Forest Rights Act and

PROTECTION OF FORESTS IN INDIA.
Protection of Forests.

What is a Forest?
How to define a land as Forest?
Definition of Forest.

a) Dictionary meaning:

- Oxford – A large tract of area covered with trees.

- Chambers – A large uncultivated tract of land covered with trees and Underwood.
b) **Biologically** area having three layers of plant growth with bio-diversity.

- **Trees** at the top
- **Shrubs** in the middle and
- **Herbs, ferns, mosses, mushrooms etc.** below

intermingled with fauna and micro-organisms of plant and animal origin
c) Functional definition:
- Production forests.
- Conservation forests.
- Social forests.
- Urban forests.
d) Abridged Glossy of technical terms prepared by FRI.

**General**: A area set aside for production of timber and other forest produce, or maintained under woody vegetation for certain indirect benefits which it provides, e.g., climatic or protective.

**Ecological** – A plant community predominantly of trees and other woody vegetation, usually with closed canopy.

**Legal** – An area of land proclaimed to be forest under forest law.
Definition of Forest.

e) Revenue department considers those areas as forests which are entered as such in revenue record
- Based on conservation needs or
- During Settlements.
Definition of Forest.

f) Forest Survey of India defined based on percentage of tree cover with canopy density.

- Very dense forests - more than 70%.
- Moderately dense – 40 to 70%
- Open forests – 10 to 40%.
- Scrub forests - less than 10%.
a) **Indian Forest Act, 1927:**
- IFA, 1927 does not define forest,
- However classifies them as per the process through which these are notified under various sections.
  - Reserved forests – Sec. 20.
  - Protected forests – Sec. 29.
  - Village forests – Sec. 28.
Legal Definition of Forest.

b) Forest Conservation Act, 1980.

- Forest land mentioned in Sec 2 of Act refers to reserved forest, protected forest, or any area recorded as forest in Govt. records.
- Supreme Court extended FCA, 1980 to all areas falling in dictionary meaning of the term forest irrespective of ownership or control.

Deemed forests.
- Area notified under IFA, 1927.
- Plantations.
- Forest area contained in a working plan.
- Forest area entered as van/vani/jungle in revenue records.
- Govt. record as forest other than above.
Legal Definition of Forest.

**NOT A DEEMED FOREST.**

- **Agro-forestry** – Trees interspersed with agricultural land cannot be deemed to be a forest.

- **Tea garden** – Tea is not forest produce/species even if having cover of trees.

- **Horti-forestry** – Apple or other horticultural crops interspersed with tree crops.
c) Scheduled Tribe and Other Traditional Forests Dwellers (Recognition of Forest Rights) Act, 2006.

“Land of any description falling within any forest area and includes unclassified forests, un-demarcated forests, existing or deemed forests, protected forests, Reserved forests, sanctuaries and national parks”.
d) The Wildlife Protection Act, 1972
Section 2 of the Act defines

- **Reserved Forest** as in IFA, 1927.

- **Protected area** means a national park, a sanctuary, a conservation reserve or a community reserve as notified under it.
Definition of Forest.

Criteria for Defining Forest:
- Land use area
- Canopy cover/Crown density
- Height of trees
- Nature of species.
“A land area of above 1 hectare notified as forest under any Act or recorded as forest in any government record, having a canopy density of 10% or more of tree species of natural forestry origin attaining height of more than 3 meters and functioning as social, ecological, biological and economic resource. Pastures, grasslands, deserts, water bodies, wetlands, geo-morphic features and glaciers in their natural habitat working as an eco-system be also categorized as forest”.
Protection of Forests.

- Indian Forest Act, 1927.
- Indian Penal Code.
- State specific Acts.
- People's Participation.
Protection of Forests.

- Encroachments of forest land.
- Illicit Felling of trees.
- Smuggling and Illicit trade of forest produce.
- Forest Fires.
- Soil erosion.
- Poaching of Wild life.
Protection of Forests.

- **Indian Forest Act, 1927.**

  Section 2 defines

  **2.2. Forest officer**

  **2.4. Forest produce**

  a) The following whether found in, or brought from forest or not, that is to say- timber, charcoal, catechu, wood oil, resin, natural varnish, bark, lac, mahua seeds, kuth and mycoblams and

  b) The following when found in or brought from a forest that is, to say

  i) trees and leaves, flowers and fruits, and all other parts or produce not herein before mentioned, of trees,

  ii) plants not being trees (including grass creepers, reeds and moss) and all parts of the produce of that plants,

  iii) Wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals.

  iv) peat, surface oil, rock and minerals (including limestone, laterite, mineral oils and all oil products of mines or quarries).
2.6. **Timber** includes trees, when they have fallen or have been felled, and all wood whether cut up or fashioned or hollowed out for any purpose or not;

2.7. **Tree** includes palms, bamboos, stumps, brushwood, canes;
Protection of Forests.

- Penal Clauses:
  - Section 26 for Reserve forests.
  - Section 33 for Protected forests
  - Section 41 and 42 Forest Produce Transit
  - Section 52 Seizure of Property liable to Confiscation

- Penal Action:
  Punishable with imprisonment which may extend to two years or with fine which may extend to Rs 5000/- or with both.
Protection of Forests.

- **Other Important Clauses:**
  - Section 64: Power to arrest without warrant.
  - Section 65: Power to release on a bond a person arrested.
  - Section 68: Power to Compound Offences.
Protection of Forests.

- **Indian Penal Code**
  - **Section 435**: A will fully caused forest fire. Imprisonment of **Seven years and fine**.
  - **Section 378**: Theft of forest produce Imprisonment of **Three years and fine**.
  - **Section 441**: Criminal Trespass Imprisonment of **Three months and fine**.
Protection of Forests.

- **Wild Life Protection Act, 1972.**
  - Section 26 A: Wild Life Sanctuary.
  - Section 35: National Park.
  - Section 36: Game Reserve.
  - Section 36 A: Conservation Reserve.
  - Section 36 C: Community Reserve.
Protection of Forests.

Penalties:
Any person who commits an offence under this Act shall on conviction be punishable with imprisonment for a term which may extend to three years or with fine that may extend to Rs 25,000/- or with both.

Provided further that in case of second or subsequent offence, the term of imprisonment shall not be less than three years but may extend to seven years and also and with fine which shall not be less than Rs 25,000/-. 
Protection of Forests.

- People’s Participation.
  - Joint Forest Management.
  - Participatory in Forest Management.
  - Joint Responsibility?
Protection of Forests.

- Forest Area System: Beat System.
- Flying Squads: Supplementary.
- Van Thana's: Overlapping and Supplementing.
- Quasi-judicial powers.
- Integrated System
- Alternatives – Improvement in Economic and Social Status.
Forest Rights.

- **Indian Forest Act, 1927.**
- **Reserve Forests.**
- **4 (i) c** Appointing an Officer (called the Forest Settlement Officer) to enquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in over any land comprised within such limits in or over any forest produce and to deal with same as provided in this chapter.
Forest Rights.

- Village Forests:
  28 (1) The State Govt. may assign to any village communities the rights of the Govt. to or over any land which has been constituted a Reserve Forests and may cancel such assignment.

- Protected Forests:
  29 (3) No such notification shall be made unless the nature and extent of rights of the Govt. or private persons in or over the forest land or wasteland comprised therein has been enquired into and recorded at a survey or settlement, or such other manner as the State Govt. thinks sufficient.
Forest Rights.

- Forest Settlements:
  - Timber distribution.
  - Minor Forest Produce.
  - Grazing.
  - Collection of fuel wood.
  - Collection of fodder.
  - Consumptive and Non-consumptive use of water.
The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act, 2006.

An Act to recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes (FDST) and other traditional forest dwellers (OTFD) who have been residing in such forests for generations but whose rights could not be recorded.

To provide for framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.

Forest rights on ancestral lands and their habitat were not adequately recognised in the consolidation of State forests during the colonial period as well as in independent India resulting in histological injustice to FDSTs and OTFDs who are integral to the very survival and sustainability of forest eco-system.
Forest Rights.

- The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act, 2006.

- **Forest Dwelling Schedule Tribes:** The members of the community of ST who primarily reside in and who depend on forests or forest lands for **bonafide livelihood needs** and includes the ST pastoral communities.

- **Other Traditional Forest Dwellers:** Any member or community who has for at least three generations prior to 13th day of Dec. 2005 primarily resided in or who depend on the forest or forest land for the **bonafide livelihood needs.**

- Definition amended that these may not necessarily residing inside the forest but are dependent on forest land for their **bonafide livelihood need.**
Community forest resource means customary common forest land within village boundaries,

Critical wildlife habitat means such areas of National Park and Sanctuaries kept for wildlife conservation,

Minor forest produce includes all NTFP of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu, medicinal plants and herbs, roots, tubers and the like,

Sustainable use means the use of components of biological diversity in such manner and at such rate that does not lead to the long term decline of biological diversity thereby maintaining its potential to meet the needs and aspiration of present and future generations.
Rights of Forest dwellers as per the Act.

- Right to live in forest land.
- Right to ownership, access to collect, use and dispose of MFP traditionally collected with or outside village boundaries.
- Other community rights of uses or entitlements such as fish and other products of water bodies, grazing.
- Rights including community tenures of habitat and habituation for primitive tribal groups and pre-agricultural communities.
- Rights in or over disputed lands disputed lands under any nomenclature in any state where claims are disputed.
Rights of Forest Dwellers.

- Rights for conversion of Pattas or leases or grants issued by any local authority or any State Govt. or forest lands to titles.
- Rights to settlement and conversion of all forest villages, old habituations, un-surveyed villages and other villages in the forests, whether recorded, notified or not into revenue villages.
- Rights to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use.
Rights of Forest Dwellers.

- Right to access to bio-diversity and community right to intellectual property and traditional knowledge related to bio-diversity and cultural diversity.
- Any other traditional right customarily enjoyed but excluding the traditional right of hunting or trapping or extracting a part of body of any species of wild animals.
- Right to in-situ rehabilitation including alternative land in cases where ST&OTFD have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement or rehabilitation prior to the 13th day of Dec. 2005.
Notwithstanding anything contained in the Forest Conservation Act, 1980 the Central Govt. shall provide diversion of forest land for developmental purpose which involve felling of trees not exceeding 75 trees per hectare. Provided that such land is allowed only if

- Forest land less than one hectare.
- Has recommendation of Gram Panchayat.
Rights of Forest Dwellers.

- **Process of recognition, restoration and vesting of forests rights and related matters**
  - Gram Sabha to initiate the process through a resolution.
  - Person aggrieved will prefer the claim to SDM level committee which will decide within 60 days but by giving opportunity to be heard.
  - Person aggrieved by SDM level committee may prefer a petition with District level committee whose decision will be binding and final.
Forest Rights - Legal Position.

Legal Position: The various settlement reports mention that ‘if the exercise of rights as admitted in any forest, would endanger the existent of forest, the extent to which the rights will be exercisable can be re-determined and should the exercise of rights become detrimental to the existence of forests over which these are exercised, the extent to which the right will be exercisable can be re-determined’.

Yet this practice has seldom been exercised in the past for conservation of forests.
**Forest Rights - Legal Position.**

- **H.P. Forest Settlement Rules, 1965** have been framed under section 76 of IFA, 1927.
- The guiding principle laid down for determining the rights and concessions under these rules are as under:

  "All these rights and concessions are meant for the satisfaction of personal bonafide requirements and subject to the condition that forests are to be maintained in perpetuity. The right of user of easement is always a limited one, it can never extend so as to destroy the servient estate. The rights exist so long as the (servient) estate ceases to exist, the right ceases with it. So while dealing with the claims, the Forest Settlement Officer should see that the forests are not unduly burdened."
Factors to be taken into consideration for Sustainable Management of Forests and Rights recorded therein.
Sustainable Development.

- One of the pre-requisite for moving towards sustainable mode of development leading to healthy environment is the management and conservation of natural resources.

- **Conservation** is defined as management of human use of natural resources in the biosphere so that they may yield the greatest sustainable benefits to the present generations while maintaining the potential to meet the needs and aspirations of future generations (World Conservation Strategy, 1980).
Natural Resources.

- The Environment consists of five basic natural resources on earth.
  - Air.
  - Water.
  - Land.
  - Flora.
  - Fauna.

(The rest of the natural resources have their origin from these basic resources).
Natural Resources.

- These resources are **inter-related, inter-connected** and **inter-dependent** with disturbance in the appropriate management of any one affects the other four resources.
- **Integration** facilitates, maximizing sustainable productivity and use.
- **Solar energy** another natural resource plays important synergistic and other roles but come from a source outside the Earth – **Sun**.
Sustainable Development (SD) – a multidimensional concept with three inter-acting angles.

- Ecological security.
- Economic Efficiency.
- Social equity.

SD is not just sustainability of environment and resource system but requires sustainability of economic and social system.
Sustainable Development.

**Conflict**

- **Environmentalists** –
  - Conservation of Natural Resources.

- **Governments** –
  - Sustainable management and use of Natural Resources with
  - Improvement in Economic potential through infrastructure development.
  - Introduction of improved technologies.
  - Increased cash flow through market economy.
  - Equitable distribution.
Best Practices

Right to Timber Distribution in Himachal Pradesh.

Past Practice:
- All season affair affecting other forestry operations.
- Rate of timber very low hence more demand.
- Marking of green trees, deodar first priority.
- Influential the primary beneficiary.
- Marking more than the prescriptions.
- Unsustainable Forest Management.
Best Practices.

- Rules framed under Section 32 (L) of IFA, 1927.
- Rationalisation Process.
  - TD only in Rural areas.
  - No TD if trees are available on the land holdings of the applicant.
  - TD only at one place if applicant has more than one land holdings.
  - TD only to head of the family as per revenue records.
  - TD to original inhabitants only.
  - Only for domestic purpose.
Best Practices.

- **Quantity fixed.**
  - New House: 3 cubic mts.
  - Maintenance: 1 cubic mts.
- **Periodicity**
  - New: Once in lifetime or 30 years which ever is later.
  - Maintenance: Once in Fifteen years.
- **Priority for grant:** BPL to be followed by APL on first come first serve basis.
- **Rates:** 30% of weighted average sale rates to APL and 10% to BPL. Free to sufferers of natural calamities.
Best Practices.

- **Procedure**: People/Forest centric.

- **Penalty**: If misused.

- **Monitoring and Evaluation**: Third party.
Best Practices.

- Rules framed on the principle of Sustainable Management:
  - Objective.
  - Transparent.
  - Without discretion.

Will lead to
  - Ecological Security.
  - Social equity.
  - Economic efficiency.
Best Practices.

- **Management of NTFP and Medicinal Plants.**
  - Right of local people to collect and dispose.
  - Through traders every year and or
  - Markets in Delhi/Amritsar.
  - Many species have vanished.
- **Sustainable Management of NTFP and Medicinal Plants.**
  - Four year cycle.
  - Rates fixed per Kg for permit fee – Reviewed.
  - Power to issue permit for selected species given to Panchyat Pardhan and for others to DFO.
  - Revenue collected to Panchyat and not Govt.
  - Review of species management.
Thank You