

NGO-ARCH

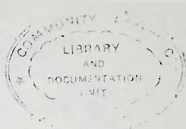
Conservation of Forests and Natural Ecosystems Act

A Critique by ARCH-VAHINI



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CW
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Background

India's crisis of forests is now a widely accepted fact. Large areas named as 'forests' are completely or largely devoid of tree cover. Soil erosion from these large denuded land areas is a common place.

Fuel wood needs of rising population of rural areas and poor of urban areas are mounting steadily. Despite all the talks and claims of alternative fuels, very little headway has been achieved and it is unrealistic to achieve. This fuel wood crisis itself is a part cause of deforestation and is getting worse, because of deforestation. Timber and wood requirements for housing and for industrial use are similarly mounting. Crisis of housing in the rural areas and the urban slums is to be seen to believe.

The Forest Department (FD) apart from the fact of being mainly responsible for the mindless clear-felling of the vast tracts of forests to earn revenues up to late seventies has compounded the crisis by its appalling management strategy and tactics. It has failed miserably to reforest the vast degraded areas, it has failed to enlist the support of local population in regenerating and preserving the forests. This failure, chiefly stems from the fact that the FD considers itself as the sole owner of the forests which is a result of a mere historical undemocratic manipulation. This frame of mind has led the FD to lay aside important sociological fact of local people living in the midst of forest areas since millennium and their legitimate rights over the forest resources - bio-mass, land, water etc. Britishers acting in an imperial manner, disregarding the established traditional rights of the residents had arbitrarily curtailed or extinguished the rights of the people. Independent India's democratically elected Governments deriving their legitimacy from the Constitution, have overlooked this violation of the democratic norms by the aliens and have in fact continued the line, principles and directives of the Constitution notwithstanding. The FD retains this non-democratic bearing, believes it to be a sovereign power and claims the authority of eminent domain and effectively treats the local residents as second class citizens. Its role is not that of protector of the environment, but that of the police over the tribal people. Its policies, attitudes and behavior are those of authoritarian tyrant. Until very recently, it has treated the forest dwellers as the adversaries to the forest, essentially hostile to the task of forest regeneration and has taken upon itself the task of preserving the forest from their 'continuous nibbling and encroachments through honey-combing'. The forest dwellers are now treated as law-breakers in their own lands, thanks to the invidious provisions of the Indian Forests Act 1927. They are continuously harassed by the petty forest officials, not to speak of high-level officials. They beat, intimidate, extort and do whatever they please. They are state within a state. Little has the FD considered where from the local people get their livelihood. Their living standard in comparison to even poverty-stricken rural areas of India is abysmal. The FD is impervious to this gross violation of civil rights and human rights. They are busy policing the forest areas, while the forests are disappearing because of the larger socio-political economic forces and the FD's inept handling.

The realization in the last decade has dawned that the forest crisis of India cannot be resolved, if at all, without willing and active participation of the local people. And this cannot be had without giving meaningful access and rights to the forest produce to the local people. The perceptiveness amongst the FD have grasped this central truth of the ecological crisis of India. Halting and half-backed attempts to enlist

the participation of local people to regenerate and preserve the forests have barely begun. This is known in the parlance of the FD as Joint Forest Management (JFM). Welcome as this first step is, it is still inadequate to meet the real economic needs of the people and is still severely handicapped by Indian Forests Act 1927 and other laws like Forest Conservation Act 1980 and Wild Life (Protection) Act 1970 and above all by the bureaucratic style of the FD. Without wider and deeper reforms in the forest management strategy – JFM, there is little chance that forest regeneration can take place, local people's social, economic and political aspirations are effectively met and country's needs of forest resources including fuel wood and timber can be met. The environmental crisis of India, rooted as it is in the forest crisis is far from resolution.

Given this background, one needs to examine the new draft forest bill titled 'Conservation of Forests and Natural Ecosystems Act'. The following characteristics stand out clearly:

1 FD remains the sole custodian of forests:

- A. **There is little in the draft to show that the central truth of the forest crisis has been grasped and assimilated. It retains its old analysis of the genesis and perpetuation of the crisis in that it seeks to treat the local dwellers as a threat to the forests. As a result, their existing rudimentary rights are sought to be curtailed even further.**

Thus the FD has been given a more decisive say in the proceedings of the Forest Settlement Officer (FSO) for declaring an area as reserved forest in Chapter 11 – Sections 3 to 28. A special provision for the appointment of Presenting Officer (PO) from the FD has been added (Section 4(3)) and the FSO is bound to take into consideration the opinion of the PO or the DFO at every stage of the proceedings (Sections 10, 11, 12 and 16), whereas no safeguards have been introduced for the examination and recognition of the rights and claims of the people. If the drafters had taken into account the ground level reality that in most of the cases in the past, the FSOs have not only not informed the people about the proposed action but have also not cared to properly examine their rights and claims they would have provided with more safeguards for the rights of the people.

In cases of claims of the local communities regarding pasturage, forest produce, right to way and waterways, people's needs are made subservient to the ecological considerations and that too on the presentation of the FD! (Sections 12, 14 and 15). Section 12, for instance, mentions that "such claims can be admitted or rejected after considering view point of the FD, and if the FSO is satisfied that such claim is within the limits of the carrying capacity of the forest or natural ecosystem, as the case may be, and conforms to the principles of sustained yield on a long term basis.....", but is silent on examining the needs of the local communities. FSO's competence to assess as complicated an issue as carrying capacity of the area is assumed to be of unrealistically high order. The result is the FD shall have arbitrary powers extended wide and far. This provision is extraordinary, it dangerous and it must be opposed.



Most importantly Section 22 A is inserted which makes all the rights and claims taken into account and granted by the FSO in above sections redundant and gives wide powers to the State Government to review and commute all such rights. It reads: '*Notwithstanding anything contained in the foregoing section, the State Government may at any time after the publication of the notification under section 20, review any or all the rights in respect of pasturage or to forest produce admitted in the notified reserved forests with regard to carrying capacity of such forests and commute those to such an extent as it may consider necessary to prevent degradation of the said reserved forest*'.

Also under Section 21 A, on the recommendation of the FD, the State Government can redefine the limits of the reserved forests in certain cases without following the procedure from Sections 4 to 19. This gives wide and unlimited power to the FD which has proven record of misuse of power.

- B. The arbitrary and unchecked powers of the forest officers have been further strengthened. The powers of the DFO have been strengthened without regard to redressal and rights of the local people. The human rights situation can only deteriorate.**

Wide and sweeping powers of seizure, confiscation and arrests without warrants have been given to the forest officers and other officers in the reserved forests violating the basic human and civic rights of the local people. Even cultivating old lands in the reserve forest area will be considered an offense under Section 26 (1) (g). A Range Forest Officer, Sub Inspector or Tehsildar can summarily evict any person and remove his house and crops who either kindles or leaves any fire burning, or cultivates land or fishes or poisons water without prejudice to any other action that may be taken against him under other provisions of this Act (Section 26 (4))! The crops and houses on forest land are also liable to confiscation by an order of DFO (Section 26(5)). Under Section 52 when there is reason to believe that a forest offense has been committed in respect of any forest produce (which now includes crops) such produce together with all the equipment, tools, ropes, chains, boats, cattle, vehicles etc. used can be seized by any forest, police or revenue officer and the authorized officer of the FD (not below the rank of DFO) can confiscate and permanently dispose of the same whether or not a prosecution is instituted for the commission of such offense and whether or not the person is found guilty by the Judicial Magistrate before whom the trial is conducted! In fact under this provision together with Section 52F(1) the Court of the Judicial Magistrate which conducts the trial for the original forest offense cannot pass any orders regarding the property seized for the same offense. Gujarat amendment of 1973 has already made similar provisions but this cannot be an argument in its favor. Moreover all offenses under this Act have been made cognizable and all forest officers, police officers or revenue officers have been given power to arrest and detain in custody without warrant any person who they think has committed or is concerned in any forest offense (Section 64) and all forest offenses for which a minimum imprisonment is prescribed have been made non-bailable and the courts are barred from granting bail unless it is satisfied that there are reasonable grounds for believing that the person is not guilty of such offense (Section 65). Under Section 78 severe penalties have been imposed for various forest offenses. Thus a person selling or bartering the forest produce which he has legally

acquired for use would have to pay a fine of up to Rs. 2000 and a person committing *any* offense under Section 26 (causing or kindling fire, cultivating land etc.) shall face three years imprisonment or a fine of up to Rs. 10000 or both and if the damage caused to the forest exceeds the value of Rs. 10,000 he will face a fine of minimum Rs. 25,000 up to Rs. 2,00,000/- and imprisonment of minimum 6 months up to 5 years!

- C. **As a corollary to this, there is no recognition of the participatory role of the people in preservation and regeneration of the forests. Not only there is no deepening and widening of the Joint Forest Management (JFM) thinking, in fact, the provisions exclude JFM from the areas where it is needed most, i.e. the reserved and protected forests.**

Thus Section 38(E) states that: *'whenever the State Government considers it expedient to involve individuals in afforestation of any land which is the property of the said Government or over which it has proprietary rights, it may, in accordance with the rules made in this behalf assign the same or part thereof to an individual; provided that no reserved or protected forest shall be assigned to any person for this purpose...'*

Thus it is amply clear that the drafters of the Bill are patently partisan, have not taken into account the important lessons learnt in last decades and have sought to gloss over the serious weaknesses and deficiencies of the FD. The drafters have shown little regard for the welfare of the local people and therefore for the welfare of the forests and for the integrity of the environment.

2. Tree-growing

One would have thought that the FD's prime concern would be to increase the tree cover and that the FD would realize that it is beyond its means and capacity to raise trees, let alone in the non-forest areas but also in the forest areas. This is, however, not so. The FD has assumed that only it can protect the trees everywhere and the people working in their own interest would only cut down the trees not only in the forest areas but in their private lands as well. Coupled with this is another untenable assumption that given right incentives, people will still not be interested in raising trees. Incredibly enough, given the disaster of existing policy of policing in the forest areas, the FD has sought to extend its police role well beyond the confines of traditional forest areas.

Thus Section 38(G) under the heading 'Prohibiting felling, cutting, damaging, destroying any class of trees in any urban or rural area' provides that *'... the State Government may, by notification in the official gazette, prohibit from the date specified in such notification, cutting, damaging, destroying, felling or removing of any class or kind of trees in any urban or rural area or part thereof...'* Then elaborate provisions for establishment of urban and rural Tree authorities and Tree officers are made. It is provided that *'from the date on which these provisions are brought into force in any urban or rural area no person shall fell trees of any specified species or cause any such trees to be felled*

in any land whether in his ownership or occupancy or otherwise... except with the previous permission of the Tree Officer'.

This is simply a recipe for disaster. Given this analysis and resultant provisions, it is difficult to believe that the FD is interested in resolving the ecological crisis of India, that it really believes in genuine involvement of the people towards the crisis resolution and that the forest management is integral to environmental protection and people's needs. These provisions are symptomatic of ivory tower mentality, if not the besieged mentality, of the mandarins of the FD and high priests of environmentalism.

3. Right to Development

The Forests Conservation Act 1980 is itself a major stumbling block to the extension of the infrastructure facilities like roads, electricity, drinking water, minor irrigation schemes etc. This draft accentuates this tendency further.

4. Primacy of the Central Government

As a culmination of the whole non learning exercise of the FD are the key provisions to effectively transfer the powers of the state to the dictates of the Central Government. This is effectively to change the subject list of the Constitution. The process initiated with the enactment of Forest Conservation Act 1980 of encroaching on the state subject has been carried much further (See Sections 3(2), 5(2), 23, 28 & 40 A (a)). This overt and covert centralization militates directly with the ideas of leaving more and more things to the people who are directly involved in the management of their resources, the crisis can only deepen. This time there will be an added dimension of massive social unrest in the tribal areas and even in rural areas.

ARCH File
For UP-RENT ACTION

Action Research in Community Health & Development

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11 January, 1995

The Forest Department (FD) and the J. K. Group's Central Pulp Mill (CPM) of Songadh have now started adopting ugly means to crush the tribal movement against the Shoolpaneshwar Wildlife Sanctuary in Dediapada, Bharuch.

Disregarding the protest of the local tribals and the Wild Life (Protection) Act the FD has once again issued orders allowing the powerful mill to cut away thousands of tonnes of bamboos from the sanctuary area. While doing this it has not even bothered to acknowledge the questions raised by the local tribals: "how can it allow such bamboo cutting in the sanctuary area when the basic rights of the local tribals are taken away, what about preserving bio-diversity and if all such activities are to be allowed why continue the facade of the 'sanctuary'?" The tribals organisation had decided to stage peaceful protest against these activities until these questions are satisfactorily answered by the FD. In stead of resolving the issue, the FD and the CPM decided in collusion to use ugly muscle power to break the peaceful protest.

On January 7 1995 they brought outside labourers with police force to start bamboo cutting in village Dabka, where the local villagers had resisted this work. High level Forest officers moved around in the villages threatening the people of dire consequences. Two forest officers and some guards were specially stationed at Motisingloti check point to prevent Ms. Trupti Parekh of Arch-Vahini from entering the sanctuary area. This officer stopped her vehicle and told her that he had specific instructions of not allowing her to go inside the sanctuary. This, despite the claims of the FD that no restrictions on peoples movements are being enforced in the sanctuary area. After she declared a firm resolve to start Satyagrah there and then, She was finally allowed to go in after heated arguments for about an hour. But a much uglier show was waiting for her at Junn Mozda.

There, the FD and the CPM had kept ready about 50 to 60 persons in a fully drunken state. These persons were the watchmen and the leaders of the forest committees of the FD. They were brought there from different villages in the tempos hired by the CPM and were provided about two gallons of free liquor. In fully drunken state they stopped Trupti and started abusing her. The same persons had earlier gheroed and roughed up two leaders of Sankli. They threatened Trupti of breaking her legs if she dared to come back in the area and did not allow her to go inside. She tried to persuade them but to no avail as they were all in a highly drunken state. In the evening the tempos that were waiting there took them back to their villages.

Next day, on 8th January these persons were again assembled to prevent Trupti from going inside. But this time about 500 men and women from organisation had also decided to assemble to see how Trupti was prevented from visiting their villages. On seeing this development the hired hoodlums of the FD and the CPM went away. Trupti had a long meeting with the people and resolved that they would not be browbeaten by such dubious tactics. They also accepted that despite these provocations from the FD and the CPM, they would not give up the path of peaceful resistance. In the evening, Trupti's vehicle was again stopped on the way by the hoodlums when she was going back from the meeting. She was again abused and told that she should give a written commitment that she would never come back in the area and only then they would allow her to go. She told them that there was no question of giving such commitment and it was fine if they did not allow her to go, she would willingly go to their villages and stay with them. On hearing this they finally allowed her to go after two hours. A few stones were also pelted during this heckle.

By adopting such repulsive means against the peaceful movement of the tribals the FD and the CPM have only shown their true colours. This will only further strengthen the people's resolve to continue their fight against the arbitrary and partisan imposition of the sanctuary laws on them, curtailing their basic human rights.

We request you to do whatever you can against these tactics of the FD and CPM and continue your support to this struggle.

Thanking You,

Sincerely,


Ambrish Mehta.

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20/1/95

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The Struggle in Dediapada Continues: The FD unmasked.

Seemingly sleepy villages of the Surpaneshwar Sanctuary, Dediapada, Gujarat are going through a rapid but peaceful transformation.

When the struggle began seven years ago, the situation was heavily loaded against the tribals. The Forest Department's (FD) rule was total and unchallenged. As usual in all tribal areas, the struggle began for the rights on forest land. The tribals were being evicted ruthlessly from the forest land they were cultivating for years. The fearful tribals had no other choice but to take on powerful FD. ARCH-Vahini's assistance in this uneven struggle was sought. After initial hesitation ARCH-Vahini decided to join the battle. Earlier we had obtained a very useful experience and knowledge in the tangled issue of tribals' rights on forest land. In 1984-85 because of the timely intervention of the then Chief Justice of Gujarat High Court Mr. Potti we had succeeded in preventing arbitrary eviction of hundreds of tribals in the tehsils of Rajpipla, Naswadi and Chhota-Udepur. Then to our best knowledge, the FD had for the first time come up with the startling argument that the tribal interests and the interests of the forest preservation and the environment were antithetical. The commission appointed by Mr. Potti had virtually endorsed the argument in its report. Almost single-handedly, we endeavoured to refute this pernicious thesis. Mr. Potti ruled that whereas environmental interests were vital, they need not be and cannot be achieved by evicting tribals without providing decent means of livelihood. Experience gained was usefully employed in Dediapada and the first wave of evictions was halted through fresh public interest petitions in the Gujarat High Court.

The FD apparently decided to teach a lesson to the tribals for having dared to organize and pose such a challenge. A wave of beating, intimidation, midnight raids, extortions and arbitrary evictions defying High Court's interim injunctions followed. The senior workers of ARCH-Vahini were threatened with physical violence. A spate of litigations, counter-litigations ensued.

The FD declared the area of about 61,000 hectares as sanctuary without as much informing the tribals. The Surpaneshwar Sanctuary was created in lieu of 11,000 hectares of forest land going under submergence in the Sardar Sarovar Project. This decision is full of anomalies and absurdities. The submerging forest land has lost its tree cover long before the project began. There is no wild life left. There is no prima facie case, therefore, to create wild life sanctuary to compensate for the imaginary wild life. This has been amply supported by the M.S. University study. Moreover Surpaneshwar Sanctuary has no connection with the submergence zone. The forests in the sanctuary area are good. There is no logic why for the loss of degraded areas a good quality forest be converted into Sanctuary endangering the livelihood and civil rights of 40,000 tribals. Challenged before the Gujarat High Court, the FD has yet to come up with credible rationale. There is little doubt that the FD is out to seek the applause of rich, powerful and urban based lobby of national and international environmentalists. The tribal interests could be easily undermined without any protest, the FD must have reckoned.

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The tribals fixing their attention on the forest land, trying to tenaciously cling to the land they were cultivating were slow at first to grasp the meaning of sanctuary and the danger of Wild Life (Protection) Act hanging over their heads. The FD proceeded methodically to extinguish their rights on the forest land as well as on other traditional rights on forest and their civil rights.

Two large rallies, one in 1989 and another in 1993 were organized to demand rights over land, forest wealth, for de-notification of the Sanctuary and to restore their civil rights. These seemed to provoke the FD even more, and more repressive measures followed. Scores of false cases including a serious criminal case of robbery were levelled against a senior woman member of ARCH-Vahini and the other workers of the Organization.

The decisive moment of awareness came this August-September in the wake of series of meetings to protest against the false cases and to discuss the actions of the FD in the name of Sanctuary. In a collective flash of insight as it were everyone saw clearly that whereas their elementary rights of grazing, cultivating traditionally owned forest lands and their right to have good roads were being trampled upon in the name of sanctuary and the Wild Life Act, the same Department was allowing a paper mill situated down in south Gujarat to cut away thousands of tons of green bamboos without any consideration of wild life, forests or bio-diversity. The meetings noticed the decimation and degeneration of bamboo-stock which could only threaten their future. In the 7th November, 1994 meeting a decision was taken that it was time to halt this charade of sanctuary. It was decided that no more bamboos will be allowed to be taken away without the approval and knowledge of the people. It was also decided that the ugly game of sanctuary should be stopped immediately.

Soon after, the village Sankli organized a 24 hour vigilance to block the transport of the bamboos. The peaceful blockade has lasted for more than 1 month. The Forest Department was duly informed about decision. It has simply disappeared from the scene. The paper mill management tried all techniques to lift the blockade including threats of filing false criminal complaints and using police force. Undeterred, the tribal men and women have quietly decided to carry on. A midnight attempt to stealthily take away a truckload of bamboos was foiled by the determined people on the night of 11th December. To the simple question of the tribals as to whether this indeed is a sanctuary or not, the FD has adopted an evasive tactics. Their aim is to ignore the protest, exhaust the tribals who are weathering cold wave, and to hope that they will simply disappear without outside world knowing about it.

Finally the FD has revealed to some discreet enquiries that the papermill under the agreement with the Gujarat Government in 1988 has a right to bamboos. The state Government declared to make the sanctuary in three phases- from 1982 to 1987, and entered into agreement with the papermill in 1988 without as much as a fear of contradiction. Such a cynical use of power, such a cynical view of tribal wellbeing and such a cynical view of biodiversity!

In another parallel spontaneous move, a few interior villages Vandri, Mathasar, Kanji, Dundakhal decided to construct 15 km. long road on their own which the district authority was refusing on the spacious ground that this was a Sanctuary area! More than 500 men and women did labor on their own without wages for 25 days to

construct this road. The villagers want the state transport buses to go up to their villages and the hand-pump rigs to reach their falias so that their drinking water problem may be solved.

The villagers of Vandri and Mathasar found out a few weeks ago that a handful of persons in a next village Mokhadi - a dam site submergence village- of the Sardar Sarovar Project have been illegally cutting hundreds of trees with great impunity and without fear of law in the sanctuary area. The villagers of Vandri and Mathasar decided to oppose this illegal felling. The FD was informed about this 2 weeks ago with a request that such cutting and destruction of forest be stopped. Nothing happened. Several more requests by ARCH were made to the FD, others were informed, but no action followed. The inaction of the FD, known for its ruthless action in a situation much less serious than this, was conspicuous. The gang of wood cutters apparently well connected were boastful of their high connections and the money they could spend. Confident of their powerful political and financial backers, the handful of them have been threatening the whole village. Some of the villagers have been hitlisted and given serious warnings including loss of life. Many persons were beaten up. Their claim that they are above law sound quite credible to fearful villagers who are also fearful that if the distruction of the forest of their villages is not stopped, what will be left for them in future? Cought in this double fear and completely stunned by the FD's inaction, they are still determined that they will not allow such destruction of forest wealth on which their future rests.

In other two villages of Pankhala and Shisha, villagers disallowed the FD to set up a nursery in which they are traditionally employed as laborers. They declared that they will make their own nurseries and plant trees and look after them so that they get all the benefits in the future.

Further down in village Patavli the villagers found out that 'environment conscious' FD has marked out four large coups with thousands of trees to be felled. Large proportion of these trees are immature. The villagers have set up a committee which will guard the forest and prevent such massive felling. They fear that their future is in danger.

In this whole area, the people have woken up to the fact that forest department says one thing and does another thing. They have also clearly grasped that they have real stake in the forest wealth, which can never be realized as long as the Sanctuary stays, as Joint Forest Management, which would permit sharing of forest wealth with the local communities, is not permitted in the Sanctuary areas. They can not be a mute witness to such cynical game plans of the forest department. It is incredible but true that the FD thought that they would not be challenged in their double-speak. The tribals are now determined that the FD's game must be exposed, the sanctuary must be denotified and the legitimacy of their rights over the forest wealth including timber, land, bamboos, fruits, seeds etc. must be recognized. The struggle for land has rapidly and peacefully widened into the struggle for their development based on their rights on the forest wealth. The FD has been unmasked.

December 15, 1994

Dediapada.

ARCI, Mangrol.

Date:31/8/'86

Dear Dhruv,

This is not an attempt to give you full details of the Sevagram meeting on Bhopal study. In the 27th morning session, among other thing, ICMR report was discussed. I outlined the major methodological flaws of the report. I argued that ICMR report could be destroyed in the court by the Union Carbide Lawyers. There was therefore an urgent necessity to undertake a new comprehensive and methodologically more rigorous epidemiological study.

In the post-noon session, however, Rave Hazari of Lawyers' Collective pointed out that the LC which was going to file a suit in the court on behalf of gas victims needed well-documented dossiers of about 100 determined and committed gas victims. These dossiers will contain the information on the extent of economic and health damages, on the basis of claims of compensation and damages will be made. He said that before he came to Sevagram Meet, the LC had a meeting in which this decision was arrived at. He was sent to Sevagram meet precisely to find out whether the activists based in Bhopal would be able to identify 100 or less such households and compile a solid documentation of each of them. He said that the law of Evidence in India does not require an epidemiological evidence (the way it was discussed in the meeting) to establish cause-effect nexus. A huge discussion on this ensued. Swaroop Sarkar from West Bengal, his friends and others contested Ravi's claim vigorously. Their argument was that cause-effect relationship between MIC gas (or mixture of toxic gases) and morbidity was not established so far. Therefore mere statements of victims that they were exposed to gas on 3rd December, 1984 and that they were suffering from certain disabilities and symptoms would not be accepted as the latter being caused by the former. The lawyer was firm and said that the way the law of Evidence in

Indian courts worked, a mere averment that plaintiffs were present in the localities where toxic gases reached on the 3rd December night and that they were suffering now and that they had sustained economic losses is enough. In this connection, a case of Thalidomide babies was discussed at length. According to Ravi, all the women who had malformed babies (not only typically deformed ones) and who could prove that they had consumed Thalidomide when pregnant were awarded damages. There was no need to furnish epidemiological evidence that all these manifestations were caused by (associated with) ingestion of Thalidomide. Ravi in later part of the discussion also said that according to him (and LC) there was no clarity as to whether epidemiological evidence would be needed, could be used and if so in what way. The crux of the matter was that legal evidence and epidemiological evidence were two different things and as the matter stood there was no definite and established way in which epidemiological evidence could be furnished to bolster legal evidence. Moreover, a mere averment would be enough. Thereafter, I took a stand which was supported by you that we had to accept Ravi Hazari's assessment of the legal situation in India and his judgement regarding the value and place of epidemiological evidence. There were quite a few misgivings about Ravi Hazari's assessment, but nobody amongst present had legal knowledge, background and experience to counter Ravi's position which according to him, had a full backing of LC. A direct consequence of this was that under present circumstances since the legal value of epidemiological evidence was not clearly established, MFC as a group could not participate in an epidemiological study. I made it repeatedly clear to the meeting (this was necessary because unintended and unflattering meanings were being attached to MFC and me by one or two participants) that the MFC after a long debate at Delhi Rajhara had decided to actively support

the study only and if only the epidemiological
the study was going to be of direct use in legal case.

The discussion that took place after this decision is of interest, but since it has no relation to MEC's stand, I am not expanding on it.

After we returned to Mangrol, in the 2nd week of August I received a letter from Anil Sadgopal who unfortunately could not remain present at Sevagram meet that although LC had taken this stand re epidemiological evidence he was of the opinion that a kind of epidemiological evidence would be needed in the courts.

In the last couple of months I have come across a few very interesting and relevant articles which precisely deal with these problems. (legal evidence-epidemiological evidence in the courts of law). Since, however these pertain to the situation in the U.S., its relevance and application to Indian situation is not clear to us. Our group vaguely feels that in all probability the LCs position requires modification which in any case Ravi Hazari has accepted in principle. The real question is in view of Judge Keenan's judgement which sets same condition on UC as well as on COI, what kind of epidemiological evidence is/will be needed (if and when) and what sort of study design will be needed.

In this connection I met clearance Dias, an Indian lawyer who is based in New York and whose group is taking keen interest in Bhopal. He seemed to share our group's perception and suggested that a meeting between interested and concerned lawyers, epidemiologists and activists of India & U.S. should be held where the whole range of issues at the interface of law and epidemiologes in U.S. and India on the one hand and the interface between the legal situation in the U.S. & India on the other hand must be

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thrashed out thoroughly. Only after this has happened we will clearly have an idea of the place of epidemiological evidence and the manner of compiling this evidence and the manner of compiling this evidence in Bhopal case. He is going to meet Daxa in New York to initiate the process. He was asking for the presence of permanent group of Bhopal) India who will continue to follow the problem.

This is all for the moment. We await your reactions.

With regards & love,

Yours sincerely,

(Anil Patel)

f.s :

18/12/86

This was in August '86. Thereafter there have been developments. I am not going to bore you with long details but as a result of these dialogues I am going to prepare a note on the Problem of Epidemiological study in Bhopal. Full fledge study is a very distant proposition if at all.

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THE 14TH MAY, 1988 VADGAM CONVENTION
BEFORE AND AFTER

(1) BACKGROUND:

On 27th December, 1987, the Chief Minister of Gujarat, Mr. Amarsinh Chowdhari travelled more than 250 Kms from the capital city of Gujarat to the Sardar Sarovar (Narmada) Project (SSP) head-quarter Kevadia Colony to address a specially convened meeting of Gujarat oustees of SSP. He came specially to announce the new Rehabilitation and Resettlement (R and R) policy for the Gujarat oustees. We had received official copies of the new Government Resolutions (GRs) - the December, 1987 GRs only two days before. After reading these GRs carefully, we realised that these were the very policies for which we were fighting for years. Seemingly, an incessant and nerve-wrecking phase of the struggle of the oustees for better and acceptable Rehabilitation and Resettlement policy was coming to an end. Even we were not prepared for such a dramatic end to the struggle for the new Rehabilitation and Resettlement policy. We were, in fact, preparing ourselves for the long, drawn-out battle for the rights of the encroacher oustees. We publically endorsed the policy. We knew it very well, however, that the Government of Gujarat had not announced this policy because of the genuine concern and sympathy for the welfare of the tribal oustees. Throughout the 8 years old struggle, we had come across several turns and twists given by the Government of Gujarat (GOG) to the Rehabilitation and Resettlement policy which were all designed to undermine and hurt the vital interests of the oustees. We had to fight each of

such turns and twists, tooth and nail. The fact of the matter is that because of our organised struggle and other powerful forces coming to the rescue of the SSP oustees (a brief summary of this struggle and other aspects of Rehabilitation and Resettlement policy has been documented by us in a draft form and circulated to some. A final story will soon be ready for circulation), the Government of Gujarat was forced to concede the new Rehabilitation and Resettlement policy. The new Rehabilitation and Resettlement policy has emerged after a long dual of words, phrases, hard arguments and hard bargaining. So many concerned people have put in their heads to obtain clear wordings of the GRs. The Government of Gujarat may not be any good in properly rehabilitating the oustees, but it is a past master at indulging in word-game of ambiguities and double-meanings. All the supporters of the SSP oustees learned this crucial lesson hard way, and made sure that the Government of Gujarat did not play such unfair game of words in formulating the GRs. We were all satisfied with the GRs in this regard barring a few exceptions about which clarifications were sought and obtained further clarifications asked for.

But we knew very well that there was still a huge task ahead of getting this policy correctly translated in actual practice. We did not believe that there was a change of heart of the Government of Gujarat. What we did believe, however, was that we will not have to fight as bitterly and dodgedly as we had to fight to obtain the new and clearly-worded Rehabilitation and Resettlement policy. What we really expected was petty hindrances and obtuseness at the lower level of rehabilitation machinery. Many friends cautioned us against going too far in co-operating with the Government. Many critics criticised us for naively believing that the new Rehabilitation and Resettlement policy was equivalent to an acceptable and implemented Rehabilitation and Resettlement. The points were well taken.

For the next three months, we did our best to co-operate with the Rehabilitation Office at Kevadia Colony. Inevitably and predictably the Kevadia Office took very cautions and conservative view. So we made two trips to Gandhinagar to meet the highest officers concerned of Narmada Development Department (NDD) to clarify and to facilitate the rehabilitation process. Several letters were exchanged between us in a cordial manner. However, at the heart of the rehabilitation process, there was something disturbing and disquietening. The Deputy Collector, Mr. J.M. Patel, in-charge of the rehabilitation was continuously and consistently dodging the heart of the Rehabilitation and Resettlement policy. He was refusing to prepare cases to obtain the land on the basis of minimum 5 acres per family. He was prepared to give land only to those who had compensation money deposited in their Bank accounts and, this too, to the extent that could be bought from the compensation money. His tactics was that of evasion. We pursued and pursued. Finally, on 4th April, 1988, he was pinned down. He admitted that he was prepared to give land only to the land-holdings and not to the families. He further said that if we wanted further clarifications on the policy, we should meet the Additional Collector, Rehabilitation Mr. Joshipura. On 6th April, 1988 this we did. He bluntly told us that he concurred with Mr. Patel and proceeded to point out from the relevant GR of 1.11.85 that since land was being acquired of the land-holding, only land-holdings were entitled to minimum 5 acres of land and not all the families (major sons - married or unmarried). This was a bomb-shell. The Government was again at it. It was clear to us that the Government was trying to wipe out all the crucial gains we had obtained through such grotesque and absurd misinterpretation. The old anti-tribal policy was back again. On 8th April, 1988, we sent long letters complaining bitterly of such somersault to Mr. Krishnamurthy,

Secretary, Rehabilitation, NDD and Mr.P.A.Raj, Additional Chief Secretary, NDD. We also issued a press note on the same day explaining what the Government had done and what we intended to do. Mr.Joshiyura had told us on 6th April that he was aware that we were persistently demanding minimum 5 acres of land per family and that he had written to Gandhinagar about 'our interpretation' of the GRs and that he was awaiting further instructions. There was neither any reply, nor any reaction from Gandhinagar. On 24th April, 1988, leaders of all the villages met at Kevadia Colony. A decision to fight back was taken. Both Gujarati and English Press carried this news. Two programmes were decided:

- (a) Patrika Rally:- The Government of Gujarat has brought out a coloured booklet in Gujarati and English for the information of Gujarat oustees. It summarises all the December, 1987 GRs together with 1.11.1985 GR. However, at the end of the booklet in the last para, it is stated that no oustee can make any claim on the basis of this booklet. Sharp oustees had themselves noticed these paragraph. They saw it for what it was-a fraud. A suggestion came from one of the enraged oustees himself to send this booklet back to Mr.Amarsinh Chowdhari after drawing an arrow from the mouth of the photograph of Mr.Chowdhari which was printed on the front page to the last, damaging paragraph. This was instantly named as patrika rally. We now believe that the CM received such hundreds of Patrikas by post. Such thing has never happened before. A mail campaign to the highest authority in Gujarat by illiterate tribals is a novel innovation of this struggle. So effective was the campaign, that Mr.Chowdhari publicly reacted to it four days after the convention. That day, the oustees' struggle attained a new height.

- (b) Decision to call a Convention of Gujarat Oustees on May 14, 1988:- Those who were present at the meeting of April 24 knew it fully well that we were in the middle of the hottest month of the year. The coming month was going to be even hotter. But this did not deter anyone. The tempers were running high and a determination to fight out this distortion of the policy was equally high. The choice fell upon 14th May, because we knew that on 15th May the Narmada Control Authority (NCA) was meeting at Kevadia Colony to discuss Rehabilitation and Resettlement issues of Maharashtra and Madhya Pradesh. And on 25th May the World Bank Mission was arriving. A Press-note was immediately released which soon appeared in the Press. We heard nothing from the Government. There was no apparent response from the Government to the problems raised by us.

A curious and intriguing development was taking place in Kevadia Colony and in the submerging villages. Mr. Sanat Mehta, the newly appointed Chairman of Narmada Development Corporation (NDC) came to Kevadia Colony in a Shibir organised by an organisation called "Shramik Vikas Sansthan", a registered trust. It is interesting to note that Mr. Sanat Mehta is very closely associated with this organisation. Sometimes in the last quarter of 1987, the Government of Gujarat issued a special GR recognising this organisation as an NGO to help the Government of Gujarat carry out Rehabilitation and Resettlement of Narmada oustees, because the Government rehabilitation machinery would prove to be inadequate to the task. This, to say the least, was strange. This Baroda-based organisation had never set foot in this area before. Nobody in the area knew about this organisation. And yet, it was not only accorded official recognition by the Government of Gujarat, but even given a sizable amount of grant to carry out the programme of Rehabilitation

and Resettlement. Mr. Sanat Mehta spoke to the participants, nearly 3 weeks after the Additional Collector had announced his destructive interpretation, after the issue had made an appearance in the Press and the top-most officers were officially informed by us. He spoke at length, but studiously skirted the heart of the issue i.e. minimum 5 acres of land per oustee family. Instead he made grandiose promises to the oustees that in 10 years time when the dam is built Kevadia Colony will be a ghost town, we will resettle you in this town, the Government will set up new industry in the area, all the adult persons will be absorbed by this industry. Grand vision, indeed ! Incredible it might appear, but it is a fact that he spoke in this manner, the December 1987 GRs, the specific terms of the Agreement with the World Bank notwithstanding. The oustees immediately saw through the game, promptly challenged him and protested strongly. This was not an end. In a subsequent series of village level shibirs organised by "Shramik Vikas Sansthan" and attended by the responsible officers, variations of the same strange and disturbing theme were repeated. In Limdi - Navagam, the organisers said : 'let's not talk about 'family', but talk about 'farmer'.' To the alarmed and alert oustee-ears, it seemed suspiciously close to the Government's latest stand of land to the land-holding only. In another shibir at village Katkhadi, the Deputy Collector, Rehabilitation frightened the oustees by his rehe-torical question : 'why do you want land ? why don't you start lari-galla ?'

On the other hand, the Rehabilitation Office at Kevadia Colony grew bolder and bolder as days passed by. At first in whisper and then loudly, the officers at Rehabilitation Office started intimidating the oustees that there was no way the oustees were going to get 5 acres per family, that they had better accepted whatever they could buy from the compensation. There were open criticisms of Vahini. There

were open attempts to divide the oustees and to drive a wedge between oustees and Vahini. Some oustees in Vadgam buckled under the barrage of such pressure. Panic, fright, anxiety and anger gripped the oustee villages. The scene was set for the 14th May Convention of Vadgam. Women and men, young and old, came to Vadgam in a large number from all the oustee villages, barring a few. The burning sun did not deter them. The atmosphere was charged, feelings were running high. At 11 a.m. sharp, the convention began.

(2) THE CONVENTION:

About 1500 oustees gathered together to register their loud protest against the Government of Gujarat's heartless policies. To stand in solidarity with the oustees of Narmada, braving the heat wave of May came friends and supporters from all over Gujarat. Ramesh Desai, Kirit Panwala, Lanci Lobo, Amit Mitra from Surat, Meera Desai and Rajesh Mehta from Sewa Rural, Jhaghadia, Swati, Michall and Anand from 'Prayas' Mangrol, Raju Purohit, Fr. Joseph, Dilip Pandya, Jayantibhai Gandhi from Rajpipla, Indubhai Shelat, Prof. Bandukwala and from the Press Shailesh Pandya PTI and TOI, Kirit Bhatt Loksatta and IE, Praful Hirwani - Gujarat Samachar and Sukhdev Patel, Madhusudan Mistry, Indu Jani, Harshad Desai from Ahmedabad. A rather pleasant surprise was in store for us. The representatives from MP oustees who had come to Kevadia Colony to present their case to the NCA also came to the Convention to express their solidarity with the oustees of Gujarat and to bless the Convention.

Continuing the tradition we had set in the March 1984 Convention, the Convention did away with all the formalities. Nobody chaired the Convention, there was no Chief Guest and there was no inauguration. About 30 representatives of different villages, including women spoke vividly

and precisely about the problems they were facing. A strong call to maintain unity of the organisation to get what is due to them was given. This was endorsed lustily and greeted with loud cheers. If there was any calculation of the Government or of a section of it that the oustees could be isolated, divided and brow-beaten into meek submission, it was set at naught. The call of the unity of the organisation given by the Convention was loud and clear. Enthusiasm filled the atmosphere. The friends and supporters of the organisation also spoke, backing to the hilt the demands of the Convention, criticising the Government for its reactionary policy, offering an unconditional support to the cause of the oustees and urging the oustees to remember that they were not alone in their fight and that they should maintain the unity at any cost. The Convention passed unanimously a set of 7 Resolutions (based on a note entitled 'Sardar Sarovar Ousteas : Struggle Continues'). An announcement was made unanimously that if Rehabilitation and Resettlement of not only oustees of Gujarat but also those of Maharashtra and Madhya Pradesh was sought to be down-graded or diluted by the State Governments, the oustees of Gujarat will not tolerate this transgression. They shall fight shoulder to shoulder with their brothers and sisters of Maharashtra and Madhya Pradesh. They will not allow dam to be built, if there was not going to be Rehabilitation and Resettlement acceptable to the oustees. The final slogan of the Convention 'if no Rehabilitation and Resettlement, no dam', rent the air.

(3) AFTER THE CONVENTION:

On 15th May morning, all the newspapers in Gujarat both Gujarati and English carried the message of Convention - 'no dam, if no rehabilitation' on their first pages.

At Kevadia Colony, had gathered all the top brass of the NDC. They were also stunned into silence. One of the major purposes of the Convention was served. The mighty help of the Press helped deliver a shock treatment to the Government of Gujarat.

In the morning hours of 15th May, we managed to meet the NCA. The Chairman of the NCA avoided to listen to our complaints against the Government of Gujarat. The NCA went beyond. The Chairman categorically asserted that the NCA's duty and responsibility was limited to the Award given by NWDI. If Gujarat Government was found guilty of violating NWDI Award, the NCA will listen to the complaint, and no more. The corollary of this was that if the Government of Gujarat defaulted seriously on providing land to the encroacher oustees or landless oustees according to relevant December'87 GRs, then the NCA was helpless, because the NWDI Award does not even mention the encroacher and landless oustees. This was shocking. Earlier on, in a heated debate with the representatives of Madhya Pradesh and Maharashtra oustees, the NCA had said the same thing and had even enlarged this theme by saying that they could not and will not force the Maharashtra and Madhya Pradesh Governments to extend the same or similar benefits to the encroacher and landless oustees as given by the Government of Gujarat. These benefits are in fact, based on the LA with the World Bank which is binding to all the State Governments and the Central Government. This is strange. We understand that it is NCA's legal responsibility and duty to see that Rehabilitation and Resettlement according to LA is carried out properly in all the States. The NCA cannot abandon its responsibility in this manner.

Soon after the meeting with NCA, the leaders of all the villages of Gujarat who had come to the meeting with the NCA met together. The news coverage was discussed. Its

implications were noted, and the future line of action was worked out. We explained to the leaders how little we could expect from the NCA, since the NCA seemed to take a shelter behind the technicalities and legalities. We also explained as to how fictitious in reality this cover was. We decided to take time to explore the possibilities of pressurizing the NCA. The meeting decided that Mr. Sanat Mehta, whose meeting was organised on 19th May will be boycotted by the oustee villages. The meeting also decided that the oustees will now stage a series of Satyagrahas before the Rehabilitation Office at Kevadia Colony to seek immediate relief and redressal of the grievances which have remained neglected and ignored for a long time by the Rehabilitation Office and which were included in the Resolutions passed by the Convention. First such Satyagrah will be launched on 23rd May, 1988.

Thereafter, we had a meeting with the representatives of Maharashtra and Madhya Pradesh oustees. We agreed that we should not allow the Governments and the NCA to divide us and treat us separately. The issue of Rehabilitation and Resettlement of SSP oustees concerns all the oustees. An understanding was reached that if any of the States defaulted in carrying out the right and just Rehabilitation and Resettlement policy, all the oustees will fight together, and the work on dam will not be allowed to go ahead. A joint letter signed by all the representatives was immediately delivered by hand to the NCA stating that henceforth NCA should invite all the States simultaneously and not separately as has been the practice so far.

That afternoon in Kevadia Colony, we managed to obtain a reliable information that a massive show of organised strength of the Gujarat oustees in the Convention of 14th May and a wide-spread publicity it has received has shattered the authorities. Never before during the

course of our struggle, the oustees had threatened to stop the dam. Never before the oustees had secured so many vital rights legally. And the Supervisory Mission of the World Bank was imminent. These were all the factors that went against the Government's calculations (or gamble ?). The whole thing had back-fired and back-fired badly. We believe that this miscalculation or gamble had taken place at the highest policy-making level.

All of us waited with a baited breath for 4 days. On 19th May, all the newspapers carried the story prominently that the CM, at a public meeting, made an announcement that each of the oustee families will get minimum 5 acres of land as demanded by the oustees at the Vadgam Convention. He acknowledged that he had received many Patrikas from the oustees. At last, the Patrika Rally had succeeded, the arrows had hit him. He went further and ascribed the bunglings, the Government had made, to some over cautious Government Officers only. He also publically chided us for not taking the matter to him and instead for organising convention of the oustees. Mr. Sanat Mehta, who spoke after him, repeated what the CM had said. Obviously, on both of these counts, he is patently wrong. As we have described in detail above, the evidence is exceptionally strong to show that this was not and could not be a decision taken by a middle-level bureaucrat. More than a month before the Convention took place, the top officers and, one presumes, the CM had the information about the happenings at Kevadia Colony, our letters of 8th April, 1988 and the Press release had seen to it. Besides, the Deputy Collector and even the Additional Collector could not have touched the heart of the Rehabilitation and Resettlement policy in as cavalier a manner as they did. They knew that Rehabilitation and Resettlement of SSP was too volatile and controversial an issue to tamper with single-handedly. Indeed,

Mr. Joshipura, the Additional Collector, who was the target of the adverse press publicity admitted that he was made a scapegoat. Obviously, the CM was trying to pass a buck, which he could not do without admitting that Gandhinagar had lost control on the lower level bureauracy. His was a belated and flabby attempt. He must have known that no one would buy it.

(4) WHAT NOW ?

The way the Government of Gujarat tampers so thoughtlessly and even heartlessly with the Rehabilitation and Resettlement policy and when the oustees rose in a great defiance, the way the Government of Gujarat seemed to yield, trying to make someone scape-goat, chiding others and shifting the buck, it appears that there is still no respite for us. The Government, unaccountable as it has grown accustomed to, will learn no lesson and we can rely upon it to repeat the performance. But the struggle has definitely moved a step further. It is impossible now to reverse the advances made by the oustees. More than ever before, the Government is vulnerable. The oustees are so awakened and so alive to their hard-won rights and so well organised, that it will be nearly impossible to over-ride them, unless, of course, they are ruthlessly suppressed. They have clearly grasped the alternative available to them i.e. if no Rehabilitation and Resettlement, no dam.

