

# **CHAPTER XV**

## **FORESTS**

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**CHAPTER XV**  
**FORESTS**

## 1. INTRODUCTION

15.1.01 The National Forest Policy lays down that out of 329 million hectares of geographical area in India, at least one-third, i.e., about 100 million hectares should be covered by forests. Studies made by the National Remote Sensing Agency have revealed that in three years, 1972—75, forest area actually covered was only 55.5 million hectares (16.9 percent of the geographical area). The extent of forest-cover declined further and was only 46 million hectares in 1980—82 (14.10 percent of the geographical area). Thus, over a period of 7 years, the reduction in forest area was of the order of 9 million hectares, i.e., about 2.8 percent of the geographical area of the country. This rapid depletion of forest resources is a matter of utmost concern for the nation.

## 2. CONSTITUTIONAL ARRANGEMENTS

15.2.01 The subject 'Forest' was originally enumerated in the State List. The Forty-second Amendment to the Constitution (1976) transferred the subject from the State List to the Concurrent List. (Entry 17A of List III).

15.2.02 The Forest (Conservation) Act, 1980 (Annexure XV-1) was enacted by Parliament to prevent further indiscriminate deforestation. Its 'Objects and Reasons' stated, *inter-alia* that “Deforestation causes ecological imbalance and leads to environmental deterioration. Deforestation had been taking place on a large scale in the country and it has caused wide-spread concern”.

15.2.03 Section 2 of the Act provides: “Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing—

- (i) that any reserved forest (within the meaning of the expression “reserved forest” in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;
- (ii) that any forest land or any portion thereof may be used for any non-forest purpose”.

The Explanation to Section 2 states that for the purpose of that section 'non-forest purpose' means “breaking up or clearing of any forest land or portion thereof for any purpose other than re-afforestation”. There is no delegation to the States under the Act and all proposals touching Forests have now to be submitted for approval of the Union Government.

## 3. COMPLAINTS OF THE STATES

15.3.01 The main complaint of the State Governments relates to the restrictions imposed under Section 2 of the Forests (Conservation) Act on the executive powers of State Governments. Prior to the Forest (Conservation) Act, 1980, the State Governments were totally free to determine all matters relating to deforestation, but the Act of 1980 resulted in total centralisation. This has provoked a State Government to observe that “in the matter of dealing with forests, we seem to be swinging from one extreme to another”. Most of the State Governments have drawn attention to the difficulties faced by them in the execution of vital, urgent development projects like irrigation and power projects owing to delays in approval of deforestation proposals involved in these projects. They point out that even small schemes get delayed as the States have no powers to approve deforestation to any extent.

15.3.02 Except for two State Governments, there has been no criticism in regard to the transfer of the subject 'Forests' to the Concurrent List. One of them has argued that since this change has been made, no big improvement in respect of planting, care, conservation and development of forests has been observed and the steady loss of the forest cover continues to be “a serious national problem”. According to this State Government, the real solution lies in creating a strong public awareness about the role of forests in the country's economy and ecology as well as taking effective measures against unauthorised exploitation of forests. According to it, afforestation is eminently suitable for utilisation of voluntary labour and for useful deployment of manpower under the special employment programmes. The other State Government has stated that there is no justification for having this Entry in the Concurrent List. Both the State Governments have suggested that the subject 'Forests' should be transferred back to the State List by restoring Entry 19 which was deleted by the Forty-second Amendment.

15.3.03 It is an incontrovertible fact that deforestation in India has been going on at an alarming rate. Even one of the State Governments which has asked for the transposition of Entry 17A back to the state List, concedes that the loss of the forest cover continues to be “a serious national problem”. It inevitably follows from this admission that conservation of forests or maintenance and adequate development of forest cover is not a matter of exclusive State concern. Therefore, this matter cannot be put back in the State List to remain a matter of exclusive State jurisdiction. It is obviously a matter of common and concurrent interest to the Union and the States. In fact, the Union Legislature has occupied only one aspect of this concurrent field *viz.*, 'conservation of forests' by enacting the Forest (Conservation) Act, 1980. Except to the extent covered by this Act, the legislative and executive competence with respect to the remaining aspects of the subject 'Forests', remains with the States. The Forest (Conservation) Act leaves the planting, development, extension and care of forests to the States. Even exploitation of the reserve forests in a scientific manner and appropriation of the income from those forests is with the States. If the States are unwilling or unable to extend the forestation or develop the forests and usefully deploy the manpower under the special employment programmes, that is no argument for transfer of 'forests' back to List II. It rather cuts the other way. We have discussed this issue in detail in the Chapter on 'Legislative Relations'.

15.3.04 Suggestions from the State to overcome the difficulties being faced by them can be summarised as follows:

- (i) A measure of delegation to the States. One State has suggested delegation of powers by relaxation of provisions of Section 2 of the Act upto 10 hectares to the State Governments.
- (ii) Provision for blanket clearance for projects like construction of power transmission lines where damage to forest areas is minimal.
- (iii) Major irrigation and power projects are scrutinised by the various agencies like Central Water Commission, Central Electricity Authority, etc. Thereafter they have to be considered by the concerned Departments and the Planning Commission before final approval is given. Scrutiny of the proposals relating to Forests should be carried out by the Ministry of Environment and Forests for these major projects at the same time, so that once a project has been examined from all aspects, and approved and cleared, the State Government need not approach the Union Government again for clearance under Section 2 of the Act.

15.3.05 The Ministry of Environment, Forests and Wildlife, in their reply, have pointed out that the procedure for approval under Section 2 of the Act has since been streamlined and most of the projects are now cleared expeditiously. They have further asserted that delay in giving clearance under Section 2 is largely due to States' furnishing incomplete information.

15.3.06 The reply from the Ministry of Environment, Forests and Wildlife of the Government of India also mentions that, “a Working Group was constituted to examine and suggest simplification of the procedure under the aforesaid Act.....As recommended by the Working Group detailed guidelines have again been issued to all States and Union Territories. The cases relating to surveys and investigation, in forest areas, which do not involve cutting of trees are not required to be referred to the Central Government. Further, the procedure for laying of transmission lines or pipes for water supply, which do not involve felling of trees, has been simplified. However, it has been noticed that in spite of clear guidelines, correct and complete proposals are very often not submitted by the States”.

#### 4. ANALYSIS OF VIEWS

15.4.01 We have considered the criticism and suggestions of the State Governments in the light of the above. Only two State Governments want that 'Forests' should be transferred back to the State List. We have already noted that the subject 'Forests' was placed in the Concurrent List by the Constitution (Forty-second Amendment) Act, 1976. The Constitution (Forty-fourth Amendment) Act, 1978, which in many respects nullified the effect of the Forty-second Amendment, was introduced after a general agreement had been reached among different political parties. It is pertinent that it did not retransfer 'Forests' From the Concurrent to the State List.

15.4.02 The Ministry of Environment, Forests and Wildlife has drawn attention to the fact that during the period 1951-52 to 1979-80, 4.3 million hectares of forest land was officially diverted to non-forest purposes. During the seven years,

1975-82. about nine million hectares of forests were lost. Obviously, in the period immediately preceding the enforcement of the Forest (Conservation) Act, 1980, large scale denudation of forests took place. Pressures on forest area due to increasing population are well known. Availability of fire-wood falls far short of the demand. It has been pointed out by the Ministry of Environment, Forests and Wildlife that in 1978, guidelines were issued by Government of India laying down that all proposals involving use of forest land exceeding 10 hectares, should be referred to them for prior concurrence. Unfortunately, it was observed only in breach. The Forest (Conservation) Act, 1980 has enabled the Government of India to drastically reduce the diversion of forest lands to non-forest uses.

15.4.03 Today, there is much greater appreciation of the need for a countrywide approach in regard to forest conservation measures. In many parts of the country the adverse consequences of destruction of forests are already being felt. We are, therefore, of the view that it would be a retrograde step to transfer back the subject of 'Forests' to the State List.

15.4.04 The main complaint of the State Governments, as already noted, is in respect of delay in clearance of projects referred to the Union Government under Section 2 of the Act. Some State Governments have given specific instances of delays. Five of the States have pointed out the difficulties arising out of total centralisation of authority under Section 2 of the Act. Absence of any delegation to the States, according to them, has resulted in a situation where even small works in forest areas, some of which may be urgent in nature, frequently get held up.

15.4.05 On the other hand, according to the Ministry of Environment, Forests and Wildlife of the Government of India, the main reasons for delay are:

- (i) Incomplete proposals;
- (ii) Lack of coordination between different Departments of the States/Union Territories and their Forest Department;
- (iii) Absence of monitoring of cases by States Union Territories; and
- (iv) Non-adherence to time-limits by States/Union Territories at their level (2 months for processing and 3 weeks for furnishing clarification additional information) sought by Union Government.

15.4.06 The Ministry of Environment, Forests and Wildlife has in their reply stated that since the enforcement of the Act, a little more than two thousand proposals for diversion of forest land to non-forest purposes were received by the Department upto the end of February, 1986. Of these, only 71 cases are pending, out of which only 13 are pending for more than two months. The information also shows that a large number of cases (871 out of 2068 were treated as 'closed' because of the incomplete information given by the State Governments. There are only four cases pending for more than six months.

15.4.07 There may be several reasons for treating cases referred under Section 2 of the 1980 Act as 'closed'. It could be after full consideration of all the issues involved or it could be due to lack of follow-up action from the States. However, it is important to ensure that no genuine cases of development work are held up.

15.4.08 On the other hand, four State Governments have given us the details of long pending cases (for more than 6 months) under Section 2 of the Forest (Conservation) Act. In one State, the number appears to be unusually large. About 205 cases out of 271 referred to under Section 2 of the Act are stated to be pending. This apart, the practice of disposing off an unusually large number of such cases, not on merits but as 'closed' for want of complete information from the State Governments, is not a desirable course of action. Certainly, it is not conducive to smooth and harmonious working of Union-State relations. We do not intend to go into the merits of these cases. Our purpose in referring to this information is to highlight the point that the expeditious clearance of projects, is being plagued by procedural problems between the Union and State Governments. Mere shifting of responsibility is not going to give results. The sooner these problems are sorted out the better it will be for the country as a whole. It will surely expedite project implementation.

15.4.09 In view of a large number of cases having been 'closed', there is need for reviewing them to identify the reasons. We recommend that a senior officer of the Ministry of Environment, Forests and wildlife should examine all such cases which have been disposed off as 'closed', identify the reasons and

inform the States. Cases which are required to be followed up by the States should be reopened and decided on their merit after discussion with the representatives of the concerned State Governments.

15.4.10 We note that the Ministry of Environment, Forests and Wildlife, has issued certain administrative guidelines to the State Governments in regard to the submission of proposals for approval of Government of India under Section 2 of the Act. We have also been informed that certain time-limits have been fixed for expediting disposal of such proposals. States have been asked to process the proposals within two months. Three weeks have been allowed for furnishing clarifications—additional information elicited by the Government of India. These are welcome steps but are not adequate. It would be advantageous if a bi-annual review of pending cases is carried out in consultation with the State Governments. Such a step would eliminate unnecessary correspondance and make for speedy disposal of cases. States could be informed in advance about the documents and information required. Since the review will be bi-annual, the states will get ample time to respond to the queries.

15.4.11 We note that in the existing arrangements, there is no delegation at all to the States in regard to diversion of reserve forest areas to non-forest uses or inter-change of forest and non-forest areas. As a result, a large number of proposals have necessarily to be sent to the Government of India. The question for consideration is whether any delegation is necessary and desirable in this regard. States have expressed unhappiness over the fact that even for every minor schemes like sinking of a well or building a small school in a tribal village involving diversion or inter-change of very small piece of reserve forest land to such non-forest purposes, proposals have to travel all the way from the Panchayat/Block level to the Government of India. The adverse impact on local development activities can well be imagined.

15.4.12 We are, therefore, of the view that certain amount of delegation to the States is necessary.

15.4.13 It has been argued that all these years the States were free to de-reserve forest lands and extensive damage has been done and the only way to deal with the situation is for the Union Government to assume all powers in this regard. It is necessary in this connection to distinguish between illicit felling of trees and dereservation or interchange by the States. The former requires to be checked with utmost severity. This calls for a high degree of cooperation and coordination between the Union and the States. The centralisation of powers in regard to dereservation of forests will not yield the desired results in controlling illicit felling. All States are agreed on the need to conserve our forests. Many experts and eminent persons, who appeared before us, also emphasised the need to conserve the forest resources. States have been entrusted with a wide range of functions under the Forest Act, 1927. Indeed, States are responsible for all matters relating to forests and only in regard to diversion of reserved forests, they can not approve any proposal except with the prior consent of the Union Government. States are, however, primarily responsible for the upkeep of forests, prevention of illicit felling and taking of punitive action against the offenders and the like. We have already noted that in 1978, prior to the passing of the Forest (Conservation) Act, States had been requested to send all proposals involving dereservation of 10 hectares and more to the Government of India for clearance.

15.4.14 We recommend that powers should be delegated to the States to divert, to a small extent, say not exceeding 5 hectares of reserved forest lands which are urgently required for specific public purposes.

15.4.15 However, freedom to act should not be interpreted liberally. We have already referred to the depredations in the forests and the massive depletion of forest resources due to dereservation and illegal felling. The Union Government and all the State Governments have spoken unequivocally in favour of conservation of forests. The State Governments should, therefore, exercise utmost caution in the exercise of the powers recommended to be delegated to them. A thorough technical scrutiny of the proposals by the Forest Department of the State Governments is a must and it should, among other things, ensure that only the minimum area required is permitted to be deforested. A positive approach to the problem is necessary. The States should as a rule arrange for afforestation of an equivalent area. Cases which are not of urgent nature or involve dereservation of an area more than 5 hectares will naturally be processed for clearance of the Department of Environment and Forests as per existing provisions. Our observation about the need to afforest equal area affected by deforestation will apply equally to such cases also. We have already suggested a bi-annual review cases pending with Government of India to be held jointly. This opportunity should be made use of to review the action taken by the States under the delegated authority and assess to what extent the afforestation of equivalent areas has been effectively carried out.

15.4.16 Conservation and improvement of forest resources is of utmost importance to the nation. The fast growing demand for timber and other forest produce requires a systematic and multi-pronged approach to sustain continuous supply and simultaneously preserve and improve the ecological balance. Many of the required elements of policy already find place in the Social Forestry Policy. It is obvious that a concerted action by both the Union and the States is called for in implementing them. We would like to emphasise that along with the restrictions on indiscriminate felling of trees and use of forest land, the positive aspects involving, *inter alia*, schemes of afforestation and development of substitutes for forest produce are equally important. In this connection, we have taken note of a study on 'Forestry and the law' conducted by Shri Chhatrapati Singh at the Indian Law Institute, New Delhi (December, 1986) which has highlighted that at the field level a more systematic and purposive implementation of forestry policy is called for. For this, the observed incompatibility and anomalies between legislations and orders passed at various levels need to be removed. Among other things, the above mentioned study has emphasised that the Acts should rationalise planting and felling of trees on private land; rationalise transit rules wherever necessary, especially in areas away from forests; permit purposive allotments of land, such as, leasing out denuded forest lands to private individuals or groups; a better understanding of the intent of the Forest Conservation Act, 1980 in the guidelines of Government of India, etc.

Without embarking upon an indepth appraisal of these suggestions, on merits, we feel it necessary to point out that since some of them or their aspects directly impinge upon matters in the State List, their successful implementation depends, in no small measure, on adoption of a procedure based on close consensus and cooperation between the Union and the States.

15.4.17 The next suggestion for consideration is that clearances under Section 2 of the Act should be given along with approvals of other agencies in case of major projects. States have cited instances of major projects which though cleared by the Government of India, have yet been held up for want of clearance under Section 2 of the Forest Act. Such situations can be avoided if a comprehensive survey of all collateral aspects and incidental needs and likely affects on the forests and ecology of the site and surroundings of a contemplated project, is made, considered, coordinated and approved at the time of project clearance by the Government of India.

15.4.18 We recommend that clearance under Section 2 of the Forest (Conservation) Act should be given as far as possible simultaneously with the project clearance by the Government of India.

15.4.19 A lot of effort and time would be saved if the Central agencies are associated with the formulation of large projects schemes involving reserve forests, right from the beginning, so that adequate measures not only to compensate but also to improve forest resources can be built into them, *ab initio*.

## 5. RECOMMENDATIONS

15.5.01 In view of a large number of cases referred under Section 2 of the Forest (Conservation) Act, 1980 having been 'closed' there is need for reviewing them to identify the reasons. A senior officer of the Ministry of Environment, Forests and Wildlife should examine all such cases which have been disposed off as 'closed', identify the reasons and inform the States. Cases which are required to be followed by the States should be reopened and decided on their merits after discussion with the representatives of the concerned State Governments.

(Para 15.4.09)

15.5.02 Powers should be delegated to the States to divert, to a small extent, say not exceeding 5 hectares, of reserved forest lands, which are urgently required for specific public purposes.

(Para 15.4.14)

15.5.03 Conservation and improvement of forest resources is of utmost importance to the nation. A concerted action by both the Union and the States is imperative. At the same time, it is necessary ensure that development efforts are not hampered. A bi-annual review of pending cases should be carried out in consultation with each State Government concerned. This occasion should also be utilised for reviewing the sanctions by virtue of powers recommended by us, to be delegated to them.

(Paras 15.4.15 and 15.4.16)

15.5.04 In the case of large projects involving significant extent of submersion of reserved forests or their diversion to non-forest uses, clearance under Section 2 of the Forest (Conservation) Act, 1980 should be given as far as possible simultaneously with the project clearance by the Union Government. Agencies of the Union Government may be associated, right from the beginning, with the formulation of the project so that adequate measures not only to compensate for the loss of reserved forests but also to improve forest resources, can be built into them *ab initio*.

(Paras 15.4.17 to 15.4.19)

ANNEXURE XV-I

THE FOREST (CONSERVATION) ACT, 1980

No. 69 OF 1980  
(27th December, 1980)

An Act to provide for the conservation of forests and for matters connected therewith or ancillary or incidental thereto.

BE it enacted by Parliament in the Thirty-first year of the Republic of India as follows:

1. **Short title, extent and commencement.**—(1) This Act may be called the Forest (Conservation) Act 1980.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall be deemed to have come into force on the 25th day of October, 1980.

2. **Restriction on the dereservation of forest for non-forest purpose.**— Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing—

(i) that any reserved forest (within the meaning of the expression “reserved forest” in any law for the time being in force in the State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose.

*Explanation*—For the purposes of this section “non-forest purpose” means breaking up or clearing of any forest land or portion thereof for any purpose other than reforestation.

3. **Constitution of Advisory Committee.**—The Central Government may constitute a committee consisting of such number of persons as it may deem fit to advise that Government with regard to—

(i) the grant of approval under Section 2; and

(ii) any other matter connected with the conservation of forests which may be referred to it by the Central Government.

4. **Power to make rules.**—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

5. (1) The Forest (Conservation) Ordinance, 1980 (17 of 1980) is hereby repealed.

(2) **Repeal and saving**—Notwithstanding such repeal, anything done or any action taken under the provisions of the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.