

# FOREST LAW

# **THE INDIAN FOREST ACT, 1927**

# Scheme and scope of the Act - 13 chapters

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# **THE INDIAN FOREST ACT, 1927**

(Act XVI of 1927)

[21st September 1927]

# *Preamble*

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

*WHEREAS it is expedient to consolidate the law relating to forests, the Transit of forest-produce and the duty leviable on timber and other Forest-produce; it is hereby enacted as follows: -*

## ➤ What is the preamble?

– Soul of any Act

– Tribhuban Prakash Narayan Vs Union of India

(AIR 1970)

- Supreme Court held that the Preamble is the **key to open the mind of the legislature.**

# Rashtriya mill Mazdoor Sangh

VS

N.T.C.Ltd. AIR 1996 SC 710

- ✓ Where the language of an Act is clear, the preamble cannot be invoked to curtail or restrict the scope of the enactment and only where the object or meaning of an enactment is not clear, the preamble may be restored to explain it.

# CHAPTER - I

## PRELIMINARY

1. Short title and extent
2. Interpretation clause

# CHAPTER I

## PRELIMINARY

### 1. Short title and extent.-

(1) This Act may be called the Indian Forest Act, 1927

(2) It extends to the whole of India except the territories which, immediately before the 1<sup>st</sup> November, 1956, were comprised in Part B States

# PRELIMINAR

Y

(3) It applies to the territories which, immediately before the 1st November, 1956, were comprised in the States of Bihar, Bombay, Coorg, Delhi, Madhya Pradesh, Orissa, Punjab, Uttar Pradesh and West Bengal; but the Government of any State may by notification in Official Gazette bring this Act into force in the whole or any specified part of that State which this Act extends and where it is not in force.

## 2. Interpretation Clause.-

In this Act, unless there is anything repugnant in the subject or context,-

(1) "Cattle" **includes** elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, ram, ewes, Sheep, lambs, goats and kids;

(2) "Forest-officer" means any person whom the Government or Any officer empowered by the Government in this behalf, may Appoint to **carry out all or any of the purposes of this Act** or to do Anything required by this Act or any rule made there under to be done by a Forest-officer.

## Plantation watcher ?

- ✓ The plantation watcher is a “forest officer” within the meaning of section 2(2) of IFA 1927.
  - Abdul Aziz vs Union Territory of Tripura ,1963

❑ There can be no right or private defense to the accused when the plantation watcher seeks to arrest him while cutting reserved trees. Escaping from custody of Plantation watcher is an offence *u/s 224, IPC*. Similarly voluntarily causing physical assault to such watcher is offence *u/s 332, I.P.C.*

*-Abdul Aziz V. The Union Territory of Tripura, 1963*

(3) "forest-offence" means an offence punishable under this Act or under any rule made there under;

## 2. Interpretation Clause contd..

(4) "forest-produce" includes-

(a) The following whether **found in, or brought from, a forest or not**, that is to say: -

Timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural Varnish, bark, lac, mahua flowers, mahua seeds , kuth and myrobolans, and

## 2. Interpretation Clause contd..

(b) the following when **found in, or brought from, a forest**, that is to say :-

(i) trees and leaves, flowers and fruits, and *all other parts or produce* not hereinbefore mentioned, of trees,

(ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,

(iii) **wild animals** and skins, tusks, horns, bones, *silk, cocoons, honey, and wax*, and all other parts or produce of animals, and

(iv) peat, **surface soil**, rock, and minerals (including limestone, laterite, mineral oils, and all products of mines or quarries) ;

# Fish – forest produce ?

- ✓ Fish is a forest produce within the meaning of sec 2 (4)
  - State vs D.J., Bijnor, AIR 1981 All 205
- ✓ Fish cannot be included in the definition of 'forest produce'. In view of the clauses 36 & 37 of section 2 of WPA 1972, the fish is not 'wild animal' but 'wild life'
  - Sheikh Taurif vs State of MP, 2002

# WPA 1972

- (1) 'animal' includes mammals, birds, reptiles, amphibians, fish, other chordates and invertebrates and also includes their young and eggs;
- (36) "wild animal" means any animal specified in Schedules I to IV and found wild in nature
- (37) "wildlife" includes any animal, aquatic or land vegetation which forms part of any habitat

# Article prepared from bamboo chips – forest produce ?

✓ forest produce takes within its fold all that is produced by nature but does not include man made products like Toplas, Palas Supdas etc., made from bamboo chips.

- **Fatesang Gimba vs State of Gujrat, AIR 1987**

✓ True that if bamboo as a whole is forest produce, every part thereof including chips would fall within that definition but once the chips cease to be a 'produce' of nature and get merged into a 'product' brought about by **human labour** and if the product so made is **commercially new and distinct character** such an article or product cease to be a forest produce.

- **Fatesang Gimba vs State of Gujrat, AIR 1987**

# Bamboo mat – forest produce ?

✓ bamboo mat is not a forest produce within the meaning of sec 2 (4)

- Mahadev vs State of Maharashtra, AIR 2001

# Rubber sheets/ mat – forest produce ?

✓ rubber sheets/mats is forest produce  
within the meaning of sec 2 (4)

- Karnataka forest development corporation

vs

Contreads private ltd., AIR 1994 SC

# Factory made “Kattha” or “Catechu” – forest produce ?

✓ is a forest produce within the meaning of  
sec 2 (4) of IFA.

- M/s Indian wood products co. Ltd vs  
State of UP, AIR 1999

Dung excreted by domestic cattles  
inside forest – forest produce ?

✓ is not a forest produce within the meaning of sec 2 (4) of IFA.

- Barkat vs MP State, AIR 1987

# “Quicklime” – forest produce ?

✓ is not a forest produce within the meaning of sec 2 (4) of IFA.

- Ramanuj Pandey & ORS.

**VS**

**State of Bihar, AIR 2008**

# “Veneer” – forest produce ?

- ✓ Veneer being a finished product of certain types of timber must be called ‘fashioned timber’ within the meaning of sec 2 (6) and therefore a forest produce under sec 2 (4) of IFA.
  - **Woodman industries Araria vs State of Bihar, AIR 2000**
  - **Bihar plywood manufacturing association vs State of Bihar, AIR 2004**

## 2. Interpretation Clause contd..

- (4A) "owner" includes a Court of Wards in respect of property under the superintendence or charge of such court;
- (5) "River" includes any stream, canal, creek or other channels, natural or artificial;
- (6) "Timber" includes trees when they have fallen or have been felled, and all wood whether cut up or **fashioned** or hollowed out for any purpose or not; and
- (7) "tree" includes palms, bamboos, stumps, brushwood and canes

## Godavarman case

- SC in W.P No. 202/95 defined “Forest” & “Forest Land”.
  - “Forest” shall be understood in the **dictionary sense**
- ✓ In the ‘Oxford Dictionary’ forest has been defined as:
- A large area covered with trees and undergrowth sometimes intermingled with pasture

## "forest land",

- 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.

# State Government of Madhya Pradesh,

## ➤ Forest land

✓ All the recorded and notified forest lands

and

✓ Areas more than 10 hectare having a tree cover of more than 200 trees per hectare

➤ Forest Act in Meghalaya namely “The United Khasi & Jaintia Hills Autonomous District (Management and Control of Forests) Act 1958”

- “Forest” means and shall be deemed to be a forest, if in the area there are reasonable number of trees, say, **not less than twenty five per acre** reserved or any other forest produce growing on such area, which have been or are capable of being exploited for purposes of business or trade

## ➤ State of Forest Report 2015,

- ✓ Forest Area means, the area recorded as “Forest” in government records.
- ✓ The term “Forest Cover” includes “all lands with more than 1 Ha. area with tree canopy density of more than 10 % irrespective of ownership and legal status”

## ➤ Under “Kyoto Protocol” India has defined forest as:

- “A forest is a land area of at least 0.05 ha, with a minimum tree crown cover of 15%, and tree height of at least 2 m”

## Broad categorization of Forest

- (i) Reserved Forest (RF) and all Protected forests(PF)
- (ii) All un-demarcated PF
- (iii) Areas once defined as forest in any government record irrespective of ownership and irrespective of whether it has forest cover or not
- (iv) All areas which according to the dictionary meaning and as given by the criteria of the expert committee can be categorized as forests.

# CHAPTER II (sec 3 - 27)

Deals with :

- i. Areas that can be constituted as reserved forest
- ii. Legal procedure to be followed
  - i. FSO
  - ii. Determining & settling of rights
- iii. Acts prohibited in a reserved forest and penalties prescribed
- iv. Powers of forest officers to stop right of ways and water course in RF
- v. Revisional powers of State Government

# CHAPTER II

## RESERVED FORESTS

3. Power to reserve forests
4. Notification by Government
5. Bar of accrual of forest-rights
6. Proclamation by Forest Settlement-officer
7. Inquiry by Forest Settlement-officer
8. Powers of Forest Settlement-officer
9. Extinction of rights
10. Treatment of claims relating to practice of shifting cultivation

## RESERVED FORESTS Contd...

11. Power to acquire land over which right is claimed
12. Order on claims to rights of pasture or to forest-produce
13. Record to be made by Forest Settlement-officer
14. Record where he admits claim
15. Exercise of rights admitted
16. Commutation of rights
17. Time limit for resolution of claims
18. Appeal from order passed under section 11, section 12, section 15 or section 16

## RESERVED FORESTS Contd...

18. Appeal under section 17
19. Pleaders
20. Notification declaring forest reserved
21. Publication of translation of such notification in neighborhood of Forest
22. Power to revise arrangement under section 15 or section 18
23. No right acquired over reserved forest except, as here provided
24. Rights not to be alienated without sanction
25. Power to stop ways and water-courses in reserved forests
26. **Acts prohibited in such forests**
27. Power to declare forest no longer [reserved](#)

# CHAPTER II

## OF RESERVED FORESTS

### **3. Power to reserve forests.-**

The State Government may constitute any forest-land or waste-land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled, a reserved forest in the manner hereinafter provided.

## Sec 3

### ❑ Power to reserve forests

➤ State Government

➤ Type of land

Private land ?

# OF RESERVED FORESTS

contd...

## 4. Notification by Government. –

(1) Whenever it has been decided to constitute **any land** a reserved forest, the Government shall issue" notification in the official Gazette -

# OF RESERVED FORESTS

contd...

- (a) declaring that it has been decided to constitute such land a reserved forest;
- (b) specifying, as nearly as possible, the situation and limits of such land; and
- (c) appointing an officer (hereinafter called "the **Forest Settlement Officer**") to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits, or in or over any forest-produce, and to deal with the same as provided in this Chapter.

**Explanation.** - For the purpose of clause (b), it shall be sufficient to describe the limits of the forest by roads, rivers, ridges or other well-known or readily intelligible boundaries.

(2) The **officer appointed** under clause "(c) 'of sub-section (1) shall ordinarily be a **person not holding any forest-office** except that of Forest Settlement-officer.

(3) Nothing in this section shall prevent the Government from appointing any number of officers not exceeding three, not more than one of whom shall be a person holding any forest-office except as aforesaid, to Perform the duties of a Forest Settlement- officer under this Act

# Sec 4

## □ Notification by State Government

### ➤ Notification in the Official Gazette

- Declaration

- Specifying the situation and limits

### ➤ Forest Settlement-officer

# OF RESERVED FORESTS

contd...

**5. Bar of accrual of forest-rights.** - After the issue of a notification under section 4, **no right shall be acquired** in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or some person in whom such right was vested when the notification was issued; and **no fresh clearings for cultivation or for any other purpose shall be made** in such land except in accordance with such rules as may be made by the State Government in this behalf.

## ❑ Bar of accrual of forest-rights (5)

➤ No new rights

➤ No fresh clearings

Advantage of construction subsequently raised ?

***-state of UP vs. addl DJ AIR 1984***

Removal of trees?

***-Mathroo Khan Vs. State of UP, 1960***

## State Amendments

### i) U P amendment (1965)

- Prohibition extended to felling, girdling, lopping, tapping, removal of any forest produce etc.

### ii) No granting of Patta – Kerala, TN, AP, Raj ,Ktk.

### iii) Doing prohibited acts without FSO permission-

#### Offence

- AP, Kerala, Assam, Ktk, TN

# OF RESERVED FORESTS

contd...

**6. Proclamation by Forest Settlement-officer.** -When a notification has been issued under section 4, the Forest Settlement-officer shall **publish** in the **local vernacular** in every town and village in the neighborhood of the land comprised therein, a proclamation -

(a) Specifying, as nearly as possible, the situation and limits of the proposed forest;

contd....

# OF RESERVED FORESTS

## contd...

- (b) Explaining the consequences which, as hereinafter provided, will ensue on the reservation of such forest; and
- (c) fixing a **period of not less than three months** from the date of such proclamation, and requiring every person claiming any right mentioned in section 4 or section 5, within such period either to present to the Forest Settlement-officer a **written notice** specifying or to **appear before him and state**, the nature of such right and the amount and particulars of the compensation( if any ) claimed in respect thereof.

## ❑ Proclamation by Forest Settlement-officer (6)

- In local vernacular

- Not less than 3 months for claim

# OF RESERVED FORESTS

contd...

## 7. Inquiry by Forest Settlement-officer. –

The Forest Settlement-officer shall take down in writing all statements made under section 6, and shall at some convenient place **inquire** into all claims duly preferred under that section, and the existence of any rights mentioned in section 4 or section 5 and not claimed under section 6 so far as the same may be ascertainable from the **records of government** and the **evidence of any persons likely to be acquainted** with the same.

## □ Inquiry by Forest Settlement-officer (7)

- Procedure as per CPC

- Spot inspection

# Order rejecting claims on the ground that objections not filed in writing; legally justified ?

- ✓ Claims and objections, recorded during survey and revision of records could be lawfully taken notice u/s 7. FSO should take care not to allow extinction of rights for procedural and technical discrepancies.

- UP legal Aid and Advise Board vs

State of UP, AIR 1999

# OF RESERVED FORESTS

## contd...

**8. Powers of Forest Settlement-officer.** -For the purpose of such inquiry, the Forest Settlement-officer may exercise the following powers, that is to say: -

(a) power to enter, by himself or any officer authorised by him for the purpose, upon **any land** and to survey, demarcate and make a map of the same; and

(b) the powers of a Civil Court in the trial of suit.

## ❑ Powers of Forest Settlement-officers (8)

➤ To enter upon *any land*

➤ Civil Court

# OF RESERVED FORESTS

contd...

**9. Extinction of rights.** -Rights in respect of which **no claim has been preferred** under section 6, and of the existence of which **no knowledge has been acquired** by inquiry under section 7, shall be extinguished, **unless**, before the notification under section 20 is published, the person claiming them satisfies the Forest Settlement-officer that he had sufficient Cause for not preferring such claim within the period fixed under section 6.

## ❑ Extinction of rights (9)

- Claim not preferred u/s 6,
- No knowledge acquired by inquiry u/s 7

UNLESS...

- Before notification u/s 20, Claimant proves
- Onus to prove the status of land on claimant

# OF RESERVED FORESTS

contd...

## 10. Treatment of claims relating to practice of Shifting cultivation.-

1) In the case of claim relating to the practice of shifting cultivation, the Forest Settlement-officer shall **record a statement** setting forth the particulars of the claim and of any local rule or order under which the practice is allowed or regulated, and **submit the statement to the State Government**, together with **his opinion** as to whether the practice should be **permitted or prohibited** wholly or in part.

# OF RESERVED FORESTS

**contd...**

- (2) On receipt of the statement and opinion, the **State Government may make an order** permitting or prohibiting the practice wholly or in part.
- (3) If such practice is permitted wholly or in part, the Forest Settlement-officer may arrange for its exercise-
- (a) by **altering the limits of the land** under settlement so as to exclude land of sufficient extent, of a suitable kind, and in a locality reasonably convenient for the purposes of the claimants, or
  - (b) by causing certain portions of the land under settlement to be **separately demarcated**, and giving permission to the claimants to practice shifting cultivation therein under such conditions as he may prescribe.

# OF RESERVED FORESTS

## contd...

- (4) All arrangements made under sub-section (3) shall be subject to the **previous sanction of the State Government.**
- (5) The practice of shifting cultivation shall in all cases be deemed a **privilege** subject to control, restriction and abolition by the State Government.

## ❑ Claims relating to practice of shifting cultivation (10)

➤ State Govt empowered

➤ 2 options:

1. Alteration in boundaries to exclude sufficient land

2. Separately demarcated

➤ Privilege

# OF RESERVED FORESTS

contd...

**11. Power to acquire land over which right is claimed. –**

(1) In the case of a claim to a right in or over any land, **other than a right-of-way or right of pasture, or a right to forest-produce or a water-course**, the Forest Settlement-officer shall pass an order admitting or rejecting the same in whole or in part.

# OF RESERVED FORESTS

## contd...

(2) If such claim is admitted in whole or in part,

the Forest Settlement officer shall **either-**

(i) exclude such land from the limits of the proposed forest; or,

(ii) come to an agreement with the owner thereof for the surrender of his rights; or

(iii) proceed to acquire such land in the manner provided by the Land Acquisition Act 1894

# OF RESERVED FORESTS

## contd...

(3) For the purpose of so acquiring such land-

(a) the Forest Settlement-officer shall be deemed to be a Collector proceeding under the Land Acquisition Act 1894(1 of 1894).

(b) the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given under section 9 of that Act;

# OF RESERVED FORESTS

## contd...

(c) the provisions of the preceding sections of that Act shall be deemed to have been complied with; and

(d) the Collector, with the consent of the claimant, or the Court, with the consent of both parties, may award compensation in land, or partly in land and partly in money or wholly in money

## ➤ Claims to land

❑ Acquisition of land over which right is claimed *(11)*

✓ Admission/rejection

- Exclusion
- Surrender of right
- Acquisition as per LA Act

# OF RESERVED FORESTS

contd...

## **12. Order on claims to rights of pasture or to forest produce.-**

In the case of a claim to rights of pasture or to forest-produce, the Forest Settlement-officer shall pass an order admitting or rejecting the same in whole or in part.

## ➤ Claim to forest right

☐ Claims to rights of pasture or to forest-produce (12)

- Admission/rejection

# OF RESERVED FORESTS

contd...

## 13. Record to be made by Forest

**Settlement-officer.** -The Forest

Settlement-officer, when passing any order under section 12, shall record, so far as may be practicable,-

- (a) the name, father's name, caste, residence and occupation of the person claiming the right; and
- (b) the designation, position and area of all fields or groups of fields (if any), and the designation and position of all buildings (if any) in respect of which the exercise of such right is claimed.

## ➤ Claim to forest right

☐ Record to be made by FSO *(13)*

- Rights to persons
- Rights with respect to property

# OF RESERVED FORESTS

contd...

## 14. Record where he admits claim. –

If the Forest Settlement-officer admits in whole or in part any claim under section 12, he shall also record the **extent** to which the claim is so admitted, specifying the **number and description of the cattle** which the claimant is from time to time entitled to graze in the forest, the **season** during which such pasture is permitted, the **quantity of timber and other forest-produce** which he is from time to time authorised to take or receive, and such other particulars as the case may require. He shall also record whether timber or other forest-produce obtained by the exercise of the rights claimed may be **sold or bartered**.

□ Extent of right (14)

- Selling or bartering of timber/ forest produce

# OF RESERVED FORESTS

contd...

## **15. Exercise of rights admitted. –**

(1) After making such record the Forest Settlement-officer shall, to the best of his ability, and having due regard to the maintenance of the reserved forest in respect of which the claim is made, **pass such orders as will ensure the continued exercise of rights so admitted.**

# OF RESERVED FORESTS

## contd...

(2) For this purpose the Forest Settlement-officer may-

(a) **set out some other forest-tract** of sufficient extent and in a locality reasonably convenient, for the purposes of such claimants, and record an order conferring upon them a right of pasture or to forest-produce (as the case may be) to the extent so admitted; or

(b) so **alter the limits of the proposed forest as to exclude** forest-land of sufficient extent, and a locality reasonably convenient, for the purposes of the claimants; or

# OF RESERVED FORESTS

## contd...

(c) record an **order, continuing to such claimants** a right of pasture or to forest-produce, as the case may be, to the extent so admitted, at such seasons, within such portions of the proposed forest, and under such rules, as may be made in this behalf by the Government.

□ Arrangement for exercise of Right *(15)*

- **2 arrangements**

# OF RESERVED FORESTS

contd...

## **16. Commutation of rights. –**

In case the Forest Settlement- officer finds it impossible, having due regard to the maintenance of the reserved forest, to make such settlement under section 15 as shall ensure the continued exercise of the said rights to the extent so admitted, he shall, subject to such rules as the State Government may make in this behalf, commute such rights, **by the payment** to such persons of a sum of money in lieu thereof **or by the grant of land**, or in such **other manner as he thinks fit**.

# OF RESERVED FORESTS

contd...

## **17. Appeal from order passed under section 11, section 12, section 15 or section 16. –**

Any person who has made a claim under this Act, or any Forest-officer or other person generally or specially empowered by the State Government in this behalf, may, **within three months** from the date of the order passed on such claim by the Forest Settlement-officer under section 11, section 12, section 15 or section 16, present an appeal from such order to such officer of the Revenue Department of **rank not lower than that of a Collector**, as the State Government may, by notification in the Official Gazette, appoint to hear appeals from such orders:

# OF RESERVED FORESTS

## contd...

Provided that the State Government may establish a Court (hereinafter called the Forest Court) composed of three persons to be appointed by the State Government, and when the Forest Court has been so established, all such appeals shall be presented to it.

□ Appeal against orders u/s *11,12, 15, 16 (17)*

➤ Revenue officer rank not lower than  
Collector

➤ Forest Court

➤ Either party can claim

# OF RESERVED FORESTS

## contd...

### 18. Appeal under section 17

(1) Every appeal under section 17 shall be made by petition in writing, and may be **delivered to the Forest Settlement-officer**, who shall forward it without delay to the authority competent to hear the same.

(2) If the appeal be to an officer appointed under section 17, it shall be heard in the manner prescribed for the time being for the hearing of appeals in matters relating to land-revenue.

# OF RESERVED FORESTS

## contd...

(3) If the appeal be to the Forest Court, the Court shall fix a day and a convenient place in the neighbourhood of the proposed forest for hearing the appeal, and shall give notice thereof to the parties, and shall hear such appeal accordingly.

(4) The order passed on the appeal by such officer or Court, or by the majority of the members of such Court, as the case may be, shall, **subject only to revision by the State Government**, be final.

❑ Deciding appeal u/s17 (18)

➤ Petition to FSO

➤ Finality of order

# OF RESERVED FORESTS

## contd...

### **19. Pleaders.**

The State Government, or any person who has made a claim under this Act, may appoint any person to appear, plead and act on its or his behalf before the Forest Settlement-officer, or the appellate officer or Court, in the course of any inquiry or appeal under this Act.

# OF RESERVED FORESTS

contd...

**20. Notification declaring forest reserved.** - (1) when the

following events have occurred, namely: -

(a) the period fixed under section 6 for preferring claims has elapsed and all claims, if any, made under that section or section 9 have been disposed of by the Forest Settlement- officer;

(b) If any Such claims have been made, the period limited by section 17 for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the appellate officer or court; and

# OF RESERVED FORESTS

## contd...

(c) all lands (if any) to be included in the proposed forest, which the Forest Settlement-officer has, under section 11, elected to acquire under the Land Acquisition Act 1894, have become vested in the Government under section 16 of that Act,

the State Government shall publish a notification in the official Gazette, specifying definitely, according to boundary-marks erected or other wise, the limits of the forest which is to be reserved, and declaring the same to be reserved from a **date fixed by the notification.**

(2) From the date so fixed such forest shall be deemed to be a reserved forest.

## ❑ Final notification declaring forest reserved (20)

- Settlement of claims
- Disposal of appeals
- Acquisition of land
  - Limits of area
  - Fixing a reservation date

# OF RESERVED FORESTS

contd...

## **21. Publication of translation of such notification in neighborhood of forest –**

The Forest Settlement-officer shall, before the date fixed by such notification, cause a translation thereof into the local vernacular to be published in every town and village in the neighborhood of the forest.

# OF RESERVED FORESTS

contd...

## **22. Power to revise arrangement under section 15 or section 18 -**

The State Government may, within **five years** from the publication of any notification under section 20, **revise any arrangement made under section 15 or section 18**, and may for this purpose rescind or modify any order made under section 15 or section 18, and direct that anyone of the Proceedings specified in section 15 be taken in lieu of any other of such proceedings, or that the rights admitted under section 12 be commuted under section 16.

# OF RESERVED FORESTS

contd...

## **23. No right acquired over reserved forest**

**except, as here provided.-**

No right of any description shall be acquired in or over a reserved forest except **by succession or under a grant or contract in writing made by or on behalf of the State**

**Government** or some person in whom such right was vested when the notification under section 20 was issued.

# OF RESERVED FORESTS

## contd...

### **24. Rights not to be alienated without sanction**

- (1) Notwithstanding anything contained in section 23, no right continued under clause (c) of sub-section (2) of section 15 shall be alienated by way of grant, sale, lease, mortgage or otherwise, **without the sanction of the State Government :**

Provided that, when any such right is appendant to any land or house, it may be sold or otherwise alienated with such land or house.

(2) No timber or other forest-produce obtained in exercise of any such right shall be sold or bartered except to such extent as may have been admitted in the order recorded under section 14.

# OF RESERVED FORESTS

contd...

## **25. Power to stop ways and water-courses in reserved forests. –**

The Forest-officer may, with the **previous sanction of the State Government** or of any officer duly authorised by it in this behalf, **stop any public or private way or water-course in a reserved forest**, provided that a substitute for the way or water- course so stopped, which the Government deems to be reasonably convenient, already exists, or has been provided or constructed by the Forest-officer in lieu thereof.

✓ Can fee be charged for forest roads?

“No tax shall be levied or collected except by authority of law”

*(Art. 265)*

➤ ***Anand transport Co. Pvt. Ltd. Vs. DFO, South Raipur, AIR 1959 MP.***

✓ *Forest roads are not public highways*

✓ *Department has the right to regulate use of the roads*

✓ *SC held that imposition of reasonable fee for user of a forest road is neither illegal nor is contravention of Art 265 of COI*

# OF RESERVED FORESTS

contd...

## **26. Acts prohibited in such forests. -**

(1) Any person who--

(a) makes any fresh clearing prohibited by section 5 ; or

(b) sets fire to a reserved forest, or, in contravention of any rules made by the Government in this behalf, kindles any fire, or leaves any fire burning, in such manner as to endanger such a forest;

# OF RESERVED FORESTS

contd.

~~or who~~, in a reserved forest -

(c) kindles, keeps or carries any fire except at such seasons as the Forest- Officer may notify in this behalf;

(d) trespasses or pastures cattle, or permits cattle to trespass;

(e) causes any damage by negligence in felling any tree or cutting or dragging any timber;

(f) Fells, girdles, lop, taps or burns any tree or strips off the bark or leaves from, or otherwise damages the same;

# OF RESERVED FORESTS

## contd...

(g) quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process, or removes any forest produce other than timber;

(h) **clears or breaks up** any land for cultivation or any other purpose

(i) in contravention of any rules made in this behalf by the Government, hunts, shoots, fishes, poisons water or sets traps or snares; or

(j) in any area in which the Elephants' Preservation Act 1879, is not in force; kills or catches elephants in contravention of any rules so made

# OF RESERVED FORESTS

contd...

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

# OF RESERVED FORESTS

~~(2)~~ **contd.**

(2) Nothing in this section shall be deemed to prohibit-

(a) any act done by permission in writing of the Forest-officer, or under any rule made by the State Government; or

(b) the exercise of any right continued under clause (c) or sub-section (2) of section 15, or created by grant or contract in writing made by or on behalf of the State Government under section 23 and

(3) Whenever fire is caused willfully or by gross negligence in a reserved forest, the State **Government** may (notwithstanding that any penalty has been inflicted under this section) direct that in such forest or any portion thereof the exercise of **all rights of pasture or to forest-produce shall be suspended** for such period as it thinks fit.

## ➤ Offences (26)

### ✓ Punishment

- Imprisonment – up to 6 months
- Fine - up to Rs. 500
- Compensation – for damage done to the forest

# *FINE*

## COMPENSATION

- Legal punishment
- Always as a sum of money
- Maximum is fixed in advance
- Amount goes to government
- Imprisonment in default
  - Rigorous or Simple
- Always imposed by convicting court

- For damages/ injury
- Either in cash or kind
- No limit
- Amount goes to injured party
- Imprisonment in default
  - Simple
- Convicting court or by departmental officers

# State amendments

<u>State</u>	<u>Imprisonment</u>	<u>Fine</u>
Bihar & Odisha	6 months – 2 yrs.	up to 5000
Haryana	up to 1 yr.	up to 1000
HP	up to 2 yrs.	up to 5000
WB	up to 1 yr	up to 2000
MH	1 yrs.	up to 2000
MP	up to 1 yr	up to 1000

In MP abatement of forest offence is also an offence (Sec 66 -A).

UP & UK For offences u/s 26 (b) (f) (g) (h)

(1<sup>st</sup>) up to 2 yrs up to 5000

(2<sup>nd</sup>) up to 2 yrs up to 20000

## A.P.

- ✓ Offences or abetment related to Sandalwood or Red Sanders -

3 months – 1 yr

Up to Rs. 10000/-

Compensation

- ✓ In other cases –

Up to 1 yr

Up to Rs. 2000/-

Compensation

## Case 2:

A person cut trees from an area which was notified u/s 4 of IFA. He removed trees out of the forest leaving stumps behind. He was charged of committing a forest offence. The defense reasoning was that since he had not cleared the land for cultivation, so he had not committed any offence.

Guilty or not?

### Case 3:

A person kindles fire in his garden. But the same spreads to the un-classed forest and then to reserved forest. Whether he is guilty for setting fire to the forest or not?

“A person cannot be said to set fire to a thing if it catches fire as an indirect consequence of his acts.”

## Case 4:

Person was charged for offences u/s 26 (1) (f) & (h). The prosecution case is that they cultivated land which falls within a reserved forest and have cut down trees standing on that land. The defense was that the land which has been cleared does not fall in the reserved forest, and that it has been the raiyatwadi land of the accused for many years.

How to prove the guilt?

## Case 5:

If a person has been granted to pasture his certain cattle in a reserved forest and his servant takes some other cattle along with the permitted cattle into the RF.

Will the master be held guilty?

A licensee under the Act would be liable criminally for every act of his agent done in carrying on the business delegated to him if there is a breach of condition of licence.

**-Saiyyad Rahim v. Emperor, AIR 1915**

## Case 6:

Some timber was seized from a person on the presumption that timber belong to Govt. He could not explain that the timber belongs to him.

Guilty ?

## Case 7:

A person in a party was beating up drum to chase animal in a RF. He himself was outside the prohibited area. Does he commit an offence?

## Case 8:

A person carrying a loaded gun through RF. Does he commit an offence?

## Case 9

A waste land was notified u/s 4 of IFA 1927. After some time , a weekly market came up on the other side of forest boundary. Villagers started using a way through the above land for going to the market for selling some products.

During settlement of rights, the FSO commuted this right of way and paid Rs 10000/- to each villagers who was using this way.

Comment on the decision of FSO !

# OF RESERVED FORESTS

contd...

## **27. Power to declare forest no longer reserved. –**

- (1) The State Government may, by notification in the official Gazette, direct that, from a date fixed by such notification, any forest or any portion thereof reserved under this Act shall cease to be a reserved forest.
- (2) From the date so fixed, such forest or portion shall cease to be reserved; but the rights (if any) which have been extinguished therein shall not revive in consequence of such cessation.

❑ Declaring forest no longer reserved (27)

➤ State Government empowered

➤ No revival of rights

❑ SC Judgment

Centre for Environment Law

Vs.

UOI, (W.P. 337 of 1995)

*(Order date 13/11/2000)*

✓ **Prohibition on de-reservation of NP,  
Sanctuaries and forest without the approval  
of SC .**

# CHAPTER III

## OF VILLAGE-FORESTS

28. Formation of village-forest

# CHAPTER III

## (Sec 28)

### OF VILLAGE-FORESTS

#### 28. Formation of village-forests. –

(1) The **State Government** may **assign** to any village-community the rights of Government to or over any land which has been constituted a **reserved forest**, and may **cancel** such assignment. All forests so assigned shall be called village-forests.

## OF VILLAGE-FORESTS contd..

(2) The **State Government may make rules** for regulating the management of village-forests, prescribing the conditions under which the community to which any such assignment is made may be provided with **timber or other forest-produce or pasture**, and their **duties for the protection and improvement** of such forest..

(3) All the provisions of this Act relating to reserved forests shall (so far as they are not inconsistent with the rules so made) apply to village forests.

## ❑ Declaring Reserve Forest as Village Forest (28)

- State Government empowered
- Only Reserve forest can be made Village forest
- State gov to make rules regarding management

# Difference between Reserve Forest & Village Forest

- Constitution
- Management
- Ownership & Possession
- Status
- Revenue realised

# Village Forest Rules by Different States

- Maharashtra Village Forest Rules, 2014
- Madhya Pradesh Village Forest Rules, 2015

# CHAPTER IV (Sec 29-34)

## OF PROTECTED FORESTS

1. Need ?
2. Arrangement
  - a. Providing a general & inexpensive demarcation of boundary
  - b. Prohibiting conversion of forest into cultivated land
  - c. Reserving a limited class of valuable tree
  - d. Periodically closing portions of areas that need closure
  - e. Making provisions for simple rules which would prevent abusive acts

# CHAPTER IV

## OF PROTECTED FORESTS

29. Protected forests
30. Power to issue notification reserving trees, etc.
31. Publication of translation of such notification in neighborhood
32. Power to make rules for protected forests
33. Penalties for acts in contravention of notification under section- 30 or of rules under section 32
34. Nothing in this Chapter to prohibit acts done in certain [cases](#)

# CHAPTER IV

## OF PROTECTED FORESTS

29. Protected forests. –

(1) The State Government may, by notification in the official Gazette, declare the provisions of this Chapter applicable to **any forest-land or waste-land which is not included in a reserved forest**, but which is the property of Government, or over which the Government has proprietary right, or to the whole or any part of the forest-produce to which the Government is entitled.

## OF PROTECTED FORESTS contd..

- (2) The forest-land and waste-lands comprised in any such notification shall be called a **"protected forest"**.
- (3) **No such notification shall be made unless the nature and extent of the rights of the Government and of private persons in or over the forest-land or waste-land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as the State Government thinks sufficient. Every such record shall be presumed to be correct until the contrary is proved:**

## OF PROTECTED FORESTS contd..

Provided that if, in the case of any forest-land, a waste-land the Government thinks that such inquiry and record are necessary, but that they will occupy such length of time as in the meantime to **endanger the rights of Government**, the Government may, **pending such inquiry and record, declare such land to be a protected Forest**, but so as not to abridge or affect any existing rights of individuals or communities.

## ❑ Declaring Protected Forest (29)

- State Government to issue notification
- Any forest land or waste land which is not RF
- Settling of rights
  - No elaborate enquiry
  - Record of rights correct until proved wrong
  - Declaration of PF need not wait till rights are settled

## OF PROTECTED FORESTS contd..

### **30. Power to issue notification reserving trees, etc.-The.**

State Government may, by **notification** in official Gazette,-

(a) declare **any trees or class of trees** in a protected forest to be **reserved** from a date fixed by notification;

(b) declare that any portion of such forest specified in the notification shall be **closed** for such term, **not exceeding thirty years**, as the State Government thinks fit, and that the **rights of private persons**, if any, over such portion shall be **suspended** during such term, provided that the remainder of such forest be sufficient and in a locality reasonably convenient, for the due exercise of the rights suspended in the portion so closed; or

## OF PROTECTED FORESTS contd..

**(c) prohibit, from a date fixed as aforesaid, the quarrying of stone, or the burning of lime or charcoal, or the collection or subjection to any manufacturing process, or removal of, any forest-produce in any such forest, and the breaking up or clearing for cultivation, for building, for herding cattle or for any other purpose, of any land in any such forest.**

## ❑ Declaring Reserve Trees (30)

- State Government to issue notification
- No effect if no notification is issued
- Power to prohibit certain acts

## OF PROTECTED FORESTS contd..

### **31. Publication of translation of such notification in neighborhood.-**

The **Collector** shall cause a translation into local vernacular of every notification issued under section 30 to be affixed in a conspicuous place in every town and village in the neighborhood of the forest comprised in the notification.

## OF PROTECTED FORESTS contd..

**32. Power to make rules for protected forests. –The State Government may make rules to regulate the following matters, namely: -**

(a) the cutting, sawing, conversion and removal of trees and timber, and the collection, manufacture and removal, of forest-produce, from protected forests;

(b) the **granting of licences** to inhabitants of towns and villages in the vicinity of protected forest to take trees, timber or other forest-produce **for their own use**, and the production and return of such licences by such persons;

## OF PROTECTED FORESTS contd..

(c) the **granting of licences** to persons felling or removing trees or timber or other forest-produce from such forests **for the purposes of trade**, and the production and return of such licences by such persons;

(d) the **payments**, if any, to be made by the persons mentioned in clauses (b) and (c) for permission to cut such trees, or to collect and remove such timber or other forest-produce;

(e) the other payments, if any, to be made by them in respect of such trees, timber and produce, and the places where such payment shall be made;

## OF PROTECTED FORESTS contd..

- (f) the examination of forest-produce passing out of such forests;
- (g) the clearing and breaking up of land for cultivation or other purposes in such forests;
- (h) the protection from fire of timber lying in such forests and of trees reserved under section 30;
- (i) the cutting of grass and pasturing of cattle in such forests;

## OF PROTECTED FORESTS contd..

- (j) hunting, shooting, fishing, poisoning water and setting traps or snares in such forest, and killing or catching of elephants in such forests in areas in which the Elephants' Preservation Act 1879, is not in force;
- (k) the protection and management of any portion of a forest closed under section 30 ; and
- (l) the exercise of rights referred to in section 29.

## ❑ Power to make rules for PF (32)

- State Government to make rules to regulate
- Granting of monopoly amounts to discrimination

- *S C Das vs. Tripura, AIR 1963*

## “Breaking up or clearing for cultivation”

Expression “Breaking up or clearing for cultivation” can only mean that what has been prohibited in terms of notification u/s 30 is reclaiming any portion of a protected forest for the purpose of cultivation by breaking up the soils for the **first time after the publication of the notification** and it does not extend to the prohibition of cultivation of such land which has already been broken up or cleared and brought into cultivation from before the issue of notification.

**State of Bihar Vs. Munshi Kahar, [AIR 1963](#)**

# **Restriction imposed on grazers of other States – higher grazing rates ?**

“There is no justification whatsoever for charging higher grazing rates for cattle belonging to persons of other States. There is nothing wrong with the prescription of the route along which the cattle have to be taken while in transit.”

**-Lakshaman Vs. State of MP, AIR 1983 SC**

# Can State differentiate between different graziers ?

“There is no justification for a distinction between Kathewadi graziers on one hand and all other graziers on otherhand. The impugned policy decision is violative of Art 14,19 and 301 of COI .”

- Bhagwan Gawali Vs. State of MH, AIR 1990

**BOM**

# OF PROTECTED FORESTS contd..

## **33. Penalties for acts in contravention of notification under section 30 or of rules under section 32. –**

(1) any person who commits any of the following offences, namely: -

(a) fells, girdles, lops, taps or burns any tree reserved under section 30, or strips off the bark or leaves from, or otherwise damages, any such tree;

(b) contrary to any prohibition under section 30, quarries any stone, or burns any lime or charcoal, or collects, subjects to any manufacturing process, or removes any forest produce other than timber;

## OF PROTECTED FORESTS contd..

- (c) contrary to any prohibition under section 30, clears or breaks up for cultivation or any other purpose any land in any protected forest;
- (d) sets fire to such forest, or kindles a fire without taking all reasonable precautions to prevent its spreading to any tree reserved under section 30, whether standing, fallen or felled, or to any closed portion of such forest;
- (e) leaves burning any fire kindled by him in the vicinity of any such tree or closed portion;

## OF PROTECTED FORESTS contd..

- (f) fells any tree or drags any timber so as to damage any tree reserved as aforesaid;
- (g) permits cattle to damage any such tree;
- (h) infringes any rule made under section 32

Shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or both.

## OF PROTECTED FORESTS contd..

(2) Whenever fire is caused willfully or by gross negligence in a protected forest, the State Government may, notwithstanding that any penalty has been inflicted under this section, direct that in such forest or any portion thereof the exercise of any right of pasture or forest-produce shall be suspended for such period as it thinks fit.

## ➤ Offences in PF (33)

### ✓ Punishment

- Imprisonment – up to 6 months
- Fine - up to Rs. 500
- Compensation – not mentioned

### ✓ For Conviction

- u/s .s. 1 (a), (b), (c), (d), (e), (f), and (g) - notification u/s 30
- u/s .s. 1 (h) - Rules u/s 32

## State amendments

<u>State</u>	<u>Imprisonment</u>	<u>Fine</u>
Bihar	6 months – 2 yrs.	1000-5000
Haryana	up to 1 yr.	up to 1000
HP	up to 2 yrs.	up to 5000
WB	up to 1 yr	up to 1000
MH	1 yrs.	up to 2000
MP	up to 1 yr	up to 1000

In MP abatement of forest offence is also an offence (Sec 66 -A).

UP & UK For offences u/s 26 (b) (f) (g) (h)

(1<sup>st</sup>) up to 2 yrs up to 5000

(2<sup>nd</sup>) up to 2 yrs up to 10000

## OF PROTECTED FORESTS contd..

### **34. Nothing in this Chapter to prohibit acts done in certain cases.-**

Nothing in this Chapter shall be deemed to prohibit any act done with the permission in writing of the Forest-officer, or in accordance with rules made under section 32, or except as regards any portion of a forest closed under section 30, or, as regards any rights the exercise of which has been suspended under section 33, in the exercise of any right recorded under section 29.

# State amendments

## State

ASSAM -doesn't use term PF

-chapter IV – “general protection of forests and forest produce”

J & K use “Undemarcated Forest” instead of PF

KERALA, TN -doesn't use term PF

-“Protection of land at the disposal of govt not included in RF”

KARNATAKA “District forest” instead of PF

MP added S 34 A – Power to State Govt to declare area not to be PF

# Difference

## RF

- i. RF can't become PF
- ii. Notification only after full settlement of rights
- iii. FSO
- iv. No new rights can accrue
- v. Restriction on alienation of rights – S 24

## PF

- i. PF can become RF
- ii. Notification pending settlement of rights
- iii. No FSO
- iv. Rights alleged to exist at the time of notification will be allowed to continue -S 29(3)
- v. No such restrictions

# Difference contd...

RF

- vi. Produce can't be sold or bartered unless permitted  
– S14
- vii. Every act is prohibited unless specially permitted
- viii. Boundary well defined & properly demarcated
- ix. Trespass is offence

PF

- vi. No such restriction
- vii. Every act is permitted unless specially prohibited
- viii. Boundary demarcation not proper
- ix. Trespass is not offence

# Difference contd...

RF

x. In punishment,  
compensation for  
damage is present.

PF

x. compensation for  
damage is not  
present.

# CHAPTER V

## OF THE CONTROL OVER FORESTS AND LANDS

### NOT BEING THE PROPERTY OF GOVERNMENT

35. Protection of forests for special purposes
36. Power to assume management of forests
37. Expropriation of forests in certain cases
38. Protection of forests at request of owners

# CHAPTER V (Sec 35-38)

## OF THE CONTROL OVER FORESTS AND LAND NOT BEING THE PROPERTY OF GOVERNMENT

### **35. Protection of forests for special purposes.-**

(1) The State Government may, **by notification** in the Official Gazette, **regulate or prohibit in any forest or waste-land**

(a) the breaking up or clearing of land for cultivation;

(b) the pasturing of cattle; or

(c) the firing or clearing of the vegetation;

when such regulation or prohibition appears necessary for any of the following purposes:

- (i) for protection against storms, winds, rolling stones, floods and avalanches;
- (ii) for the preservation of the soil on the ridges and slopes and in the valleys of hilly tracts, the prevention of land slips or of the formation of ravines, and torrents, or the protection of land against erosion, or the deposit thereon of sand, stones or gravel;
- (iii) for the maintenance of a water-supply in springs, rivers and tanks;
- (iv) for the protection of roads, bridges, railways and other lines of communication;
- (v) for the preservation of the public health.

(2) The State Government may, for any such purpose, construct at its own expense, in or upon any forest or waste-land, such work as it thinks fit.

(3) No notification shall be made under sub-section (1) nor shall any work be begun under sub-section (2), until after the issue of a notice to the owner of such forest or land calling on him to show cause, within a reasonable period to be specified in such notice, why such notification should not be made or work constructed, as the case may be, and until his objections, if any, and any evidence he may produce in support of the same, have been heard by an officer duly appointed in that behalf and have been considered by the State Government.

## ➤ Private Forest (35)

- ✓ Ownership remains unaffected
- ✓ Only few activities are prohibited or regulated
- ✓ No penalty for violations

**OF THE CONTROL OVER FORESTS AND LAND NOT BEING  
THE PROPERTY OF GOVERNMENT contd..**

**36. Power to assume management of forests.**

(1) In case of **neglect of, or wilful disobedience** to, any regulation or prohibition under section 35, or if the purposes of any work to be-constructed under that section so require, the State Government may, after notice in writing to the owner of such forest or land and after considering his objections, if any, **place the same under the control of a Forest-officer**, and may declare that all or any of the **provisions of this Act relating to reserved forests shall apply** to such forest or land.

**OF THE CONTROL OVER FORESTS AND LAND NOT BEING  
THE PROPERTY OF GOVERNMENT contd..**

(2) The net profits, if any, arising from the management of such forest or land shall be paid to the said owner.

## ➤ Private Forest (36)

✓ Time period for management by Govt not given

**OF THE CONTROL OVER FORESTS AND LAND NOT BEING  
THE PROPERTY OF GOVERNMENT contd..**

**37. Expropriation of forests in certain cases.**

(1) In any case under this Chapter in which the State Government considers that, **in lieu of placing the forest or land under the control of a Forest-Officer**, the same should be **acquired for public purposes**, the State government may proceed to acquire it in the manner provided by the Land Acquisition Act, 1894 (1 of 1894).

OF THE CONTROL OVER FORESTS AND LAND NOT BEING  
THE PROPERTY OF GOVERNMENT contd..

(2) The owner of any forest or land comprised in any notification under section 35 may, at any time not less than three or more than twelve years from the date thereof, require that such forest or land shall be acquired for public purposes, and the State Government **shall** acquire such forest or land accordingly.

## ➤ Private Forest (37)

✓ u/ ss (2) govt is bound to acquire land

**OF THE CONTROL OVER FORESTS AND LAND NOT BEING  
THE PROPERTY OF GOVERNMENT contd..**

**38. Protection of forests at request of owners.**

(1) The owner of any land or, if there more than one owner thereof, the owners of shares therein amounting in the aggregate at least two-thirds thereof may, with a view to the formation or conservation of forests thereon, represent in writing to the Collector their desire -

(a) that such land be managed on their behalf by the Forest-officer as a reserved or a protected forest on such terms as may be mutually agreed upon; or

**OF THE CONTROL OVER FORESTS AND LAND NOT BEING  
THE PROPERTY OF GOVERNMENT contd..**

(b) that all or any of the provisions of this Act be applied to such land.

(2) In either case, the State Government may, by notification in the Official Gazette, apply to such land such provisions of this Act as it thinks suitable to the circumstances thereof and as may be desired by the applicants.

## ➤ Private Forest (38)

✓ Ownership does not change

# CHAPTER VI

## OF THE DUTY ON TIMBER AND OTHER FOREST-PRODUCE

39. Power to impose duty on timber and  
other forest-produce

40. Limit not to apply to purchase money or  
royalty

# **CHAPTER VI (Sec 39-40)**

## **OF THE DUTY ON TIMBER AND OTHER FOREST-PRODUCE**

### **39. Power to impose duty on timber and other forest-produce.**

(1) The **Central Government may levy a duty** in such manner, at such places and at such rates as it may declare by notification in the Official Gazette on all timber or other forest-produce -

(a) which is produced in the territories to which this Act extends, and in respect of which the Government has any right;

(b) which is brought from any place outside the territories to which this Act extends.

## OF THE DUTY ON TIMBER AND OTHER FOREST-PRODUCE

contd..

(2) In every case in which such duty is directed to be levied **ad valorem** the Central Government may fix by like notification the value on which such duty shall be assessed.

(3) All duties on timber or other forest-produce which, **at the time when this Act comes into force** in any territory, are levied therein under the authority of the **State Government**, shall be deemed to be and to have been duty levied under the provisions of this Act.

# OF THE DUTY ON TIMBER AND OTHER FOREST-PRODUCE

contd..

(4) Notwithstanding anything in this section, the **State Government** may, until provision to the contrary is made by Parliament, **continue to levy** any duty which it was lawfully levying **before the commencement of the Constitution**, under this section as then in force:

Provided that nothing in this sub-section authorises the levy of any duty which as between timber or other forest-produce of the State and similar produce of the locality outside the State, **discriminates** in favour of the former, or which, in the case of timber or other forest-produce of localities **outside the State**, discriminates between timber or other forest-produce of one locality and similar timber or other forest-produce of **another locality**.

➤ *duty on Timber & other forest produce (39)*

✓ Central govt has power

✓ 2 definite classes of timber or forest produce

1. Produced in India & in respect of which govt has any right

2. Which is brought from any place beyond frontier of India

✓ Duty imposed by State govt to continue unless contrary is decided by Parliament

# OF THE DUTY ON TIMBER AND OTHER FOREST-PRODUCE

contd..

**40. Limit not to apply to purchase money or royalty. –**

Nothing in this Chapter shall be deemed to limit the amount, if any, chargeable as purchase-money or royalty on any timber or other forest-produce, although the same is levied on such timber or produce while in transit, in the same manner as duty is levied.

➤ *Royalty (40)*

✓ Royalty is not a duty

# CHAPTER VII

## OF THE CONTROL OF TIMBER AND OTHER FOREST- PRODUCE IN TRANSIT

41. Power to make rules to regulate transit of forest-produce
42. Penalty for breach of rules made under section 41
43. Government and Forest-officers not liable for damage to forest produce at depot
44. All persons bound to aid in case of accident at [depot](#)

# CHAPTER VII (Sec 41-44)

## OF THE CONTROL OF TIMBER AND OTHER FOREST-PRODUCE IN TRANSIT

Why the necessity ?

- i. To deal with theft from forest more effectively
- ii. To prevent traders from removing in excess of what they are permitted
- iii. To facilitate collection of duties/fees
- iv. River transport – to ensure no obstruction even in privately owned waterways
- v. To prevent theft of timber floating whether belonging to govt or individual
- vi. To enable identification of timber – govt or private

# CHAPTER VII

## OF THE CONTROL OF TIMBER AND OTHER FOREST-

### PRODUCE IN TRANSIT

#### **41. Power to make rules to regulate transit of forest produce.—**

(1) The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber and other forest-produce in transit by land or water, is vested in the **State Government**, and it may make rules to regulate the transit of **all timber and other forest-produce**.

## OF THE CONTROL OF TIMBER AND OTHER FOREST-PRODUCE IN TRANSIT contd..

(2) In particular and without prejudice to the generality of the foregoing power such rules may

(a) prescribe the **routes** by which alone timber or other forest-produce may be imported, exported or moved into, from or within the State;

(b) prohibit the import or export or moving of such timber or other produce without a **pass** from an officer duly authorised to issue the same, or otherwise than in accordance with the conditions of such pass;

(c) provide for the **issue, production and return** of such passes and for the payment of fees therefor;

## OF THE CONTROL OF TIMBER AND OTHER FOREST-PRODUCE IN TRANSIT contd..

(d) provide for the **stoppage, reporting, examination and marking** of timber or other forest-produce in transit, in respect of which there is reason to believe that any money is payable to the Government on account of the price thereof, or on account of any duty, fee, royalty or charge due thereon, or, to which it is desirable for the purposes of this Act to affix a mark;

(e) provide for the **establishment and regulation of depots** to which such timber or other produce shall be taken by those in charge of it for examination, or for the payment of such money, or in order that such marks may be affixed to it, and the conditions under which such timber or other produce shall be brought to, stored at and removed from such depots:

OF THE CONTROL OF TIMBER AND OTHER FOREST-  
PRODUCE IN TRANSIT contd..

(f) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest-produce, and the throwing of grass, brushwood, branches or leaves into any such river or any act which may cause such river to be closed or obstructed;

(g) provide for the prevention or **removal of any obstruction of the channel or banks** of any such river, and for recovering the cost of such prevention or removal from the person whose acts or negligence necessitated the same;

## OF THE CONTROL OF TIMBER AND OTHER FOREST-PRODUCE IN TRANSIT contd..

(h) **prohibit absolutely or subject to conditions, within specified local limits, the establishment of sawpits, the converting, cutting, burning, concealing or making of timber, the altering or effacing of any marks on the same, or the possession or carrying of marking hammers or other implements used for marking timber;**

(i) **regulate the use of property marks for timber, and the registration of such marks; prescribe the time for which such registration shall hold good; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration.**

**OF THE CONTROL OF TIMBER AND OTHER FOREST-  
PRODUCE IN TRANSIT contd..**

(3) The **State Government may direct** that any rule made under this section **shall not apply** to any specified class of timber or other forest-produce or to any specified local area.

➤ *Timber in transit (41)*

✓ *State govt to make rules*

✓ *Applicable to timber or forest produce in transit*

*irrespective of the source – private or government ...*

# Ranchi timber Association Vs. State of Bihar

- Eight writ petitions in High Court
  - the Rules for the establishment of Saw-pits and establishment and regulation of depots framed in the year 1983 by the State Government, Bihar in purported exercise of powers conferred under Sections 41, 42 and 76 of the Indian Forest Act, 1927 **were in excess of delegation or authorisation, exceeding mandate, and hence a colourable exercise.**

# Ranchi timber Association Vs. State of Bihar

- High Court Order 1983:
  - ✓ Meaning of In transit ?
    - Timber and forest produce which are being conveyed from one place to another is in transit. Once that timber or forest produce ends its journey, finally reaches a depot, an establishment dealing with its sale, timber or forest produce can not be said to be in transit.
  - ✓ Regulation of the business of timber and forest produce at Saw-pits and depots, is not covered by either of the three sections 41, 42 & 76.

# Ranchi timber Association Vs. State of Bihar Supreme Court observations (1996)

## **1. Sub-section 1 of Section 41**

- ✓ State Government can make rules regulating the transit of all timber and other forest produce by land or water

## **2. Section 42**

- ✓ supportive of Section 41
- ✓ empowers the State Government to frame rules prescribing penalties for breach of the rules

## **3. Section 76**

- ✓ all comprehensive
- ✓ provides the State Government the additional powers to make rules to carry out the provisions of the Act

## Supreme Court conclusions (1996):

- a. The conclusion of the High Court was totally erroneous.
- b. Thus, requiring all the saw-pit holders or depot holders to obtain regulatory licences, squarely fall within clause (d) of Section 76, if not, (without holding so) under the power to regulate transit by land or air available under Section 41 of the Act.
- c. The power to regulate by license the upkeep of saw-pits and Depots is in any event ancillary to the main power.

➤ ***Validity of levy of transit fee ?***

“Transitory fee is regulatory in nature. The question of *quid pro quo* is necessary when a fee is compensatory. It is well established that for every fee *quid pro quo* is not necessary to establish the factum of rendering of service. Thus there is no question of a levy of transit fee being invalidated on the ground that *quid pro quo* has not been established.”

- M/s. Sitapur packing wood suppliers Vs. State of UP ,

AIR 2003 SC

➤ *Power to grant or refuse permit - violation of Art*

*19(1) (g) ?*

“Timber transit rules are regulatory in nature and not prohibitive. Hence it doesn't violate freedom given under Art 19(1)(g) of constitution.”

- T.V. BalaKrishna Vs. State of TN , 1992 SC

➤ *Failure of State Govt to frame rules regulating transit of timber etc. outside the State – what does it mean?*

“It does not mean that movement of timber outside the state is prohibited or that it empowers executive to issue an order imposing ban against movement of timber outside the state. On the contrary it simply means that the field is uncovered and there is no control or regulation over movement of timber etc. outside the State.”

- **Bhartia & sons Vs. State of Bihar , AIR 2002 Patna**

## OF THE CONTROL OF TIMBER AND OTHER FOREST-PRODUCE IN TRANSIT contd..

### **41A. Powers of Central Government as to movements of timber across customs frontiers.—**

Notwithstanding anything in section 41, the **Central Government** may make rules to prescribe the route by which alone timber or other forest-produce may be **imported, exported** or moved into or from the territories to which this Act extends across any customs frontier as defined by the Central Government, and any rules made under section 41 shall have effect subject to the rules made under this section.

OF THE CONTROL OF TIMBER AND OTHER FOREST-  
PRODUCE IN TRANSIT contd..

**42. Penalty for breach of rules made under section  
41.-**

(1) The State Government may by **such rules** prescribe as penalties for the contravention thereof imprisonment for a term which may extend to **six months, or fine** which may extend to five hundred rupees, **or both**.

(2) Such rules may provide that penalties which are **double** of those mentioned in subsection (1) may be inflicted in cases where the offence is committed **after sunset and before sunrise, or after preparation for resistance to lawful**

## ➤ Penalty (42)

- Imprisonment – up to 6 months
  - Fine - up to Rs. 500
- 
- ✓ Double punishment – 3 conditions:
    - i. After sunset and before sunrise
    - ii. after preparation for resistance to lawful authority,
    - iii. Where the offender has been previously convicted of a like offence

Sl. No.	State Act	Section	Penalty prescribed
1.	Bihar Forest Act	(42) Bihar	Minimum 6 months - maximum 2 years or with fine, minimum Rs. 1000/- maximum Rs. 5000/-
2.	Goa	Sec. (42)	Upto 2 years and fine upto Rs. 5000/-
3.	Maharashtra	Sec. (42)	Upto 1 years or with fine upto Rs. 2000/-
4.	U.P.	Sec. (42)	Upto 2 years or fine upto Rs. 5000/- or both.
5.	Assam	Sec. (42)	Upto six months or fine upto Rs. 500/-.
6.	Tamil Nadu	Sec. (36)	Upto 1 years and fine

OF THE CONTROL OF TIMBER AND OTHER FOREST-  
PRODUCE IN TRANSIT contd..

**43. Government and Forest-officers not liable for  
damage to forest-produce at depot.-**

The Government shall not be responsible for any loss or damage which may occur in respect of any timber or other forest-produce while at a depot established under a rule made under section 41, or while detained elsewhere, for the purposes of this Act; and no Forest-officer shall be responsible for any such loss or damage, **unless** he causes such loss or damage **negligently, maliciously or fraudulently.**

**OF THE CONTROL OF TIMBER AND OTHER FOREST-  
PRODUCE IN TRANSIT contd..**

**44. All persons bound to aid in case of accidents  
at depot.**

In case of any accident or emergency involving danger to any property at any such depot, **every person employed at such depot, whether by the Government or by any private person, shall** render assistance to any Forest-officer or Police-officer demanding his aid in averting such danger or securing such property from damage or loss.

# *CHAPTER VIII* (sec 45 -51)

## OF THE COLLECTION OF DRIFT AND STRANDED TIMBER

Objective : Regulate the rights of owner of drift and stranded timber

1. Drift timber
2. Stranded timber
3. Waif timber
4. Beached timber

# CHAPTER VIII

## OF THE COLLECTION OF DRIFT AND STRANDED TIMBER

45. Certain kinds of timber to be deemed property of Government until Title thereto proved, and may be collected accordingly
46. Notice to claimants of drift timber
47. Procedure on claim preferred to such
48. Disposal of unclaimed timber
49. Government and its officers not liable for damage to such timber
50. Payments to be made by claimant before timber is delivered to him
51. Power to make rules and prescribe [penalties](#)

## **CHAPTER VIII (sec 45 -51)**

### **OF THE COLLECTION OF DRIFT AND STRANDED TIMBER**

**45. Certain kinds of timber to be deemed property of Government until title thereto proved, and may be collected accordingly.—**

(1) All timber found **adrift, beached, stranded or sunk**; all wood or timber bearing marks which have not been registered in accordance with the rules made under section 41, or on which the marks have been obliterated, altered or defaced by fire or otherwise; and

in such areas as the State Government directs, all unmarked wood and timber,

shall be deemed to be the **property of Government**, unless and until any person establishes his right and title thereto, as provided in this

# OF THE COLLECTION OF DRIFT AND STRANDED TIMBER

contd..

(2) Such timber may be **collected by any Forest-officer** or other person entitled to collect the same by virtue of any rule made under section 51 and may be **brought to any depot** which the Forest-officer may notify as a depot for the reception of drift timber.

(3) The State Government may, by notification in the Official Gazette, exempt any class of timber from the provisions of this section.

# OF THE COLLECTION OF DRIFT AND STRANDED TIMBER

contd..

## **46. Notice to claimants of drift timber.-**

**Public notice** shall from time to time be given by the Forest-officer, of timber collected under section 45. Such notice shall contain a description of the timber, and shall require any person claiming the same to present to such officer, **within a period not less than two months** from the date of such notice, a written statement of such claim.

# OF THE COLLECTION OF DRIFT AND STRANDED TIMBER

contd..

## **47. Procedure on claim preferred to such timber.-**

(1) When any such-statement is presented as aforesaid, the Forest-officer may, after making such **inquiry** as he thinks fit, **either reject** the claim after according his reasons for so doing, **or deliver** the timber to the claimant.

(2) If such timber is claimed by more than one person, the Forest-officer **may either deliver** the same to any of such persons who he deems entitled thereto, **or may refer** the claimants to the **Civil Courts**, and retain the timber pending the receipt of an order from any such Court for its disposal.

# OF THE COLLECTION OF DRIFT AND STRANDED TIMBER

contd..

(3) Any person whose **claim has been rejected** under this section may, **within three months** from the date of such rejection, **institute a suit** to recover possession of the timber claimed by him; but **no person shall recover any compensation or costs against the Government, or against any Forest-officer** on account of such rejection, or the detention or removal of any timber, or the delivery thereof to any other person under this section.

(4) No such timber shall be subject to process of any Civil, Criminal or Revenue Court until it has been delivered, or a suit has been brought, as provided in this section.

# OF THE COLLECTION OF DRIFT AND STRANDED TIMBER

contd..

## **48. Disposal of unclaimed timber.-**

If no such statement is presented as aforesaid, if the claimant omits to prefer his claim in the manner and within the period fixed by the notice issued under section 46, or on such claim having been so preferred by him and having been rejected, omits to institute a suit to recover possession of such timber within the further period fixed by section 47, the ownership of such timber shall vest in the Government, or, when such timber has been delivered to another person under section 47, in such other person free from all encumbrances not created by him

# OF THE COLLECTION OF DRIFT AND STRANDED TIMBER

contd..

## **49. Government and its officers not liable for damage to such timber.-**

The Government shall not be responsible for any loss or damage which may occur in respect any timber collected under section 45, and no Forest-officer shall be responsible for any such loss or damage, unless he causes such loss or damage **negligently, maliciously or fraudulently,**

# OF THE COLLECTION OF DRIFT AND STRANDED TIMBER

contd..

**50. Payments to be made by claimant before timber is delivered to him.-**

No person shall be entitled to recover possession of any timber collected or delivered as aforesaid until he has paid to the Forest-officer or other person entitled to receive it such sum on account thereof as may be due under any rule made under section 51.

# OF THE COLLECTION OF DRIFT AND STRANDED TIMBER

~~contd.~~

## **51. Power to make rules and prescribe penalties.-**

(1) The State Government may make rules to regulate the following matters, namely:

(a) the salving, collection and disposal of all timber mentioned in section 45;

(b) the use and registration of boats used in salving and collecting timber;

(c) the amounts to be paid for salving, collecting, moving, storing or disposing such timber; and

(d) the use and registration of hammers and other instruments to be used marking such timber.

# OF THE COLLECTION OF DRIFT AND STRANDED TIMBER

contd..

(2) The State Government may prescribe, as **penalties** for the contravention of any rule made under this section, imprisonment for a term which may extend to **six months**, or fine which may extend to **five hundred rupees**, or **both**.

# CHAPTER IX (sec 52 – 69)

## PENALTIES AND PROCEDURE

- Powers given to forest officers and Magistrate  
( Sec 52 – 61)
- Penalties prescribed for special kinds of offences
  - Wrongful seizure (S - 62)
  - Counterfeiting of marks (S - 63)
  - Tampering with boundary pillars (S - 63)
- Lays down procedure to be followed (Sec 64 - 67)
- Disposal by compounding (S – 68)

# CHAPTER IX

## PENALTIES AND PROCEDURE

52. Seizure of property liable to confiscation
53. Power to release property seized under section 52
54. Procedure thereupon
55. Forest-produce, tools, etc., when liable to confiscation
56. Disposal, on conclusion of trial for forest-offence, of produce, in respect of which it was committed
57. Procedure when offender not known, or cannot be found
58. Procedure as to perishable property seized under section 52
59. Appeal from orders under section 55 section 56 or section 57
60. Property when to vest in Government 45

# CHAPTER IX Contd...

61. Saving of power to release property seized
62. Punishment for wrongful seizure
63. Penalty for counterfeiting or defacing marks on trees and timber and For altering boundary marks
  - 63-A : some offence to be non-bailable
64. Power to arrest without warrant
65. Power to release on bond a person arrested
66. Power to prevent commission of offence
67. Power to try offences summarily
  - 67- A : Appointment of forest Magistrate
68. Power to compound offences
69. Presumption that forest-produce belongs to [Government](#)
  - 69-A : Prosecution of forest-offences

# CHAPTER IX (sec 52 – 69)

## PENALTIES AND PROCEDURE

### **52. Seizure of property liable to confiscation.-**

(1) When there is reason to believe that a forest-offence has been committed in respect of any forest-produce, such produce together with all tools, boats, **carts** or cattle used in committing any such offence, may be **seized** by any Forest-officer or Police-officer.

**Amendment UK : vehicles, cattle, rope chain and other articles**

## PENALTIES AND PROCEDURE contd..

(2) Every officer seizing any property under this section shall place on such property **a mark indicating** that the same has been so seized, and shall, as soon as may be, make a - report of such seizure to the Magistrate having jurisdiction to try the offence on account which the seizure has been made:

Provided that, when the forest-produce with respect to which such offence is believe to have been committed is **the property of Government, and the offender is unknown**, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

## □ Section 52

### 1. Seizure of Property

- Things liable to seize
- Who can seize
- Marking seizure
- Reporting

Can a forest officer seize a JCB machine  
involved in digging forest land?

## PENALTIES AND PROCEDURE contd..

### **53. Power to release property seized under section 52.-**

Any Forest-officer of a rank not inferior to that of a **Ranger who, or whose subordinate**, has seized any tools, boats, carts or cattle under section 52, **may release** the same on the execution by the owner thereof a **bond** for the production of the property so released, if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

➤ *Power to release conferred on forest officer is not w.r.t. Forest Produce*

*( Rajkumar Mishra Vs State of Bihar 1995 - HC)*

➤ *No provision for filing appeal against an order passed u/s 53 refusing to release the vehicle or property*

## PENALTIES AND PROCEDURE contd..

### **54. Procedure thereupon.-**

Upon the receipt of any such report, the Magistrate shall, with all convenient dispatch, take such measures as may be necessary for the arrest and trial of the offender and the **disposal of the property according to law.**

## PENALTIES AND PROCEDURE contd..

### **55. Forest-produce, tools, etc., when liable to confiscation.—**

(1) All timber or forest produce which is not the property of Government and in respect of which a forest-offence has been committed, and all tools, boats, **carts** and cattle used in committing **any forest offence, shall be liable** to confiscation.

(2) Such confiscation may be in addition to any other punishment prescribed for such offence.

Words used in S 55 are not 'any such offence' but "any forest offence" and , therefore confiscation in respect of these properties cannot be restricted to such offences which are committed in respect of only timber or forest produce.

**-Arjun Tabadu Mahajan vs State of MH 1988 HC,**

Mehta Brothers vs State of HP 1980 HC,

“shall be liable for confiscation” does not mean that property stands automatically confiscation.

On the contrary it is presupposed an opportunity is to be given to the person affected before the property is actually ordered be confiscated .

## PENALTIES AND PROCEDURE contd..

**56. Disposal on conclusion of trial for forest-offence, of produce in respect of which it was committed.-**

When the trial of any forest-offence is **concluded**, any forest-produce in respect of which such offence has been committed shall, **if it is the property of Government or has been confiscated**, be taken charge of by a **Forest-officer**, and, in any **other case**, may be disposed of in such **manner as the Court may direct**.

## PENALTIES AND PROCEDURE contd..

### **57. Procedure when offender not known or cannot be found-**

When the offender is not known or cannot be found, the Magistrate may, if he finds that an offence has been committed, order the **property** in respect of which the offence has been committed to be **confiscated and taken charge of by the Forest-officer**, or to be made over to the person whom the Magistrate deems to be entitled to the same:

Provided that no such order shall be made **until the expiration of one month** from the date of seizing such property, or without hearing the person, if any, claiming any right thereto, and the

evidence, if any, which he may produce in support of his claim

## PENALTIES AND PROCEDURE contd..

### **58. Procedure as to perishable property seized under section 52-**

The Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized under section 52 and subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had not been sold.

## PENALTIES AND PROCEDURE contd..

### **59. Appeal from orders under section 55, section 56 or section 57.-**

The officer made the seizure under section 52, or any of his official superiors, or **any person claim to be interested in the property** so seized, may, **within one month** from the date of any order passed under section 55, section 56 or section 57, appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appealable, and the order passed on such appeal shall be final.

## ➤ Appeal – (59)

- Time limit

- Finality of order

- “any person interested”

- Finality of order?

## ➤ Difference between

- o Confiscation and forfeiture

## PENALTIES AND PROCEDURE contd..

### **60. Property when to vest in Government.-**

When an order for the confiscation any property has been passed under section 55 or section 57, as the case may be, and the period limited by section 59 for an appeal from such order has elapsed, and no such an appeal has been preferred, or when, on such an appeal being preferred, the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall **vest in the Government free from all encumbrances.**

## **PENALTIES AND PROCEDURE contd..**

### **61. Saving of power to release property seized.-**

Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by the State Government, from directing at any time the immediate release of any property seized under section 52.

## ❑ Confiscation

1. Seizure of Property – {52(1), (2)}
2. Releasing seized property - (53, 54, 61)
3. Confiscation – (55, 57)
4. Disposal of seized property - (54, 56, 58)
5. Appeal – (59)
6. Property vest in Govt. (60)

## Releasing seized property

➤ Range Officer - (53)

➤ Magistrate - (54)

➤ State Govt.... - (61)

➤ Tools?

➤ Forest produce?

➤ Vehicle?

# State Amendments

## Madhya Pradesh

S 52 (1) :

When there is reason to believe that a forest-offence has been committed in respect of **any reserved forest and protected forest or forest-produce**, such produce together with all tools, boats, **vehicle, ropes, chains or any other article used** in committing any such offence, may be **seized** by any Forest-officer or Police-officer.

## ❖ State Amendments

### ➤ M. P.

- 52 (1) Power to seize
- 52 (2) Report for confiscation – to Authorised Officer,  
For criminal proceedings – to Magistrate
- 52(3) Power of Authorised Officer to confiscate, copy of order to CF
- 52(4) Conditions to be fulfilled prior to confiscation
- 52 (5) burden to prove innocence on the owner

- 52 (A) appeal against order of confiscation
  - (1) to CF as Appellate Authority
  - (2) power to CF to act 'suo-moto' or on appeal
  - (3)- (8) procedure there after
- 52 (B) revision before Court of Session
- 52 (C) bar to jurisdiction of Court

# State Amendments

State	Provision of Confiscation	Officer empowered to confiscate	Appeal	Revision Petition	Power of entry search and seizure
Bihar	Sec (52)	Not below the rank DFO	Sec 52 (A) by appeal or Suo Moto Distt Magistrate with in 30 days	Sec 52© Secretary E& F within 30 days order is final	Sec 52(D) not below Ranger or in case of police not below Sub Inspector
Goa	Sec(61) of Goa Act 1989	Authorized Officer (ACF)	DCF	Session court	
Gujarat	Sec (61)	Authorized officer Sec (61-A) - ACF	CF	Sessions Court session court's order final	

State	Provision of Confiscation	Officer empowered to confiscate	Appeal	Revision Petition	Power of entry etc.
M.P.	Sec (52)	Not below extra ACF	Sec (52) Appeal before CF with in 30 days of order or suo moto by CF	Sec (52)(B) Sessions court within 30 days for revision Session order final	
Tripura	Sec (52)	ACF	CF	District court	
U.P.	Sec (52)	authorized officer DFO	State Govt Sec (52) B With in 30 days order final		
UK	Sec (52)	authorized officer DFO	CF		

State	Provision of Confiscation	Officer empowered to confiscate	Appeal	Revision Petition	Power of entry search etc
H. P.	Sec (52)	Sec (52) (A) Authorized officer not below ACF			
Maha-rashtra	Sec (52)/(61)	61 (A) authorized officer ACF	CF	Session	
Tamil nadu	Sec 49	Sec 49 (A) not below ACF	CF on his own motion Sec 49(C)	Session court with in 30 days order is final	
Uttar Pradesh	Sec (52)	authorized officer DFO	State Govt Sec (52) B With in 30 days order final		

# High court decision on amended Section 52

# 1. Kailash Chand vs State of MP

➤ MP High Court, Civil Petition NO. 490 of 1984  
decided on 19/4/1994

**Challenged Sec 52 as amended by MP Govt.**

**Issue raised :**

1. Amendment unjust, unfair. Violates Art 14 of COI
2. Violation of Natural Justice
3. Jurisdiction of court can't be barred

# Court Observations:

- Confiscation and prosecution are parallel proceedings, each having distinct purpose
- Merely because other forum is manned judicially by an executive officer, instead of judicial officer, it can not be said that it result in violation of Article (14) of constitution.
- court rejects the contention that the provision of confiscation is violation of natural justice and Article 19(1)(g) and Article 21 of constitution

# Court Observations contd..

- IFA 1927 is a special Act u/s 5 CrPC
  - » The Magistrate has no power to release the vehicle, when confiscation proceedings initiated under sec 52
- Confiscation is a quasi-judicial proceeding and not a criminal proceeding
- Absence of provisions for time limit and interim release of vehicles

# Mohammand Akhtar vs State of Bihar

➤ **Challenged Sec 52 as amended by Bihar Govt.**

## **Court Observed:**

- Jurisdiction of criminal court to release vehicle during the pendency of confiscation proceedings is barred
- Magistrate can give interim custody of property under Sec 457 CrPc under proper bond , Where confiscation proceedings has not been initiated

## 2. Kamlesh vs State of Maharashtra

- **Bombay High Court, 1997 Observed:**
  - Master has no knowledge is not sustainable and can not be accepted

## 3. Md. Yasin Vs. Authorised officer Jalpaiguri

- **Calcutta High Court , 1994 Observed:**
  - Owner must satisfy authorized officer that he has no knowledge and taken reasonable and necessary precaution against the misuse of the vehicle by his agent or driver, then only he can get exemption from confiscation

# Dinesh Sharma vs State of MP, HC Jabalpur

Order date : 25/04/2016

## FACTS OF THE CASE:

1. Authorised officer(SDO Betul) order dated 09/02/2012
  - Ordered confiscation of vehicle (Tata 407) seized on 28/05/2011
2. Appellate authority (CCF Betul) order dated 07/09/2012
  - Confirms the Authorised officer order
3. Revision before ASJ betul
  - Order dated 14/09/2015- dismissed the revision petition
4. Petitioner went to HC u/s 482 CrPC

## High Court Observed:

- Orders dated 19/09/2015 ..... set aside.
- Took cognizance of the judgment of SC in **Madhukar Rao vs State of MP 2008,**
- Vehicle released on interim custody on furnishing Supurdnama by applicant in a sum of Rs 800000/  
-
- Fate of the vehicle will be decided at the end of criminal case

**Supreme court decision on**  
**amended Section 52**

# 1. Dfo(AP) vs Sudhakar Rao, 31 October 1985, SC

## Amended State Forest Act 1967

- Sec 44 – power of authorised officer to confiscate
- Sec 45, where a person is convicted of a forest offence the Court sentencing him shall
  - i. order confiscation of timber or forest produce and of the implements etc. used in committing such offence, **except where an order of confiscation has already been passed in respect thereof under s.44.**

## 1. Dfo(AP) vs Sudhakar Rao, 31 october 1985, SC

### Issue raised :

1. Power vested in the Authorized Officer to direct confiscation and the power of the Magistrate to direct confiscation on conviction of the accused, are mutually exclusive.
2. Forest authorities having elected to prosecute the respondents for offences, they cannot at the same time proceed with the confiscation proceedings before the Authorized Officer
  - for there cannot be two parallel proceedings before two distinct forums empowered to direct confiscation of the timber or forest produce seized

# 1. Dfo(AP) vs Sudhakar Rao, 31 october 1985, SC

## Issue raised :

3. Order of confiscation passed by the Authorized Officer must necessarily be subject to the finding of the court in a criminal prosecution. In case the trial ends in an acquittal of the accused, the seized property cannot be confiscated to the Government

## Dfo(AP) vs Sudhakar Rao, 31 october 1985, SC

### SC OBSERVATIONS :

- Confiscation and prosecution are 2 different matter
- There can be no conflict of jurisdiction between the Authorized Officer acting under s.44 of the Act to direct confiscation of the property seized and the Magistrate making an order for confiscation on conviction of an accused for a forest offence under s.45
  - no overlapping of their respective jurisdictions as there is clear demarcation over the areas in which they operate.

## Dfo(AP) vs Sudhakar Rao, 31 october 1985, SC

### SC OBSERVATIONS :

- Where proceeding for confiscation initiated, Criminal court has no jurisdiction to pass the order of release
- u/s 5 CrPC special laws always prevail over the general laws. IFA is a special Law and Sec 451, 457 of CrPC provision can have no application

## 2. Smt Kallo Bai vs State of MP, 2017 SC

Fact of the case :

- i. A tractor and trolley seized on 03.1.2012 while transporting 1.054 cubic meters of teak wood in Seoni dist. of MP
- ii. Case registered under Sec 5 and Sec 15 of Madhya Pradesh Van Upaj (Vyapar Viniyam) Adhiniyam, 1969 read with Sec 26 and Sec 41 of the IFA, 1927.
- iii. Complaint (Criminal Case No. 269/2013) was filed before the trial court.

## Section 15 & 15-A to 15-D of Adhiniyam 1969

**Sec 15(3):** seized property or report to be produced before Authorised officer or where it is intended to launch criminal proceedings against the offender, immediately make report of such seizure to the Magistrate

**Sec 15(4):** Authorised officer can confiscate

## Section 15 & 15-A to 15-D of Adhiniyam 1969

**Sec 15-A:** Remedy of appeal against the order of the authorized officer under Section 15

**Sec 15-B:** Provides for revision before the Court of Sessions against the order of the Appellate Authority

**Sec 15-C:** A jurisdictional bar on courts and tribunals if the confiscation proceedings are initiated under Section 15

**Sec 15-D:** when the produce is not the property of Government - Confiscation of property only after conviction

- iv. The Authorized Officer (SDO Seoni) simultaneously initiated the confiscation proceeding under Section 15 of the Adhiniyam.
  - ordered confiscation of tractor and trolley and teak wood**
- v. Respondent appealed before the Appellate Authority (Chief Conservator of Forest, Seoni Circle),
  - Dismissed the appeal and confirmed the order of the Authorized Officer by order dated 06.12.2012.
- vi. Respondent preferred revision before the additional sessions judge, Seoni, under Section 15-B of the Adhiniyam 1969.

vii. The ASJ Seoni, by judgment dated 18.07.2013, allowed the revision and quashed the order of confiscation and directed to release the vehicle.

viii. Court observed:

- a. unless the guilt of the accused is proved, there cannot be any confiscation of the vehicle and the forest produce.
- b. order of Authorized Officer and order of Appellate Authority are violation of Section 55 of the IFA 1927 and also Adhiniyam, 1969.
- c. The SDO lakhnadon and Appellate Authority without holding accused guilty in criminal case no. 269/2012 had no right to confiscate the vehicle and forest

- viii. **The State challenged the order of the ASJ Seoni by filing a petition under Section 482 CrPC M.Cr. C No. 12750/2013 before the High Court, Jabalpur.**
- ix. **The High Court, by order dated 21.01.2014, dismissed the petition filed by the appellant/state and affirmed the order of the lower court.**
- x. **Aggrieved by the order of the High Court, the appellant/state preferred special leave petition to SC.**

## SC observations..

1. Where the Authorized Officer is empowered to confiscate the seized forest produce, the general power vested in the Magistrate for dealing with interim custody/release of the seized materials under the Cr.P.C. gives way
2. Confiscation proceeding is a quasi-judicial proceeding and not a criminal proceedings. Confiscation proceeds on the basis of the 'satisfaction' of the Authorized Officer with regard to the commission of forest offence.

## SC observations..

3. The Magistrate should first examine whether the power to confiscate the seized forest produce is vested in the Authorized Officer under the Act and if he finds so, then he has no power to pass any order dealing with interim custody/release of the seized material.

## SC observations..

4. Under Sec 15-D confiscation after the conviction is subjected to separate confiscation proceedings as contemplated under Section 15, 15-A, 15-C.
5. The purpose of the enactment seems to be that the power of the criminal court regarding the disposal of property is made subject to the jurisdiction of the authorized officer with regard to that aspect;
6. The jurisdiction of criminal court in regard to the main trial remains unaffected.

## SC observations..

7. The conferral of the power of confiscation is not dependent upon **whether a criminal prosecution for commission of a forest offence has been launched against the offender or not.** It is a separate and distinct proceeding from that of a trial before the Court for commission of an offence
8. Criminal prosecution is distinct from confiscation proceedings. The two proceedings are different and parallel, each having a distinct purpose. The object of confiscation proceeding is to enable speedy and effective adjudication with regard to confiscation of the produce and the means used for committing the offence while the object of the prosecution is to punish the offender.

## SC observations..

9. This position is manifest from the statute and has also been held by this Court in *Divisional Forest Officer v. G.V. Sudhakar Rao*(1985)
10. High Court as well as the revisional court **erred** in coming to a conclusion that the confiscation under the law was not permissible unless the guilt of the accused is completely established.

## PENALTIES AND PROCEDURE contd..

### **53. Power to release property seized under section 52.-**

Any Forest-officer of a rank not inferior to that of a **Ranger who, or whose subordinate**, has seized any tools, boats, carts or cattle under section 52, **may release** the same on the execution by the owner thereof a **bond** for the production of the property so released, if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

# State Amendments

- UP /UK , Gujarat, Goa, MH, WB
  - ... “except in respect of cases falling under section 52-A for which the procedure laid down in that section shall be followed” .
  - The word ‘**vehicles**’ has been inserted.

# State Amendments

- MP

- Any Forest-officer of a rank not inferior to that of a Ranger who, or whose subordinate, has seized any tools, boats, carts or cattle under section 52, may release the same on the execution by the owner thereof **of a security in a form as may be prescribed, of an amount equal to the value of such property, as estimated by such officer,** for the production of the property so released, when so required, **before the authorised officer under section 52** or the Magistrate having jurisdiction to try the offence on account of which the seizure has been made

# Confiscation of cattle committing offence of trespassing / illegal grazing u/s 26 ?

The power includes power to confiscate cattle unauthorisedly trespassing into RF and damaging forest produce like plants & grass.

**-Karna Gawali Vs. State of MH, 1990 Bombay**

**HC**

❑ Empty tempo brought to be loaded - was seized & confiscated by DFO. Magistrate ordered release of Tempo. Whose action was justified?

*-Mangal sarjerao Bharte V. AB Dhangre, DFO, 1989, Bom.HC)*

❑ The vehicle involved in commission of forest offence was seized by the forest officer. This seized vehicle was confiscated by DFO u/s 55.

**Comment.**

**Order of Confiscation under Sec 55 to be passed**

**by**

**magistrate trying the offence**

**or**

**by Forest officer ?**

***-Ahmadji Vs. State of M.P. 1985***

# Section 61 – A , B

Encroachment Removal

in

U.P. and Uttarakhand

## PENALTIES AND PROCEDURE contd..

### **62. Punishment for wrongful seizure.-**

Any Forest-officer or Police-officer who **vexatiously and unnecessarily** seizes any property on pretence of seizing property liable confiscation under this Act shall be punishable with imprisonment for a term which extend to **six months**, or with **fine** which may extend to five hundred rupees, or with **both**.

## PENALTIES AND PROCEDURE contd..

### **63. Penalty for counterfeiting or defacing marks on trees and timber and for altering boundary marks.-**

Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Indian Penal Code

(a) knowingly **counterfeits** upon any timber or standing tree a mark used by Forest-officers to indicate that such timber or tree is the property of Government or of some person, or that it may lawfully be cut or removed some person; or

## PENALTIES AND PROCEDURE contd..

(b) alters, defaces or obliterates any such mark placed on a tree or on timber by under the authority of a Forest-officer;  
or

(c) alters, moves, destroys or defaces any **boundary-mark** of any forest or waste land to which the provisions of this Act are applied,

shall be punishable with imprisonment for a term which may extend to **two years**, or **fine**, or with **both**.

## ➤ Offence u/s 63

- *Counterfeiting, defacing, obliterates marks*
- *Alters, removes, destroys, defaces Boundary pillars*

## ✓ Punishment

- Imprisonment – up to 2 years
- Fine

## ➤ WB amendments

- Not less than 3 months but may extend to 3 years and fine

## **PENALTIES AND PROCEDURE contd..**

### **64. Power to arrest without warrant.—**

**(1) Any Forest-officer or Police-officer without orders from a Magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest-offence punishable with imprisonment for one month or upwards.**

## PENALTIES AND PROCEDURE contd..

(2) Every officer making an arrest under this section shall, without unnecessary delay and subject to the provisions of this Act as to **release on bond, take or send the person arrested before the Magistrate** having jurisdiction in the case, or to the officer in charge of the **nearest police station**.

(3) Nothing in this section shall be deemed to authorise such arrest for any act which is an offence under Chapter IV unless such act has been prohibited under clause (c) of section 30.

# CrPC

## Chapter V - Arrest of Person

- **Sec 41-60 :**

- ✓ S 41 - arrest without warrant
- ✓ S 43 - arrest by private person
- ✓ S 46 - arrest how made
- ✓ S 50 - person arrested to be informed of ground of arrest and of right to bail
- ✓ S 51 - search of arrested person
- ✓ S 53 - examination by medical practitioner at the request of police
- ✓ S 54 - examination by medical practitioner at the request of arrested person
- ✓ S 56 - person arrested to be taken before magistrate or officer in charge of police station
- ✓ S 57 - person arrested not to be detained more than 24 hrs

## **PENALTIES AND PROCEDURE contd..**

### **65. Power to release on a bond a person arrested.-**

Any Forest-officer of a rank not inferior to that of a Ranger, who, or whose subordinate, has arrested any person under the provisions of section 64, may release such person on his executing a bond to appear, if and when so required, before the Magistrate having jurisdiction in the case, or before the officer in charge of the nearest police station.

## U.P. , Maharashtra, Uttarakhand & W.B.

### 65-A: Certain Offences to be non-bailable:-

1. Not with standing any thing contained in this Act or in that code of Criminal Procedure, 1973, any offence punishable under sec. (26) or section (33) or section (42) or section (63) shall be non-bailable.
2. No person accused of any offence as aforesaid shall, if in custody, be released on application for release on bail or on his own bond unless:-
  - a. The prosecution has been given an opportunity to oppose the application for such release, and
  - b. Where the prosecution opposes the application as aforesaid the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence

## PENALTIES AND PROCEDURE contd..

### **66. Power to prevent commission of offence.-**

Every Forest-officer and Police officer **shall prevent**, and may interfere for the purpose of preventing, the commission of any forest-offence.

# Section 66 – A

1. Encroachment Removal in **Bihar**

2. **U.P.**

- Penalty for not preventing commission of forest offence
  - Imprisonment up to 2 years or fine or both

# Section 66 – A contd...

## 3. Punishment for abetment

### a) W.B.

- If offence abetted is committed
  - Same punishment as is provided for such offence
- If offence abetted is not committed
  - Same punishment as is provided for such offence but extend up to  $\frac{1}{4}$  of the maximum

### b) M.P.

- Same punishment as is provided for such offence

## **PENALTIES AND PROCEDURE contd..**

### **67. Power to try offences summarily.-**

The District Magistrate or any Magistrate of the first class specially empowered in this behalf by the State Government may try summarily, under the Code of Criminal Procedure, 1898, any forest-offence punishable with imprisonment for a term not exceeding six months, or fine not exceeding five hundred rupees, or both.

# CrPC

## Chapter XXI – Summary Trials

- **Sec 260- 265 :**

- Means speedy disposal

- no formal charge is framed

- S 260

- Who can try in a summary way ?

- CJM

- JM I

- What kind of offence ?

- Offence not punishable with imprisonment for a term exceeding 2 years

## Chapter XXI – Summary Trials contd..

- **Sec 261: by JM II**
- **Sec 262 :**
  - amount of punishment ?
    - < 3 months
    - no limit to fine

# PENALTIES AND PROCEDURE contd..

## 68. Power to compound offences.-

(1) The State Government may, by notification in the Official Gazette, empower a Forest officer

(a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest-offence, other than an offence specified in section 62 or section 63, a sum of money by way of **compensation** for the offence which such **person** is suspected to have committed, and

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

## PENALTIES AND PROCEDURE contd..

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

(3) A Forest-officer shall not be empowered under this section unless he is a Forest officer of a rank not inferior to that of a Ranger and is in receipt of a monthly salary amounting to at least one hundred rupees, and **the sum of money accepted as compensation under clause (a) of sub-section (1) shall in no case exceed the sum of fifty rupees.**

## ❑ Compounding ( S- 68)

- Compoundable offences
  - Mutual consent / Out of court settlement
- Effecting the compounding
  - Compensation
  - Value of property seized liable to confiscation
  - Release of property/person

## PENALTIES AND PROCEDURE contd..

### **69. Presumption that forest-produce belongs to Government.-**

When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest-produce is the property of the Government, such produce shall be presumed to be the property of the Government until the contrary is proved.

## ➤ Presumption ( S 69)

- Accused can not be convicted on a mere presumption
- Presumption can not take the place of proof, it can form the basis for attempting to establish the claims of govt

# CHAPTER X

## CATTLE TRESPASS

70. Cattle-trespass Act, 1871, to apply

71. Power to alter fines fixed under that Act

**CATTLE-TRESPASS**

**70. Cattle-trespass Act, 1871, to apply-**

Cattle trespassing in a reserved forest any portion of a protected forest which has been lawfully closed to grazing shall be deem to be cattle doing damages to a public plantation within the meaning of section 11 of Cattle-trespass Act, 1871 (I of 1871), and may be seized and impounded as such by Forest-officer or Police-officer.

## ➤ Cattle Trespass ( S 70)

- U/S 11 Cattle Trespass Act, only cattle doing Damages ,to be seized and impounded
- But here, cattle trespassing in RF/PF , to be seized and impounded

## CATTLE-TRESPASS contd..

### **71. Power to alter fines fixed under that Act.-**

The State Government may, notification in the Official Gazette, direct that, in lieu of the fines fixed under section 12 of the Cattle-trespass Act, 1871 (I of 1871), there shall be levied for each head of cattle impounded under section 70 of this Act such fines as it thinks fit, but not exceeding following, that is to say:-

## CATTLE-TRESPASS contd..

For each elephant ten rupees

For each buffalo or camel two rupees

For each horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow, or heifer one rupee

For each calf, ass, pig, ram, ewe, sheep, lamb, goat or kid eight annas

# CHAPTER XI

## OF FOREST-OFFICERS

- 72. Government may invest Forest-officers with certain powers
- 73. Forest-officers deemed public servants
- 74. Indemnity for acts done in good faith
- 75. Forest-officers not to [trade](#)

# CHAPTER XI

# Sec ( 72-75)

## OF FOREST-OFFICERS

**72. State Government may invest Forest-officers with certain powers.-**

(1) The State Government may invest any Forest-officer with all or of the following powers, that is to say:-

(a) power to **enter** upon any land and to survey, demarcate and make a map of the same;

(b) the powers of a **Civil Court** to compel the attendance of witnesses and production of documents and material objects;

## OF FOREST-OFFICERS contd..

(c) Power to **issue a search-warrant** under the Code of Criminal Procedure, 1898 (5 of 1898); and

(d) Power to hold an **inquiry** into forest-offences, and, in the course of such inquiry, to receive and record evidence.

(2) Any evidence recorded under clause (d) of sub-section (1) shall be **admissible** in subsequent trial before a Magistrate, **provided** that it has been taken in the presence of accused person.

# Forest Range Officer vs Aboobacker

Decision : 14 March, 1989, Kerala High Court

Court rejected :

- That the evidence of Forest Officers alone cannot be made the basis of conviction without corroboration by independent witnesses.

## Court observed :

- **Forest Officers are not Police Officers**, though they are invested with some of the police powers,
- Embargo contained in **Sec 25 of 'The Indian Evidence Act 1872'** is not applicable to forest officers
- Confession made to the Forest Officer is admissible
  - If the Court considers such confession to be reliable, there is no legal bar in acting on such confession
- There is no legal requirement that whenever a confession is reduced to writing it must also be attested by another witness

## Dr Emerico D'Souza Vs. State, 1995 (Bom)

- ✓ **Forest Officers are not Police Officers,**
- ✓ **Confession made to the Forest Officer is admissible.**

## OF FOREST-OFFICERS contd..

### **73. Forest officers deemed public servants.-**

All Forest-officers shall be deemed be public servants within the meaning of the Indian Penal Code, 1860 (45 of 1860).

### **74. Indemnity for acts done in good faith.-**

No suit shall lie against any public servant for anything done by him in good faith under this Act.

## □ Indemnity to Forest Officers

### ➤ Forest Law

- ✓ Indemnity for acts done in good faith (74)
- ✓ Not liable for damage to forest produce retained u/s 41 at depot (43)
- ✓ Not liable for damage to forest produce retained u/s 45 at depot (49)

➤ IPC

✓ Nothing is offence if done with a good faith *(76-79)*

➤ CrPC

✓ No prosecution/remand of public servant without sanction of the authority *(197)*

## Sec 21 IPC

The words "public Servant" denote a person falling under any of the descriptions hereinafter following, namely:

12. Every person –

- a) In the service or **pay** of the government or **renumerated by fees or commission** for the performance of any **public duty** by the government
- b) In the service or pay of a local authority, a **corporation established by** or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956.

# Authority who takes decision in discharge of official duty and immunity provided to them

1. President/Governor – Article (361) of Constitution
2. Judges of SC/HC – Article (124) of Constitution for SC Judge and Article (218) for HC Judge
3. Public Servant (Judges/ Public Servant) Section (197) CrPC

# CrPC (Section – 197) Prosecution of Judges and Public Servant

(1) When any person who is or was a Judge or Magistrate or a Public Servant **not removable** from his office save by or with the **sanction of the government** is accused of any offence alleged to have been committed by him, **while acting or purporting to act in the discharge of his official duty**, no court shall take cognizance of such offence except with previous sanction –

contd....

- (a) In case of person employed in connection with the affair of union, of the Central Government
- (b) In case of person employed in connection with the affair of State , of the State Government
- (c) The Central Government/State Government may determine the person by whom, the manner in which, the prosecution of such Judge, Magistrate or Public Servant is to be conducted and may specify the court before which the trial is to be held.

# Analysis

- 1) Section is intended to guard against vexations proceedings against Judge/Magistrate/Public Servants
- 2) The privilege of immunity from prosecution without sanction only extends to acts which can be shown to be in the discharge of official duty (Pichai Pillai Vs. Balasundaram Mudely (1935) R.R. Chari Vs. State of UP AIR 1962 SC)

contd....

## Scope of Section

1. Protection given by this section applies not only a person who is still a public servant at the time the prosecution is launched but extends also to a person who is no longer a public servant at that time but was in office when the said to have been committed.
2. Sanction of Central Government for prosecution of its employee for a offence alleged to have been committed by him while acting in discharge of his official duty is necessary only when such employee is not removable from his office save by or with sanction of Central Government  
(Baij Nath AIR 1966 SC)

## Scope of Section contd...

3. No sanction is required if act/omission is not connected with discharge of official duty (**Baij Nath Case AIR 1966**)
4. Sanction under 197 CrPC is not necessary before a public servant could be prosecuted for offence of bribery under Section 161 IPC

**B.P. Srivastava Vs. N.P. Mishra (1970 SC)**

5. Sanction was held not required for prosecution of police officer for causing death of a person in custody though the use of third degree method (**Mohammad Sarda Vs. State of HP 1988 HP/SC**)

6. Test for determining whether, there was a reasonable connection between the act complained of and the official duty of the public servant –

If the **omission or neglect** on the part of the public servant could have made him answerable for a charge of dereliction of duty. If the answer to his question is in the affirmative, it may be said that such act was committed by Public servant while acting in the discharge of his official duty.

**(Darshan Kumar Vs. Sushil Kumar Malhotra 1980 HP (SC))**

7. CML Bhatnagar Case (1953) HC held that for proceeding for **contempt of Court** against public servant, sanction under (197) is not required as it is not a proceeding in connection with an offence
  
8. “Take Cognizance” – No Court take cognizance of an offence committed by a Judge/Public Servant in his public capacity without a sanction. But the **complaint can be examined without a sanction. The accused cannot be summoned or evidence against him cannot be taken without a sanction.**

**(RW Matrama Vs. State of W.P. AIR 1954 SC)**

9. A sanction obtained subsequently does not validate the proceedings

( Prabhaker Vs. Shankar AIR 1967 ;

Goa Sankaran Kutty Vs. DSP AIR 1961 Kerala .)

1. **Yogesh Yogendra and others Vs. State of MP ,  
Division Bench HC Gwalior  
WP No. 6917 of 2012**

**Fact of the case:**

- o 2 people died when SAF opened fire on timber smugglers in Sheopur district on 28/08/2012.
  - o Police registered FIR u/s 147,148,149, 307 & 302 IPC against Forest staff.
  - o Counter FIR by Forest department u/s 353,186,147,148, 149,427,294,332 and 323 IPC.
  - o Police arrested Forest personnel & produced before CJM Sheopur.
- **CJM sent the accused to Judicial custody.**

**Yogesh Yogendra and others Vs. State of MP ,  
Division Bench HC Gwalior  
WP No. 6917 of 2012**

- Petition under Art 226 of COI filed WP in the nature of habeas Corpus
  - that without conducting magisterial inquiry as per Home department MP, notification dated 11/06/1996, detention of petitioner is arbitrary and not permissible under Law.

**Yogesh Yogendra and others Vs. State of MP ,  
Division Bench HC Gwalior  
WP No. 6917 of 2012**

**Order dated 19/10/2012**

- o HC uphold the decision of CJM.
- o Notification dated 11/06/1996 issued by Home Department is Just and Reasonable and do not override powers of the police officers conferred u/s 41 CrPC.
- o Language of the notification does not take away power of arrest as conferred u/s 41 CrPC in a cognizable offence.

## 2. Raju Gaur Vs. State of MP , HC Gwalior Bench

(Petition under section 482 CrPC )

- Fact of the case:

- i. On 26/06/2010, while removing encroachment, quarrel took place between forest department personnel and encroachers.
- ii. Both parties sustained injuries.
- iii. Police registered FIR against forest personnel u/s 323, 147 and 506 IPC
- iv. Forest department also registered FIR u/s 353,147, 336,323 IPC against 35 encroachers.

## Fact of the case:

- v. Police tried to get permission to file charge sheet against forest personnel
- vi. For getting sanction of prosecution, letters were sent to the authorities

Petitioner(Range Officer) filed a Petition under section 482 CrPC for quashing FIR and further investigation in a criminal case u/s 323, 147 and 506.

- **Petitioner's Contention:**

- ✓ Petitioner was authorised to remove encroachment in perusal of DFO order dated 09/04/2010.
- ✓ Encroachers instead of vacating the encroachment, attacked forest personnel.

- **Respondent reply:**

- ✓ FIR has to be investigated by the police and if prima facie case is made out then police is duty bound to file the charge sheet after taking the sanction as required u/s 197CrPC.

# Raju Gaur Vs. State of MP , HC Gwalior Bench

Order dated 22/10/2013

- HC observed :
  - o Sanction u/s 197 CrPC has not yet been granted.
  - o FIR lodged by respondents against only in defence and to protect himself and other encroachers from legal action
  - o If FIR not quashed and investigation allowed, it will amount to abuse of process of law.

## ORDER:

Petition is allowed and FIR is quashed and other proceedings which are being initiated against the petitioner by way of investigation hereby dropped with immediate effect

# IPC Chapter – X (Sec 172-189)

## (Of contempt of the lawful Authority of Public Servants)

- ✓ Absconding/Preventing to avoid service of summon, notice or order *(172/173)*
- ✓ Non-attendance in obedience to an order from public servant *(174)*
- ✓ Omission to produce document *(175)*

**Punishment – 1 month imprisonment and/or fine**

# IPC Chapter – X (Sec 172-189)

## (Of contempt of the lawful Authority of Public Servants)

- Omission to give information for preventing offence by person legally bound to give *(176)*
- False information *(177)*
- Refusing oath or affirmation or to answer or to sign statement *(178-179-180)*
- False statement on oath or affirmation *(181)*
- False information to cause injury to someone *(182)*

# IPC Chapter – X (Sec 172-189)

## (Of contempt of the lawful Authority of Public Servants)

- Resistance to seizure *(183)*
- Obstructing public servant in discharge of his duties *(186)*
- Omission to assist public servant when bound by law to give assistance *(187)*
- Disobedience to order duly promulgated by public servant *(188)*
- Threat of injury to public servant *(189)*
  - 2 yrs imprisonment or with fine or both

# IPC Chapter – XI

## (Of False Evidences and Offences)

- Resistance to lawful arrest (224)
- Resistance to lawful arrest of another person (225)

# IPC Chapter – XVI

## (Of Hurt and Grievous Hurt)

### ➤ Sec 332 IPC

- Voluntarily causing hurt to deter public servant from his duty
  - 3 yrs imprisonment or with fine or both

### ➤ Sec 333 IPC

- Voluntarily causing grievous hurt to deter public servant from his duty
  - 10 yrs imprisonment and also liable to fine

## OF FOREST-OFFICERS contd..

### **75. Forest-officers not to trade.-**

Except with the permission in writing of the State Government, no Forest-officer shall, as principal or agent, trade in timber or other forest produce, or be or become interested in any lease of any forest or in any contract for working any forest, whether in or outside the territories to which this Act extends.

# CHAPTER XII

## SUBSIDIARY RULES

- 76. Additional powers to make rules
- 77. Penalties for breach of rules
- 78. Rules when to have force of [law](#)

# *CHAPTER XII* (*Sec 76-78*)

## **SUBSIDIARY RULES**

### **76. Additional powers to make rules.**-The State

Government may make rules

- (a) to prescribe and limit the powers and duties of any Forest-officer under this Act;
- (b) to regulate the rewards to be paid to officers and informers out of the proceeds of fines and confiscation under this Act;
- (c) for the preservation, reproduction and disposal of trees and timber belonging to Government, but grown on lands belonging to or in the occupation of private persons; and
- (d) **generally, to carry out the provisions of this Act.**

## SUBSIDIARY RULES contd..

### **77. Penalties for breach of rules.-**

Any person contravening any rule under this Act, for the contravention of which no special penalty is provided, shall be punishable with **imprisonment** for a term which may extend to **one month**, or **fine** which may extend to **five hundred rupees**, or both.

## SUBSIDIARY RULES contd..

### **78. Rules when to have force of law.-**

All rules made by the State Government under this Act shall be published in the Official Gazette, and shall thereupon, so far as they are consistent with this Act, have effect as if enacted therein.

# CHAPTER XIII

## MISCELLANEOUS

79. Persons bound to assist Forest-officers and Police- officers
80. Management of forests the joint property of Government and other Persons
81. Failure to perform service for which a share in produce of Government forest is enjoyed
82. Recovery of money due to Government
83. Lien on forest-produce for such money
84. Land required under this Act to be deemed to be needed for a public Purpose under the Acquisition and Requisition of Immovable Property Ordinance, 1982
85. Recovery of penalties due under [bond](#)
  - 85A. Saving for rights of Central Government
86. Repeals

# *CHAPTER XIII* (*Sec 78-85*)

## MISCELLANEOUS

### 79. Persons bound to assist Forest-officers and Police-officers.-

(1) Every **person** who exercises any right in a reserved or protected forest, or who is permitted to take any forest-produce from, or to cut and remove timber or to pasture cattle in, such forest, and every person who is employed by any such person in such forest, and

every **person** in any village contiguous to such forest who is employed by the Government or who receives emoluments from the Government for services to be performed to the community

## MISCELLANEOUS contd..

shall be bound to furnish without unnecessary delay to the nearest Forest-officer or Police officer any information he may possess respecting the **commission of, or intention to commit, any forest-offence**, and shall forthwith take steps, whether so required by any Forest-officer or Police officer or not,-

(a) to extinguish any forest fire in such forest of which he has knowledge or information;

(b) to prevent by any lawful means in his power any fire in the vicinity of such forest of which he has knowledge or information from spreading to such forest,

## MISCELLANEOUS contd..

and shall assist any Forest-officer or Police-officer demanding his aid

(c) in preventing the commission in such forest of any forest-offence; and

(d) when there is reason to believe that any such offence has been committed such forest in discovering and arresting the offender.

## MISCELLANEOUS contd..

(2) Any **person** who, being bound so to do, without lawful excuse (the burden of proving which shall lie upon such person) fails

(a) to furnish without unnecessary delay to the nearest Forest-officer or Police officer any information required by sub-section (1);

(b) to take steps, as required by sub-section (1), to extinguish any forest fire in reserved or protected forest;

(c) to prevent, as required by sub-section (1), any fire in the vicinity of such forest from spreading to such forest or

## MISCELLANEOUS contd..

(d) to assist any Forest-officer or Police officer demanding his aid in preventing the commission in such forest of any forest-offence, or, when there is reason believe that any such offence has been committed in such forest, in discover and arresting the offender,

shall be punishable with **imprisonment** for a term which extend to **one month**, or with fine which may extend to **two hundred rupees**, or with both.

## MISCELLANEOUS contd..

### **80. Management of forests the joint property of Government and other persons.**

(1) If the Government and any person be **jointly interested** in any forest or waste-land, or in the whole or any part of the produce thereof, the State Government may either

(a) undertake the management of such forest, waste-land or produce, accounting to such person for his interest in the same; or

## MISCELLANEOUS contd..

(b) issue such regulations for the management of the forest, waste-land or produce by the person so jointly interested as it deems necessary for the management thereof and the interests of all parties therein.

(2) When the State Government undertakes under clause (a) of sub-section (1) the management of any forest, waste-land or produce, it may, by notification in the Official Gazette, declare that any of the provisions contained in Chapters II and IV shall apply to such forest, waste-land or produce, and thereupon such provisions shall apply accordingly.

# Section 80 – A

Encroachment Removal

in

**M.P.**

## MISCELLANEOUS contd..

### **81. Failure to perform service for which a share in produce of Government forest is employed.-**

If any person be entitled to a share in the produce of any forest which is the property of Government or over which the Government has proprietary rights or to any part of the forest-produce of which the Government is entitled upon the condition of duly performing any service connected with such forest, such **share shall be liable to confiscation** in the event of the fact being established to the satisfaction of the State Government that **such service is no longer so performed:**

## MISCELLANEOUS contd..

Provided that no such share be confiscated until the person entitled thereto, and the evidence, if any, which he may produce in proof of the due performance of such service, have been **heard by an officer** duly appointed in that behalf by the State Government.

## MISCELLANEOUS contd..

### **82. Recovery of money due to Government.-**

All money payable to the Government under this Act, or under any rule made under this Act, or on account of the price of any forest produce, or of expenses incurred in the execution of this Act in respect of such produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an **arrear of land-revenue**.

## MISCELLANEOUS contd..

### **83. Lien on forest-produce for such money.—**

(1) When any such money is payable for or in respect of any forest-produce, the amount thereof shall be deemed to be a first charge on such produce, and such produce may be taken possession of by a Forest-officer until such amount has been paid.

(2) If such amount is not paid when due, the Forest-officer may sell such produce by public auction, and the proceeds of the sale shall be applied first in discharging such amount.

(3) The surplus, if any, if not claimed within two months from the date of the sale by the person entitled thereto, shall be

## MISCELLANEOUS contd..

### **84. Land required under this Act to be deemed to be needed for a public purpose under the Land Acquisition Act, 1894.—**

Whenever it appears to the State Government that any land is required for any of the purposes of this Act, such land shall be deemed to be needed for a public purpose within the meaning of section 4 of the Land Acquisition Act, 1894 (1 of 1894).

## MISCELLANEOUS contd..

### **85. Recovery of penalties due under bond.**

When any person, in accordance with any provision of this Act, or in compliance with any rule made thereunder, binds himself by any an **bond or instrument to perform any duty or act** or covenants by any bond or instrument that he, or that he and his servants and agents will **abstain** from any act, the whole **sum mentioned in such bond or instrument** as the amount to be paid in case of a breach of the conditions thereof may, notwithstanding anything in section 74 of the Indian Contract Act, 1872 (9 of 1872), be recovered from him in case of such breach as if it were an arrear of land revenue.

## MISCELLANEOUS contd..

### **85A. Saving for rights of Central Government.-**

Nothing in this Act shall authorise a Government of any State to make any order or do anything in relation to any property not vested in that State or otherwise prejudice any rights of the Central Government or the Government of any other State without the consent of the Government concerned.

## MISCELLANEOUS contd..

### **86. Repeals.-**

[Rep. by Repealing and Amending Act, 1947 (2 of 1948),  
sec.2 and Sch.]

**END**

# **Encroachment on forest land**

Procedure and Action







05/02/2005





# Encroachment on forest land

Offence under IFA 1927 :

- For RF – under Section 26(1)/(a), (h)
  - clears or breaks up any land for cultivation or any other purpose
- For PF – under section 33(1)/(c), (h)
  - contrary to any prohibition under section 30, clears or breaks up any land for cultivation or other purpose in any protected forest;

# Procedure ...

- Register POR
    - i. If offender is not known
      - o Remove encroachment
    - ii. If offender is known
      - a. If offender removes encroachment voluntarily
      - b. If does not remove encroachment
        - o Action under Sec 80 ( A ) – M.P.
- Or
- Sec 61 (A),(B),(C) – UP & UK

## M.P.

Sec 80-A : Penalty for unauthorisedly taking possession of land constituted as reserved or protected forest -

- (1) Any person who unauthorisedly **takes or remains in possession** of any land in areas constituted as **reserved or protected forest** under section 20 or section 29, as the case may be, without prejudice to any other action that may be taken against him under any other provision of this Act, **be summarily ejected by order of a Forest-officer not below the rank of Divisional Forest Officer and .....**

.... and any **crop** which may be standing on such land or any **building** or **other work** which he may have constructed thereon, **if not removed by him within such time as such Forest-officer may fix shall be liable to forfeiture:**

Provided that no order of ejection under this subsection shall be passed unless the person proposed to be ejected is given a **reasonable opportunity of showing cause** why such an order should not be passed.

## Section 80 A (2):

Any property so forfeited shall be disposed of in such manner as the Forest-officer may direct and the **cost of removal** of any crop, building or other work and of all works necessary to restore the land to its original condition shall be **recoverable from such person** in the manner provided in section 82.

# U.P. & U.K. (S 61-A, 61-B, 61-C)

## ➤ *Sec 61-A*

- Summary eviction of persons convicted of certain offences by court

1. On conviction *u/s 26 (1) a/h* or *33 (1) c/h*

- may direct eviction from land

2. Court of appeal or revision may modify, alter or annul the order in clause 1

## ➤ Sec 61 -B

### ▪ Summary eviction of unauthorized occupants

1. DFO is empowered
2. Issuance of a show cause notice
3. Order of eviction – land to be vacated in a time not less than 10 days from the order date
4. On non-compliance – eviction using necessary force
5. Appeal to CF – Final order

## ➤ Sec 61 -C

- Disposal of property left on land by unauthorized occupant
  1. After not less than 10 days' notice, to be sold by public auction
  2. Sale proceeds to be paid to concerned person after necessary deductions for restoration of land to original

- Steps to be taken by DFO –
  1. Issue show cause notice
    - Give details of action to be done by forest department like removal of crops ,building etc.
  2. Reasonable time to be given to encroacher to reply
  3. Show cause notice – how to serve?
    - i. Give a copy to encroacher and take acknowledgement
    - ii. If encroacher refuses to take , then
      - Call ‘Panches’ of village and make ‘Panchnama’ of the same
    - iii. If encroacher runs away, then
      - Paste SCN at the prominent place of his home and make ‘Panchnama’ of it

## Hearing of Show Cause Notice:

– By DFO

- After hearing , DFO to give final order
- Order is to be served to encroacher
- ‘Order execution report’ is to be given by  
RO





20 14:13



05/02/2005



05/02/2005





























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# REMOVAL of ENCROACHMENT

## ✓ PLANNING :

- i. Extent of area
- ii. Requirement of staff
- iii. Requirement of vehicles
- iv. Identify actions to be done
  - 3 Types of action :
    - i. Breaking houses
    - ii. Removing crops
    - iii. Digging trenches
- v. Requirement of Machines( Tractor & JCB)

- Planning contd...
  - viii. Requirement of labours
  - ix. Evaluation of resistance
  - x. Requirement of police force
  - xi. Knowledge of Roads/pathways
  - xii. Choose day / time
  - xiii. Decide about staying time at spot
  - xiv. Evaluation of traveling time
  - xv. Secrecy
  - xvi. Food / water

# Execution of plan :

- i. Punctuality
- ii. Staff / labourers attendance
- iii. Vehicles / machines counting
- iv. Simultaneous movement
- v. Immediate action after reaching spot
- vi. Video recording of whole actions
- vii. 3 Types of action :
  - i. Breaking houses – collect all sound timber
  - ii. Removing crops
  - iii. Digging trenches

## Execution of plan : contd.....

viii. Identify high places and occupy these

ix. Keeping encroachers at safe distance

x. Keep open the returning path

xi. Identify place for safety

xii. Avoid stampede in case of attack

xiii. Evaluation of resistance posed

xiv. Return with all staff / labours

xv. Keep in touch with last vehicle

xvi. If there is firing/ injuries to staff - register FIR

xvii. Treatment of injured





26 9:37



26 9:08



26 9:08



15 9/48



15 9:49



15 9:49



15 9:52











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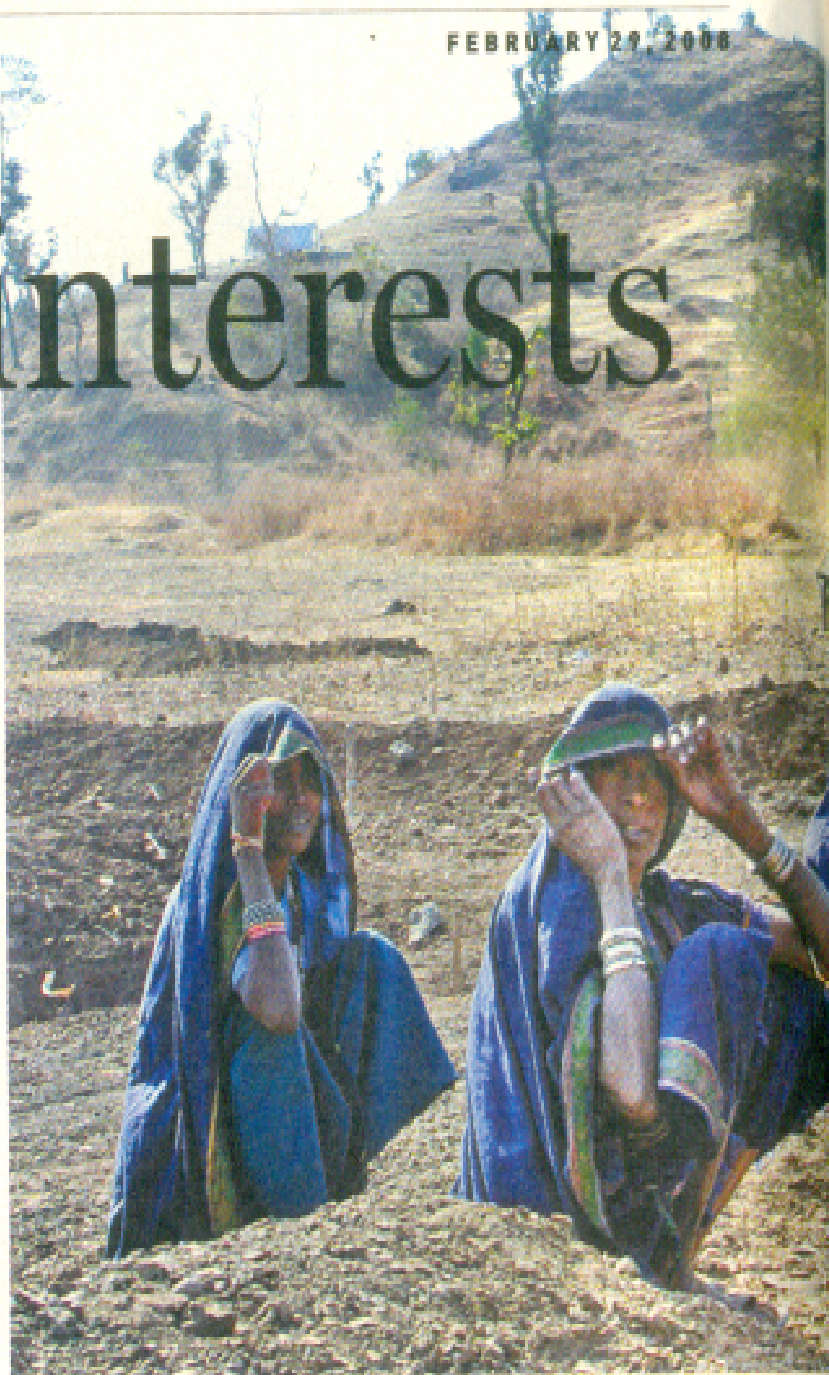


## Hope and fear

Notification of forest rights law  
stirs up tribal belt

FEBRUARY 29, 2008

# interests



FEBRUARY 29, 2008



DIONNE BUNSHA

Department personnel destroyed tribal homes

# Conflict of interests

**As the phase of implementation of the law approaches, there is palpable unease among the tribal populations.**

The authorities, in collaboration with vested interests, have often tried to deny forest-dwellers their rights. Even as the FRA became law, some States had particularly unpleasant experiences.

## DEMOLITION DRIVE

By Dianne Banaha in Buxarhampur district

THE road to Pipalkhura is long, rocky and dusty. Across a ponded, lilly landscape occasionally broken by a village, farm or bazaar, we make our way to this remote village in Madhya Pradesh. Suddenly, we see a cluster of white tents breaking out of the brown earth — that is all Pipalkhura has been left with. Tents and blankets.

"A huge team from the Forest Department destroyed 55 homes on January 11. Their machines bulldozed our homes, and then they set it all on fire. They took everything — our livestock, chickens, food-grains, utensils, bedding, and left us here in the cold," said Shankar Bahadur, a Burcha Adivasi who accuses himself an illegal encroacher in this dry, degraded forest, where the only sign of forest is a sprinkling of trees. When their leaders made a complaint about the demolition in the State capital of Bhopal, the tehsildar (local revenue official) sent them tents and blankets. Small consolation in the biting cold here, where night temperatures touch zero.

"Every three or four months, the Forest Department tries to clear us out. They take our crops, set our homes on fire and leave. They say we are illegal encroachers, but we were born and brought up here. Our elders came here from Khajuraho [a neighbouring district] because there was no land in that village. If we can't stay here, where else can we go? Why did they [the forest guards] take our money and let us settle when we first came here?"



Just before the coming into force of the Forest Rights Act in January 2008, the Forest Department of Buxarhampur district demolished seven villages. U. Anbumaze Shastri, the District Forest Officer (DFO), says that they are encroachers who can claim no right over the land but are trying to take advantage of the new law. The Adivasis say that the Forest Department is trying to get rid of them to deny them their legal rights.

The conflict turned violent in Bomilapat, where 47 homes were broken, including a school run by the Adivasi Ekta Sanghatan (AES), a non-governmental organisation that the DFO has labelled "naxalite". Four people were injured in police firing, of which one, Damidra Harlia, lost his eye. "We even took him to Delhi for treatment, but they could not do anything to take the bullet out of his eye. He has lost his vision forever," says Vinod Jaiswal, a local activist of the AES.

At most of the eviction sites, the forest guards posted in one day's time and never returned to guard the forest. If they were truly interested in guarding forest land, why did they not return the next day?

"They took everything. We slept out in the open in the freezing cold, and borrowed food from others in the village whose homes were not broken," says Janabai Bhungla. "We have been living here for around 15 years. Earlier, we were in the neighbouring village of Mandwa. But there was no land there, so we came here."

Across India, atrocities are part of the daily grind for Adivasis, and Buxarhampur is no different. The



DIPNESH BISHNAP

**AT PIPALKHURA, FOREST** Department personnel destroyed tribal homes and took away their belongings.

Forest Department here has a long history of terror and abuse. Over the years, several cases have been filed against them for illegal arrests and torture of tribal people.

The DFO dismisses all these accusations as lies and says that his personnel fired in self-defence. "There is a law and order problem in these villages. My team cannot enter them to carry out their work without being stoned. We were surrounded and had to fire six rounds to leave the place," said Uttarkumar Sharma. "We have not demolished a single structure in the past six months. These accusations are totally false." Yet, he admits that there have been violent skirmishes. In the past seven years, three Adivasis have been killed in police firing and one forest guard was killed during an anti-encroachment drive.

"Starting from 1999, we have been removing these encroachments into the forest," says the DFO. "People come from nearby Khargon and Sendhwa. They are not originally from this place. They are encroaching on the rights of villagers who are already set-

tled here and have to suffer on account of these illegal occupiers of the forest." Of the 1,90,000 hectares of forest land in the district, 40,000 ha was encroached; the Forest Department has managed to remove half of the encroachers, he estimates.

"They are trying to take advantage of the Forest Rights Act, but we do not consider them eligible under the Act," says Sharma. "We have been instructed by the State government that only those residing for at least three generations (75 years) from December 13, 2005 are eligible. The gram sabhas will decide, but I expect that we shall find very few Adivasis who will be eligible."

Who is eligible depends on how the government chooses to interpret the new law. "The Act clearly states that Adivasis should be given the rights denied to them. Adivasis have been in Burhanpur for generations, even before the Mughal rule. They know no district boundaries and move within the forest in search of land in order to survive. To say that they are encroachers is ridiculous," says Bijaybhai from the AES.

The irony is that the Forest Department sees only the most deprived Adivasis as encroachers, whereas contractors and corporates who exploit the forest wealth are welcome. Sharma boasts how the Forest Department provides the Madhya Pradesh government with Rs.500 crore of revenue every year.

The Ministry of Environment and Forests has diverted 1,133,123 ha for "non-forest purposes" from 1980 to 2006, of which more than half has been in the past five years, points out Madhu Sarin, activist with the Campaign for Survival and Dignity, which is fighting for Adivasi rights. Almost the same area - 1,343,000 ha of forest land - is under encroachment in the country, of which the government has regularised only 3,66,000 ha.

"From 2002 to 2004, the government removed 'encroachers' from 1.52 lakh ha of land. If you assume one hectare per family, 1.5 lakh families who have lived there for generations have been displaced. But we never hear of the removal of multinational corporations, or the Tatas or the Birlas," says Sarin.

In the new, Shining India that is envisioned, business is always welcome. And Adivasis are a nuisance in this vision of progress and need to be dealt with firmly.

## REAL THREATS

By T.K. Rajalakshmi in Udaipur

SHIVA RAM, Nima Ram and many others of Karmela Phala hamlet in Padrada village have reasons to be worried. Despite having lived in the village, in Gogunda block of Udaipur district in Rajasthan, for over three decades, they have no entitlements and face routine harassment by officials of the State Forest Department. Not only have cases been filed against them for encroaching on forest land, but they face threats of eviction regularly. Nearly 70 families in the village stand affected owing to the non-implementation of the legislation enacted



**TRIBAL PEOPLE INJURED** in the State Forest Department's 'anti-encroachment drive' in Nepanagar tehsil of Burhanpur district, Madhya Pradesh, at a press conference organised by the Adivasi Ekta Sangathan in Bhopal on December 14, 2007.

# दैनिक जागरण

बुधवार 19 दिसंबर 2007 : मार्गशीर्ष शुक्ल 10, विक्रम 2064

अक्सर लोग दूसरों की दया का तो लाभ उठाने का प्रयास करते हैं, लेकिन जब खुद का नंबर आता है तो कान बंद कर लेते हैं। -जयशंकर प्रसाद

## क्यों वन विभाग चला रहा है जगह-जगह गोली?

### आदिवासियों-वनवासियों की दो हत्याएं क्यों?

बोमल्यापाट (नेपानगर, बुरहानपुर) के दमड़िया पिता हरलाल को उनके परिजन इलाज के लिए सोमवार को भोपाल ले आए। 11 दिसंबर को वन विभाग के अधिकारियों-कर्मचारियों ने आदिवासियों को उनकी परंपरागत जमीन से बेदखल करने के लिए जब 21 राउंड गोलियां चलायीं, तो जो पांच आदिवासी घायल हुए थे, दमड़िया भी उन्हीं में से हैं। उनकी एक आंख में छर्रा लगा था और आंख में रोशनी आए, इसकी संभावना बहुत कम है। आदिवासियों की जल-जंगल-जमीन की लड़ाई पुरानी है। एक बहुत लंबी लड़ाई के बाद उनके अधिकारों को दिसंबर 2006 में संसद से स्वीकृति मिली है। अनुसूचित जनजाति एवं अन्य परंपरागत वन निवासी विधेयक में थोड़े से किंतु-परंतु के साथ यह माना गया है कि आदिवासी या दूसरी परंपरागत वन्य जातियां, जहां रह रही हैं, या जंगल का जो हिस्सा परंपरागत रूप से उनके अधिकार में रहा है, उस पर उनका हक माना जाएगा। संसद के दोनों सदनो ने विधेयक पर मोहर लगा दी है। केवल नियम और प्रक्रियाएं तय होनी हैं। इसके बाद आदिवासियों-वनवासियों को उनकी परंपरागत जमीन से बेदखल नहीं किया जा सकेगा। नियम और प्रक्रिया तय कर दिए जाने में बस थोड़े ही वक्त की देर है। संसद ने आदिवासियों-वनवासियों के इन अधिकारों की स्वीकृति दी है, इसे कौन नहीं जानता।

वावजूद इसके वन-विभाग प्रदेश में जा कर रहा है, इसका कोई सोना नहीं है। कभी प्लांटेशन के नाम पर, तो कभी रतनजोत लगाने के नाम पर जगह-जगह आदिवासियों को जंगलों से खदेड़ा जा रहा है। उन्हें उजाड़ने के लिए जो तरीका अपनाया जा रहा है, वह भी 'अप्रतिम' है। गोलियों-बंदूकों से लैस वन विभाग के अधिकारी घोड़ों पर बैठे, अमेरिकी काऊब्वॉयों की तरह आदिवासी बस्तियों में पहुंचते हैं, और गोली-बंदूक के दम पर ही बस्तियां खाली कराते हैं, और उनके घरों (झोपड़ों पर ही तो इन गरीबों की निस्वत है) को मय सामान नष्ट कर देते हैं। हम सबने शोले के 'गब्बर सिंह' को देखा है। जगह-जगह से कुछ वैसे ही कथानक हैं। जैसे, जो जानकारी मिली है, उसके मुताबिक 7 दिसंबर का नेपालगर का यह एक दृश्य देखें- एक घुड़सवार अधिकारी जेसीबी मशीन, डग्गा गाड़ी और दूसरे मातहतों को लेकर गांव चिडियापानी पहुंचता है, और गांव के बीच में पहुंचकर हवा में गोलियां दगवाकर गब्बर के ही अंदाज में कहता है- 'गांव वालों भाग जाओ।' गांव वाले भागे, और फिर पूरी बस्ती को तहस-नहस कर दिया गया। कुछ ऐसा ही दृश्य 11 दिसंबर को बोमल्यापाट में भी था। बस फर्क इतना ही था कि वहां घोड़े पर एक नहीं चार गब्बर पहुंचे। और कुछ बस्ती वाले नहीं भागे, तो उन पर सीधे भी गोलियां दागी गयीं, जिसमें पांच लोग घायल हुए। दमड़िया उन्हीं में से एक हैं, जिन्हें सोमवार को इलाज के लिए हमीदिया अस्पताल लाया गया है। पर यहां भी ठीक होने की संभावना न देखकर अब उन्हें दिल्ली के एम्स अस्पताल के लिये रिफर कर दिया गया है। वन विभाग की ऐसी घटनाओं पर क्या प्रतिक्रिया है, इसे भी जान लें। आदिवासी एकता संगठन के विजय भाई और नाहरसिंह बताते हैं- 'मंत्री जी से शिकायत की, तो उलटे उन्होंने ही कहा कि डीएफओ कह रहे हैं कि लोगों ने ही वन विभाग के अमले पर हमला किया। इसलिए बचाव में 21 राउंड गोलियां चलानी पड़ीं।'

हममें से हर किसी के पास कोई न कोई बहाना रहता ही है। ऐसे ही कार्रवाई न करने के लिए भी हमेशा एक बहाना मौजूद रहता है। ऐसी ही कार्रवाइयों में वन विभाग ने पिछले दिनों देवास और नरसिंहपुर में गोली चलाकर दो आदिवासियों-वनवासियों की हत्या की। हरदा, खरगोन, सतना, सीधी, खंडवा, बैतूल, दमोह हर जगह से आदिवासियों को जंगल से उजाड़ने की कोई न कोई छोटी-बड़ी खबरें हर रोज आ रही हैं। सवाल यह कि जिनका जहां परंपरागत हक है, और जो हक आज न सही कल, कागजों पर भी दर्ज होना है, तो फिर उन्हें वहां से बेदखल करने की इतनी बेताबी और बेसब्री क्यों है?

इस विषय पर आज हम आदिवासी एकता संगठन के कार्यकर्ता गोपाल भाई का एक विशेष अतिथि संपादकीय छाप रहे हैं। प्रदेश के लिखने-पढ़ने वाले, समाजवेत्ता, कार्यकर्ताओं-विचारकों, संस्कृतिकर्मियों, लेखकों, कलाकारों, जनअभियान से जुड़े लोगों के लिए दैनिक जागरण उनके विचारों की अभिव्यक्ति के लिए एक खुला मंच है।



अतिथि संपादकीय

## सरकार ईमानदार नहीं

केन्द्र सरकार और मध्यप्रदेश सरकार के तमाम दावों को बताते हुए वन विभाग ने 11 दिसंबर को बुरहानपुर जिले के नेपानगर तहसील में आदिवासियों को उनके घर, जमीन और उनके जीविकोपार्जन के साधनों से बड़े पैमाने पर बेदखल किया है। चिड़ियापानी, हल्दियाखेड़ा, जामुननाला और बोमल्यापाट गांवों से भी सैकड़ों आदिवासियों को उजाड़ा गया। उनके बर्तन-भांडे, बिस्तर-कपड़े, नकदी, उनके अनाज, खेती के औजार, पालतू जानवर और अन्य जीविकोपार्जन के साधन वन विभाग वाले उठा ले गए। इस कार्रवाई के दौरान एक व्यक्ति को गिरफ्तार भी किया गया। बोमल्यापाट गांव में तो 21 राउंड गोलियां भी चलीं, जिसमें 5 लोग घायल हुए हैं और एक कालाहालत गंभीर है। इलाके के आदिवासी एवं अन्य जंगलवासी वन विभाग के डर से छिपकर जीवन बिता रहे हैं।

11 दिसंबर को वन विभाग के लगभग सौ लोगों ने बोमल्यापाट गांव पर हमला कर दिया। इस अमले में चार घुड़सवार, पांच जीप, तीन ट्रैक्टर, दो डग्गा गाड़ी, एक पिंजरा गाड़ी के साथ-साथ एक जेसीबी मशीन को भी तोड़-फोड़ के लिए गांव में लाया गया था। सुबह से शाम तक वन विभाग ने इस गांव के 47 घरों को तोड़ डाला। ग्रामीणों के पास अब न तो खाने को अनाज है और न ही पहनने को कपड़ा। ठंड के इस मौसम में छोटे-छोटे बच्चे नंगे बदन रह रहे हैं। यह अत्याचार तब हो रहा है, जब आदिवासियों एवं अन्य जंगलवासियों को जंगल पर अधिकार देने के लिए संसद से दिसम्बर 2006 में अनुसूचित जनजाति और अन्य परम्परागत वन निवासी (वन अधिकारों की मान्यता) कानून 2006 पास हो चुका है। कानून पास होने के बावजूद नियमों के अभाव में वन विभाग का अमला अभी भी लोगों पर जुल्म कर रहा है। एक करने के पीछे यह मंशा है कि कानून को लागू करने का नोटिफिकेशन जारी होने से पहले आदिवासियों एवं अन्य जंगलवासियों को जंगल से बाहर कर दिया जाए, ताकि जब उन्हें अधिकार देने की बात आए, तब तक वे जंगल से बेदखल कर दिए जाएं। उपरोक्त कानून के मुताबिक जब लोगों को पट्टा मिलने ही वाला है तो वन विभाग का कानून के नोटिफिकेशन होने से पहले लोगों को हटाने का क्या अधिकार है?

आदिवासियों एवं अन्य जंगलवासियों ने जंगल पर अपने अधिकारों की मान्यता पाने के लिए लंबा संघर्ष किया है। इसी संघर्ष का परिणाम है कि सरकार ने माना है आदिवासियों एवं अन्य जंगलवासियों के साथ ऐतिहासिक अन्याय हुआ है और उसे सुधारने की दृष्टि से संसद ने दिसम्बर 2006 में अनुसूचित जनजाति और अन्य परम्परागत वन निवासी (वन अधिकारों की मान्यता) कानून 2006 पास किया। पर सरकार उस अन्याय को खत्म करने के बजाय जारी रखना चाहती है, जो वन विभाग द्वारा जारी अत्याचारों को देखकर स्पष्ट होता है। सरकार अत्याचारियों के खिलाफ क कार्रवाई नहीं कर रही है और अभी तक इस कानून को लागू करने के लिए केन्द्र सरकार नियमों को नहीं बनाकर उन्हें अत्याचार करने के लिए शह दे रही है।

ऐसी परिस्थिति में जंगलों में निवासरत लाखों लोग अपने अधिकारों से वंचित हैं साथ ही वे वन अधिकारियों के प्रताड़ना के शिकार हैं। ताजा स्थिति यह है कि कानून में संरक्षित क्षेत्र के निवासियों को जो अधिकार हैं, उसे कमजोर करने के लिए प्रस्तावित नियमों में प्रावधान बनाने के प्रयास किए जा रहे हैं और साथ ही वन विभाग द्वारा आदिवासियों एवं अन्य जंगलवासियों को जंगल से बेदखली की प्रक्रिया भी अ तेज कर दी गई है। वन माफिया, खदान माफिया के साथ-साथ वन अधिकारियों के अत्याचारों से देश के सभी अंचलों के आदिवासी एवं अन्य जंगलवासी पीड़ित हैं। इ कानून को कमजोर करने के पीछे शोषणकारी राजनीतिक एवं आर्थिक शक्तियों का गठजोड़ काम कर रहा है। हमारा कहना है कि जंगलों पर पारंपरिक रूप से काबिज लोगों को उनके अधिकारों से किसी भी तरीके से वंचित नहीं किया जाना चाहिए। दे की प्राकृतिक संपदाओं पर विभिन्न बहुराष्ट्रीय कंपनियों की नजर है। ऐसे में वन कानून को लागू करने के लिए बनाए जा रहे नियमों को कठोर एवं जंगलवासियों के हित में बनाए जाने की जरूरत है, अन्यथा न केवल जंगलवासी बेदखल होंगे, बल्कि देश के प्राकृतिक संपदा भी लुट जाएगी।

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dk;kZy; ou eaMykf/kdkjh ou eaMy \_\_\_\_\_

&csn[kyh vkns" k &

vkns" k Øekad@Hkw0izca/k@ fnukad

¼Hkkjrh; ou vf/kfu;e 1927 dh /kkjk 80&v ,oa e0iz0 fo/kku  
Ø0 9 o'kZ 1965 dh /kkjk 17 ds vuqlkj la"kksf/kr ds rgr ikfjr  
½

Jh \_\_\_\_\_  
tkfr \_\_\_\_\_ fuoklh \_\_\_\_\_ ftyk ----  
----- ds ou ifj{ks= dh iflj \_\_\_\_\_  
lajf{kr@vkjf{kr ds d{k Ø0 ----- esa ----- gsDVj dh ou  
Hkwfe ij voS/k :lk ls dCtk dj cksdj@VIIkj cukdj edku fuekZ.  
k dj mDr Hkwfe dk mi;ksx dj jgs gSA bl voS/k d`R; gsrq  
vkids fo:/n fof/kor ou vijk/k izdj.k Ø- ----- fnukad  
----- tkjh dj iathc/n fd;k x;k gSA vkidk ;g d`R; Hkkjrh; ou  
vf/kfu;e 1927 dh /kkjk ----- ds rgr vijk/k gSA

vkidks bl dk;kZy; ds i000----- fnukad -----  
--}kjk voS/k :lk ls vfr0e.k dj dCtk dh xbZ ouHkwfe ls  
[kM+h Qly@Vllkj@ >ksiM+h dk dCtk gVkus gsrq dkj.  
k crkvksa lwpuk i= tkjh dj cpko dh leqfpr volj iznku fd;  
k x;kA vkius viuk cpko mRRkj fnukad -----  
ds bl dk;kZy; esa izLrqr fd;kA izLrqr cpko mRRkj dk  
voyksdu fd;k x;kA vkius vius cpko esa ys[k fd;k gS fd

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vfr0e.k fnukad ----- ls dj j[kk gSA vkidk  
mRRkj vk/kkjghu vlarks'kizn ,oa ekuus ;ksX; ugh gSA  
vr% Hkkjrh; ou vf/kfu;e 1927 dh /kkjk 80&v esa  
iznRRk vf/kdkjksa dk mi;ksx djrs gq;s eSa vkns"k  
nsrk gwW fd %&

## &% vkns”k %&

Jh ----- fuoklh -----  
ftyk ----- dks ou eaMy -----dh ifj{ks= -----  
----- dh iflj ----- ds  
lajf{kr@vkjf{kr ou ds d{k Ø0 -----esa -----  
----- gSDVj ij voS/k :lk ls dCtk dh xbZ ou Hkwfe ls  
[kM+h Qly ls Vllkj@>ksiM+h ls ou vijk/k izdj.k ij  
izfrdwy izHkko Mkys cxSj csn[ky fd;k tkrk gSA vki  
mDr Hkwfe ls viuk voS/k :l ls fd;k x;k dCtk fnukad ----  
----- rd gVk ysaA ;fn vki mDr dCtk ugh gVkrs  
gS rks mDr vfrØfer ouHkwfe ij edku@Vllkj@>ksiM+h ,  
oa [kM+h Qly jktlkr ekuh tkosxA

Hkkjrh; ou vf/kfu;e dh /kkjk 80&v¼ll½ eas  
iznRRk “kfDr;ksa dk mi;ksx djrs gq;s ;g Hkh vkns”k fn;  
k tkrk gS fd mDr Hkwfe dks ewy :lk esa ykus esa  
gksus okys 0;; dh jkf”k Hkk0o0v0 1927 dh /kkjk &82  
ds vUrxZr cuk;s x;s fof/k ls olwyh dh tkosxA

vkt fnukad ----- dks esjs gLrk{kj ,oa dk;kZy; dh eksg ls  
tkjh fd;k x;kA

**Oku eaMykf/kdkjh**  
**ou eaMy -----**

i`000@Hkw0izca/k@  
izfrfyfi %&

fnukad

1- Jh ----- }kjk ifj{ks= vf/kdkjh -----  
-----ds ikyukFkZ vxzsf'krA os ,d izfr ij fnukafdr ikorh nsosaA

2- ifj{ks= vf/kdkjh ----- dh vksj lwpukFkZA ,d izfr  
lacaf/kr dks lkSidj nwljh izfr ij fnukafdr ikorh izklr dj bl dk;kZy; dk  
HkstsarFkk ou Hkwfe ls nh xbZ le;kof/k esa vfrøe.k gVkdj ikyu  
izfrosnu izLrqr djsaA

3- ljiap@xzke iapk;r ----- dk lwpukFkZ  
vxzssf'krA

4- Fkkuk izHkkjh Fkkuk ----- dh vksj lwpukFkZ  
vko";d dk;Zokgh gsrq vxzsf'kr

5- mi ou eaMy vf/kdkjh ----- dh vksj lwpukFkZ ,oa vko";d  
dk;Zokgh gsrq vxzsf'krA

**Oku eaMykf/kdkjh**  
**ou eaMy -----**

# FRA 2006 & ENCROACHMENT REMOVAL

- **Sec 4(5)** – no member of ST and OTFD shall be **evicted and removed** from the forest land under their occupation **till the recognition and verification process is complete.**