

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH NEW DELHI

ORIGINAL APPLICATION NO. 163/2024

IN THE MATTER OF:

Rasikh Rasool Bhat

Versus

.....Applicant

Govt of UT of J&K and others

.....Respondents

REJOINDER BY APPLICANT TO THE REPORTS OF RESPONDENT NO 10 J&KPCC
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Place: Handwara J&K

Dated : 16 of December 2024



Rasikh Rasool Bhat
Applicant in person

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MEMO OF PARTIES

Rasikh Rasool BhatAPPLICANT

VERSUS

1. **Union Territory (UT) Government of Jammu and Kashmir**
Through Chief Secretary Civil Secretariat Jammu, Jammu and Kashmir- 180001
Email: cs-jandk@nic.in (Respondent no 1.)
2. **Administrative Secretary Public Works Roads and Buildings Department**
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Civil Secretariat Jammu Jammu and Kashmir- 180001
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3. **Administrative Secretary to Forest Ecology and Environment Department**
UT Government of Jammu and Kashmir
Civil Secretariat Jammu Jammu and Kashmir- 180001
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4. **Deputy Commissioner, Kupwara**
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5. **Executive Engineer Public Works R&B Division Handwara**
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6. **Divison Forest Officer Langate**
Langate, Handwara J&K – 193302
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(Respondent no. 6)
7. **Administrative Secretary Mining Department UT Govt of Jammu and Kashmir**
Civil Secretariat Jammu Jammu and Kashmir- 180001
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(Respondent no. 7)



8. **Executive Engineer Irrigation and Flood Control Department**
Rajwar Road, Handwara J&K- 193221
Email: plansectionhyd@qmail.com se1-jkidfc@jk.gov.in (Respondent no. 8)
9. **District Mineral Officer Geology and Mining Department**
Kupwara Kupwara J&K- 193222
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10. **Member Secretary J&K Pollution control committee**
Perivesh Bhawan ,Gladni Forest Complex Transport Nagar Jammu
Email: membersecretaryjkspcb@gmail.com , membersecy.pcb@jk.gov.in (Respondent no. 10)

Dated: 16/12/2024.
Place : Handwara J&K



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District Kupwara 193221 J&K
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OA No: 163/2024

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REJOINDER BY APPLICANT TO THE REPORTS OF RESPONDENT No 10 J&K PCC.

RESPECTFULLY SHOWETH:

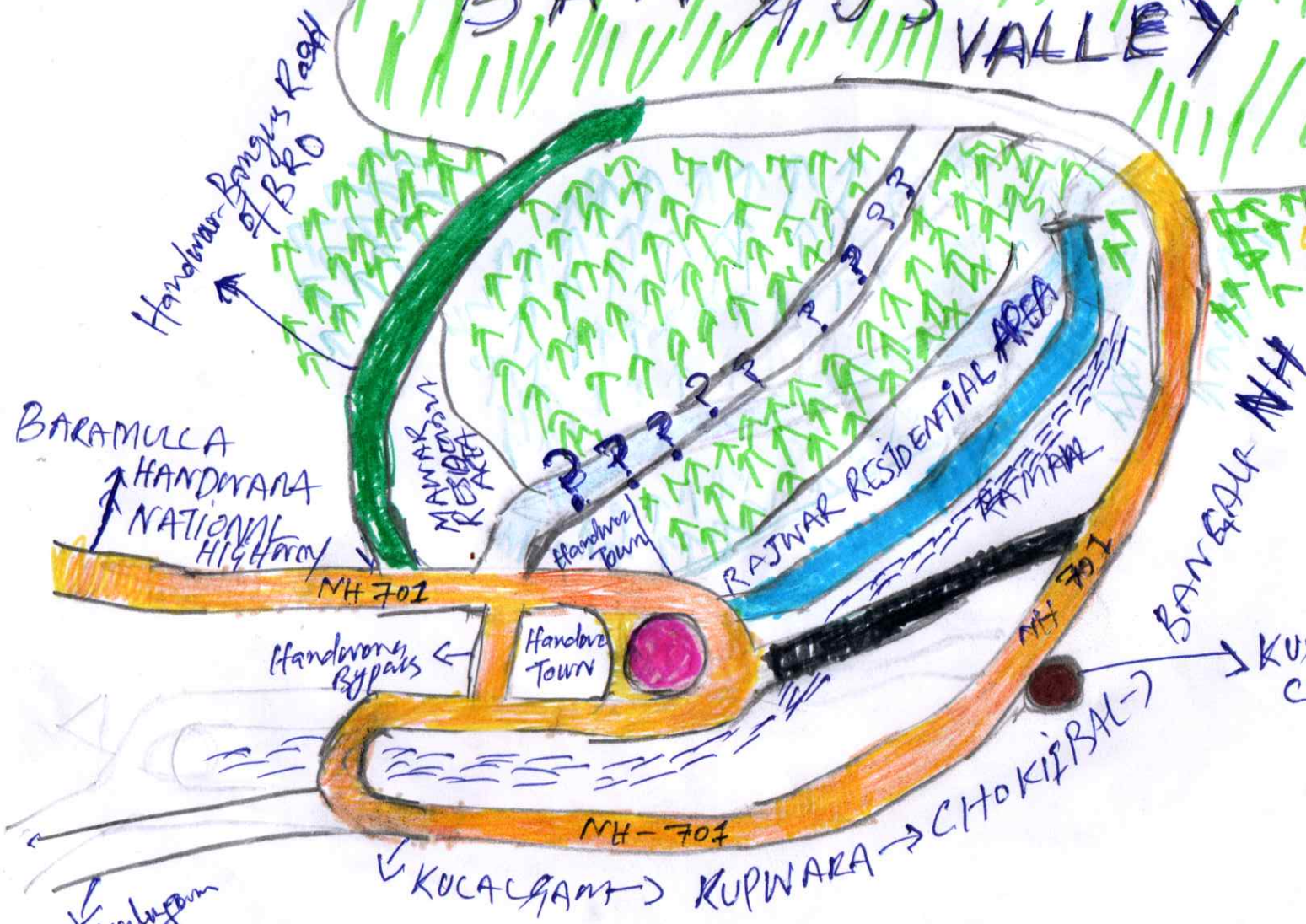
1. That in the aforementioned OA, Applicant has raised the grievance that in the execution of the work on Handwara- Bangus road project (state highway) at Rajwar Forest Area of Kupwara District of J&K the environmental norms are being violated and extraction of gravel in the stream local Talri Nallah of Rajwar area is being done. Applicant further raised the issue that authorities have allowed extraction of gravel from local stream (Bakiaker - Zachaldara) of Rajwar area of Kupwara district for utilization in construction of the road, in result various Public and private properties like Bridges etc are at threat of Damage, It was further submitted that more than 25000 lush green forest trees were cut/uprooted and big mountains have been blasted and more than 14 hectares of forest land is being used to construct the road. Further more it was submitted that none of the respondents have applied for the mandatory Environmental Clearance and no information in this regard is available in dedicated PARIVESH Portal. And Forest clearance was granted without the consultation of local people. Applicant is praying for ban on construction of Road and imposition of penalties up-on the appropriate authorities as the road for Bangus was already available via Rajwar Locality and there was no need to propose and construct new road via Rajwar Forests. Subsequently in response to the reports filled by Respondent No 3 , 9 and 10 , applicant also prayed for the cancellation of Forest Clearance and Investigation by CBI or ACB of J&K.

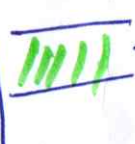









2. That Applicant is submitting that Reports of J&K PCC are not reflecting the actual and detailed violations of Rules / laws and Environmental Loss, Total cost of the Project and other details.

3 That for the clear overview , Applicant is presenting an illustrated Map drawn by him , attached below , mentioned as **Map 1** .



BANGUS VALLEY



-  → Bangus Valley
-  → Rajwar Forests.
-  → NH-701
-  → Handwar - Bangar via Mangarad BBO
-  → Handwar - Zachelde wadder - Bangus Ke
-  → Impugned Road Project Handwar - Bangus of R&B
-  → Bakialke Zachelde Nallah - Stream
-  → Handwar Chowk.
-  → Handwar - Ramkr Road.
-  → Kupwar Chowk.

MAP-
Draw by the Applicant.

Barak

A. That three Major routes for Bangus Valley were available in Kupwara District, since the year 2012 and all these three routes were adopted by the “lolab Bangus Drangyari Development Authority” for tourism activities. These Routes/ Roads are known as:- 1. Handwara-Bangus Road via Nowgam Mawar a state highway constructed by the Boarder Roads Organisation (BRO) under the Project BEACON , that Begins at Chotipora Handwara from NH701 and passes through Mawar Locality , through some forest area and connects Bangus Valley. Signified in Green color on the Map

B. That second route/road was available from Rajwar Locality known as Handwara-Zachaldara-WadderBala Bangus route/road well built up macadamised with 30 feet width ,Upto wadder, Rajwar. Signified in Bright Sky Bule color on the map.

C. That third route/road was available as National Highway 701 itself known as Banramulla-Handwara-Kulangam-Kupwara-Chokibal-Bangus . Signified in Yellow color on the Map.

So, as per the above explained facts with the help of illustrated map:

A. its crystal clear that at least 3 routes were available in Kupwara District (including its Sub-Division Handwara) of J&K , all these routes were connecting Bangus Valley with the rest of country and all these 3 routes/roads were accepted by the General Public of whole the Kupwara District and there was no need to propose or built/construct any other route.

B. That during the times of lockdown and communications blackout in the year 2019 that had been imposed by the Government in the interest of Law and order following the revocation of Article 370 (August 2019) which lasted until a long, a new road was given permission/Technical Clarence known as Handwara-Bangus Road constructed by the R&B PWD Department via 14 hectares Rajwar Forests land, same is impugned in the instant petition Signified as ? (Question Mark) on the Map

C. That impugned Road project signified as Question Mark? On the map , was proposed in parallel to available route/road signified as bright sky blue color on the map and Bright sky blue color road was cancelled without informing the General Public of the Rajwar Area.

FOREST CLEARENCE IN VIOLATION OF RULES

3. The Forest clearance granted under J&K Forest Conservation Act and J and K (conservation and Afforestation) Rules 2000. of the impugned Road project annexed in the reports of J&K PCC on Page No 116 which reflects as under

C	Weather the Chief Conservator of Forests had certified that it has considered all other alternatives and that Yes, no alternative in circumstances are feasible and that all the required area is minimum needed for the Propose	YES
---	--	-----



- A. That above certification by the Chief conservator of Forest in nexus with than DFO Langate and others was given dishonestly and fraudulently as the fact is three routes/ alternate were available as mentioned and reflected on the attached illustrated Map .
- B. Such misconduct by the Chief Conservator of Forests is violation of Section 7 (c) of the Jammu and Kashmir Forest (conservation and afforestation) Rules 2000, SRO 203, dated 13th June, 2000. Which reads as under “(c) whether the Principal Chief Conservator of Forests had certified that t has. considered all other alternatives and that no other alternative in circumstances are feasible and that the required area is the minimum needed for the purpose” and this criminal misconduct the Chief Conservator of Forests has led huge damage to Forests Ecology and Environment JKF(CandA) rules annexed here with mentioned as **Annexure A**

PICTURES DICPICTNG THE LATEST DESTRUCTON SINCE JANUARY 2024



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4. WHY THE IMPUGNED ROAD PROJECT IS A STATE HIGHWAY AND PRIORENVIROMENTAL CLEARENCE WAS NECESSARLY REQUIRED UNDER EIA NOTIFICATION.

- A. That in reply to JKPCC Report on 30th July 2024 Applicant has already defined (that Impugned Road project is a State Highway in terms of Definitions/Classifications of Roads under the Jammu and Kashmir Road Gazette and other facts. Annexed on page 129 .130 and 133 of the instant matter.
- B. That Applicant has also availed the Road definitions/classifications Publication of the the Indian Road Congress (IRC), enclosed herewith mentioned as ANNEXURE B and its point 3.3 reads as under

‘State Highways are arterial routes of the state linking district headquarters and important cities with the state and connecting the with National Highways or highways of the neighboring states’

- C. That Impugned Road Project is onset linking NH 701 near Bypass Road Handwara , Passing through middle of very dense hilly mountainous ecologically sensitive Forests and connecting Tourist Destination/ Tourist city Bangus Valley while on its connection to Bangus Valley it also connects Handwara-Bangus Mawar (State highway) left side and NH 701 towards Chokibal on its Right side. So its clearly a State Highway as per its purpose/ activity and the class/definitions of the IRC and J&K Road Gazette.
- D. That EIA Notification Schedule in reference to its section 2 and 7 V(i) is extracted as under;

LIST OF PROJECTS OR ACTIVITES REQUIRED PRIOR ENVIROMENTAL CLEARENCE.

7(f)	Highways		V i) All state Highway Project; and ii)State Highway expansion projects in hilly terrain (above hilly 1000 m AMSL) and ecologically sensitive areas.	General Condition shall apply; Note; Highways include expressways
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- E. That as per the above schedule of EIA Notification 2006 it was mandatarly for User Agency to avail Prior Environmental clearance.



MORE THAN 25000 TREE CUT/UPROOTED

4. That Applicant is affirm on the fact that more than 25000 tress of different class were illegally cut/uprooted by than DFO in league with Concerned Public Servants of User Agency and others, Applicant is Justifying the fact with below mentioned technical grounds.

A, Forest Cover mentioned in the Impugned Forest clearance of the Impugned Road Project annexed with the Report of JKPCC on page no 116 is extracted as under;

5	Crop density of the Area	Very Dense
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B, As per the Reports/Publications/notifications of the Forest Survey of India, downloaded from the website of Ministry of Statics and Programme Implementation Govt. of India. there are 5 forest covers ie Very Dense Forest, Moderately Dense Forest. Openg Forest , Scrub and Non-forest, 3 Page Extraction is annexed here with as ANNEXUE C

C, As per the Forest Survey of India, Very Dense Forest (VDF) is described as under;

'All lands with tree canopy density of 70% and above,'

D As per above described technical fact 70% of 14ha very dense forest lands under the User Agency will having more than 25000 tree conopy. Hence it is evident that more than 25000 tress were illegally cut/uprooted by user agency in league with than DFO Langate and others.

BIRD VIEW PICTURE OF FIRST 3 KMS OF IMPUGNED ROAD PROJECT THAT WERE MACDAMIZED BY USER AGENCY IN THE MONTH OF JULY AUGUST 2024 IN VIOLATION OF ENVIROMENTAL NORMS , TREE DENESTY OF FORESTS IS VISBLE VERY DENSE



5. GRAVEL(Nal mukh) Extraction in violation of Laws.

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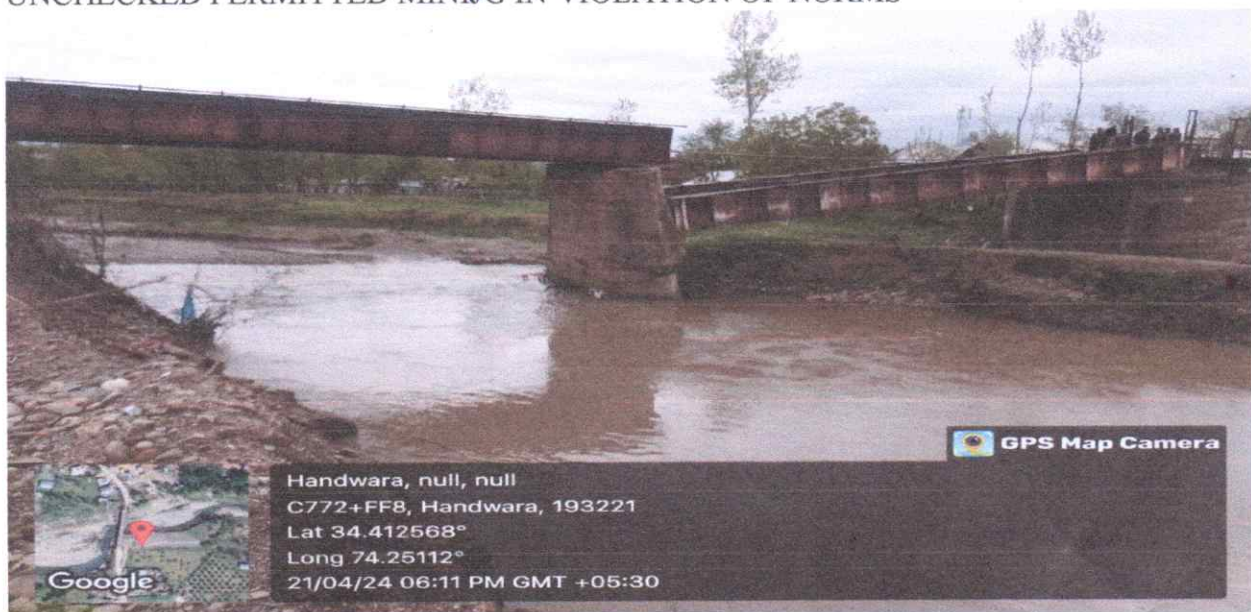
A. As the Report dated 18.11.2024 has of J&KPCC has disclosed the discrepancy of 2728.82 MT in the material consumed and disposal permits obtained by the Executive Agency PWD (R&B) Department. Report also disclosed that the Executive Agency has not provided any justification for the discrepancy. However there are lot of discrepancies and violations as under

B hat J&K PCC failed to ascertained the facts in terms of Violations committed with Nulmakh (GRAVEL) River bed extraction in violations of laws committed by the Respondent no 5 and 9 and others like violations of Minor Mineral Concession Storage ,Transportation of Minerals and prevention of illegal Mining rules 2016: Rule 94, after clause (iii) of sub-rule (2), the following clause shall be added; namely:- "(iv River bed material shall not be extracted up to a distance of five times (5) of the span (x) of a bridge / public civil structure (including water intake points) on up-stream side and ten times (10) the span of such bridge on down-stream side, subject to a minimum of 250 meters on the upstream side and 500 meters on the downstream side. Reference page No's 131, 134 , 135, 136, 137 and 138 of the instant case.

C. Since two years Bakiaker Zachaldara Nallah has been tremendously affected , damaged while Public and Private properties also got damaged , ground water has reduced even a Bridge collapsed , no water was available for irrigation purposes as the stream has been deeply exploited, while two more bridges are verge to collapse but Mining has not been stopped, recently people of area mark protest against authorities for allowing mining of said Nallah as they saw river bed martial were carried for the site of impugned Road Project in a suspicious manner.

D, There is no clarity about about approved source of Mineral extraction as the report filled by J&K PCC on 18/11/2024 is contradicted the approved and non approved source of material extraction and DPR (Detailed Project Report) of impugned project has not been ascertained, hence Source of Material is doubtful.

PICTURE OF BRIDGE CLLOPSED ON BAKIAKER-ZACHALDARA NALLAH DUE TO UNCHECKED PERMITTED MINING IN VIOLATION OF NORMS



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6. FIRs

Various FIRs were registered or recommended to register by the forest Department for Violation of Conservation of Forest Act etc details of FIRs by the Forest Department reflected on page no 156 of the instant matter

7. HUMAN -WILD ANIMAL CONFLICT CASES

Since the inception of the impugned Road Project , Wild Animals presence in human habitats has risen, great of number Wild-Human Animal conflict cases are being report wherein in some cases Children lost their life. Which clearly indicates that due the approval of impugned road project via middle of very dense forest , wild Animal habitat is greatly affected.

In view of above mentioned facts its evident that impugned Road Project is not only being constructed in Violation of Environmental Norms But also a Fit case to classify it as scam, therefore Applicant most respectfully pray that to prevent the further destruction and environmental damage, impugned Forest Clearance of the impugned Road project should be cancelled straight-off and prayers in OA 163 of 2024 may please be granted and meantime further investigation by the Central Bureau of Investigation or Anti Corruption Bureau J&K may also please be ordered.

Dated ; 16/12/2024
Place Handwara J&K



Rasikh Rasool Bhat
Applicant in Person
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M.no 9103097097 email.rasikhrasool@gmail.com

**THE JAMMU AND KASHMIR
FOREST (CONSERVATION & AFFORESTATION) RULES, 2000**

SRO 203, dated 13th June, 2000.

In exercise of the powers conferred by section 6 of the Jammu and Kashmir Forest (Conservation) Act, 1997 (Act No. XXX of 1997), the government hereby makes the following rules, namely:

1. Short title, extent and commencement

(i) These rules may be called the Jammu and Kashmir Forest Conservation and Afforestation) Rules, 2000.

(ii) They shall extend to the whole of Jammu and Kashmir State.

(iii) They shall come into force from the date of their publication in the Government Gazette

2. Definitions

In these rules unless the context otherwise requires:

- (a) Act means the Jammu and Kashmir Forest (Conservation) Act, 1997;
- (b) Committee means the committee constituted under section 3 of the Act;
- (c) Chairman means the Chairman of the Committee.
- (d) Member means the member of the Committee.
- (e) Section means a section of the Act.

3. Composition of the committee

The Committee shall consist of the following members:-

i)	Chief Secretary, Jammu & Kashmir State	Chairman
ii)	Financial Commissioner, (Revenue) Jammu & Kashmir Government	Member
iii)	Principal Secretary and Secretary to Government, Planning and Development Department	Member
iv)	Principal Secretary and Secretary to Government, Finance Department	Member
v)	Principal Secretary and Secretary to Government, Forest Department	Member
vi)	Principal Chief Conservator of Forests, Jammu and Kashmir Government	Member
vii)	Director Soil Conservation	Member
viii)	Chief Wildlife Warden, Jammu and Kashmir Government	Member
ix)	Director Environment	Member
x)	Two eminent Environmentalists	Member
xi)	A representative of Central Ministry of Environment and Forests	Member
xii)	Conservator of Forests, Working Plan Circle	Member Secretary

4. Terms of Appointment of non-official members

The terms of appointment of non-official members shall be as follows:-

- (1) A non-official member shall hold office for a period of two years.
- (2) A non-official member shall cease to hold office if he dies, resigns, become of unsound mind, becomes insolvent or is convicted by a court of law on a criminal offence involving moral turpitude.
- (3) Any vacancy in the membership caused by any reason mentioned in sub-rule (2) shall be filled up by the Government for the remaining portion of 2 years.
- (4) Travelling and daily allowances shall be payable to the non-official members of the committee at the rate as admissible to class - I officers of the Government under the rules and orders made by the Government from

[Signature]

time to time.

5. Conduct of business of the Committee:-

(1) The Chairman shall call the meeting of the committee as and when necessary, but at least once in 6 months.

(2) The meetings of the committee shall normally be held at the State Capital (Jammu or Srinagar) provided that in case the Chair man is satisfied that inspection of sites of forest land proposed to be used for non - forest purposes, would be necessary or expedient in connection with the consideration of the proposal received under sub rule (1) of rule 7, he may direct that the meeting of the committee will be held at a place other than the capital, from where such inspection of site or sites can be undertaken conveniently

(3) The Chairman shall preside over every meeting of the committee at which he is present.

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

(4) Every question upon which the committee is required to advise, shall be considered at its meeting; provided that in urgent cases if the meeting of the Committee cannot be convened within 6 months, the Chairman may direct that necessary papers may be sent to the members for their opinion by a stipulated date in rotation.

(5) The quorum for the meeting of committee shall be six.

6. Procedure to make proposals by the Forest Department:-

The Principal Chief Conservator of Forests shall send its proposals to the Government in the Forest Department along with the particulars specified in the Annexure to these rules.

7. Committee to advice on proposals received by Govt.:-

(1) The Forest Department shall refer every proposal received by it under rule 6 to the committee for its advice thereon.

(2) The Committee shall have due regard to all or any of the following matters while tendering its advice on the proposals referred to it under sub: rule (1), namely:

(a) whether the forest land proposed to be used for non-forest purpose forms part of a natural reserve, national park, wildlife sanctuary, biosphere reserve or forms part of the habitat of any endangered or threatened species of flora and fauna or of any area lying in severely eroded catchment.

(b) whether the use of any forest land is for agriculture purposes or for the rehabilitation of displaced person.

(c) whether the Principal Chief Conservator of Forests had certified that it has considered all other alternatives and that no other alternative in circumstances are feasible and that the required area is the minimum needed for the purpose, and

(d) whether the department or authority requisitioning forest land for non-forest uses undertakes to provide at its own cost acquisition of an equivalent area and afforestation thereof.

(3) While tendering its advice the committee may also suggest any condition or restriction on the use of any forest land for any non-forest purposes which, in its opinion, would minimize adverse environmental impact.

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text was done jointly by R.P.Sikka, Member-Secretary, Specifications and Standards Committee and K. Arunachalam.

2. SCOPE

2.1. The publication is based primarily on existing standards and recommendations of the Indian Roads Congress, with suitable modifications and additions in the light of current engineering practice. The standards prescribed are essentially advisory in nature but may be relaxed somewhat in very difficult situations if considered judicious. Effort in general should, however, be to aim at standards higher than the minimum indicated.

2.2. The text deals with geometric design standards for rural highways**, i.e. non-urban roads located predominantly in open country outside the built-up area. The alignment may however pass through isolated stretches of built-up nature as long as character of the road as a whole does not change. The standard is not applicable to urban roads or city streets. It is also not applicable to expressways. Geometric design elements of road intersections are not considered in the standard either.

2.3. The geometric features of a highway except cross-sectional elements do not lend to stage construction. Geometric deficiencies are costly and sometimes impossible to rectify later on due to the subsequent roadside development. Therefore, it is essential that geometric requirements should be kept in view right in the beginning.

3. CLASSIFICATION OF NON-URBAN ROADS

3.1. Non-urban roads in India are classified into five categories:

- (i) National Highways
- (ii) State Highways
- (iii) Major District Roads
- (iv) Other District Roads
- (v) Village Roads

**These should not be confused with Rural Roads which refer commonly to Other District Roads and Village Roads. While geometric design elements of Rural Roads are duly covered in this publication alongwith roads of higher category, more comprehensive guidance about different facets of design and construction of the Rural Roads can be had from the IRC Special Publication No. 20, "Manual on Route Location, Design, Construction and Maintenance of Rural Roads (Other District Roads and Village Roads)".

3.2. National Highways are main highways running through the length and breadth of the country connecting major ports, foreign highways, State capitals, large industrial and tourist centres etc.

3.3. State Highways are arterial routes of a State linking district headquarters and important cities within the State and connecting them with National Highways or highways of the neighbouring States.

3.4. Major District Roads are important roads within a district serving areas of production and markets, and connecting these with each other or with the main highways.

3.5. Other District Roads are roads serving rural areas of production and providing them with outlet to market centres, taluka/tehsil headquarters, block development headquarters, or other main roads.

3.6. Village Roads are roads connecting villages or groups of villages with each other and to the nearest road of a higher category.

4. TERRAIN CLASSIFICATION

4.1. The geometric design of a highway is influenced significantly by terrain conditions. Economy dictates choice of different standards for different types of terrain. Terrain is classified by the general slope of the country across the highway alignment, for which the criteria given in Table 1 should be followed. While classifying a terrain, short isolated stretches of varying terrain should not be taken into consideration.

TABLE 1. TERRAIN CLASSIFICATION

S. No.	Terrain classification	Per cent cross slope of the country
1.	Plain	0—10
2.	Rolling	10—25
3.	Mountainous	25—60
4.	Steep	Greater than 60

5. DESIGN SPEED

5.1. Choice of design speed depends on the function of the road as also terrain conditions. It is the basic parameter which determines all other geometric design features. Design speeds for various classes of roads should be as given in Table 2.

Note on the Conceptual Differences in the Definition of "Forests" across India's Official Data Sources

1. The terms 'Forest Cover' and 'Forest Area' are the two most commonly used terms to describe the extent of the forest. Both the terms, 'Forest Cover' and 'Forest Area' denote extent of the forests with different meanings. The term 'Forest Cover' is used to define the expanse of forest resources in a region primarily based on the tree canopy density, while the term 'Forest Area' is used to denote the areas having legal standing, i.e., recorded as forests in government records or maintained as forests. In addition, there exists a variation in the definition followed by different Indian official agencies in the measurement and description of forests. These differences have been elucidated in the following paragraphs.

Forest Cover

2. Definition of 'Forest Cover' as followed by the Forest Survey of India (FSI)¹: It includes all lands having trees more than one hectare in area with tree canopy density of more than 10 % irrespective of ownership, legal status of the land and species composition of trees. The assessment of the 'Forest Cover' includes tree orchards, bamboos, palms etc. within recorded forests, on other government lands, private, community or institutional lands.

3. Forest cover is classified by FSI in terms of canopy density classes as follows:

Class	Description
Very Dense Forest	All lands with tree canopy density of 70% and above
Moderately Dense Forest	All lands with tree canopy density of 40 % and more but less than 70%
Open Forest	All lands with tree canopy density of 10% and more but less than 40%
Scrub	Forest lands with canopy density less than 10%
Non-Forest	Lands not included in any of the above classes. (includes water)

4. Definition of 'Forest Cover' as followed by Indian Space Research Organization (ISRO), National Remote Sensing Centre (NRSC)²: The category, Forest, in the Land

¹ <https://fsi.nic.in/isfr19/vol1/chapter2.pdf>

² <https://bhuvan-app1.nrsc.gov.in/2dresources/thematic/2LULC/lulc1112.pdf>