ANIL AGARWAL DIALOGUE
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Understanding Forests Beyond Words and Legislation

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Photo: Debadityo Sinha
What is a ‘Forest’?
forest

noun

a large area of land covered with trees

the tropical rainforests of South America
<table>
<thead>
<tr>
<th><strong>a thick growth of trees and bushes that covers a large area</strong></th>
<th><strong>a large area of land that is thickly covered with trees</strong></th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th><strong>a forest is a large area where trees grow close together</strong></th>
<th><strong>a dense growth of trees and underbrush covering a large tract</strong></th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th><strong>noun</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. a large tract of land covered with trees and underbrush; woodland.</td>
</tr>
<tr>
<td>2. the trees on such a tract: to cut down a forest.</td>
</tr>
<tr>
<td>3. a tract of wooded grounds in England formerly belonging to the sovereign and set apart for game.</td>
</tr>
<tr>
<td>4. a thick cluster of vertical objects: a forest of church spires.</td>
</tr>
</tbody>
</table>

https://www.dictionary.com/browse/forest
Land spanning more than 0.5 hectares with trees higher than 5 meters and a canopy cover of more than 10 percent, or trees able to reach these thresholds in situ. It does not include land that is predominantly under agricultural or urban land use.

-Food and Agricultural Organization of the United Nations, 2020

A land area of more than 0.5 ha, with a tree canopy cover of more than 10%, which is not primarily under agriculture or other specific non-forest land use. In the case of young forest or regions where tree growth is climatically suppressed, the trees should be capable of reaching a height of 5 m in situ, and of meeting the canopy cover requirement.


A land area with a minimum 10% tree crown coverage (or equivalent stocking level), or formerly having such tree cover and that is being naturally or artificially regenerated or that is being afforested

-International Union of Forest Research Organizations, 2002
Finn’s Weaver, Uttarakhand (Photo: Debadityo Sinha)
IUCN: Endangered
Black-necked Crane, Ladakh (Photo: Shivang Mehta) 
IUCN: Vulnerable

Sarus Crane, U.P. (Photo: Debadityo Sinha) 
IUCN: Vulnerable
India has >200 Forest Types

Mirzapur, U.P.

Palamau, Jharkhand

Hesaraghatta, Karnataka

Gurugram, Haryana

Orans, Rajasthan

Kaziranga, Assam

Photo: Roundglass Sustain

Photo: Vijai Dhasmana

Other Photos: Debadityo Sinha
Origin of the word ‘Forest’

Forest’ [latin ‘foris’: outside the settlement] was initially used to imply uncultivated land of a variety of vegetation types, including grasslands.
Historical Use of the ‘Forest’

- Historical use of ‘forest’ contrary to modern use. The definition, recognition and control of forest keeps evolving with the requirements of the civilizations. (eg. Recreation, Hunting, Timber, Biodiversity, Ecosystem Services, Carbon Sequestration)

- 7th Century- Frankish kings claimed rights to forests, uncultivated hunting and swine foraging areas. No clear owner

- 10th Century- King William started afforestation on fallow lands and introduced forest laws- a separate legal system with its own courts and officers. It was the responsibility of these courts to protect and preserve the vert and the venison for the King’s pleasure. Sovereign rights over forests, Right of Commons recognized.

- In India, the importance of forests was recognized during the Mauryan period (~3rd century BCE). The Arthasastra mentions about a superintendent of forest produce, who shall collect timber, employ guards to protect forests and fix adequate fines who cause damage to forests.

- Precolonial times- Rulers had control over certain trees. The remaining forest items were left unclaimed for the use of the common people.

- British Rule- used forest resources for revenue generation. Estd Indian Forest Service
How are **Forests** Regulated in India?
Forest Regulation in India

**Indian Forest Services** 1864
- Utilization of forest resources.

**Indian Forest Act 1865** 1865
- Power to declare any land covered with trees as a government forest. Defined forest as land covered with trees, brushwood and jungle. Purpose was timber extraction.

**Indian Forest Act 1878** 1878
- Demarcate protected, reserved forests (and village forest).

**1st National Forest Policy** 1894
- Classified forests into protection, commercial production, minor forests and pasture lands. Agriculture prioritised over forest. Necessity for exploiting forests for generation of State revenue.

**Indian Forest Act 1927** 1927
- Still in force
## Table 2

### Sources of Fuel Supply to Madras Railways (in Tons)

<table>
<thead>
<tr>
<th>Districts</th>
<th>Government</th>
<th>Private</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nizam’s Dominions</td>
<td>–</td>
<td>2,550</td>
<td>2,550</td>
</tr>
<tr>
<td>Bellary</td>
<td>–</td>
<td>1,120</td>
<td>1,120</td>
</tr>
<tr>
<td>Cuddapa</td>
<td>8,860</td>
<td>1,800</td>
<td>10,660</td>
</tr>
<tr>
<td>North Arcot</td>
<td>2,750</td>
<td>23,440</td>
<td>26,190</td>
</tr>
<tr>
<td>Mysore</td>
<td>–</td>
<td>850</td>
<td>850</td>
</tr>
<tr>
<td>Salem</td>
<td>650</td>
<td>10,750</td>
<td>11,400</td>
</tr>
<tr>
<td>Coimbatore</td>
<td>400</td>
<td>–</td>
<td>400</td>
</tr>
<tr>
<td>Malabar</td>
<td>–</td>
<td>15,250</td>
<td>15,250</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>12,660</strong></td>
<td><strong>55,760</strong></td>
<td><strong>68,420</strong></td>
</tr>
</tbody>
</table>

Forest Regulation in India

- **2nd National Forest Policy** (1952): Forests classified into protection forests, national forests, village forests, and tree lands. Min forest cover introduced. Regulate private forest in national interest.

- **‘State’ to ‘Concurrent’ list** (1976): Centre gets law-making power.

- **Forest (Conservation) Act 1980** (1980): Centre’s approval mandatory for diversion of forest by States.

- **3rd National Forest Policy** (1988): Principal aim- environmental stability and maintenance of ecological balance including atmospheric equilibrium which are vital for sustenance of all lifeforms, human, animal and plant. The derivation of direct economic benefit must be subordinated to this principal aim.

- **Van Sanrakshan Evam Samvardhan Adhiniyam 2023** (1996): Definition of forest by dictionary meaning. T.N. Godavarman case in Supreme Court (continuing mandamus)

- **Amendments to Forest (Conservation) Act 1980** (2023):
Forest Regulation in India

Privately owned Forests were not specifically recognized or regulated before independence. There were attempts to bring them under State control. Chapter V of 1927, IFA contained such provisions, but hardly exercised.


Separate Trees Acts also introduced with exclusive jurisdiction of State on trees outside forests.

Permission under section 2 of Forest (Conservation) Act 1980 is commonly called ‘Forest Clearance’ or FC *(No State can deserve any of forest, use any forest land for ‘non-forest’ use, lease forest land, clear trees for purpose of reafforestation, without prior permission of Centre)*

Applicability of section 2 depends on how the Act defines forest and non-forest activity. Any work ancillary to conservation, development and-management of forests and wildlife are usually not considered ‘non-forest’.

The process of FC is prescribed as Rules and guidelines published by MoEFCC. Rules are law (consultation + parliamentary assent), guidelines usually administrative orders (gazette notification, office memorandum, manuals published by officers).

User agencies apply FC to State > DFO verifies and forwards > State forwards to Authority as per Rules.

Upto 40ha and linear projects forwarded to Regional Offices of MoEFCC -> Upto 5 ha can be accepted or rejected by RO, 5-40 ha can be accepted/ rejected by Regional Empowered Committee (REC).

More than 40 ha forwarded to MoEFCC -> review and accept/reject by Forest Advisory Committee (FAC) -> MoEFCC grants or reject FC.

FC is granted 2 stage:

Stage I (in-principle agreement) mainly involves identification of compensatory afforestation land, declaration of the land as RF/ OF wherever applicable and submission of Net Present Value (NPV).

Stage II (final approval) is given after submission of compliance report by the State.
Supreme Court on **Forests in context of FCA**


Landmark case. Still ongoing through continuing mandamus.

‘forest’ to include any piece of land that resembles the dictionary meaning of forest for the purpose of the Forest Conservation Act, 1980 (“FCA”). Reinstating the applicability of forest laws on private forests.

Directions to State:

1. Identify areas which are forests irrespective of whether they are so notified, recognized or classified under any law irrespective of the ownership of the land of such forests.

2. Identify areas which were earlier forests but stand degraded, denuded or cleared; and

3. Identify areas covered by plantation trees belonging to the Government and those belonging to private persons.

SC has consistently placed significant weight on State Acts, Rules and Guidelines to identify and regulate the use of forests. Plantations grown on non-forest land are exempted from applicability of FCA.
Re: Construction of Park at Noida Near Okhla Bird Sanctuary and Ors [2011] 1 SCC 744

“...In the present case, even though as per the Report of the Forest Survey of India, the area was having good forest/tree cover and the project area had more than 6000 trees, it does not fall in the category of "forest" for the purpose of Section 2 of the Forest (Conservation) Act and therefore does not require any approval under the Forest (Conservation) Act. The project areas does not have naturally grown trees but planted trees. The area has neither been notified as "forest" nor recorded as "forest" in the Government record. In the exercise carried out by the State of Uttar Pradesh, after detailed guidelines for identification of deemed forest were laid down, the project area was not identified to be deemed forest.”

If the criterion fixed by the State Level Expert Committee that in the plains a stretch of land with an area of 2 hectares or above, with the minimum density of 50 trees/hectare would be a deemed forest is applied mechanically and with no regard to the other factors a greater part of Lutyens Delhi would perhaps qualify as forest. This was obviously not the intent of the order dated December 12, 1996.
Gardens not forest

Ram Saha v. State of West Bengal and Ors [2004] 11 SCC 497

Appeal against Calcutta High Court. SC clarified:

“25. The High Court, being clear in its mind that the ban imposed in T.N. Godavarman Thirumulpad (supra) in the matter of felling of trees did not extend to non-forest private plantation and there being no State enactment dealing with the felling of trees in nonforest private plantation, in our view, was not right and justified in reading in the provisions of Sections 4-B and 4-C that permission of the authorities is required for felling of trees even in non-forest private plantation/orchard.”
Tree-felling laws apply on plantations

Provisions of State/UT Trees Act and Land Laws most relevant. Permission from Forest Department (Tree Officer) requires for certain trees and certain circumstances. Other laws may apply in special circumstances.

Eg. Karnataka Preservation of Trees Act, 1976

- Restriction on felling of trees is applicable only in the rural areas of 9 districts, 47 talukas and 65 municipal areas notified by the State Government. The restrictions do not apply on felling of trees for bonafide use of a family in any calendar year for utilizing timber up to 2.8 cubic meters, 100 poles, 100 bamboo and 5 tons of firewood.
- Exempts requirement of any permission for felling of trees such as Casuarina, Coconut, Erythrina, Eucalyptus, Prosopis, Rubber, Sesbania, Silver Oak, subabul trees, Areca nut, Coffee, Guava, Hebbevu, Ailanthus excelsa, Lemon, Mango, Sapota, Seemegala, cashew, certain species of bamboo etc.
- Mandates compulsory plantation and preservation of trees by owners in their respective land in 12 districts and 128 talukas notified by the State Government, although felling permission is not required in such areas.
- The restrictions on felling of trees and compulsory plantation of trees in the notified districts and talukas are exempted for Reserved Forests; lands managed by Horticulture Department or the University of Agricultural Sciences; and lands cultivated with coffee, tea and rubber wherein the number of plants is not less than 750 per hectare in the case of coffee and tea; and 225 in the case of rubber.
**Summary - Till 2023**

**Qualifying as Forests**

- **Notified forests** (notified under a law)
- **Recorded forests** (recorded as forest, not necessarily notified under law)
- **Deemed forest** (is a recognition under FCA, qualifies the criteria set by State empowered committees)

*Diversion of all above forest for non-forest activity requires permission u/s 2 of the Van Adhiniyam 1980*

**Forests or Plantations on Previously Non-Forest Land**

Forest laws do not apply unless meet legal criteria

State specific tree laws, other environmental laws may be applicable

Any private land which has biodiversity value can be regulated as Community/ Conservation Reserve (Wildlife Protection Act, 1972), Ecosensitive Zone (Environment Protection Act 1986) or notified as Private Forest (national/public interest under State forest law) or in compliance of court orders. Areas of exceptional biodiversity may be declared as ‘Biodiversity Heritage Site’ under Biological Diversity Act 2002.

*Indian Forest Act, 1927- Chapter V gives power to State government to regulate, notify, assume management of forest for public purpose or on request of owner.*
How 2023 amendments affect our forests?
Forests for the purpose of FCA 2023

1A. (1) The following land shall be covered under the provisions of this Act, namely:

(a) the land that has been declared or notified as a forest in accordance with the provisions of the Indian Forest Act, 1927 or under any other law for the time being in force;

(b) the land that is not covered under clause (a), but has been recorded in Government record as forest, as on or after the 25th October, 1980:

Provided that the provisions of this clause shall not apply to such land, which has been changed from forest use to use for non-forest purpose on or before the 12th December 1996 in pursuance of an order, issued by any authority authorised by a State Government or an Union territory Administration in that behalf.

Explanation.—For the purposes of this sub-section, the expression “Government record” means record held by Revenue Department or Forest Department of the State Government or Union territory Administration, or any authority, local body, community or council recognised by the State Government or Union territory Administration.
Clarity is welcome, but baseline missing

- Status of recorded forests and deemed forests not available even after 27 years (since 1996).
- Some states have as high as 97% of forests as ‘unclassed’ (term used by FSI to designate any forest outside notified forests- includes recorded + non-recorded forest).
- As per FSI, 120753 ha of area falls under ‘unclassed forests’ in India- 15% of forest cover. Some experts 28% of forests are unrecorded. The figure may be very high if we also include forests already encroached or diverted illegally.

- No govt. data available on status of forests (recorded/ deemed) outside notified ones.
- No govt. data available on degraded/ denuded forests.

<table>
<thead>
<tr>
<th>State</th>
<th>Total Forest (sq.km)</th>
<th>Reserve and Protected Forest (sq.km)</th>
<th>Unclassed Forest (sq.km)</th>
<th>% of Unclassed Forest / Total State Forest Cover (sq.km)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nagaland</td>
<td>8623</td>
<td>234</td>
<td>8,389</td>
<td>97.29</td>
</tr>
<tr>
<td>Meghalaya</td>
<td>9496</td>
<td>1125</td>
<td>8,371</td>
<td>88.15</td>
</tr>
<tr>
<td>Lakshadweep</td>
<td>13</td>
<td>2</td>
<td>11</td>
<td>84.61</td>
</tr>
<tr>
<td>Manipur</td>
<td>17418</td>
<td>4238</td>
<td>13,380</td>
<td>75.67</td>
</tr>
<tr>
<td>Punjab</td>
<td>3084</td>
<td>1181</td>
<td>1,903</td>
<td>61.71</td>
</tr>
<tr>
<td>Arunachal Pradesh</td>
<td>51540</td>
<td>24228</td>
<td>27,312</td>
<td>52.99</td>
</tr>
<tr>
<td>Tripura</td>
<td>6294</td>
<td>3590</td>
<td>2,704</td>
<td>42.96</td>
</tr>
<tr>
<td>Assam</td>
<td>26836</td>
<td>17646</td>
<td>8,972</td>
<td>33.43</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>17384</td>
<td>11856</td>
<td>5,528</td>
<td>31.79</td>
</tr>
<tr>
<td>Goa</td>
<td>1271</td>
<td>874</td>
<td>397</td>
<td>31.24</td>
</tr>
</tbody>
</table>
The Exemptions

Direct Exemptions

- linear project linked to national security within 100 km of int’l borders; & 0.1 ha around them
- 10 ha for any security related infrastructure;
- 5 ha for defence/ paramilitary or public utility projects in LWE areas

Indirect Exemptions (unclassified as ‘non-forest activity)

- Zoo, safari, ecotourism
- Reconnaissance/ prospecting surveys
- plantations
Zoo, Safari, Ecotourism..
The February Notification under The Green Credits Rule 2023 allows exchange of green credits for compensatory afforestation mandate for Forest Clearances.
A Case Study

Debadityo Sinha & Ors v. Union of India & Ors, Appeal No. 79/2014

- 2014- Environmental Clearance of a 1320 MW TPP was approved by the MoEFCC. EIA report showed the site 98% barren and without any wildlife.

- 2016- NGT set aside the Environmental Clearance. Concealment of information about forest and wildlife was a major ground.

- Even then proving the ‘forest’ status of the entire land based on any record or notification was difficult. Even though site photos and satellite imagery showed it was forest.

- RTI revealed that the land proposed to be used for the project might be the parcel which was transferred to Forest Department in 1952 post abolishment of Zamindari system but pending notification under Indian Forest Act.

Pending clarification on the ‘forest status’-the forest clearance application is pending since 2015. Project stalled till date.

A camera trap study later revealed presence of many Schedule I wildlife in the forest range, leading to proposal of a Conservation Reserve in 2019.
Status of Reserve Forests, notified under Indian Forest Act 1927 in Uttar Pradesh

<table>
<thead>
<tr>
<th></th>
<th>Notified under s4 IFA</th>
<th>Yet to be notified for s4 IFA</th>
<th>Notified under s20 IFA</th>
<th>Yet to be notified under s20 IFA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mirzapur</td>
<td>102353.1</td>
<td>11174.35</td>
<td>73793.36</td>
<td>28559.74</td>
</tr>
<tr>
<td>Overall U.P.</td>
<td>1262562.58</td>
<td>88084.08</td>
<td>741942.75</td>
<td>464311.4</td>
</tr>
</tbody>
</table>
Some of my publications that I urge you to read to understand forest management laws and practices... (available online free of cost)
Missing the Forest for the Trees?

Great Indian Bustard, Rajasthan. (Photo: Radheshyam Bishnoi/ERDS)
IUCN: Critically Endangered
“Our understanding of forests greatly influence how we protect, manage and augment our forests.”

Thank you

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