

LOK SABHA

**JOINT COMMITTEE ON THE SCHEDULED TRIBES
(RECOGNITION OF FOREST RIGHTS) BILL, 2005**

EVIDENCE

LARRDYS
Acts and
Bill
2302 (III)
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**LOK SABHA SECRETARIAT
NEW DELHI**

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**JOINT COMMITTEE ON THE SCHEDULED TRIBES
(RECOGNITION OF FOREST RIGHTS) BILL, 2005**

COMPOSITION OF THE COMMITTEE

Shri V. Kishore Chandra S. Deo — Chairman

**MEMBERS
*Lok Sabha***

2. Shri Shingada Damodar Barku
3. Shri Mahavir Bhagora
4. Shri C.K. Chandrappan
5. Shri Giridhar Gamang
6. Dr. P.P. Koya
7. Shri A. Krishnaswamy
8. Shri Shailendra Kumar
9. Shri Rajesh Kumar Manjhi
10. Shri Babu Lal Marandi
11. Shri Madhusudan Mistry
12. Shri Hemlal Murmu
13. Shri Jual Oram
14. Shri Baju Ban Riyan
15. Shri Nand Kumar Sai
- @16. Dr. Babu Rao Mediyam
17. Shri Sugrib Singh
18. Shri Rajesh Verma
19. Shri Ravi Prakash Verma
20. Shri P.R. Kyndiah

Rajya Sabha

21. Shri Rishang Keishing
22. Dr. Radhakant Nayak
23. Smt. Brinda Karat
24. Shri Devdas Apte
25. Shri Ravula Chandra Sekar Reddy
26. Shri N. Jothi
27. Shri Mangani Lal Mandal
28. Shri Nand Kishore Yadav
29. **
30. **

@Appointed w.e.f. 21.2.2006 vice Adv. P. Sathidevi resigned.

**Vacant vice Sarvashri Moolchand Meena and Birbhadra Singh ceased to be members of the Committee on retirement from Rajya Sabha w.e.f. 3 April, 2006.

(iv)

SECRETARIAT

- | | | |
|----------------------------|---|-----------------------------------|
| 1. Shri R.C. Ahuja | — | <i>Joint Secretary</i> |
| 2. Shri R.K. Bajaj | — | <i>Deputy Secretary</i> |
| 3. Shri J.K. Jena | — | <i>Under Secretary</i> |
| 4. Shri J.V.G Reddy | — | <i>Under Secretary</i> |
| 5. Shri K.R. Narendra Babu | — | <i>Executive Officer</i> |
| 6. Shri D.K. Arora | — | <i>Senior Executive Assistant</i> |

Representatives of Ministry of Tribal Affairs

- | | | |
|-------------------|---|------------------------|
| Ms. Meena Gupta | — | <i>Secretary</i> |
| Shri Rajeev Kumar | — | <i>Joint Secretary</i> |

Representatives of the Ministry of Law & Justice (Legislative Department)

- | | | |
|-----------------------|---|--|
| Shri N.K. Nampoothiry | — | <i>Joint Secretary & Legislative Counsel</i> |
| Shri S. Sreenivas | — | <i>Assistant Legislative Counsel</i> |

**JOINT COMMITTEE ON THE SCHEDULED TRIBES
(RECOGNITION OF FOREST RIGHTS) BILL, 2005**

WITNESSES EXAMINED

Sl. No.	Name of Association/Organisation/ individual etc.	Date on which evidence was taken	Page No.
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1.	Prof. Nandini Sunder, Department of Sociology, University of Delhi, New Delhi	03.03.2006	1—13
2.	Ms. Smita Gupta, Senior Fellow, Institute of Human Development, New Delhi		
3.	Shri Lal Sinh Paragi, Secretary, Eklavya Sangthan, Ahmedabad. Gujarat		
4.	National Campaign for Survival and Dignity, C/o SHRUTI Q-1, Haus Khas Enclave, New Delhi		
5.	Jan Jangal Jameen Andolan, Rajasthan	09.03.2006	14—32
6.	Bharat Jan Andolan, Jharkhand		
7.	Dr. Archana Prasad, Reader, Jamia Millia Islamia University Delhi		
8.	People Alliance for Livelihood Rights, Chhattisgarh	10.03.2006	33—51
9.	Lok Sangarsh Morcha, Madhya Pradesh		
10.	Ms. Sunita Narain, Director, Centre for Science and Environment, 41, Tughlakabad Institutional Area, New Delhi-110062		

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11.	Shri S.R. Sankaran, IAS (Retd.) Former Secretary, Ministry of Rural Development, Government of India, New Delhi		
12.	Dr. M.K. Ranjit Singh, Former Additional Secretary, Ministry of Environment & Forests, Government of India	23.03.2006	52—71
13.	Jan Sangarsh Morcha, Madhya Pradesh		
14.	Shri Pradip Prabhu, Senior Fellow, National Institute of Rural Development, Hyderabad		
15.	Shri B.D. Sharma, IAS (Retd.)	24.03.2006	72—90
16.	All India Democratic Women's Association, 121, V.B.P. House, Rafi Marg, New Delhi		
17.	Ms. Madhu Sarin, Chandigarh		
18.	Adivassi Adhikar Manch (M.P. & Chandigarh)		
19.	All India Kisan Sabha, 4, Ashoka Road, New Delhi		
20.	Action Research in Community Health & Development, (ARCH) Gujarat		
21.	National Forum of Forest People and Forest Workers, North Bengal Regional Committee, Kalimpong	17.04.2006	91—106
22.	Shri Sanjay Upadhyay, Advocate, Supreme Court of India		
23.	Shri C.R. Bijoy, Coimbatore		
24.	Shri Ashish Kothari, C/o Kalpvriksh, Pune		

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25.	SEVA Sustainable Agriculture & Environment Voluntary Action, Madurai	18.04.2006	107—119
26.	Shri Samar Singh, IAS (Retd.)		
27.	Shri D.S. Prasad, Andhra Pradesh	19.04.2006	120—144
28.	Shri B. Narsingh Rao		
29.	Shri K. Krithna Rao		
30.	Smt. Bhoodevi		
31.	Smt. K. Laxman Rao		
32.	Shri Shankara Reddi, Andhra Pradesh		
33.	Shri Bala Raju, Andhra Pradesh,		
34.	Shri N. Snayasi Rao, Andhra Pradesh		
35.	Smt. Sagari Ram Das, Director, ANTHRA (NGO), Secunderabad, Andhra Pradesh		
36.	Shri N. Madhusudhan, Director, Yakshi (NGO), Secunderabad, Andhra Pradesh		
37.	Shri K. Pandu Dora, D. Bhimavaram Village, East Godavari District, Andhra Pradesh		
38.	All India Agriculture Workers Union		
39.	Adivassi Mahasabha, Gujarat, C/o Behavioural Science Centre, St. Xavier's College Campus, Navrangpura, Ahmedabad-380009		
40.	Shri Valmik Thapar, Ranthambore Foundation, New Delhi		
41.	Shri M.K. Jiwarajka, Member Secretary, Central Empowered Committee		

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42.	Shri Koshy Baby, Nilgiris, Tamil Nadu		
43.	Shri K.V. Paulose, Chairman, Nilgiris District Panchayat and District Planning Cell, Nilgiris District		
44.	Shri P.H. Abdul Kareem, Nilgiris, Tamil Nadu		

**JOINT COMMITTEE ON THE SCHEDULED TRIBES
(RECOGNITION OF FOREST RIGHTS) BILL, 2005**

**RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE
SCHEDULED TRIBES (RECOGNITION OF FOREST RIGHTS) BILL, 2005**

Friday, the 3rd March, 2006 from 1500 hrs. to 1630 hrs. in Committee Room 'B', Ground Floor,
Parliament House Annexe, New Delhi.

PRESENT

Shri V. Kishore Chandra S. Deo — *Chairman*

MEMBERS

Lok Sabha

2. Shri Mahavir Bhagora
3. Shri C. K. Chandrappan
4. Dr. P.P. Koya
5. Shri Madhusudan Mistry
6. Dr. Babu Rao Mediyam
7. Shri Sugrib Singh
8. Shri Ravi Prakash Verma

Rajya Sabha

9. Shri Rishang Keishing
10. Dr. Radhakant Nayak
11. Smt. Brinda Karat
12. Shri Devdas Apte
13. Shri Ravula Chandra Sekar Reddy

SECRETARIAT

1. Shri R.C. Ahuja — *Joint Secretary*
2. Shri R.K. Bajaj — *Deputy Secretary*
3. Shri J.V.G. Reddy — *Under Secretary*

Representative of Ministry of Tribal Affairs

Shri Rajeev Kumar — *Joint Secretary*

**Representatives of Ministry of Law & Justice
(Legislative Department)**

1. Shri T.K. Viswanathan — *Secretary*
2. Shri N.K. Nampoothiry — *Joint Secretary and Legislative Counsel*

WITNESSES EXAMINED

- (i) Prof. Nandini Sundar, Department of Sociology, University of Delhi.
- (ii) Ms. Smita Gupta, Senior Fellow, Institute of Human Development, Delhi.
- (iii) Shri Lal Singh Pargi, Eklavya Sangathan, Ahmedabad, Gujarat.

WITNESS EXAMINED: Prof. Nandini Sunder,
Department of Sociology,
University of Delhi.

MR. CHAIRMAN: Prof. Sunder, on behalf of the Committee and myself, I welcome you to this meeting of ours. You are aware that this Bill has been referred to the Joint Select Committee. We have also received your suggestions which you have sent earlier and also today.

As you are aware, whatever will be discussed in this meeting shall remain confidential until the Report is tabled in Parliament.

Well, if there is anything you would like to mention before this Committee which you would not like to go into the Report, we will keep that confidential and not include that as part of the Report. Is there anything that you would like to mention, apart from what you have already given in writing?

PROF. NANDINI SUNDAR: I have already given my suggestions in writing and that has already been circulated.

MR. CHAIRMAN: I think, the hon. Members will ask you questions to which you may respond.

PROF. NANDINI SUNDAR: Would you like me to go through my submissions and briefly highlight the points?

MR. CHAIRMAN: There is no need to refer to the entire thing. If there is anything which you would like to highlight, you can do so.

PROF. NANDINI SUNDAR: I think the Bill addresses three objectives basically—conservation, right to life, and ensuring that the whole process of meeting these objectives is democratic. I think there are more severe problems coming in the conservation provisions precisely because of two things. One is exclusion of non-tribals because it would be very common to find villages in which you have a few tribal members and a number of non-tribal families. To put the pressure of being right-holders as well as conservers of the forest only on tribal families would, I feel, completely go against the spirit of the Bill. It would simply not be feasible.

I also feel that the way the Bill is now structured, it implies community conservation and giving powers to the Gram Sabha to enforce that community conservation. But the way in which the Sections that deal with conservation such as Section-5 are framed, they deal with only individual right holders and the responsibility of individual right holders, and there is no power for the Gram Sabha as a whole. The penalty powers given to the Gram Sabha are extremely weak. The Gram Sabha, for instance, has no powers when it comes to non-forest right holders who come from outside and who might engage in illicit felling, for instance, including members of the Forest Department themselves.

It is also important to provide Gram Sabha—this is something debatable, something very difficult to get around—with some way of monitoring illegal diversion by large Central projects or by powerful forces. I think this is something that the Committee should really find a solution for.

I do not think that the current provisions to deal with relocation of people from the core areas of national parks and sanctuaries will really address the issue of conservation. If you look at the work of conservationists, many of them they have argued that one needs, much more essentially the State, to determine when exactly an area should be inviolate. This should be clearly done with the consent and consultation with local communities. I do not think the current situation will help that. I think it will only lead to eviction of people from these core areas.

There is also something which I have not mentioned but it is quite interesting and that is, the Wildlife Bill that is currently under way actually provides for people to have rights in the core areas. It is interesting that these two Bills contradict each other. In terms again of the right to life objectives, I think it is absolutely impossible to fulfil these objectives by keeping non-tribals out. Clearly there have to be some criterion for including some non-tribal residents of these villages and excluding others. Again, the kind of criterion that could be developed is something for the Committee to deliberate.

I think that this 1980 cut off date is going to lead to massive eviction. It is not going to satisfy the whole purpose for which the Bill was framed because there is a whole generation which has come up since 1980. Many of the provisions of the Bill actually make no sense when they are read with the strict proviso of only having the Scheduled Tribes. For instance, Section 3D specifies that rights of pasture, etc., will be granted. Given that many of the pastures in India are not Scheduled Tribes, this provision actually makes no sense.

In terms of procedural safeguards, I think there are at least three or four major issues that need to be addressed. One is the role of the Gram Sabha. As it currently stands, the Gram Sabha simply initiates the process. The Sub-Divisional and District level Committees which are composed entirely of officials and currently do not have any representation from the members of the Scheduled Tribes or other forest residents themselves, or other outside bodies, can simply overwrite the decisions of the Gram Sabha. So, clearly there has to be a way in which the Gram Sabha will also be involved in the final determination of rights.

Further, I think that the composition of the Committee should be clearly stated in terms of not limiting it to members of bureaucracy. This is in fact why 1990 circulars of the Ministry of Environment and Forests were not put into effect, because it was simply left to the bureaucracy, because there was no outside pressure.

I think one of the most exciting parts of the Bill was Rules of Evidence, which was there in the earlier draft of the Bill. There are currently no rules attached to this Bill. The very idea that you can have oral evidence, you can have a variety of forms of evidence which are admissible is important given the fact that the basic problem in these areas is these people cannot prove their possessions through any documentary evidence.

There are also several other features like certain clauses which give too much power to the Central Government, without limiting it, confusing formulations and there is not protection against inaction by the government in a way that both POSA and Employment Guarantee Acts are.

Finally, I would just like to point out that there are two types of forest lands which this Bill seeks to address. One is the issue of misclassification like orange areas in Madhya Pradesh and Chhattisgarh. The lands in Orissa which are above 10 degree slope have not been surveyed. I think, the Bill will adequately look into these kinds of lands. What it will now address sufficiently is the fresh encroachment on forest lands. I think, this is something this Committee needs to take into account given that the main factor that lead to encroachment of this sort, diversion and land acquisition, people being displaced from their lands, on going processes of land alienation and the lack of land reforms. I just want to highlight in this process of land alienation, in fact, many States are changing their laws, revenue courts in order to allow alienation, of tribal. Chhattisgarh has just passed a law changing Section 165(6) which prevents alienation of transfer of tribal land. It makes little sense to say that forest land that is acquired under this Bill will not be transferable but your revenue land that you have in these will be transferable. It also means that there will be a great deal of immigration into these areas because people will buy up tribal revenue land then they will put pressure on the forest in a variety of ways, both through demanding forest rights and fresh kind of encroachment. Unless it is seen as a comprehensive package, this bill alone will not be able to address these problems.

DR. RADHAKANT NAYAK: In the very first para, we have suggested about categorization of non-tribals living in the tribal villages are where the tribals may be in minority. Do you think the principles that you have suggested for the categorization? What exactly should be the criteria? For example, you have indicated the proximity to the areas or livelihood patterns or occupation categories. Do you think these could be scientifically classified so as not to exclude who actually destroyed the forests like contractors? As you have suggested, that is a very good suggestion. There should be some kind of objective criteria in order to fulfil the conditions of benefiting or becoming responsible for maintenance of forests or benefiting tribals from the forest area.

I agree with you that 1980 is a very arbitrary cut off date. We have come across this in Orissa in Kalinga Nagar where 14 tribal people have been killed. We found that they are in occupation since 1860 and 1928 is the recorded survey and the settlement during British days. That has been conformed in 1922 and again in 1981.

I was just thinking what should be cut off date procedure? Most of the tribal persons do not have any land record system nor could they take advantage of when the settlement operations had taken place. They are just treated as encroachers or outsider. What should be in your considered view the cut off date for these people because first of all absence of land records and because they were rulers or owners of those lands and we have suddenly treating them as encroachers. Do you think of any criteria because even this Committee has to give a very considered view of it, which cannot be scientifically proved or could be argued about? These are my two questions. There may be many others as we go along. Do you have any points to make?

PROF. NANDINI SUNDAR: I think, the cut-off date should be made as recent as possible. It may perhaps 2000, 2001 or even the date of commencement of this Act. For instance, another Section 5(1) says that the family has been in possession of the land on the date of commencement of the Act, and it does not mention 1980. This is something that is contradictory within the Bill. This particular Clause should be retained and the 1980 Clause could be removed. It is because in any case, given that the Gram Sabha will have to go through a process of verification and show evidence that this cultivation is of long standing, whether the cut-off date is 2000 or 2006, it makes little difference. So, you might as well start from the date the Act commences.

DR. RADHAKANT NAYAK: But that will be very harsh.

MR. CHAIRMAN: We will discuss it later among ourselves.

PROF. NANDINI SUNDAR: Addressing in terms of the first question about scientific criterion including non-tribals, in fact, if you look at the process of scheduling itself, it is not very scientific. There are communities like the Kauls in Uttar Pradesh who have been left out despite being recognized as tribals. In various States, there are demands for certain communities to be included in the Scheduled List. For instance, in Sikkim, I know that there was a Committee that was set up recently to include some communities which were very similar to other communities which had been scheduled in terms of income, in terms of social practices and so on but had not been scheduled. So, ideally, it would be good to look at the whole process of scheduling afresh. Either you should exclude certain communities which are scheduled include others, or you could draw up a schedule of communities for the purpose of this Bill or it should be really left to the Gram Sabha to determine the eligible people, and it should be simply confirmed by the district level committee to ensure that the Gram Sabha is not subverted by powerful interests who wanted to declare themselves eligible.

So, I think, there should be a combination of Gram Sabha decision making and the district level committee. The monitoring and the final decision should be left to the Gram Sabha.

SHRIMATI VRINDA KARAT: Do you have anything to say about 2.5 hectare ceiling which is being put in the Bill?

PROF. NANDINI SUNDAR: I am trying to understand that 2.5 hectare ceiling does not apply to the disputed lands and the lands which have been under possession, while it would apply only to fresh land which is encroached. That is the impression I get from reading the Bill. We need to make a distinction between the areas like orange areas in Madhya Pradesh which have been debated even between the Revenue Department and the Forest Department. If there is a fresh encroachment in forest, even over the last 20 years, then, I think, 2.5 hectare is a fair limit.

I know that many tribal communities are themselves worried that this Bill would lead to fresh encroachment in the forests. People are concerned about both conservation and getting land rights. I think, this 2.5 hectare limit, in a sense, is not entirely unreasonable.

SHRI MADHUSUDAN MISTRY: I do not know whether you know it or not, but the date of 1980 was accepted by a number of Governments because the Forest Conservation Act came into existence on 25th October. That is the rationale behind it. You know why that was accepted at that time. I would say when you say 2000 or 2004 may be the cut-off date, why not make it yesterday's date or why not make the date when we present this Report to the Government? Why should this not be accepted as the cut-off date?

Secondary, the Scheduled Areas have their own Panchayat, it is an old tribal Panchayat. I am talking to your practical problems. A number of Members may agree and many may not agree, but we are supposedly thinking that the Gram Sabha functions ideally; all decisions are made ideally; its Members cannot be bribed; there are no vested interests among within the tribals though we have a caste structure. For example, those who suffered, will never get married to some high caste, high certification within the tribal. There is a certification within the tribals also.

There is a certification within tribals also. I am pretty sure that a number of people may know this. Given a right, they should decide in the Gram Sabha as to whether 'X' was cultivating or 'Y' was cultivating. Do you think that there will be some problem? I would like to have your opinion on that.

The third problem which I want to mention is that a number of State Governments took a decision to give land before 1980. This decision was not executed, partly because the Government was not willing, the Forest Department was not willing; and where they were willing, there was the problem of surveyor and money. Even when they were there, there was no data as to who was Cultivating in 'X' land 'Y' village, how many people were cultivating, whether it was forest land, etc. From our side, that data may be there. The Government may have or may not have or may not be keen to give. But there is no independent machinery through which you can have this data available. I do not know and how can you cope up with this problem? Can you suggest something? There are areas for example in Gujarat, where we got 39,000 hectares of land which was deleted from the Forest Department. The biggest problem was that this had to be distributed to 66,000 families. We do not have data of 66,000 tribal families as a result of which we could distribute only 32,000 hectares. The Forest Department does not have it. How can you find people? How do you cope up with the problem of the entire country? I would like to know whether you could find out a mechanism for this.

This is a general problem. Take for example Rajasthan. They took a decision in 1980. NGOs have the data, but it is localized. They do not have the data for the entire State. I want to give the right and I do not want to give also. Is there any counter-claim that I have not been given a land? Do you have anything to say on this?

PROF. NANDINI SUNDAR: Is it in terms of the land that is cultivated before 1980?

SHRI MADHUSUDAN MISTRY: No. Take for example, we decided in 2001 to take a decision, and the Government says, you regularize the land up to 2001. They may do or may not do at the local level. Normally, they do not work because there is no tendency that more and more land should go to them. Since they have not been given, the problem that we may face is that—even after presentation of this report—there is no independent information coming out from the villages or there is no claim coming out to determine that this land was cultivated by such and such people. How do you do it?

PROF. NANDINI SUNDAR: The focus of the Bill, as I understand, is that the Gram Sabha should be the initiating authority for determining the land or the members of Gram Sabha or the members of the village who should go and say that we have been cultivating this land. It has not been recognised and it is only on such response to individual claims rather than Government initiating it. What the Government is saying is that now people have rights which are vested in them and it is for them to claim those rights and it is for the Government to publicise that those rights exist. It is much the same fashion as PESA, that people are competent to manage their own natural resources. Section 4(d) of PESA says that the Gram Sabha is competent to manage its customary natural resources, dispute resolution, etc. In a sense, both these are putting the onus on people's mobilisation and Government's willingness rather than Government issuing a statement saying that now we are going to prepare a list of all those people who are cultivating the land before 1980.

I agree with you that there are many areas where people are not mobilised, where there are no organisations which can help people to make these claims and where people do know about this Act exactly as people do not know about PESA, then there may be no action on the ground at all. So, I am not sure how one deals at the policy level the lack of information, lack of mobilisation on the ground.

In terms of stratification within the villages, and whether the Gram Sabha will be democratic, and give the people who need it, the rights that they should have, there are two things. One research has found if certain sections of the village are excluded, who are equally deserving then that Gram Sabha is not likely to operate in a democratic fashion. So, this comes back to the issue of including non-tribals who are there in the villages so that the Gram Sabha can actually function as a unit.

Secondly, if you look at the experience of Jharkhand where the Chota Nagpur Tenancy Act actually gives the headman of the village, in the name of the whole village, the power to settle ways, the power to give people land rights on their land. In fact, this seems to have worked quite well in preventing landlessness in Jharkhand. If you look at the situation there are very few adivasi families who are completely without land. The land may not be very productive but at least they have something. Of course, it may be alienated later on. In fact, this system of giving Gram Sabha power has worked very well in Jharkhand. So, using that as an example, I think it may be possible to extend it to other areas as well where at least there are communities which are not very stratified. Even if they are stratified, if there is a sense that the village as a whole has an interest in settling rights and conserving forests.

MR. CHAIRMAN: You have mentioned that non-tribals also should be included for the purpose of this Bill. If it is for forest dwellers, it will be tribals and all those non-tribals who are living in the forests. Here you have said that we should include certain categories of non-tribals. When you say certain categories of non-tribals, implication is that you want to eliminate certain categories of non-tribals. Would not that process become complicated and arbitrary?

PROF. NANDINI SUNDAR: It will become complicated and arbitrary. I think in a sense there is no way that you can have a blanket inclusion of all non-tribals communities because in many of the Scheduled areas there are large immigrants presence of traders and other people who have acquired land and one finds that for instance they will get people to encroach on forest land if it is alienable between tribals and non-tribals. People will encroach on forestland and then it will be alienated to traders, contractors, etc. I have in mind the example of, for instance Buster where you have Thakurs from U.P. who have been engaged in minor forest produce and they have been living there for the last 100 years. If it was just a residency requirement, they would be there for a long time but they do not satisfy many of the other criterion. So, there has to be some way of determining who is eligible.

DR. BABU RAO MEDIYAM: With the permission of the Chair I want to ask two questions. You are saying about the powers of Gram Sabha. The ground level position is, there is a big gap between our preaching and practise. As such, the Gram Sabha are not at all working, especially in the State of Andhra Pradesh from where I come. The age-old panchayati system is also not up to the mark. Only the hegemony of the village head is going on. In such a case, is it possible at this stage to have monitoring of diversification of forestland, recognition of boundaries, equal distribution and such other things?

Now we are saying that the Gram Sabah would do everything to decide and enforce this Act. But is it possible in such a given situation?

Secondly, I would like to mention the practice followed in Godavari district of Andhra Pradesh. There is a State Act by name one of seventy which is in force for the last 34 years. Even then the tribals are losing the land in name of poor non-tribal peasants. As the tribals are not educated, they are not able to get *pattas* though they are cultivating the lands since ages. Therefore, if we provide this provision, would we not give way for the non-tribal land-less people to enter the tribals areas?

PROF. NANDINI SUNDAR: I would start my reply with the second question whether by giving this provision, the tribal land would be transferred to the non-tribal poor. This Bill says that land acquired under this Government will not be transferred. So, technically this land is not going to be transferred whether it is tribal land or non-tribal land.

Coming to the other question, there are problems in the Gram Sabahs where the head man dominates and in some areas the Gram Sabhas are dominated by the egalitarian people. But what is the option left? If you give it to the Government, which has not performed. Had the Department of Forest worked according to the 1999 circular, there would have been no need for this Bill. The Department of Forest has not provided those rights. so, the other option is that the Gram Sabah initiate that process and have the district level monitoring Committee to ensure that the provision are enforced. The representatives on this may be from Scheduled Tribes movements and outside bodies. They could also ensure that the Gram Sabhas do not misuse this process to give land to the richer people in the village. But I think it is going to be inevitable that there will be some of the happenings observed in the beginning. In due course, people would know about this Bill and there will be popular movements to put pressure to see that it is applied in the right fashion. I think there is no substitute to democracy. There is no option and this is all we have. So, we have to institutionalise it in the best manner that one can.

MR. CHAIRMAN: I thank you. If there is anything that you want to add, you can always send to the Committee in writing later on.

PROF. NANDINI SUNDAR: Sir, I would like to present to somebody the situation in Chhattisgarh about *Salva Judum*. I know that this is not concerned with this Bill. But I just wanted to know how to tell what is happening there.

MR. CHAIRMAN: Today the Minister of Tribal Affairs is not here. I shall certainly put a request to him to give you some time so that you can go and discuss the matter with him.

PROF. NANDINI SUNDAR: Sir, thank you.

(The witness then withdrew)

WITNESS EXAMINED: Ms. Smita Gupta,
Institute of Human Development,
Delhi

MR. CHAIRMAN: I welcome you to this sitting of ours. We have received your representation which you have sent to this Committee. You are aware that whatever we discuss in this Committee shall remain confidential until the Report is presented to Parliament. I welcome you to make your observation and may state any new fact if you have anything apart from what you have sent us. After that, the hon. Members of the Committee may like to ask questions to which you may like to respond.

MS. SMITA GUPTA: Sir, I thank all of you for giving me this opportunity to present my submissions before this Committee on this very important Bill which as it states at the very beginning is an attempt to correct the historic injustices faced by the tribals and other forest dwelling communities. However, in my submission, I have argued broadly that if you look at this Bill three grounds on which the Bill can be judged, whether it serves its stated intent or not. first, who does this Bill benefit? Who are the people to whom it gives the rights to? Second, what are the rights that are given? Third, how are these rights to be given? What is the institutional mechanism for giving these rights to people? I submit before all of you that in my view it fails on all these three counts to be a very effective Bill.

Sir, if you turn to the first issue which is the issue of to whom it vests the rights in, then the first problem in this is that it restricts it only to the Scheduled Tribes. I would submit that it should be extended to all forest dwellers because the historic injustices that it talks about are faced also equally by other poor and equally marginalised non-tribal forest dwellers. You are well aware that there are many Scheduled Tribes who are notified in one State and not notified in another State or are notified as OBCs in one State and as Scheduled Tribe in another State. There is a lack of clarity on this front. Therefore, it is better to have an inclusive definition about to whom the Bill will vest rights in. That is the first weakness — to whom the Bill gives rights to?

The second is the issue of the cut off date which has been taken as the 25th of October, 1980. It is difficult to administer. It is an event that occurred 26 years ago, so to have records for that period and to have records

to show occupancy 26 years ago is going to be extremely difficult. It is going to be difficult to be administered. The Bill again says that it wants to correct some of the wrongs done by displacement due to developmental projects. We are aware that a lot of these developmental projects actually happened after 1980 and consequently a lot of the displacement that took place, took place actually after 1980. So, to have a Bill that says 1980 is the cut off date, the problem is that the other set of people, the project affected population, 55 per cent of whom are tribals, the Bill fails to do it the moment it sticks to this cut off date.

The other problem is that the more complex and less simple the method of verification becomes, you open the door to corruption, you open the door to all kinds of bureaucratic manipulations. Therefore, simplicity and fairness—on these two criteria we should examine the cut off date. This 26 years old cut off date is actually, in my humble opinion, not something which is really fair. Now, if you keep 25th of October, 1980 as the cut off date, you will find a lot of people who are evicted because they cannot prove that they were there from then on and you would also find that a lot of that land has been under cultivation and you would not be able to regenerate forest on that. You may take away that land from the tribals or from the people who were occupying that land because they cannot prove occupancy but you cannot do much with that land by way of forest regeneration.

So, even from the point of view of conservation having this cutoff date is not really going to help. The third limitation is about the people who live in protected areas, people who live in national parks and wildlife sanctuaries. This Bill gives transitional temporary rights to these people for five years and then puts the onus on the Forest Department that if you do not relocate with due compensation, these people will get a permanent right. Due compensation is a vague term and it has not been defined. This in my view is an invitation to the Forest Department to willy-nilly evict within these five years. I think that too is a problem because the moment you set a date like that, you say that if you do not evict in five years with due compensation, then they get permanent rights and then the Forest Department is quite likely to actually evict with or without now due but adequate humane and just compensation. So, as far as the issue of whom is concerned, these are the three major shortcomings in the Bill.

Then we go to the issue of the rights which the Bill gives. I am giving focus on the issue of land rights. I am not going to talk too much about the rights of minor forest produce and so on. On the issue of land, I think the Bill is very stingy because it actually says 2.5 hectares or whatever you are tilling or whichever is less. It is not saying that you will all get 2.5 hectares. It does not use this language. But what the Bill is actually saying is that you cannot have more than 2.5 hectares and you cannot have any more than what you have. Therefore, it is 2.5 hectares or less. Now, we must note that a lot of land is in dry areas and hilly areas without any benefit of irrigation of land and soil management. Therefore, agriculture here is very precarious and extremely vulnerable. In a situation like this, to impose a 2.5 hectares limit where people have more than 2.5 hectares is going to be extremely unfair. It is also something which does not become clear to me or the logic at this level because we are not cutting fresh forests to give land to the tribals. The Bill is not saying that we are going to give 2.5 hectares to everybody. It simply says till what you have. Therefore, it should be on as is where is basis. In the North-East, I think it is going to have a huge implication. I am involved in the Planning Commission study on Manipur. It is a State Development Report on Manipur. I know that in a State like this, it could have an effect which would disempower people. It would take away land from the people in large parts of the North-East. So, this is one of the issue in what is being given. The second issue which is very important is the whole issue of development infrastructure. In the Bill, there are no provisions to permit people to be able to construct development infrastructure like schools, handpumps, etc. Even if you want to have handpumps, at the moment, you would require to go to the Forest Department for clearance. This is another aspect which we need to address the absence of provisions allowing people to construct development infrastructure which would actually mean that we leave them in the low level of development vulnerable to starvation without ration shops, without schools and without health in these areas. In a recent circular issued by the Forest Department, they have permitted this. But there, it is permitted on forest land. In this Bill it is important to simply permit the Gram Sabhas to be able to treat some land as land which could be used for effective development infrastructure. The other issue is nishtar rights which have been defined within the village boundaries and these rights extend well beyond the

village boundaries. This is a corrective which needs to be made in the kind of rights which have been given to people.

The last point is about 'how'. I think if this provision needs to be the strongest, it is actually the weakest because the institutional structure which is going to verify the records, invites rights has to be something which is inclusive. If we are going to put the same bureaucracy and the same Departments which could have in the last 26 years given land to the tribals but have not done so, there is nothing to prevent the Forest Department in the last 26 years to use the Forest Conservation Act in order to vest the land rights in the people whom we are talking about.

This was not done for 26 years. I would humbly submit that not only was this not done, actually it was prevented from being done. You would know that the date of 25th October, 1980 was not passed by Parliament. The date was not a date that is there in the law. It is the result of circulars issued by the Ministry of Environment and Forests. The Forest Conservation Act does not stand in the way of regularisation. It only needs the permission of the Central Government. But the Forest Department has never done it. If you are going to have Committees which are dominated by the same Department, by the same forces, which have not in the 26 years been willing to regularise land holdings and today out of sheer nervousness they say that they are issuing circulars and that they are going to do it, I think, is a major problem. The Committees are full of officials. The role of Forest Department in these Committees is a major problem in this Bill. If we do not correct this, then the fear that these people will not get their rights recognised and will not have their grievances redressed and the whole process will become opaque and unjust will be well founded.

The Bill also suffers from another major problem. That is the problem of penalties. At the moment the powers which are there with the *Gram Sabha* and the people are very little. Yet the responsibilities thrust upon them through this Bill is enormous. They have to implement all forest laws, all wildlife laws biodiversity laws. So, the onus on them to implement the laws is extremely high. But the powers that they have are very low. The Bill does not actually protect them against diversion of the land which they are using. There is no protection. Tomorrow, if a dam has to be constructed or a mining lease has to be given, there is nothing in the Bill which says that people who are living there to whom the powers are being given, need to be consulted. There is nothing in the Bill which privileges the rights of the tribals or of the forest dwellers. Yet it imposes huge responsibilities on them. As far as the penalties are concerned, it deals with them in a very unfair manner. At the moment, the way it has been worded, the Forest Department can interpret anything to be a violation and impose any kind of penalty. The argument which is being made is that it is in the interest of conservation. If we do not exclude people from the forest, then we cannot conserve natural resources. Obviously, we are keen to conserve our forest resources. So, there has to be certain amount of narrowness in the Bill. I would draw your attention to the data, which speaks quite the contrary. What we find here is that there has been huge diversion of forest land by the Forest Department. Annually the average is 40,000 hectares per year. I am sure these figures must have come before you even before I have come. But at the risk of repetition, I would emphasise that if you look at the graph, you will find that the quantum of official diversion is huge. It adds up to a mind boggling figure. It is one million hectares of land. That is the official diversion of forest land. What are we talking about? It has been argued that these three main restrictions of 2.5 hectares as an upper limit, exclusion of non-tribals and the 1980 cut off date are there in the Bill because we want to save the forests. Now, the first argument against this, of course, is that land is anyway under cultivation. It is not that as if you are cutting trees and forest resources and giving it to tribals. So, this argument is mere propaganda. We have to still counter it using data. We have information and we can easily counter it. If we look at the date, what we find is that about one million hectares has been diverted officially.

How much are we asking for? If you turn to page no.10, you will find that total amount of land, that is under encroachments and as reported by the Ministries is 1.73 per cent of the forest area. If we add to this the forest villages, it adds up to 2.2 per cent of the forest area. Now, if we compare this not only with the one million hectare which has been diverted, which is about what we want 66 per cent of this, let us look at another figure.

The other figure is the land which is recorded as forest but which has no forest cover. This is a stupendous 12 per cent, 12 per cent of the legally recognized forest area which is under the control of the Forest Department. This 12 per cent has no forest cover. We are asking for 2.2 per cent which is under cultivation with very poor people, the most marginalised section of this country. In terms of quantum of land, there are many other facts which are there, which I shall not repeat because they are in my submission. But the import of my argument is that the amount of land that we are asking for when compared to the official diversion by the Forest Department is very little. When we compare to the land with the Forest Department which has no forest cover, it is very little.

If you look at the state of forest reports, between two periods—in a very small period of 4 or 5 years, they have actually declared about 6.3 lakh hectare as forest land. We do not know where it has come from. There was one figure for forest land in 2000. In 2004, this is up by 6.3 lakh hectares. We do not know where this land has come from. As far as the quantum of land is concerned, we are not talking about an enormously huge quantity. We are talking about only 2.2 per cent of the total forest area which is already under cultivation.

I would like to submit to the Committee, to all of you respected hon. Members, that there is no conservationist argument in favour of narrowing the Bill. This is a historic opportunity. Actually, we can very easily, looking at the data and the law of the land, overcome these problems.

SHRI MADHUSUDAN MISTRY: What do you suggest where the tribals have the revenue land, as well as they are cultivating the forest land? What could be the ceiling? There are many of them who are also having revenue land. They are not dependent solely on forest land cultivation. What would you suggest?

You mentioned about 2.2 per cent of the total land. One of the arguments of the Forest Department is that this entire diversion took place before 1980. Now, you have not segregated the data here on the diversion that took place before 1980 and after 1980. Their argument is that after 1980, there is a very little diversion of our land and wherever the land is diverted, they have asked the State Government to give the same area of the land under forest. So, they have prepared a land bank in most of the States. What is your comment on these two issues?

MS. SMITA GUPTA: On the first issue of people who are actually cultivating some land in forest and some land which is revenue land, I would like to say that I have travelled extensively in Chhattisgarh. I worked there a lot. I have found that this happens quite frequently what you are saying. I would like to submit that as long as in the revenue land, they are very within the land ceiling for dry land which they usually are. They have much this land and the land ceiling. If they are not exceeding the ceiling, then it should be treated separately and even that should be regularised. There is no reason not to regularise land holding which is on forest land.

SHRI MADHUSUDAN MISTRY: I did not get you. Are you saying that even those who are cultivating a revenue land, the ceiling of 2.5 hectare is still a lower limit and we should increase this limit of 2.5 hectare?

MS. SMITA GUPTA: I am not saying this. In different States, they have different ceilings for dry lands. Most of this land is dry land.

SHRI MADHUSUDAN MISTRY: Are you talking about the revenue land?

MS. SMITA GUPTA: Yes, Sir. I am saying that as far as the revenue land is concerned, it should be treated from that point of view. The persons who are on forest land should be treated separately within the purview of this Bill. There is no reason to tie up the land holding which they own as revenue land and the land that we are talking about now for regularisation.

SHRI MADHUSUDAN MISTRY: What is the ceiling that you are prescribing?

MR. CHAIRMAN: She is against any ceiling.

MS. SMITA GUPTA: I am against any ceiling.

SHRI MADHUSUDAN MISTRY: I am just trying to find out whether it is 3 or 4 or 5 or 6 acres or what.

MS. SMITA GUPTA: I am saying that it should be on "as is where is" basis. Whatever they are holding on the ground from the cutoff date that we decide on, that should be taken into account. Suppose we take it as 2001 or 2002 or 2003. We have come to a situation where there are huge plantations. Suppose we are looking at a situation like that. We are talking about the tillers, farmers and the cultivators. So, they should get whatever is prescribed. If at all a ceiling has to be set, then, we can refer to the ceiling in the Land Reforms Act, the upper limit of that for the dry land cultivators.

Regarding the second part, what you are asking is about post-1980, pre-1980 diversions that took place. I do not have the data before the period 1980. The data which I have presented is the post-1980 diversion.

MR. CHAIRMAN: Thank you very much. If you have any other information which you want to send, you can send it to my Secretariat. Thank you very much.

(The witness then withdrew)

WITNESS EXAMINED: Shri Lal Singh Paragi,
Eklavaya Sangathan,
Ahmedabad.

MR. CHAIRMAN: Shri Lal Singh Paragi, I welcome you to this meeting of the Joint Select Committee. You have already gone through the Bill and we have received your representation also. Whatever we discuss in this Committee will remain confidential till the Report is presented to Parliament.

You may please enlighten the Committee with your further views, if any, on the provisions of this Bill. You may start now.

श्री लाल सिंह परागी: मैं हिन्दी में बात करूंगा। इसके लिए मैं आपसे परमिशन मांगता हूँ।

सभापति महोदय: ठीक है, हिन्दी में बोलिए। ट्रांसलेशन सुविधा उपलब्ध है।

श्री लाल सिंह परागी: सर, मैं एकलव्य संगठन, अहमदाबाद से आ रहा हूँ। पिछले 15 सालों से हम गुजरात में फॉरेस्ट लैंड जोतने वाले जो लोग हैं, इनके साथ मिलकर उनके अधिकारों, उनके हक के लिए हम काम कर रहे हैं। ज्यादातर हमारे इस एरिया में जो लोग फॉरेस्ट लैंड कल्टीवेट कर रहे हैं, आदिवासी और गरीब समुदाय के जो लोग हैं, वे कई सालों से फॉरेस्ट लैंड कल्टीवेट कर रहे हैं। यह जो बिल लोक सभा में आया है, उसमें हम कुछ बातें कहना चाहते हैं।

इस विधेयक में हम यह कहना चाहते हैं कि जंगल और जंगल में रहने वाले एक-दूसरे के अभिन्न अंग हैं। इन बातों की स्वीकृति दी गई है। इसे हम स्वीकारते हैं। इसके साथ ही आदिवासियों के साथ ऐतिहासिक न्याय को स्वीकार कर उसे सुधारने की बात कही गई है। तीसरी बात, सालों से जंगल में रहने वालों के अधिकारों को सुनिश्चित करके स्वीकृति देने की बात कही गई है। जंगल और वन्य जीवन दोनों को बनाये रखने की बात कही गई है। आदिवासी, वन्य जीवन और उनके अधिकारों को दस्तावेजी रूप देने तथा वन में रहने वाले और वन्य अधिकारों को बनाये रखने की बात कही गई है। इन सभी बातों में प्रशासन द्वारा आदिवासियों को अतिक्रमणकारी बताने के इस दृष्टिकोण से हम सहमत नहीं हैं, इससे हमारी भावनाओं को ठेस पहुंचती है। ये बातें रखते हुए हम इस बिल में थोड़े सुझाव देना चाहते हैं। पहले हम बता रहे हैं जब से वन अधिनियम बना, तब से जंगल में रहने वाले लोगों को अपनी जमीन से बेदखल कर दिया गया और बड़ी-बड़ी परियोजनाओं में उनकी लाखों हेक्टेयर जमीन छीन ली गई है। उसको लौटाने की बात इसमें नहीं कही गई है। जो बिल में है, बड़ी-बड़ी परियोजनाएं हमारे इलाके में बनी हैं और परियोजना बनने से जो रेवेन्यू है, वह भी परियोजनाओं से आता है और इसके बाद कहीं न कहीं फॉरेस्ट लैंड में विस्थापित किया गया है। हमारे एरिया में कई बड़े-बड़े बांध बने हुए हैं लेकिन उनको जमीन के पट्टे नहीं मिले हैं और अपने विकास के लिए वे योजनाएं नहीं ले सकते हैं। वह बात इस बिल में नहीं आई है। दूसरे जंगल का कानून बनने से जमींदारों के पास जो जमीन थी, वह उनके कब्जे में है लेकिन वन कानून बनने से जमीन जंगल की हो गई है। उसे किस तरह से अधिकार दिलाएंगे, वह बात इसमें कही गई है।

हमारा कहना है कि जो जागीरी जमीन राजाओं के पास थी, वह उनके पास नहीं रही। उसके बाद कोई न कोई हमारे आदिवासी या गरीब लोगों का उस पर कब्जा था और वे खेती कर रहे थे। वहां पूरा गांव का गांव वे जोत रहे हैं और बसे हुए हैं। लेकिन उनके नाम उस

जमीन का पट्टा नहीं है। इसे फारेस्ट लैंड कहा जाता है। ऐसी जमीन में जो लोग रह रहे हैं, उनके नाम पट्टा करना चाहिए। मैं समझता हूँ इस बिल में इसका प्रावधान करना चाहिए। जमीन धारण करने की कट आफ डेट 25.10.1980 बताई गई है। लेकिन वहाँ लोग सालों से जोत रहे हैं इसलिए यह कट आफ डेट कहीं न कहीं वहाँ छूट जाती है। इसलिए जब यह बिल कानून बनेगा, जिस दिन रिलीज होगा, उसी दिन से कट आफ डेट रखनी चाहिए। ढाई हेक्टेयर जमीन की सीलिंग की जो बात कही गई है, मैं समझता हूँ कि सीलिंग नहीं रखी जाए तो अच्छा रहेगा। उन्होंने जो जुर्माना दिया है, जो पैसा दिया है उसी को पर्याप्त समझा जाए, क्योंकि वे लोग 10-20 सालों से कोई न कोई दंड दे रहे हैं इसलिए उसे ही रेवेन्यू देखते हुए इनका कब्जा उस जमीन पर करना चाहिए। इसमें 1000 रुपए दंड की बात है, अच्छी बात है, लेकिन जो वन कर्मी हैं या अधिकारी हैं, वे अगर उन लोगों पर अत्याचार करें, कुछ न कुछ परेशान करें, तो उनके लिए दंड का प्रावधान इस बिल में होना चाहिए। इस विधेयक की धारा 3 में पांच वर्ष तक वन अधिकार देने की बात निकाल दी जानी चाहिए। उससे ज्यादा करनी चाहिए, क्योंकि पांच साल में तो जो विस्थापित होंगे, उनके पुनर्विकास के लिए यह अवधि कम है। जैसे उद्योगों के लिए 20 साल तक भाड़ा या पट्टा देने की बात होती है, वैसे ही इसमें भी होना चाहिए। इसके अलावा इस जमीन का जो मालिक हो, जो पट्टा दिया जाए उसमें पति और पत्नी दोनों का नाम होना चाहिए। न्यूक्लियर फैमिली की बात करते हैं इसलिए इसमें इन दोनों का नाम होना चाहिए। इस विधेयक में 1000 रुपए का दंड का प्रावधान है और एक से अधिक अपराध करने पर वन अधिकारों की मान्यता समाप्त करने का प्रावधान है, यह नहीं होना चाहिए। 1000 रुपए लेकर वह जितना करेगा, अधिनियम में जो बताया गया है, हम मानते हैं वह नहीं होना चाहिए। जंगल में बसने वाले लोगों को वन अधिकार और मिलने वाले अधिकारों की रक्षा के लिए वन कर्मियों को अधिकार जो हैं, उसके लिए अलग व्यवस्था करनी चाहिए। भारत गणराज्य के 56वें वर्ष में संसद द्वारा अनुसूचित जनजाति वन अधिकार विधेयक 2005 बनाकर अधिकार लौटाने की बात हो रही है, लेकिन इसमें संतुष्ट होने की बात नहीं है, क्योंकि वन संरक्षण कानून 1980 और उससे पहले के जो कानून हैं, उनको सामने रखते हुए इस विधेयक की क्या पहचान हो सकती है, यह एक प्रश्न चिन्ह है। इसलिए जितने भी वन के कानून हैं, उनमें भी कुछ सुधार करना पड़ेगा।

इसे देखते हुए यदि इसे पास करेंगे तो बिल का असर होगा, ऐसा मेरा मानना है।

दूसरे, यह भी है कि हम जितने फारेस्ट लैंड की जमीन जोतने वाले लोग हैं उनकी समस्याओं का समाधान करने के लिए ग्रामसभा में वे रैजोल्यूशन करें लेकिन बीएससी फाइनल निर्णय लेगी। हम मानते हैं कि शैड्यूल्ड एरिया को देखते हुए सर्वोपरि ग्रामसभा है। इसलिए उनको मान्यता देनी चाहिए और बीएससी उनपर नजर रखेगी, ध्यान रखेंगी कि एक्ट का वायलेशन तो नहीं हुआ है। ग्राम सभा का निर्णय फाइनल होना चाहिए, ऐसी हमारी एकलव्य संगठन की मान्यता है और यही सुझाव हमने रखा है।

गुजरात में 15-20 साल से हम काम कर रहे हैं और हमने अपने अनुभवों के आधार पर सुझाव सभापति जी आपको दे दिये हैं। वर्ष 1961 से लेकर वर्ष 1984 तक फारेस्ट लैंड एरिया में जितनी भी लैंड है वह अलग-अलग हैड्स में बंटी हुई है और टोटल लैंड करीब 610981.41 हेक्टेयर है। इसमें फारेस्ट लैंड एग्रीकल्चर के लिए बहुत कम आंकड़ा बताया गया है। रिहैबिलिटेशन, रोड और इंडस्ट्री में है तो जो हमने अपने यहां निकाला है कि एग्रीकल्चर लैंड को जो फारेस्ट वाले जोत रहे हैं वह कम जमीन है। इसलिए जो लोग जमीन जोत रहे हैं उनको वह जमीन दी जाए, ऐसा हमारा मानना है।

श्रीमती वृंदा करात : हम चाहते थे कि आपने जो फारेस्ट डवैलर कम्युनिटी के बारे में लिखित में दिया है उनके बारे में आप कुछ कहेंगे क्योंकि बिल में तो आदिवासियों के बारे में है। फारेस्ट डवैलर कम्युनिटी जो जंगल में बसने वाली है वह भी इस बिल में आये, इस बारे में आपका क्या सुझाव है?

श्री लाल सिंह परागी : फारेस्ट एरिया में केवल आदिवासी लोग नहीं रहते हैं। गुजरात में वर्ष 1988 से वहां फारेस्ट लैंड डवैलर हैं और उनके अधिकारों को लेकर एकलव्य संगठन शुरू किया गया और सर्वे किया गया। करीब 67000 लोग उस समय वहां कल्टीवेट कर रहे थे। इसमें केवल आदिवासी नहीं हैं अदर बैंकवर्ड क्लास के और दूसरी जातियों के लोग भी कल्टीवेट कर रहे हैं। आदिवासी अलग बात करते हैं तो अलग दिखते हैं लेकिन आर्थिक स्थिति दोनों की बराबर है, रहन-सहन एकसा है। शैड्यूल्ड एरिया की आप बात करते हैं तो गुजरात में आदिवासी एरिया में 11 डिस्ट्रिक्ट्स हैं।

11 जिलों में ये लोग फारेस्ट लैंड कल्टीवेट कर रहे हैं। अनुसूचित जाति बिल जब आ रहा है, तो उनको भी ध्यान रखते हुए, उन्हें भी जमीन मिलनी चाहिए, नहीं तो फिर दूसरी बात होगी और आपके सामने फिर दूसरा प्रश्न आएगा, फिर उसके बारे में सोचना पड़ेगा, फिर उनके लिए बिल बनाइए, उनके कुछ न कुछ सवाल खड़े ही रहेंगे, मैं कहना चाहता हूँ कि इस बिल के साथ उनको भी जमीन मिले, ऐसा प्रावधान करना चाहिए।

श्री महावीर भगोरा: आप कहाँ के रहने वाले हैं?

श्री लाल सिंह परागी : महोदय, मैं गुजरात के दाहोड जिले के घूगस गांव में रहता हूँ। यह बड़वा ही आदिवासी क्षेत्र है।

सभापति महोदय: यदि आप कुछ सुझाव समिति को देना चाहें, तो आप उसे भेज दीजिएगा। आपका बहुत-बहुत धन्यवाद।

(तत्पश्चात्, समिति की बैठक स्वर्गित हुई।)

**JOINT COMMITTEE ON THE SCHEDULED TRIBES
(RECOGNITION OF FOREST RIGHTS) BILL, 2005**

**RECORD OF ORAL EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE
SCHEDULED TRIBES**

(RECOGNITION OF FOREST RIGHTS) BILL, 2005

Thursday the 9th March, 2006 from 1500 hrs. to 1715 hrs. on 9 March, 2006 in Committee Room 'A',
Ground Floor, Parliament House Annexe, New Delhi

PRESENT

Shri V. Kishore Chandra S. Deo — *Chairman*

MEMBERS

Lok Sabha

2. Shri Mahavir Bhagora
3. Shri Giridhar Gamang
4. Dr. P. P. Koya
5. Shri Shailendra Kumar
6. Shri Babu Lal Marandi
7. Shri Madhusudan Mistry
8. Shri Bajju Ban Riyan
9. Dr. Babu Rao Mediyam

Rajya Sabha

10. Shri Rishang Keishing
11. Shri Devdas Apte
12. Shri Birabhadra Singh
13. Shri Ravulu Chandra Sekar Reddy
14. Shri N. Jothi

SECRETARIAT

Shri R.C. Ahuja	—	<i>Joint Secretary</i>
Shri R.K. Bajaj	—	<i>Deputy Secretary</i>
Shri J.V.G. Reddy	—	<i>Under Secretary</i>
Shri K. Jena	—	<i>Under Secretary</i>

Representative of Ministry of Tribal Affairs

Shri Rajeev Kumar — *Joint Secretary*

**Representative of Ministry of Law & Justice
(Legislative Department)**

Shri N.K. Nampoothiry — *Joint Secretary and Legislative Counsel*

WITNESSES EXAMINED**I. Representatives of National Campaign for Survival & Dignity**

- (i) Shri Gopalakrishnan
- (ii) Shri F. Xavier Manjooran
- (iii) Ms. Trupti Parekh
- (iv) Shri Kundan Kumar
- (v) Shri Gopinath Majhi
- (vi) Ms. Tapti Marai

II. Representatives of Jan Jungle Jameen Andolan, Rajasthan

- (i) Shri Ramesh Nandwana
- (ii) Shri Raghav Dutta Vyas
- (iii) Shri Bhanwar Singh Chandana
- (iv) Shri Mangilal Gujjar
- (v) Shri Ladu Ram
- (vi) Shri Arjun Lal
- (vii) Shri Nanadas
- (viii) Shri Meghraj
- (ix) Shri Jawan Lal
- (x) Ms. Charumitra Nehru

III. Representatives of Bharat Jan Andolan, Jharkhand

Shri George Monipally

IV. Dr. Archana Prasad,

Reader,

Jamia Millia Islamia University,
Delhi.

MR. CHAIRMAN: Shri Gopalakrishnan, I welcome you to the sitting of our Committee. You must have already gone through the Bill which was introduced in Parliament. I would only like to mention that whatever we discuss in this meeting shall remain confidential until the Report is placed on the Table of the House. If it is publicized prior to that it will become the breach of privilege.

You may first introduce yourself and your colleagues to the Committee and after that you can elaborate on whatever points you would like apart from the representation which you have given to the Committee. Then you may respond to the questions asked by the Members.

Introduction

SHRI SHANKAR GOPALAKRISHNAN: Sir, the Campaign is a federation of tribal and forest dwellers from 11 States. We have come essentially for the struggle for forest rights. On those grounds, we heartily welcome this Bill. We believe the fundamental principles of this Bill are sound and it is a long overdue legislation. In our view, we believe that this legislation should be based on three essential points. The first of which is that the comprehensive recognition of the rights of forest dwellers. Secondly, such recognition should include the forest rights, the responsibility, the authority and the right to protect and conserve forest as well. Thirdly, both recognition of rights and conservation of forest should be taken through a democratic and public process. This is what we believe are the three underlying principles of any meaningful recognition of rights.

While the current draft is founded on these principles, it also deviates from them in a number of ways. I think you have the executive summary of the Campaign's written submission before you. Broadly, I am going to follow the same sequence while discussing these issues.

First and perhaps the most critical issue from our point of view with regard to the current draft is the process that has been laid down for recognition and verification of rights. The current process essentially makes the *Gram Sabha* the local community an advisory body and provides that the certain higher committee comprised exclusively of Government officials from the Departments of Forest, Tribal Affairs and Revenue should sit in judgement on the decision of the *Gram Sabha* and may modify, overturn, cancel or nullify, as they wish. We have seen from the Ministry of Environment and Forest guidelines, 1990, that this structure does not work and it cannot work. It is expecting a group of officials one of whom from the Department of Forest is, in fact, an interested party in the dispute to actually recognise and respect community's rights. If this were to occur, it would have occurred a long time ago. Therefore, we feel that the current structure in the Bill, in fact, nullifies the essential meaning of this Bill. We think that a number of specific amendments that need to be made to various Sections to address this problem.

First is section 2(o) which is the definition of 'village' in the Bill, the village is currently defined in this Bill in a somewhat nebulous manner. But particularly outside scheduled areas, if you look at Section 2(o)(ii), village is defined essentially as a revenue village as per whichever State Act may apply. It has been our experience that in many areas, there are communities that are either mixed or that may be partially forest dwelling and partially non-forest dwelling. They may have multiple communities. In this case, if one considers the *Gram Sabha* be entire revenue village which may cover anywhere from two to 10 or 15 hamlets. Then, one is bringing together far too large an assembly with far too many interests all of which may not have anything to do with forest dwelling communities. Therefore, we believe that in accordance with the Panchayats (Extension of Scheduled Areas) Act of 1996, the *Gram Sabha* and the village for the purposes of this Act should be defined be the *Gram Sabha* of the hamlets concerned and not of the revenue village which is particularly a major problem in tribal areas where many revenue villages are defined covering enormous geographical areas and that is containing multiple hamlets. Therefore, we believe that the definition provided in the Panchayats (Extension to the Scheduled Areas) Act, 1996 should be extended to all villages under this Act and the *Gram Sabha* should be convened hamlet-wise.

Secondly, Section 4(7) of the Act provides in case any forest right recognised and vested under this Act may do so by appeal to the Central Government. This undermines this entire Act. There is not much meaning in providing local level process at the *Gram Sabha* at the district and at the Taluka level as in kindly provided if this entire process can be overturned on the decision of the Central Government. This is a violation of the 73rd Amendment. It is against the principle of Panchayati Raj. In fact, it is against the principle of democracy.

Therefore, we strongly feel that this Section has no place in this legislation and should be deleted.

Thirdly, with regard to the actual verification process itself it is set down in section 6(i) (vi). The detailed formulation is given in our written submission. I will confine myself only to the principles that we advocate. The first of those is that the decision of the *Gram Sabha* Should first be taken as the primary authority for recognition of rights. The sub-Divisional or *taluka* level Committee can examine such decisions, hear appeals against it, but then should give its recommendations back to the *Gram Sabha*. This what we believe are corrections that are needed in your Resolution. The *Gram Sabha* should then be allowed to have a final decision. In the matter. In case there is anyone who feels aggrieved even after the final decision of the *Gram Sabha* and in case there are questions of legal problems with the decision of the *Gram Sabha*, then there may a final appeal to the district level which can have a decision on those appeals. But we believe strongly that neither the district, nor the sub-divisional committee should have any power to modify the *Gram Sabha suo motu* and that the district level committee should only have the power to do so after the *Gram Sabha* has been given a chance to reconsider its decision and that too only on appeals. In that case one will have a democratic process whereby the primary responsibility will lie with a democratic body, namely the *Gram Sabha*. One has

only certain right of appeal in order to provide a check on the power of the institution in case of gross abuse of power. We should not allow the higher bodies to simply overturn the *Gram Sabha*. That will nullify this legislation.

Sir, in connection with the higher bodies, the concerned Section is 6(viii) which specifies the composition of the committees. Currently they have specified only to have representatives from the Tribal Welfare, Forest and Revenue departments. There are two major problems with this structure. One, it is undemocratic because it allows bureaucrats to sit in judgement on decision that are essentially decisions that should be taken by democratic bodies. Second, it contains an interested party which is the forest department. One must realize that the forest department has an interest in retaining control over land and forest resources. Therefore, it is a party to the dispute. It cannot be allowed to sit in judgement on that dispute. Even in the Indian Forest Act itself it is specified that in case of settlement of rights, the forest department should not do the settlement and that it should be left to be done by the Revenue Department. We believe there is a strong case for excluding the Forest Department from these bodies and replacing them with a representative from the civil society, someone who is familiar with the ground situation and is an expert in the matter. If the Forest Department has to be retained, then our representative from the civil society should also be retained and a representative from the Panchayati Raj Institution of that level should also be present. This will ensure that there is some balance within the Committee and also some democratic representation.

Further there is a question that has repeatedly been raised with regard to the *Gram Sabhas* which is the question that in large parts of the country the *Gram Sabhas* do not function or they function rarely. In such cases the question that is posed to us is, what is proposed to be done in such cases? There is an existing precedent in the Panchayati Raj laws of many States that should the Panchayats fail to convene the *Gram Sabhas* that another authority can step in to convene the *Gram Sabhas* for the purpose of that legislation. We feel that the same position should be provided in Act. We have suggested a formulation as an additional Section 10 which empowers the *Taluka* level committees to convene the *Gram Sabhas* for the purpose of this Act.

Sir, finally with regard to the integrity of the verification process I would submit that there is an unusual clause that has been included in the latest version of the Bill and that is Section 15(2) (4) which empowers the Central Government to regulate the exercise of rights. This is a very vague section and is also, potentially very dangerous. One does not understand the meaning of recognition of rights and then provide the Central Government the power to regulate or presumably restrict it. This Section was not present in the earlier law and we see no reason as to why it should be included now. That completes the verification process.

Some controversial sections has been included in the Bill, like the *proviso* to the Section 4(1) which provides that rights in the so called core areas or protected areas will be granted on provisional basis for a period of five years after which period they will become permanent if such right holders have not been relocated with "due compensation".

We find that this provision is a very dangerous one for a number of reasons. Firstly, there is no mechanism or guarantee provided to define what due compensation means. Therefore, relocation can amount to eviction. Secondly, it is based on five year time limit which would essentially amount to an order to the State Governments to evict people within a period of five years. Thirdly, the definition of core areas is left upon the Ministry of Environment and Forests to define whereas it is the considered position of many conservationists organizations that such definition should only be done through participation of scientists and through an open process involving community representative.

There is no need for this provision if resettlement is the decision of the Government. Then it is possible to do so at any time. Under the existing law, the rights can be acquired at any time with provision of rehabilitation. Therefore, there is no need for such a special provision particularly such a dangerous provision. I was not able to distribute the paper to you. But we are happy to say that a number of environmental organizations including the World Wildlife fund are in agreement with this position. A number of organizations have been expressing concerns about this Bill and they have also agreed that this provision is not an answer to these concerns which is in fact dangerous. I can circulate that statement later.

With regard to the inclusion of non-Scheduled Tribe forest dwellers, it has been raised many times. We support this provision. It is arbitrary and unjust to exclude people on the ground only because they are not STs. There is a question of trying to adjust this process in such a manner as to ensure that the land grabbers and others who are essentially do not enter forest areas in order to either exploit the forests or the local tribals or the forest dwellers population. We have come up with a list of criteria which unfortunately we are not able to circulate.

The first issue is anyone residing in a forest village namely a village that is unrecorded or unrecognised within the forest area should be treated as a forest dweller. There should be no question of discrimination on these grounds. Otherwise, it also produces a very peculiar where mixed forest villages tribals who receive the rights but non-tribals will not receive the rights. Secondly, outside the forest villages, we believe that the criterion could be as follows. It is only a proposal and it is not our final suggestion. It is for any such person who satisfies all the following criterion. They should be a member of the Scheduled Castes or the OBC's or should be considered any Scheduled Tribe in any other area of any other State. Then they should be certified by the local community, namely, the gram sabha, to be depending on forest rights for surviving or livelihood or any such persons who are being deprived of these rights which would threaten their survival. The third is the gram sabha who certifies that such individuals have a standard of living or income similar to or lower than the Scheduled Tribes in that area. So, one avoids the wealthy estate owners, land grabbers who are trying to sneak under this provision. In addition to these three compulsory criteria, should they satisfy at least one of the others. That is, they should have been living in forest area for the extended period of time. We have suggested this generation and the two previous generations. Secondly, they should have become dependent on the forest area against their will. For instance, like being brought as a plantation labourer or being brought by the Forest Department or having been displaced by dam or some development activities or being forced to enter the forest area, etc. This is the proposal. Fourthly, there is an issue of cut-off date. Sir, 25th October, 1980 has been specified as the cut-off date for the rights under the Act. This has attracted widespread opposition. We agree that this is a problematic provision and we oppose this 1980. We believe that there is no sense in setting a date 26 years prior and particularly, there is no sense in justifying such a date on the basis of the Forest Conservation Act which has no legal relevance in this context because the Forest Conservation Act provides that forest land cannot be diverted without the permission of the Central Government.

The Central Government seems to be perfectly happy to divert lands for development purpose, for mines, for dams, etc. So, we see no reason why there cannot be a diversion for purposes of people's rights. Therefore, we believe that at the minimum this date should be moved forward to 2001. 2001 would offer the justification of not being too long ago. Simultaneously saying that anyone who has been living and subsisting within the forest area and depending on forest rights for three or four years is undoubtedly a forest dweller. So, we believe that at the minimum it should be moved forward to 2001.

We believe that one of the principals of this Bill should be to strengthen the existing practices of communities to conserve and protect the forests and environment area. There is a more detailed note that has been circulated with more instances. That point is implicit in the Bill but it has not been made explicit. It should be made explicit. Section 3 (k) or 3 (j) provides for the right to protect and manage any forest that is being traditionally managed and protected by the community. But that right does not define what "community forest resource" is. We have suggested one such possible definition. It is in the written submission. Section 5 of the Act of the current Bill provides for the duties of forest dwellers. It is a very sweeping provision. The duties imposed are very large. Therefore, we have to argue that such duties make sense if a community is given the power to regulate and to establish such duties. The rest of the provisions should be re-formulated in the same fashion so that the communities are empowered to define what these duties are. Similarly, section 7 provides for penalty in case of violations of provisions of this Act. This provision, as it is currently phrased, is redundant. There is no need for separate penalty under this Act. There are already offences under other Acts. We believe that this section would have meaning if the penalty power under this Section is given to the communities and not left in the hands of the Government because this would provide a check on the activities of State agencies who are in many areas corrupt, unaccountable and autocratic. We should also give the communities power to protect

the forests. This would also give some teeth to the communities. The details are given in the note that we have circulated. In fact, my colleagues from Orissa can give some concrete examples and instances. Without any legal power, they currently defend their forest against mafias and in some cases against the Government. Therefore, we believe that this is a crucial change that is required in the Bill. The next Section is with regard to legal technicality and in some ways very important given the history of forest rights. One crucial question that has come up time and again in every order or legislation of forest rights is the question of evidence to be cited. The Government has always demanded documentary evidence, which of course the majority of the tribals and other forest dwellers simply do not have. So, we believe that this law should explicitly provide that evidence should include, oral evidence, multiple forms of documentary evidence, and affidavits. It should also include prior applications or court cases etc. The details of which I have given it in the written submission. There is another issue that is particularly acute. In Eastern India, in Orissa, in Chhattisgarh, in Jharkhand it is likely to be increasingly more acute. The issue is forest land being diverted and destroyed for purposes of mining, industry, dams, etc.

The pressure for doing this has skyrocketed in the last few years. The amount of forest land that was diverted last year by the Ministry of Environment and Forest for these purposes was two-and-a-half times greater than the average that they have been diverting since 1980, and this pressure will only increase. The single greatest threat to both and forest dwellers, is their displacement or the destruction of forest for such purposes. Therefore, again there is a more detailed note on this and it has been circulated to you. We believe that there is both legal precedent and legal requirement for restricting the power of the Government to acquire forest lands for such purposes, and under this Act. We believe that at a minimum that such restrictions should say that the consent of the community is required, which is currently a requirement under the Panchayat Extension to Scheduled Areas Act. But, it should be a requirement for any right recognized under this Act in any location, not just in Scheduled Areas. That is, the consent of *Gram Sabha* and the community and perhaps the consent of the other bodies—there can be other safeguards incorporated — at a minimum, this should be allowed. Ideally, we would actually request the Committee to recommend that the Acquisition of such rights should be barred. That would be the most solid protection that one could have.

Then there is a question of displacement of displaced persons, the people who have already been displaced from their lands and home prior to the promulgation of this legislation. There are two categories of such people. There are people who have been displaced and have, therefore, occupied other forest lands or other areas for their survival. There are also people who have been displaced, who have been unable to take possession of any other land and, therefore, have been reduced to destitution in life as land labourers. These are large sections of people. They include many people who have been illegally evicted, as a result of their failure to recognize their rights. They have been illegally evicted by the Forest Department. My colleague from Madhya Pradesh can tell many instances of that occurring. We do not believe that it would be just or fair for this law to ignore these categories of people. With regard to people who have managed to occupy and to subsist on other locations, one can say that, at least, the cut-off date in such cases should be relaxed, that they should be allowed to retain possession of whatever land they have managed to take hold on. They should not be doubly punished by being evicted again. For those who have not done so, and who are not in possession of land or other rights or other livelihood security, we believe that this Bill should, at least, in principle, recognize their right to rehabilitation, to alternative lands, to some form of compensation for the illegal loss and, in fact, the crime that has been committed against them.

Then, there are some other more legal and technical changes that are required. First, in section 2(c), the definition of 'forest dwelling Scheduled Tribes' currently reads as constituting such communities that live in forest land. If one requires or wants them to live in forest land, then, it technically could be right in saying that only those who are currently residing with their habitation itself inside the reserved forest should be recognized. Now, this will exclude the vast majority of forest dependent communities who live on the edges of, or who may have revenue title to their houses but do not have the title to their Agriculture, do not have the title to the minor forest produce and so on. So, in the earlier draft of the Bill, they had stated that it should be 'the community to live in and around forest'. We believed that word 'around' should be reinstated.

Then, there is a very minor point or technical point with regard to the grant of joint title to husband and wife under section 4(5) (ii) of the Act. I think, due to a clerical error, that joint title now only extends to rights under section 3(a). We believe it should extend to any right under section 3 recognized under this Act.

Then, with regard to section 5 and section 7, particularly section 7 and its sub-sections like (iii), (iv) and (v), these are extremely sweeping provisions, for example, to make the destruction of any aspect of bio-diversity a crime or felling of any tree for any commercial purposes a crime. These are sweeping provisions and they provide for much scope for abuse.

Therefore, we believed, as we have argued in the position paper, that the final three sub-sections of section 7 should be deleted.

Section 5, as I have already stated, should be re-formulated to allow the community to determine such regulations.

Section 8 is about the penalties for the authorities who contravene the provisions of this Act. This Act is meant to recognize the livelihood rights of the most marginal and the most victimized members of our society. Yet, we find that the penalty for violating that recognition is just Rs. 1000. For a Government official, it is a slap on the wrist. It will have no deterrent effect whatsoever. Therefore, we believe that at least the prior provision, which is there in the Act, which provided for imprisonment and for a much higher fine, should be reinstated.

Section 14 of the Act reads "where there is any conflict between this legislation and the others, this Act shall be treated to be in addition to those other legislations, not in derogation of them." It is not clear to us. It is not clear to most of us, to many of those we have spoken to, what this section means. What it could Mean is that there could be considerable legal complexities and confusions. That could result in many disputes particularly with regard to application of the Forest Conservation Act. Will the Forest Conservation Act apply or not till the lands are recognized? Under this legislation, it is not clear. Therefore, we believe that this Section should be revised to read the same way as it reads in most Acts saying "where this legislation is in conflict with the other legislations, this legislation shall prevail."

Finally, I have to make two more points. One is that in 1990, the Central Government had conceded that those who are dependent on the forest livelihood, whosoever they might be, if they are found inevitable for the recognition of rights, they should be granted *in situ* rehabilitation which might include alternative employment, afforestation programmes etc. We believe this constitutes an important right and that should be incorporated in this legislation in accordance with what the Central Government has already committed itself to.

In the public version of the Act, last year in June, there was an important right that was included — the bio-diversity right, intellectual proper right. There is some objection to the phrasing of that right which may have been valid. We find that right has been deleted in the latest version of the Act. We believe that that right should be reinstated in this era of globalization, bio-piracy, patenting of anything from neem to hundreds of other herbal and traditional remedies. This right could be an important defence for the traditional forest-dwelling community.

I believe this completes my submission on behalf of the Campaign. My colleagues have come from various States. They may also be allowed to make certain observations.

MR. CHAIRMAN: They can make their submissions. Please be brief and to the point.

SHRI KUNDAN KUMAR: Before making my submission, I would just like to take two minutes to give the background information of Orissa from where I come.

Around 38 per cent of Orissa's areas in considered as forest land. In tribal area, it is called Scheduled-V area. It constitutes almost half of Orissa and around 46 per cent of the land belongs to the Forest Department and the Revenue Department. It is classified as forest land, Our submission is that the settlement rights especially of the Scheduled Tribes and the Dalits in these forest areas have been very poorly done. In fact, the data collected by us shows that no proper settlement of rights have taken place in respect of more than 80 per cent of the forest areas in the State Orissa.

There have been different mechanisms through which this has happened. One of the most important mechanisms was this. When Orissa was constituted, it was constituted taking the British parts, the Madras Presidency Area, the Orissa State as it was before Independence and the Central Provinces Area which also had 24 Princely States. All these were merged to create the State of Orissa. Almost all the forests in these Princely States as well as the Madras Presidency Area, reserved or otherwise, were never properly settled by the Princes, by the erstwhile rulers.

There was no proper settlement of rights process. However, after independence, these forests in 1954, through an amendment, were deemed as reserved forests or protected forests without settling the rights of people who were residing therein or who had rights therein. I can just cite an example of various forest divisions. For example, in Rairakol division, which is one of the important forests divisions of Orissa, 100 per cent of the reserved forests as of now are deemed reserved forests which have been constituted in very poor fashion and where, effectively no rights have been settled in those areas. This is one of the problems because of which in most of the forests in Orissa, right settlements have not taken place.

Secondly, there is another submission that Orissa is one of the States in the mainland India where shifting cultivation was a traditional customary practice of the tribal communities. As hon. Members from Orissa would know, tribals have been subsisting on activity since generations and as a tradition. In 1959, Orissa Forest Enquiry Committee Report, which was an enquiry committee set up by the State Government of Orissa, conceded that almost 12, 000 Square Miles of the State of Orissa was affected by shifting cultivation. That is almost 30,000 Square kilometers, 20 per cent of the area of the State. Sir, I regret to point out that even though in the princely States in the British period, there were certain rights on these lands. After independence no rights were given to tribals on these lands and most of these lands were converted to forests or considered as forests on which now Forest Conservation Act applies. Anybody who has been to Orissa to various tribal areas will find that this is one of the most burning problems in the State. Apart from that I would like to give an illustration of how badly the survey and settlement has been done. We did an analysis of the census data of 2001 and we found that in 10 of the scheduled districts there are 443 villages, which have zero revenue area. That means they neither have *patta*, they neither have private land nor revenue land. That implies that these are situated in forest lands and the population of these villages was 69,237. These villages are neither in the list of the Forest Department, which has been proposed to the Ministry of Environment of Forests for regularization. It is a matter of great concern that since 1980 to 2005, the same Forest Department and the Ministry of Environment and Forests, which claims to have passed to recent resolution, have regularized a total of 29 hectares of forests land in the name of cultivators in the whole State of Orissa. In 25 years, State of Orissa has regularised 29 hectares of forest land after Forest Conservation Act has been passed. This is the record of Forest Department and of the bureaucracy. As someone was pointing out that we are giving them the responsibility. There have been so many exercises and so many efforts but nothing has come out of it. So, it is due time that we should give this responsibility to the people themselves. Regarding specific submissions, I would like to make two specific submissions from Orissa, which compliment and supplement what our national campaign has pointed out. The Tribal Bill, in Section 3(j) mentions that community should have certain rights. It mentions certain community rights over forests and it says that these community rights include right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use. It is my submission that in the State of Orissa and not only in Orissa, in Jharkhand and in other States a very large number of village communities are protecting and managing forests. In Orissa itself we have documentation of over 10,000 villages, which have been protecting and managing forest on Government land without any external incentive or money for the last 20 years to 30 years.

Sir, I have satellite maps, which compare the data. I have literature which can substantiate this. I can submit the same for the consideration of the Committee. Similarly, documentation is available for Jharkhand and where at least a few thousand community groups are protecting and managing forests.

This is both in tribal areas and non-tribal areas. Under the Joint Forest Management Programme, you must be aware that in most of the States now communities are involved in managing and protecting the forests. The

need for democratization of forest governance is extremely important. For example, in Orissa, in the tribal areas, the poor tribals or the poor Dalits often depend for more than 40-50 per cent of their requirement of the livelihood and subsistence needs on the forest land. Yet, the forest land both in Scheduled and Non-Scheduled areas is controlled by the Forest Department or by the Revenue Department on which people have, almost, no rights. Even the rights that they have like nistar rights are suspended using one means or the other. I think it is time that in this Bill we should include the provision that, at least, the forest which come under the traditional boundary of the villages should be and which come inside what the village community or as defined in the Bill as its traditional boundary should be brought within the purview of the Gram Sabha. I would like to say that, for example, in Orissa Panchayati Raj Act, 1964 there is a provision that all waste lands and forest lands which come within the boundary of Gram Sabha should be controlled and managed by the Gram Sabha. However, this was never implemented through rules. It is my submission that this is something which will make tremendous difference to the way that our forests are managed, to the way that they can be sustainably managed for the livelihood and benefit of forest-dependent people of this country.

Therefore, I suggest that Section 3(j) can be modified to read that the community rights to forest may include the right to control, protect, regenerate or conserve or sustainably manage all forest resources which fall within the traditional boundary of the village and an additional section introduced in the definition of forest rights which says that right to produce and benefits including timber, minerals and environmental and cultural benefits from the forest lying within the traditional boundary of the village should be given to the Gram Sabha. Further, these rights shall be supplementary to the other existing rights settled in these areas including nistar rights because sometimes in some places other villages might have some rights within a forest which might come under the traditional boundary of villages. This process of settlement can also be done by the Gram Sabha where it can demarcate its boundary and in case there is a conflict or a confusion, may be the Gram Sabhas can sit and resolve their confusion and in case that is not done, higher level committees can handle this and arbitrate between the Gram Sabhas.

Another submission that I want to make which is not really covered by the Bill is the issue of shifting cultivation. This is one of the greatest injustices done to the tribals of Orissa that the shifting cultivation land traditionally owned by them has been converted to forest land. Even now, in most of these areas, tribals are cultivating such land, but they are being punished for it, they are being harassed for it. Since it is their sole source of livelihood, they are being forced to carry out shifting cultivation. I can again provide documentary proof and satellite maps which show the extent of shifting cultivation of the tribal communities.

My submission is that the shifting cultivation land which is categorised as forest land should be demarcated by the Gram Sabha, taken out of forest category and settled as land owned by the community or individuals as per the traditional norms of the concerned tribes because different tribes have different norms as to whether shifting cultivation land is individually owned or is owned by the community and land use on such land shall be the decision of the individual or the community concerned who can manage such areas as forest or for agro-forestry or for horticulture. This provision should be included in the Acts and the Rules.

One final submission that I want to make is about the mining issue. Orissa is one of the worst sufferers in this regard. Again, if you look at the satellite maps, areas like Schedule-V areas look like all the forests have been completely destroyed and in fact, we are afraid there is a strong feeling at the local level that this Bill could be the means for the industry and mining companies coming through the back door. The Forest Conservation Act is one of the most important obstacles against forest land being converted for mining and other industry and this has been one of the major problems for the people who want to expand these activities.

Sir, it is our request that every such land, which is being given through the tribals under this Bill either there should be a ban on the acquisition of such land or if there is no ban, which I understand position being taken by many of the people, at least, the consent of the Gram Sabha must be made mandatory under the Bill.

Thank you.

MR. CHAIRMAN: You mentioned about and started with shifting cultivation and ended with that also.

SHRI VIRBHADRA SINGH: Sir, before that I would like to submit in this regard. Shifting cultivation means, a tribal cuts the jungle, burns it, put some seed for a particular period, then again he chooses another plot of forest, cuts the jungle, burns it, put some seed as per requirement and so on. It is on rotation. So, I would like to know which part of the land should be recorded in his name, the earlier one or the later one.

MR. CHAIRMAN: This shifting cultivation is there even in the North-East Region. They call it Jhoom over there. In Andhra, it is called Podhu. Basically, what happens is, this is done on the hilly slopes, many of them are jungle areas and they keep on doing the shifting cultivation from one area to another area because fertiliser starts decreasing. So, when you say, the rights have to be settled, what do you mean by that? If you go on settling rights in favour of all the hilly slopes, there will be no end to it. What is your specific suggestion as far as that is concerned? How does one have to settle those rights?

SHRI KUNDAN KUMAR: Sir, when the shifting takes place, it goes in a cycle. I can bring in enough evidence from the literature and from the scientific work, which shows that it has a deleterious effect. I can submit that literature to the Committee. But in Orissa, for example, when people are doing shifting cultivation they rotate, they use one patch and after two-three years of cultivation they shift to another. But they come back to the same one after that.

MR. CHAIRMAN: This is the traditional practice. But of later they have been abandoning this. They have been shifting permanently out. It is happening in my constituency and in Shri Gamang's constituency also. In practical terms, we have seen communities abandoning these old places of cultivation and they keep on going from one area to another area. This problem is there.

SHRI KUNDAN KUMAR: In this regard, my submission would be that there are different practices being followed. I am not aware of the practice followed in your constituency. Our studies have shown and it is based on the field study. In Orissa, what we have seen is that a tribal plan normally has a boundary and within that boundary they say that this is our land. They do not go beyond that. If you cross that boundary, it can be a cause of major conflict.

What we are suggesting is that either on an individual basis or community basis, within the planned boundary, the land should be considered as their land. As you said that there are many places that they are now planning to leave. It is a question of accepting that these people have the rights on these lands. They might decide on that. In fact, in Koraput, they have decided to leave it as natural forest or plant cashew or other plants.

But, till they have rights on these lands, they cannot do all that. I am not advocating that the shifting cultivation may be protected; what I am requesting is that the right on the shifting cultivation land, as per the traditional village boundary, may be considered.

MR. CHAIRMAN: I am not talking of either promoting it or curbing it. I am saying that there are practical difficulties when people keep shifting. As you yourself have mentioned that now they are not going back to those lands but they are planting cashew nuts etc. or leaving for regeneration. It also implies that they are going to newer pastures rather hill slopes. It means, by your own statement the implication is that, they are not reverting back on rotation basis to the earlier slopes that they were cultivating. What I am talking about is that there is practical difficulties. What is your suggestion to solve it? We have to find a way out.

SHRI KUNDAN KUMAR: What is happening is that where they are shifting to other land uses, it is because they are either getting some other alternative or land uses. But the point is that the lands traditionally belong to their clans. So, that land should be considered their land rather than forest land. It is because currently whatever they might do on that land it is not allowed under the Forest Conservation Act.

SHRI N. JOTHI : The gentleman from Orissa has doubted whether this Act is in a manner helping the multinational companies. Instead of accusation, he should have looked at the Preamble and the efforts made for the first time after Independence. Very *bona fide* efforts have been made in the interest of tribals. Please

remove that doubt from your mind while you leave this please. Please do not advocate that. It is because people will suspect thereafter. You leave that issue now itself.

SHRI KUNDAN KUMAR : Sir, this is not my perspective. This is what some people have said.

SHRI N. JOTHI : The Constitution and the Members from both the Houses of Parliament will not be a party to these kinds of activities. We are not a party to it. We have a *bona fide* approach. In fact the Chariman is making a lot of efforts in this matter. I have not seen any Chairman functioning like this. I am freely appreciating him publicly. Already 16 memorandums have been received and all the hon. Members are working on this. We are really interested in helping the tribals.

SHRI BIJAYBHAI : Thank you Chairman, Sir. I shall be as brief as possible. I would like to bring to your kind notice the peculiar situation being faced by the tribals in Madhya Pradesh and Chhattisgarh particularly. At the time of the formation of Madhya Pradesh, the forest areas which were under the princely States were also merged to the State. About 94 lakh hectares of land was merged to the State forest land. Earlier the people were having their rights over that 94 hectares of land. After the merger, the rights of the people were not settled and they were asked to go away and they were forcibly evicted from that land. That is one thing.

The other thing is that after 2002, the forest Department undertook a massive drive evicting tribals by burning their houses and so on and so forth. But the Bill does not say anything about those people who have been evicted. That is the peculiar thing. There are a large number of people. I think in Madhya Pradesh particularly the Forest Department was able to drive away around 10,000 families from therein. There are several cases of burning, looting, beating and so many other things happened. I would like to request the hon. Chairman that the hon. Committee may recommend that something should happen to those people who have already been evicted by these people.

MR. CHAIRMAN : We will take care of all that. We will certainly give a serious thought to your suggestion.

Thank you very much for interacting with the Committee and letting us having the benefit of your views. If there is anything else other than you gave that you would like to send it to the Committee, please do send it as early as you can. Kindly send your reply to a couple of other points which are relevant. Please send it as soon as possible so that we can incorporate it in our Report after we decide.

Please have a cup of tea before you go.

(The witness then withdrew)

WITNESSES EXAMINED: 1. Shri Ramesh Nandwana from Jangal Jameen Andolan, Rajasthan

2. Shri Bhanwar Singh Chandana from Jangal Jameen Andolan, Rajasthan

MR. CHAIRMAN: Shri Ramesh Nandwana and his colleagues, I welcome you all the sitting of the Joint Select Committee. We have received your representation and you have also gone through the proposed Bill that was introduced in the Parliament.

Whatever we discuss in this Committee today shall remain confidential until the Report of the Committee is placed in the Parliament. Otherwise, it will attract proceedings under breach of privilege as per the conduct of Rules of Business of the House.

Please introduce yourself and your colleagues to the Committee. You can also make whatever submissions apart from the representation that you have made.

(Introduction)

MR. CHAIRMAN: You can speak in Hindi or English. There is no problem. We have simultaneous translation facility.

श्री रमेश नन्दबाना: हमारा सम्मानपूर्वक कमेटी से निवेदन है कि प्रस्तावित अधिनियम 4 (1) जिसे हम समझ पाए हैं, उसका मतलब यह है कि यह केवल शैड्यूल एरिया के लिए प्रस्तावित है। सैक्शन 7 में भी यह लिखा गया है कि—

"In case any authorised right recognised and vested by sub-section (1) is despatched by any State Government or local authority, the competent authority shall consider the records prepared at the time of declaring the area as scheduled area, and while notifying any tribe to be deemed to be scheduled tribe under article 342 of the Constitution along with evidence and then pass an appropriate order in the matter."

हमारा सम्मिश्रण यह है कि राजस्थान में शैड्यूल एरियाज हैं, उनमें रहने वाले टाऊ कहलाते हैं, वे एरियाज मार्जिनल एरिया डेवलपमेंट एजेंसी (माडा) के अंतर्गत आते हैं। इन एरियाज में ट्राइबल पापुलेशन पचास परसेंट से कम हैं, वे लोग जंगल में रहते हैं। तीसरी कैटेगरी में स्कैटर्ड पापुलेशन आती है, वह कलस्टर्स में रहती है और उनके पांच, दस या पन्द्रह गांव हैं। ये पूरी तहसील का पचास परसेंट भी नहीं बनाते हैं और न ही पूरे जिले का पचास परसेंट बनाते हैं। वे लोग इस एक्ट के बेनिफिट से वंचित नहीं होने चाहिए, उन्हें इसमें शामिल किया जाना चाहिए।

हमने रिप्रजेन्टेशन में कुछ उदाहरण दिए हैं। पिछले कुछ दिनों से भीलवाड़ा जिले में करीब पन्द्रह गांवों में ट्राइबल पापुलेशन रह रही है, वे लोग पीढ़ियों से रह रहे हैं, उन्होंने मकान बनाए हुए हैं, कुएं बनाए हुए हैं, लेकिन इसके अलावा उनकी कोई जमीन नहीं है। वहां दस-पन्द्रह बीघा जमीन है, वहां के तहसीलदार और पटवारी लिख रहे हैं कि ये ट्राइबल्स के कब्जे में हैं। उन्हें वहां से डिसपजैस किया जा रहा है, इनमें से किसी को भी इस साल फसल बोने नहीं दी गई है। इस एक्ट के बनने से वे अपने राइट्स से डिप्राइव नहीं होने चाहिए। जो लोग अदर वैन शैड्यूल एरियाज में रह रहे हैं, उनके राइट्स को रिकोगनाइज किया जाना चाहिए। उदयपुर जिले में राजस्थान के दस जिले, जो माडा के अंतर्गत आते हैं, उन्हें टीएस्पीए एरियाज में लेने के लिए एस.सी.एस.टी. कमीशन ने रिकमेंड किया है कि उदयपुर जिले की मावली, गिर्वा, वल्लभनगर एवं गोगुंदा तहसीलें, राजसमंद जिले की कुभंलगढ़ एवं नाथ द्वारा तहसीलें, चित्तौड़गढ़ की छोटी सादड़ी एवं बड़ी सादड़ी तहसील, सिरौही की पिण्डवाड़ा तहसील तथा पाली जिले की वाली तहसील, इन दस जिलों में ट्राइबल पापुलेशन बड़ी तादाद में रह रही है और जंगल में ही रह रही है।

मेरा सम्मिश्रण है कि ये लोग जंगल में रह रहे हैं, वैसे तो जंगल के लिए बहुत जगह होनी चाहिए। उन्होंने जंगल को बचाकर रखा हुआ है, इसे बर्बाद नहीं किया है। लेकिन आज उनकी निगाह में आ रहा है कि ये जंगल हैं इसलिए इन्हें हटया जाए जबकि उन्होंने ही जंगल का बचाया हुआ है। उनका कहना है कि हम हैं तो जंगल हैं, हमने इतने सालों से इसे बचाकर रखा है और आज तक जंगल बर्बाद नहीं हुए हैं। आप दूसरे इलाके देख लीजिए। राजस्थान के दूसरे इलाकों की परसेंटेज देख लीजिए। जयपुर और जोधपुर की परसेंटेज देख लीजिए, वहां दो या तीन परसेंट भी जंगल नहीं हैं। उदयपुर, डुंगरपुर और बांसवाड़ा में 30 परसेंट से ज्यादा इलाकों में जंगल हैं क्योंकि वहां इन्होंने जंगल को बचाकर रखा है। प्रिमिटिव ट्राइब्स बारां जिले के किशनगढ़ और शाहबाद में रहते हैं। उनकी स्थिति इतनी ज्यादा खराब है कि राजस्थान में भुखमरी से मरने वाले सबसे पहले इन इलाकों के लोग होते हैं फिर चाहे वहां, कोई भी सरकार हो। वहां की स्थिति यह है कि हर साल दो, पांच या दस मौतें होती हैं। वहां मेरे और भी दोस्त आए हुए हैं, वे भी अपनी बात रखेंगे, लेकिन ये इलाके भी टीएस्पीए में शामिल नहीं हैं। जबकि इस एक्ट का फायदा केवल टीएस्पीए को ही मिलना चाहिए, जब ये शामिल नहीं होंगे तो इसका कोई मायने नहीं रह जाएगा और पचास परसेंट पापुलेशन इस राइट को प्राप्त करने से वंचित रह जाएगी।

मेरा अगला सम्मिश्रण है कि इनीशियली जब यह एक्ट बना था तब इसमें फरिस्ट डेवलपिंग पीपुल लिखा गया था लेकिन अब फरिस्ट डेवलपिंग शैड्यूल ट्राइब्स लिखा गया है। हम इनमें कैसे फर्क करें? एक गरीब आदमी है जो अनुसूचित जनजाति का नहीं है और वह राजपूत हो गया।

हमारे यहां कोई राजपूत है, जैसे गरसिया और राजपूत दो तरह की बड़ी जातियां हैं, जिनमें से कुछ गरसिया राजपूत हो गये और कुछ गरसिया ट्राइब्स रह गये। उन्होंने रिकार्ड में गरसिया, राजपूत, रावत, राजपूत लिखवा दिया। इस तरह से ये रिकार्ड में राजपूत हो गये। जबकि वहां सेम कंडीशन हैं, वहां राजपूत भी रह रहे हैं, वही नाता पड़ता है। सारे का सारा सिस्टम वैसे ही चल रहा है। यदि इन लोगों को वंचित किया जायेगा तो हमारा सम्मिश्रण है कि इससे झगड़े होंगे और गांवों के अंदर फूट पैदा होगी। एक ही गांव में दो भाई साथ-साथ

रह रहे हैं। आप इसके लिए एक क्राइटीरिया फिक्स कर दीजिए कि लैन्डलैस आदमी होना चाहिए। हर राज्य में लैन्डलॉर्ड बने हुए हैं, उसमें अलाटमेंट का एक नियम बना हुआ है कि इतने बीघे तक जमीन अलाट हो सकती है। उस क्राइटीरिया में जो आता है, उसे इस एक्ट में बैनिफिट दिया जाना चाहिए।

हमारा अगला सबमिशन यह है कि शुरू में इस एक्ट में ग्राम सभा को पावर्स दी गई हैं, फाइनल अथॉरिटी ग्राम सभा है, वह तय करेगी कि किसका इनटाइटलमेंट है, जिसे ये राइट मिल सकते हैं। जो प्रोपोज्ड बिल की कापी हमारे पास है, उसमें ग्राम सभा का एडवाइजरी रोल है। हमारा निवेदन है कि इस संबंध में सब डिविजनल लैवल पर जो अधिकारी होते हैं, उनकी गांवों तक पहुंच नहीं होती है। सब-डिविजनल लैवल पर हमारे गांव के लोग भी नहीं पहुंच पायेंगे। क्योंकि उन्होंने आज तक सब-डिविजन नहीं देखा है। अब यदि उनसे यह कहें कि आपको यह काम करना है तो आप सब-डिविजनल कमेटी में जाओ तो वह उनके बस का नहीं है। वहां उन्हें वकील करने पड़ेंगे, उन्हें कुछ न कुछ रास्ता निकालना पड़ेगा और नये वकीलों के लिए लिटीगेशन का एक जरिया बन जायेगा। हमारा सबमिशन यह है कि इसमें ग्राम सभा को राइट दिया जाये और अगर ग्राम सभा के प्रस्ताव से कोई एग्रीव्ड है तो भले ही वह वहां जाए, लेकिन राइट तय करने का काम ग्राम सभा का होना चाहिए।

सभापति महोदय, टाइम लिमिट के बारे में हमारा सबमिशन यह है कि इस में 25 अक्टूबर, 1980 की तारीख रखी गई है, यह उचित नहीं है। 25 सालों में सैकड़ों और हजारों की तादाद में लोग विस्थापित हो गये हैं और हर साल लोग विस्थापित हो रहे हैं। आज से दस दिन पहले का किस्सा है—कोटला तहसील में एक आदिवासी के घर को जला दिया गया। उसका लड़का गुजरात में मजदूरी करता है। वह वहां से कमाकर दस हजार रुपये लाया था, जो एक डिब्बी में रखे थे। उसके दस हजार रुपये के नोट भी आग में जल गये। हमने जाकर फॉरिस्ट विभाग के लोगों को बताया कि आप यह क्या कर रहे हैं, तो फॉरिस्ट ऑफिसर ने कहा कि अब अंग्रेजों का राज नहीं है। इतना मत करो, बस उसे वहां से हटा दो। 1980 से लेकर आज हम वर्ष 2006 में पहुंच गये हैं। इस बीच बहुत लोग विस्थापित हो गये हैं। इसलिए आप कोई न कोई रीजनेबल क्राइटीरिया फिक्स कीजिए। वर्ष 2004 में 1993 तक का सर्कुलर निकला था। उसे माना जाए। हमारा निवेदन यह है कि यदि हमेशा के लिए इस समस्या को हल करना है और जंगलों को बचाना है तो इसे आज की तारीख से लागू कर दिया जाए। आज के बाद के जो भी कब्जे हैं, उन्हें रेगुलराइज मत कीजिए। यह स्पष्ट मैसिज इस एक्ट से जाना चाहिए। यदि 1980 वाले का हो जाए और 1981, 1983 या 1985 वाले का न हो तो इससे बहुत बड़ा डिसक्रिमिनेशन नजर आयेगा और जो भावनाएं और मंशा है, वह पूरी नहीं हो पायेंगी।

हमारा अगला सबमिशन यह है कि ट्राइबल एरियाज में बड़े पैमाने पर माइनिंग और डैम्स के कारण लोगों का विस्थापन हुआ है। हजारों की तादाद में माही, बजाजसागर, तालाबबना, कडाना तालाबबना के विस्थापितों के पास जंगलों में जाने के सिवाय और कोई विकल्प नहीं है। वे जंगलों में जाकर बैठे हुए हैं। आज की तारीख में 30, 35 और 40 सालों से वे जंगलों में बैठे हुए हैं और अभी भी विस्थापन की प्रक्रिया लगातार चल रही है। क्योंकि आदिवासी जंगलों में रहते हैं। जंगलों में रिसोर्सेज हैं, जंगलों में पानी है, नदी, तालाब आदि हैं। अब यदि वहां सरकार की निगाह पड़ती है कि यहां तालाब बना दो या बांध बना दो तो वे फिर विस्थापित होंगे।

उनके लिए क्राइटीरिया फिक्स किया जाए, बाकी लोगों के लिए जो क्राइटीरिया है, वह उन लोगों के लिए भी किया जाए। मेरा अगला सबमिशन यह है कि पिछली बार सन् 1990 में सेंट्रल गवर्नमेंट ने और स्टेट्स ने एक सर्कुलर निकाला था, उनमें कोई यूनिफॉरमिटी नहीं थी कि क्या क्राइटीरिया होगा। यह क्लियर होना चाहिए कि क्या क्राइटीरिया होगा ताकि कोई गलत आदमी एनटाइटलमेंट प्राप्त न कर सके और न ही कोई सही आदमी उससे वंचित हो सके। इस तरह का क्राइटीरिया फिक्स होना चाहिए, इसका प्रावधान इसके अंदर किया जाना चाहिए। आखिर में देश की संसद के सामने हम विनम्रता पूर्वक करबद्ध निवेदन करना चाहते हैं कि इस एक्ट को जितनी जल्दी बनाया जाए उतनी जल्दी उन लोगों की कठिनाईयां दूर होंगी। उनके ऊपर तलवार लटकी हुई है, उन्हें कभी आजादी का सुख नहीं मिला। गांवों के लोग कहते हैं कि वहां जंगल है, सड़कें ठीक नहीं हैं। वहां अगर कोई बीमार हो जाए तो उसे खाट पर डाल कर ले जाना पड़ता है, क्योंकि वहां सड़क नहीं बन सकती है। हमारा यह कहना है कि आजादी के लाभ उन्हें भी मिलने चाहिए, इसलिए इस काम को आप जल्दी करवाएं।

श्री भंवर सिंह चंदाना: सभापति महोदय, मैं एक ही बात बोलाना चाहता हूँ कि जो सेंचुरी इलाके घोषित कर दिए गए हैं, उनमें उनके जो अधिकार तय होने चाहिए, वे आज तक नहीं हुए। हम जब इस एक्ट के बारे में बात कर रहे थे, वे 90 के सर्कुलर को लेकर थे। उस समय सेंचुरी इलाके में कोई राइट्स कंसीडर करने की बात नहीं हुई, जब कि हमारी सेंचुरी में डेढ़ सौ के करीब गांव हैं। एक सीतामाता सेंचुरी इलाका है, जहां विस्थापित लोग आकर बैठे हुए हैं। उन्हें दोबारा, दूसरी बार विस्थापित होने के लिए मजबूर होना पड़ेगा, क्योंकि उन्हें वहां से निकालने की प्रक्रिया जारी है। सेंचुरी इलाके के बारे में इस एक्ट में जो पांच साल का प्रावधान है कि अगर वे पांच साल तक रहते

हैं, उनका राइट्स कंफर्म करेंगे तो वह समय-सीमा भी देखेंगे, कि इन्हें इतने साल हो गए हैं। इस समय-सीमा को अगर तीन साल किया जाए, कमेटी भी इस पर विचार करके एक समय-सीमा तय कर सके तो अच्छा होगा, यह प्वाइंट मुझे इसमें जोड़ना था।

शुश्री चारु मिश्रा: सभापति महोदय, मैं बारां के शाहबाद ब्लॉक से आई हूँ। शाहबाद और किशनगंज, इन दोनों ब्लॉकों की टोटल पापुलेशन का 34 प्रतिशत हिस्सा आदिवासी है। It is the only primitive tribe of *Adivasis* in Rajasthan. स्टेट ने भी उसे बिल्कुल वनरिजर्वल ग्रुप रिकोगनाइज किया है। They have packages of schemes for them which hardly reach them. हम उनके लिए सारी चीजें कर रहे हैं, लेकिन मुझे लग रहा है कि उनकी जो मूलभूत समस्या है, उसे एड्रेस करने की कोई कोशिश नहीं हो रही है। We have a whole lot of letters from the officials last 40 years, जिसके अंदर यह लिखा होता है — Forest and Revenue should sit together and resolve this problem, परन्तु उसे लेकर अभी तक वहां कोई भी प्रयास नहीं हो पा रहा है। Five hundred cases were recognised by Forest Department. जिन्हें लीगलाइज करने के लिए उन्होंने रिकोमेंड किया था। सह सर्वे कब हुआ, यह किसी को नहीं पता, कोई नहीं जानता, nobody knows in the field. जब कि वहां हजारों की तादाद में आदिवासी परिवार रहते हैं। Only 107 cases were recognised which is ridiculous. जिन्हें रिकोगनाइज किया था, उनसे भी जुर्माना लिया जा रहा है और जिन्हें खुद रिकोगनाइज कर रहे हैं, उनसे भी लिए जा रहे हैं, जिस तरीके से ये सारे जुर्माने लिए जाते हैं, It is really inhuman. वास्तविक रूप से हम नहीं देख सकते हैं कि फोरेस्ट पीपल किस तरीके से ये सारे जुर्माने चार्ज कर रहे हैं। हमारा यह सबमिशन है कि इस प्रोब्लम को जल्दी सोल्व किया जाना चाहिए। कमेटी बनी है, लेकिन कमेटी जब तक ट्रांसपेरेंट नहीं होगी तब तक लोगों को विश्वास नहीं होगा कि हमारा काम सही होगा। पहले भी ऐसा हुआ है और अभी भी होने की संभावना है। हमारा तीसरा सबमिशन यह है, until and unless we resolve this problem, orders should be issued. उनसे कम से कम जुर्माना लेना बंद किया जाए।

They are imposing the penalty of at least Rs. 1,000 per bigha, which is a big amount for them. सिर्फ पर्टिकुलर प्रॉब्लम को कंट्रोल नहीं कर सकते हैं यह स्थिति ऐसी रहेगी जैसा कि बताया गया है कि यह ऐरिया 34 प्रतिशत है This area is not recognised as Scheduled Tribe area. इस ऐरिया के लिये जहां वनरिजर्वल ग्रुप रहा है। अगर इसका परसंटेज देखेंगे, यह शायद नहीं आये यह स्पेशल केस ट्रेट किया जा रहा है क्योंकि राजस्थान में प्रीमिटिव ट्राइब्स है और खेवाड़ उस ऐरिया में रह रहे हैं। इस जनजाति को कथौड़ी घोषित किया गया है और हम अपने इलाके में इसे खैरवा बोलते हैं। Nowhere they are recognised as ST. If they are recognised, it might increase the percentage. आप इन्हें भी शामिल करके कर सकते हैं।

These are the two submissions which I would like to make.

श्री अर्जुन लाल: बांसवाड़ा में दो बड़े डैम बने हुये हैं जैसा श्री न्दवाणा साहब ने बताया है। वहां 40 हजार आदिवासी विस्थापित हुये हैं। उन्हें न तो आज तक कोई मुआवजा मिला है न कोई जमीन दी गई है। इस कारण वे लोग दर-दर की ठोकरें खा रहे हैं। वे लोग परेशान हो रहे हैं। वे लोग मीटिंग में या धरने पर बैठे हुये हैं और सरकार से मांग कर रहे हैं लेकिन उन लोगों की समस्या का हल नहीं हुआ है।

दूसरी बात यह है कि पिछले साल भारत सरकार ने एक सरकुलर निकाला था कि 1980 से पहले के जितने कच्चे हैं, उन्हें बेदखल न किया जाये लेकिन आये दिन वर्षा के दिनों में वहां पर उनकी झोपड़ी गिरा दी जाती है, बैल मार दिया जाते हैं, हर साल ऐसे होने से वे लोग परेशान हैं।

श्री लादू राम: सभापति जी, ये लोग राजा-महाराजाओं के समय से वहां रह रहे हैं। हमने देखा है कि ऊपर वालों को खाता मिल गया, लेकिन इन लोगों को खाता नहीं मिला। मेरा सुझाव है कि मौके पर जाकर समय निकाल कर कमेटी देखे कि सब क्या है और झूठ क्या है? लोग इतनी सारी बात आपके सामने रख रहे हैं, आपको वास्तविकता का ज्ञान होगा जब आप लोग वहां जायेंगे।

श्री मेघराव: बारां जिला में पूरी तरह से राजस्थान के आदिवासी रहते हैं। आजादी के बाद से वे लोग अपनी रोजी-रोटी छोड़कर जेल भोग रहे हैं। इससे बड़ा अन्याय और क्या होगा? आपसे रिक्वेस्ट है कि उनकी समस्या का हल जल्दी निकालें।

MR CHAIRMAN: You have made a suggestion that certain areas should be included as ST areas. It is beyond the scope of this Committee. You may give it in writing. I will give it to the Minister of Tribal Affairs. Then, Cabinet will decide about it. It is a long process. If you feel like that, you write to us and we will forward it to the Minister. I would also like to assure that we will present our Report at the earliest. The Government also

wants that this Bill should be passed at the earliest. That is why, this Joint Committee was formed. It was also formed so that we can take the opinion of different sections of the people. We have recorded everything you have spoken. Keeping all those things in view, we will present our Report.

Please have a cup of tea before you go.

(The witnesses then withdrew)

WITNESS EXAMINED: Shri George Monipally, Bharat Jan Andolan, Jharkhand

MR. CHAIRMAN: Shri George Monipally, I welcome you to this sitting of our Committee. You have already gone through the Bill, and sent your representation on the same. If there is anything more that you would like to say or any point that you would like to elaborate based on the representation that you have given, then you may please begin.

SHRI GEORGE MONIPALLY: Sir, there are a few points on which I would like to give emphasis here. Firstly, I would like to mention about the cut-off date, which is mentioned as 1980. We are representing three different organisations, namely, the Jharkhand Jungle Bachao Andolan (JJBA), the Jharkhand Ulgulan Manch, and the Bharat Jan Andolan. We are of the opinion that the year 1980 is the day that the Forest Conservation Act was passed. But it in no way stops us from having different dates. I feel that 1980 is a very difficult date even to verify the claims of the people. We propose that the year 2001 should be the cut-off date for it. Those who have occupation even today are not coming for it. I am saying this because there will be a lot of misuse including land grabbing *mafia* problem, etc. Therefore, people who have been occupying for at least five years should come in it.

Secondly, practically in every village there are non-tribal forest dwellers also. Segregating them, and making a provision only for tribals will create problems in the villages also. I am saying this because all these villages are functioning as a community. It will create unnecessary conflicts. At the same time it is necessary to protect against land grabbing or destruction of forest by people who are in towns or those who have got money power and influence. Therefore, certain criteria should be included in the Bill, so that it will be protected. Actually, this provision should be brought into the Bill for those people who are really dwelling in the forests — may be for a few generations — and who are depending on these forest land for their livelihood.

Thirdly, I would like to mention about the authority of the *Gram Sabha*. By and large, we believe that we have inherited a system from the Britishers. They were basically working on the principle of 'trust the system and not the people'. The people even do not know anything about the *Gram Sabha*. There is a widespread feeling that some people in the *Gram Sabha* are not functioning properly as lot of fighting is there, and only a few people are managing the *Gram Sabha*.

We, basically, believe that in spite of all these limitations, the *Gram Sabha* would be the court of the people or the Parliament of the people as it is functioning in the villages. This is a place where better justice could be done to the people, and this is a place where there will be much more truth. It would allow the real benefits to go to the people. Therefore, I would suggest that the *Gram Sabha* should not be just a body that makes proposals to the higher Committees, but *Gram Sabha* should be a deciding body, and they should have the power. This kind of a provision should be brought into the Bill. Today, the *Gram Sabha* makes proposals for development projects, etc., but somebody else like the Collector makes the final decision thinking that he knows what is best for the people. But I think that, in a true democracy, the people should have the power to make decisions about their rights.

Another concern that we have in Jharkhand is about two types of displacement that is taking place. One is displacement by the Forest Department itself where in the name of reforestation, a lot of people are being displaced from the forestland. If they do not move or create any obstacle in the process of displacement, cases are filed against them and put in jail. Even if people have been occupying land for more than 50 years, even before the time of Independence, cases were filed against them. After fighting those cases over a period of four

to five years, if they are still occupying the place, they are being told that further cases will be filed against them. Out of that fear, people have left that place. That kind of displacement by the Forest Department itself is taking place. There is no provision in the Bill for such people. The Bill says the day it becomes an Act, from that day onwards, they will have possession only. But those who are dispossessed, maybe, in the last 15 to 20 to 30 years, what will happen to them? That has to be looked into.

Another issue is about displacement by the so-called development projects. In case of more than 50 per cent of the cases of displacement, it has been the tribals who were affected. Once they are displaced from the forestland, the only place where they can go is the forest, where can they go? But they are being displaced from the forest. Therefore, this Act has to make some provision so that that kind of repeated displacements or that kind of injustice does not take place.

Now, I will come to the definition of 'forest land' in the Bill. I feel that it is okay, but it has to be made a little more specific. In 1996, the Supreme Court has given a definition of the 'forest', while making certain clarifications on the Indian Forest Conservation Act. The Government land that is not occupied or on which people do not have a title is all considered to be forestland, according to the Supreme Court judgement. Everything in the forest will be considered as 'forest'. That also has to be brought specifically into the Act so that people get benefit out of that. People are cultivating; they have their houses, fields, wells and dams and all that. They cannot get it settled because of the Supreme Court judgement. The definition of 'forest area' or 'forest land' should cover all these things.

Section 6 (1) says that traditional village boundaries are within the local jurisdiction of the village, the *Gram Sabha* of the village. Now, local jurisdiction may mean the revenue village or the boundaries of the revenue village. At least, in Jharkhand, I know that all the reserved forests are outside the boundaries of the revenue village. Due to this, the *Gram Sabha* will not be able to make any decisions. Traditional boundaries of villages are much wider than what they are actually occupying. When the forefathers started a village, they had put certain boundaries, and that is considered as traditional boundary. Those boundaries should be accepted, and the *Gram Sabha* should be empowered to function within these traditional boundaries.

On community rights, I think, a lot of noise is being made about 2.5 hectares of land ceiling, *pattas* to be given to the tribals or non-tribals or whatever it is. I think, the real issue which the Bill talks about is not about the ceiling of 2.5 hectares, but actually about the rights of the community or of the *Gram Sabha* over the forestland and its produce. We feel that it has to be a little more strengthened so that the community will sort of have the ownership of that forest produce, as they are protecting it and also they have got the benefits of the forest. That clarification has to be made in the Bill.

By and large, these are the specific things, besides other things, that we wanted to mention before you.

MR. CHAIRMAN: What do you say specifically about the ceiling of 2.5 hectares?

SHRI GEORGE MONIPALLY: We are of the view that one and a half hectares of land is sufficient. That is because one nuclear family normally containing of husband, wife and children cannot be cultivating more than six acres of land unless it has got some other sources of income. In such cases they can employ labourers and get the work done. For the survival of a family in Jharkhand, we believe that two and a half hectares of land is sufficient. Increasing it or making it much higher may result in more destruction of forests and other vested interests coming in.

MR. CHAIRMAN: In other words, you support the ceiling.

Thank you, Mr. George Monipally for your views. If there is anything that you would like the committee to take note of, you can write to my Secretariat. We will certainly give full consideration to the views that you have expressed.

(The witness then withdrew)

WITNESS EXAMINED: Dr. Archana Prasad, Reader, Jamia Milia Islamia.

MR. CHAIRMAN: Dr. Archana Prasad, I welcome you to this meeting of our Joint Select Committee. You are aware that we are dealing with the Bill on the Recognition of forest rights for Scheduled Tribes. You must have gone through the provisions. We have received your notes.

Whatever we discuss at this meeting shall remain confidential until we present our report of Parliament. If there is anything else that you would like to state or explain with respect to your representation you may please do so.

DR. ARCHANA PRASAD: Hon. Chairman, and hon. members of the Committee, I am indeed honoured to be here amongst people who have long experience in political life and perhaps much more experience than me in tribal areas too.

I feel that this Bill is a very significant step forward from two important areas of research. I am working with different mass organisations. I find that the step forward can be strengthened further if certain changes were to be made to this Bill. Before doing that, I would just like to mention four principles by which I sought to judge the Bill as it was formulated and circulated first in draft form and then in final form. Also, I have the occasion to be in a couple of consultations where different processes of the Bill and institutional frameworks under the Bill were discussed.

First of all I might add that I find this Bill very interesting and significant for the single biggest reason that for fifty years, till today forest management has been a very centralised system within our country. I find this as a good opportunity to institutionalise a system which is more decentralised not only at the *Gram Sabha* level but at the level of State-level as well as at the level of Subdivision and District-level bodies and an effort to strengthen our democratic institutions within these areas.

The second thing that I find quite worrisome is the fact that the UPA Government, while keeping its commitment to fulfil the rights of the tribal people, has also started a contradictory process of easing the environmental impact assessment laws which makes me a little bit vary. That is because I feel that the empowerment of tribals through this Bill has to be far greater than it already is within the Bill if they have to fight within these processes where everyday 40 MoUs being signed in one State and 50 MoUs being signed in another State.

We have horrible instances like Kalinga Nagar. We cannot forget this aspect while we assess this Bill.

I feel that the issues of ecological equity and social equity are not unrelated issues. Somehow the debate as it has been progressed, it seems that we have environmentalists on the one side and tribal rights activists on the other side. This Bill has to find a way out this impasse so that a new way can be charted out for the tribal development. We have the experience of 50 years of tribal development but it has not been a happy experience so far. Having said that, I would like to go through the Bill clause by clause and make suggestions.

As you know, we have come before the Committee also with a dilemma and the storm raised over Section 4(2) of the Bill is concerned where there is a mention of cut off date as 1980. I do not feel like other organisations that 1980 is not either a viable solution to the settlement of rights or that it would solve the problem as it exist today. If we keep the date of 1980 as the cut off date, it will merely justify the executive decision that was taken earlier and legalise it. This problem is all the more vexed because we do not have any clear estimate of how many people or how much land would be affected. In our 15 or 20 years of research, we tried to find time and again that reliable estimates of how things are going to be effected, how many people will be affected. It is not surprising then that many *kisan* organizations, many intelligible people who had even worked with the Ministry of Environment & Forests have suggested an independent service for the estimation of both resources and the number of people living over there. I think the whole issue of cut off date is a very complex one. In order to simplify it into a legislation, it would probably be simpler for us to just say that the rights of various tribals living in forest areas should be recognised and may be verified by either the census of 2001 or any other procedure

laid down by the Act. I say any other procedure laid down by the Act because not all habitations are recorded in the census of 2001 either especially when you take the case of *Jhoom* settlement or remote tribal settlements, the census enumerators do not get their. **** If we want this Bill to benefit the lowest common denominator, then, we will have to have a provision where the first step towards the settlement of rights will be to have an independent transparent survey and the assessment of that local area where rights are being settled. I feel that this procedure should be documented and laid down in the Act because time and again lack of procedure in different Acts have kept the way open for arbitrariness in various laws.

The issue I wish to raise is about the inclusion of provisional rights in core areas. I feel that the inclusion of provisional rights in core areas is nothing but an invitation for forcible eviction. Already we have seen a great amount of eviction from areas like Jhabua, western Madhya Pradesh, Jharkhand where those people are going to get dry wood are being exploited by forest guards and bureaucracy. At the same time, many of the forest collectors who are women are being exploited for forest guards.

Some of these dilemmas that women foresters face, need to be corrected. My recommendation would be in keeping with the Tiger Task Force Report with the core area. The management concept is not a right concept. If it is a management concept, then all rights should be recognized irrespective of where they are in the core area or the buffer zone. These rights may be acquired if there is a mutually acceptable procedure of the designation of the core area. I think, it is possible to demarcate ecologically invalid areas in consultation with the local People themselves. That provision of a mutually acceptable criteria is open to social audit and scientific inspection should be incorporated within this Act. I am not against ecological areas. I want it to be a mutually acceptable procedure.

The third vexed issue is one of the exclusion of forest dwelling by non-tribals. I think, ideally we should have all people who depend on forest. May I say that with the agrarian crisis today, the dependence on forest is only increasing rather than decreasing. What are we to do with those people who are becoming more and more dependent on forest? I found that at least one-third of the Scheduled Caste artisans were dependent on forest gathering activities for their livelihood. What are we to do with these people? I would suggest that we should recognize all habitations that are within a designated forest area. That should be done through a mapping process. While the people who own forest land, they own other land outside forest also. Forest people should include tribals and people living within a forest area including the *Jhoomas*. Every time, shifting cultivation is raised, I believe it raises a big storm in environmental circles. When I say all, I also mean that shifting cultivation should not be left alone as it is today. There should be some responsibility of the system so that it can be developed into a proper system. I believe, from my experience that the greatest impediment in such experimentation is the FC Act of 1980.

Now the next point is about land ceiling. I feel that actually this is a non-issue because if you look at the pattern, most of the tribal people have less than two hectares of land. However, in the interest of equality between those who live inside the forest and those who live outside the forest, the land should be settled on 'as is where is' basis. I repeat that land grabbers who own more than that, their land should be confiscated and re-distributed among the landless. This is a law which has been there. There are three lakh hectares of benami land in one area of Andhra Pradesh.

Another strange thing that I came across in this Bill was the Nistar Rights in the Erstwhile Princely States. That is Section 2B. I believe that Nistar Rights should be granted to all forest dependent people, and not only to those who live in the Erstwhile Princely States. So, I believe, that clause should be amended for that.

Secondly, it says: "Traditional rights to protect, regenerate and conserve." While I respect all traditional rights in forest, might I add that it is possible worthwhile to think of having a right of the people to develop their own forest land? You know that forest land is increasingly becoming degraded. It is turning more dense forest area to open forest area. I believe that the forest people themselves should have the right to develop their land,

it should not be left to the Forest Department to develop the land, because we all know what kind of nexus the Forest Department has with contractors and companies.

Now, coming to the institutional framework, I believe that this is the need of the issue. This is, in fact, the bull work, which will make this Act implementable, if at all. One thing, I was very surprised by, in this Act, was that it introduces the Forest Officers as players in the settlement of rights. Even the Indian Forest Act, 1927 does not have this. The Indian Forest Act, 1927 says that a forest settlement officer should not hold any office under the Forest Department. In fact, I believe that by introducing the forest officials into the process of settlement of rights, the Forest Department is an interested party. It should not be the part of that process.

Secondly, I believe that a lot has been said and written about the Gram Sabha. I also respect the Gram Sabha rights. But I feel that the democratization of the system should not end at the Gram Sabha. While the Gram Sabha will be the key institution, all other Committees and the sub-divisional level, divisional level and at the State level should have the elected representatives, the representatives of the tribal people, and the representatives of people who work with the tribal people. While I have no problem with the nodal agency becoming the Tribal Affairs Department, I also believe that there is a case for thinking about a more broad based structure. For example, the National Bio Diversity Act or even the Wild Life (Amendment) Act, 2002, have the authorities which have representatives of a much larger opinion. Even if they are not, we should try to have an authority which is representative of a much larger opinion because Administrations can change; Tribal officials can change; but I do not think that the Act can change so easily.

One area where the Act is quite weak, I feel, is indefining the duties of the State. While it is only fair to say that the people who have got the rights should also protect the forest, on the other hand I believe that the State also has a right to protect the rights of the forest dwellers, specially in the wake of a large-scale diversion of forest land to non-forest purposes. For this purpose, I believe that a new Section should be introduced in this Act, and this new section should be on the role of the States. I believe that the way in which the role of the State is conceived, should not be the same old role of the State as it was conceived 50 years ago. I have identified, at least, three areas where the State needs to play a greater role. The first is in the protection of the tribal people from land mafias and from traders. I say this because we are saying that people can only use forest produce for their *bona fide* use. If they get a lower price for their produce, they will keep harvesting more and more produce. So, those who are arguing for ecological safety or ecological security will also stand to benefit by a minimum procurement price, by a State procurement system. Instead of disinvesting in the State procurement, I think, the ambit of the State procurement should be increased.

Because I believe that mechanism has not met its potential. In areas like Madhya Pradesh only four projects are permitted by the State. Rest is in the open market and the results are there to see for all.

The second area, which I feel I have already said is protection of right when diverted for non-forest purposes.

The third area where I think we can make an upward and a new beginning is an area in the re-development of forests and fringe areas. I believe that it is absolutely essential if we want sustainable use of forest and I do not think that sustainable use is only fore ecology. The sustainable use is also for livelihood. Security of tenure cannot be maintained if adequate input for sustainable use is not provided. For example, I have forest land and I do not provide irrigation or adequate seed support, then I am not going to be able to induce that person to have sustainable use or to have a recurrent sustainable use and if a person does not have a sustainable recurrent use that person cannot have security of tenure. Therefore, it is quite essential to the success of This Act. If that is not done, I believe minority rights may actually become something else.

MR. CHAIRMAN: Thank you. We have benefited a lot from the discussion we had with you. If there is anything else you want the Committee to take cognisance of, you may send it in writing to the Secretariat at the earliest. Thank you.

(The Committee then adjourned)

**JOINT COMMITTEE ON THE SCHEDULED TRIBES
(RECOGNITION OF FOREST RIGHTS) BILL, 2005**

**RECORD OF ORAL EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE
SCHEDULED TRIBES
(RECOGNITION OF FOREST RIGHTS) BILL, 2005**

Friday, the 10th March, 2006 from 1500 hrs. to 1715 hrs. in Committee Room No. '63' Parliament House,
New Delhi.

PRESENT

Shri V. Kishore Chandra S. Deo — *Chairman*

MEMBERS

Lok Sabha

2. Shri Shingada Damodar Barku
3. Shri Mahavir Bhagora
4. Shri Giridhar Gamang
5. Dr. P.P. Koya
6. Shri A. Krishnaswamy
7. Shri Shailendra Kumar
8. Shri Bajju Ban Riyan
9. Dr. Babu Rao Mediyam

Rajya Sabha

10. Shri Rishang Keishing
11. Smt. Brinda Karat
12. Shri Devdas Apte
13. Shri Ravula Chandra Sekar Reddy

SECRETARIAT

- | | | |
|----------------------|---|-------------------------|
| 1. Shri R.C. Ahuja | — | <i>Joint Secretary</i> |
| 2. Shri R.K. Bajaj | — | <i>Deputy Secretary</i> |
| 3. Shri J.V.G. Reddy | — | <i>Under Secretary</i> |
| 4. Shri K. Jena | — | <i>Under Secretary</i> |

Representative of the Ministry of Tribal Affairs

Shri Rajeev Kumar — *Joint Secretary*

**Representative of the Ministry of Law & Justice
(Legislative Department)**

Shri N.K. Nampoothiry — *Joint Secretary and Legislative Counsel*

WITNESSES EXAMINED:

- I. Representative of People Alliance for Livelihood Rights, Chhattisgarh.
Shri Gautam Bandyopadhyay
- II. Ms. Sunita Narain
Director
Centre for Science and Environment
Delhi
- III. Shri S.R. Sankaran, IAS (Retd.),
Former Secretary
Ministry of Tribal Affairs
Government of India

MR. CHAIRMAN: Mr. Gautam Bandyopadhyay, we welcome you to this meeting. Whatever we discuss here will remain confidential until the Report is placed on the Table of the Parliament. You have got the Bill, and you must have gone through it. You can please say whatever you want to. The committee will take note of your suggestions and observations, and if the hon. Members ask any questions, you may respond to them later. Now, you may begin.

SHRI GAUTAM BANDYOPADHYAY: Sir, I have come from Chhattisgarh.

MR. CHAIRMAN: If you wish to speak in Hindi, you are free to speak in Hindi as well.

SHRI GAUTAM BANDYOPADHYAY: Thank you.

Sir, I come from central east Chhattisgarh. This is the area where the central east region has its own geo-cultural understanding, geo-cultural recognition with dakshin coastal part of Orissa, dantkaran part of Andhra Pradesh, Vidarbha part of Maharashtra, Jharkhand Manmohom part of Bengal, and Mahakaushal part of Madhya Pradesh. These are seven geo-cultural zones, as we call them the central east. Central east, as we know is the second densest tribal population in the country. It is rich in resource areas and it has the greatest forest coverage are in the country. It is a concern for us and we appreciate the spirit of the Bill, the way it has come. There is a need for a lot of amendments.

One is the whole question of incursion of SC. The area we are coming from is Chhattisgarh. It basically is the whole border of Chhattisgarh-Orissa; and Chhattisgarh-Maharashtra. That is the forest area. the Scheduled Caste population within the forest is of high degree. It is near about six to seven per cent of SCs habitation there. In this regard, I have got the papers with me. But there are only two copies with me. I would give it to you. It is the documentation of the Government. Within the Sanctuary Government sent Project Plan to MoEF. There, it is being agreed for 5.9 per cent SCs within the sanctuary areas. There is a great need now. Without that, it will create ethnic conflict between those SCs and STs living inside the forest.

The second point is the whole question of cut-off year as 1980. If you go through the data, it is basically traditional, unsettle, disputed forest land. When it is a traditional, unsettled, disputed forest land, without starting it, without recognizing it, and without identifying it we cannot say that these are the encroachers and these are non-encroachers. The whole question is of the settled traditional and unsettled disputed forest land, I think, the cut-off year should be 2000, where this type of major process has taken place between 1980 and 1990. I would give you one example. I have got 10 copies with me. The Government has identified those who are eligible. Only 80,000 families in Chhattisgarh are eligible if the cut-off year is taken as 1980. In districts like Bastar, 40,000 people are coming. It is a great area. Now, there are four districts. The total number of applications as on 31.1.1994 was 2,05,069. The Government had agreed to give *patta* to 81,000. It means, the eligibility criterion is not proper.

I am giving an example. The criterion is such that those who are with 0.4 dense forest they are not eligible; those who are on the 40 degree slope are not eligible; those who are on more than 40 degree slope are not eligible. According to earlier working plan, it was 60 degree. There was 0.4 dense forest. Now, there is no forest. But those who were there, were not eligible.

If those who are settling down in the enclaves are not eligible then this criteria of eligibility is to be questioned. I think 80,000 people will be eligible if the cut off date is 1980. Day before yesterday I met the Governor. He said that everything is ready but he is waiting for the Bill so that everybody could be given.

MR. CHAIRMAN: Is there any cut off date that you would like to suggest?

SHRI GAUTAM BANDYOPADHYAY: 2001.

SHRIMATI BRINDA KARAT: Why 2001?

SHRI GAUTAM BANDYOPADHYAY: It is because the 2001 census is available.

SHRIMATI BRINDA KARAT: Six years have passed since then.

SHRI GAUTAM BANDYOPADHYAY: The whole question is that of 2001. As it is in the process, people will get *patta* by hook or crook and try to insert their names within that Bill, so, you should see to it that the people who are against the forest should not be included.

MR. CHAIRMAN: You are suggesting 2001 as the cut off date because the last census was held in 2001.

SHRI GAUTAM BANDYOPADHYAY: It can be till date also but it is very difficult to get the figure. I am for till date but it is very difficult to get the data.

The whole process of relocation of five years settlement should be deleted. Till that process is going on, in Chhattisgarh three sanctuaries are now facing the problem. Three villages are just going to be thrown out. If you put protected areas in the Bill, it will be promoting the whole question of resettlement. There is a conflict between the tribal and wild life. We have to strengthen the symbiotic relations. It needs a different type of management. Relocation cannot be a possible solution to wild life conservation.

Finally, we come to the voluntary resettlement. Nothing can be voluntary. Everything is forced. We are trying to decrease the conflict and to save wild life and the tribals.

MR. CHAIRMAN: You are against the relocation of settlement.

SHRI GAUTAM BANDYOPADHYAY: That needs a different management 2.5 acres of land in Rajasthan is completely different from 2.5 acres in Bengal because we have a lot of cultural diversity in the country.

It is completely different. We have to see the cultural zones. There is a question of the land. People have to live with dignity. The norm of 2.5 hectares of land is not valid for all areas in the country. We have to look after each cultural region.

Section 14 says that if there is confrontation about which law would prevail, this law would not prevail. There are many Acts like Wild Life Act, 2001, Bio-Diversity Act, 2002, etc. if all other laws would prevail, where is the space for this law?

Finally, I come to the question of Gram Sabha. The other bodies can be supportive or advisory to the Gram Sabha in the case of verification process, identification process, conflict resolution process, etc. to strengthen its spirit. The care should also be taken that the Gram Sabha is at the level of hemlets and not at the level of village.

PESA, 1996 has been passed but till date rules and guidelines have not been framed. We passed Bio-Diversity Act in 2002 and the rules and guidelines have been framed. But the implementation of PESA is creating problems. Therefore, I would request that PESA should be implemented to strengthen Gram Sabha. Lastly, the Bill should have teeth to put an end to diversion of forest land for mining, industry, anti-environment, anti-people development and other purposes. The Bill should be able to prevent tribal rights. Recently, 14,000 hectares of tribal land was put to non-tribal use in Chhattisgarh. They have passed a resolution saying that the

tribal land can be taken up for the non-tribal use and industrial purposes. So, we have to protect the tribal land. This Bill should be able to protect the tribal land.

The Bill is silent about the common property regions which are under threat. They include river basin, river region, etc. We have to look after these areas. I would say that we should not do a historical mistake as we did earlier. We may be late in doing this but we should not be in a hurry. Now I thank the Parliamentary Committee for having invited me to express my views on this Bill.

SHRI RAVULA CHANDRA SEKAR REDDY : I have two queries to ask. You have made a mention about the inclusion of OBCs. What is your view about it?

SHRI GAUTAM BANDYOPADHYAY : Sir, the lifestyle of the OBCs and SC living in the forest areas is similar to that of Scheduled Tribes. I am especially talking about Gari community living in the forests. They do not know the difference.

SHRI RAVULA CHANDRA SEKAR REDDY : The second point is about whether the people living in the tribal areas are aware that such a legislation is being brought. Do you have any such interaction with them.

SHRI GAUTAM BANDYOPADHYAY : No.

SHRI GIRIDHAR GAMANG : You have stated that in the State of Chattisgarh, the Government has brought about a regulation or an Act by which the tribal land would be transferred to non-tribals. Is it cultivable land or a land on which mining activity is undertaken which belongs to the tribal population will be transferred to non-tribals?

SMT. BRINDA KARAT : He has just come here to give his views. How would he know about such things?

SHRI GIRIDHAR GAMANG : He then must be knowing about it whether the land proposed to be transferred to the non-tribals are lands on which mining activity is taken up or it is being used for industrial purpose.

SMT. BRINDA KARAT : Is it a cultivable land?

SHRI GAUTAM BANDYOPADHYAY : Yes. It is cultivable land.

SHRI GIRIDHAR GAMANG : Is it under the regulation of the State? Is it in Schedule Vth of the Constitution? Under which provision is the transfer of land being contemplated?

SMT. BRINDA KARAT : Is it there in the Vth Schedule? That is what he is asking.

SHRI GAUTAM BANDYOPADHYAY : It is there in the Vth Schedule.

SHRI GIRIDHAR GAMANG : Is it through a State Act or is it a regulation?

SHRI GAUTAM BANDYOPADHYAY : We will have to see that.

जो जमीन ली गयी वह सब आदिवासियों की कल्टीवेबल जमीन है और उसके साथ लगी दूसरी जमीन सरकारी जमीन है। इसमें से 2102 हेक्टेअर जमीन ट्राइबल्स की कल्टीवेबल लैण्ड है और 248 हेक्टेअर जमीन सरकारी जमीन है। यह एक हिस्सा है। इसका दूसरा हिस्सा वह 5,000 हेक्टेअर जमीन है जो टेक्सस को देने जा रहे हैं और इसके लिए एमओयू साइन हो गया है।

श्री शैलेन्द्र कुमार: गौतम जी, जैसा कि आपने कहा है कि काफी जमीन को धीरे-धीरे इण्डस्ट्रीज को दिया जा रहा है। क्या यह फॉरेस्ट एरिया से लगी हुई सरकारी जमीन है या बहुत पहले से आदिवासी लोग जिस जमीन पर खेती करते आ रहे हैं, उस जमीन को कब्जा किया जा रहा है या उस जमीन को अधिग्रहीत करके दिया जा रहा है?

श्री गौतम बंदोपाध्याय: इसमें दोनों तरह की जमीन है। जहाँ-जहाँ लोगों की खेती की जमीन है वह भी दे रहे हैं और उसके साथ लगी हुई अगर कोई सरकारी जमीन है तो उसे भी लिखा जा रहा है।

श्री शैलेन्द्र कुमार: मान लीजिए अगर आदिवासियों की बस्ती के बगल में कोई फॅक्ट्री या इण्डस्ट्री लगती है तो इससे उनको रोजगार बगैरह के अवसर मिल सकते हैं।

श्री गौतम बंदोपाध्याय: आदिवासियों को फॉरेस्ट कन्वर्जन पर आधारित आजीविका देना ज्यादा अच्छा होगा, उसे नौकरी देने का कोई प्रश्न नहीं है। आदिवासियों का जो मूल लाइवलीहुड है, उसे मजबूत करना चाहिए। फॉरेस्ट एरिया में इण्डस्ट्री लगाए जाने के इन्वयरनमेंटल इफेक्ट्स क्या होते हैं, हमें रायगढ़ में इसका अनुभव देखने को मिल रहा है।

श्री शैलेन्द्र कुमार: इसके बारे में फॉरेस्ट डिपार्टमेंट वाले स्वयं देखेंगे कि प्रदूषण की वजह से कहां नुकसान हो रहा है और क्या इफेक्ट्स हो रहे हैं। वे इसे देखकर ही जमीन के लिए परमीशन देंगे।

श्री गौतम बंदोपाध्याय: जी नहीं, हमारा अनुभव है कि ऐसा नहीं होता है। इसी तरह वहां के स्थानीय लोगों को उस फैक्ट्री में नौकरी नहीं मिलती है, फिर आदिवासियों को उनकी मूल आजीविका से हटाकर नौकरी देना ठीक नहीं है।

श्री शैलेन्द्र कुमार: मान लीजिए कि कोई इण्डस्ट्री स्थापित होती है तो उसके आस-पास आदिवासी लोग कुछ स्व-रोजगार स्थापित कर सकते हैं। आदिवासियों के फॉरेस्ट राइट्स के लिए तो हम लड़ ही रहे हैं, इसी के लिए यह जेपीसी बनी है।

MR. CHAIRMAN: If there is any information which you may like to send to the Committee Secretariat, you may do so. Thank you very much.

SHRIMATI BRINDA KARAT: You may send a note on the exact amendment quoting the details.

(The witnesses then withdrew)

WITNESS EXAMINED: Ms. Sunita Narain

MR. CHAIRMAN: You are aware that we are discussing the Recognition of Forests Rights Bill. We have received your note. Whatever is being discussed here would remain confidential till a report is tabled in the House. You can make your observations or submissions which you may like to and then respond to questions put by the hon. Members.

MS. SUNITA NARAIN: I thank you for giving me an opportunity to be present before you. I know that here are a number of issues in this Bill and I know that the Committee will be looking at many issues whether it is cut-off date or whether it is the definition of forest dweller or whether it is an issue about the North-East or whether it is about the process of decision-making. In my presentation today, I would like to stick to one key issue and that issue is the conflict between this Bill and the protection of wildlife. That is going to be my key focus in my presentation today.

Just to give you the background, I am coming to this Committee having been the Chair of the Task Force which was set up last year by the Prime Minister's Office called the Tiger Task Force. It was set with a key interest to look at why were India's tigers disappearing and what we should do about it. In some sense, I am bring my experience about the Tiger Task Force and through my experience trying to understand that what we have in front of us in this Bill will it create further problems for tigers or is there any resolution in the issue of tigers and tribals.

Firstly, I am not very clear if all the members have got a copy of the report that we submitted on Joining the Dots — A tiger's report. Maybe, the Government can make sure that everyone of you has got a copy of that report as that would help the Members. One of the key issues in the report is this. The areas in India where the tigers inhabit are also the same areas where the tribals live. In fact, there is a map that we have submitted to the Government in this report which overlays forests districts with the tribal districts with the 150 poor districts of this country and the areas where the tigers live. If you want to put on it, you can also put mineral wealth of the country as well as the water reserves of this country. It is very clear that the tragedy in this country is that the poorest people live on its richest lands.

We must understand that it is a major tragedy. These are lands on which you have mineral reserves, water reserves, forest and also bio-diversity, tigers and other animals. The question is, is it possible to look at these lands on which the poorest people live and wildlife live and find a way of coexistence? Our Report very clearly says that in the last 30 years of conservation, we have made the situation worse. We started off with looking

at the reserves as reserves in which we would keep only animals. But very soon we realised that in a country like India, there is no area where people do not live. So, there is a clear question today on how you are going to manage your wild reserves where people already live. I think that is a point which needs to be made very clearly. It is a tragedy that in 30 years, in spite of all out talk and in spite of all our efforts, we have relocated only 80 villages. 28 tiger reserves exist. I am talking only on tiger reserve simply because it is a microsm of the larger problem. To give you an idea, one per cent of the land area is under tiger reserve and five per cent of the land area is under protected areas. So, whatever I say for tiger reserves has to be magnified by five times to look at the remaining protected areas. You have relocated 80 villages. When I began to ask how many villages actually live in the river reserves, I can assure you that there is absolutely no information. We were given three months by the Prime Minister. I definitely did not want to extend the deadline as most Committees end up doing. We wanted to submit our Report on time. As a result of it, my entire effort was to get the information from the tiger reserves itself. We have faxed to each of the tiger reserves director to get the information about the number of villages. I will point to you a particular chart in which we have put that data. That data essentially shows that in the 28 tiger reserves, you have 1500 villages in the reserves and about 273 villages in what has been defined as the "core area of the reserve".

श्री महावीर भगोरा : क्या ये सभी ट्राइबल्स विलेज हैं?

सुश्री सुनीता नारायण : यह बात मैं नहीं कह सकती हूँ कि ये सभी ट्राइबल्स विलेज हैं या नॉन ट्राइबल्स विलेज हैं।

SHRI MAHAVIR BHAGORA: Have you verified it?

सुश्री सुनीता नारायण : वैरीफाइड नहीं कह सकते हैं। तीन महीने में हमने डाटा इकट्ठा करने की कोशिश की है वह हमने अपनी रिपोर्ट में रखा है। ऐसे गांवों जिनको हटाया नहीं जा सकता या हटाने की जरूरत है, यह सवाल किसी ने सोचे भी नहीं हैं।

श्री शैलेन्द्र कुमार : आपने जो स्टेटमेंट दिया है उसमें टाइगर्स के बारे में ज्यादा बताया है हम लोग जेपीसी-की कमेटी में इस बात से चिंतित हैं कि जो हमारे आदिवासी जंगल में रह रहे हैं...

सुश्री सुनीता नारायण : आप दो मिनट मेरी पूरी बात सुन लीजिए।

So, there are 273 villages in the core area. As we have said there are about 1500 villages altogether in the tiger reserve. The reason why I am saying this is that the hon. Member is asking the question. I am essentially pointing out that there are a large number of people who live in the tiger reserves today. A number of these people will be tribals as well because a large number of these areas are in tribal districts. There is no doubt that this is an issue. The question that is in front of us is that, if you want to protect these sanctuaries, these areas, can you actually relocate all the people or some of them?

Or, can you relocate some of them? What we have presented in our report is a compromise solution. We have said essentially that what the Government should do is to identify as quickly as possible the villages that need to be relocated; and do it as fast as possible. We have essentially made the point that the delay that has happened in relocation is too much. In the last 30 years, the Government talked about people, had taken away their rights but has not relocated the people. That must stop. So, it must relocate the people as fast as possible. It must also realize that it cannot relocate all the people. Therefore, it must come up with a strategy for co-existence which means finding ways in which it can restore the rights of the people within the sanctuaries and national parks where people cannot be relocated.

The reason why I am explaining this is because it has a context to your Bill. Your Bill essentially, to my mind, has tried to make some resolution in the conflict between wild animals and tribals, the protection of both. The Bill very clearly says that the Government should give provisional rights to people in the core areas and if they are not relocated with a particular time period, which is five years as given in the Bill, then those rights will become permanent rights. It is not a very comfortable situation for anyone. In my submission to you, I would like

to say that it is as good a resolution as can be done at this point of time. I very strongly believe that you will have to resolve the rights of people living in protected areas.

There are two ways of resolving the rights. One is through this Bill in which you will either relocate people or they will be given some land rights. The other is through the Wildlife Protection Act which also gives a certain amount of rights to people. So, the point I really want to leave for you from my side as the Chairperson of the Tiger Task Force, as someone who takes a very careful view in respect of wildlife protection seriously is this. This is an issue which is in front of your Committee as well. This wildlife protection is going to be compromised if the Tribal Bill comes through. My own opinion is that wildlife protection is today compromised because we have not adequately compensated the rights of local people. Wildlife protection today is compromised because people are very angry. There is intense hostility. There is huge tension between people and animals.

We have, in our report, given the countless number of cases where animals have been poisoned. We have literally talked about a war which is happening within our sanctuaries and national parks. I believe that you will have to resolve the conflict. The way of resolving the conflict is, on the one hand, to relocate the people from the areas which you believe are inviolate places, and, on the other hand, to accept that you will not be able to relocate everyone. So, you have to start looking at the rights of those people even within the national parks and sanctuaries. In that context, the current Bill makes an attempt. I think the clause that the Bill has makes some effort to be able to deal with the conflict between the wild animals and the tribals as also the recognition of tribals. So, on that, I would say that I have no problems. However, I have two issues that I want to highlight which may help the Committee in its deliberations.

One, it is very clear that the Wildlife Protection Act actually goes much farther than the current Bill does. It is important for you to recognize that. The Wildlife Protection Act says very clearly that nobody who lives within a sanctuary or a national park can be removed until his rights are settled. It also says very clearly that no sanctuary and national park can be notified until the rights of the people have been settled. In 2003, an amendment was brought in the Wildlife Protection Act. It is because the rights, obviously, have not been settled.

So, there has been some effort to deal with it by saying that even if the rights are not settled, the regulatory regime will continue to be there in the Sanctuaries and National Parks. But the 2003 Amendment makes it very clear that until the rights are settled, people will need to be given alternatives, whether it is fuel, fodder or livelihood alternatives. Now, this is the main problem today with the selective use of the Wildlife Protection Act. The Central Empowered Committee of the Ministry of Environment has written to all the State Governments saying that all rights are expunged in protected areas, but this is a selective use of the law and the only caution that I have to this Committee is that you have to make sure that the provisions of the Wildlife Protection Act are not negated as a result of this law. We have given rights to a few tribals and we should not the protection put in the Wildlife Protection Act. It is not written here, but it is a question of the implementation of the Act.

श्री रौलेन्द्र कुमार : क्या आपको वाइल्डलाइफ की ज्यादा चिन्ता है?

सुश्री सुनीता नारायण : मुझे वाइल्डलाइफ की ज्यादा चिन्ता नहीं है। जो मैं कह रही हूँ, आप समझ नहीं रहे हैं। आप तब तक वाइल्डलाइफ बचा नहीं सकते, जब तक लोगों के हकों की रक्षा नहीं करेंगे। लोगों की चिन्ता जब तक एक दायरे में नहीं करेंगे तब तक कुछ नहीं हो सकता है।

The last submission I want to make is, I am not at all happy with your penalty section. I think it should be removed completely. I cannot understand an Act under which you have given people rights, but then you have such penalties which can be completely misused because the penalties are already there in other Acts. You have the Forest Act, you have the Forest Conservation Act and you have the Wildlife Protection Act. I cannot understand particularly the use of words regarding penalties which make the Act so sweeping under which anybody engaging in unsustainable use of forest assets will be punished. What is 'unsustainable use of forest assets' is not defined. Then, anybody who kills wild animals or destroys bio-diversity will be punished. Even a tendu leaf is forest product or forest asset. Does it mean collection of minor forest product would amount to

destruction of forest assets? I strongly believe that the offences and penalty section should be removed and you should say that whatever law applies in other cases will apply here also.

My other concern is that this Act should not compromise the rights of the people who live in forests because the people who live in forests do not live on land, they also live on the adjoining forest areas. They need them for grazing, they need the rights to community land which is around the forests. This Act should not be taken very simplistically to say that if a small piece of land, which is already being occupied, is used, it is not correct. These are essential rights for the people who are already using the land. They are using it in conjunction with a lot more of the community land that they have to use. Those rights must be carefully protected and I think safeguard should be built into the Act, though I have not carefully looked into it.

SHRIMATI BRINDA KARAT: It is a very clear and good presentation. When we spoke to the Environment Ministry authorities and asked them whether they have any definition of what constitutes 'core areas' or what constitutes 'inviolable areas' and what constitutes 'necessary relocation of villages', they were not clear. You made a statement we have to quickly identify the villages to be relocated in the core areas or inviolable areas. Now, we actually have no definition and in fact this is going to be nothing but an instrument to evict tribals. That is why, I just wanted to ask you another question related to this. What would be wrong, in your opinion, if, for example, changing that portion which you have no trouble with? Supposing we say tribals have rights as tribals indifferent forest areas and similarly in Sanctuaries and protected areas.

As and when Government wish to locate them, this relocation issue can come. If you do not give them the rights, then you are leaving them totally unprotected. In your experience, would you have a problem with them?

MS. SUNITA NARAIN: Let me answer both. One, you are absolutely right, there are no definitions that exist as yet. However, there is another Bill in front of Parliament, which is an Amendment Bill to the Wild Life Protection Act, which is the Tiger Conservation Authority Bill. There is one more Bill also and the effort again was exactly to clarify these and to try and get both processes happening simultaneously.

There is a Bill called the Amendment Bill to the Wild Life Protection Act, which is a Bill to constitute a Tiger Protection Authority or a Tiger Conservation Authority. This is the Bill in Rajya Sabha. It is in front of the Standing Committee right now. The idea was that this came out of the recommendations of our report. That you need an authority which could implement the various recommendations of our Task Force. In this Bill, an effort has been made for the first time to introduce the term core and tiger but it is as vague as today.

What is core? Core is an area which is defined by the administrative body and not by the legal body, an area which requires extra protection. But let me specify that there is a hidden sort of thing. In this core area, 99 per cent is a national park. In a sanctuary, as you know, under the Wild Life Protection Act, a national park has more protection than a sanctuary because a national park, even after the rights are recognized, before a national park is actually constituted as a national park, these rights have to be expunged, people have to be compensated. Theoretically, in law, there is nothing wrong. The practice of law is abysmal. So, I agree with you. There is no definition. It is vague and broad. But it is essentially making a contrast. What you can do is to specify those areas which have to be constituted by the State Governments.

Now, your question to me is why not act a step forward? Why not say the rights exist? I do not think you need to say. I very strongly believe that Wild Life Protection Act is stronger than the Act that you are planning to bring in.

SHRIMATI BRINDA KARAT: This will take care of it.

MS. SUNITA NARAIN: You should bring in the clause of the Wild Life Protection Act. To my mind, the Act is very clear and it does not say 1980. You are now, at this stage, saying the cut of date is 1980. That one says already that if you were to bring in this Act, you may strengthen it.

MR. CHAIRMAN: I think, Wild Life Protection Act is that which promises settlement of rights in forest areas, which is not coming in the 1980 Conservation Act.

MS. SUNITA NARAIN: That Act is the problem.

MR. CHAIRMAN: It is only for conservation of forest. That was mentioned in the Act of 1972 and the Indian Forest Act of 1927.

MS. SUNITA NARAIN: The Wild Life Protection Act is for areas which are notified as sanctuaries or national parks.

MR. CHAIRMAN: In this, there are norms and guidelines. It could be quite arbitrary.

MS. SUNITA NARAIN: That is the purpose of what we have recommended. It is time that the Government caters to these issues that you need to define this. You do not even know where is the care area and where you have a tiger. You need to be precise. I feel that if you get this Act and you get the Tiger Protection Act, you start a process by insisting that there is no clarity in governance.

Today a lot of things are not said but they are done. For the first time, they will have to define what is the core area. To define what is the core area, they will have to justify whether there are wild animals in it or not. To justify that there are wild animals, they will have to do a census. To do the census, they will have to make sure that it is transparent.

Sir, I am coming to you saying that I am not happy, and I think, still this Act is not as good as you would like it to be if you want to protect the interests of the tribals. But if you are looking for a resolution between the two, then, I think, an effort has been made to resolve between the two. That is basically what I say.

MR. CHAIRMAN: Thank you very much. If there is any other information that you would the Committee to consider, you can send it to us.

MS. SUNITA NARAIN: I would send it. I would really encourage the Committee to please have a look at our Report so that there is no misunderstanding about it.

MR. CHAIRMAN: We will surely do that.

(The witness then withdrew)

WITNESS EXAMINED: Shri S.R. Sankaran, IAS (Retd.)

MR. CHAIRMAN: Shri Sankaran I welcome you to this sitting of this Committee. You are aware that whatever we discuss here will have to be kept confidential until we place the Report on the Table of the House.

We have gone through your representation which has been sent to the Committee. We shall be glad to hear your views on this proposed piece of legislation.

SHRI S.R. SANKARAN: Sir, with your permission, I would like first to welcome this Bill because the Statement of Objects and Reasons shows that it is going to undo the historical injustice to the tribal people.

I had myself worked as the Secretary for the Tribal Welfare in Andhra Pradesh. I also worked sometimes as the Forest Secretary in Andhra Pradesh and retired as Secretary to Government of India, Ministry of Rural Development. I was also a party to the Circulars issued in October 1990 regarding the interface between the tribal and the forest. Keeping all this background, I strongly feel that this Bill is a very welcome step and one should go ahead with it.

Having said it, with your permission, I would like to make a few comments which I feel that the Bill, in this present form will have to be touched upon and improved upon to the extent it requires. Broadly, the Bill deals with two types of rights. One is land rights, land inhabitation, land-related rights and the other is non-land rights like access to minor forest produce, access to forest products. Here, it also places a duty on the tribal population to protect and conserve the forest resources. It brings in the Gram Sabha as one of the important institutions to initiate the determination of the rights. In all these, I think, this is broadly the framework of this Bill.

First on the scope of the Bill itself I would like to make a submission. This Bill is restricted to forest dwelling Scheduled Tribes.

No doubt, the Scheduled Tribe people have a relationship with the forests. Even the Forest Policy of 1988 recognizes the symbiotic relationship between the Tribal people and the forests. But there are a large number of non-Tribal poor who are also dwelling in the forests and they are also dependent on the forests. I think by practical experience, every one of us will know this. There are, no doubt, Tribal people but there are also non-Tribal poor who are also dwelling in the forests. I would submit that there must be a provision to enlarge the scope of the Bill to cater to the forest dwelling non-Tribal poor also. I do not want it to cover any rich person who wants to occupy the forestland or have forest rights.

Somewhere we could find out that the scope of the Bill is enlarged to cover non-Tribal poor. The definition of poor could be something what we use in the normal terminology, small farmers, marginal farmers or landless poor. Or, it could even be landless poor. I would submit this as my first submission.

The second is that the Bill makes their rights in the core areas of National Parks and Sanctuaries as provisional. I would submit to the Committee that this is going to create a big problem because what we call as National Parks and Sanctuaries are part of protected areas. As per the Wildlife Act, it is known as protected area. People living in the protected area are as many as four million. Roughly, the core area will come about 40 per cent of the protected area. In fact, the Tiger Task Force also mentioned that of the tiger reserves, about 46 per cent falls within the core area. The core area definition is actually not a legal definition. Until the new amendment to the Wildlife Act comes, the core area definition is an administrative definition.

The protected areas are divided into core areas and buffer areas. The core areas are roughly about 40 per cent of the protected areas. So, in such a case, we will be leaving a large number of people without the benefit of these rights. Even assuming they are only going to be Tribal people, even then we will be leaving a large percentage of people. My submission would be that the Bill should cover the protected areas also fully. If there is any need to rehabilitate the people, then this right can be extinguished by giving a suitable remedy.

I would suggest that the Bill should create the right but not make it provisional. It should not exclude the protected areas. But if it comes to an administrative practice that if we want to have, in forest terminology, free-cum-biotic interference for wildlife, then that right can be extinguished by means of a suitable remedy. So, my making that right provisional in core areas, I would submit that we will be doing a large harm to the Tribal people. It is not only presently but also the Bill is going to be a permanent feature because the National Wildlife Policy envisages that in future the target is 10 per cent of the country's landmass which should come under the protected areas. Ten per cent of country's landmass is a very big area. So, this is my second submission that we need not exclude the core from the scope of the Bill nor make it provisional. Make the Bill applicable to the protected areas also.

For instance, I think the report of the Tiger Task Force shows that there are more tigers outside the protected areas than inside the tigers' reserve. I think they have given it in the Report of the Task Force. We should look at the forests in totality rather than protected areas and other areas separately.

My third submission is that the cut off date is 25.10.80. I think, the Bill as far as land rights are concerned, it makes the cut off date of 25.10.80 as an operational thing and also says that they must continue in possession when the Bill comes in to force, that is, as is where is basis. That is why I am a tribal and as far as occupying the land before 25.10.80, I will be entitled to land right subject to 2-1/2 hectares and subject to my being possession today, that is 2006. So, it means I will have to prove my possession continuously for 26 years which I feel is going to be extraordinarily difficult. So, by putting this cut off date I think the right which you are giving I submit may become a fiction. It is a small benefit, but I do not think really it will be conveying much benefit as the Bill is intended to do. There is no significance for 25.10.80 in my view because 25.10.80 is only the date on which the Forest Conservation Act of 1980 came into force. If you look at the Forest Conservation Act, it was not an Act which was intended to do anything more than to take away the powers of dereservation and the powers of non-forest use from States to the Centre. That is all. It is single line Act that no reserved forest will be dereserved

or no forest land should be used for non-forest purposes without the permission of the Central Government. It took away the powers from the State to the Centre because from 1916, forest became a Concurrent Subject. Whatever it is, so that date has no significance at all for the rights. The tribal had right earlier and the tribal continue to have the right later whether you decide to recognise it or not. So, to my mind 25.10.80 has no place in the scheme of things where we really want to provide the tribal with certain rights which has been denied to him historically. So, I would submit that no cut off date should be there at all. On the other hand, Section 4(5) of the Bill says that the person should be in occupation at the commencement of the Act which means that itself will be the cut off date. The date of commencement of the Act will become the cut off date. I am sure people may have doubts about it because if you say like that people will go on occupying millions of acres and ask for title and all that. But I submit that is not a practical possibility now today and unless they really remove the cut off date, there will be zero benefit. If you leave it without the cut off date, I think, we will be able to give the benefit. Even according to the forest department's estimate some time ago, the occupation of tribal within the forest areas, they estimated it about 1.3 million lakh hectares and if I am not mistaken, it will be roughly less than two per cent of the total forest area. If they are in occupation already, I think we have to right to deny that much of right because what we are recognising by this Bill is their pre-existing occupation. We are not going to parcel out forestland to them. I think there is a misconception that this Bill is going to parcel out forestland. It is not going to do anything like that. It is going to recognise the rights which we fail to recognise as State. Tribal are already there. They were cultivating those lands. The Forest Act came later. The Forest Regulations came later and we denied them the right. We are giving back that right. So, I would submit that this cut off date could be completely done away with.

My next submission is Section 4(7). I think that is a very peculiar Section. I do not know at what stage it came into the Bill. Section 4(7) I would request you to have a look at it. In case any forest right recognised and vested by sub-section (i) is disputed by any State Government or local authority, the competent authority shall consider the records prepared etc. and pass an appropriate order. If you see the definition, the competent authority means any officer or authority appointed by the Central Government. Now, this looks to me somewhat strange because the Bill is passed by the Parliament and we expect the State Government or the local authority to dispute. We pass a Bill, we give the right under the Bill. The State Government and local authority is going to challenge the right and it is going to be decided by an officer of the Central Government. I do not know what was the need for this provision and why this provision is there at all. It will nullify the Bill.

The Bill confers a right and the Bill itself says the State Government or local authority can challenge it and it is going to be decided by an officer of the Central Government appointed under the Bill. I feel it is an affront to the Bill itself. Section 4(7), according to me, should be deleted and that authority for that also is not necessary because if there is a dispute about any other thing there is provision later. The Gram Sabha and all the State Level Committee and the Central Level Committee, all of them come in. So, I would submit and request the hon. Committee to have a closer look at Section 4(7). I feel it is not necessary. I feel it is also some sort of — if I may use that word — a very dangerous provision allowing a State Government or a local authority to challenge a Central legislation.

Then, I would come to Section 5 where there are some duties on the holders of various rights. I agree that their right also can carry along with it some duties. But Section 5(a)(b)(c) are alright; but 5(d) says that he has a duty to inform the Gram Sabha and the forest authorities any activity and violation of the provisions of the Wildlife Protection Act, Forest Conservation Act, Biological Diversity Act. I fear that a tribal, or a poor person, will not even know what these Acts are. In fact, I myself do not know what this Biological Diversity Act, 2002 is. But we expect the tribal to inform the forest authorities of any violation, not only in his area or anything. I think this will be too much of a responsibility or duty placed on him. I think this should be taken away completely. This is not also warranted by the right-giving legislation.

I will come to Section 6 on authorities and procedures for verifying the forest rights. I think here the structure is the Gram Sabha initiates the proposal, then it goes to a sub-divisional level Committee for a final decision and then it goes to the district-level Committee. While the Gram Sabha is an elected body or whatever

it is, an existing body, Gram Sabha is the total electorate of the village and so it is a representative body of the village, the next two bodies are official bodies because it says it will consist of revenue officer, forest officer and tribal officer. These are two official bodies.

So, on what is being recommended by a people's body, the seal of approval is given by — if I may say so an unelected official body. I think it has to become a little more transparent. I think somewhere the Gram Sabha's recommendation should not be departed from except for very exceptional reasons. Something like that must be built into the Act. Otherwise what is started will be nullified by the same departments which have not recognised the rights all these days. The whole Bill has become necessary because the executive apparatus has not been able to do the duty. But they are now being given that authority to finally approve. I think somewhere you have to modify the Bill, the Bill has to be modified to see that the will of the people prevails rather than some two-three officials nominated by the Government.

One more important provision is there — Section 7 which deals with offences and penalties. If any holder of any forest rights or whatever contravenes, there is contravention of any provision or commits breach of the conditions, engages in unsustainable use, kills any wild animals, fells trees, he will be guilty of an offence. My submission is the whole Section 7 is misconceived. This Bill is expected to give the tribal a right which was denied all these days. It is to give the right. But why am I being given a penalty? What for? I am receiving a right. If somebody violates my right he should be penalised. That is there in Section 8. But why should I be penalized at all? By the Bill you are giving me some right. So, it is a contradiction. If I fell a tree I can be punished under the Forest Act. It is already there. If I do something to the wildlife I can be punished under the Wildlife Act. It is already there.

This Bill is introducing an additional penalty to me merely because I happen to be a tribal and receiving a right. I am sorry if I am expanding it a little more. But then, merely because you are giving me a right, you are giving me an additional penalty over and above the existing law in which case I am in double jeopardy if I may use the term. I submit that this penalty clause in Section 7 should go completely.

Then, clause 14 is very important. It says "save as otherwise provided in this Act, the provisions of this Act shall be in addition to and not in derogation of provisions of any other law for the time being in force." In addition to is all right, but the moment we say 'not in derogation of any other law in force' it means that this Act will become a nullity. This Bill is conferring right because all other Acts are not operating to this effect. By this Act, we are creating a right and that right emerges from this Act. Some other right may be inconsistent with it, but then this Act should prevail. Otherwise, that Act will carry the day. For example, the Forest Conservation Act say'....there is no non-forest purpose' and somebody will say that this is a non-forest purpose. I will say that 'in derogation of, cannot be here. We have to write somewhere in this Act that this Act will prevail or over-ride all other provisions.

I would submit that 'in derogation of' cannot be here in this Act. In such a case, the Bill would become infructuous. It should prevail and over-ride. It should have effect notwithstanding anything in any other Act.

These are my comments on the Bill. I am ready to answer questions, if any.

DR. P.P. KOYA: It was a very interesting intervention. You were telling about Gram Sabha and subsequent vetting by other body. Gram Sabha is a sabha of everybody in the village. It does not know of rules and regulations at all. So, it will be healthy, or it may be acceptable, to vet its recommendation by a competent higher authority. Your only grievance is that it is done by a group of officials. In States having PRI, Gram Sabha is the last sabha. We have three-tier panchayat system. We have Gram Sabha, taluka-level panchayat and district-level panchayat. Will you be happy if it is gone through by taluka-level and district-level panchayat?

SHRI S.R. SANKARAN: I agree that in Gram Sabha, there could be some biases possible. It is a larger and it may be dominated by even vested interests. I thought that the next level review should be done by an officials' group. There also, there could be a public representative or someone else. Unless it can go to the next tier of PRI itself, it is also practicable. I thought that the next two tiers cannot be completely official in which case, I think, our purpose will not be served.

MR. CHAIRMAN: Do you think that inclusion of tribals and other forest-dwellers could serve the purpose to some extent? Do you think that the inclusion of some non-official tribals in the district level committees and sub-division level committees would serve the purpose?

SHRI S.R. SANKARAN: There could be representatives of tribal community. My only point is that it should be broad-based so that they will be able to look at some other points also.

SHRI GIRIDHAR GAMANG: Mr. Sankaran, you have got wide-ranging experience in the State as well as Centre, particularly in tribal area of Andhra Pradesh. As per the Fifth Schedule of the Constitution, the provisions of any State or Central Act are not applicable in the Scheduled Areas. If it will be applicable, there should be exception and modification of the Central or State Act and the Governor or the President will decide whether it is applicable or not. On the basis of that, as you are aware, when we incorporated into the Constitution the Panchayat Act which was there at the Centre, we made a provision that *Panchayat* is not extendable to any of the Fifth Schedule areas. If it will be, it will be through an Act of Parliament, through an exception or modification.

Today, we have got a separate Bill for rights of the tribals in the forest area apart from the existing *Panchayat* Act, which has been extended to the Scheduled Areas. There are also a number of other acts relating to the forest. Do you think that if we do some modification—while extending the central act—then this problem would not be there? Does it require a separate Act, namely, for the forest rights of the tribals or will extending the existing Central Act in the tribal areas with certain modification suffice? Do you want this Act, which will be extended with some modification in the existing Bill?

SHRI S.R. SANKARAN: Sir, I was myself the Secretary of the Rural Development Department at the time of passing of the Panchayat Act. We excluded the Vth Scheduled Areas in it, and we also excluded States like Nagaland, hilly areas of Manipur, Darjeeling, etc. because they had a different setup in so far as local institution was concerned. There were also some traditional systems.

Later, the PESA Act was brought in with modification in this Bill. I feel that we are really conferring rights on the tribal people themselves. As it is, it is exclusively a tribal bill, even though I argued for extending it to others also. It is intended for the tribal people in the Vth Scheduled Areas, and it is really the tribal people who are going to get benefit out of it.

My rough estimate is that out of the total tribal population in the Vth Schedule—excluding the North-East—may be between 40 per cent and 50 per cent will be within the Vth Scheduled Areas. Therefore, this Bill should be applicable to the Vth Scheduled Areas because it is intended for the tribal people. We are conferring rights on them, and it is for them only. My own view with regard to this issue is that it should be extended, and it may not be left to the Governors to do it.

MR. CHAIRMAN: Shri Sankaran, thank you very much for your valuable suggestions. I am sure that the Committee has benefited from your vast experience. We shall take note of every recommendation/suggestion made by you. If there is anything further that you would like this Committee to consider, then you are welcome to supply your comments/observations to the Committee. Thank you very much for attending this meeting.

(The witness then withdrew)

WITNESSES EXAMINED: 1. Shri Ambarish Rai, Lok Sangarsh Morcha

2. Ms. Pratibha Shinde, Lok Sangarsh Morcha

MR. CHAIRMAN: Shri Ambarish Rai, and his colleagues:

I welcome you all to this sitting of the Joint Select Committee. You are aware that we are now discussing the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005. We have received your memorandum, and if there is anything more that you would like to say or stress with regard to your memorandum, then you may do so.

I would like to make it clear that whatever discussions we have here will remain confidential until the Report of the Committee is placed in the Parliament.

Before you start with your submissions, please introduce yourself and your colleagues, so that we can note it for our record purpose. You can speak in Hindi also, and it all depends on the language in which you are comfortable speaking.

श्री अम्बरीश राय: सबसे पहले तो हम अपने संगठन की तरफ से आपको धन्यवाद देना चाहेंगे कि आपने हमें यह अवसर दिया कि हमारे जो ग्रास रूट लेवल पर काम करने वाली साथी हैं, वे यहां आकर अपने मुस्तकबिल के बारे में आपसे बात कर सकें, क्योंकि यह ट्राइबल बिल उनके लिए देश की संसद में एक कानून बनने जा रहा है तो जाहिर सी बात है कि वे लोग जो इससे इफैक्टिव हों, वे लोग अपनी बात यहां आकर कह सकें। हम चाहेंगे कि हमारे जो साथी हैं, उन लोगों का परिचय आपके साथ हो जाये, इसके बाद प्रतिभा शिन्डे जी अपनी बात रखेंगी और जो लोग जगह-जगह से आये हुए हैं, वे लोग भी अपने अनुभव आपके साथ शेयर करना चाहेंगे।

(परिचय)

सुश्री प्रतिभा शिन्डे: जोइंट सलैक्ट कमेटी के सभी साथीगण, आज हम लोग बड़ी ही जद्दोजहद के बाद संसद की लोक सभा की जोइंट सलैक्ट कमेटी के सामने आये हुए हैं। एक साल से हम लोग इस बिल के बारे में लड़ रहे हैं और उसके पहले 12 साल से यह संगठन महाराष्ट्र, गुजरात, मध्य प्रदेश और उत्तर प्रदेश के इन एरियाज़ में आदिवासी और गैर-आदिवासी जो फौरेस्ट में रह रहे हैं, उनके अधिकारों के बारे में अपनी लड़ाई लड़ रहे हैं। हम लोग अपनी तहसील से लेकर स्टेट के मुम्बई तक और गुजरात में भी सूरत से लेकर नर्मदा जिले से लेकर यहां पर रैली करते हुए सात दिसम्बर के दिन करीब 6 हजार लोग प्रातिनिधिक रूप से दिल्ली में संसद के सामने आये थे, यही बात उस वक्त भी दोहराने के लिए कि आप लोग आदिवासियों के ऊपर हुए ऐतिहासिक अन्याय को दूर करने की बात करके यह बिल ला रहे हैं और ट्राइबल डिपार्टमेंट ने यह जो पहल की है, इसके लिए तो तमाम आदिवासी एरिया के लोग स्वागत जरूर करते हैं, मगर जब हम इस बिल को पढ़ते हैं, तब हम लोगों को यह महसूस होता है, अन्दर से यह लगता है कि बात तो ऐतिहासिक अन्याय को दूर करने की उठई जा रही है, मगर उसके अन्दर की जो बातें हम लोग देखते, पढ़ते और समझते हैं, जब उसकी कोशिश करते हैं, कानून के तहत जब उसको देखते हैं, तब हमको लगता है कि यह बिल आदिवासियों को सही मायनों में न्याय देने के लिए आज के रूप में तैयार नहीं है। उस वक्त भी हमारी यही मांग रही कि इसे फिर से संशोधित किया जाये और इस बिल में जो तब्दीली करनी चाहिए, यह किया जाये।

जोइंट सलैक्ट कमेटी ने हमें यह मौका दिया, इससे हमें बहुत खुशी हुई और आप लोगों से हम यही उम्मीद और अपेक्षा लेकर आये हैं। कॉमन मिनिमम प्रोग्राम के तहत भी आप लोगों ने यह सब उठाया ही है और अभी की संसद की यह पूरी जिम्मेदारी है कि आदिवासियों के ऊपर ऐतिहासिक अन्याय दूर करने का काम करें। इस बिल के अन्दर जो बातें हैं, उसमें हमें लगता है कि कट ऑफ डेट की बात जो आप लोगों ने 25 अक्टूबर, 1980 की हम लोगों को कंजर्वेशन एक्ट के तहत जो डेट है, उसमें और आपके बिल में क्या अन्तर है, यह हमें समझ में नहीं आ रहा है। इसको जब हम लोग देखने लगे कि क्या परिणाम हो सकता है, अगर यह कट ऑफ डेट रही तो हमारे ही नन्दुरबार डिस्ट्रिक्ट को ले लीजिए, साउथ गुजरात में तमाम डिस्ट्रिक्ट्स को ले लीजिए, हम लोगों ने जो परसेप्टेज निकाले हैं उनमें से करीब 60 परसेंट लोग अगर यह कानून आ जायेगा तो वहां से एक्विशन उनका हो जायेगा और उनको जंगल जमीन से बाहर कर दिया जायेगा। इसलिए हम लोग यह मांग करते हैं कि जिस दिन यह कानून पारित होगा, उसके एक साल पहले, जैसे आप रिहैबिलिटेशन में करते हैं, लोगों के विस्थापन के लिए भू-सम्पादन का कानून आपने बनाया है, उसमें आप कहते हैं कि एक साल पहले जो लोग वहां रह रहे हैं। लैण्ड इक्विजिशन के अधिकार इसमें रखिए। हमको नहीं लगता है कि वर्ष 1980 आदिवासियों के लिए सही है।

दूसरी बात इसमें कही गयी है कि जंगल की रक्षा आदिवासी करें। यह ठीक है कि जंगल की रक्षा हम सभी को करनी चाहिए। दिल्ली के अंदर इतनी गाड़ियां आ जाएं और वे प्रदूषण फैलाएं, शहरों में प्रदूषण होता रहे, लेकिन जंगल की रक्षा आदिवासी करें, यह हमारी समझ से बाहर है। हम लोग अपने जंगल और जमीन की रक्षा पहले से ही कर रहे हैं। आदिवासियों के लिए जंगल आदिवासियों का देवता होता है, जिसको वह कभी हाथ नहीं लगाता है। वर्ष 1980 का एक्ट आने के बाद एफडीसीएम ने नाबार्ड और वर्ल्ड बैंक से पैसा लेकर हजारों एकड़ जंगल काट दिए, लेकिन उसकी जगह आज तक नये जंगल नहीं लग पाए हैं।

इसमें एक हजार रुपये का जुर्माना करने की बात कही गयी है। हमें लगता है कि आप चोर के हाथ में ही चाबियां दे रहे हैं। इसे आप वन विभाग के तहत कर रहे हैं। इसमें यदि एक बार कोई पकड़ा जाता है तो उससे एक हजार का जुर्माना लिया जाएगा, अगली बार पकड़े जाने पर उसके अधिकारों को छीन लिया जाएगा। सीविलियन को जब लैण्ड दी गयी, तब उन्हें कभी यह बात नहीं कही गयी। आदिवासी

को जंगल की रक्षा की जिम्मेदारी दे दी गयी है, यह उनके ऊपर बिलकुल अन्याय है। हमारी मांग है कि इसमें सज़ा के प्रावधान को खत्म किया जाए। सैक्शन 7 को डिलीट किया जाना चाहिए।

सैक्शन 2 (सी) में सिर्फ आदिवासियों को राइट देने की बात कही गयी है। उत्तर प्रदेश में जो नॉन-ट्राइबल लोग हैं, लेकिन उनका कल्चर ट्राइबल की तरह है, लेकिन उनके लिए इसमें प्रोविजन नहीं है। इससे इन लोगों का काफी विस्थापन होगा इसमें फारेस्ट डेवलपर की बात शामिल की जाए।

सैक्शन (3) में विस्थापन को पूरी तरह से रोकने की बात करनी चाहिए। हमें लगता है कि इस बिल में कारपोरेट सेक्टर के लिए कोई बात नहीं कही गयी है। इसमें भविष्य में आदिवासियों के विस्थापन की बात नहीं उठायी गयी है। हम लोग देख रहे हैं कि वर्ष 1980 के बाद से 11 लाख हैक्टेयर से ज्यादा जमीन और आदिवासियों का विस्थापन हो चुका है। नंदूरबार जिले में सरदार सरोवर की वजह से 30 हजार एकड़ जंगल डैम में चला गया है। वहां से आदिवासी विस्थापित हुए हैं, उनके पुनर्वास के लिए हम लोग बीस साल से लड़ रहे हैं। बीस साल में सरकार ने इस साल एक हजार को मान्यता दी, अगले साल दो हजार को मान्यता दी, इस तरह से देखा जाए तो आदिवासियों का पुनर्वास करना सरकार के लिए मुमकिन नहीं है। इसलिए हम विनती करते हैं कि इस बिल में विस्थापन को बिलकुल रोक देने के लिए कोशिश की जानी चाहिए।

हम लोग गुजरात से आए हैं और वहां पर वर्ष 1972 में उकई के कारण 172 गांव विस्थापित हुए थे। उनमें से 60 गांवों के कागजों में नामोनिशान नहीं है, क्योंकि वे सभी गांव फारेस्ट में थे। अब वे कहां चले गए हैं, इसका कहीं कोई अस्तित्व ही नहीं है। बचे हुए लोग सूत में मजदूरी करने के लिए जाते हैं। इनका सरकार सही तरीके से पुनर्वास नहीं कर पायी है और न ही इसके आंकड़े हैं। इसलिए स्वतन्त्रता के बाद जो विस्थापित हो चुके हैं, इनके बारे में भी बिल में उल्लेख होना चाहिए।

हम विकास की पूरी प्रक्रिया को नकार नहीं रहे हैं। यदि कभी विस्थापन करना पड़े तो उसकी पूरी जांच-पड़ताल ग्राम सभा के तहत ही होनी चाहिए। साथ ही साथ ग्राम सभा को ही उसके पुनर्वास का अधिकार दिया जाना चाहिए।

हमको लगता है कि सैक्शन 5(बी), (सी) और (डी) को पूरी तरह से हटा देना चाहिए।

हमें लगता है कि यह आदिवासियों के हित में बिल्कुल नहीं है उल्टा उनके लिए मारक ठहरेगा।

बाकी लोग अपनी बातें रखेंगे। हम यह जरूर कहना चाहते हैं कि आज की तारीख में जब हम बिल को पढ़ते हैं और बिल को लेकर गांव के लोगों को बताते हैं कि आपके हक में इस तरह का बिल आया है, इतने सालों में पड़ली बार आदिवासियों के हित के लिए बिल आ रहा है, तो लोग कहते हैं कि हमें समझ में नहीं आ रहा है कि हमें क्या नया अधिकार मिल रहा है। यह इसलिए हो रहा है कि पहले कहते हैं कि निस्तार हक की बात की जाएगी, उसके बाद कहते हैं कि निस्तार अधिकार कौन से हैं, स्टेट में जो तय हों, वे होंगे। हम पहले से ही देख रहे हैं कि क्या तय है। तेन्दु पत्ता हमें कभी नहीं दिया जाएगा क्योंकि वह कारपोरेट सेक्टर के पास जाता है, बम्बू हमें नहीं दिया जाएगा क्योंकि वह अलग-अलग फैंक्ट्रियों के लिए दिया जाता है। हम यहां कहते हैं कि जंगल में जो-जो होता है, उस पर आदिवासियों को अधिकार देना चाहिए।

दूसरी बात इसमें कही गई है कि सिर्फ खाने के लिए हम आपको अधिकार दे रहे हैं। हम इस बात का अधिकार बिल्कुल नहीं देंगे कि आप उसे बेचें। क्या आदिवासी लोगों को उसी तरह मजदूर रखना चाहते हैं? आदिवासी लोगों की जीविका सिर्फ उसी पर आधारित होगी कि वे न कभी प्रगति कर सकें या कुछ कर सकें? इसी प्रकार का प्रोविजन इसमें दिया गया है।

इसमें 2.5 हैक्टेयर सीलिंग की बात कही गई है। इतनी कम सीलिंग, 6 ए.ए.ए. जमीन देना, गरीबों के लिए जो कानून बन रहा है, उसमें भी 6 एकड़ जमीन दे रहे हैं। हम जानते हैं कि जंगल किस प्रकार होता है। क्या एक परिवार का 6 एकड़ में जीना मुमकिन है? हम कहते हैं कि कम से कम ढाई हैक्टेयर जमीन दी जानी चाहिए और ज्यादा से ज्यादा उनके हाथ में है।

सभापति महोदय: ढाई हैक्टेयर अपर लिमिट सीलिंग है।

सुश्री प्रतिभा शिन्डे: हम कहते हैं कि मिनिमम सीलिंग ढाई हैक्टेयर होनी चाहिए।

सभापति महोदय: उनके पास अभी तक जितनी जमीन है, उतनी तो पूरी देंगे, उसमें से एक इंच भी नहीं लेंगे। जो मैक्सिमम सीलिंग लगानी थी, वह ढाई हैक्टेयर रखी गई है।

सुश्री प्रतिभा शिन्दे: महाराष्ट्र का उदाहरण लीजिए। नान-इरीगेटेड लैंड महाराष्ट्र में नान-ट्राइबल्स के लिए 32 एकड़ है।

सभापति महोदय: यह बिल, अभी तक जिनके पास जमीन है, उनके राइट्स को इस्टैबलिश करने के लिए है, जमीन बांटने के लिए नहीं है। अगर कोई व्यक्ति 50 साल से एक हैक्टेयर जमीन में काम कर रहा है तो उसे डेढ़ हैक्टेयर जमीन कहां से लाकर देंगे। उनके पोजीशन में जितनी जमीन है, उतनी ही देनी है।

सुश्री प्रतिभा शिन्दे: उनके हाथ में जितनी जमीन है, उतनी तो देनी ही चाहिए।

सभापति महोदय: उतनी जमीन तो जरूर देंगे।

मान लें कोई ट्राइबल व्यक्ति दो हैक्टेयर जमीन में काम कर रहा है तो उसे दो हैक्टेयर जमीन ही देंगे, ज्यादा जमीन कहां से लाकर देंगे।

DR. P.P. KOYA: What she wants is 2.5 hectares or actually what they are having already.

MR. CHAIRMAN: Dr. Koya, that is not what she wants. She wants 2.5 hectares to all, that is, even those who are having 1 hectare now. We will be very happy to export some land from Lakshadweep and place it at the disposal here.

श्री विपिन शुक्ला: आपने औब्जेक्टिव में कहा है, आप कह रहे हैं कि हिस्टीरीकल इनजस्टिस जो किए गए हैं, उन्हें दूर करेंगे। जो रिकगनिशन के राइट्स हैं, आपने उस संदर्भ में कहा है। आप जो बिल बता रहे हैं, उसमें ऐतिहासिक अन्याय को दूर करने की कोई बात नहीं है। ऐतिहासिक अन्याय दो संदर्भ में है – जमीन के अधिकार के मामले में और जंगल में जो अधिकार हैं, उनके मामले में। हमारा जो संविधान बना, पांचवे और छठे शैड्यूल की मेन मंशा यह थी कि आदिवासियों की जमीन आदिवासियों के पास रहे।

यह उसकी मूल मंशा थी। उसकी जो शासन प्रणाली है, व्यवस्था है, वह भी आदिवासियों के पास रहे, यही उसकी मूल मंशा है। लेकिन हम सब जानते हैं और सुप्रीम कोर्ट के जजमेंट में भी कहा गया। अंग्रेजों ने भी यह कानून बनाया कि आदिवासियों से जमीन वापस ली गयी, उनको रिस्टोर किया जायेगा। वर्ष 1927 से लेकर आज तक जंगल से आदिवासियों के अधिकार कम किये गये। जब आप रिकोगनिशन की बात करें, हिस्टीरीकल इनजस्टिस को दूर करने की बात करें, तो यह आपकी पूरी जिम्मेदारी बनती है क्योंकि सुप्रीम कोर्ट ने कहा कि कानून बनाने के बावजूद समता जजमेंट में आप कोट कर सकते हैं। वर्ष 1906 से लेकर इतने सारे कानून बनें और पार्लियामेंट में व्यवस्था है, उसके बावजूद जमीनें चली गयीं और उनके अधिकार कम हो गये। देश के अंदर अगर एक समुदाय सबसे ज्यादा गरीबी में है, बदहाली में है तो वह आदिवासी है उसकी बेसिक वजह यह है कि यह ऐतिहासिक न्याय जमीन और जंगल में हक के मामले में ठीक नहीं किया गया है। इसलिए इस बिल की जो पूरी बुनियाद है, उसे आप दूर नहीं करेंगे तो आप आदिवासियों की खुशहाली नहीं कर सकते। पहले हम यह कहना चाहते हैं। This Bill is fundamentally flawed in this respect.

सभापति महोदय: हमने आपको इसलिए बुलाया है कि आप हमें बतायें कि कहां कमी है। आपके बताने से ही हम इसमें सुधारने की कोशिश करेंगे।

श्री विपिन शुक्ला: आपने कहा कि जमीन कहां से लायेंगे। जमीन के सैटलमेंट के बारे में इस बिल में है। बहुत सारे लोगों ने इसे कैलकुलेट किया है।

सभापति महोदय: मैं इसे क्लियर करना चाहता हूँ कि पार्लियामेंट में यह बिल पेश किया गया है। This is for recognition of lights of forest dwellers and not for distribution of land.

श्री विपिन शुक्ला: हम यह कह रहे हैं कि रिकोगनाइज करने के लिए बिल है तो उनके अधिकार रिकोगनाइज करने चाहिए। आप आब्जेक्टिव एंड रीजन्स को देख लीजिए। इसके अलावा बिल का एक बैकग्राउंड नोट सबमिट किया है। हम एक अजीब विडम्बना देखते हैं।

सभापति महोदय: आप अपना सजेशन बतायें। हम उस पर डिसकस करेंगे।

SHRI AMBARISH RAI: We want to make a suggestion. मैं एक सजेशन देना चाहता हूँ। आपने सीलिंग की बात की है। आप लैंड के इश्यू पर कुछ नार्मस सेट करने जा रहे हैं। You are not going to distribute land. You are going to recognise that land; you are going to set up norms for tribals and others at this moment. We want to make our issue clear. जो सीलिंग का नया कानून आप आदिवासी के लिए बनाने जा रहे हैं। देश में एक सीलिंग कानून आलरेडी एग्जिस्ट कर रहा है। आपने अगर डेढ़ हैक्टेयर लाख सीलिंग तय कर दी, तो हमारा सबमिशन यह है कि दो ऑप्शन हैं—आप या तो सीलिंग हटाइये और जो सीलिंग देश में है,

वह सीलिंग आदिवासियों के लिए लागू कीजिए। दूसरा, इस समय जहां जो जैसे है, आप जो भां कट ऑफ डेट तय करें, जिसके पास जितनी जमीन उस समय है, उसको ऐज इट इज रिकोगनाइज किया जाये।

सभापति महोदय: आपका कट ऑफ डेट पर सजेशन क्या है?

श्री अम्बरीश राव: हमारा सजेशन है कि बिल संसद में पारित होने के एक वर्ष पूर्व रिकार्ड राइट्स और रिकार्ड जो स्थिति है, उसे मान्यता दी जाये। जो जहां जिस सिचुएशन में है, जिसके पास जमीन है उसे विदाउट ऐनी सीलिंग उसको पहले रिकोगनाइज किया जाये।

DR. P.P. KOYA: This is what we have been thinking. We wanted to visit every one of you in the field. Our Chairman had gone to the Speaker asking for permission to tour every area. I am happy that you have come up to the Parliament. We are for you, we are a select few and we will stand by you.

सुश्री प्रतिभा शिंदे: इन अराउंड सेंचुरी और इसके बारे में बात की है, हम लोगों को लगता है कि प्राणी, एनीमल और ट्राइबल्स में कभी भी झगड़ा नहीं रहा है। इसलिए हमारा कहना है कि इसको भी एक किया जाये।

श्री महावीर भगोरा: मैं एक बात आप लोगों से जानना चाहता हूँ कि क्या हमें जंगल को बचाना चाहिए या आदिवासियों को बचाना चाहिए? मैं ऑफ दि रिकार्ड बोल रहा हूँ कि क्या हमें जंगल को बचाकर रखना चाहिए या आदिवासियों को बचाना चाहिए?

सुश्री प्रतिभा शिंदे: मैं तो ऑन दि रिकार्ड कह रही हूँ कि आपकी जो वन समितियां बनी हैं, आप सब लोग उसके बारे में जानते ही हैं कि महाराष्ट्र, मध्य प्रदेश में फेज-1 का किया गया और सबसे ज्यादा झगड़े उसी वानिकी प्रक्रिया के कारण हुए और जंगल भी सबसे ज्यादा उसी समय में खत्म हुए। आप लोग यदि हमारे यहां विजिट करते और मध्य प्रदेश, महाराष्ट्र और गुजरात के एरियाज में जाते तो देखते कि सरकार की वन समितियों के अलावा हम लोगों ने हर गांवों में और यह हर गांव का नारा है कि खेती की जमीन हम छोड़ेंगे नहीं और नये जंगल तोड़ेंगे नहीं। यह हमारा नारा है और हम लोगों ने हमारे जंगल की रक्षा की है। इसीलिए हम आपसे अपेक्षा करते थे कि यदि आप आते तो आपमें भी एक भावना आती कि आदिवासी क्या सोचता है। आदिवासी जंगल के बिना नहीं रह सकता। आपको पता है कि जैसे मछली बिन पानी नहीं रह सकती, वैसे ही आदिवासी जंगल के बिना नहीं रह सकता। आपकी इसकी बैकग्राउंड में भी लिखा हुआ है।

श्री महावीर भगोरा: मैं यही कहने जा रहा हूँ कि सरकार ने समितियां बनाई हैं या हम लोग उनसे जुड़े हुए हैं?

सुश्री प्रतिभा शिंदे: हम लोगों ने खुद बनाई हुई हैं।

श्री महावीर भगोरा: वे काम की हैं या सरकारी काम की हैं? आप लोग क्या चाहते हैं?

सुश्री प्रतिभा शिंदे: सरकार कौन सी समितियां बनाती है? उसमें तो पैसे वाला मामला आ जाता है।

श्री महावीर भगोरा: सांझा वन समितियां जो बनी हैं।

सुश्री प्रतिभा शिंदे: ज्वाइंट फॉरेस्ट मैनेजमेंट के तहत सरकार ने समितियां बनाई हैं।

श्री महावीर भगोरा: सरकार मत बोलिए। क्या उसमें सरकार का कोई प्रतिनिधि है?

सुश्री प्रतिभा शिंदे: फॉरेस्ट विभाग के बारे में आप भी जानते हैं और हम भी जानते हैं। सालों से एक ही नम्बर पर एक ही तरह की रोक लंबाने का काम बार-बार कर रहे हैं और यदि उनका पूरा ब्यौरा निकाला जाए तो आप देखेंगे कि फॉरेस्ट ने आज तक कितना पैसा खर्च किया है?

श्री महावीर भगोरा: मैं एक बात और स्पष्ट करना चाहता हूँ कि क्या यह जो फॉरेस्ट है, क्या वह पर सांझा वन प्रबंधन समितियों को सौंप दिया जाए?

सुश्री प्रतिभा शिंदे: ग्राम सभा को सौंप दिया जाए। ग्राम सभा की दिक्कत यह है कि ट्राइबल एरियाज में आप सब लोग जानते होंगे कि वहां पंचायत होती है। हालांकि विलेज पंचायत की दिक्कत यह है कि आदिवासी एरियाज में सालों से ग्रुप ग्राम पंचायतें रहती हैं। उसमें बीस-बीस गांवों में और चालोस-चालीस किमी का एरिया होता है। मैं कहना चाहती हूँ कि ग्राम सभा को अधिकार होने चाहिए।

सभापति महोदय: आप क्या कहना चाहते हैं?

(श्रीमती यमुना पदावी — Spoke in Gujarati)

सुश्री प्रतिभा शिंदे: यह कह रही हैं कि सब लोग जानते हैं कि सालों से हमारे पुरखों का कोई बिजनेस नहीं था और न ही हमारे बाप-दादा की कोई फैक्टरी थी।

हमारे पूर्वज लोग मजदूरी नहीं करते थे, हमारे पूर्वज खेती पर ही जीते थे। अब यह नया सवाल ही कहां से आ गया जिसकी वजह से आधे से अधिक आदिवासी भूमिहीन हो गए और आज उनको अधिकार देने की बात हो रही है। यह बात हमारी समझ में नहीं आ रही है कि हमारे पूर्वजों का धन्या क्या था। आप लोगों ने हमसे विकास में जितनी हिस्सेदारी मांगी, हमने उसमें पूरी हिस्सेदारी की, लेकिन उससे होने वाले लाभ में से कभी आदिवासियों को भी हिस्सा देने की बात किसी ने नहीं सोची। हमारे लिए न तो शिक्षा प्राप्त करने के लिए कोई प्रोविजन है, न ही जंगल में उत्पन्न होने वाले उत्पादों पर हमारा कोई अधिकार रह गया है। हम ही लोग जंगल की रक्षा करते हैं, ये फॉरेस्ट विभाग वाले तो जंगल को उजाड़ते हैं।

आप यह जो कह रहे हैं कि डिस्ट्रिक्ट लेवल पर और तहसील लेवल पर एक कमेटी बनाई जाएगी जो ग्राम सभा के बाद उस विषय पर निर्णय लेगी और उस कमेटी में ट्राइबल, फॉरेस्ट और रेवेन्यू डिपार्टमेंट के अधिकारी रहेंगे, उसके सम्बन्ध में हमें यह लगता है कि इन अधिकारियों का ट्राइबल्स से कोई रिश्ता नहीं रहा है और न ही फॉरेस्ट से इनका कोई सम्बन्ध रहा है।

सभापति महोदय: इसके बारे में आपका क्या सुझाव है?

सुश्री प्रतिभा शिंदे: अगर हमें वास्तव में इस प्रकार की एक लोकतांत्रिक व्यवस्था बनानी है तो इस काम के लिए एक स्वायत्त आदिवासी परिषद होनी चाहिए जिसमें ग्राम सभा से ही चुने हुए लोगों शामिल किया जाए। इस तरह डिस्ट्रिक्ट लेवल पर एक महासभा बनाई जाए और वे लोग ही इसे देखें। फॉरेस्ट डिपार्टमेंट के लिए हाईकोर्ट में जाने का जो प्रोविजन है, वह भी इस महासभा के धू होकर ही जाना चाहिए अन्यथा ट्राइबल्स तो हाईकोर्ट में जा-जाकर ही खत्म हो जाएंगे क्योंकि अभी डिस्ट्रिक्ट कोर्ट में ही वे नहीं पहुंच पाते हैं।

श्री महावीर भगोरा: क्या उनको कमेटियों में सदस्य बनाया जाना चाहिए?

सुश्री प्रतिभा शिंदे: यह आदिवासियों की ही महासभा होनी चाहिए। जिस तरह पार्लियामेंट कुछ पदों पर कार्य करने के लिए लोगों को चुनती है, उसी तरह पांचवीं शिड्यूल के एरियाज में ट्राइबल्स की एक संसद कांस्टीट्यूट की जाए। यही संस्था ब्लॉक और डिस्ट्रिक्ट लेवल पर अपेक्स बोर्डिंग का चुनाव करे। इसके साथ ही छठीं शिड्यूल के जो एरियाज हैं, उनमें ऑटोनोमस डिस्ट्रिक्ट का इन्चार्ज मुखिया को बनाया जाना चाहिए।

सभापति महोदय: इस बिल के बारे में कुछ बताना हो तो बताएं।

सुश्री प्रतिभा शिंदे: ये कह रहे हैं कि अभ्यारण्य बनाया जाता है, इस देश में 525 वन घोषित किए गए हैं, लेकिन उसकी वजह से कितने लोग बेघर होने वाले हैं, जबकि बाघों और भालुओं के लिए तो आरक्षित जंगल बनाए गए हैं, परंतु जहां आदिवासी रहते हैं, उनको उजाड़ा जा रहा है। अब वे लोग कहां जाएंगे, इस पर सोचना चाहिए। उनकी जमीनों पर बड़े-बड़े कारखाने लगाए जा रहे हैं, अभी एक स्टील कम्पनी को वहां जमीन दी गई है। लेकिन हमारे आदिवासी जहां रहते हैं, उनको जब विस्थापित किया जाता है तो छः एकड़ जमीन भी नहीं मिलती है। इसलिए अभ्यारण्य का जो कानून बना रहे हैं, उसे कंसिल करके आदिवासियों और वन्य जीवों दोनों का जो मिलाजुला सम्बन्ध है, उसी तरह रहने दें। आदिवासियों में शिक्षा की बहुत कमी है, लेकिन वहां महिलाओं के लिए स्कूल नहीं हैं। वहां पहाड़ों पर जगह की कमी है इसलिए रास्ते बनाने चाहिए। स्कूल, अस्पताल के लिए बहुत दूर-दूर जाना पड़ता है। दवा के अभाव में पहाड़ों पर रहने वाले लोगों की मौत भी हो जाती है। इसी तरह से राशन की बात है, इन लोगों को बहुत कम अनाज दिया जाता है। जैसा कहा जाता है कि विकास के लिए स्कूल होने चाहिए, लेकिन वहां जगह की कमी है। इसी तरह से अस्पतालों की कमी है। इसलिए स्कूलों की बात केवल कागजों तक ही सीमित रह गई है। इसलिए इस कानून के तहत फॉरेस्ट विभाग को विकास के लिए भी प्रावधान करना चाहिए।

महाराष्ट्र में 10 अक्टूबर, 1980 में जीआर निकला था। जो कानून आप बनाने जा रहे हैं, वही ग्राम सभा को अधिकार देते हुए उन्होंने 1980 में ही कट आफ डेट के तहत वहां के लोगों को अधिकार देने की बात कही थी। नंदरबार जिले के 45,000 लोगों ने कहा था कि हम सरकार के सामने एपीयर होना चाहते हैं। जब ग्राम-ग्राम सभाएं होने लगीं, तब उन्हें कहा कि आप आएँ और केवल 25,000 लोग ही एपीयर हो पाएँ और उसमें भी 18,000 लोगों को ही अधिकार देने की बात कही गई। अगर आप वही कट आफ डेट रखेंगे तो यह और भी कम हो जाएगा।

सभापति महोदय: यह आप कह चुकी हैं। हमने कहा है कि हमने नोट कर लिया है। हम जरूर इसके बारे में सोचेंगे। अन्य कोई बात हो तो बताएं।

सुश्री प्रतिभा शिंदे: सन् 1972 में डैम बनाने के वक्त गांवों को उजाड़ने की बात कही लेकिन अभी तक लोगों का पुनर्वास नहीं हुआ है। आज भी हमारे गांवों में कुछ नहीं है। नर्मदा में महाराष्ट्र से जो लोग उजड़कर हमारे यहां आये, उनको फॉरिस्ट में अभी तक अधिकार नहीं दिया गया है और मैल-न्यूट्रीशन आपको उन्हीं जगहों पर दिखेगा जो आदर्श बोले जाते हैं। जंगल में जो ऊपज होती है, आदिवासी उन्हीं पर जीते हैं और इसमें यह न होने के कारण आप पुनर्वास का उल्लेख करेंगे तो उनका पुनर्वास ऐसी जगह पर होना चाहिए जहां जंगल आस-पास हों। पहले था कि जंगल के अगल-बगल के लोगों को भी उसका अधिकार दिया जाएगा। अगर वह अब इसमें से निकाल दिया जाएगा और केवल जंगल के ही गांव लेंगे तो काफी गांव रह जाएंगे। इसलिए इसमें जंगल के अगल-बगल के गांव भी होने चाहिए।

MR. CHAIRMAN: This is about-re-location of the oustees.

श्री अमिताभ राय: यह जो पनिशमेंट का प्रावधान है तो मेरा कहना है कि आदिवासी तो पहले से ही पनिशमेंट पा रहा है, उसको नया पनिशमेंट क्यों दे रहे हो।

सुश्री प्रतिभा शिंदे: यह बिल अगर ऐसे ही आ गया तो आदिवासी पहले ही लड़ाई लड़ रहे हैं उनको और तेजी से लड़ना पड़ेगा और उनका लोकतांत्रिक व्यवस्था से विश्वास उठ जाएगा। हम लोग बरसात होने के बावजूद यहां आये हैं कि आप हमारे साथ होने वाले इनजस्टिस को दूर करेंगे। पोजिटिव तरीके से लड़ने के लिए आदिवासी जनता तो तैयार है लेकिन अगर आप उन लोगों को विकास की मुख्य धारा में लाने के लिए यह बिल करेंगे तो ऐसा होगा।

सभापति महोदय: Thank you very much. हम आपको सुनने के लिए इधर बैठे हैं। आपने जो पॉइंट दिये हैं उनको हम अपनी रिपोर्ट में पेश करेंगे, ऐसा मैं एसोर्स आपको दे रहा हूँ। पार्लियामेंट बैठी हुई है और इतना टूबल लेकर हमने आपको यहां बुलाया है। You can be rest assured that your suggestions will be given due consideration. We have made a note of the points that you have raised. We will debate and discuss those points amongst ourselves. This is only to try and do justice to you. You can be rest assured that we will do our best.

(The Committee then adjourned)

**JOINT COMMITTEE ON THE SCHEDULED TRIBES
(RECOGNITION OF FOREST RIGHTS) BILL, 2005**

**RECORD OF ORAL EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE
SCHEDULED TRIBES (RECOGNITION OF FOREST RIGHTS) BILL, 2005**

Thursday, the 23rd March, 2006 from 1500 hrs. to 1720 hrs. in Committee Room 'B', Parliament House Annex, New Delhi.

PRESENT

Shri V. Kishore Chandra S. Deo — *Chairman*

MEMBERS

Lok Sabha

2. Shri Mahavir Bhagora
3. Shri Giridhar Gamang
4. Dr. P.P. Koya
5. Shri Bajju Ban Riyan
6. Dr. Babu Rao Mediyam

Rajya Sabha

7. Shri Moolchand Meena
8. Shri Rishang Keishing
9. Dr. Radhakant Nayak
10. Smt. Brinda Karat
11. Shri Mangani Lal Mandal
12. Shri Nand Kishore Yadav

SECRETARIAT

Shri R.C. Ahuja	—	<i>Joint Secretary</i>
Shri R.K. Bajaj	—	<i>Deputy Secretary</i>
Shri K. Jena	—	<i>Under Secretary</i>
Shri J.V.G. Reddy	—	<i>Under Secretary</i>

Representatives of the Ministry of Tribal Affairs

Shri Rajeev Kumar	—	<i>Joint Secretary</i>
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**Representative of the Ministry of Law & Justice
(Legislative Department)**

Shri N.K. Nampoothiry	—	<i>Joint Secretary and Legislative Counsel</i>
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WITNESSES EXAMINED:

- I. **Dr. Ranjit Singh, Former Additional Secretary, Ministry of Environment & Forests**
- II. **Representatives of Jan Sangarsh Morcha, Madhya Pradesh**
 - (i) **Ms. Madhuri**
 - (ii) **Shri Anurag Modi**
 - (iii) **Shri Phagram**
 - (iv) **Shri Mangal Singh**
- III. **Shri Pradip Prabhu,**
Senior Fellow,
National Institute of Rural Development Hyderabad.

MR. CHAIRMAN: Dr. Ranjit Singh, I welcome you to this sitting of the Committee. You are aware that the Bill which was introduced was basically to undo the historical injustice that was done to the forest dwelling people since time immemorial. Since you have been in Government service—you were the Secretary in the Ministry—the Committee thought that we could be enlightened by your views which would enable us to get a better perspective in dealing with this problem that is before us. You are aware that whatever we discuss here will be treated as confidential until the report is placed on the Table of the House.

I request you to make your observations and we can begin now. There is no restriction, but be brief; we have heard the views of others also and we will hear views of many others also. You can make it in about 15 minutes.

DR. M.K. RANJIT SINGH: Thank you very much for affording me this opportunity.

If I may submit there are certain general premises as a backdrop of this legislation. I may point out certain specific aspects of the clauses as they are within the Bill. I may be pardoned, I do not know; but you are a very distinguished person, I do not want to preach.

I would like to present my perspective. As a citizen of India and a person who is anxious in long-term conservation of natural resources, I would first like to present my perspective from that angle. While the fulfilment of the basic requirements of forest dwelling communities from adjoining forests cannot be denied and it is a prime consideration, forest and forest lands must be acknowledged as a national wealth and a national resource in the broad context of the term, as a crucial component of the country's ecological security, and not from regional, sectoral or political point of view. I do not want to elaborate it further.

This particular Bill addresses itself to a certain segment or community, the tribals. If there is a historical wrong—or historical injustice as you have put it—it should be addressed across the board. Why should it be confined to only one group of people? With due respect, do we want 'Mandalisation' even in the forest communities?

Secondly, if you take it from that perspective, I do not know why this was done and why it is so. I do not want to cast aspersions or anything of that nature. But having worked in Government, I am just raising this point. Is it because the Tribal Welfare Ministry would lose its mandate to be the nodal Ministry for this? I am just raising a point. I do not know the answer to this. But it is something that needs to be taken into account. The past history and track record, etc. are there. What one is interested in is the long-term survival of the country, because I am a firm believer of that principle. I had been in service and had seen the denudation of the forest; I was first a non-Government servant, then a Government servant and then I was Environment Secretary of a State where maximum amount of this kind of activity was going on; without going into the details, I would say that I have seen five regularisation of encroachments in any tenure of service. And all the five give spurt to further encroachment, but they have been regularised. There are people who organise these things. But anyway, if the past settlements of history are taken into account, the danger that is before us cannot be denied.

The interesting thing is that it has not been taken into account and it has not been projected. I have seen this happen; I have worked in tribal districts in various capacities. It has not led to the improvement of economic lot of the people. It has led to some kind of a schism between those who have encroached and those who have not, where they feel deprived; and I have seen the people who have actually done encroachment. Now, in the forest only marginal lands remain; once the top soil gets washed away, then it becomes porous; and then denudation takes place.

The non-encroachers—if I may put it that way—get affected. I could take you across the board and you will see where there was forest when the settlement was done, now there is nothing. The facts are there for everyone to see. We have got into rhetoric that it is tribals who save forests but it is not so everywhere. The North-Eastern States are the great example where the Government land, the forest land, is only 4.5 per cent and the rest is under jhum. As you know, now the jhum cultivation has come to two and three years a cycle. A study conducted by FSI between 2001-03 says while the forest land denudation across the country is 4 per cent, in the tribal-dominated districts, in Assam it is around 26 per cent, in Madhya Pradesh it is 12.6 per cent and in Jharkhand it is almost 6 per cent more than the national average.

MR. CHAIRMAN: Where are these figures from, Mr. Singh?

DR. M.K. RANJIT SINGH: They are from Forest Survey of India (FSI) which is based in Dehradun. They have carried out a district-wise survey on loss of forest cover. It is the State of Forests Report 2003. We do not have the present figures.

I have seen some excellent work done. You have Karkos who have looked after forests magnificently. In my experience throughout the world I have never seen tribals who have done so well in looking after the forests. Sir, 30 kilometers away, you have areas of total denudation by another tribe. You cannot say that what applies across the board applies in principle. You have to go State by State. It is because community's individual leadership and focus vary. To my mind there is far too much emphasis on rights. Of course there are rights. But, in my humble opinion there cannot be rights without duties. there has to be a *quid pro quo*, a social contract, that they shall have those benefits provided they do the following. The second aspect is not very appealing and it is not emphasised upon. I think it applies across the board to all citizens including the tribals. We have been saying there has been historical wrong. I would like to submit that the greatest historical wrong has been the pushing out of the tribals into sub-marginal areas by the non-tribals over the last two or three hundred years. Madhya Pradesh is the witness to this. You have people living on the banks of Narmada and elsewhere. Over the years they have been pushed back. Now, they want to come back. Some of them do want to come back. Now, we are saying: 'You remain in the forest.' They should remain there as what, as anthropological examples? There are 230 villages in Maharashtra alone who want to come out of the forests. Some of them have come to me and said: 'We want to file PIL; we want to come out; help us; give us a package. The forest staff itself—the lower staff—does not want them to come out. They lose their constituencies. Some NGOs do not want them to come out, whatever may be the reason. If they wish to come out, they have a right to do so. They have a prerogative. As free citizens of the country they should be given a package to come out and stay in areas which they have lost in the past including the forest areas. We have settled over the years and you say historical wrong. There are reports—let us not sweep it under the carpet—of many villages having been settled in the past century by the Forest Department so that they could be tenants at will, the labourers for doing begar and forest labour. They have not been there for ever and ever. It is probably wrong to say that all of them have been there for centuries. If you go into the forest, you see that there have been settlements. Due to pressure of land people have moved. The question is, will we settle encroachments? If it is historical wrong, they should have occurred in the past. So there must be some kind of a limit. The limit of 1980 has been fixed. Let that be the limit. Let there be transparency in the assessment. I have the highest regard for the public institutions, gram panchayats and gram sabhas, but in my candid opinion, I do not think the gram sabhas are the right authorities of deciding it.

It is very difficult to say 'no' to somebody who is your next of kin. I am sorry but this is my considered opinion. Sir, 3.67 lakh square hectares have been settled and 510 villages have been regularised. It is fine. There may be some more. Let there be a *quasi-judicial* authority, let there be a retired Judge to look into it within a time frame and let everybody know. Let this not be an incentive for further encroachment.

In Kerala people are growing palm trees of certain age and arecanut so that they can put them on encroached land and say that they have been there before 1980. Do we want all these things to continue? If I may submit again what really is perhaps requires is the livelihood rather than land. What is really required is livelihood. Land is now marginal, and land can be misused. What they need is livelihood. I have been the first subscriber to this aspect that forest should be harvested not on the basis of what is ecologically sustainable. Who decides that? Only gram sabha, as the Bill says or the forest managers should also have a say in the matter? Let both of them decide. It cannot be so. The forest of this country cannot sustain that we first fulfil all the needs including the rights to sell. Then, what remains is it has to be the other way round, what can be on the long-term ecologically sustainable. It is because if that can be sustained, the tribals, as we know them today, will be there, otherwise they will be just impoverished across the board. I have seen this and you have seen it too. If that is decided and then the offtake is taken, then the first charge must be to the local communities. That is not there. After that, if there is any surplus, why cannot it be disposed of to other communities, to the common people and to the market of this country? Then it may be to the forest dwellers who have protected, again a *quid pro quo*, a social contract. Why cannot they be given a share of the produce?

What safeguards are there for the non-tribals praying upon the tribals? It is still going on. What safeguards are there for tribals praying upon the other tribals, the educated tribals? Let us face the challenge. It does happen. In Bastar, if you ask them which Maria they fear the most, they will say the man-eating tiger and the Dandami maria. It is happening even today.

So, what are the safeguards? You can say that a tribal cannot sell land to a non-tribal but he can sell it to another educated tribal. That is what is happening—dispossession.

Sir, I will try to finish off the specifics in five minutes.

The Bill says that the forests can be exploited for sale purposes. Incidentally I have a certain point to make here. I am a member of the National Forest Commission appointed three years ago under Justice Kripal. One of the mandates—there are five—was to look at and advise the Government on policy, law and other dimensional aspect including sustainable use of forests and the tribal rights. Why was not this Bill referred to the Commission? Our opinion could have been taken. It was not given. So, Justice Kripal has written a letter to the Prime Minister and it has been acknowledged by the Tribal Welfare Minister and I have a copy of it, and if you wish to see I can give that. So, that was not done. We were not consulted on this matter.

There is another aspect. The Sarkaria Commission which looks at the Centre-State relationship has given clear directions that—subjects which have concurrent jurisdiction in which both the State and the Centre have concurrent powers—any legislation on concurrent subjects should be referred to the States, their opinion taken unless there is such a hurry to do so and such great compulsion of lack of time. Why could not the opinion of the State Governments taken in this regard? What is the great hurry? It is not some terrorism bill.

MR. CHAIRMAN: Dr. Singh, you will appreciate the fact that the mandate of this Committee is to go into the merits of this Bill, make its observations and give its Report to the Government. It is up to the Government to decide whom they should consult and whom they should not. That is beyond our scope.

DR. M.K. RANJIT SINGH: I withdraw it. I will take the point. I apologize for taking up so much of your time. As I said, I get too carried away and I apologize for that but I will be very quick.

The Bill categorically mentions that you can sell the produce. Originally it was for personal *bona fide* use. The forests of India can sustain the local communities for the personal *bona fide* use. It cannot sustain it for commercial use. Then, you open up the Pandora's box. This is what the danger is. The often repeated cliché of

Mahatma Gandhi was: "There is enough in the forest and nature for the need but not for the greed", and that the greed with the non-tribals involved. There are no safeguards against this particular dimension. The decision of this should not only be left to the Gram Sabhas. In my considered opinion, forests of this country have a long-term survival future only in our protected areas of national parks and sanctuaries. I have seen the forests of this country. In Madhya Pradesh, now they say that there is hardly anything left out. If you can superimpose the forest map of Gujarat and Rajasthan, you will find that today forests survive in national parks and sanctuaries. I would earnestly request and plead that the national parks and sanctuaries at least should not have this component of it because there if you start giving it, I mean there will be nothing left in my opinion. My considered opinion is that the national parks should be kept out of the purview of this.

Then, it says that no encroacher should be removed till his claim is settled from any forest but it does not say within what timeframe. In the question of national parks, you can settle them out in five years. That is totally unrealistic. Nobody wants to settle down. They themselves want to go out but the State Governments do not want them to go. This is a fact which one has to understand.

Next one is the ambiguity about the applicability of the law. If the law is to apply, and it says here that this will be in addition to other Act. It says: "Provided that the penalties under the section shall be in addition to and not in derogation or imposition of any penalty under any law for the time in force." If that be the case, then does it mention Rs. 1,000? Why should a poor tribal get punishment in addition to Rs. 1000? Can a man be punished twice for the same offence? Why can it not simply say that the laws pertaining to shall prevail unless you want to create a special privileged class whereby if the same offence is created, a non tribal faces another penalty and a tribal faces another penalty? Is that the intention? Is that fair and good in law?

Of course, there could be— this is something I am sure you are aware of —Supreme Court. One should try and avoid confrontation with the judiciary. I know I am opening something which is probably saying too big a mouth full.

MR. CHAIRMAN: Dr. Singh, the threat of judiciary is not going to be prevent this Committee from making whatever recommendations the Committee desirest to do.

DR. M.K. RANJIT SINGH: I come to my final sentence. As I said, I know, I will be pilloried for this. In my considered opinion, as somebody who has been involved and probably studied to some extent, this particular Bill has been the greatest threat to the long-term survival of both the tribals, the forests of India, the water, the ecological sustainability, wilderness and wild life in the history of the country.

Thank you.

श्री मंगनी लाल मंडल: सभापति जी, सभिति में जब किसी को साक्ष्य के लिये बुलाया जाता है तो उसे अपनी मर्यादा का ख्याल रखना चाहिये। अभी वह सरकारिया कमीशन और ज्युडिशियरी को श्रेत करने की बात कह रहे थे। यह उनके ज्युरिस्टिक्शन में नहीं है। हमने इनको इस विषय पर बोलने के लिये नहीं बुलाया है। इनका यह तरीका गलत है। दूसरा, इन्होंने कहा कि मंडलीकरण नहीं किया जाना चाहिये। इनका यह भी अंत में कहना था कि इससे समाज में टैशन पैदा होगी। अभी एस् सी, एस् टी के बारे में कहा गया लेकिन यह बिल तो एस् टी के लिये आ रहा है। इसमें ज्युडिशियल ज्युरिस्टिक्शन कहां आ गया। ये बातें इनके ज्युरिस्टिक्शन से बाहर की हैं। मैं इन दो विषयों पर इनका स्पष्टीकरण चाहता हूं।

श्री एम् के रणजीत सिंह : जहां तक मंडलीकरण का सवाल है, यह हिस्टोरिकल ग्राउंड किया गया है यह किसी ने डिनाई नहीं किया है। एकसैस टू फोरिस्ट या सैटलमेंट ऑफ लैंड में कम्युनिटी में जिसमें फोरिस्ट डवेलिंग विलेज है वहां कोई ट्राइबल नहीं है, नॉन-ट्राइबल है।

कोई नॉन ट्राइबल्स जो ट्राइबल्स से भी गरीब हो सकते हैं, उनको ये राइट्स नहीं दिये जाएंगे या लैंड सैटल नहीं की जाएगी, सिर्फ ट्राइबल्स को ही दी जाएगी। मैंने इसलिए यह बात उदाहरण के लिए कही क्योंकि इसमें भी segments in communities and ethnicity आती है। अगर हिस्टोरिक रॉंग हुआ है तो पूरी कम्युनिटी के लिए हुआ है। जो पूरी विलेज कम्युनिटी है, उनके साथ हुआ है, न कि एक सेगमेंट के साथ हुआ है। इसमें कोई बाद-विवाद और भेद नहीं है।

SHRIMATI BRINDA KARAT: Mr. Ranjit Singh, we have all listened to your presentation. As our Chairman had said, as a citizen of India, you have every right to come and give your views. However, my point is that you are the former Secretary of the Ministry of Environment and Forests.

DR. M.K. RANJIT SINGH: I was not Secretary. I was Additional Secretary.

SHRIMATI BRINDA KARAT: So, you were Additional Secretary in the Ministry of Environment and Forests. All that I can say is—I do not know whether the rest of the Committee Members will share my views on this—that it is precisely this kind of approach which you have displayed in your presentation today is the root cause of the injustice which the Tribal communities have faced or are facing. That is also a comment which, I think, is required after your presentation. It is because clearly your presentation is a one-sided presentation and it is a presentation which is on the side of those who have been depriving the Tribal communities of their rights. I am very sorry and I really deeply regret. If you were an ordinary citizen, we would have never made such a comment. I do not think my colleague, the hon. Member from Rajya Sabha, would have even asked you what you mean by Mandali Karan.

If the post of Additional Secretary, a very senior post in the Government, is held by people who have such gross prejudices and they use such terms like *Mandali Karan*, then it is a matter of concern for us. So, in a way, we are also glad that you have not concealed what your actual views are. So, it gives us a better idea of the mindset of sections of our bureaucracy. So, anyway at least on my own behalf, I would thank you for that.

MR. CHAIRMAN: Dr Singh, thank you. Please have a cup of tea before you go.

DR. M. K. RANJIT SINGH: May I respond?

SHRIMATI BRINDA KARAT: It is not at all necessary to respond.

(The witness then withdrew)

WITNESSES EXAMINED:

1. Ms. Madhuri, Jan Sangarsh Morcha, Madhya Pradesh.
2. Shri Mangal Singh, Jan Sangarsh Morcha, Madhya Pradesh.
3. Shri Anurang Modi, Jan Sangarsh Morcha, Madhya Pradesh.
4. Shri Phagram, Jan Sangarsh Morcha, Madhya Pradesh.

MR. CHAIRMAN: Ms. Madhuri, I welcome you and your colleagues to this sitting of this Committee. You are aware that we are discussing the Scheduled Tribes (Recognition of Forest Rights) Bill which has been introduced by the Government to correct the historical injustice that has been done to the forest dwelling communities. You had sent your representation which is with us. We have gone through it. Now, whatever we discuss here shall remain confidential until the Report is presented to the Parliament. I would request you to introduce yourself and your colleagues and make your presentation before the Committee.

(Introduction of Witnesses)

MS. MADHURI: There are a few points that we would like to bring to the notice of the hon. Members. I will just run through our suggestions and then my comrades will also focus on a few specific instances which we feel that need further elaboration.

The first point is that one of the problems with this Bill is the exclusion of non-Scheduled traditional forest dwelling communities. In many areas, including Western Madhya Pradesh to which I belong, there are communities like Nayak and Mankar. They are traditionally forest dwelling communities. They have been living together with other Adivasi communities from time immemorial. Culturally, they cannot be distinguished from other Adivasi communities. But they are not Scheduled Tribes. There are other communities all over Madhya Pradesh and Chhattisgarh. They are in every way like Adivasi communities. They have the same socio-economic profile. They are culturally the same but they are not Scheduled Tribes. We feel that this will be a great injustice towards

these communities if they are excluded from the purview of this Bill because as they have suffered the same kind of historical injustice, they are equally entitled to the rights which are envisaged in this Bill.

The second point is that in section 3(b), the definition of Nistar Rights is not very clear. We feel that there should be greater clarity in this and it appears that only the Nistar Rights, which were prevalent at the time of Zamindaris or Princely States, have been included whereas the nature of Nistar Rights has also changed considerably over the years and that has to be reckoned with. Shri Mangal Singh will give some instances in this regard a little later.

The exclusion of National Parks and Sanctuaries is extremely unfortunate. In fact, in some senses, it destroys the very purpose of the Bill because it is the Adivasis or the non-Adivasi forest dwellers in the national parks and sanctuaries who have suffered the most violence. They have the most insecure tenure. They are not allowed even to extract the very basic forest produce for their daily needs.

If these people are going to be excluded from the purview of this Bill, then the purpose of the Bill will be defeated. The reason for the provision is that some persons from core areas can be relocated and the rationale for that is protection of the forests. We recognise that the forests need to be protected. But we would also like to state in as strong words as possible that actually to date, there has been no study which shows that the existence, the dwelling of villages within national parks and sanctuaries has been detrimental, that it has been harmful. This is an assumption that we are making. In short, there is no study at all which shows that Adivasi-use or forest dweller-use of the forests has been the main reason for the destruction of the forests. So, in that situation, the premise on which the provision for relocation is based, that premise itself is faulty and we feel needs to be re-examined. We would also like to point out that the whole exclusionist strategy in forest areas has come from the West where tribal indigenous population was first wiped out and, therefore, it was after the decimation of tribal population, these areas were closed off. In India, there has been a history of human habitation in forests from time immemorial and it is not possible. The communities are part of the forests. This western strategy we feel needs to be examined. Then, you are talking of relocation. There is no land for relocation. We have seen in other projects which have caused displacement. It is very difficult to relocate people in the case of big dams and so on. Land for land is not possible and it has so far not taken place. There has been a history of great suffering of people who have been displaced by and kind of project. So, we anticipate if there is a relocation, this tragedy of destitution will be faced even by these people who are in any case very vulnerable because they have already lived in forest areas. It is very difficult for them to live outside. They are even more vulnerable. So, the tragedy of extreme destitution we feel of these people is a very great possibility. The Bill provides for relocation from notified core areas. We would like to bring to the kind notice of the hon. Members that so far in the history of forest management, core areas have not been clearly defined. Why an area is called a core area, what is the boundary of a core area and what is the basis on which the core is decided? What is the basis of deciding about the core area has not been clarified even after 50 years. So, we feel that will be misuse of this provision and there will be arbitrary designation of areas as core areas without any rationale. We also feel that the time limit of five years will actually lead to greater dislocation because the forest department will throw out people after the completion of five years without any proper rehabilitation. It is because the proper rehabilitation is very difficult. It is very expensive and you need a lot of resources. They will be under pressure to evict people without proper relocation due to this five year period. This will encourage wrongful eviction. We also would like to point out that in national park and sanctuaries, in any forest areas, in fact, there are a lot of invisible benefits which these people get from the forests. There is grazing, fishing, minor forest produce and there is resource for building of your house. All these things are labour intensive—considered when rehabilitation or compensation packages is made. My colleagues will give some examples of people who are now suffering from water shortage. They came from the water-rich area and they were thrown out. My colleague will enumerate that point.

Regarding the 1980 'cut off date', we feel that this is a very major problem with the Bill which again we would like to point out as strongly as possible that this provision hits at the very basic tenet of the Bill that this provision is actually undercuts the Bill and will defeat its very basis. It is completely arbitrary. There is no

rational for 1980. This is a date which is about 25 years ago. A whole new generation has been borne and come of age in forest areas after that. The rationale which is given of the date of the Forests Conservation Act does not apply because the Forests Conservation Act does not at all prohibit regularisation of right. It only says that the permission of the Central Government must be sought for this purpose. So, we do not see extending the cut off date much later than 1980. We would suggest that date be fixed within one year of the passage of the Bill. We feel that this does not in any way contravene the provisions of the Forests Conservation Act. Therefore, the passage of the Forests Conservation Act in this Bill is completely irrelevant, arbitrary and it is also impractical because you cannot verify as to what happened 25 years ago. There is no documentary proof on the ground as to who was in position and what was the nature of land holdings a quarter of a century ago. We have villages in which there is only one person or two people who have documentary proof and entire village does not have proof. So, we will have situations in which there are only one or two people left in the village and the entire village is liable for eviction. We would also like to say that the maximum destruction of forests has taken place due to diversion for development projects and for mines and other such purposes. Forty thousand hectares are being diverted annually since 1980 and that figure is climbing. Last year it was 42,000 hectares. The graph is climbing as to the amount of land that is being diverted. In such circumstances, it is unfair to blame forest dwellers for the destruction of the forests and by blaming them to cut down on their rights over the forests because ultimately they are not the ones who are causing the destruction. The destruction is being caused by diversion for other purposes. There is some statistics which we have included in the submission. We would also like to point out that in about 55 per cent of the projects, displaced persons are adivasis even though adivasis are only eight per cent of the population in the country. So, they are already bearing a much larger burden of development than other sections of the population. Now, they are also being made to be the scapegoats. They are also being told that they are responsible for forest destruction which is extremely unfair.

We have given the example of a place in which displacement has taken place after 1980. It has taken place in 1990. One hundred and sixty two villages have been submerged with a proper rehabilitation. So, where this displacement even till today is continuing and since it is still continuing, we feel that the hon. Members would like to consider this matter that forests cannot be protected unless displacement stops. Unless we stop large-scale displacement, it is very difficult because where will these people go. Since they are all on the edges of the forests, they are going into the forests because there is no proper rehabilitation for them.

About cut off date of 1980, we would like to say that you should consider the provision 'one year before the passage of the Bill' so that we do not encourage frivolous things and people going and cutting the forest, but people who are already there from one year before the passage of the Bill. That is the date which is easily verifiable because one of the problems with the 1980 cut off date is that it is very difficult to verify. If you have a recent date, it could be easily verifiable and there will be no corruption. If you have a very far back date, then there is a great possibility of happenings which we are seeing every day. The surveys which are still today taking place by the Forest Department as to who was in possession before 1980 are riddled with corruption and manipulation. So, if you want to have a free and fair method, it is very important that a very recent date—which is easily verifiable and which is in the present and therefore, there is not much confusion—may be considered for the cut off date.

Regarding 2.5 hectares, we would like to say that when the land ceiling in the country is much higher, it should not be 2.5 hectares for them. In every State, of course, there are different ceilings. In Madhya Pradesh, it is 21 hectares for dry land and 7 hectares for double irrigated land. Therefore, we are asking the people who have no irrigation facility, who have very impoverished holdings which do not produce very much, to make do with 2.5 hectares. We feel that this contravenes the spirit of the Act and it is unfair that for *adivasis*, there should be a different ceiling. When it is considered that a person holding dry land holdings should have at least 10 to 20 hectares—that is considered minimum—for the rest of the country, why should persons who are in possession of forest land be penalised? We would like the hon. Members to consider a situation of as is where is, whoever is in possession of whatever land. *Adivasis* and forest-dwellers are already suffering from chronic malnutrition. The figure is something like 55 per cent malnutrition among women and children in *adivasis*,

according to official estimates. In such a situation, it would be not only unfair but it would also go against the spirit of just development for all if people who are already holding impoverished holdings are made to give up land under their cultivation. We should request you to consider that the general ceiling laws be maintained here also.

We would also stress that you consider major changes in sections 5(b) and 5(c) because these envisage penal provisions against holders of right and responsibilities against holders of right. We would suggest that the Gram Sabha in tribal areas be empowered to protect biodiversity, wildlife, catchment areas not only against its own members but also against other institutions and corporations including large vested interests who are also causing very great destruction to the forest. So, Gram Sabha should have power to stop forest destruction. In our experience, Gram Sabha has proved to be the only agency which is interested in Forest protection. Under the Forest Department, we have only seen forest destruction more than forest protection.

Section 5(d) deals with the provisions of pattas of forest-dwellers to be cancelled. We feel that it is unjust and discriminatory and it continues to be within the framework of the colonial legislation which this Bill aims to change. Therefore, this provision should be changed. Then, we would like to very strongly point out about Section 6(1) which provides procedure for and authorities for vesting of rights. In this regard, we feel that Gram Sabha should be given not only the powers to initiate the recording of rights but also vested with the full powers to decide the rights. Only the persons who are aggrieved with the decision of the Gram Sabha may approach the collector or SDM, as is notified. But unless there is a grievance against the decision of the Gram Sabha, the resolution of the Gram Sabha should be binding. We feel that this is very important because now only Gram Sabha is the agency which knows who has what kind of forest use and needs what kind of forest rights. There is no other agency. We would like to say this repeatedly that there is no other agency which is able to accurately pinpoint the nature of forest rights. Forest records so far are not accurate.

Section 10 prescribes fine against any officer who violates provision of the Bill. It prescribes a nominal fine which is as good as unless because we have had a history of great violence against the forest people. There have been rapes, killings and looting and it is still continuing. So, unless there is a stringent provision for violation of this Act, that will continue. We have some instances in which people had filed complaints against the Forest Department, which Shri Anurag will explain, and they had been very strongly victimized after that. So, we suggest criminal prosecution, disciplinary action and a fine extending at least up to rupees one lakh. If these kinds of safeguards are not there, we will continue to see a great deal of violence by the Forest Department against people. We would like you to consider this strongly. Then, derecognition of rights is a matter which needs your attention.

Then, there is section 14. Shri Anurag will be able to tell about that.

श्री अनुराग मोदी: सभापति महोदय, मुझे हिन्दी में बोलने की अनुमति दी जाए।

एक तो हमें थोड़ा सा यह सोचना पड़ेगा कि इस बारे में कानून तो बहुत पहले से ही है, लेकिन जैसा कि आप खुद जानते हैं, अंग्रेजों ने जंगलों को छीना और एक बहुत बड़ा अत्याचार किया। अब जो नए कानून बनें, वे मॉडल कानून बनने चाहिए। यदि वे ऐसे नहीं बनें, जो आदिवासियों के अधिकार नहीं दे पाएँ, तो क्या फायदा होगा। इसलिए जिन कानूनों ने आदिवासियों के अधिकारों को छीना, उन्हें हमें बदलना होगा। यदि हम उन कानूनों को हाथ लगाने से बचेंगे, तो हम आदिवासियों को न्याय नहीं दे पाएँगे।

महोदय, अंग्रेजों ने जंगल छीने हेतु जो कानून बनाए और अब आजादी के बाद भी जो कानून हमारी विभिन्न सरकारों ने बनाए, उनमें आधारभूत कठिनाइयाँ हैं, उन्हें सब जानते हैं, मुझे उन्हें रिपीट करने की जरूरत नहीं है क्योंकि वे कानून इस देश पर शासन करने के लिए बनाए गए और उनमें अधिकारियों को इतने ज्यादा अधिकार दे दिए गए हैं, जिनकी कोई कल्पना भी नहीं कर सकता है। इसके कारण सबसे बड़ी समस्या यह आ रही है कि हमारी जो न्याय व्यवस्था है, वह भी उन कानूनों से इतनी ज्यादा बंधी हुई है और इतनी ज्यादा परिचित है कि पुराने बेस के ऊपर नए प्रकरणों में न्याय कर दिया जाता है, उसे बदलने के ऊपर विचार न किया जाकर, पुराने प्रकरण के आधार पर ही नया फैसला दे दिया जाता है। और इस प्रकार जो ट्रेडिशन चली आ रही है, न्यायालय का फैसला भी उसी के आधार पर दे दिया जाता है।

महोदय, जो उत्तर हमने दिया है, उसके अनेकवचर भी आपको सर्कुलेट किए गए होंगे। उत्तर के अनेकवचर 1 और 2 देखिए। उनमें बताया गया है कि किस तरह से फॉरेस्ट एरिया में, कंट्रिक्टर्स इल्लीगल माइनिंग कर रहे हैं। फिर अनेकवचर 3 में अगर आप देखेंगे, तो उसमें आप पाएंगे कि एक आदिवासी महिला को जिसने जंगल में झोंपड़ी बनाई थी, जिससे फॉरेस्ट का 754 रुपए का नुकसान हुआ था, उस नुकसान के लिए उसे जेल में डाल दिया गया था। आपको शायद मालूम होगा कि फॉरेस्ट एक्ट के अन्तर्गत दो-तीन जैसे धारा 26(1) को छोड़कर बाकी सभी अपराध बेलेबल हैं, फिर चाहे वे किसी भी प्रकार के अपराध हों। अधिकांश जमानती अपराधी हैं।

अगर मान लीजिए, पहले तो उसने अतिक्रमण किया था, झोंपड़ा बनाया था तो आपके पास 80ए में प्रावधान था कि आप नोटिस करके बयान लें। वह भी आपने कुछ नहीं किया, एक महिला को आपने गिरफ्तार कर लिया और उसके घरवालों को बताये बिना उसको जेल में डाल दिया। 15 दिन तक वह जेल में रही, क्योंकि मध्य प्रदेश वन विभाग को 754 रुपये का नुकसान हुआ था। इसके बाद पेज चार और पांच आप देखेंगे तो भण्डारपानी करके एक गांव बहुत ऊंची पहाड़ी पर बेतूल जिले में बसा हुआ था। उस गांव को हटाने के नाम पर जिला प्रशासन ने सारे आदिवासियों को बन्दी बना लिया। हम लोगों को हैबीएस कोरपस रिट पिटीशन लगानी पड़ी, तो हैबीएस कोरपस रिट पिटीशन लगाने के बाद अगर आप पेज पांच के सबसे आखिर में देखेंगे कि पिटीशन लगाने के बाद उन आदिवासियों को रिलीज किया गया। हैबीएस कोरपस रिट पिटीशन को हाई कोर्ट ने स्पेशल केस मानते हुए कहा कि यह कोई नोर्मल हैबीएस रिट पिटीशन नहीं है, यह आदिवासियों की जिंदगी से जुड़ा मामला है। उसके बाद उनके पुनर्वास का हाई कोर्ट ने ऑर्डर किया कि उनको 100 दिन का काम दिया जाये, उनको घर की जगह दी जाये। लेकिन उस ऑर्डर का पालन नहीं हुआ। हाई कोर्ट के ऑर्डर का पालन नहीं हुआ और सबसे आखिरी पेज नं. 12 अगर आप देखेंगे तो इस तरह से नदी के किनारे जंगल में पिन्नी का झोंपड़ा बनाकर आदिवासी रह रहे थे, उस समय वर्षा के दिन थे, उनको चार जुलाई को हटाया गया था, चार दिन भरी बारिश में इस तरह वे लोग वहां रहे, पुनर्वास का इन्तजार करते-करते। फिर हम लोग कंटेम्प्ट ऑफ कोर्ट पिटीशन में गये। उसमें फिर ऑर्डर हुआ, यह पेज 6-8 तक है। उसके बाद भी पुनर्वास नहीं मिला और वापस वे लोग उसी पहाड़ी पर भण्डारपानी में चले गये। यह हालत है कि 20 घरों को हाई कोर्ट के दो ऑर्डर के बाद भी पुनर्वास का लाभ नहीं मिला। उसमें जमीन देने का भी नहीं था, उसमें खाली हाउस प्लॉट, इन्दिरा आवास योजना में घर, बच्चों को स्कूल, कुआ, राशन कार्ड है और दो-तीन एकड़ जमीन कुछ नहीं है। लेकिन हाई कोर्ट के दो ऑर्डर के बाद भी पुनर्वास नहीं हुआ है। आप पेज नौ और दस देखेंगे, एक गांव के लोगों पर आपने 20 केस लगा दिये। क्यों लगा दिये, क्योंकि उन लोगों ने शिकायत की थी कि फॉरेस्ट डिपार्टमेंट ने जो काम कराया है, उसका पेमेण्ट नहीं हुआ। शिकायत के बाद सवा लाख रुपये का पेमेण्ट हुआ, उसके बाद 6 महीने के अन्दर उनके ऊपर 20 केसेज फॉरेस्ट डिपार्टमेंट ने फाइल कर दिये। फॉरेस्ट डिपार्टमेंट के पास दो तरह के प्रोसीजर होते हैं। One is that they can compound the cases then and there and say that आपको इतना फाइन होता है और उनके ऊपर 80ए का नोटिस होता है। वह कुछ भी नहीं किया और सारे के सारे केसेज को ज्यूडीशियल मजिस्ट्रेट की कोर्ट में डाल दिया। इसमें दो से लेकर नौ तक के केसेज वाले लोगों को बेल कराने के इंतजार में 45 दिन जेल में रहना पड़ा। देखिये, ज्यूडीशियल सिस्टम किस तरह से ऑपरेट करता है कि बेलेबल ऑफिस में जब फॉरेस्ट वाले मजिस्ट्रेट के सामने पकड़कर लाते हैं तो मजिस्ट्रेट यह सवाल नहीं करता कि आप बेलेबल ऑफिस में मेरे पास क्यों पकड़कर लाये, इनको वही बेल क्यों नहीं दी। बेलेबल ऑफिस में 45 दिन जेल में रहें और ये नौ केस हैं, एक केस नहीं है। बाकी जो केसेज हैं, इनमें लोगों की नोलिज के बिना जी.एम.एफ.सी. की कोर्ट में केस डाल दिये गये हैं। जब हमने हाई कोर्ट में केस डाला, जब हमें लिस्ट मिली, तब हमें मालूम पड़ा कि लोगों के ऊपर केसेज हैं। दो आदिवासी सोमा और मेहर सिंह के ऊपर आठ क्रिमिनल केसेज हैं, उसकी जमानत कराने में वह बिक जायेगा। They are still absconding in the records of the JMFC because they have never appeared before it, and they can never appear before it. क्योंकि आप यह नहीं समझ रहे हैं कि फॉरेस्ट डिपार्टमेंट के पास पुलिस जैसी पावर है। अगर आप पुलिस को दे दें कि सारे देश को पुलिस रन करेगी, तो क्या होगा। आदिवासियों के लिए जंगल देश है, उसका घर है। अगर आप यह बोल दें कि उसके घर को, उसकी पूरी जगह को वन विभाग चलाएगा, तो उसके साथ वहाँ क्या होगा। इसके बाद पेज 11 में आप देखेंगे, they have a list of 13 cases. बेतूल जिले में रामपुर भतोड़ी फॉरेस्ट डेवलपमेंट एरिया में कुछ आदिवासियों ने 2-4 साल में 32 घर बना लिये थे और कुछ साल से रहने लगे थे। In November 2001, all their houses were put on fire along with their belongings. उनके घर जला दिये, उनके सामान के साथ, दो साल तक हमने मेहनत की, एस.सी. एस.टी. कमीशन में शिकायत की, सब किया। जब लोक सभा के चुनाव आये तो हमने चुनाव आयोग को शिकायत की कि जिस जिले का एस.पी. आदिवासियों के घर जलाने के बाद भी, एस.सी. एस.टी. कमीशन की रिक्मेण्डेशन के बाद भी केस रजिस्टर नहीं करता है, आप उस एस.पी. को हटाइये तो फिर अज्ञान-फ़ानन में अगस्त, 2003 में केसेज रजिस्टर हुए, कोर्ट में चलाए पेश हुए। आप देखेंगे, 2003 के बाद से उनके ऊपर 13 केसेज दर्ज हो गये। जरा आप देखिये, क्या केसेज है, 700 रुपये का नुकसान, 750 रुपये का नुकसान, 450 रुपये का नुकसान, झोंपड़ा बन्धव है...

MR. CHAIRMAN: Shri Anurag, we, in the committee, are deeply concerned about the atrocities that have been committed on the tribals. We will go through the list that is provided by you. Please confine yourself to explaining the points that are important according to you, and that you want to highlight before the Committee.

SHRI ANURAG MODI: Sir, I will conclude my submission in a short while.

MR. CHAIRMAN: We, in the committee, are also equally concerned as you are in this matter and we appreciate all that you have said here before the Committee.

SHRI ANURAG MODI: Sir, I am concluding in a short while.

MR. CHAIRMAN: Let me assure you that all these facts will be weighting heavily on the minds of all of us while preparing our Report.

SHRI ANURAG MODI: Sir, I will just conclude my submissions. मैं एक ही बात इन सारी बातों में लाना चाहता हूँ कि जो कानून है, उसमें इतनी ज्यादा पावर्स दे दी गई हैं कि उन अधिकारों को अगर आपने खत्म नहीं किया, क्योंकि अगर इस एक्ट को हम बहुत ध्यान से देखें तो यह पूरा सीमित करता है, ग्राम सभा का जंगल और चाहे आदिवासियों के निस्तार की बात हो, जैसा मेरे साथी मंगल भाई बताएंगे, चाहे अतिक्रमण का मामला हो, आदिवासियों का 90 प्रतिशत का निस्तार और अतिक्रमण ग्राम सभा के बाहर है, जिसको यह एक्ट डील नहीं करेगा, जिसको वन विभाग डील करेगा। एक तो यह है कि जहां-जहां भी आदिवासियों का निस्तार है, चाहे नेशनल पार्क या सैक्चुरी में हो, चाहे वह ग्राम सभा में 50 किलोमीटर दूर के जंगल में हो, वहां अगर आदिवासियों को अधिकार नहीं दिये गये तो इससे बड़ी एट्रासिटीज होंगी। एक तो मैं यह बताना चाहता हूँ। दूसरा यह है कि इसमें जो क्लॉज 14 है कि जितने भी एग्जिस्टिंग एक्ट हैं, जब तक आप स्पेसीफाई नहीं करते हैं, वे इस कानून के साथ लागू रहेंगे तो जब वे सारे पुराने कानून इस कानून के साथ रहेंगे तो क्या इस कानून का हाल होगा, यह आप इससे अंदाज लगा सकते हैं। मुझे लग रहा है कि इसे हटाना बहुत जरूरी है। दूसरा यह है कि जो माधुरी ने पहले ही बोला कि अगर कुछ टिडरेंट नहीं होगा, इस कानून के पालन करने के लिए, तो फिर वह बात होगी। सबसे आखिरी बात मैं सिर्फ यह बोलना चाहूंगा कि जो रिटेलिएशन के उदाहरण हमने दिये, वे सिर्फ इसलिए दिये कि जब इस कानून में आदिवासियों को हक नहीं मिलेगा और अगर वह शिकायत करेगा तो उसका क्या हथ्र होगा, क्योंकि आप फोरिस्ट डिपार्टमेंट के पावर्स विदड्रा नहीं कर रहे हैं और सबसे बड़ी बात हमें यह ध्यान रखनी पड़ेगी कि मेरे ख्याल से ज्यादा महत्वपूर्ण अतिक्रमण से निस्तार ज्यादा बढ़ा है, क्योंकि हर आदिवासी निस्तार जरूर करता है, हर आदिवासी का अतिक्रमण नहीं है।

MR. CHAIRMAN: Shri Anurag, you have already mentioned all these points, and we have also taken note of whatever she has said before the Committee.

श्री मंगल सिंह: मैं मध्य प्रदेश में बेतूल जिले के एक छोटे से जोड़ियां गांव में रहता हूँ। हम लोग निस्तारी करते हैं तो एक जलाऊ लकड़ी के लिए हम कम से कम 10-15 किलोमीटर और बाबर घास हमारी जीविका का साधन है, उससे हम परिवार पालने के लिए रस्सी बनाकर बेचते हैं तो उसके लिए 40-50 किलोमीटर दूसरे क्षेत्र में जाते हैं। वहां से लाते हैं और जीविका चलाते हैं। हल और गाड़ी के सामान के लिए भी 15-20 किलोमीटर में निस्तार करते हैं। हमें घर साफ करने के लिए झाड़ू-बुहारी खरीदने के लिए भी 25-30 किलोमीटर जाना पड़ता है। महुआ वन का फल होता है, जिसे खरीदकर हम अन्न-पानी का इंतजाम करते हैं, इसके लिए भी हमें 25-30 किलोमीटर दूर जाना पड़ता है। यदि पंचायत के स्तर पर यह कानून लागू हो गया तो हमारे लिए मुश्किल हो जाएगी। यह कानून सुनने में तो अच्छा लगता है, लेकिन यह लागू हो गया तो बहुत मुश्किल हो जाएगी। अभी सुनने में आ रहा है कि वर्ष 1980 से पहले वालों को जमीन मिलेगी, लेकिन इसके बाद के लोगों का क्या होगा?

सुश्री माधुरी: सैक्शन 6 में निस्तार के अधिकार गांव की सीमा के अंदर ही लागू होंगे।

श्री महाबीर भगौरा: आपका गांव जंगल के अंदर है या जंगल से 40 किलोमीटर दूर है।

श्री मंगल सिंह: हमारा गांव शहर से दस-बारह किलोमीटर अंदर ही है। हमारे यहां सभी सामान एक जगह पर नहीं मिलता है। यह स्थिति सभी गांवों के साथ है।

MS. MADHURI: Sir, Can you give us five more minutes?

MR. CHAIRMAN: We have other witnesses also. If there is anything different, you may go ahead.

श्री फगराम: महोदय, नये कानून और पुराने कानून की समीक्षा हो रही है। हम आदिवासी लोग हैं हमारी परम्पराएं अलग हैं और जंगल से जुड़ी हुई हैं। पहले भी हीरांगंगाबाद जिले से काफी लोगों को हटाया गया था, लेकिन उनका पुनर्वास पूरी तरह से नहीं हो पाया है। हम यह कैसे मान लें कि यदि हम लोगों को अभयारण्य से बाहर लाया गया तो हमारा पुनर्वास पूरी तरह से हो जाएगा। पहले जिन लोगों को हटाया गया था, उनका आज तक पूरी तरह से पुनर्वास नहीं किया गया है। आदिवासी जंगलों में कई सदियों से रह रहे हैं। सैब्वूरी में सभी निर्माण कार्यों पर प्रतिबन्ध लगा हुआ है। इस तरह से आदमी कैसे जाएगा? हमारे यहां एक जलाशय है, वहां की मछलियों को हम दाना खिलाते हैं और उनको पकड़कर हम अपनी आजीविका चलाते हैं, लेकिन वन विभाग कह रहा है कि यह जलाशय वन की सीमा के अंदर आता है और वर्ष 1972 में बने वन संरक्षण कानून के तहत इससे आप मछली नहीं पकड़ सकते हैं। जबकि यह जलाशय वर्ष 1972 में बना था। मेरा निवेदन है कि आप इन सभी परिस्थितियों को ध्यान में रखते हुए इस बिल के प्रावधानों पर विचार करें।

श्री महावीर भगोरा: वह जलाशय वन विभाग का है या इरिगेशन विभाग का है।

DR. RADHAKANT NAYAK: I will explain this particular position. Whichever tank or lake is inside the reserved forest, it is regarded as part of the reserved forest. In Orissa, even Chilika was regarded as part of the reserved forest. You cannot enter a reserved forest. Therefore, they are being prevented. We must record that. It is a very valid point.

श्री अनुराग मोदी: यह जलाशय वर्ष 1972 में बना था और यह सैब्वूरी की सीमा पर स्थित है। वन विभाग कहता है कि यह जंगल में आता है और हम इससे मछली पकड़ने की परमीशन देते हैं।

MR. CHAIRMAN: We will definitely keep all these factors in mind, while preparing the report.

Please have a cup of tea before you leave this place.

(The Witnesses then withdrew).

WITNESSES EXAMINED: 1. Shri Brian Lobo, Jungle Adhikar Sangarsh Samiti.

MR. CHAIRMAN: Shri Brian Lobo and colleagues, I welcome you all to this sitting of the Committee. As you are aware the Bill has been introduced to undo the historical injustice done to forest dwelling tribes since time immemorial. We have received your memorandum and we have gone through the details. I can assure you that we will not leave any part unread or unconsidered before we write the Report. We are running short of time. Please be brief. Within 15 or 20 minutes, you can stress or highlight certain aspects of the Bill and make your observations. Then, if the Members feel it necessary, they would ask questions, which you can answer later.

(Introduction)

SHRI BRIAN LOBO: Sir, we have submitted a detailed submission last month. A shortened version is with you. A few points were added right now. Firstly, we welcome the Bill. In fact, I would request you to go to appoint (d) on page 3. There are some changes or amendments which we suggest and the first amendment is to do with defining the term of 'village'. We considered this matter because in the context of Gram Sabha, section 2(0) defines the village to be Gram Sabha for Scheduled Area I and for Non-Scheduled area, there is another definition. There are many tribal areas which have not been included in the Scheduled area, which will not get the benefit of provision, which is there in PESA Act. Therefore, our suggestions is if you modify section 2(o) 2 but village is defined in clause (b) of section 4 of the provision of PESA Act regardless of whether the area in question is Scheduled or not. There is a matter of deletion of section 2(o)(2).

You want a village to function properly. It is our experience as we work in tribal areas, where we might have a large village where five or six or 12 hamlets would be there, which might be a tribal hamlet but may a non-tribal village. If you want a particular forest right holder to be there, you also have to function with each other at the hamlet level. Therefore, we suggest these changes in the definition. As I said, this is to do with Gram Sabha and because once the village is defined, Gram Sabha gets defined — Section (e) talks about granting a clear role and authority to Gram Sabha for determining the eligibility for rights because this particular Bill does

mention that Gram Sabha should be the authority but as we go along in the Bill, there are many points which would mean that Gram Sabha is given an authority but the authority is not an authority which is very final. It is not an authority which has got very specific powers which have been given to Gram Sabha. In a sense, a lot of people have questioned – should there be a role granted to body which is there at the village level? But it is not a body which functions in Gram Sabha, then Gram Sabha can misuse its powers.

These are the things which have come up from various quarters and we do believe that despite whatever be the infirmities in Gram Sabha, for that matter any body, any democratic body or elected body has infirmities with it. But it does not mean that one throws the baby out with the bath water. Therefore, we do believe that Gram Sabha especially for Scheduled areas, since it is there in the Constitutions as it is a constitutional requirement for the Scheduled areas which are largely tribal areas and it is the only open and democratic forum of governance. In fact, Gram Sabha is the body which is close to ground realities. When we talk about forest tribes we are talking about ground realities, what exactly is there at the ground level Gram Sabha which actually can tell you that. It is the policy of the State to strengthen Gram Sabha. So, in a sense what has happened in Maharashtra where 30 years, that is, since 1978-79 where the Resolutions were passed, talking regularisation of issues relating to land had not happened because there were administrative bodies through which such eligibility criteria had to be decided upon. In Maharashtra for 30 years, nothing happened. In 2002 a Resolution was passed and implemented which talking about appointing village level committees which had to make decisions in Gram Sabha. We have participated in that whole enquiry process. I think, it has been a process from which there is a lot to learn a lot to offer to the rest of the country and that there is a process through which such kind of enquiries have taken place. There has been committees which had People's Representatives on it and decision has taken place in an open Gram Sabha. It is not been our experience that there has been misuse of power because if there would have been a misuse of power in Gram Sabha, then one would not have had in this Gram Sabhas, Thane district from where I come from, where 38,000 cases were considered, out of which 21,000 claims were eligible. In Amaravati, 58 per cent claims were eligible, that means that Gram Sabha is given responsibility and clear-cut procedures were laid down in that GR. Clear-cut procedures to be followed, eligibility criteria to be followed and certain kinds of things were arrived at.

Therefore, given this background, we call for a revision of Section 4(7)(6)-7 because these projections even though it is there in the Act of Gram Panchayat, the final power is going to the body on which only Government officials are there. Gram Panchayat remains in the present Bill only in advisory body capacity and the district level committees it in judgement on this body. Therefore, what we are suggesting is that Gram Panchayat will be the authority for determining the eligibility of the case. Sub-Divisional level committee will hear appeals from aggrieved persons on the decision of the Gram Sabha and after considering the recommendations of the Sub-Divisional level Committee, Gram Sabha will make its final decision and forward this to the district level Committee which can appeal to the district level Committee. This change would be necessary as I mentioned earlier so that power are with the Gram Sabha.

It is also been our experience in Maharashtra that Committees which were appointed by this 2002 GR where the decisions took place in the open Gram Sabha, there was a Committee which was appointed which had representatives from the Tribal Welfare Department, Revenue Department, Forest Department and also had representatives from the village itself. Therefore, the Committees which are being appointed, we do think that there has to be change in the composition compared to what the Bill says right now. In a sense, we are of the opinion that on this Committee, Forest Department officials should not be there at all because the Forest Department is a party to the suit. For that matter, the local tribal will be a party to the suit. So either should they be there on the Committee and the Forest Department should not be there either. If the Forest Department is going to be included, then there should be representatives from the people also from the Panchayat Raj Institutions on the Committee or noody there at all. We also had in Maharashtra that in any Committee, I think, Secretary is as important as the Chairman is. Therefore, if at all Forest Department is going to be on this Committee like the Chairman and the Secretary belonging to the Revenue and the Tribal Welfare Department, there should be representatives from the people.

That is what we are suggesting. In fact, that is what has happened in Maharashtra. I think, we have a lot to learn from that particular experience. As I mentioned, we are suggesting a clear role regarding the Gram Sabha for deciding on the eligibility of rights and also a clear role for the Gram Sabha, which is the next section of the Bill, for the authority of Gram Sabha to conserve. It is because if Gram Sabha is given the right to conserve in this Bill, but there is no clear-cut authority which is being given the right. You can use to conserve it if penal provisions are granted to you. If you see section 7, the power under section 7 shall be vested to Gram Sabha and not under the Forest Authority. So, we enjoy penal powers anyway. About this Rs. 1,000 limit which has been put on a particular fine, that obviously should be given. Gram Sabha should be allowed to increase it or decrease considering how much destruction does take place in the forest and that is more important than the upper limit of Rs. 1,000.

Coming to the next section, which is about penalty, the penalties for contravention by officers has been limited to Rs. 1,000 only. If you compare penalties for various rights holders who contravene provisions of this Act, they could even lose their rights. But here, if an officer does not follow other provisions of the Act, he is fined only Rs. 1,000 as the upper limit. Therefore, we are suggesting to at least, what was in the earlier draft, the penalty which was there which was imprisonment and a fine upto Rs. 5000 should be reinstated in the Act.

The fourth point is regarding the Gram Sabha, and it have a particular role to be given to the Gram Sabha considering the kind of situation which we have also experienced. Regarding displaced persons, if one sees the Act today, the preamble talks about that there is a necessity to address the rights of those who were forced to relocate their dwelling due to the State Development interventions. The preamble mentions this. But if one really goes to see the provisions of the Bill, there is not a single provision of the Bill which would relate this particular statement in the preamble to any of the provisions. Therefore, we are saying that there has to be certain things kept in mind about displaced ones. We have two types of displaced persons. One is, people who have been displaced due to whatever reasons, whether by Forest Department or due to dam or a highway and then who come back upon land because they have not had proper rehabilitation. In the second type of situation, the people have been displaced and they have not been able to go back to the land, or to go on what should be the new area in the forest. Now, for the first type, the people who have been evacuated and who have now occupied forest land in another place. If the cut-off date is fixed as 1980, of course are suggesting another date but suppose, it is 1980, for the sake of argument, and if I have been evicted in 1982 and I go and occupy forest land in 1986, then I would not be considered under this Act. But we are suggesting that then, the date be relaxed for such types of people. The second kind of case is that if I have not reoccupied land but if I can prove that I was in that area prior to 1980, by whatever means, then my rights should be recognized and I should be rehabilitated.

These are the points which I personally have to make. Now, my colleagues will make additional points and they would proceed. Thank you.

SHRIMATI INDAVI TULPULE: We are also drawing attention to some more points which we feel are important and on which amendments need to be done. The basic amendment drawing from the field experience of ours is that this Bill is restricted to the tribals, to the Scheduled Tribes. Now, basically in Maharashtra, specially in the lower Konkan in Maharashtra, other caste people like Kunbis, dalits and some of Nomadic tribe people live life of more or less like tribals. They depend so much on the forest that they live similar life like the tribals. So, in that case, by giving rights only to tribals will mean injustice to them.

Also the Maharashtra State has passed some GRs earlier like regularisation of Eksali plots, regularisation of some encroachment plots which was done before 1972, then in 1978 and 1979 where there was no such restriction. The Dali plots, the Fireline plots and all those kinds of plots are given not only to tribals but also to non-tribals, the deserving landless families, poor families. Now if this Bill talks only on tribals, then all these people will be deleted, their rights would not be recognized which would be an injustice to the people. Therefore, we suggest that suitable changes be incorporated at various places so that even these people whose livelihood depend on forest, who have no other source of income and livelihood should also be included in the giving of

rights. For that purpose, we suggest that all persons residing in forest villages, taungya settlement, forest settlement villages where the villagers themselves are resettled by the Forest Department years ago, in those places or those villages, the caste of the tribes should not be a consideration. Being placed in a forest villages, itself should become an eligibility for their rights.

Secondly, of course, we cannot say that anybody and everybody who is dependent on forest or who has some right in the forest, should be considered eligible. May be more suggestions can come. But we suggest that if we have five criteria listed here, and we may say that any three of the criteria are fulfilled by a family. These criteria are: the right holder must belong to SC or nomadic tribe or vimukta jaati; and he should be living in the area for at least, three generation. So, they are not just to go on to live in the forest. He has also to be dependent on forest or forestland for livelihood purposes; and he has no other permanent source of income and also he is below poverty line. So, if we consider, at least, three or four of these requirements, and if he fulfills that, then even that family, if it does not belong to the Scheduled Tribes, should be included and should be given this right.

MR. CHAIRMAN: Have you given the criteria, in writing?

SHRIMATI INDAVI TUPLULE: Yes, we have given these criteria, in writing.

SHRI BRIAN LOBO: The first submission which was the larger submission, does not include these criteria; This includes today's submission.

SHRIMATI INDAVI TUPLULE: It is there on the second page.

There has been a lot of talk about the cut-off date, which is 1980. Of course, we do not understand what is so sacrosanct about 1980 because it is so far away from today, that establishing any right by means of proving it, which is so far away from today, becomes very, very difficult on in ground reality. While we are the people working at the grass-root level, we know that there are so many problems for people to produce evidence for such kind, the evidence that can show that before 25 years they existed or their right existed. Therefore, we feel that the cut-off date should be recent enough to address the survival livelihood rights of the majority of forest dwelling communities and it is recent enough to allow a reasonable chance of establishing proof of continuous user occupation. But, of course, we would not say that make it today, because then it should not encourage fresh encroachments in the hope of gaining rights; that the rights are coming, so let us encroach. So, that kind of situation also should not arise. And, for that purpose, taking the base, which of course we do not say that there is a real strong justification for it, but the last Census was in 2001. So, we suggest that the cut-off date could be the year 2001 when the last Census was conducted.

The third point that we want to make is that the forest right holder in protected areas should not be discriminated against. Now, this is one more thing that we feel. It is because in most of the tribal areas there are many national parks, many sanctuaries that have come up. But we again and again say that they have not come up before the people survived in those areas. These are developments that have occurred after many generations of the people have been living and surviving in those villages, in that area, which is, their forest areas. So, if we say that they are criminals and therefore, they will be discriminated against and others will get a right; and these people in the protected areas will only get temporary rights, we feel that it would not be justified provision in the Bill.

Therefore, since people in the protected areas have been living there prior to the declaration of protected areas, they should enjoy the same rights.

What we suggest is that no area should be declared inviolate unless the ecological and scientific rationale for doing so is established through studies and an open process of consultation with independent scientists, ecologists and local communities of the area. We feel that local communities are ignorant and only the scientists would know what is inviolate. But that is not true. Those who have been studying know what is the uniqueness of this. That should be taken into consideration.

Resettlement without consent should not be allowed; and resettlement should at the most be to the buffer zone. If you put people out of the area which is hundreds of thousands of miles away, without any roots will be inhuman. If even these conditions are not included then this law will amount to legalizing forced evictions of people living in protected areas and will be a blow to the entire objective of recognizing forest rights.

These are my submissions and my colleague, Mr. Ramakant Patil will have further points to make.

श्री रमाकांत पाटिल: इसमें और बातें हम जोड़ना चाहते हैं जो एवीडेंस की बात के साथ में कही गई है, वह स्पेसिफाइड नहीं की गई है। उसमें जो लूपहोल्स हैं, उनको दूर करने के लिए जो कि एक महाराष्ट्र का केस हुआ था जिसमें सुप्रीम कोर्ट ने नॉन-डॉक्यूमेंट्री एवीडेंस का एक सुझाव दिया और बहुत अच्छी तरह से जैसे कि इन लोगों ने कहा कि महाराष्ट्र में उसे लेकर बहुत अच्छा काम भी हुआ और उसके आगे जाकर 10 अक्टूबर 2002 का जो जे.आर. सरकार ने निकाला और ग्राम सभा को लेकर जो एवीडेंस करने का काम किया तो उस तरह के एवीडेंस को इसमें शामिल करना चाहिये। इसमें और भी सुझाव एवीडेंस के लिए हमने दिये हैं जैसे कि ओरल एवीडेंस मैम्बर ऑफ कम्युनिटीज का होना चाहिए स्पॉट वेरीफिकेशन जो कल्टीवेटेड एरिया है, पेड़ जो लगाये हैं उनकी आयु क्या है वह ग्राम सभा नहीं तो संबंधित आथोरिटी डिसाइड करेगी, जो जमीन है उसके ऊपर जो बांध जैसे जो काम किये गये हैं, उसे भी ध्यान में लिया जाएगा। जो प्राइमरी ऑफिस रिपोर्ट्स हैं, उसके बाद फाइल की रिसीट्स हैं, प्रॉपर पट्टा लीज और हाऊस टैक्सेज वगैरह जैसे प्रूक्स हैं उन्हें भी इसमें साथ में लेना चाहिये और गैजेटियर से आफिशियल और इंडिपेंडेंट रिकार्ड्स हैं, फारेस्ट इन्क्वायरी रिपोर्ट्स प्रॉपर एम्प्लीकेशन रेगुलेशन के लिए जो ट्राईबल्स और नॉन-ट्राईबल्स ने अपनी एम्प्लीकेशंस दी होंगी, उनको भी ध्यान में रखना चाहिए और सर्वे मैप्स को भी ध्यान में लेना चाहिए।

दूसरे एफिडेंस कम्प्युनिटी मैम्बर्स के और नैबरर्स को इसमें प्रूफ की तरह शामिल कर लेना चाहिए ऑफिशियल रिकार्ड ऑफ राइट्स एंड परमिटेड अंडर प्रिंसली स्टेटस जमींदारी इत्यादि, उसे भी इसमें शामिल कर लेना चाहिए। तीसरे, ग्राम सभा का रिजोल्यूशन और ग्राम पंचायत का सर्टिफिकेट इनको भी प्रूफ के लिए मानना चाहिए। इसका अगला प्वाइंट प्राइमरीली रेसीडिंग इन फारेस्ट, यह सेक्शन 2 सी में है।

MR. CHAIRMAN: We have got these points with us. If you want to add anything other than this, you are welcome.

SHRI RAMAKANT PATIL: That is all.

SHRI BRIAN LOBO: We only want to stress that section 14 should be deleted and you should provide for appropriate amendments in the concerned Acts to make them in consonance with the present Act. Otherwise, we feel that when the Act comes into being, it will not have any teeth left in it.

MR. CHAIRMAN: It is fine. It is very well noted. Thank you very much. Please have a cup of tea before you leave. Thank you.

(The witnesses then withdrew)

WITNESS EXAMINED: Shri Pradip Prabhu, Senior Fellow, NIRD, Hyderabad.

MR. CHAIRMAN: I welcome you to this sitting of the Committee. You are aware that this Bill has been introduced to undo the historical injustice that has been done to the forest dwelling communities in our country. We have received your memorandum we shall consider every aspect of it. Now, whatever we discuss shall remain confidential until we present our report to the Parliament. I shall be grateful if you could be brief and highlight those specific issues which you would like the Committee to take note of. We will go through the other aspect which you have submitted to us earlier.

SHRI PRADIP PRABHU: Thank you. The issues that I have raised would have been raised by several others. So, I do not want to re-invent the wheel. I have another note; I do not have copies because the Xerox Copies could not be made.

MR. CHAIRMAN: No problem. My Secretariat will get it copied and circulate to the hon. Members on the Committee.

SHRI PRADIP PRABHU: There are few issues that I would like to raise for the consideration of the Committee. Relying on the whole series of issues that had come up, the fact that most of the earlier orders, regulations, etc. for recognition of rights remained defective all across the country, which resulted in actually

large number of eligible persons being excluded from the recognition of rights, we have filed a case in the Supreme Court of India. I had filed it in my name—Prabhu Vs. the State of Maharashtra.

MR. CHAIRMAN: You were quoted by the previous speakers.

SHRI PRADIP PRABHU: In that case, there are 2-3 important principles that have evolved. The first principle was on the nature of evidence, in which the Interim Committee appointed by the Supreme Court relied a fair amount on the report of the Commissioner of Scheduled Castes and Scheduled Tribes, on the nature of evidence. The Supreme Court passed a very clear order that even in cases where the claim is not supported by documents, even then, the competent authority will examine the claim, receive evidence and then come to accept or reject the claim. This required three important things. The first was, where is evidence available? Evidence is available with the people who live there. Every forest official may be there for 2-3 years and go away. Therefore, we have to begin to understand that the Gram Sabha or the community is the repository of evidence.

Based on that, on 10th October 2002, the Government of Maharashtra passed a special order. I just had the privilege of having drafted that order in which I listed a whole series of evidence, which included documentary, non-documentary, oral physical and the evidence of the Gram Sabha. To our great surprise, we saw this. I hope that the District Collector of Amaravati who wants to depose before the Committee will also be permitted. He took Supreme Court order and did the process of verification.

One found that the Gram Sabha having that basic insight of saying this person is before and this person is after. So, it is not the question allegation that is continuously being made that you will have just rampant distribution of forest land. In that context, my insistence actually is that the Gram Sabha should have the clear authority to recognize rights. Somewhere while this was what was thought of before. I also have had the privilege and the honour of drafting the original Bill which then was subsequently modified from time-to-time. It clearly stated that the Gram Sabha will be the authority to begin the process of investigation and also the process of recognition of rights. We are talking of recognition. We are not talking of creating new rights. So, the Gram Sabha will recognize and wherever the Gram Sabha cannot recognize, the State can recognize. There have been a number principles to the extent in terms of where the Gram Sabha is empowered under PES A very extensively. My first and honest submission is that we have to make the process of recognition of rights Gram Sabha centric. The only ground on which the Gram Sabha decision could be challenged would be on the grounds of *mala fide* and for that matter any decision can be challenged on the ground of *mala fide*.

The second submission which is linked to the first is what I began to see and learnt from the Right to Information Act in which the whole procedure is laid down in the Act itself. It will ensure that we have to make this applicable across the country. So, the procedure should be prescribed and not in the rest of it. If it is to rectify the historical injustice, then where does this historical injustice is going to be rectified unless we lay very clear procedure that will not be modified, tempered, etc. when it goes down to the States where we are facing still enormous difficulties with the implementation of PESA. It is because at that time we were given to understand that PESA would be the part of the Constitution and it can be free from wide range of interpretations. But today any State Government is interpreting it in its own way. So my humble submission is that the Act should clearly state and assert that the procedure will be part of the Act. If we agree on this point I do not wish to put my argument in detail and take your time.

The third issue that I am raising is regarding the nature of evidences should also be specified in the Act. What is the challenge that any claimant who is claiming that right will have to meet should be specified. It is because if I do not know what is the challenge I have to meet then I do not know how to meet the challenge. Therefore, the law which is very beautiful in its concept would get mutilated by the fact that my lack of

knowledge about the challenge would work against me. So, in the Maharashtra Order of 10th October, 2002 the whole range of evidences was prescribed which started with documentary evidence available with the Forest Department and other State Departments. The documentary evidence available in term of Satyagraha, protests, or if you have given any Memorandum and things like that. This was also accepted as part of evidence by the Supreme Court. The resolution of the *Gram Sabha*, evidence of the Panchayats, elders of the village who are the most critical people in terms of management of affairs. Then for instance, my own affidavit in the Supreme Court and say this is my area. Then a simple tribal should also have the opportunity to file an affidavit in support by his neighbouring cultivators and somewhere this should become part of the PESA. This is my humble submission.

My fourth submission which I am trying to make is that already we have a situation in which the MoEF filed a statement in Parliament between June 2002 and June 2004 stating that a total of 1.5 lakh hectares of encroachments have been evicted. Now if you take the average holding of tribal to be between one hectare or half hectare, there are 1.5 lakh tribal families who have been evicted. If you look at the forest records, I am just getting more and more surprised like in Orissa census report, there are 1000 villages where not a single person has even one square inch of land. This is the Census records and strangely in Orissa 74 per cent of land stand in the name of the State. This 74 per cent of the land is all hilly tracks because coastal tracks were part of the madras Presidency and Calcutta Presidency where titles have been formed as they were all plain areas. But in the hilly areas still no titles have been given. In that situation, every year eviction takes place.

SHRI RADHAKANT NAYAK: What is the date of Census?

SHRI PRADIP PRABHU: Sir, it is 2001 Census. Over the next few months as more and more records come in we will be able to get a clear picture. So, if you see the situation, there can be a person who was on the land even if a cut off date is 1980 but he is evicted. In 2002, if I have no other source of income, I start cultivating the nearby land. I have State Government records. For example, in Maharashtra because people are arguing that *adivasis* are acquiring forest land and not planting. I have records of forest Development Corporation of Maharashtra which says that in Thane District alone 1000 hectares of virgin forest land have been rendered waste land which finally the *adivasis* have take for cultivation. So the issue of forest is something where we need to look at very differently. But my submission here is that where the claimant comes before and the claimant is able to establish that she or he has been evicted without a settlement of right. If you take the Madhya Pradesh, for example, according to the Department of Forest records 80.1 per cent of forest land is not settled till today and 11.8 per cent land of 18.8 per cent forest land which has been settled was settled by the British. So, from 1947 till 2005, we have not been able to settle over 80 per cent of land and people are being evicted. The Same is the case of Chhattisgarh. In Orissa, 74 per cent of the land is not settled till today. In that case evictions are taking place. I would crave the indulgence of this Committee to say that those who have been displaced or evicted that the cut off date will be relaxed because they had a prior claim.

They were evicted without due process of law. On the basis of their prior claim their present claim should stand. I have a suggestion to make which might sound outrageous but which I think is very real. My prayer to this Committee is that the lands or the rights that have been conferred by virtue of this law—which this hon. committee, I believe, will inform with their wisdom and understanding—should not be alienated even by the State. There will be an argument saying as to how can the State not take over the land it they require if for public purposes. I have two humble submissions to make in this regard.

Power of the State to take over land of people still flows from the colonial principle of eminent domain. Somewhere, after 50 years of Independence, I would believe that the parliamentarians of this country, particularly in case of tribals, the original settlers of this land will hold that the principle of eminent domain must give way to a principle of democratic domain. In that sense I was listening to the arguments of Shri Shankaran. I do not know if he had his case before this August Committee or not. He was arguing that the principle of acquisition of land should be no displacement. This should be the principle that there will be no displacement. Therefore,

the first effort will be to ensure that all alternatives of non-displacement are first examined and if there is no alternative that is totally non-displacing that the least displacing will be taken. This hon. Committee says that this right will not be absolute, for that matter none of the Fundamental Rights are absolute. There is a principle of reasonable restriction. I might have the right to speech but that does not mean that I can abuse anybody. There are grounds for reasonable rights that are there for every right. If there is a genuine need for a public purpose, then the principle of reasonable restriction would apply on that land. I think, it will be a very important and great contribution that this august Committee will make for the future of the tribal communities for the rest of time to see that their land will be taken out of the freedom of alienation.

In the last meeting with the hon. Prime Minister, where I also had the privilege of attending, there was one principle that was argued upon. In the previous meeting with the hon. Prime Minister the members of the National Advisory Council had argued that not forced re-location or location should be voluntary. So, taking that principle further, voluntary re-location is based on a principle like you make a promise to me saying that if I move out you will take care of A, B, C, D, E and based on your promise I move out and once I move out and then if you do not fulfil the promise to A, B, C, D, E, then where do I go? The guarantee of effective re-settlement will be the right to return. The environmentalists even argue that the recognition of rights even in national parks and sanctuaries should be final and that is what the Wildlife Act also prescribes. If re-location is unsatisfactory, then we will be doing the greatest good to posterity. The legal principle that will be created by this Committee is the right to return. You cannot determine your land that is submerged under water. At that meeting the hon. Minister in the Prime Minister's Office said that this is an issue which we must discuss in higher circles. I hope this Committee will raise this issue in the higher circles.

Sir, my last submission is, what do we do for people who are considered ineligible? On the 30th October, 2002, the Ministry of Environment and Forest had filed an affidavit in the Supreme Court in case of ineligible claimants, the efforts will be *in situ* rehabilitation. I cannot say as to how it will work. But if you think that you can throw me out of my homeland, from a land which I am occupying even before this nation came into being, do you think that somewhere justice will continue to be done? If that is my homeland and I live there, then the least can be done is that I am considered ineligible and that I am rehabilitated *in situ* in the efforts of conserving and that even if there are lands that I am cultivating, the same land can be used for growing tree cover as well as livelihood. These are my humble submissions to you. Thank you all for giving me this honour and for listening to me with all emphasis.

DR. RADHAKANT NAYAK: You have raised a very fundamental issue. I was just wondering whether it will be possible for us in this country to reflect on the rights to land and whether it should be limited only to surface rights or the minerals that are under the surface. In the State of Orissa we have huge reserves of minerals starting from gold, tin to silver and copper. You have rightly pointed out that the tribals are being evicted with a minuscule amount of compensation. I would like to know if in such cases we would have to reflect on this issue of land rights not being limited only to surface rights but also about the rights of minerals lying underneath the land in occupation of the people.

What I would like to know, can you refer, as a matter of example, to any other country which have debated this issue, to what depth the right to surface can be gone in for?

SHRI PRADIP PRABHU: In India this issue is still governed by the colonial law. This issue has been debated in the Supreme Court in Botswana and in South Africa and it has also been debated in Canada and it related to indigenous people. In South Africa and in Botswana it related to their homeland. There is no surface rights there. But in Botswana and in South Africa all those rights to land means the rights below it. A law was passed in South Africa, namely, the Right to Restoration of the land and it was challenged in the Supreme Court

and Justice Yakoob, if I remember the name correctly, passed an extensive long order justifying that the right of indigenous people to their homeland which included the right to the entirety of the homeland.

Of course, this is a highly complex issue. Now there is a debate in the issue on whether access to ground, does it become the right of the owner of the land, or it belongs to the whole community? Similarly, for us, the argument is, what is below my land does it belong to me or it belongs to the whole community?

If we do say that the right to land is actually a usufructuary right and while what is below the soil or the land belongs to the whole community, one could move into greater and greater extent in understanding that. To some extent in PESA Act, we tried to look at it but restricted to minor minerals because major minerals are covered under old colonial acts and strangely, all the four critical colonial Acts that we have retained affect only the tribal communities, namely, the Minerals Act, the Acquisition Act, the Indian Forest Act and the Water Act. Therefore, I would presume that your argument is, what is below the surface belongs to the community and whatever is produced from that should go back to the community.

DR. RADHAKANT NAYAK: Sir, Mr. Prabhu could give us some more evidence on this?

MR. CHAIRMAN: Mr. Prabhu, kindly give us a note on this aspect so that it will help the Committee.

SHRI PRADIP PRABHU: Please give me some time because I have to access the judgements from South Africa.

MR. CHAIRMAN: You may give us a brief note on the salient points so that they may be helpful in formulating our report. Thank you.

(The Committee then adjourned)

**JOINT COMMITTEE ON THE SCHEDULED TRIBES
(RECOGNITION OF FOREST RIGHTS) BILL, 2005**

**RECORD OF ORAL EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE
SCHEDULED TRIBES (RECOGNITION OF FOREST RIGHTS) BILL, 2005**

Friday, the 24th March, 2006 from 1500 hrs. to 1700 hrs. in Committee Room No. '53', Parliament House,
New Delhi.

PRESENT

Shri V. Kishore Chandra S. Deo — *Chairman*

MEMBERS

Lok Sabha

2. Shri Mahavir Bhagora
3. Shri Giridhar Gamang
4. Dr. P.P. Koya
5. Shri Bajju Ban Riyan
6. Dr. Babu Rao Mediyam

Rajya Sabha

7. Shri Moolchand Meena
8. Shri Rishang Keishing
9. Smt. Brinda Karat
10. Shri Mangani Lal Mandal
11. Shri Nand Kishore Yadav

SECRETARIAT

Shri R.K. Bajaj — *Deputy Secretary*
Shri K. Jena — *Under Secretary*
Shri J.V.G. Reddy — *Under Secretary*

Representatives of the Ministry of Tribal Affairs

Shri P.K. Varma — *Deputy Secretary*

**Representatives of the Ministry of Law & Justice
(Legislative Department)**

Shri R.S. Shukla — *Deputy Legislative Counsel*

WITNESSES EXAMINED:

- (i) **Shri B.D. Sharma, IAS (Retd.)**
- (ii) **Representatives of All India Democratic Women's Associations**
Ms. Sudha Sundararaman
Mr. Kirti Singh
- (iii) **Ms. Madhu Sarin, Chandigarh**
- (iv) **Representatives of Adivassi Adhikar Manch (M.P. & Chhattisgarh)**
Shri B.S. Dhakad
Shri Budhsen Singh
Shri Jasvinder Singh
Shri Sukharanjan Usendi
- (v) **Representatives of All India Kisan Sabha**
Shri Dhulichand
Shri Rajendra Singh Munda
Shri Sanjay Parate
- (vi) **Representatives of Action Research in Community Health & Development, Gujarat (ARCH)**
Shri Ambrish Mehta
Shri Rajesh Mishra

MR. CHAIRMAN: Dr. B..D. Sharma, I welcome you on behalf of the Committee and myself to this Sitting of the Joint Select Committee. You are aware that this Bill has been introduced by the Government to actually undo the historical injustice done to forest dwelling people for the last so many decades or, may be, centuries.

Dr. Sharma, we have got your memorandum which you have submitted to us. We have gone through it in detail. But, other than what you have written and sent to us, if there is anything that you would like to mention or if there is anything that you want to lay stress on, I request you to do so. Whatever we discuss here shall remain confidential until the report is placed in the Parliament. We shall be grateful if you could be brief and make your submissions within 15 minutes so that the Members may like to ask question to which you may respond.

DR. B.D. SHARMA: Thank you, Mr. Chairman, for giving me this opportunity of placing before you my views. I have been associated with the tribal affairs for the last 40 years or so. The first thing is that the issue of historical injustice that has been raised is most welcome. But its scope has been rather restricted. The historical injustice was done by the enactment of the Forest Act itself. Unfortunately, after Independence, the adoption of the Constitution did not result in undoing that historical injustice. On the contrary, the laws got extended to these areas in routine. What I have been saying is that it led to criminalisation of the entire tribal communities. The tribal who is born in the forest is supposed to be an encroacher. Now, there cannot be worst anomaly than this.

Now, I am laying stress on the forest dwelling communities. May I submit that if there is a forest, as defined under the law as reserved forest, possibly there cannot be people there? Only the forest villages will be there or those people you see who linger on. But it is not the people living in the forest now because these people have been living in the forest since ages. They were driven out of those forests, from the villages, and they have been hankering to go back like in Jharkhand, Chhattisgarh. This has been the basic issue. Now, if you say that people, forest dwelling communities, that means, the injustice which has been done to the people by driving them away remains undone. Therefore this scope, I should say here, 'people living in the forest and around'. This is the term which has been used in the Forest Policy of 1988. Why are we deviating from that policy? This is the accepted thing.

The second point which I have made out in this is about the shifting cultivators and the primitive groups. Of course, the way it has been put in the law, by implication shifting cultivators are covered. For example, you have

mentioned about the district councils, the Sixth Schedule. Now, in the Sixth Schedule, shifting cultivation is a recognised form of occupation. But in Orissa, Andhra Pradesh, Bastar, Abujmand and so on, shifting cultivation is not mentioned. Although you have put here 'pre-agricultural communities', the way our bureaucracy and the States will interpret, I am hundred per cent certain that the shifting cultivators will be chased as is being done in Orissa and Andhra Pradesh. Fortunately, it is not in Madhya Pradesh, Chhattisgarh because of other reasons. If the shifting cultivators are brought in as specific groups and recognising them specifically as a pre-agricultural communities, that is a must.

The other point which I have raised is about the other communities. Why should only the Scheduled Tribes be there? Now, there are some communities which are as good as Scheduled Tribes. But today, the problem is that if we generalise this that other communities are brought at par with the Scheduled Tribes, then there will be two consequences. One, the basic issue of the tribal people will recede in the background. For example, in Andhra Pradesh, the moment Lambadas were included, you know what consequences were there. In Maharashtra, the fake tribals in the Nagpur area, they are a problem because they get the certificate, etc. Even amongst the tribals, there is a problem. The people from Kanker in South Bastar, they have inundated that area. Now, if you add to this generalised category, that will be undoing of the justice to the tribal people.

Another point is that their relationship with the forest is not the same as that of the tribal people because their relationship is qualitatively different. I can answer your question on this separately, if you wish. Therefore, the genesis of this problem is that, unfortunately, we are dealing with the delicate tribal situation in a very generalised way whereas the situation in tribal areas is different from one region to another and from one community to another. On the one hand, there are hunters and gatherers, and on the other hand, there are advanced tribal groups. If we want to have the same law covering all the tribal people, this type of problem is bound to arise.

I would like to invite your kind attention to the fact that in the Constitution itself, the Scheduling is not necessary for the nation or for the State. The Scheduling of the communities can be done in a part of the State. The communities may be Scheduled here or may not be Scheduled else where. Similarly, the powers which have been given to the Governor in amending the laws in Para 5 of the Fifth Schedule talks about the amendment for any area, or any Scheduled Area or part thereof. Specific issues of each community have to be built in. This in a Central legislation is very difficult. I think, some enabling provisions will have to be done so that exceptional cases do not become general and undo the objective of this law. They remain exception rather than making a general thing.

Now, the other point I would like to make is about the Gram Sabha. The injustice has been done to the tribal people by not recognising the community in the Constitution.

Injustice has also been done by not recognising their customs and traditions. This was the biggest historical injustice which occurred after Independence. Fortunately, in 1996, the provisions of Panchayats (Extension to the Scheduled Areas) Act brings in the community and its tradition under the Constitution. Section 4 (d) of the provisions of Panchayats says that the Gram Sabha shall be competent to manage all its affairs according to its customs and traditions.

Here, I would like to invite your attention to the word "competent." The Gram Sabha is competent. There is no question of the Gram Sabha being endowed with some powers. Please compare it with Article 40. Also compare it with Article 243B for the general areas, Gram Sabhas. There the provision is that the State shall endow it. This concept was rejected while enacting the provisions of Panchayats with a clear objective that in the tribal areas, there are living communities. If you super-impose a system from above, there is bound to be confrontation. We, in our areas, say that the Gram Sabha is supreme, it is higher than Parliament because there it is the people themselves who do it. I am happy to say that in Parliament, Members are the representatives of the people. So, we say that the Gram Sabha is higher than Parliament. In this law, how do you make the Gram Sabha subservient to an official agency?

In another context, I had invited your attention to the incongruity which is there. I have suggested that in this case, when you are dealing with the Gram Sabha, you must think in terms of providing some guidelines which should be binding on the official agency but should be only a guide to the supreme Gram Sabha where the people themselves are the arbitrators. This is a very important point which I would like to make. Otherwise, the purpose of this Act will not be achieved.

The last point which I would like to make is about the preparation of a map under Section 15. In fact, I had dealt with this issue in detail in my report as the Commissioner for Scheduled Castes and the Scheduled Tribes. The problem is that whenever you go to a tribal area or anywhere, it is a document of the State which is produced in evidence. It is not a document of the people. So, the forest officers say that this is an encroachment and the people say that this is not an encroachment since they have been living through the ages. There has to be a document on the basis of this process which must be authenticated by the Gram Sabha and the State agency so that that can be the starting point for a stage where there are no conflicts on this at least; there would be a consensus saying that this is what is with the people, this is what is not with the people and so on.

I have already discussed the rules under the Act. In fact, you make it the most egalitarian law and put the rules there. Then, the bureaucracy provides rules which are beyond the comprehension of anybody. So, I think I have made my point. Thank you very much.

SHRIMATI BRINDA KARAT: I thank you, Dr. Sharma, for giving your views. We all appreciate your tremendous experience in this field. I just wanted to put one question to you. You have said that you are against including any other communities which may be living there. You have correctly said that the term "forest" is not properly defined. Apart from tribals, there are many other communities which are living there and existing side by side with the tribals. We have had a lot of evidence from people who have come from different States giving percentage of communities. We assume that we do not include the Scheduled Caste or any other poorer sections. Suppose we keep it as it is. Then, in your opinion, will it not lead to eviction of that whole section? Will it not be seen as discriminatory? Do you have any other suggestion how to take into account that problem which may arise?

DR. B.D. SHARMA: In my view, the tribal people, by definition, should be deemed to be the original inhabitants of the areas because they are associated with the territory. If they are supposed to be evicted, then the onus should lie not on the tribal but on the Department to prove that he is an encroacher. In the case of others, you make a provision where he has to prove, the onus is on him. This fine distinction will serve the purpose. This is my view. The basic distinction of this law is that it accepts the tribal people, the presumption is in favour of the tribal people and the onus of evidence is on the other side.

MR. CHAIRMAN: You had also mentioned that there should be an enabling provision so that the State Governments can identify the specific tribes in relation to certain areas. Do you not think that this can lead to a lot of arbitrariness? Will it not lead to giving too much power to the State Governments?

DR. B.D. SHARMA: When I was writing this, I was not envisaging the State Governments. I have got very strong views on this. What about the Governor? I do not agree that the Governor has to act in the case of the tribal people under the advice of the Council of Ministers. If the Governor is supposed to work only under the advice of the Council of Ministers, then, Sir, I must say that the Council of Ministers become supreme and higher than Parliament because the Governor has the authority under para 5 (1) to direct that any law of the State or Centre shall not apply. So, you make a law. The Governor says that you cannot apply it. If the Governor says this on behalf of the Council of Ministers, then the Council of Ministers can overrule this great Parliament. So, the interpretation of para 5 (1) has been wrongly put. It is a special responsibility of the Governor. I hold that there is a difference between the oath of the Governor and that of the council of Ministers. The Governor is supposed to uphold the Constitution while the Ministers are supposed to abide by the Constitution. So, this fine distinction has not been made. In my view that has been the undoing of the protection of the tribal people.

SHRI GIRIDHAR GAMANG: I would like to know whether it should be a separate Act or the Forest Act and Forest Conservation Act which are existing today, which, with exception and modification, should extend the rights to be given to the tribals. I would like to know whether you want a separate Act for this or you want, with the exception and modification, the existing Forest Act, 1927 and 1980 to apply.

Secondly, I come to the power of the Governor. We are always fighting for it. Most of the provisions are yet to be interpreted and implemented. They are not at all implemented. These are the provisions which we have got today. The interpretation of the Fifth Schedule, Section 5(1) definitely says that the Governor has the power. It says about the notification by the Governor. Then, the advice of the Council of Ministers is required. But here, the very interesting thing is that the Tribal Advisory Council is not at all vigilant about its own rights. In that case, who will notify it? Is it directly by the Governor himself or will the Tribal Advisory Council advise the Governor or the Council of Ministers?

Thirdly, the point which you have made is that it is meant for the tribals. That is the constitutionally protected areas, the Fifth Schedule Area. It is not a boundary demarcated by the State, by the District or the Panchayat. Therefore, whatever rights are enshrined in the Constitution, mostly it will be applicable to the Fifth Schedule Area. In that case, do you justify this Bill? Or, is the extension of the Forest Act and the Forest Conservation Act, with exception and modification, a viable one?

Dr. B.D. SHARMA: Sir, I will begin from the last end. As you said that the scheduled areas are specifically defined. Again there has been a default on the part of the Union Government and the State Governments on this. May I invite your attention to the amendment in the Fifth Schedule which was brought in 1976. If you see the preamble of the amendment act, it has been clearly stated that the tribal majority areas and the scheduled areas shall be co-terminus. Shri Brahmanand Reddy was the Home Minister. That first exercise has not been done. Therefore, we have the anomaly that a part of the tribal majority areas are scheduled, a part of the tribal majority areas are not scheduled. This anomaly must be made good. Now, you see there are certain areas where even villages have been scheduled, for example in Tripura because of the situation there. So, this situation must be reviewed and the entire tribal majority areas should be brought under the Fifth Schedule. I think, this is one of the most important thing which must be done. So far as the powers of the Governor and Tribal Advisory Council are concerned, this is a long issue. I would say that even the President has not exercised his powers. Not a single direction has been issued till this day by the President of India under Article 332 of the Constitution. Under the first para of the Fifth Schedule of the Constitution, not a single direction has been issued. Do you see that in the whole tribal areas there is all *aman* and *chain*? Therefore, what is lacking in this case is the political will and there is a lot of confusion about the provisions and so on.

SHRI GIRIDHAR GAMANG: Whether you want a separate Act or whether the first Act will be extended?

DR. B.D. SHARMA: This is about forests. Therefore, a separate bill has to be there as it is here because forests are not totally co-terminus with the scheduled areas. There are other areas also. I think you see a separate bill has to be there.

MR. CHAIRMAN: So, in other words, we do not need to recommend the abandonment of this Bill.

SHRI GIRIDHAR GAMANG: What I am asking is whether the Forest Act will be extended with the modification and exception like panchayat or it should be a separate Act.

DR. B.D. SHARMA: That can be done. I would say that first the rectification of this situation, where the tribals are outside the scheduled areas, must be done. One-third of the tribal population in this country is outside the scheduled areas. Look at what is happening in Southern States. The weakest groups have not got the protection of the Fifth Schedule for the last 50 years. The Debar Commission did the worst dis-service by saying that scheduling of areas is not necessary.

MR. CHAIRMAN: Thank you very much Dr. Sharma.

DR. B.D. SHARMA: I am thankful to you for giving me this opportunity.

(The witness then withdrew.)

WITNESS EXAMINED:

1. Ms. Sudha Sundararaman, General Secretary, All India Democratic Women's Association

2. Smt. Kirti Singh, Member-Secretary, All India Democratic Women's Association

MR. CHAIRMAN: Shrimati Kirti Singh and Ms. Sudha Sundararaman, I welcome you to this sitting of our Committee. You must have already gone through the Bill. You know that this is basically to undo the historical injustice that has been done to the forest dwelling communities. Whatever we discuss here shall remain confidential until we present report to Parliament. I would request you to make your observations briefly because we are short of time. After that if any Members ask any clarification, you may respond to them.

MS. SUDHA SUNDARARAMAN: Thank you very much Shri Kishoreji and also other Members of the Committee. I am Sudha and this is Shrimati Kirti Singh and from All India Democratic Women's Association (AIDWA), we have already submitted our note in writing. I hope that all of you would be having a copy. AIDWA very much welcomes the tabling of this Scheduled Tribes (Recognition of Forest Rights) Bill. We believe that the Bill is indeed a tremendous opportunity, as the Chairman so rightly put it, to correct the historical injustices. We are also happy particularly about the Section 5(2) of the Bill, which recognizes all land and forest rights, which will be granted by the Bill, are to be registered jointly in the names of both spouses. We would just like to add in that there should be a specific provision for single women and female-headed families. It is because even today many of the tribal areas and the tribal communities' assets are not present in the name of the women. So, this would strengthen that Clause. However, we also feel that there are some flaws and infirmities in the Bill. If these are allowed to remain, then it would not actually fulfil the objective that has been placed in the statement of objects and reasons. It will actually contribute to denying tribals their rights.

In the first case, we would like to state that we are very disturbed by the large number of licences being given in the different States to business houses for mining etc. on tribal land in the Fifth Schedule areas. This is leading to a very huge displacement of tribals. This is being done in spite of Supreme Court ruling, which has specifically forbidden the alienation of land in the Fifth Schedule areas. In this context, we would request the Committee to add relevant clauses to the Bill to protect tribals from being displaced in the name of development. On behalf of AIDWA, we are placing before you some of the major suggestions and amendments.

First is on this cut off year of vesting of rights in forest land before 25.10.1980, which is Section 4(2). We feel that this is a very unfortunate Clause. It actually militates against the whole spirit and purpose of the Bill. Considering that there are no land records and there has been no proper registration of existing rights, this proposed deadline will actually lead to a huge eviction of tribal people, harassment and, of course, as we all know, the tribal women will be the worst sufferers. So, the vesting of rights of forest land surely should be on an 'as is where is' basis for those included in the proposed legislation. We would like to emphasize that. This choice of date of 1980 is totally arbitrary. There are no laws which have mentioned this as cut off date. Therefore, we feel that the Parliament has full jurisdiction to decide a fair and just cut off date and they should proceed from an 'as is where is' basis.

श्री मूल चन्द मीणा: इसका कट ऑफ डेट क्या होना चाहिए?

MR. CHAIRMAN: Do you have any specific date in mind?

MS. SUDHA SUNDARARAMAN: Well, what we have said is it should be on an 'as is where is' basis. जहाँ अभी है, उसका ठीक तरह से स्टडी हो जाना चाहिए। मेरे ख्याल से उस एक्टिविटी का अनुभव करना चाहिए।

SHRIMATI BRINDA KARAT: You mean when the Bill is notified.

MS. SUDHA SUNDARARAMAN: When the Bill is notified so that from there the rights will proceed.

The second point is inclusion of traditional forest dwelling communities in the Bill. We believe that other traditional forest dwelling communities that do not come under the categories of STs but have traditionally lived in the forests for a long time also need to be brought under the Bill. There is no clear definition of this term forest area by the MOEF. So, land which does not have tree covers has also been included as forest land. Specifically, on such land there are many scheduled castes who have been cultivating the land and even within the areas with forest cover many poor non-ST communities have been eking out a very difficult livelihood over there. They are dependent on minor forest produce for their livelihood. So, we should not exclude them from the Bill. It would be a great injustice to them. So, we feel that this will also adversely impact on the traditional unity between these various poor communities. So, this is one aspect and of course, the definition of tradition is important. It is because it should not provide any loopholes for illegal encroachers to capture the land of tribals and the traditional forest dwellers.

Then the third point that I would like to place before the Committee is regarding the provisional rights in the core areas, in National Parks and Sanctuaries. The Bill must ensure that all areas, irrespective of whether they are in the core or in the fringe, should be covered in this Act and all rights should be recorded. Recording of provisional rights is really an invitation for the forced eviction of tribal people. We all know that there will be a tremendous scope for atrocities against tribal women, particularly by the low level of the forest bureaucracy. So, we believe that permanent land rights and tenure have to be granted to the beneficiaries and even if there are to be some restrictions, the Bill should ensure that the definition and demarcation of inviolate areas is not done in any arbitrary manner, but the affected people themselves should be involved in the decision making process.

Then, those to be dislocated should be provided with equal and comparative land and adequate compensation and an overall relocation plan... The process and the formulation of this plan should be done through the participation of those who will be affected. So, Gram Sabhas where existent or Committees formed with their representatives should monitor the process of resettlement and relocation. It may not be left to just the bureaucracy.

Then the next point is regarding land ownership ceiling. The Bill mentions a very arbitrary figure of 2.5 hectares and, as it stands, it appears it takes away existing rights. When the Bill has its objective 'enabling of tribals' why should this clause be introduced at all when we know tribal land is rocky, so unproductive and people go for zoom cultivation? So, that land ceiling should be reconsidered and there should be no limit provided in the Bill.

Definition of traditional and customary rights is specifically gender related. Though we agree that it is not necessary to retain the democratic rights of the tribal communities of their customary and traditional practices, we feel that the Bill should not give sanction to those practices, which in the name of custom or tradition, go against the constitutional rights of tribal women such as polygamy, denial of equal rights to land. So, in the name of custom, we cannot go against the constitutional rights of the tribals women. So, this aspect should be considered very carefully and the Bill should ensure that the women's fundamental rights are preserved.

I now come to the nature of rights. We all know that a majority of forest produce collectors is women. We feel that the Government will have to play a greater role to protect these rights because now there are a number of problems that the women are facing when they go into forests to collect minor forest produce. The State Governments should notify a list of the minor forest produce that is being used and sold by tribal people in their regions.

Secondly, it should set a Minimum Support Price for these items and ensure that these are procured by the Government and forest agencies so that tribal women are not exploited by middlemen.

Thirdly, provision of punitive action against Forest Guards found harassing and sexually exploiting tribal women must be made part of this Bill. This is important because the kind of atrocities that women face when they go into forests to collect these minor forest produce is something that the Committee Members have to take into consideration.

The other part of this is, in Section 5 of the Bill which has the duties of the rights holders, the entire burden of conservation is placed on them. In this Section, is it not important to mention the role and responsibility of the State? Why is the State trying to withdraw from its own responsibility in forest management in the name of forestry sector reform? Is it proper? So, we feel that the Bill should guard against this and against the exploitation of forest resources by unscrupulous elements, including MNCs. So, this aspect of this Bill looking at the withdrawal of the State, while at the same time putting huge and draconian penalties on tribals for not fulfilling their responsibilities, this is a section that needs to be changed in two ways.

A section on the duties of the State *vis-a-vis* protection of the forest should be introduced. There should be a section incorporated on the developmental role of the State which would assist the tribals in making good and sustainable use of their land and forest rights by providing them with a basic infrastructure. These are very important amendments.

But the serious problem is about the whole development activity. As it stands, no development activity can be carried out without the permission of the Government authorities, not even a school can be built. Recently, the Central Government has brought in a circular increasing the number of development projects which are beneficial to forest dwellers. This will have to be incorporated in the Bill and additionally, we feel that some of the infrastructural requirements to address malnutrition, ill-health, access to water, free schooling etc. should become part of the forest dwellers' rights. The forest department is responsible to provide these facilities.

The last section is on institutional framework. The Bill makes provision for authorities and procedures for settlement of rights. Unfortunately, it is a very bureaucratic and very centralised model. This will certainly affect the democratic functioning of Gram Sabhas and exercise of the legitimate authority of the tribals. The Bill should ensure that the central authority should be clearly vested in the Gram Sabha. It is not so in the current draft. The rights of the Gram Sabha are extremely limited. They have to be expanded. Moreover, elected tribal representatives of the Gram Sabha should have a greater say than others in the delineation and the verification of the land rights. So, as per the Bill, forest department officials are being proposed as members of the Rights Determining Committees. This is even going back. It is retrogressive step because even earlier it was the District Collector. Now, the final decision is lying on the forest department officials. This is something which will have to go. All sub-divisional or district or State level committees have to have representation from tribals, voluntary associations, experts etc. All the tribal representative have to be there. This lacuna should be remedied in the interests of transparency and participatory process for the settlement of rights and in this context, since women are highly department on forests for their work and survival, their compulsory representation should be ensured in every committee. The Bill should lay down that at least 33 per cent of all members in the committees at all levels should be women. Thank you so much.

MR. CHAIRMAN: Thank you very much.

MS. SUDHA SUNDARARAMAN: So, all the arguments are, I think, self-evident. Thank you so much.

MR. CHAIRMAN: Your arguments have been well taken. We shall consider every aspect of what you have said.

MS. SUDHA SUNDARARAMAN: Thank you very much.

(The Witness then withdrew)

WITNESS EXAMINED: Ms. Madhu Sarin, Chandigarh

MR. CHAIRMAN: I welcome you to the sitting of our Committee. As you are aware, this Bill has been introduced basically to undo the historical injustice that has been done to the forest dwelling communities over the years. Whatever we discuss here shall remain confidential till the Report is presented to Parliament. We have got your memorandum. If there is anything else that you would like to say or there is anything that you would like to stress from within this, you are welcomed to do so, after which Members may like to ask for some clarifications to which you may respond.

I would appreciate if you could make your presentation in 15 or 20 minutes so that we may have time to ask questions.

MS. MADHU SARIN: I just brought my memorandum with me but I think it will be useful if I focus on some of the key things that I have covered in this.

Essentially I would just like to inform the Members of the Committee that I was actually a member of the Drafting Committee of the Bill. So, I am a great supporter of the Bill and I have worked to get this bill to this stage and particularly to get it tabled by the Ministry of Tribal Affairs. It is because I think the fact of all the tribal areas when having been labelled as forest and thereby transferred to the Ministry of Environment and Forests itself is a major problem. I see it as a new beginning. Although I was a member of the Drafting Committee, there was lots of to and fro and lots of discussions, and of course we did not have complete control over what went into the Bill. While, overall, I am greater supporter of it, I feel there are a number of serious shortcomings which need to be addressed. I very much hope that the hon. Committee would give serious thought to those issues.

I have divided my comments really into four categories. The first is really in terms of who is covered by the Bill. I feel the Bill needs to be made a lot more inclusive than it is at present. I think all of you know that when the Prime Minister mandated the Ministry of Tribal Affairs to draft such a Bill, its title itself included other forest dwellers itself in addition to Scheduled Castes. I really feel that we need to go back to that. I have never really fully understood why at one point other forest dwellers were included, and the problem is that existing policy, whether there is 1990 Guidelines of the Ministry of Environment and Forests, they do not distinguish between tribals and non-tribals. I know this is one matter which has already been covered by many other people. So, I will not take too much time on this. I have listed many reasons why forest dwellers other than Scheduled Tribes must be included because otherwise it will create a lot of discord at the village level. It would make collective forest protection very difficult because some people will be out and some will gain rights. It will create inequalities and injustice. I have worked in Gujarat, Rajasthan, Orissa and in many tribal areas for several years. What I am saying is based on at least 25 years of grass root experience.

The second point is about the October 25, 1980 date which I know has been covered by many people. The main point that I would like to say about this date is that when the Forest Conservation Act itself does not bar recognition of rights or diversion of forest land for any particular use, why should this Bill make it a legal date beyond which rights cannot be recognized? The Forest Conservation Act only says that Government of India's permission is required. So, I would not spend much time on that also.

Of course, there are so many people who have been illegally evicted or illegally displaced during the last 25 years since 1980 because their rights were not recognised because of the failure of the Government. What about their rights? I think that displaced and forcibly evicted people need to be brought within. If the cutoff date is brought closer to the present, then many of them would get covered in any case.

On the fourth point I would like to dwell on a bit because I have personally seen particularly in Orissa what is being done to the tribals in sanctuaries and national parks. It is an absolute scandal. I think the current provision in the Bill is very very dangerous. It is largely because in fact it almost implies that these people must be evicted within five years. We hear in Orissa and Chhattisgarh that the Wildlife Department have already started preparing plans that within five years how to throw these people out. That is one problem. Secondly, the very concept of core area is not a legal concept. It is management term which is being used very loosely. In some sanctuaries they have decided that the whole sanctuary is the core area; in some areas they say only a particular part is the core areas. We have no idea as to how many people will be get covered under core area provision. I feel, first, in its present form that must be deleted. It is extremely dangerous. I think at least this Committee must ensure that our Bill or a Bill must for recognising the rights of tribals and forest dwellers does not give legal sanctity to the definition of core area which basically just says MOEF will determine. On what

criteria, on what basis, and how you decided which is a core area? What is the process by which you decide? In fact, if you look at the Wildlife Protection Act itself, it provides far greater flexibility in how you settle the rights of people living within the protected areas. I think in States like Orissa, Andhra Pradesh, Chhattisgarh, parts of Madhya Pradesh and Jharkhand the problem is that firstly in many areas even revenue settlements have not done. There is no survey and no revenue settlement. People are living there. Those land have been declared forests against without any settlement. On the top of that, they have been declared either a sanctuary or national park. These people are stuck inside. The interpretation of this which the Wildlife Authorities are giving in that no new rights can be acquired after an area is declared a protected area. These are not new rights; these are old rights which have just never been settled. So, the necessity is that rights of everybody must be settled. So, the first necessity is that rights of everybody must be settled. The second thing is that in the case of sensitive wildlife habitat or ecologically sensitive areas—that is really what the core area is all about—there need to be a transparent consultative process which takes into account conservation scientists, local knowledge-holders and the local communities to develop site-specific approaches on how once these rights are recognised that within the protected areas how should they be modified or adapted in line with wildlife thing. So, I have given a lot of details about that which may be considered.

My fifth point is that after a lot of fighting we did manage to get into the Bill that the rights of both spouses would be entered on any legal title. But I still have serious problems with the formulation. That is one of the main things which I want to really focus after this is that the rights under the Bill are both for private land titles which could be lands under agriculture, under villages or whatever but also for common property rights. Many of the rights, almost half the rights are to common property resources. And whether it is minor forest produce, which will come from a common forest area, whether it is the user-folk's rights to meet their needs from a community forest resource, from the local forest which they always have been doing. Now, where are the women's rights going to come into that? So, I have suggested a reformulation here. Well, it is not really quite a reformulation but what I am saying is, ensure equal recognition of women's rights including the rights of single women. I think, in this there is one problem with the current formulation that they may not be independent household. Often single women are living within household but they have actually to take care of their own needs. So, these rights should not only be to individual land titles but also all common property rights and rights, over minor forest produce which is recognised under the Bill.

The second thing is about the provision is that, I think, almost by mistake it has been put in the wrong place. At present it is under section 4(5) which makes it applicable only to rights recognised under section 3(a). So, this need to be moved.

The next is, I think, it will be desirable if the Bill also provides for In-Situ Rehabilitation of those who are not considered eligible, especially the very poor ones.

Then, I think, again a number of people have already raised this but, I think, this Committee does need to really seriously think about what happens to these rights after they are recognised. Are they going to be handed over to a PASCO or Tata or Birla? The Bill says that people cannot alienate. But is the Government going to have the same totally unquestioned right to extinguish these rights? I do feel that it will be very desirable if somehow these rights can be protected against future acquisition. At least what can be provided is this. PESA says that no land acquisition can take place without consulting the Gram Sabha. I think, this Bill should say that no land acquisition should take place without the prior informed consent of the Gram Sabha. Let us at least provide for that. If this Bill does not do it, which one will?

Now, I move on the next category of points. Here I feel, as I said, there are 12 rights listed under the Bill. Out of which, at least five are primarily common property rights. Yet, the way these rights are framed, there is too much ambiguity and the danger is that in the end they will never really materialise because even the claimants will not understand what that provides for and while these rights are recorded, they may not really be properly understood.

I have suggested a number of reformulations for sections 3(b), 3(c), 3(d), 3(e) as well as 3(j). I shall be most grateful if the Committee gives due sort of attention is that in addition to rights to land for agriculture. There are common property rights which are on lands which will remain by and large forest lands. There are also communal agricultural lands like shifting cultivation and things like that which is communal tenures. It is not individual land cultivation. But when it comes to rights to traditional customary rights like grazing, nomadic pastoralist, etc. fisher-folk which have not been included because a lot of rivers, water bodies have also been declared forests, and those rights must be recognised. But what is very important is that the Bill should very clearly state that these rights shall apply to a forest area falling within the customary boundary of the village, not the administrative official revenue boundary, and that these customary boundaries shall include reserve and protected forests wherever appropriate.

I will say this because in the case of PESA what is happening is this. The Forest Department says that PESA does not apply to reserve and protected forests. So, what is the meaning of ownership of minor forest produce because all the forests are out? In Orissa, actually the Government has transferred ownership of minor forest produce, over 68 minor forest products, to the Panchayats. But once again the Forest Department is saying that reserve forests do not come within that.

What we have to work towards and, I think, the Bill has a great potential for democratizing governance of our forests because a lot of these forests have traditionally been customary, communal property resources, post Independence much more than even during the British time. They were declared State forests through, you know, blanket notifications. So, this Bill should create space for people to recuperate that as community forest resources with clearly demarcated boundaries which must be entered in revenue land records and forest records. Here I would like to point out to you that the one example in the country is that of Van Panchayats in Uttaranchal which were actually provided by the British in 1931 because of all these protests by villagers against reservation of forests, and till today those Van Panchayat forests firstly when they are constituted, the boundary of the area in which people have customary rights is demarcated and entered in land records. I think, this is very important because at present the MoEF has its Joint Forest Management Programme in which the villagers have no security of tenure and it is only the Forest Department officials who run the show. When there is money, things work. Once money finishes, everything collapses. In this, we must genuinely transfer not only rights over produce but the authority to manage these areas to local institutions of the right holders within the Gram Sabha, either to the Gram Sabha if all Gram Sabha members are right holders or to a Sub-Group of Gram Sabha members whose rights are recognised. So, I have suggested a number of reformations so that it is clarified that each one of these rights is tied to a specific area with a clear boundary and that the management of that area, the right to protect, manage, regenerate and conserve must be vested in the community institution.

Unless that is done, this Bill will not get any forest rights to the people. It may get them some land rights over the actual land under cultivation. But as we know, in these forest areas, agriculture is not really viable without access to the forest resources.

I have also mentioned that it is important to review the two-and-a-half hectare blanket upper limit because once again under section 3(a), it covers both individual and common land. So, how will this two-and-a-half hectare limit apply to commonly cultivated lands? It is because all those systems are very diverse. Many required large areas to be kept fallow. I have seen it in Dungarpur. Along with their agricultural land, they have land, which is either kept fallow, or is the grassland of the individual family. Are we going to say that all those types of lands are going to be snatched away? Many of those systems will become unviable. I personally feel that 'as is where is basis' is probably the best if at all the two-and-a-half hectare limit should only apply to sectoral cultivation. Ideally, the limit should be the same as the limit in the State for similar ceilings. Why should this particular group of right claimants be discriminated against if the State itself has different limits?

I would just like to read out, particularly, the amendment to section 3(j) which talks about the right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting or conserving. What I have suggested is that it should say very clearly that it is a community rights

and authority to protect, conserve or manage for sustainable use with entitlement to all sustainably harvestable produce, including timber. If the British monopolised Government control over timber because they wanted to exploit it, why should that be continued today? In Himachal Pradesh, they have timber rights recognised by the British. Why do we say that? At one point, the Bill says that people will not commercially harvest timber. Where it is harvestable, why should not the community have first right over it? In the original Van Panchayat rules and till today, in fact, they had 100 per cent entitlement to all forest produce. So, if we want to talk about empowering forest dwellers and tribals and to improve their livelihoods, their entitlement over all forest produce within limits of sustainable management needs to be determined on location specific basis, including reserve and protected forests.

About the Gram Sabha, I think, a lot of people have already mentioned. I do feel that it has to be the primary authority for determining, and the officials should not have the rights.

MR. CHAIRMAN: I think you mentioned about the Gram Sabha. That has also been brought to our notice by several others who come before us. So, we will take note of that. That is the fourth category.

MS. MADHU SARIN: It is not just the Gram Sabha. In this process and procedure, I think, while in the first draft of the Bill, we had included a lot of information about the nature of evidence, the procedure and the duties of the Government in ensuring that every claimant is aware of capacity building support of the claimants. All that, at some stage it was decided that it would be shunted to the rules. But the more we think about it, it is very, very important that it is brought back into the Bill because we never know what will come into the rules eventually. So, the responsibility of the Government must be specified.

There is one very important point. The Bill does not anywhere say what will happen once these rights are recognised. It must say very clearly and these are available on page 13. I have actually highlighted the first two points. It must clearly bind the Collector to enter the rights in the record of rights.

MR. CHAIRMAN: We will certainly discuss these points in detail.

MS. MADHU SARIN: The second thing, I think, is that under the Forest Conservation Act, at present it is only the MoEF which diverts. I think under the Bill, once the whole procedure has been completed, once the district committee has forwarded the recognised rights, the State Government must enter in the records and the MoEF should only be informed. It is because if it is again sent to Delhi, they will sit on it or they must be made absolutely bound to enter that.

My fourth category of point is really that the Bill does not say anything about what happens once the rights are recognised.

MR. CHAIRMAN: So, we will certainly give full consideration to the fact that what should actually happen after the rights are recognised.

MS. MADHU SARIN: It is because the tenure of the committee is not very clear. There must be support. There must be multi-agencies' involvement.

श्री महावीर भगोरा: हमें खुशी है कि यह जो बिल बना, आप इसकी ड्राफ्ट कमेटी की मैम्बर थीं, आपके सजेरेंस से ही यह बिल बना होगा, फिर भी आपने बहुत ज्यादा सुझाव दे दिये हैं। मैं यह जानना चाहता हूँ कि हम यहां सिर्फ उनके कब्जे में जो जमीन है, उसके बारे में ही बात कर रहे हैं, उनकी आवश्यकताओं की वन में जो चीजें हैं, जो माइनर फॉरेस्ट प्रोड्यूस हैं, वह नियमों में, कानून में सब है, पर कल हमारे कुछ बंधु आये थे, उन्होंने बताया कि चारा लाने के लिए उन्हें 20 किलोमीटर जाना पड़ता है। इसी तरह से पशुपालक हैं, आदिवासी बकरियां पालते हैं, भेड़ पालते हैं, सब चीजें अगर इस जमीन में नहीं मिलेंगी तो क्या इस बिल में ऐसी कोई चीज भी रखी जाये कि जो आवश्यकता की चीजें हैं, उसकी हम सीमा तय करेंगे, उसी में अपनी आवश्यकता की चीजें जो फॉरेस्ट में मिलने वाली हैं, ऐसा कुछ उपजायें, ऐसा कुछ इस बिल में करा सकते हैं? अगर आदमी वहां रहेगा तो खाली खेती करेगा, ऐसा नहीं है। वह वहां मकान बनाएगा, पशुपालन करेगा, अन्य आवश्यकताओं की पूर्ति करेगा तो उनको प्रेरित करने वाली बात की खाली जंगल काटकर कब्जा करो और खेती करो, ऐसा नहीं करके वह आगे भी वन को बढ़ाये, ऐसी व्यवस्था इस बिल में होनी चाहिए कि नहीं? चूंकि आप सब जगह घूम चुकी हैं, जिन्होंने अपनी रोजी-रोटी चला रखी है, कब्जा कर रखा है तो आप इसमें क्या महसूस करती हैं?

सुश्री मधु सरिन: जैसा मैंने अभी बोला कि इस बिल में केवल खेती की जमीन का प्रावधान नहीं है, उसमें जंगल की भूमि का उपयोग करने की भी अधिकार है। बहुत सारी जरूरतों की जो आप बात कर रहे हैं, वे वन भूमि से ही होंगी और उस पर समुदाय को अधिकार देना बहुत जरूरी है, क्योंकि वह सामुदायिक भूमि ही थी। केवल मध्य प्रदेश में इंडिपेंडेंस के समय 94 लाख हेक्टेयर सामुदायिक भूमि को 1-2 लाख हेक्टेयर सरकारी वन बना दिया गया। उस भूमि को सामुदायिक भूमि बनाने की जरूरत है।

श्री महावीर भगोरा: क्या यह इस बिल में है?

सुश्री मधु सरिन: जी हां, ऐसा इस बिल में है। इन शब्दों को और स्पष्ट करने की जरूरत है। जो भूमि रिज़र्व फारेस्ट के दायरे में आ गयी है, उस पर भी हक लागू होने चाहिए।

श्री महावीर भगोरा: समुदाय तो लम्बा-चौड़ा नहीं होता है, लेकिन जो फारेस्ट इलाका है, उस पर कब्ज़ा करके कमा-खा रहे हैं, ऐसा समुदाय कितने किलोमीटर को कवर करता है? पहाड़ी इलाकों में तो बहुत बड़े एरिया में कवर करते हैं।

सुश्री मधु सरिन: समुदाय तो अलग-अलग तरह के होते हैं। गुर्जर इत्यादि इस तरह के समुदाय हैं जो एक बार ऊपर की तरफ जाते हैं, फिर बाद में नीचे की तरफ आ जाते हैं। इस तरह के समुदायों का एरिया काफी लम्बा कवर होता है।

श्री महावीर भगोरा: हमारे यहां तो एक गांव का एरिया 40-50 किलोमीटर में होता है। इसका मतलब जंगलों में तो इसकी कोई सीमा नहीं होगी।

सुश्री मधु सरिन: दोनों को मैनेज करने की जरूरत है।

श्री महावीर भगोरा: यहाँ हम आपसे जानना चाहते हैं कि कैसे मैनेज किया जाए?

MS. MADHU SARIN: Sir, I want to say one thing more here.

MR. CHAIRMAN: If there is anything else that you would like the Committee to consider, then you can send it in writing to the Secretariat. We will surely take note of everything, the note that you would send.

Thank you very much.

MS. MADHU SARIN: Thank you very much.

(The witness then withdrew)

WITNESSES EXAMINED:

1. Shri Dhulichand, Secretary, Rajasthan State Committee.
2. Shri Sanjay Parate, Secretary, Chhattisgarh State Committee.

MR. CHAIRMAN: Shri Dhulichand and other colleagues, I welcome you all to this Committee of ours. As you know, this Joint Select Committee has been constituted to give recommendations on the Bill on the recognition of forest rights for Scheduled Tribes. It is basically to undo the historical injustice that has been done to these categories of forest dwelling people over the centuries.

We have just received your memorandum. If there is anything else that you would like to add or any specific issue that you would like to stress on, you are most welcome to do so. But please be brief and within 15 to 20 minutes you can present your views. Afterwards, if hon. Members want to ask some queries, then you may be in a position to respond.

But before that please introduce yourself before the Committee for the record purpose.

SHRI DHULICHAND: Sir, I am the Secretary, Rajasthan State Committee of the All India Kisan Sabha.

I welcome the introduction of this Bill. I want to submit some of the amendments which, I believe, will be considered for amendment.

I want to make a submission that if you want to undo the injustice which has been meted out to the tribals, then we should amend this Bill in such a way that all the tribals who are living in the forests and outside can get the forest rights on the land which they are cultivating. For that, the provisions which are here in the Bill should be amended. The 'cut off date' year should be changed. In fact, this Bill will give a sort of instruments in the

hands of the forest machinery to evict the tribals. So, this cut off year should be changed and this should be the date of notification Bill.

Secondly, the ceiling limit is unscientific and discriminatory because it does not consider the quality of lands, soil irrigation facilities, geological and other situations prevailing in the tribal area. It is also discriminatory because in various States, there are different ceiling limits for the agricultural lands which are more, twice or thrice than the limit fixed in this Bill.

Thirdly, the final authority to decide about the matters and about the compensation should be the Gram Sabha. It should be the decision-making authority. Otherwise, if this power is given to the district committees, then officers will have the rights to evict the tribals from their lands.

Fourthly, I want to stress that there should not be any discrimination while giving or vesting forest rights to the tribals. Hence, all tribals living in forest areas—whether they are living in the reserved forests or living in the national park areas or in the Sanctuary areas, whatever be the quality of the forest and whatever be the definition of forest area—should be given equal and permanent rights.

Lastly, this Bill should fix the Centre's responsibility for the tribals because if we confer the forest rights to the tribals and if we do not take into consideration other things like supply of inputs, giving irrigation facilities, power facilities, given education and health, roads and other things, giving these rights also will not fulfil the task. These are some of the points which I wanted to make before this august Committee.

Now, my other friends will make some other important points.

श्री संजय पराते: महोदय, विधेयक की भावना का समर्थन करते हुए मैं दो-तीन पॉइंट पर ही अपनी बात रखना चाहता हूँ। इस बिल में फॉरिस्ट डवैलिंग शब्द रखा गया है, जिसको विस्तृत रूप से परिभाषित करने की जरूरत है। हमारे छत्तीसगढ़ में हजारों परिवार राजस्व ग्राम में रहते हैं, लेकिन फिर भी वे वन भूमि में खेती करते हैं, यदि इस परिभाषा को संकुचित कर दिया जाएगा तो वे लैण्ड होल्डिंग के राइट से वंचित हो जाएंगे। छत्तीसगढ़ में अभुझमार देश का बहुत पिछड़ा हुआ एरिया है। वहां दो सौ से ज्यादा गांव हैं, जहां सरकारी मशीनरी तक की पहुंच नहीं है। वे झूम की खेती करते हैं, पूरा गांव झूम की खेती करने में शिफ्ट हो जाता है। यही स्थिति त्रिपुरा और दूसरे नार्थ-ईस्ट एरिया की है। मेरा अनुरोध है कि इस बिल में झूम कल्टिवेशन के बारे में उचित प्रावधान किए जाने चाहिए ताकि उनके सामुदायिक अधिकारों को सुनिश्चित किया जा सके।

इस विधेयक में उनके अधिकारों के उल्लंघन के बारे में सजा का जो प्रावधान दिया गया है, हमें लगता है कि वह बहुत ही कठिन प्रावधान है, क्योंकि जिस तरह आदिवासी लोगों का शोषण किया जाता है, दूसरे निहित स्वार्थी तत्व उनका उपयोग करते हैं, बहुत संभव है कि इस प्रावधान का दुरुपयोग किया जाए। हमारा अनुभव है कि आदिवासियों पर झूठे केस लादे गए हैं। छत्तीसगढ़ में आदिवासियों पर कई लाख झूठे केस लादे गए हैं। राज्य सरकार ने अभी उन्हें वापिस लेने की घोषणा की है। हमारा अनुरोध है कि अभी जो सरकारी कानून है, अगर वे उस कानून का उल्लंघन करते हैं, अपनी ड्यूटी पूरी नहीं करते, तो उन्हें सजा मिलनी चाहिए, लेकिन इसका मतलब यह नहीं है कि उन्हें पूरे अधिकारों से वंचित कर दिया जाए और फॉरिस्ट से निष्कासित कर दिया जाए। यदि यह प्रावधान बना रहता है तो उन्हें वन भूमि से बेदखल करने का बहुत बड़ा हथियार हम मशीनरी को देने जा रहे हैं। यदि हम ऐतिहासिक अन्याय को दूर करने की बात करते हैं तो इससे यह ऐतिहासिक अन्याय जारी रहेगा।

मुझे इन्हीं कुछ बिन्दुओं पर आपका ध्यान आकर्षित करना है। धन्यवाद।

श्री राजेन्द्र सिंह मुंडा: सभापति महोदय, मैं तीन बिन्दुओं पर आपका ध्यान आकर्षित करना चाहूंगा। इस बिल में विस्थापन के बारे में बात ही नहीं की गई है। हमारे यहां कारखाने, खान-खनिज, रोड, डैम के नाम से आजादी के बाद 15 लाख लोगों के विस्थापित होने का इतिहास है। आजादी के बाद 75 प्रतिशत लोगों को अभी तक पुनर्वास, मुआवजा, नौकरी और जमीन मयस्सर नहीं है। इसलिए इसे भी बिल में जोड़ा जाए कि उन्हें जंगल में जमीन मिली है, वे जंगल में रह रहे हैं, उनकी खेती-बाड़ी और जंगलात उनके अपने हैं, उसमें पेड़ के पट्टे होने चाहिए।

दूसरी बात इसी से जुड़ी हुई है। झारखंड में 42 एमयू किए गए हैं। उसमें खनिज, लौह अयस्क, कोयला, बॉक्साइट का खनन उद्योगपतियों द्वारा किया जाने वाला है। यूं तो उसमें 23 प्रतिशत जमीन ही कृषि योग्य है। 23 प्रतिशत कृषि की जमीन के अंदर से ही एमयू के लिए जमीन ली जाती है, तो यह किसानों के लिए बहुत ही घातक है। इसलिए इसे भी बिल में जोड़ा जाए क्योंकि इस तरह विस्थापन और प्यादा बढ़ेगा।

सन् 1999 से 2000 को ग्राम सभा वर्ष घोषित किया गया था। पूर्व प्रधानमंत्री श्री अटल बिहारी वाजपेयी, ग्रामीण विभाग के राज्य मंत्री की फोटो के साथ छपा था, श्री के०आर० नारायणन की फोटो भी थी, उसमें घोषित किया गया था कि प्राकृतिक संसाधनों का प्रबंधन एवं नियंत्रण ग्राम सभा करेगी। यह लागू नहीं हो रहा है बल्कि सरकार ही एमयू करके बड़े-बड़े उद्योगपतियों को दे रही है।

सभापति महोदय: धन्यवाद। हमने आपके सब प्वाइंट्स नोट कर लिए हैं। हम जब रिपोर्ट लिखेंगे, तो इन सब प्वाइंट्स को ध्यान में रखेंगे।

(तत्पश्चात् साक्षी बाहर चले गए)

- परीक्षित साक्षी: 1. श्री बहादुर सिंह धाकड़, मैम्बर, स्टेट कमेटी, मध्य प्रदेश
2. श्री जसविन्दर सिंह, मैम्बर, स्टेट कमेटी, मध्य प्रदेश

सभापति महोदय: श्री बहादुर सिंह धाकड़ एवं साथी, मैं समिति में आप सबका स्वागत करता हूँ। आपके पास बिल है। आपका मेमोरैंडम हमारे पास है। यदि आप कुछ और बताना चाहते हैं तो संक्षेप में बता दीजिए। उसके बाद यदि माननीय सदस्य प्रश्न पूछना चाहेंगे, तो पूछ लेंगे।

(डायरेक्शन 58 पढ़ा गया)

(परिचय करवाया गया)

श्री बहादुर सिंह धाकड़: माननीय सभापति महोदय और माननीय सदस्यगण, आपने मध्य प्रदेश आदिवासी एकता महासभा को अपनी बात कहने का अवसर दिया, इसके लिए हम कमेटी का आभार व्यक्त करते हैं। मेरा सबसे पहला निवेदन है कि इस बिल की धारा 4(2) में जो कट-ऑफ लाइन 25 अक्टूबर, 1980 की दी गई है, वह नहीं होनी चाहिए। इसके अलावा धारा 4(4) के बारे में हमारा निवेदन है कि उसमें एक प्रोवीजो जोड़ा जाना चाहिए, मध्य प्रदेश और छत्तीसगढ़ का अनुभव है कि पिछले दस सालों में बड़े पैमाने पर वन भूमि से बेदखली हुई है, बहुत बड़े पैमाने पर फॉरेस्ट लैंड से एक्विशन हुआ है। एक रिपोर्ट के अनुसार केवल तीन साल के अंदर 16 लाख आदिवासी परिवारों को बेदखल किया गया है। मध्य प्रदेश के कुल एरिया की 32 प्रतिशत लैंड फॉरेस्ट है उस फॉरेस्ट लैंड से 16 लाख परिवारों को बेदखल किया गया है। आप अंदाजा लगा सकते हैं कि जो परिवार बेदखल कर दिए गए हैं, जो अभी तक उन अधिकारों का उपभोग कर रहे थे, अब वे उन अधिकारों से वंचित हो गए हैं। इसलिए उसमें धारा 4(4) के पश्चात् एक प्रोवीजो जोड़ा जाए कि अगर दस साल के अंदर कोई भी फॉरेस्ट डेवलपिंग आदिवासी बेदखल किया गया है, तो उसे पुनः रीइनस्टेट किया जाए और इस बिल में जो अधिकार दिए गए हैं, वे उसे भी दिए जाएं।

दूसरा निवेदन है कि इसमें 2.5 हैक्टेयर की जो सीलिंग लिमिट दी गई है, वह नहीं होनी चाहिए। इस संबंध में हमारा सुझाव है कि हर स्टेट के सीलिंग लॉ हैं, जैसे मध्य प्रदेश, छत्तीसगढ़ का है। उस सीलिंग लिमिट में मध्य प्रदेश के एक्ट में 10 एकड़ सिंचित और 18 एकड़ सिंगल व्यक्ति को रखने का अधिकार है। अगर उसके परिवार के और लोग हैं, तो प्रति एडल्ट मैम्बर 3 एकड़ और बढ़ जाएगी। एक परिवार को 18 एकड़ से लेकर 54 एकड़ तक असिंचित जमीन रखने का अधिकार है। उसी लॉ के अनुसार किया जाना चाहिए। उसमें यह जोड़ा जाना चाहिए कि सीलिंग लिमिट 2.5 हैक्टेयर की बजाए संबंधित राज्य के सीलिंग लॉ के अनुसार हो। इसके साथ-साथ दूसरा निवेदन धारा 4(5) के पश्चात् एक सब-सैक्शन और जोड़े जाने का है। खेती के लिए अधिकार दिए जाएंगे, आवास के लिए, फॉरेस्ट प्रोड्यूस के लिए अधिकार दिए जाएंगे। मध्य प्रदेश और छत्तीसगढ़ के सैपरेट आंकड़े मुझे मालूम नहीं हैं, जब संयुक्त मध्य प्रदेश था, तब मध्य प्रदेश में डीग्रेडेड फॉरेस्ट का सबसे ज्यादा एरिया था।

वह एरिया 101 लाख हैक्टेयर था। यानी 32 प्रतिशत एरिया का 101 लाख हैक्टेयर है जहां कोई हरियाली नहीं होती। कुछ माफियाओं ने उस पर कब्जा कर लिया है। हमारा निवेदन है कि सब सैक्शन जोड़कर यह प्रोविजन किया जाये कि जंगल में रहने वाले आदिवासियों को पेड़ लगाने दिये जायें। इसका आशय यह होगा कि इससे जंगल बना रहेगा। इसके साथ-साथ यह प्रावधान भी होना चाहिए कि जिस

व्यक्ति ने वह पेड़ लगाया है, उसको उसका मालिकाना अधिकार दिया जाये और उस पेड़ से जो चीज पैदा होती है, उसका अधिकार भी उसी को हो। मैं इस संबंध में थाइलैंड का उदाहरण देना चाहता हूँ। वहाँ पर 20-30 एकड़ में शी टीयर पेड़ लगाने की व्यवस्था की थी। बाउंड्री में इमारती लकड़ी के यानी अधिक लम्बाई वाले पेड़ लगाये गये। उसके बाद उससे छोटी लम्बाई के पेड़ लगाये गये तथा उसके बाद सबसे छोटी लम्बाई के पेड़ लगाये गये। वे फलदार पेड़ हो सकते हैं। उसके बीच के एरिया में खेती होती थी। बड़े पेड़ों की वजह से कार्बन डाइआक्साइड का खेती पर कोई असर नहीं होगा। इससे दो फायदे होंगे। पहला फायदा यह होगा उस एरिया में जो लोग निवास करते हैं, उनकी आजीविका चलेगी और दूसरा ऐनवायरनमेंट और बायो-डायवर्सिटी का भी प्रोडक्शन होगा। हमारे संगठन के हिसाब से दोनों चीजों से बचने के लिए यह सबसे प्रॉपर तरीका होगा। अब वन विभाग वालों ने आपसे उलटी बात कही होगी।

मेरा अगला निवेदन है कि इसमें सब डिबीजनल लेवल कमेटी, डिस्ट्रिक्ट लेवल कमेटी और स्टेट लेवल कमेटी बनाने का प्रावधान है। यह भी प्रावधान है कि फॉरेस्ट आफिसर्स होंगे, वे फॉरेस्ट राइट, फॉरेस्ट मैप को तैयार करेंगे। लेकिन उसका आधार क्या है, उस संबंध में नियम बनाने के लिए लिखा है। हमारा कहना है कि नियम बनाने से काम नहीं चलेगा। इस बिल में प्रावधान क्या होगा क्योंकि आप जानते हैं कि आदिवासियों की क्या स्थिति है? उनके पास कोई प्रमाण नहीं है। मध्य प्रदेश और छत्तीसगढ़ का हमारा अनुभव यह है कि फॉरेस्ट आफिसर्स आकर जंगल की जमीन पर काबिज हो जाते हैं जबकि वे वहाँ पीढ़ियों से बसे हुए हैं। हर साल वे वसूली करके ले जाते हैं। उनके पास इसका कोई रिकार्ड नहीं है और न ही कोई प्रमाण है। ऐसी स्थिति में आवास अपने अधिकार को कैसे बचायेगी? इसलिए उसके लिए एक प्रोविजन होना चाहिए कि फॉरेस्ट सब डिबीजनल कमेटी, डिस्ट्रिक्ट लेवल कमेटी को वहाँ बसे हुए लोगों के साक्ष्य के आधार पर अधिकार दिये जायें अथवा जो ग्राम सभा शब्द आया है, उसके आधार पर दिया जाये। ग्राम सभा के बारे में हमारा निवेदन है कि कानून में ग्राम सभा की जो परिभाषा है अथवा संविधान सभा के 43-44वें संशोधन के तहत ग्राम सभा की जो परिभाषा है, वह आदिवासी क्षेत्रों के लिए उपयुक्त नहीं है। आदिवासी एक जगह नहीं बसे हैं, एक गांव एक जगह नहीं बसा है। 10 परिवार एक जगह बसे हुए हैं और 10 परिवार 10 किलोमीटर दूर बसे हैं जबकि वह विलेज एक ही है। इसमें ग्राम सभा का स्वरूप नहीं होगा, जो सब विलेज है, जिनको भिन्न-भिन्न नामों से जाना जाता है। हमारा कहना है कि उनको ही ग्राम सभा का रूप माना जाये ताकि उनके द्वारा बताया जाये कि यहाँ वह निवास करता है या नहीं?

मैं विधेयक की धारा पांच की क्लॉज डी के बारे में कुछ कहना चाहता हूँ।

Clause 5 (d) states that:

"Inform the Gram Sabha and to the Forest Authorities any activity in violation of any of the provisions of The Wild Life (Protection) Act 1972, The Forest (Conservation) Act 1980, or the Biological Diversity Act 2002;"

इन तीन एक्ट का वायलेशन होता तो ग्राम सभा फॉरेस्ट आफिसर्स को रिपोर्ट करेगी। हमारा निवेदन है कि 1980 का फॉरेस्ट एक्ट है, उसमें इस बिल की लाइट में कोई संशोधन प्रस्तावित नहीं है। जब संशोधन नहीं करेंगे, तो अभी भी जंगल में निवास करने, प्रोटेक्शन फॉरेस्ट, रिजर्व फॉरेस्ट में निवास करना अथवा फॉरेस्ट प्रोड्यूस कलैक्ट करना ऑफेंस है और उनका वायलेशन होगा। ये अधिकार दिये जायेंगे तो इन अधिकारों से वायलेशन होगा। इसलिए निवेदन है कि इस बिल के तारतम्य में, इस बिल के प्रावधानों के विपरीत उन कानूनों में जो प्रावधान हैं, उनमें भी संशोधन किया जाये। अंत में, मैं कहना चाहता हूँ कि जंगल के बाहर भी यानी उसकी सीमा पर आदिवासी बस्तियाँ हैं। वे आदिवासी बस्तियाँ भी जंगल से फॉरेस्ट प्रोड्यूस कलैक्ट करती हैं। जैसे पत्ता, फल आदि। अब उनको अधिकार नहीं दिये जायेंगे क्योंकि वे शैड्यूल ट्राइबल्स नहीं हैं। इसलिए उनका भी प्रावधान होना चाहिए कि एडजर्निंग एरिया में जो ट्राइबल्स रहते हैं, वे परम्परागत तरीके से उनका उपयोग कर रहे हैं इसलिए उनकी भी सुरक्षा होनी चाहिए। यह प्रावधान इसमें जोड़ा जाना चाहिए।

सभापति महोदय: बिल में कोई नया सैक्शन है, तो उसके बारे में आप बताइये।

श्री बहादुर सिंह धाकड़: हमने उस संबंध में नोट दिया है।

सभापति महोदय: वह नोट हम पढ़ लेंगे। आपने हमें जो सुझाव दिये हैं, उस पर हम आपस में बातचीत करके उसे कंसीडर करेंगे। आपका बहुत-बहुत धन्यवाद।

श्री सुखरंजन उसेन्डी: माननीय सदस्यगण, मुझे यहाँ बोलने का मौका मिला है इसलिए मैं आप सबका हार्दिक अभिनंदन करता हूँ। आदिवासी वन अधिकार मान्यता विधेयक, 2005 रखा गया है इसमें जो आदिवासी जंगल में रहते हैं, उनका मुख्य रूप से जीविकापार्जन

वनों पर आधारित होता है। जैसे वह लाख चिरंगी, हर्षा, बेड़ा, आंबला, महुआ, इमली आदि पर निर्भर रहते हैं। सरकार द्वारा इसका समर्थन मूल्य निर्धारित नहीं किया गया है। मेरी विनती है कि शासन के द्वारा इनका समर्थन मूल्य निर्धारित होना चाहिए ताकि व्यापारीगण और कोचिया के द्वारा उसको आँने-पौने दामों में खरीद कर जो उनका शोषण किया जाता है, वह न हो सके और उनका आर्थिक विकास हो सके।

श्री बुदा सेन सिंह गौड़: हम आदिवासी हैं और हमको वन अधिकारियों द्वारा सजा दी जाती है। हम केवल वन जीवन के लिए आधरित होते हैं लेकिन हमें जंगल अधिकारियों द्वारा परेशान किया जाता है। मेरा इतना ही कहना है कि हमें वन अधिकारियों द्वारा परेशान न किया जाये।

श्री जसविन्दर सिंह: महोदय, नैशनल पार्क ऑफ सेंचुरी के बारे में हमारा इतना ही निवेदन है कि इसमें अभी जो प्रावधान किया गया है, उसके तहत उनको पांच साल का पट्टा दिया जायेगा।

उसके बाद वर्तमान प्रावधान जो रहता है, उसके लिए वहां से एक्ट कर दिया जाएगा और दूसरी जगह उनके विस्थापन की कोई व्यवस्था नहीं होगी। इसलिए मेरा यह निवेदन है कि पांच साल के लिए उनको मालिकाना हक दिया जाए। उसके बाद कहीं दूसरी जगह यदि रीलोकेट करना है तो वे रीलोकेट हो जाएं लेकिन उनको वहां से किसी प्रकार से बेदखल करने की कोशिश न की जाए।

(The witness then withdrew)

WITNESS EXAMINED:

1. Shri Ambrish Mehta, Action Research in Community Health and Development;
2. Shri Rajesh Mishra, Action Research in Community Health and Development.

MR. CHAIRMAN: Shri Ambrish Mehta and Shri Rajesh Mishra, we welcome you all to this sitting of the Committee. You have already got the copy of the Bill. We have also received your memorandum and we have gone through it. You know that this Bill is basically to undo the historical injustice that has been done to the forest dwelling community over the years.

(Direction 58 was read out)

Since, we have already gone through your memorandum, we shall consider every aspect that you have raised in this submission. If there is anything in addition to that or anything that you would like to stress on, please make your point. But please be brief.

SHRI AMBRISH MEHTA: Thank you, very much Mr. Chairman and other Members of the Committee. Sir, we have made two submissions. One is the original one and the other is having some supplementary points. So, we would highlight three or four points from the supplementary submission which we have made.

This Bill provides the rights which are relating to land and certain other rights which are relating to forest produce and management of forest etc.

About the land related rights, the intention seems to be that the title shall be given to the families who are cultivating these lands or are having their homes.

But the Chapter IV on these procedure and authorities for providing these Forest Rights does not have any specific provision that this title shall be given. It is written that "the decision of the District Level Committee would be final and binding." It ends at there. But afterwards, there is no provision that Collector shall pass orders giving titles to the families; or it would make appropriate changes in the land records. So, no specific provision in this Section 6 of the Act is there in the Bill. Therefore, we feel that there should be a clear-cut provision regarding this.

In this regard, one should also keep in mind that these are forest lands and while diverting these forest lands and giving the titles to the tribals, the permission of the Ministry of Forest and Environment is also necessary.

So, either a consolidated case has to be prepared and sent to the MoEF for permission and the Bill should have a provision that MoEF should grant permission in all these cases without any additional conditions of MPV or compensatory afforestation, or as an alternative, the Bill should have a provision that there would not be any necessity to get permission from the MoEF in all these cases and Collector can take decisions and pass appropriate orders. But either way, a clear cut provision regarding this should be there. This is what we feel.

Number two, similarly in the case of non-land related forest rights where you have management rights, here in all these cases also, the Collector must pass orders, and there should be an agreement between the Forest Department and the concerned Gram Sabha which clearly enlists the rights and duties of both the parties, and which would be binding. This would give a legal binding to the whole arrangement which are being vested.

Another point we would like to raise on is about the role of Gram Sabhas. This is also an important matter and a lot of discussion is going on here. We feel that as far as the process of determination and final examination of the rights goes, the Gram Sabha must play a central role. But this does not mean that the Government departments do not have to do anything until and unless the claims are received from the Gram Sabha. Specially so, the Ministry of Tribal Affairs and the Revenue Department should play 'proactive role, conduct training camps, awareness camps, explain the provisions of this Bill. They should tell what the Gram Sabhas are expected to do.

Sir, in this Bill, Gram Sabha is also given a duty to carry out the surveys and measure the lands, and prepare maps. We feel that this is something which the Gram Sabhas cannot do on their own. You require trained surveyors to measure land and prepare maps and to know actual extent of land. At the same, it is also necessary that the claims are based on these actual surveys. Otherwise, in most of the previous exercises, the rights have been recognised and some amount of land is being given. But no verification of actual measurement is being carried out. So, we feel that trained surveyors of the District Revenue Department should be put at the disposal of Gram Sabhas, and they shall carry out the surveys and give the list and maps to the Gram Sabhas, after which the Gram Sabhas would take appropriate decisions. So, once the Grama Sabha initiates the process, the surveyors from the Revenue Department should be placed at their disposal. They should assist the Gram Sabhas in carrying out the surveys and preparing maps. Otherwise, most of the villagers on their own, would not be able to carry out this exercise. These are a couple of main points.

Another point we need to make is on the Forest Title in Section 3(j) which talks about the right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use. This also needs a little bit of modification in the sense that traditionally conserving and protecting many of the areas the people are traditionally conserving and protecting, those are also declared as reserved forests or protected areas. There, there rights are not recognised as such. So, this should extend to reserved forest and protected areas also. This should be modified to read something like: "Their right to control, protect, regenerate, conserve and sustain all forest resources" which fall within the traditional boundary of the village or the Gram Sabha. That is one thing.

Appropriately, Section V on penalties which are to be imposed, should be basically left to the Gram Sabhas. Once the Gram Sabhas would be managing it, and so, there should be a provision that the Gram Sabhas would have the right to impose penalties on forest offences. This Bill is basically to give rights. So, there should not be any clauses for imposition of penalties. One thing can be mentioned that Gram Sabhas can do this.

Another important point — other points are on cut-off date, inclusion of non-tribal, and they are in discussion and I think, we need not repeat. We have already made our submission—is on the provision of core areas, that rights should be given only provisionally in the core areas of sanctuaries and forest. We are working in Surpan Sanctuary area and we are aware of many of the problems, which this can take care of. Core area of sanctuary, is such an undefined term. Even the Wildlife Protection Act also does not have any definition as to what is core area and what is not a core area. So, these issues are very much there. In sanctuaries, there are other people also living who have their own private lands, and they also have to be rehabilitated. So, these rights should be

given permanently; there is no point in keeping these provisionally. You give the rights permanently; and if you have to resettle people from the core areas — which would be core areas; how scientific surveys would have to be carried out is a separate matter altogether — rights have to be given permanently even in protected areas and they shall be resettled along with the other people who are also having rights with due resettlement process. Although the overall history is not good that wherever the Forest Department has tried to resettle people in India, our experience so far is pretty bad and much needs to be done there. These are the main points we would like to make. We thank you, very much.

MR. CHAIRMAN: Thank you very much, Mr. Ambrish Mehta and Mr. Rajesh Mishra for having given evidence before the Committee.

Hon. Members, we will meet on April 17th, 18th and 19th. We will close the evidence thereafter. We have taken enough of evidences. After that, we will deliberate among ourselves and find out how to go about it.

On 17th, 18th and 19th, we will take evidence from fresh group of people and thereafter, we will deliberate among ourselves for preparing the report.

(The Meeting then adjourned)

**JOINT COMMITTEE ON THE SCHEDULED TRIBES
(RECOGNITION OF FOREST RIGHTS) BILL, 2005**

**RECORD OF ORAL EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE
SCHEDULED TRIBES (RECOGNITION OF FOREST RIGHTS) BILL, 2005**

Monday, the 17 April, 2006 from 1500 hrs. to 1640 hrs. in Committee Room No. 074, Parliament Library Building, New Delhi.

PRESENT

Shri V. Kishore Chandra S. Deo — *Chairman*

MEMBERS

Lok Sabha

2. Shri Mahavir Bhagora
3. Shri C.K. Chandrappan
4. Dr. P.P. Koya
5. Shri Shailendra Kumar
6. Shri Rajesh Kumar Manjhi
7. Shri Babu Lal Marandi
8. Shri Bajju Ban Riyan
9. Dr. Babu Rao Mediyam
10. Shri Sugrib Singh
11. Shri Rajesh Verma

Rajya Sabha

12. Shri Ravula Chandra Sekar Reddy
13. Shri Mangani Lal Mandal

SECRETARIAT

Shri R.K. Bajaj — *Deputy Secretary*
Shri K. Jena — *Under Secretary*
Shri J.V.G. Reddy — *Under Secretary*

Representative of the Ministry of Tribal Affairs

Shri P.K. Varma — *Deputy Secretary*

**Representative of the Ministry of Law & Justice
(Legislative Department)**

Shri N.K. Nampoothiry — *Joint Secretary & Legislative Counsel*
Shri R.S. Shukla — *Deputy Legislative Counsel*

WITNESSES EXAMINED

- (i) Shri Sanjay Upadhyay,
Advocate, Supreme Court of India
- (ii) Shri C.R. Bijoy, Coimbatore
- (iii) Shri Ashish Kothari,
Kalpuriksh, Pune
- (iv) Representatives of National Forum of Forest People and Forest
Workers, Kalimpong
 - (i) Smt. Mamta Dash
 - (ii) Shri Munni Lal
 - (iii) Shri Shiba Sunwar
 - (iv) Shri Ashok Choudhary
 - (v) Shri Sanjay Basu Mullick
 - (vi) Shri Parshuram Netam
 - (vii) Shri Debnit Nandi

MR. CHAIRMAN: Shri Sanjay Upadhyay, I welcome you to this sitting of this Joint Select Committee. You are aware that the proposed Bill basically seeks to remove the imbalances and social injustice that has been historically meted out to those living in the forest. You have got a copy of the Bill. All that I would like to mention is that whatever we discuss here will be made public and published later, unless you specifically state that you would like a certain portion to be kept confidential. But whatever we discuss here however will remain confidential until the report is presented to the Parliament. We have just got a note which you have just circulated to us. We shall surely go through it. But in the mean, time you may begin and highlight or specify those aspects of the Bill which you think need to be re-considered or amended or changed.

SHRI SANJAY UPADHYAY: Mr. Chairman, it is an honour to be here. I express my heartfelt thanks. Actually, I was a part of the Drafting Committee of this Bill. I am also the Committee member to draft the Wildlife Act, which is now going through amendments. As a lawyer, I think I have the objective view of looking at to both sides, having worked in the conservation sector for the last 13 years and having worked with the tribal issues for an equal number of periods. I just wanted to highlight key points that I think, to my mind, is a myth which is being created about this Bill. I just wanted to highlight a few points on that, if you permit me. In the copy I have circulated, I have circulated two things. One is about some key issues. I call them some myths, which I want to demystify right here before the hon. Members, and another little article that I done, I think, immediately after the Bill which came in down to earth.

The first point is that I have read through a number of communications that are going on in the Internet and newspapers. I have been in touch with a number of people who have been for and against this particular Bill. The first concern everybody seems to have is that the Bill will hand over the forest to the tribal communities. With my humble submission, there is nowhere that we talk about handing over forest as such in the Bill. There is no provision in the law which talks about the handing over forest to tribal communities. Secondly, there is a whole myth that there will be fresh allocation of forest lands. Nowhere in the Bill that we talk about the fresh allocation of land. It is again a myth that has been created about the Bill for reasons best known to them. Another very key concern from the pro-conservation lobby that we have heard is that this Bill will encourage decimation of forest. Now, I wanted to submit that this Bill has adequate safeguards within the Bill and then this particular Bill is not in lieu of other conservation laws of the country. I am aware of it. I have been an environmental lawyer for the last 13 years. The fact is that this Bill is in complement to and not in lieu of any other Bill which is on conservation. So, I wanted to make that point very clear. So, any punishment or penalty

provisions that exist in the current Bill is in addition to already that we have in terms of conservation laws, whether it is a Wildlife Protection Act or the Forest Conservation Act, or any other conservation law, including Supreme Court orders. I have read all the 550-odd orders that have come in the T. N. Godarvan case and the Centre for Environmental law, WWF of India case and the Navin Daheja case. I have gone through most of these orders. I was conscious as a part of the Drafting Committee that no order of the Supreme Court is violated when we talk about the conservation issues as far as this Bill is concerned.

The fourth point is that when I have heard a lot from the Forest Department across the country—I travel extensively—that there are already policies in place and, therefore, there is no requirement of the Bill. Now, the fact is that these policies came in 1990. In fact, 6 specific circulars came which cover the aspects that have been covered in this particular Bill. What we found is that it is precisely because a policy statement and not enforceable, that no action almost was taken as far as the country is concerned and, therefore, the need to legislate on the policy mandate. All this Bill does in my understanding is that it mandates what is already there in a legislative frame so that it becomes enforceable and the strength of the legislation becomes stronger. That is the whole idea as far as I understand this Bill. There has been much debate about this 2.5 hectare land. In fact, I was instrumental in putting that figure. It actually comes from the forest village rules of different States across the country. I can quote, for example, Madhya Pradesh, Jharkhand and Orissa which actually comes up with this figure of 2.5 hectares, around 5 acre of land, for subsistence of tribal nuclear family, so, again that figure is a figure that is drawn from the forest village rules themselves. There is a whole argument that 2.5 hectares x 8.1 per cent of tribal families will take over all the forest. No, we are not talking about 8.1 per cent anywhere. We are talking about the forest dwelling Scheduled Tribes. As per the Environment Ministry' records, we have less than 2 per cent of land which is so-called encroached. I do not like the word 'encroached'. But it is precisely that amount of land that we are talking about, roughly speaking. There are enough evidences to prove who are forest dwelling Scheduled Tribes. So, it is about them and this 2.5 hectare is merely, in fact, recognising only to that extent. What we already know is that a number of areas have more than 2.5 hectares. So, we are talking about recognition of only 2.5 hectares of land. The key word is 'recognition' and not 'transfer', not 'fresh allocation' and not 'disbursement of new land'. That needs to be really clear which I wanted to be humbly submitted before this hon. Committee.

It is very widely quoted that this Bill contradicts the Wildlife Act and the Forest Conservation Act. As I stated earlier, it does not. Not a single provision of this law actually violates any single provision of the Wildlife Act or the Forest Conservation Act or the Supreme Court orders, which have interpreted the Wildlife Act or the Forest Conservation Act. In fact, it complements the conservation laws. The punishments are as serious as the de-recognition of forest right, which to a tribal community is perhaps the most harsh punishment that you can give, what we have envisaged in this particular Bill. So, it is in addition to de-recognition of forest rights that we are talking about; wildlife conservation laws and forest conservation laws being in addition to this particular law and not in lieu of this particular law.

The seventh point, which I gathered, is on the concerns of the North-Eastern States. I am part of the Working Group in the North-East looking at community forestry, and I have realized very consciously that this Bill is very sensitive to the North-Eastern States. In fact, it very clearly says—I do not want to read out the exact Section—about the recognition of any State law or Regional Council or Autonomous Council, which is specifically mentioned in Section 3(k). Then, we have the residuary clause also. The residuary clause under the Forest Rights clearly says that any other traditional right except hunting which is banned in the Wildlife Protection Act is being recognized. So, the concerns of the North-Eastern States are well taken care of in residuary clauses as well as in the traditional laws that we are talking about under this particular Bill.

Now, I am on my eighth point. Again, it is a very political question that panchayat bodies are not the adequate forums to recognize forest rights. We are not talking about panchayat bodies in this law; we are talking about the village assemblies; we are talking about the Gram Sabha, the Aam Sabha as we commonly understand; and we are talking about the process of initiation from the Gram Sabha. We are not talking about the few elected

Members of the Panchayats who will be starting this process. This is well known. For want of better forum, I feel that the Gram Sabha is perhaps the best body, which knows who their villagers are, who their community is. They are the best bodies, which can initiate this process. That process is supposed to be recognized by the Sub-level Committee at the Sub-divisional level, and then going to the District Level Committee. So, again, there is a fair representation at each level to recognize this process. I think, that is very crucial to understand.

Again, there is a concern about that the Bill will destroy the national parks and sanctuaries. But it would not, to my mind, destroy them. I just want to raise two points here. One, in this country more than 70 per cent of national parks is not finally notified. This is very important to understand. In fact, when I was in the WWF of India, we initiated this case in 1995 to settle all the rights in the national parks and sanctuaries, and the fact is that today the case is still pending in the Supreme Court. It has been 11 years now and the rights have not been settled in for the national parks or the sanctuaries. It is important to understand that the national parks are not finally notified. Therefore, people's rights may subsist in such areas, which is very important to understand. Secondly, about sanctuaries, it needs to be understood at two different time lines. I humbly submit that there was no provision of settling the rights first before a sanctuary was declared. Before 1991, the sanctuaries could be directly declared and their settlements for rights were supposed to happen subsequently. It was only 1991, when Amendment Act came, the process changed where it was brought at par with the national parks level, wherein there was an intention notification, a process of settlement, and then final notification. Now, again, what we know and what is there in the Supreme Court is that most of the rights in these sanctuaries have not yet been settled. To my mind, if they are not yet been settled, the legal status of such national parks and sanctuaries is proposed and they are not yet finally notified; it is my contention. Therefore, to my mind, this Bill or anybody who is talking pro-conservation—I am the conservationist myself—needs to take into account these in between status of communities whose rights have not been settled, and I think, this is very crucial.

My last point is that every body says that the tribal will not understand this Bill. It is very correct. The tribal is not supposed to understand this Bill. That is our contention. That is why we have put the onus of proof to determine rights for the State and not for tribal to understand this Bill. This is a radical shift; nowhere in the legislation history we have put onus of proof. Even there are some criminal laws, where onus of proof is not on the State, but here we have put the onus of proof is not on the State. Therefore, if a State disputes that a particular tribal does not stay in that area, then the State is supposed to prove with records; and there are innumerable records that exist for the Scheduled Tribes to say that a particular tribal community or a person does not belong to that areas or he is not a *bona fide* resident of that particular area.

So, these are the 10 myths I wanted to clarify. However, I have just three concerns. For want of time, I would quickly go through that. When we were drafting this Bill, when it came to us, it was 'Forest Dwelling Communities and Forest Dwellers and Scheduled Tribes Bill.' However, the forest dwellers component was left out in the final version. I think, to be fair, that there are people who are similarly placed. However, I take it that this particular Bill is the first step to test the waters, to come up with a formal process, to come up with a sound process, to recognize the forest rights and the other forest dwelling communities should be taken as a second step. I think, that is the way this Bill should be taken. I knew that there was some problems with the allocations of business rules and so on, but I think, the fact is that if we take the STs to begin with as the first step and the other dwelling communities as a second step with certain modifications, then we will do justice as far as this Bill is concerned.

Now, there has been a word introduced on drafting as 'core areas' of national parks and sanctuaries. Now, the core areas are the administrative areas. Core areas, buffer areas and dispersive areas are all administrative categories, which have no legal sanction. Now, we need to be very clear as to what are the core areas, where are these core areas, what are the guidelines to declare the core areas before we say that rights will not exist in such areas. It is because, I am aware that in several national parks, there are core areas. There are many more examples where in core areas, there are national highways passing; I know there are core areas where villagers

are there. So, we need to be very careful in defining the core areas. I think, that is still a shortcoming in the Bill, which has not been put in place.

My last point is that people say God is in details, and we really need to put a lot of time on drafting the rules. We have already been thinking about it in terms of the process. We have set up three Committees. We have the Gram Sabha; we have the Sub-divisional Committee and we have the District Level Committee. What we need to convey to the people of this country is that there is a fair representation at each level. Gram Sabha, we know, is a contiguous unit, but at the Sub-divisional level, at the District Level Committee, we need to have a fair representation, which takes the concerns of the forester, the revenue persons, the Panchayat persons, the rural development persons, the tribal persons and the community at large, and the political representation from that area. So, I think, we have not really gone in details, which is obvious because a law cannot detail all such details.

Therefore, we need to be very careful as to how we draft the rules. I think, it should come out very quickly and simultaneously with this law so that there is no misconception about this Bill. Thank you very much for your patient hearing. I am really honoured to be here. If there are any clarifications or points, I would be more than happy to answer.

MR. CHAIRMAN: Thank you very much, Mr. Upadhyay. We will surely take note of your observations that you have made.

SHRI RAVULA CHANDRA SEKAR REDDY: In your last point, you said that the tribal should not understand the Bill. Basically, I think, the Bill is initiated to protect the forests as well as the interests of tribals also.

Can you enlighten us? Can you elaborate your understanding of this?

SHRI SANJAY UPADHYAY: What I have said is that there is this myth that the Tribal will never understand this Bill that we are drafting for the Tribal people. I want to exclude this myth that it is not necessary for the Tribal to understand the intricacies of this Bill. One of the reasons is because the Tribals' existence in such areas is known. It is very well known. It is the settlement process of this country which did not recognize that existence. That is why, we have had several policy circulars. We have this Bill which automatically addresses that concern. What I am trying to make is that it is not necessary for the Tribal to understand the intricacies of this particular Bill. It is their existence which has been recognized. It is their forest right which has been vested as this law will pass. So, it is an automatic vesting of forest rights which have been enumerated in the law. So, he is not supposed to understand.

SHRI RAVULA CHANDRA SEKAR REDDY: My point is that most of them are illiterates. As a matter of fact, 100 per cent of the people are illiterates and there is every possibility of exploitation

SHRI SANJAY UPADHYAY: With due respect, I would like to disagree with that for the simple reason that if you look at the unit which is recognizing forest rights, it is assuming. This Bill assumes that the Gram Sabha is the best unit to recognize who their neighbours are and it is only the Gram Sabha, the Aam Sabha, the village assembly, which is supposed to initiate the process. Now, as I understand village community—I have been there many times—the Gram Sabha, which is the smallest unit, will not recognize anybody who is an outsider, especially a tribal community.

I have visited across this country. Tribal communities are very contiguous. You know better than me. The way they are united, the way they are contiguous, they would normally never encourage any other person out of their will to recognize their presence. If there are people who are there by force, per force, may be then they are weak. But this law exactly strengthens that position that it is the Gram Sabha which has been given the power to recognize who my neighbours are, which is my family, where do I celebrate my Holi, where do I do my celebration, and where do I go in times of death. The way the village was defined, the way the hamlets were defined across the country, whether it is a *palli* or a *bala* or any village hamlet that we are talking about,

they have recognized based on these traditions. They have never followed revenue jurisdiction. They have always followed their traditional boundaries. I feel if they are given the power to recognize their right, it will be the best unit possible for want of any better institution. That is my contention.

MR. CHAIRMAN: THANK YOU.

(The witness then withdrew)

WITNESS EXAMINED:

Shri C.R. Bijoy, Coimbatore.

MR. CHAIRMAN: Mr. C.R. Bijoy, I welcome you to this sitting of our Joint Select Committee.

You are aware basically this Bill has been introduced to sort out the differences on the historical injustice that has been done to the forest dwelling tribals over centuries. I presume you got a copy of the Bill which you may have studied by now. Whatever we discuss now will have to remain confidential until the Report is presented to Parliament. But after that, whatever is recorded can be published or made public unless you specifically mention that a portion of what you say will have to remain confidential.

You may please begin and enlighten the Committee about whatever aspects of the Bill you think should be dealt with in a more detailed manner or if there are any changes that you feel should be made.

SHRI C.R. BIJOY: Basically, I have made one submission. On the one hand it is related to the problem related to the definition of the village. So, what I have suggested is that we delete the section which says 'any area referred to as a village in any State'. That section be deleted. One can modify it by saying that for the purpose of this particular Act, the village as in Panchayat Raj Schedule II Exemption, 1996, PESA Act can be used as far as application of this particular law is concerned. Of course, in the submission I have given a lot of explanations which I am not going into now.

The second one is on section 6 (1). One aspect which I have suggested is the addition, inclusion of other forest dwellers which, I am sure, is being debated. The second thing is that as far as the village is concerned, what is mentioned is a local limit. What I have suggested is that one could think in terms of the customary limits also. That can be taken into account. Therefore, the boundary of that village will also, for the purpose of this particular Act, have to include the customary limits, whether it is right now classified as a reserve forest or not.

In terms of the procedure, the Bill as it is available in the public domain says, the village or the Gram Sabha shall determine the rights. Essentially the structure remains the same as it is now. Therefore, one is not arguing about the provisions in any existing law of rights. Probably, one has to focus more on how to make sure that whatever change is being made is implemented. One cannot afford to say that in the future that somewhere in the implementation we have gone wrong. Therefore, what I have suggested is that essentially we follow the same track as the PESA Act and say that the village actually determines and settles the rights.

If anybody is aggrieved as in the present proposal, they can come to the Sub-divisional Committee and the Sub-divisional Committee then makes its observation and gives it back to the Gram Sabha for its reconsideration but the decision would be that of the Gram Sabha. All the decisions of the Gram Sabha are directly suggested to be forwarded to the district level committee and the district level committee in the absence of any objection or grievance from anybody in the Gram Sabha, within a certain stipulated number of days—I have suggested 30 days—will have to make changes in the record and make necessary notification.

I have added the portion which is there in the Right to Information Act in terms of how do you ensure that these procedures are complete within 30 days. How do you ensure that the district level committee finishes off the task? So, I have exactly copied the portion of the Right to Information Act and suggested that if it goes beyond 30 days and if there are no complaints about it, then there will be a fine of Rs. 250. I have added the same thing to that.

Regarding the role of the Sub-divisional Committee, I think it is very necessary to make sure that the Sub-divisional Committee has a role in informing every Gram Sabha about this particular law. It could also probably take on this responsibility that wherever the Panchayats or the Gram Sabhas are not meeting, they should take the responsibility of convening the meetings of the Gram Sabha. There are two full responsibilities. One is communicating within the jurisdiction, and the second is to ensure that the Gram Sabha meets. There is also a question that some of the rights would overlap with the rights of some other Gram Sabhas. Therefore, it would become the responsibility of the different Gram Sabhas involved to collectively to meet and to take decision. If they are not able to take a decision, if they are not able to meet, then it will be the Sub-divisional Committee who shall convene the various Gram Sabhas and say you have to take a decision now about whatever are the conflicting or disputed rights. This is essentially the point as far as this particular section is concerned.

I have also introduced, as I mentioned to you on the Right to Information Act, the portion under offences and penalty. I have submitted this as a third suggestion.

There are a few other issues, which I have brought, which have been from the region, which I come from. For instance, one of the major sections of the people in the Western Ghats are the Sri Lankan repatriates who are essentially Indians taken about 150 years ago, not given the citizenship rights; and under the pact they have been brought back. Over all, in the State, more than five lakh people have been settled in different hill areas and they have been the plantation labours. About 80,000 people are there in Nilgiri district alone. When they came in the Seventies, they did not know anything about the law; they were told that under the agreement they would be all given three acres of land plus housing, electricity and employment opportunities. There was a Government set up created for plantation. But lots of things went wrong, and nobody got the land. Therefore, the local mafias and other people offered the land and sold the land. The sale took place. Anyway, they have all settled there and they have been facing a lot of problems including the threat of eviction in Godalur. Nilgiri region has the history of violent fight whenever the eviction issue comes up. Fortunately, the situation has come up where people are now insisting on eviction of the right kind of people and not the eviction of the wrong kind of people.

There is also another major section of people, which is under this. During 1951-52, under the Grow More Food Campaign, a lot of people were encouraged by the Government to go and settle there. They have cleared up the forest, and they have been living there. But they are constantly under the threat; there have been protests and some of the people have immolated themselves in the last decade. So, that constitutes another category. The people there and all of us feel that we would include two categories in the forest dwellers definition. One is, those people who have been settled because of international agreements. May be, this is one particular case, but I do not know whether there would be any other cases; I do not know about the Bangladesh; I have no idea about it. Second is, where as a State Government Programme, they have encouraged the people to move into the forest 30 to 40 years ago. These two criterions could be added to the whole definition of the forest dwellers. This is one kind of submission that I have made.

But other than that, one of the major problems for example, in the Western Ghats is that people have been protesting against the extension of the protected areas. Now, the argument, which the people are giving, is the experience of these areas, which have been, declared as wild life sanctuaries and protected areas. The moment it is done, it becomes as exclusive preserve of the mafias. In the south, we have a lot of people who are involved in these mafia things. That is a problem, which is there. So, the people feel that if they are moving in out of this area, then it becomes a kind of disincentive for the poachers and others to enter. Their experience is that the moment you classify into the wild life sanctuary or the national parks, it becomes a kind of free for all, especially for those who are armed poachers. The areas which are outside, continue to be inhabited, and people are moving around; and therefore, it is disincentive. The people are also protecting it. In the case of wild life sanctuaries, national parks they find it difficult to move in and to protect. So, people have been opposing any further extension of the wild life sanctuaries saying that it is destroying them. I think, this is one major issue that has come up especially in the Mudummali Wild Sanctuary, Bandipur Nagarholi.

Then, of course, there is this whole controversy about the cut-off date. The preception from the people in that area is that 1980 will be too problematic. The big fear is there. For instance, we have a large number of cases where people would try to create records of lease from Nilangur-Kovilangam. Even you have the old papers, ancient papers, and ink is still being used to manufacture the so-called lease. So, it may be creating records, pre-dated FIRs so that the some of the big encroachers could claim. They may get the Forest Department to these old cases and later, they may ask them to identify the land. So, this kind of problems would come in the cut-off date as 1980. If it is something very closer, then it becomes much easier to verifiable. So, the suggestion is to keep it as close as possible. There may be definitely a section of people who are not using the forest for any limited purposes and yet plantation may be there, encroachment of plantation of forest areas may be there. So, all these issues are there. There is also an increasing trend of drought. For example, Western States. There is an increasing trend of drought because deforestation and all these kinds of issues have actually led to the agenda of forest conservation and water very much into the forefront. In fact, now the political parties in both the States are now forced to take up these issues because of the drought, especially in the hill regions. So, the conservation agenda is very much there. So, the people feel that they should have a right to conserve. So, somewhere in the Act though it is mentioned, the provisions of the community conservation component will have to be addressed very closely. Thank you.

SHRI RAVULA CHANDRA SEKAR REDDY: We have been hearing you. I am happy that you have given a detailed note to us. You have shared your experience with the Committee. Since you are interested in Sub-divisional Committees and thereafter Divisional Level, District Level Committees, I would say that on the one hand you are saying that the Gram Sabhas should be empowered and they should determine everything but on the other hand you are interested in the cut-off date as close as possible. It seems to be a vague suggestion. What may be the possible cut-off date? In the presence of Gram Sabha Resolution and in the presence of the Sub-divisional Committees and District Level Committees, as suggested by you, what purpose would be served? How are you going to justify the cut-off date, as closer as possible, as suggested by you?

SHRI C.R. BIJOY: As far as the cut-off date is concerned, the best cut-off date would be something which is easily verifiable, and what is easily verifiable is there currently on the ground.

The second thing is that the Bill obviously is intended only for those people whose livelihood is affected. That is the focus. Considering that, it would be easily verifiable. If one is talking about the cut-off date of earlier times, he has to think in terms of trying to build up evidence. Then, all kinds of dynamics would enter into the picture. So, it makes it easier for practical purposes.

As far as the Sub-divisional Committee and the District Level Committee are concerned, what I have suggested is that the Sub-divisional Committee's responsibilities should be limited to looking into the complaints and making their observations, and referring them back to the Gram Sabha. It is because, when after some kind of settlement is over, tomorrow we cannot have the same problem coming over and over again. So, one of the best ways to enable the Gram Sabha to take the full responsibility for whatever they are going to take is to give the ball back to the Gram Sabha. And, the Sub-divisional Committee, as I mentioned earlier, has got two responsibilities. One is to make aware of the Act and the second is to ensure that where the Gram Sabhas are not taking the initiative to call any meeting of the Gram Sabhas, they should be encouraged to take the initiative. Similar is about the inter-Gram Sabhas, where the dispute comes. The District Level Committee's job is essentially this. Once you have the Gram Sabha Resolution, then its job is to efficiently change the records and settle the whole thing. One can expect that these kinds of change of records are also going to have the repercussions, which means, identification of illegal encroaches. All these kinds of things would come in the normal course, but not essentially as part of it. So, somewhere along the way, I say that the District Level Committees — once these records come and when they are changing the records — will have to compare them with all existing records.

And then, they may probably have to refer things for which further action has to be taken by the Forest Department for eviction etc.

MR. CHAIRMAN: Thank you, very much.

(The Witness then withdrew).

WITNESS EXAMINED:

Shri Ashish Kothari, Pune.

MR. CHAIRMAN: Shri Ashish Kothari, I welcome you to this sitting of our Joint Select Committee. You are aware that this Bill has basically been introduced to sort of undo the historical injustice that has been meted out to the forest-dwelling tribals. You have got a copy of the Bill and we have received your memorandum also.

(Direction 58 read out)

MR. CHAIRMAN: You may now proceed. We will go through the memorandum which you have given. You do not have to go through that entire thing. If you have anything that you want to highlight or stress on, please do so.

SHRI ASHISH KOTHARI: Thank you for this opportunity. I would just make a couple of general points.

We are an organisation that has been working for the last 26 years on environmental issues. We have consistently tried to take a position that the environment cannot just be for the luxury of rich people to go and enjoy, as often is thought, and that the relationship between the natural environment and local communities—both *adivasi* and non *adivasi* local communities—very very close, very intricate.

So, for a long time we have also been arguing that there is a need for recognition of the rights of local communities to not just forest but in fact all kinds of natural resources. So, we very much welcome this Bill. But we also have been a group that is very strongly arguing for the protection of nature. This might sometimes seem to be contradictory because local people need to use nature, they live inside natural areas. On the other hand if you want to protect nature, then often the argument is that the local people should not be allowed to stay there.

Our position has always been that we can only protect nature if the local communities are empowered along with, of course, the relevant Government Departments and so on. So, from that point of view, we very much welcome this Bill.

Most of the comments I gave are based on the very basic belief that we need to have very site-specific solutions. India is a very diverse country. It is diverse from the ecological perspective, natural resources, wildlife and culture and people. So, any solution that is sought to be imposed or brought in for the problems that are faced cannot be one kind of solution. So, my comments on this would be based largely on the premise that if we can have a Bill which actually is able to provide for the specificities that are needed in different countries. For instance the situation in part of the North-East are very different from the situations in parts of South India. So, that is our main concern.

If I could take us through the specific comments that we have made in the submission, if everybody has a copy of that, the first comment we have—and I think you would have received from a number of other people also—is that we feel that it should not be restricted to Scheduled Tribes. There are equally dependent forest communities who are non-scheduled Tribes who have been traditionally living inside or adjacent to forests. They should also be given the same kind of rights. However, we would recommend that there be a time-bound process of identifying such communities. Especially this is important because there are also a lot of situations in which people have settled in very recently. They could be migrants from outside, they could be refugees or other kinds of people or vested interests who have encroached on forest lands. This Bill should not be for them. But it definitely must include those who have traditionally been dependent on forests and I would especially also include the nomadic communities because they are the ones who are unfortunately the most dis-privileged. They get the least kind of rights. Because they are not settled in one place, they are moving from place to place, their status is very-very bad. So, our first comment is that it should be expanded to include the non-schedule Tribes also.

The second major comment we have is with regard to Section 2(b) which is the definition which talks about core areas. I would link this to Section 4.1 which is about rights of people inside protected areas— national parks

and wildlife sanctuaries. We have been studying the Wildlife Act for the last 20-25 years now and looking at the problems that the Wildlife Act has created especially for people who live inside these wildlife sanctuaries and national parks. Our estimate is that at least three to four million inside these national parks and sanctuaries. The states of these three-four million people has been very-very uncertain. They are living with no certainty about their rights. They are living with no certainty about whether they will be resettled somewhere else. There is a situation of conflict and harassment which is very-very common across the country. So, the Bill needs to address that issue. The way it does so here, we feel, is not satisfactory at all.

If I can refer you to Section 2(b) which is the definition of core areas, and then to Section 4.1 which talks about what should be done in those core areas for the *adivasis* that are there. I have two or three submissions to make here. Firstly, the term core area itself is problematic. It is a commonly used term in wildlife management and it refers to a particular kind of area where as a part of a national park or a wildlife sanctuary, a smaller part is designated as a core area where nobody is allowed to go. That is essentially what it means. However, here the meaning that we are wanting to talk about is what we have called critical wildlife habitats. These are areas where the wildlife needs a certain amount of peace and security like where tigers are breeding and bears are breeding. They need some amount of peace and not too much of disturbance.

But as any good wildlife scientist will tell us, even in a critical wildlife habitat, it is not essential that all human beings have to be moved out. Some human presence can be allowed but it has of course to be restricted. The kinds of activities that are allowed have to be restricted. But it is not necessary that everybody has to be moved out. So, Section 4.1 talks about giving provisional rights to Scheduled Tribes within such areas for five years. And in that five years if they are removed out fine. If not, they get permanent rights. That is the current provision is. We feel it is not a solution either to conservation or to the people's rights. That is because what will happen is that either people will be forcibly moved out within these five years—and I think we should take a very strong position against any kind of forcible displacement, which is not wilfully allowed or consented to by the people—or the State Governments will simply sit back and say let the five years pass and people will continue to stay and then it will become permanent. So, it neither solves the wildlife conservation problem nor does it solve the problem of the people. We have given suggestions on different alternative wordings on page eight of our submission.

We have suggested that there should be a process by which these critical wildlife habitats are identified. We would kindly urge you not to leave this process to the Ministry of Environment. In Section 2(b)—the core areas are to be identified by the Ministry of Environment. Having closely watched the performance of the Ministry of Environment for a long time, we do not think that it has the expertise to do this on its own. This kind of identification of core areas or critical wildlife habitats must be done by an independent body of scientists who know wildlife science. Once that is done, then, there are three options for them.

Firstly, it is to be determined that people can continue to stay and conservation can also happen. Let me give example—Srisailam Tiger Reserve or national parks and wildlife sanctuaries—where people are inside but they are in small number. There are traditional *Adivasis* who are living in harmony with nature and it could well be determined that these are areas where people should be given rights there. They should be given joint management kind of a partnership for that area. Let them also protect the wildlife. Let them enjoy the benefits of local resource.

Secondly, where it is felt that people are living in a way causing damage to those wildlife habitats, then either their practices can be change, they continue to live there or of course if that is also not possible, then resettlement can be opted, but through a process of consent, discussion and dialogue. These are two-three possibilities for such critical wildlife habitats. Our main concern is that the Bill with this current drafting does not help to do all these two things. In any case, there is no difference between a provision and permanent right. It has not been defined in the Act and Bill. Once giving provisional right for five years is like a permanent right. A permanent right even if it become permanent, can still to be acquired under the Wildlife Act. So, it is actually never permanent. So, there is no real distinction. Therefore, we need a different kind of approach which we have suggested.

Section 3(j) on page 6 is about community forest resource—right to protect, regenerate, conserve or manage any forest resource. Our studies across India has shown that there are hundreds or even thousands of examples where communities are protecting the forest. As you very well aware in Orissa, there are at least 10,000 forest protection communities. Recently, we were in Nagaland. There are at least 100-150 villages that are protecting forest and wildlife. But legally there is no such thing as community forest resource. So, what could happen in the current formulation is that the State Governments would say, all right, the communities have the right to protect. What is a community land —*panchayat* or private land but not reserve forests are not protect. Forests are Government land. This is already what has happened with PESA where we talked about non-timber mining forest produce ownership. But many States have said that this is fine on *panchayat* land but not in reserve or protected forest. We feel that in most of the documented across the country are actually where communities are protecting reserve or protected forest because there is a little *panchayat* forest except in parts of North-East where they are owning the forest. So, we feel that the term 'community forest' needs to be defined as including of forests which are adjacent to villages or in fact, it should just change the 'forest land' remove the word 'community' and just say forest land because all ready the Bill defines 'forest land' includes all kinds of forest.

This may be a mistake but it becomes a very important one—Section 4(2)—recognition and whetting of forest rights under this Act. In my submission, it is on page 9—forest dwelling tribes, etc. is subject to date—25.10.1980. This is only for tribes that have occupied forest land before 1980 but there are lots of tribal communities which have customary access to forest who are not occupying forest lands. They may be on revenue land, a land that has already been given. So, this Bill creates a peculiar situation that all the forest rights that they currently enjoy, either customary or otherwise, will not be granted under the Act because they are not occupying forest land. So, what we are suggesting is that Section 4(2) should apply to only the right which is under Section 3(a)—right to land, the right to *pattas* for forest land. But all the other rights this Bill provides for, that is rights to *nistar*, rights to forest produce, etc. Those should be for any Scheduled Tribe or forest dwelling community, not only for those who occupy the forest land. I hope I am clear. Otherwise, it will create a very peculiar situation of that kind.

The same situation could be created with responsibilities also. The Bill provides for whole series of responsibilities for conservation. But those responsibilities are only for those who have the rights under the Bill. You have village where under the Bill some people have got the rights. Having got the rights from earlier times on revenue land or they are non-Scheduled Tribes, then you create a very strange situation. In the same locality or forest some people have responsibility for protecting forests and others do not. There is a likelihood of a conflict coming up. Again, we have suggested some changes and said that the responsibility for conservation should be for the entire community or tribe.

Section 5 (c)—on our submission, it is on page 11— ensures that the habitat of forest dwelling Scheduled Tribe is preserved from any form of destructive practices affecting their cultural and natural heritage. We feel that this is a very powerful clause because we have seen in Orissa, Chhattisgarh, Jharkhand, Uttaranchal and everywhere destructive mining or big dams or expressways or ports are causing a lot of havoc in these kinds of areas to both people and wildlife. What we suggest is that this is not an adequate provision to stop that kind of a process. First of all, it should not be only to holders of forest rights who have to ensure that. This duty under Section 5(c) of the Bill is given only to those who have forest rights. We feel that this is something that should be first of all also the responsibility of the Government concerned. The Government concerned is to ensure that the habitat of forest dwelling community is preserved against destructive practices.

Secondly, it should be for the entire community, not only for those who occupy rights under the Bill.

Thirdly, we would stress that you could provide a process which includes, for instance, mandatory public hearing so that any project of any kind which is to come on lands that belong to the forest dwelling community or where they have rights, should have a mandatory public hearing with all the communities to be affected or the community should have the right to provide or deny consent. Now, we have an administrative order from the Ministry of Environment to this effect. But unfortunately it is only an administrative order which says that it has told all the State Governments before they approve any development project, consent of the local community should be sought.

But unfortunately, because it is the administrative Order, nobody follows it. We feel something like this should come into the Bill so that it becomes legal, mandatory kind of a thing. That will be one very good check against very destructive development.

The next point is on the composition of Sub-divisional Committee, District Level Committee and the State Level Monitoring Committee. It is concerning Section 6(8), page 8 of my submission. These Committees will consist of officers of the Revenue, Forest and Tribal Affairs Departments, and the rest of the composition shall be prescribed later. That is what the Bill says right now. Now, we feel that it is very important that these Committees must have the representatives of the communities, and must have the local NGOs both social action NGOs and conservation NGOs. The Bill should itself prescribe that, and not leave it to subsequent step of prescription because nobody could predict. I am saying this specially because we have already specified the Government Departments. So, if we are specifying the Government Departments, which should be there in the Committees, then we should also specify the non-Government people who should be in the composition of these Committees.

My last point, Mr. Chairman, is about penalties. I am referring to Section 7. Under Section 7, anybody who is guilty of killing a wild animal, unsustainably using forest or destroying trees etc., is to be fined up to Rs. 1,000 plus a penalty under any other law that may be applicable there. Now, supposing a villager kills a wild animal, he will be fined Rs. 1,000 and also he will be prosecuted under the Wildlife Act or the Forest Act, as the case may be. Now, we feel that this kind of double penalising is unnecessarily complicated. It will create more harassment. So, the Bill should either specify what kind of infringement of violations would come for penalties under this Bill, under the existing Act, under the Forest Act and under the Wildlife Act. Or, it should simply say that 'because they are already dealt with under the Forest and Wildlife Act, it should be dealt with under the existing Act.'

There is some vague terminology that could lead to harassment or a lot of misunderstanding. For instance, at one point the Bill talks about no destruction of bio-diversity. This term bio-diversity is so vague. It could be plucking of one plant from somewhere; and the Forest Officer could come and say that you are infringing the Act. Or, it could be doing all kinds of damage and could still show that I am not causing damage to the bio-diversity. It depends on how you define it. So, we have suggested that some of the terms that have been used here can be much more rigorously defined. We have given some alternatives. We would be very happy to help the Committee if it feels that some assistance is needed in some of the typical terms as to how they could be defined.

At the end, Mr. Chairman, I would again thank you for this. As I said, our main concern is how to balance the rights of the people with the need for conservation. Both are equally important to us. We feel that this Bill has gone a certain distance, but with these additional changes, I think, it would be the most powerful tool for this kind of a balance that Independent India has ever created. Thank you.

MR. CHAIRMAN: Thank you very much.

(The witness then withdrew)

WITNESSES EXAMINED:

1. Shri Ashok Choudhury, Convenor, National Forum of Forest People and Forest Workers, Kalimpong;
2. Shri Munilal, National Forum of Forest People and Forest Workers, Kaimpong

MR. CHAIRMAN: Shri Ashok Choudhury and your colleagues, I welcome you all to this sitting of the Joint Select Committee. You have got a copy of the Bill but we have just received your memorandum. I would only like to mention that whatever we discuss today will have to remain confidential until we present this Report to Parliament; and if there is anything that you want us to keep confidential, please let us know it because otherwise whatever we discuss here will be public after the Report is placed on the Table of the House. We will go through your memorandum in detail. Though it is just received, we shall certainly consider every aspect of

what you have presented to this Committee. But if there is anything that you want to stress or lay stress on, or if you want to highlight and point, you may do so.

Before we start, please introduce your colleagues to the committee.

(Introduction)

श्री अशोक चौधरी: सबसे पहले हम स्वागत करते हैं कि आजादी के 55 साल बाद एक ऐसा बिल पेश किया गया जिससे यह उम्मीद जागी है कि वन में रहने वाले लोगों को बुनियादी कानूनी, संवैधानिक अधिकार मिलेंगे जिससे वे वंचित हैं। बिल के ऑब्जेक्टिव्स में, प्रिम्बल में हिस्टोरिकल इनजस्टिस बताया गया है। हम कहना चाहेंगे कि जो हिस्टोरिकल इनजस्टिस हुए हैं, उसके जिम्मेदार कौन हैं? इनजस्टिस की जो प्रक्रियाएं हैं, उसमें कुछ संस्थाएं भी बनी हैं इसलिए उनके बारे में भी सोचना चाहिए। उनमें प्रमुख संस्थान भारत के वन विभाग हैं, जो आज भी अंग्रेजी शासनकाल की विधि, कानून और मानसिकता से हैं। 1927 का एक्ट जो हमारे जंगल में रहने वाले लोगों पर सीधा प्रहार है, उसके आधार पर चल रहे हैं। आज खुद जंगल के क्षेत्र से आते हैं इसलिए आप जानते हैं। आजादी के बाद आज भी वन विभाग के पास एकछत्र हम लोग अपनी भाषा में कहते हैं कि यह कांफीडेंशियल न होकर ओपनली है। हम मानते हैं कि इस समय वन विभाग की जिम्मेदारी है। 1950 की ऐतिहासिक जमींदारी उन्मूलन कानून के साथ इसकी जमींदारी भी खत्म होनी चाहिए थी लेकिन हुई नहीं। कम से कम हम इस बिल से उम्मीद करेंगे। हमें वन विभाग के अस्तित्व से परेशानी नहीं है। वे स्थित रहें लेकिन जनवादी ढांचे में भारत के संविधान के आधार पर रहें। उनके पास ऐसे पावर्स हैं जो संविधान को भी पायलट करते हैं। ऐसी बहुत सारी रिपोर्ट्स हैं। जस्टिस कोठारी ने भी रिपोर्ट दी थी।

जो मूलभूत बात हम इस बिल में चाहेंगे वह है कि इस बिल में जो उद्देश्य आपने दिया है, इस बिल में वे सारी बातें क्लर में आनी चाहिए जिससे वन विभाग को प्रभुत्व खत्म हो, जनवादी ढांचा हो जिसमें राजस्व विभाग और लोगों के जो प्रतिनिधि हैं और जन संगठनों के प्रतिनिधियों की भी भागीदारी इसमें हो। इस बिल में उस बारे में जो समस्या है, हम लोगों ने विस्तार में उसके बारे में बताया है। हमने चार बाजों को उठाया है जो पहले हमने आपको भेजी थी कि इस बिल में केवल शैड्यूल ट्राइब की बात कही गई है, इससे हमें आपत्ति है क्योंकि हकीकत यह है कि देश के अन्दर और वनों में बहुत बड़े पैमाने पर आदिवासी हैं जो शैड्यूल नहीं हैं और बार-बार इस तरह से बोला जो रहा है कि वे आदिवासी नहीं हैं, शैड्यूल ट्राइब के हैं। माननीय सदस्यगण इस बात से परिचित हैं कि बहुत सारे राज्यों में अलग-अलग तरीके से शैड्यूल हुए हैं, उदाहरण के लिए झारखंड के पचास लाख आदिवासी असाम में हैं। वे वहां शैड्यूल नहीं हैं और उनके ऊपर हमले हुए हैं। यूपी के आदिवासी भी कई जगह शैड्यूल नहीं हैं, दक्षिण भारत में बहुत सारे आदिवासी शैड्यूल नहीं हैं। पहाड़ों पर ज्यादातर जंगलों में जो लोग रहते हैं, वे शैड्यूल नहीं हैं। इसलिए गलत लिख क्रिएट करना गलत है। इसके अलावा उत्तर भारत और मध्य भारत में दलित वर्ग हैं तथा कुछ क्षेत्रों में माइनोरिटीज भी हैं, जैसे जम्मू वाले गुज्जर उत्तरांचल के जंगल में हैं वे मुसलिम गुज्जर हैं लेकिन वे न ओबीसी हैं और न वे एससी हैं और न एसटी हैं। पशुपालन करने वाली कम्युनिटी ओबीसी में आती है। इसलिए हमारा यह कहना है कि इस इतने बड़े मसले को राजनैतिक, धार्मिक, सामाजिक तथा जाति के आधार पर नहीं देखा जाना चाहिए। हम यह नहीं चाहेंगे कि जो निहित स्वार्थ हैं, वे उसमें आएँ जैसे कांटेक्टर लॉबी इत्यादि इसमें आएँ। हम चाहेंगे कि जिनकी आजीविका, जिनका जीवन-मरण जंगल से जुड़ा हुआ है, ऐसे लोगों को इसमें रखा जाए। भले ही इसमें थोड़ा समय ले जाए क्योंकि बाद में बहुत दिक्कत हो जाएगी। हमारा यह कहना है कि केवल शैड्यूल ट्राइब करने में तमाम दिक्कतें आएंगी। इसमें आदिवासियों के इंटेरेस्ट का भी नुकसान हो सकता है और वन विभाग इससे फायदा उठाएगा। इससे हम लोगों को कम्युनिटी गिलेण्डरशिप के ऊपर बहुत ज्यादा काम करना पड़ता है। हम चाहेंगे कि यह बिल एक हथियार बने, लोगों को इससे शक्ति मिले।

दूसरा मुद्दा कट ऑफ डेट के बारे में है। बहुत लोगों ने इसके बारे में कहा है। हमारा इतना ही कहना है कि जिस दिन से यह बिल लागू हुआ है, कट-ऑफ होना चाहिए। जितना ज्यादा हम डिटेल में जाएँ, उसमें बहुत मैनीपुलेशन होगा और गरीब लोग मैनीपुलेशन में मारे जाएंगे तथा दूसरे लोग बहुत पैसा कमाएंगे। इंटरनेशनल एजेंसीज पैदा होगी, इससे बचने के लिए सेंसर के हिस्सा से देखा जाना चाहिए। एक महत्वपूर्ण सवाल यह है कि जंगल में इंडिविजुअल राइट्स की जो बात बताई गई है, वह हमें परमानेंट ही लगती है क्योंकि आदिवासी परम्परा में जंगल इंडिविजुअली नहीं देखा जाता। कलेक्टिव राइट्स का इसमें जिक्र नहीं है, हम लोगों ने सुझाव दिया है कि जंगल कलेक्टिव राइट्स में रह सकता है क्योंकि आज के दौर में इंडिविजुअल एक्ट में हमें खतरा है। पट्टे की जमीन में हमने देखा है कि इंडिविजुअल राइट्स में जमीन बिक सकती है लेकिन कलेक्टिव होने से विशेषकर महिलाएं, परिवार के साथ होने से अगर किसी जगह जमीन को देने में समस्या है तो कम से कम परिवार के नाम पर दी जा सकती है। कई सारे देशों में इस बारे में अनुभव मिल चुका है कि।

व्यक्तिगत नामों पर जमीन न हो, कलैक्टिव राइट्स में जमीन होनी चाहिए। हमें बहुत आपत्ति है कि जो मोनीटरींग एजेंसी है, पूरी ब्यूरोक्रेट्स से भरी हुई है। हमारा कहना है कि उसमें जन संगठनों के प्रतिनिधि और जन प्रतिनिधि होने चाहिए। एमपीज, एमएलएज या जिला परिषद के सदस्य तो उसमें होने ही चाहिए बल्कि जन संगठन के प्रतिनिधि भी होने चाहिए। मैं एनजीओज की बात नहीं कर रहा हूँ। मैं कह रहा हूँ कि फारिस्ट डिवीजंस के प्रतिनिधि उसमें होने चाहिए और प्योरली ऑफिशियल्स इसमें रखे जाने चाहिए और ग्राम सभा में यह होना चाहिए और फाइनल ऑथोरिटी ग्राम सभा होनी चाहिए।

श्री संजय बसु मलिक: हम इसमें दो-चार प्वाइंट और जोड़ना चाहेंगे यह जो 2.5 हेक्टेअर जमीन की बात कही गई है, हम लोग कहना चाहते हैं कि असाम से लेकर गुजरात या राजस्थान तक जमीन की स्थिति बराबर नहीं है। प्राकृति परिवेश बराबर नहीं है। 2.5 हेक्टेअर यदि हम नियम बना दें तो यह सब जगह के लिए ठीक नहीं होगा। इसलिए हमारा कहना है कि परिस्थिति के अनुसार राज्य सरकार तय करें कि 2.5 हेक्टेअर काफी है या कहीं इससे ज्यादा देना चाहिए। दूसरी बात हमने इसी के संदर्भ में कहा कि बहुत सारी प्री-एग्रीकल्चरल कम्युनिटीज हैं, जैसे बिहोड़ इस तरह की कम्युनिटी जो हांटिंग स्टेज में अभी भी है, इनके साथ जमीन का सवाल नहीं है। इनके साथ स्पेस का सवाल है कि उनको क्या स्पेस आप दीजिएगा। इसके बारे में बिल में कोई प्रावधान नहीं है। हम लोगों ने किसी-किसी जगह पर सवाल उठया है कि इस बिल में बहुत सारे बिन्दु हैं जिनकी वास्तव में कोई जरूरत नहीं है। हम इस बारे में विस्तार में नहीं जाएंगे, हम कुछ डिस्लीट करना चाहेंगे क्योंकि बहुत सारे एक्ट के संदर्भ में बात कही गई है कि हो सकता है कि कई एक्ट है जो इस बिल में सही ढंग से लागू करवाने में बाधा उत्पन्न कर सकते हैं। उसमें टेली कैंसे हो, यह देखना पड़ेगा। जो वाइल्ड लाइफ एक्ट है, फारिस्ट कंजर्वेशन एक्ट है, बायोलॉजीकल डाइवर्सिटी एक्ट है, किसके साथ इस बिल का तालमेल किस तरह से हो, यह देखना पड़ेगा।

यह जो कोर एरिया, प्रोटेक्टेड एरिया और नेशनल पार्क की बात कही गई है, पहले तो नेशनल पार्क प्रोटेक्टेड एरिया के संदर्भ में कहना है कि पांच साल के बाद दूसरी जगह बसाने का जो प्रस्ताव है, यह अन्याय है क्योंकि यह दूसरा हिस्टीरीकल इंजस्टिस हो जाएगा क्योंकि कोर एरिया वही जगह है जहां कुछ अभी भी जंगल हैं और वहां पुराने समय से जो लोग बसे हुए हैं। उनको कैसे आप नयी जगह पर बसाना चाहते हैं क्योंकि उनको वहां रहना बहुत जरूरी है ताकि प्रोटेक्टेड एरिया सही रूप में प्रोटेक्टेड रहे।

श्री अशोक चौधरी: सुप्रीम कोर्ट को ऑर्डर के तहत पर सेटलमेंट नहीं हो सकता है। कल हम लोगों का भी नर्मदा वाला केस हो जाएगा और फिर एक और आदोलन छेड़ना पड़ेगा।

श्री संजय बसु मलिक: बहुत सी कम्युनिटीज जो आदिवासी हैं। लेकिन उनको विस्थापित करने के कारण जिन्होंने बाध्य होकर जंगल में जाकर घर बसा लिया है, जो बहुत रीसेंट केस भी हो सकते हैं जैसे छत्तीसगढ़ में जब स्पज ऑयनर की भरमार हो गई तो कई लोग विस्थापित हो गए और जंगल में जाकर उन्होंने शरण ले ली है।

इस तरह के लोगों के साथ भी न्याय होना चाहिए।

श्री मुनिलाल: महोदय, जैसा इस बिल में लिखा है कि यदि किसी अधिकारी या कर्मचारी से जाने या अनजाने में कोई गलती हो जाती है तो उसके ऊपर कोई कार्रवाई नहीं की जाएगी और उसे माफ कर दिया जाएगा। इसके बारे में मुझे यह कहना है कि सेलेक्शन अथारिटी द्वारा ऐसे अधिकारियों-कर्मचारियों की नियुक्ति उनकी क्षमता का परीक्षण करने के बाद ही किया जाता है। यह बात तो आम आदमी के लिए होनी चाहिए कि अगर उससे जाने-अनजाने कोई गलती हो जाती है जा उसे माफ कर दिया जाए, लेकिन सरकारी विभाग का वह अधिकारी जो जानकार है, उसके लिए आम आदमी से ज्यादा सजा का प्रावधान होना चाहिए।

श्री संजय बसु मलिक: इस विषय में हम लोगों ने यह सुझाव दिया है कि कम से कम उनके लिए इम्प्रिजनमेंट की सजा और एक लाख रुपए तक के अर्थदण्ड का प्रावधान होना चाहिए, जबकि इस बिल में केवल एक हजार रुपए तक के अर्थदण्ड का प्रावधान है।

श्री गमता दास: महोदय, हमने चैप्टर-5 के सेक्शन 7 में सब-सेक्शन 2 जोड़े जाने के बारे में सुझाव दिया है जिसमें प्वाइंट ओनरशिप के बारे में प्रावधान है। इसमें हमने प्वाइंट ओनरशिप में पीनल्टी के बारे में यह सुझाव दिया है कि यदि किसी एक से गलती हो जाए तो उसकी सजा दूसरे को नहीं मिलनी चाहिए। मान लीजिए पति-पत्नी हैं और पति से कोई गलती हो जाती है जिसके वजह से उसे सजा दी जाएगी तो ऐसे में पत्नी का हक नहीं छीना जाना चाहिए। ऐसा ही पति के मामले में भी होना चाहिए कि यदि पत्नी से कोई गलती हुई है तो पति के हक को नहीं छीना जाना चाहिए। प्वाइंट ओनरशिप के मामले में हम यह प्रावधान इस बिल में शामिल करवाना चाहते हैं।

श्री देवबीत: महोदय, एक अन्य विचारणीय बात यह है कि उन लोगों के जो कस्टमरी राइट्स हैं उनके बारे में इस बिल में कुछ भी नहीं कहा गया है। कस्टमरी राइट्स सम्बन्धित प्रावधानों को इसमें जोड़ा जाना चाहिए।

श्री संजय बसु मलिक: महोदय, इसी सन्दर्भ में मैं कहना चाहता हूँ कि इसमें NTFP की बात कही गयी है लेकिन फ्युल वुड को आप किस कैटेगरी में रखेंगे? फ्युल वुड तो उनके लिए बहुत जरूरी है, लेकिन आम तौर पर यही होता है कि फ्युल वुड काटने के आरोप में लोगों को, यहां तक कि महिलाओं को भी वन विभाग के लोग बुक कर देते हैं। इसलिए इस बिल में उसका जिक्र आना चाहिए।

श्री अशोक चौधरी: बांस और बेंत को फारेस्ट विभाग वाले वुड मानते हैं और इससे रूरल डेवलपमेंट मिनिस्ट्री और ट्राइबल्स के लिए बहुत प्रब्लम हुई। इसलिए यह बात स्पष्ट रूप से नियमों में आनी चाहिए कि NTFP में क्या-क्या शामिल है? बांस की लकड़ी से बहुत सी कारीगरी का काम होता है, लेकिन पता नहीं किस आधार पर उसे वुड बता दिया गया है, इससे बहुत सी प्रब्लम्स आती हैं।

श्री मुनिलाल: महोदय, टेंगिया के बारे में आप लोगों को जानकारी है कि टेंगिया सिस्टम से पेड़ लगाए गए, जो तराई क्षेत्र में हैं जिसमें हमारे देश के कई राज्य आते हैं। इस पद्धति से वर्ष 1976 तक पेड़ लगवाने का काम किया गया जिसके एवज में लोगों को वहां बसाया गया, उससे जितनी भी प्रोग्रेस और एक्स्ट्रा आमदनी हुई है, उसे जोड़ा जाए। वहां रहने वाले लोगों को कोई भी कन्नूनी अधिकार प्राप्त नहीं हैं, यहां तक कि आजादी के 58 सालों बाद भी उन्हें त्रिपक्षीय पंचायत चुनावों में वोट डालने का अधिकार नहीं है, जैसे ग्राम प्रधान या जिला पंचायत सदस्य या क्षेत्र पंचायत सदस्य के चुनाव में वोट डालने का अधिकार नहीं है।

श्री शैलेन्द्र कुमार: अशोक जी, जैसा आपने अभी कहा है कि इस बिल का जो नाम है वह शिडयुलड ट्राइब्स से जुड़ा हुआ है, इसमें कुछ परिवर्तन करना चाहिए, तो वन क्षेत्रों में रहने वाले लोगों को हम कैसे परिभाषित कर सकेंगे कि यही लोग वनों के आदिवासी हैं या आदिवासी कम्युनिटी से जुड़े हुये हैं? जैसा आपने परिवर्तन के बारे में इंगित किया है कि उत्तर प्रदेश में कोल जनजाति के लोग रहते हैं और उत्तरांचल में गूजर लोग हैं जिनका पेशा पशुपालन से सम्बन्धित है और उनकी कुछ प्रजातियां मुस्लिम समुदाय से भी मिलती-जुलती हैं, तो इस बिल का एक सामान्य नाम हम कैसे देंगे? आपको आशंका हो रही है कि इसका नाम शिडयुलड ट्राइब्स रखा गया है जबकि वनों में एसटीज के अलावा भी बहुत से लोग रहते हैं, अगर जातिगत आधार पर देखा जाएगा तो ये ट्राइबल्स हुए, लेकिन उत्तर प्रदेश में रहने वाले कोल और उत्तरांचल में रहने वाले गूजर जाति के लोगों और अन्य अनुसूचित जनजाति के लोगों को आप इसमें कैसे शामिल करेंगे?

श्री अशोक चौधरी: महोदय, इसके लिए हमारा सुझाव है कि इस बिल का नाम बदलकर एसटी एण्ड अदर फारेस्ट डेवलपिंग कम्युनिटीज होना चाहिए। ऐसा करने से ये सभी लोग इसके अन्तर्गत आ सकेंगे क्योंकि वनों में बहुत बड़े पैमाने पर दलित लोग रहते हैं जिनका आदिवासियों से रहन-सहन में कोई फर्क नहीं है। अगर वे जातिगत आधार पर अलग हो जाएंगे तो आपस में उन्हें बहुत दिक्कत आएगी।

श्री शैलेन्द्र कुमार: महोदय, यह बहुत गौर करने वाली बात है, बिल का नाम शिडयुलड ट्राइब्स रखा गया है जबकि कोल, गूजर आदि दूसरी जातियों के बहुत से लोग भी हैं इसलिए इसके नाम में कुछ न कुछ परिवर्तन करना पड़ेगा। आपने दूसरी जो बात पेड़ बगैर लगवाने के विषय में कही है जिसके लिए उन लोगों को वहां बसाया गया था। और अभी तक उनको कोई अधिकार नहीं दिये गए हैं, इसके बारे में कहना चाहता हूँ कि इसी के लिए तो यह बिल हम संसद में ला रहे हैं कि सदियों से जो लोग वनों में रह रहे हैं जो समाज की मुख्य धारा से बिल्कुल अलग हुए हैं, उनको किस प्रकार से जोड़ा जाए, उनको विभिन्न चुनावों में वोट डालने के अधिकार मिले और जो ग्राम सभाएं हैं जिनको पंचायती राज व्यवस्था के तहत अधिकार दिए गए हैं, वे अधिकार उनको भी मिलें, उनको जमीन के मालिकाना अधिकार मिलें और वहां रहने का अधिकार मिले। जहां तक उनको विस्थापित करने की बात है, हमें एक प्रकार का विरोधाभास दिखाई देता है कि एक तरफ तो हम यह कहते हैं कि उनको सभी अधिकार मिलने चाहिए, उनके घरों को नहीं तोड़ना चाहिए। दूसरी तरफ यह होता है कि वनों के संरक्षण के लिए उनको वहां से विस्थापित किया जाए ताकि वनों का स्वरूप बना रहे। यह बात सही है कि जो लोग वनों में रहते हैं वे लकड़ी तो काटेंगे ही, हालांकि वे ज्यादातर सूखी लकड़ियां ही लेते हैं, वे इन लकड़ियों का प्रयोग भोजन वगैरह पकाने के लिए करते हैं। इसी तरह फारेस्ट एरिया में यह भी देखा गया है कि अगर कोई सूखा पेड़ भी है तो उसे भी संरक्षित किया जाए क्योंकि कुछ जानवर और पक्षी सूखे पेड़ों पर भी रहते हैं। इन सभी बातों के बारे में एक स्पष्ट कांसेप्ट आना चाहिए।

श्री अशोक चौधरी: आप से ही हमारी उम्मीद है।

SHRI RAVULA CHANDRA SEKAR REDDY: While appreciating the efforts and suggestions made by your team, I would like to know as to why you want to exclude the eight North-Eastern States from the purview of this Bill. The State of Jammu and Kashmir cannot be compared with any other States of the country. But whenever any legislation is made through the Parliament of India the provisions of the Act are applicable to all States except for the State of Jammu and Kashmir. Now, do you want to create another such segment? You may be right in what you are saying from your experience. But how are you going to differentiate? States like Jharkhand also has similarity insofar as forests are concerned. If the North-Eastern States, the Backward States and the tribal dominated States are excluded, then the very purpose of this Bill be defeated as far as my limited knowledge goes. With your experience in the matter you can enlighten the Committee on this point.

SHRI ASHOK CHOUDHURY: The State of Jammu and Kashmir is excluded from the provisions of this Bill because of article 370. Now, in many of the North-Eastern States, within the Sixth Schedule and outside the Sixth Schedule, forest is known as private forest. It is not classified, as is the case in Tripura and Assam. The forest cover in Jharkhand is classified. Now the danger is when it is not classified it could be taken over by the authorities. So, in the Sixth Schedule areas, in case of the unclassified forest cover there is an apprehension from our friends in the North-East that it could be taken over by the authorities. We discussed this issue with our friends from the North-Eastern States and so a proposal is made that in the Bill it should be divided.

Either there should be a provision saying that the community ownership of the forests of the North-Eastern States would not be affected or there should be a declaration. Then, there is no need. But, in this form, we apprehend that there will be danger. In Tripura, Arunachal Pradesh and Meghalaya — especially in Tripura and Arunachal — there is the danger of the Forest Department encroaching upon the community forests. That is the danger that we apprehend. By calling it a reserve forest, protected forest, they will take it over.

MR. CHAIRMAN: Shri Ashok Choudhury and your colleagues, I thank you very much for having come and explained your views and position on the Bill. We will certainly consider every aspect that is presented to us today. Thank you.

(The witnesses then withdrew)

MR. CHAIRMAN: Hon. Members, two other groups were supposed to come but they have not reached Delhi. So, as far as taking evidence is concerned, I think we have finished that today.

Now, I would just like to read the schedule once again. The last date for taking evidence is day after tomorrow, the 19th. Then, the last date for receipt of notice of amendments is 28th of this month. Written notice will go from the Secretariat. But I would like to inform the hon. Members that they may take two or three days' time. In the mean time, you may prepare your amendments and kindly send them to the Secretariat so that we will tabulate them and prepare them before they are circulated to the hon. Members. Then, clause by clause consideration will be taken up on 2nd May, 1st May is May Day. So, we are taking it on 2nd Day. On the 9th, we will take up consideration and adoption of the Draft Report. If there are any Dissenting Notes, then, we shall give three or four days' time for that. I hope there will be no Dissenting Notes and we will all be able to sit together and produce a unanimous report which will give strength to our recommendations. So, I thought that I should apprise you of this time table so that you will have adequate time available with you. You can start giving notice of amendments accordingly. The last date will be 28th. Day after tomorrow, we will finish the evidence part of it.

We will meet again tomorrow at the same place at Three of the Clock. Thank you.

(The Committee then adjourned)

**JOINT COMMITTEE ON THE SCHEDULED TRIBES
(RECOGNITION OF FOREST RIGHTS) BILL, 2005**

**RECORD OF ORAL EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE
SCHEDULED TRIBES (RECOGNITION OF FOREST RIGHTS) BILL, 2005**

Wednesday the 18th April, 2006 from 1500 hrs. to 1630 hrs. on in Committee Room No. 074, Parliament Library Building, New Delhi.

PRESENT

Shri V. Kishore Chandra S. Deo — *Chairman*

MEMBERS

Lok Sabha

2. Shri Mahavir Bhagora
3. Shri C.K. Chandrappan
4. Shri Giridhar Gamang
5. Dr. P.P. Koya
6. Shri Shailendra Kumar
7. Shri Rajesh Kumar Manjhi
8. Shri Madhusudan Mistry
9. Shri Jual Oram
10. Shri Baju Ban Riyan
11. Dr. Babu Rao Mediyam
12. Shri Ravi Prakash Verma

SECRETARIAT

Shri R.C. Ahuja	—	<i>Joint Secretary</i>
Shri R.K. Bajaj	—	<i>Deputy Secretary</i>
Shri K. Jena	—	<i>Under Secretary</i>
Shri J.V.G. Reddy	—	<i>Under Secretary</i>

Representative of the Ministry of Tribal Affairs

Shri P.K. Varma	—	<i>Deputy Secretary</i>
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**Representatives of the Ministry of Law & Justice
(Legislative Department)**

Shri N.K. Nampoothiary	—	<i>Joint Secretary and Legislative Counsel</i>
Shri R.S. Shukla	—	<i>Deputy Legislative Counsel</i>

WITNESSES EXAMINED:**(i) Representatives of SEVA - (Sustainable Agriculture & Environment Voluntary Action, Madurai)**

Shri Padmakumar
 Shri S. Muthiah
 Shri R. Muthiah
 Shri Hanwant Singh
 Shri Babulal Raika
 Shri Hira Ram Raika
 Shri Bhopal Ram Raika

(ii) Shri Samar Singh, IAS (Retd.)

MR. CHAIRMAN: Shri Samar Singh, I welcome you to the sitting of this Joint Select Committee on my behalf and on behalf of my other colleagues on the Committee. You are aware that this Bill which Parliament is seeking to introduce is basically to undo the historical injustice which has been meted out to the forest-dwellers, especially the Scheduled Tribes who have been denied their rights for over a century. You have got a copy of the Bill which you must have gone through.

I would only like to mention that whatever we discuss here will have to remain confidential until we present a Report to the Parliament. After that whatever we have discussed here can be made public also. In case you desire that any part of what you may tell us has to remain confidential you can do so while you make the presentation in which case we will not include it in the Report.

You may please go ahead and make your observations.

SHRI SAMAR SINGH: Thank you very much, Sir. First of all, I would like to thank the hon. Committee for giving me this opportunity. I belong to a predominantly tribal district of Doongerpur in Rajasthan. When I joined the service, the IAS, I had an opportunity to serve in Madhya Pradesh where I was Collector in West Dimar, Kharbong district and also in Bastar which are again very predominantly tribal districts. Then, subsequently, I was Forest Secretary in Madhya Pradesh for three years and then subsequently I was in the Ministry of Agriculture looking after forest and wildlife. Subsequently I was with the Ministry of Environment also dealing with forest and wildlife. So, in a way, I have had opportunity through my career to get acquainted with the issues which this hon. Committee is addressing.

Sir, I would like to make my submissions in two parts. One is—some general comment which relate to the scheme of the Bill under consideration and then I have some points, more specific, with relation to certain provisions of the Bill. In the first part, may I submit, that the main objective of the Bill is undoubtedly to confer certain rights on the forest-dwelling Scheduled Tribes in respect of forest lands and this is, perhaps, the first time that a Central Legislation is proposed on this subject which actually falls within the jurisdiction of the State. The ownership and management of all vests with the State Governments, except such land that may be acquired by or transferred to the Central Government. Hence, my submission is that the legality and constitutional propriety of the proposed Bill does need some consideration.

Furthermore, in 1976, the subject of forest was brought under the concurrent List of the Seventh Schedule in the Constitution thereby giving the Central Government overriding authority in regard to legislation. However, the central purpose of this move was to ensure better protection and management of forests and not to undertake action for vesting of rights in forests. Clearly, the proposed Bill is not in line with the approach and intent of the important constitutional amendment made in 1976.

Besides, the provisions of the proposed Bill are not exactly in harmony with the objectives and provisions of the existing Central laws on forests and wildlife—the Indian Forest Act, 1927, the Forest conservation Act, 1980, the Wildlife Protection Act, 1972, and the existing National Forest Policy does not visualise vesting of rights on forest lands.

The Preamble to the proposed Bill talks of historical injustice. But the exact extent of the problem is not spelt out anywhere, nor is there any recognition of the historical fact that in several States the occupation of forest lands by different categories of persons including Scheduled Tribes has been regularised by the concerned State Governments from time-to-time. Moreover, while the Bill intends to benefit the forest-dwelling Scheduled Tribes, where they are scheduled, it is very unlikely that such a restriction would be possible to enforce in respect of Scheduled Tribes in other places. Besides, what about Scheduled Castes and other disadvantaged categories who will certainly come forward to claim their share once this legislation is enacted?

Then, the lessons arising from earlier experiences in vesting rights in trees with the tribals particularly in States like Madhya Pradesh cannot possibly be ignored. That move led to massive exploitation of the concerned tribals by the middlemen on the one hand and considerable deforestation and felling of trees on privately-owned lands. In the past five decades, encroachments on forest lands and regularisation thereof has been a very serious recurring problem in most of the States which have got forests. Vested interests have instigated and taken full advantage of the situation each time. Influential interests including those in political parties have also played their part in all this. The connivance of the lower level Government functionaries has further compounded the problem. The implementation of the proposed Bill will surely provide a golden opportunity to all such interests to flourish leading to further exploitation as well as large scale destruction of forests throughout the country.

The inclusion of national parks and sanctuaries within the purview of the proposed legislation is fraught with very serious consequences for the protection of wildlife in such protected areas and is certainly not in consonance with the provisions of the Wildlife Protection Act, 1972. The Bill provides for a maximum of 2.5 hectares of land per nuclear family. But the term 'nuclear family' has not been defined. In any case, the requirements of additional land will be fuelled further with additions to the existing population. In effect, the recognition of rights on land within forest areas will further worsen the already existing honeycombing of forests and the hitherto good forest areas will get sacrificed in the process.

By entrusting implementation of the proposed legislation at the level of the Gram Sabha, the ultimate outcome will be that virtually all the forests in the country will get burdened with some rights, more especially the community rights. Grazing of Cattle, already a serious problem in the forest management, will become free for all. The implications for the forest will be disastrous.

Finally, on the general issue, I submit that by dissociating or delinking the Forest Department at the State level, the outcome would be counter-productive and lead to considerable confusion, laxity and loss of accountability at the field level.

With regard to certain specific provisions of the Bill, I would draw attention to the preamble where there is a mention of 'for generations'. Unless one is clear as to what one is implying, generations can mean anything and is subject to interpretation which would be very unfortunate. Secondly, in the preamble, there is mention of 'recognised rights', but recognised rights are nowhere defined. The Bill does not mention what is meant by recognised rights. This will lead to confusion. How are these recognised rights so recognised?

In the section dealing with definitions, I would draw attention to clause 2(b) which is for commercial purposes, but the commercial purpose has been equated to large-scale trade or mercantile purposes. Now, large-scale trade or mercantile purposes create its own implications. It says 'for profit or for large-scale trade or mercantile purposes'. I do not know whether the tribals would, at all, indulge in large-scale trade or mercantile purposes. I feel that these words are not appropriate at all. It would again be a question of interpretation as to what is large-scale and what is not so large-scale.

MR. CHAIRMAN: You are talking of clause 2(b), but clause 2(b) is different. It deals with core areas.

SHRI SAMAR SINGH: There is one clause dealing with commercial purposes. If commercial purpose is being used, it should not be interpreted as large-scale. If commercial purpose is not being defined, then there is a need to define what is meant by commercial purposes.

In clause 2(d), forest land includes sanctuaries and national parks, which is not appropriate and it would create its own problems.

SHRI MADHUSUDAN MISTRY: What objection do you have in including sanctuaries and national parks in the reserved forest land?

SHRI SAMAR SINGH: Sir, sanctuaries and national parks are governed by a different law, Wildlife Protection Act. By including it here, it would lead to dual management and dual control.

SHRI MADHUSUDAN MISTRY: It is also governed by the basic law for forest land because you do not have a separate hearing while you declare national park and sanctuary. You take earlier settlement as a settlement under the Forest Act, 1927 and you do not have a separate hearing when you begin to declare a wildlife or sanctuary.

SHRI SAMAR SINGH: Sir, there is a provision in the law. Now, it is a different matter that the implementation may not have been done.

SHRI MADHUSUDAN MISTRY: It is always a followed practice by the Forest Department that since all the hearing has taken place at the time of declaring any area as a reserved forest, there is no need to have a further hearing while you are declaring the same area as a sanctuary or national park.

SHRI SAMAR SINGH: Sir, I would humbly submit that a reference to Wildlife Protection Act would clarify this. There is a provision there for settlement of right when any protected area is declared.

SHRI MADHUSUDAN MISTRY: It does not take place.

SHRI SAMAR SINGH: It is a question of implementation.

SHRI MADHUSUDAN MISTRY: It is not a question of implementation; it is a question of interpretation by the Forest Department. It is interpreted by a large number of Forest Departments of this country that there is no need of a separate hearing under the Wildlife Protection Act if we intend to declare certain area, which is a reserved forest, as a sanctuary or national park.

SHRI SAMAR SINGH: If I may submit, the settlement is the responsibility of the Collector of the District under the Act.

SHRI MADHUSUDAN MISTRY: This is done under the Forest Act. The Collector does not go. The Settlement Officer works under the Forest Act.

SHRI SAMAR SINGH: It is not implemented properly, by the law is there.

SHRI MADHUSUDAN MISTRY: There has been a clear view of the Ministry of Environment and Forest Departments because it has not been done for years. In fact, it has been the very view of the Ministry of Environment and Forest, even when you were there, and all the Forest Departments of different States that it is not being done because there is no need of a separate hearing. It is because the hearing has been once made to declare any area as reserved forest and after that you declare the same area as national park or sanctuary.

SHRI SAMAR SINGH: Of course, I have not looked at it this way. I have never interpreted it this way. Since the law is there, it is for all the executing agencies to implement the law.

SHRI MADHUSUDAN MISTRY: What would you do? These are not the reserved forest areas where there is no settlement and there are no villages and so on. There are villages and there are people. People are living over there. In fact, they have been cultivating forest land for years, even after 1970, 1980 and so on and so forth. Once you declare that area as reserved forest under section 4 of the Forest Act, all settlement process comes, more or less, to a standstill. You know and we all know how the process has been carried on by the Forest Department or the Settlement Officer all these years. What would happen to these people who have been cultivating land for years in the sanctuaries and national parks, even after we declared them as reserved

areas? Between 1970 and 1980, there was a trend to declare a large number of forest areas as reserved—national parks and sanctuaries—so that one can protect the land, and not wildlife, and Forest Department could protect its strength. It can increase but not decrease. How would you deal with this problem inside the national parks and sanctuaries?

SHRI SAMAR SINGH: Sir, we went into this issue at great length when a task force was recently appointed by the Prime Minister to look at the tiger situation. In the report we have somewhat analysed this problem. We have recommended very clearly that this is a serious issue, and once for all there is a need to decide which of these areas need to be settled and which are not to be settled.

SHRI MADHUSUDAN MISTRY: What do you mean by settled?

SHRI SAMAR SINGH: It means that even the boundaries of that protected area can be redone if it is actually established—after looking at the ground situation—that these particular areas need not be a part of the sanctuary or a national park and has been wrongly brought under the protected area.

In respect of those areas that are absolutely in the core of the protected area, there may be a need to resettle the people. They should be given a good package as we do in respect of other development projects. So, some finality to this matter is absolutely important, and there is a need to deal with it. I would like to mention that I am not at all against the Bill.

SHRI MADHUSUDAN MISTRY: I am not saying it. I am simply trying to clarify the point because I have a different view with regard to this issue. It is a very big problem, and it is going to create a lot of problems in this country if we try to shift people out because of wildlife being there. It may be a priority of the Forest Department, but it may not be a priority for the other departments. I would like to make it very clear that I am not trying to drag it in this. It was just asked to clarify because whatever information is coming out very clearly from the Environment and Forest Department. In any way, there is bound to be difference on certain issues of this kind.

SHRI SAMAR SINGH: Section 3 deals with the Forest Rights, and in clause (j) there is a mention about the community forest resource. But this community forest resource has not been defined anywhere. If this term is used, then there is a need for it to be defined in the Bill. There is also a mention of sustainable use and unsustainable use, but these terms also have not been explained anywhere in the Bill.

SHRI MADHUSUDAN MISTRY: If I am not wrong it is for their rights, etc. only. You also mentioned this point earlier, and you must know it more than me that before the forest law came or at the time of the first forest law the rights of the communities were their privileges. They were the privileges of the community living at that place. But it became a right and concession after 1952 policy, and after the Roy Burman Committee Report—which they presented to the Department and another Committee was set up by the Department of Environment and Forest—they became more or less concessions, and the rights were completely withdrawn.

Now, you say that the 1952 forest policy should override because of this as they are living in the proximity of the forest area. It does not mean that they have the first right above the national interest. Therefore, national interest and local interest had become an issue at that time. Are you saying in your submission that the privileges had become a right and a concession, and now the right has gone and it has become simply a concession? Do you think that we should not restore—if not all of them—at least certain rights to these people?

SHRI SAMAR SINGH: No my submission is not at all this. My submission is only that the term community forest resource has been used here, but nowhere has it been explained as to what community forest resource actually is. It should be explained in the definition. Otherwise, it would be interpreted in different ways.

SHRI MADHUSUDAN MISTRY: Do you mean like village forest?

SHRI SAMAR SINGH: Sir, in whichever way it is defined, but my point is purely that if there is a definition of Gram Sabha; if there is a definition of forest village; and if there is a definition of habitat, then in the same manner the term community forest resource that has been used here should also be explained.

Likewise, the term sustainable use and unsustainable use has been used here, which is likely to create confusion.

MR. CHAIRMAN: In section 2 (n) it has been mentioned that:

"sustainable use" shall have the same meaning as assigned to it in clause (o) of section 2 of the Biological Diversity Act, 2002,"

I think, as far as this issue is concerned, it has been taken care of by this sentence.

SHRI SAMAR SINGH: I will come to a few other points that would explain it. In section 4 there is a problem of making a distinction between those who are declared scheduled and those who are not declared scheduled in the areas where they may have been in occupation. It would be a very difficult situation. During 1978, 1979 and 1980 we did our best to regularise occupation of forestlands in Madhya Pradesh. I was the Forest Secretary at that time. I was also the Collector in West Nimad district when extensive areas had actually been occupied, and the Government declared that this should be regularised. Now, making a find distinction that person 'A' is scheduled and person 'B' is not scheduled is very difficult. Therefore, he will be deprived of the benefits, and the Government machinery will exploit this to the hilt. This would lead to a lot of confusion.

MR CHAIRMAN: In other words, you feel that the non-scheduled tribal forest dwellers should also be included in it.

SHRI SAMAR SINGH: My submission is that everybody should be treated at par. It is not the question of tribals alone, but the non-tribals also. In the past in several States including Madhya Pradesh, Maharashtra, Karnataka, Gujarat, etc. those who have been in occupation were all treated at par.

SHRI MADHUSUDAN MISTRY: What do you mean by occupation?

SHRI SAMAR SINGH: It means those who had occupied it.

SHRI MADHUSUDAN MISTRY: Do you mean those who occupied the land?

SHRI SAMAR SINGH: In fact, the cutoff date for the occupied forest land has shifted from time to time, and now there is a date of 25 October 1980. It is the date picked up because the Forest Conservation Act was brought into force at that time. My very humble submission is that this is an arbitrary date. This date will be very difficult to establish on the basis of actual records. It is something, which would again be used by people to distort and create fresh evidence.

SHRI MADHUSUDAN MISTRY: A circular has come out to find out the occupants of the land through *Gram Sabhas* rather than depending on the Forest Department's data. That way, the Committee is right.

SHRI SAMAR SINGH: Sir, I have been in-charge of that Department and I know the problems involved. I think, we have to be definitely innovative in this respect. I think, we have to adopt ways of doing it. I will, at the end, make one suggestion for the consideration of the Committee on this point.

Sir, I have already submitted that on this issue of ceiling of 2.5 hectares per nuclear family, the term 'nuclear family' will have to be properly understood because to the best of my knowledge, it has not been defined anywhere in the Bill.

MR. CHAIRMAN: That is the higher ceiling limit. Generally, nuclear family means husband, wife and dependent minor children.

SHRI MADHUSUDAN MISTRY: I think, you must be knowing that in Madhya Pradesh and also in other places, if I possess revenue land, then, it is the revenue land plus the forest land, the total of which comes to 2.5 hectares.

SHRI SAMAR SINGH: I am not so much on the question of quantum of land. I am saying that the term 'nuclear family' should be put down in the Bill as to what is understood by it. Then, Sir, in section 4(6) and (7), which talks about certain responsibilities devolving, the question of adding wildlife and biodiversity should be considered.

level, despite the fact that all authorities have been vested at the local level. My worry is that local level officials, in this process, may be either carried away for a number of factors. If you take that decision-making process a little far away, then the influence gets decreased.

SHRI SAMAR SINGH: In any case, there is a forum at the District level. I am saying this on the basis of my perception. I feel that taking this whole thing up to the District level is only going to delay things. On the question of influence, if this is allowed to happen in a haphazard way there is a problem. But if there is proper supervision and monitoring, this should not create a problem. This is my submission.

In section 7, which is relating to penalties the penalty is somewhat a flat amount. It is not linked to the gravity of the offence. Of course, it says that if it is repeated the right can be taken away and all that. However, there is a difference between cutting one tree and cutting several trees; killing a wild boar and killing a tiger. So, there are differences which need to be appreciated. I feel that that aspect has not been reflected here. And, of course, the word forests or any other aspect of biodiversity can mean a lot of things, something more serious requiring a bigger penalty and something which is much lesser in extent.

SHRI MADHUSUDAN MISTRY: Do you mean that the present practice should continue?

SHRI SAMAR SINGH: I think there should be some kind of grading of offences.

MR. CHAIRMAN: What he means is that the punishment should differ according to the quantum of offence.

SHRI SAMAR SINGH: Seriousness of the offence.

SHRI MADHUSUDAN MISTRY: That is what is happening today. It is being decided by the Range Officers mainly. If you cut non-reserve tree it would attract more penalty than if you cut a reserve tree.

SHRI SAMAR SINGH: There should be some distinction made between cutting one tree and cutting 100 trees because destroying a forest includes the both.

SHRI MADHUSUDAN MISTRY: Agreed. But as per the examples given, even if you cut one tree you will be fined as if you have cut 100 trees. And the whole offence is being compounded. Money is taken as a deposit from the person. The case goes *ex parte*. The amount which has been deposited is put as a penalty. Some amount is treated as penalty. That is the practice being adopted by the Forest Department throughout the country. The person never gets a chance to defend himself or herself. I am sure the same thing will be repeated. As a result, the tribals and other forest-dwellers in the country become victims and end up paying a lot more fine than those who actually cut 100 trees. How would you prevent it?

SHRI SAMAR SINGH: A distinction should be made on the basis of the gravity of the offence that there will be a higher penalty provided in the case of those who actually resort to that kind of a thing. The language used is 'engages in unsustainable use of forest or forest produce'. I am only bringing to your attention problems that will arise in implementation. But the use of language here will create confusion in the implementation at that level. This is all that I am saying. When it says, 'that engages in unsustainable use of forest or forest produce', it is language which is very vague, very ambiguous. It can be interpreted in any manner.

Section 13 deals with tribal affairs, Ministry of Tribal Affairs being the nodal agency. It says, 'That shall be a nodal agency for the implementation of the provisions of this Act'. The Government in its wisdom has decided that Ministry Tribal Affairs should do it. The nodal agency can be the Ministry of Tribal Affairs. Undoubtedly, since the forest land is involved, the two agencies must work together. I wonder if this leads to dual control; dual management; dual interpretation. Of course, this raises this other point that at what point is a person punishable under this Bill. That is because Section 14 says. "Save otherwise provided in this Act, the provisions of this Act shall be in addition and not in derogation of the provisions of any other law for the time being in force". A person who commits an offence here is liable as he is liable under other Acts, It has not been taken care of in the Bill as to at what point of time and in what type of cases this law will prevail. It says, this will be in addition to. In other words, a Forest Officer, a Wildlife Officer, or whoever it is who is responsible for managing, can also

institute action under those laws. How will this be treated? I feel that this aspect has not been adequately dealt with under this Bill.

I feel that certain terms which have been used here like wildlife, biodiversity, etc.,-habitat is now got covered-should be actually explained in the definitions. One must know what is the meaning of a term which is being used here because they have specific meaning under different laws already in existence also made by the Central Government and passed, of course, by the Parliament.

Finally, I am reacting to the point which was made. I am not making out a case that the issue of addressing the problems of those who have been in occupation of forest land should not be dealt with. I am all in favour of it being addressed seriously. It must be addressed with utmost urgency, but not in piecemeal manner. If the Scheme of the Bill is tightened up, I would submit that it should be subjected to very close supervision and monitoring, it should be undertaken on a pilot basis and experience gained, and it should be a time-bound exercise.

In other words, it should not be a question of spreading it over a long period of time. It should be time bound. It should be a Mission project. It should be done quickly with a cut off date. Only then, it will achieve the purpose that we are trying to address.

SHRI MADHUSUDAN MISTRY: You said that it should be time bound. A circular has been issued by the Ministry of Forests to respective State Governments in regard to the land cultivated before 1980. The complete process should be made time bound. But the circular was not carried out. The very attitude of the Department is not to give the land to the people. Once you put a time limit, you would say that the time is over.

The process of giving the land is cumbersome. The land has to be earmarked, surveyed and the title has to be issue. Do you think that the Police department of the country has the surveyors or machinery to complete this process within five years? I belong to Gujarat where I am hitting my head for more than eight years. Still, they have not been able to give *pattas* to all the tribals for which they made a decision in 1997. Party because there is a lack of resources, no surveyors, etc. Now they claim that the time is over. They say sorry and that every thing is in fructuous and we cannot give the land. How would you deal with this?

SHRI SAMAR SINGH: I was not dealing with the Forest Department. I was talking of the entire Government machinery. I have implemented it in the district of Kharbong where I had gone as collector in 1968. We had to deal with several thousand hectares of forest land to be settled. The entire district machinery got done to do. Time bound is not for the person in occupation, it is for the Government machinery to implement. That is what I meant. What I meant was no department will be able to implement it. I have seen Tribal Affairs Department also very closely. They have no machinery at the ground level to implement this kind of scheme. This has to be done by the district administration in its totality. My submission is, let this be done as an integrated approach with all agencies who are concerned with it—Revenue Department, Forests Department and the Tribal Affairs Department. This must be given on a time bound basis. Why I said 'pilot' because if we try to do it in the districts of the country. supervision and monitoring will not be easy. Therefore, to gain experience and to establish models, it should be taken up in a few places in a time-bound manner and in the manner in which I am submitting. Then, it will be done because I have practical experience of having done it.

MR. CHAIRMAN: Thank you very much.

(The witnesses then withdrew)

WITNESSES EXAMINED:

1. Shri Padmakumar, SEVA, Madurai
2. Shri S.P. Muthiah.

MR. CHAIRMAN: Shri Padmakumar and your colleagues, I welcome you to the sitting of this Joint Select Committee on my behalf and on behalf of my other colleagues on the Committee. As you know this Bill

is being introduced in Parliament to undo the Historical injustice which has been meted out to the forest-dwellers, especially those of the Scheduled Tribes. We have seen your memorandum.

I would only like to mention that whatever we discuss here will have to remain confidential until we present a Report to the Parliament. After that whatever we have discussed here can be made public also. If any part of what you may tell us has to remain confidential you can do so specifically while you make the presentation in which case we will not include it in the Report.

You may please go ahead and make your observations in brief and make important points which you have not covered in your memorandum.

(Introduction)

SHRI PADMAKUMAR: There are three different angles if you look from the bio-diversity dimension or livelihood contribution or ecological security. These three dimensions contribute to the process. Even though we have many pastoralist, they are facing problems. The most important and the critical one is resource alienation that is the resource base is shrinking day by day. it is immediately affecting the pastoralists and their livelihood. If their access to the forest will be denied, definitely it will impact on their livelihood. so, our humble submission is that, all pastoralists, including Raika in Rajasthan belong to OBC and not STs. Irrespective of different castes access to the forests should be given. Kindly also look at the different dimensions including pastoralists categories in the Bill rather than confining the STs.

श्री गोपाल राम देवासी: महोदय, मैं सबसे पहले सभी माननीय सदस्यों को नव वर्ष की शुभकामनाएं देना चाहता हूं।

महोदय, इस देश में पशुधन और खेती दो ही ऐसी चीजें हैं, जिन पर हमारे देश के 80 प्रतिशत लोग निर्भर करते हैं।

महोदय, इन्हीं पर देश की अर्थव्यवस्था टिकी हुई है और इन्हीं पर हमारा रोजगार चलता है। हमारे पशुओं की चराई की समस्या बहुत बढ़ गई है। एक तरफ तो जनसंख्या बढ़ रही है और दूसी तरफ ऊबड़-खाबड़ जमीन है। हमें अपने पशुओं को चराने में बहुत कठिनाई हो रही है। पशुओं को चराने के हमारे परम्परागत राइट्स हैं। ये हमारे कस्टमरी राइट्स हैं। इसीलिए हमें रेवाड़ी कहते हैं, यानी राह दिखाने वाले देवासी, यानी देश-देश में घूमने वाले। हम लोग केवल राजस्थान में ही नहीं रहते हैं। हम आंध्र प्रदेश, मध्य प्रदेश, उत्तर प्रदेश, पंजाब, हरियाणा और गुजरात में भी जाते हैं। जितने भी हमारे पड़ोसी राज्य हैं, उनमें हम घूमते रहते हैं। हमें सिर्फ हमारे प्रदेश में ही नहीं बल्कि सभी प्रदेशों में अपने पशुओं को चराने में कठिनाई हो रही है। इसलिए हमारा आपसे और कमेटी से विशेष निवेदन है कि जिस नये बिल को, सरकार ने समिति में विचार हेतु भेजा है, उस पर विचार करते हुए समिति हम गडरियों को अपने पशुओं को चराने की व्यवस्था जरूर करें।

श्री हनुमंत सिंह राठौर: सर, सबसे पहले तो कमेटी का धन्यवाद कि उसने हम लोगों को बुलाया और हम लोगों की बात आप लोग सुन रहे हैं। हमारी जो संस्था है, वह पिछले 10-12 सालों से राइका कम्युनिटी के साथ काम कर रही है। राइका कम्युनिटी, पिछले 10 साल से कैमल के फीमेल को अपने लोगों के अलावा अन्य किसी को नहीं बेचती थी। सिराही में यह कम्युनिटी नई-नई ब्रीड तैयार करती थी। सिराही में एक संस्था डिस्ट्रिक्ट नारी कैटल नाम की है। उसके कैमल फीमेल पशुओं को किसी भी प्रकार की कोई डिजीज नहीं है। वे अपने फीमेल कैमलों को दूसरों को इसलिए किसी को नहीं बेचते जिससे किसी भी प्रकार की कोई बीमारी नहीं फैल जाए।

राइका समुदाय, घुमन्तू पशु-पालक समुदाय है। ये जगह-जगह अपने भेड़-बकरियों के समूह को ले जाकर चराते हैं और अपना गुजारा करते हैं। इनके पास जमीन नहीं होती। ये दो प्रकार के होते हैं। एक-माररू राइका, जिनके पास कुछ जमीन होती है और दूसरे-गौड़ राइका, जिनके पास जमीन बिलकुल नहीं होती। ये दूसरे प्रकार के राइका टोटली फॉरेस्ट पर डिपेंड होते हैं और फॉरेस्ट में ही पशुओं को चराते हैं। इनके सामने सबसे बड़ी कठिनाई रेनी सीजन में आती है जब सब जगह फसल खड़ी होती है। चार महीने टोटली क्रॉप्स होती हैं, तब इन्हें अपने पशुओं को चराने के लिए कहीं जगह नहीं मिलती है। इसलिए ये टोटली फॉरेस्ट पर डिपेंड हैं।

महोदय, एक बार सेंट्रल एम्पावर कमेटी ने एक डिजीजन दिया जिसके द्वारा इन्हें अपने पशुओं को जंगल में चराने पर बैन लगा दिया गया, लेकिन उसके बाद इनकी बात सुनी गई और सेंट्रल गवर्नमेंट ने उस ऑर्डर को निकलवाकर उसमें ग्रेजिंग के लिए व्यवस्था की गई।

महोदय, कैमल पोपुलेशन वर्ष 1977 की तुलना में अब तक 50 प्रतिशत डिक्लाइन हो चुकी है। राइका फीमिली जो पहले कैमल फीमेल को नहीं बेची थी, अब वे कैमल फीमेलों को बहुतायत में बेच रही हैं। पुष्कर के मेले में फीमेल कैमल कौटल बड़े पैमाने पर बेचे गए। हमने वहां एक वर्कशॉप लगाया और हमने उनसे पूछा कि आप क्यों फीमेल कैमल को बहुतायत में बेच रहे हैं, तो उन्होंने यही कहा कि उनके चरने की कोई व्यवस्था नहीं होने के कारण हमारे पास उन्हें बेचने के अलावा कोई और चारा नहीं है। इस प्रकार से देखा जाए तो उनके जीवनयापन का साधन टोटली खत्म होता जा रहा है क्योंकि वे इसी पर पूरी तरह डिपेंड होते हैं।

महोदय, हम चाहते हैं कि जो नया फॉरेस्ट ऐक्ट बनाया जा रहा है, उसमें इनके ग्रेजिंग राइट्स की व्यवस्था जरूर की जाए। यदि पूरे साल नहीं, तो कम से कम चार महीने जब क्रॉप्स खेतों में खड़ी होती हैं, तब इन्हें जंगलों में चरने की अनुमति देने अथवा पास देने की व्यवस्था अवश्य की जाए अन्यथा देश का यह हैरिटेज सिस्टम खत्म हो जाएगा।

महोदय, अभी हम लोग एक कॉन्फ्रेंस में भाग लेने विदेश गए थे। हमने वहां एक जगह लिखा देखा कि "इनक्रेडीबल इंडिया" और उसके पास एक कैमल बना था। मैं बताना चाहता हूँ कि यदि राइका समुदाय की भेड़-बकरियों को चराने की व्यवस्था फॉरेस्ट ऐक्ट में नहीं की गई और जिस प्रकार से इनकी पोपुलेशन खत्म हो रही है, उससे ऐसा लगता है कि लगभग 20 साल बाद कैमल केवल चित्रों, किताबों या जू हाउसेस में ही दिखेगा, धरती पर नहीं। इसलिए हमारी प्रार्थना है कि राइका समुदाय को अपनी भेड़-बकरियों को चराने हेतु प्यादा नहीं, तो कम से कम चार महीने के लिए जंगलों में चराने की व्यवस्था अवश्य की जाए।

श्री हरि राम राइका: सभी समिति मੈम्बरों को मेरा नमस्कार। हमारा पशुपालन ही मुख्य धंधा है। हमारे पास इसके अलावा कोई और धंधा नहीं है और न ही कोई जमीन है। हमें मवेशियों के चराने नहीं करने देने के कारण पिछले एक-दो सालों में मवेशियों की संख्या घटकर 50 प्रतिशत रह गई है। हमारे पशुओं को चारा करने की जगह नहीं दी गई, तो हम लोग बेरोजगार और बेकार हो जाएंगे। इसलिए हमारा आपसे निवेदन है कि आप हमें अपने पशुओं को चराने के राइट की व्यवस्था नए फॉरेस्ट ऐक्ट में जरूर करने का कष्ट करें। धन्यवाद।

श्री बाबू राम राइका: मैं एक पशुपालक हूँ और मुझे आपके दर्शन हो गए, यह मेरे लिए बहुत बड़ी बात है। मैं अनपढ़ आदमी हूँ। मुझे कोई जानकारी नहीं है। हम लोग भेड़-बकरी चराकर अपना गुजारा करते हैं और अपने बच्चों को पालते हैं। हमारे बच्चों को पढ़ाने-लिखाने की कोई व्यवस्था नहीं है। हम अपने पशुओं के साथ राजस्थान की सीमा से लगते हुए प्रदेशों में घूमते रहते हैं, लेकिन अब हमे अपने पशुओं के चराने की व्यवस्था नहीं होने के कारण बहुत कठिनाई आ रही है हमारा निवेदन है कि हमारे पशुओं को चराने की व्यवस्था करें और हमें अपने भेड़-बकरियों को पालने की अनुमति दी जाए। धन्यवाद।

श्री आर. मुत्तैया: सर, मैं तामिलनाडु से हूँ। मद्रास में ऐसे 500 परिवार हैं जो जंगलों में अपने पशुओं को चराकर, अपना जीवनयापन करते हैं फॉरेस्ट वाले हमें बहुत तंग करते हैं। हमें अपने पशुओं को जंगलों में चराने की अनुमति प्रदान की जाए। फॉरेस्ट वाले हमसे पैसे भी ले लेते हैं और हमारे पशुओं को चराने भी नहीं देते हैं और हमें कई अन्य प्रकार से परेशान करते हैं। इसलिए हमारा निवेदन है कि हमारे पशुओं को जंगल में चराने की अनुमति हमें अवश्य दी जाए।

SHRI S. MUTHIAH: (*spoke in Tamil*)

MR. CHAIRMAN: Basically the gist of what the witness has said is that they belong to a nomadic tribe and their cattle had been earlier grazing in the forest lands. But after the Joint Forest Management came into being in Tamil Nadu and with the formation of the Village Committees their cattle are not being allowed to graze in those areas. He wants the Committee to consider this aspect of allowing this nomadic tribe to let their cattle graze in the forest lands which they have not been entitled to doing since 1992.

श्री शैलेन्द्र कुमार: सभापति जी, इनका कोई स्थायी निवास नहीं होता। ये घूमते रहते हैं।

श्री मधुसूदन मिस्त्री: मैं राजस्थान वालों को बताना चाहता हूँ कि फॉरेस्ट वाले कहते हैं कि आप लोगों के पास मवेशी बहुत प्यादा होते हैं, जिनके कारण जंगल नष्ट हो रहे हैं। इसलिए मैं जानना चाहता हूँ कि एक कुटुम्ब के पास या एक आदमी जिसे खई एकड़ दी गई है, ऐसी न्यूकलीयर फीमिली जिसमें एक बाप, बेटा या बेटियाँ या एक कुटुम्ब हो, उसके एक साल का खर्चा ठीक प्रकार से चलाने के लिए जिससे उसकी सारी जरूरतें पूर्ण हो जाएं, उतनी आमदनी करने के लिए कितने मवेशी एक आदमी को जंगल में चराने के लिए परमिट देना चाहिए?

एक कुटुम्ब को पालने के लिए कितने मवेशी चाहिए?

श्री हनुमन्त सिंह राठौर: एक फैमिली के पास अगर 50 से 100 भेड़ बकरी हैं और माइग्रेशन में जाने के लिए गाड़ी में सामान ले जाने के लिए 2-4 ऊंट भी हैं तो उनसे इनको एक साल में 70 हजार से 80 हजार रुपये की इनकम है।

श्री मधुसूदन मिस्त्री: दूसरा सवाल है कि बकरी को इसलिए जंगल में नहीं जाने देते, क्योंकि जब वह खाती है तो उसको जड़ से खा लेती है और फिर वह उगता नहीं है। इसके बजाय आप जंगल से चारा ले आओ और अपने घर या खाने की जगह पर लाकर खिलाओ, यह आपको मंजूर है या नहीं?

श्री हरि राम राइका: ऐसा मंजूर नहीं है। बकरी के ऊपर जो ब्लेम लगाया जा रहा है, वह गलत है। हो सकता है, आप भी काश्तकार हों, एक आदमी पढ़ा-लिखा है, आपको ज्ञान है तो आप विधान सभा में, पार्लियामेंट में पहुंच जाते हैं, आफिसर बन जाते हैं, लेकिन जिनको खुद जड़ से जानकारी है, उनको पता है कि बकरी जड़ नहीं उखाड़ती। आपने कहा कि बकरी जड़ उखाड़ लेती है, आप वन विभाग के लोगों का कहना मत मानिये, यह बिल्कुल गलत बात है।

श्री जुएल ओराम: बकरी या भेड़ के जंगल में चरने से जंगल नष्ट होता है क्या?

श्री हरि राम राइका: भेड़ बकरी के खाद और पेशाब से जंगल बढ़ता है।

श्री हनुमन्त सिंह राठौर: सबसे बड़ा जानवर तो इन्सान है, उससे ज्यादा खतरनाक कोई नहीं है। कुम्भलगढ़ सैक्चुरी पिछले 15 दिन से जल रही है, लेकिन फोरिस्ट डिपार्टमेंट का कोई आदमी उसको बुझाने नहीं जा रहा है। जंगल ज्यादातर कटाई से नष्ट हो रहा है, जानवरों के शिकार से नष्ट हो रहा है, मवेशियों से वहां कोई प्राब्लम नहीं है।

SHRI PADMAKUMAR: Naturally, depending upon the situation the destruction of the forest by the animals will be caused. If the number of animals is more than grazing capacity, then it will cause damage. So, some kind of control is required.

MR. CHAIRMAN: Basically most of these tribes are nomadic tribes. They roam from one place to another. This Bill is seeking to give rights to traditional forest dwellers. Do they have any proof of having got permission from the Forest Department?

श्री मधुसूदन मिस्त्री: 25 साल से ये लोग वहां रह रहे हैं और इनके पास कोई राइट नहीं है।

MR. CHAIRMAN: If they do not have any proof on what basis they will be recognised as belonging to nomadic tribe who has been dependent on grazing in forest land or forest areas for their livelihood? आप कह रहे हैं, इनके पास रसीद है, लेकिन अगर किसी के पास रसीद नहीं हो तो उनके साथ क्या होता है?

श्री मधुसूदन मिस्त्री: उनको वे जंगल में जाने नहीं देते।

श्री हरि राम राइका: अरावली में तो ताम्र पत्र है और सारी रसीदें हैं।

श्री हनुमन्त सिंह राठौर: इनके पास रसीद है, जिनमें इनके फादर और उनका नाम लिखा हुआ है।

सभापति महोदय: ऐसे बहुत से लोग होंगे, जिनके पास रसीद या प्रूफ नहीं हों तो उनके साथ क्या होता है, वह आप हमें बताइये। हम इस मामले में आपकी मदद कर सकते हैं।

श्री जुएल ओराम: आप जंगल में मवेशी चराते हैं तो उसके लिए सरकार को पैसे देते हैं तो सरकार की तरफ से उसकी रसीद दी जाती है क्या?

श्री हनुमन्त सिंह राठौर: ये लोग चराई का तय पैसा भरते हैं, उसकी बाकायदा रसीद मिलती है और उससे ये पट्टेदार हो जाते हैं, इनको जंगल में चराई का अधिकार प्राप्त है। राजस्थान हाई कोर्ट ने भी कहा है कि इनको जंगल में चराई का अधिकार है और पेरीफरी एरिया में रहने वाले लोग भी जंगल में ग्रेजिंग कर सकते हैं।

श्री रवि प्रकाश बर्मा: तय शुल्क जमा कराने के बाद जंगल में चराई करने की परमीशन देते हैं, वह साल भर की देते हैं तो इस बीच में कभी कोई जुमाने की रसीद भी कटती है क्या?

श्री हनुमन्त सिंह राठीर: जैसे कहीं प्लान्टेशन किया हुआ है और उसमें अगर जानवर चले जाते हैं तो उसके लिए जुर्माना होता है।

श्री गोपाल राय राइका: जहां अवैध चराई या बिना परमीशन चराई होती है तो जुर्माना होता है। राजस्थान में स्टेट टाइम का बनों का जो नियम था, वही अभी भी चला आ रहा है। अब देसूरी में 10 रुपये ऊंट है, सिराही में सिर्फ 25 पैसे है, उदयपुर में दो रुपये ऊंट है, करौली में चार रुपये ऊंट है। हमारे चीफ सैक्रेटरी की अध्यक्षता में एक कमेटी बनी हुई है, जिसकी प्रतिवर्ष एक बैठक होती है कि कितने ऊंट, कितने जानवर कहां रहेंगे, उसमें वह निर्णय होता है अभी राजस्थान में 50 पैसे भेड़ और बकरी का शुल्क है।

सभापति महोदय: आपने कहा कि इस साल से चराई सस्पेंड की है।

श्री गोपाल राय राइका: अभी तो बन्द है। जैसे हमारे यहां करौली में केलादेवी अभयारण्य क्षेत्र है, क्योंकि वह सैबुरी एरिया है, इसलिए वहां बन्द है, लेकिन खुले वन क्षेत्र में है।

श्री महावीर भगोरा: आंध्र प्रदेश में एक पैसा चराई का नहीं है, हरियाणा और उत्तर प्रदेश में नहीं है, लेकिन मध्य प्रदेश में है।

श्री मधुसूदन मिस्त्री: सवाल यह है कि आपको अधिकार हो या नहीं हो। आपको अधिकार है, इसमें से यह बात निकलती है, इतनी सी बात है।

SHRI PADMAKUMAR: Actually, the biggest problem is that they are migratory in nature. In a way, that is good. Since they are not sedentary in nature, it is ecologically not damaging. India's best livestock breeds are available with these people. Even if you look at the animal husbandry services, it is not reaching them because they are migratory in nature. In spite of their contribution, they are left out in the development process.

SHRI S. MUTHIAH: (*Spoke in Tamil.*)

MR. CHAIRMAN: Thank you very much.

(The witnesses then withdrew)

MR. CHAIRMAN: Can I have your attention please? For those Members, who were not present yesterday, I would like to read the schedule again. Tomorrow we are having the last day for taking evidence from witnesses. Then, the last date for receipt of amendments is 28th. On the 2nd of May, 2006, we will take up clause by clause consideration of the Bill. On the 9th of May, 2006, we will take up consideration and adoption of the Bill and report.

Okay, we will meet again tomorrow at the same time.

(The Committee then adjourned)

**JOINT COMMITTEE ON THE SCHEDULED TRIBES
(RECOGNITION OF FOREST RIGHTS) BILL, 2005**

**RECORD OF ORAL EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE
SCHEDULED TRIBES (RECOGNITION OF FOREST RIGHTS) BILL, 2005**

Thursday, the 19th April, 2006 from 1500 hrs. to 1800 hrs. in Committee Room No. 074,
Parliament Library Building, New Delhi

PRESENT

Shri V. Kishore Chandra S. Deo — *Chairman*

MEMBERS

Lok Sabha

2. Shri Mahavir Bhagora
3. Dr. P. P. Koya
4. Shri Shailendra Kumar
5. Shri Rajesh Kumar Manjhi
6. Shri Bajju Ban Riyan
7. Shri Jual Oram
8. Dr. Babu Rao Mediyam
9. Shri Ravi Prakash Verma

Rajya Sabha

10. Dr. Radhakant Nayak
11. Shri Mangani Lal Mandal

SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Shri R. C. Ahuja | — | <i>Joint Secretary</i> |
| 2. Shri R. K. Bajaj | — | <i>Deputy Secretary</i> |
| 3. Shri K. Jena | — | <i>Under Secretary</i> |
| 4. Shri J. V. G. Reddy | — | <i>Under Secretary</i> |

Representative of the Ministry of Tribal Affairs

Shri P. K. Varma — *Deputy Secretary*

**Representatives of the Ministry of Law & Justice
(Legislative Department)**

- | | | |
|---------------------------|---|--|
| 1. Shri N. K. Nampoothiri | — | <i>Joint Secretary and Legislative Counsel</i> |
| 2. Shri R.S. Shukla | — | <i>Deputy Legislative Counsel</i> |

WITNESSES EXAMINED:

- I. Shri Valmik Thapar, Ranthambore Foundation
- II. Shri M. K. Jivarajka, Member, Central Empowered Committee
- III. Representatives of All India Agriculture Workers Union
 - (i) Com. Suneet Chopra, Joint Secretary, AIAWU
 - (ii) Com. Kumar Shiralkar, Member, Central Working Committee, AIAWU
- IV. Representatives of ANTHRA (NGO), Secunderabad
 - (i) Ms. Sagari Ram Das
 - (ii) Shri N. Madhusudhan
 - (iii) Shri K. Pandu Dora
- V.
 - (i) Shri N. Sanyasi Rao, Director, ARTs (NGO)
 - (ii) Shri K. Krishna Rao
 - (iii) Shri D.S. Prasad
 - (iv) Smt. P. Bhudevi
 - (v) Shri Narsinga Rao
 - (vi) Shri Sankara Reddi
- VI.
 - (i) Shri Koshi Baby
 - (ii) Shri K. V. Poulse
 - (iii) Shri P.H. Abdul Kareem
 - (iv) Shri K. Bala Murugan
- VII. Representatives of Adivasi Mahasabha, Gujarat
 - (i) Shri Gova Rathod
 - (ii) Shri Datubhai Vasava

MR. CHAIRMAN: Shri Thapar and Shri Jivarajka, I welcome you to this joint sitting of our Committee. You are aware that this Bill has basically been introduced to undo the historical injustice that has been done to the forest dwelling people, especially the tribal. I hope you have gone through the contents of the Bill.

(Direction 58 was read out)

(Introduction)

MR. CHAIRMAN: You have circulated a Background Note to the Committee. We will surely go through this note in detail before we make our recommendations. If you would like to say anything other than this or would like to further explain you are welcome to do so.

SHRI VALMIKI THAPAR: I am going to try and focus on the points I really feel concern national parks, protected areas and sanctuaries. My colleague will talk more about the forest land in general.

Having followed the story of our national parks, I believe that the national parks of India, which are one per cent of country's land mass, forest land forms 23 per cent of the land mass of India, no rights should accrue on national parks. The reason we have national parks is to preserve the natural treasure of a nation. I believe the wealth that you find in one per cent of natural parks cannot be matched anywhere in the country by its foreign exchange reserves or gold deposits. This one per cent of national parks was created over a period of time starting from British India, post-independence, into the Nehru era, into Shrimati Indira Gandhi's time and the successive Governments that followed later for the unborn Indians. It is meant to be locked up because it is at treasure house whether it is the forest produce, medicinal plants, minerals, 600 rivers and perennial streams which the national parks give birth to. I believe it is very difficult when you have large villages with population

inside the national parks to control some of the damage that takes place. The damage does not take place by genuine tribal or forest communities. The damage takes place because there is always a minority who come in and try and plunder these natural treasures. Therefore, in my opinion it is very important that national parks should have no rights.

I believe sanctuaries which form 3.5 per cent of the country's land-mass should be dealt with differently. In sanctuaries there should be too lots of happenings; strategic villages in sanctuaries where you want to preserve vast tracks of land because there is natural wealth. You have to do resettlement and rehabilitation in the very best possible way. That means any human being who is to be resettled must get the best deal that can be bought for him; the best land, the best agriculture and the best area and only when that person is wants to go, he is resettled. Other villagers who do not want to go to sanctuaries should have the rights to remain there. This should be carefully formulated by a special Commission that looks into the human problems and the wild life problems.

We must find a way in this Bill that the wild life and the natural treasures of this nation have equal amount of rights because we do not save wild life for a picnic to go out and look at tigers or wild life. Wild life determines the quality of life in a nation for all the people. We believe that water reservoirs, national parks and sanctuaries provide water to 100 million people. They cannot be fiddled with at any level or lost by chance or by accident of a legislation which could create such a problem.

I believe somewhere around the line that you cannot distinguish between tribal and non-tribal. I have spent 30 years travelling the course of this country from State to State. I have been in forest villages and tribal villages. I have started my education in university in sociology, not in wild life. I have to do a lot of courses in trying to understand the problem. They are neighbours. The tribal neighbours who face non-tribal neighbours in the same place. How can you distinguish between both of them? You will have some of the most violent clashes if it remains just a tribal Bill and does not look at forest communities and non-tribal. It would be disastrous for this country and I believe that is the second most important point.

We have also tried in this Paper at some point to provide some alternative on how to deal with the issue so that there is justice done for the people who live in our forests. I call them forest communities, both tribal and non-tribal. There are ways in which people of different opinion can come together and can find solution where a Bill like this really becomes focused and meaningful for the broad perspective 23 per cent of forests because these are our last reservoirs, our last natural treasures and our last bio-diversity. When this goes we will have nothing to lean on. If we lose our national parks today, we will not be able to get forests in other countries. We just have to live on what this country produced over centuries. So, we just have to find a way which is highly sensitive in my opinion to bring this together. I will give it to Shri Jivarajka, because he knows much more the legal side and looks at forest issues differently. For your reference, we have also tried to list in this all the Supreme Court orders that cover forest.

SHRI M. K. JIVARAJKA: Before covering other issues, I would like to cover one particular issue which has been covered by Shri Valmiki, that is whether the rights should be only for the tribal or for all forest dwellers. I will give you some statistics which will show how dangerous the situation will be if the Bill is restricted to only for tribal and Scheduled Castes and other forest dwellers are excluded from the purview of this Bill.

In Madhya Pradesh some study has been done by the Ministry of Environment and forest. About 12-13 years back 90,561 hectares of forest land was regularized. Out of 90,561 hectares, which was diverted for regularization of encroachment on forest land in favour of forest dwellers, 55,023 are tribal families and 15,180 are non-tribal families.

In Chhattisgarh, 1,30,421 hectares has been either identified or formally diverted already. Out of that, 40,465 are tribal families and 27323 are non-tribal families, i.e., Scheduled Castes and other weaker sections of the society. In Maharashtra, before the enactment of the Forest Conservation Act, 82,771 hectares has been diverted. Out of that, 72318 are tribal families and 53,586 are non-tribal families. As a citizen of this country I

very humbly submit that please do not distinguish between the Scheduled Tribes and Scheduled Castes and other weaker sections of the society who are living at the same place and dependent on the same piece of land. I am not saying this as a person who has interest in forest conservation because if my suggestion is included much more forest land will be lost. I am saying so because it will create violent reaction and will lead to division of the society. Nobody will be able to control it. They have their own way of understanding a law. That will be understood only in one way that this Act has given this right and I have been denied and that there was no reason for me to be denied this right. Please keep that thing in mind while deciding this matter because historically, at least for the last 70 to 80 years whether it is Tongya village or forest village and even the areas which are under autonomous district council of North-East or any other place, at no point of time distinction between the tribals and Scheduled Castes has been made. There is no need of doing that especially when you are talking about undoing the historical injustice. In fact, if it is done it will become a historical injustice in the present form if this is not removed. I must add that we had attended meetings before the hon. Prime Minister and the Home Minister at different places and everybody agreed that it should not be done. But ultimately the Bill remains in its present form only because of one problem that if the Scheduled Castes and other weaker sections of the society are included, then this Bill cannot be piloted by the Ministry of Tribal Affairs. It was a question of allocation of business and for such a petty thing such type of thing should not be allowed to be done in this country. In any case, we will come to this later on which Ministry will deal with what subject. As per the Constitution, under rule and not by a piece of legislation it is decided that 'x' will be dealt by this Ministry or by that Ministry. It is always the Ministry which deals with the subject. If required there can be a Ministry of Tribal Welfare, Social Welfare and Others which have a common mandate of dealing with this Bill instead of restricting the scope of this Bill to a particular Ministry or to a particular section of the society. Please keep one thing in mind. You are dealing with one time distribution of rights and assets. Differentiating between one class of society *vis-à-vis* other class of society which are living in identical places will have disastrous results. One cannot even quantify the consequences which will be followed especially in the remote areas of Arunachal Pradesh, Nagaland, Meghalaya, Chhattisgarh and other places where already a lot of complications are there.

Secondly, this Bill basically provides for three things. One is land rights over forest land, second is rights over forest produce and the third is division in respect of national parks and sanctuaries. Without going into other details, if you see sub-section V of Section 4, *de facto* it means that each of the family will be eligible for allotment of 2.5 hectares of forest land provided such land is under his occupation as on the date of the commencement of this Act. It does not say whether that area was historically under agriculture or not under agriculture. He will be eligible. This issue was discussed again and again and without any reservation in every forum every participant agreed that the area which was historically not under agriculture or which was historically not under individual ownership will not be assigned and accordingly sub-section II of Section 4 was modified. But by introducing as on the date of commencement, in sub-section V(1), in fact a worst scenario is there. If you read both sections together, it only means that even if one member of scheduled castes or a scheduled tribes resides in the forest within each nucleus family of such tribe will be eligible for claiming right over 2.5 hectares of forest land provided he claims that this particular piece of forest land up to 2.5 hectares was under his physical possession. It does not talk about the area actually under agriculture historically or the person was actually occupying that area historically or some other person of the tribe was occupying that area historically. The Bill in the present form merely says that subject to his getting the land at the commencement of the act, i.e., at a future date even if today that land is under dense forest and after two months or four months if somebody goes and claims that I am the occupant of this piece of land, then as per the present provision of the Bill he becomes eligible for allotment of 2.5 hectares of land. There is no reason why they will not claim right. Each of them will claim right over 2.5 hectares, then the total area which is eligible for allotment becomes much more than the forest which falls in the schedule area as on today. The purpose of this Bill is to ensure that the land which was under agriculture as on 25.10.80 and not to ensure that every piece of land is to be distributed then please consider that the language is modified in such a way that it is made clear that only that forest land which was under agriculture as on 25.10.80 or under physical occupation will be eligible for allotment subject to an upper limit of 2.5 hectares. I am again repeating, in

every for a right up to the hon. Prime Minister everybody agreed that this is the purpose of the Bill. Unfortunately, the language remains the same or it has been modified in such a way that the thing becomes much worse than what it was originally anticipated.

Then what is the right? If you see sub-section II paragraph (f) one of the right is minor forest produce. It includes all non-timber forest produce of plant origin including bamboo and brush wood. Read this along with Section 3(a) and 3(c), right of ownership and access or use or dispose of minor forest produce. Where will it could be quantified or qualified as forest or reserve forest or protected forest or even deemed forest? Then if it gets transferred to individual, he has the right. When somebody has a right, others do not have a right. So, the right of the Government today either to harvest or sell or better use or distribute is immediately taken away. The Government will not have any right afterwards even if there is some cyclone or something else in some area to use even a single piece of land or anything out of this. Everything becomes private property. It *de facto* becomes a private property which historically was never there. It is without any restriction. Now you see the sustainable use which has been defined. If you see paragraph 5(a), it reads that except for those activities that are permitted under such rights no other activity shall be allowed that adversely affects the wild life, forest and bio-diversity.

In other words it means that if something is given as a right even it adversely affects the Wildlife and even if it adversely affects the provisions of the Indian Forest Act and even if it results in felling of the naturally grown trees, those are permitted. I would like to submit if this was the intention of bringing about this Bill, or this has so happened because of some problem at the stage of drafting. If the purpose is to allow sustainable use of forest products, then this portion needs to be re-drafted and the right over minor forest produce requires to be regulated in such a manner that it is used only in a sustainable manner. What is defined is unfortunately your Biological Diversity Act of 2002 and other Indian Forest Act and such other Acts. Even if the use results in clear felling of naturally grown forests which have been historically under forest, over exploitation of a right or whether it is grazing or removal of bamboo, this Bill provides *de facto* that in respect of minor forest produce, as defined under this Act, any type of removal of minor forest produce whether it is on a sustainable basis or on an unsustainable basis is permitted.

The second thing is that in this country bamboo and such other minor forest produce are in short supply and there is a huge gap between demand and supply. For the same piece of land, for the same piece of minor forest produce if two different groups are laying claim or wanting to use, then how that has to be sorted out? How equitable distribution is to be done? It is nowhere mentioned. It means that I have a right as a person, any person, say x, y or z who has a right can go and can collect minor forest produce and if there is a conflict, then they have to resolve the conflict amongst themselves and find ways as to how that conflict has to be sorted out. It is a very dangerous situation.

Before any Act is passed, the purpose of the Act is first decided. What I am trying to request is that the Committee may please consider as to what is the purpose of this Bill. Is the purpose of the Bill is that all forest land which was under encroachment, or under personal occupation, irrespective of the purpose, irrespective of the whether it is legally recognised or not, should be allowed to be given on an individual right? If it is so, then the entire Bill requires to be re-drafted, because that is not the purpose of this Bill. If the purpose of the Bill is that some legal right is created over minor forest produce, then that needs to be clearly laid down instead of giving a wide definition of minor forest produce giving unlimited rights which may lead to unsustainable use of this resource.

The next point is that the Bill does not differentiate between Government owned forest and privately owned forest. There are many privately owned areas in this country which come under the definition of forest, or what is known as the deemed forest. Suddenly after the passage of this Bill, a private ownership of a forest will become somebody else's property and he is legally entitled to claim minor forest produce as well as his *lien* on this piece of land if it is given under the category of deemed forest.

Sir, coming back to the issue of national parks and sanctuaries, I would like to submit, if you see, the way it has been provided for in this Bill, you would find that in respect of national parks and sanctuaries, in special proviso to para 4(i) rights for five years have been given in respect of land falling within the national parks and sanctuaries. *De facto* it means that there will be right for cultivation within the national parks and sanctuaries. There will be rights for collection of minor forest produce and there will be rights for felling bamboo and also rights for selling these. This is totally in contravention of the provisions of the National Forest Policy; this is totally in contravention of the provisions of the Wildlife Protection Act; and this is totally in contravention of the Indian Forest Act. It is also totally against a large number of Supreme Court directions issued. We have enumerated about these in our note and I would not like to go into the details of those. Against such directions of the Supreme Court order of 14.02.2000, I do not know how these provisions could be implemented and what type of a conflict situation it would lead to once these rights are provided.

Now, again in the next para it has been said that, 'provided further that such provisions in such core shall become permanent if the holders of such rights are not relocated with due compensation with these rights.' I would only request you to please calculate the financial amount that would required for re-location. If you quantify in monetary terms, after these rights are given, it would come to trillions and trillions of rupees which may be hundred times more than our annual Budget. I would only submit, why go through this route at all? It is much better that directly these rights are given and amendments are made in the Wildlife Act and other Acts saying that forests are not to be managed on sustainable basis. The preamble to this Bill says that forests are to be managed on a sustainable basis, a symbiotic relationship between the tribals and the forests has to be increased and it has to be ensured that no further encroachment of forest land takes place. But the provisions which are there in this Bill are totally contradictory to the preamble or the purpose for which this Bill is being proposed to be introduced.

Sir, one must look at the past to see as to what had happened. I would like to give an example of the State of Andhra Pradesh. Huge tracts of land in the State of Andhra Pradesh have been assigned under Joint forest Management. I would say for minor forest produce collection a tripartite agreement has been entered into with the Government concerned, the Joint Forest Management Committee and industries. Now, you see what is the state of forests in the State. There is a publication called the 'State of Forest Report' published every two years by the Ministry of Environment and Forests wherein, based on satellite data the forest cover in different States and different districts are interpreted. In Andhra Pradesh, out of 87090 square kilometres of forest area falling in eight tribal districts, very dense forests, that is where the density of the forest is more than 70 per cent, is only 15000 square kilometres. This is the situation in Andhra Pradesh where, I would say, a mini experiment was done in the past. You look at the situations in the District Councils in Meghalaya, the District Hill Councils in Khasi area, or the District Councils and Autonomous Councils in Assam, the state of forests whether it is really helping the tribals, or in the guise of tribals some handful of influential people are getting the benefit. We have filed a report in the Supreme Court, what is called the Bastar Scam with all documents and with all photographs and cheques. We have filed a report stating that land is being purchased from a tribal for a sum of Rs. 1,20,000 or so and by cheque a payment of Rs. 49 lakh from the same piece of land has been made by the forest department to the person who purchased that land from the tribal just some 15 to 20 days back. It is not just one case. Hundreds of such cases have been coming up. For the last 20 years this case is languishing. An enquiry has been conducted by the Lok Ayukt. The CBI did an enquiry into the matter. The matter is pending before the Supreme Court. Year after year, the Government is reiterating its commitment that no guilty will be allowed to go scot free, but not a single piece of land has so far been returned and not a single rupee has come back to the tribals. You recall the situation in Arunachal Pradesh before 12.10.1996 order of the Supreme Court.

MR. CHAIRMAN: What is your suggestion now?

SHRI M.K. JIVARAJKA: Sir, if you please see the submissions which has been handed over to you...

MR. CHAIRMAN: We have gone through it. Please say if there is anything other that those points there.

SHRI M.K. JIVARAJKA: I would reiterate one point specifically. Quantify the results which you want. That is one point. Secondly, keep in mind that the tribal forest guidelines which was issued in 1990 became non-implementable on two grounds. The first ground was that a decision was taken by the Cabinet that only in those cases where a State had taken a decision prior to 25.10.1980 regarding permitting regularization of encroachment. It is a non-implementable condition.. The second condition was compulsory afforestation will have to be carried out in all such cases. None of the State Governments were in a position to fulfil these conditions. So, it became non-implementable.

MR. CHAIRMAN: That is one of the reasons which has necessitated the introduction of the Bill.

SHRI M.K. JIVARAJKA: My submission is, a very easy solution and simple solution could have been to modify the Cabinet decision and remove these two restrictions and implementing the 1990 guidelines and see whether the provisions given in those guidelines fulfil the purpose for which this Bill is brought out or not.

MR. CHAIRMAN: In other words, in principle, are you against the Bill? Otherwise, there is no necessity.

SHRI M.K. JIVARAJKA: I think there is a necessity on one ground. I would request you to keep it confidential. There is lack of will power and there is conflicting interest. Due to conflicting political reasons and other reasons, the guidelines have not been allowed to be implemented and I have been very deeply associated in formulating these guidelines and implementing these guidelines. These form the key to the entire issue. Firstly, the State Group of Ministers made their recommendations in 1989. It was discussed in the Ministry and everybody said that historical injustice has to be set right. Then the Committee of Secretaries discussed it and thereafter, the Group of Ministers discussed the matter. Till this stage, it was absolutely implementable guidelines which were proposed. Somehow, when this matter was discussed in the Cabinet in September, 1990, these two conditions were imposed. Fortunately or unfortunately, before the Cabinet decision was communicated, diversion of 1,03,000 hectares in July, 1990 was already approved by the Ministry presuming that whatever has been recommended by the Group of Ministers will be approved. About the non-implementation of the guidelines, the Ministry of Environment and Forests, the Ministry of Tribal Affairs and the Ministry of Social Welfare took up the matter with the Cabinet and it is a matter of record and we have given the exact dates in this regard.

MR. CHAIRMAN: We will go through all these details. Now what exactly are you trying to say?

SHRI M.K. JIVARAJKA: Please start with the implementation of the guidelines. Unless and until there is some reason absolutely to change the guidelines, these guidelines can be converted into act so that it becomes implementable after removing those two anomalies. This is one part.

In respect of national parks and sanctuaries, there should be a differentiation. There should be a separate set of rules for national parks and a separate set of rules for sanctuaries. We are trying to evolve a strategy in consultation with the MP Government and there are about 700 and odd villages located inside the national parks and sanctuaries area.

MR. CHAIRMAN: He has already mentioned all these points. They are very well taken and they have been taken note of.

Now, I would like to say certain things. I would like to set the record straight as Mr. Jivarajka has been working in the Forest Department. You first made a mention as to why the Ministry of Tribal Affairs is piloting this Bill. Let me mention here that after all, nobody disputes the fact that more than 70 per cent of people who are living in the forest areas are tribals. Naturally, it devolved upon the Ministry of Tribal Affairs to pilot the Bill. Secondly, you are aware of the fact that since we are in the Cabinet form of Government, it involves collective responsibility. It is the will of the Government to decide as to which Ministry will pilot the Bill. Tomorrow, it may be the Home Ministry or any other Ministry who may pilot the Bill. Or the Prime Minister himself may pilot the Bill. So, it is the collective functioning of the Government. I do not think any petty consideration is going to guide us when we write the report and that is not a matter of concern as far as this Committee is concerned. I am only trying to set the record straight.

Secondly, repeatedly you were asking us the purpose of the Bill. Going through the Bill itself, you should have realised the purpose of the introduction of the Bill. You have mentioned many Acts while you made your presentation. You were in the Forest Department and you should be aware of the fact that the Forest Act of India, 1927 itself assured the forest dwellers of settling the rights. Mr. Thapar must be very well aware that Wildlife Protection Act of 1972. In fact, it assures settlement of rights for those who are dwelling in the forest areas. What has happened to the assurances of 1972 and 1927? Has anything been done in that regard? I am afraid to say that the story of settlement has been dismal for political or whatever reasons. The Forest Conservation Act of 1980 does not deal with settlement of rights. It is only the corollary arising out of that. But these assurances have been given 100 years during the British times even before 1927 Forest Act came into being. They were introduced by the then colonial government and they had assured these rights to the tribals. If this is not historical justice, then what else is?

You were very categorical about mentioning that they were not doing agriculture there. It is common sense that no agriculture can be done in forest land. Those who are living in forest lands are making livelihood out of the forest produce and forest produce means minor forest produce like growing something in the clearances within the forests. Forest income means income from forest produce or any other growth associated with forests and its flora and fauna without affecting sustainable growth. This is a problem. But as you have yourself said, this is a term which can be discussed and has to be defined. Minor forest produce is something on which the tribal people or forest dwellers have been living on for centuries. Forests till now are not devoid of this minor forest produce and forests have been denuded by whom? It is by the timber mafia and by the corrupt forest officials, by people who have marched into and unscrupulous traders and so on. Hence the Government felt it necessary to do it. Mr. Thapar, I would like you to understand that I am a wildlife conservationist and I am very fond of wildlife. Wildlife and tribals have lived together. Has there been any conflict between wildlife and tribals? Have the tribals destroyed wildlife? It is the smugglers who come and trade with the skins and other parts of wild animals. What you have mentioned is right that it is not the tribals who destroyed the forests. It is a handful of people who have destroyed them. These are problems which all of us have to address ourselves to. So, we want protection of all of them. At the same time, you cannot ignore that historical injustice has been done. I repeatedly say historical because after all, who encroached upon the forests? Is it the tribals, is it the Forest Department which encroached into the tribal territory by declaring them as forests? Since when did this concept of forests come into being? Were these people inhabiting all these areas before that date or not? You are talking of satellite imagery. I will give you an example. Sugarcane has been declared as forest by the satellite imagery. There are a lot of areas which are declared as forests by various State Governments. You must be aware of it being in the Forest Department. These were not known to be forest land before. While on the one hand, we say that forests have been denuded and forests have gone and on the other hand, there have been instances where more and more areas have been declared as forest areas. These are questions which need to be debated.

Again and again, you have mentioned about Supreme Court. We have great respect and regard for the Supreme Court. But we all must remember that Parliament has the sovereign right in a democracy to enact legislation. The Supreme Court shall arbitrate and decide whether it is constitutional or not. But the right shall lie with the Parliament to change or to make new laws. In a democracy, people's rights vest with the Parliament.

We have great regard and respect for Supreme Court. We shall take into consideration everything that the Supreme Court has said or observed. But while enacting or making laws, I think, the decision of the Parliament always and shall remain to be final.

SHRI VALMIKI THAPAR: This subject is a matter of great debate outside and inside the Government. We have to find a way out in this country whether the needs of the people, tribals, forest communities and human beings who live in this country must be looked after by the 98 or 97 per cent of land of this country. If we cannot do that then we are not administrators. Then we are not doing the performance that we are there for. If two per cent of this country cannot be inviolate and locked up for future generation, unborn Indians, I believe, it

is a fatal mistake. So, I believe with all our wisdom, all the hon. Members of the Committee are here, we must find a way that 97 per cent or 98 per cent of this country's land must look after the needs.

MR. CHAIRMAN: This is very well taken Mr. Thapar. Your colleague has mentioned about relocation. I think the relocation work has been very bad.

SHRI VALMIKI THAPAR: I am not arguing on that. My contention is that there are some strategic villages and there are some non-strategic villages. I think there are Budgets and it should be done. There are still expertise and dynamics within our system. We are doing it. We failed.

SHRI M.K. JIVARAJKA: What I am trying to say is that area which was not under agriculture should not be allowed to be put under agriculture.

MR. CHAIRMAN: You should appreciate the fact that people who lived in forests never lived on agriculture. Agriculture is not the only source of livelihood.

SHRI M.K. JIVARAJKA: All the areas which have been diverted after 1947 that is what we have been objecting. You divert this forest land for maintenance as a forest whether under joint community right or under individual rights. Give 100 per cent rights of that piece of land with one rider that it will be kept under forest cover.

MR. CHAIRMAN: Fortunately or unfortunately I belong to Andhra Pradesh. You have referred to Andhra Pradesh and JSM. The less we talk about the experience of JSM in Andhra Pradesh the better it is. I do not want to waste your time and the time of the Committee.

SHRI M.K. JIVARAJKA: I fully agree with you.

SHRI VALMIKI THAPAR: The Bill should have a balance between the natural world and the human world. If we do not do that, then it can be a disaster because there are mafias in city, town and village who are waiting, not to use common sense but to use the negative of life.

DR. RADHAKANT NAYAK: You have suggested that a separate Commission or Committee should be there.

SHRI M.K. JIVARAJKA: It is Commission for Rehabilitation.

DR. RADHAKANT NAYAK: Up to now Forest Department or the Minister was the custodian of the forests. You are only talking of changing of masters. There is nothing very substantial in it. Secondly, you are aware that tribes live in a community. Without community there is not life. What is your suggestion, whether it should be individual rights or community rights?

SHRI M.K. JIVARAJKA: I believe it has to be community rights.

SHRI VALMIKI THAPAR: Today there are community rights in the North-East. Entire area is developed with community rights. You will have lot of criticism of nuclear families. Not tribal or forest community came from nuclear families. It is collective community rights. That is how social behaviour and interactive connections have been covered. Of course, the world has changed. But still we must respect the collective right and not the nuclear right. It is because these are historical. Just like you said historical injustice.

SHRI M.K. JIVARAJKA: The Forest Department does not have the technical know-how or will power or, I would say, inclination to do that.

DR. RADHAKANT NAYAK: You are doing disservice to your own Department.

SHRI M.K. JIVARAJKA: This is a fact. Recently one IA has been filed before us. We made a visit. There is a village called Bori Village in Madhya Pradesh. The first area which has been made reserved forest in this country about 150 years back, for the last 20 years the villagers of that areas are trying or fighting that they should be rehabilitated because for 50 kms. around that village no facility is there. Unfortunately, the

scheme which has been sanctioned for environment and forest rehabilitation is only one lakh of rupees per family. On the face of it Rs. 1 lakh may sound very good. But this one lakh of rupees is spent only on cutting the trees removal of stones and levelling of that area. Nothing is left for creating community welfare infrastructure in that area. There are many areas in Madhya Pradesh and other places where if you see the conditions in which these people are living are inhuman. Rehabilitation is worsening the conditions in which they are living.

SHRI VALMIKI THAPAR: Why can we not do it well? There is an example in Bhadra in Karnataka. They want to go out because they gave them the most fertile land near the canal. The best land that money can buy. They are doing a great sacrifice, but we don't.

SHRI M.K. JIVARAJKA: Secondly, unfortunately what happens is that because of technical reason you just try to identify the non-forest land which everybody knows is not available for rehabilitation. Then, you try to give them the worst possible land. You do not recognise the community based pattern of living and certain basic conditions. That is why this idea of Commission is there. Instead of enmasse rehabilitation, identify strategic villages which are required to be shifted. Shift only those villages, not all.

MR. CHAIRMAN: Thank you.

(The witnesses then withdrew)

WITNESSES EXAMINED:

1. Com. Suneet Chopra, Joint Secretary, AIAWU.
2. Com. Kumar Shiralkhar, Member, Central Working Committee, AIAWU.

MR. CHAIRMAN: Com. Suneet Chopra and Com. Kumar Shiralkhar, I welcome you to this sitting of the Committee. You are aware that this Bill has been introduced to undo the historical injustice that has been meted to our forest dwellers, especially the tribals. you must have gone through the Bill. We have just received your Memorandum. We will certainly go through this Memorandum. Whatever we discuss here should remain confidential until we present the Report to Parliament. After that they can be made public because it would be presented to Parliament. In case you want anything to remain to be confidential, please let us know so that we do not put those parts of you presentation. You please introduce you colleagues and make a brief presentation of the most important points within fifteen or twenty minutes.

COM. SUNEET CHOPRA: The essential feature of this Bill is the law that restricts itself to Scheduled Tribes.

We found that in many areas a particular body of people is a Scheduled Tribe in one State and Scheduled Caste in another State. This would result after the passage of the law in allowing the eviction of people who are actually Scheduled Tribes. I have given an example of Kols of UP in the Kaimur region. This would create a situation, and it has already created a situation, where many of these tribes in order to defend their ancient livelihood have been forced to take up arms and things like that. So, the essential feature is that this anomaly must go from the law. The main thing is that we feel it should include 'traditional forest dwellers', not immediate encroachers like mafias. 'Traditional forest dwellers' must also be protected by the law.

The second thing is that the date of October 25, 1980 is an arbitrary date. I think, the legislators must go into it. How can we have an arbitrary date like that and utilize it? It is because, along with the risk, why we object to that is because we find that the issue is stated as encroachment. What about the 'land for bona fide livelihood'? So, I think the word 'encroachment' should be removed in the law wherever possible except in the case of mafias, forest officials who have stolen land. That distinction should be there.

The question of land records is very clear. We have quoted from the Maharashtra document and, I think, Com. Shiralkhar will go into details. In short, the written land record and proper land survey virtually does not exist. I was in Khandwa district of Madhya Pradesh. I can tell you that there are villages, established 50-50 years ago, that they are not there. We must understand that we cannot go by land records where they do not exist

Also, we have come across a large number of cases, as in Mirzapur where lands were given by the Forest Department. *Pattas* were given to the tribals and then they were arbitrarily seized from the people. In fact, at the moment, I am fighting a particular case in Mirzapur where they are on hunger strike. They have even vacated the land but the cases have not been removed. These are poor people who are being destroyed. So, if this becomes the norm after the law, it would be very difficult for all.

As regards 2.5 hectares, this is no ceiling for anybody anywhere. Why should it be for tribals? After all, tribal people are also Indian citizens. Whatever is the ceiling in a particular State, the land ceiling should apply to the tribal people also. This is discriminatory.

Then, I come to the question of the Draft Rules about the Gram Sabhas. Tribals are in hamlets. I think, we must accept that also. Finally, the deciding rights are given to District Committees set up with officers. This is dangerous and undemocratic. My own experience of the Forest Department is that they are the biggest land grabbers. I can actually give evidence of it like the Kaimur region of UP where naxalite problem is supposed to be the most extreme. When the forest officers are grabbing land and dispossessing the tribal people, what recourse do you leave to them except taking up the gun? You have to think of that. This law should not increase that problem. This law should be able to deal with it. After all, Naxalwari was in West Bengal and there were massive land reforms. That was the only reason why that did not become a problem like Andhra. So, you have to understand this aspect also. We should not ignore it.

With regard to section 2(1), I feel there should be 'community property rights' in that section. These are forest areas that are under the jurisdiction of Gram Panchayats, autonomous district councils. In Orissa and Himachal Pradesh, there are community forests. That whole community ownership of forest should, in fact, be integrated into the law because without this it will be dispossessing the people. If we dispossess people, the law would become infructuous.

Then, there is the question of forest rights of the persons who has committed an offence being taken away. I think, this is something that we cannot accept. These forests are livelihood for people. The human rights of a person cannot be taken away just because he has committed a delict. The forest rights of the people who in my view are the traditional dwellers of forests should be inalienable. With regard to this, I think, a clear-cut statement must come out that the Centre Government is responsible for making the rights of the forest dwelling people against *benami* transactions. Under section 5 (a) (i) the Centre must delegate powers to State level Monitoring Committee who can actually go to the ground and ensure that the law functions properly. Big developments to projects must have prior consent of the Gram Sabhas. Otherwise, we will have the kind of a situation we just saw with Medha Patkar. If people have been consulted on that level, the problem would never arise.

Apart from that, with regard to the question of utilizing and transfer of minor forest produce, there must be some provisions to protect the tribal people from exploitation by vested interests like traders, contractors, industrialists and land mafias. The Orissa case, as you know, is lately this.

The Bill covers that those people who live off the forest but may not be living in the forest are totally excluded. I think, those rights should also be taken up. We must have a very clear-cut thing about the Sixth Schedule. How do we handle that in the law? I think, the term 'encroachment' should be strictly limited to non-tribal encroachers who have illegally occupied the tribal land for commercial purposes, and not for population settled in forest traditionally for subsistence. That definition must be clear. Section 15 should be amended to make it clear that, once notified, this Act shall prevail in cases where it comes in conflict with other Acts.

Finally, I would like to say, on behalf of our organization, we feel that a comprehensive forest act is necessary. If you forgive me saying so, the present Act in my view gives me the impression that it can become a very easy tool in the hands of an administration that wants to give evicting the forest people in the name of not being Scheduled Tribes officially. Now, the Kols of UP are a tribe but they are not Scheduled Tribe because they are not recognized. They have been fighting for recognition. It is not being given to them. They are now being evicted all over the Kaimur range of UP. Now, this may become a method of evicting people to empty the

forest for multi-nationals to have the tourist organization to come and take over the raw materials, as in Orissa. With due respect to Members of Parliament, who are involved in this Bill, for heaven's sake do not allow a law to come in which would allow eviction in the name of encroachment rather than settlement that is the due of the tribal people. They never got rights only because they fought the British. Had they been agents of the British they would have been given the Zamindaris. We must understand that we are actually ensuring social justice. The general feeling is that everybody has the total right than the traditional people who have been living in the forests. The tiger has a better right to land.

The leopard has better right to land; the hyena has better right to land but the human beings do not have. I hope this Bill does not become something like that.

COM. KUMAR SHIRALKHAR: Respected Chairman and the Members of the Joint Committee, at the outset, I would like to submit that the cut-off date October 25, 1980 is really discriminatory. As you have said, this Bill is being brought forward to undo the historical injustice since the colonial period. We are welcoming this Bill as we are undoing the historical injustice during the new colonial period. After 1980 also, this injustice continues because the Forest Department itself and the Forest Development Corporation have taken possession of the land which has been cultivated by the tribals for many areas.

For example, I would cite one example. In Maharashtra, in Nandurbar district, in Akkalwa and Shadha tehsils, there are villages where the adivasis were cultivating the land since so many years. In 1980, the Forest Conservation Act was passed. Before that, the Maharashtra Government came out with two Acts in 1978 and 1979 according to which the land was to be given to the tribal families. But, after the Forest Conservation Act came into being, the tribals were forcefully evicted from the land by the Forest Department. So, I think, this cut-off date should be changed and the date should be fixed again. When the proposed Act comes into effect, that should be the date.

Then, I would submit that the limit of 2.5 hectares is also unscientific because generally the lands cultivated by the tribals are sloppy, rocky and very infertile in many cases. They are not using any modern techniques or modern inputs. So, the yield per acre is very less. The main objective and the purpose of this Bill is to provide some livelihood. The land which has been possessed by the adivasis—though it is more than 2.5 hectares—should be allotted to them.

For example, I will cite one example in Nandurbar. In Dhanil hamlet, there are families which have more than 70 or 80 members in one family. They have got 15.5 acres of forest land. If you take away the land from that family, then they will be deprived of that. So, the ceiling limit should be removed and whatever acres of land the tribal families possessed, that should be allotted to the tribals.

As Shri Chopra has said, it is true that this Bill is meant mainly for the tribals. But many poor families and landless families which are living either inside or on the fringe of the forest area are not tribal families. They are Scheduled Caste people or other Backward Class people. For example, in Chandrapur district in Maharashtra, in Manikgarh area, there are non-tribals but they are very poor. They are cultivating the land. So, they should also be included in this Bill.

As far as written evidence is concerned, it is not with the tribals. It has been thoroughly examined by the Maharashtra Government. The State Government came to the conclusion that no written proof or evidence is required. According to Maharashtra Government's G.R./Sankhirana No. 2002/372/J1 dated 10th October, 2002, the land should be actually allotted because in many cases, the Forest Department allowed the tribals to cultivate the land by taking some bribe and no receipt has been given. So, I think, the only evidence or proof should be the affidavit of the claimant tribal family.

MR. CHAIRMAN: Com. Chopra and Com. Shiralkhar, all the points that you have mentioned have been well taken. I would only like you to clarify one issue. Both of you mentioned about the limit of 2.5 hectares. I think the logic is when the ceilings are different in different States for others why the tribals should have a different ceiling limit.

First of all, you have yourself spoken about the non-tribal forest dwellers. You are very much justified in saying so. You said that the non-tribal forest dwellers are very poor people. They may be Scheduled Caste people or belonging to other backward Communities. But, in any way, they have been interfacing with tribals and they are very poor people. I do not think any of these people would actually have had access to more than 2.5 hectares or six acres of land. Even when it comes to tribals, the intention is to settle the rights of tribals who have been eking out their livelihood from minor forest produce from that area which has been in their occupation since time immemorial. I have my own doubts how many tribals have access to more than 2.5 hectares. You have spoken about the family. Here, it just means that 2.5 hectares relate to one nuclear family. Nuclear family means the husband, wife and minor children. So, when it is a family of 15 or 18 people, as you have mentioned, there will be three or four or five major children. So, each of them will be entitled to 2.5 hectares of land subject to the condition that those people should already be in possession of the land because the 2.5 hectare is not intended to be doled out. It has been sought to be the upper ceiling limit. Suppose we take the ceiling. I have my own doubts because I represent a tribal constituency. How many tribals in the forest area today have, under their control, more than 2.5 hectares?

You have spoken about cultivation on the slopes etc. That is the podu and jhum cultivation. Such a cultivation is owned by the community. The area of 2.5 hectares does not relate to a community. Where there are customary laws which exist in parts of the North-East, where the land belongs to the community, they are totally different. The intention is not to clamp the 2.5 hectare ceiling. In the North-Eastern States like Nagaland or other North-Eastern States, the community owns the land. So you, give your response to this suggestion.

COM. KUMAR SHIRALKHAR: If this definition of nuclear family is cleared, as you have said, then there is no problem.

COM. SUNEET CHOPRA: I would make a little different submission. We live in a class society. I feel that as long as the class society exists in our society, I see no reason why the tribals should not develop into higher class. Why should the tribals be always underdogs?

MR. CHAIRMAN: Com. Chopra, the point is well taken.

COM. SUNEET CHOPRA: My point is that ten acres or fifteen acres is the point at which a man becomes a landlord. I am not saying that you should make the tribals the landlords. Let them be farmers. I am saying only this thing.

MR. CHAIRMAN: Comrade Chopra, you will appreciate the fact that this Bill actually intends to settle the rights of those people who have been the forest dwellers, who have been in occupation of such land over a period of time. So, what I am trying to say is that there are very few tribals who have been owning anything like 15 or 20 or 25 acres of land on their own. So, the intention of this Bill is not to give extra land to these people who do not have land. It is a question of recognising the present rights of land that they have been cultivating and enjoying over the years.

COM. SUNEET CHOPRA: I entirely agree with you if you have the Section on communal land ownership and if you consider all the things that we have raised because the law does not go into those aspects. We cannot assume it.

MR. CHAIRMAN: I can assure you that we will go into those aspects also because these are the realities which exist in the Sixth Schedule Area. These are the community lands.

COM. SUNEET CHOPRA: That is not there in the law.

MR. CHAIRMAN: We will certainly take a view on that.

COM. KUMAR SHIRALKHAR: After 1980, there are tribal people who are more than 18 years of age and less than 30 years. They also possess this.

MR. CHAIRMAN: We have certainly taken note of your suggestion that the cut off date is arbitrary. We will consider and discuss that.

DR. RADHAKANT NAYAK: I want to seek one clarification. Firstly, you have said that prior consent of the Gram Sabha is required. You know the tribes. We have got traditional leadership where there is always ambivalence between the modern leadership of Panchayat's sarpanch and all that because of party politics or because of their other influences, they have grabbed the powers. They have destroyed more or less the traditional leadership. So, in that context do you think the consent of the Panchayat, as it is, will be valid or will it be realistic? That is my first question.

Secondly, mere consent is of no value at all. Yes, we have consulted. That is enough. Do you suggest merely consultation or concurrence as a mandatory provision in the statute. What is your view on this?

COM. SUNEET CHOPRA: I would suggest concurrence, to make it very legally clear. Concurrence is absolutely essential. The other thing I feel is that even if the traditional leadership has been bypassed, the democratic process must develop among the tribes and even if we make democratic mistakes, they will be corrected. But, I think, without democracy, what I have seen is forest raj. What actually goes in the forest today is the grossest form of oppression of the tribals by forest officials.

DR. RADHAKANT NAYAK: Unfortunately, what happened in Orissa is this. We have what is called a rotating system of panchayati raj. In that context, even in a tribal area we have seen that non-tribals are sarpanch of the panchayat sritis and they rule the roost. Their traditional leadership has been totally bypassed. They do not have any say legally according to the panchayat. They do not have any kind of say at although they are traditionally tribals but at the same time under the new law they do not have any say at all.

COM. SUNEET CHOPRA: We must insure that they have a say. Concurrence is the term I would definitely agree with.

MR. CHAIRMAN: Thank you very much. You have given very useful suggestions to this Committee. I can assure you that we will consider every aspect of what you have presented before us today. Thank you.

(The Witnesses then Withdrew)

WITNESSES EXAMINED:

- (Please fill in the rest)
1. Dr. (Smt.) Sagari R. Ramdass, Anthra (NGO), Secunderabad, Andhra Pradesh
 2. Shri Madhusudhan, Anthra (NGO), Secunderabad, Andhra Pradesh

MR. CHAIRMAN: Dr. Ramdass and Shri Madhusudhan, I welcome you to the sitting of our Joint Select Committee. Well, you are aware that the Bill that has been introduced in the Parliament is basically to undo the historic injustice that has been done to the tribals and other forest dwellers. You have gone through the Bill. We have just received your memorandum, which we shall go through in detail. You have already given a memorandum to us. This is the second one. We have gone through that and we shall scrutinize this in detail.

Whatever we discuss over here today will have to remain confidential until the report is presented to Parliament. But, after that it will be made public and what we will discuss here may be published in the report also. If you want that a portion of what you discuss with us should not become part of report or should be kept confidential, please mention to us in the course of the discussion so that we will take note of that.

Now, please introduce yourself and your colleagues. You may begin by briefly stressing on the points that you would like to highlight or make any other observation, which you feel is necessary today.

(Introduction Of Witnesses)

DR. (SMT.) SAGARI R. RAMDASS: Hon. Chairperson and Members, we would like to bring to your notice certain issues within the Bill, which we feel should be included in this discussion. I will be discussing and presenting some of them and I would request my colleagues to present some of them. So, the issues, which we

would like to bring to your notice, are primarily around the questions of shifting cultivation rights of adivasi communities in, particularly, Andhra Pradesh which, as of now, have not been covered in the Bill. Though you have mentioned customary rights, which are enjoyed by the forest dwelling tribes. However, if we look historically right from colonial period, scheduled tribes have been enjoying and doing shifting cultivation but these have never been fully recognised. In fact, right from the colonial period and through all the forest acts and policies, the whole attempt has been to wean them away. But, the reality is that we still have over 60, 000 families in Andhra Pradesh practicing shifting cultivation. We would like to mention that, particularly, in Chapter II, Section 3 (1), where you speak about traditional rights customarily enjoyed by the forest dwelling tribes, we do feel that this is something which has to be elaborated. It is because often their customary rights may not be recognised by the Government. We know of course that through all the forest acts thus far and the policies, they constantly want to stop the adivasis from doing shifting cultivation. So, this is one point which we would like to bring to your notice that if we can clearly mention there that adivasis should be empowered with their traditional rights of practicing shifting cultivation and we can give them the entire area. Once, they are given legal surety, they will also have a stake to developing it. We know that there is a lot of controversy around shifting cultivation but till now the attempt has been to stop them. When you try to stop them, we have seen in the area, people just move further into the forest to clear new area. So, rather than that if we can actually empower them by giving them the legal right to an area, then they will also become stakeholders and feel motivated that they will also be involved to attempt to address other associated problems.

The second point, which I want to raise, is this. In Chapter II, Section 3 (d), when you spoke about community rights of uses or entitlements such as grazing (both settled and transhumant), this is another point we want to just bring to your notice. I feel it is very important to elaborate here because you know that pastoralists migrate seasonally into the forests. So, what happens often is that there is a conflict which happens between the forest dwelling adivasis and the migratory pastoralists. We feel that given that you do have 1996 PESA which clearly mentions that the grazing rights must be negotiated by the Gram Sabha. Pastoralists are visitors. they need to negotiate with the Gram Sabha about the rights. Otherwise what happens is that negotiation does not happen, it leads to unnecessary conflict. So, those rights should be very clearly mentioned that pastoralists have to have negotiated with adivasi Gram Sabha. I would now request Mr. Madhusudhan and Mr. Pandu Dora to say something further.

SHRI K. PANDU DORA: Mr. Chairman and hon. Members of the Committee, as an adivasi, I would, first of all, like to thank you for giving me this opportunity to appear before this Committee and present my views on this very important Bill.

My first point is about the cut-off date 1980 because my father was cultivating at that point in time. After that, we broke into nuclear families. What will happen to us now? My suggestion is that the cut-off date should be either the date when the Bill is passed in Parliament or it should be 2001 which would be the best possible date for recognising the rights.

Then, Clause 4(1) of this Bill says that the adivasis living within protected areas have to be resettled outside non-protected areas. We have been living in those areas for so many years now and you are not going to give us any new rights. We are living there, we are protecting the area and we are not killing animals. If you give us legal rights, then we will participate in that. Suppose they declare a new sanctuary, does that mean that we would be removed from there in another five years?

My next point is about shifting cultivation. Somewhere we must recognise the rights of the shifting cultivators to say that the Gram Sabha recognises the land where people are doing shifting cultivation and we grant them that land. Once we recognise that, the adivasis will not move further to claim more and more areas.

We have to work on having proper records on people who are doing shifting cultivation. Now, records are not available with the Gram Sabha as to how many people are doing shifting cultivation on 1 year, 3 years and 5 years cycles. While making the rules the Gram Sabha should be empowered to get all the details on the people

who have been cultivating as to how many farmers are doing 1 year cycle and how many are doing rotational cycle etc. In Andhra Pradesh, *kondapadu* is a confusing thing. But some provision should be made while making the rules to protect them.

SHRI MADHUSUDAN: Since the law makes these people entitled to this land, we should empower the adivasi farmers, who leave the land in the fallow period, to grow some pine apple trees etc. so that the adivasis can coserve and cultivate the land. So, their rights can be recognised. That is why, shifting cultivation should be recognised as the right. It is not elaborately mentioned in the Bill. This is going to create a lot of unrest among the farmers if they are removed from that kind of practice.

In Clause 6, coming to penalties, there should be much more emphasis and the Gram Sabha should be made the authority to determine forest rights. The Gram Sabha should be given little more powers which should be much more focussed rather than the Committees that they set up. If a person has been cultivating there for the last 25 to 30 years, his testimony should be recorded by the Gram Sabha and Gram Sabha should determine that he is entitled to that right. So, we are supporting Clause 6 of the Bill.

In Clause 6 (viii) of the Bill, in the District Level Committees, the Forest Department has been included. In Andhra Pradesh, they booked many cases after 1980 against the farmers. In Visakapatnam area, they are displaced because of the two dams which have come up there. They have moved and their villages have not been recognised as revenue villages. An unsurveyed village term is not there in the Bill, but they have been filing claims and thousands of cases have been filed against farmers in Andhra Pradesh. From Adilabad to Srikakulam, this is the position and they have not done anything about that and so, the authority of the forest officials should be removed. The Tribal Welfare Department and the Revenue Department must be made a part of the Committee. That is our request.

MR. CHAIRMAN: Don't you think some tribal representatives should be put there along with them?

SHRI MADHUSUDAN: Yes, apart from adivasis, the people's representatives should be there. In Section 7(3) to (5) the Bill talks about felling to trees for commercial purposes. This is how this Act at village level is going to oversee all these things not happening. This is something which should be deleted. You are giving more powers to Gram Sabha to see how many people are doing shifting cultivation and all that. The same way Gram Sabha should be empowered to have penal provisions, ect. It should be in their hands. Otherwise, it is going to create much more problems.

As far as a fine of rupees thousands on adivasis as well as officials is concerned, I think, there should not be any fine on adivasis, whereas the fine on the official should be more.

All other laws are there and section 14 is in addition to these. It is something which talks about the jurisdiction of the existing laws. It should be made more clearer when it comes to the implementation part of it. It is giving power to the forest department again. So, there should not be any contradictory statements within the Bill.

Section 15(2)(a)—the old preamble of the Bill says that it going to address the injustice that is going to happen to adivasis. Anyway the Government has taken a step to address the historical injustice done to the adivasis. If you are giving powers to determine and the Central Government is going to be the sole authority then there is some kind of a contradiction. We are talking about the self-role and that should be much more. There should be emphasis added to this. The Central Government already has the powers in terms of land acquisition, etc. The Central Government, by notification or official gazette, may declare it any time.

MR. CHAIRMAN: Your contention is that Gram Sabhas should be given more powers.

DR. (SMT.) SAGARI R. RAMDASS: Yes. That is why, in the last ten years, there is a joint forest management and community forest management programmes in Andhra Pradesh. Unfortunately what it has actually done is that it has taken away the land, particularly, the shifting cultivation land and other land as well,

which people are cultivating in the reserve forest region. Those are being put under plantation. In the last ten years, in Visakhapatnam, 10,000 hectares of land has already been taken.

There is also a RAP Programme. What happens is that there is conflict going on. We are encouraging the farmers to stake the claims. Under RAP, JFM and CFM, they are asking people to surrender the land. It is very difficult at this stage. We are requesting you very strongly in this regard that so many people have lost their land, it is not police force, it is that social force, it is like a pressure on people that you give away your land. Now, those lands may have come under JFM project. People must be given the right to stake the claim because they were doing cultivation. There are a number of such cases, particularly, all across the tribal region. In Adilabad district of Andhra Pradesh, they also use the term Podu, but it is settled agriculture there. The forest department is asking them to recultivate their land with bio-diesel plantation, even if the plantation, which has already happened in the last ten years. So, people must be given the right to stake their claims through the procedures in the Bill. At one point the Bill says that if there is land already under forestry or something like that, it should not be cut again. My concern is that already people may have lost their land in the last ten years, so we must ensure that they stake their claim.

MR. CHAIRMAN: Was the land, which has been used for JFM, and CFM, community land or otherwise?

DR. (SMT.) SAGARI R. RAMDASS: Sometimes people were doing their own cultivation and the land happened to fall in the forest territory. Sometimes, it was still some part of forest land, which was neither protected nor reserved, but called unclassified land. But most of the time a large of people are cultivating in reserve regions and this was then been taken over through the JFM and CFM. We would like to bring this to your notice because this is happening very rapidly. The RAP programme is being implemented by the forest department in Andhra Pradesh and they are sying, "we will give you cash compensation for the land". Our contention is some security should be there.

SHRI MADHUSUDAN: Lastly, I would like to say that there is about 12.5 lakh hectares of land, which was not given. The final notification has not co,e. Under the Indian Forest Act, only two to three lakh hectares is under encroachment. There is a lot of land whose people are already cultivating and which is available. Encroachment is not the issue. This legislation is going to really help the adivasis. We thank you very much for this.

DR. (SMT.) SAGARI R. RAMDASS: Please do take up our points. Thank you very much.

(Witnesses then withdrew)

WITNESSES EXAMINED:

1. Shri Shankar Reddy.
2. Shri Prasad.

MR. CHAIRMAN: Shri Shankar Reddy, Shri Prasad and colleagues, I welcome all of you to this sitting of the Joint Committee. Well, you are aware that this Bill has been introduced in Parliament to undo the historic social injustice that has been done to the tribals and other communities over the years.

You have gone through the Bill, copies of which were stpllied to you. We have received your memorandum just now. The Committee will surely go through all the recommendations and submissions, that you have made, before we submit a report to Parliament.

Whatever we discuss today shall remain confidential till the repot is placed on the Table of the Lok Sabha. After the report is presented in Parliament, whatever we discuss here may be made public or published. If you want anything to remain confidential—that is if you want anything not to be reported or published later—please let us know during your submission so that we will keep that part of the report as confidential.

Before you begin, I would like you to introduce yourself and your colleagues to us and please be brief in making your presentation with respect to the points which you would like to highlight and which you think are important.

(Introduction of Witnesses)

SHRI SHANKARA REDDI: Sir, Shri K. Laxman Rao would like to speak in Telugu. I would then explain to the Committee as to what he has spoken.

MR. CHAIRMAN: Okay.

SHRI K. LAXMAN RAO: (Spoke in Telugu and translated by Shri Shankara Reddi)

SHRI SHANKARA REDDI: Sir, Shri Rao just told that Adivasis have intimate relationship with forests and environment. They are cultivating small pieces of land in which they are growing mixed crops which include millets and other foodgrains. So, in this way, they are earning their living. If you do not give them a right to livelihood they will have to become slaves. That is the essence of his submission. On the other hand most of deforestation and killing of animals are done in collusion with the forest officials by the non-Tribals and they are putting blame on the Tribals. So, kindly understand this problem properly and protect the interests of the Tribals. Kindly try to issue pattas to podu cultivating people. Podu is the only means of their livelihood. This is the essence of his speech.

MR. CHAIRMAN: Would you like to say something?

SHRI SHANKARA REDDI: Sir, I would like to press on some important points. The first is the cut-off date. This Bill is talking about cut-off date. Regarding fixing cut-off date our submission is this. If you look into the history, most of the tribal people were governed by tribal kingdoms, estates and Zamindars. Prior to British also the kingdoms or estates were there for example in Gondwana, Jaipur etc. Some other small and big estates and kingdoms were there. When the Britishers came to India, they first recognised reserve forest and then they formulated the forest laws and tried to push away the Tribals to more interiors and they curtailed their rights. In the first instance they gave some concessions, later they gave some privileges. All this has made the Tribals worst citizens of India and second-grade citizens of India also. In such a situation there is no evidence for the Tribals regarding land. The Forest Conservation Act, 1980 says that the land should be identified and demarcated. That is not taking place in Andhra Pradesh across all the districts. As far as our experience goes in Andhra Pradesh, unless and until the joint identification and verification takes place, it is very difficult to put the cut-off date. Our submission is that you take the date when the Bill is going to pass as the cut-off date or you take 2001 Census as the cut-off date. Then only it will give justice to the Tribals.

My next point is about unjust ceiling regarding land holdings particularly in Telangana and Rayalseema areas. The land ceiling limit is very high for wet land and dry land. If it is wet land, the ceiling is up to 50 acres as per the land ceiling laws. Similarly for dry land, it is up to 250 acres.

So, in such a situation we would like to know why the present Bill is going to envisage only 2.5 acres of land. It is quite unjust. This limit should be removed. In our experience, majority tribes are only small and marginal farmers. There is no middle farmer tribe. If you look into the factual data, you can ascertain from the revenue records and forest records very easily. Their land holding capacity is very thin. That is why, that ceiling should be removed.

Another thing is written land records. There are no written land records. During the previous days, most of the tribals are identified with prominent places, prominent trees and prominent objects of that locality. So, the present Bill should also incorporate those prominent places and those prominent things to identify tribal lands. For example in Srikakulam some of the lands are called 'Eethamanu guddi'. 'Eetha' is a date tree. Similarly, there are other trees such as palm trees and mango trees. The surname of the particular camp is also recorded. These things were recorded in the British records. After the transfer from British to Indian governance, these records had disappeared. Our submission is that the factual family affidavit should be taken into account in the Gram Sabha. This is regarding the rights.

Then, the other things comes to community property rights. It is spelt out in Section 2 (1). Here the village forests and other things have not been exactly demarcated. Sir, at present there is only two forests—reserved

forest and unreserved forest. The third forest is not categorized in most parts of Andhra Pradesh, So, this also should be taken into account.

Another important thing is the Gram Sabha. According to the Bhuria Committee recommendation and the Fifth Schedule of the Panchayati Raj Act, it has given a lot of boost to the Gram Sabha. Here that should be defined more clearly. In the Gram Sabha, we have to take habitation as a unit and not Panchayat as a unit. Most of the tribal addresses are very scattered. The number is also high — 15 to 35 addresses in one Panchayat. If we constitute Panchayat as a unit for the Gram Sabha, it is quite unjust to the majority of the tribal people. So, our submission is that you take habitation as a unit for recognizing us to constitute the Gram Sabha.

With this, I conclude. My friends will share other points.

SHRI D.S. PRASAD: Sir, I have four important aspects. One is regarding the cut-off date. There is no cut-off date for the tribal because the tribals are having every right. They have to live in the forest tribal area. There is no cut-off date for them. If the cut-off date is needed, kindly consider the date of the recent Census 2001 or at least at the time of execution of the Bill.

Regarding boundary demarcation, in Andhra Pradesh at the time of the then Chief Minister, Shri N.T. Rama Rao, *Telugu Girijana Magani Samaradhana* was implemented for boundary demarcation. At that time, one-fourth of the total land was demarcated but unfortunately that process was stopped. Again it has to be restored. TJMS, which is simply called 'agency land'. At that time, there was a Government officers, Shri Subramaniam. Still he is in the Chief Minister's office. He took that responsibility at that time. Again we have to take that into consideration, and the Forest Department and the Revenue Department have to take that identification into consideration. If you take the Regulation Act, of 170 in Andhra Pradesh, even though it is an excellent and a tremendous Act, 50 per cent of the total land has been in the hands of the non-tribals. This is a very unfortunate situation in our State, Andhra Pradesh.

We have identified so many un-surveyed villages. There are so many un-surveyed villages. We were astonished to listen from MRO, local administration and the district administration that there was no name in their records, in the Gazette or anything else. This is very unfortunate in India. This is going on. So, we have to recognize those villages and we have to give all rights to the tribal people.

Regarding the Panchayati Raj Extension Scheduled Area, in Andhra Pradesh till today no rules have been framed for execution of the PESA Act. It is an excellent Act. It is passed in the Parliament itself, approved in the Assembly also. Till today it has not been executed. Why was it passed in the Parliament and also in the Assembly? It is totally unfortunate for the tribals that the PESA controls over the institutions and the resources. These two things are the major components. Gram Sabha is an important concept. So, that has to be taken into consideration. In Vishakapattnam, Padaru Division has five and a half lakh tribal population. one area is totally disturbed by mining. Another area is totally disturbed by planting mono cultivation, coffee plantation, and it is a corporate culture again. So, food crops and food grains are gradually diminishing. Sixty thousand acres of lands have been cultivated for coffee plantation itself. Till today everybody is suffering for food grains itself. Every tribal in Padaru Division is depending on DR depots. Generally, tribal culture is different. They cultivate, they produce and they eat. That is an excellent characteristic of the culture of the people of Padaru Division. This is there everywhere in India and across the world also. So, that is the alarming situation. Livelihood is also affected.

Regarding *Podu*, everybody should respect them, everybody should respect their rights. This Bill has to protect the rights of the tribal community. This is my humble request to you, Sir.

SHRI N. SANYASI RAO: Hon. Chairman and respected Members, our tribal affairs are administrated through Nehruvian Panchasheel. If we keep it under this Panchasheel, the tribals should be allowed to develop according to their own genuineness, rights in land and forests should be respected, tribal team should be trained to undertake administration and development without any outsider being inducted. Tribal development should be

undertaken without disturbing the tribal social and cultural institutions. The index of tribal development should be quality of their life and not the money that has been spent. So, you kindly consider this. The nature of evidence in the Bill is not specified.

So, I am requesting you to consider that the nature of evidence should be the declaration of tribal families in the Gram Sabha. That should be the conclusive and final evidence. The Gram Sabha should have clear authority to recognise the rights of these claims. In the Bill, there are sections 4 and 6. According to this, either the Central Government or the district level officials are the final authority. So, all these sections are contradictory to 73rd Amendment and PESA. So, I am requesting you to please consider that the Gram Sabha should be the conclusive and final authority.

The Government must recognise the scheduled area rights of the tribal. That is one thing. Secondly, the rights of forcibly displaced persons should be recognised. So many people are displaced from one place to another place. Their rights should be recognised. They are losing a lot of forest resources. They have to be rehabilitated restoring those rights. Non-tribal forest dwellers should be included in the Bill. Their rights in protected areas should be given and resettlement without consent should be allowed. The community must be given a legal authority to penalise offenders. In this connection, the recent case of Salman Khan poaching in Rajasthan is the best example how the tribal community is protecting wildlife in forests. So, kindly consider this. Also, you provide some legal authority to penalise the offenders. Thank you.

SHRI BALA RAJU: Respected Chairman and all the Committee Members, I thank you very much for this opportunity. Our main concern is about un-served villages. There are many un-served villages in Padaru Division of Vishakhapatnam and in the Eskote and Vepada Mandals of Vizayanagaram district. Unofficially, there are many. The Government identified 147 un-served villages through our NGO's efforts and other people's representation. There are totally 147 un-served villages. Every time they are forcibly displaced by the local officials of the Forest Department. That is one issue.

The second issue is that there are people who are forcibly displaced because of different schemes under community forest management through Resettlement Action Plan (RAP). In Padaru Division, there are 330 VSSs. They have declared, in total, 10,965 Padu farmers as encroached podudars. The land is 17,000 hectares. The figures are with the Forest Department.

How do we take care of the two issues regarding forcible displacement of people under various schemes and also un-served villages in the proposed Bill? That is our concern. Thank you.

SHRI NARSINGH RAO: *(He spoke in Telugu and its English translation was given by hon. Chairman)*

MR. CHAIRMAN: Hon. Members, do you like what he said to be translated? He basically said that there are about 60,000 families who are dependent on Podu/shifting cultivation in the parts of the area where he comes from. So, he says that their rights will have to be recognised. Secondly, he says that when people are going for bauxite mining and for other purposes, even the lands within the scheduled areas have been taken over by the Government without the concurrence of the Gram Sabha as specified in the Panchayat Extension of Scheduled Areas Act. So, he wanted the Committee to be aware of these aspects.

Then he says that the Act 1 of 70 in Andhra Pradesh prohibits anybody other than tribals from possessing or buying of land in the scheduled areas. This is also being violated by companies which are coming in through the backdoor. They are displacing the tribals from the original habitat. That is why, he appeals to this Committee to see that their land rights and other rights in those areas are protected.

SHRIMATI BHOODEVI: *(She spoke in Telugu and its English translation was given by hon. Chairman)*

MR. CHAIRMAN: She wants the protection of adivasi rights to ensure that the food security which they were enjoying is restored to them. That is something she says is the area that she comes from and has suffered.

(SHRI B. NARSINGH RAO cd. in Telugu)

MR. CHAIRMAN: He has basically appealed for protection of rights to the podu cultivation. He says that Gram Sabha should be the unit who should be entrusted with this job because they are aware of the boundaries. It has been cultivated basically by the local area people.

Secondly, he has got his grievance about minors have come into the areas especially in the part that he comes from where a lot of bauxite ore are available. So, he says that we are losing a lot of land and forest dwelling etc. because of this mining. So, he has appealed to the Committee to either stop the mining or to ensure that their rights are fully protected.

DR. RADHAKANT NAYAK: Shri Shankara Reddy has raised certain issues like the treaties made earlier by the tribal chieftains ~~in the past~~ even before the British and all that. In the international law some countries recognise these kinds of rights. So, can you produce any model treaty which have been signed in the past? Can you locate it anywhere?

Mr. Chairman, Sir it is a very interesting thing.

SHRI SHANKARA REDDY: Yes, Sir. I will go back and try to collect it and send it to the Committee.

MR. CHAIRMAN: Shri Reddy, we have a very little time left with this Bill. So, as soon as you go back, please try to procure it and send it to the Secretariat.

Thank you very much.

SHRI SHANKARA REDDY: Thank you very much.

(The Witnesses then withdrew)

WITNESSES EXAMINED:

1. Shri Bar Murugham
2. Shri P.H. Abdul Kareem
3. Shri K.V. Poullose
4. Shri Koshy Baby

MR. CHAIRMAN: Shri Koshy Baby, I welcome you and your colleagues to the sitting of this Joint Select Committee. As you are aware, this Bill has been introduced in Parliament basically to undo the historical injustice that has been done to forest dwelling community especially the tribals.

(Direction 58 was read out)

After that the report will be made public and whatever we discuss here also be included as part of the report. So, if you want anything to remain confidential, then please let us know while this discussion goes on.

Now, first of all, please introduce yourself and your colleagues to the Committee. We have just received your memorandum. We will go through this in detail. Please briefly highlight whatever points you would like to mention with respect to this Bill which may affect your area or the people in that region.

So, you can start.

SHRI KOSHY BABY: Mr. Chairman, Sir thank you very much for giving me this opportunity to talk on behalf of the tribal community and also on behalf of the affected community. I am Koshy Baby, a social worker from Nilgiris.

(Introduction of Witnesses)

Sir, first of all, I would like to say that we have given the memorandum in respect of the tribals. We belong to Gudalur area in the Nilgiris district in Tamil Nadu. We have been exclusively governed by the Gudalur Janmom Estates (Abolition and conversion in to at Rytowari Act) 1969. This is an Act 24 of 1969 and the said Act was enforced in the year 1974. The fact is that the property in Gudalur area originally belongs to Janmom of Nilambur Kovilagam. Subsequent to the enactment of Act 24 of 1969, nearly 80 acres in Gudalur area were transferred to the Government of Tamil Nadu. After that a lot of enquiries has been made in respect of the Janmom lands and those lands wrongly and illegally was classified as Janmom forestland. They have mentioned about Section 53 of the Gudalur Janmom Estates (Abolition and conversion in to Rytowari Act) 1969. That only questions regarding forests and without going into the realities of the situation, they unilaterally decided it under Section 53.

There are lot of tribals and also non-tribals in that area. They are solely depending on this property. Since it is not covered under section 53, subsequently it has been converted under Section 4 and other sections of Tamil Nadu Reserved Forest Act. The reality is that those who are in possession for more than six decades, they have been in continuous possession of the property and have cultivated tea plantations on small holdings ranging from 3 cents to 3 acres of land. Now they have no title over the property despite having possession over it. They are not able to even get any right over the property. My submission is that even though it has not been declared as reserved forest, it is incomplete procedure, but the authority is not giving any right over this property to them. Day by day, we are facing all Forest Department officials coming. They are trying to remove property owners from the places. We are right now facing this great difficulty. Even though it is not a reserved forest and the determination of right is yet to be decided, the Government of Tamil Nadu and the Forest authorities, without looking into the merit of the cases, are unilaterally declaring it as forest in this case.

As far as Gudalur area is concerned, there are nearly 25,000 tribals of six varieties. I am representing here not only for tribals but also those who are inhabitants of the forest. They should also be considered in the proposed Bill.

SHRI BAJU BAN RIYAN: Is it rocky or hill area?

SHRI KOSHY BABY: It is exclusively hillock.

MR. CHAIRMAN: What kind of plantation do they do?

SHRI KOSHY BABY: Tea plantation, paddy field, pepper, arecanut etc.

MR. CHAIRMAN: When have these been declared as forest areas?

SHRI KOSHY BABY: In the year 1977, the Office of the Settlement Officer, without informing the party and without seeing the ground reality, had unilaterally declared that these lands are coming under section 53.

MR. CHAIRMAN: You have mentioned sections 17 and 53. Can you give us the extract of these sections?

SHRI KOSHY BABY: Section 17 says that where the property originally belonged to Janmom, the Raja of Nilambur Kovilagam prior to the enactment of this Act, after the enactment of this Act, the entire land vests with the Government of Tamil Nadu. So, prior to the enactment of this Act, their leases were given to some of the parties including small holders from the Janmis. After the enactment of the Act, they have become revenue tenancies under the Government of Tamil Nadu.

Section 53 says that if any question arises whether any land in Janmom Estate is forest or is situated in forest or as to limits of a forest, it shall be determined by the Settlement Officer subject to an appeal to the Director within such time as may be prescribed and also revision by the Board of Revenue.

MR. CHAIRMAN: Could you please give us the extracts of sections 17 and 53.

In other words, what you are trying to say is that the land, which was used for horticultural and agricultural purposes, was unilaterally declared forest land. So, these lands were not actually forest or forest land. They were arbitrarily declared as forest land.

SHRI KOSHY BABY: They have been in possession of the land since 1940.

DR. RADHAKANT NAYAK: Have you approached the court of Tamil Nadu at any time?

SHRI KOSHY BABY: No.

DR. RADHAKANT NAYAK: In Madras city itself, the British long time ago had given some pieces of land. It was called *achut* land. The Government had taken it arbitrarily. Then, the Madras High Court and also the Supreme Court had held that this land cannot be taken arbitrarily, without the consent of the people. If such a law is there, the law is in your favour. Without the involvement of the court, you can always establish this right over the property.

SHRI KOSHY BABY: Only the Settlement Officer has got power to do it.

DR. RADHAKANT NAYAK: No. the entire statute was declared null and void. The land was taken under an Act.

MR. CHAIRMAN: Has none of the holders of these small estates gone to the courts or challenged it?

SHRI KOSHY BABY: When the Act was enacted in 1969, the Act itself was challenged. Section 3 of Janmon Act, which vests Janmom forests with the Government of Tamil Nadu, was challenged by some of the estates. The matter went up to the Supreme Court and the Supreme Court gave judgement to the effect that Section 3 itself was *ultra vires* to the Constitution.

DR. RADHAKANT NAYAK: Even during the British days, the Imperial Court had held some of the treaties and some of the *sanads* given by the Estates, by the Rajas, Mahaarajas, Zamindars and all that. There is a particular law on this. It is in your favour. Of course, the Committee may take in view about traditional rights, customary rights, some of the past rights. That is some other matter, but it may be included in that also if there is a particular law.

SHRI KOSHY BABY: My submission is that since these are small holdings and these people have been in possession of land from 1920, 1930 or 1940, this Committee may consider it.

DR. RADHAKANT NAYAK: As Chairman has said, you give us all the details.

MR. CHAIRMAN: Mr. Koshy, we will definitely consider what you are saying. If certain lands have been declared as forest land arbitrarily, despite being lands which are used, as you said yourself, for growing tea plantations and other commercial cash crops, we would like to know more details about it. This may have been done in other parts of the country also. So, you please send us whatever records you have. You also send us a copy of the Supreme Court citation and relevant portion of the Act you have quoted over here. That is for our understanding and knowledge.

SHRI KOSHY BABY: Some of the lands have been declared as reserved forest without seeing the ground reality. If the Chairman and the Committee go to see it, the plantations there are about 50 years old. Even the Tamil Nadu Government has recognised construction of the building.

MR. CHAIRMAN: As soon as you go back, quickly send us whatever details you have.

SHRI KOSHY BABY: My submission is that those Janmom lands may be included in this.

SHRI K.V. POULOSE: Respected Chairman and hon. Members of the Joint Committee, we are very thankful to you for having been given the opportunity to represent here the tribals of our district. In our district, the total geographic area is 2,543 sq. km. and the total population is 7,26,141. Out of this population, the population of Scheduled Tribes is 28,373. Out of the total geographical area. 56 per cent is wrongly classified as reserved forest.

During the period of Pandit Jawaharlal Nehru there was a need to grow more food because of food problem. As a result of the food shortage, all the people entered into the Gudalur area. It is an area where three States, namely, Tamil Nadu, Kerala and Karnataka join together. Very poor people from Kerala and Karnataka have all settled on lands in this area. In this area the tribals, especially, the Paniyars and the Moopass and Kurumbar are not living inside the forest. The Todas, Irulas, etc. are living inside the reserved forest.

Our district is situated 2,800 meter above sea level. We cannot provide roads or other basic amenities to the Scheduled Tribes. The Government of India is allocating a lot of fund under the head 'Rural Development' for the uplifting of tribals in our district, but we are not able to spend those funds in a suitable manner as the forest official prevent us from doing it.

We have already represented to you about the Janmom Abolition Act, 1969. The people there are illiterate as there is no facility for schools to go and study in. All the people have migrated to some other States. We came to know that we are inside Tamil Nadu only after partition of the linguistic States in 1956. Therefore, the Karnataka people, Kerala people and the Sri Lankan repatriates are at least 800 kms away from Chennai, and we do not know what they are doing about it. They have marked 45 cents of land or 25 cents of land as reserved forest. In my case, I have *patta* land inside 47 cents of reserved forest. Therefore, we cannot form a road or an irrigation channel, and the drinking water supply is also banned.

In the Nilgiri district we have four blocks, namely, Otty, Coonoor, Kotagiri and Gudalur. Gudalur is the border area for Kerala, Karnataka and Tamil Nadu, and most of the Scheduled Tribes including Paniyars and Kurumbar are settled in the Gudalur area because of its plain conditions. Therefore, this is not a particular problem of the Nilgiri district, but it is the problem prevalent all over India for different category of people.

I would like to further request that the tribals, Scheduled Tribes, very poor people and others who have been living in wrongly classified lands should get *pattas*, and be allowed to live on this land. Thank you.

MR. CHAIRMAN: Thank you very much to all of you. Shri Koshy Baby, please do send us the information that you wish to convey to the Committee in writing as soon as you possibly can, and we will surely consider every point that you have mentioned here. Thank you.

(The Witnesses then Withdrew)

WITNESSES EXAMINED:

1. Shri Gova Rathod, Adivasi Mahasabha, Gujarat
2. Shri Datubhai Vasava, Adivasi Mahasabha, Gujarat

MR. CHAIRMAN: Shri Rathod and Shri Vasava, I welcome you to this sitting of the Joint Select Committee on my behalf and on behalf of my colleagues in the Committee. You are aware that this Bill -- which the Parliament is seeking to introduce—is basically to undo the historical injustice, which has been meted out to the forest-dwellers, especially the Scheduled Tribes who have been denied their rights for over a century.

We have just got your memorandum. I would like to mention that whatever we discuss here will remain confidential until we present the Report in the Parliament. In case you desire that any part of what you may mention here should remain confidential, then you can do so while making your presentation and the same will not be included in our Report.

Please introduce yourselves, and go ahead with your observations. You can speak either in English or Hindi depending upon the language you are comfortable speaking.

श्री गोवा राठी: मैं आदिवासी महासभा, गुजरात के जो 41 लोकल आर्गेनाइजेशंस हैं, उनके नेटवर्क का सीक्रेटिएट संभालता हूँ। अभी यह जो 2005 का बिल है, उस पर सबसे पहले तो मैं इस कमेटी के चेयरमैन और सभी सदस्यों का आभारी हूँ, जिन्होंने यह इनीशिएटिव लिया है। मैं इस बिल पर आदिवासी महासभा, गुजरात की ओर से थोड़े बहुत सुझाव रखना चाहूँगा। पहले तो मैं एडमिनिस्ट्रल एवीडेंस के

बारे में कहना चाहूंगा कि पहली जैसे 1999 की गाइडलाइन है, उस वक्त जो एवीडेंस रखी गई थी, 18 वाली दण्ड पावती, जैसे गुजरात के 11 डिस्ट्रिक्ट्स में अभी जो ग्रास रूट लेवल पर लोग काम कर रहे हैं, सभी लोगों की पावती की जो एवीडेंस है, उतने नैचुरल रिसोर्सज में वह एवीडेंस नहीं रहती है। अभी भी जो रेनी सीजन रहता है, चौमासा रहता है, उस समय जो एवीडेंस रहती है, वह उसके पास नहीं रहती है। उसके पास अगर यही एवीडेंस रहेगी, इस बिल में भी कुछ लिखित में, तो ट्राइबल कम्युनिटी को इससे फायदा होगा, क्योंकि यह एवीडेंस वे सभी लोग नहीं रख पाते, इसलिए हमारा सुझाव है कि कई बार जैसे ओरल एवीडेंस है, उसे मानना चाहिए। इसके अलावा जहां पर उनका कब्जा है, जहां वे रहते हैं, कम्युनिटी के परिवार हैं, उनके जो ट्रीज़ होते हैं, उसकी एज से पता लगता है कि कितने सालों से वे लोग वहां पर हैं। वहां की ग्राम सभा, सरपंच या ग्राम पंचायत के लोग अगर बोलें कि इतने सालों से ये यहां है तो वह भी मान्य रहना चाहिए। दूसरा सुझाव यह है कि अगर चैक डैम या बांध हो तो राइट सैटल करते समय उनको भी ध्यान में रखना चाहिए। तीसरी चीज यह है कि जहां पर वे रहते हैं, कल्टीवेशन करते हैं, वहां के कोर्ट केसेज़ में गये हैं, अगर कोई गुनाह किया है या कुछ गवर्नमेंट को एप्लीकेशन दी है तो राइट सैटल करने के लिए पट्ट, हाउस टैक्स की रसीद भी मान्य रहनी चाहिए। अगर वह भी नहीं है तो ग्राम सभा या कम्युनिटी के लीडर्स लोगों की बात माननी चाहिए।

श्री दातुभाई वासवा: एक सुझाव मैं और जोड़ना चाहता हूं। जो ज्यादातर आदिवासी कम्युनिटी रहती है तो वहां उनके खेतों में उनके पूर्वजों को दफनाया जाता है, वह भी एवीडेंस के तौर पर माना जाना चाहिए, क्योंकि यह हमारी कल्चर है कि आदिवासी समुदायों में हमारे पूर्वजों की कब्रें हमारे खेतों में होती हैं और उनको वे पूजते हैं तो इसे भी एवीडेंस के तौर पर माना जाना चाहिए। दूसरी बात मैं यह जोड़ना चाहता हूं कि जो भी दण्ड पावती किसानों को दी गई है, वह यह कहकर दी गई थी कि जो जमीन आप इस्तेमाल कर रहे हैं, उसके दण्ड के बदले में आपको पावती दी जाती है, लेकिन रिटिन में कुछ और ही डाक्यूमेंट होता है, फोरेस्ट डिपार्टमेंट जो भी डाक्यूमेंट देता था, वह या तो गाय चराने या भैंस चराने के मामले में दण्ड किया जाता है, ऐसा कोई लिखित में डाक्यूमेंट नहीं दिया गया कि इस जमीन पर खेल रहे हैं, इसकी वजह से आपको यह दण्ड पावती दी जा रही है। सबसे अहम बात यह है कि जिनके पास पूरी पावतियां हैं, हमारे किसान लोग समझते हैं कि उनको यह दण्ड पावतियां दी गयी हैं।

श्री गोबा राठीड़: ग्राम सभा को ग्रास रूट लेवल पर मजबूत बनाने की आवश्यकता है। सरकार का ऐसा कोई मैकिनिज्म होना चाहिए जिससे ग्राम सभा राइट-सैटल करने में मदद राइट करे। ग्राम सभा यह कलैक्टर को फाइनल डिसेजन की पावर होनी चाहिए। सब डिवाजन कम्युनिटी की बात इस बिल में कही गयी है। उसको ग्राम सभा को स्पॉट करना चाहिए। ऐसा हमारा सुझाव है।

श्री दातुभाई वासवा: एमओइएफ ने जो संकूलर जारी किया है, उसमें आदिवासी वन अधिकार के बारे में बिल लाने की बात कही गयी है। दूसरी ओर एमओइएफ ने परिपत्र जारी किया है, जिसकी वजह से गुजरात सरकार जीएफ को मानकर चल रही है और ठहराव किया है। इसकी वजह से एमओइएफ ने जो गाइडलाइन्स दी हैं, उसके मुताबिक जो प्रोसेस चलना चाहिए, वर्ष 1980 वाला जो मुद्दा उठया है, वह पूरा प्रोसेस गुजरात के ग्यारह जिलों में शुरू किया गया है।

सभापति महोदय: आप ~~बारे~~ बारे में क्या चाहते हैं?

श्री गोबा राठीड़: हमारा सुझाव है कि कट आफ डेट 2001-02 से पहले का नहीं होना चाहिए। आदिवासी 25-26 साल से जंगलों के निवासी हैं और उनका जंगल पर अधिकार है।

श्री दातुभाई वासवा: जमीनी तौर पर लोगों को यह कहा जाता है कि आपको जमीन दी जा रही है, लेकिन गाइडलाइन में साफ लिखा है कि यह केवल सर्वे के लिए है। सरकार ने जो भी सर्वे शुरू किया है, उसमें कोई भी रिटन डाक्यूमेंट नहीं है। पहले यह तालीम प्रोग्राम होना चाहिए, फिर ग्राम समिति को मजबूत बनाना चाहिए। एमओइएफ का जो प्रोसीजर है, वह गुजरात में फालो नहीं किया जा रहा है।

श्री गोबा राठीड़: आदिवासी कम्युनिटी का राइट सैटल करने की बात है, इसके साथ-साथ फोरेस्ट कम्युनिटी और नॉन ट्राइबल कम्युनिटी का भी राइट सैटल होना चाहिए, क्योंकि वे भी हजारों सालों से जंगलों में रह रहे हैं। यदि इस बिल में गैर-आदिवासियों को जोड़ेंगे, तो अच्छा रहेगा।

श्री दातुभाई वासवा: हमारे 11 जिलों में अनुसूचित जाति के लोग जंगलों में रहते हैं हमारा सुझाव है कि इस बिल में आदिवासियों की जो इयूटी बताई गई है, उसके लिए पैनल्टी की बात भी कही गई है। हमारा मानना है कि केवल पैनल्टी नहीं होनी चाहिए, उनके पास मेनेजमेंट की आथोरिटी भी होनी चाहिए। मैं गुजरात के संबंध में कहना चाहता हूं कि वहां कोई प्रोटेक्टिड एरिया नहीं होना चाहिए, क्योंकि

गुजरात में ऐसे रिजर्व जंगल और सेंक्यूरीज हैं, जहां कुछ भी नहीं है। हमारे इलाके में तीन अभ्यारण हैं। सरकार की तरफ से अभ्यारण के लिए जो प्रक्रिया चलनी चाहिए, वह नहीं चल रही है क्योंकि ग्राम सभा से जो अभ्यारण के लिए जमीन ली गई है, वह गलत तरीके से ली गई है। इसकी वजह से वहां के लोग काफी दिक्कत में हैं।

श्री गोबा राठौड़: सबसे अहम बात यह है कि यह अभ्यारण है, इस बात को कौन तय करेगा। जहां भी सेक्यूरीज या अभ्यारण तय किए गए हैं, यदि आप वहां जा कर देखें तो आपको एक ही पेड़ देखने को मिलेगा। मैं अंग्रेजी में उस पेड़ का नाम नहीं जानता हूँ लेकिन हमारी भाषा में उसे "गांडा बावर्ड" कहते हैं, केवल वही पेड़ मिलेगा। क्या वन विभाग उसी को जंगल कहता है, क्या कोर एरिया यही है? अभ्यारण के अंदर जो रीछ आदि जानवर रहते हैं, वे लोगों पर अटैक करते हैं, क्योंकि उनके लिए अभ्यारण में कोई सुविधा नहीं है, इसलिए वे बाहर आ कर लोगों पर हमला करते हैं।

श्री दासूभाई बासबा: जहां बालाराम अभ्यारण है, उसी डिस्ट्रिक्ट में विजय नगर ब्लाक है, जिसे वन विभाग ने अभ्यारण घोषित किया है। लेकिन विजय नगर में कोई जंगल नहीं है। जहां जंगल है, उसे अभ्यारण नहीं बनाया गया है और जहां जंगल नहीं है उस जगह को अभ्यारण दिखाया गया है। आदिवासियों को निकाल दिया गया है, लेकिन उस स्थान पर कोई जंगल नहीं है। पहले जंगल होता था, लेकिन आज वहां जंगल नहीं है। कोर एरिया से आदिवासियों को इसलिए हटाया जाता है, क्योंकि कहते हैं कि वे जंगलों को नुकसान पहुंचाते हैं। यह बिल्कुल गलत बात है क्योंकि हमारे पास विजय नगर का अनुभव है।

MR. CHAIRMAN: Hon. Members, I would again like to remind you that today is the last day for taking evidence and we have completed it. Please send us your amendments for which the last day is 28th of this month. You can start sending the amendments right from tomorrow itself. The next meeting is scheduled to be held on the 2nd of May.

(The Committee then Adjourned)