CHAPTER – 4

POLICY MEASURES: EXISTING FOREST POLICIES, ACTS AND RULES
## CHAPTER - 4: POLICY MEASURES: EXISTING FOREST POLICIES, ACTS AND RULES

### CONTENTS

<table>
<thead>
<tr>
<th>Policy measures: Existing Forest Policies, Acts and Rules</th>
<th>64</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. 1 National &amp; State Forest Policies</td>
<td>65</td>
</tr>
<tr>
<td>4.1.1 National Forest Policies</td>
<td>65</td>
</tr>
<tr>
<td>4.1.1.1 Forestry during the British Rule</td>
<td>65</td>
</tr>
<tr>
<td>4.1.1.2 Forest Policy of 1894</td>
<td>66</td>
</tr>
<tr>
<td>4.1.1.3 The National Forest Policy of 1952</td>
<td>67</td>
</tr>
<tr>
<td>4.1.1.4 National Forest Policy 1988</td>
<td>72</td>
</tr>
<tr>
<td>4.1.2 State Forest Policies</td>
<td>75</td>
</tr>
<tr>
<td>4.1.2.1 State Forest Policy-1987</td>
<td>75</td>
</tr>
<tr>
<td>4.1.2.2 State Forest Policy 1998</td>
<td>76</td>
</tr>
<tr>
<td>4.2 Regulations on tree cultivation on non forest lands in Kerala</td>
<td>78</td>
</tr>
<tr>
<td>4.2.1 Kuthakappattom Rules 1947</td>
<td>80</td>
</tr>
<tr>
<td>4.2.2 Rules for the assignment of Govt. lands for rubber cultivation, 1960</td>
<td>80</td>
</tr>
<tr>
<td>4.2.3 The Kerala Govt. Land Assignment Act, 1960</td>
<td>81</td>
</tr>
<tr>
<td>4.2.4 The Kerala Land Assignment Rules, 1964</td>
<td>82</td>
</tr>
<tr>
<td>4.2.5 Rules for Lease of Govt. lands for Cardamom cultivation, 1961</td>
<td>83</td>
</tr>
<tr>
<td>4.2.6 Kerala Land Reforms Act, 1963</td>
<td>84</td>
</tr>
<tr>
<td>4.2.7 Rules for the assignment of Government lands for settlement of agricultural labourers</td>
<td>84</td>
</tr>
<tr>
<td>4.2.8 The Kerala Land utilization order 1967</td>
<td>85</td>
</tr>
<tr>
<td>4.2.9 High Range Colonization Scheme Rules, 1968.</td>
<td>86</td>
</tr>
<tr>
<td>4.2.10 Wynad colonization scheme Rules, 1969</td>
<td>86</td>
</tr>
<tr>
<td>4.2.11 Kerala Land Assignment (Regularization of occupations of Forest Lands Prior to 1.1.1977) Special Rules, 1993</td>
<td>87</td>
</tr>
<tr>
<td>4.2.12 Settlement Scheme Patta Rules, 1970</td>
<td>87</td>
</tr>
<tr>
<td>4.2.13 Rules for the assignment on Registry of Government lands included in the co-operative colonization scheme and the ex-servicemen co-operative colonization scheme, 1971</td>
<td>88</td>
</tr>
<tr>
<td>4.2.14 Wasteland Rules regarding sale of land for coffee or tea cultivation-1923</td>
<td>88</td>
</tr>
<tr>
<td>4.2.15 The Kerala (Grants &amp; Leases Modification) Act, 1980</td>
<td>88</td>
</tr>
<tr>
<td>4.2.16 The Arable Forest Land Assignment Rules, 1970.</td>
<td>89</td>
</tr>
<tr>
<td>4.2.17 Assignment of land within Municipal and corporation Areas Rules, 1995.</td>
<td>89</td>
</tr>
<tr>
<td>4.2.18 The Kerala Assignment of Government Land to the Scheduled Tribes, Rules, 2001</td>
<td>90</td>
</tr>
</tbody>
</table>
4.2.19. Rules Regulating the Levy of Kuttikanam on Trees in Government Lands, 1958
4.2.20. The Kerala Forest Act, 1961
4.2.22. The Kerala Private Forests (Vesting & Assignment) Act, 1971
4.2.24. The Kerala Restriction on Cutting and Destruction of Valuable Trees Act, 1974 (Repealed)
4.2.25. The Kerala Forest Produce Transit Rules, 1975
4.2.27. The Forest (Conservation) Act, 1980
4.2.28. The Kerala Preservation of Trees and Regulation of Cultivation in Hill Areas Ordinance, 1983. (Became Time Expired)
4.2.29. The Kerala Preservation of Trees Act, 1986
Kerala Forest (Prohibition of Felling of Trees Standing on land temporarily or permanently assigned) Rules, 1995
4.2.31. The Kerala Promotion of Tree Growth in Non-Forest Areas Act, 2005
4.2.32. The Kerala Promotion of Tree Growth in Non-Forest Areas (Amendment) Act, 2007 (Act 19 of 2007)
Chapter - 4
POLICY MEASURES:
EXISTING FOREST POLICIES, ACTS AND RULES

Policies for promoting or regulating tree farming on private lands are plenty in Kerala. As in the case of policies in any other sector these policies pertaining to forests also have evolved over many decades. This chapter intends to give a brief account of all existing policy instruments that promote or restrict tree growing on private lands in Kerala. This include policy per se i.e., the old and current forest policies, both National and State, and legislation i.e., all Acts and Rules. These Acts and Rules are of two categories: that originated from Land Laws of Kerala and that relates to Forest Laws. The former is related more to land tenure whereas the latter is more about tree tenure.

The term forest policy connotes a set of principles or guidelines, adopted by a government to attain fixed objectives in forestry for the welfare of the nation as a whole (L.K. Jha 1994). Forest Policy evolves over time and is conditioned by needs and context. So far, India has had three written forest policies. They are of the years 1894, 1952 and 1988. Even before 1894, the country had forest policies which can be read from administrative manuals and documents of that period. For e.g: Chanakya (325 to 273 BC) in his book ‘Ardhasasthra’ listed out guidelines for promotion of forestry. His guidelines had been duly followed by the kings of the Maurya dynasty (321-185 B.C). Kautilya prescribed that the first and the foremost duty of a king was to protect and maintain forests with strong timbers and elephants. Secondly, a king had to manage the proper exploitation of forest produce. Thirdly, a king also had the duty of setting up new forests
(L.K. Jha 1994). It is a matter of great importance that afforestation had been given due importance in ancient India.

4. 1. National & State Forest Policies

4.1.1. National Forest Policies

Government of India so far has enunciated three national forest policies. This section will examine all the three National Forest Policies with special emphasis on its approach towards trees outside forests in general and private forestry in particular. A glimpse into history of 18th and early 19th century will help to understand the settings under which policies were evolved.

4.1.1.1. Forestry during the British Rule

Victory in the battle of Plassey in 1757 laid the foundations of the British Empire in India. For 100 years thereafter, the administration of the colony was with the British East India Company. As it was a trading company, profit maximization was its prime motto. In forestry, this led to overexploitation of natural forests for timber. However, Lord Dalhousie in the year 1855 declared a policy ‘Charter of Indian Forests’ for conserving forests. Dr. Brandeis, an expert on forestry was given the task of organizing the Forest Department of India. The first war of independence of the country in the year 1857 prompted the British Parliament to pass an ‘Act for the better government in India’ in the year 1858. The Act brought administration of India under the direct control of the British Government. In the year 1864, Mr. Brandeis was appointed as the first Inspector-General of Forests of India. The first Indian Forest Act was passed in the year 1865.

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1 Due to these reasons the first year of that decade, ie; 1861 is considered as the year of birth of scientific forestry in India. In the year 1961 Govt. of India celebrated centenary of Indian Scientific Forestry.
Subsequently, more Acts were passed by the British Parliament to make the Forest Department of India effective in conserving Indian forests. It will be only logical to think that in those days, a major objective of forest management was the maximization of revenue by extraction of timber. Organization of the Department and training of the staff were done with this objective. The sole aim of ‘scientific forestry’ was extraction of timber on principles of sustained yield (Mr. Brandeis was a German and Germany had already mastered the theory & practice of principles of sustained yield in the harvest of timber from forests). Attempts in raising artificial plantations also were tried. For example, the first artificial plantation of teak in the country was raised at Nilambur in Kerala in the year 1840.

4.1.1.2. Forest Policy of 1894

In the year 1894, the Government of India issued a circular resolution which formed the basis of the future forest policy. The cause of action for Government to issue such a circular was the recommendations made by Dr. Voelcker regarding the need for declaring a policy on forests for the improvement of Indian agriculture. The sole objective of management of forests of the country as per this policy was public benefit. Agriculture was considered as a sector which affects the life of many people. Thus the policy stipulated: “wherever an effective demand for cultivable land exists and can only be supplied from forest area, the land should ordinarily be relinquished without hesitation”. In a situation where growing population demands more food for survival, such a policy might have been inevitable. The Government reserved all good forest land for production and extraction of valuable commercial timber. The necessity of some
forests on climatic and physical grounds was also highlighted. However, there was hardly anything in this policy aiming at growing trees outside forests.

Criticisms about forest management during the British regime are many. All those allegations hover around the argument that the prime objective of British were to extract our wealth. For example Mr. L.K Jha (1994) summarizes his analysis of Government and forestry during the British rule as follows.

“During the British rule reckless exploitation of Indian Forests continued, which deprived the peasantry of wood for fuel and for building cottage, exposed agriculture to greater risks of draught, flood and soil erosion and on the whole, resulted in the sterilization of the soil. Moreover, ruthless exploitation weakened the basis of forest based industries and reduced the potentialities of production of timbers for various national requirements.” In that sense 1894 policy was not a forest policy but a policy for agricultural expansion and revenue maximization at the cost of forests. While looking from a platform of present day knowledge about biodiversity conservation and forest influences the policy of 1894 may be very bad. However, giving importance for food production can not be undermined from the present day perspectives. In short, a policy is formulated to solve a public problem. Maximum one can criticize the policy of 1894 as not pro-active.

4.1.1.3. The National Forest Policy of 1952

India got independence on August 15, 1947. Many developments between 1894 and 1947 prompted the new Government to adopt a new forest policy. During that interval, developments of far reaching importance had taken place in the physical, economic and political fields (two World Wars, population growth, expansion of
agriculture etc.). The part played by forests in maintaining the physical condition in the country was better understood by then. However, the National Forest Policy could not be formulated after attainment of independence for a period of four years and nine months due to emergence of complicated political, economic and social problems in the country. Finally, the first National Forest Policy of independent India was proclaimed on 12th May 1952.

This policy was a clear deviation from the earlier one, as far as the intention of forest conservation was concerned. It took a clear stand against reckless exploitation of forests for agriculture. If the previous policy was very liberal in permitting forest clearance for agricultural expansion, the new policy stipulated that “The notion widely entertained that forestry as such has no intrinsic right to land but may be permitted on sufferance on residual land not required for any other purpose, has to be combated” (Para 8). The policy highlighted the need for: ‘evolving a balanced and complementary land-use, checking denudation of hills, checking soil erosion, protecting the sea shores and arresting desertification’.

This policy for the first time stipulated that at least one third of the geographical area of the country shall be maintained under forestry land-use. This stipulation as per the background paper of the National Forest Policy-1952, was adopted from the experiences of the European countries which were considered as advanced in those days. The forest areas of countries in Europe were as in table - 4.1.

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<tr>
<th>Sl. No.</th>
<th>Region</th>
<th>Percentage of total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Northern Europe</td>
<td>48.10</td>
</tr>
<tr>
<td>2.</td>
<td>Western Europe</td>
<td>17.70</td>
</tr>
<tr>
<td>3.</td>
<td>Central and Southern Europe</td>
<td>21.74</td>
</tr>
<tr>
<td>4.</td>
<td>Eastern Europe</td>
<td>45.00</td>
</tr>
</tbody>
</table>
Table - 4.1: Forest Area in European Countries (1939)

Source: (GOI) Background paper of National Forest Policy-1952

The background paper of 1952 policy justified fixing the target of one third of the geographical area of the country under forest as follows:

“Viewed against its temperate climate, even distribution of rain fall, and its industrial bias, Europe provides a valuable guide for the proportion of forests that we might well adopt. In India, where we have oppressive tropical sun, desiccating hot winds, periodic monsoons, steep mountain slopes, a lower forest productivity, and a predominantly agricultural population, a proportion somewhat higher than that of Europe would appear to be optimum. From practical considerations, however, we might, for the present, be content with a considerably modest percentage. However, we should aim at increasing the over-all percentage of area under forests to a minimum of 33.33%.” (GOI-1952)

The fixation of one-third geographical area of the country for forestry was a landmark in the developmental history of Indian forestry. Even distribution of forests in all physical regions was considered essential according to this policy. Wherever forestry is not possible due to climatic or edaphic factors, the policy suggested that, such deficiency should be compensated by tree lands in other places.

This policy, for the first time, recognized the importance of tree lands (whether State owned or private owned) in delivering functions of the forests (Para 4). “Tree lands, i.e., those areas which though outside the scope of the ordinary forest management are essential for the amelioration of the physical conditions of the country”, Para (4-D) of the policy.
Regarding Tree lands in agricultural areas the policy proposes, “The importance of tree lands in the rural economy cannot be over emphasized. Experience gained during the first two *Vana Mahotsavas*\(^2\) indicated a very considerable response in the countryside, where Government officers had prepared the ground and created the necessary enthusiasm among the people. As in the case of tree lands, 1952 policy was very clear about its deliberations on private forests also. Private forestry need to be regulated with a national interest (Para 18). Owners of private forests should be given opportunity to manage it in accordance with the approved working plan.

One of the major criticisms about the policy of 1952 was that it failed to prescribe the strategies and to recommend finance that would be required to increase forest coverage of the country to one third of its geographical area (e.g. Jha L.K 1994). This observation is relevant even now. Forestry is one operation which requires a stable flow of fund at least for an initial period of five years, till the planted seedlings are successfully established. Wherever fund and manpower are scarce, agro forestry is a good alternative.

In terms of the area brought under forests, the performance of the 1952 policy was poor. Achievements in afforestation from 1950 to 1980 was only 35.56 lakhs hectares though the position has improved during the next 10 years wherein the achievement was 134.50 lakh hectares. (See table 4.2)

<table>
<thead>
<tr>
<th>Sl. No</th>
<th>Five Year Plan</th>
<th>Period</th>
<th>Area afforested (lakhs.ha)</th>
<th>Cumulative area afforested (lakhs.ha)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>First</td>
<td>1950-55</td>
<td>0.52</td>
<td>0.52</td>
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\(^2\) *Vana Mahotsava*: was a new approach to forestry in which the public was encouraged to plant trees in common places including roadsides, office compounds and compounds of education institutions. Shri. K.M Munshi, Minister for Food & Agriculture, Govt. of India started it in June 1950. Every year June 1-7, this festival of tree planting is being celebrated even now with much fanfare. *Now the programme shrunk to ritual ceremonies with no care of planted seedlings (personal opinion)*
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<tr>
<td>2.</td>
<td>Second</td>
<td></td>
<td>3.11</td>
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<td>3.63</td>
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<td>3.</td>
<td>Third</td>
<td></td>
<td>5.83</td>
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<td>9.46</td>
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<td>4.</td>
<td>3 Annual Plans</td>
<td></td>
<td>4.53</td>
<td></td>
<td>13.99</td>
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<td>6.</td>
<td>Fifth</td>
<td></td>
<td>12.21</td>
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<td>33.34</td>
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<td>7.</td>
<td>Annual Plan Period</td>
<td></td>
<td>2.22</td>
<td></td>
<td>35.56</td>
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<td>8.</td>
<td>Sixth</td>
<td></td>
<td>46.50</td>
<td></td>
<td>82.06</td>
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<tr>
<td>9.</td>
<td>Seventh</td>
<td></td>
<td>88.00</td>
<td></td>
<td>170.06</td>
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**Table - 4.2**: Area afforested in different five year plans

**Source**: Various plan documents of GOI

Regarding increasing the FTC of the country the policy of 1952 failed in the following spheres.

- Actual forest cover in the country could not be increased.
- Forest encroachments could not be controlled
- Shifting cultivation could not be stopped
- Though the policy stipulated that forest land should not be diverted for agriculture, it could not be implemented.
- Survival percentage of planted seedlings was unsatisfactory.
- The performance of social forestry was very poor till the end of fifth five year plan.
- Agro-forestry remained least attended.

Despite all the inadequacies pointed out above, one should appreciate the enormous goals the forestry sector achieved in the field of production of industrial wood, timber and fuel wood. In those years, India was just emerging from the clutches of almost 200 years of colonial rule. It had lot many priorities, such as ensuring food security, providing health and education facilities to its millions of poor, building infrastructure and setting up basic industries. So it is only just that the country made use of forests and forest land for ensuring all the above. Between 1951 and 1980 India diverted 43 lakhs hectares of forest land for various purposes of which more than half
was for agriculture (Roy et al. 2008). Though the country lost a major chunk of its natural forests for the cause of ‘development’, it is noteworthy that the country could initiate social forestry and agro forestry programmes from the fifth five year plan onwards. Late 1970s and 1980s were a period of environmental awareness in India. The ecological significance of forests got prominence over its commercial values. The urgency for recognizing forest as a resource for sustainable development of nation as well as the poor was felt all over the world. All this necessitated the formulation of a revised Forest Policy in 1988.


The National Forest Policy (1988) clearly recognizes three basic sectors for which forest resources are required and lays down guidelines for all these sectors. The three sectors are: Production (for industrial and commercial needs), Social (for people’s needs of food, fuel, fodder and housing) and Biodiversity (for safeguarding the needs of future generations). In sharp departure from its predecessors, the policy of 1988 underscored the importance of forests for maintaining environmental stability and ecological balance.

It states that: “the principal aim of the forest policy must be to ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium which is vital for sustenance of all life forms, human, animal and plant. The derivation of direct economic benefits must be subordinated to this principal aim”. (Para 22 of the policy instrument).

Regarding the area to be maintained as forests, this policy modifies the national goal of the 1952 policy by including Forest or Tree Cover instead of Forest cover. The national goal should be to have a minimum of one-third of the total land area of the
country under FTC. In the hills and in mountainous regions, the aim should be to maintain two-third of the area under FTC in order to prevent erosion and land degradation and to ensure the stability of the fragile eco-system (Para 4.1).

Regarding afforestation of non-forest lands the policy proclaims the following. A massive and time bound afforestation programme should be taken up in all degraded and denuded lands with priority for fuel wood and fodder species. Afforestation of all public lands such as roadside, rail sides, canal banks and institutional compound should be taken up either under government/corporate or private ownership over the produce. Village/community lands should be afforested with suitable species as decided by the local community. Revenue generated out of such schemes shall be shared among the villagers or the Panchayats. Issuing tree-patta for trees (ownership over trees only, not on lands) should be considered. Land laws should be modified wherever necessary so as to facilitate and motivate individuals and institutions to undertake tree farming on their own land. Degraded forest land also can be made available for this purpose either on lease or on the basis of tree-patta scheme.

To bridge the gap between demand and supply of wood the policy suggests measures such as increasing the productivity of forests and using substitute for wood (Para 4.3). The policy agrees that forest encroachment has been on the increase in the country. To contain this problem, the policy suggests scrapping of regularization of encroachment (Para 4.8).

The objective of managing natural forests should be to maintain it as a gene pool resource and to maintain ecological balance. Such forest will not, therefore, be made available for industries for undertaking plantation and for any other activities. However,
regarding the earlier practice of supply of raw materials to forest-based industries from government forests, the policy lays down:

“...The practice of supply of forest produce to industry at concessional prices should cease. Industry should be encouraged to use alternative raw materials. Import of wood and wood products should be liberalized. As far as possible, a forest based industry should raise the raw material needed for meetings its own requirements, preferably by establishment of a direct relationship between the factory and the individuals who can grow the raw material by supporting the individuals with inputs including credit, constant technical advice and finally harvesting and transport services. Farmers, particularly small and marginal farmers would be encouraged to grow, on marginal degraded lands available with them, wood species required for industries. These may also be grown along with fuel and fodder species on community lands not required for pasture purposes, and by Forest Department/corporations on degraded forests, not earmarked for natural regeneration.”

In order to achieve the objectives of the policy Government of India has, taken a number of steps for increasing the tree cover. The latest programmes include:-

(i) National Afforestation Programme (NAP): The intent of the programme is to rehabilitate degraded forests and wastelands with the participation of local communities. Budget allocation for this programme for the 11th Five Year Plan is Rs.2000 crores.

(ii) Gram Van Yojana (GVY) scheme: This scheme envisages tree planting on non-forest lands by involving Panchayati Raj Institutions. Budget allocation
for this scheme in the current FYP is Rs.900 crores. These efforts are expected to cover 1 million hectares during the next plan.

(iii) Scheme of other Ministries: Integrated Waste Development Programme (IWDP), Desert Development Programme (DDP), Drought Prone Area Programme (DPAP) of the Ministry of Rural Development, Watershed Development Scheme, National Bamboo Mission of the Ministry of Agriculture, etc.

(iv) Tree planting is one of the priority activities to provide employment under the National Rural Employment Guarantee Act (NREGA).

(v) The Ministry of Environment and Forests has requested other ministries, e.g. Ministry of Micro, Small and Medium Enterprise, Ministry of Textiles, Ministry of Social Justice and Empowerment, Ministry of Tribal Affairs to dovetail their scheme with the JFMCs/FDA for value addition and marketing of tree products and for providing impetus to tree planting.

4.1.2. State Forest Policies:

Since Forest is a subject in the concurrent list of Indian Constitution, the State Government also has freedom to formulate their own forest policy as per local requirements, provided the latter policy is not contradicting the policy of the Union government. Accordingly, Kerala State so far had proclaimed two forest policies in the year 1987 and 1998. The third State forest policy is about to be announced.

4.1.2.1. State Forest Policy-1987

Over the years vast tracts of forests in Kerala had been diverted for non-forestry purposes and large areas were lost to encroachments. The forests have undergone
qualitative changes adversely affecting the interests of the people at large and eroding the ecological values. These changes necessitated a review of the forest management strategy for which the Government of Kerala in 1987 constituted a High-level Expert Committee under the Chairmanship of Sri. Madhava Menon, a retired Indian Administrative Service officer. The mandate of this committee was to recommend measures for conservation and management of the forest wealth of the State. Based on the recommendations of the Committee, the Government of Kerala issued orders outlining the principles of forest management in the State vide GO (MS) 1/87 dated 07.01.1987.

The Policy guidelines of 1987 were in respect of management of 110 items. Some of the recommendations in this policy which have direct or indirect bearing on private forestry in the state are as follows:

For the fuel wood requirement of urban population fuel wood plantations shall be raised with the help of voluntary organizations in vacant lands. Nurseries under Social Forestry shall produce and distribute seedlings of the desired species. Seedlings of multi-purpose species such as mango, jack, angili, tamarindus, jamun and neem should be distributed to public and planted in suitable areas by the Department. Private nurseries and buy back scheme of seedlings should be popularized. Extension activities shall include not only seedling distribution but also advice on management and maintenance of trees on private land.

It is fairly obvious, therefore, that the objective of social forestry in this policy is recreation forestry, avenue forestry and production of fuel wood. It is pertinent to note
here that production of hardwood timber on private lands or public lands outside forests were not at all conceived in the 1987 policy of the State.

4.1.2.2. State Forest Policy 1998

The preparation for the Kerala Forestry Project (KFP) (1998-2003) afforded an opportunity to revisit many of the recommendations made in the State Policy of 1987. This facilitated suitable modifications of the principles of forest management in the state by drawing inputs from the National Forest Policy, various studies and consultations undertaken as part of the preparation of the KFP. Finally as per GO (MS) No.3/98/F&WLD dtd, 7.1.1998 Government approved new policy guidelines.

As per the preamble of this policy the purpose of the new policy statement was to evolve a vision and strategy for the management of forestry resources in Kerala which will reconcile the desperate demands upon forests to conserve the biodiversity for posterity on the one hand and meet the demands of society on the other hand. Realizing that the Government alone cannot protect and manage the forests effectively, the policy guidelines emphasized the need to develop partnerships with all stakeholders outside the government sector. The policy guidelines also aimed at broadening the institutional framework for forest management, with clearly defined roles and responsibilities for the various stake-holders. The following were salient guidelines in the policy of 1998 with special reference to private forestry or issues related to production of wood outside forests.

i. Growing of trees on homesteads and other forms of agro-forestry will be promoted as a main strategy to supply wood and other forest produce for meeting household and market needs.
ii. The establishment, management and harvesting of industrial forest plantations on private lands by local people, communities, industries etc., in the private sector will be promoted.

iii. The State will promote tree growing by local people, rural communities, NGOs and other non-state sector bodies for meeting the demands for forest produce and improving tree cover in the State.

iv. Greater responsibility will be given to local people, organized groups, cooperatives, industries and other private bodies in commercial wood production, industrial manufacturing and marketing.

v. The state will liberalize regulations relating to the harvesting and transport of produce grown on private lands.

vi. Homegardens, other agro-forestry systems and plantation forestry will be promoted on homesteads, other public and private lands in order to minimize the demand for forest produce from the reserve forests.

vii. The resources on homesteads and other private land will be improved and utilized according to the priorities set by the owners.

viii. Farmers, industries, public institutions and the private sector will be motivated to grow trees and the regulations relating to felling of trees and transport of timber will be liberalized.

ix. The Government will provide technical assistance and other support services to farmers for improving technology and management of resources.

x. The Government will rationalize felling and transport regulations for trees on private lands, with appropriate safeguards.

A complete evaluation of the State forest policy with respect to its impact on private forestry has not done so far. However, the experience of the researcher who has 25 years experience in the department is that, but for the policies on paper no concrete steps either by way of fund allocation or by implementation of simplification of regulations have been done by the State for encouraging tree growing in private lands.
Apart from the polices per se mentioned above, the State Government has enacted many Acts and Rules for achieving the goals of the policy. The next session deals with Acts and Rules which has a bearing on tree growing outside forests in Kerala.

4.2. Regulations on tree cultivation on non forest lands in Kerala

Growing of trees outside forests in Kerala are regulated either under Land related Acts (land tenure) or under Forest related Acts (tree tenure). The following Acts and Rules have bearing on private forestry in the State.

A. Land Laws and Rules


B. Forest Laws and Rules

32. The Kerala Promotion of Tree Growth in Non-Forest Areas Act, 2005
33. The Kerala Promotion of Tree Growth in Non-Forest Areas (Amendment) Act, 2007

In each of the Acts and Rules mentioned above only the Sections and Rules that regulate tree growing, harvesting and transportation of trees/timber in private areas is dealt in the following section.

4.2.1. Kuthakapattom Rules 1947
*Kuthakapattom* means lease for cultivation of *poramboke land* or government lands or *tharisu* or lease of certain trees in public lands.

**Regulations on harvesting of trees:** As far as trees in *Kuthakapattom* areas are concerned, the lessee on payment of tax can enjoy usufructs of the following trees only: Coconut, Areca nut, Jack, Palmyrah, Tamarind, *Punna* and Mango. All other trees in the leased land will be Government’s property and lessee can not fell them.

**4.2.2. Rules for the assignment of Government lands for rubber cultivation, 1960**

*Intent:* These rules were made for assigning forest land for planting rubber under the scheme ‘assignment of Government Land for rubber cultivation’. The intention of assignment was giving government land on license to poor persons who are either agricultural labourers or educated unemployed or on sale in public auction to small holders or to companies. Trees were extracted by the Forest Department before assignment. The license granted under these rules shall be only for the right of occupation and cultivation of rubber alone.

**Regulations on harvesting of trees:** Other than the above two conditions, there is no specific restriction regarding tree possession and tree cultivation as in other *patta*.

**4.2.3. The Kerala Government Land Assignment Act, 1960**

This Act is considered as the mother of all Land Assignment Acts of the State. The intent of the Act is to facilitate and to regulate the assignment of Government lands and to remove doubts regarding the validity of limitations and restrictions imposed in the
assignment of Government lands. *Patta* is the official document which an assignee will get as a token of his ownership of land which is assigned to him.

**Regulations on harvesting of trees:** The land assignment will be conditional. Major regulations that constrain tree growing in the assigned land are as under:

i. The land should not be used for any purpose other than for which it is assigned.

*Comment:* If a land is assigned for personal cultivation or house sites it can not be used for tree growing and hence tree harvesting will be prohibited there. This is further reiterated by the second condition which is as under:

ii. The full right over all the trees within the grant and specified in the schedule vests in the Government and the assignee is bound to take care of all such trees standing on the land at the time of assignment or that may come into existence subsequent to it.

*Comment:* Normally the number of teak, Rosewood, Ebony, Sandalwood or other trees standing in the land will be noted in the schedule to *Patta*. The condition that “not only the trees standing on the land at the time of assignment but those come up subsequently also will be Government property”, clearly rules out any ownership the assignee can have on any tree in such lands, even if the tree is grown by him. Forest officials normally will not permit harvesting of trees grown in such lands. Also, forest officials at any time can harass the occupier of such lands as is evident from the third condition below.

iii. The assignee is bound to afford all facilities to the officers of Government in the matter of inspecting the land periodically for checking the trees referred to in condition (i) above and removing them, if necessary. If any land owner cuts branches or fell tress for
shade regulation for agricultural purposes, forest officers can book case against him for violation of conditions in the *Patta*.

In short, all tree, names of which are mentioned in the *patta* and all that may come into existence subsequently also are the property of government; the assignee cannot harvest any tree from the assigned land even if it is grown by him. The land shall not be used for any purpose other than for which it is assigned. *Patta* is liable to be cancelled for contravention of the conditions or violation of the rules. In the event of cancellation of the *patta*, the *patta* holder shall not be entitled to any compensation for any of his efforts.

**4.2.4. The Kerala Land Assignment Rules, 1964**

These Rules cover general procedure and restrictions to be followed while assigning Government land. Government lands assigned for specific purposes of cultivating Tea, Coffee, Rubber, Cinchona and Cardamom or lands assigned under any special rules other than Kuthakapattom Rules of 1947 are also not covered under these rules. As per these rules, a person who possesses any non objectionable government land by way of encroachment is eligible to get land on assignment for personal cultivation, house-sites and beneficial enjoyments of adjoining registered holding. In fact, this clause of the rules accelerated encroachments in Cardamom Hills during 1960s and 1970s.

**Regulations on harvesting of trees:** Same as in 4.2.3

**4.2.5. Rules for Lease of Government lands for Cardamom cultivation, 1961**

**Purpose:** These rules were framed for lease of land for cultivation of cardamom in the taluks of Devikulam, Peermade and Udumbanchola in Idukki District. These
rules enable lease of forest land for 20 years to encroachers who have already encroached and cultivated cardamom.

**Regulations on harvesting of trees:** The lessee shall be free to remove the undergrowth and fell trees to the extent necessary to admit sufficient sunlight on the land, for cultivation of cardamom. The lessee, without prior sanction of Revenue Divisional Officer, shall not fell any tree of teak, blackwood, ebony, sandalwood or any other tree of girth more than four feet at 3 ft. height from the ground. But, the lessee with the permission of the Revenue Divisional Officer, can fell trees for construction of building required for cultivation of cardamom.

If any tree or undergrowth is felled, destroyed or cleared without permission the lessee shall pay double the value of such damages as assessed by the Revenue Divisional Officer. In the interest of forest conservancy and subject to the above provisions, the lessee is bound to maintain all tree growth and undergrowth on the leased out land. In fact, this is a rule which led to large scale encroachments into cardamom hill reserve of Idukki Dist. In the name of shade regulation, good forest was cleared and converted to other land-uses. However, tree harvesting is prohibited in such lands.

**4.2.6. Kerala Land Reforms Act, 1963**

This is a social welfare legislation. The object of the Act is to enact a comprehensive legislation relating to land reforms in the State. Following are the major aims of the Act. To avoid concentration of agricultural lands in the hands of a few who would be able thereby to exploit the labourers, to makes the actual tillers of the soil the owners of it, to dispense with intermediaries and to promote efficient cultivation and
increased production. Upper ceiling for area of land that can be possessed by individuals and families have been fixed as per this Act. The ceiling area fixed is as follows: for an individual five standard acres, and for a family of 2-5 members 10 standard acres and for a family of six or more members 10 standard acres plus one standard acre for each additional member in excess of five, with an upper ceiling of 20 acres. 13 categories of lands including plantations, private forests and lands comprised in mills, factories and workshops etc. are exempted from the ceiling area.

**Regulations on growing trees**: Plantation is defined as land used principally for the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon. If an existing plantation exempt under the ceiling provisions is converted into any other class of land not so exempt such land may be considered as surplus land liable to be surrendered. Therefore, unless the definition of plantation is expanded to include crops like teak, *anjily* or any other tree crop which can profitably be cultivated by converting the existing plantation, raising tree plantation in the so called plantations exempted for land ceiling is impossible.

**4.2.7. Rules for the assignment of Government lands for settlement of agricultural labourers**

There was a centrally sponsored scheme for assigning government land to agricultural labourers. These rules were framed for regulating assignment of such lands. ‘Agricultural workers’ include only persons who cultivate the land by their own labour. First preference was for landless or tenants ousted from their lands. The assignee will have to pay land value and value of assignable trees, plants and vines. If the assignee is not agreeable to pay the value of trees, plants and vines, the Tahsildar shall dispose them off in public auction. Forest lands thus granted shall be brought under cultivation within a period of one year from the date of issue of *patta*. 
Regulations on harvesting of trees: Same as in 4.2.3.

4.2.8. The Kerala Land utilization order 1967.

Intent: At the time of passing this order there was acute shortage for food in Kerala. The purpose is to promote growing of food crop in all lands suitable for that and non-diversion of lands suitable for growing food crops for any other purpose. Food crops include paddy, sugarcane, vegetables, tapioca, yam, tea, coffee, cardamom, pepper, groundnut, cocoa and banana. So also, if the land was under cultivation of crops for 3 years continuously, it should not be changed to any other food crop except paddy without written permission from the Collector. As per an amendment made to clause 6(1) on 6.04.77, any removal of tree growth from an area which was under cardamom cultivation, shall be deemed to be an attempt to convert or utilize such land for a purpose other than cultivation of cardamom, even if such removal is for cultivation of paddy.

Comments: Land-use order clearly shows that Government is the ultimate authority in deciding land-use pattern in any land. It exemplifies how government can intervene in the scarcity of any good. The intention of amendment made to this order in 1977 was to stop conversion of cardamom areas to other forms of land-use. Large scale encroachments into cardamom areas and destruction of forests for cultivation of food crop were big problem in those days. To promote tree growth in plantations of tea, coffee, cardamom etc; the land utilization order of 1967 has to be amended by excluding these crops from the list of food crops in the order.

4.2.9. High range Colonization Scheme Rules, 1968.
High-range colonization scheme was launched by the Government to encourage families belonging to the landless agricultural labour class to settle down in the High Ranges (Western Ghats in Present day Idukki Dist.)\(^3\). The scheme was published under G.O.No.A-7171/54/FD dt.1.10.1954. Under this scheme, four colonies were established at Kallar, Marayoor, Kanthalloor & Deivyar. Purpose of these rules was to assign Government land to persons or their heirs or successors-in-interest (the ‘colonist’) to whom land has been allotted under the High Range colonization scheme.

**Regulations on harvesting of trees:** Same as in 4.2.3 with the following modification: There is no condition in this *patta* that ownership of trees that will come up subsequently also would be government property. To this extent there is no restriction on harvesting trees grown by the owner. How far the officers will honour this condition is doubtful.

**4.2.10. Wynad colonization scheme Rules, 1969**

*Intent:* The intention of these rules was to assign lands on registry to the colonists who were allotted lands under the Wynad colonization scheme. The scheme was implemented in the villages of Ambalavayal, Nenmoni and Sulthanbathery in the South Wynad Taluk of the Wyanad district.

**Regulations on harvesting of trees:** Same as in 4.2.3

**4.2.11. The Kerala Land Assignment (Regularization of occupations of Forest Lands Prior to 1.1.1977) Special Rules, 1993**

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\(^3\) Up to the declaration of this scheme majority of inhabitants of High Ranges were Tamil labourers working in tea estates. When the boundaries of states were re-organized during March-October 1956, on linguistic basis High Ranges fell in Kerala State only due to this pro-active scheme. But for high range colonization scheme Tamilnadu would have got a claim over the high ranges! (Personal discussion with colonists)
**Background and intent:** Regularization of forest encroachment is a populist strategy adopted by politicians in Kerala. So far the Government of Kerala has regularized forest encroachments four times, each time regularizing encroachments done up to a particular date. The first regularization legalized encroachments done up to 26.04.1957 the second up to 1.1.1960, the third up to 1.1.1968 and the fourth up to 1.1.1977. The rules under discussion were framed to assign the encroached land to the eligible encroachers. Purpose of assignment was for personal cultivation or for house sites or for shop sites. Cultivation of trees is not intended on these lands.

**Regulations on harvesting of trees:** Same as in 4.2.3

**4.2.12. Settlement Scheme Patta Rules, 1970**

*Intent:* These rules were framed for regulating the issue of *patta* to settlers to whom land was allotted under any settlement scheme.

**Regulations on harvesting of trees:** The full proprietorship of all teak, rosewood, ebony or karunthali and sandalwood trees vests in the government and details of such trees shall be entered in the *patta*. The grantee shall take care of all such trees till it is disposed by the Government. If any one of such trees is found damaged and if such damage, in the opinion of a forest officer, is caused by the grantee or his workers, the grantee shall pay the cost of the trees so damaged as assessed by the Forest Department. In regard to all trees other than those mentioned in the deed including ‘other important trees’ (63 forestry trees are in this list) the grantee shall pay market rate and purchase them or has to pay market rate for the damage if any caused to them.
4.2.13. Rules for the assignment on Registry of Government lands included in the co-operative colonization scheme and the ex-servicemen co-operative colonization scheme, 1971.

Government lands included in the co-operative colonization scheme and the ex-servicemen co-operative colonization scheme sponsored by the Government of India were occupied by individual members of the co-operative (colonists) or encroached by outsiders (occupants). The purpose of these rules were to assign such land on registry to the colonist or to the occupant. The land will be assigned on registry for personal cultivation and for house sites.

Regulations on harvesting of trees: Same as in 4.2.3

4.2.14. Wasteland Rules regarding sale of land for coffee or tea cultivation-1923

Intent: Purpose of these rules was to popularize the cultivation of coffee and tea in the forests of Travancore. Under these rules lands were given to the applicants either by public auction or by private arrangement for the cultivation of coffee and tea. Several companies and individuals purchased land under these rules. Land was sold in lots of 500 acres each. But a person may apply for several contiguous lots, each not exceeding the above limit.

Regulations on harvesting of trees: Same as in 4.2.12

4.2.15. The Kerala (Grants & Leases Modification) Act, 1980

Intent: Vast areas of forests and other lands were leased out or given as grants by the former Maharajas of Travancore and Cochin. According to the terms and conditions of such leases and grants, teak, ebony and blackwood trees can be cut and removed by the lessees or grantees on payment of nominal royalty. In regard to other trees, the lessees and grantees have the right to fell and appropriate the same on payment of
Kuttikanam (stumpage tax). The rates of Kuttikanam as well as land rents were negligible. It was therefore, considered necessary to revise the terms and conditions of the leases and grants in order to bring them on a par with the market rates. Accordingly it was proposed to increase the Kuttikanam to seigniorage rates in force from time to time and also to enhance lease rent periodically.

**Regulations on harvesting of trees:** As per this Act every grantee and lessee shall be bound to pay to the government the seigniorage rates in force for the timber cut and removed from any land held by him under the grant or lease even if the tree was grown by him.

**Comments:** The current seigniorage rate is almost equivalent to the market price. Therefore, a land owner who wants to harvest trees from such leased lands, even if the trees were grown by him, has to pay its market value to government!

**4.2.16. The Arable Forest Land Assignment Rules, 1970.**

The arable forest land assignment rules were issued for the assignment of forest land to agriculturalist. Purpose of assignment was personal cultivation or for house sites or for both. As per SRO 225/74 dt.5.4.1974 published in Kerala Gaz. Ex.No.363 dt.9.4.1974. the purpose was extended for cultivation on co-operative basis wherever such cultivation is possible.

**Regulations on harvesting of trees:** Same as in 4.2.3

**4.2.17. Assignment of land within Municipal and corporation Areas Rules, 1995.**

Purpose: Rules to assign land in Municipal Corporation areas for house sites, shop sites for commercial or charitable purposes and for beneficial enjoyment of adjoining registered holdings.
Regulations on harvesting of trees: As per Rule 15, trees if any standing on house sites will be permitted to be cut on payment of tree value. For trees planted by the assignee or his predecessor-in-interest, tree value need not be remitted to the Government, but if the land is assigned on lease no tree shall be felled without paying tree value to Government.


Background and Intent: Landless tribals of Kerala were agitating for land for quite some time. During late 1990s and early 2000s there were many organized agitations among the tribals for this cause. Finally, Government has decided to assign a minimum of one acre and a maximum of five acres of land to landless tribes of the state. The land earmarked for such assignment includes forest land also. Land is assigned for personal cultivation, house sites and beneficial enjoyment. Beneficial enjoyment means the enjoyment of land for purposes like providing road to the assignees registered holding and protection of his water-course, standing crops or building.

Regulations on harvesting of trees: The assignee should not cut any tree standing on the assigned land. But, he can cut small timbers with the prior permission of the Village Officer for the construction or maintenance of small residential buildings or for making agricultural implements. Small timber does not include sandalwood, rosewood, ebony and teak. If the Government considers that any tree standing on the assigned land is an obstruction for cultivation, such trees may also be removed by the Government. Unlike in the case of other Rules, there are three different conditions regarding tree preservation and maintenance, in the Patta issued under these Rules. They are:

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4 One such agitation in Muthanga in Wyanad District turned into violence, police firing and killing of one tribal man on 19.02.2003.
i) The assignee shall not cultivate or use the land assigned, in violation of the restrictions or instructions issued by the authorities concerned for ecological protection or for plant quarantine reasons. ii) The assignee shall not cut any trees except permitted small timbers and iii) The assignee shall not do any intensive tillage practice.


Kuttikkanam rules are applicable to the land assigned prior to 1958. The purpose was regulating the levy of Kuttikanam (stumpage tax) on trees standing on Government lands.

**Regulations on harvesting of trees:** Same as in 4.2.3.

The Supreme Court in a landmark judgment ordered that for harvesting any tree from a leased land, if the tree is not for bonafide uses the lessee has to pay seignorage rate to government (See 5.4). As the seignorage rate is almost equivalent to market rate, there is no attraction in growing tree in leased lands.

*Researcher’s Comments:* The above decision of the supreme court of the country clearly rules out any prospects for commercial forestry in leased lands of the State. The irony is that there is freedom to grow tea in the hills but not trees.

4.2. 20. The Kerala Forest Act, 1961

*Intent:* Before the formation of the State of Kerala there were two divergent pieces of legislation applicable to different parts of the State on the protection and management of forests. They were the Travancore - Cochin Forest, Act 1951 (applicable to the Travancore - Cochin area) and the Madras Forest Act, 1882 (applicable to the Malabar

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5 Kuttikkanam rules were framed in exercise of the powers conferred under Section 93 (2) (d) (dd) and (e) of the Travancore Cochin Forest Act, 1951 (Act III of 1952).
area of the State). Consequent on formation of the Kerala State on 1st November 1956, necessity of having a uniform legislation on the topic was felt by legislature and this Act was made in 1961. Most of the policies regulating growing, cutting and transportation of trees in the State have its foundation on this Act. A particular section of this Act, Section – 61A, empowers the forest officers to confiscate vehicles and tools used for illicit cutting and transportation of forest produce such as timber and charcoal. This particular section alone has a tremendous negative impact on the timber movements in Kerala. In a way this is the mother of all forest policies of the State.

**Regulations on harvesting of trees:** Terms such as ‘land at the disposal of government’ ‘forest produce’, ‘timber’ and ‘tree’ are defined in section two of the Act. Thus, *Forest produce* includes timber, charcoal, wood oil roots of sandalwood and rosewood wherever it is found; *Land at the disposal of government* includes all unoccupied land, all temporarily occupied land and, all land occupied without permission whether assigned or unassigned and *Trees* includes palms, bamboos, stumps, bush - wood and canes. As per Section - 30, government can make rules to regulate or prohibit the cutting, sawing, conversion and removal of trees and timber from land at the disposal of Government. Sections 39, 40 and 76, empower the State to make rules for regulating transportation of timber and other forest produce. Section - 42 is about regulations on collection of drift and stranded timber. Stranded timber is deemed to be property of Government until its title is proved. Section 52 - 69 deals with offences, penalties and procedures to handle the same. As per the Section – 52,
all forest produce along with tools and vehicles used for the commitment of offence is liable to be confiscated to Government.


As per section 42 of the Kerala Forest Act, 1961, all timber found adrift, beached, stranded or sunk and all timber which do not bear any marks registered with the Forest Department and found in areas as the Government direct shall be deemed to be property of Government unless and until any person establishing his right over it. These rules were made for the collection of such drift and stranded timber.

4.2.22. The Kerala Private Forests (Vesting & Assignment) Act, 1971

Background: Before the birth of Kerala State, its northern region popularly known as Malabar was part of the then Madras Presidency (present Tamilnadu State). The Madras Presidency with its differing perception on the rights of the local people in the forests ignored the forest Act made by the Government of India in 1878 and made a law of its own in 1882 (Pathak 2002) ownership of individuals over forest was allowed in this Act. Thus there were a lot of private forests in Malabar even after independence of the country. On 10th May 1971, the Government of Kerala took over the private forests of the State through the Kerala Private Forest (Vesting & Assignment) Ordinance, 1971. This was done as an ‘agrarian reforms’ without payment of any compensation to its owners. Soon the Ordinance was replaced by the Act.

For the speedy implementation of the Act, the Government appointed a committee, known as the ‘Vested Forests Committee’. The committee was required to report the details of vested forests to be reserved as well as those to be assigned for
agricultural purposes. The Committee submitted its interim report on 6.08.1974 showing details of areas for permanent reservation and for assignment to agriculture labourers.

As per the committee report a total area of 1,69,411 Ha (1,62,567 Ha in Malabar region and 6,844 Ha in Travancore-Cochin) was vested in Government as forests. The owners of the vested forest had freedom to approach different courts of law for redressal of grievances if any. After, all the litigations, if the verdict is in favour the owner, the forest land vested in government has to be restored to its ex-owner. The courts used to order restoration of the private forest to its ex-owner if the forest was under cultivation or if it was intended for cultivation. Till May 2001, about 4820 ha of notified areas have been released to the ex-owners as per court verdicts.

**Regulations on harvesting of trees:** In 1997\(^6\) the Government issued directions that before a land is restored to its ex-owner it should be notified under Section 5 of the Kerala Preservation of Trees Act 1986. A notification under Section 5 of KPT Act, means that no tree shall be felled from the notified land. Besides the land can be notified under section 33 of the Kerala Forest Act, 1961. Government insist that for using the restored land for non-forestry purposes prior permission of Government of India under forest conservation Act, 1980 is essential.

**Comments:** Banning tree felling from a land which was or intended for cultivation means, no owner will cultivate trees on such lands. The Researchers’ experience is that no sooner the ‘land’ is notified under Section 5 of KPT Act and restored to its owner, than the owner starts killing the trees for raising agricultural crops. Also, there are many instances where the Section 5 notification has been issued just as a ritual to comply with the Government’s

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\(^6\) Note (1) Govt. Ltr. No. 6097/E2/96/F&WLD/dtd, 3..07..1997
direction, even if the land is devoid of any tree. (Personal discussion with Mr. Amarnathu Shetty IFS, Custodian Vested Forests)

Litigations regarding tree-felling from restored private forest is very common. There are many judgments which allow ownership of trees to the land owner. There are equal numbers of judgments which disallow tree-felling by owners. These confused states of affairs confirm only one thing and that is the decision of the land owner not to grow trees in such lands!


These rules were made as provided in the Kerala Private Forests (Vesting and Assignment) Act 1971 and it stipulate among other things, procedures and conditions for assignment of vested forests and regulations on harvesting of trees.

**Regulations on harvesting of trees:** Same as in 4.2.3

4.2.24. The Kerala Restriction on Cutting and Destruction of Valuable Trees Act, 1974 7 (Repealed)

This Act was repealed with the promulgation of the Kerala Preservation of Trees and Regulation of Cultivation in Hill Areas Ordinance, 1983 which is the forerunner of Kerala Preservation of Trees, Act 1986. Though repealed it is included in this discussion due to its historical significance.

The purpose of the Act was to restrict the cutting and destruction of certain valuable trees such as sandalwood, rosewood and teak on private lands. During the 1970s there was great demand for the above timbers in foreign markets and these trees on

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7 Received Governor’s assent on 12.03.1974 and published in Kerala Gazette Ext. dated, 12.03.1974
private lands were indiscriminately axed by owners. As per the Act, no owner of any private land including a plantation shall, without permission of the authorized officer (normally the D.F.O), cut or destruct any sandalwood tree or rosewood tree from his land. Similarly no teak tree shall be felled or destructed from plantations of private owners without permission.

4.2.25. The Kerala Forest Produce Transit Rules, 1975

Intent: The intent of these Rules is to check the unauthorized removal of timber or forest produces from forest land. As per section 39, 40 & 76 of the Kerala Forest Act, rules shall be made for regulating transportation of timber & other forest produce. Import, export and transport of all forest produce shall be done only under the cover of a valid transport pass. Rule 3. stipulates that Government may by notification in the Gazette exempt any species of trees or any area within the State from the operation this rule for the purpose of giving incentive to grow trees on private lands. Till 1998 there were 21 species in the exempted list which was increased to 61\(^8\). This increase in number of exempted trees from 21 to 61 has been at the insistence of the World Bank as one of the pre-conditions for financing the Rs.182 crore, Kerala Forestry Project (1998-2003). However, premium hardwood species such as Teak, Rosewood, Sandalwood, Ebony, Kampakam, Irul and Thempavu are not in the exempted list. The procedure for obtaining a pass is very cumbersome. This involves minimum two journeys to the village officer, Range Office and Divisional Forest Office. This also requires taking these officers to the site of the tree at the cost of the applicant. For detailed procedure on issue of cutting permit & pass see annexures 4.1 and 4.2.

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\(^8\) SRO No.246 dated, 17/02/1998 published in K.G No.452 dated, 16/03/1998.

*Background:* Between 1940 and 1980 sizable chunks of Reserved Forests were lost due to encroachment. The Government was forced to regularize forest encroachments. The *modus operandi* of encroachers was first to clear undergrowth and to put annuals such as tapioca, paddy and ginger followed by killing of large trees by girdling, lopping and burning. In spite of all the efforts of the encroachers some big trees survived the attacks and, they stood dead or half-dead in all encroached lands. During 1960s and early 70s government extracted large number of such trees from encroached forest lands through a special drive popularly known as ‘*salvage felling scheme*’. From some lands all trees could not be salvaged due to inaccessibility to the site or due to difficulties in extraction with out damaging the agricultural crop of the occupant. The purpose of these rules is to regulate protection of those ‘orphan trees’ in the occupied but not dis-reserved forest lands and for sale of certain species of timber and trees to the occupants for their genuine uses.

As per these rules all species of trees except royal trees (teak, rosewood, ebony and sandalwood) may be soled to the occupant if these are procured for his bona fide purposes.

The DFO shall publish a notice in two local dailies inviting application for the sale of trees to the occupants. On receipt of applications the trees will be measured and price calculated. After paying the value of the trees and after getting permission from the Department the occupant may fell trees and collect timber. In order to avoid purchase of timber by a third party from the occupants, no permit shall be issued for transport of such
timber. The species of Teak, Rosewood, Ebony and Sandalwood and other trees which are not required by the occupant may be sold by the Forest Department.

**Regulations on harvesting of trees:** Trees standing in the land shall be preserved by the occupant till they are sold. The occupant shall not destroy the trees standing in his lands by any means and he shall nurture seedlings of teak, rosewood, ebony and sandalwood. If any tree standing in the occupied land is seen damaged the value of such trees shall be made good from the occupants.

*Comments:* Occupants were not interested in buying trees from the government because there was no dearth of timber in the surrounding forests. Maintenance of trees by the occupant as envisaged in the rules was never materialized as its implementation was very difficult. As there was no scope for the occupants to harvest trees they started destroying them from seedling stage itself.

**4.2.27. The Forest (Conservation) Act, 1980**

*Intent:* This is a Central Act promulgated to stop wanton destruction of forests by State Governments. The genesis of this Act can be traced back to the early 1970s when for the first time, foresters and academics raised their great concern over the growing rate of deforestation in developing countries. The United Nations Conference on Human Environment at Stockholm from 5th to 16th June 1972 brought the issues of degradation of human environment to the attention of the world leaders. Union government could not so much in this regard mainly because forest was in the State list of Indian constitution wherein the state governments have full authority and responsibility on its management and protection. This autonomy of States led to lot of forest encroachment and its subsequent regularization. Through 42nd amendment of the Constitution in 1976, forest
was brought in the concurrent list wherein both Union Government and State Government have jurisdiction over forests. And in 1980 the union Government promulgated the new Act for the protection of remaining forests of the country.

As per this Act, no State Government or other authority without the prior approval of Central Government shall dis-reserve any reserved forests, or use any forestland for any non-forestry purpose or assign or lease any forests to anybody and clear natural forests with trees for reforestation.

**Regulations on harvesting of trees:** This Act for the first time defined a ‘forest’. In one of the Writ Petitions\(^9\) came under this Act before the Supreme Court the Court defined ‘Forest’ as: ‘The word ‘forest’ must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term “forest land”, occurring in Section 2, will not only include “forest” as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of section 2 of the Act. As per this definition any forest land which is not dis-reserved has the status of a forest. Thousands of hectares of forest land in Kerala, though already converted into human settlements are still in the category of reserved forests which make tree felling from such lands impossible without prior permission of the Government of India. Probably this is one order often quoted by forest officials to prohibit tree harvesting from any ‘non-dis-reserved forest land’.

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\(^9\) Writ Petition (Civil) No.202/1995 in the Supreme Court of India T.N.Godavarman Thirumulpad Versus Union of India and others.
A specialty of this Act is that it is one of the very few Acts which punishes executives for their negligence. Whoever contravenes or abets the contravention of the provisions of this Act shall be punishable with simple imprisonment which may extend to fifteen days.

4.2.28. The Kerala Preservation of Trees and Regulation of Cultivation in Hill Areas Ordinance, 1983. (Became Time Expired)

Though not in effect now, this ordinance is discussed here due to its historical significance to the topic of this study.

**Intent:** Preservation of special characteristics of the hill areas such as landscape, vegetal cover and climate plus restriction on destruction of trees was the intention of this ordinance. This ordinance imposes the following 3 types of restrictions regarding tree felling from private lands.

i). Trees of 8 species\(^{10}\) shall not be felled from any private land without prior approval of the authorized officer. The authorized officer should normally be a D.F.O or Forest Range Officer as notified by the Government.

ii). No tree of any species shall be felled from a notified private land such as private forests and Cardamom Hill Reserve unless the tree is dead, diseased or wind fallen or constitute a danger to life or property and

iii). Land in hill areas with a slope of more than one in three shall use only for growing trees.

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\(^{10}\) Sandalwood (Santalum album), Teak (Tectona grandis), Rosewood (Dalbergia latifolia), Irul (Xyilia xylocarpa), Venthekku (Lagerstroemia lanceolata), Thempavu (Terminalia tomentosa), Mulluvenga (Bridelia retusa), Kampakam (Hopea parviflora), Venga (Pterocarpus marsupium), Chempakam (Michelia champaca), Chadachi (Grewia tiliaefolia), Chandana vempu (Cedrela toona), Cheeni (Tetrameles nudiflora), Jathi (Myristica fragrans), Nijavel (Eugenia jambolana) and Thanni (Terminalia bellerica)
This ordinance was later adapted into the Kerala Preservation of Trees Act, 1986.

But, the prohibition on cultivation in hill areas with a slope of more than one in three, was deleted while formulating the Act.

4.2.29. The Kerala Preservation of Trees Act, 1986

*Intent:* The intent of the Kerala Preservation of Trees Act, 1986 (KPT Act) was to curb indiscriminate felling of trees on private lands, which causes soil erosion and to prevent loss of timber wealth of the state. History of this Act can be traced back to the Ordinance mentioned in 4.2.28. When that ordinance was made into the Act the clause regarding prohibition of cultivation in hill areas was deleted.

**Regulations on harvesting of trees:** The KPT Act has 26 sections; sec.4 & 5 deals with restrictions on felling or destruction of 10 species of trees (table 4.3) in private lands. Though Section 4 of the Act was repealed with the promulgation of Promotion of Tree growth in Non-Forest land Act 2005(4.2.30), a brief narration of the same is necessary to analyze the problem dealt in this study in its correct perspective.

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Common Name</th>
<th>Botanical Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Sandal Wood</td>
<td><em>Santalum album</em></td>
</tr>
<tr>
<td>2</td>
<td>Teak</td>
<td><em>Tectona grandis</em></td>
</tr>
<tr>
<td>3</td>
<td>Rosewood</td>
<td><em>Dalbargia latifolia</em></td>
</tr>
<tr>
<td>4</td>
<td>Irl</td>
<td><em>Xylii xylocarpa</em></td>
</tr>
<tr>
<td>5</td>
<td>Thempavu</td>
<td><em>Terminalia tomentosa</em></td>
</tr>
<tr>
<td>6</td>
<td>Kampakom</td>
<td><em>Hopea parviflora</em></td>
</tr>
<tr>
<td>7</td>
<td>Chempakom</td>
<td><em>Michelia chempaia</em></td>
</tr>
<tr>
<td>8</td>
<td>Chadachi</td>
<td><em>Grewitii titiaefolia</em></td>
</tr>
<tr>
<td>9</td>
<td>Chandana Vempu</td>
<td><em>Cedrela toona</em></td>
</tr>
<tr>
<td>10</td>
<td>Cheeni</td>
<td><em>Tetramelles mudifflora</em></td>
</tr>
</tbody>
</table>

Table- 4.3: Trees, felling of which is restricted as per KPT Act 1986

Restriction on felling of 10 trees is not applicable to trees on the compound of any residential building provided area of such compound is one hectare or less. If the area of the compound with residential building exceeds one hectare, the restriction is applicable to an
area excluding one hectare surrounding the residential building. Felling of trees shall be done only after obtaining a cutting permit from the authorized officer. For these trees transport pass will be issued only on production of the ‘cutting permit’. The procedure for obtaining cutting permit and pass is explained in annexure 4.1 and 4.2.

As per section 5 of the Act Government can notify any area from where cutting of any tree is prohibited. Notified area includes areas such as private forests, Cardamom Hill Reserve, or any other area cultivated with cardamom. This restriction is not applicable to trees standing dangerous to life or property, dead, diseased or wind fallen trees and to pruning of trees if it is required for ordinary agricultural or horticultural practices. In short, as per this Act, the Government can notify any area form where prohibition on felling or destruction of any species of tree is intended.

4.2.30. The Kerala Forest (Prohibition of Felling of Trees Standing on land temporarily or permanently assigned) Rules, 1995

Government over a period of time have assigned lands to individuals under various schemes. The purpose this rule is to safeguard trees in such assigned lands.

Regulations on harvesting of trees: Same as in 4.2.3.


Two issues related to the management of forests of Kerala during the 1990s is often cited as reasons for the promulgation of this Act. First is the failure of the department in safeguarding vested forests of the state and the second is environmental enlightenment of governments in developing countries.
Kerala government vested about 2 lakh hectares of private forests in government as per the Kerala Private Forests (Vesting and Assignment) Act, 1971. At least 10% of this land was lost due to improper conduct of cases in various courts and encroachments. Corruption among forest staff, government pleaders and even judges are often cited as reasons for failure of vested forest cases. Taking back these forest lands again to government was a serious concern of the government for quite some time. Environmental concerns of the developing countries after the Rio Conference in 1992\(^\text{11}\) was another cause for the promulgation of this Act. The Act has come into force on the second day of June, 2000. As per the Act the ownership of all Ecologically Fragile Land (EFL) of the State stand transferred to and vested in the Government. EFL is defined as ‘any forest land held by any person and lying contiguous to a reserved forest or a vested forest or any other forest land owned by the Government. In short, as per this Act, anybody’s property, if it has natural tree growth and if it lies contiguous to a government forest, its ownership stand automatically transferred to the government from 2\(^{nd}\) June, 2000. The owner will not get any compensation for the land or improvements thereon. Further, as per section 4 of the EFL Act, the Government has the power to declare any land (even if it is not contiguous to forests and irrespective of composition of its vegetation as EFL). In such cases, the owner of the land is entitled to get compensation for the land and permanent improvements thereon. All EFL will have the status of a reserved forest.

**Current status of EFL in Kerala:** So far the Custodian, Ecologically Fragile Lands has issued 14 notifications as per which 963 plots having an approximate extent of 13,108 hectares have been notified as Ecologically Fragile Lands.

\(^{11}\) The United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro in 1992
The Classification of plots according to Forest division is as below:

<table>
<thead>
<tr>
<th>Sl.No</th>
<th>Name of Division</th>
<th>No. of plots</th>
<th>Extent (Ha.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Palakkad</td>
<td>425</td>
<td>4968.5723</td>
</tr>
<tr>
<td>2</td>
<td>Wayanad</td>
<td>95</td>
<td>2388.8676</td>
</tr>
<tr>
<td>3</td>
<td>Thiruvananthapuram</td>
<td>46</td>
<td>759.9784</td>
</tr>
<tr>
<td>4</td>
<td>Malappuram</td>
<td>37</td>
<td>1224.8247</td>
</tr>
<tr>
<td>5</td>
<td>Thrissur</td>
<td>10</td>
<td>20.8530</td>
</tr>
<tr>
<td>6</td>
<td>Kannur</td>
<td>56</td>
<td>753.7443</td>
</tr>
<tr>
<td>7</td>
<td>Kozhikode</td>
<td>98</td>
<td>1513.7270</td>
</tr>
<tr>
<td>8</td>
<td>Kollam</td>
<td>12</td>
<td>140.6724</td>
</tr>
<tr>
<td>9</td>
<td>Kasargode</td>
<td>7</td>
<td>81.1200</td>
</tr>
<tr>
<td>10</td>
<td>Idukki</td>
<td>177</td>
<td>1255.5515</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>963</td>
<td>13107.9112</td>
</tr>
</tbody>
</table>

Table 4.4 - District wise No. and total area of EFL plots.

Source: Answer to Legislative Assembly Interpellation No: 2761 of 9th session of XII Kerala Legislative Assembly.

In short, the land owners who grow trees especially forestry species are constantly under the threat of taking over of such lands by government.

4.2.32. The Kerala Promotion of Tree Growth in Non-Forest Areas Act, 2005

As the name suggests, this Act has been promulgated to promote tree-growth on private lands. This is the first of its kind in the entire history of Kerala. The Act got the Governor’s assent on 8th September 2005.

Purpose of the Act is elaborated in its preamble which includes promotion of tree growth in private lands in order to maintain environmental stability, checking soil erosion and denudation in the catchments of rivers, lakes, for mitigating floods and droughts; increase green cover in the country to meet small timber, fuel wood and fodder requirements of rural populations; for amelioration of climatic conditions; for promoting the general well being of the people and to ensure constant supply if wood for industrial growth. Ensuring the constant supply of wood for industrial growth and realization of
maximum annual revenue in perpetuity is another intent of the Act. The Law-Reforms Committee appointed by the Government of Kerala also have recommended to bring in a legislation to promote cultivation of trees in non-forest areas, in order to fulfill the needs enumerated above.

As per the Act, every owner of non-forest land shall be free to plant appropriate trees on his land and generally contribute to the increase of the tree cover in the land, in addition to any crop he may have grown over such land. The Forest Department shall develop and approve private nurseries, execute social forestry schemes in association with Local Self-Governments and give technical assistance in tree planting. Every owner of non-forest land shall have the right to cut and transport any tree other than sandalwood tree standing on his land.

Felling and transportation of trees has been much simplified in this Act. An owner of the tree who is desirous of transporting its timber to any other place instead of obtaining a pass from the forest department shall file a self declaration before the Forest Range Officer either directly or by registered post with acknowledgement due. The declaration shall contain details of the land from where the tree is cut, number of trees, species, quantity of timber and place to which it is being transported. Every such declaration shall be acknowledged by the Forest Range Officer and such acknowledged declaration shall be carried along with the timber while transporting it.

Where any Forest Officer not below the rank of a Forester, has reason to believe that any timber has been transported without a self-declaration as mentioned above, he may seize the timber along with all tools and make a report to the D.F.O. If the D.F.O is satisfied that an offence has been committed with regard to felling and transportation of
timber, he shall make a report to the Judicial Magistrate of First Class who in turn shall
adjudicate over the issue. Whoever transports any timber against provisions of this Act or
files a fake declaration shall be punishable with imprisonment for a term which may
extend to six months or fine which may extend to Rs. 2000.

Section- 4 of the Kerala Preservation of Trees Act, 1986 is repealed with the
promulgation of this Act.

The law is applicable to non-forest land. As per the Act, a non-forest area
includes all private lands and lands owned by Local Self-Government Institutions, but do
not include Cardamom Hill Reserve lands, lands declared or deemed to have been
declared as Reserved Forest or land assigned to Scheduled Tribes under any land for the
time being in force and paddy fields.

Foresters are not very happy about the Act. In fact the bill was piloted in the
legislature not by the Minister for Forests, but by the Minister for Revenue who was
holding the portfolio of Law also. Many foresters are skeptical about the outcome of this
Act. The researcher had lengthy discussions on this issue with many forest officers of
different rank and NGOs. Major objections raised by forest officers are on the following
lines:

(i) By implementing this Act there will not be any validity to the Kerala Forest
Produce Transit Rules 1975. Timber can be transported on the cover of a ‘self
declaration’ instead of the conventional ‘pass’ which is issued by the forest department.
‘Pass’ for transit of timber is crucial in controlling smuggling and illicit transportation of
timber from forests.
(ii) In the new Act there is no provision for hammer marking of the timber by the Department. During verification of sawmills and private timber depots for suspected smuggled timber, hammer mark of the Forest Department on timber is the identification mark to distinguish genuine timber from smuggled timber.

(iii) The declaration can be sent by post and the acknowledgement card and the copy of the declaration is enough for transportation. One can very well sent even a blank cover or a cover containing something else and obtain the acknowledgement card!

(iv) No provision is given to prove the status of the land. Felling in leased lands and even in encroached forest areas will take place under the cover of the new Act.

Thus, according to forest officers whom the researcher interviewed, “the provisions of the Act will only help indiscriminate felling. The control of the Forest Department over the transit of timber will be lost and will enhance the illegal smuggling of forest wealth. In fact the relaxations under the cover of the new Act with the beautiful title Promotion of Tree Growth in Non-Forest Areas will only help to deplete the tree growth in non-forest as well as forest areas”.

The above opinions of foresters were reflected in some of the actions of forest officers. For example, the Kerala Forest Protective Staff Association (KFPSA), the only organization of 3400 Forest Protective staff which includes Forest Guards, Foresters and Deputy Ranges, vehemently opposed the new Act. Within 30 days of passing the Bill into an Act they submitted a petition to His Excellency, the Governor of Kerala with a prayer to withdraw the Act. In the said petition they aggrieved that “we are afraid that using the Bill as a shield, the timber lobby in the State would convert forest areas like

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12 Petition No. 3072 dtd, 6.10.2005 of K. Jayakumar, General Secretary and K. Vijayakumar, President of KFPSA submitted to H.E the Governor of Kerala.
Wayanad, Attappady, Munnar (Idukki etc.) into barren lands. The bill which is stated to have been promulgated for promoting the interest of common agriculturalist is, in fact, meant for supporting the timber lobby and for promoting their interests.” The Association further added that the provisions in the Bill enabling cutting of trees standing on private land without permission are justifiable. But, the abolition of transport pass required under the Kerala Transit Rules, 1975 is not necessary because this provision would be misused for smuggling trees from forests.

Besides sending such petitions to the Governor, the Chief Minister, the Ministers etc., the KFPSA conducted 5 seminars in different parts of the State to educate the public in general and environmentalists in particular about the damage caused by the implementation of the new Act. Members of Parliament, Members of Legislative Assembly and noted literary personnel took part in those seminars and spoke against the Act.

Probably all the above apprehensions proved correct when large-scale fellings were reported from Palakkad, Wayanad and Idukki districts and the Government promulgated an Ordinance to amend the Act.

4.2.33. The Kerala Promotion of Tree Growth in Non-Forest Areas (Amendment) Act, 2007 (Act 19 of 2007)

Though there were lot of skepticism among foresters and environmentalists about the outcome of the new Act, the immediate reason for its amendment was large scale tree

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13 'Forest Staff say new Act will abet illegal felling’ – The Hindu Daily, Thiruvananthapuram. Dt: Nov.3.2005
felting During April / May 2006 in two private estates (Shoba Estate & KGP Estate) in Sholayur Village Palakkad District. About 1,216 trees from Shoba estate and 326 trees from KGP estate were felled. Felled trees were mainly Rosewood, Gravelia, Chadachi and Venga. The mere fact that the felling has taken place in the catchments of Shiruvani River, a major source of drinking water for the arid zones of Attappadi and Coimbatore town gave a different angle to the issue. The Government has been implementing an afforestation programme in Attappadi since 2000 with financial assistance from Japan\textsuperscript{16}. This also roused criticism from environmentalist and the public because, spending huge amount of money for afforestation on one side and permitting large scale felling of trees in estate was meaningless to them. Media gave good coverage to the issue. Though the forest staff was not empowered to stop felling, they stopped the transportation of timbers, partially on compulsion of environmentalists. Environmentalists approached the forest department requesting notifying the above estates as Ecologically Fragile Land under the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 (personal experience) (See 4.2.31). During the same period stories of large-scale felling were reported from other districts such as Idukki and Wayanad also. As an interim action to stop felling the government issued orders\textsuperscript{17} directing District Collectors to take action under the Kerala Land Utilization Order 1967 or any other similar Act / Rules against owners of land who misused provisions in the Kerala Promotion of Tree Growth in Non-Forest Areas Act, 2005.

\textsuperscript{16} Attppadi Hill Area Development Scheme (AHADS) under financial assistance of Japanese Bank for International Co-operation (JBIC) Project period 2000-10(Project agreement signed in 1996) Total outlay of the Project Rs 219 crores.

\textsuperscript{17} G.O (Rt) No.2889/06 dated 23..05..2006
As solution to the issue the forest department advised government to limit the operations of the Act, to Districts other than Wyanad, Idukki (which are ecologically sensitive) and villages which are having either forest areas or forest areas as a boundary; and to declare Coffee and Cardamom estates also as EFL or to repeat this Act as such. The reasons for the amendment are summarized as follows in the statement of objects and reasons of the Act itself.

“As a precautionary measure, the government considers it necessary to regulate tree felling in certain areas in protecting the ecology of the area or in public interest. The government intent to limit the restriction on felling of trees by smallholders to twelve specified trees only in the notified area. To encourage tree planting outside the notified area, the restriction on felling of trees in the private areas is limited to sandal only and the owners are free to cut all other species without permission. Restriction on transport of timber of certain species is also felt necessary to protect the forest wealth of the State”.

While the objective of the Act of 2005, was a complete liberalization of tree growing, the amended Act took a reverse path towards command and control. The regulations introduced as per the amended Act, 2007 in general are as follows.

This amendment introduced new classifications for trees (according to value) for landholdings (according to size) and for villages (according to proximity to forest lands) and made different regulations on felling and transportation of trees according to these classifications.
Trees are classified as ‘specified’\(^{18}\) and ‘non-specified’. Specified category consists of 12 species of which 9 are hardwood species. Regulations are liberal for non-specified trees whereas it is stringent for specified group. Sandalwood continued to be in a separate category, extraction of which continued to be vest with Government wherever it is found.

Landholdings are classified into ‘small’ (size up to one hectare) and large (size more than one hectare). Regulations are stringent in large holdings whereas it is liberalized in the case of small holdings.

Villages are classified into ‘notified’ (notified in the government gazette) and non-notified (all others). There are 50 villages in the notified category (Out of a total of 1478 in the state) where regulations are more strict.

De-regulation permitted as per this Act is not applicable to trees if any, reserved by the Government at the time of assignment of such land or to land notified under section-5 of the Kerala Preservation of Trees Act, 1986. Not it is applicable to paddy lands.

The owner of the tree who intends to cut or transport a tree can do it on the strength of a declaration ha files before the Forest Range Officer.

Even the amended Act is not without criticism. Major inadequacies of the new Act from the foresters’ perspective are as follows: (This is gathered on the basis of interview with senior forest officers)

Prior permission of the authorized officer is required only for cutting and removal of certain categories of trees. There is no restriction on ‘uprooting, burning or otherwise damaging any tree’ including the exempted species in these lands.

In the notified area, small holders can cut and transport all species except specified species. In the case of large holders, cutting permission is required for all species other than the twenty exempted species. Transport permit is seen required only for the eleven specified species from the notified areas. As almost all jungle wood species which are found commonly in the forests other than specified trees can also be felled and transported from small holdings. It is deemed necessary that transport permits are imposed for these species also.

Mangroves cardamom plantations and coffee plantations are deemed to be notified areas as per the Act. But in many cases, the lands having the status of cardamom plantations and coffee plantations as per revenue records would have already been converted into other crops growing areas and similarly certain other lands having freehold status have been planted with cardamom and coffee. Insisting the cutting permit and transport permit in such lands affect tree growing.

Paddy fields and tribal lands are not non-forest lands as per the definition of the Act. This imposes restriction on felling and transportation of any species of trees from such land.

In general, with the introduction of the Amended Act regulations have become stricter in 50 notified villages whereas the conditions which existed previous to the introduction of the Kerala Promotion of Tree Growth in Non-Forest Areas Act 2005 have been brought back in non-notified villages.
Comment: In the amended Act also there is ample scope for bureaucracy to harass tree growers. For example, when the land owner transports timber on the strength of a declaration (not acknowledged by the Range Officer) the forest staff can stop the vehicle in the pretext of verification of particulars in the actual site of felling. On the other hand to get a declaration duly acknowledged by the Range Officer under his hand and seal, one may have to go through all the ordeals required for obtaining a ‘pass’ or ‘cutting permit’. Above all, the so called liberation granted as per this Act is not available to the land owners who occupy non revertible forest (NRF) land, tribal lands and paddy lands.

There is a general belief among the public and majority of the forest bureaucracy that only Kerala Forest Act and its rules regulate private tree growing in the State. In fact, as seen above, there are at least 32 policy instruments besides this Act to regulate tree growing in private lands. Consequently, a land owner who wishes to grow trees is often scared of the intricacies of these instruments. Chapter - 5 examines the real life experiences of a few land owners chosen at random.

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