

**GOVERNMENT OF INDIA  
ENVIRONMENT AND FORESTS  
LOK SABHA**

UNSTARRED QUESTION NO:1650

ANSWERED ON:19.07.2004

LEASE OF FOREST LAND

Ahir Shri Hansraj Gangaram;Bisen Shri Gauri Shankar Chaturbhuj

**Will the Minister of ENVIRONMENT AND FORESTS be pleased to state:**

- (a) whether any scheme has been formulated to provide the lease deed to the persons including Scheduled Tribes who have encroached upon the forest land for agricultural and other purposes;
- (b) if so, the details thereof alongwith criteria fixed in this regard;
- (c) whether certain State Governments have sent any proposals to the Union Government to provide lease deed to such persons; and
- (d) if so, the details thereof and the action taken thereon, State-wise?

**Answer**

MINISTER OF STATE IN THE MINISTRY OF ENVIRONMENT AND FORESTS (SHRI NAMO NARAIN MEENA)

(a) & (b) No Sir. Encroachment is an offence under Section 26 of the Indian Forest Act, 1927. These have to be evicted from the forest lands. However, Central Government had issued following two separate guidelines under Forest (Conservation) Act, 1980 to various State / UT Governments on 18th September, 1990 :

(i) Guidelines for regularisation of pre-1980 eligible encroachments on forest lands as a one time dispensation keeping in view the fact that the various State / UT Governments in some cases had taken a decision to regularize certain categories of encroachments but could not implement the decision as Forest (Conservation) Act, 1980 came into effect. This relaxation is not applicable to encroachments that took place after 24-10-1980. The detailed guidelines/criteria for regularisation of encroachments are appended as Annexure-I.

(ii) Guidelines for settlement of disputed claims of the tribals living in forests by constituting a committee involving a Revenue Officer, concerned Divisional Forest Officer and a representative of the Tribal Welfare Department. These guidelines have been appended as Annexure-II, which provide the criteria fixed for settlement of such disputed claims. There was no progress in this respect in any State / Union Territory over the years. Therefore, the Central Government re-iterated the same guidelines on 30-10-2002, to settle the tribal rights in a time bound manner, but again there was no progress. Central Government has issued fresh guidelines to the State / UT Governments on 5-2-2004, appended at Annexure-III, for regularization of tribal rights and settlement of their disputed claims. Implementation of these guidelines has been stayed by the Supreme Court on 23-2-2004 in IA No.1126 in Writ Petition (C) No. 202 of 1995.

(c) & (d) Madhya Pradesh, Karnataka, Arunachal Pradesh, Orissa, Gujarat, Kerala, Tripura and Andaman & Nicobar Islands had submitted proposals for regularisation of encroachments on forest land in the past. In accordance with the guidelines issued for regularisation of encroachments on 18th September, 1990, the Central Government found pre-1980 encroachments over 3.66 lakh hectare of forest land eligible for regularisation. These cases have already been approved by the Central Government for regularization. The State-wise details of regularization of encroachments on forest lands are given in Annexure-IV. Supreme Court has restrained the Union Government from further regularization of encroachments over forest land vide their order dated 23-11-2001 in IA No.703 in Writ Petition (C) No. 202 of 1995.

Annexure-I

ANNEXURE REFERRED TO IN THE REPLY TO PARTS (a) & (b) OF THE LOK SABHA UN-STARRED QUESTION NO. 1650 BY SHRI GAURISHANKAR CHATURBHUIJ BISEN AND SHRI HANSRAJ G. AHIR REGARDING "LEASE OF FOREST LAND" DUE FOR REPLY ON 19-07-2004.

REGULARISATION OF ENCROACHMENTS ON FOREST LAND

Encroachment of forest land for cultivation and other purposes continues to be the most pernicious practice endangering forest resources throughout the country. Statistical information compiled by Ministry of Agriculture during early 1980s revealed that nearly 7 lakh hectares of forest land was under encroachment in the country about a decade back. This is despite the fact that prior to 1980, a number of States had regularised such encroachments periodically and approximately 43 lakh hectares of forest land was diverted for various purposes between 1951 and 1980, more than half of it for agriculture. The decisions of the State Government to regularise encroachments from time to time seem to have acted as strong inducement for further encroachments in forest areas and the problem

remained as elusive as ever for want of effective and concerted drive against this evil practice.

2 The National Forest Policy, 1988 has also observed the increasing trend in encroachments on forest land and stated that these should not be regularised. Implementation of this pronouncement has been examined by this Ministry keeping in view the constraints of various State Governments some of whom have expressed that they stand committed to regularise encroachments of a period prior to 1980. The issue figured prominently in the Conference of the Forest Ministers held in May, 1989 and was later examined by an inter-Ministerial Committee, set up by this Ministry in consultation with the representatives of some of the States. Keeping in view the recommendations of the Forest Ministers' Conference and the committee referred to above, and with due approval of the competent authority, the following measures are suggested for review of the old encroachments and effective implementation of the pronouncement made in this regard in the National Forest Policy, 1988.

2.1 All the cases of subsisting encroachments where the State Governments stand committed to regularise on account of past commitments may be submitted to this Ministry for seeking prior approval under the Forest (Conservation) Act, 1980. Such proposals should invariably conform to the criteria given below:

### 1. PRE-1980 ENCROACHMENTS WHERE THE STATE GOVERNMENT HAD TAKEN A DECISION BEFORE ENACTMENT OF THE FOREST (CONSERVATION) ACT, 1980, TO REGULARIZE 'ELIGIBLE' CATEGORY OF ENCROACHMENTS.

1.1 Such cases are those where the State Governments had evolved certain eligibility criteria in accordance with local needs and conditions and had taken a decision to regularise such encroachments but could not implement their decision either wholly or partially before the enactment of the Forest (Conservation) Act, on 25.10.80.

1.2 All such cases should be individually reviewed. For this purpose the State Government may appoint a joint team of the Revenue, Forest and Tribal Welfare Department for this work and complete it as a time-bound programme.

1.3 In case where proposals are yet to be formulated, the final picture after taking into considerations all the stipulations specified here may be placed before the concerned Gaon Sabha with a view to avoid disputes in future.

1.4 All encroached lands proposed for regularisation should be properly surveyed.

1.5 Encroachments proposed to be regularised must have taken place before 25.10.1980. This must be ascertained from the First Offence Report issued under the relevant Forest Act at that point of time.

1.6 Encroachments must subsist on the field and the encroached land must be under continuous possession of the encroachers.

1.7 The encroacher must be eligible to avail the benefits of regularisation as per the eligibility criteria already fixed by the State.

1.8 As far as possible scattered encroachments proposed to be regularised should be consolidated/relocated near the outer boundaries of the forests.

1.9 The outer boundaries of the areas to be denotified for regularisation of encroachments should be demarcated on the ground with permanent boundary marks.

1.10 All the cases purposed to be regularised under this category should be covered in one proposal and it should give district-wise details.

1.11 All cases of proposed regularisation of encroachments should be accompanied by a proposal for compensatory afforestation as per existing guidelines.

1.12 No agricultural practices should be allowed on certain specified slopes.

### 2 . INELIGIBLE` CATEGORY OF PRE-1980 ENCROACHMENTS WHERE THE STATE GOVERNMENTS HAD TAKEN A DECISION PRIOR TO THE ENACTMENT OF THE FOREST (CONSERVATION) ACT, 1980.

2.1 Such cases should be treated at par with post 1980 encroachments and should not be regularised.

### 3. ENCROACHMENTS THAT TOOK PLACE AFTER 24.10.1980.

3.1 In no case encroachments which have taken place after 24.10.1980 should be regularised. Immediate action should be taken to evict the encroachers. The State/UT Government may, however, provide alternate economic base to such persons by associating them collectively in afforestation activities in the manner suggested in this Ministry's letter No. 6-21/89-FP dated 1.6.90, but such benefits should not extend to fresh encroachers.

### CLARIFICATION

A reference is invited to the guidelines issued by this Ministry for regularisation of certain cases of forest encroachments reproduced above. The relevant paragraph 1.1 of the guidelines, which clarifies the cases of encroachments, which subject to specified conditions, would be eligible for regularisation, is reproduced below:

`Such cases are those where the State Governments had evolved certain eligibility criteria in accordance with local needs and conditions and had taken a decision to regularise such encroachments but could not implement their decisions either wholly or

partially before enactment of the Forest (Conservation) Act on 25.10.1980.

2. Doubts have been raised as to whether all encroachments that had taken place up to 25.10.1980 could be regularised in accordance with an eligibility formula by which some earlier encroachments were regularised.

3. A perusal of the paragraph reproduced above will make it clear that there are 2 pre-conditions for any encroachments to be considered for regularisation. These are:-

(a) The State Government should have taken the decision on regularisation of encroachments before 25.10.1980; and

(b) that the decision should be with reference to some eligibility criteria (normally expected to be related to social and economics status of encroachers, location and extent of encroachment, cut off date of encroachment, etc.)

4. It would be seen that the encroachments which are proposed to be considered for regularisation, subject to the prescribed conditions, are those which fulfilled the eligibility criteria evolved by the State Government as per decision taken before 25.10.1980 for regularisation of encroachments. The objective is limited to permitting implementation of decisions taken before 25.10.1980 which could not be implemented because the enactment of Forest (Conservation) Act, 1980 intervened. It is therefore quite clear that while all encroachments that can be considered as eligible for regularisation would have taken place before 25.10.1980, all encroachments that had taken place before 25.10.1980 would not be eligible for regularisation - they may be ineligible because either they do not meet the eligibility criteria or are not covered by any decision taken before 25.10.1980. Thus, if the decision on regularisation of encroachments in a State covered only encroachments up to a date earlier than 25.10.1980, the guidelines on regularisation of encroachments do not envisage that the State Government would now survey encroachments between that date and 25.10.1980 and propose regularisation. The latter encroachments though occurring before 25.10.1980 are not covered by any regularisation decision taken prior to that date and hence can not be considered for regularisation at this juncture.

5. Accordingly, the State Governments may take up for implementation only such decision of pre 25.10.1980 period which could not be implemented because of Forest (Conservation) Act, 1980 intervening and propose regularisation of encroachments as per those decisions and in accordance with the eligibility criteria laid down in those decisions. No encroachments not covered by any pre 25.10.1980 decisions - even though they might have occurred prior to that - should now be considered for regularisation in terms of our guidelines.

## ANNEXURE- II

ANNEXURE REFERRED TO IN THE REPLY TO PARTS (a) & (b) OF THE LOK SABHA UN-STARRED QUESTION NO. 1650 BY SHRI GAURISHANKAR CHATURBHUIJ BISEN AND SHRI HANSRAJ G. AHIR REGARDING 'LEASE OF FOREST LAND' DUE FOR REPLY ON 19-07-2004.

### Review of disputed claims over forest land, arising out of forest settlement

It has been brought to the notice of this Ministry that local inhabitants, living in and around forest areas, have preferred claims on certain notified forest lands contending that they were in occupation of such areas prior to the initiation of forest settlements and/or their rights were not enquired and/or commuted before notifying these lands as forests under respective laws. The claimants are requesting that title of such lands should be conferred on them. It is being generally felt that even bonafide claims are persistently overlooked causing wide-spread discontentment among the aggrieved persons. Such instances ultimately erode the credibility of the Forest Administration and sanctity of the forest laws, especially in the tracts inhabited by tribals.

2. Seized of its complexities, the issue regarding disputed claims over forest land was got critically examined by this Ministry through an inter-Ministerial Committee. The Committee, after prolonged deliberations and due consultations with representatives of some of the States, stressed the need to resolve such disputes with utmost urgency and suggested the feasible course of action to redress genuine grievances without jeopardising protection of forests and forest land. Keeping in view the recommendations of the said Committee and with due approval of the competent authority, the following course of action is suggested for amicably resolving disputed claims on forest land:

2.1. The State Government/UT Administration should review the cases of disputed claims over forest land and identify the following three categories of claims:

(a) Claims in respect of forest areas notified as deemed reserved Forests without observing the due process of settlement as provided in Forest Acts provided that these pertain to:

(i) tribals areas; or affect a wide cross section of rural poor in non-tribal areas; and

(ii) the claimants are in possession of the 'disputed land'.

(b) Claims in tribal areas wherever there is prime facie evidence that the process of forest settlement has been vitiated by incomplete or incorrect records/maps or lack of information to the affected persons, as prescribed by law, provided that:

(i) Such forest settlement pertains to a period after 1947; and

(ii) The claimants are in possession of the 'disputed land'.

(c) Claims in tribal areas wherever the process of settlement is over but notification under section 20 of the Indian Forest Act, 1927 (or corresponding section of the relevant Act) is yet to be issued, particularly where considerable delay has occurred in the issue of final

notification under section 20, provided that the claimants are still in possession of 'disputed land'.

2.2b After identifying the above three categories of the claims, the State Government/UT Administration should get these enquired through a Committee which should consist of atleast the concerned Divisional Forest Officer, Sub-divisional Officer (Revenue Department) and a representative of the Tribal Welfare Department. The Committee should determine genuineness of the claims after examining all available evidence to establish that:

(i) In case of category 2.1(a) the claimant was in possession of the disputed land when the notification declaring 'deemed reserved forests' was issued; and

(ii) In case of categories 2.1(b) and 2.1(c) the claimant was in possession of the disputed land when the notification showing Governments intention to declare reserved forest was issued under section 4 of the Indian Forest Act, 1927 (or corresponding section of the relevant Act) and his rights were not commuted or extinguished in accordance with due process of law.

2.3 In no case either the Government or the above Committee shall entertain any claim in which the claimant has not been in possession of the disputed land throughout.

2.4 Once the bonafides of the claims are established through proper enquiry, the State/UT Government may consider restoration of titles to the claimants. While deciding to restore titles to the claimants the following aspects should be duly considered:

(i) As far as possible, restoration of claims should not be result in honey combing of forest land. In such cases possibility of exchange of land near periphery or elsewhere (e.g. non-forest Govt. land) should be exhausted.

(ii) The land to be restored to the claimants should be properly demarcated on the ground with permanent boundary marks.

2.5 After the State Government/UT Administration has decided in principle to restore titles to the claimants proposals may be formulated suitably and submitted for seeking prior approval of this Ministry under the provision of the Forest (Conservation) Act, 1980, alongwith proposals for compensatory afforestation.

#### ANNEXURE-III

ANNEXURE REFERRED TO IN THE REPLY TO PARTS (a) & (b) OF THE LOK SABHA UN-STARRED QUESTION NO. 1650 BY SHRI GAURISHANKAR CHATURBHUIJ BISEN AND SHRI HANSRAJ G. AHIR REGARDING "LEASE OF FOREST LAND'DUE FOR REPLY ON 19-07-2004.

GOVERNMENT OF INDIA

MINISTRY OF ENVIRONMENT & FORESTS

Tel: 24360379, Fax: 24365721 No.2-1/2003-FC(Pt) Dated: 5.2.2004.

To:

1. All Chief Secretary, All the States/UTs
2. All Principal Secretary, All the States/UTs
3. All Principal Chief Conservator of Forests, All the States/UTs

Sub: Regularisation of the rights of the tribals on the forest lands.

Sir,

The Government of India have been receiving a number of representations for regularisation of rights of the tribal forest dwellers on forest lands in different parts of the country. The question has also been raised in various public discussions including meetings of various Standing Consultative Committees of Parliament attached to different Ministries, as also various State Governments, that the tribals have been living in harmony with the forests since time immemorial and their rights on such lands should be recognised. However, while these areas were being brought under the purview of relevant Forest Acts, their traditional rights could not be settled due to number of reasons, making them encroachers in the eyes of the law. The Central Government in September, 1990, vide No.13-1/90-FP(2) & (3) had requested the State Governments/UTs to settle the disputed claims, issue patta lease, etc. of the tribal population on the forest land, but so far no such proposals have been received. Proposals have been received only under the category of regularisation of eligible encroachments only from a couple of States. This has deprived the tribals of natural justice as guidelines for regularisation of encroachments are different from the guidelines for settling disputed settlement claims.

This issue has been examined in its entirety in considerable depth by the Central Government and after careful consideration, the Central Government hereby takes the following decisions with a request to the State Governments/UT Administrations to take necessary follow up action as under:

1. The State Government/UT Administration should recognise the traditional rights of the tribal population on forest lands, and these

rights should be incorporated into the relevant Acts, rules and regulations prevalent in the concerned States/UTs by following the prescribed procedure.

2.(i)In respect of these recognised rights of the tribal forest dwellers on the forest lands, the Central Government upon receipt of complete proposals from the State Governments/UT Administration concerned, shall consider these proposals for diversion of continuously occupied forest land under the Forest (Conservation) Act, 1980 so that these tribals can get unfettered legal rights over such lands. The tribals shall have heritable but inalienable rights over such lands. This decision shall apply for those tribal dwellers who are in continuous occupation of such forest land at least since 31.12.1993.

(ii)The diversion proposals shall, however, be considered only if an integrated tribal rehabilitation scheme forms part of the proposal to be submitted by the State/UT, along with financial commitments, so that the tribal population are retained at that particular land, and the problem is solved once and for all. In order to ensure in situ biodiversity conservation with the rehabilitation package, the programme should be implemented by the tribal rehabilitation wing of the forest department. Where such wings do not exist, these may be created. The model adopted by the Kerala Government for rehabilitation of the tribals is a case in point and the State Governments may follow this pattern.

(iii)As the Hon'ble Supreme Court vide their Order dated 23.11.2001 in W.P.202/95 had restrained the Central Government from regularisation of encroachments, the Central Government shall approach the Court for modification of their order so that the instant decision taken in this regard by the Central Government is implemented.

3.In respect of any fresh occupation of forest land by tribals and non- tribals in forest areas henceforth,the State Government/UT Administration shall hold the concerned District Magistrate and Collector, Superintendent of Police, and the Divisional Forest Officer personally responsible for such encroachment and they will be liable for disciplinary action in respect of any such encroachment.

4.Attention of the State Government / UT Administration is invited to this office letter No.7-16/2002-FC dated 3rd May, 2002 in which the constitution of State level and Circle level encroachment monitoring committees had been suggested. Apart from this, a district level committee consisting of District Magistrate & Collector, Superintendent of Police and the Divisional Forest Officer should also be constituted immediately for eviction of encroachments, and monitoring of the same should be done at the State level, the Circle level and the District level Committees at quarterly intervals. The notification constituting these committees and action taken by them shall also be part of the diversion proposal.

5.The State Government and UTs should make sincere efforts for making available an equivalent area of non-forest land wherever feasible for inclusion of such lands as reserved forests or protected forests.

6.It is also clarified that in respect of pre-1980 eligible encroachers, the Central Government has already approached the Supreme Court in October, 2002 to permit to regularize such eligible encroachments as per the guidelines and policy of the Government.

7.The consideration of the proposals from the State Governments/UTs shall depend on the progress achieved by the concerned States/UT Administration in eviction of all pre-1980 and post-1980 in-eligible non-tribal encroachers and all encroachers post 31-12-1993.

8.It may please be noted that this issue of tribal rights must be settled in a fixed time period of one year from the date of issue of this letter and no proposals shall be entertained thereafter.

9.The State level Committee, headed by the Chief Secretary mentioned under Para 3 above, shall monitor the implementation of the above decisions.

Yours faithfully,  
Sd/- (Dr. V.K. Bahuguna)  
Inspector General of Forests(FC)

Copy for information and necessary action to:

1. The Prime Minister`s Office, New Delhi (Attention: Shri K.V. Pratap, Deputy Secretary)

2. All Chief Conservator of Forests/Conservator of Forests (Central), Ministry of Environment & Forests, Government of India

3. The Secretary, Ministry of Tribal Welfare, Government of India, New Delhi

4. Member/Adviser (Environment), Planning Commission, New Delhi

Sd/-  
(Dr. V.K. Bahuguna)  
Inspector General of Forests (FC)

Annexure-IV

ANNEXURE REFERRED TO IN THE REPLY TO PARTS (c) & (d) OF THE LOK SABHA UN-STARRED QUESTION NO. 1650 BY SHRI GAURISHANKAR CHATURBHUI BISEN AND SHRI HANSRAJ G. AHIR REGARDING "LEASE OF FOREST LAND` DUE FOR REPLY ON 19-07-2004.

State-wise details of regularisation of encroachments on forest lands

(Area in hectare)  
Name of State                      Already approved regularization of pre-1980  
eligible encroachments on forest lands

1. Madhya Pradesh	275405.692
2. Gujarat	31982.80
3. Kerala	28588.159
4. Arunachal Pradesh	13419.290
5. Karnataka	14848.830
6. Andaman & Nicobar Islands	1367.000
7. Orissa	29.940
8. Tripura	27.400
TOTAL :	365669.111