

# THE LEGAL REQUIREMENTS OF A DEEMED FOREST

## A Case Study

By

Vinod Pande

“Law should be so succinct that it can be carried in the pocket of the coat and it should be so simple that it can be understood by a peasant.”

-Napolean.

# Law and Forest

- **Law is made to regulate some task.  
Therefore a practical/ successful law should be based upon common sense.  
Or a law is common sense.**
- **Forestry and Science are very intimate.**
- **We cannot ignore Science in forest management.**
- **Therefore science cannot be ignored while making a law regarding a scientific entity.**

Forest is a multidisciplinary subject involving, among others, the following-

1. Economy
2. Botany
3. Zoology
4. Geography
5. Geology
6. History
7. Sociology
8. Commerce
9. Development
10. Engineering

Too many subjects

Too many interests

Too many stakeholders

**Make regulation difficult**

# Order in Gondavarman Case- 12 Dec.1996

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

- (i) Identify areas which are "forests", irrespective of whether they are so notified,
- (ii) recognised or classified under any law, and irrespective of the ownership of the land of such forest; identify areas which were earlier forests but stand degraded, denuded or cleared; and identify areas covered by plantation trees belonging to the Government and those belonging to private persons.

The word "forest": must be understood according to its dictionary meaning. This description cover all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership.

## Notification of “deemed forest”-

**21<sup>st</sup> November 2019- Govt. of Uttarakhand issued, on behalf of the Governor an office order regarding definition of “Deemed Forest”.**

1. Forest means any area notified as “forest” by existing laws of centre or state.
2. Any other area mentioned in **revenue records as forests** and **consisting of a 10ha. compact area plus a canopy density of more than 60%.**
3. Any other area other than mentioned above, with 10ha compact patch, 75% of native trees and canopy density of more than 60% will be deemed as Forest.

वन एवं पर्यावरण अनुभाग-3  
संख्या- 868/X-3-19-15(59)/2014  
देहरादून: दिनांक: 21 नवम्बर, 2019.

(83)

कार्यालय आदेश

राज्यपाल, उत्तराखण्ड राज्य हेतु क्षेत्र विशेष को "वन" (Deemed Forest) के रूप में परिभाषित किये जाने हेतु मापदंडों का निम्नानुसार निर्धारण करने की सहर्ष स्वीकृति प्रदान करते हैं :-

- (क) "वन" से उत्तराखण्ड राज्य में लागू राज्य या केन्द्र की वर्तमान विधि के अंतर्गत वन के रूप में अधिसूचित समस्त क्षेत्र अभिप्रेत है।
- (ख) उपर्युक्त प्रस्तर (क) में उल्लिखित क्षेत्र के अतिरिक्त राज्य के किसी भी राज्य रिकार्ड में "वन" के रूप में अधिसूचित या उल्लिखित वन क्षेत्र जो 10 हेक्टेयर या उससे अधिक का सघन क्षेत्र (Compact Patch) है तथा गोलाकार डेन्सिटीमीटर से मापने पर जिसका वितान घनत्व (Canopy Density) 60 प्रतिशत से अधिक हो, को ही "वन" माना जायेगा।
- (ग) उपर्युक्त प्रस्तर (क) और (ख) में अधिसूचित या उल्लिखित "वन" के अतिरिक्त किसी भी स्वामित्व के अन्य क्षेत्र जिसमें 10 (दस) हेक्टेयर या उससे अधिक के सघन क्षेत्र (Compact Patch) के साथ 75 प्रतिशत से अधिक देसी (Native) वृक्ष प्रजातियाँ हों तथा गोलाकार डेन्सिटीमीटर से मापने पर जिसका वितान घनत्व (Canopy Density) 60 प्रतिशत से अधिक हो, को "वन" माना जायेगा, किन्तु किसी भी आकार और प्रजातियों के बाग/फलों के बागानों को वन की परिभाषा से बाहर रखा जाएगा।

(अरविन्द सिंह ह्योकी)  
सचिव।

संख्या- 868 (1)/X-3-19-15(59)/2014, तददिनांकित।

प्रतिलिपि:- निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित-

1. सचिव, पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय, भारत सरकार, पर्यावरण भवन, सी0जी0ओ0, कॉम्प्लेक्स, लोदी रोड, नई दिल्ली।
2. मुख्य सचिव, उत्तराखण्ड शासन।
3. समस्त अपर मुख्य सचिव/प्रमुख सचिव/सचिव, उत्तराखण्ड शासन।
4. प्रमुख वन संरक्षक (डॉफ), उत्तराखण्ड, देहरादून।
5. समस्त विभागाध्यक्ष, उत्तराखण्ड।
6. आयुक्त, गढ़वाल/कुमायूं, उत्तराखण्ड।
7. अपर प्रमुख वन संरक्षक एवं नोडल अधिकारी वन सारवाण, इन्दिरा नगर उत्तराखण्ड, देहरादून।
8. समस्त जिलाधिकारी, उत्तराखण्ड।

# Reaction in Public

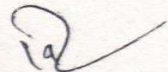
- Environment is very sensitive subject.
  - ✓ The news was flashed in newspapers.
  - ✓ Then social media groups.
  - ✓ More vocal were “activists” and Retired Forest officers.
- “Activists” tried to convince the people that now the Government is going to acquire your agricultural lands. Meetings conducted and press notes issued.
- The retired forest officers and some conservationist were opposing on the ground that the scattered patches will cease to be forest or protected. ( in fact both the groups claiming exactly opposite )
- **A PIL (PIL 209/2019) was filed on 02.12.2019, in person.**

PRAYER

It is, therefore, Most Respectfully prayed that this Hon'ble Court may graciously be pleased to:-

- a. Issue a suitable writ, order or direction to set aside the impugned office order no.868/x-3-19-15(59)/2014 issued by the respondent no.4 whereby modified the legal definition of the deemed forest in contravention of the judgment passed by the Hon'ble Apex Court in the matter of T.N. Godavarman Thirumulkpad Vs. Union of India reported in AIR 1997 SC 1228.
- b. Issue a writ, order or direction in the nature of mandamus directing the respondent no. 2 to constitute an expert committee to identify areas which are forest, irrespective of whether they are so notified, recognized or classified under any law and further to identify areas which were earlier forest but stand degraded, denuded or cleared.
- c. Issue a writ, order or direction in the nature of mandamus directing the respondent no. 2 to make appropriate rules for conservation of unclassed forest areas.
- d. Issue a suitable writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of this case.
- e. Award the cost of writ petition to the petitioners.

Dated: 30/11/2019

  
(Vinod Kumar Pande)  
Petitioner (In Person)

# Prayer

1. To set aside the order dated 21<sup>st</sup> November 2019.
2. Constitute an expert committee to identify areas which are forests or respective of whether they are so notified, recognized, or classified under any law and identify areas which were earlier forests but stand degraded, denuded or cleared.

# Making Legislation Regarding Unidentified Forest areas

- As per ISFR data, in Uttarakhand, at least 4.21% of the forest or 1521sq.Km. area is un-classed forests.
- However “forest” lands without trees also needs such regulation.
- Therefore before making/ applying a law we need to define various important terms relating to it.

# Basis For A Law For Un-classed forests

- ✓ It was a mandate of Supreme Court of India.
- ✓ We live an era of unprecedented Environmental change.
- ✓ Internationally and nationally unprecedented global actions.
- ✓ We have set ambitious goals for mitigation of climate change/restoration of ecology.
- ✓ We fail to achieve these goals if the **appropriate concepts and definitions of forests is not applied in making regulations.**

# Forests are viewed, defined and assessed and valued through different lenses-

- Source of timber
- Eco-system composed of trees along with myriad forms of bio-diversity
- Home for indigenous people
- Repository for carbon storage
- Source of multiple eco-system services
- Socio-ecological system
- Some of the above or
- All of the above

# The PIL in deemed forest order-

1. 2 other persons also filed PIL afterwards.
2. On 5<sup>th</sup> Dec. 2019, MOEF rejected the order.
3. On 10<sup>th</sup> Dec. 2019, the operation of the order was Stayed.
4. On 19<sup>th</sup> Feb, 2020 Uttarakhand Govt. revised the order- mainly 10ha was substituted by 5 ha.
5. On 28.02.2020, Hon'ble High Court has passed an interim order staying the "operation and effect" of this order also.

## Main issue of PIL

1. The order is in **contravention** to Gondavarman judgment of 12<sup>th</sup> Dec, 1996.

*“The word “forest” must be understood in its dictionary meaning”.*

*“It will not only include the dictionary meaning but also any area recorded as forest in Government records irrespective of ownership”.*

Gondavarman is significant because-

Earlier there was no LEGAL interpretation/ significance of the the word “forest”.

despite-

Sec.2 of FCA 1980- **“any forest land”** but it was ignored by **all Governments.**

# DEFICIENCIES IN THE NOTIFICATION OF DEEMED FOREST-

## LEGAL INFIRMITIES

### (a) Constitution- Article-

**Directive principle- 48A-** Protection and improvement of environment and safeguarding of forest and wildlife.(1976)

**Fundamental Duties-51A (g)-** To protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creature.

**Article 21 (Right to life)-** It extends to natural resources such as rivers, forests, sea shores, air etc. for the purpose of protecting the eco system. (MC Mehta v/s Kamal Nath, (1987) 1ssc388)

**Article 21 –** Component of right to life- right to food, water, decent environment, education, medical care and shelter (Chameli Singh v/s State of UP),(1996) 2ssc549.

**Art21 includes life with dignity.**

**(b) FCA 1980 –** “any forest land”

**(c) Gondavarman case 1996-** “dictionary meaning”

Forest policy also advocates in increasing the forests.

## **In the light of these deficiencies the para 5 of Gondavarman judgment becomes significant**

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

- (i) Identify areas which are "forests", irrespective of whether they are so notified, recognised or classified under any law, and irrespective of the ownership of the land of such forest;
- (ii) identify areas which were earlier forests but stand degraded, denuded or cleared; and (iii) identify areas covered by plantation trees belonging to the Government and those belonging to private persons.

- ✓ **The forest records are not up to date.**
- ✓ **Many forest areas the legal formalities are yet not fulfilled.**
- ✓ **Many areas are de-reserved, many are included.**

## DATA-

Forest Department is becoming data deficient due to not updating data.

- (a) Many protected forest were declared as protected without proper legal formalities. 1893 notification- *benap* land.
- (b) Many reserved forests were declared as reserved without sec.20 of IFA 1927.
- (c) Example- Pithoragarh WP (2011-21), page 228-229 1.17-
  1. Many RF were transferred for non-forestry purpose, legal status still RF.
  2. Munsyari Khalia RF 40.5ha. was transferred to Horticulture deptt 1951, similarly in Didihat and many areas.
  3. Many patches were given in lease before 1980.

➤ **The Notification / order regarding “Deemed forest” has based the parameters from the ISFR report.**

# *ISFR data*

We are describing the forest data on the basis of ISFR data

Nationally as well as Internationally for providing information to UNCCC, FAO, CBD etc.

ISFR data is released biennially. The latest is 2019 report.

It is based upon two variables-

1. Canopy density
2. Area

1. Canopy density-

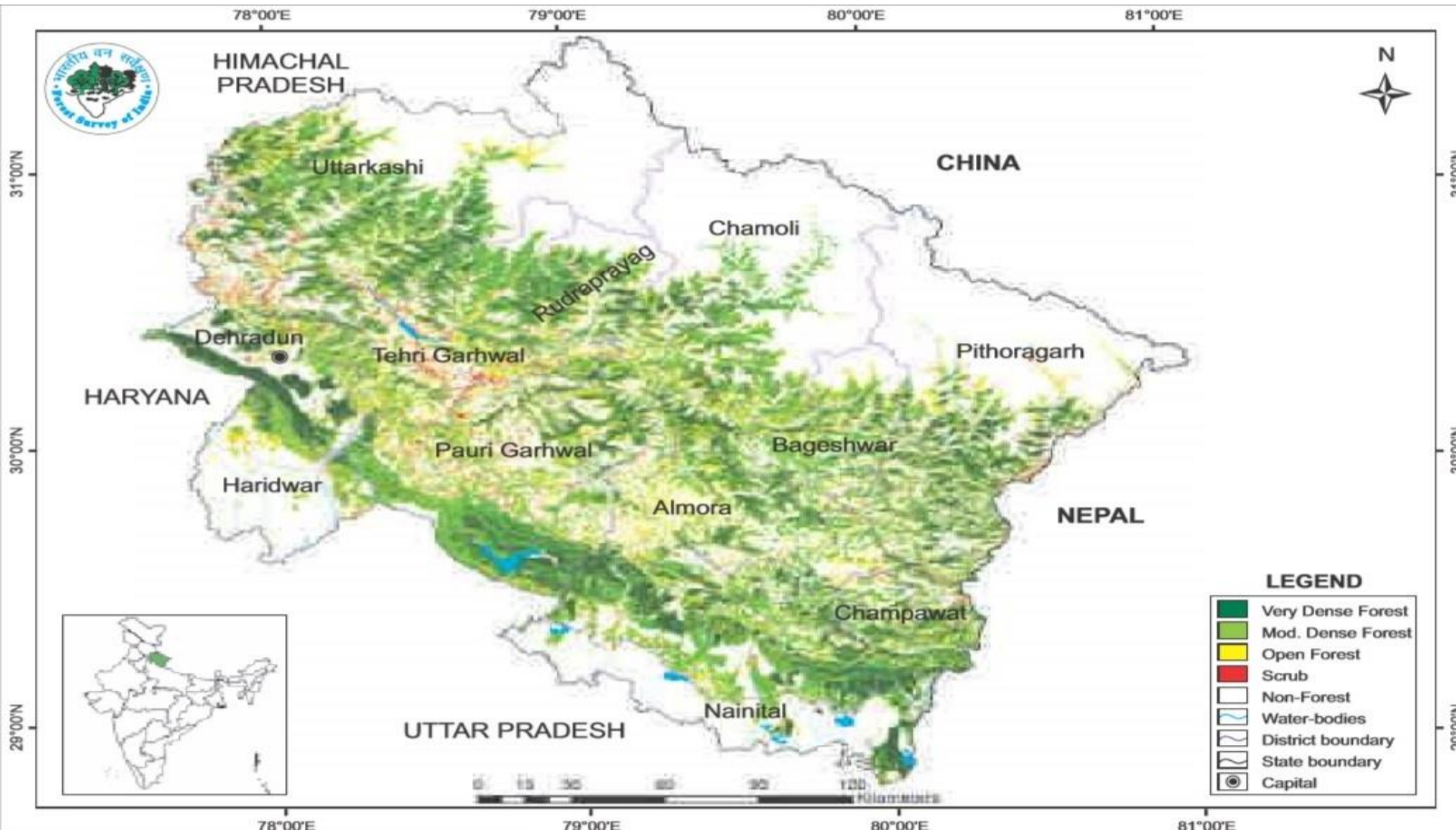
very dense forest	(VDF)	70% or above,
moderately dense forest	(MDF)	40-70%
open forest	(OF)	10-40%

below 10% canopy density is scrub.

2. Area- above 1 ha.

The report is based on satellite images, however it is claimed that ground truthing is carried out.

Limitation- any area covered with orchard, banana plantations, sugar cane , even by dense weed, it may give an impression of tree canopy.



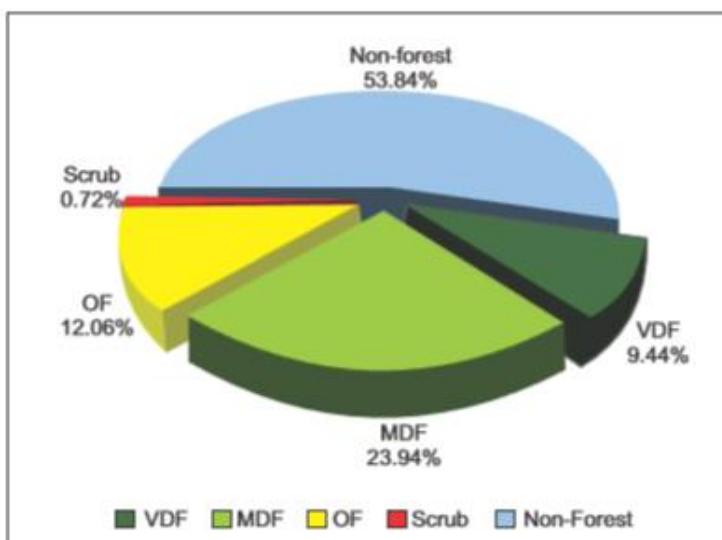
### 11.29.2 Forest Cover

Based on the interpretation of IRS Resourcesat-2 LISS III satellite data of the period Oct 2017 to Oct 2018, the Forest Cover in the State is 24,303.04 sq km which is 45.44 % of the State's geographical area. In terms of forest canopy density classes, the State has 5,046.76 sq km under Very Dense Forest (VDF), 12,805.24 sq km under Moderately Dense Forest (MDF) and 6,451.04 sq km under Open Forest (OF). Forest Cover in the State has increased by 8.04 sq km as compared to the previous assessment reported in ISFR 2017.

**TABLE 11.29.2** Forest Cover of Uttarakhand

(in sq. km)		
Class	Area	% of GA
VDF	5,046.76	9.44
MDF	12,805.24	23.94
OF	6,451.04	12.06
<b>Total</b>	<b>24,303.04</b>	<b>45.44</b>
Scrub	383.17	0.72

**FIGURE 11.29.1** Forest Cover of Uttarakhand



#### 11.29.2.1 Forest Cover inside and outside Recorded Forest Area (or Green Wash)

The State has reported extent of recorded forest area (RFA) 38,000 sq km which is 71.05% of its geographical area. The reserved, protected and unclassified forests are 69.86%, 26.01% and 4.13% of the recorded forest area in the State respectively. However as the digitized boundary of recorded forest area from the state covers 25,494.46 sq km and the analysis of forest cover inside and outside this area is given below.

# ??? Question Marks On ISFR parameters

- What about below 1 ha. Area? Satellite constraints!
- Why canopy density? While we are in the biodiversity regime.
- Which forest is more healthy? And vice versa. E.g.-  
Cheena Peak's western aspect. Unhealthy or natural
- Bugyal the alpine meadows, having no canopy.
- Why is there no ground data?

# Canopy Density

1. Subjective.
2. Season effect.
3. Species difference.
4. Disease impact etc
5. Maintenance.

- The Data is doubtful therefore the information is doubtful.
- And the order?
- It is difficult to defend, particularly when contested legally.

# STATE AMENDMENT UTTAR PRADESH

## 1|CHAPTER V-A

### Of the Control over Forests of Claimants

**38-A. Definitions.**—In this Chapter, unless there is anything repugnant in the subject or context,—

- (a) "Claimant" as respects any land means a 'person claiming to be entitled to the land or any interest therein acquired, owned, settled or possessed or purported to have been acquired, owned, settled or possessed whether under, through or by any lease, or licence executed prior to the commencement of the U.P. Zamindari Abolition and Land Reforms Act, 1950, or under and in accordance with any provision of any enactment including the said Act;
- <sup>2</sup>[(b) "forest" means a tract of land covered with trees, shrubs, bushes or woody vegetation whether of natural growth or planted by human agency, and existing or being maintained with or without human effort, or, such tract of land on which such growth is likely to have an effect on the supply of timber, fuel, forest produce, of grazing facilities, or on climate, stream-flow, protection of land from erosion, or other such matters and shall include—

## INDIAN FOREST ACT, 1927

- (i) land covered with stumps of trees of a forest;
  - (ii) land which is part of a forest or lies within it or was part of a forest or was lying within a forest on the first day of July, 1952;
  - (iii) such pasture land, water-logged or non-cultivable land, lying within, or adjacent to, a forest as may be declared to be a forest by the State Government;
- <sup>1</sup>[(c) "forest land" means a land covered by forest or intended to be utilized as a forest; and
- (d) "prescribed" means prescribed by rules made under this Act.)

## IFA1927-38A (1960)

- (b) '*Forest*' means a tract of land covered with trees, shrubs, bushes or woody vegetation whether of natural growth or planted by human agency, and existing or being maintained with or without human effort, or such tract or land on which such growth is likely to have an effect on the supply of timber, fuel, forest produce, or grazing facilities, or on climate, stream-flow, protection of land from erosion; or other such matters, and shall include –
- i. land covered with stumps of trees of a forest;
  - ii. land which is part of a forest or was lying within a forest on the first day of July, 1952 ;
  - iii. such pasture land, waterlogged or cultivable or non-cultivable land, lying within, or adjacent to a forest, as may be declared to be a forest by the State Government;

# The Related Issues- Jiiling Estate dispute

- Violation of Forest Conservation Act 1980.
- Litigation in NGT.
- Appeal in Supreme Court of India.
- Direction from SC-
  - Court Commissioner's Report
  - The area is a dense forest of canopy density more than 40%. But the state has not defined the Deemed Forest.
  - Define the Deemed Forest.

- The matter is still pending the High Court.
- The Main contender are from Jiiling estate.
- One who is a builder and has purchased the land and developing it.
- The other is an “activist”, opposing the lower limit of the definition i.e. 5 ha and 40% canopy density.

“Views and definitions of forests need to adapt to changing circumstances imposed by climate change, government policies, **new scientific knowledge** or international market forces.”

- Robin L Chazdon (When is a forest a forest)

## Conclusion

- Law making is not easy
- Seriousness from Government. Matter is pending since 1996
- Implementation
- Judicial impact assessment

Courts cannot make laws.