as before. They do not reflect a policy of environmental protection. Instead, they continue the revenue oriented approach of the colonial era.

The Indian Forest Act 1927 and State legislation relating to forest impose Governmental control over forests by classifying them into reserved forests, protected forests and village forests. This three-fold classification has no relevance in protecting the environmental value of forest. It only denotes the differential degree of control exercised by the Government over the rights of communities over forest. The controls are imposed to earn maximum revenue from forest. The revenue oriented policy is more evident in the Forest Acts of Tamil Nadu, Karnataka and Andhra Pradesh. These enactments contain special provisions imposing governmental control over valuable species of trees like sandal, catechu, teak and rose wood standing on any land. The State of Kerala has gone a step further. It has, by a separate legislation, imposed controls on valuable trees. The provisions in the Central and State forest legislation empowering the Government to impose duty on timber and other forest produce and the provision for compounding of forest offences also throw light on the revenue oriented policy towards forest.

Even as a revenue oriented legislation the Indian Forest Act is not devoid of defects. The Act prescribes punishment of six months' imprisonment and fine of Rs.500 for offences like felling of trees or clearing of land in

Government forest. This is inadequate. Such punishment is neither effective to prevent the commission of offences nor sufficient to compensate for the loss arising from such commission. There is need to impose prohibitive fines. The States of Tamil Nadu and Karnataka provide good examples. In Tamil Nadu if the offence relates to valuable timber, three years' imprisonment and a fine of Rs.10,000 can be imposed on the offender. In Karnataka the maximum punishment for offences relating to sandalwood extend up to seven years' imprisonment and a fine of rupees twenty five thousand. If such prohibitive fines are extended to all types of forest offences, commission of offences can be considerably reduced.

A law which is framed to implement one policy cannot be effectively used to implement another policy which stands in contradiction to it. The Indian Forest Act 1927 reflects the revenue policy adopted by the British. No wonder it fails to be an effective instrument to protect and preserve the environmental values of forest. Even enactment of another law to supplement the original law may not fully serve the purpose of protecting forest on environmental considerations. The Forest (Conservation) Act 1980 enacted to arrest deforestation is only such a supplementary legislation relating to forest. The Act does not fully transfer the powers over forest to the Central Government. It only makes it mandatory for the State Government to get the sanction of the Central Government before using forest land for non-forest purpose.

Such partial control has proved to be ineffective. States may not favour such controls imposed by law which minimise the revenue accruing to them from forest wealth. So the Forest (Conservation) Act is frequently violated by State Governments on one ground or other. The ill-defined term 'non-forest purpose' in the Act provides loopholes for abuse of power by State Governments.

It is true that forest is a major source of revenue for the State. Timber plays a significant role in industrial development. Quarrying of stones and minerals abundant in forest areas and construction of hydroelectric and irrigation projects in suitable localities in forest area are also the needs of the day. However, if forest is over exploited and destroyed on developmental and revenue considerations and environmental values totally ignored, it may lead to serious environmental hazards, leaving human life in peril. The environmental and revenue/developmental factors should not be viewed as mutually contradictory. Optimum revenue should be realised from forest resources. But such exploitation should not lead to destruction of their regenerative potentialities. Exploitation is to be made on scientific lines. In cases where developmental activities necessitate clearing of forest land, care should be taken to see that such activities do not go beyond the carrying capacity of the life

support system. Environmentally sound development - sustainable development - should be the policy to be followed by the Government and the decision makers when granting permission to exploitation of forest resources or starting of development projects in forest area.

In order to ensure sustainable development a cost benefit analysis must be made before development projects are undertaken. Economic costs including environmental costs should be taken into account. If the net benefit of the project is minimum or nil in view of the costs, the project should be dropped.

Developed countries like U.S.A. have incorporated the principles of conservation and sustainable development in their environmental legislation. Their forest planning is based on principles of protection, conservation and preservation taking into account ecological and environmental significance of forest. The National Environmental Policy Act 1969 of U.S.A. requires every federal agency to prepare an environmental impact statement before proposing any major federal action significantly affecting the quality of human environment. Before preparing the environmental impact statement the responsible federal official is required to consult experts, consider the view of other federal state and local agencies and the public

about the proposed action. Similar measures, which ensure sustainable development, should be incorporated in the law relating to forest in India also.

At the early stages, the Indian judiciary was reluctant to appreciate the environmental consequences of development and deforestation. However, in the eighties the judiciary began to play a significant role in protecting the forest environment. Courts decided several cases harmoniously reconciling the conflict between environment and development.

The process of environmental protection through litigation has its limitation. The court can look only into those matters which come before it. There may be a number of instances involving environmental degradation which are not brought before the court. Sustainable development can be more effectively implemented, if the strategy of environmental impact assessment is incorporated in the legislation relating to forest.

Recently the Central Government has issued notification under the Environmental Protection Act 1986 making environmental clearance mandatory for certain listed projects. It would be better if the requirement of environmental impact assessment is clearly laid down in the legislation itself. Such arrangement will give more scope for democratic formulations of the controls on

developmental actions and facilitate judicial intervention in cases where the implementation of arbitrary administrative decisions deteriorates the environment.

Effective environmental impact studies facilitate adoption of the practice of sustainable development. Permission should not be granted for a project before examination of its impact on the flora and fauna in forest. Local bodies can play a significant role in promoting the environment. Each Panchayat, Municipality and Corporation should take steps to see that a good portion of its geographical area is brought under tree cover.

Population growth is a major cause for environmental degradation. It also results in denudation of forest. Hence measures to curb growth of population should have priority in the agenda of action for environmental protection. The poor and needy often encroach upon forest land for food, shelter and fuel. The use of wood as fuel should be minimised by popularising improved chulas, bio-gas and petroleum gas stoves in rural areas. In order to reduce the thrust on forest for timber, members of the public should be encouraged to minimise the use of wood in construction works and to use substitutes for such works as far as possible. Economic incentives should be given by the State for encouraging such ventures.

Forest should not be cleared for purposes of agriculture. Instead, intensive cultivation on existing agricultural land should be practised using better varieties of seeds and environmentally friendly fertilisers, insecticides and pesticides to increase the crop.

Governmental control over private forest has not been effective in India in protecting private forest from deterioration. In Kerala, much of the vested forest remains under the control of the State Government and are managed like reserved forests. The restraints imposed on owners of private forest by legislation in the States of Tamil Nadu, Karnataka and Orissa helped only to increase illegal felling of trees by the owners themselves. The management of forest by forest officers as is done in Bihar also opened chances for abuse of power by them for personal gain. Management of private forest by the owners themselves with the supervision of the Forest Department as done in Uttar Pradesh and West Bengal is better than the system of total government control adopted in other States. The management pattern of private forest should be designed in such a way as to protect the environmental values of forest.

Serious problems are involved in implementing forest legislation. State Forest Departments do not have

adequate staff, weapons, vehicles, communication facilities and facilities to keep seized goods in safe custody. The training given to the staff is inadequate. Forest personnel are not properly equipped to fight against smugglers and encroachers. The forest departments do not have modern fire-fighting equipments to protect forest from fires. Infrastructural facilities require improvement in almost all States for protecting forest.

The field staff of the Forest Department in Kerala are not satisfied with their service conditions. They are not given adequate incentives for the risky jobs undertaken by them. The frequent transfers and the lack of quarter facilities in the place of duty prevent them from leading a settled life. Political interference to save offenders and smugglers hinders honest discharge of their duties. This, together with the inadequate facilities in the Department makes some of the officials corrupt and lenient towards offenders and smugglers. The situation in other States also are not different. The service conditions of the field staff should be improved by adequate incentives by way of promotion, risk allowances and risk insurance coverage. Quarter facilities should be given to the field staff.

Forest check-posts have failed to prevent illicit transit of forest produce. The clever techniques played by offenders often make detection of offences and the arrest of offenders difficult. Nationalisation of timber trade may considerably reduce the illicit transaction in timber. Saw mills shall be run by Government and not by private persons. Timber cut from private lands may be permitted to be sold in the Government saw mills at reasonable prices fixed by Government. Processing of timber after it is cut into planks may be left to private agencies so as to meet the needs of wood articles.

Law relating to possession and transit of valuable trees like sandal wood is not uniform throughout India. Absence of inter-State co-ordination creates problems at the border. Inter-State problems can be minimised if a central forest legislation is applied uniformly throughout India.

Restrictions imposed on the cutting and possession of sandal wood, grown in ones own land may be relaxed. Sandal wood is of high demand for industrial use. If private land owners are free to cut, possess and sell the sandal trees grown on their land, more people will come forward with programmes for raising of such trees. If sandal wood is available in plenty in the market, people may not smuggle sandal wood from Government forest at the

risk of their lives. People may also be encouraged to cultivate other valuable trees like teak, rose wood and ebony so that unlawful intrusion into the Government forest for these trees can be minimised.

Effective implementation of forest laws requires co-ordination between forest, police, revenue and excise departments. While police can help in arresting the offenders, the Revenue Department can assist the forest personnel in identifying, surveying and recording the area of Government forests. Encroachments could then be quickly found out and steps taken to evict the encroachers. The Excise Department can help arresting of offenders who cultivate narcotic plants in forest areas.

Effective implementation of forest laws also requires co-operation and help from the members of the public. In order to make the public law-abiding they should be made aware of the beneficial effects of forest through extensive educational programmes. They should be associated with the management of forest. Forest management with public participation has proved to be a success in West Bengal, Uttar Pradesh and Orissa. In those states forest protection committees constituted by members of the public have been helpful in protecting forest from offenders. They have also made substantial contributions in programmes of regenerating degraded

forests. Strategies of this type may be adopted in all States in India so as to protect forest from deterioration.

Prosecution of forest offenders involve some problems. Failure to produce before the court notifications and other records relating to forest have resulted in acquittal of the accused. This could be avoided if a legal cell is created in the Forest Department. The cell may keep up-to-date records and notifications relating to forest and can assist the prosecution to successfully conduct the cases involving forest offences.

There are defects in the forest law which also contribute to acquittal of the accused. The Indian Forest Act and State legislation relating to forest do not define the term 'forest'. Some offences are not properly defined. Abetment is not made an offence. Legal provisions delegating legislative powers to the State Government do not clearly lay down the guidelines. If these loopholes in the law are plugged, the number of acquittals can be reduced. There is also the need to establish a Forest Court in each district for speedier disposal of cases relating to forest.

In India, the stress on natural forest for fuel and fodder is attempted to be reduced by a scheme of

social forestry. The programme has succeeded in extending the area under tree cover. However, objection has been raised regarding the species of trees planted in social forestry. Planting of acacia, eucalyptus, polyalthia, casuarina, subabul and alianthus in social forestry programmes is not welcomed by Indian farmers since they yield only timber. It is also alleged that since the wood of eucalyptus is widely used in paper and pulp industries, the real beneficiaries of these trees are industrialists and not the rural poor. It is also proved that eucalyptus is not an ecologically suitable species to be used widely in social forestry programmes. Eucalyptus reduces the fertility of the soil by absorbing all available water in the subsoil. It prevents the growth of other plants and micro-organisms in the soil due to the inhibitory alkaloids present in its leaves. Therefore planting of eucalyptus has to be limited to wastelands, hill-slopes and other areas where the soil is not fit for the growth of any other species of plants.

Monoculture is objectionable in social forestry. It has a negative impact on forest environment. Climatic conditions in forest favour the growth of a variety of flora and fauna within the shade of the leaf canopy. This will be lacking in the case of monoculture. Instead

of monoculture, if trees having more leaves and spreading crown are selected and planted in mixed plantations, it can create climatic conditions more or less identical to that of a natural forest. This would promote the growth of more flora and fauna, more deposit of humus and more yield of fuel and fodder and gradual natural regeneration of forest.

Another serious criticism levelled against the social forestry programmes in India is that social forestry encourages farmers to change the land use. There occurs a shift from food crop cultivation to farm forestry. Hence supply of fuel and fodder trees for farm forestry fails to seek co-operation from small farmers in some areas. Social forestry programme will be more successful if the species of trees supplied to farmers are those of their choice.

Social forestry programmes should be made more extensive. Local authorities, public corporations, companies, voluntary organisations and the members of the public including tribal people should be actively involved in implementing the programme. Industrial establishments should be encouraged to plant suitable species of trees in and around their premises so that problems of pollution may be minimised and the timber

can be used for industrial and other purposes. Social Forestry programmes should also be co-ordinated with the programmes of soil conservation and waste land development.

There exists a symbiotic relationship between forest and the tribal people. Deforestation, illegal encroachments into forest and development projects in forest area affect the tribal life. Forest legislation has adversely affected the interests of tribal people. The law did not contain adequate provisions to protect their rights in forest. Tribal people have not been destroyers of forest. They use forest resources in a sustainable way. The law relating to forest should permit the tribal communities to exercise their age old rights in forest. Care should also be taken to see that the tribal members are not made tools by plainmen to smuggle timber and other valuable forest produce. In the present deteriorated condition of Indian forest, the tribal people need not be encouraged to practice shifting cultivation. They should be trained in modern cultivation methods. Training tribal people in making useful fancy articles out of bamboo and other forest produce will reduce the problem of unemployment among the tribal people. Tribal people displaced when

development projects are undertaken should be properly resettled. Instead of resettling tribal people at places chosen by the Government, the tribal members should, as far as possible, be permitted to select areas of their choice. This will enable them to easily adapt themselves to the new surroundings. The task of forest protection can be effectively and successfully carried out if the Forest Department seeks co-operation and involvement of tribal people. Tribal members should be employed in sufficient number in the Forest Department as watchmen and guards. For appointment the minimum educational qualifications should be relaxed in the case of tribal candidates. If possible, they should also be given higher posts. The traditional tribal wisdom has to be meaningfully and profitably used in the protection and management of forest.

There exists a close interrelation between the flora and fauna in forest environment. Legal measures for protection of wildlife are therefore of considerable importance in protection of forest. The provisions in the Wildlife (Protection) Act 1972, should be strictly implemented so as to protect wildlife and its habitat. Punishments provided in the Wildlife (Protection) Act should be enhanced. Such deterrent punishment may protect the wildlife by preventing the commission of offences.

The provision for compounding of offences should be deleted from the Act so as to prevent the culprits from escaping criminal liability by payment of an amount. In Situ conservation of wildlife should be given more importance. The law relating to national parks, sanctuaries and biosphere reserves should be unified and uniformly implemented throughout India without regard to territorial barriers. Forest officials and the members of the public should be encouraged to take a sympathetic approach towards wild creatures, should be educated on the role played by living creatures in maintaining the ecobalance and made aware of the need to protect wildlife. Voluntary organisations should be encouraged to take part actively in the programmes for conserving forest and wildlife. Extracting and processing the skins and tusks of wild animals dying naturally alone shall be permitted. Official marks shall be affixed on such articles. Provisions should also be made for collecting and processing, through Government controlled agency, the ivory collected from domestic elephants dying naturally. Such measures shall ensure that the valuable forest produce is not unnecessarily wasted and also that wildlife is not wantonly destroyed for procuring the forest produce.

Protection of forest together with its fauna and the tribal communities can gradually build up the eco-balance in forest. In order to achieve this end there needs a thorough reorientation of the law and policy relating to forest.

The new Forest Act should provide for effective environmental impact study before development projects are undertaken in forest areas. The guidelines for this should be clearly laid down in the Act. The law should also provide for co-ordination of Central, State and local agencies and the members of the public in the planning and implementation of policies relating to forest. Provisions should be made for creation of a strong enforcement machinery at the Central level, with adequate trained staff. They should be provided with weapons, vehicles and other infrastructural facilities to protect and preserve forest from smugglers and encroachers.

Deterrent punishments should be prescribed for violation of the law. Imprisonment should be made compulsory. Prohibitory fines also may be imposed on offenders. There should be no provision for compounding. The law should shift the burden of proof from the prosecution to the accused.

The law relating to private forest should be made uniform throughout India. In some States private forests are vested in the Government. The remaining private forest in the country need not be taken over by the Government. Instead, the law should provide for management of private forest under the supervision of the Forest Department, in accordance with management plans designed with an environmental perspective. People should be permitted to plant what ever species of trees they want irrespective of their timber value, provided felling is done on scientific lines and without causing ecological problems. Clear felling should be totally banned even in plantations.

The law relating to forest should also clearly lay down the guidelines for implementing social forestry programmes. The Forest Department should be authorised to lease lands for planting useful trees. The new forest legislation should also recognise the traditional tribal rights in forest. The Indian Forest Act 1927 and the State legislation relating to forest with their outdated revenue policy and scheme should be replaced by such a new forest legislation framed with an environmental perspective. The new law should be uniformly applied throughout India.

APPENDIX I

PART II

THE FOREST (CONSERVATION) ACT, 1980¹

No.69 of 1980

27th December, 1980

An Act to provide for the conservation of forests and
for matters connected therewith or ancillary
or incidental thereto

Be it enacted by Parliament in the Thirty-first
Year of the Republic of India as follows:

1. SHORT TITLE, EXTENT AND COMMENCEMENT:-

- (1) This Act may be called the Forest (Conservation) Act, 1980.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall be deemed to have come into force on the 25th day of October, 1980.

1. Received the assent of the President on December 27, 1980, published in the Gazette of India, Extra., Part II, Section 1, dated 27th December, 1980, pp.737-38.

2. RESTRICTION ON THE DE-RESERVATION OF FORESTS OR
USE OF FOREST LAND FOR NON-FOREST PURPOSE:

Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing -

- (i) that any reserved forest (within the meaning of the expression 'reserved forest' in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;
- (ii) that any forest land or any portion thereof may be used for any non-forest purposes.
- ²(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation and owned, managed or controlled by Government;

2. Ins. by Act 69 of 1988, dated 19.12.1988.

- (iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for re-afforestation;

3

Explanation:- For the purpose of this section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for -

- (a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;
- (b) any purpose other than re-afforestation, but does not include any work relating or ancillary to conservation, development and management of forests and wild life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes trench-marks, boundary-marks, pipelines or other like purposes.

3. Subs. by ibid.

APPENDIX II

No.3-1/86-FP

Ministry of Environment and Forests

(Department of Environment, Forests and Wildlife)

Paryavaran Bhavan, CGO Complex,
Lodi Road, New Delhi - 110 003.

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 fuelwood, 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 fuelwood, 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, arid 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 timebound 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 micro-climate.

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 possible, 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 Government 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 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 area 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 post-graduate 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;-

- i) 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.
- ii) Revegetation of barren/marginal/waste/mined lands and watershed areas.
- iii) Effective conservation and management of existing forest resources (mainly natural forest eco-systems).
- iv) Research related to social forestry for rural/tribal development.
- v) Development of substitutes to replace wood and wood products.
- vi) Research related to wildlife and management of national parks and sanctuaries.

4.13. Personnel Management.

Government policies in personnel management for professional forests and forest scientists should aim at enhancing their professional competence and status and attaching 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.

APPENDIX III

GOVERNMENT OF KERALA

Abstract

Sandalwood trees in Patta lands - Removal of - proposal regarding - sanction accorded.

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Agriculture (Forest) Department

G.O.MS. 126/73/AD

Dated, Trivandrum 3-4-1973.

=====

Read: 1) Govt. letter No.91931/F1/68/AD dated 14-12-68.
 2) Letter No.G1.13547/70 dated 18-8-1970 from the Chief Conservator of Forests.

O R D E R

In the letter read as first paper above, Government stayed the issue of passes for the transport of sandalwood from patta lands pending further orders.

Several parties have represented to Government to vacate the stay imposed on the issue of passes for the transport of sandalwood on the ground that they are put to heavy loss due to their inability to transport and sell the produce on account of the stay order.

As the existing rules are inadequate to prevent smuggling of sandalwood, rules are being framed to safeguard the interest of Government in the matter. In the meanwhile the Chief Conservator of Forests has made a

proposal in the letter read as second paper above to minimise the hardship of those people affected by the stay. According to it the Forest Department will purchase the sandalwood trees on private lands on reasonable terms, if the parties are agreeable. The Department will extract sandalwood, sell it in auction and pay the land owners 70% of the proceeds leaving 30% to the Department. The Chief Conservator of Forests has stated that, this procedure if approved will considerably reduce the prospects of smuggling.

Government accept the proposal of the Chief Conservator of Forests subject to the following condition.

1. No additional staff will be sanctioned on any account.
2. Payment to the owner will be made only after the disposal of sandalwood collected.
3. The owner will not have any right over the sandalwood collected by Government.

By order of the Governor,

K.K. GOPALAN,

Deputy Secretary to Government.

To

The Chief Conservator of Forests

The Accountant General (This issued with the concurrence of Finance Department.)

APPENDIX IV

PROCEEDINGS OF THE GOVERNMENT OF KARNATAKA

Subject:- Providing immunity to the Forest personnel whenever they open fire to protect Government property and life - regarding.

ORDER NO.AHFF 30 FSW88, BANGALORE, DATED, 20th Sept.1991

- Head:- 1) Letter No.86.MNL.CR.14/87-88 dated 23.6.88 of the Principal Chief Conservator of Forests.
- 2) D.O.letter No.31.ACCF (WL).SAB/29/87-88, dated 26.7.1988 of the Additional Chief Conservator of Forests (Wildlife Preservation) addressed to the Special Secretary to Government.

Preamble:

Pursuant to the decision arrived at in the meeting held on 9.3.1988 at Nagarhole National Park that for protecting forests, the strength of the forest guards should be increased and also that they should be given more facilities, Government have considered the question of providing immunity to the Forest personnel from being arrested whenever they meet with compelling circumstances and shoot the smugglers in self-protection.

The Principal Chief Conservator of Forests also in his letter cited at (1) above has stressed the need to provide immunity to the Forest Personnel and stated that enormous increase in the value of forest produce has resulted in increased activities of the smugglers in the state particularly in smuggling of valuable forest produce like Sandalwood, Rosewood, Teak and Poaching of elephants for ivory. To prevent the poaching and smuggling Government have supplied guns to the Forest Officials, as the smugglers more often than not come prepared with guns and

other lethal weapons generally more powerful than what is provided to the Forest Personnel. On a number of occasions, the forest subordinates had to fire at the smugglers in self-defence and also to safeguard the Government property. In almost all cases of firing, the subordinates who are involved were arrested and in a few cases even charge of murder was brought on them and for this they had to undergo a lot of mental agony. This has affected the morale of the Forest Personnel to a great extent, leading to their, not using the fire arms even when an occasion demanded it.

The Principal Chief Conservator of Forests has therefore suggested that to maintain a fair amount of motivation among the subordinate staff and in order to bring out the best in the discharge of their duties a notification under Section 197 (3) of the Code of Criminal Procedure be issued providing immunity to the Forest Personnel.

ORDER

After careful examination, Government of Karnataka in exercise of powers conferred under Section 197 (3) of the Code of Criminal Procedure, hereby direct that:

- (i) the fire arms may be used by the Forest personnel of the rank of Forest Guard and above, to protect forest property as well as their life from the Forest offenders. They could use minimum possible force in due discharge of their duties, exercisable being the right of private defence as conferred under the Indian Penal Code (Central Act XLV of 1860).
- (ii) the powers to use fire arms for dispersal of unlawful assembly need not be conferred on the Forest Officials,

- (iii) while in the discharge of their duties, if any firing is resorted to, a magisterial enquiry by the Executive Magistrate of the concerned area should be ordered in all such cases, and as a consequence of such enquiry if it is held that there was unnecessary, unwarranted or excessive use of force, a criminal case could be instituted against the delinquent officers after examination by the Government. Till the recommendation of the Magisterial Enquiry is known, police should not arrest or proceed against the officers who had opened fire etc.
- (iv) in case any allegation of torture by Forest Officials arises, provision similar to the Police standing order may be incorporated in the Karnataka Forest Code and it may be followed; and
- (v) in cases of allegation of rape, the accused may be placed under suspension and then Magisterial Enquiry be conducted. Based on the enquiry a case may be filed or departmental action may be taken against the Officials concerned, if need be.

Instructions about the use of fire arms by forest officials with reference to their responsibilities, legal position, relationship with Police, Magisterial Enquiry etc., mentioned in the Annexure to this order are for strict compliance and codification in the Karnataka Forest Manual.

This order is issued with the concurrence of Home Department vide their Note No.HC/572, dated 4.5.91.

By order and in the name of
the Governor of Karnataka,

(P.V.KRISHNAKUMAR)
Under Secretary to Government,
Animal Husbandry, Fisheries &
Forest Department.

ANNEXURE - I TO THE GOVERNMENT ORDER NO.AHFF 30 FSW 88,
DATED, 20th SEPTEMBER 1991.

A. Type of Firearms:

In the Forest Department it has been decided to standardise, the type of firearms as follows:-

- a) Range Forest Officer and above - 9 MM Pistols.
- b) Forester and Forest Guards - DBBL Guns.
- c) Rifles (Sandal and Elephant Poaching areas).

B. Powers of Forest Officials:

There are no specific provision of law in Indian Penal Code, Criminal Procedure Code, Karnataka Forest Act, Wildlife Protection Act, etc., giving them powers to use fire-arms. Like other Citizens., the Forest Officials also can exercise their right of private defence under Section 96 to 106 of the Indian Penal Code. However they will enjoy certain amount of protection from criminal prosecution by police, for the acts done by them in good faith.

C. Circumstances under which the Forest Officials can open fire:-

1) It must be clearly understood that the Forest Officials can use their fire-arms inside the Reserve Forest areas only. Here also where there are villages, Forest settlements and hamlets of hill tribes, they should not use fire-arms.

2) Unlike Police Officers, the Forest Officials are not empowered to disperse an unlawful assembly by using fire-arms and hence the Forest Officials should not use fire-arms for this purpose even inside the Reserve Forest area. If there is resistance to arrest, execution of

warrant, recovery of Stolen property etc., by villagers inside the Reserve Forest area, they should not use fire-arms and they should take the help of local Police having jurisdiction. There are provisions to provide Armed Reserve Police men to help the Forest Officials, in clearing encroachments and for giving protection in the discharge of their Official duties. On such occasions the Senior-most Forest Official will take the responsibility.

3) Under the right of private defence, the Forest Officials can open fire for:

- a) protecting the forest property including wildlife.
- b) protecting the lives of Forest Officials, when there is no other alternative.

4) Some of the examples are given below:-

- i) when the forest offenders are cutting valuable timber and they do not surrender when challenged by Forest Officials.
- ii) When valuable timber is being transported either on head loads or in vehicle, and they do not stop when ordered by Forest Officers.
- iii) When elephant poachers armed with weapons are preparing to commit an offence or are actually committing an offence or going with wildlife trophies and they refuse to stop and hand over the properties when ordered to do so by Forest Officials.
- iv) When outsiders enter the Reserve Forest area with arms for shooting without licence, and they refuse to hand over weapons when ordered to do so by Forest Officials.
- v) When the number of Forest Officials is outnumbered by offenders and there is imminent danger to the lives of Forest Officials or fire-arms carried by them.
- vi) When the offenders surround or confront the Forest Officials with superior weapons and there is imminent danger to the lives of Forest Officials or their weapons.

vii) When any forest official is taken hostage by offenders and there is no time to get reinforcements and hence they have to rescue their colleague.

5) These examples are only illustrative and the Officer using fire-arms, should use his discretion and he should be able to justify that he had to use firearms as the last resort.

6) The power to use fire-arms, is only meant to stop the criminal and hence the purpose should be to injure, rather than kill. Firing should not be done indiscriminately and vindictively. In other words, firing should be stopped as soon as the objective is achieved. During enquiry the onus will be on the Forest Officials, to justify the use of fire-arms.

D. Action to be taken after opening fire:

- i) As far as possible, firing should be avoided during night time because it may not be possible to aim and fire and also innocent persons may be injured/killed.
- ii) The seniormost Officer going with the Forest party should order opening of fire and similarly he should control the fire and own responsibility.
- iii) As soon as firing is done, there are three possibilities.
 - a) None may be injured due to firing,
 - b) One or more offenders may be injured due to firing.
 - c) One or more offenders may be killed.

In all cases, a message should be sent by telegram/telephone/wireless/messenger without loss of time, to the following authorities (See Annexure-III).

- 1) Nearest Police Station
- 2) Deputy Conservator of Forests
- 3) Conservator of Forests
- 4) Chief Conservator of Forests (Gl./Dev).
- 5) Superintendent of Police
- 6) Deputy Commissioner
- 7) Assistant Commissioner.

As soon as the Police get the message, they will visit the scene, take charge of the deadbody, if any and arrange for inquest by the Deputy Commissioner and post-mortem. They will also ensure that there will be no law and order problems as a result of firing.

- iv) The injured persons (culprits and forest Officials) should be sent to hospital for treatment, the Senior most forest official must lodge a complaint in writing at the Police Station having jurisdiction outlining the circumstances under which he had to open fire/the number of persons injured/dead etc.
- v) The Forest Officials should protect the scene from being disturbed, arrange for photographing the scene of crime. They will await the arrival of the Deputy Commissioner for an enquiry. Till then the dead body should not be removed. It is advisable to photograph the scene as well as the body before it is removed.
- vi) Arms and ammunition including empty cartridges should be accounted for and the weapon used for firing should be preserved.
- vii) The police will wait for the completion of enquiry by the Deputy Commissioner. Till then no forest official will be arrested or put up for identification parade etc., However the forest officials should extend fullest co-operation for investigation by police searching for absconding accused, searching for weapons, used by offenders etc.

- viii) No case of offence report will be registered by the Forest Officials when fire-arms are used. Since the police officials have powers under the Forest Act and the Wildlife Protection Act, the Forest Offence will also be looked after by them as part of their investigation.
- ix) The Deputy Conservator of Forest will collect the details and send a detailed report to the Chief Conservator of Forests/Conservator of Forests/Government in consultation with the Superintendent of Police.
- x) The Deputy Commissioner's report will be scrutinised by the Government and the following courses are likely:
 1. Opening of fire by Forest Officials may be justified.
 2. Opening of fire may not be justified in which case criminal action will have to be taken against those forest officials who opened fire. This will include arrests, identification parade etc.
- xi) The Deputy Commissioner has the discretion to dispense with an enquiry, in which case he has to record reasons and intimate the Government. In case the Government agrees with the recommendation of the Deputy Commissioner no action may be necessary. But if the Government does not agree an enquiry has to be held.

E. General instructions regarding safety of weapons and training.

- i) Whenever forest officials go into the Reserve forest area with fire-arms, there should be a minimum of 2 persons, with fire-arms. On no account a single weapon should be taken since his weapon may be snatched or he may not be able to use fire arms due to misfire.
- ii) As far as possible, use of fire-arms should be minimum where there is time to get additional force or to retreat successfully, such courses should be followed. In other

words, firing should be thought of only under extreme circumstances when there is no other alternative.

- iii) In the case of DBBL guns they should be kept in arms racks with chain and a lock. The ammunition should be kept in a box under lock and key. Similarly 9 MM Pistols should be kept in Holster and kept in a box separately with a lock.
- iv) When 9 MM pistols are taken out, they should be linked to a long whistle-cord around the neck of shoulder so that the weapon cannot be snatched easily. The ammunition in 9 MM pistols should be loaded in magazine and ready for use but they should not be loaded in the weapon.
- v) While marching 9 MM Pistols and DBBL guns should not be loaded as there might be accidents. The ammunition should be kept separately and loaded on the specific orders of the Officer-in-charge where they are moving in a dangerous area or they expect an attack, weapons may be loaded but the safety catch should be on.
- vi) All arms and ammunition should be accounted for, in the office of Chief Conservator of Forests (General) and the Deputy Conservator of Forests in "Arms and Ammunition Register". The Form of register used by Police may be copied.
- vii) The weapons should be issued to Officers and men by name and their acknowledgement should be obtained in Arms Card (as in Police). A weapon issued to an Officer would not be used by another, except in an emergency.
- viii) All the weapons should be oiled and cleaned and sent for reborning periodically. For this purpose for each Circle, there should be one trained Armourer (of the rank of Forester) and there should be one Chief Armourer in the Office of the Chief Conservator of Forests (General) (of the rank of Range Forest Officer).
- ix) All officers and men should be put through a training programme.

APPENDIX V

GOVERNMENT OF TAMIL NADU
 1982
 TAMIL NADU GOVERNMENT GAZETTE
 EXTRAORDINARY
 PUBLISHED BY AUTHORITY.

=====
 No.177, MADRAS, SATURDAY, MARCH 13, 1982

MA SI 29, THUNMATHI, THIRUVALLUVAR AANDU-2012.
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Part IV - Section 2
 Tamil Nadu Acts and Ordinances.

 The following Act of the Tamil Nadu Legislature received the assent of the President on the 12th March 1982 and is hereby published for general information:-

ACT No.14 of 1982

AN ACT TO PROVIDE FOR PREVENTIVE DETENTION OF BOOTLEGGERS, DRUG - OFFENDERS, FOREST OFFENDERS GOONDAS, IMMORAL TRAFFIC OFFENDERS AND SLUM-GRABBERS FOR PREVENTING THEIR DANGEROUS ACTIVITIES PREJUDICIAL TO THE MAINTENANCE OF PUBLIC ORDER.

WHEREAS public order is adversely affected every now and then by the dangerous activities of certain persons, who are known as bootleggers, drug-offenders, forest offenders, goondas, immoral traffic offenders and slum-grabbers;

AND WHEREAS having regard to the resources and influence of the persons by whom, the large scale on which, and the manner in which, the dangerous activities are being clandestinely organised and carried on in violation of law by them, as bootleggers, drug-offenders, forest offenders, goondas, immoral traffic offenders or slum-grabbers in the State of Tamil Nadu, and particularly in its urban areas and forest areas, it is necessary to have a special law in the State of Tamil Nadu, to provide for preventive detention of these six classes of persons and for matters connected therewith.

BE it enacted by the Legislature of the State of Tamil Nadu in the Thirty-third Year of the Republic of India as follows:-

1. SHORT TITLE, EXTENT AND COMMENCEMENT --(1) This Act may be called the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders and Slum-grabbers Act, 1982.

(2) It extends to the whole of the State of Tamil Nadu.

(3) It shall be deemed to have come into force on the 5th January 1982.

2. DEFINITIONS -- In this Act, unless the context otherwise requires, --

(a) . . .

(i) . . .

(ii) . . .

(ii-A) in the case of a forest-offender, when he is engaged or is making preparations for engaging, in any of his activities as a forest-offender, which affect adversely, or are likely to affect adversely, the maintenance of public order;

(iii) . . .

(iv) . . .

(v) . . .

EXPLANATION:- For the purpose of this clause (a) public order shall be deemed to have been affected adversely, INTER ALIA, if any of the activities of any or the persons referred to in this clause (a) directly, or indirectly, in causing or calculated to cause any harm, endanger or alarm or a feeling or insecurity, among the general public or any section thereof or a grave or widespread danger to life or public health or ecological system;

(b) . . .

(c) . . .

(d) . . .

(e) . . .

(ee) "forest-offender" means a person, who commits or attempts to commit or abets the commission of offences, punishable under Chapter II or Chapter III or Chapter V or Chapter VI-B or Chapter VII of the Tamil Nadu Forest Act, 1882 (Tamil Nadu Act V of 1882) or under Chapter VI of the Wild Life (Protection) Act 1972 (Central Act 53 of 1972);

(f) . . .

(g) . . .

(h) . . .

(i) . . .

3. POWER TO MAKE ORDERS DETAINING CERTAIN PERSONS:-

(1) The State Government may, if satisfied with respect to any bootlegger or drug-offender or forest-offender or goonda or immoral traffic offender or slum-grabber that with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing, or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified

in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section:

Provided that the period specified in the order made by the State Government under this sub-section shall not in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government together with the grounds on which the order has been made and such other particulars as in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government.

4. EXECUTION OF DETENTION ORDERS:- A detention order may be executed at any place in the State in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

5. POWER TO REGULATE PLACE AND CONDITIONS OF DETENTION:

Every person in respect of whom a detention order has been made shall be liable:-

(a) to be detained in such place and under such conditions, including, conditions as to maintenance, discipline and punishment for breaches of discipline, as the State Government may, by general or special order specify; and

(b) to be removed from one place of detention to another place of detention, within the State by order of the State Government.

5.A. GROUNDS OF DETENTION SEVERABLE: Where a person has been detained in pursuance of an order of detention (whether made before or after the commencement of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Goondas, Immoral Traffic Offenders and Slum-grabbers (Amendment) Act, 1986) under section 3 which has been made on two or more grounds such order of detention shall be deemed to have been made separately on each of such grounds and accordingly --

(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are:-

- (i) vague,
- (ii) non-existent,
- (iii) not relevant,
- (iv) not connected or not proximately connected with such person, or
- (v) invalid for any other reason whatsoever, and it is not, therefore, possible to hold that the Government

or officer making such order would have been satisfied as provided in section 3 with reference to the remaining ground or grounds and made the order of detention;

(b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds.

6. DETENTION ORDERS NOT TO BE INVALID OR INOPERATIVE ON CERTAIN GROUNDS. - No detention order shall be invalid or inoperative merely by reason -

(a) that the persons to be detained thereunder, though within the State, is outside the limits of the territorial jurisdiction of the officer making the order, or

(b) that the place of detention of such person, though within the State, is outside the said limits.

7. . . . to 13. . . .

14. REVOCATION OF DETENTION ORDERS. -

(1) Without prejudice to the provisions of section 15 of the Tamil Nadu General Clauses Act, 1891 (Tamil Nadu Act I of 1891), a detention order may, at any time, be revoked or modified by the State Government, notwithstanding that the order has been made by an officer mentioned

in sub-section (2) of section 3.

(2) The revocation or expiry of a detention order (hereafter in this sub-section referred to as the earlier detention order) shall not (whether such earlier detention order has been made before or after the commencement of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drub-offenders, Goondas, Immoral Traffic Offenders and Slum-grabbers (Amendment) Act, 1986) bar the making of another detention order (hereafter in this sub-section referred to as the subsequent detention order) under section 3 against the same person;

Provided that in a case where no fresh facts have arisen after the revocation or expiry of the earlier detention order made against such person, the maximum period for which such person may be detained in pursuance of the subsequent detention order shall in no case, extend beyond the expiry of a period of twelve months from the date of detention under earlier detention order.

15. . . .

16. PROTECTION OF ACTION TAKEN IN GOOD FAITH.

No suit, prosecution or other legal proceeding shall lie against the State Government or any officer or person, for anything in good faith done or intended to be done in pursuance of this Act.

17. DETENTION ORDERS AGAINST ANY BOOTLEGGER, DRUG-OFFENDER, FOREST-OFFENDER, GOONDA, IMMORAL TRAFFIC OFFENDER, OR SLUM-GRABBER TO BE MADE UNDER THIS ACT AND NOT UNDER NATIONAL SECURITY ACT. - On and after the commencement of this Act no order of detention under the National Security Act, 1980 (Central Act 65 of 1980) shall be made by the State Government or any of their officers under the Act in respect of any boot-legger, drug-offender, forest-offender, goonda, immoral traffic offender or slum grabber in the State of Tamil Nadu, on the ground of preventing him from acting in any manner prejudicial to the maintenance of public order, where an order of detention may be or can be made against such person, under this Act.

18. REPEAL AND SAVING. - (1) The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Goondas, Immoral Traffic Offenders and Slum-grabbers Ordinance, 1982 (Tamil Nadu Ordinance I of 1982) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under this Act.

(BY ORDER OF THE GOVERNOR)

S.VADIVELU,
SECRETARY TO GOVERNMENT
LAW DEPARTMENT

TABLE OF CASES

	Pages
<u>Alipilla v. State of Kerala</u> 1983 Cri.L.J. N O C 185 (KER.)	210
<u>Amar Singhji v. State of Rajasthan</u> A.I.R. 1955 S.C.504	145
<u>Ambika Quarry Works v. State of Gujarat</u> 1986 (2) SCALE 1037	96
<u>A.M.Antony v. Forest Range Officer</u> 1977 K.L.T. 691	208
<u>Anupama Minerals V. Union of India</u> A.I.R.1986 A.P.225	96
<u>Babulal v. State</u> 1982 Cri.L.J.41 (Delhi)	126
<u>Balbir Singh v. Emperor</u> A.I.R.1933 All 630	216
<u>Bandhua Mukti Morcha v. Union of India</u> 1984 S.C.802	275
<u>Benwasi Seva Ashram v. State of U.P.</u>	116, 266
<u>Bhagavathi Tea Estate Ltd. v. State of Kerala</u> : : 1985 K.L.T. S.N.2	152
<u>Bhagwan Sahai v. Divisional Forest Officer</u> : : A.I.R.1947 Pat.264	204
<u>Bhavani Tea Produce Co. v. State of Kerala</u> : : 1991 (1) K.L.T. 666	150
<u>California v. Bergland</u> (1980) 10 E.L.R.20098	125
<u>Chacko Pyli v. State of Kerala</u> 1966 K.L.T.102: : :	209
<u>Court on its own motion v. Shankroo</u> : : 1983 Cri.L.J.63	65
<u>Dehanu Taluka Environment Protection Group v.</u> : : <u>Bombay Suburban Electricity Co. Ltd.</u> (1991) 2 S.C.J. 446	117

<u>Eacharan Ittiathi v. State of Kerala</u>	: :	271
1970 K.L.T. 1069		
<u>Emperor v. Mohammed Khan</u>	A.I.R.1938 Nag.365	: : 220
<u>Emperor v. Wamanrao</u>	A.I.R.1937 Nag. 169	: : 220
<u>Environmental Defence Fund Inc. v. Corps of Engineers</u>	(1971) 1 E.L.R.20130	: : 125
<u>Environmental and Ecological Protection</u>		: : 67
<u>Samithy v. Executive Engineer</u>	1991 (2) K.L.T. 493	
<u>Fatesang Gimba v. State</u>	A.I.R.1987 Guj.9	: : 267
<u>Forest Range Officer v. Aboobaker</u>	1989 (1) K.L.T. 871	: : 326
<u>Goa Foundation v. Konkan Railway Corporation</u>		: : 94,117 118,123
<u>Govindan Thirumulpad v. State of Kerala</u>	1988 (1) K.L.T. 865	: : 153
<u>Guhram v. Emperor</u>	A.I.R.1931 Sind. 156	: : 215
<u>Gwalior Rayons Silk Manufacturing Co.Ltd. v. State</u>	1972 K.L.T. 628	: : 146
<u>Gwalior Rayons S.M.W. Co. Ltd. v. The Custodian:</u>		: : 150
<u>Vested Forest</u>	1990 (1) K.L.T. 819	
<u>Harrisons Malayalam Ltd. v. State of Kerala</u>	1992 (2) K.L.T. 535	: : 151
<u>Himachal Pradesh v. Sabla</u>	1988 Cri.L.J.1341	: : 226
<u>Hyderabad Abrasives and Minerals v. Government</u>	of A.P. 1990 F.L.T. 119	: : 96
<u>Janukhan v. The State</u>	A.I.R.1960 Patna 213	: : 210
<u>Kammukkutty Haji v. State of Kerala</u>	1970 K.L.T. 171	: : 142

	392
<u>Kaniram v. State of M.P.</u> A.I.R.1983 M.P.86	: : 222
<u>Kannan Devan Hill Produce Co.Ltd. v. State of Kerala</u> 1972 K.L.T.377	: : 145
<u>Karna Laxman Gawali v. State of Maharashtra</u> 1990 Cri.L.J.163	: : 221
<u>Kinkri Devi v. State of Himachal Pradesh</u> A.I.R. 1988 H.P.4	: : 66
<u>Kunhiraman v. Special Range Officer</u> 1959 K.L.T.667	: : 225
<u>Lakshman v. D.F.O.</u> A.I.R.1953 Nag.51	: : 213
<u>L.K.Koolwal v. State of Rajasthan</u> A.I.R.1988 Raj.2	: : 66
<u>Madhavan Nair v. State</u> 1963 K.L.T.898	: : 300
<u>Mansid Oraon v. The King</u> A.I.R.1951 Pat.380	: : 205
<u>Minnesota Public Interest Research Group v. Butz</u> (1976) 6 E.L.R.20133	: : 124
<u>Mohammed v. State of Kerala</u> 1986 K.L.T.681	: : 150
<u>Nagowani v. Emperor</u> A.I.R.1929 Nag.190	: : 214
<u>Narayanan Nair v. State of Kerala</u> 1970 K.L.T.659	: : 145
<u>Peoples Union for Democratic Rights v. Union of India</u> A.I.R.1982 S.C.1473	: : 275
<u>Rafique Ramzan Ali v. A.A.Jalgaonkar</u> 1984 (2) Cri.L.J.1460	: : 303
<u>Rajendra Singh v. State of U.P.</u> A.I.R.1973 All 37	: : 99

<u>Ramachandra Menon v. State of Kerala</u> 1984 K.L.T. S.N.17	: :	148
<u>Ram Nish Bansal v. State of Rajasthan</u> 1990 F.L.T. 61	: :	29
<u>Rural Litigation and Entitlement Kendra v.</u> <u>State of U.P.</u> 1985 S.C.652	: :	65,110 111
<u>Rural Litigation and Entitlement Kendra v.</u> <u>State of U.P.</u> A.I.R.1985 S.C.1259	: :	110
<u>Rural Litigation and Entitlement Kendra v.</u> <u>State of U.P.</u> A.I.R.1987 S.C.359	: :	110,111 112
<u>Rural Litigation and Entitlement Kendra v.</u> <u>State of U.P.</u> A.I.R.1989 S.C.2426	: :	110,112
<u>Rural Litigation and Entitlement Kendra v.</u> <u>State of U.P.</u> A.I.R.1988 S.C.2187	: :	96,110 111,112
<u>Sachidanand Pandey v. State of West Bengal</u> A.I.R.1987 S.C.1109	: :	116
<u>Saiyyad Rahim v. Emperor</u> A.I.R.1915 Nag.2	: :	219
<u>Sankara Rao v. State of Mysore</u> A.I.R.1969 S.C.453	: :	145
<u>Scaria Augusthy v. The Special Deputy</u> <u>Collector and Others</u> High Court of Kerala O.P.No.4822 of 1986.	: :	98
<u>Sidheswar Panda v. The State</u> A.I.R.1954 Orissa 16.	: :	224
<u>Society for Protection of Silent Valley v.</u> <u>Union of India and Others</u> (1984) C.U.L.R. 133.	: :	114

			394
<u>State of Bihar v. Banshi Ram Modi</u>	: :		96
A.I.R.1985 S.C.814			
<u>State of Bihar v. Kameshwar Singh</u>	: :		145
A.I.R.1952 S.C.252			
<u>State of Bihar v. K.S.R. Swami</u>	: :		222
A.I.R.1966 S.C.1847			
<u>State of Kerala v. Adichan Sasi</u>	: :		207
1975 K.L.T.839			
<u>State of Kerala v. Ahamedkutty Haji</u>	: :		153
1987 (2) K.L.T.406			
<u>State of Kerala v. Gwalior Kayons Silk</u>	: :		148
<u>Manufacturing Co.Ltd.</u> 1973 K.L.T.896			
<u>State of Kerala v. Moosa Haji</u> 1984 K.L.T.494	: :		150
<u>State of Kerala v. Nilgiri Tea Estate Ltd.</u>	: :		150
1988 (1) K.L.T.113			
<u>State of Kerala v. Thomas</u> 1987(1) K.L.T.530	: :		153
<u>State of Kerala v. Thomas</u> 1989 K.L.T.201	: :		153
<u>Tehri Bandh Virodhi Sangarsh Samiti v. State</u>	: :		115
<u>of U.P.</u> (1991) 2 Comp.L.J.231 (S.C.)			123
<u>Thep Singh v. Emperor</u> A.I.R.1927 All. 767	: :		218
<u>Umed Singh v. Emperor</u> A.I.R.1927 All. 121	: :		218
<u>Union of India v. Abdul Jaleel</u>	: :		206
A.I.R. 1965 S.C.147			

<u>U.P. Legal Aid and Advice Board v. State</u>	: :	267
A.I.R.1991 All. 281.		
<u>Vajaralu v. Special Deputy Collector</u>	: :	145
A.I.R. 1965 S.C.1017		
<u>Venugopal Varma Rajah v. Controller of</u>	: :	144
<u>Estate Duty</u> 1969 K.L.T.320		
<u>Vilangan Kunnu Samrakshana Samiti v. State of</u>	: :	67
<u>Kerala</u> 1989 (2) K.L.T. 547.		

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