

Sustainable Timber Trade: Mechanism under Indian Forest Act, 1927

Ripon Bhattacharjee¹

I. The Focus:

With emphasis on development and the increasing global population, the demand for timber has increased many folds. All trade have an impact on natural resources directly or in indirectly but timber trade impacts the environment in a big way. Consequently, global climate change, decrease in forest cover and loss of biodiversity have become subjects of international concern. As result of centuries of dreadful exploitation many natural forest and bionetworks are now gravely in danger. Natural forests have already been reduced to a few wreckages. According to the latest global survey by the UN Food and Agriculture Organisation (FAO), deforestation is presently taking place in at least 76 countries, and in the mainstream of these the rate of loss is accelerating². The planet currently contains large areas of recently cleared forest, young restoring forest and middle-age forest that are far less common in the temperate regions but increasingly so in the tropical regions. These regions generally have a specialised flora and fauna, a proportion of which can only survive in forests that have remained undisturbed for long periods of time.³

In India the Supreme Court has laid emphasis on sustainable development and accordingly right to healthy and clean environment is incorporated within fundamental right under article 21 of the Constitution⁴.

In *Vellore Citizen Welfare Forum v. Union of India*⁵ the Court observed – Sustainable Development means the development that meets the needs of the present without

¹ Ph. D Research Scholar, Department of Law, University of North Bengal.

² Nigel Dudley, Jean-Paul and Jeanrenaud, The Timber Trade and Global Forest Loss, *Ambio*, Vol. 27, No. 3 (May, 1998), pp. 248-250. See <http://www.jstor.org/stable/4314725>. Accessed: 30/01/2012 ,01:43 pm

³ Dr. S.R.Myneni, *Environmental Law*, Edn.2008, Asia Law House, p.401

⁴ Article 21- No person shall be deprived of his life or personal liberty except according to procedure established by law.

⁵ AIR 1996 SC 2715

compromising the ability of the future generation to meet their own needs. It is a balancing concept between ecology and development

Deforestation and forest degradation have, inter alia, two major critical issues. On one hand it threatens biodiversity, stability of the ecosystem and on the other hand the long-term availability of forest products and more specifically timber for industrial development and economic growth of the nation. Population pressure, heavy dependence on fuel wood, timber and other products, as well as conversion of forests to agricultural, urban and industrial land are the underlying factors for deforestation in India. Forest degradation and deforestation has also resulted from overgrazing and shifting cultivation. In addition, as forests have become degraded, so fire, pests, diseases and natural disasters have caused greater damage. Construction of irrigation schemes, dams and reservoirs as well as mining are further causes of deforestation while armed conflict has also taken a toll in some countries⁶.

The focus of this article is upon timber trade which is considered to be a major cause of deforestation. Areas of high biodiversity tend to contain the oldest, and thus in many cases the most commercially valued trees. Forests with high biodiversity are, by their very nature, likely to draw the attention of the timber traders globally. Therefore the sustainability of the national and international timber trade are thus critical to the survival of most of the world's biologically richest forests' ecosystems and therefore to the majority of species on one hand and prevention of climate change on the other.

Logging and regeneration can have important impact not only on the biodiversity of a nation but also on its economy. Timber trade in many states is considered to be the primary cause of forest dilapidation and trouncing in those forests that include the uppermost levels of biodiversity. Time has also amplified the relative impact of the timber trade. Major forest has now been reduced to fragments in many countries.⁷

As the area of high quality natural forest declines, and is increasingly restricted to areas which are uncongenial to human settlement, deforestation due to timber trade continues to grow. In developing countries, the impact of the timber business has habitually been underestimated. Its exacerbated role in the cause of deforestation has been undervalued or

⁶ STATE OF THE ENVIRONMENT AND POLICY RETROSPECTIVE: 1972–2002, p.101, see www.grida.no/geo/geo3/english/pdfs/chapter2-1_socioeconomic.pdf, visited on 19.3.2012 at 4 p.m.

⁷ Nigel Dudley, Jean-Paul and Jeanrenaud, The Timber Trade and Global Forest Loss, *Ambio*, Vol. 27, No. 3 (May, 1998), pp. 248-250. See <http://www.jstor.org/stable/4314725>. Accessed: 30/01/2012 01:43

mistreated. Loggers are often the first outsiders to break through forests leading to further dreadful conditions when they create logging routs or use logging roads to enter previously closed forests.⁸

II. Timber Trade: Indian Scenario:

Forest products constitute an important source of revenue for the government exchequer. Import and export of forest goods form a significant portion of international trade; therefore it implies that business and trade of wood products and forest raw materials has attracted the traders all over the world and India is no exception. Fascination towards wood based products, ranging from doors, windows, and furniture to valuable show pieces has gradually enlarged the size of trade based on timber items. Timber is also essential in infrastructural work and construction. Demand for luxurious wood products has consequentially filled the pockets of traders trading in wood items and unfortunately leading to destruction of forest⁹ and loss of forest cover globally.

Of late the structure of the global timber trade and timber industry is changing, marked by a perceptible shift in favour of intensive plantation of timber producing trees over and around natural forests. The forest department has taken such practice as its own project. At the same time, a growing domestic and export demand for finished wooden products have given rise to the growth of small and illegal timber traders and forest mafias, who highly exploit the forest. Illegal loggers often target particularly valuable species, have little concerns for principles of sustainable logging and operate in remote areas, including many national parks and other protected areas.¹⁰ Although trade in illegal timber has been widespread for decades, it is only recently that the civil society has become concerned with the issue of illegal logging. Illegal timber trade is now recognised as a key global threat that contributes to deforestation, biodiversity loss and climate change which also undermines the rule of law. In many producer countries, illegal logging also involves high-level corruption, tax evasion, leading to the loss of national revenue and limits the resources available to investing in sustainable

⁸ Id. at p.

⁹ A drive from the Darjeeling More region to Bagdogra on national highway 31 in Siliguri subdivision of district Darjeeling in West Bengal will prove the point. It is believed that the source of wood supply here are not necessarily legal.

¹⁰ Nigel Dudley, Jean-Paul and Jeanrenaud, The Timber Trade and Global Forest Loss, *Ambio*, Vol. 27, No. 3 (May, 1998), pp. 248-250. See <http://www.jstor.org/stable/4314725>. Accessed: 30/01/2012 01:43

development. Uncontrolled and unregulated timber trade leads to loss of sustainability. Furthermore, the illegal trade in timber continues to undermine international security and is frequently associated with money laundering, organised crime, and human rights abuses and, in some cases, violent conflict.

An attempt is made in this article to delineate the legal framework in India and the regulatory and control mechanism for control of illegal timber trade and logging.

II.1. Laws for conservation of forest

II.1.i. Indian Forest Act, 1927:

In the initial days of British Rule, not much attention was paid towards forests protection. People used to clear forests for agricultural purposes. However, towards the later parts of the British rule, the first Indian Forest Act, 1865 (VII of 1865) was passed by the Supreme Legislative Council declaring the possession of State over forests. This further culminated into Acts of 1878 and 1927.

The Indian Forest Act, 1927 is a comprehensive legislation relating to forests management that consolidates pre-existing laws such as the Indian Forest Act, 1865 and the Forest Act, 1878 and goes on to control and regulate trading in timber.

The first step taken under this Act towards this direction is the formation of “Reserve Forest”. The State Government may constitute any forest-land or waste-land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest produce of which the government is entitled, a reserved forest¹¹ Moreover the state government may by notification acquire land over which no right accrues except through succession or grant of contract in writing made or entered into by or on behalf of the Government or some person in whom such right was vested when the notification was issued; and no fresh clearings for cultivation or for any other purpose shall be made in such land except in accordance with such rules as may be made by the State Government in this behalf¹² .

Once an area has been declared as ‘reserved forest’ certain activities are prohibited within that area:

¹¹ Section 3, of Indian Forest Act, 1927

¹² Sections 4 and 5, of Indian Forest Act, 1927.

Making of any¹³

- a) fresh clearing
- b) Setting fire in reserve forest area or endangers the forest by kindling fire in any manner.
- c) trespasses or pastures cattle, or permits cattle to trespass; or
- d) causes any damage by negligence in felling any tree or cutting or dragging any timber; or
- e) fells, girdles, lops or burns any tree or strips off the bark or leaves from, or otherwise damages, the same; or
- f) quarries stone, burns lime or charcoal or collects, subjects to any manufacturing process, or removes, any forest-produce; or
- g) clears or breaks up any land for cultivation or any other purpose; or
- h) in contravention of any rules made in this behalf by the State Government hunts, shoots, fishes, poisons water or sets traps or snares; or
- i) in any area in which the Elephants' Preservation Act, 1879, is not in force, kills or catches elephants in contravention of any rules so made. In the event such activities are carried on, such person shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, in addition to such compensation for damage done to the forest as the convicting court may direct to be paid.

However there are certain exceptions to the above such as:

- a) any act done by permission in writing of the Forest Officer, or under any rule made by the State Government; or
- b) The exercise of any right continued under clause (c) of sub-section (2) of Section 15, or created by grant or contract in writing made by or on behalf of the Government under Section 23¹⁴.

In the event of the prohibited activity occurring in the reserved forest, the state government may suspend the right to pasture or forest produce for a period as it deems fit¹⁵.

¹³ Section 5(1) of Indian Forest Act, 1927.

¹⁴ Section 5(2) of Indian Forest Act, 1927

¹⁵ Section 26 of Indian Forest Act, 1927

The Indian Forest Act 1927 was enacted with the objective of consolidating the laws pertaining to forests, the transit forest-produce and the duty leviable on timber and other forest produce and the provisions contained in Chapters VI and VII deal with levying of the duty on timber and other forest produce and control of timber and other forest produce in transit. Chapter VIII deals with the collection of drift and stranded timber. The pertinent provisions are summarised below:

- The Central Government has been empowered to impose duty on timber and other forest produce which is produced in the territories to which the Act extends and in respect of which the government has any right and which is brought from any place outside the territories to which the Act extends.¹⁶
- Control of all rivers and their banks as regard the floating of timber as well as the control of all timber and other forest produce in transit by land or water is vested in the state government and it may make rules to regulate the transit of all timber and other forest produce.¹⁷
- The rules may be framed for the following purposes:
 - a. Prescribing the routes by which alone timber or other forest produce may be imported, exported or moved into, from or within the state;
 - b. Prohibiting the import or export or moving of such timber or other produce without a pass from an officer duly authorised to issue the same or otherwise then in accordance with the condition of such pass;
 - c. Providing for issue, production and return of such passes and for the payment of fees there for;
 - d. Provide for the stoppage, reporting, examination and marking of timber or other forest produce in transit, in respect of which there is reason to believe that any money is payable to the government on account of the price thereof, or on account of any duty, fee, royalty or charge due thereon or, to which it is desirable for the purposes of this Act to affix a mark;
 - e. Provide for the establishment and regulation of depots to which such timber or other produce shall be taken by those in charge of it for examination, or the payment of such money, or in order that such marks may be affixed to it, and the

¹⁶ Section 39 of Indian Forest Act, 1927

¹⁷ Section 41 of Indian Forest Act, 1927

condition under which such timber or other produce shall be brought to, stored at and removed from such depots;

- f. Prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest produce, and the throwing of grass, brushwood, branches or leaves into any such river or any act which may cause such river to be closed or obstructed;
- g. Provide for the prevention or removal of any obstruction of the channel or banks of any such river, and for recovering the cost of such prevention or removal from the person whose acts or negligence necessitated the same;
- h. Prohibit absolutely or subject to conditions, within specified local limits, the establishment of saw-pits, the converting, cutting, burning, concealing or making of timber, the altering or effacing of any marks on the same, or the possession or carrying of marking hammers or other implements used for marking timber;
- i. Regulate the use of property marks for timber, and the registration of such marks; prescribe the time for which such registration shall hold good; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration.¹⁸

- Central government may make rules to prescribe the route by which alone timber or other forest produce may be imported, exported or moved into or from the territories to which this Act extends across any customs frontier as defined by Central government.¹⁹
- The state government may by such rules prescribe as penalties for the contravention thereof imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both and such penalties will be double in cases where the offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority, or where the offender has been previously convicted of a like offence.²⁰
- The following timber shall be deemed to be the property of the government, until and unless any person establishes his right and title thereto²¹:
 - a. All timber found adrift, beached, stranded or sunk;

¹⁸ Ibid.

¹⁹ Sec 41(A) of Indian Forest Act, 1927

²⁰ Sec 42 of Indian Forest Act, 1927

²¹ Sec 45 of Indian Forest Act, 1927

- b. All wood or timber bearing marks which have not been registered or on which the marks have been obliterated, altered or defaced by fire or otherwise and in such areas as the state government directs, all unmarked wood and timber.
- c. Such timber may be collected by any forest officer or other person entitled to collect the same and may be brought to any depot which the forest officer may notify as a depot for the reception of drift timber.
- Public notice shall from time to time be given by the forest officer for the collection of timber and such notice shall contain a description of the timber, and shall require any person claiming the same to present to such officer, with in a period not less than two months from the date of such notice, a written statement of such claim²².
 - When any statement is presented as per Sec 46, the forest officer may reject the claim after recording reasons or may deliver the timber to the claimant after making reasonable enquiry. If the timber is claimed by more than one person, the forest officer may, either deliver the same to any such persons whom he deems entitled thereto, or may refer the claimants to the civil courts, and retain the timber pending the receipt of an order from any such court for its disposal. Any person whose claim has been rejected under this section may, within three months from the date of such rejection, institute a suite to recover possession of the timber claimed by him but no person shall recover any compensation or costs against the government, or against any forest officer, on account of such rejection, or the detention or any removal of any timber, or the delivery thereof to any other person. Such timber shall not be subject to process of any Civil, Criminal or Revenue Court until it has been delivered, or a suit has been brought²³.
 - If no written statement of claim is presented or if the claimant omits to prefer his claim within the period fixed by notice or if the claim has been rejected or if the claimant omits to institute a suit to recover a possession of drift timber within the prescribed period, the ownership of such timber shall vest in the government or when such timber has been delivered to another person the ownership shall vest in such other person free from all encumbrances not created by him²⁴.

²² Sec 46 of Indian Forest Act, 1927

²³ Sec 47 of Indian Forest Act, 1927

²⁴ Sec 48 of Indian Forest Act, 1927

- The state government may make rules to regulate the following matters²⁵ :
 - a. The salving, collection and disposal of all timber mentioned in sec 45.
 - b. The use and registration of boats used in salving and collecting timber;
 - c. The amounts to be paid for salving, collecting, moving, storing or disposing of such timber; and
 - d. The use and registration of hammers and other instruments to be used for making such timber.
 - e. Penalties for the contravention of above rules is imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.
- When there is a reason to believe that a forest offence has been committed in respect of any forest produce, such produce, together with all tools, boats, carts or cattle used in committing any offence, may be seized by any forest officer or police officer and every officer seizing any property shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, make report of seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made. Provided that when the forest produce with respect to which such offence is believed to have been committed is the property of government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstance to his official superior²⁶.

II.1.ii. The Forest Policies:

An important aspect of the legal framework relating to forest and timber trade is the declared policy of the nation relating to those matters. The policies are varied upgraded or modified from time to time as is shown in the following pages.

Policy of 1894: The government of India issued a resolution on 19th October, 1894 declaring its forest policy in which the principal features were as follows:

²⁵ Sec 51 of Indian Forest Act, 1927

²⁶ Sec 52 of Indian Forest Act, 1927

- 1) The sole object with which state forests are administered is public benefit. In general, the constitution and preservation of a forest involve the regulation of rights and restriction of Privileges of the user of the forest by the neighbouring population.
- 2) Forests situated on all hill slopes should be maintained as protection forests to preserve the climatic and physical conditions of the country and to protect the cultivated plains that lie below them from the devastating action of hill torrents.
- 3) Forests which are the store house of valuable timbers should be managed on commercial lines as a source of revenue to the State.
- 4) Forests that yield only inferior timber, fuel wood or fodder or are used for grazing should be managed mainly in the interest of the local population, care being taken to see that the user does not annihilate its subject and the people are protected against their own improvidence.

National Forest Policy, 1952

During the First Five-Year Plan, the first forest policy of Independent India was declared on May 12, 1952 by the Government of India. According to this policy, it was decided to raise steadily the area under forests to 100 million hectares, which would come to 33 percent of the country's land as a whole. The Government planned to promote and expand forests and manage them scientifically. The following programme was proposed:

- 1) **Aforestation:** - Aforestation schemes such as (i) plantation of quick growing species; and (ii) plantation to be raised under the scheme of rehabilitation of degraded forests were brought under State plans.
- 2) **Social Forestry:** - To increase green coverage, the Government has set up social forestry projects on non-forest lands, public lands and on village common lands. Government started with the operation of the people in developing forest to meet the needs of the fuel, paper, etc. Under social forestry 3 steps were proposed.
 - a) **Farm Forestry:** - Farmers are encouraged to plant trees on their own farms. For this purpose the State Forest Departments supply the seedlings to the farmers and other people without any cost.
 - b) **Public Wood Lots:** - The Government plant fast growing trees along road-sides, canal banks and other such public lands for the needs of community.

- c) **Community Wood Lots:** - Trees are planted by the communities themselves as community lands to be shared equally by the villages. Seedlings are supplied by Forest Department.

Forest Policy, 1988

The basic objectives that that governed the National Forest Policy, 1988 are the following:

- (i) Maintenance of environmental stability through preservation and, where necessary, restoration of the ecological balance that has been adversely distributed by serious depletion of the forests of the country;
- (ii) Conserving the natural heritage of the country by preserving the remaining natural forests with the vast variety of flora and fauna, which represent the remarkable biological diversity and genetic resources of the country.
- (iii) Checking soil erosion and denudation in the catchment areas of rivers, lakes, reservoirs in the interest of soil and water conservation, for mitigating floods and droughts and for the retardation of siltation of reservoirs;
- (iv) Meeting the requirements of fuel wood, fodder, minor forest produce and small timber of the rural and tribal populations;
- v) Increasing the productivity of forests to meet essential national needs;
- (vi) Encouraging efficient utilisation of forest-produce and maximising substitution of wood; and

The principal aim of forest Policy must be to ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium which is vital for sustenance of all lifeforms, human, animal and plant. The derivation of direct economic benefit must be subordinated to this principal aim.

III. Conclusion:

Though there are many rules and regulation relating to timber transit and allied matters but mechanism of sustainable timber trade under Indian Forest Act 1927 is not adequately addressed.

Recently, global timber trade structures have been changing drastically from trade in raw logs to trade in wood products. This change seems to reflect the trends in environmental movements around the world and the depletion of useful forest resources. Considering changes in the timber trade, it is believe that controlled and regulated timber trade is needed in order to realize sustainable management of forests.

There is also a practice of growing timber yielding trees on separate land, waste or arid so that the forest is not adversely affected by the growing demand for timber. It can be suggested that, for a better future, environmental degradation can be stopped by implementing sustainable development in a better way.

01. Attaining sustainability in the context of timber trade is not easy because trees that produce timber for commercial purpose or for other use takes approximately twenty to thirty years or more to become in harvestable size. In this context if anybody plants some trees simultaneously after cutting of the trees of harvestable size for commercial purpose to maintain the ecological balance, then the issues arises here is that the time between planting a new tree and its becoming matured is considerably long. Therefore, the concept of attaining the ecological balance by planting new tree after cutting a matured one is not sufficiently viable one.

02. If dry arid waste land is turned green in one region, desertification occurs in another. For example the green drive in Rajasthan and Gujarat that were naturally dry and arid has blocked the hot air current that rushes in from the Maharashtra coast resulting in desertification of Maharashtra and greening of Gujarat and Rajasthan. That in itself is causing a disastrous climate change.

Attaining sustainability is difficult technically, economically and politically. For some species of tropical timbers the growth rate of trees takes at least as little as 30 to 50 years, but for many common timber species it can be double (eg. Mahogany 97 years) or more than treble that (eg. Iroko 154 years; Edinam 168 years; Afromosia 240 years). Although, in theory, existing young commercial trees left by loggers would grow up to harvestable size in shorter periods, for commercial enterprises the time needed for the preferred species to reach

maturity is a long time to wait for return on capital investment. It is very common for logged forests to be re-logged before the required rotation period has expired.

In effect worldwide business of illegal timber is another reason for creating hindrance in the ecological area. There are many laws implemented for the purpose to protect illegal timber trade but those rules and regulation are not adequate to stop the illegal timber trade. Therefore, illegal timber trade is another hindrance behind achieving the sustainable development.