

## **RESOLUTION OF CONFLICTS CONCERNING FOREST LANDS - ADOPTION OF A FRAME BY GOVERNMENT OF INDIA**

**DR. B. D SHARMA, COMMISSIONER, SCHEDULED CASTES  
AND SCHEDULED TRIBES,**

**NEW DELHI, JANUARY, 1990**

### **Background**

A major cause of confrontation between the tribal people and the State has been the difference in the perceptions of the tribal people and the Government about the rights of the tribal people over the forests and their use. This question was examined in some detail in the report of the Commissioner for Scheduled Castes and Scheduled Tribes for the years 1988-89 (29<sup>th</sup> Report). The touchstone of the validity of any system and its practices is their harmony with the right to life with dignity of the ordinary people. This right is self-evident and does not need the support of any formal announcement or even adoption in a Constitution. This right is the very essence of human civilization.

### **Infringement of the Right to Life with Dignity**

2. The present situation in our country in the context of this basic right of the people cannot be said to be complimentary. Here are the tribal people, who are eking out a living from the natural resource in their habitat according to their perceptions, abilities and traditions. They are not making any demands from the system for sustenance, support or privileges like those in the modern sector of our economy or those who are conscious about the tremendous benefits which are bestowed automatically by its membership. Their only desire is to be allowed to live in their ancestral homes without interference. They are keen to enter that privileged group, but the state is not prepared to concede. Nay, it does not hesitate in using law and even force against these people on some technical grounds or even otherwise. Their inalienable claim of continued use for survival as a people. This is not only denial, but blatant violation of the basic right to life with dignity of the people, which is enshrined in our Constitution. No formal stand, which the state or the concerned authorities may prefer to take in this regard, can be acceptable for this gross violation of human rights.

### **Dissonance between The Law & The Constitution**

3. The basic question, therefore, is that how these gross anomalies persist in our country even after independence and adoption of a Constitution, which establishes these rights of the people in no uncertain terms. A closer scrutiny of the formal system reveals that the very legal frame concerning the management of natural sources, particularly the forest, is not, in keeping with the spirit of our Constitution. Therefore there is a need for thorough review and revision of the legal framework itself as has been suggested in the

Report (29th). It is, however, an open question whether the govt. would be agreeable to concede the right of the people over their resources and make adequate and effective changes in that frame.

### **Violation of Law by the State & the People**

4. The need for a basic structural change in the legal frame cannot be over emphasised. Much in this regard will however, depend on the general sensitivity in the nation on these issues and also the people's preparedness to assert their basic rights, it is also necessary to consider whether some amends can be made in the unhappy situation even as the legal frame remains as it is for a while. Accordingly, the position was reviewed in detail in the above report. The results even within this limited frame were rather disturbing. In many cases, the claims of the people within the legal frame as adopted by the State were not considered. Consequently, many a tribal are deemed to be encroachers even though nothing unusual was done by them and they had continued to live in their respective habitats just like their ancestors through the ages.

5. The situation was quite different in many other cases. Under growing pressure of population with no other resources to fall back upon, the people are forced to break the law and enter forests for making a living. The biggest question, which these people face, concerns provision or the next meal for the family. This is a basic right of every person. If the state feels that any traditional activity in this regard is not correct, it is the duty of the state before the people are acceptable alternative and to persuade the people to make their way of life. Accordingly, comprehensive recommendations were made in the Report to end the present confrontation between the state and the people on the vital issue of use of forest land for making a bare living. Some excerpts from the Report are given in Annexure I.

### **Decisions of Government of India to Resolve the Dissonance**

6. The situation of the forests and tribal people and recommendations made by the Commissioner were considered in detail by the Secretary's Committee in consultation with the State Governments. The Secretary's Committee broadly concurred with them, though within the limitations of the existing legal frame. The Government of India in their turn, accepted the recommendations of the Secretary's Committee though with a vital change discussed in para below. A set of six circulars were issued on 18/8/90 for the guidance of the State Government. These instructions are in technical terms with which even activists may not be familiar with. Moreover, it will be necessary to understand the basic frame of these instructions, which rests on certain premises accepted by the Government of India in pursuance of the recommendations of the Commissioner.

### **Unsettled Claims and Encroachments Distinguished**

7. The first major premise of these instructions is that the land occupied by the tribal people even within the reserved forests, ipso facto, cannot be deemed to be an encroachment. It was on the mistaken premise that all lands occupied by the tribal people in reserved forests, or even in other forest areas not reserved, the encroachments that in a large number of cases, the tribal people are being erroneously treated as encroachers.

Consequently they are facing harassment, prosecution and even eviction for no fault of theirs.

8. The GOI instructions of 18/8/90, for the first time, have acknowledged the fact that there a number of disputed claims of the tribal people as distinguished from encroachments, in the former case, continued occupation of law is a right of the people, while in the latter cases to allow continued occupation is technically a discretion of the Government.

### **The Six Circulars**

9. The first circular in this set of six circulars with encroachments while the next two are concerned with disputed claims (as distinguished from encroachments). One deals with regularisation of habitations and conversion of forest villages into revenue villages. The two others deal with wildlife management and removal of intermediaries from forestry. Some examples in which the land occupied by the tribal people should not be deemed to be encroachment but regarded as disputed claims to be amicably settled between the State and the tribal people, are given in these circulars which should be carefully noted.

### **Unsettled Claims**

#### **(1) Claims Pertaining to Forest Settlement**

10. The first set of cases is referred to in the second circular (No.13-1 /90 F.P. (2) of 18/ 8/90). They cover disputed claims over forest land arising out of forest settlement. Some examples in this regard are given below:

- (i) There are cases where the tribal people have been in occupation of the land prior to the formal process of the reservation of the forest started. But these cases, for a variety of reasons were not considered at the time of reservation. Consequently after the final notification of reservation, these people have been commonly treated as encroachers. This is obviously wrong.
- (ii) There are a number of cases, where the concerned people are not aware about the process of reservation itself. For examples, the Settlement Officer himself may not have visited the areas and yet many have passed the final order. In many cases, the process of reservation may have been faulty or incomplete because of incomplete record or non-existence of maps. Consequently there is dissonance between the official record and the reality. The occupation of the land by the tribal is deemed to be encroachment. It is clear that, the people cannot be penalised for acts of omission and commission of the State Authorities.

- (iii) There are cases, where the process of reservation had been completed long time back but the final notification of reservation has not been issued so far. It is quite likely that the situation on the ground in the meantime may have changed significantly. For example, some people may have occupied some lands, which could not have been taken note of at the time of the enquiry of claims before reservation. And there is no possibility of considering these cases before the final notification on the basis of that enquiry is issued. Now these cases should not be treated as encroachments but treated as disputed claims.

## 2. **Claims pertaining to pattas/ leases/ grants**

11. The second set of cases is dealt with in the third circular (No.13-1 /90 F.P.(3) of 18/9/90). They cover disputes regarding patta/ leases/ grants involving forest lands. Some examples are given below -

- (i) There are a large number of cases in which the people may be holding their lands under a formal assignment. The patta/ lease/ grant may have been temporary or conditional. They may have been either forgotten or lapsed though the flux of time. Or they may not have been renewed as a result of conscious policy of the State. In all these cases, the initial occupation of the land by the people was legal. In some cases that right still exists as in the case of dali lands in Maharashtra, even though these tribal assignments have been forgotten. Therefore, in this case- the continued occupation of the people is legal and it cannot be disturbed. In some other cases, the period of initial lease might have ended as in the eksali pattas, which were not renewed prior to 1980. Now after the enforcement of the Forest Conservation Act, the people cannot be formally renewed. In some cases, like lands assigned for agri-sericultural purposes or tongia cultivation, the tribal may have violated the conditions of the lease. Therefore, they may be unauthorised occupation but they cannot be dealt with as encroachers.
- (ii) In some cases, the forest land may have been transferred to the Revenue Department yet its legal status may not have changed. In the meantime, these lands may have been assigned to the people by the Revenue Department. Since the legal status has not changed, the people are deemed to occupy forest lands even though they hold regular pattas. This is the position of 'Orange areas' in M.P. The tribal people cultivating such land cannot be treated as encroachers.

## 3. **Claims pertaining to Habitations and Forest Villages**

12. Another set of cases has been covered in the fifth circular (No.13-1/90 F.P.(5) of 18/9/90). They relate to habitations and forest villages. The need for this circular arises from the fact that a distinction is made between land under cultivation and homestead land. In many cases, Government may accept the right or claim of a person on lands cultivated by him. But it may consider construction of a hut in the adjoining area as encroachment notwithstanding the fact that this construction may be necessary for

cultivation of land. Thousands of tribal people were forced to vacate a large number of such habitations in Dhule District of Maharashtra in 1987.

13. Similarly, the issue of forest villages and lands cultivated by forest villagers has remained unclear. A general decision was taken by the Government of India in 1970s to convert all forest villages into revenue villages. This process was completed in some States, but remained incomplete in other States. With the coming of Forest Conservation Act in 1980, all these processes came to a grinding halt. The matter was further confused when the forest villages again found a mention in the National Forest Policy and the need for developing them was emphasised. This circular clears the position. We will consider forest villages and other habitations separately.

(a) **Habitations other than Forest Villages**

14. All habitations other than forest villages have been divided into two categories (i) habitations of those people, who may have encroached upon forest for cultivation and (ii) where the habitations may be a forest area but people may not be cultivating lands in the forest.

(i) According to this circular, in those cases, where people are cultivating forest lands according to this circular the habitations should be regularised if the land is regularised. There is, however, a technical flaw in the circular. It does not speak of the habitation of those people whose occupation of land is not to be treated as encroachment but as disputed claims. It is hoped that a common sense view will be taken by the officials and habitations relating to disputed claims will be regularised.

(ii) The case of other habitations, where people may not be cultivating forest land is a complex one. There cannot be any tribal habitations like this. If there are any such cases, they have to be proceeded with due cautions. According to the circular all habitations, which are more than twenty years old, have to be regularised. Most of the encroachment on forest land for housing are in and around new industrial areas, urban centres and along highways. They relate to non-tribals, who are taking undue advantage of unclear forest boundaries, not unoften in collusion with local officials. They deserve no sympathy.

(b) **Forest Village**

15. This circular now reiterates the Government decision to convert forest villages into revenue villages. This should bring these villages at par with other villages for the purpose of developmental programmes. There were some psychological blocks and technical hurdles so far. It is, however, envisaged that even after the forest villages are given the status of revenue villages, their management could continue with forest officials. It will, however, be necessary to clothe the forest officials with revenue powers. This is a welcome move.

(c) **Forest land cultivated by forest villagers**

16. This circular is not clear about the forest land cultivated by forest villagers. It may be noted that the land is assigned to the each forest villager without conferring any rights on him. But in the mean time it is possible that some more lands may have been brought under plough by the residents of forest villagers. This circular envisages inheritable but inalienable rights being given in the forest villages. This should cover the forest lands cultivated by forest villagers.

**4. Lands under encroachment of the Tribal people**

17. The next set of cases is referred to in the first circular (No.13-1/90 FP (1) of 18/9/90). They relate to encroachment on forest land. These instructions broadly divide these encroachments into two groups, viz. Encroachments (i) before and (ii) after the enforcement of the Forest Conservation Act, 1980 (25/9/1980). The encroachers themselves comprise two categories, (i) those people who are eligible for grant of patta, and (ii) those people who are not eligible. Lastly, the encroached lands also broadly comprise two types, (i) Some encroached lands are quite good and cultivable. Therefore, there is no harm in settling them, (ii) Some other lands cannot be assigned for cultivation for technical reasons such as land with a slope of 15 or land on the bank of a nala/ stream. The reason is that the soil of these lands will be washed away if they are cultivated. Some land are not just cultivable such as those in rocky areas.

18. The instructions clearly state that all encroachments prior to 1980 should be settled provided the land is cultivable and the person is eligible for allotment of lands. The post - 1980 encroachments cannot be settled. Thus, according to these instructions land cannot be settled in case the encroacher is an ineligible person and/ or the land is not fit for the cultivation or the encroachment was made after 1980. N.P.

19. It will be necessary to consider the cases of ineligible category of persons carefully. For example, those people, who may have encroached upon the land for making a big estate, do not deserve any consideration. Their encroachments should be removed. But there are others, who may be ineligible only technically. For example the holding of a person may be a big one. But the land may be rocky and may not be of much useful. Even if the land is good, it may jointly owned by many brothers. Formal division of holding cannot be insisted for declaring a person eligible for regularisation

20. The other question relates to the type of land. A number of persons, who are otherwise eligible for allotment of land may not be able to get benefit of regularisation because the land they occupy cannot be assigned for technical reason or is unsuitable for cultivation. In some cases the technical objections may not be sound. For example, the fields in the nala beds comprise the best agricultural land in a hilly area. And nala-bed cultivation is desirable even so for soil conservation. The agricultural experts are either unaware along there acts or may not like to be bothered. Such lands, therefore, should be assigned.

21. Similarly the post-1980 encroachments should also be dealt with care and empathy. As stated earlier, the encroachers are somehow making a living from these lands and have no alternative. Their occupation of land cannot be disturbed by the State on any technical ground whatsoever unless they are provided with an alternative means of livelihood. The Govt. of India have accepted this premise. For otherwise it will infringe the right to life of the people guaranteed under the Constitution. Accordingly while it was formally decided not to settle such lands in favour of the encroachers, it was envisaged that the State Government will prepare schemes for providing these people alternative means of livelihood- The right to life of the people was, thus, implicitly accepted. In practical term it means that no tribal shall be dispossessed of his land unless an alternative means of livelihood has been provided to him by the Government.

#### **5. Provision of Economic base for Tribal People before Removal of Encroachment Obligatory**

22. The most significant feature of the approach accepted by the Government of India as reflected in these circulars is the acceptance of the responsibility to provide an alternative economic base to those tribal people in whose favour encroachments on forest lands cannot be regularised. These instructions make pointed reference to a scheme prepared for this purpose by the Government of India and communicated to the State Governments vide their letter No. 6-21/89 FP dated 1/6/90 (Annexure 3). This scheme has the following special features:

1. This scheme can be taken upon degraded forests lands even within reserved forest areas.
2. The areas selected for the purpose should comprise sizeable compact blocks. The designated block(s) should be assigned to a number of families collectively as a group. However the block should be nationally sub-divided and an area of up to 5 ha. for natural regeneration and 2 ha. for intensive planting can be assigned to each family. The object is engendering personal interest and group responsibility in the new economic activity.
3. The group of families so selected is expected to function as an informal group. In particular, they need not form a registered society or a cooperative, the two institutional forms which are generally insisted upon in government programmes meant for group of people.
4. The selection of beneficiaries for this programme has been left with traditional tribal institutions or the assembly of all adult in the concerned habitation. Thus the idea is to work through the community as distinct from formal institutions like village Panchayats. It may also be noted that it is habitation which is the real community-unit and not a village which. The village is generally an administrative unit, which may comprise a number of habitations. The group of families in their turn will select their representatives informally. It is clear that these representatives will be unequivocally responsible to the

group and can be changed at will. They will deal with the officials on behalf of the people in all the matters and report to the group regularly.

5. The participation of beneficiaries in the programme will be exclusively through their personal labour and not hired labour. Thus, the possibility of acquiring interest in the new assets through hired labour is ruled out.
6. The participants will have full right over the usufruct from their respective areas. They will also be entitled to 75% of the proceeds of silvicultural operations and 50% of the main fellings at the end.
7. As the flow of benefits from this scheme gradually increases, the dependence of the concerned persons on agricultural lands in the forest will gradually decrease. Finally, they can be expected to become self-reliant. At that stage, the land under unauthorised occupation can be taken over by the government with their consent.

**(6) Other Related Matters**

- (i) Compensation for Loss of Life, etc. due to predation/ depredation by Wild Animals [Circular No.13-1/90 F.P.(6)]

23. The tribal people living in and around the forests face the risk of life, damage to property and crops due to predation/ depredation by wild animals. This risk becomes manifold and around wildlife sanctuaries. This circular prescribes certain norms for compensation of losses of all descriptions. An important feature of these instructions is that compensation has not been related to the legal status of the land cultivated or the place where the incident may have occurred, that is, within or outside a sanctuary/ reserved forest area.

- (ii) Removal of Intermediaries and Determination of Adequate Wages for Forestry Works [Circular No.13-1/90 F.P.(5)]

24. Two important points have been touched in this circular. Firstly, it is well-known that, for a variety of reasons, outside labourers are inducted for forestry operations even though local labour may be available. For example, in many cases outside labourers are brought for working of bamboo forests. These people remain behind and encroach on the forest land in collusion with forest officials. They become a problem to the tribal people. This circular disfavours such practices. In particular, it prohibits contracts for bringing outside labour. If it is necessary to bring in labourers from outside, it should be done exclusively through cooperative- societies.

25. The second issue relates to the determination of wages. The principles and the method adopted for determination of wages are not known to the people. The circular specifically states that the wages should be determined on the basis of detailed work-

studies. The people or their representatives can ask the concerned authorities how the wages have been fixed.

26. It is also not unusual that wages in forestry may not measure up to the legal minimum wages notified by the concerned state governments. This is illegal and should need no specific mention. Nevertheless forest officials may take a technical view and plead their helplessness. The workers have no remedy except to take their claims to a court of law or resort to agitation, both of which have their own limitations. This circular puts at rest this controversy. The departmental officers can be prevailed upon to follow the instruction of the highest authority in the Government of India.

### **Critical Appraisal of the New Instructions**

27. These instructions break new grounds and represent a positive step forward in resolving what is admitted as a very complex issue resulting in confrontation between the state and the tribal people. The decision to make a distinction between 'disputed claims' and 'encroachments' can be said to be historic. It will go a long way to undo, albeit partially and after a long long delay, the gross injustice meted out to the tribal people by the state. If these instructions are followed in their true spirit, many of the problems in the tribal areas can be expected to be resolved.

28. It is important to note here that these instructions also provide for a machinery for initiating a process of review and resolution of disputes. A committee comprising sub-Divisional Officer, Divisional Forest Officer and a representative of Tribal Welfare Departments (Circulars 2 & 3 referred to earlier) is expected to examine all disputed claims. It is the duty of this Committee to examine all available evidence about the fact of possession on the relevant date. [Para 2.2 of Circular (2)] Pending final decision, the concerned persons should not be dispossessed of the land. [Para 2.3 of Circular (3)]

29. Thus, the package deal envisaged in these instructions is imbued for a sense of urgency for amicable resolution of the conflict situation in each local area. Thus the Committee has a clear charter and well-defined parameters. The tribal people have an assurance of continued occupation of their lands, the state assuming the responsibility for providing the people an alternative economic base.

### **Yet the Spirit of the Basic Frame is not fully Honoured**

30. While appreciating the significant move by the Govt. of India on a vital issue concerning the tribal people, it must be added that certain deviations from the basic frame carefully evolved, have been made at the very outset even before the ink on paper was dry. As we will presently see this has been without due consideration of their implications and even without due authorisation. This, to say the least, is regrettable- It will blunt the thrust of these instructions in many areas.

(a) Obsession with Compensatory Afforestation

31. While the need for maintaining the existing tree-cover on land and expanding it as quickly as possible cannot be overemphasised, yet the objective has to be judiciously pursued taking along the people. It is unfortunate that a purely mechanical approach has been adopted in this regard so far which has proved to be counter-productive. For example, the total ban on deforestation under the Forest Conservation Act, 1980 which affected such activities like construction of schools, dispensaries, irrigation channels, nistar tanks, discredited the administration and put a question mark on the Conservation Act itself. This indefensible situation was taken full advantage of by the vested interests. The Conservation Act thus, has neither served people nor the forestry cause.

32. The comprehensive proposals worked out by the Secretary's Committee for resolving the conflict situation were in the nature of an effort to achieve twin objective of (i) to freeze the boundaries of cultivation at 1980-level and (ii) to set in motion a process of reversal of cultivation area with people's involvement providing them an alternative economic activities. This would have served the interests of both the people and the forest. In fact, that is the spirit of the symbiotic relationship between the two. It is surprising that the scheme in its final form has been made subject to a blanket condition of compensatory afforestation even though that point was considered and not adopted in the original scheme both as a matter of principle and on practical considerations.

33. Some examples will illustrate the point made above, firstly let us taken the case of disputed claims. Since it is conceded that there are a number of disputed claims, some of which predate reservation of forests, settlement of such claims cannot be subject to any condition whatsoever including the condition of compensatory afforestation. The stipulation of compensatory afforestation in the circular concerning settlement disputed claims clearly shows that it is a not well-considered stipulation.

34. Similarly, the biggest concern on encroachment front is to win the confidence of the people and free the forests urgently from the pressure of growing demand through diversion of the people's energy to mutually beneficial activities. So long this is not done ingression cannot be checked. With the stipulation of compensatory afforestation, the proceedings of the local committee may come to naught. Both the concerned officials and the people may feel helpless vis-à-vis the system even though they may be convinced about the basic frame of resolution of the dispute and may be otherwise prepared to move forward.

35. Lastly, the condition of compensatory afforestation in the case of conversion of forest villages into revenue villages is incongruous, particularly when it is desired that the management of the converted forest villages may remain with the forest department.

(b) Reluctance to Accept Responsibility for Providing a Reasonable Alternative Economic Base for the People

36. The central point in the new scheme to end the conflict and work for a harmonious relationship between the people and the status to appreciate the tribal side who cannot but

continue to extent their cultivation within available space for making a living unless they are provided with a reasonable alternative. The stipulation of providing an alternative economic base before eviction was unequivocally incorporated in the scheme. However, with a view to avoid any wrong messages being carried, it was so worded that the instructions were clear without being provocative. Thus, the scheme envisaged - 'In case of post -1980 encroachers, - their encroachment should not be regularised. The State Govt., however, may provide alternative economic base to such persons by associating them collectively in afforestation scheme.' Thus the spirit of this stipulation is that while encroachment should not be regularised, yet the state must take steps for providing alternative economic base so that the need for continuing encroachment disappears and the area can be reclaimed for the forest. But it is unfortunate that a clause 'Immediate action should be taken to evict the encroachers' has been inserted in these instructions. It is almost the spirit of the persons and vitiates the whole scheme.

37. Similarly, a stipulation that such benefits should not extent to fresh encroachers has been added at the end of the scheme which was no where in the scheme presented to and accepted by the Govt. of India. Care has not been taken even to define the term 'fresh encroachers'. Since the scheme stipulates only two categories of encroachers - pre-1980, and post-1980, and the objective is to resolve the dispute fully without leaving any trace of discord, the stipulation about 'fresh' encroachers is meaningless and should best be ignored.

#### **(c) Evidence about Disputed Claims/ Encroachments**

38. A major point which crops up in all disputes concerning land is about the evidence acceptable to establish the fact of possession and its duration. The departmental authorities go by record which in the case of encroachments is the preliminary offence report (p.o.r.). A major cause for the people's claims not being entertained by the authorities is the inability of the tribal people to produce any evidence. In fact, in some cases even the record of earlier departments such as the pattas/ leases or census papers may not be entertained by the Forest Department.

39. If the claims of the tribal people are to be determined on the basis of the record of the forest department or, at best, record of other government departments, his claim may be as good as lost. It is the fact of possession, of law, its cultivation and actual reclamation in some cases by his ancestors, which is common knowledge in the village, which is the basis of his claim. These facts may or may not have been brought on record. The reasons for this dissonance can be many. For examples the official may not have visited the area or may have preferred not to take note of the cultivation, or may not have bothered to bring it on record and such like. They are of no concern to the tribal people. They cannot be expected to know what is here in government record. In these circumstances if the record were to be insisted, the disputes about land can never be expected to be resolved.

40. Therefore the scheme itself envisages that the claims of the tribal people shall be considered on the basis of 'documentary and such other evidence which they may

produce in their support for that purpose. While this stipulation for acceptance of all available evidence about possession of land has been incorporated in the circulars concerning disputed claims (para 2.2). The position in relation to encroachments remains unchanged. This circular concerning encroachment envisages the 'Encroachments proposed to be regularised must have taken place before 25.10.1989. This must *be* ascertained from the first offence report (p.o.r.) issued under the relevant Forest Act at that point of time (para 2.1/1/5).

41. This stipulation goes against the basic decision of the Govt. of India and knocks out the very rationale of the constitution of a joint team comprised Revenue, Forest and Tribal welfare officials for reviewing all cases of encroachments vide para 1.2 of the same circular. If p.o.r. is to be accepted at conclusion evidence what is these to review accordingly, all available evidence has to be taken into consideration by this team notwithstanding the restrictive stipulation in para 1.5, if all disputes are to be amicably resolved.

**(d) Pre-1947 Claims:**

42. As stated earlier, the distinction between disputed claims and encroachments is a major step forward. Yet, under these instructions only those claims are to be entertained which pertains to post-independence period. This is not fair. The root cause of dispute in these cases relates to the process of reservation under a law, which was enacted in the eighteenth century and continues to be in force even today. There has been no change in the formal frame with the dawn of independence. It will be desirable to remove this artificial distinction.

**(e) Continued Possession as the basis for Consideration of Claims**

43. A crucial point in the acceptance of a claim over the forest land in these circulars is the continued occupation of the land by the concerned person. This is a necessary concomitant of accepting the validity of the Indian Forest Act and processes under which the forest areas were taken over by the State. All forest areas in our country have been the abodes of some people or the other. There was no 'wilderness' whatsoever in any part of our ancient country. Therefore, the tribal people claim their ancestral abodes habitations in many forest regions. In some cases, there are extensive remains of these habitations. It may be conceded here that acceptance of such claims would knock out the very basis of all reservations done so far because every inch of forest area is claimed by some people or the other. Therefore, such old claims cannot be entertained within the existing frame.

44. However, there is another aspect of the stipulation about continued operation which deserve to be seriously considered. Continued occupation of disputed lands over a long period against the might of the state is no mean task. Only those groups who are very strong or who may be residing in very remote, difficult and inaccessible areas may have succeeded in doing so. The weaker groups even amongst the tribal people must have been pushed out from their lands, particularly as these areas got opened up. Moreover, with growing assertion by the state of its formal authority, the officials were obliged to implement the laws strictly and literally. They had no discretion to make any exception even in genuine cases. Consequently, comparatively weaker groups amongst the tribal people could not stand against this pressure and had to withdraw leaving their lands behind notwithstanding their genuine claims. The primitive communities have been the worst sufferers.

45. In the context of this situation, literal interpretation of instructions about continued occupation of land as a pre-condition for considering of people's claims over land in the forest area would be unfair. It will leave the seeds of discord behind which may grow and lead to confrontation situations again. For example, some people may have been in continued occupation of their lands for more than, say, 25 years. Their 'encroachments' may have been removed, say, a year back paying no attention even to the Govt. decision for considering such claims. And ceiling the lands of the occupants were otherwise eligible. If the above instructions are literally interpreted, such claims cannot be entertained. If a broader view is taken and the spirit of these instructions are followed, their cases must be covered and duly considered.

46. On the other extreme of the spectrum will be the cases of, say, deserted villages which were abandoned, may be, hundred years back. The people may have settled elsewhere.

Nevertheless under the growing pressure of population, they may be on the look out for more agricultural lands elsewhere. Therefore, they are prone to stake their claims to these deserted villages also. These claims in a broader sense are undoubtedly justified. But so long as the premises of the Indian Forest Act are taken as valid, such claims cannot be entertained. Otherwise the very basis of reservation of forests will be knocked out. A balanced view therefore will have to be taken of such claims. The provisions of continued occupation should not be literally applied. If a person has been depending on some land and has been dispossessed for some reason but has not so *far* acquired an alternative economic base, his claims should be considered notwithstanding the fact that he is not in continued possession. In case their occupation has been forcibly removed, he should be deemed to have remained in continued occupation of that land.

### **The Procedural Delays**

47. That above instructions were issued on 18.9.1990 with the clear objective that all disputes in the field should be resolved before the next agricultural season. It appears that in some cases instructions have not reached the district level even though more than 4 have passed. They are still under consideration at the state level itself, or in the process of transmission. In some isolated cases, like that of Adilabad in Andhra Pradesh, the local officers have taken the initiative to obtain the instructions under duly constituted committees. The results are very encouraging as many as old disputed claims are being removed.

It is hoped that the matter will be expedited before the onset of the monsoon. In case there are delays in formation of committees and proceedings the least which can be expected from the State governments is to issue instructions to local officials not to interfere with the continued occupation of land by the tribal people. In the forest areas, pending adjudication by the duly constituted committees as stipulated in these instructions.

It is also hoped that there will be no lateral interpretation of these instructions. The promise to provide alternative economic before person required to move out must be honoured. It is also hoped that the stipulations, which have been incorporated in the instructions which are not in consonance with the basic frame of the Govt. decisions, will be amended by the Govt. of India.