



**National Law School
of India University**
Bengaluru



Ministry of Environment, Forest
& Climate Change



**CENTRE FOR ENVIRONMENTAL LAW, EDUCATION, RESEARCH
AND ADVOCACY, (CEERA), NATIONAL LAW SCHOOL OF INDIA
UNIVERSITY, BENGALURU**

In association with

**MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE
(MoEF & CC), GOVERNMENT OF INDIA**

Organizes

**TWO-DAY WORKSHOP FOR INDIAN FOREST SERVICES (IFS)
OFFICERS**

On

**LAW RELATING TO REGULATORY FRAMEWORK ON PRIVATE
FORESTRY: ISSUES, CHALLENGES AND REFORMS**

REPORT OF THE TWO-DAY WORKSHOP

DATE:

SEPTEMBER 16TH AND 17TH, 2021



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TWO-DAY WORKSHOP FOR IFS OFFICERS

**TWO-DAY WORKSHOP FOR INDIAN FOREST SERVICE (IFS) OFFICERS
LAW RELATING TO REGULATORY FRAMEWORK ON PRIVATE FORESTRY:
ISSUES, CHALLENGES AND REFORMS**

RESOURCE PERSONS













Organised by
CENTRE FOR ENVIRONMENTAL LAW, EDUCATION,
RESEARCH AND ADVOCACY, NATIONAL LAW SCHOOL OF
INDIA UNIVERSITY, BENGALURU

SEPTEMBER 16 - 17, 2021

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DAY - 1 - 16 TH SEPTEMBER, 2021	
TIME	TOPIC
2:00 PM - 2:30 PM	INTRODUCTION TO THE TWO DAY WORKSHOP GUEST OF HONOUR: PROF. (DR.) ALOK MISRA, Dean, Kirit P Mehta School of Law, NMIMS PROF. (DR.) M.K. RAMESH, Professor of Law, NLSIU PROF. (DR.) SAIRAM BHAT, Professor of Law, NLSIU
2:30 PM - 3:30 PM	LAW ON PRIVATE FORESTRY IN INDIA PROF. (DR.) M.K. RAMESH, Professor of Law, NLSIU MR. DEBADITYO SINHA, Senior Resident Fellow, Vidhi Centre for Legal Policy
3:30 PM - 4:30 PM	FOREST ACT, 1927 AND FOREST (CONSERVATION) ACT, 1980 SRI A.M. ANNAIAH, IFS (Retd), Former Additional Principal Chief Conservator of Forests
4:30 PM - 4:45 PM	BREAK
4:45 PM - 5:45 PM	CASE STUDY ON PRIVATE FOREST IN KODAGU, KARNATAKA DR. ANIL KUMAR MALHOTRA, Co-Founder and Trustee, SAI Sanctuary MS. PAMELA GALE - MALHOTRA, Co-Founder, SAI Sanctuary
5:45 PM - 6:45 PM	FOREST MANAGEMENT TO FOREST GOVERNANCE DR. SHARACHCHANDRA LELE, Distinguished Fellow, A-TREE
6:45 PM - 7:15 PM	CASE STUDY DISCUSSION MR. VIKAS GAHLOT, Teaching Associate, CEERA, NLSIU MS. GEETHANJALI K.V., Legal Associate, CEERA, NLSIU

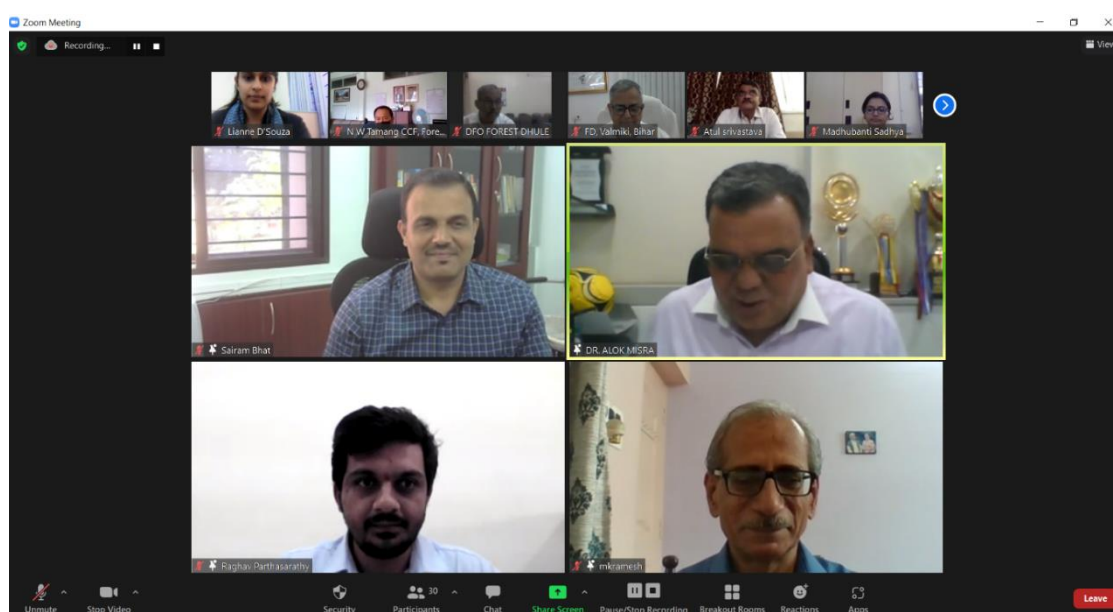
DAY - 2 - 17 TH SEPTEMBER, 2021	
TIME	TOPIC
2:00 PM - 3:00 PM	PUBLIC PRIVATE PARTNERSHIP: INTRODUCTION PROF. (DR.) RAMESH G., Professor of Law, IIM-B PROF. (DR.) SAIRAM BHAT, Professor of Law, NLSIU
3:00 PM - 4:00 PM	FOREST AND MANAGEMENT OF PARK UNDER PPP: EXPLORING POSSIBILITIES DR. V. SATHYANARAYANA, Independent Researcher PROF. (DR.) SAIRAM BHAT, Professor of Law, NLSIU
4:00 PM - 4:15 PM	BREAK
4:15 PM - 5:15 PM	CASE STUDY DISCUSSION: MYSORE ZOO PROPOSAL PROF. (DR.) SAIRAM BHAT, Professor of Law, NLSIU MR. ROHITH KAMATH, Consultant, CEERA, NLSIU
5:15 PM - 6:15 PM	CASE STUDY DISCUSSION: WWF MR. RAGHAV PARTHASARATHY, Teaching Associate, CEERA, NLSIU MR. VIKAS GAHLOT, Teaching Associate, CEERA, NLSIU
6:15 PM - 6:45 PM	CONCLUSION AND WAY FORWARD PROF. (DR.) SAIRAM BHAT, Professor of Law, NLSIU

LAW RELATING TO REGULATORY FRAMEWORK ON PRIVATE FORESTRY: ISSUES, CHALLENGES AND REFORMS

INTRODUCTION ABOUT THE CENTRE

Centre for Environmental, Education, research and advocacy (CEERA) was established in the year 1997. It enjoys the support of the Ministry of Environment, forests, and climate change, the Ministry of Law and Justice, Government of Karnataka, the Bar and the Bench in India. Along with this, there are several other institutions and universities abroad with which CEERA has collaborated. Further, building on an environmental law database, effectively networking among all stakeholders, building up an environmental community and policy research in the area of environment are CEERA'S main objectives. Although, CEERA has also delved into the fields of contract management, Right to Information, Urban Development laws and Agricultural Water use. Furthermore, CEERA has been a steady choice for the Ministry of Environment, Forests, and Climate Change for training its officers of the Central Pollution Control Board and the State Pollution Control Board. Moreover, CEERA has also trained the Indian Forest Service officers, along with the other cadres of the civil services on environmental legislations and the Right to Information. The Centre has been conducting training and workshops for the officers for over a decade and a half moon. It has three websites that houses all the Publications within the centre itself and contains details about all projects and activists.

SESSION 1 - INAUGURAL SESSION



The Two-Day Workshop for Indian Forest Services (IFS) Officers on Law Relating to Regulatory Framework on Private Forestry: Issues, Challenges and Reforms commenced with an introduction on the guests, that being Prof. (Dr.) Alok Misra, Prof. (Dr.) M.K.Ramesh and Prof. (Dr.) Sairam Bhat.

Prof. (Dr.) Alok Misra is the guest of honor for the two-day workshop. He is presently serving as the Dean of Kirit P. Mehta School of Law. He has experience of over 20 years and has taught 15 plus courses throughout his career. Dr. Misra comes with an experience of more than 10 years in the industry and also had a flourishing legal practice. In his 20 years of experience, he has received many awards, for his contribution to the legal education. He has also worked as a consultant and as an advocate in the field of constitutional law and has worked closely in the fields of Human Rights and duties, gender justice, current affairs, sociology philosophy, English and Hindi literature. Further, Prof. (Dr.) M.K.Ramesh is currently serving as the professor of Law and previously served as the vice-chancellor. He holds the Professorial Chair on Urban Poor and the Law, instituted by the Ministry of Housing and Urban Poverty Alleviation, Government of India. Dr. Ramesh has assisted several State and Central Governments in drafting of the legislations. He is also a member of several Committees of different institutes. Last but not the least, the coordinator of the Centre and the coordinator of this program, Prof. (Dr.) Sairam Bhat. He is the coordinator and heads the Centre for Environmental Education, Research and Advocacy. It should be pointed out that he started the NLSIU books series under which he has published several books titled “Contracts, Agreements and Public Policy”, “Energy law and Policy in India” and “Right to Information and Good Governance”. Dr. Bhat is also the chief editor of the Journal on Environmental law. Policy and Development and Journal of Law and Public Policy.

The session began with the address of Prof. (Dr.) Alok Misra. He started by giving a basic idea of how the workshop is going to be conducted and what can the participants expect from the same. It includes an analysis on The Indian Forest Act, 1927, The Forest conservation Act, 1980, along with case studies on private forest, forest management and forest governance. He pointed out that the workshop will help in learning about the private forestry in India, as well as public private partnership in this area. Further, according to Dr. Misra the journey with regards to Forest, and wildlife in India, started from ancient times. With that mind, he stated how the forests were treated in the ancient times and medieval times and how they were protected. Later, he moved on to address the participants with regards to the objectives of the two-day workshop and

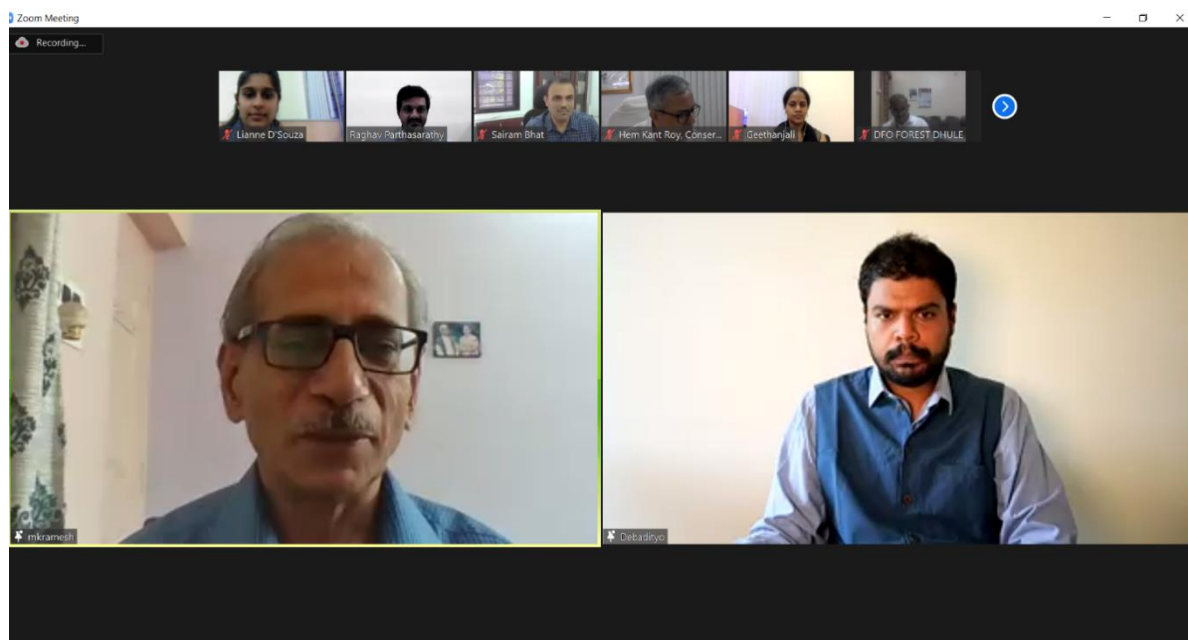
how it will help in making a change towards prevention, preservation, conservation and afforestation,

Subsequently, the participants were addressed by Prof. (Dr.) M.K. Ramesh. He considered the workshop to be path breaking for various reasons. One such reason includes that fact that the workshop will help in understanding the legislations with regards to conservation and protection of forests. In general, it gives a fundamental knowledge on forest conservation. He appreciated the history of forests mentioned by Dr. Misra and mentioned how the communities of people play a role in maintaining, managing and regulating the forests. He concluded his inaugural address by stating how the society should review the current scenario to protect the forests and wildlife.

Following Dr. Ramesh, Dr. Bhat started his inaugural address by signifying the importance of the workshop. India got into the Liberalization, Privatization and Globalization (LPG) era in 1991 and a lot of sectors in India has been benefited by the same. However, the question here whether the forest sector should be benefitted by the LPG era as well? Dr. Bhat, further raised a lot of questions with regards to Private forestry and a public-private partnership (PPP) model in the forest sector. He indicated that the workshop deliberates upon understanding the law and policy with respect to the forestry sector. In particular, the modalities of the management principles and challenges in preserving a forest. The workshop also includes case studies to provide a practical insight on how privatization is effective. The workshop deals with answering all the questions related to privatization, regulation and balancing the interests correctly. He concluded the inaugural session by pointing out the basic idea of the workshop, that being, mutual learning.

SESSION 2 - LAW GOVERNING THE PRIVATE FORESTRY

Prof. (Dr.) M.K. Ramesh initiated his speech on private forestry by paying attention to the immemorial existence of the same in India. The state had a very limited, almost non-existent role, with regard to forestry in ancient times. He referred to the words of Rabindranath Tagore



and his reference to the entire system of Forest governance. While talking private forest, the historical fact is that people had private zoo and others which they maintained on their own. Further, the same privatization continued in the British era. All the colonial laws, even after the independence, denote that only the forest in the public domain was taken care by the community. The only two exception this is the provision that extends the authority of the State to private forests and through development. With this, Dr. Ramesh emphasized that Private Forest was never under the purview of the State. Only after independence, State came up with private forest Act. In all these Acts, private forests include any land for which the notification is issued with reference to Indian Forest Act. The objective of these Acts is to conserve forests and develop private forests as national assets.

Further, Dr. Ramesh mentioned about the 2018 Draft policy. It is a proposal for taking up PPP models in order to undertake afforestation and reforestation activities. Moving on, he talked about the reason behind the amendment of Forest Conservation Act. The main reason for the amendment is to make the State government to leave forest land to private individuals. In the proposed new section 1A, a proviso has been added to exempt application of FCA on forest land that is used for underground exploration and production of oil and natural gas through Extended Reach Drilling (ERD) originating outside forest land. In addition, A new explanation added to

Section 2 says that “survey, reconnaissance, prospecting, exploration or investigation” for a future activity in the forest will not be classified as a “non-forestry activity”. This means the prior permission required from the government under Section 2(iii) been deleted. To understand it more clearly, Section 2(iii) of the FCA requires the central government’s approval before assigning forest lands on lease to any private person / corporation / organisation not owned or controlled by the central government and empowers states to issue leases for the use of forest land without the Centre’s prior approval. A new explanation to Section 2 proposes to exempt plantation of native species of palm and oil-bearing trees from the definition of “non-forest purpose”. In the case of T.N. Godavarman Thirumulpad v. Union of India & Ors., the Supreme Court held that forest under Forest Conservation Act would include not only the statutory recognition but any area. Dr. Ramesh pointed out that, the proposed amendment purposely reduces the ambit of this specific judgment.

Following Dr. Ramesh, Mr. Debadityo Sinha, was introduced to give his insights on the law governing Private Forestry. He is a Senior Resident Fellow and is leading projects related to the implementation of key environmental legislations and judgments. His research interest lies on the intersection of ecology, law and policy. He has undertaken training on Tropical Forest Restoration from Yale School of Forestry and Environmental Studies in 2016. He is founder and trustee of Vindhyan Ecology and Natural History Foundation (since 2012). He is a recipient of the 'Sanctuary Wildlife Service Award' (2019) and is member of IUCN-Species Survival Commission’s Bear Specialist Group and EKOenergy network, Helsinki. He has also initiated litigations in the National Green Tribunal on issues related to environmental clearance, declaration of eco-sensitive zones and compensation for environmental damage.

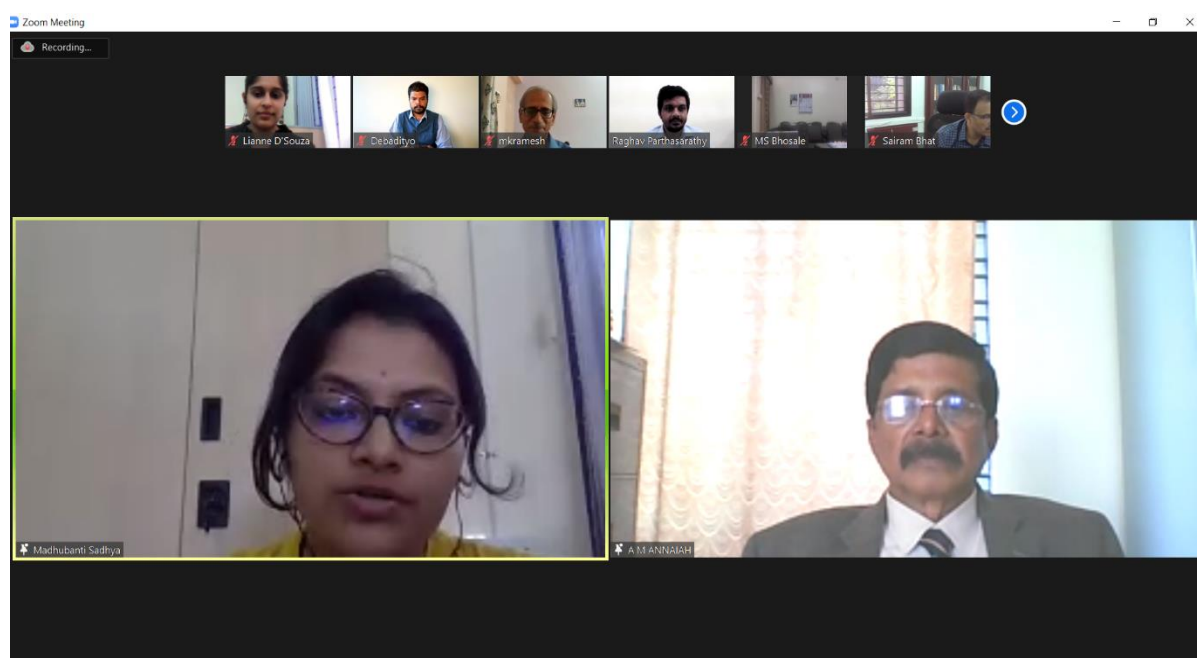
Mr. Sinha’s speech was essentially with regards to development of forest laws in India and its effect on private forestry. First, it is important to understand the purpose of the law. Historically, the word “forest” implied any area of wilderness. However, the meaning of the term has changed time in time. The British came up with the Forest Act from which they got the power to consider any land covered with trees and animals as forest. According to Mr. Sinha, a policy was introduced in which the Indian Forests were put into 4 categories. This entire policy was made to gain more revenue but not for the preservation of forest. After independence, most of the private forest came under State governance. At this point of time, there was no separate Ministry to take care of forest and hence, Ministry of food used to regulate them. They formulated the National Forest Policy 1952 and it classified forests functionally into four categories: protection forests, national forests, village forests and Treelands. the Policy stresses that each forest—public

or private—must develop a forest working plan to ensure sound forest management and sustainable and consistent income from forests.

Mr. Sinha deliberated that in 1976, it was decided State need centre's approval with respect to any steps taken towards conservation of forest. Moreover, Separate trees Act were introduced to preserve the trees alone. It should be noted that the previous policies were made for the purpose of revenue generation. However, later the principle aim of the Policies were to protect wildlife and conservation of forest. It was also mentioned that these forest laws apply to private forests as well. This was because private forest was part of National Forest Policy after independence. Mr. Sinha cited two cases to explain the forest laws in the States: the first one was in relation to building Urban Park in Noida which looked like a forest and the second case was *Sriram Saha v. State of West Bengal*. In both the cases, the court second that all forests are regulated, even if it's a private forest. The regulation of Private Forest differs in each State. Further, he provided a few illustrations to make the participants understand the ways to regulate forests. Lastly, he concluded by focusing on the fact that even though India has regulations, it is hardly being used to preserve private forestry.

SESSION 3 - FOREST ACT, 1927 AND FOREST (CONSERVATION) ACT, 1980

Sri A.M. Annaiah, IFS (Retd), Former Additional Principal Chief Conservator of Forests, second Speaker of the Day discussed the major provisions of the Forest (Conservation) Act, 1980 and Forest Act, 1927.



Mr. Annaiah started his session by outlining the main rights in India relating to forests. These were divided into three main heads- 1) Constitutional Rights including the fundamental rights under Articles 14, 19 (1) and 21, 2) Statutory Rights under the Indian Forest Act 1927, Easement Act 1884 as also special rights provided to tribal communities and 3) The Rights of Nature itself under the Indian Forest Act 1927, the Forest Conservation Act 1980 and to cite international conventions such as the Rio Declaration and Convention on Biological Diversity. Mr. Annaiah then traced the history of forest conservation legislation in India, starting with the pre-British era. In this era, the Vedic and Harappan Civilisations held forests in high esteem. Under the later Mauryan and Gupta dynasty forests had great importance and continued to cover 80-85% of the land area. Even under Mughal dynasty, forest cover was largely maintained. It was with the advent of the British that large scale felling of forests began to take place. Finally realising that forests in India were not an inexhaustible resource, the British enacted the Indian Forest Act in 1865. The National Commission on Agriculture of 1976 also caused a lot of damage to the Forests in India. Finally, the enactment of the 42nd amendment and subsequent acts enacted under it such as the FCA, the water/ air/ environment acts and the National Forest Policy of 1988 bolstered forest conservation in India. More recent developments such as, the Joint Forest Management, the Village Forest Committee formed under the Societies Regulation Act and the Godavarman case have further aided forest conservation.

Mr. Annaiah then went on to discuss Forest Policy in India. The 1894 policy focused on the commercial use of forests. The 1952 policy classified forests and made some effort at conservation. However, the National Commission on Agriculture of 1976 made the shift from conservation to production forestry. Till 1962, forest officers were encouraged to fell forests and plant more productive species. The policy of 1988 was the first to encourage proper conservation. It called for maintenance of 1/3rd of the total area of the country under forests, safeguarding customary rights of tribals, wildlife conservation, afforestation, social forestry and management of state forests among other things. Undesirable aspects such as diversion of forest land for non-forest purposes and non-regularization of existing land encroachments were present.

The focus was then shifted to the Indian Forest Act 1927 whose objective was to consolidate forest laws in India, regulate the transit of forest and the duty of timber and forest produce. Some essential terms defined by the act such as Reserved forest, Protected forest, Village forest, forest area, District forest and land at the disposal of the State were discussed. Chapter V of the IFA and the Karnataka Forest Act deal with the Control over forests and land not being property of the government. It essentially gives power to the government to even declare private land as forest

if it fits the criteria outlined or by notification to regulate or prohibit the activities on land including clearing of vegetation, pasturing of cattle and clearing land for cultivation. Though the act is applicable to the whole country, states however generally refer to local forest act.

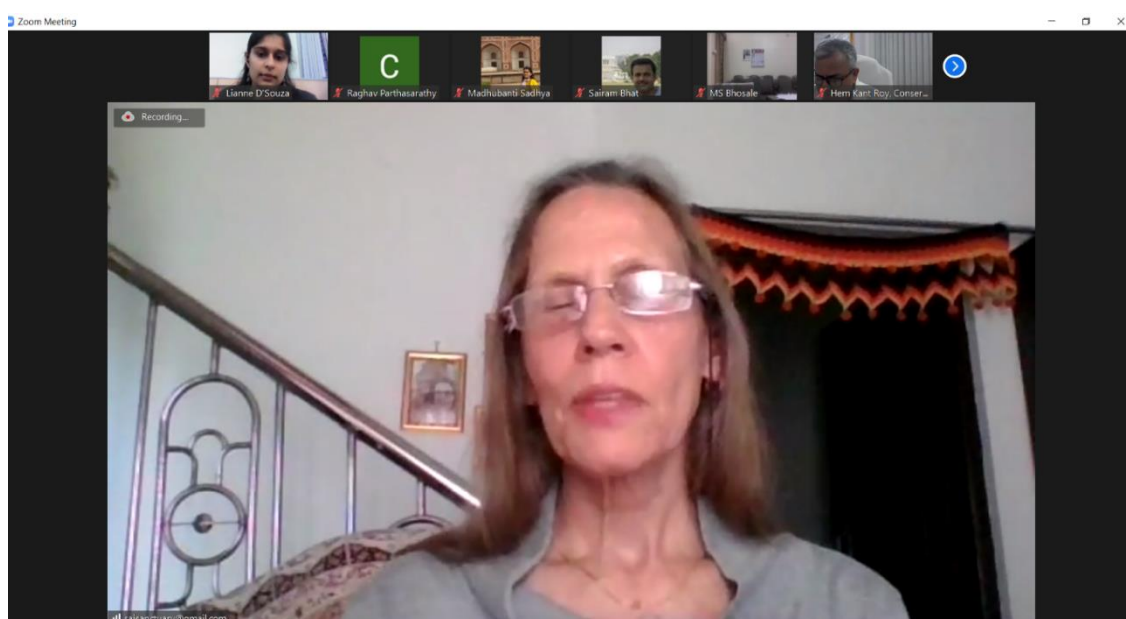
Thereafter, the Forest Conservation Act, 1980 whose objective is to check deforestation and conserve forests, was examined by Mr. Annaiah. The essential features of the Act include restricting use of forest land for non-forest purposes, regulating de-reservation of forests, restricting felling of trees, punishments for contravention of the act a provision for appeal to the NGT. It was pointed out that the FCA is regulatory and not prohibitory in nature. To that end, the case of *Bhagwati Tea Estates v. Govt. of India* was discussed wherein it was held that the FCA does not completely prohibit clearance of forest all together but rather only prohibits clearance without prior government approval. Important sections of the FCA including section 2 were explained. Section 2 relates to the restriction on de-reservation of forests or use of forest for non-forest purposes. The section prohibits State Governments from de-reserving or diverting forest land for any other use without the permission of the central government.

Two important cases relating to sections 1 & 2 of the FCA were studied. Firstly, *K. Balakrishnan Nambiar v. State of Karnataka & Ors* wherein the applicability of the FCA and the need to get prior permission from the Central government before renewing a lease of forest land to private parties was affirmed. Further, it was held that "Forest land" under the FCA includes forest as well as any other area recorded as forest in Government records irrespective of ownership. The case of *T.N. Godavarman v. UOI* which is still ongoing was also discussed. It ordered the ceasing of all activities in forest areas taking place without the approval of the state government and called for state governments to constitute expert committees for identification of forest areas. Two IAs filed in the case were discussed by Mr. Annaiah. The first related to the Chikkamagalur area where there was fragmentation of the forest land which was considered to be in violation of the previous orders of the court in the case. The IA relating to the Thatkola Reserve Forest was also discussed wherein encroachment was restrained and ordered to be removed and if the encroachers remained even three months after the date of the order, they would have to pay Rs. 5L per day. He concluded the session after mentioning certain other cases.

The session was then opened for discussion and Mr. Annaiah answered some questions raised by the forest officers in attendance.

SESSION 4 - CASE STUDY ON PRIVATE FOREST IN KODAGU, KARNATAKA

Ms. Pamela Gale - Malhotra, Co-Founder, SAI Sanctuary. The speaker for the 3rd session of the day was Ms. Pamela Gale-Malhotra the Co-Founder of SAI Sanctuary in Kodagu Karnataka. Ms. Pamela started off the session by narrating an experience that she and her husband had living in Hawaii. This made them realise the limits of the natural eco-system services such as rainfall production, water conservation, water purification, soil conservation etc. that we rely. She stressed the importance of preserving earth for human survival. She then stated how SAI sanctuary came to be established. When she and her husband came to Himalayas only to find large-scale deforestation and non-native trees. Cutting down forests means cutting down the entire eco-system that it harbours. They were unable to establish a private sanctuary in Uttar Pradesh (as it was then) due to land ceiling laws at the time. They finally settled on Karnataka whose land ceiling laws allowed them to buy larger parcels of lands. Thus, was established the SAI sanctuary in Kodagu.



She discussed the need to attach an economic value to the eco-system services that forests provide us in order to understand the cost of replacing the services forests provide us if they are cut down. The cost of the ecosystem services provided by the ecosystem of SAI sanctuary is Rs. 2 Cr 8 L per annum.

Ms. Pamela then demonstrated how changing regulations have resulted in changing ecosystems in the areas. For instance, landowners had to file RTCs in order to secure loans. This previously had a column for tree banks where in mature, native trees and their economic value were to be

listed and which then increased the value of the land and aided him in getting larger loans. This motivated the plantation owner to keep the trees. This was important because the western ghats are essential for drawing in the monsoon. However, coffee a few later, was regulated and it caused large scale damage. The previously cultivated cardamom and rice plantations allowed for the presence of large trees on the plantation. The advent of coffee plantations caused ancient forests and trees to be cut down and wrecked the monsoon pattern. Thus, Ms. Pamela noted the devastating effect that the switchover from Cardamom to coffee and the felling of ancient trees and encroachment into forests has had on Kodagu and adjoining districts.

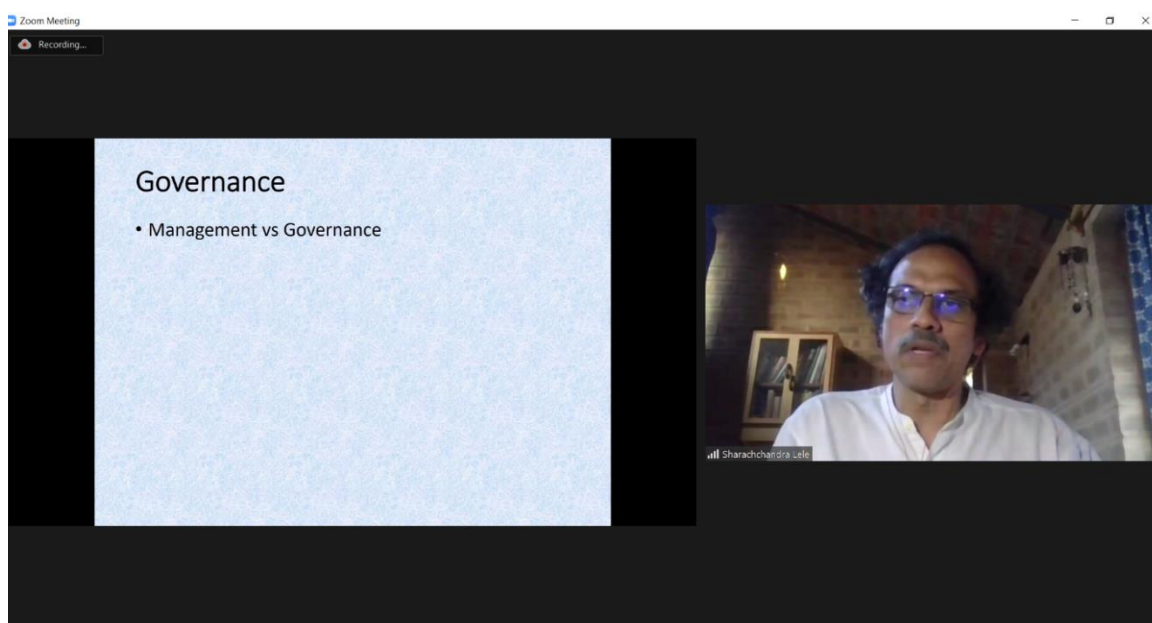
In light of this, she made certain policy recommendations which could help restore these ecosystems.

- 1) The restoration of the tree bank column on the RTCs which would spur the implantation of native trees for shade and along river systems. This would create a biological corridor preventing droughts, stabilising the monsoon and limiting man-animal conflict.
- 2) Persons undertaking private forest development should be allowed to pay the tax assessed at coffee value without having to plant coffee trees as is currently required under RTC regulations. This would allow natural meadows to come back and once again limit man-elephant conflict.
- 3) Losing wildlife is equivalent to deforestation. Focus on the entire ecosystem instead of just planting forests. This allows the whole ecosystem to recover and endangered species to return. Wildlife, especially elephants play a huge role in propagating the forest and carbon trapping. They must be allowed to thrive. This phenomenon has taken place in SAI sanctuary.
- 4) Change the policy relating to NRI and OCI ownership of plantations. OCIs and NRIs cannot purchase agricultural and plantation land and can only purchase it. This is preventing from NRIs interested in conservation from taking action and providing funds to reforest India. NGOs can currently only purchase 20 acres land which is too less to affect any real change. This limit to must be raised. Both of these, policies can have restrictions to minimise misuse of the land.
- 5) The great green wall envisaged by PM Modi which would piece together fragmented areas of the western ghats to create an uninterrupted stretch of forest across the Western Ghats is essential. It would restore monsoon patterns, reduce man-animal conflict and create jobs for tribal and rural people. Basically, allow nature to thrive and let it help us thrive in return.
- 6) A different and uniform law for the Union and State Governments relating to private sanctuaries.

7) Using CSR funds for reforestation.

Ms. Pamela concluded the session by highlighting the dangerous environmental situation India faces right now. She stressed on the need to stop de-notifying forest areas and reforesting forest areas. Forests and our wildlife that keep it thriving trap monsoon water and mitigate climate change. She also pointed out the need to smoothen the legal process for establishment of private forests which can make a huge difference in the preservation of Forests and Wildlife in India.

SESSION 5 - FOREST MANAGEMENT TO FOREST GOVERNANCE



DR. SHARACHCHANDRA LELE, Distinguished Fellow, Centre For Environment & Development A-TREE. Dr. Lele started with the concepts on development, administration and political science in respect to the terms governance and management.

Management is the hands down activity that one has to cater on daily basis in respect of a forest or a company or any entity, whereas governance always lands up in the domain of a public policy question with subject to allocation of rights, responsibilities, roles between two entities (agencies).

The two types of government roles could be one of the developmental governance, highlighting welfare state approach, wherein the state plays an important role in enabling development in country through projects,

Other being regulatory governance pertaining to action related to private ownership of land in forms of regulations. These roles could be complementary or even intentional for the overall development of an area.

The developmental role could relate to production of goods and services, knowledge and information and functioning and funding, wherein regulatory role could be of policing, taxation, and limiting actions in other ways.

The concept of privatization was also looked with the belief that the private sector is more efficient in producing tangible goods and services, hence, the regulatory governance should focus on privatization.

Even in NeoClassical Economic Theory, there is a need to hear the monopolies, natural monopolies and to have information inadequacies to check in a free market. Continuity in trade of essential service and anti-competitive behaviour, must be looked upon as well. We have to regulate well.

The state intervention can only work with the idea of excludability and subtractability. Forest are very complex services, including the ecological nature of forests.

Given a priority, the management decisions should follow prime questions of What to plant, where to plant, etc? Larger questions in forest governance always remain handful as to which (whose) objective should be prioritized and where? Once identified, how then should multiple stakes be reconciled and through what process? Who should manage on a day-to-day basis? How much should be allowed to be converted to 'non-forest' where, by whom, and who should regulate this and how? Solutions to these questions shall take the people ahead in the development

Multiple legitimate stakeholders: not just local, but certainly not just global or national need to contribute. Clearly some combination of production & regulation will be required and fair balance between stakes means fair balance across stakeholders (including non-forest uses!). Even, Sustainability is not a single idea, but of ensuring a given mix of benefits over time in a particular landscape and devolution is not just an instrument for reducing costs or even guaranteeing sustainable use, but a right in itself, as a part of democratization.

The history of Indian forests starts back in 1830s to 1947 with colonial takeover of Indian forests: RF & PF, felling & plantations, taungya, evictions In 1890s-1920s, there were backlash in pockets through concessions (SB, VP). In 1947-1970s: Continuation of colonial policy in name of state-led development led to more RFs & PFs, & more felling & plantations. Early 1970s talks about Chipko & Jharkhand movements. In 1972, the Conservation goals were worked on and we got Wildlife Protection Act and Forest Conservation Act. In 1988, the New policy sorted new

priorities on ecological balance', 'local needs', 'participation' and the Joint Forest Management of 1990 is still the last updated regulations that we use.

The historical injustice happened to forest dwellers since a long while leading to loss of customary land/cultivation rights and non-recognition of lands granted later on. It took away forest access & management (and disposal) rights and evicted forest-dwellers when creating PAS in form of Forced labour in FVs. Forest land diversion without consultation or compensation used to occur in the past.

FRA shifts the discourse as a game changer from instrumental to normative goal of democratization & justice and specifies goals of livelihoods, sustainability, justice and addresses land rights & development rights(IFR+3(2)) along with community forest rights (CFR) It also creates voice in forest diversion (amended FCA).Stringent process and consent requirement in high biodiversity areas (CWH).

The harsh ground realities were put forth as well, CFR provisions were ignored and never publicised, jumbled up, openly denied (Exception: part Maharashtra, part-Odisha, now CG). The FCA got amended via Niyamgiri success, but then subverted. CWH: bypass with CTH acted as another tool for eviction. The FRA was interpreted as 'only granting of IFRS' being equal to 'regularisation of encroachments' and 'land grants'.

Increasing compensatory rights for tourism revenues in CWHs/Pas with special reference to timber rights in CFRS, rights to external fund flows: carbon, CAMPA shall be a great step for expansion. The need to clarify rights in areas with pre-existing individual rights and in areas with pre-existing shifting cultivation rights was also highlighted.

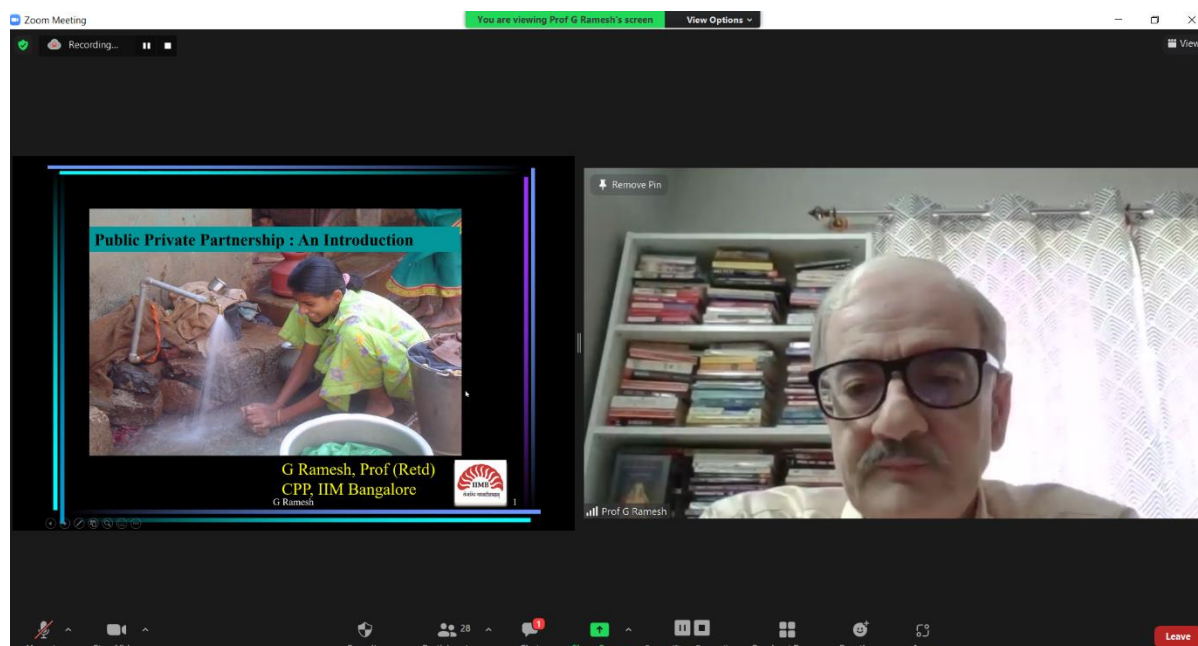
The clarification of internal arrangements in CFRS lead to deepening local-level democracy and setting up the higher-level governance system shall lead to Coordination at landscape scale, CFR regulation, policing support, technical support, Wildlife co-management and overall funding.

The Forest sector is going through a sea change and there is shift in role of FD from all-in-all (management, policing, regulation, planning, funding, policymaking) to a more regulatory role. The most crucial and the first way to achieve the goal is by removing misunderstandings and understanding the normative shift.

New regulatory roles also should meet new criteria of transparency and accountability. The sooner we embrace this change the better and in the same way, need to resist temptation of increasing centralization/privatization in response to new demands.

DAY 2

SESSION 1 - PUBLIC PRIVATE PARTNERSHIP: INTRODUCTION



The first speaker for the session was Dr. G Ramesh, Retd., Professor from Indian Institute of Management Bangalore for the topic Private Forestry in India. Dr. Ramesh started his session with an example of Hubli water supply project, which was about public private partnership and how it is beneficial for the Indian Economy. We were told about the key aspects of PPP which included Public ownership, Private Management, Contract Structuring, Right to collect fees, Viability gap funding, and third-party monitoring. Dr. Ramesh also made us aware about the core competencies of both the private and public sector, in which he told how private sector is better when it comes to achieving returns on the invested funds and are more empowered having to anticipate market and competitive development and better management and whereas public sector has legislative power and regulatory powers and it also minimizes the risk of achieving the returns. We also learnt that the owner's rights in a PPP should lie with the government and whereas the usage rights should lie with the private sector for better regulations and a successful venture. At the end of his session, he advised all the IFS offices and everyone present in the meeting about how to select the projects for PPP and what all requirements it should meet to be a good venture.

SESSION 2- FOREST AND MANAGEMENT OF PARK UNDER PPP: EXPLORING POSSIBILITIES



The second distinguished speaker for the day was Dr. V Sathyanarayana, he had more than 39 years of experience in Public and Private sector organization and has been a master trainer in the National PPP learning program for the Government of India. Dr. V. Sathyanarayana, began the session by outlining his agenda for the day. He discussed 5 main points for consideration when deliberating the PPP model in the Forest Sector. It included Conventional Sector v. Forest & Park PPPs, framework for exploring PPP projects, issues for consideration before bidding (regulations, documents etc), procurement process, key contract conditions and PPP case examples.

Dr. Sathyanarayana pointed out the differences in PPPs occurring in other sectors and the forest sector. He made a comparison between PPP in the transport sector and the forest sector. While we find a number of instances if the former, the latter is a rare occurrence. In the transport sector as well as others, the procedure is standardised, requires less time and usually occurs on a large scale. In the forest sector, this would not be possible because every project is different. So, forest sector PPPs are usually smaller and happen on an ad-hoc basis. They can also occur through a variety of means including management contracts, leases and standard BOTs. While in other sectors, the developers are established private entities, such entities may not be interested in forest sector. So, smaller organisations, NGOs and tribals as well as local communities and stake

holders need to be considered. The forest department also has less exposure compared to other sectors such as transport due to a lack of opportunities.

Dr. Sathyanarayana then outlined some issues to consider for a competitive bidding process. These include qualifications of the bidders, specifications to include for financial and technical proposals, sequential evaluation of the proposals, how to assess technical proposal and how should offers be evaluated.

He outlined a four-step framework for project development. This included, a) monitoring and evaluating out performance/ service delivery standards, b) defining the scope, size and type of PPP model, c) designing and implementing a transparent procurement process including designing the tender documents/ concession agreements/ management contracts and d) Undertake project development studies to determine footfalls or highlight the special features of the project that may add value to it.

He also discussed the need to assess market, technical and institutional risks that may arise in setting up the infrastructure. The allocation of risks to different stakeholders was also examined.

He then introduced the concept of Design thinking wherein the participation of all stakeholders is ensures and the choice of all stakeholders especially those who will remain even after the private sector comes in, is accounted for. The policy of the government to consult transaction advisors to oversee this entire process of PPP and the need for the same was also explained by Dr. Sathyanarayanan.

He then went on to detail the tendering Process which includes bid documentation, process and the execution of the contract. The two types of bid processes i.e., single stage and two stage was also explained. The need to have a sound marketing process wherein discussions with bidders regarding their expectations and requirements take place as well as a competitive bidding environment is created, was also stressed. The bid documentation process which screen appropriate candidates on the basis of pre-qualification was explained. Such a pre-qualification could include candidates who are already doing such work, or candidates who have invested in core sector projects or those who have constructed a park on behalf of someone else or even such candidates who have previously conducted operations and maintenance. The key contents of RFQ and a discussion on RFPs and their contents was also undertaken. He also went over,

important components of the agreement such as the terms, conditions precedent, obligations of the parties, applicable regulations etc.

Dr. Sathyanarayanan also went over some case studies from other countries which have adopted a PPP model in the conservation sector. A comparison between government and private operated parks as well as obligations of private parties in such an arrangement was studied. He concluded by stressing that the application of the PPP in the forestry sector is a complex exercise and that to ensure success the government must have significant oversight and monitoring of the operations.

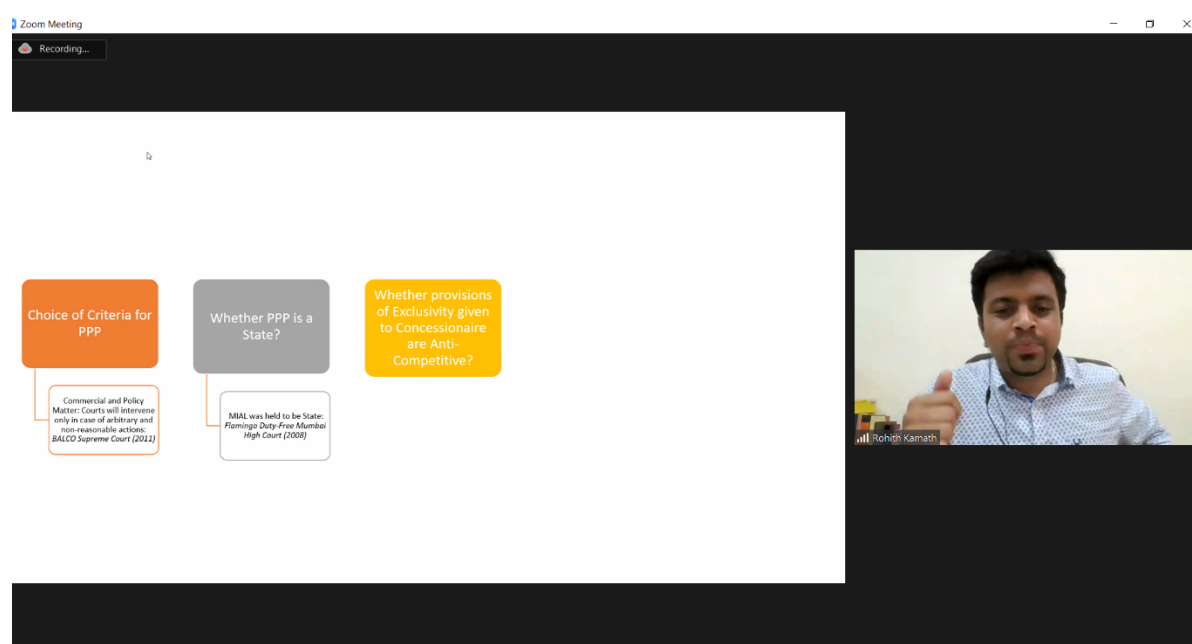
Professor Bhat then took over the discussion and a question answer session between the officers and the three speakers ensued. Prof. Bhat discussed that the main motive for the government to resort to PPP was the efficiency. A PPP model does not involve handing over the resources and management to private parties. The land would still be with the government. However, the need for proper laws and regulations to make this model a success was also stressed.

Ms. Madhubanti Sadhya then undertook a case study of PPP between the Rajasthan Forest Department, WWF and Swarovski at the Keoladeo National Park in Bharatpur. This case was used to highlight certain questions and issues that arise when undertaking PPPs. These include the commercial interest of the private partners, the necessity of central government permission as well as the interpretation of the phrase ‘non-forest purpose’ under the Forest (Conservation) Act.



In light of the Case study Prof. Bhat discussed the reasons as to why the government prefers the PPP model in the forest sector. Firstly, the forest department has historically always had a shortage of funds. Therefore, private companies investing the CSR money into the forest department would be a boon. Also, the government constantly need to employ people for work in a sector as large as the forest sector which drains resources. Outsourcing this labour would reduce this money crunch. He mentioned that in a sector like wildlife conservation that requires tremendous investment, foreign investment should be considered an option. This model has worked in several other countries. Therefore, a partial opening up of the sector seems inevitable.

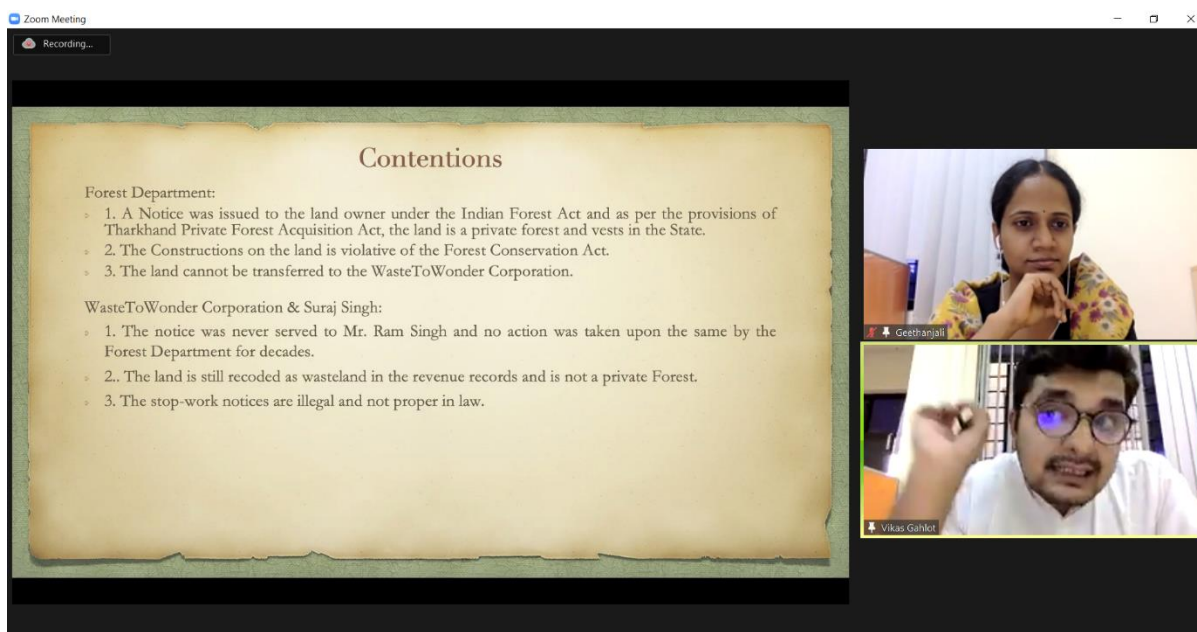
SESSION 3 - CASE STUDY: MYSORE ZOO



This session of the day was conducted by Mr. Rohith Kamath who is an Advocate & consultant at CEERA, National Law School of Indian University, Bangalore. The topic on which he addressed the audience was “Allowing private players to forest domain”. He did a detailed case study discussion on “Mysore Zoo Proposal”, which basically included of making an Aquarium in the Mysore Zoo through a PPP. He told us about all the problems faced by the Zoo and the technicality through which they had to go for the making of the Aquarium and besides all those troubles and issues, how they still haven’t been able to complete the same. He also made us aware about how PPPs for forests are getting attention and private players are coming and developing Eco-tourism. He also asked a few questions for an interactive session, viz., He asked that is PPP a state? The answer is Yes, Flamingo duty free, Bombay Airport case (2008), competition law’s angle will be looked at for PPP was decided in the Dabhol Power Corporation

Case. The next speaker for the session was Prof. Dr. Sairam Bhat, Faculty of Law, National Law School of Indian University, Bangalore. Dr Bhat threw light on how hard & challenging it is to bring up an aquarium through a PPP model. He told us as to how the government is planning to turn 116 Zoo's to PPP in the nation. He told us about the challenges and the issues for forest sector with respect to PPPs in India. He made us aware with the duration of PPP for forest sector in India i.e. 50-60 years. He advised all the participants in the workshop to make the forest sector viable for private sector. He also asked if privatization in forest sector is possible? And Why privatization? How is it necessary in today's era.

SESSION 4 - CASE STUDY DISCUSSION



The screenshot shows a Zoom meeting interface. On the left, a presentation slide titled "Contentions" is displayed. The slide lists two sets of points: "Forest Department:" and "WasteToWonder Corporation & Suraj Singh:". On the right, two participants are visible in a video call. The top participant is a woman with dark hair, wearing a yellow and black patterned shirt, with her hand near her face. The bottom participant is a man with glasses and a white shirt, gesturing with his hand. The Zoom window has a "Recording..." button in the top left corner.

Contentions

Forest Department:

- 1. A Notice was issued to the land owner under the Indian Forest Act and as per the provisions of Jharkhand Private Forest Acquisition Act, the land is a private forest and vests in the State.
- 2. The Constructions on the land is violative of the Forest Conservation Act.
- 3. The land cannot be transferred to the WasteToWonder Corporation.

WasteToWonder Corporation & Suraj Singh:

- 1. The notice was never served to Mr. Ram Singh and no action was taken upon the same by the Forest Department for decades.
- 2. The land is still recoded as wasteland in the revenue records and is not a private Forest.
- 3. The stop-work notices are illegal and not proper in law.

The Session 4 was initiated by Mr. Vikas Gahlot where he discussed the hypothetical case decided by him and Ms. Geethanjali K.V. This case is with respect to a partnership between state and a private party. The facts of the case are that there is a land of 2000 acres. This land was inherited by Mr. Ram Singh in the year 1960 and it was located in Jharkhand. As per the revenue records, this land was categorized as waste land and was in existence since 1938. It should be noted that since 1938, no change has been made in the revenue report regarding the land. Over the years, the landscape of the land has been completely transformed and in 1975, the land converted into a self-sustaining forest ecosystem with many species of insects, birds, etc. In 1975, the conservator of the forest made a notice to Mr. Ram Singh under section 35(3) of the Indian Forest Act 1927. However, this notice was never served to Mr. Ram Singh. In 1935, the Jharkhand Government passed a Jharkhand Private Forest Acquisition Act. As per Section

2(f)(iii) of this Act, if a notice has been issued under section 35 of the Indian Forest Act, then the same land will become a private forest and the ownership will be vested in a State Government.

In 1990, Mr. Ram Singh passed away and the same land was inherited by his son Mr. Suraj Singh. He wanted to continue the work of his father and intended to make the land financially independent by constructing resorts in 500 acres of the land. He asked for the permission of the Municipal Corporation and the same was granted to him in 1991. With this permission, he constructed two resorts. In 2015, he transferred the land to a corporation called Waste to wonder corporation. After the transfer, the corporation wanted to construct one more resort in the same land and hence, they applied for permission of Municipal Corporation and the same was granted to them in 2019. In 2020, the Municipal Corporation gave notice to corporation on the letter received by the Municipal Corporation from the Deputy Conservator of the Forest. Since a notification has been passed under Section 35(3) of the Indian Forest Act 1927, the land currently belongs to the State Government. Subsequently, even the construction of resort is a violation of Forest Conservation Act, 1980. Based on this factual matrix, the contentions raised by both are parties are as follows:

Contentions of the forest department

1. Since the notice has been issued as per the Indian Forest Act and as per the provision of the Jharkhand Private Forest Acquisition Act, the land is now vested with State and its cannot be transferred.
2. In order make any kind of construction requires the permission of the Central Government. If the same is not followed, then it is a violation of the Forest Conservation Act.
3. The land cannot be transferred to the Corporation

Contentions of the Corporation

1. Though the notice was issued by the forest department, it was never served to Mr. Ram Singh.
2. Considering the fact that decades have passed since the issuance of notice and that no action was taken by the forest department, the land does not belong to the forest department.
3. The land is recorded as a waste land in the Government record and not a forest. Hence, the contentions of forest department are vague and not proper in law.

Keeping the above facts and contentions in mind, 4 issues were made:

1. What is the scope of power to strike Section 35(3) of the Indian Forest Act 1927 and Section 2(f)(iii) of the Jharkhand Private Forest Acquisition Act?
2. Whether the Forest Conservation Act applies to the disputed land?
3. What is the exact role of forest officers in private forests?
4. What are the restrictions placed on the transfer and use of private forests?

Discussion on Issue 1 & Issue 2 - This issue basically questioned the meaning of the term “issue” in the issuance of notice. This aspect was discussed by Mr. Gahlot with the participants. According to one of the participants, the Supreme Court has defined the term “forest” and hence, irrespective of the ownership of the land, the forest is a forest and it will automatically fall under the ambit of Forest Conservation Act. Further, the same participant pointed out that if there are more than 200 trees in the land, then it will be called as forest. Mr. Gahlot concluded the issue by stating that the Supreme Court in this aspect, held that the term “issue” should be given a literal interpretation but a liberal one. Issuing of notice alone will not make the land, a property of the forest department. Hence, it was said that it is not a private property under Forest Conservation Act. Hence, the same act will not apply.

After the discussion on Issue 1 & Issue 2 by Mr. Gahlot, Ms. Geethanjali took over to talk about Issues 3 & 4. Before delving into the same, she referred to Forest Advisory committee which was held on September, 2019 and stated that the definition of “forest” is can be determined by the State. With that in mind, she moved on to the discussion on Issue 3 & 4. To begin with the same, she posed a question to the participants stating - what according to you is the role of forest officers with respect to private forests? After considering the answers from the participants, Ms. Geethanjali mentioned 3 important points: firstly, that the role of forest settlement officers comes into picture when there is a question on right to way with regards to the private forest; secondly, that issuing permissions for cutting or burning of trees which should be given by the Deputy Conservator of the Forest; and lastly, Forest officers above the rank of forester has the power to enter any private forest to inspect and secure compliance.

With respect to Issue 4, the State can regulate and prohibit certain activities for special purposes such as grazing, maintenance of Water Resources, preservation of soil protection from storms. etc, with respect to private forests matters. Ms. Geethanjali again posed a question to the participants stating - When can government take over the management of private forest? After considering the answers from the participants, she put them forth in a two-fold manner: firstly, that the

government can take over in case of neglect or wilful disobedience of any regulation or prohibition by the owners: and secondly, that if it seems necessary in the interest of public.

SESSION 5 - CASE STUDY

Mr. Raghav Parthasarathy essentially made a case study that dealt with the privatization and demarcation of the private forest in India. In 2013, in the case of *Nisarga & Anr v. Conservator of Forests & Anr.*, the National Green Tribunal had to identify a private forest and had to determine the parameters to do the same. Referring the same, Mr. Parthasarathy made a case study. The facts of the case is that one of the private land owners named Kumaran, who owns around 20 acres of land in a particular village, decides to make money out of the land that he owns. However, the land he owned was rich in biodiversity. Keeping this in mind, he decides to sell the land to a private developer. The private developer being the Green city developers wherein the developer takes over the property and starts the process of taking approvals and necessary permissions the particular plot he purchased.

Accordingly, the developer chops off the trees (approx. 800 to 900 trees) in the premises. It should be noted that this land is adjacent to the forest area and this forest area is under the control of the government. Moving further, while the land was rich in biodiversity, it was converted to be used for commercial or non-agricultural purposes. It is a well-known fact that any land that should be converted for commercial purpose has to follow the regulations mentioned in the Land Revenue Act of that respective State. Consequently, the developer approached the District Collector seeking for conversion certificate and the same was granted. After considering all these developments, a nearby NGO raised an objection with regards to the cutting down of trees, converting of the land and also with respect to the no-objection granted by the District Collector to use the land for non-agricultural purposes.

The contentions raised by the NGO in the instant case are

1. The tree that fell in the particular forest land was basically forest species as they were an extension of the forest land and the private owner could not have sold the land to a private developer. Further, the developer should have sort clearance under the Forest Conservation Act.
2. As per the Google Satellite Imaging, the area is under the consideration of the forest land and it was completely filled with green cover. Hence, it should be considered as forest.

3. The conversion of the land was illegal as under the Forest Conversation Act, the district collector was supposed to approach the Ministry of Environment & Forest, seeking for clearance from them and only then he could have issued the clearance.
4. Area that is contiguous to the forest is under the control of the government.

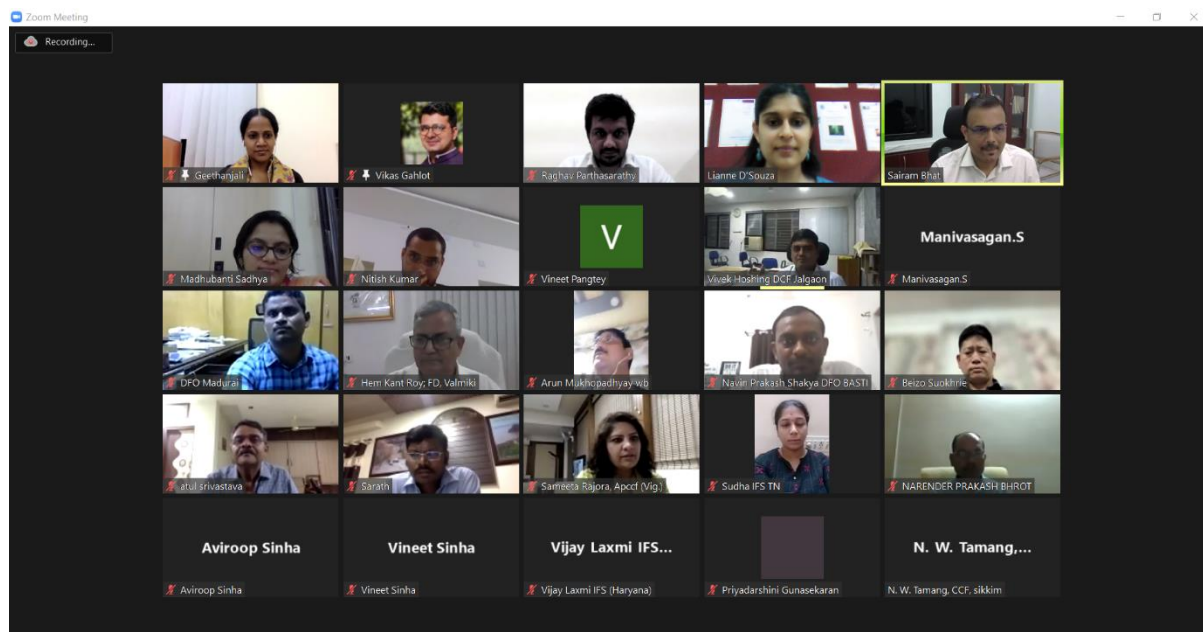
The contentions of the Private developer are

1. The land are under consideration or the subject-matter of the petition is a private land. So, the private land owner has the right to do anything with respect to his land if it is in accordance with the law.
2. The area that has been alleged to be a forest land was never mentioned in the Revenue documents/RTC or did it mention the type of trees that were grown in that area. Interestingly, the RTC only mentioned that the trees in the particular plot of land were only forest species.
3. The reliance placed by the NGO on the Google Satellite Imagery is not valid because such imagery can show even a small plant as if it covers a large area
4. The area contiguous to the forest does not mean that it is an extension of the forest

Keeping the above facts and contentions in mind, 4 issues were made:

1. Whether the piece of land (Sy. No. 156) can be considered as a private land?
2. Whether the conversion certificate issued by the collector in favour of the developer is valid?
3. Whether the developer can chop off the trees without taking consideration from the appropriate authorities? Whether his action is criminal in nature?

With that in mind, Mr. Parthasarathy discussed the legal position with respect to this aspect. He posed a question to the participants stating - “what is a basic understanding of the term forest or private forest?”. As per the NGT case in Goa, they came with norms that constituted a private forest. According to the same, there are three main criteria: first one is that the private forest should have at least 75% composition of dense forest trees species; second is that, the area should be contiguous to the government forest; and the last is that canopy density should not be less than 40%. These are the important criteria to ascertain whether a particular area can be considered as a private forest. Mr. Parthasarathy concluded his case study explanation by stating the judgment of the case where a civil liability was imposed on the developer and was asked to compensate the losses by invoking the principal of reforestation.



With this the Two-day Workshop on the Law regulating Private Forestry in India came to a close. For the closing, Prof. Sairam Bhat along with his team thanked each and every Resource Person and the Participating Officers to have taken active participation during the event.

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