

# **COMMITTEE ON SUBORDINATE LEGISLATION**

**(EIGHTH LOK SABHA)**

**THIRTEENTH REPORT**

*(Presented on 20 April, 1987)*



**LOK SABHA SECRETARIAT  
NEW DELHI**

*April, 1987/Chaitra, 1909 (Saka)*

*Price: Rs. 2.00*

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**COMPOSITION OF THE COMMITTEE ON SUBORDINATE  
LEGISLATION  
(1986-87)**

**\*1 Shri Vakkom Purushóthaman — *Chairman***

**2. Shri D. L. Baitha**

**3. Shri Anil Basu**

**4. Shri H. A. Dora**

**5. Dr. (Shrimati) Phulrenu Guha**

**6. Shri Abdul Rashid Kabuli**

**7. Shri Dharam Pal Singh Malik**

**8. Shri Shantaram Naik**

**9. Shri Mohanbhai Patel**

**10. Shri Mullappally Ramachandran**

**11. Shri K. S. Rao**

**12. Shri Bholanath Sen**

**13. Shri Saleem I. Shervani**

**14. Shri Yogeshwar Prasad Yogesh**

**SECRETARIAT**

**1. Shri N. N. Mehra—*Joint Secretary***

**2. Shri R. S. Mani—*Senior Legislative Committee Officer***

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**\*Appointed Chairman w. e. f. 20 March, 1987 vice Shri Mool Chand Daga died.**

# REPORT

## I

### INTRODUCTION

I, the Chairman of the Committee on Subordinate Legislation, having been authorised by the Committee to present the Report on their behalf, present this their Thirteenth Report.

2. The matter covered by this Report were considered by the Committee at their sittings held on 25 June, 4 July, 28 October, 23 and 24 December, 1986.

3. On 24 December, 1986, the Committee also heard the representatives of (i) Ministry of Environment and Forests (Department of Environment, Forests and Wildlife), and (ii) Ministry of Law and Justice (Legislative Department) in the matter. The Committee wish to express their thanks to the Officers of the Ministries for placing their views before the Committee and furnishing the information desired by them.

4. The Committee considered and adopted this Report at their sitting held on 9 April, 1987. The Minutes of the sittings relevant to this Report are appended to it.

5. For facility of reference and convenience, recommendations/observations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in a consolidated form in Appendix I to the Report.

## II

### NON-EXERCISE OF RULE-MAKING POWER UNDER THE INDIAN FOREST ACT, 1927

6. Section 41A of the Indian Forest Act, 1927 (16 of 1927), as amended from time to time, reads as under:—

**“41A. Powers of Central Government as to movements of timber across customs frontiers—**

Notwithstanding anything in section 41, the 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 the Central Government, and any rules made under section 41 shall have effect subject to the rules made under this Section.”

[Inserted by the Government of India (Adaptation of Indian Laws) Order, 1937 and further substituted by the Adaptation of Laws (No. 3) Order, 1956, for “Part A States and Part C States”.]

7. In a letter dated 27 June, 1986, Shri Shantaram Naik, M.P.—a Member of the Committee—raised the matter as to whether the Central Government had issued any notifications or framed any rules under the Indian Forest Act, 1927. At the sitting held on 4 July, 1986, the Committee took notice of the fact that no rules were framed by the Central Government in pursuance of the powers conferred upon them by Section 41A of the Indian Forest Act, 1927. The Committee thereupon proposed to enquire the reasons for non-exercise of the rule-making power conferred by the said Section.

8. On 30 July, 1986, the Ministry of Environment and Forests were accordingly requested to state the special reasons, if any, for non-exercise of the rule-making power conferred upon the Central Government by the Indian Forest Act, 1927 and as to how the matters detailed in Section 41A of the Act were being regulated in actual practice. In this connection, attention of the Ministry was also invited to an oft-repeated recommendation of the

Committee made in paragraph 108 of their Eighteenth Report (Fifth Lok Sabha), which is reproduced below :—

“The Committee restate their earlier recommendation that ordinarily rules should be framed under an Act as soon as possible after the commencement of the Act and in no case this period should exceed 6 months. In case, however, a Ministry/Department finds that for any unavoidable reasons it is not possible for them to adhere to the prescribed time-limit in an exceptional case, they should at the expiration of 6 months from the commencement of the relevant Acts, explain the reasons to the Committee and seek a specific extension of time from them.”

9. In a communication dated 27 October, 1986, the Department of Environment, Forests and Wildlife explained the position as under :—

“..... regarding the framing of rules under the provisions of the Indian Forest Act, 1927 ..... it is stated that the import and export of timber across custom frontiers primarily takes place through the sea ports. The import and export of timber from the adjoining countries like Bangladesh, Bhutan, Nepal, Pakistan, Burma are not significant. The movement of such timber from the adjoining countries is through the sea ports and always covers some States of the Union. Under these circumstances, these movements get regulated by the Forest Produce Transit Rules that the States have framed under the Indian Forest Act in exercise of the powers given to them under section 41 of the Indian Forest Act, 1927. No State Government has also come up to this Department with any problem in the matter of regulation of the movement of timber across the customs barriers. In this context, the power to make rules under section 41A of Indian Forest Act, 1927 has not been exercised by the Central Government so far. It would also not be proper at this stage to frame such rules after about lapse of 50 years since 1937 when the provision of section 41A was introduced through an amendment.

It would be worthwhile to mention here that it has now been decided to frame a comprehensive forest legislation on adoption of the revised National Forest Policy, which is in the stage of finalisation. While going in for such legislation the question of regulation of inter-state movement of timber and the movement of timber across the customs frontiers could be examined in detail and suitable provisions made if necessary in consultation with the States/ Union Territories.”

10. During the course of evidence before the Committee on 24 December, 1986, the Secretary, Department of Environment and Forests, attributed the following reasons for not framing the rules by the Central Government under the Indian Forest Act, 1927 :—

“Since the Central Government has left the timber trade to the State Governments, that is why the rules have not been framed by the Central Government. That is the factual position.”

11. There is no denying the fact that the Central Government did not exercise rule-making power conferred upon them under Section 41A of the Indian Forest Act, 1927 despite Committee's repeated exhortations for framing the rules as soon as possible after the commencement of the Act and in no case this period should exceed six months. Admittedly, the provisions of Section 41 were introduced through an amendment in 1937 with a view to confer power on the Central Government to provide for regulation of movement of timber or other forest-produce into or from the territories within the country and across the customs frontiers but the underlying purpose of the legislature in conferment of such a power was allowed to remain unfulfilled for half a century.

12. The Committee, however, note from the reply of the Department of Environment, Forests and Wildlife that on the adoption of the revised National Forest Policy which is at the stage of finalisation, they propose to bring in a comprehensive legislation and that would take care of the provisions of Section 41A as well. The Committee cannot but trust the Department to keep up this assurance to the Committee and embark upon making the necessary consultations with the States/Union Territories in the right earnestness so as not to allow the matters to prolong indefinitely.

### III

#### THE FOREST (CONSERVATION) RULES, 1981 (G.S.R. 719 OF 1981)—RULE 3

13. Rule 3 of the Forest (Conservation) Rules, 1981 (G.S.R. 719 of 1981) reads as under :

**"3. Conduct of business of the Committee.**

- (1) The Chairman shall call the meetings of the Committee as often as necessary.
- (2) The meetings of the Committee shall, unless the Chairman in any case otherwise directs, be held in Delhi.
- (3) The Chairman shall preside over every meeting of the Committee at which he is present :

Provided that if the Chairman was absent from a meeting and it is not expedient to adjourn the meeting, the senior-most member of the Committee shall preside over the meeting.

- (4) Every question upon which the Committee is required to advise shall be considered either at its meetings or, if the Chairman so directs, by sending necessary papers to members for their opinion."

( A )

14. Sub-rule (1) of rule 3 of the Forest (Conservation) Rules empowered the Chairman of the Advisory Committee to call the meetings of the Committee *as often as necessary*. In order that the power conferred upon the Chairman was not abused at any point of time, it was felt that the maximum period within which a meeting of the Committee must be called might be specified in the rules.

15. The Ministry of Environment and Forests, with whom the matter was taken up, stated in their reply dated 19 July, 1986 as under :—

"The term 'as often as necessary' has been inserted to enable the Chairman to call the meeting of the Committee in consonance with the number of pending proposals. It would not be appropriate to specify hard and fast frequency; the Committee ordinarily meets once in a week."



16. The Committee are not convinced with the reply of the Ministry of Environment and Forests. Under rule 3(1) of the Forest (Conservation) Rules, discretionary powers are vested in the Chairman of the Advisory Committee in fixing its meetings. Besides, these rules do not also provide for calling a meeting at the behest of any other member of the Advisory Committee. The Committee feel that with the experience gained so far, it should have been possible for the Ministry to lay down a suitable maximum period within which a meeting of the Advisory Committee must be convened. The Committee, therefore, desire the Ministry to suitably amend the rules in this regard at an early date.

( B )

17. Sub-rule (2) of rule 3 of the forest (Conservation) Rules provides that the meetings of the Advisory Committee would be held in Delhi unless the Chairman otherwise directed. In this connection, the Ministry of Environment and Forests were enquired as to whether any criterion had been laid down for the guidance of the Chairman for holding meetings outside Delhi. In their reply dated 19 July, 1986, the Ministry stated as under :—

“The reason for holding meetings in Delhi is to ensure that the meetings are held frequently and without inconvenience to the experts of the Advisory Committee as all the members are based at Delhi. However, if the Chairman feels that it is necessary to hold meetings outside Delhi, the meetings can be held outside Delhi also, particularly if any spot inspection etc. is required. So far the Committee has not met outside Delhi.”

18. The Committee feel that with a view to obviate any arbitrary use of the discretion conferred upon the Chairman of the Advisory Committee under rule 3(2) of the Forest (Conservation) Rules, suitable guidelines may be evolved to serve as a guidance for the Chairman in the matter of fixing meetings outside Delhi.

( C )

19. Proviso to sub-rule (3) of rule 3 of the Forest (Conservation) Rules provides that in the absence of the Chairman, the senior-most member of the Advisory Committee would preside over the meeting. The Ministry of Environment and Forests were asked to state as to how the seniority amongst the members would be reckoned for the purpose. In their reply dated 19 July, 1986, the Ministry stated as follows :—

"The copy of the administrative order dated 23.3.1983 is enclosed.\* It provides that Additional Inspector General of Forests shall function as Chairman of the Committee in the absence of the Inspector General of Forests who is Chairman of the Committee."

20. During evidence before the Committee, the Secretary (Environment and Forests) informed that there were four members on the Advisory Committee and the senior most member i.e. the Inspector General of Forests was its Chairman. Other members were Additional Inspector General of Forests, the Joint Commissioner in charge of Soil Conservation, and the Deputy Inspector General in charge of the work in the Department.

21. The Committee note with concern that all the four members (including the Chairman) nominated on the Advisory Committee are Government officials belonging to only one particular cadre viz., the Indian Forest Service. As a consequence, even as members of the Advisory Committee, they do not enjoy equal status and represent only the Department they belong to. Apparently, such a state of affairs can never be conducive to the spirit of independent inquiry and frank advice the Advisory Committee is entrusted to cater in the vital matters like conservation of forests in the country. In the opinion of this Committee, the rule of service-seniority should not be allowed to penetrate into independent forums like the one set up under the Forest (Conservation) Act, 1980 and all-out efforts should be made to associate experts and eminent personalities in the field of environment and forestation. The Committee strongly stress the need to do some fresh thinking in the matter at the highest level and urge upon the Ministry of Environment and Forests to take immediate steps to shed the bureaucratic character of the Advisory Committee at an early date.

( D )

22. Sub-rule (4) of rule 3 of the Forest (Conservation) Rules empowered the Chairman either to call for a meeting of the Advisory Committee or alternatively forward the necessary papers to its members for eliciting their opinion on any matter. The concerned Ministry of Environment and Forests were required to state as to whether any criterion had been laid down in that respect or the contingencies under which opinion of the members might be elicited through circulation of the relevant papers, could be prescribed through the rules. In their reply dated 19 July, 1986, the Ministry stated as under :—

"So far no contingency has arisen which might have necessitated circulation of papers for eliciting opinion from various members of

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\*Reproduced at Appendix II.

the Committee. No criteria has been laid down in this respect. However, steps will be taken to prescribe contingencies under which papers might be circulated for eliciting opinion."

23. The Committee note from the reply that the Ministry of Environment and Forests have agreed to prescribe the contingencies under which papers can be circulated to the members of the Advisory Committee for eliciting opinion on any matter. The Committee desire the Ministry to take early steps to do the needful in this regard.

#### IV

### THE FOREST (CONSERVATION) RULES, 1981 (G.S.R. 719 OF 1981)

24. While scrutinising the Forest (Conservation) Rules, 1981 (G.S.R. 719 of 1981), the Committee *inter alia* noticed the following lacunae :—

- (a) The Forest (Conservation) Rules did not prescribe the quorum of a meeting of the advisory committee constituted under section 3 of the Forest (Conservation) Act, 1980;
- (b) The tenure of the advisory committee had not been laid down in the rules;
- (c) The rules did not clarify as to how the decisions in the advisory committee would be arrived at i.e. by a majority vote or unanimously or whether there existed any provision for a casting vote in the event of equality of votes;
- (d) The rules were also silent as to the remuneration or allowance payable to members for attending the meetings of the advisory committee; and
- (e) Whether Government had issued any guidelines/administrative instructions to supplement the main rules.

25. The aforesaid points raised by the Committee were referred to the Ministry of Environment and Forests to ascertain if they had any objection to amending the rules to the desired effect. In a communication dated 19 July, 1986, the Ministry furnished their comments as under :—

“Steps will be taken to prescribe the quorum of the meeting of the Committee.

Since the appointment to the Committee is ex-officio, there is no need for prescribing the tenure.

The decisions of the Committee are based on consensus arrived after careful deliberations.

All the ex-officio members of the Committee are officers in Government of India. No extra remuneration or allowances are paid to them for attending the meetings.

Only one administrative order (copy enclosed)\* has been issued which provides that Additional Inspector General of Forests shall function as Chairman of the Committee in absence of the Inspector General of Forests, who is Chairman of the Committee."

26. On 24 December, 1986, the Secretary (Environment and Forests) appeared before the Committee. On being pointed out that the rules were not in consonance with the scope and object of the parent statute and the matters like term of the advisory committee, quorum, election of chairman, decision, by the committee and other allied procedure have not been laid in the rules, the Secretary stated that the points were well taken and the rules would be amended to provide for quorum and other necessary details.

27. The Committee observe that even though the Advisory Committee consists of few forest officers, who have been nominated to the Committee on ex-officio basis, it is always open for the Government to associate experts from other fields of knowledge like the ecology and environment. Hence, while formulating the rules, due care should be taken of all important factors like the term, tenure, appointment, resignation, remuneration and other facilities intended to be given to the members of the Advisory Committee. The Committee also consider that the provision authorising the Additional Inspector General of Forests to act as chairman in the absence of the Inspector General of Forests should more appropriately be provided in the rule itself rather than to be prescribed through the instrument of administrative instruction. The Committee, therefore, recommend that while effecting the proposed amendments to the Forest (Conservation) Rules, the Ministry should make a concerted endeavour to formulate a compact composition of subordinate legislation, which should be free from inadequacies and ambiguities for the guidance of all concerned.

## CONSTITUTION OF AN ADVISORY COMMITTEE ON USE OF FOREST LAND FOR NON-FOREST PURPOSE

28. Section 3 of the Forest (Conservation) Act, 1980 (69 of 1980) provides for constitution of an Advisory Committee on use of forest land for any non-forest purpose as under :—

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

- (i) the grant of approval under section 2; and
- (ii) any other matter connected with the conservation of forests which may be referred to it by the Central Government.”

29. An Advisory Committee was accordingly constituted by the Government of India under Section 3 of the Forest (Conservation) Act, 1983 *vide* Ministry of Agriculture (Department of Agriculture and Cooperation) Order No. 8-4/80-Fry (Coord) dated 24 January, 1981. Later, it was decided to include the Additional Inspector General of Forests as a member of the aforesaid Committee *vide* Order No. 8-4/80-Fry (Coord) dated 23 March, 1983.

30. In August, 1981, the Central Government notified a set of rules entitled ‘The Forest (Conservation) Rules, 1981’ in pursuance of the powers conferred under Section 4 of the Forest (Conservation) Act, 1980. These rules provided for the conduct of business and the scope of functioning of the said Advisory Committee but did not lay down the composition of the Advisory Committee. The matter was taken up with the ministry of Environment and Forests who were also required to state—

- (i) the number of persons to be nominated on the said Advisory Committee;
- (ii) the broad qualifications or knowledge in the specialised field which a member ought to possess; and
- (iii) whether the ministry of Environment was being associated with the Advisory Committee and also with matters connected with the conservation of forests.

31. In their reply dated 19 July, 1986, the Ministry stated the position as under :—

“The Advisory Committee is composed of senior and experienced forest officers and they have been nominated on the Committee ex-officio and not by name.

The persons appointed on the Advisory Committee are ex-officio and belong to the Indian Forest Service. Since appointment to the Forest Service is based on a standard all-India examination by the UPSC, it is not necessary to specify the qualifications of persons to be nominated on the Advisory Committee.

\* \* \* \*

Now there is no separate Ministry of Environment. There is one Ministry of Environment and Forests. Nevertheless an officer from the Environment Wing of the Ministry attends the meetings of the Advisory Committee as an invitee.”

32. During evidence before the Committee on 24 December, 1986, the Secretary (Environment and Forests) agreed that any tribal living in the local area could have far greater knowledge of forests than Government officials but considered it expedient to have forest officials on the Advisory Committee; and it could be certainly possible to take advice of the experts in the field. On being pointed out that it was contrary to the intention of the legislature to constitute the Advisory Committee consisting solely of Government officials who were already within the Government machinery in some capacity or the other and who could hardly give independent and free advice in the wake of influence cast by superior authority, the Secretary submitted that Government should get the best possible advice before deciding on any particular case and is with this aim that the Advisory Committee was constituted and the officers could sit independently in the Committee and provide expert advice to the Government.

33. Admittedly, the Advisory Committee as contemplated under Section 3 of the Forest (Conservation) Act, 1980 was initially constituted with three forest officers only. Later, another forest officer was nominated on it. During the course of debate on the Forest (Conservation) Bill in Lok Sabha on 19 December, 1980, the Minister incharge of the Bill *inter alia* stated—

“... I would like to state that this committee which is sought to be formed will not be on political considerations....Our present thinking is that there will only be experts and officials on this committee, the people concerned with the management of forests.

... I am glad to say that, at the highest level in the Government, there is increasing concern for maintaining our ecological balance and environment..."

34. Obviously, the present structure of the Advisory Committee which is barely composed of few forest officers and fully devoid of other experts in the fields of forestation, ecological balance and environment, does not evenly conform to the intentions expressed before the legislature. In essence, the so called Advisory Committee has been reduced to function as an exclusive departmental body for which a specific measure of legislation was not even necessary, for it was always open to the executive to lay down the process of scrutiny of any matter within the bureaucratic channels in the normal course. The Committee are also of the view that the attendance of an officer of the Environment Wing of the Ministry as an invitee at the meetings of the Advisory Committee cannot be termed as a satisfactory arrangement. The Committee, therefore, desire the Ministry to re-constitute the Advisory Committee so as to include the other essential experts in the field of ecological environment and forestation besides the forest department, so as to serve the intended purpose. It is needless to say that the suggestions and guidance of experts in the field would be germane to the objectives of the Committee.

35. The Committee are constrained to note that the matters like the number of members to be appointed on the advisory committee, the knowledge and expertise such members should possess, the mode of their induction and the terms of appointment, etc. are provided nowhere in the Forest (Conservation), Rules, 1981. The Committee need hardly stress that once an Advisory Committee is constituted, it is but essential that important ingredients of its composition and allied procedure should be precisely spelt out in the rules to make them self-contained for the information of all concerned. In the absence of adequate provisions having been laid down, the rules tend to become mere skeletal defeating the very purpose of subordinate legislation. The Committee hope that with the experience gained so far, the Ministry should have no difficulty in placing the practice followed heretofore on the statutory footing. The Committee desire the Ministry to issue the requisite amendment notification in this regard expeditiously.



## ROLES OF THE ADVISORY COMMITTEE IN RESTRICTING CONVERSION OF FOREST LAND FOR NON-FOREST PURPOSES

36. The Forest (Conservation) Act, 1980 (69 of 1980) was enacted to provide for conservation of forests and for matters connected therewith or ancillary or incidental thereto, and to repeal the Forest (Conservation) Ordinance, 1980 promulgated by the President on 25 October, 1980. Section 2 of the Act imposed a restriction on dereservation of forests or use of forest land for non-forest purpose except with the prior approval of the Central Government. To advise them in the matter of granting approval under section 2 and any other matter connected with the conservation of forests, section 3 of the Act empowered the Central Government to constitute an advisory Committee. Under section 4(1), Government can also make rules to carry out the provisions of the Act. Accordingly, the Central Government constituted an Advisory Committee and formulated the forest (Conservation) Rules, 1981 laying down the scope and functions of this Committee.

37. To identify the role played by the aforesaid Advisory Committee in the matter of preservation of country's forest wealth and with a view to make an assesment as to how far the Forest (Conservation) Rules, 1981 could serve the intended purposes, the Committee called for the following statistical information :—

- (a) The number of cases referred to the Advisory Committee constituted under section 3 of the Forest (conservation) Act, 1980 and the number of those which were disposed of by the Government directly without making reference to that Committee.
- (b) The number of cases pending for disposal before the Advisory Committee.
- (c) The number of cases in which recommendations of the Advisory Committee were accepted by Government.
- (d) The area of forest land released for non-forest purposes and the nature of such non-forest purposes, and the new areas brought under the forest land as a result of release of the land for non-forest purposes.

38. In their reply dated 19 July, 1986, the Ministry of Environment and Forests furnished the information as under :—

“1124 cases were referred to the Committee constituted under section 3 of the Act and 91 cases were disposed of by the Government directly without making reference to the Committee. The cases directly disposed of by the Government involved diversion of very small areas of forests which were qualitatively poor forests. The Committee takes decision on a case put before it during the meeting. No case remains pending with the Committee. The Committee either recommends the case for approval or non-approval. In some special circumstances it requests the Central Government to seek some additional information from the State Government before putting it to the Committee again.

In 1122 cases the recommendations of the Committee were accepted by the Government.

32,825 ha. of forest lands have so far been diverted for non-forest purposes. The various purposes are : irrigation projects, hydro-electric projects, thermal power projects, transmission lines, telegraph lines, roads, gas pipelines, water-supply schemes, etc.”

39. During oral evidence, the Secretary (Environment and Forests) informed the Committee that cases involving 2 acres of land were being disposed of by the Central Government directly without making a reference to the Advisory Committee with the sole aim of obviating delays on that score. The Secretary added that the Advisory Committee examined the projects with the limited point of view of forestation whereas Government had to provide for other developmental projects as well. To cite an instance, he referred to the case of Chamara Hydel Project wherein Government considered it vital for development of hydro-electric power to release the land despite a contrary finding by the Advisory Committee.

40. The Committee find that there is a constant flow in the demand of forest land for non-forest purposes as is evident from the fact that as many as 1124 cases were processed by the Advisory Committee constituted for this purpose in January, 1981 and another 91 cases were disposed of by Government without reference to the Committee. As a result, a large area comprising 32,825 hectare acres of forest land was diverted for purposes like irrigation/hydro/thermal power projects, transmission/telegraph lines, roads, gas pipelines, water supply schemes, etc. The Committee view the drain caused on the ever-reducing forest wealth of the country as a matter of grave concern. The need to preserve

and conserve the forests cannot be overemphasized for a multiplicity of reasons including the environment and ecology of planet earth. Without interruption to the legitimate and essential developmental activities, a saturation point has now been reached when Government have to watch for every inch of forest land. Despite assurances on the floor of the House, the Government have not pronounced the long-awaited comprehensive national forest policy. The Committee, therefore, urge upon the Government to make concerted efforts in this direction lest the balance of nature is totally disrupted as a result of unchecked human intervention.

41. As per reply of the Ministry of Environment and Forests, some 91 cases involving diversion of every small areas of qualitatively poor forests were disposed of by Government without making reference to the Advisory Committee. During evidence, the representative of the Ministry stated that cases involving 2 acres of land were being disposed of by Government to obviate delays on that score. The Committee, however, find that no cases remained pending with the Advisory Committee which recommended the case either for approval or disapproval. Thus the contention of the Government in disposing of cases involving 2 acres of land directly to obviate delays is not fully borne out by the above facts. The Committee are of the opinion that when an advisory Committee has already been constituted for the purpose, the Government should exercise self-restraint in the matter of disposing of any cases directly without making reference to the said Committee except for very exceptional and compelling reasons.

42. While sending replies to the points raised by the Committee, the Ministry of Environment and Forests were silent about the new areas that had been brought under the forest land as a result of release of forest land for non-forest purposes even though the point was specifically made out. The Committee are unable to conceive of any valid grounds for such a lapse. The Committee need hardly emphasize that the replies meant for any Parliamentary Committee should be complete in all respects and nothing should be omitted or otherwise allowed to escape. In this connection, the Committee would like to reiterate an oft repeated recommendation made in paragraph 64 of their Seventh Report (Sixth Lok Sabha) that the communications addressed by the Committee should be dealt with at a sufficiently high level in the Ministries and replies thereto signed by senior officers not below the rank of Deputy Secretary. The Committee trust the Ministry would ensure compliance of this recommendation in future and devise suitable remedial measures to avoid recurrence of such an instance.

## VII

### DELAY IN FRAMING THE RULES UNDER THE FOREST (CONSERVATION) ACT, 1980

43. The Forest (Conservation) Act, 1980 (69 of 1980) was assented to by the President on 27 December, 1980 whereas the Forest (Conservation) Rules, 1981 were published in the Gazette of India dated 1 August, 1981 i. e. after an interval of more than 7 months. The concerned Ministry of Environment and Forests were accordingly asked to state the circumstances leading to the delay in framing the rules and how the matters were regulated in actual practice during the intervening period. In their reply dated 19 July, 1986, the Ministry stated as under :—

“It was felt necessary to gain some experience before formulating the rules. The rules were therefore formulated after experience of six months. The publication took another month and so there was a delay of 7 months. During the intervening period matters were regulated on the basis of guide-lines issued from the Ministry.”

44. On 24 December, 1986, the Secretary of the Department of Environment, Forests and Wildlife appeared before the Committee and stated that the rules for the constitution and functioning of the Advisory Committee were framed within seven months of coming into force of the Forest (Conservation) Act, 1980. During the intervening period, the cases were decided upon based on the departmentally available guidelines. In a subsequent communication dated 6 January, 1987, the Ministry furnished the following further information asked for by the Committee :—

#### “(i) *Reasons for framing the Forest (Conservation) Rules, 1981*

The Forest (Conservation) Ordinance was promulgated by the President of India on 25.10.1980. In order to get the Ordinance replaced by an Act of Parliament, a Bill was introduced in the Lok Sabha on 20.12.1980. Parliament passed the Bill. The Forest (Conservation) Act, 1980 was assented to by the President of India on 27.12.1980 and was published in the Gazette of India (Extraordinary) on the same day. Sub-section (1) of Section 4 of the Ordinance

empowered the Central Government to make rules for carrying out the provisions of the Ordinance (The Act also contained a similar provision under sub-section (1) of Section 4 of the Act).

Section 3 of the Act provides for constitution of an Advisory Committee consisting of such members or persons as it may deem fit to advise the Central Government with regard to the grant of approval under section 2 of the Act and any other matter connected with the conservation of forests which may be referred to the Central Government. Therefore, it was essential to frame rules in regard to the conduct of business of the Advisory Committee and the scope of the Committee.

*(ii) Date on which the necessity of framing the above rules was brought to the notice of the Minister*

In pursuance of sub-section (1) of Section 4 of the Forest (Conservation) Ordinance, which empowered the Central Government to make rules for carrying out the provisions of the Ordinance, draft rules were prepared and sent to the Ministry of Law for vetting on 17.11.1980. The amendments suggested by the Ministry of Law in the draft rules were brought to the notice of the Minister (Agriculture) on 5.3.1981.

*(iii) Time taken in framing the rules*

The action to frame the rules was initiated on 15.11.1980 and the rules were published in the Gazette of India on 1.8.1981. The chronological processing of the case in regard to finalisation of the rules is annexed.\*

*(iv) Time taken by the Ministry of Law in vetting the rules*

The file containing the draft rules was sent to the Ministry of Law three times. The time taken by them on each occasion is as follows :—

(a) 17-11-80—26-11-80	Suggested certain modifications.
(b) 19-12-80—24-12-80 (However, the file was received back on 29.12.80)	Approved the draft. However, suggested that it would appropriate to publish the rules after the Ordinance is replaced by an Act.

(c) 19-3-81—27-3-81  
(The file was received  
back on 31.3.81)

The Minister (A) made certain suggestions in the draft rules earlier vetted by the Ministry of Law. The Law Ministry again revised the draft taking into account the suggestions made by Minister (A).

(v) *Total extent of forest land released during the intervening period, when the rules were not in force.*

0.605 ha. — on one proposal only, namely establishment of a Micro-wave Repeater Station in Rajasthan (approved on 7.5.1981)."

45. The Committee observe that the Government have in all taken a period of nine months in bringing out the Forest (Conservation) Rules, 1981 after promulgation of the Forest (Conservation) Ordinance by the President on 25 October, 1980. The Committee feel that the whole matter of framing rules has been treated with an amount of laxity in the Ministry of Environment and Forests. Had the Ministry moved in the matter with the seriousness it deserved, the period of nine months could have been reduced considerably. The plea taken by the Ministry that some time was needed to gain experience is not tenable. The Committee urge upon the Ministry to devise suitable measures so as to minimise the delays in vital matters like the subordinate legislation.

VAKKOM PURUSHOTHAMAN

*Chairman*

*Committee on subordinate legislation*

NEW DELHI,

April 9, 1987

Chaitra 19, 1909 (SAKA)

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## APPENDICES

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## APPENDIX I

(Vide Paragraph 5 of the Report)

### Consolidated statement of Recommendations/Observations made by the Committee

S. No.	Para No.	Recommendations/Observations
1	2	3
1	11	There is no denying the fact that the Central Government did not exercise rule-making power conferred upon them under Section 41A of the Indian Forest Act, 1927 despite Committee's repeated exhortations for framing the rules as soon as possible after the commencement of the Act and in no case this period should exceed six months. Admittedly, the provisions of Section 41 were introduced through an amendment in 1937 with a view to confer power on the Central Government to provide for regulation of movement of timber or other forest-produce into or from the territories within the country and across the customs frontiers but the underlying purpose of the legislature in conferment of such a power was allowed to remain unfulfilled for half a century.
2	12	The Committee, however, note from the reply of the Department of Environment, Forests and Wildlife that on the adoption of the revised National Forest policy which is at the stage of finalisation, they propose to bring in a comprehensive legislation and that would take care of the provisions of Section 41A as well. The Committee cannot but trust the Department to keep up this assurance to the Committee and embark upon making the necessary consultations with the States/Union Territories in the right earnestness so as not to allow the matters to prolong indefinitely.



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The Committee are not convinced with the reply of the Ministry of Environment and Forests. Under rule 3(1) of the Forest (Conservation) Rules, discretionary powers are vested in the Chairman of the Advisory Committee in fixing its meetings. Besides, these rules do not also provide for calling a meeting at the behest of any other member of the Advisory Committee. The Committee feel that with the experience gained so far, it should have been possible for the Ministry to lay down a suitable maximum period within which a meeting of the Advisory Committee must be convened. The Committee, therefore, desire the Ministry to suitably amend the rules in this regard at an early date.

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The Committee feel that with a view to obviate any arbitrary use of the discretion conferred upon the Chairman of the Advisory Committee under rule 3(2) of the Forest (Conservation) Rules, suitable guidelines may be evolved to serve as a guidance for the Chairman in the matter of fixing meetings outside Delhi.

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The Committee note with concern that all the four members (including the Chairman) nominated on the Advisory Committee are Government officials belonging to only one particular cadre viz. the Indian Forest Service. As a consequence, even as members of the Advisory Committee, they do not enjoy equal status and represent only the Department they belong to. Apparently, such a state of affairs can never be conducive to the spirit of independent inquiry and frank advice the Advisory Committee is entrusted to cater in the vital matters like conservation of forests in the country. In the opinion of this Committee, the rule of service-seniority should not be allowed to penetrate into independent forums like the one set up under the Forest (Conservation) Act, 1980 and all-out efforts should be made to associate experts and eminent

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personalities in the field of environment and forestation. The Committee strongly stress the need to do some fresh thinking in the matter at the highest level and urge upon the Ministry of Environment and Forests to take immediate steps to shed the bureaucratic character of the Advisory Committee at an early date.

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The Committee note from the reply that the Ministry of Environment and Forests have agreed to prescribe the contingencies under which papers can be circulated to the members of the Advisory Committee for eliciting opinion on any matter. The Committee desire the Ministry to take early steps to do the needful in this regard.

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The Committee observe that even though the Advisory Committee consists of few forest officers, who have been nominated to the Committee on ex-officio basis, it is always open for the Government to associate experts from other fields of knowledge like the ecology and environment. Hence, while formulating the rules, due care should be taken of all important factors like the term, tenure, appointment resignation, remuneration and other facilities intended to be given to the members of the Advisory Committee. The Committee also consider that the provision authorising the Additional Inspector General of Forests to act as chairman in the absence of the Inspector General of Forests should more appropriately be provided in the rule itself rather than to be prescribed through the instrument of administrative instruction. The committee, therefore, recommend that while effecting the proposed amendments to the Forests (Conservation) Rules, the Ministry should make a concerted endeavour to formulate a compact composition of subordinate legislation, which should be free from inadequacies and ambiguities, for the guidance of all concerned.

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Obviously, the present structure of the advisory Committee which is barely composed of few forest officers and fully devoid of other experts in the field of forestation, ecological balance and environment, does not evenly conform to the intentions expressed before the legislature. In essence the so called Advisory Committee has been reduced to function as an exclusive departmental body for which a specific measure of legislation was not even necessary, it was always open to the executive to lay down the process of scrutiny of any matter within the bureaucratic channels in the normal course. The Committee are also of the view that the attendance of an officer of the Environment Wing of the Ministry as an invite at the meetings of the Advisory Committee cannot be termed as a satisfactory arrangement. The Committee, therefore, desire the Ministry to re-constitute the Advisory Committee so as to include the other essential experts in the field of ecological environment and forestation besides the forest department, so as to serve the intended purpose. It is needless to say that the suggestions and guidance of experts in the field would be germane to the abjectives of the Committee.

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The Committee are constrained to note that the matters like the number of members to be appointed on the advisory committee, the knowledge and expertise such members should possess, the mode of their induction and the terms of appointment, etc. are provided nowhere in the Forest (Conservation) Rules, 1981. The Committee need hardly stress that once an Advisory Committee is constituted, it is but essential that important ingredients of its composition and allied procedure should be precisely spelt out in the rules to make them self-contained for the information of all concerned. In the absence of adequate provisions having been laid down, the rules tend to become mere skeletal defeating the very purpose of subordinate legislation. The Committee hope that with the experience gained so far, the Ministry should

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have no difficulty in placing the practice followed heretofore on the statutory footing. The Committee desire the Ministry to issue requisite amendment notification in this regard expeditiously.

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The Committee find that there is a constant flow in the demand of forest land for non-forest purposes as is evident from the fact that as many as 1124 cases were processed by the Advisory Committee constituted for this purpose in January, 1981 and another 91 cases were disposed of by Government without reference to the Committee. As a result, a large area comprising 32,825 hectare acres of forest land was diverted for purposes like irrigation/hydro/thermal power projects, transmission/telegraph lines, roads, gas pipelines, water supply schemes, etc. The Committee view the drain caused on the ever-reducing forest wealth of the country as a matter of grave concern. The need to preserve and conserve the forests cannot be overemphasized for a multiplicity of reasons including the environment and ecology of planet earth. Without interruption to the legitimate and essential developmental activities, a saturation point has now been reached when Government have to watch for every inch of forest land. Despite assurances on the floor of the House, the Government have not pronounced the long-awaited comprehensive national forest policy. The Committee, therefore, urge upon the Government to make concerted efforts in this direction lest the balance of nature is totally disrupted as a result of unchecked human intervention.

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As per reply of the Ministry of Environment and Forests, some 91 cases involving diversion of very small areas of qualitatively poor forests were disposed of by Government without making reference to the Advisory Committee. During evidence, the representative of the Ministry stated that cases involving 2 acres of land were being disposed of by Government to obviate delays on that score. The

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Committee, however, find that no cases remained pending with the Advisory Committee which recommended the case either for approval or disapproval. Thus the contention of the Government in disposing of cases involving 2 acres of land directly to obviate delays is not fully borne out by the above facts. The Committee are of the opinion that when an Advisory Committee has already been constituted for the purpose, the Government should exercise self-restraint in the matter of disposing of any cases directly without making reference to the said Committee except for very exceptional and compelling reasons.

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While sending replies to the points raised by the Committee, the Ministry of Environment and Forests were silent about the new areas that had been brought under the forest land as a result of release of forest land for non-forest purposes even though the point was specifically made out. The Committee are unable to conceive of any valid grounds for such a lapse. The Committee need hardly emphasize that the replies meant for any Parliamentary Committee should be complete in all respects and nothing should be omitted or otherwise allowed to escape. In this connection, the Committee would like to reiterate an oft-repeated recommendation made in paragraph 64 of their Seventh Report (Sixth Lok Sabha) that the communications addressed by the Committee should be dealt with at a sufficiently high level in the Ministries and redlies thereto signed by senior officers not below the rank of Deputy Secretary. The Committee trust the Ministry would ensure compliance of this recommendation in future and devise suitable remedial measures to avoid recurrence of such an instance.

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The Committee observe that the Government have in all taken a period of nine months in bringing out the Forest (Conservation) Rules, 1981 after

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promulgation of the Forest (Conservation) Ordinance by the President on 25 October, 1980. The Committee feel that the whole matter of framing rules has been treated with an amount of laxity in the Ministry of Environment and Forests. Had the Ministry moved in the matter with the seriousness it deserved, the period of nine months could have been reduced considerably. The plea taken by the Ministry that some time was needed to gain experience is not tenable. The Committee urge upon the Ministry to devise suitable measures so as to minimise the delays in vital matters like the subordinate legislation.

## **APPENDIX II**

*(Vide Paras 19 and 25 of Report)*

**No. 8-74/81-Fry (Coord)**

**Government of India**

**Ministry of Agriculture**

**(Department of Agriculture and Cooperation)**

**New Delhi, the 23rd March, 1983.**

### **ORDER**

A Committee was constituted by the Government of India under Section 3 of the Forest (Conservation) Act, 1980, *vide* the Ministry of Agriculture (Department of Agriculture and Cooperation) order No. 8-4/80-Fry (Coord) dated the 24th January, 1981. It has now been decided to include the Additional Inspector General of Forests as a member of the aforesaid Committee with immediate effect. In the absence of the Inspector General of Forests, the Additional Inspector General of Forest shall function as the Chairman of the Committee.

**Sd/—**

**M. V. Kesavan,**

**Dy. Secretary to the Govt. of India.**

### APPENDIX III

(Vide Paragraph 44 of Report)

#### CHRONOLOGICAL PROCESSING OF THE DRAFT OF FOREST (CONSERVATION) RULES

S. No.	Date	Action
1	2	3
1.	25.10.80	Forest (Conservation) Ordinance promulgated by the President.
2.	15.11.80	Draft of Forest (Conservation) Rules put up.
3.	17.11.80	Draft rules sent to the Ministry of Law.
4.	26.11.80	File received back from the Ministry of Law suggesting certain changes.
5.	19.12.80	Deptt. of Agriculture furnished comments on the points made by the Ministry of Law and sent the file to them.
6.	29.12.86	File received back from Law Ministry. Approved the draft.
7.	25.1.81	In the meantime, the Forest (Conservation) Ordinance was replaced by an Act assented to by the President on 27.12.80. Decision taken to publish the rules under the Act.
8.	17.2.81	The draft rules were considered by a meeting under the Chairmanship of I.G.F.
9.	19.2.81	Draft rules submitted to Secretary (Agri.) for obtaining the approval of Minister (Agri.)
10.	5.3.81	File sent to Minister.
11.	11.3.81	Minister (Agri.) made certain suggestions.
12.	16.3.81	The draft containing the suggestions of the Minister sent to the Law Ministry.



1	2	3
13.	30.3.81	File received back from Law Ministry. Law Ministry again revised the draft.
14.	10.4.81	P.M. directed that notification or enactment of the rules may be done at a later stage when sufficient experience has been gained in the exercise of clearance of cases referred by State Governments.
15.	20.4.81	File sent to Minister (Agri.) to apprise him of the position.
16.	21.4.81	File sent to PM's office to apprise the PM of the position.
17.	25.4.81	File received back from PM's office.
18.	5.5.81	Official Language Wing of the Law Ministry requested to translate the rules into Hindi.
19.	5.6.81	Official Language Wing sent the Hindi translation.
20.	15.6.81	Government of India Press requested to notify the rules in the Gazette of India.
21.	27.6.81	Government of India Press returned the rules with the request to get the same ink-signed.
22.	20.7.81	Duly ink-signed copies sent to the Government of India Press.
23.	1.8.81	Rules published in the Gazette of India.

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• **MINUTES**

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## APPENDIX IV

(Vide Paragraph 4 of the Report)

### MINUTES OF THE THIRTY-FIRST SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (EIGHTH LOK SABHA) (1986-87)

The Committee sat on Wednesday, 25 June, 1986 from 15.00 to 16.30 hours.

#### PRESENT

Shri Mool Chand Daga—*Chairman*

#### MEMBERS

2. Shri D. L. Baitha
3. Shri Anil Basu
4. Dr. (Shrimati) Phulrenu Guha
5. Shri Abdul Rashid Kabuli
6. Shri Dharam Pal Singh Malik
7. Shri Shantaram Naik
8. Shri Vakkom Purushothaman
9. Shri Mullappally Ramachandran
10. Shri Yogeshwar Prasad Yogesh

#### SECRETARIAT

Shri R. S. Mani—*Senior Legislative Committee Officer*

2. The Committee considered Memoranda Nos. 48 to 52 and took the following decisions thereon :—

- \* \* \*
- (iv) *The Forest (conservation) Rules, 1981 (G. S. R. 719 of 1981)—  
(Memorandum No. 51)*

The Committee approved the points that emerged out of the scrutiny of the Forest (Conservation) Rules, 1981 and desired that information on the various points should be obtained from the Ministry immediately.

\* \* \*

*The Committee then adjourned.*

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\*Omitted portions of the Minutes are not covered by this Report.

**MINUTES OF THE THIRTY-SECOND SITTING OF THE  
COMMITTEE ON SUBORDINATE LEGISLATION  
(EIGHTH LOK SABHA) (1986-87)**

The Committee sat on Friday, 4 July, 1986 from 15.00 to 16.00 hours.

**PRESENT**

**Shri Mool Chand Daga—Chairman**

**MEMBERS**

2. Shri D. L. Baitha
3. Shri Anil Basu
4. Dr. (Shrimati) Phulrenu Guha
5. Shri Dharam Pal Singh Malik
6. Shri Shantaram Naik
7. Shri Vakkom Purushothaman
8. Shri Mullapally Ramachandran
9. Shri K.S. Rao
10. Shri Yogeshwar Prasad Yogesh

**SECRETARIAT**

**Shri R. S. Mani—Senior Legislative Committee Officer.**

2. The Committee took up further consideration of the Forest (Conservation) Rules, 1981 (G. S.R. 719 of 1981). Some Members expressed the view that environment and ecology being important factors in the matter of preservation of forests, some specialists having requisite expertise and experience in that field should as well be associated with the Advisory Committee to be constituted under Section 3 of the Forest (Conservation) Act, 1980. In this connection, the Chairman informed the Committee that a comprehensive list of points emerging out of the scrutiny of the Forest (Conservation) Rules had already been sent to the Ministry concerned for eliciting their comments in the first instance. He added that after receipt of Government replies, the representatives of the Ministry might be called for oral evidence if so considered necessary.

3. The Committee then took up consideration of the points raised by Shri Shantaram Naik, M.P. in his letter dated 27 June, 1986 (Annexure) based on the study of the rules framed under the Indian Forest Act, 1927 and the Forest (Conservation) Act, 1980. The Chairman observed that no rules were framed by Central Government in pursuance of the powers conferred on it by section 41A of the Forest Act, 1927. The Committee decided to enquire from the Ministry Concerned the reasons for non-exercise of the rule-making power conferred by the said section.

*The Committee then adjourned.*

## ANNEXURE

(Vide Paragraph 3 of Minutes)

*Copy of letter dated 27 June, 1986 from Shri Shantaram Naik, M. P. regarding rules framed under Forest Legislation*

The Chairman of the Committee on Subordinate Legislation, Shri M. C. Daga, had entrusted to me to study the Rules framed under Forest Legislation. For want of time, I have not been able to go into the details. However, a few observations which I would like to make and with respect to which we can seek comments from the concerned ministry, are as follows :—

1. Whether the Indian Forest Act, 1927 is in force and whether the Central Government have issued any notifications or framed any Rules under the Act.
2. It appears, after the examination of I. F. Act, 1927 and the Forest (Conservation) Act, 1980 that the purpose of the latter Act was limited i. e. to provide for seeking of prior approval of the Central Government in the matters of conversion of forest land for non-forest purposes. This small piece of legislation could have been brought by way of an amendment to the Indian Forest Act, 1927. Under the 1927 Act, the powers to frame Rules are given to State Government, as a result of which, it is doubtful whether any scrutiny of the various rules framed by the various States under the Central Act namely Indian Forest Act, 1927 has been made.
3. On account of existence of the two acts with powers to frame rules under one act to the State Governments and under the other to the Central Government, has created a confusion. Major forest activities in the country are, obviously, controlled under the rules framed by 22 States in different manners. Therefore, it does not appear to be rational that only one aspect of the forest is controlled by Central Rules framed under a Central Act.
4. Since the Forest (Conservation) Act, 1980 provides for seeking of prior approval of the Central Government in the matters provided for under section 2 of the Act, the Rules should provide a minimum mandatory period for disposal of such cases.

5. Under Sub-rule 3 of Rule 5 of the Forest (Conservation) Rules, 1981, the advisory committee has been empowered to suggest any condition or restriction on the use of any forest land for any non-forest purpose which, in its opinion, would minimise adverse environmental impact. Now, as per rule 6 the government may approve a proposal in accordance with the advice tendered by the Advisory Committee or reject the same. But, it is not clear, whether when a committee suggests any conditions or restrictions on the use of any forest land and in case the Government accepts such conditions of restrictions whether they will be made applicable by the Government without amending the rules.

6. I feel there is plenty of scope to study the subject in detail, which study, I propose to make in the course of few days.

MINUTES OF THE THIRTY-NINTH SITTING OF THE  
COMMITTEE ON SUBORDINATE LEGISLATION  
(EIGHTH LOK SABHA) (1986-87)

The Committee sat on Tuesday, 28 October, 1986 from 11.00 to 12.00 hours.

PRESENT

Shri ool Chand Daga—*Chairman*

MEMBERS

2. Dr. (Shrimati) Phulrenu Guha
3. Shri Abdul Rashid Kabuli
4. Shri Dharam Pal Singh Malik
5. Shri Shantaram Naik
6. Shri Vakkom Purushothaman
7. Shri Mullappally Ramachandran
8. Shri Yogeshwer Prasad Yogesh

SECRETARIAT

1. Shri M. K. Mathur—*Joint Secretary*
2. Shri R. S. Mani—*Senior Legislative Committee Officer.*

2. The Committee considered Memoranda Nos. 53 and 54 as under :-

\*                      \*                      \*

(ii) *The Forest (Conservation) Rules, 1981 (G. S. R. 719 of 1981) —  
(Memorandum No. 54)*

The Committee considered in detail the replies furnished by the Department of Environment, Forests and Wild Life to the various points raised by them. The Committee found the replies vague and inadequate and decided to hear the representatives of the Ministry concerned in person for clarifying the various points further. The Committee also decided to hear simultaneously the representatives of the Ministry of Law and Justice (Legislative Department) to elicit their views on certain points of law.

*The Committee then adjourned.*

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\*Omitted portions of the Minutes are not covered by this Report.



**MINUTES OF THE FORTY-FIRST SITTING OF THE  
COMMITTEE ON SUBORDINATE LEGISLATION  
(EIGHTH LOK SABHA) (1986-87)**

The Committee sat on Tuesday, 23 December, 1986 from 15.00 to 16.00 hours.

**PRESENT**

**Shri Mool Chand Daga—Chairman**

**MEMBERS**

2. Shri Anil Basu
3. Shri Dharam Pal Singh Malik
4. Shri Vakkom Purushothaman
5. Shri Mullappally Ramachandran
6. Shri Bholanath Sen

**SECRETARIAT**

**Shri R. S. Mani—Senior Legislative Committee Officer.**

2. The Committee took consideration of Memoranda Nos. 55 and 56 as follows :

- (i) *Non-framing of rules in pursuance of the Powers conferred under the Indian Forest Act, 1927 (16 of 1927)—(Memorandum No. 55)*

3. The Committee considered the above Memorandum and decided to take up the matter with the representatives of the Ministry of Environment and Forests (Department of Environment, Forests and Wildlife) during evidence before the Committee scheduled to be held on 24 December, 1986.

\* \* \* \* \*

*The Committee then adjourned.*

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\*Omitted portions of the Minutes are not covered by this Report.

**MINUTES OF THE FORTY-SECOND SITTING OF THE  
COMMITTEE ON SUBORDINATE LEGISLATION  
(EIGHTH LOK SABHA) (1986-87)**

The Committee sat on Wednesday, 24 December, 1986 from 11.00 to 12.15 hours.

**PRESENT**

**Shri Mool Chand Daga— *Chairman***

**MEMBERS**

2. **Shri D. L. Baitha**
3. **Shri Anil Basu**
4. **Dr. (Shrimati) Phulrenu Guha**
5. **Shri Abdul Rashid Kabuli**
6. **Shri Dharam Pal Singh Malik**
7. **Shri Mullappally Ramachandran**
8. **Shri Bholanath Sen**

**• REPRESENTATIVES OF MINISTRY OF ENVIRONMENT AND FORRESTS  
(DEPARTMENT ENVIRONMENT, FORESTS AND WILDLIFE)**

1. **Shri T. N. Seshan, Secretary (E&F)**
2. **Dr. M. K. Ranjitsingh, Joint Secretary**
3. **Shri Y. G. Jadhav, Addl. Inspector General of Forests**
4. **Shri J. B. Lal, Deputy Inspector General of Forests**

**II. REPRESENTATIVE OF MINISTRY OF LAW AND JUSTICE (LEGISLATIVE DEPARTMENT)**

**Shri C. Raman Menon, Additional Secretary**

**SECRETARIAT**

**Shri R. S. Mani — *Senior Legislative Committee Officer.***

2. The Committee examined the representatives of the Ministry of Environment and Forests (Department of Environment, Forests and Wildlife) regarding the Forest (Conservation) Rules, 1981 (GSR 719 of 1981).

3. Asked to state the reasons for taking seven months to frame the rules under the Forest Conservation Act, 1980 and how the matters were governed during the intervening period including release of land for deforestation, the Secretary of the Department stated that as contemplated in Section 3 of the said Act, rules for the constitution and functioning of the Advisory Committee were framed within seven months of coming into force of the said Act. During the intervening period of seven months, the cases were decided upon based on the departmentally available guidelines. The Chairman thereupon observed that the departmental guidelines or administrative instructions did not have any statutory footing and the object of enactment had been defeated by such a procedure. With regard to the land released during intervening period, the witness promised to furnish information in writing.

4. To the question as to whether the rules were vetted by the Ministry of Law, the Secretary replied in the affirmative. He further stated that there were four members on the Advisory Committee and the senior most member *i. e.* the Inspector General of Forests was its Chairman. Other members were Additional Inspector General of Forests, the joint Commissioner in charge of soil Conservation, and the Deputy Inspector General in charge of the work in the Department. The decisions in the Committee were arrived at by consensus and no quorum was insisted upon. He agreed that any tribal living in the local area had far greater knowledge of forests than local officials but held it expedient to have forest officials on the Advisory Committee. He was of the view that it was certainly possible to take advice of the experts in the field.

5. In reply to a question, the Secretary stated that cases involving 2 acres of land were disposed of by Government directly without making a reference to the Advisory Committee with the sole aim to obviate delay in that regard.

6. When pointed out that it was not the intention of the Legislature to constitute the Advisory Committee consisting solely of Government officials who were already within the Government machinery in some capacity or the other and who could hardly give independent and free advice in the wake of influence cast by superior authority, the Secretary stated that Government would get the best possible advice before deciding on any particular case and

it was with this aim that the Advisory Committee was constituted and the officers could sit independently in the Committee and provide expert advice to the Government.

7. When asked whether the rules were laid on the Table of the House, the Secretary replied in the affirmative, When pointed out that the rules were not in consonance with the scope and object of the Act and the matters like term of the Committee, quorum, election of Chairman, decisions by the Committee and other allied procedure were not there in the rules, the Secretary stated that these points were well taken and the rules would be amended to provide for quorum and other necessary details.

8. When enquired about the reasons for not framing rules under Section 41 A of the Indian Forest Act, 1927, the Secretary stated that the power to make rules under the said Act had not been exercised as the Central Government had left the timber business to the State Governments.

9. when asked to explain as to what was envisaged by the provision 'further enquiry's under rule 6 of the Forest (Conservation) Rules, the Secretary stated that the Advisory Committee examined the projects within the limited point of view of forestation mainly whereas Government had to provide for other developmental projects as well. He narrated the case of Chamera Hydel-Power Project wherein Government considered it vital for the development of hydro-electric power to release the land despite a negative recommendation from the Advisory Committee.

*The Committee then adjourned.*

MINUTES OF THE FORTY-EIGHTH SITTING OF THE  
COMMITTEE ON SUBORDINATE LEGISLATION  
(EIGHTH LOK SABHA) (1986-87)

The Committee sat on Thursday, 9 April 1987 from 15.00 to 15.30 hours.

PRESENT

Shri Vakkom Purushothaman—*Chairman*

MEMBERS

2. Shri H. A. Dora
3. Dr. (Shrimati) Phulrenu Guha
4. Shri Shantaram Naik
5. Shri Mullappally Ramachandran
6. Shri K. S. Rao
7. Shri Saleem I. Shervani

SECRETARIAT

1. Shri N. N. Mehra— *Joint Secretary*
2. Shri R. S. Mani— *Senior Legislative Committee Officer*

2. The Committee considered the draft Thirteenth .....Reports and adopted them.

3. The Committee authorised the Chairman and, in his absence, Shri Saleem I. Shervani, M. P. to present the Thirteenth Report to the House on 20 April, 1987.

\* \* \* \*

*The Committee then adjourned.*

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\*Omitted Portions of the Minutes are not covered by this Report.

Printed at : Sunlight Printers, 2265 Dr. Sen Marg, Delhi-6