

**IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)**

WRIT PETITION (CIVIL) NO. _____ OF 2023
(Petition under Article 32 of the Constitution of India read
with Order XXXVIII of the Supreme Court Rules, 2013)

IN THE MATTER OF:

Shri Ashok Kumar Sharma & Ors.**PETITIONER(S)**

Versus

Union of India & Anr.**RESPONDENT(S)**

VOLUME-I
(Pg.A to 561)

WITH

214764

I.A. NO. _____ OF 2023
[Application For Stay]

PAPER BOOK
(FOR INDEX PLEASE SEE INSIDE)

ADVOCATE FOR THE PETITIONER(S) : KAUSHIK CHOUDHURY

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VOLUME-II
(Pg. 562-802)

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PROFORMA FOR FIRST LISTING

SECTION :

THE CASE PERTAINS TO (Please tick/check the correct box):

<input type="checkbox"/> Central Act: (Title)	N.A.
<input type="checkbox"/> Section:	N.A.
<input type="checkbox"/> Central Rule: (Title)	N.A.
<input type="checkbox"/> Rule No(s):	N.A.
<input type="checkbox"/> State Act: (Title)	N.A.
<input type="checkbox"/> Section:	N.A.
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<input type="checkbox"/> Impugned Interim Order: (Date)	N.A.
<input type="checkbox"/> Impugned Final Order/ Decree: (Date)	N.A.
<input type="checkbox"/> High Court: (Name)	N.A.
<input type="checkbox"/> Name of Judges:	N.A.
<input type="checkbox"/> Tribunal/Authority: (Name)	N.A.
1. Nature of matter:	<input checked="" type="checkbox"/> Civil <input type="checkbox"/> Criminal
2. (a) Petitioner / appellant No.1:	Shri Ashok Kumar Sharma & Ors.
(b) e-mail ID:	N.A.
(c) Mobile Phone number:	N.A.
3. (a) Respondent No.1:	Union of India & Anr.
(b) e-mail ID:	N.A.
(c) Mobile phone number:	N.A.

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(a) Whether accused/convict has surrendered: <input type="checkbox"/> Yes <input type="checkbox"/> No. N.A.		
	(b) FIR No. N.A. Date: N.A.	
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10.	Special Category (first petitioner/appellant only):	N.A.
<input type="checkbox"/> Senior citizen > 65 years <input type="checkbox"/> SC/ST <input type="checkbox"/> Woman/child <input type="checkbox"/> Disable <input type="checkbox"/> Legal <input type="checkbox"/> Aid case <input type="checkbox"/> In custody N.A.		
11.	Vehicle Number (in case of Motor Accident Claim matters):	N.A.
Date:	.09.2023	AOR for petitioner(s)/appellant(s)
		 [KAUSHIK CHOUDHURY]
		Registration No.2459 kaushikchoudhury7@gmail.com

SYNOPSIS

The present Petition is being filed in public interest under Article 32 of the Constitution of India to challenge the constitutionality of the Forest (Conservation) Amendment Act 2023 ['2023 Amendment Act']. The 2023 Amendment Act will radically undermine India's decades-old forest governance regime built around the implementation of the Forest (Conservation) Act 1980 ['FC Act'] and based on the landmark order of this Hon'ble Court delivered on 12.12.1996 in *T.N. Godavarman v Union of India* W.P. (C) No. 202/1995. The impugned law significantly restricts the scope of the FC Act by curtailing the definition of forest land that will fall within its ambit.

The land thus identified after the amendment circumvents the clear exposition of this Hon'ble Court in its 12.12.1996 order on what constitutes forest land. In that order, this Hon'ble Court held that the aim of the FC Act is to protect against ecological imbalance which would necessarily require that 'forest land' in Section 2 of the FC Act to include not only forests as understood in the dictionary sense but also any area recorded as forest in the Government record irrespective of the nature of ownership or classification thereof. Forest lands which until recently enjoyed the protection of law due to this expansive interpretation provided by this Hon'ble Court will now be stripped of any legal protection.

The 2023 Amendment Act arbitrarily permits several categories of projects and activities in forest land, while

exempting them from the purview of the FC Act. These projects and activities are vaguely defined in the impugned law, and could be interpreted in a manner that serves vested commercial interests, at the cost of much larger public interest. Each diversion of land, without any cumulative ceiling being prescribed across the country, will pockmark our forests with cancerously growing deforested 'islands' and fragment them, causing enormous ecological loss. For instance, the newly inserted Section 1A(2)(a) excludes forest land alongside a rail line or public road which provides access to a habitation, or to a rail, and roadside amenity. This will also apply to feeder roads. The number of such feeder roads, and the distance between each road is not specified and this can lead to large scale destruction of forest lands. Section 1A(2)(b) arbitrarily exempts plantations and reforested areas from the purview of the law purportedly to incentivise tree plantations, but there are no legal safeguards against these same lands being diverted for non-forest use. According to Section 1A(2)(c)(ii), forest land upto 10 hectares is exempt from scrutiny under this Act if it is being proposed to be used for construction of 'security related infrastructure'. There is no clarity in the law as to what would be considered as 'security related infrastructure'. These kinds of exemptions will sound the death-knell of forests in India.

The FC Act included a list of activities which were not to be considered as non-forest purpose and were thus permitted within forest land. This list, provided in the Explanation to Section 2, included public works like establishment of

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check-posts, fire lines, wireless communication etc which were considered as work relating to or ancillary to conservation, development and management of forests and wildlife. The 2023 Amendment Act arbitrarily and capriciously expands this list in the Explanation to Section 2 to include activities like safaris, zoos, and eco-tourism facilities. Zoos hold captive animals and safari parks are merely larger enclosures, and thus cannot by any means be equated with measures for conservation of wildlife or forestry activity. This is a blatant attempt to open floodgates to increased forest diversions, while ignoring the associated negative impacts on otherwise intact forests and wildlife from the creation of permanent structures, huge constructions, access roads, power transmission lines and other supporting infrastructure for such zoos and safaris. The 2023 Amendment Act also permits the Central Government not to treat surveys and explorations in forest lands as non-forest uses and thus exempt from scrutiny. Such provisions subvert basic public interest and commitment to nature conservation

The 2023 Amendment Act unlawfully delegates what are essentially legislative functions to the government. The discretion granted to the Central Government under the provisions of the impugned law such as the newly inserted Section 1A(2) and (3), amended Explanation to Section 2(1), Section 2(2) and Section 3C are excessive, and the 2023 Amendment Act does not provide sufficient guidance for the exercise of the discretion. Definitions of key terms and phrases like 'public utility project', 'strategic linear

E

project', 'security related infrastructure' etc are not provided in the law. Under the impugned law, the Central Government will implement the provisions of the amended Act through guidelines, directives and orders, not through a set of notified rules duly approved by Parliament. Such untrammelled powers will allow Central Government to permit diversion of forest lands without public or regulatory scrutiny.

A Joint Committee of Parliament (JCP) was set-up to review the Forest (Conservation) Amendment Bill 2023. During the pre-legislative consultation process, the JCP repeatedly overlooked the lack of evidence to support the need for the amendment, completely disregarded the concerns and suggestions put forth by different stakeholders, and blindly accepted submissions made by the MoEFCC. MoEFCC, as it appears from its submissions – many of which were vague and evasive, based its decisions with the goal of facilitating “ease of business” for those with commercial interests, and this unfortunately appears to be the *raison d’être* of the impugned legislation.

One of the critical issues before the JCP was the amended definition of forest land proposed in the Bill. The MoEFCC gave an assurance before the JCP that all categories of forests defined by the State Expert Committees set up by various states in compliance with this Hon’ble Court’s order of 12.12.1996 will be given protection. JCP accepted this submission on face value, without undertaking any

assessment of the said SEC reports which had purportedly been taken into consideration while framing the legislation.

The aforesaid assurance given by the MoEFCC was blatantly misleading. As per this Hon'ble Court's order, SEC were to *inter alia* identify areas which are "forests", irrespective of whether they are so notified, recognised or classified under, any law, and irrespective of the ownership of the land of such forest. These reports would have provided crucial information about the location and nature of forest lands across the country. However, little information about these SECs and their reports is available in the public domain. It is not known whether these SECs were even formed in all states; how many reports were submitted; and what is the quality of these reports. Yet, MoEFCC places reliance on them, and JCP accepts their existence and content without question.

In the instant case, the State ought to have carried out a detailed analysis of the impact which the provisions of this legislation would have on the forests in order to ensure that the duty to protect and improve the environment as encapsulated in Article 48A read with Article 51A(g) was fulfilled. A Brandeis brief compilation of data is designed to indicate the actual or probable social effects of legislation, and it has been recognised as a valid aid to judicial review of legislation. The same approach is appropriate for an environmental legislation particularly since the damage once caused to the environment by a constitutionally deficient legislation would be irreversible.

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Unlike other legislations, since environmental legislations involve resources belonging to the community, it necessitates a greater degree of responsibility by the legislature than what would be expected in a normal legislation. It is submitted that a greater judicial scrutiny of what relevant factors were taken into consideration and what was the scientific basis of the amendments, becomes imperative while examining the constitutionality of the statute. This is a classic case where the need for a 'Brandies Brief' approach is acutely felt.

The 2023 Amendment Act is in blatant violation of several principles of Indian environmental law – precautionary principle, intergenerational equity, principle of non-regression and public trust doctrine. As this Hon'ble Court has observed on several occasions, each of these principles along with the Environmental Rule of Law must guide present day environmental decision-making in India. Yet, in the present matter, each of them have been overlooked.

The 2023 Amendment Act gravely impinges on the fundamental rights guaranteed to citizens under Articles 14 and 21 of the Constitution, read with Articles 48A, 51(c) and 51A(g). It provides a restrictive definition of 'forest land' and arbitrarily exempts various activities and projects from the regulatory scrutiny of the FC Act. The amendment represents a complete dereliction of duty imposed on the State to protect and improve the environment in keeping with the Directive Principle of State Policy under Article 48A

of the Constitution read with the State's collective duty to protect the environment under Article 51A (g).

India is one of the most vulnerable countries to impacts of climate change, and weakening its ecological security by permitting rampant deforestation will only worsen the country's adaptive capacity. India's forests are a crucial defence against the climate crisis. Significantly, it is now established that the carbon sequestration potential of natural forests is 40 times greater as compared to plantations, and therefore we as a country cannot afford to lose our natural carbon sinks as the alternatives such as plantations are evidently not as effective.

A law that is so manifestly arbitrary in its scope, blatant in its intent to circumvent the interpretation of law as adopted by this Hon'ble Court, and will likely endanger ecological and food security of the country must be struck down. There exists a constitutional imperative in accordance with Article 14, Article 21, Article 48A, 51(c) and 51A(g) of the Constitution of India to protect our forests and wildlife. Therefore, it is prayed that this Hon'ble Court finds the 2023 Amendment Act to be unconstitutional and set it aside.

LIST OF DATES

1878	The Indian Forest Act, 1878 was enacted to consolidate the laws relating to forests in India.
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1927	The Act of 1878 was amended by the Indian Forest Act of 1927. <i>Inter alia</i> , the Act empowers State Governments to notify and declare the forest lands as reserved forests and protected forests.
1952	The Central Government adopted the Indian Forest Policy of 1952, wherein it was recommended that India should aim to bring 33% of the total land area under forest and tree cover, and about 60% in hilly areas under forest and tree cover to prevent soil erosions in the hilly and mountainous districts.
1952 – 1980	In almost three decades India witnessed rampant deforestation, and approximately 4.2 million hectares of forests were lost due to diversion for non-forest purposes.
1977	The 42 nd Constitutional Amendment Act of 1976 was passed in 1977. Article 48A and Article 51A(g) of the Constitution of India were introduced; thus, placing a constitutional duty on the State to protect forests and wildlife. 'Forests' was moved from List II (State List) to List III (Concurrent List) of the Seventh Schedule to the Constitution.
1980	The Forest (Conservation) Act of 1980 was enacted with the aim to conserve forests. It placed restrictions on the use of forest land for

	<p>non-forest purposes. It required the State Governments to seek a prior approval from the Central Government before permitting diversion of forest lands for non-forest use.</p>
1988	<p>The Central Government adopted the National Forest Policy of 1988 which reiterated the goals set out in the National Forest Policy of 1952. The Policy focused on the restoration of the ecological balance and conservation of the natural heritage of the country through the preservation of natural forests with its vast variety of flora and fauna, and increasing substantially the forest/tree cover through massive afforestation and social forestry programmes. It also highlighted the involvement of tribal communities in conservation of forest. The policy categorically stated that derivation of direct economic benefit must be subordinated to the principal aim of the policy which was to ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium which are vital for sustenance of all life forms, human, animal and plant.</p>
12.12.1996	<p>The Hon'ble Supreme Court passed a landmark order in <i>T.N Godavarman v. Union of India</i> W.P. (C) 202/1995, holding in categorical terms that the Forest (Conservation) Act 1980</p>

	<p>would apply to all forests that come within the dictionary definition of forests. This was done considering that the aim of the principal Act is to protect against “ecological imbalance”, which would necessarily require the Act to “apply to all forests irrespective of the nature of ownership or classification thereof”. This Hon’ble Court also issued direction to the state governments for constituting State Expert Committees (SECs) for the systematic identification of the forest areas in every state.</p>
1997	<p>The Forest Survey of India (FSI) published the State of Forest Report 1997 which reported that the forest and tree cover stood at only 19.27% of India’s total land area; much less than the policy goals set in the National Forest Policies of 1952 and 1988.</p>
2019	<p>The Forest Survey of India published the State of Forest Report 2019 that reported that forest and tree cover was 24.56% of the total land area. It also recorded forest cover in hilly areas to be at 40.3% of the total land area in these districts as against the target figure of 67% (as per the 1988 Forest Policy). It should be noted that the forest surveys which are conducted are primarily satellite surveys and record all plantations and other areas which have tree cover as forests.</p>

29.03.2023	<p>The Central Government introduced the Forest (Conservation) Amendment Bill of 2023 in the Lok Sabha. A motion was passed referring the Bill to a Joint Committee of Parliament (JCP), chaired by the member of the ruling party. This was against the conventional parliamentary norm of referring a Bill to the Departmental Standing Committee responsible for same, in this case the Committee on Science & Technology, Environment & Forests.</p>
2023	<p>The JCP received hundreds of representations and submissions from various stakeholders including scientists, forest officers, conservationists, tribal councils, retired civil servants, researchers etc. opposing the Bill. Several petitioners herein also sent their detailed representations to the JCP. Many states including Kerala rejected provisions of the Bill.</p> <p>The Bill proposed to strip vast tracts of forest land in the country of any legal protection and permit the use of forest land for several non-forest purposes which were previously subject to strict regulatory scrutiny. It would encourage the diversion of forest land in a manner which would pockmark our forests, and fragment and shrink important wildlife habitats.</p>

20.07.2023	<p>The JCP submitted its report and accepted the provisions of the Bill. It disregarded all genuine concerns raised by stakeholders, and returned the Bill stating that due legislative process had been followed. The outcry of the scientific community, forest officers, conservationists, tribal councils, retired civil servants, and other expert advice was completely ignored. At the same time, the Ministry of Environment, Forest and Climate Change (MoEFCC) furnished inaccurate and misleading information to the JCP. A plain reading of the report shows that the JCP accepted all submissions made and assurances given by the MoEFCC without any independent verification.</p>
26.07.2023 & 02.08.2023	<p>The Bill was passed by the Lok Sabha on 26 July 2023 and by the Rajya Sabha on 2 August 2023. The Bill was passed through the Lok Sabha in 38 minutes and through the Rajya Sabha in 1 hour and 41 minutes, with limited debate and discussion on the substance of the Bill and the arbitrary report filed by the JCP.</p>
4.08.2023	<p>The Bill received Presidential assent on 4 August 2023. It was published in the Gazette of India for general information on 4 August 2023.</p>

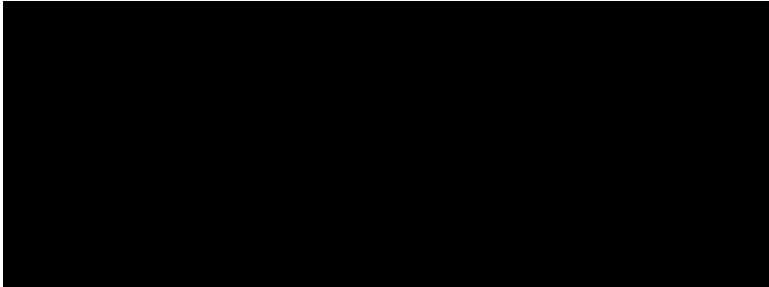
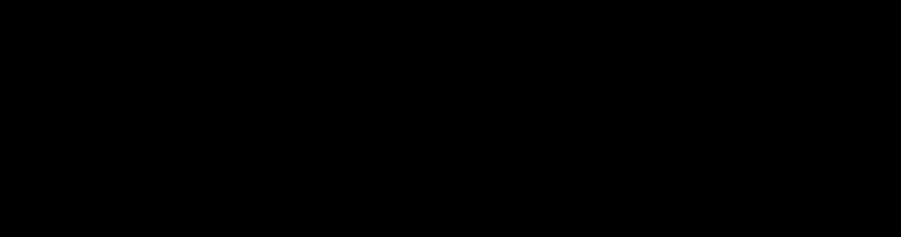
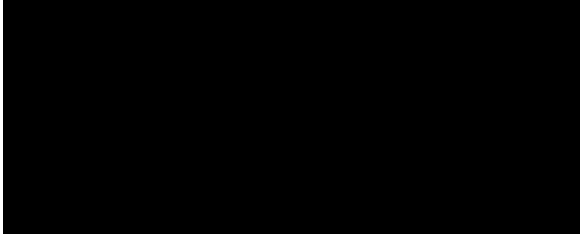

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11.08.2023	A letter was issued by the Additional Chief Secretary, Odisha, stating that requests to divert forest land for non-forestry purposes such as infrastructure and state development now ought to conform with the amended Forest Act and that 'the concept of deemed forest is now removed'.
14.08.2023	After public pressure, letter dated 14.08.2023 was issued, and the letter dated 11.08.2023 of the Additional Chief Secretary, Odisha, was withheld. It will become operational once guidelines are received from MoEFCC. Not being aware or not caring to follow due procedure on part of the highest officer of the State of Odisha in-charge of forests shows the potential of misuse and misinterpretation of the amended FC Act.
27.09.2023	Hence, this Writ Petition.

**IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)**

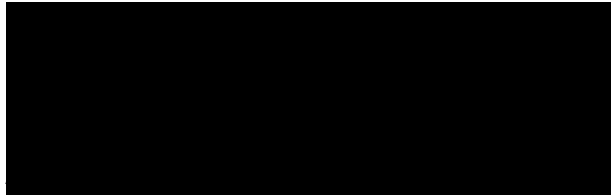
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(Petition under Article 32 of the Constitution of India read with Order XXXVIII of the Supreme Court Rules, 2013)

IN THE MATTER OF:

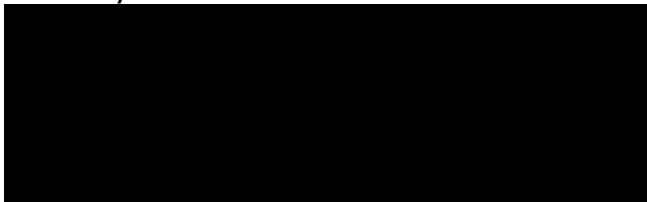
1. Shri Ashok Kumar Sharma
Indian Forest Service (Retd),
Kirti Chakra,

2. Shri Uma Shanker Singh
Indian Forest Service (Retd),
Principal Chief Conservator of Forests,
Uttar Pradesh

3. Shri Prashant Kumar Jha
Indian Forest Service (Retd),
Principal Chief Conservator of Forests
& Head of Forest Force, Telangana

4. Shri Biswajit Majumdar
Indian Forest Service (Retd)
Principal Chief Conservator of Forests-Maharashtra,
Vice Chairman, Maharashtra Administrative Tribunal




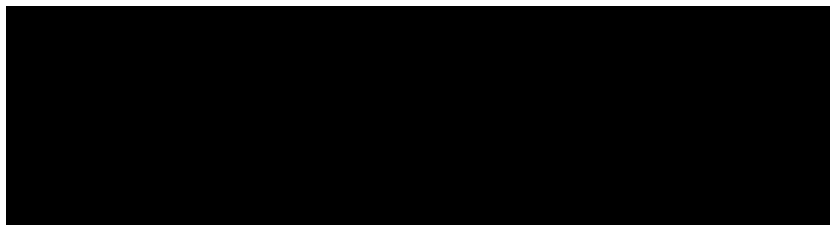
5. Shri Arvind Kumar Jha
Retd as PCCF & DG (SFD),
Maharashtra State.



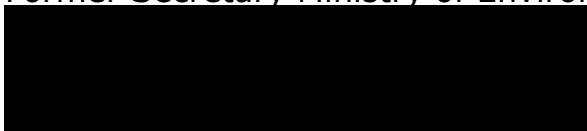
6. Dr. M K Ranjitsinh
Indian Administrative Service (Retd)
Former Addl Secretary,
Ministry of Environment & Forests



7. Ms Prakriti Srivastava
Indian Forest Service (Retd)
Principal Chief Conservator of Forests,
Kerala

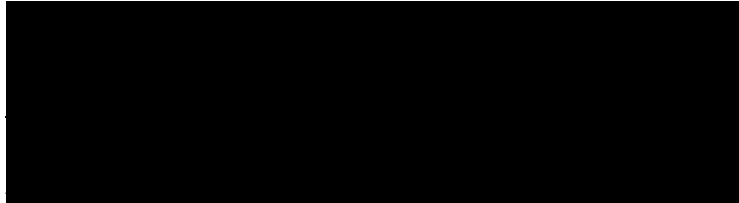


8. Ms Meena Gupta
Indian Administrative Service (Retd)
Former Secretary Ministry of Environment & Forests

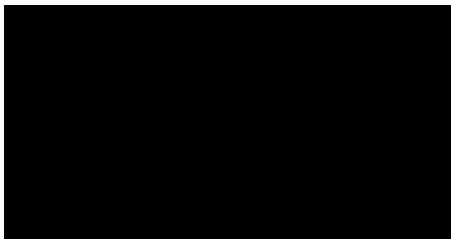




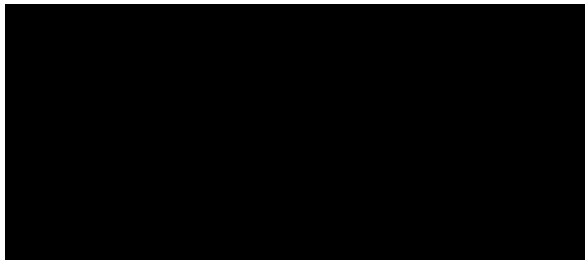
9. Shri Amitabha Pande
Indian Administrative Service (Retd)
Former Secretary to Government of India



10. Shri Ashok Kumar Sharma
Indian Foreign Service (Retd),
Former Ambassador Finland and Estonia



11. Ms Purna Singh Bindra
Former Member, Standing Committee,
National Board of Wildlife,
Former Member,
State Board of Wildlife-Uttarakhand

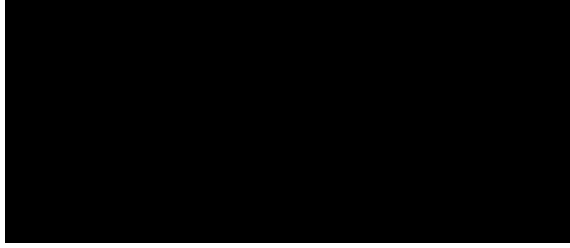


12. Shri Deb Mukherjee
Indian Foreign Service (Retd),
Former High Commissioner to Bangladesh



13. Shri Debadityo Sinha
Wildlife Conservationist, Legal and Policy Analyst





.....PETITIONERS

Versus

1. Union of India,
Ministry of Environment, Forest & Climate Change
Through the Secretary,
Jor Bagh, Lodhi Colony, New Delhi,
Delhi-110003
2. Ministry of Law & Justice,
Through the Secretary,
Shastri Bhavan, New Delhi,
Delhi -110001

...RESPONDENTS

**WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA SEEKING A
DECLARATION THAT THE FOREST
(CONSERVATION) AMENDMENT ACT 2023 IS
UNCONSTITUTIONAL AND HENCE NULL AND VOID
AS IT IS IN VIOLATION OF FUNDAMENTAL
RIGHTS GUARANTEED UNDER THE CONSTITUTION
AND ESTABLISHED PRINCIPLES OF INDIAN
ENVIRONMENTAL JURISPRUDENCE**

To

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

The humble Petition of the Petitioners above named.

MOST RESPECTFULLY SHEWETH:

1. That this petition filed under Article 32 of the
Constitution of India is filed in public interest for the
enforcement of fundamental rights under Articles 14
and 21 read with Articles 48A, 51(c), and 51A(g) of the
Constitution. The petition challenges the
constitutionality of the Forest (Conservation)

Amendment Act 2023 [hereinafter '2023 Amendment Act'] which significantly reduces legal protection afforded to vast tracts of forest lands in India and exposes them to deforestation and irreversible damage. The 2023 Amendment Act will threaten the environmental, ecological and food security of the country, and impact the lives and livelihoods of local communities. It grants unfettered discretion to the Central Government regarding use of forest lands and reduces regulatory scrutiny of forest lands. As it impinges on various constitutional provisions and violates various established principles of Indian environmental law, the impugned 2023 Amendment Act must be struck down in its entirety.

A copy of the Forest (Conservation) Amendment Act 2023 is filed herewith and marked as **ANNEXURE P-1** (Pg.125-128).

- 1A. That the present writ petition is being filed in public interest under Article 32 of the Constitution of India to raise issues that impinge fundamental rights guaranteed to citizens under Articles 14 and 21 of the Constitution, and violate directive principles of state policy and fundamental duties of citizens. Having regard to the nationwide implications of the important issues raised in this petition, impacting several states in the country, it is respectfully submitted that this Hon'ble Court has the jurisdiction to entertain and hear the present petition. The Petitioners state that they have not filed any other similar petition challenging the *vires* of the Forest (Conservation) Amendment Act 2023 in this or any other Court. The Petitioners have demanded justice but justice has been denied to them.

1B. PAN and Income details of the Petitioners are as follows:-

1. Shri Ashok Kumar Sharma [REDACTED]	8. Ms Meena Gupta [REDACTED]
2. Shri Uma Shanker Singh [REDACTED]	9. Shri Amitabha Pande [REDACTED]
3. Shri Prashant Kumar Jha [REDACTED]	10. Shri Ashok Kumar Sharma [REDACTED]
4. Shri Biswajit Majumdar [REDACTED]	11. Ms Prerna Singh Bindra [REDACTED]
5. Shri Arvind Kumar Jha [REDACTED]	12. Shri Deb Mukherjee [REDACTED]
6. Dr. M K Ranjitsinh [REDACTED]	13. Shri Debadityo Sinha [REDACTED]
7. Ms Prakriti Srivastava [REDACTED]	

ARRAY OF PARTIES

1. The Petitioner No.1 is a retired IFoS, who officiated the post of Principal Chief Conservator of Forest, Gujarat and is an awardee of Kriti Chakra; Petitioner No.2 is a retired IFoS, who officiated the post of Principal Chief Conservator of Forest, Uttar Pradesh; Petitioner No.3 is a retired IFoS who officiated the post of Principal Chief Conservator of Forest & Head of Forest Force, Telangana;

Petitioner No.4 is a retired IFoS who officiated the post of Principal Chief Conservator of Forest and Vice – Chairman of Maharashtra Administrative Tribunal; Petitioner No.5 is a retired IFoS, who officiated the post of Principal Chief Conservator of Forest & Director General of Social Forestry Department, Maharashtra; Petitioner No.6 is a retired IAS, who was officiated as the Former Additional Secretary to the Ministry of Environment & Forest, Government of India; Petitioner No.7 is a retired IFoS who officiated the post of Principal Chief Conservator of Forest, Kerela; Petitioner No.8 is a retired IAS who was officiated as the Former Secretary to the Ministry of Environment & Forest, Government of India; Petitioner No.9 is a retired IAS who was officiated as the Former Secretary to the Government of India; Petitioner No.10 is a retired IFS who was officiated as the Former Ambassador of Finland & Estonia; Petitioner No.11 was officiated as the Former Member to the Standing Committee of National Board of Wildlife and State Board of Wildlife, Uttarakhand; Petitioner No.12 is a retired IFS who was officiated as the Former High Commissioner of Bangladesh; Petitioner No.13 is officiated as the Wildlife Conservationist and Legal & Policy Analyst.

2. That the Petitioners do not have any personal interest or any personal gain or private motive or any other oblique reason in filing this Writ Petitioner in Public Interest. The Petitioners have not been involved in any other civil or criminal or revenue litigation, which could have legal nexus with the issues involved in the present Petition.
3. That Respondent No. 1 is the Union of India, through the Ministry of Environment, Forest and Climate Change

(MoEFCC) and Respondent No. 2 is the Ministry of Law and Justice of the Union of India. Both the Respondents are proper and necessary parties to the present Petition and are likely to be affected by the orders sought in the present Petition.

4. That the Petitioners, through the present writ petition, are invoking the civil original writ jurisdiction of this Hon'ble Court to seek issuance of a writ, order or direction of like nature against the Respondents herein *inter alia* to quash the Forest (Conservation) Amendment Act 2023 being unconstitutional and in violation of several provisions of the Constitution of India.
5. That the Petitioners have no other equally efficacious remedy except to approach this Hon'ble Court by way of present Writ Petition. All annexures annexed to the Writ Petition are true copies of their respective originals.
6. That the Petitioners herein have never approached this Hon'ble Court or any other Court seeking a relief similar to the relief sought for in the present writ petition.

A. SUMMARY

1. That forests are our purveyors of potable water, the most important gift of nature along with oxygen. Unfortunately, rampant increase in unrestricted deforestation, and the privatisation of forests, pose an impending threat to the forests, and the environment at large. It is absolutely essential that we protect our environment. The faunal and floral biodiversity of the country is our national natural heritage and the source of sustenance for millions including the most marginalised peoples of our nation. It is an important part of the religious and cultural heritage of several local

communities. Forests and other ecosystems also provide valuable ecosystem services particularly from the perspective of poverty alleviation especially for a developing country like India. According to a 2010 paper by the global initiative The Economics of Ecosystems and Biodiversity (TEEB), ecosystem services and other non-marketed goods account for between 47% and 89% of the so-called 'GDP of the poor' (i.e. the effective GDP or total source of livelihood of rural and forest-dwelling poor households), whereas in national GDP, agriculture, forestry and fisheries account for only 6% to 17%.

2. That permitting unrestricted destruction and privatisation of forests, and allowing megaprojects to come up in the wilderness and forests could disrupt complex ecological systems, thus threatening also the survival of some of the most endangered life-forms in the country, shifting drastically the ecological balance of nature. This will have far-reaching impacts on the environment and potentially cause permanent and irreversible damage.
3. That India is one of the most vulnerable countries to impacts of climate change, and threatening its ecological security will only worsen the country's adaptive capacity. India's forests are a crucial defence against the climate crisis. A 2009 study by the Indian Council of Forestry Research and Education estimated that India's forestry sector could neutralise more than 9% of India's GHG emissions at 2000 levels. Significantly, it is now established that the carbon sequestration potential of natural forests is 40 times greater as compared to plantations, and therefore we as a country cannot afford to lose our natural carbon sinks as the alternatives, such as plantations, are evidently not as effective.

4. That the 2023 Amendment Act introduces a regulatory regime that facilitates a regression in the nature and extent of protection that forests were afforded earlier. It significantly reduces the protections earlier guaranteed under the Forest (Conservation) Act 1980 read with the landmark order dated 12.12.1996 delivered by this Hon'ble Court in *T.N. Godavarman v Union of India* W.P. (C) No. 202/1995. The provisions of the 2023 Amendment Act violate Articles 14, 21, 48A, 51(c) and 51A(g) of the Constitution of India as well as established principles of Indian environmental jurisprudence including the principles of non-regression, precaution and inter-generational equity and the public trust doctrine. The impugned law excessively delegates powers to the executive, and its definition of forest land amounts to an impermissible overruling of this Hon'ble Court's order of 12.12.1996.

B. BRIEF HISTORICAL BACKGROUND TO FOREST GOVERNANCE IN INDIA

5. That forests in India have been subject to protection and reservation since the colonial era. The Indian Forest Act of 1878 was enacted to create a system of reservation and protection of forest land, noting the importance of systematic conservation of forest land.

6. That the Indian Forest Act of 1878 was later updated through the Indian Forest Act of 1927 without any significant changes. The Indian Forest Act of 1927 continues to be the framework by which State Governments are entitled to notify, declare, or record forests as reserved or protected. Forest lands recognised as reserved or protected under the provisions of this Act make up the total "Recorded Forest Area" of India.
7. That most notable in the historical policy framework relevant to the present Petition is the Indian Forest Policy adopted by the Central Government in 1952. By way of this policy, the Government, in paragraph 19 of the Policy, recommended that India should aim to bring, at least one-third (33%) of the total land area under forest and tree cover. It also recommended that in light of special ecological considerations such as the need to prevent soil erosion in hilly and mountainous districts of India, about sixty percent (60%) of the total land area in these districts must be brought under forest and tree cover. Though many forest policies have since been adopted by both the Central and State governments, these proportions endure as targets to be achieved, through forest legislation and policies.

A copy of the National Forest Policy, 1952 is filed herewith and marked as **ANNEXURE P-2** (Pg.129-144).

8. That despite the recommendations made in the Indian Forest Policy of 1952, survey reports indicated rampant deforestation due to diversion of forest land for non-forest uses. It was estimated that between 1950 and 1980, approximately 4.2 million hectares of forest land were lost to diversion and deforestation.
9. That in consideration of this and the targets set by the recommendations in the 1952 Policy, the Central Government took several legislative decisions to reduce the rate of deforestation and increase protection afforded to forests. Most significantly, in January 1977, the Constitution (42nd Amendment) Act 1976 came into force. It, *inter alia*, accorded the Central Government greater responsibility towards forests and conservation through a constitutional mandate. It did so in three ways. Firstly, it moved the subject of Forests from the State List to the Concurrent List in the Seventh Schedule, thus empowering the Central Government to legislate on forest conservation. Secondly, it introduced Article 48A to the Constitution of India wherein, the protection and safeguarding of forests and wildlife was included as a Directive Principle of State Policy. Thirdly, it introduced Article 51A to the Constitution of India, wherein Article 51A(g) made the protection and improvement of forests a fundamental duty. These amendments to the Constitution were deliberate

efforts at tackling the prevalent threat of deforestation by expanding the constitutional mandate of the Central Government, and by tasking it with the duty of protecting and conserving the forests of the nation.

10. That the widened constitutional mandate granted to the Central Government under the 42nd Amendment Act became the precursor to the Forest (Conservation) Act 1980 (hereinafter 'the principal Act'). As per the Statement of Objects and Reasons of the principal Act, the primary thrust behind the Act was to check and counter the ecological imbalance and environmental degradation caused by deforestation. It followed and sought to replace the Forest (Conservation) Ordinance 1980 passed earlier. The Act made it necessary to seek prior approval of the Central Government for the de-reservation of forests reserved under the 1927 Act and for the diversion of any forest land to non-forest uses and purposes. The Act also laid down ameliorative measures to tackle deforestation through compensatory reforestation and afforestation. It is noteworthy that since 1980 about 1.5 million hectares of forest land has been diverted to non-forest use – a marked reduction compared to figures between 1950 and 1980 which were estimated to be 4.2 million hectares. In this context, the principal Act was a significant progressive legislative step in the conservation and

protection of forests. The change in figures is evidence of a positive realisation of the goal of curbing deforestation and diversion of forest land as set out in the Statement on Objects and Reasons.

11. That the Central Government in its 1988 Forest Policy again reiterated the goals set out earlier in the 1952 Policy. The 1988 Policy focused on the restoration of the ecological balance and conservation of the natural heritage of the country through the preservation of natural forests with its vast variety of flora and fauna, which represent the remarkable biological diversity and genetic resources of the country, and increasing substantially the forest/tree cover through massive afforestation and social forestry programmes. It was notable in being one of the earliest significant policies highlighting the involvement of tribal communities in the protection and conservation of forests. It also guarded specifically against the diversion of forest land towards non-forest uses, noting that forests must be considered as national assets warranting proper safeguarding, instead of considering them as merely a readily available resource. The 1988 Policy was, in retrospect, an important step in moving from an anthropocentric to an ecological approach to conservation. The policy categorically stated that derivation of direct economic benefit must be subordinated to the principal aim of the policy which was to ensure

environmental stability and maintenance of ecological balance including atmospheric equilibrium which are vital for sustenance of all lifeforms, human, animal and plant.

A copy of the National Forest Policy, 1988 is filed herewith and marked as **ANNEXURE P-3** (Pg.145-154).

12. That on 12.12.1996, the Hon'ble Supreme Court passed a landmark order in *T.N. Godavarman v Union of India* (1997) 2 SCC 267 holding in categorical terms that the Forest (Conservation) Act 1980 would apply to all forests that come within the dictionary definition of forests. This was done considering that the aim of the principal Act is to protect against "*ecological imbalance*", which would necessarily require the Act to "*apply to all forests irrespective of the nature of ownership or classification thereof*". This Hon'ble Court held –

4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest

Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof.

13. That to execute this interpretation of forests, this Hon'ble Court further ordered the creation of an Expert Committee in each State tasked with identifying areas that are forests, and gave the following direction:

- "5. Each State Government should constitute within one month an Expert Committee to:
- i) identify areas which are "forests", irrespective of whether they are so notified, recognised or classified under, any law, and irrespective of the ownership of the land of such forest;
 - ii) identify the areas which were earlier forests, but stand degraded, denuded or cleared and;
 - iii) identify the areas covered by plantation trees belonging to the Government and those belonging to private persons."

A copy of the order dated 12.12.1996 in *T.N. Godavarman v Union of India* (1997) 2 SCC 267 is

filed herewith and marked as **ANNEXURE P-4** (Pg.155-163).

14. That it is pertinent to note the importance of the reports of the State Expert Committees (SEC) that were to be set-up on direction of this Hon'ble Court. According to the 12.12.1996 order, State Governments were to constitute SECs within a month, and the Expert Committees were directed to, identify those areas with forest cover to be protected under the FC Act. This identification was to be done based on the categorisation laid down by the Hon'ble Supreme Court in its order. It is unknown, however, whether this was done at all, or, indeed, if such Expert Committees exist in each state. The reports of the SECs are not available in the public domain despite several applications under the Right to Information Act 2005 for release of the same. Thus, there is no clarity if all states have indeed prepared the reports as directed by this Hon'ble Court and if prepared, whether they were exhaustive, and based on cadastral surveys and ground truthing. While examining the Kerala's State Expert Committee report, it is evident that it was put together in haste with no reference to the locations of the forests in the state, and without any ground truthing, physical cadastral surveys or demarcation of these lands. SEC reports submitted by other states are likely to be of similar poor quality.

15. That the State of Forest Report 1997 published by the Forest Survey of India (FSI) reported that the forest and tree cover stood at only 19.27% of India's total land area. Despite the reduction in deforestation brought by the principal Act, it was clear that its implementation affected only deforestation and failed to actively increase and grow forest cover as envisaged by the 1952 and 1988 Policies.

A copy of the relevant extract from the State of Forest Report 1997 alongwith its typed copy is filed herewith and marked as **ANNEXURE P-5** (Pg.164-176).

16. That the the State of Forest Report 2019 did not reflect much increase in the total figures. It recorded the total forest and tree cover to stand at 24.56% of the total land area. It also recorded forest cover in hilly areas to be at 40.3% of the total land area in these districts as against the target figure of 67% (as per the 1988 Forest Policy). It should be noted that the forest surveys which are conducted are primarily satellite surveys and record all plantations and other areas which have tree cover as forests.

A copy of the relevant extracts from the State of Forest Report 2019 is filed herewith and marked as **ANNEXURE P-6** (Pg.177-191).

C. INTRODUCTION OF 2023 AMENDMENT ACT AND THE PRE-LEGISLATIVE PROCESS

17. That it is against this background that the Central Government introduced the Forest (Conservation) Amendment Bill 2023 to the Lok Sabha on 29 March 2023. On the same day, a motion was passed to refer the Bill to a Joint Committee of Parliament including members from both Houses of Parliament [hereinafter referred to as 'JCP']. It must be noted that, in contravention of ordinary parliamentary procedure, the Bill was referred to a Joint Committee of Parliament chaired by a member of the ruling party instead of a Department Related Standing Committee which was, in this case, the Committee on Science & Technology, Environment & Forests.

A copy of the Forest (Conservation) Amendment Bill 2023 is filed herewith and marked as **ANNEXURE P-7** (Pg.192-198).

18. That hundreds of representations and submissions were made to the JCP highlighting various concerns with regard to the 2023 Amendment Bill. Several significant issues arising out of the Bill were extensively pointed out to the JCP by a joint submission made by Prakriti Srivastava, IFS, (then) Principal Chief Conservator of Forests, Kerala, Petitioner No. 7 herein and Prerna Bindra, former member of the Standing Committee of the National Board of Wild Life (NBWL), Petitioner No. 11 herein. Another set of detailed comments on the adverse impacts of the Amendment Bill 2023 were

submitted to the JCP by a group of eighteen experts and stakeholders including Dr. MK Ranjitsinh, IAS, Petitioner No. 6 herein and Mr. Debadityo Sinha, Petitioner No. 13 herein, and convened by the Vidhi Centre for Legal Policy. None of these concerns were taken on the record or corrective measures made in the draft Bill.

A copy of the joint submission made by Prakriti Srivastava, IFS, Petitioner No. 7 and Prerna Bindra, former member of the Standing Committee NBWL, Petitioner No. 11 is filed herewith and marked as **ANNEXURE P-8** (Pg.199-258).

The Report of the High-Level Working Group on the Forest (Conservation) Amendment Bill 2023 submitted to the JCP by a group convened by Vidhi Centre for Legal policy is filed herewith and marked as **ANNEXURE P-9** (Pg.259-302).

19. That despite receiving 1,309 memoranda questioning the soundness of the Bill, the Committee accepted, without any critical comment, all its provisions in its report submitted on 20 July 2023. It disregarded any and all genuine concerns and returned the Bill stating that due legislative process had been followed. The outcry of the scientific community, forest officers, conservationists, tribal councils, retired civil servants, and other expert advice, was completely ignored. States also raised serious concerns; for

instance, concerns raised by Sikkim (Clause 2.4.33, JCP report); Tripura (Clause 2.4.34) and Mizoram (Clause 2.4.36, JCP Report) which were dismissed with perfunctory replies by the MoEFCC and states such as Kerala rejected the amendment Bill in its entirety. Several members of the JCP expressed dissent and their notes were brought on record. For instance, Pradeep Bordoloi, MP, Lok Sabha in his detailed comments of dissent stated that there was reason to believe that the proposed changes would subvert the primary objective of the principal Act which was forest conservation and checking further deforestation.

A copy of the Letter No. FC2-2252/21 dated 29/10/2021 from the Principal Chief Conservator of Forests and Head of Forest Force, Government of Kerala to the Director General of Forests and Special Secretary, MoEFCC is filed herewith and marked as **ANNEXURE P-10** (Pg.303-311).

A copy of the Letter vide D.O. No. Mp. Nowgong: 03 sent by Pradyut Bordoloi with Comments of dissent on the Forest (Conservation) Amendment Bill, 2023 for inclusion in the JPC Report dt. 26.06.2023 is filed herewith and marked as **ANNEXURE P-11** (Pg.312-315).

A copy of the letter dated 12.07.2023 from 105 retired civil servants sent to Members of Parliament

is filed herewith and marked as **ANNEXURE P-12** (Pg.316-325).

20. That the JCP failed to properly take scientific concerns into consideration while considering the Bill. In fact, the JCP had no independent Scientific Advisor to go through and vet the scientific and technical information submitted by MoEFCC and advise it on the deposition of the officers of MoEFCC. Further on perusal of the JCP report, it is evident that the MoEFCC misled the JCP and submitted false information. In turn, the JCP accepted these depositions at face value without any scrutiny or critical thinking.

A copy of the Report of the Joint Committee on The Forest (Conservation) Amendment Bill 2023 dated 20.07.2023 is filed herewith and marked as **ANNEXURE P-13** (Pg.326-503).

21. That the Committee's Report noted that the impetus behind the amendments was the misinterpretations caused by adopting the dictionary definition of forests. It was noted that adopting such a definition led to a number of lands already diverted to non-forest use being considered as forests and that this led to hinderances in achieving carbon sink goals. This assumption does not seem to be correct since forest cover is determined primarily through satellite survey, and land on which there is no tree cover, even if

recorded as forest land, is not included in the survey results.

22. That the catastrophic consequences of enacting this bill were brought to the Government's attention through media and other fora, as it would exacerbate the ill effects of climate change. The Government, nonetheless, bulldozed the bill through Parliament without considering the widespread dissent expressed by the knowledgeable scientific community and other important voices, thus crushing the democratic process that needed to be mandatorily followed for bringing a new law into force.
23. That the Bill was passed by the Lok Sabha on 26 July 2023 and by the Rajya Sabha on 2 August 2023. The Bill was passed through the Lok Sabha in 38 minutes and through the Rajya Sabha in 1 hour and 41 minutes, with limited debate and discussion. The Bill received Presidential assent on 4 August 2023 and was published in the Gazette of India for general information on 4 August 2023.
24. The 2023 Amendment Act is deeply damaging to any gains made in the protection, improvement and conservation of forests after 1980. The amendments also seek to overrule the 12.12.1996 order in *T.N Godavarman* by restricting the application of the Act to only Recorded Forest Areas ("RFAs"). Doing so strips the protection afforded

under the principal Act, as it stood prior to the 2023 amendment to Unclassed Forest Areas which is a large chunk of forest land in India.

25. That most significantly, unclassified forests make up most of the forest area in the North-Eastern states of India. This would mean that under the Act, approximately 97.29% of forest lands in Nagaland and approximately 88.15% of forest lands in Meghalaya will lose legal protection. This is even before considering the implication of the newly inserted Section 1A(2)(a) which exempts all forest land within 100 kilometres of India's international borders from the purview of the FC Act.

D. PRINCIPAL ISSUES

I. Vast tracts of forests have lost legal protection

26. That the 2023 Amendment Act removes protections provided earlier in the principal Act to vast tracts of forest land and restricts protections only to declared and notified forest under the Indian Forest Act of 1927 and land which has been recorded in Government record as Forest on or after 25.10.1980 (i.e. date on which the principal Act came into force). It does so through the insertion of Section 1A(1) which provides –

1A. (1) The following land shall be covered under the provisions of this Act, namely:—

(a) the land that has been declared or notified as a forest in accordance with the provisions of the Indian Forest Act, 1927 or under any other law for the time being in force;

(b) the land that is not covered under clause (a), but has been recorded in Government record as forest, as on or after the 25th October, 1980:

27. That this new definition of forest has totally changed the previously accepted dictionary definition of forest, and has left unprotected the most vulnerable forest areas of India. Even before the amendment, India lost 11,743 square kilometres of unclassed forest area between 1997 and 2019 as per Forest Survey of India reports. The newly inserted Section 1A(1) would further exacerbate the vulnerability and lead to unhindered exploitation of unclassed forest areas.

A copy of a Comparative Chart on the unclassed forest area as per the FSI Reports of 1997 and 2019 is filed herewith and marked as **ANNEXURE P-14** (Pg.504).

28. That the amendment retrospectively deprives the effects of the order of this Hon'ble Court in *T.N. Godavarman (supra)*. As per the order of 12.12.1996, forest lands were to be identified by the SEC as per the categorisation provided by the Hon'ble Court within one month. Following up on its

directions issued on 12.12.1996, this Hon'ble Court ordered once again in July 2011 for completion of the exercise of identification of all lands that can be classified as forest for the purpose of FCA.

29. That the MoEFCC has given an assurance before the JCP that under Section 1A(I)(a) and (b) all categories of forests defined by the SECs set up by various states in compliance with this Hon'ble Court's order of 12.12.1996 will be given protection. The MoEFCC further stated that only those forests whose nature has been changed to non-forestry purpose by any Government order, on or before 1996 will not be covered by the amended Act. The MoEFCC assured the JCP that all such forest lands mentioned above have been identified by the SECs constituted within one year of the Hon'ble Supreme Court's order, and that mostly all states had submitted their reports which are on record.
30. That it may be noted with much consternation that the JCP has believed the submissions of the MoEFCC without any questions. They did not call for these SEC reports to be released, or get them examined by scientific forestry experts. They did not have the scientific acumen to question if such data has been evaluated by the FSI, if satellite mapping has been done, if such physical surveys have been undertaken by the states, and if such areas have been demarcated in the field.

31. That contrary to assurance given by the MoEFCC, it is neither known how many states have submitted these SEC reports, nor can the authenticity of these reports be verified. It is not known if the reports were based on ground truthing and if are exhaustive, comprehensive and adequate. The Kerala Expert Committee report itself says that extension of time was requested given the exhaustive terms of reference but was not granted. Hence implying that the report was hurriedly put together. It has no reference to the location in the state, and that no ground truthing, physical cadastral surveys or demarcation of these lands have been done. This is probably the case with other SEC reports submitted by other states also.
32. That it may be noted that these SEC reports are not in public domain either on the MoEFCC's website or on the website of the Forest Survey of India. Thus for citizens of this country, it is difficult to even know where India's forests are located.
33. That the Forest Survey of India reports that have been accessed of 1997 and 2019 do not mention these SEC reports. FSI's identification of forest lands has also not been conducted as per the SEC reports which would have been the order of things. The only information that can be gleaned from the two FSI reports are that over the period from 1997 to 2019, as much as 11,743 sq Kms of Unclassed forests have been lost across the country. Loss of

such a large area of unclassified forest indicates illegal diversion of lands throughout the country.

34. That this Hon'ble in its judgment in *Lafarge Umiam Mining v Union of India* (2011) 7 SCC 338 gave the following directions:

“(vii) Creation and regular updating of a GIS based decision support database, tentatively containing inter-alia the district-wise details of the location and boundary of (i) each plot of land that may be defined as forest for the purpose of the Forest (Conservation) Act, 1980; (ii) the core, buffer and eco-sensitive zone of the protected areas constituted as per the provisions of the Wildlife (Protection) Act, 1972; (iii) the important migratory corridors for wildlife; and (iv) the forest land diverted for non-forest purpose in the past in the district. The Survey of India top sheets in digital format, the forest cover maps prepared by the Forest Survey of India in preparation of the successive State of Forest Reports and the conditions stipulated in the approvals accorded under the Forest (Conservations) Act, 1980 for each case of diversion of forest land in the district will also be part of the proposed decision support database.

(viii) Orders to implement these may, after getting necessary approvals, be issued expeditiously.

(xii) Completion of the exercise undertaken by each State/UT Govt. in compliance of this Court's order dated 12.12.1996 wherein inter-alia each State/UT Government was directed to constitute an Expert Committee to identify the areas which are "forests" irrespective of whether they are so notified, recognized or classified under any law, and irrespective of the land of such "forest" and the areas which were earlier "forests" but stand degraded,

denuded and cleared, culminating in preparation of Geo-referenced district forest-maps containing the details of the location and boundary of each plot of land that may be defined as "forest" for the purpose of the Forest (Conservation) Act, 1980.

It is understood that while some states undertook the exercise, albeit adopting different methodologies, it seems the exercise has not been completed in any state. Therefore, it is very clear that none of the states have followed the orders of this Hon'ble Court vis-à-vis its directions pertaining to the State Expert Committees and identification and demarcation of forests on field by them as detailed above.

35. That it would have been more in order, given its mandate, that the MoEFCC had gotten the orders of the Hon'ble Supreme Court scrupulously implemented rather than create new legislation which not only does not implement the orders but sets it aside. Furthermore, as the three categories of forest lands as identified by this Hon'ble Court's order dated 12.12.1996 have not been identified and demarcated in the field, implementation of the 2023 Amendment Act will be guided by little to no data. This will result in confusion and misuse, and large areas that are intended to be forests will be now taken out of the purview of the Forest (Conservation) Act.

36. That areas that will go out of the purview of the Forest (Conservation) Act as being areas diverted on or before 12.12.1996 based on Government or any authority's order also needed to be identified, before legislating the proviso under Section 1A(1).
37. That proposing such sweeping changes to the existing legal regime through an amendment without actual assessment of forest lands that will be removed from the purview of the FC Act appears to be with a dubious intent and is completely against scientific principles of forestry and conservation, and in contravention of the ecological security of the country. Ground surveys, and state-wise identification of all types of forest lands - notified, recorded, unclassified, deemed forests, and forests by its dictionary meaning, need to be undertaken. This has not been done till now and the SEC reports are inadequate. Making drastic changes in the FC Act, which has been the cornerstone for forest conservation, on the basis of inadequate data and unproven hypothesis is a precursor to an ecological disaster.

II. Violations of FC Act 1980 are being Illegally Regularised

38. That the proviso to Section 1A(1) states-

Provided that the provisions of this clause shall not apply to such land, which has been changed from forest use to use for non-forest

purpose on or before the 12th December, 1996 in pursuance of an order, issued by any authority authorised by a State Government or an Union territory Administration in that behalf.

This means that such land shall not fall under the definition of forest land. By bringing this proviso the Government is trying to retrospectively legalise the illegality committed by violating the provisions of Section 2 (ii) of the principal Act. The FC Act categorically states that without the prior approval of Central Government, no state government or authority can use a Forest Land for any non-forest purpose. By bringing the proviso in the amendment the Government is trying to cover up and regularise the illegalities of various State Governments which, without the prior approval of the Central Government, had used forest land for non-forest purposes.

III. Amendments facilitate Rampant Deforestation through Over-Broad Exemptions and Excessive Discretion to the Central Government

39. That beyond the restriction of the applicability of the Forest (Conservation) Act 1980, the 2023 Amendment Act exempts several categories of forest lands (including RFAs) from statutory protection.

i. Section 1A(2)(a): Exacerbating fragmentation of forest land by exempting forest land along rail lines and public roads

40. As per the newly introduced Section 1A(2)(a), the following lands are not covered by the FC Act–

(a) such forest land situated alongside a rail line or a public road maintained by the Government, which provides access to a habitation, or to a rail, and roadside amenity up to a maximum size of 0.10 hectare in each case;

This exemption would cause fragmentation in forest land, leading to its degradation and ultimate destruction as has been proven repeatedly in the past. No definitions have been given as to what is a roadside amenity, public utility, habitations etc. There is no explanation whether the whole area alongside an entire road or rail line is exempt or only the area around the feeder roads that is exempt. Such exemptions can result in large scale degradation and destruction of forests alongside roads and rails.

41. That the MoEFCC has submitted before the JCP that defining amenities, strategic roads/public utilities etc will be undertaken subsequently by the Central Government in accordance with provisions of Section 1A(3) and further explanation in future, under Section 3(C) of the amended Act.

42. That this form of opaqueness is deeply concerning as the MoEFCC does not care to inform the JCP and the people of the country what these terminologies entail. It arrogates the authority to subsequently define these crucial terms without giving explanations and obtaining public consent. It is indeed very dubious as to how the JCP has accepted such explanations and not conducted its transactions with due diligence.

43. That it is a known ecological fact supported by scientific findings and data that ecosystem services provided by intact forest, particularly climax natural forests, is much greater than fragmented forests. Microenvironment changes at fragmented edges resulting in increased light levels, higher daytime temperatures, higher wind speed and lower humidity. Habitat fragmentation reduces biodiversity by 13-75% and impairs key ecosystem functions by decreasing biomes and altering nutrient cycles. This negatively impacts the water table, agricultural productivity, the ability of forest to sequester carbon and the ability to prevent landslides and environmental calamities and provisioning for ecosystem services. It causes irreparable damage to the habitats of both wild animals and birds, especially the smaller species. It is a potent recipe for loss of ecological security for the citizens of this country.

A copy of Haddad et. al., *Habitat Fragmentation and Its Lasting Impact on Earth's Ecosystems* (2015) 1(2) *Science Advances* is filed herewith and marked as **ANNEXURE P-15** (Pg.505-514).

44. That this provision is also applicable to feeder roads being created to the size of 0.1 hectare for access to habitations and public utility services along rail and road sides. The number of such feeder roads, and the distance between each road is not specified and this can lead to large scale destruction of forest lands. Each diversion of 0.1 hectares without any ceiling being prescribed across the country, will pockmark our forests with cancerously growing deforested "islands" and fragment them causing enormous ecological loss.
45. That Respondent No. 1 has failed to appreciate that human-wildlife conflict will exacerbate as a consequence of these amendments. Opening forest lands for non-forest use will lead to shrinking, fragmentation and degradation of wildlife habitats. Blocking the paths of long ranging animals such as elephants, tigers, bears by mines, highways and other infrastructure increases human-wildlife conflict, which is already a burning issue in many parts of the country. It has led to loss of human life, livelihoods, and tremendous loss of crops across the country. It could lead to local extinctions of already vulnerable species. It is a misconception that much of our wildlife is confined to Protected Areas. It is

noteworthy that much of our wild species live outside Protected Areas. Seventy percent of elephant population, a good part of wolf, bustard and leopard populations reside in landscapes outside Protected Areas. Other endangered wildlife outside Protected Areas includes fishing cats, snow leopards, sloth bears, hyenas, sarus cranes, lesser floricans, king cobras, etc.

46. That when a forest becomes secluded, the movement of wildlife is inhibited. This restricts gene flow and results in long-term population decline. Organisms struggle to move between habitat fragments, which can lead to decreased genetic diversity. This increases disease vulnerability and the risk of extinction. Fragmentation contributes to increased invasive plants (uncontrolled spread of non-native plants) in the habitat thereby increasing chances of spread of pests, pathogens and degradation of the water quality.
47. That predators have a very important role to play in the regulation of an ecosystem. Most predators are susceptible to the process of fragmentation and thus are found to be often missing from fragmented forests. When the top predators are lost, the food web falls out of place and the organisms residing at the lower end of the food chain can uncontrollably multiply. Herbivores like wild pigs, leaf cutter ants, monkeys and rodents have shown such effects.

ii. Section 1A(2)(b): Wrongly exempting all tree plantations and afforested areas

48. That the newly inserted Section 1A(2)(b) further excludes the following from the purview of the FC Act –

(b) such tree, tree plantation or reforestation raised on lands that are not specified in clause (a) or clause (b) of sub-section (1);

This exemption stands in stark contrast to the Act's purported Statement of Objects and Reasons to promote reforestation. Scientifically, this exception is also misplaced and illogical and functions under unsound and dubious presumptions as to the efficacy of compensatory afforestation and plantation drives.

49. That according to the MoEFCC, as submitted before the JCP, this provision has been introduced for promoting tree plantations as allegedly people are not growing trees and plantations due to the fear of applicability of the FCA. It further claimed that by removing such trees and plantations from the FCA's purview, the fear will be removed. It has been assumed that people will then start growing trees and plantations on a large scale, thus helping our country to achieve its national targets of Net Zero emission by 2070, while creating carbon

sinks, increasing green cover, improving livelihood of forest-dependent communities, etc.

50. That the submission of the MoEFCC is only based on suppositions and anecdotes, and not on data to show that there is reduced planting due to fear of the FC Act.
51. That there is no clause in the impugned law stipulating that such areas identified will be used only for plantations and cannot be diverted for any other purpose by the owner of that parcel of land. It is only wishful thinking at best, but a false and misleading claim that the owners will use that land only for agro-forestry and for raising plantations. In fact, in all likelihood, the owners would not have diverted it for other uses till now only because of the applicability of the FC Act, and that will change now.
52. That such lands are more likely to be diverted for non-forestry lucrative “developmental” activities now when there will be no oversight over land use of these areas. More ominously, they will be used as Compensatory Afforestation lands offered up in lieu of forest areas diverted for non-forestry activities. There is a strong possibility that while obtaining permits for diversions of notified forest land, project proponents will offer such “freed forest lands” as compensatory afforestation areas.

The amendments offer no safeguards against such a trade-off.

53. That it can only be inferred that the intention is dubious and the MoEFCC is trying to mislead the citizens of this country by offering such a bizarre logic that people will grow more trees once the FC Act is no longer applicable to such lands.
54. That it is presumptuous and fallacious to believe that the amendment will address a perceived fear that people are not planting trees because the FC Act is applicable in these areas. In fact, people, especially those who are financially deprived – a likely majority, will go for what is most monetarily appealing for them in the short term, rather than start planting trees. At best they will go for monoculture of the most commercially profitable trees. Further, this perceived fear could have been easily resolved by issuance of a clarificatory circular/ guideline rather than bring out such a sweeping amendment.
55. That there are large patches of land throughout the country where plantations of poplar, rubber and eucalyptus etc. are being grown and harvested for commercial purposes, without any fear of the Forest (Conservation) Act being brought into force in such lands. If there are any such instances that may have happened, it could have been only due to mala-fide or ignorance on part of

the enforcement officers, rather than fear of the law.

56. That the principal Act is effective and practical and the need of the hour is better implementation. State-level initiatives under the umbrella of the principal Act could have been considered to encourage tree plantation. Some such initiatives are already underway -

- i. The administrative report of Kerala Forest Department 2020-21 states that there is a "*Scheme for Incentivization of Private Forestry under Social Forestry*". The proposal to give cash incentives to farmers with an objective of encouraging them to grow more trees and produce timber in private lands, was approved by the Government vide G.O (Rt) No. 99/2012/F&WLD, dated: 17.02.2012. The tree species included in this scheme are teak, sandal, mahogany, anjili, plavu, rosewood, kambakom, kumbil, kunnivaka and thembavu. The scheme is being implemented through individual farmers, VSS, EDC, Kudumbasree units, Self Help Groups, farmer's co-operatives and NGOs. Those who are planting a minimum of 50 seedlings in their land will be eligible for incentives. The scheme also provides cash awards for the best three performers in each of the above said slab at the end of 5th and

10th year. An amount of Rs. 4,09,610 was expended during 2020-21 for the same.

- ii. Similarly, the Forest Department Annual Administrative Report of Assam states that Agro-Forestry and plantation on private land under the programme *Assam Project on Forest and Biodiversity Conservation* aims to promote alternative livelihoods through initiatives such as agroforestry amongst the forest-fringe communities of the state. In December 2021, the Assam FD has also notified the creation of 'Assam Agroforestry Development Board' as a non-profit company.
- iii. The Andhra Pradesh Annual Administrative Report also states the popularisation of various Agroforestry practices/models suitable to different agro-ecological regions and land use conditions.

It would be safe to say that many states in India run such tree plantation drives and specific targeted programmes to increase tree cover and to provide local livelihoods.

57. That social forestry programs offering tree planting for private areas, agroforestry, plantations along rail, roads, etc. run throughout the country and huge funds have been spent over such programmes and many assets created in terms of agroforestry and urban forestry. Therefore, for the MoEFCC to

claim that people are scared to plant trees, plantations, and engage in agroforestry is negating a huge social forestry programme running across the country over the last 20 years. The Government has poured crores and crores of public funds for this purpose, with dedicated forest staff to run such programs. The MoEFCC has misled the JCP by giving false information and hiding the facts.

iii. Section 1A(2)(c)(i): Blanket exclusion of land within 100 kms of the LOC and international borders

58. That the newly inserted Section 1A(2)(c)(i) excludes such forest land –

(i) as is situated within a distance of one hundred kilometres along international borders or Line of Control or Line of Actual Control, as the case may be, proposed to be used for construction of strategic linear project of national importance and concerning national security; or

The petitioners would like to draw the attention of the Hon'ble Court to the horrific impacts of this exemption. This means there will be no regulatory oversight, no safeguards, no impact assessment on the environment, loss of some of the rarest lowland dipterocarp forests surviving in the world which are also amongst the richest in India in the

Andamans and Nicobar, as also wild habitats and species. India's 15,100 km international terrestrial borders house India's most biodiverse and fragile ecosystems and includes almost the whole of the Northeast. A look at just the Species Listed in the MoEFCC's 'Species Recovery Programme' whose ranges fall within 100 kms distance from International Border, LoC, LAC is cause for concern.

A copy of a representative map of India showing the ranges of Species Listed in the MoEFCC's 'Species Recovery Programme' falling within 100 kms distance from International Border, LoC, LAC along with population status of these species is filed herewith and marked as **ANNEXURE P-16** (Pg.515-516).

59. That entire territories of the northeastern states, such as 90% of Nagaland, a large part of Assam, and the whole of Meghalaya, Tripura and Mizoram, fall within this range. These exclusion zones harbour India's national animal - the tiger, national heritage animal - the elephant, and other endangered, critically endangered and endemic species such as the Great Indian Bustards, red pandas, Snow Leopards, Hoolock Gibbons, Wild Ass, wolves, Black-necked Cranes, pangolins and bears, to name only a few.

60. That it may be noted that Himalayan glaciers form the headwaters of rivers such as the Ganga, Brahmaputra, Indus and others which provide sustenance to millions downstream. Unchecked construction on such seismically and geologically sensitive landscapes not just threatens rare wildlife and the country's water security but also renders these regions vulnerable to earthquakes and landslides. The land subsidence in various parts of Himachal Pradesh and Uttarakhand should be a wake-up call for stringent environmental oversight and safeguards on developmental activities in the Himalayan belt, rather than squandering our ecological responsibility. Viewed in this context, the justifications provided by the MoEFCC for this amendment are vapid and hollow.
61. That the MoEFCC in the JCP report states that 100 km exemption along international border is being provided because they want to fast-track construction of strategic linear projects of national importance and those concerning national security. However, they have not provided any data to the JCP showing delay in any such projects due to the implementation of the principal Act. Thus the MoEFCC concern is based on suppositions and anecdotal findings which has little value empirically and in forestry, which relies heavily on science.
62. That a number of the present petitioners have been members of the committees which approve

projects under the FC Act including those for defence needs and can vouchsafe that no defence project has ever been rejected. The MoEFCC should have been asked by the JCP to furnish information as to how many and what percentage of defence proposals have indeed been rejected in the past 10 years to warrant such a drastic exemption.

63. That the MoEFCC deposed before the JCP that only 3.5% of diverted area under the FC Act is for defence road projects (clause 2.4.68, JCP Report). This again indicates that defence roads in border areas have not been a significant number. Changing the law so drastically for 3.5% of forest diversions appears to be unwarranted.
64. That MoEFCC's replies to the JCP in response to concerns raised about this exemption include that these will be linear projects and will only be within 5-10 kms of the international boundary/LOC (e.g. Internal Page 30, 32, 37, 39 of JCP report). If that is the case, then it is unclear why a 100 km belt been provided when 5-10 km is adequate. Such a submission is merely a response to the JCP by senior officers of MoEFCC and is neither reflected in the law nor does it trickle down to other implementing officers in the concerned states. What will be implemented is what is stated in the law, and not what was deposed before the JCP.

65. That the Ministry has remained silent about the maritime borders which also are included within international boundaries of 100 kms and where linear projects such as laying of oil and natural gas pipelines, etc can be done as per this act legally, without obtaining any clearance. The destruction that can be caused to the already vulnerable sea scape, coastal belts, coral reefs, mangroves, beaches and marine bio-diversity is incalculable. the richness and importance of the forests of the outlying islands of India has been already mentioned. These coastal and marine ecosystems are the first line of defence against tsunamis and cyclones, as was seen in the 2005 tsunami and repeated cyclones in the Sundarbans, for the extremely vulnerable coastal and island zones of our country. Bleaching of corals, loss of sea grasses, high extinction risks of endangered species such as the dugong and turtles is a stark outcome of such meddling with our sea scape. Acute hardship will be caused to millions of fisherfolk, whose livelihood is completely dependent on seas. They are inevitably going to be impacted by such laws, for which no social accounting has been done before notifying such an amendment. Such over-broad exemptions, without any explicit safeguard in the amended law, will render them vulnerable, exposed to large-scale destruction without any scrutiny or accountability.

iv. Section 1A(2)(c)(ii): Forest land used for security related infrastructure excluded from the Act's purview

66. That newly inserted Section 1A(2)(C)(ii) excludes the following from the purview of the FC Act –

(ii) up to ten hectares, proposed to be used for construction of security related infrastructure; or

In the absence of any indication of which forests this provision will be applicable to, it is clear that it will apply to all forests in the country. It does not even restrict the numbers of such constructions of security related infrastructure, which could amount any numbers of constructions carried out, taking 10 hectare forest land for each such construction piecemeal.

67. That the exemption applies to forest anywhere in the country, rendering by implication all forest in the country vulnerable to diversion and destruction. This is indeed a shocking and very dangerous clause and will result in loss of our forests, biodiversity, livelihoods, and ecological security for people.

68. That such a broad exemption, without any explanation to where it will be applicable and without any safeguards, while potentially being applicable to every piece of forest land in India, is

extremely concerning and should be set aside to safeguard the ecological security of our country

69. That this too will result in fragmentation of our forests. It merits repeating that the amendment does not consider a known ecological fact supported by scientific findings and data that ecosystem services provided by intact forests is much greater than fragmented forests. As mentioned earlier, habitat fragmentation reduces biodiversity by 13-75% and impairs key ecosystem functions by decreasing biomes and altering nutrient cycles. It is a potent recipe for loss of ecological security for the citizens of this country besides being disastrous for our biodiversity and wildlife through loss and destruction of habitat and populations.

v. ***Section 1A(2)(c)(iii): Unrestricted exemption for defence and public utility projects in Left Wing Extremism affected areas***

70. That as per the newly inserted Section 1A(2)(c)(iii), the FC Act will not apply to such forest land –

(iii) as is proposed to be used for construction of defence related project or a camp for paramilitary forces or public utility projects, as maybe specified by the Central Government, the extent of which does not exceed five hectares in a Left Wing Extremism affected

area as may be notified by the Central Government.

The amendment has also been justified by stating that the principal Act comes in the way of building drinking water facilities, toilets in schools, basic infrastructure and other such basic facilities in forests.

71. That construction of infrastructure to serve basic development needs are allowed by circulars and guidelines under the FC Act 1980. Therefore, the premise itself is false that people living in forests face difficulties as there are no schools and water facilities and that other basic facilities are denied due to the FCA 1980. The MoEFCC has deliberately misled the JCP and the nation by stating this as a reason for allowing 5 hectares to be diverted in left wing extremism areas for such purposes.
72. That the number of such infrastructure for paramilitary units within any forest is also not specified. Laying of roads to such units, electricity, water lines and other such facilities is also not specified, which no doubt will be ancillary and not accounted within the stipulated diversion of the 5 ha exemption. It has been already mentioned that fragmentation and other associated ecological losses, both to biodiversity and humans, is an inevitable outcome of such untrammelled construction.

vi. Section 1A(3): Statutory reliance on compensatory afforestation which has a very poor track record in India

73. That as per the newly inserted Section 1A(3),

(3) The exemption provided under sub-section (2) shall be subject to such terms and conditions, including the conditions of planting trees to compensate felling of trees undertaken on the lands, as the Central Government may, by guidelines, specify.

It is submitted that before making such a grandiose aspiration of increasing green cover by raising plantations, an assessment should have been as to how much money has been spent in the past 20 years for raising plantations across the country, the species composition and success and failure rates of such plantations and such data should have been placed in public domain. There must be innumerable vigilance cases against delinquent officers for causing failed plantations, data regarding which is also liable to be collated. Such large-scale plantations as suggested should only be given a go-ahead if the data shows that the survival rate of these plantations is good and worth investing in.

74. That this Hon'ble Court in its order dated 25.03.2021 in *Association for Protection of Democratic Rights v State of W.B.* (2021) 5 SCC

466 had set up an expert committee under the chairpersonship of Dr. MK Ranjitsinh Jhala to *inter alia* develop a set of scientific and policy guidelines that shall govern decision making with respect to cutting of trees for developmental projects. The committee submitted its report dated 05.01.2022. Some of the key observations made by this committee in its report are:

“Compensatory Afforestation’ needs to be replaced with ‘Compensatory Restoration’ both conceptually and in practice. Compensatory restoration of forest implies restoring it to its pristine form, and a degraded grassland to its original state and not into a woodland of fast-growing species.’

“The survival of plantations has been a major problem and results from inadequate planning, and poor execution and monitoring. Monies collected by the CAMPA are to “carry out statutory and constitutional obligations,” i.e., the protection of natural resources. Compensatory afforestation ought to be positioned as discharging a statutory and constitutional responsibility of restoring and long term survival of a ‘national’, ‘intergenerational’, ‘public’ asset and be differentiated from routine forest

plantation activity. Forestry plantations will succeed only when accountability is fixed.'

'The present compensatory conservation regime turns a blind eye to the livelihood and security of forest-dependent communities who are most impacted by forest diversion.'

'Species selection in afforestation projects is most often biased towards fast-growing, non-native tree species that thrive in disturbed habitats but have limited scope for fostering biodiversity or other species that would benefit local forest-dependent communities. Such inappropriate plantations may be more accurately described as 'green deserts'. To make matters worse, in many instances plantations have been raised in areas that never historically harboured trees, but instead contained other types of valuable natural habitats such as grasslands, which were destroyed as a result of mindless tree-planting.'

A copy of relevant extract the Report on Compensatory Conservation in India: An Analysis of the Science, Policy and Practice submitted to the Hon'ble Supreme Court by the 7-Member Expert

Committee pursuant to the directions dated 25.03.2021 in SLP (Civil) No. 25047/2018 is filed herewith and marked as **ANNEXURE P-17** (Pg.517-527).

75. That in its order dated 11.01.2023, this Hon'ble Court recorded its appreciation for the herculean efforts put in by the Expert Committee in preparing a commendable report. It directed the MoEFCC to respond to the report and state as to what measure the Union of India propose to take to give effect to the Committee's recommendations. Till date no response has been filed by the MoEFCC to this report, which indicates its low level of engagement with issues of such critical importance.

A copy of relevant extract of order dated 11.01.2023 of the Hon'ble Supreme Court of India in SLP (C) No. 25027 of 2018 (tagged with *T.N. Godavarman v Union of India*) is filed herewith and marked as **ANNEXURE P-18** (Pg.528-551).

76. That it may also be noted that there are innumerable press reports for almost all states as to the number of failed plantations and crores of tax-payer's money squandered over this.

A copy of the article by Simrin Sirur titled 'More Than Half of Himachal Pradesh's expenditure on tree planting wasteful, study finds' published in

The Print dt. 27.03.2022 is filed herewith and marked as **ANNEXURE P-19** (Pg.552-554).

A copy of the article by Atikh Rashid titled 'Green Maharashtra' initiative: 38 out of 59 participating govt agencies fail to submit survival report for a single sapling' published in *The Indian Express* is filed herewith and marked as **ANNEXURE P-20** (Pg.555).

A copy of the article titled 'CAG finds 'irregularities' in Odisha forest dept's plantation activities' published in *Business Standard* dt.02.08.2022 is filed herewith and marked as **ANNEXURE P-21** (Pg.556-561).

77. That moreover, this objective of creating carbon sinks via afforestation, plantations and increasing tree cover is counter intuitive, and multiple studies, including in India show that these are poor in sequestering carbon. Natural forests are far more effective – a study published in *Nature* indicates that the carbon sequestration potential of natural forests is 40 times greater as compared to plantations.

A copy of the article Lewis, Wheeler et. al. 'Regenerate Natural Forests to Store Carbon' (2019) 568 *Nature* 25, dt. 04.04.2019 is filed herewith and marked as **ANNEXURE P-22** (Pg.562-565).

IV. Arbitrary Restriction of what constitutes Non-forest Purpose

i. Explanation to Section 2(1): Arbitrary exemption of zoos, safaris and ecotourism facilities from the purview of 'non-forest purpose' without regard to conservation goals

78. That the 2023 Amendment Act entirely arbitrarily expands the scope of what may be considered a non-forest purpose by substituting the existing provision. The Explanation to Section 2(1) now states the following regarding non-forest purpose—

Explanation - ...

but does not include any work relating to or ancillary to conservation, development and management of forests and wildlife, such as—

(i) silvicultural operations including regeneration operations;

(ii) establishment of check-posts and infrastructure for the front line forest staff;

(iii) establishment and maintenance of fire lines;

(iv) wireless communications;

(v) construction of fencing, boundary marks or pillars, bridges and culverts, check dams, waterholes, trenches and pipelines;

(vi) establishment of zoo and safaris referred to in the Wild Life (Protection) Act, 1972, owned by the Government or any authority, in forest areas other than protected areas;

(vii) eco-tourism facilities included in the Forest Working Plan or Wildlife Management Plan or Tiger Conservation Plan or Working Scheme of that area; and

(viii) any other like purposes, which the Central Government may, by order, specify.";

Forests have been managed traditionally by operationalising the activities mentioned in clauses (i) to (v), and these were mentioned in the principal Act as well. To date, huge amounts of funds from the public exchequer have been spent on such activities. Huge assets and infrastructure have been created for this purpose throughout the country. All these are governed by approved working plans, forestry codes, and forest schedule rates.

79. That, however, apart from the reasonable exemptions that already existed in the principal Act, shockingly zoos and safaris owned by the Government or any authority in forest areas other

than Protected Areas, and Ecotourism facilities are also now excluded from the purview of non-forest purpose. A number of submissions made to the JCP by stakeholders, experts, and even a few State Governments raised serious concern about the misuse of this amendment and commercializing of the forests in the name of zoo, safari and ecotourism.

80. That zoos hold captive animals and safari parks are merely larger enclosures, and thus cannot be equated with conservation of wildlife or forestry activity. They do not have in their manifesto or agenda the conservation of forests or other natural ecosystems. It may be mentioned that until recently the setting up of zoos and safari parks within and around protected areas was not permitted.
81. That this is a blatant attempt to open floodgates to increased forest diversions for zoos and safaris in the name of 'forest conservation and management' and ecotourism, as has been promoted and planned in the Aravali. The proposed Aravalli Safari Park by Haryana government involves construction of huge infrastructure and, includes structures such as clubs, restaurants, aquarium, cable car, open-air theatres, animal cages, entertainment parks, landscaped gardens, electricity lines, road networks etc. This cannot be termed a forestry activity by any stretch of imagination. Bringing zoos and

safaris in the ambit of forestry activities will only benefit the mega tourism industry and politicians, who have been clamouring for such activities for their personal and political gains. The principal Act had been a major tool for forest officials in fighting off such unscrupulous attempts at forest diversion. However, the MoEFCC has now made it easy for such vested interests to be rewarded by removing the need to seek permission.

A copy of the article by Ipsita Pati titled 'Ph-1 of Aravali zoo safari park to be developed in 2 years: Khattar' published in *The Times of India* dated 06.07.2023 is filed herewith and marked as **ANNEXURE P-23** (Pg.566-567).

82. That the exemption for zoo, safari, eco-tourism facilities, prospective survey, exploration etc. is contrary to the National Forest Policy 1988. It is regressive and ultra vires to the FC Act, as it relaxes the existing safeguards against commercial utilization of our natural assets.
83. That the inclusion of the term '*any authority*' in clause (vi) is also deeply worrying. Like with other terms in this Act, this phrase has not been defined in the law, thus rendering it open for misuse or misinterpretation. In its submission to the JCP, the MoEFCC mentions that activities indicated in clause (vi) will be with the approval of the Central Zoo Authority (CZA) and will be implemented by

Government authorities. CZA looks only at the aspects related to the functioning and upkeep of zoos; not at forest conservation vis-à-vis the zoo. The MoEFCC assurance to the JCP is clearly misleading and creates a leeway for future diversions by private or corporate entities, who have already shown interests in creation of large zoos. The controversy surrounding the illegal felling of trees in the Corbett Tiger Reserve and massive encroachments on forest land for the Pakhru Tiger Safari in Uttarakhand may be highlighted here. In September 2023, the Hon'ble High Court of Uttarakhand directed the Central Bureau of Investigation to investigate the illegalities surrounding the construction in the Safari Park in the Tiger Reserve.

A copy of article by Ishita Mishra titled 'Uttarakhand HC orders CBI to probe illegal construction inside Corbett National Park' published in *The Hindu* dt. 07.09.2023 is filed herewith and marked as **ANNEXURE P-24** (Pg.568-571).

84. That even though the JCP raised concerns on this specific exemption and suggested that such activities be carried out in non-forest lands, the MoEFCC did not address its concerns nor give a satisfactory response. Despite knowing the negative implications of such a legal exemption, the JCP accepted the unreasonable explanation, accepted

the amendment and did not recommend any modifications.

85. That the amendment to encourage zoos and safaris on forest land suggests an intent to encourage wildlife in captivity and as objects of amusement, rather than their conservation in the wild. World over, the movement is to move away from zoos. With this law India seems to be sliding into the dark ages where menageries flourished as means of entertainment and not the way forward for the future for forest and wildlife conservation and the preservation of the national natural heritage.
86. That considering zoos and safaris as activities ancillary to forest conservation and management defies logic and basic common sense and only exposes the mala fide commercial intent of the government. One must consider the associated negative impacts on otherwise intact forests and wildlife from the creation of permanent structures, huge constructions, access roads, power transmission lines and other supporting infrastructure for such zoos and safaris. It subverts basic public interest and commitment to nature conservation. Zoological parks hold wildlife in captivity and are considered means of entertainment; many have huge welfare concerns and only a select few serve as ex-situ tools for wildlife conservation. They cannot, at any cost, be

used as means to fragment the forests and destroy them in the name of conservation.

87. That the amendment also excludes ecotourism facilities in forest lands from non-forest uses, if they are included in the Forest Working Plan or Wildlife Management Plan or Tiger Conservation Plan or Working Scheme of that area. In this regard, MoEFCC as per the JCP Report believes that "...such facilities, besides sensitizing and generating awareness about the importance of conservation and protection of forest land and wildlife, will also add to the livelihood sources of local communities and thereby providing them opportunities to connect with the mainstream of development". This clause is redundant because if such activities are included and approved in Forest Working Plan or Wildlife Management Plan or Tiger Conservation Plan or Working Scheme of that area, they do not need to be specified in this amendment as this course of action is already being followed.
88. That in the name of ecotourism, commercial tourism has already taken over the natural habitats and forests in our country. This is the on-ground situation in many forest lands in India, despite the existing regulations under the purview of the principal Act and the "Guidelines on Sustainable Eco-tourism in Forest and Wildlife Areas" issued by MoEFCC in 2021. Similar concerns about the negative impacts of unregulated ecotourism on

forests and wildlife have been raised by several other individuals, organizations and experts in their submissions to the JCP including Petitioner No. 7 and No. 11 in their submission annexed as Annexure P-8 above. However, these were completely disregarded by MoEFCC as well as the JCP.

A copy of the Ministry of Environment, Forests and Climate Change's Guidelines for Sustainable Eco-tourism in Forest and Wildlife Areas 2021 dated 08.10.2021 is filed herewith and marked as **ANNEXURE P-25** (Pg.572-582).

89. That eco-tourism facilities obstruct wildlife movement, alter the land use and land cover, pollute the landscape, increase human-wildlife conflict etc., cause further fragmentation of a landscape already affected by linear disturbances like access roads, and put great pressure on land and water. Similar concerns are reflected in the National Wildlife Action Plan 2017-31 ("NWAP"), which mentions that in recent years mushrooming of tourism facilities has led to overuse, disturbance and serious management problems in several PAs.
90. That the submission of the MoEFCC to the JCP does not clearly justify the reasons for permitting ecotourism facilities in forest areas. It also does not clarify or define the term 'ecotourism facilities'. Such an ambiguous term is open for wide

interpretations, making it easier for construction of permanent or high-impact structures within the forests. This has serious ecological implications and is clearly against our country's ethos of forest conservation and protection.

91. That it is pertinent here to recall Hon'ble National Green Tribunal's observations in the matter of *Social Action for Forest and Environment (SAFE) Vs Union of India & Others* in its order dated 10/12/2015, regarding haphazard and unregulated licensing of the river rafting camps operating in the river Ganga from Shivpuri to Rishikesh. In this context, the Hon'ble Tribunal noted that ecotourism activities such as camping in forest lands, that were erroneously perceived as low-impact by the Government, could not be considered as a forestry activity or ancillary to forest conservation. Therefore, such activities shall be subjected to the provisions of the original FC Act directing the concerned user agencies to seek relevant permission for such non-forestry activity in a forest land.

A copy of the Judgment dated 10/12/2015 passed by the Hon'ble National Green Tribunal in *Social Action for Forest and Environment (SAFE) v Union of India & Ors* 2015 SCC OnLine NGT 843 is filed herewith and marked as **ANNEXURE P-26** (Pg.583-692).

92. That the MoEFCC's actual intentions for permitting ecotourism in forest areas remains ambiguous. In its submission to the JCP, the MoEFCC mentions that these amendments do not promote corporate enterprises and that such activities like ecotourism will be implemented as the working plan or management plan by the Government Department. However, the amended provision is only likely to provide an opportunity to unscrupulous individuals or agencies to misuse the Act.
93. That the MoEFCC failed to apprise the JCP about 'The National Strategy for Ecotourism 2022'. The JCP members also did not find it necessary to inquire from MoEFCC or the relevant Ministry about the existing policies governing the implementation of ecotourism in forests and Protected Areas. This 2022 Strategy allows for identification of certain areas as 'Ecotourism Blocks' in forest lands, which are to be designated by State Governments for development and management by the private sector. The private operator will be given 'exclusive access' preferably in partnership with the local communities but they will not have rights to the forest produce or the forest land. The private operators cannot build residential or commercial facilities on the designated forest land except if there are no private lands available for the same, adjoining the Block. This is a very alarming development and violative of the FC Act.

Exemptions to ecotourism activities and facilities in forest lands as per the 2023 Amendment Act along with this 2022 strategy of 'Ecotourism Blocks' is a sure way of opening the doors of the country's forests to the private sector, giving them unfettered access to our natural assets.

A copy of the National Strategy for Ecotourism 2022 by Ministry of Tourism, Government of India dated 29.04.2022 is filed herewith and marked as **ANNEXURE P-27** (Pg.693-742).

94. That the potential impacts of ecotourism and safaris on the wildlife living in such forest lands has been entirely ignored. One study published in 2019, found higher stress levels in tigers during the tourist season than in non-tourist season in two tiger reserves in India. The hordes of jeeps clamouring to get as close to an animal or to take pictures of tigers and other wildlife are popular scenes in our tiger reserves and protected areas. Increased littering by tourists has severe implication in and around the forests and protected areas. Most scenic natural forests and hill stations have restaurants, souvenir shops, shanties selling tetra pack drinks, chips in poly-packs, etc. Wildlife is attracted to the food in rubbish dumps where they scavenge, becoming used to people further exacerbating human-wildlife conflict. Macaques, and increasingly elephants, in human spaces, sometimes feeding on the waste dumps near

ecotourism facilities, is a typical example of the unforeseen impacts of anthropogenic activities. Allowing such a clause will destroy our natural habitats, and poignantly, remove the very essence of wildness from our wildlife.

A copy of the research article by Tyagi et al. titled 'Physiological stress response of tigers due to anthropogenic disturbance especially tourism in two central Indian tiger reserves' 7(1) Conservation Physiology 2019, coz045 is filed herewith and marked as **ANNEXURE P-28** (Pg.743-751).

95. That nature has time and again made the grave consequences of widespread disturbances and degradation of forests and natural habitats clear. The unfortunate tragedy in Kedarnath, Uttarakhand in 2013 and the damage caused by the recent Himachal Pradesh flash floods in July 2023 are distressing examples of the harrowing outcomes. Such ecologically fragile areas are also very popular tourist destinations and are increasingly being developed to facilitate more tourist influx. While tourism is an important way to provide local communities with livelihood options, but unregulated and high-impact tourism can be counterproductive with deadly impacts on the same communities.

ii. Section 2(2): Arbitrarily permitting activities such as survey and exploration in forest land

96. That as per the newly inserted Section 2(2)–

(2) The Central Government may, by order, specify the terms and conditions subject to which any survey, such as, reconnaissance, prospecting, investigation or exploration including seismic survey, shall not be treated as non-forest purpose."

This means no approvals will be required under the FC Act for such work. By excluding activities such as surveying from the ambit of non-forest purpose, it leaves all forests vulnerable to destructive use and activity. The JCP has not considered the necessity of conducting prospective surveys for minerals and oil and natural gas in forest areas. It simply says that no permanent damage will be done to forest in the event of such scoping surveys. If coal, diamonds or other minerals are found in rich forest areas, there will inevitably be demands for diverting the forest land for destructive mining activities. The implication is clear that if minerals are found in such prospecting surveys the next step will be to extract it, without considering the deleterious impacts on forest, wildlife, bio-diversity and ecosystem services that such forests offer, even in designated protected areas like national parks and sanctuaries. It raises the question as to how such a clause is going to justify the new name of the law which refers to conservation and augmentation of forests.

97. That the MoEFCC repeatedly justifies the exemption of these survey activities as these do not have any “perceptible change”. Such an understanding and rationale is highly imprudent. In the JCP Report, there is no mention of empirical evidence provided by MoEFCC to this effect or for any other exemptions.
98. That as per the guidelines issued by MoEFCC (FC Division) ‘*Guidelines specific to hydrocarbon sector for undertaking ‘seismic surveys and exploratory drilling in forest areas’* under para 6.8 of Chapter-6 of the Handbook of the Forest (Conservation) Act, 1980, certain guiding directions have been enlisted to regulate seismic surveys and exploratory drilling in forest areas. One of the guidelines direct that, “[t]he process of exploration drilling for hydrocarbon in 130 m x 130 m area causes total damage to vegetation (both flora and faunal elements) in the area and cannot be considered as temporary vegetation change. It is a case of proper diversion for the purpose of FCA 1980 and must be considered for processing with application in form A of FCA rules and not under Form C.”
99. That when MoEFCC itself considers certain types of exploratory drilling in forests as a “case of proper diversion”, it is rather baffling that it went on to impose a blanket exemption on all such activities irrespective of their individual impacts, instead of continuing to regulate it on a case-by-case basis or

through effective implementation of its own guidelines. This clearly shows the actual intentions of MoEFCC, which is incongruous to its stated mandate –the conservation of forests, mitigating the impacts of climate change, meeting the carbon sequestration targets and welfare of and livelihood generation for local communities.

100. That the Hon'ble Guwahati High Court in December 2020 has imposed a stay over the Environmental Clearance given to Oil India Limited for their proposal on hydrocarbon exploration and drilling utilizing extended reach drilling methods at seven distinct locations within the Dibrusaihowa National Park. The reason for this suspension was the absence of a Biodiversity Impact Assessment. Unfortunately, such regulatory safeguards against unbridled developmental activities slowly being diluted and the 2023 Amendment Act is yet another instance of this dilution.
101. That it is apparent that the provisions of the 2023 Amendment Act will cumulatively cause extensive and unbridled damage to the forests of India. These amendments fundamentally change the entire object and purpose of the FC Act as well as the regulatory framework built under it. The amended Forest (Conservation) Act is now a new legislation, bearing little resemblance with the principal Act. This was brought to the attention of the JCP by the submission of LIFE, but this concern

has neither been taken on record, nor replied or addressed by the JCP.

A copy of the Legal Initiative for Forest and Environment (LIFE)'s comments on the Forest (Conservation) Amendment Bill 2023 is filed herewith and marked as **ANNEXURE P-29** (Pg.752-762).

V. North Eastern States Will Be Forced To Bear The Brunt Of The Act's Arbitrary Provisions

102. That the north-eastern states of India boast significant forest coverage, ranging from 47% in Sikkim to 84.5% in Mizoram. These lush forests contribute substantially to the country's dense forest cover, accounting for around 25%. However, even prior to the recent amendments, these states were grappling with substantial forest loss. Between 2009 and 2019, these states lost a considerable 3698 sq.km of forest, with nearly 28% of this loss occurring within the last two years. A pressing concern amplifying the situation in the region relates to large forest expanses falling within the Recorded Forest Area (RFA) that remain unclassified under any government records. This constitutes more than 52% of the RFA in certain states, such as Manipur, Nagaland (almost over 90%), and Meghalaya, and includes forests managed by traditional institutions on private or communal lands. Disturbingly, extensive

unclassified forests might not even appear in government records, potentially rendering them beyond purview of the FC Act after the amendment unless officially recognized as forests after 25 October 1980.

103. That the removal of legal protection of forests solely due to absent official records is a contentious point in the Northeast. Moreover, these forests play a pivotal role in food security for the region, as periodic clearings and regeneration – known as jhum cultivation is the mainstay of local agriculture. Significantly, areas outside the RFA in the Northeast comprise approximately 38.5% of Assam's forest area, contributing almost 4% to India's total forest cover. Remarkably, dense forests form a substantial 44% or so of these areas, underscoring their ecological importance. However, the 2023 Amendment Act fails to extend conservation provisions to these regions.
104. That the situation is worsened as pursuant to the amendments, forest clearance is no longer required under the FC Act for forest land within 100 km of international borders or strategic zones for defence or security related projects. Entire territories of the northeast states, such as 90% of Nagaland and the whole of Meghalaya, Tripura and Mizoram, and a substantial part of Assam fall within this range.

105. That the unique status of Nagaland under Article 370(a) further complicates matters. With over 90% of its forests owned by individuals, clans, and local communities, the state operates under oral traditions, with limited written records including records of the forest boundary, etc. Less than 6% of the forest lands are controlled and managed by the forest department as per the original FCA 1980. An estimated 29% of Nagaland's forest cover lies outside the RFA, raising questions about the applicability of the amended FC Act. Moreover, Nagaland has also failed to implement the Forest Rights Act until now, due to the different traditional ownership system in the state. Therefore, further easing the way for forest diversion and exploitation in the state. There is a push for oil palm plantations in Nagaland. Currently it has 4623 ha under oil palm while the target is another 15000 ha in the "wastelands" of seven districts under the National Mission on Edible Oils-Oil Palm-a Centrally Sponsored Scheme. Agreements on the same have already been signed with Patanjali and Godrej Agrovet Limited.
106. That large parts of dense forests in these states will be highly vulnerable to diversions to activities such as mining, plantation, zoos, safari, exploration surveys, and for security reasons. It is pertinent to note here that this concern has been

mirrored and considered seriously by the affected states themselves. It may be noted that the legislative assembly of Mizoram has unanimously rejected the 2023 Amendment Act through a resolution dated 22.08.2023 to "protect the rights and interests of the people of Mizoram".

A copy of the Resolution opposing the Forest (Conservation) Amendment Act, 2023 adopted by the Mizoram Legislative Assembly dated 22.08.2023 is filed herewith and marked as **ANNEXURE P-30** (Pg.763).

VI. Lack of clear definitions for crucial terms

107. That despite amending the existing regulatory framework significantly, the 2023 Amendment Act leaves several key terms and phrases undefined. It is not stated as to what is implied by "strategic linear projects", "security projects", "public utility projects", etc. For example "security" can imply anything- defence, financial, food, raw materials. Therefore, any diversion can be covered under the newly inserted Section 1A(2). The terms "roadside amenity" and "public utility projects" are not defined which can have sweeping connotations. Unfortunately, it can be presumed that it has been deliberately left vague to allow all nature of diversions to be included. Definitional clarity must be there in the principal law as it is essentially a legislative function. Allowing the same to be

clarified subsequently by the Government through orders and circulars would amount to excessive delegation and unlawful exercise of legislative functions by the Government.

108. That it may be noted that nowhere in the pre-legislative process has the MoEFCC clarified that these undefined terms and phrases will be defined in the Rules that will be notified subsequently. To the contrary, it has said that it will invoke newly inserted Section 3C to clarify applicability of the Act and other issues (see for e.g., Clause 2.4.9, Clause 2.4.17, Clause 2.4.31 and Clause 2.5.14, JCP Report). This provision only envisages directions being issued by the Central Government to State Governments and other entities. Such directions will be in the form of executive action, not subject to crucial legislative scrutiny, and are likely to amount to impermissible law-making by the executive.

VII. Excessive delegation of powers to Central Government

109. That with inclusion of provisions like Section 1A(1) and (3), amended Explanation to Section 2(1), Section 2(2) and Section 3C, the Central Government has ensured full control of how forests are diverted and retained all over the country without having to inform or take sanction from Parliament or do so with the knowledge and participation of the citizens of the country. With

these enabling provisions in the amended Act, the Central Government will implement the provisions of the amended Act not through a set of notified Rules duly approved by Parliament, but through guidelines, directives and missives. This will give untrammelled powers to the Central Government which can implement projects of diversion of forest lands without public or legal scrutiny possibly in collusion with the party seeking diversion/project proponent along with the State Government.

110. That delegating such excessive powers through the Act to the executive jeopardises transparency and public participation as well as parliamentary scrutiny of the law. No doubt these draconian clauses have been brought in for ease of business to convert forest lands to non-forestry uses in the name of "development" which will endanger the ecological security of the country. Once implemented, these provisions will result in ecocide and have disastrous impacts on our forests, wildlife, biodiversity and ecosystem services offered by forests for human survival and security.

VIII. Conflict with The Wildlife (Protection) Act, 1972

111. That the impugned law will come in conflict with the provisions of the Wildlife (Protection) Act of 1972 (WPA), pertaining to the control,

management, diversion and excision of territory, denotification, etc, of Protected Areas (national parks, sanctuaries, etc) lying within the 100 Km radius of India's boundaries, and those that come within the purview of areas affected by Left Wing Extremism. Many of these Protected Areas are not forests notified under the Indian Forest Act 1927 and many of them, especially in the Trans Himalayan regions like Ladakh, Himachal Pradesh, Uttarakhand, Sikkim, and Arunachal Pradesh, and in the Kutch and Western Rajasthan, do not even have forest cover but are unique ecosystems rich with endangered and also endemic wildlife. They have come under the control of the state wildlife and forest departments only because they were notified as Protected Areas.

112. That it is unclear whether these vulnerable areas will now come under FC Act, as amended. It is highly likely that the amended provisions will grossly override and erode the protections afforded in the WP Act. The consequences of this would be grave.
113. That the protected areas that fall within the ambit of the 100 Km of the borders are the main, and in some cases the only surviving habitat, many of them minuscule, of a majority of our most endangered species—the Manipur brow-antlered deer, Kashmir Hangul, great Indian bustard, Tibetan Gazelle, Tibetan antelope, Tibetan Argali,

wild yak, snow leopard, takin, Black-necked crane, markhor, Malayan sun bear, Manipur quail, western tragopan, Sclater's monal, Nicobar megapode, Andaman pigeon, Andaman teal, Andaman wild pig, Narcondam hornbill and a host of others. Many of these species are the State Animals and State Birds of the states and union territories. Their survival and recoveries are being funded by the States and the Union Government. These are also the habitats of our national animal, the tiger and national heritage animal, the elephant. If these habitats are excluded from the purview of the WP Act, their extinction would be rendered imminent.

IX. Joint Committee of Parliament was Misled by Government And Its Report Lacks Scientific Credibility

114. That throughout the pre-legislative consultation process for the 2023 Amendment Act, the JCP repeatedly overlooked the lack of evidence to support the need for the amendment, completely disregarded the concerns and suggestions put forth by different stakeholders, and blindly accepted submissions made by the MoEFCC. MoEFCC, as it appears from its submissions, based its decisions only on ensuring ease of doing business for those with commercial interests, and this unfortunately appears to be the *raison d'être* of this legislation.

115. That the JCP accepted all falsehoods of the MoEFCC at face value without checking the facts in their hurry to recommend the amendment which can only be with a dubious intent to fast-track diversion of forest lands for non-forestry purposes.
116. That the statement of MoEFCC that even handpumps and school toilets for tribal girls are not being able to be made due to the stringent FC Act 1980, a statement repeated by the Minister of Environment, Forest and Climate Change, as well as a Member of Parliament in the Rajya Sabha, is devoid of truth given the data on diversion of forest land for such and other basic infrastructure and public utility projects.
117. That regarding SEC reports and the identification of forest land in accordance with this Hon'ble Court's order, the JCP believed submissions made by the MoEFCC. It did not call for the SEC reports, verify their existence for all states, and get them examined by scientific forestry experts.
118. That from a perusal of the JCP report, it is very clear that the MoEFCC has provided false and incomplete information to the JCP and the JCP has believed the Ministry's submissions without any scientific examination or scrutiny of the documents. The JCP ought to have examined the Director of FSI to understand the ground reality

which would have helped it to take an informed decision.

119. That the JCP ought to have sought independent scientific and technical advice from person or persons with expertise in forestry, forest laws and wildlife conservation to assess the veracity of submissions made by MoEFCC. In response to several important concerns, the MoEFCC gave vague, evasive or incomplete responses, or stated that terms and conditions would be formulated at a subsequent stage. This has resulted in highly arbitrary amendments to the law, which lack clarity in definitional scope and ambit, allow sweeping exemptions that are not based on empirical data or sound scientific evidence, and are replete with contradictions.
120. That the officers of the MoEFCC who have deposed before the JCP are holding the post in a term bound manner. Their assurances and explanations to the Committee are of little value as the law must speak for itself, not by what some officers' deposition before certain committees.

X. Alarming Scope for Misinterpretations

121. That alarmingly, amendments introduced by the 2023 Amendment Act are confusing and misinterpretations have surfaced barely a few days after the enactment of the bill on 04.08.2023, and there are likely to be more such instances of

misinterpretations. This will lead to irrevocable and disastrous consequences for forests across the country. Recently a letter was issued by the Additional Chief Secretary Odisha dated 11.08.2023 as an outcome of misinterpreting the notified amendment. The letter stated that requests to divert forest land for non-forestry purposes such as infrastructure and state development now ought to conform with the amended Forest Act and that 'the concept of deemed forest is now removed'. Not being aware or not caring to follow due procedure on part of the highest officer of the State of Odisha in-charge of forests shows how misuse and misinterpretation of the amended FC Act can arise. This directive has been kept on hold after public pressure, and a subsequent letter dated 14.08.2023 says it is withheld and will become operational once guidelines are received from MoEFCC. It may be noted that when the highest officer in the state, the person in-charge of forests of Orissa has misread and misinterpreted the notified amendment, what will be the pathetic plight of a lower functionary of the Forest Department such as the forest guard or forest watchers who are the first line of defense for protection of forest wealth. If corrective action is not taken, the large-scale havoc of forests that will be unleashed is horrific to envisage.

A copy of the Letter dt. 11.08.2023 from the Additional Chief Secretary, Forest, Environment and Climate Change Department, Government of Odisha to the vide subject The Forest (Conservation) Amendment Act 2023 is filed herewith and marked as **ANNEXURE P-31** (Pg.764).

A copy of the Letter No. FE-DIV_MISC-0022-2023-172285/FE&CC dt. 14.08.2023 from Additional Secretary, Forest Environment and Climate Change Department, Government of Odisha to the Collectors vide subject The Forest (Conservation) Amendment Act 2023 is filed herewith and marked as **ANNEXURE P-32** (Pg.765).

122. That the Petitioners are filing the present petition on the following among other grounds which are set out without prejudice to each other.

E. GROUNDS

123. That the Petitioners are approaching this Hon'ble Court for reliefs and directions on the following grounds:

- A. BECAUSE the Forest (Conservation) Amendment Act 2023 is highly detrimental to the environmental and ecological integrity of the country and if not struck down with immediate effect will cause untold and irreversible damage to India's forests and wildlife and greatly impacting human welfare.

Once the 2023 Amendment Act is implemented, vast tracts of invaluable forest land across the country will lose legal protection and will be vulnerable to destruction. There will be immeasurable loss of ecosystem services and associated social, cultural, and economic value. We will witness exacerbation of widespread natural calamities such as landslides, floods and droughts which will impact the lives and livelihoods of millions of people in India.

- B. BECAUSE we hold this earth and its natural resources and ecological wealth in trust for our present and future generations. This trust, and the principle of inter-generational equity, are blatantly breached when whimsical decisions, inadequate and inaccurate data, and poor scientific evaluation influence legislative measures, causing rampant destruction of the forests and the ecology that they support.
- C. BECAUSE the introduction of the 2023 Amendment Act to India's forest governance regime will effectively destroy decades of work on preservation and conservation of India's forest land, first through the enactment of the Forest (Conservation) Act 1980 and then through the landmark order of this Hon'ble Court dated 12.12.1996 in *T.N. Godavarman v*

Union of India. The lucid exposition by this Hon'ble Court on what will constitute 'forest' in Indian law and the subsequent directions delivered by the Hon'ble Court have been the guiding principles for Indian forest regulation and governance till date. They have significantly helped in reducing loss of forests and wild habitats and provided a crucial bulwark against unregulated and unaccounted destruction of forest lands across the country.

I. **Gravely impinges on the fundamental right to pollution-free environment**

- D. BECAUSE the Hon'ble Supreme Court has held in *T.N. Godavarman Thirumulpad (87) v. Union of India* (2006) 1 SCC 1 that 'any threat to the ecology can lead to violation of the right of enjoyment of healthy life guaranteed under Article 21, which is required to be protected. The Constitution enjoins upon this Court a duty to protect the environment'.
- E. BECAUSE the protection of forest lands is essential to the ecological, food and water security in the country. Rampant diversion of forest land for all varieties of purposes, many only serving commercial interests, and allowing unrestricted deforestation will amount to violation of the fundamental right guaranteed to persons by Article 21 of the Constitution. This Hon'ble Court in *Narinder*

Singh v Divesh Bhutani & Ors. [2022] 15 S.C.R. 1066 has observed -

“Article 21 of the Constitution confers a fundamental right on the individuals to live in a pollution-free environment. Forests are, in a sense, lungs which generate oxygen for the survival of human beings. The forests play a very important role in our ecosystem to prevent pollution. The presence of forests is necessary for enabling the citizens to enjoy their right to live in a pollution-free environment;”

- F. BECAUSE this Hon’ble Court has observed that the right to life guaranteed under Article 21 includes the right to a proper and healthy environment. In *Hinch Lal Tiwari v. Kamala Devi* (2001) 6 SCC 496, it was held-

“13. It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution.”

- G. BECAUSE it is imperative to maintain the ecological balance under the Constitutional schema of Article 21 read with Article 48A and Article 51A(g). This Hon’ble Court has held in

Sushanta Tagore v Union of India (2005) 3
SCC 16 –

“31. It is imperative that the ecological balance be maintained keeping in view the provisions of both directive principles of State policy read with Article 21 of the Constitution. Furthermore, a State within the meaning of Article 12 of the Constitution must give effect to the provisions of Article 51-A(g) of the Constitution...”

Furthermore this Hon'ble Court has upheld in *Charu Khurana v Union of India* (2015) 1 SCC 192 the proposition that the fundamental duty of every citizen is the collective duty of the State. Article 12 of the Constitution of India provides that 'State' includes Parliament of India. In this context, therefore, Article 51A(g) also imposes a duty on Parliament as the legislative arm of the State.

- H. BECAUSE the amendments to the FC Act reflect a complete dereliction of duty imposed on the State to protect and improve the environment. Article 48A of the Directive Principles of State Policies (DPSPs) provides that the state shall endeavor to protect and improve the environment and safeguard forests and wildlife of the country. Article 51A(g) makes it a duty of every citizen of India to protect and improve the natural environment including forests, lakes etc. In

the Constitutional Assembly Debates, Dr. Ambedkar had emphasized that DPSPs should be made the basis of all executive and legislative actions that will be taken hereafter. Prof. Shibban Lal Saksena emphasized that every legislature will be bound to respect the directive principles in the Constitution, and any act which offends the directive principles shall be ultra vires. This Hon'ble Court has held that DPSPs cannot be reduced to oblivion by a sleight of interpretation (*Gujarat Mazdoor Sabha v. State of Gujarat* (2020) 10 SCC 499).

- I. BECAUSE the State rather than protect and improve the forests, seeks to remove the protection of the FC Act previously afforded to large sections of forests as defined by the Hon'ble Supreme Court in its 12.12.1996 order in *T.N. Godavarman v. Union of India*. It is a brazen attempt at overriding a judicial decision. The Act is egregiously unconstitutional as not only does it violate the fundamental rights, but also represents a failure of the State in discharging its duty to legislate in keeping with the directive principles as under Article 48A of the Constitution. Directive principles impart greater width to fundamental rights and have

to be taken into consideration while legislating on environmental concerns.

- J. BECAUSE there is little data to support the impugned amendment to the FC Act. A Brandeis Brief form of compilation of data designed to indicate the actual or probable social effects of legislation has been recognised as a valid aid to judicial review of legislation. In fact, the Supreme Court in *Carew & Co. Ltd. v Union of India* (1975) 2 SCC 971 held that, '18. *It is unfortunate that in cases where the economic object and impact of special types of legislation call for judicial interpretation, the necessity for a detailed statement of the background facts and supportive data, apart from some sort of a Brandeis Brief illuminating the social purpose of the statute, is not being fully realized by the state.*' The same approach is apt for environmental legislation particularly since the damage once caused to the environment by constitutionally deficient legislation would be irreversible. A cautious approach in such cases where irreversible and irreparable damage may be caused to the environment has been crystallized in the precautionary principle and recognised in *Research Foundation for Science (18) v Union of India* (2005) 13 SCC 186.

K. BECAUSE in the instant case the State ought to have carried out a detailed analysis of the potential impact which these amendment would have on the Forests in order to ensure that the duty to protect and improve the environment as encapsulated in Article 48A read with Article 51A (g) was fulfilled. On the contrary, the State has given no data to justify its legislative stand. For instance, the SEC Reports which had purportedly been taken into consideration while framing the legislation, were not placed before the JPC. In fact, these reports are not available in the public domain either, and it is not known how many states have even submitted these reports.

L. BECAUSE deforestation not only decimates wild habitats but leads to defragmentation of forests which also severely impacts wildlife. As held by this Hon'ble Court in *M.C. Mehta (Badkhal and Surajkund Lakes Matter) v. Union of India* (1997) 3 SCC 715-

'Articles 21, 47, 48-A and 51-A(g) of the Constitution of India give a clear mandate to the State to protect and improve the environment and to safeguard the forests and wildlife of the country. It is the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.'

The impugned law will exacerbate fragmentation of forests by permitting various projects with varying land requirements to pockmark our forest land, with no regulatory oversight.

- M. BECAUSE this Hon'ble Court is fully cognisant of the dangers of habitat defragmentation, and in the context of encroachments in elephant corridors has held in *Hospitality Assn. of Mudumalai v In Defence of Environment & Animals* (2020) 10 SCC 589 that -

33. Elephant corridors allow elephants to continue their nomadic mode of survival, despite shrinking forest cover, by facilitating travel between distinct forest habitats. Corridors are narrow and linear patches of forest which establish and facilitate connectivity across habitats. In the context of today's world, where habitat fragmentation has become increasingly common, these corridors play a crucial role in sustaining wildlife by reducing the impact of habitat isolations. In their absence, elephants would be unable to move freely, which would in turn affect many other animal species and the ecosystem balance of several wild habitats would be unalterably upset.

(emphasis supplied)

- N. BECAUSE it is incumbent on Respondents to apply the precautionary principle – which has been accepted as part of the law of our land

by this Hon'ble Court in *Vellore Citizens' Welfare Forum v Union of India* (1996) 5 SCC 647. The law requires the State to anticipate, attack and prevent any cause of environmental degradation. This Hon'ble Court in *Hospitality Assn. of Mudumalai* case held -

"39. As was held by this Court in *M.C. Mehta (Badkhal & Surajkund Lakes Matter) v. Union of India* [*M.C. Mehta (Badkhal & Surajkund Lakes Matter) v. Union of India*, (1997) 3 SCC 715] the "precautionary principle" has been accepted as a part of the law of our land. ... It is the duty of every citizen of India to protect and improve the natural environment including forests and wildlife and to have compassion for living creatures. The precautionary principle makes it mandatory for the State Government to anticipate, prevent and attack the causes of environmental degradation. In this light, we have no hesitation in holding that in order to protect the elephant population in the Sigur Plateau region, it was necessary and appropriate for the State Government to limit commercial activity in the areas falling within the elephant corridor."

Stripping vast tracts of forest land of any legal protection and permitting a wide spectrum of activities in forest land on the pretext that they do not constitute non-forest use will cause extensive environmental degradation, not prevent it.

- O. BECAUSE this Hon'ble Court has categorically held that when the State has to choose between irreparable damage to the environment and that to economic interests, it has to give precedence to environmental protection. In *M.C. Mehta v. Union of India* (2004) 12 SCC 118 it was held -

"48. ... Principle 15 of the Rio Conference of 1992 relating to the applicability of precautionary principle, which stipulates that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation, is also required to be kept in view. In such matters, many a times, the option to be adopted is not very easy or in a straitjacket. If an activity is allowed to go ahead, there may be irreparable damage to the environment and if it is stopped, there may be irreparable damage to economic interest. In case of doubt, however, protection of environment would have precedence over the economic interest. Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. ..."

- P. BECAUSE the 2023 Amendment Act goes against the foundations of the Environmental Rule of Law as defined by this Hon'ble Court in a series of judgments. This Hon'ble Court elucidated on the concept of the

Environmental Rule of Law in *H.P. Bus-Stand Management & Development Authority v. Central Empowered Committee* (2021) 4 SCC 309-

49. The environmental rule of law, at a certain level, is a facet of the concept of the rule of law. But it includes specific features that are unique to environmental governance, features which are sui generis. The environmental rule of law seeks to create essential tools — conceptual, procedural and institutional to bring structure to the discourse on environmental protection. It does so to enhance our understanding of environmental challenges — of how they have been shaped by humanity's interface with nature in the past, how they continue to be affected by its engagement with nature in the present and the prospects for the future, if we were not to radically alter the course of destruction which humanity's actions have charted. The environmental rule of law seeks to facilitate a multi-disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions and policy perspectives in the field of environmental protection. ... There are significant linkages between concepts such as sustainable development, the polluter pays principle and the trust doctrine. The universe of nature is indivisible and integrated. The state of the environment in one part of the earth affects and is fundamentally affected by what occurs in another part. Every element of the environment shares a symbiotic relationship with the others. It

is this inseparable bond and connect which the environmental rule of law seeks to explore and understand in order to find solutions to the pressing problems which threaten the existence of humanity. The environmental rule of law is founded on the need to understand the consequences of our actions going beyond local, State and national boundaries. The rise in the oceans threatens not just maritime communities. The rise in temperatures, dilution of glaciers and growing desertification have consequences which go beyond the communities and creatures whose habitats are threatened. They affect the future survival of the entire eco-system. The environmental rule of law attempts to weave an understanding of the connections in the natural environment which make the issue of survival a unified challenge which confronts human societies everywhere. ...The structural design of the environmental rule of law composes of substantive, procedural and institutional elements. The tools of analysis go beyond legal concepts. The result of the framework is more than just the sum total of its parts. Together, the elements which it embodies aspire to safeguard the bounties of nature against existential threats. For it is founded on the universal recognition that the future of human existence depends on how we conserve, protect and regenerate the environment today.

(emphasis supplied)

II. Excessive Delegation of Powers to the Executive

Q. BECAUSE the 2023 Amendment Act unlawfully delegates what are essentially legislative functions to the government. The discretion granted to the Central Government under the provisions of the law are excessive, and there is not sufficient guidance for the exercise of this discretion. This Hon'ble Court through a catena of cases has laid down the rule against excessive delegation. In *Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. CST*, (1974) 4 SCC 98, this Hon'ble Court held -

"13. ... At the same time it has to be borne in mind that our Constitution-makers have entrusted the power of legislation to the representatives of the people, so that the said power may be exercised not only in the name of the people but also by the people speaking through their representatives. The rule against excessive delegation of legislative authority flows from and is a necessary postulate of the sovereignty of the people. The rule contemplates that it is not permissible to substitute in the matter of legislative policy the views of individual officers or other authorities, however competent they may be, for that of the popular will as expressed by the representatives of the people.

15. ... the determination of the legislative policy and its formulation as a rule of conduct. Obviously it cannot abdicate its functions in favour of another. But in view of the multifarious activities of a

welfare State, it cannot presumably work out all the details to suit the varying aspects of a complex situation. It must necessarily delegate the working out of details to the executive or any other agency. But there is danger inherent in such a process of delegation. An overburdened legislature or one controlled by a powerful executive may unduly overstep the limits of delegation. It may not lay down any policy at all; it may declare its policy in vague and general terms; it may not set down any standard for the guidance of the executive; it may confer an arbitrary power on the executive to change or modify the policy laid down by it without reserving for itself any control over subordinate legislation. This self-effacement of legislative power in favour of another agency either in whole or in part is beyond the permissible limits of delegation. It is for a court to hold on a fair, generous and liberal construction of an impugned statute whether the legislature exceeded such limits."

(emphasis supplied)

- R. BECAUSE the fact the delegatee in the present case is the Central Government does not make the delegation lawful. In his concurring judgment in *Gwalior Rayons Silk* case, KK Mathew J observed

"57. It is not clear what difference does it make in principle by saying that since the delegation is to a representative body, that would be a guarantee that the delegate will not exercise the power unreasonably, for, if ex hypothesi the legislature must perform the essential legislative

function, it is certainly no consolation that the body to which the function has been delegated has a representative character. In other words, if, no guidance is provided or policy laid down, the fact that the delegate has a representative character could make no difference in principle."

(emphasis supplied)

- S. BECAUSE the 2023 Amendment Act while exempting certain forest lands from the applicability of the FC Act and declaring large number of activities as outside the remit of non-forest purposes, gives the Central Government unfettered discretion to define the related terms and conditions through orders, guidelines and directions. There is no clarity or guidance on how such executive action should be carried out even though these actions will impact vast tracts of forest land. As has been observed by this Hon'ble Court in *Vasantlal Maganbhai Sanjanwala v. State of Bombay* (1961) 1 SCR 341:

4. ... The extent to which such delegation is permissible is also now well-settled. The legislature cannot delegate its essential legislative function in any case. It must lay down the legislative policy and principle, and must afford guidance for carrying out the said policy before it delegates its subsidiary powers in that behalf. As has been observed by Mahajan, C.J., in *Harishankar Bagla v. State of Madhya Pradesh* [(1955) 1 SCR 381, 388] "the

legislature cannot delegate its function of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. The legislature must declare the policy of the law and the legal principles which are to control any given cases, and must provide a standard to guide the officials or the body in power to execute the law". In dealing with the challenge to the vires of any statute on the ground of excessive delegation it is, therefore, necessary to enquire whether the impugned delegation involves the delegation of an essential legislative function or power and whether the legislature has enunciated its policy and principle and given guidance to the delegate or not.
..."

(emphasis supplied)

- T. BECAUSE the impugned law suffers from patent illegality as the Central Government has been given the powers to issue directions for the implementation of the law, but there is no provision which lays down the underlying principles or the criteria or standards that the Central Government must follow while issuing such directions. This Hon'ble Court has held in *Mohmedalli and Others v. Union of India and Another* [1963] Suppl 1 SCR 993:

"It is clear that the last mentioned case illustrates the rule that the question whether or not a particular piece of legislation suffers from the vice of excessive delegation must be determined with reference to the facts

and circumstances in the back-ground of which the provisions of the statute impugned had been enacted. If, on a review of all the facts and circumstances and of the relevant provisions of the statute, the Court is in a position to say that the legislature had clearly indicated the underlying principle of the legislation and laid down criteria and proper standards but had left the application of those principles and standards to individual cases in the hands of the executive, it cannot be said that there was excessive delegation of powers by the legislature. On the other hand, if a review of all those facts and circumstances and the provisions of the statute, including the preamble, leaves the Court guessing as to the principles and standards, then the delegate has been entrusted not with the mere function of applying the law to individual cases, but with a substantial portion of legislative power itself."

(emphasis supplied)

Key terms such as 'public utility projects', 'strategic linear projects' and 'security related infrastructure' have been left undefined in the impugned law, and the Central Government is now empowered to clarify what would fall within the ambit of these terms. This untrammelled power will come at the cost of invaluable forest lands being usurped not for critical and limited public purposes but projects and developments that have only a tenuous link with public

purpose at best, and at worst – vested commercial interests.

III. Illegal legislative overruling of the 12.12.1996 order of this Hon'ble Supreme Court in T.N. Godavarman

U. BECAUSE amendments have been introduced with the intention to overrule the landmark judicial pronouncement made by this Hon'ble Court vide its order 12.12.1996 and is thus *ultra vires*. This Hon'ble Court in the 12.12.1996 order laid down the manner in which the word 'forest' was to be interpreted for the purposes of implementation of the FC Act. It did not invalidate the law, it provided a clarification on how the word 'forest' was to be understood, and then issued suitable directions in the nature of mandamus to the government. The objective of the FC Act being to protect forests, and there being misconceptions about the true scope of what are forests, the order of this Hon'ble Court sought to remedy that situation. The 2023 Amendment Act excludes certain categories of forests from the scope of the FC Act which this Hon'ble Court had clearly considered to be within the ambit of the definition of forest. This nullification of a judicial pronouncement is impermissible. As has been held by this

Hon'ble Court in *S.R. Bhagwat v. State of Mysore* (1995) 6 SCC 16:

"12. It is now well settled by a catena of decisions of this Court that a binding judicial pronouncement between the parties cannot be made ineffective with the aid of any legislative power by enacting a provision which in substance overrules such judgment and is not in the realm of a legislative enactment which displaces the basis or foundation of the judgment and uniformly applies to a class of persons concerned with the entire subject sought to be covered by such an enactment having retrospective effect. We may only refer to two of these judgments.

...

15. We may note at the very outset that in the present case the High Court had not struck down any legislation which was sought to be re-enacted after removing any defect retrospectively by the impugned provisions. This is a case where on interpretation of existing law, the High Court had given certain benefits to the petitioners. That order of mandamus was sought to be nullified by the enactment of the impugned provisions in a new statute. This in our view would be clearly impermissible legislative exercise.

(emphasis added)

- V. BECAUSE the power of judicial review is part of the basic structure of our Constitution, and the legislature cannot in the exercise of its

power nullify judicial pronouncements. This Hon'ble Court in *NHPC Ltd. v State of Himachal Pradesh* 2023 SCC OnLine SC 1137 observed:

"...The role of the judiciary in galvanising our constitutional machinery characterised by institutional checks and balances, lies in recognising that while due deference must be shown to the powers and actions of the other two branches of the government, the power of judicial review may be exercised to restrain unconstitutional and arbitrary exercise of power by the legislature and executive organs. The power of judicial review is a part of the basic feature of our Constitution which is premised on the rule of law. Unless a judgment has been set aside by a competent court in an appropriate proceeding, finality and binding nature of a judgment are essential facets of the rule of law informing the power of judicial review. In that context, we observe that while it may be open to the legislature to alter the law retrospectively, so as to remove the basis of a judgment declaring such law to be invalid, it is essential that the alteration is made only so as to bring the law in line with the decision of the Court.

(emphasis supplied)

- W. BECAUSE this Hon'ble Court in its 12.12.1996 order had held that the aim of the principal Act is to protect against ecological imbalance which would necessarily require that 'forest land' in Section 2 of the FC Act to include not only forests as understood in the dictionary

sense but also any area recorded as forest in the Government record irrespective of the nature of ownership or classification thereof. The 2023 Amendment Act blatantly sets aside this lucid and clear interpretation of the law by the Hon'ble Court, and that is not permissible. In *Madras Bar Association v. Union of India* (2022) 12 SCC 455, the following principles were laid down by the majority of the Hon'ble Supreme Court, as regards the permissibility of abrogation, to remove the basis of a judgment:

"43. The permissibility of a legislative override in this country should be in accordance with the principles laid down by this Court in the aforementioned as well as other judgments, which have been culled out as under:

a) The effect of the judgments of the Court can be nullified by a legislative act removing the basis of the judgment. Such law can be retrospective. Retrospective amendment should be reasonable and not arbitrary and must not be violative of the fundamental rights guaranteed under the Constitution. (*Lohia Machines Ltd. v. Union of India*, (1985) 2 SCC 197).

b) The test for determining the validity of a validating legislation is that the judgment pointing out the defect would not have been passed, if the altered position as sought to be brought in by the validating statute existed before the Court at the time of rendering its judgment. In other words, the defect

pointed out should have been cured such that the basis of the judgment pointing out the defect is removed.

c) Nullification of mandamus by an enactment would be impermissible legislative exercise (See : S.R. Bhagwat v. State of Mysore, (1995) 6 SCC 16). Even interim directions cannot be reversed by a legislative veto (See : Cauvery Water Disputes Tribunal, 1993 Supp (1) SCC 96 (2) and Medical Council of India v. State of Kerala, (2019) 13 SCC 185).

d) Transgression of constitutional limitations and intrusion into the judicial power by the legislature is violative of the principle of separation of powers, the Rule of law and of Article 14 of the Constitution of India.”

This position of law was recently relied upon by this Hon’ble Court in *Dr. Jaya Thakur v. Union of India* 2023 SCC OnLine SC 813 wherein it was reiterated that a writ of mandamus could not be nullified by a subsequent legislation.

- X. BECAUSE the 2023 Amendment Act does not address to any degree, implicitly or explicitly, the issue of ecological imbalance being caused by deforestation of any wooded area in general. It also fails to address how the principal Act would be able to continue its protection against ecological imbalance through such a restrictive definition of forest land. It is also not clear from the Statement of

Objects and Reasons and the amended Preamble why only those forests specifically declared, notified, or recorded as defined in Section 1A(1) should be given legal protection under the FC Act while the Hon'ble Supreme Court's order that a wider applicability irrespective of classification should be set aside.

- Y. BECAUSE while the impugned law squarely circumvents and overrules the 12.12.1996 pronouncement, the core reason for that landmark judicial order remains as relevant today as it was then – deforestation must be checked, and ecological imbalance has to avoided.
- Z. BECAUSE this Hon'ble Court was conscious of the limits to forest conservation if large areas of forests were excluded from the protection of the FC Act, and thus through its decision it interpreted forests in FC Act to include *all* forests, as it also used the word 'otherwise' to indicate an expansive definitional ambit. The Hon'ble Court was thus deliberate in adopting the wider dictionary definition of forests. On the other hand, the newly inserted Section 1A(1) has circumvented such an understanding of the term 'forest' by limiting the Act's applicability to only those forests that have been declared, notified or recorded.

AA. BECAUSE as a result of the impugned law, we are likely to revert to a pre-1980 situation where large forest areas were exempted from legal protection of the FC Act. Forests will now be diverted at a whim, with no consideration of the resultant ecological dangers.

IV. **Manifestly arbitrary and capricious**

BB. BECAUSE the Constitution of India mandates protection against arbitrariness under Article 14, and the 2023 Amendment Act is clear instance of manifest arbitrariness in legislative action. The Hon'ble Supreme Court of India has held in *Shayara Bano v Union of India* (2017) 9 SCC 1 that the test of manifest arbitrariness would apply to invalidate legislation as well as subordinate legislation under Article 14 of the Constitution. This Hon'ble Court held-

"101. ... Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."

The Hon'ble Supreme Court in *Ajay Hasia v Khalid Mujib Sehravardi* (1981) 1 SCC 722 has observed that -

"16. Wherever therefore there is arbitrariness in State action whether it be of the legislature or of the executive or of an "authority" under Article 12, Article 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution."

- CC. BECAUSE the 2023 Amendment Act introduces a regulatory regime for forest governance in the country, which is manifestly arbitrary, based on unreasonable assumptions, and without adequate guiding principles for its implementation. The 2023 Amendment Act significantly reduces the area of forest land that will be governed by the FC Act, and thus removes protection that was earlier afforded to vast tracts of land. Contrary to its Statement of Objects and Reasons, the 2023 Amendment Act does not enhance the available carbon stock, carry forward the rich tradition of preserving forests or broaden the horizons of the principal Act. In fact, its implementation will reduce the capacity of India's forest to sequester carbon, exacerbate defragmentation of forests and permit activities like zoos and safaris in pristine forest land which were impermissible until recently.

DD. BECAUSE the lack of clear definitions for terms like 'strategic linear projects', 'security related infrastructure projects, 'public utility projects' etc. means that the scope of the FC Act is no longer clear, and therefore the 2023 Amendment Act is capricious. The Government has arrogated to itself powers to issue guidelines, orders, directions etc. to clarify whatever is unclear in the law, but this not only amounts to law-making – which is impermissible under the Constitutional rubric, but also leaves the forest protection regulatory regime vulnerable to unpredictable and unreasonable policy changes that are not supported by robust evidence but are likely to serve vested interests not forest conservation goals.

V. **Patent Breach of the Public Trust Doctrine**

EE. BECAUSE forests are held by the government in public trust. It is the duty of the government to ensure their protection and exposing our forest land to rampant deforestation and unchecked diversion is a patent breach of public trust. This Hon'ble Supreme Court in *Fomento Resorts and Hotels Ltd. and Ors. v Minguel Martins and Ors.* (2009) 3 SCC 571 has held:

"The heart of the public trust doctrine is that it imposes limits and obligations

upon government agencies and their administrators on behalf of all the people and especially future generations. For example, renewable and non-renewable resources, associated uses, ecological values or objects in which the public has a special interest (i.e. public lands, waters, etc.) are held subject to the duty of the State not to impair such resources, uses or values, even if private interests are involved. The same obligations apply to managers of forests, monuments, parks, the public domain and other public assets."

(emphasis supplied)

FF. BECAUSE the Hon'ble Supreme Court in *Intellectuals Forum, Tirupathi v. State of A.P.* (2006) 3 SCC 549, while invoking the public trust doctrine in a matter involving the challenge to the systematic destruction of percolation, irrigation and drinking water tanks in Tirupati town observed about the public trust doctrine:

"Formulated from a negatory angle, the doctrine does not exactly prohibit the alienation of the property held as a public trust. However, when the State holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny on any action of the Government, no matter how consistent with the existing legislations, that attempts to restrict such free use. To properly scrutinise such actions of the Government, the courts must make a distinction between the Government's general obligation to act for the public benefit, and the

special, more demanding obligation which it may have as a trustee of certain public resources..."

(emphasis supplied)

GG. BECAUSE the State cannot abdicate its duty to protect the country's natural assets by excluding previously protected forest land from statutory protection, and permitting the use of forest land for vaguely defined non-forest activities without taking into account relevant considerations. The Hon'ble Supreme Court has observed in *T.N. Godavarman Thirumulpad, In re v. Union of India* (2022) 10 SCC 544-

"33. The role of the State cannot be confined to that of a facilitator or generator of economic activities for immediate upliftment of the fortunes of the State. The State also has to act as a trustee for the benefit of the general public in relation to the natural resources so that sustainable development can be achieved in the long term. Such role of the State is more relevant today, than, possibly, at any point of time in history with the threat of climate catastrophe resulting from global warming looming large."

Natural forests perform the invaluable function of carbon sequestration. Furthermore, altering the natural ecological functions of resources like rivers, forests, soil, etc will significantly reduce the adaptive capacity of the country. As several parts of the world reel under the

impacts of climate change and natural calamities get exacerbated, the State has to protect our natural assets as a responsible trustee, not squander them with no regulatory scrutiny or impact assessment.

VI. Violation of the Principle of Non-Regression

- HH. BECAUSE provisions of the 2023 Amendment Act violate the international legal principle of non-regression. The impugned law reduces the protection afforded under the law to forest lands across the country and reduces the scope and applicability of the FC Act. The principle of non-regression posits that States are prohibited from weakening their domestic levels of environmental protection. Therefore, new environmental legal provisions can only maintain or increase protection of natural resources, not decrease them.
- II. BECAUSE this principle has been relied on by Indian courts and thus the State is bound to follow it. The principle of non-regression was applied by the Hon'ble National Green Tribunal in its judgment and order dated 08.12.2017 in *Society for Protection of Environment & Biodiversity v. Union of India & Ors*, O.A. No. 677/2016, 2017 SCC OnLine NGT 981 where it quashed parts of the Notification dated 09.12.2016 which sought to dilute the EIA

Notification, 2006. The Tribunal noted as follows:

“Under the International law, the doctrine of Non-regression is an accepted norm. It is founded on the idea that environmental law should not be modified to the detriment of environmental protection. This principle needs to be brought into play because today environmental law is facing a number of threats such as deregulation, a movement to simplify and at the same time diminish, environmental legislation perceived as too complex and an economic climate which favours development at the expense of protection of environment. The draft amendment of the existing environmental laws should be done with least impact on environment protection that was available under the existing law or regime.

32... Thus, some other provisions of the same Notification ex-facie suffer from legal infirmities and are incapable of being implemented in accordance with the scheme of federal structure under the Constitution of India. Out of them, some provisions are directly opposed to the Principle of Non-regression as they considerably dilute the existing environmental laws and standards to the prejudice of the environment...”

In *Hanuman Laxman Aroskar v. Union of India* (2019) 15 SCC 401, this Hon’ble Court relied on the IUCN World Declaration on the Environmental Rule of Law, which outlines 13 principles for ecologically sustainable development, one of which was the principle

of non-regression. The Hon'ble National Green Tribunal has referred to the principle of non-regression in *Waris Chemicals (P) Ltd. v. U.P. Pollution Control Board* 2023 SCC OnLine NGT 41 as well.

- JJ. BECAUSE the provisions of the 2023 Amendment Act are manifestly regressive in the protections afforded to forests. The principal Act read with the 12.12.1996 order of this Hon'ble Court in *T.N. Godavarman v Union of India* afforded protection to 100% of India's forest lands. The 2023 Amendment Act through Section 1A(1) reduces this protection significantly by restricting the applicability of the principal Act to only Recorded Forest Areas.
- KK. BECAUSE the impugned law through Section 1A(2) is regressive in expanding the conditions under which forest land may be diverted to non-forest use. Further, by expanding the list of activities which will not be considered non-forest purpose, the 2023 Amendment Act reduces the protection available to forest lands and violates the principle of non-regression.
- LL. BECAUSE by permitting activities such as survey and reconnaissance in forest land on a discretionary basis, the impugned Act ignores

the ecological impact of these activities and permits them with minimal regulatory oversight and compliance conditions, thus marking a clear regression.

VII. Complete disregard of the principle of Inter-generational Equity

MM. BECAUSE the 2023 Amendment Act completely disregards the principle of inter-generational equity. The environment must be protected for the future generations; it is not an asset that the current generation can dispose of for its immediate short-term gains. This Hon'ble Court has held that environment and ecology are national assets, not state property, and are subject to the principle of inter-generational equity (*T.N. Godavarman v Union of India* (2006) 1 SCC 1; *M.C. Mehta v Union of India* (2009) 6 SCC 142). In *Glanrock Estate (P) Ltd. v The State of Tamil Nadu* (2010) 10 SCC 96, the Hon'ble Court observed:

'Forests in India are an important part of environment. They constitute national asset. In various judgments of this Court delivered by the Forest Bench of this Court in the case of *T.N. Godavarman v. Union of India* Writ Petition No. 202 of 1995, it has been held that "inter-generational equity" is part of Article 21 of the Constitution.

What is inter-generational equity? The present generation is answerable to the

next generation by giving to the next generation a good environment. We are answerable to the next generation and if deforestation takes place rampantly then inter-generational equity would stand violated.”

NN. BECAUSE the principle of inter-generational equity and its origin in international legal documents was traced by this Hon’ble Court in *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, (1999) 2 SCC 718:

The duty of the present generation towards posterity: principle of inter-generational equity: rights of the future against the present

53. The principle of inter-generational equity is of recent origin. The 1972 Stockholm Declaration refers to it in Principles 1 and 2. In this context, the environment is viewed more as a resource basis for the survival of the present and future generations.

“Principle 1.—Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for the present and future generations....

Principle 2.—The natural resources of the earth, including the air, water, lands, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of the present and future generations through careful planning or management, as appropriate.”

Several international conventions and treaties have recognised the above principles and, in fact, several imaginative proposals have been submitted including the locus standi of individuals or groups to take out actions as representatives of future generations, or appointing an ombudsman to take care of the rights of the future against the present (proposals of Sands and Brown Weiss referred to by Dr Sreenivasa Rao Pemmaraju, Special Rapporteur, paras 97, 98 of his Report).

(emphasis supplied)

VIII. Breach of India's international obligations

OO. BECAUSE the 2023 Amendment Act is an unfortunate instance of India not respecting international law and its treaty obligations as required under Article 51(c) of the Constitution. India is a member of several multilateral environmental agreements which place obligations on it to protect floral and faunal biodiversity, their habitat and the indigenous communities and their knowledge associated with this biodiversity. These include the Convention on Biological Diversity, Convention on Wetlands of International Importance especially as Waterfowl Habitat (the Ramsar Convention), and Convention on the Conservation of Migratory Species of Wild Animals. India is also a party to the UN Framework Convention on Climate Change (UNFCCC) and the Paris Agreement 2015. By significantly reducing the legal protection

afforded to forests and wild habitats, and thus impacting the naturally available carbon sink in the country, the 2023 Amendment Act in effect amounts to a violation of several of India's international obligations.

PP. BECAUSE in 2015, the international community adopted the 2030 Agenda for Sustainable Development and its 17 Sustainable Development Goals (SDGs). India is also a party to this. SDG 13 on climate action and SDG 15 on life on land are relevant to the present case. The Hon'ble Supreme Court has also acknowledged the significance of these two SDGs in *Hanuman Laxman Aroskar v. Union of India* (2019) 15 SCC 401:

"151. SDG 13 emphasises the urgent action required to combat climate change and its impacts. This is based on the recognition that extreme weather events such as heat waves, droughts, floods and tropical cyclones have aggravated the need for water management, pose a threat to food security, increase health risks, damage critical infrastructure and interrupt the provision of basic civil services.

...

153. In this backdrop, SDG 15[5] emphasises the need to protect, restore and promote sustainable use and management of terrestrial ecosystems and forests, combat desertification of river lands, prevent land degradation and halt the loss of biodiversity.

Terrestrial ecosystems provide a range of ecosystem services including the capture of carbon, maintenance of soil quality, provision of habitat for biodiversity, maintenance of water quality and regulation of water flow together with control over erosion. Maintenance of ecosystems is hence crucial to efforts to combat climate change, mitigate and reduce the risks of natural disasters including floods and landslides."
(emphasis added)

QQ. BECAUSE international legal principles such as sustainable development, precautionary principle, principle of non-regression, and inter-generational equity find their source in various international legal documents such as the Rio Declaration 1992 which India is signatory to. These principles are now part of the Indian environmental jurisprudence and crucial for effectuating the fundamental right to a clean and healthy environment under Article 21 of the Constitution of India. The impugned law blatantly violates these principles.

IX. Decision to amend the principal Act is based on irrelevant considerations and in the absence of accurate data

RR. BECAUSE the underlying basis for the 2023 Amendment Act is influenced by irrelevant considerations, and the JCP report recommending the Bill with no changes was issued in the absence of any credible data

being presented to the JCP. Environmental decision making in the absence clear evidence and data can lead to disastrous consequences. This Hon'ble Court in *Lafarge Umiam Mining Pvt Ltd. v Union of India* (2011) 7 SCC has clearly laid down the principles of judicial review applicable in environmental matters -

"In the circumstances, barring exceptions, decisions relating to utilisation of natural resources have to be tested on the anvil of the well-recognised principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? ..."

SS. BECAUSE the State Expert Committee (SEC) reports have either not been prepared or are not available for all the states; identification of forest land has not been undertaken as directed by this Hon'ble Court, and there is clear lack of credible data supported by ground truthing on the extent of forest land etc., Therefore assumptions made by the Respondent have no basis. The MoEFCC's responses to the JCP were evasive,

inaccurate, and misleading. This Hon'ble Court in *Sachidanand Pandey v West Bengal* (1987) 2 SCC 295 held:

On the other hand, if relevant considerations are not borne in mind and irrelevant considerations influence the decision, the court may interfere in order to prevent a likelihood of prejudice to the public. Whenever a problem of ecology is brought before the court, the court is bound to bear in mind Article 48-A of the Constitution, the Directive Principle which enjoins that "the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country", and Article 51-A(g) which proclaims it to be the fundamental duty of every citizen of India "to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures". When the court is called upon to give effect to the Directive Principle and the fundamental duty, the court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy-making authority. The least that the court may do is to examine whether appropriate considerations are borne in mind and irrelevancies excluded. In appropriate cases, the court may go further, but how much further must depend on the circumstances of the case.

Relevant considerations relating to the nature, extent, and use of forest lands, and the fact that stripping vast tracts of forest land of their legal protection will violate the fundamental

rights of millions of people was entirely overlooked while amending the FC Act.

TT. BECAUSE unlike other legislations, environmental legislations are concerned with, or regulate, resources belonging to and shared by the community. These resources are finite and deeply contested. In such a scenario the breach of legal principles such as public trust doctrine, inter-generational equity, principle of non-regression and precautionary principle directly affect humanity at large and the rights of persons under Article 21. As impacts of climate change are beginning to be felt across the country, there is an even greater degree of responsibility on the legislature while legislating on natural resources than what would be expected for other legislation. The State ought to have carried out a detailed analysis of the impact which the provisions of amended law would have on the forests in order to ensure that its duty to protect and improve the environment as encapsulated in Article 48A read with Article 51A(g) was fulfilled. At the same time, deeper judicial scrutiny of whether relevant factors were taken into consideration, and what was the scientific basis of the amendments sought to be made become

imperative when examining the constitutionality of an environmental law.

F. JURISDICTION

124. That the present writ petition is being filed in public interest under Article 32 of the Constitution of India to raise issues that impinge fundamental rights guaranteed to citizens under Articles 14 and 21 of the Constitution, and violate directive principles of state policy and fundamental duties of citizens. Having regard to the nationwide implications of the important issues raised in this petition, impacting several states in the country, it is respectfully submitted that this Hon'ble Court ought to entertain and hear the present petition. The Petitioners have demanded justice but justice has been denied to them.

125. That the Petitioners have no other efficacious remedy but to approach this Hon'ble Court by means of the present Writ Petition.

126. That the present Petition is filed *bona fide* and in the interest of justice.

127. That the Petitioners have not filed any other similar petition before this Hon'ble Court or any other court seeking similar reliefs.

IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) NO. _____ OF 2023

IN THE MATTER OF:

Shri Ashok Kumar Sharma & Ors.PETITIONER(S)

Versus

Union of India & Anr.RESPONDENT(S)

CERTIFICATE

CERTIFIED that the Writ Petition is confined only to the pleadings before the Court/Tribunal whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Writ Petition. It is further certified that the copies of the documents/Annexure attached to the Writ Petition are necessary to answer the question of law raised in the petition or to make out grounds urged in the Writ Petition for consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the petitioner/person authorized by the petitioner whose affidavit is filed in support of the Writ Petition.

FILED BY:



PLACE : NEW DELHI
DATED: 27/09/2023

[KAUSHIK CHOUDHURY]
Advocate for the Petitioner(s)

**IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)**

WRIT PETITION (CIVIL) NO. _____ OF 2023

IN THE MATTER OF:

Shri Ashok Kumar Sharma & Ors.**PETITIONER(S)**

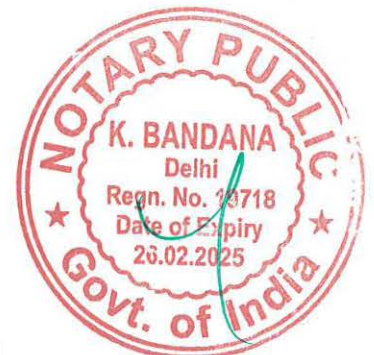
Versus

Union of India & Anr.**RESPONDENT(S)**

AFFIDAVIT

I, Prakriti Srivastava, aged about 60 years, D/o Shri T.B. Srivastava, R/o 1904, KNG-I, Klassic Wishtown, Sector-134, NOIDA, U.P. (Presently at New Delhi) do hereby solemnly affirm and state as under:

1. That I am one of the Petitioners in the aforesaid matter and am conversant with the facts and circumstances of the case and as such competent to swear this affidavit and on behalf of the others.
2. That the accompanying Writ Petition [Pages ¹ ~~124~~ to ~~127~~ Para 1 to ~~127~~ Statement of Dates and Facts [Pages B to ~~N~~] and Interlocutory Application [s] have been drawn by my Advocate under my instructions. I have read and understood the contents of the above and I say that the same are true and correct to my knowledge and belief and I believe the same to be true.
3. That the Annexures filed herewith are true copies of their respective originals.



P. Bandana

DEPONENT

VERIFICATION:

I, the abovenamed deponent, do hereby verify that the contents of para-1 to Para-3 of above affidavit are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

Solemnly affirmed on the ___ day of September, 2023, New Delhi.

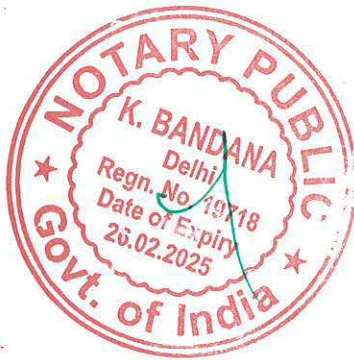
23 SEP 2023

P. Bandana

DEPONENT

IDENTIFIED

23 SEP 2023



ATTESTED
NOTARY PUBLIC DELHI
GOVT. OF INDIA
Mob.: 9654768498

ANNEXURE P-1

रजिस्ट्री सं० डी० एल०—(एन)04/0007/2003—23

REGISTERED NO. DL—(N)04/0007/2003—23



भारत का राजपत्र

The Gazette of India

सी.जी.-डी.एल.-अ.-05082023-247866
CG-DL-E-05082023-247866

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 18] नई दिल्ली, शुक्रवार, अगस्त 4, 2023/ श्रावण 13, 1945 (शक)
No. 18] NEW DELHI, FRIDAY, AUGUST 4, 2023/SRAVANA 13, 1945 (SAKA)

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

MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 4th August, 2023/Sravana 13, 1945 (Saka)

The following Act of Parliament received the assent of the President on the 4th August, 2023 and is hereby published for general information:—

THE FOREST (CONSERVATION) AMENDMENT ACT, 2023 (No. 15 OF 2023)

[4th August, 2023]

An Act further to amend the Forest (Conservation) Act, 1980.

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

1. (1) This Act may be called the Forest (Conservation) Amendment Act, 2023.

Short title and commencement.

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

69 of 1980.

2. In the Forest (Conservation) Act, 1980 (hereinafter referred to as the principal Act), after the long title and before the enacting formula, the following preamble shall be inserted, namely:—

Insertion of preamble.

"WHEREAS, the importance of forests is to be realised to enable achievement of national targets of Net Zero Emission by 2070 and maintain or enhance the forest carbon stocks through ecologically balanced sustainable development;

AND WHEREAS, Nationality Determined Contribution targets of the country envisage creating carbon sink of additional 2.5 to 3.0 billion tons of CO₂ equivalent by 2030;

AND WHEREAS, the country envisages an increase in the forest and tree cover to one-third of its land area, which is to be given impetus with an enhanced growth trajectory;

AND WHEREAS, India has a rich tradition of preserving forests and their bio-diversity, and, therefore, enhancing forest based economic, social and environmental benefits, including improvement of livelihoods for forest dependent communities is envisaged;

AND WHEREAS, it is necessary to provide for provisions relating to conservation management and restoration of forests, maintaining ecological security, sustaining cultural and traditional values of forests and facilitating economic needs and carbon neutrality."

Amendment
of section 1.

3. In section 1 of the principal Act, in sub-section (1), for the words and brackets "Forest (Conservation) Act", the words and brackets "*Van (Sanrakshan Evam Samvardhan) Adhinyam*" shall be substituted.

Insertion of
new section 1A.

4. After section 1 of the principal Act, the following section shall be inserted, namely:—

Act to cover
certain land.

'1A. (1) The following land shall be covered under the provisions of this Act, namely:—

(a) the land that has been declared or notified as a forest in accordance with the provisions of the Indian Forest Act, 1927 or under any other law for the time being in force;

(b) the land that is not covered under clause (a), but has been recorded in Government record as forest, as on or after the 25th October, 1980:

Provided that the provisions of this clause shall not apply to such land, which has been changed from forest use to use for non-forest purpose on or before the 12th December, 1996 in pursuance of an order, issued by any authority authorised by a State Government or an Union territory Administration in that behalf.

Explanation.—For the purposes of this sub-section, the expression "Government record" means record held by Revenue Department or Forest Department of the State Government or Union territory Administration, or any authority, local body, community or council recognised by the State Government or Union territory Administration.

(2) The following categories of land shall not be covered under the provisions of this Act, namely:—

(a) such forest land situated alongside a rail line or a public road maintained by the Government, which provides access to a habitation, or to a rail, and roadside amenity up to a maximum size of 0.10 hectare in each case;

(b) such tree, tree plantation or reforestation raised on lands that are not specified in clause (a) or clause (b) of sub-section (1); and

(c) such forest land,—

(i) as is situated within a distance of one hundred kilometres along international borders or Line of Control or Line of Actual Control, as the

case may be, proposed to be used for construction of strategic linear project of national importance and concerning national security; or

(ii) up to ten hectares, proposed to be used for construction of security related infrastructure; or

(iii) as is proposed to be used for construction of defence related project or a camp for paramilitary forces or public utility projects, as may be specified by the Central Government, the extent of which does not exceed five hectares in a Left Wing Extremism affected area as may be notified by the Central Government.

(3) The exemption provided under sub-section (2) shall be subject to such terms and conditions, including the conditions of planting trees to compensate felling of trees undertaken on the lands, as the Central Government may, by guidelines, specify.'

5. In the principal Act, section 2 shall be renumbered as sub-section (1) thereof and—

Amendment
of section 2.

(a) in sub-section (1) as so renumbered,—

(I) in clause (iii), for the words "not owned, managed or controlled by Government", the words ", subject to such terms and conditions, as the Central Government may, by order, specify" shall be substituted;

(II) in the *Explanation*, for the long line occurring after clause (b), the following shall be substituted, namely:—

"but does not include any work relating to or ancillary to conservation, development and management of forests and wildlife, such as—

(i) silvicultural operations including regeneration operations;

(ii) establishment of check-posts and infrastructure for the front line forest staff;

(iii) establishment and maintenance of fire lines;

(iv) wireless communications;

(v) construction of fencing, boundary marks or pillars, bridges and culverts, check dams, waterholes, trenches and pipelines;

(vi) establishment of zoo and safaris referred to in the Wild Life (Protection) Act, 1972, owned by the Government or any authority, in forest areas other than protected areas;

(vii) eco-tourism facilities included in the Forest Working Plan or Wildlife Management Plan or Tiger Conservation Plan or Working Scheme of that area; and

(viii) any other like purposes, which the Central Government may, by order, specify.";

(b) after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:—

"(2) The Central Government may, by order, specify the terms and conditions subject to which any survey, such as, reconnaissance, prospecting, investigation or exploration including seismic survey, shall not be treated as non-forest purpose."

Insertion of
new section 3C. namely:—

Power of
Central
Government
to issue
directions.

6. In the principal Act, after section 3B, the following section shall be inserted,
namely:—

"3C. The Central Government may, from time to time, issue such directions, to
any authority under the Central Government, State Government or Union territory
Administration, or to any organisation, entity or body recognised by the Central
Government, State Government or Union territory Administration, as may be necessary
for the implementation of this Act."

DR. REETA VASISHTA,
Secretary to the Govt. of India.

ANNEXURE P-2

APPENDIX III

MINISTRY OF FOOD AND AGRICULTURE RESOLUTION

Agriculture

New Delhi, the 12th May, 1952 NATIONAL FOREST POLICY

Introduction

No. 13-1/52-F-In their Resolution No. 22-F., dated the 19th October, 1894, the Government of India in the late Department of Revenue and Agriculture enunciated in broad outlines the general policy to be followed in the management of State forests in the country. During the inter-val that has since elapsed, developments of far -reaching importance have taken place in the eco-nomic and political fields. The part played by forests in maintaining the physical conditions in the country has come to be better understood. The country has passed through two world wars which disclosed unsuspected dependence of defense on forests. The reconstruction schemes, such as river-valley projects, development of indus-tries and communications, lean heavily on the produce of forests.

2. While the fundamental concepts underlying the existing forest policy still hold good, the Government of India, consider that the need hag. now arisen for a re-orientation of the forest policy in the light of the changes which ,have taken place since it was enunciated.

3. Vital national needs-The National Forest Policy of India is formulated on the basis of six paramount needs of the country, namely:-

(1) the need for evolving a system of balanc-ed and complementary land-use, under which each type of land is allotted to _hat, form of use under which it would produce most and deteriorate least;

(2) The need for checking-

(a) Denudation in mountainous regions, on which depends the perennial water supply of the river system whose basins constitute the fertile core of the country;

(b) the erosion progressing space along -the treeless banks of the great rivers leading to ravine formation, and on vast stretches of undulating wastelands de-priving the adjoining fields' of their fertility; -

(c) The invasion of sea-sands on coastal tracts, and the shifting of sand dunes, more particularly in the Rajputana desert.

(3) the need for establishing tree lands, wherever possible, for the amelioration of physical and climatic conditions promoting the general well being of the people;

(4) the need for ensuring progressively in-creasing supplies. of grazing, small wood for agricultural implements, and in parti-cular of firewood to release the cattle dung for manure to step up food production; -

(5) The need for sustained supply of timber and other forest produce required for defense, communications and industry;

(6.) the need for the realisation of the maxi-mum annual revenue in perpetuity consistent with the fulfillment of the needs enumerated above.

These vital needs indicate the functions forests are to fulfill, and 'provide the fundamental basis of the policy governing their future.

4. Functional classification of forests-Having regard to the functions afore-stated, the forests of India, whether State or privately owned, may be 'conveniently Classified as follows:-

(A) Protection forests, i.e., those forests which must be preserved or created for physical and climatic considerations;

(B) National forests, i.e., those which have to be maintained and managed to meet the needs of defence, communications, industry, and other general purposes of public importance;

(C) Village forests, i.e., those which have to be maintained to provide firewood to release cow-dung for manure, and to yield small timber for agricultural implements and other forest produce for local requirements, and to provide grazing for cattle;

(D) Tree-lands, i.e., those areas which though outside the scope of the ordinary forest management are essential for the amelioration of the physical conditions of the country.

This classification is merely illustrative and is by no means mutually exclusive. In fact every forest performs more than one function, and has, therefore, to be so managed as to achieve the highest efficiency in respect of the chief functions assigned to it. This functional classification has also no bearing on the classification of forests distinguished in the Indian Forest Act XVI of 1927 which is based on the degree of control exercisable in them.

5. Necessity of classification this board's functional classification of forests is necessary to focus attention on the kind and object of management necessary in each case. Every sizeable forest, whatever its composition, location, or category, serves both a protective and a productive purpose, and in its utility may be of local, regional, or national significance. The fact, however, must be realised that the country as a whole has a vast stake in the conservation of all forests, irrespective of their functions and ownership, and, therefore, all of them should be administered from the point of view of national well-being.

6. Two possible considerations-Two considerations, plausible, no doubt, at first sight, if given undue weight to, destructive of national well-being in the long run, should be combated. They are:-

(1) Neighboring areas are entitled to a prior claim over a forest :and its produce.

(2) Agricultural requirement has a preferential claim over forest lands.

7. Claims of neighboring Communities -Village communities in the neighborhood of a forest will naturally make greater use of its products for the satisfaction of their domestic and agricultural needs. Such use, however, should in no event be permitted at the cost of national interests. The accident of village being situated close to a forest does not prejudice the right of the country as a whole to receive the benefits of a national asset. The scientific conservation of a forest inevitably involves the regulation of rights and the restriction of the privileges of user depending upon the value and importance of the forest, however, irksome such restraint may be to the neighboring areas. The Himalayan forests, for, instance, are the greatest of national assets; to them we owe the richness of the country. The denudation and under-development of the Himalayan slopes leads to greater intensity and frequency of floods, recurrent erosion, and to coarse detritus being deposited on the fertile submountane tracts. This process inflicts immeasurable loss and misery on the unsuspecting millions in the Indo-Gangetic Plain, and brings about a progressive and permanent of soil fertility, and a cumulative reduction in the agricultural potential of the whole land. While, therefore, the needs of the local population must be met to a reasonable extent, national interests should not be sacrificed because they are not directly discernible, nor should the rights and interests of future generations be subordinated to the improvidence of the present generation.

8. Relinquishment of forest land for agricultural purposes-The indiscriminate extension of agriculture and consequent destruction of forests have not only deprived the local population of fuel and timber, but have also stripped the land of its natural defences against dust-storms, hot desiccating winds, and erosion. The old policy, which envisaged

the relinquishment, subject to certain safeguards honoured only in their breach, of even valuable forest land for permanent cultivation, has resulted in general deterioration of physical conditions to the detriment of national interests, and must, therefore, be given up. In the abstract, the claims of agriculture undoubtedly appear stronger than those of forestry. The notion widely entertained that forestry, as such, has no intrinsic right to land but may be permitted on sufferance on residual land not required for any other purpose, has to be combated. The role of forests in the national economy, both protective and produce, entitles forests to lay claim to an adequate share of land. The importance of tree lands in the rural economy of this region where agriculture constitutes the main-stay of the vast bulk of population can scarcely be over-emphasized.

9. Land use- The correct solution of the land problem is -to evolve a system of balanced and complementary land use, under which each type of land is allotted to that' form of use under which it would produce most and deteriorate least. A detailed survey .of lands with a view to their proper utilisation is, therefore, highly desirable.

10. Protection forests- Protection forests' de note forests found, or required, on hill slopes, river banks, sea-shores, or other erodable locali-ties. In such sites the need for forest cover is dictated by purely protective physical considera-tions, such as prevention of erosion, conservation of moisture, and control of rushing torrents and floods. The role of such forests in saving the soil from being washed away, and when maintained in catchment areas, in the prevention of floods and maintenance of stream-flow, cannot be over -emphasised. On flat country with loose sandy soil, especially under' dry conditions, forests, whether natural or artificial, perform an essential function in minimizing wind erosion, fixing the soil and preventing the formation of sand dunes, and. mitigating the desiccation of agricul-tural crops leeward of the tree cover. The National Forest Policy requires, therefore) an imme-diate and speedy programme for the reconditioning of the mountainous regions, river valleys, and coastal lands by establishing protective forests over larger areas, and preserving the existing ones. The primary object of management of such forests should be to utilise in full their protective influence on the soil, the water regime and the physical and climatic factors of the loca-lity; and the interests to be thus

protected should far outweigh those which it may be necessary to restrict. The scientific management of such 'protection forests', wherever possible, should include the production and exploitation of timber within the limits of safety.

11. Reconditioning of hills and dales-The progressive denudation of hill sides with serious repercussions on the fertility of the land, and the growing erosion along the banks of rivers, of which the Yamuna, the Chambal, the Mahi, the Narnada, the Kosi, and the Damodar are notorious examples, constitute the major considerations demanding immediate attention,

12. The immobilization of the desert of Rajputana-Attention also needs to be drawn here to the Rajputana desert, more particularly to the fixation of the shifting sand dunes. Strong winds that develop in this region during the summer, transport vast quantities of sand and salt from the sea and Rann of Cutch, whipping the desert into terrific dust storms, the fury of which is felt throughout the north-western India. The desert has spread through the ages causing the 'wester-ing' of the Indus and the 'northering' of the Sutlej, meeting an obstruction of sorts only along its eastern confines in the Aravallis. The immobilization of the desert and protection of the remaining fertile belts inside it constitutes one of the planks of the National Forest Policy.

13. National forests- 'National forests' constitute the basis of India's strength and wealth; for they comprise valuable timber bearing regions the produce of which is indispensable for defence, communications and vital industries. They have to be managed chiefly in the interest of the nation as a whole, and their organization and development is one of the most important functions of the States: Their management on scientific and business lines is essential for maintaining a sustained supply of wood for industry and of large timbers for defence, communications and other national purposes. The basic policy, so far as such forests are concerned, must be to attain national self-sufficiency in these vital supplies. Future development should, therefore, be directed to that end. Cultivation should not be permitted to encroach upon these valuable timber bearing tracts, The solution of the food problem of an ever-increasing population must be sought primarily

in intensive cultivation and not in weakening the very basis of national existence by encroaching upon such forests.

14. Village forests- 'Village forests' popularly termed fuel forests, are intended; in the main, to serve the needs of the surrounding villages in respect of small timber for housing and agricultural implements, fire-wood, leaves for manure and fodder, fencing thorns, grazing and edible forest products. The supply for such requirements should be made available at non-competitive rates, provided they are utilised by the villagers themselves and not traded in. The management of such village forests should aim at meeting the present as well as the future needs of the local population. Removal of the produce in excess of its annual growth should not, therefore, be permitted. Restrictions should be imposed in the interests not only of the existing generation but also of posterity. These considerations render the entrusting of the management of village forests to panchayats, without appropriate safeguards, a hazardous undertaking as has been demonstrated in some of the States, The co-operation of panchayats should be enlisted in the protection and creation of village forests, and in the distribution of forest produce assigned to meet the needs of the local population, but not at the cost of economy and efficiency. While the profit motive in the management of these forests should be relegated to the background; there is no justification for allowing them to become a burden on the general tax-payer: the expenses for development and maintenance of such forests must come from their own income.

15. Tree lands- Although 'tree lands' are not part of regular forests, in a country like India where their increase, management, and development are vital to the needs of the people, they cannot well be left out of any well-considered policy. The Land Transformation Programme of the Government of India envisages the planting of 30 crores of trees in ten years; but this number is very far from about 2,000 crores of trees, which would be necessary to restore the hydrological nutritional balance of the country. The creation of forests by State Forest Departments on such an elaborate, scale is ruled out at present by lack of funds and trained personnel. The only way in which some progress can be achieved is by making the whole nation 'tree conscious'. Such

consciousness will stimulate private efforts at tree planting as has been demonstrated by the success-of the National Vana Mahotsava movement. It will also arrest the vandalism which feels no scruples in cutting down valuable trees, and create among the populace an urge to secure the protection of trees-a virtue as much to be desired as it is rare.

16. Scope for increasing tree lands-State Government have a vast scope for an all-round 'increase in the area under tree lands. Defence, Rail-ways, Public Works Departments, Universities and Colleges, Boards, Municipalities and other local authorities, associations and institutions can lend helping hand by converting the lands at their disposal into tree lands. The new Forests Policy, therefore, envisages a concerted and supreme effort on the part of various Governments and other agencies towards planned afforestation with a view to the enlargement of tree lands. The exploration of the possibilities of such a development by the Central State is clearly indicated. A systematic programme of extending existing tree lands and establishing new ones should be framed by the Governments concerned. Under the new Policy, it should be the duty of the Forest Departments concerned-

(a) to awaken the interest' of the authorities within their region in" the development extension's and establishment of tree- lands;

(b) To draw up plans for such purposes bearing in mind' the need for species of commercial importance:

(c) To establish nurseries and seed stores in each area for the supply of saplings, plants and seeds:

(d) To supervise the planting of trees, and render such technical assistance as may be necessary for the development tree lands; and

(e) To arouse tree consciousness among the people by publicity, by celebrating the Vana Mahotsava, and by encouraging the Vana Premi Sangh. -

17. Tree lands in agricultural areas-The importance of tree lands in the rural economy of the regions where agriculture constitutes the mainstay of the vast bulk of the population cannot be over-emphasized. Experience gained during the first two Vana Mahotsavas indicated a very considerable response in the countryside, where Government officers had prepared the ground and created the necessary enthusiasm among the people. A campaign inducing villagers to plant trees in village commons and along roadsides, on the condition that they would enjoy the benefit of the fruits, timber, and other produce of trees planted by them has yielded excellent results and is well worth an extended trial. The essence of success in such ventures lies in invoking the willing co-operation of the local villagers, the necessary technical guidance and help being furnished by the Forest and other Departments. In most localities, a cultivator has no land to utilize for raising trees; there is, however, nothing to prevent him from growing at least a few trees per acre on his own field. Much useful work in this direction has been done in the western district of Uttar Pradesh where cultivators have raised a fair amount of babul (*Acacia arabica*) in their fields. Other species may prove to be of equal utility in other regions.

18. Control of private forests-The ownership of private forests in States where they still exist vests in individuals. Such ownership must however, be regulated in the national interests so that the indiscriminate exercise of individual rights may not prejudice or endanger, general welfare regulation and control of private forests by the State on physical climatic and economic grounds is, therefore, imperative. Recent legislation in various States has assumed the following pattern: -

(1) Owners of private forests should, in the first instance, be given an opportunity to manage their forests in accordance with an approved working plan.

(2) In the case only of recalcitrant owners, who are tempted to sacrifice their capital for immediate gain, should the management of their forests be made to vest in Government by the process of law.

(3) The ownership of such 'vested forests' should remain, however, unaffected; and the transfer should relate only to management, the net profits arising therefrom, if any, accruing to the owner.

The object of the legislative measures outlined above stand in grave risk of being defeated by the tendency discernible among owners of private forest to cash in their assets by excessive exploitation of forests for personal ends. In order to arrest such destruction of forests, the National Forest Policy requires that their control and management should be strictly regulated, and where that cannot be done, they should be taken over by the State Governments by effective legislation.

19. Proportion of forest areas-The proportion of land to be kept permanently under forests would naturally vary in different regions. Practical consideration suggests, however, that India, as a whole, should aim at maintaining one-third of its total land area under forests. As an insurance against denudation a much larger percentage of the land, about 60 per cent should be kept under forests for their protective functions in the Himalayas, the Deccan, and other mountainous tracts liable to erosion. In the plains, where the ground is flat and erosion is normally not a serious factor, the proportion to be attained should be placed at 20 per cent; and in view of the pressure of agriculture effort at the extension of tree lands should be concentrated on river banks and other convenient places not suitable for agriculture. At the same time it must be realised that even distribution of forests in all physical regions is as important as its over-all proportion. In certain localities deficient in forests, therefore, afforestation of marginal lands, and eroded river and village wastelands, should be undertaken. Forest area in excess of the indicated proportion, if any, should however, not be sacrificed. To maintain an over-all average, it is essential that States better suited for the growth of trees should help to make good the deficiency in those parts where climatic and edaphic factors militate against tree-growth.

20. Wild Life-The National Forest Policy emphasizes the need for affording protection to the animal kingdom and particularly to rare species such as the lion and the great one-horned rhinoceros, which are fast disappearing. While the damage caused by such

predators as wild pigs, game and porcupine cannot be denied, the elimination of their natural enemies tends to multiply them. It is necessary, therefore, that bird and animal life should be controlled by special laws and rare fauna preserved by setting up sanctuaries and large-scale national parks. For this purpose, a Central Board for Wild life has been constituted by the Government of India in the Ministry of Food and Agriculture Resolution No. 7-110/51-F., dated 4th April, 1952.

21. Grazing-The controversial question of grazing in State forests calls for a clear definition of policy. Speaking generally, all grazing in forests, particularly unlimited or uncontrolled grazing is incompatible with scientific forestry. At the same time, grazing does take place in forests and must be accepted as a hard fact. There are indeed circumstances in many regions where a moderate amount of grazing does little direct harm, and may even do a great deal of indirect good in reducing the risk of fire and in suspending regression at a desirable stage. But efficient forests management requires that grazing should be regulated as regards the time and place, as also the number of cattle admitted. The formulation of the grazing policy should be based on the following cardinal principles: -

(a) Continuous grazing on the same area by larger herds is destructive of the better strains of grasses and leads to a deterioration of the grass complex. Wherever it is permitted and is in great demand, efforts should be made to introduce rotational grazing, the benefits of which should be explained and demonstrated to the villagers.

(b) Cheap forest grazing has a demoralizing effect and leads to the vicious spiral of reckless increase in the number of cattle, inadequate forest grazing, reduced quality of the herds and further increase in the numbers to offset the fall in quality. Free and indiscriminate forest grazing is, therefore, a serious disservice to cattle breeding. The notion that a farmer's wealth must be reckoned in terms of the number of cattle he owns, regardless of quality is one of the causes of India's- uneconomical cattle wealth and must be combated.

(c) Grazing should not be looked upon primarily as a source of revenue. But the simple and obvious way of regulating and controlling grazing as also improving the quality both of grazing and cattle themselves, is to institute a reasonable fee for the privilege of grazing.

(d) Grazing must not be allowed in regeneration areas and young plantations during such periods as the seedlings require for establishment; otherwise they stand in danger of being browsed or trampled upon.

(e) Grazing incidence should be kept at a minimum in 'Protection Forests'.

22. Sheep and goats- Experience gained in India and elsewhere points to the imposition of restrictions on sheep grazing in forests, and the total exclusion of goats, there from. The damage to young plants caused by the browsing of these animals is often irreparable, and their admission into the forest is incompatible with the aims and objects of forest management. The creation of special fodder reserves under strict- rotational control is indicated for the purpose.

23. Shifting cultivation-The damage caused to forests by shifting cultivation in certain areas must be guarded against. To wean the aborigines, who eke out a precarious living from axe-cultivation moving from area to area, away from their age-old and wasteful practices, requires persuasion, not coercion; a missionary, not an authoritarian, approach. Possibilities of regulating shifting cultivation by combining it with forests regeneration (Taungya) to the benefit of both should be fully explored; Success in this direction largely depends on enlisting the co-operation of the cultivators and gaining their confidence and, in showing consideration to their needs and wishes.

24. Sustained yields-With. a view to conserving forest resources in perpetuity, the new forest policy requires scrupulous regard for sustained yield in the management of all classes of forests. The fluctuations in the annual output of forests upset State budgets, industries" and other national enterprises; all working plans, therefore, should aim at -

confining them, within the narrowest limits. This aspect assumes even greater significance in case where private owners manage their own forests. The compilation of sound working plans, therefore, requires-

- (a) the calculation of increment so that what is annually put on is annually cut, leaving the original assets intact or improved;
- (b) the preparation of the plans, and investigations on the propagation and tending of various species, their increment, the optimum conditions of their growth and the regulation of yield;
- (c) carefully planned afforestation schemes to replace inferior tree, growth by valuable species of commercial importance.

Each State, therefore, should set up a permanent organisation to deal with working plans -their compilation, and revision and deviations from them, research and statistics, as well as to conduct detailed surveys of available forest resources which are a sine qua non for a sound forest management.

25. Forest administration-The efficiency of forest administration depends directly on the adequacy of the forest laws, the training and caliber of the professional forest services, and the progress of research on both the biological and the utilisation aspects of forestry.

26. Forest legislation-So far as forests under the control of the Central Government and of Part A States are concerned, adequate forest legislation exists in the Indian Forests Act and the Madras Forest Act. In some of the Part B States, there are forests regulations having the force of law. But there are some Part B States where forests laws do not exist. It is necessary,

therefore, that States without a proper forest Act should enact legislation at an early date on the lines of the Indian Forest Act, or validate that Act for their territory. Several States

have already enacted legislation for the control of private forests; it is desirable that States which have no such laws should enact them early. While framing legislation for private - forests, States should not overlook the need for providing adequate staff for enforcing its provisions.

27. Forest education-Forestry courses are at present conducted for Forest Rangers and Superior Officers at the Forest Research Institute and Colleges. The States would, be well advised to continue taking advantage of the facilities provided by the Central Government at Dehra Dun, associated with the well-equipped Forest Research Institute, which enjoy a world-wide reputation. A common forest education is a very effective means of inculcating an esprit de corps among officers; of developing a common outlook in forestry matters; and of ensuring concerted and integrated policies throughout the country. Openings in the profession of forestry being limited the decentralization of forest education will militate against economy, and efficiency, encourage dissipated tendencies, create unemployment, and render planned development of forest resources difficult.

28. Training of field staff-Attention has also to be directed to the proper training of lower executive staff on whose technical skill ultimately depends the proper execution of forest schemes and their extension. The tendency to start schools which are not properly equipped should be discouraged. It is necessary that contiguous States should combine and co-operate in establishing well-equipped and up-to-date training schools for the purpose of meeting their needs in the most economical manner.

29. Services--The idea held in some quarters that since forests grow by themselves, they need no technical management is based on ignorance. Inadequacy of technical personnel, and weakening of the professional standards of the men called upon to manage forests, would be followed not only by a loss of revenue but also by a general degradation of the forests, resulting in reduced output of forest products and in deterioration of physical conditions.

30. Forest Research-Investigations in the biological aspects of forestry, among others Silviculture, Botany and Entomology, have naturally leaned heavily upon the co-operation of Forest Departments of various States, most of which have an organisation of their own for the purpose. The maintenance of a research organisation in each State commensurate with its resources and requirements is in the interests of efficient forest management of the country as a whole. Research in the utilization of forest products has, on the other hand, always been initiated and conducted at the Forest Research Institute where special equipment for the purpose exists. This balanced arrangement ensures both efficiency and economy. The Institute also is naturally the centre for specialized education in forest industries; and special technical courses in paper and plywood technology, wood preservation, timber seasoning and other cognate subjects have been organised to meet the demands of industry for technicians.

31. Liaison with industry-There is also considerable scope for improvement in securing the utilization of the results of research on forest products by commercial and industrial interests. For ensuring closer contact between the Forest Research Institute and the interests utilizing timber and forest products, liaison and publicity arrangements at the Institute need to be strengthened.

32. Popular goodwill, co-operatives and forest workers-While forest legislation, forest education, and forest research constitute the basis for sound forest management, the welfare and good-will of the people in the neighborhood of forests provide the firm ground on which it stands. No forest policy, however well intentioned and meticulously drawn up, has the slightest chance of success without the willing support and co-operation of the people. The recognition of their rights to forest produce at concessional rates, or, free of royalty, is not by itself enough. What is necessary is to instill in the people a direct interest in the utilization of forests. Intermediaries who exploit both the forests and local labour for their own benefit may with advantage be supplanted gradually by forest labour co-operative societies which may be formed to suit local conditions. Once the local population learns to look upon the forest as a means of its livelihood, a great step forward will have been taken.

33. Forest budgets-Forestry is a long range enterprise and it becomes incumbent upon State Governments to secure for it freedom from the vagaries of the annual budget. A steady flow of funds is indispensable for sustained forest operations such as replacement of what is removed annually, improvement of remaining crops, development of communications for opening up remote areas, and protective measures; they have to be based on phased schemes which should not be set aside lightly. Budget cuts made from year to year: to meet the exigencies of State finances can only be made at the expense of continuity in forest management- 'apart from other benefits -and at the sacrifice of forest revenue and other benefits in the coming year. The creation of a sinking fund, therefore, by investing a portion of the revenue in Government securities, more particularly during boom years, would not only ensure availability of funds for replacement and development costs, but may also be made to act as an equalizing fund to be drawn upon in lean years to prevent a fall in revenue. The immediate profit motive should be rigidly ruled out; for, this urge may endanger the supply of large and special timber for defence and industry and lead to a disturbance of climatic conditions seriously affecting agriculture. The adoption of rotations to produce large-sized timber is often of greater importance to the general economy of the country than that of rotations which yield the maximum rate of interests in forest investments.

34. Policy-an Enunciation of General Principles -While the discretion of State Government to regulate the details of forest administration in their respective territories is left unfettered, the general principles of the above forest policy should, in paramount national interests, be observed by them in framing their policies and legislation for the conservation of their forest resources. The forest policy of every State should be so framed as not to impinge adversely upon the general economy and physical balance of an adjoining State. It should be in consonance with the general principles underlying the Forest Policy laid down by the Centre for the preservation and development of the nation's forest resources which are so vital to its general well being.

ANNEXURE P-3
NATIONAL FOREST POLICY

1988

**GOVERNMENT OF INDIA
MINISTRY OF ENVIRONMENT AND FORESTS
NEW DELHI**

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

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

Dated the 7th December, 1988.

RESOLUTION

National Forest Policy, 1988

1. PREAMBLE

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

2. BASIC OBJECTIVES

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

- Maintenance of environmental stability through preservation and, where necessary, restoration of the ecological balance that has been adversely disturbed by serious depletion of the forests of the country.
- Conserving the natural heritage of the country by preserving the remaining natural forests with the vast variety of flora and fauna, which represent the remarkable biological diversity and genetic resources of the country.
- Checking soil erosion and denudation in the catchment areas of rivers, lakes, reservoirs in the "interest of soil and water conservation, for mitigating floods and droughts and for the retardation of siltation of reservoirs.

- Checking the extension of sand-dunes in the desert areas of Rajasthan and along the coastal tracts.
- Increasing substantially the forest/tree cover in the country through massive afforestation and social forestry programmes, especially on all denuded, degraded and unproductive lands.
- Meeting the requirements of fuel-wood, fodder, minor forest produce and small timber of the rural and tribal populations.
- Increasing the productivity of forests to meet essential national needs.
- Encouraging efficient utilisation of forest produce and maximising substitution of wood.
- Creating a massive people's movement with the involvement of women, for achieving these objectives and to minimise pressure on existing forests.

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

3. ESSENTIALS OF FOREST MANAGEMENT

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

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

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

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

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

4. STRATEGY

4.1 Area under Forests

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

4.2 Afforestation, Social Forestry & Farm Forestry

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

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

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

4.2.4 Land laws should be so modified wherever necessary so as to facilitate and motivate individuals and institutions to undertake tree-farming and grow fodder plants, grasses and legumes on their own land. Wherever degraded lands should be made available for this purpose either on lease or on the basis of a tree-patta

scheme. Such leasing of the land should be subject to the land grant rules and land ceiling laws. Steps necessary to encourage them to do so must be taken. Appropriate regulations should govern the felling of trees on private holding.

4.3 Management of State Forests

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

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

4.3.3 In order to meet the growing needs for essential goods and services which the forests provide, it is necessary to enhance forest cover and productivity of the forests through the application of scientific and technical inputs. Production forestry programmes, while aiming at enhancing the forest cover in the country, and meeting national needs, should also be oriented to narrowing, by the turn of the century, the increasing gap between demand and supply of fuelwood. No such programme, however, should entail clear-felling of adequately stocked natural forests. Nor should exotic species be introduced, through public or private sources, unless long-term scientific trials undertaken by specialists in ecology, forestry and agriculture have established that they are suitable and have no adverse impact on native vegetation and environment.

4.3.4 Rights and Concessions

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

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

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

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

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

4.4 Diversion of Forest Lands for Non-forest purposes

4.4.1 Forest land or land with tree cover should not be -treated merely as a resource readily available to be utilised for various projects and programmes, but as a national asset which requires to be properly safeguarded for providing sustained benefits to the entire community. Diversion of forest land for any non-forest purpose should be subject to the most careful examinations by specialists from the standpoint of social and environmental costs and benefits. Construction of dams and reservoirs, mining and industrial development and expansion of agriculture should be consistent with the needs for conservation of trees and forests. Projects which involve such diversion should at least provide in their investment budget, funds for regeneration/compensatory afforestation.

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

4.5 Wildlife Conservation

Forest Management should take special care of the needs of wildlife conservation, and forest management plans should include prescriptions for this purpose. It is specially essential to provide for "corridors" linking the protected

areas in order to maintain genetic continuity between artificially separated sub-sections of migrant wildlife.

4.6 Tribal People and Forests

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

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

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

4.7 Shifting Cultivation

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

4.8 Damage to Forests from Encroachments, Fires and Grazing

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

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

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

4.9 Forest-based Industries

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

- As far as possible, a forest-based industry should raise the raw material needed for meeting its own requirements, preferably by establishment of a direct relationship between the factory and the individuals who can grow the raw material by supporting the individuals with inputs including credit, constant technical advice and finally harvesting and transport services.
- No forest-based enterprise, except that at the village or cottage level, should be permitted in the future unless it has been first cleared after a careful scrutiny with regard to assured availability of raw material. In any case, the fuel, fodder and timber requirements of the local population should not be sacrificed for this purpose.
- Forest-based industries must not only provide employment to local people on priority but also involve them fully in raising trees and raw-material.
- Natural forests serve as a gene pool resource and help to maintain ecological balance. Such forests will not, therefore, be made available to industries for 'undertaking plantation and for any other activities.
- Farmers, particularly small and marginal farmers, would be encouraged to grow, on marginal/degraded lands available with them, wood species required for industries. These may also be grown along with fuel and fodder species on community lands not required for pasture purposes, and by Forest department/corporations on degraded forests, not earmarked for natural regeneration.
- The practice of supply of forest produce to industry at concessional prices should cease. Industry should be encouraged to use alternative raw materials. Import of wood and wood products should be liberalised.

- The above considerations will, however, be subject to the current policy relating to land ceiling and land-laws.

4.10 Forest Extension

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

4.11 Forestry Education

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

4.12 Forestry Research

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

- Increasing the productivity of wood and other forest produce per unit of area per unit time by the application of modern scientific and technological methods.
- Revegetation of barren/marginal/waste/mined lands and watershed areas.

- Effective conservation and management of existing forest resources (mainly natural forest eco-systems).
- Research related to social forestry for rural/ tribal development.
- Development of substitutes to replace wood and wood products.
- Research related to wildlife and management of national parks and sanctuaries.

4.13 Personnel Management

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

4.14 Forest Survey and Data Base

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

4.15 Legal Support and Infrastructure Development

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

4.16 Financial Support for Forestry

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

(K.P.Geethakrishnan)
Secretary to the Government of India

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a widow holding a life estate and has held that in view of the provisions of the Land Reforms Act she will be deemed to be a *Bhumidhar*. The learned counsel tried to distinguish the judgment by saying that in that case, the land had devolved on the widow from her husband directly and not on the basis of any compromise. According to us, the ratio of that judgment cannot be distinguished on this ground.

b 7. The High Court has rightly rejected the stand of the appellants that as Smt Phoola got the lands by way of maintenance it will be covered by Section 11 of the Act and after vesting she will be deemed to be the asami and not *Bhumidhar*. It appears Section 11 shall be applicable where the holder of sir or khudkasht lands allots such lands to a person in lieu of maintenance allowance. In the present case, Smt Phoola got the lands on the basis of a compromise entered into in the year 1932 and she was in possession thereof.

c 8. We are surprised as to how the Deputy Director while exercising the revisional power entered into all questions of fact and came to the conclusion on pure conjecture that the appellants before this Court shall be deemed to be in possession of the lands since 1932. This Court has repeatedly pointed out that howsoever wide the power under statutory revision may be in contrast to Section 115 of the Code of Civil Procedure, still while exercising that power the authority concerned cannot act as court of appeal so as to reappraise the evidence on record for recording findings on questions of fact. According to us, the High Court should have set aside the order of the Deputy Director, on this ground alone and should have restored the order of the Consolidation Officer and the Settlement Officer (Consolidation). We are in agreement with the conclusions arrived at by the High Court. Accordingly, this appeal fails and is dismissed. No costs.

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(BEFORE J.S. VERMA AND B.N. KIRPAL, JJ.)

f T.N. GODAVARMAN THIRUMULKPAD . . . Petitioner;

Versus

UNION OF INDIA AND OTHERS . . . Respondents.

Writ Petitions (C) No. 202 of 1995[†] with No. 171 of 1996
decided on December 12, 1996

g **A. Constitution of India — Arts. 32 & 21 — Ecology — Protection and conservation of forests — Interim directions issued by Supreme Court — All on-going activity within any forest in any State throughout the country, without prior permission of Central Govt., must stop forthwith — Running of saw mills including veneer or plywood mills and mining of any mineral, being non-forest purposes, not permissible without prior approval of Central Govt. and must stop forthwith — Felling of trees in Tirap and Changlang in State of Arunachal**

h

[†] Under Article 32 of the Constitution of India

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Pradesh to be totally banned — Felling of trees in all other forests to remain suspended in accordance with working plan of State Govt., as approved by Central Govt. — Movement of cut trees and timber from any of the seven North-Eastern States to any other State to be completely banned — All the States must constitute Expert Committees and submit reports to the Supreme Court — Specific directions for States of J&K, U.P. and W.B. and T.N. also issued — Notwithstanding the closure of any saw mills or other wood-based industry pursuant to this order, the workers employed in such units will continue to be paid their full emoluments due and shall not be retrenched or removed from service for this reason — Ministry of Railways to file an affidavit giving full particulars including the extent of wood consumed by them, the source of supply of wood, and the steps taken by them to find alternatives to the use of wood — These orders and directions to continue till further orders of the Court and will operate and be complied with by all concerned, notwithstanding any order at variance, made or which may be made hereafter, by any authority, including the Central or any State Government or any court (including High Court) or Tribunal — Matter to be listed on 25-2-1997 for further hearing — Forest Conservation Act, 1980, S. 2

B. Forest Conservation Act, 1980 — S. 2 — ‘Forest’ — Meaning — Words and phrases

The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word “forest” must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term “forest land”, occurring in Section 2, will not only include “forest” as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. (Para 4)

Ambica Quarry Works v State of Gujarat, (1987) 1 SCC 213, *Rural Litigation and Entitlement Kendra v State of U.P.*, 1989 Supp (1) SCC 504; *Supreme Court Monitoring Committee v Mussoorie Dehradun Development Authority*, WP (C) No 749 of 1995, decided on 29-11-1996, *State of Bihar v Banshu Ram Modi*, (1985) 3 SCC 643, *relied on*

R-M/17353/C

Advocates who appeared in this case .

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a Mahra, B.B. Singh, A.K. Srivastava, T. Anil Kumar, A. Venkateshwara Rao, Aruneshwar Gupta, J.S. Manhas, J.S. Attri, U.U. Lalit (Amicus curiae), Ms Purnima Bhat, Ms Meenakshi Sakhardanda, Altaf Nayak, R. Sasiprabhu, A.V. Palli, Zafar Shah, Atul Sharma, Ms Rekha Palli, Ms Kavita Wadia, S.K. Bhattacharya, S.K. Dhingra and Ms Ranu, Advocates, with them) for the appearing parties.

Chronological list of cases cited

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| 1. | WP (C) No 749 of 1995, decided on 29-11-1996, <i>Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority</i> | 270b-c |
| b | 2 1989 Supp (1) SCC 504, <i>Rural Litigation and Entitlement Kendra v State of UP</i> | 270b |
| | 3 (1987) 1 SCC 213, <i>Ambica Quarry Works v State of Gujarat</i> | 270b |
| | 4 (1985) 3 SCC 643, <i>State of Bihar v Banshi Ram Modi</i> | 270b-c |

ORDER

c 1. In view of the great significance of the points involved in these matters, relating to the protection and conservation of the forests throughout the country, it was considered necessary that the Central Government as well as the Governments of all the States are heard. Accordingly, notice was issued to all of them. We have heard the learned Attorney General for the Union of India, the learned counsel appearing for the States and the parties/applicants and, in addition, the learned Amicus Curiae, Shri H.N. d Salve, assisted by Sarvashri U.U. Lalit, Mahender Das and P.K. Manohar. After hearing all the learned counsel, who have rendered very able assistance to the Court, we have formed the opinion that the matters require a further in-depth hearing to examine all the aspects relating to the National Forest Policy. For this purpose, several points which emerged during the course of the hearing require further study by the learned counsel and, e therefore, we defer the continuation of this hearing for some time to enable the learned counsel to further study these points.

2. However, we are of the opinion that certain interim directions are necessary at this stage in respect of some aspects. We have heard the learned Attorney General and the other learned counsel on these aspects.

f 3. It has emerged at the hearing, that there is a misconception in certain quarters about the true scope of the Forest Conservation Act, 1980 (for short "the Act") and the meaning of the word "forest" used therein. There is also a resulting misconception about the need of prior approval of the Central Government, as required by Section 2 of the Act, in respect of certain activities in the forest area which are more often of a commercial nature. It is necessary to clarify that position.

g 4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be h understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or

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otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in *Ambica Quarry Works v. State of Gujarat*¹, *Rural Litigation and Entitlement Kendra v. State of U.P.*² and recently in the order dated 29-11-1996 (*Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority*³). The earlier decision of this Court in *State of Bihar v. Banshi Ram Modi*⁴ has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay.

5. We further direct as under:

I. GENERAL

1. In view of the meaning of the word "forest" in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any "forest". In accordance with Section 2 of the Act, all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running of saw mills of any kind including veneer or plywood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest Conservation Act, 1980. Every State Government must promptly ensure total cessation of all such activities forthwith.

2. In addition to the above, in the tropical wet evergreen forests of Tirap and Changlang in the State of Arunachal Pradesh, there would be a complete ban on felling of any kind of trees therein because of their particular significance to maintain ecological balance needed to preserve

1 (1987) 1 SCC 213

2 1989 Supp (1) SCC 504

3 WP (C) No 749 of 1995 decided on 29-11-1996

4 (1985) 3 SCC 643

a bio-diversity. All saw mills, veneer mills and plywood mills in Tirap and Changlang in Arunachal Pradesh and within a distance of 100 kms from its border, in Assam, should also be closed immediately. The State Governments of Arunachal Pradesh and Assam must ensure compliance of this direction.

b 3. The felling of trees in all forests is to remain suspended except in accordance with the working plans of the State Governments, as approved by the Central Government. In the absence of any working plan in any particular State, such as Arunachal Pradesh, where the permit system exists, the felling under the permits can be done only by the Forest Department of the State Government or the State Forest Corporation.

c 4. There shall be a complete ban on the movement of cut trees and timber from any of the seven North-Eastern States to any other State of the country either by rail, road or waterways. The Indian Railways and the State Governments are directed to take all measures necessary to ensure strict compliance of this direction. This ban will not apply to the movement of certified timber required for defence or other Government purposes. This ban will also not affect felling in any private plantation comprising of trees planted in any area which is not a forest.

d 5. Each State Government should constitute within one month an Expert Committee to:

(i) Identify areas which are “forests”, irrespective of whether they are so notified, recognised or classified under any law, and irrespective of the ownership of the land of such forest;

e (ii) identify areas which were earlier forests but stand degraded, denuded or cleared; and

(iii) identify areas covered by plantation trees belonging to the Government and those belonging to private persons.

6. Each State Government should within two months, file a report regarding:

f (i) the number of saw mills, veneer and plywood mills actually operating within the State, with particulars of their real ownership;

(ii) the licensed and actual capacity of these mills for stock and sawing;

(iii) their proximity to the nearest forest;

g (iv) their source of timber.

7. Each State Government should constitute within one month, an Expert Committee to assess:

(i) the sustainable capacity of the forests of the State qua saw mills and timber-based industry;

h (ii) the number of existing saw mills which can safely be sustained in the State;

(iii) the optimum distance from the forest, qua that State, at which the saw mill should be located.

8. The Expert Committee so constituted should be requested to give its report within one month of being constituted. a

9. Each State Government would constitute a Committee comprising of the Principal Chief Conservator of Forests and another Senior Officer to oversee the compliance of this order and file status reports.

II. FOR THE STATE OF JAMMU AND KASHMIR

1. There will be no felling of trees permitted in any “forest”, public or private. This ban will not affect felling in any private plantations comprising of trees planted by private persons or the Social Forestry Department of the State of Jammu and Kashmir and in such plantations, felling will be strictly in accordance with law. b

2. In “forests”, the State Government may either departmentally or through the State Forest Corporation remove fallen trees or fell and remove diseased or dry standing timber, and that only from areas other than those notified under the Jammu and Kashmir Wild Life Protection Act, 1978 or any other law banning such felling or removal of trees. c

3. For this purpose, the State Government will constitute an Expert Committee comprising of a representative being an IFS officer posted in the State of Jammu and Kashmir, a representative of the State Government, and two private experts of eminence and the Managing Director of the State Forest Corporation (as Member Secretary) who will fix the qualitative and quantitative norms for the felling of fallen trees, diseased and dry standing trees. The State shall ensure that the trees so felled and removed by it are strictly in accordance with these norms. d e

4. Any felling of trees in forest or otherwise or any clearance of land for execution of projects, shall be in strict compliance with the Jammu and Kashmir Forest Conservation Act, 1990 and any other laws applying thereto. However, any trees so felled, and the disposal of such trees shall be done exclusively by the State Forest Corporation and no private agency will be permitted to deal with this aspect. This direction will also cover the submerged areas of the Thein Dam. f

5. All timber obtained, as aforesaid or otherwise, shall be utilised within the State, preferably to meet the timber and fuel wood requirements of the local people, the Government and other local institutions.

6. The movement of trees or timber (sawn or otherwise) from the State shall, for the present, stand suspended, except for the use of DGS & D, Railways and Defence. Any such movement for such use will — g

(a) be effected after due certification, consignment-wise made by the Managing Director of the State Corporation which will h

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include certification that the timber has come from State Forest Corporation sources; and

a (b) be undertaken by either the Corporation itself, the Jammu and Kashmir Forest Department or the receiving agency.

7. The State of Jammu and Kashmir will file, preferably within one month from today, a detailed affidavit specifying the quantity of timber held by private persons purchased from State Forest Corporation Depots for transport outside the State (other than for consumption by the DGS & D, Railways and Defence). Further directions in this regard may be considered after the affidavit is filed.

b

8. No saw mills, veneer or plywood mill would be permitted to operate in this State at a distance of less than 8 kms from the boundary of any demarcated forest areas. Any existing mill falling in this belt should be relocated forthwith.

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III. FOR THE STATE OF HIMACHAL PRADESH AND THE HILL REGIONS OF THE STATES OF UTTAR PRADESH AND WEST BENGAL

1. There will be no felling of trees permitted in any forest, public or private. This ban will not affect felling in any private plantation comprising of trees planted in any area which is not a “forest”; and which has not been converted from an earlier “forest”. This ban will not apply to permits granted to the right-holders for their bona fide personal use in Himachal Pradesh.

d

2. In a “forest”, the State Government may either departmentally or through the State Forest Corporation remove fallen trees or fell and remove diseased or dry standing timber from areas other than those notified under Section 18 or Section 35 of the Wild Life Protection Act, 1972 or any other Act banning such felling or removal of trees.

e

3. For this purpose, the State Government is to constitute an Expert Committee comprising a representative from MOEF, a representative of the State Government, two private experts of eminence and the MD of the State Forest Corporation (as Member Secretary), who will fix the qualitative and quantitative norms for the felling of fallen trees and diseased and standing timber. The State shall ensure that the trees so felled and removed are in accordance with these norms.

f

4. Felling of trees in any forest or any clearance of forest land in execution of projects shall be in strict conformity with the Forest Conservation Act, 1980 and any other laws applying thereto. Moreover, any trees so felled, and the disposal of such trees shall be done exclusively by the State Forest Corporation and no private agency is to be involved in any aspect thereof.

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IV. FOR THE STATE OF TAMIL NADU

1. There will be a complete ban on felling of trees in all “forest areas”. This will however not apply to:

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(a) trees which have been planted and grown, and are not of spontaneous growth, and

(b) are in areas which were not forests earlier, but were cleared for any reason. a

2. The State Government, within four weeks from today, is to constitute a committee for identifying all “forests”.

3. Those tribals who are part of the social forestry programme in respect of patta lands, other than forests, may continue to grow and cut according to the Government Scheme provided that they grow and cut trees in accordance with the law applicable. b

4. Insofar as the plantations (tea, coffee, cardamom etc.) are concerned, it is directed as under:

(a) The felling of shade trees in these plantations will be —

(i) limited to trees which have been planted, and not those which have grown spontaneously; c

(ii) limited to the species identified in the TANTEA Report;

(iii) in accordance with the recommendations of (including to the extent recommended by) TANTEA; and

(iv) under the supervision of the statutory committee constituted by the State Government. d

(b) Insofar as the fuel trees planted by the plantations for fuel wood outside the forest area are concerned, the State Government is directed to obtain within four weeks, a report from TANTEA as was done in the case of shade trees, and the further action for felling them will be as per that report. Meanwhile, Eucalyptus and Wattle trees in such area may be felled by them for their own use as permitted by the statutory committee. e

(c) The State Government is directed to ascertain and identify those areas of the plantation which are a “forest” and are not in active use as a plantation. No felling of any trees is however to be permitted in these areas, and sub-paras (b) and (c) above will not apply to such areas. f

(d) There will be no further expansion of the plantations in a manner so as to involve encroachment upon (by way of clearing or otherwise) of “forests”.

5. As far as the trees already cut, prior to the interim orders of this Court dated December 11, 1995 are concerned, the same may be permitted to be removed provided they were not so felled for Janmam land. The State Government would verify these trees and mark them suitably to ensure that this order is duly complied with. For the present, this is being permitted as a one-time measure. g

6. Insofar as felling of any trees in Janmam lands is concerned (whether in plantations or otherwise), the ban on felling will operate subject to any order made in the Civil Appeals Nos. 367 to 375 of 1977 h

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in CAs Nos. 1344-45 of 1976. After the order is made in those civil appeals on the IAs pending therein, if necessary, this aspect may be re-examined.

a

7. This order is to operate and to be implemented, notwithstanding any order at variance, made or which may be made by any Government or any authority, Tribunal or court, including the High Court.

The earlier orders made in these matters shall be read, modified wherever necessary to this extent. This order is to continue, until further orders. This order will operate and be complied with by all concerned, notwithstanding any order at variance, made or which may be made hereafter, by any authority, including the Central or any State Government or any court (including High Court) or Tribunal.

b

6. We also direct that notwithstanding the closure of any saw mills or other wood-based industry pursuant to this order, the workers employed in such units will continue to be paid their full emoluments due and shall not be retrenched or removed from service for this reason.

c

7. We are informed that the Railway authorities are still using wooden sleepers for laying tracks. The Ministry of Railways will file an affidavit giving full particulars in this regard including the extent of wood consumed by them, the source of supply of wood, and the steps taken by them to find alternatives to the use of wood.

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8. IAs Nos. 7, 9, 10, 11, 12, 13 and 14 in Writ Petition (Civil) No. 202 of 1995 and IAs Nos. 1, 3, 4, 5, 6, 7, 8 and 10 in Writ Petition (Civil) No. 171 of 1996 are disposed of, accordingly.

9. List the matter on 25-2-1997 as part-heard for further hearing.

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(1997) 2 Supreme Court Cases 275

(BEFORE S.P. BHARUCHA AND S.C. SEN, JJ.)

STATE OF GUJARAT

.. Appellant;

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Versus

SUHRID GEIGY LTD. AND OTHERS

.. Respondents.

Civil Appeals No. 1780 of 1980[†] with Nos. 3536-40 of 1982 and 7431 of 1983, decided on December 10, 1996

A. Excise — Medicinal and Toilet Preparations (Excise Duties) Act, 1955 — S. 2(h) — “Narcotic drug” or “narcotic” — Meaning of — Held, one which produces either drowsiness or sleep or stupefaction or insensibility and not necessarily all the four effects — Word “or”, occurring between “stupefaction” and “insensibility” cannot be read as “and” — Plain meaning applied — Interpretation of statutes — Basic rules — Plain meaning — Interpretation of statutes — Subsidiary rules — Conjunctive or disjunctive — Words and phrases — “Or”

h

[†] From the Judgment and Order dated 4/7-4-1980 of the Gujarat High Court in S C A No 912 of 1975