

CHAPTER 7

LEGAL FRAMEWORK RELATED TO TIMBER TRADE IN THE STATE OF TRIPURA AND ITS IMPLEMENTATION

THE FRAME

The framework of this chapter is limited to the state of Tripura. The researcher looks into the legal provisions relating to trade in timber in the state of Tripura both from the substantive and implementational perspective.

FOCUS

The focus of this chapter is on timber trade within the state of Tripura and the mechanism for its implementation.

OBJECTIVE

The present research work is with special reference to state of Tripura. The purpose of this chapter is to assess how well and to what extent the laws are amended for the purpose of suiting the need of Tripura and the stringency of their implementation.

FREEDOM OF TRADE, PROFESSION, OCCUPATION AND THE CONSTITUTION OF INDIA

The Constitution of India ensures that all citizens shall have the right to freedom of carrying on any profession, occupation, trade or business⁵⁴⁵. However, this right is subject to certain reasonable restrictions⁵⁴⁶ that may be imposed by the state in the interest of general public. The state is empowered to make laws for imposing reasonable restrictions on trade.

For the purpose of this chapter the reasonableness of the restriction relating to trading in forest produce is directly linked with the issue of sustainable development. A just balance has to struck between the restriction impose and the social control intended to be achieve. The reasonability of the restriction is to be determined in an objective manner from the stand point of the interest of both the future generation and the general public and not from the point of view of the trading person upon whom the restriction is impose. In *Aramachine and Lakri Vikreta Sangha v State of Rajasthan*⁵⁴⁷ the Rajasthan forest produce (establishment and regulation of sawmills) rules 1983 were challenged being violative of Article 19 (1) (g) of the constitution. The court held that an imposition of restriction requiring a person to obtain permission from proper authorities for cutting trees cannot be held to be unreasonable. Such rules are not in contravention of the provision of the constitution. The object behind regulating the saw mills and its activities is to prevent illicit felling of trees on account of which ecological problems and many other problems crop up. Felling of trees is likely to be controlled by regulating the trade on timber by the saw mills owners and the State has the power to prosecute a person who runs the trade without obtaining prior permission. So long

⁵⁴⁵ Article 19 (1) (g) of Constitution of India.

⁵⁴⁶ Article 19 (6) of the Constitution of India.

⁵⁴⁷ AIR 1992 Raj 8.

as the rules are regulatory and not prohibitive in nature, they cannot be termed as violative of Article (1) (g) of the constitution.

In *Sushila Saw Mill v State of Orissa*⁵⁴⁸, the Supreme Court held that total ban imposed upon saw mills business or sawing operation within prohibited area of reserved or protected forest was not violative of Article 19 (1) (g) read with Article 301 of the constitution. It is a settled principle of law that in public interest under Article 19 (6) may amount to prohibition.

AN OVERVIEW OF LAWS RELATING TO TIMBER TRADE IN TRIPURA

As the in the rest of the country in Tripura also the Indian Forest Act 1927 occupies primary position for regulating activities relating to forest, transit of forest produce and the duty leviable on timber and other forest produce. Section 51 of the 1927 Act was amended in Tripura and a new Section 51 A was inserted to regulate manufacture and preparation of articles based on forest produce as Act NO. 10 of 1984 called the Indian Forest (Tripura Amendment) Act 1984 which empowered the state government to regulate, manufacture and preparation of articles based on forest produce by the use of license, permit or otherwise (and the payment of fees therefore) of saw mills and other units including factories engaged in manufacture of preparation of plywood, veneer, wood panel products, boxes including packing cases out of wood and, such other materials based on forest produce as the state government may, by notification in the official gazette from time to time specify⁵⁴⁹. The Act further provides for the regulation by license, permit or otherwise, of procurement of raw materials for the purpose of the above mentioned articles, the payment and deposit of fees therefor and for due compliance of conditions thereof, the forfeiture of the fees so deposited or any part thereof for contravention of any such condition, and the adjudication of such forfeiture by such authority as the state government may, by notification in the official gazette specify⁵⁵⁰. Any contravention of the above rules calls for imprisonment for a term which may extend to 6 months, or fine which may extend to Rs.500 or both⁵⁵¹.

The Indian Forest Act 1927 was further amended in Tripura as Tripura Act No. 8 of 1986 with relation to application of the 1927 Act in the State of Tripura and a new Section 52 A was inserted after Section 52 of the Indian Forest Act 1927.

⁵⁴⁸ (1995) 5 SCC 615.

⁵⁴⁹ Section 51 A (1) (a) (ii) (iv) (v), The Indian Forest (Tripura Amendment) Act, 1984.

⁵⁵⁰ Section 51 A (1) (b) The Indian Forest (Tripura Amendment) Act, 1984.

⁵⁵¹ Section 51 A (2), The Indian Forest (Tripura Amendment) Act, 1984

Section 52 A of the Indian Forest (Tripura Second Amendment) Act 1986 states that where a saw mill is established, maintained or operated without a license or without renewal of license the authorized officer may order confiscation of the stock of wood together with whole or portion of the plants, machinery, implements, tools and equipments of the saw mill⁵⁵². Where the authorized officer seizes any forest produce or any such property is produce before the authorized officer after seizure by any forest officer and the authorized officer is satisfied that an offence has been committed with respect to such property, he may, whether or not a prosecution instituted for the commission of such forest offence, order confiscation of such property so seized and used for the commission of the forest offence⁵⁵³.

No order confiscating any property shall be made unless the person from whom the property is seized and in case the owner of such property is known, such person is given⁵⁵⁴:

- a. A notice in writing informing him the grounds on which it is proposed to confiscate such property;
- b. An opportunity of making representation in writing within such reasonable time as may be specified in the notice against the grounds for confiscation; and
- c. A reasonable opportunity of being heard in the matter⁵⁵⁵.

Any forest officer not below the rank of Conservator of Forests empowered by State Government in this behalf by notification, may within 30 days from the date of order of confiscation by authorized officer under sub-section (1) or subsection (2) either suo motu or on application, call for and examine the records of that order and may make such inquiry or cause such inquiry to be made and pass orders as he may think fit. Provided, that no order prejudicial to any person shall be passed without giving him an opportunity of being heard⁵⁵⁶.

Any persons aggrieved by an order under the above circumstances may, within 30 days of passing such order appeal to the district court under which the property is seized, and the District Court after hearing both the parties may pass necessary order. Ordinarily the property so seized vests in the State Government free from all encumbrances. For the purposes of

⁵⁵² Section 52 A (1), The Indian Forest (Tripura Second Amendment) Act, 1986

⁵⁵³ Section 52 A (2), The Indian Forest (Tripura Second Amendment) Act, 1986

⁵⁵⁴ Section 52 A (2), (a), (b), (c), The Indian Forest (Tripura Second Amendment) Act, 1986

⁵⁵⁵ Ibid.

⁵⁵⁶ Section 52 A (4), The Indian Forest (Tripura Second Amendment) Act, 1986

these provisions the authorized officer should not be below the rank of Assistant Conservator of Forest⁵⁵⁷.

The third amendment to the Indian Forest Act, 1927 took place in 1990⁵⁵⁸ amended Section 68 (3) of the Indian Forest Act 1927 and for the words (hundred rupees) and the words (fifty rupees) the words (one thousand five hundred rupees) and (five thousand rupees) respectively was substituted.

A bird's eye view of the above amendments of the Indian Forest Act 1927 indicates that in Tripura the act of trading in wood and wood products have been more fine-tuned and focused in Tripura but the penalty remains the same i.e. six months imprisonment and Rs.500 fine which is very nominal and may have no impact upon trading. The Tripura Second Amendment to section 52 of the Indian Forest Act speaks about confiscation of the property machinery and tools etc. of the saw mill for non-compliance of provisions of license permit etc. is also made much more specific and workable than the principle Act⁵⁵⁹ and appears to be quite stringent and deterrent. The third amendment of 68 (3) of the Principle Act appears to be in tune with the contemporary than the principle Act. Therefore it is noted that the primary laws relating to timber trading in Tripura is more specific, workable and deterrent than what is seen in the Indian Forest Act 1927.

THE TRIPURA FOREST (ESTABLISHMENT AND REGULATION OF SAW MILLS AND OTHER WOOD BASED INDUSTRIES) RULES 1985

Under these rules "saw mill" means a mill for sawing timber or logs into logs or beams or scantlings or planks or battens and includes hand saws whether in a fix structure or enclosure or not⁵⁶⁰. "Permit" means a written permission for carrying out any of the acts or operations covered by these rules⁵⁶¹. A "unit" means a shop or establishment or premises used wholly or impart for manufacturing or processing or repairing for sale of commodities or articles based on forest produce as envisaged in the Indian Forest (Tripura Amendment) Act 1984⁵⁶².

In Tripura circumstances prohibiting establishment of saw mills etc. and grant of license are as follows:

⁵⁵⁷ Section 52 A (5), The Indian Forest (Tripura Second Amendment) Act, 1986

⁵⁵⁸ The Indian Forest (Tripura Third Amendment) Act 1990.

⁵⁵⁹ Indian Forest Act 1927.

⁵⁶⁰ Rule 2 (1)(i), Tripura Forest (Establishment And Regulation Of Saw Mills and Other Wood Based Industries) Rules 1985

⁵⁶¹ Rule 2 (1) (g), Tripura Forest (Establishment and Regulation of Saw Mills and Other Wood Based Industries) Rules 1985.

⁵⁶² Rule 2 (1)(k), Tripura Forest (Establishment and Regulation Of Saw Mills and Other Wood Based Industries) Rules 1985.

1. Saw mill or units cannot be established outside industrial estate and without obtaining license.
2. The saw mills, plywood mills, and other wood based industrial units which are on Government land, which have been cleared by the high power committee with or without penalty shall be permitted to establish their saw mills or unit within the industrial estate and license may be granted for the same subject to condition that they are not against public interest⁵⁶³.

Applications for license have to be made to the authorized officer in a prescribed form. On receipt of an application the authorized officer shall make necessary enquiries within 30 days from the date of application and submit his report to the chief conservator of forest, Tripura. The authorized officer shall specifically mention in his report whether the required quantity of timber as determined by the approved working plan is available on annual basis. The Principal Conservator of Forest then forwards the application along with the report of the authorized officer and his own recommendation to the state level expert committee for their consideration and recommendation. After considering the recommendation of the state level expert committee the Principal Chief Conservator of forest may direct the concerned authorized officer to grant license in a prescribed form or reject the same. In latter case the reasons for so doing must be recorded in writing. While directing the authorized officer to grant license, the Principal Chief Conservator of Forest shall decide against which notified industrial estate, as notified by the Government of Tripura, the license shall be issued. For the above purposes the authorized officer may enter into any land, survey and demarcate the same, make a map of the premises and call for such document as the officer may deem necessary⁵⁶⁴.

A license is to be renewed in prescribe form within 30 days of the expiry of the same. On receipt of the application for renewal of license the authorized officer make the necessary enquires and may grant or refuse to grant license within 30 days of the receipt of the application. In this process the applicant must be given full opportunity for presenting his case in compliance of the provision of natural justice. An application for renewal of license may be rejected/ declined only on the following grounds:

⁵⁶³ Rule 3 of Tripura Forest (Establishment and Regulation Of Saw Mills And Other Wood Based Industries) Rules 1985.

⁵⁶⁴ Rule 4 of Tripura Forest (Establishment and Regulation Of Saw Mills And Other Wood Based Industries) Rules 1985.

1. If the application for renewal is made after the expiry of the stipulated period specified therefor.
2. Any statement made by the applicant is found to be incorrect or materially false.
3. The applicant has contravened any of the terms and conditions of the license or provisions of the rules or provisions of the Act.
4. The applicant failed to fulfill the terms and conditions stipulated in the license.

The license is issued or renewed for a period of one financial year, and it is not transferable or assignable. The issuance or renewals are done after the deposit of the prescribed fee by the applicant⁵⁶⁵.

A license can be cancelled by the conservator of forest for reasons recorded by him and after affording the license holder is right of natural justice. A license may be suspended or cancelled under the following circumstances:

1. If there is material misrepresentation or false statement made to procure the license.
2. The license holder has contravened any of the terms and conditions stipulated in the license, rules or the Act⁵⁶⁶.

The maintenance of record by the wood base units and progress report shall be regulated in accordance with the guidelines for the wood based units in North Eastern States issued by the Ministry of Environment and Forest⁵⁶⁷.

The records kept by the wood by the wood based unit can be inspected or verified by the authorized officer or any forest officials not below the rank Head Forest Guard appointed by the Conservator of Forest. Such investigation can be done at any time and without any notice.

The following documents may be so inspected:

1. Guidelines for the wood based units in North Eastern States.
2. Stock of raw materials and
3. Stock of sawn timber or manufactured products or processed products.

⁵⁶⁵ Rule 5 and 6 of Tripura Forest (Establishment and Regulation Of Saw Mills And Other Wood Based Industries) Rules 1985.

⁵⁶⁶ Rule 7 and 8 of Tripura Forest (Establishment and Regulation Of Saw Mills And Other Wood Based Industries) Rules 1985

⁵⁶⁷ Rule 9 (2) of Tripura Forest (Establishment and Regulation Of Saw Mills And Other Wood Based Industries) Rules 1985

During such inspections and verification the license holder or his authorized agent, employees and workers are lawfully required to extend all possible assistance and produce all documents and records as may be called for inspection and verification⁵⁶⁸.

All Forest produce entering or leaving a saw mill or other units including factories shall be covered by a transit pass duly issued under the provision of the Tripura Forest (Transit) Rule. An officer not below the rank of Head Forest Guards can be appointed as an inspecting officer of a specified area⁵⁶⁹. The penalties for contravention of any of these provisions is imprisonment which may extend to six months or fine which may extend to Rs.10,000 or both⁵⁷⁰.

In the year 2000 these rules were amended⁵⁷¹ and under these rules, inter alia, a high power committee constituted by the supreme court of India was brought within the preview of the rules⁵⁷² and a State level expert committee was constituted by the Government of India in pursuance of Supreme Court order⁵⁷³. Under this amended rules any contravention of the directions of the high power committee also shall be a reason for cancellation or suspension of license for setting up saw mills or wood based units.

These rules were again amended in 2002⁵⁷⁴ and a new sub-rule was inserted after sub-rule 2 in rule 3 of the principal rule which reads as follows, “No person shall possess or import in the State items like saw mills or any other tree/timber cutting/ or processing equipment without obtaining a license in a prescribed form issued by an authorized officer⁵⁷⁵. Sub rule 2 is also inserted in rule 13: “without prejudice to the power of the forest officers, the State Government may for the purpose of preventing unauthorized import of item enumerated in

⁵⁶⁸ Rule 10 and 11 of Tripura Forest (Establishment and Regulation Of Saw Mills And Other Wood Based Industries) Rules 1985

⁵⁶⁹ Rule 13 of Tripura Forest (Establishment and Regulation Of Saw Mills And Other Wood Based Industries) Rules, 1985.

⁵⁷⁰ Rule 14 of Tripura Forest (Establishment and Regulation Of Saw Mills And Other Wood Based Industries) Rules 1985.

⁵⁷¹ Tripura Forest (Establishment and Regulation of Saw Mills and Other Wood Based Industries) (Second amendment) Rules 2000.

⁵⁷² Rule 2 (L) Tripura Forest (Establishment and Regulation of Saw Mills and Other Wood Based Industries) (Second amendment) Rules 2000.

⁵⁷³ Rule 2 (O) Tripura Forest (Establishment and Regulation of Saw Mills and Other Wood Based Industries) (Second amendment) Rules 2000.

⁵⁷⁴ Tripura Forest (Establishment and Regulation of Saw Mills and Other Wood Based Industries) (Third amendment) Rules 2002.

⁵⁷⁵ Sub rule 3 to rule 3, Tripura Forest (Establishment and Regulation of Saw Mills and Other Wood Based Industries) (Third amendment) Rules 2002.

rule (3) entrust any officer of the department of taxes and excise with the additional duties of inspection and checking at entry points⁵⁷⁶.

These rules were again amended in 2006 and after rule 2 (1) (i) and (k) a new sub-rule 2 (1) (i) was inserted which read “ ‘saw mill and other wood based industrial unit’ means saw mill, veneer unit, plywood unit with or without slicer and/or pillar, particle board unit, block board unit, medium density fiber board unit, molding beat unit, sandal wood oil extraction unit, or any other unit which uses any mechanical or electrical device for cutting, converting or shaping timber”. Rule 2 (1) (k) under the 2006 amendment reads: “‘secondary wood based industries or shop’ means agar wood oil extraction unit, furniture making unit, electrical accessories making unit, sports goods manufacturing unit, handicraft manufacturing units having vertical band saw up to 9 inch opening and / or circular saw up to 12 inch in diameter for the purpose of re-sawing of sawn timber originated from the High Powered Committee cleared saw mills located inside notified wood based industrial estate for its own use provided that they are not involved in sale or trade of sawn timber and also provided that they do not use round timber for sawing or re-sawing. A shop means any shop or establishment or premises used wholly or in part for the sale of converted or fashioned timber, furniture, handicrafts, cabinet or other articles made of forest produce”.

The law relating to timber trade is very strictly implemented in Tripura. In 1991 a notice and a memorandum of the forest department required that the performance of the saw mills in the state of Tripura be assessed and action be taken against the unlicensed and illegal saw mill⁵⁷⁷ and in action and failure to take action against the unlicensed saw mill as required under law will henceforth be treated as a serious dereliction of duty. Action taken should be promptly reported by the conservator of forest and Divisional Forest Officers to the Principal Chief Conservator and to the State Government.

A file relating to a court case in connection with a saw mill was sent to the law department for their opinion. The L.R. and Secretary Law, Government of Tripura in the said file observed as follows⁵⁷⁸:

⁵⁷⁶ Rule 13 (2), Tripura Forest (Establishment and Regulation of Saw Mills and Other Wood Based Industries) (Third amendment) Rules 2002.

⁵⁷⁷ Letter no. F.7 (87)/For F.P-86/25543-758 dated 24.5.1991 and Forest Department Memo No. F. 7 (148)/For-90/46455-74 dated 16th Oct. 1990, Letter No. F.7 (83)/ For/F.P.-86/28078-89 dt.29.06.91 of PCCF (T).

⁵⁷⁸ Ibid.

The saw mill in question appears to have been functioning over a year as per records. The records available in the file do not show what action the forest department has taken up against the owner of the saw mill for running the business of sawing illegally.

It may, therefore, be mentioned that one may be said to have committed the offence of abetment by illegal omission from due discharge of duties⁵⁷⁹.

The inaction and failure to take action against the illegal saw mills by the concern forest officials will constitute commission of offence of abetment by illegal omission from due discharge of duties. In other words, going by the law, if prompt legal action is not taken as per the provision of law the concern DFO will be guilty of commission of the offence of abetment⁵⁸⁰.

The letter further stated that the forests are disappearing very fast. The illicit felling and conversion of illicit timber in the saw mills clandestinely has gone beyond all limits. The licensed saw mills are also not being regularly checked nor submission of the bi-monthly returns which are required to be submitted by the saw mills. No action has also possibly been taken to initiate and conclude the confiscation proceedings. All these speak very ill in the matter of performance of the division pointing the accusing fingers of the public and that of the press to the connivance of the forest officials in the matter of illicit felling and destruction of the forest. Confiscation proceedings are to be drawn against the unlicensed saw mills or any saw mill which is found to accept or convert illegal timbers and those who do not submit the bimonthly reports within the statutory period as required under the rule. Each DFO is required to submit a detailed report of their division with respect of the saw mills within their jurisdiction to the Conservator of Forest who will then act upon it⁵⁸¹.

The unlicensed saw mill in the State are a major single factor contributing to illicit felling of trees from the forest. The Indian Forest Act was amended in 1984 as "Indian Forest (Tripura Amendment) Act 1984 and the Rules namely, Tripura Forest (Establishment and Regulations of Saw Mills and Other Wood Based Industries) Rules, 1985 were made there under making it compulsory for all the saw mills to obtain license for their establishment and running and also to submit the statutory returns. The Indian Forest Act was further amended in the year

⁵⁷⁹ Ibid.

⁵⁸⁰ Ibid.

⁵⁸¹ Ibid.

1986 as “Indian Forest (Tripura Second Amendment) Act 1986” empowering the authorized officers to confiscate the saw mills which are established, maintained or operated without license or without renewal of license. It is observed that although provision of confiscation of the saw mills was made by amending the Indian Forest Act in the year 1986 for its application to the state of Tripura no action is being taken by the DFOs to confiscate any of the unlicensed saw mills for violation of the provisions of Indian Forest Act. On the other hand, in addition to the saw mills this already existed at the time of enforcement of the Tripura Forest (Establishment and Regulations of Saw Mills and Other Wood Based Industries) Rules, 1985 new unlicensed saw mills are coming up in the State. The inaction by the concerned DFO in the matter of taking appropriate legal action towards confiscation of unlicensed saw mills have become a cause for concern⁵⁸².

It is significant to note that such acute and strong concern was expressed in the State of Tripura much before the historic judgment of the Supreme Court in Godavarman case in 1996⁵⁸³.

As early as 1950, a notification⁵⁸⁴ was there to the effect that now sawyers were allowed to saw a tree within a mile (now two kilometer) or protected forest without having registered his name and obtained a license from forest department. By virtue of the same notification all traders of forest produce were required to register themselves with the department of forest in Tripura.

As per the 2001⁵⁸⁵ no forest produce shall be brought to or remove from the Reserved Forest, Proposed Reserved Forest, Protected Forest, Un-classed Open Government Forest or from any other areas in any form of conveyance or contrivance which is not registered by the forest department and which does not bear a registration number.

In Tripura no trader can carry on trade in forest produce or business through any limit which is not defined in Rule 2 of Tripura forest (Establishment and Regulation of Saw Mills and Other Wood Based Industries) Rules 1985 and without obtaining Forest Trade License. Such license is not granted to a non citizen. The DFO decides the maximum number of Forest Trade License that will be given in one financial year subject to the approval of the Principal Chief Conservation of Forest (PCCF) and availability of forest produce which can be

⁵⁸² Ibid.

⁵⁸³ AIR 1997 SC 1233.

⁵⁸⁴ Notification no: 104-J, dated 24 August, 1950 read with Section 76 (d) of the Indian Forest Act, 1927

⁵⁸⁵ No. F. 7(8)/For/FP-2001/14,431 dt. August 25th, 2001.

scientifically harvested on the basis of sound forest management without causing deterioration and depletion of forest. In order to export to other states from the State of Tripura and import from other states into the State of Tripura it is important for the trader to hold on import/export license.

The Penalty for contravention of the above provisions is punishable with imprisonment which may extend to six months or fine which may extent to Rs.2000 or both⁵⁸⁶.

Under the Tripura Forest (Establishment and Regulation of Depots) Rules 2006, there shall be one or more depot under control of the DFO to which timber, timber logs, fashioned timber, drift wood, sunken, salvaged wood together with seized or confiscated, boats, tools, vehicles etc as defined in the Indian Forest Act 1927 and its amendments shall be taken to and stored at for safe custody, examination, marking, disposal and sale. Record of day to day transaction, transportation has to be maintained mandatory and regular returns are to be filed. The Range Officer has the duty of periodic inspection and report.

Despite such stringency it has been observed that in many cases the Tree Registration Certificates issued on the basis of joint verification by Forest and Revenue Department do not contain accurate information about CS Plot, Owner of plot etc. as well as number of trees standing on the plot. To check illicit felling and other malpractices re-verification of Tree Registration Certificates at random was called for⁵⁸⁷ and the verification of Tree Registration Certificates still continues under the said notification.

Under the Tripura Forest (Timber Marking) Rules 1985, marking of trees are to be done by a person not below the rank of forester with departmentally supplied hammer and digits. Trees of which felling is not required need not be marked. Mark must be done on heart wood of the tree and the impression must be very distinct⁵⁸⁸.

A tree can be felled only after stand marking and after realization of royalty in case of tree allowed on permit of necessary security deposit and part of valuations for tree as assessed by the DFO as per terms and conditions of auction/tender/negotiation is paid after the trees are delivered to the party and necessary agreement executed for the lot disposed of by auction/tender/negotiation after the tree is felled, logging must be done on site itself.⁵⁸⁹ Log

⁵⁸⁶ Notification no: F 7 (8) / For / FP-2001 /14, 431 dt August 25th 2001.

⁵⁸⁷ Notification no: 12 (141)/Gen/PD/FOR-10/8748-76 dt. 9th July 2010

⁵⁸⁸ Rule 2 (1) (2) of the Tripura Forest (Timber Marking), Rules 1985.

⁵⁸⁹ Ibid.

marking is to be done on the cut surface of the thinner end of each log. The marking should indicate the serial number of the log starting from the bottom of the log, serial number of the tree and the year of stand marking with at least three impressions of TFD⁵⁹⁰ hammer put over the said out surface⁵⁹¹. The length and mid girth of each log should be measured accurately and recorded in the field log. Marking Book along with the number of trees and transferred to the register maintained for the purpose⁵⁹². After realization of all dues sales marking is to be done on the cut surface of the thicker and expression of the sale hammer must be distinct and spread all over the cut surface of each stem and on the surface of the thinner and this indicate that the tree has been lawfully sold and all dues have been realized. This marking has to be done by a person not below the rank of a Forest Ranger⁵⁹³. Ordinarily sawing of logs into pieces is not allowed in the forest but may be done under very special circumstances without causing damage to the existing forest. Each piece has to come under the TFD hammer with distinct marking. Marking hammers are allotted to forest officers by name and are not transferable⁵⁹⁴.

TRIPURA FOREST TRANSIT RULES AND AMENDMENTS⁵⁹⁵

Transit pass is necessary for the movement of any type of forest produce. Timber and fire wood cannot be moved from its origin to any other place beyond the jurisdiction of the Beat without the transit pass (TP). TPs are issued free of cost on a written application to issue the transit pass deem fit and consider necessary and on realization of all dues and after making necessary inquiries.

A TP is valid only for the destination for which it is granted within the territory of the state of Tripura. In case a forest produce is to go to a place outside the jurisdiction of the State of Tripura, then the produce / product is to be surrendered to a forest ranger in charge of that range and a TP from an forest officer in-charge of the boarder through which the material has to pass and then after crossing the border it must again be surrendered to the forest officer in-charge on the other side of the border and a fresh TP have to be issued.

⁵⁹⁰ Tripura Forest Department

⁵⁹¹ Rule 4 of the Tripura Forest (Timber Marking), Rules 1985.

⁵⁹² Ibid.

⁵⁹³ Rule 5 of the Tripura Forest (Timber Marking), Rules 1985

⁵⁹⁴ Rule 6 of the Tripura Forest (Timber Marking), Rules 1985

⁵⁹⁵ Section 41 and 42 of the Indian Forest Act 1927 read with Notification no: 104J dt 24th August 1950.

For reasons to be recorded in writing a transit pass may be issued upon a fresh application made. Fresh transit pass is necessary for the movement of forest produce including timber from point to point.

A transit pass can be issued to the owner only. No TP can be issued on the strength of saw mill or on the basis of any chit of paper issued by the saw mill but can be issued only after physical inspection of the goods and after ensuring that all dues with respect to the goods have been cleared⁵⁹⁶.

In case of importing or exporting of the forest produce the matter shall be presented to the forest officer in-charge of the place of origin or entry of the forest produce for examination or checking and payment of any amount that may have to be paid. Transit pass, ordinarily, may be issued to a license holder for the above purpose, renewable after a stipulated period. The conditions for issuing the license, the route or routes through which the timber has to move and the destination outside the State of Tripura has to be mentioned in the license. The conditions or period of validity varies from categories of timber to timber. Renewal of license has done only after the authorized forest officer is satisfied about the location, availability of raw materials, financial capacity, past records, and the antecedent of the applicant. An officer may reject the application for renewal of license for reasons to be recorded in writing and the same shall be communicated to the applicant. In case of rejection the rules of natural justice shall be strictly followed⁵⁹⁷.

Under these rules a forest officer may stop any vehicle, carts, animals, boats, rafts or person carrying the forest produce at any check post or drop gates for inspection of the documents and the goods and detain any forest produce if the documents relating to it are found to be faulty or if the goods do not match the description or if any amounts remains to be paid with respect to the produce. After the produce has reached the destination the transit pass and the goods must be surrendered to the forest officer nearest to that destination for examination⁵⁹⁸.

Closing or obstructing any river, stream or channel or the bank of any river, stream or channel used for transit of timber or other forest produce is prohibited. The DFO may order

⁵⁹⁶ Rule 2 of the Tripura Forest Transit Rules and Amendments 1952.

⁵⁹⁷ Rule 3 of the Tripura Forest Transit Rules and Amendments 1952.

⁵⁹⁸ Rules 4-9 of the Tripura Forest Transit Rules and Amendments 1952.

the person causing the obstruction to remove the same within a stipulated period and recover the cost for the same⁵⁹⁹.

In Tripura, presently trees are not felled from the natural forest especially after 1997 when the Supreme Court of India laid down certain stringent guidelines. Trees are now felled from private forest under individual ownership. The transit rules apply to the movement of timber even from those lands and require that

1. As regards reserved species of trees, the rules for marking, payment of royalty, sale marking shall apply mutatis mutandis.
2. In respect of species of trees other than those mentioned above free transit passes may be obtained from the DFO or on payment of forest valuation wherever necessary⁶⁰⁰.

Any person infringing the transit rules shall be punished with imprisonment for a term which may extend to six months or with fine of Rs.500 or with both. Double the penalty will be inflicted if the offence is committed after sun set and before sun rise or with preparation to resist lawful authority or on repeated offence.

EXTRACTION OF TIMBER⁶⁰¹

In case of extraction of trees from jote land or allotted land joint inspection is carried out for issuing permit for extraction of trees from such land. For this purpose an application is to be made to the DFO personally on which the DFO records his comment and forward the same to the SDO along with the name of the forest officer who will be entrusted with the joint verification/demarcation. The SDO on receipt of the application passes an order entrusting the work of verification to a revenue officer also and indicate there upon the amount to be paid by the allottees / jotedars before any such demarcation for joint inspection is taken up. Only after the said amount is deposited the joint inspection can take place. The joint verification / demarcation report duly signed by the forest department staff and the revenue department staff shall be submitted to the SDO who will forward one copy of the report to the

⁵⁹⁹ Rule 10 of the Tripura Forest Transit Rules and Amendments 1952.

⁶⁰⁰ Rule 11 of the Tripura Forest Transit Rules and Amendments 1952

⁶⁰¹ Memorandum No. F.4 (52)-RCC/86, Government of Tripura, Revenue Department (L.R. Cell), dt. Agartala 6th Sept.1990

DFO. The issue of permits for extraction would be based on such a report. Appropriate action is initiated against officers who submit motivated reports.

In the case *T.N. Godavarman Thirumulpad v. Union of India*⁶⁰²; the Supreme Court guided that guidelines/rules be framed regarding felling of trees from non forest areas including from plantations on non forest areas. The State Government of Tripura, in compliance of the said order of the Supreme Court of India laid down “Guidelines for felling trees from non forest areas”. Under those guidelines forest means:

- Reserved forest or protected forest or any other area legally constituted as forest, and
- Any area recorded as “forest” in the government records maintained by the forest departments or other government departments, and
- Deemed forest areas identified as per the Supreme Court order in Godavarman case dated 12/12/1996.

“Non forest land” for the purpose of these guidelines means, areas which are not forest as described above. Trees plantations raised in non forest areas by an individual or community or institution or Non Government Organization as may be prescribed by the Principal Chief Conservator of forest. Such forest is required to be registered by the legal title holder and the registering authority should ensure that the land is a non forest land. The DFO shall, prepare and make available a certificate of such registration which shall include a location sketch or map with copies to the village level bodies, Deputy Commissioner / collector, Conservator of forest and the Principal Chief Conservator of Forest. Ordinarily this entire process is to be completed within a period of 90 days⁶⁰³.

Certain species of trees like Aam (Mango-*Mangifera indica*), Jamun (Black berry- *Syzygium cumini*), and Kathal (Jackfruit- *Artocarpus integrifolia*), all species of bamboo, Leteku, Paniol, Madhuriam etc. do not require felling permission⁶⁰⁴.

Application for felling of trees for non commercial purposes including in respect of registered plantation is to be made to the DFO after marking the trees for proposed felling. Such application is to be accompanied with the marking list, tree wise measurement, copy of registration certificate wherever applicable and any other detail that may prescribe from time

⁶⁰² Writ Petition (Civil) 202/1995, Order (Dated: 12/12/1996) and 12/5/2001.

⁶⁰³ Guidelines 3.1 to 3.4, No. F. 7 (44)/ For/FP/2001/PT-II/29,042, dated- Jan.7, 2002.

⁶⁰⁴ Guidelines 4.1 to 4.2, No. F. 7 (44)/ For/FP/2001/PT-II/29,042, dated- Jan.7, 2002

to time. The DFO, shall, as soon as possible and not later than 30 days from the date of the receipt of the application shall take necessary decision in the matter failing which it shall be deemed that permission has been granted⁶⁰⁵. Permission may be refused only if the applicant does not have rightful title to the non-forest area or the plantation. An un-registered plantation also calls for refusal of permission to fell trees. For those plantations that are registered for more than three years, permission shall be granted within 30 days of the receipt of the application⁶⁰⁶.

Application for felling trees from non-forest area for commercial purposes other than in respect of registered plantation shall be made by the title holder of such trees in prescribed proforma to the DFO along with documents containing species wise details of trees to be felled, along with the map of the non-forest area from which the trees are to be felled, and also documentary proof of ownership of the land. The DFO after making the necessary verifications and physical inspection of the area shall forward the application to CCF with his recommendation and observation regarding the maturity of the trees and other relevant details including the fact that the land is a non-forest land. The CCF having been satisfied that due diligence has been exercised with respect to ownership of the land, number of trees and the species etc. may permit felling of the trees under intimation to the PCCF. After felling of such trees the transportation of timber shall be done under valid transit pass⁶⁰⁷.

Trees felled in violation of the present guidelines shall be deemed to have been confiscated to the state government but the DFO is at liberty to release the timber obtained from such trees to the legal title holders after recovering from them 50% of the royalty payable to the timber. Such released timber shall not be eligible for purchase or use by any wood based industries, traders, or registered timber transport⁶⁰⁸.

DISPOSAL OF TIMBER

Any person can salvage the drift wood, timber and bamboo and take them to the nearest drift wood depot for which a salvage fee will be paid. In relation to that salvage the DFO has the right of collection and disposal at the rates agreed on by the contracting parties, and no salvage fee shall be claimable in addition to any rate paid under the contract. Drift wood depot shall be notified for salvage by the Conservator of Forest of Tripura. In absence of such

⁶⁰⁵ Guidelines 5.1 to 5.3, No. F. 7 (44)/ For/FP/2001/PT-II/29,042, dated- Jan.7, 2002

⁶⁰⁶ Ibid.

⁶⁰⁷ Guidelines 7.1 to 7.5 and 8.1, No. F. 7 (44)/ For/FP/2001/PT-II/29,042, dated- Jan.7, 2002

⁶⁰⁸ Ibid.

notified area or depot the drift wood, timber or bamboo shall be taken to the nearest forest office and on delivery the officer in-charge of that forest office shall furnish a report to the salvager. The salvage rate shall be payable to the salvager by the Tripura Forest Department (TFD) after the sale of all drift timber or wood or bamboo raft by auction. If any claim is filed with respect to any collected drift timber or bamboo raft before auction thereof takes place and the claim is proved to be true, then the said drift wood, timber or bamboo raft may be delivered to the claimant on payment to TFD⁶⁰⁹:

- a. The average cost incurred per log or raft of bamboo in moving or storing the drift timber and bamboo raft.
- b. A fee as fixed by the DFO concerned for taking care of an watching over the property and also
- c. The salvage fee assessed by the DFO concerned in accordance with the principle.

Any person who infringes any of the provisions mentioned above shall be punished with imprisonment which may extend to 6 months or fine which may extend to Rs.500/- or with both⁶¹⁰.

Sale of timber from departmental depots is in accordance with national and State government policy. Restrictions are imposed on green felling both in the forest and in plantations. Consequently the quantity of timber available in the depot is not sufficient to meet the growing demand. Due to inadequacy of the availability of timber in the departmental depot, it is necessary to follow certain norms so as to avoid implications. It may be reiterated that national policy contractor system in operation of trees have been completely eliminated and a fresh guideline has been laid down⁶¹¹.

Ordinarily forest department will not encourage large number of Forest Trade License (FTL) holders in a division. No new trade license would be issued by the DFOs but renewal of the existing FTLs may be done provided there is nothing adverse against the FTL holders. Issuing of FTL by the forest department allows only trading in forest produce but it does not

⁶⁰⁹ Disposal of Timber, Notification No. 5, dated 29.4.1952, Forest Department, Tripura.

⁶¹⁰ Ibid.

⁶¹¹ Guidelines regarding disposal of timber from the departmental depots, memo no. F.7 (17) / For. FP-87 /Gen/24, 722-25, Dt. 12.6.89 of PCCF (T).

entitled to holder to get supply of timber from the department. The forest department takes no responsibility of supplying timber to any FTL holder⁶¹².

The forest department has to make an effort to meet the requirement of timber of the local people for bonafide personal use and supply of timber for such purpose is given preference. Similarly, preference must also be given to the requirement of cottage industries and small scale wood based establishments. A register has to be maintained in the office of the DFO recording the petitions received from various local individuals and local wood based establishments and sale order may be issued by DFO on “first come first serve basis” depending upon the availability of timber, after necessary enquiry and verification regarding the genuineness of the requirement and the bonafide use⁶¹³.

The third importance is given to the requirement of various government departments such as the P.W.D, Agriculture, and Rural Development etc. for various developmental works in the state. The requisitions from these departments will have to be recorded in the register specifically maintained for that purpose in the office of the DFO and sale order should be issued on specific recommendations of the B.D.O, Executive Engineer on “first come first serve basis” as per availability of the timber in the stock. For sale of Saal bridge posts the relevant guidelines have to be strictly followed⁶¹⁴.

As the availability of timber is very limited and there is heavy demand by the traders, no trade license holder may be given sale order for timber exceeding 7 Cum., or one truck load whichever is lower. Application received from the FTL holders should be recorded in the register to be maintained in the office of the DFO. Sale order may be issued by the DFO on “first come first serve basis” as per availability of the timber in the stock⁶¹⁵.

Seized timber should not be released to the offender while departmentally; compounding the case and all seized timber should be brought into the departmental stock and sold as per the above guidelines. Since there is non-availability of timber in the state the forest department is very vigilant that no timber is allowed to be transported outside the state⁶¹⁶.

⁶¹² Id. at Para 1

⁶¹³ Id. at Para 2.

⁶¹⁴ Id. at Para 3.

⁶¹⁵ Id. at Para 4.

⁶¹⁶ Id. at Para 5.

The 1998 order of the Supreme Court in Godavarman case⁶¹⁷ required that the state government should lay down procedure, in order of preference, for disposal of inventorised stock of timber from the Department depot. Such are as follows:

1. Out of seized timber the logs found suitable for manufacture of veneer and plywood shall be processed by the State Government within their own factories and by hiring such facilities
2. The remaining timber belonging to the Government and district Council shall be first offered for sale to the Government Departments for their bonafide official use.
3. The rest timber shall be sold in public auction or through sealed tenders after fixing floor price by an expert committee with the representative from the ministry of environment and forest⁶¹⁸.

Disposal of timber including timber seized subsequently would be strictly in accordance with the order of the Supreme Court. However, if the State Government required any modification to the 1998 order of the Supreme Court, it may approach the Supreme Court for the same. Accordingly the State of Tripura filed an Interlocutory Application (IA)⁶¹⁹ before the Supreme Court seeking relaxation in the above order of the

court to the extent that the State may be allowed to dispose the seized timber lying in the departmental filled depots by direct sale to the local population with in a limit 3m³ in each case at government notified rates and as recommended by the expert committee to meet their and personal and bonafide domestic requirement. The Supreme Court vide order dated 01.04.2002 in respect to the above mentioned Interlocutory Application has allowed the application of the State Government of Tripura. By virtue of the said order direct sale of the seized illegal timber is now allowed in the State of Tripura⁶²⁰.

FOREST PROTECTION

The extent of the natural forest in Tripura is alarmingly low. Many tree species have become scares and are on the verge of extinction. It is necessary to protect and conserve all the natural forest whatever and wherever they exist in the State and to protect the trees species which are

⁶¹⁷ WP (C) No.202 of 1995.

⁶¹⁸ Notification no. F. 7 (207) / For / FP- 2002/ 2869-82, Dt May 4 2002

⁶¹⁹ Interlocutory Application No. 636

⁶²⁰ Para 2, Notification no. F. 7 (207) / For / FP- 2002/ 2869-82, Dt May 4 2002

becoming rare and extinct. The State has prepared a list of about 24 trees which should be completely protected from felling. Such trees species wherever they exist including in the annual plantation coupes shall not normally be felled. However, such trees may be felled if the situation imperatively so demands in the interest of protection/sanitation of the forest, only with the permission of the Head of the Department. Such an appeal is also made to the land owners who have such trees on their land⁶²¹.

The above legal frame work of timber trade in the State of Tripura shows that the state has sensitively promulgated Acts, rules and guide lines for effective control and regulation of timber trade in the State. Significantly, as in the Principal Act of 1927 so in the State Amendments the duration of imprisonment and the stipulated fine are not deterrent or prohibitive in nature. Deterrence, however, is reflected in the seizure and confiscation of timber, saw mill machineries, tools and the wood finished products which range up to several lakhs of rupees and can cause real time set back to an individual's timber business. Unlike what was stated in the empirical study by the forest officials and timber traders the forest canopy in Tripura is denuded fast. The forest is not able to meet the market demands for domestic consumption and the problem of illegal timber felling is quite rampant and cause of worry for the Forest Department of Tripura.

The major forest crimes in relation to timber felling and smuggling, it has come to light that not much action can be taken for lack of evidence and man power for intensive patrolling. Some petty cases may be apprehended where in out of court settlement is reached to confiscation or payment of fine.

The infrastructural shortcoming of the department is well known among the traders. Save for confiscation no other punishment is and deterrent enough. So, despite the rules described above the traders can easily circumvent the law.

⁶²¹ Memo no. F.17 (105) / For- Dev/86/52578-928, Dt 28.12.86 of PCCF (T)