

Inclusions and exclusions in India's forest governance

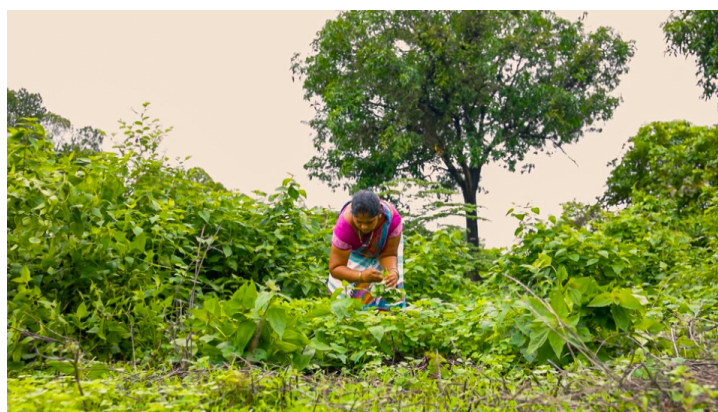
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The question of what is a forest has been inextricably linked to the question of who owns and who should govern forests.

Thirty years ago, when a landlord approached the Supreme Court decrying deforestation in the Nilgiris Hills, little did he know that his petition would deeply entrench the role of judiciary in forest governance. Since then, the Court has delivered orders and judgments in the continuing case of *TN Godavarman Thirumulpad v. Union of India* and has shaped India's forest policy. Responding to interlocutory applications, the Court has made decisions with respect to timber trade, operation of saw mills and the functioning of national parks. It also created the Central Empowered Committee (CEC) to monitor the implementation of forest-related orders, and decided the price of forests and rules for compensatory afforestation. *Godavarman* orders have expanded the role of the State, especially the Centre, in forest conservation.



This centralising tendency in forest governance runs opposite to community-based models of conservation. (PTI)

However, forest-dwelling people are equally important stakeholders. Their land rights and participation in decision-making on forest management are key to successful conservation. It is in this context that two recent judgments of the apex court in the *Godavarman* case (In Re: Aman Singh, December 18, 2024; and In Re: Zudpi Jungle Lands, May 22, 2025) offer compelling insights into the evolving direction of forest governance. In both cases, the Court considered the question of protecting landscapes that are not usually imagined as forests — grasslands known as Orans in Rajasthan and uncultivated grazing and scrub lands in Vidarbha, Maharashtra known as Zudpi lands. Orans, historically protected by agro-pastoral communities, are now threatened by renewable energy projects in the Thar desert. In the case of Zudpi lands, whether they are a forest at all has been a matter of conflict between the state of Maharashtra and the Centre for several decades.

The question of what is a forest has been inextricably linked to the question of who owns and who should govern forests. The colonial State saw vast uncultivated landscapes as a source of valuable timber and reserved them as State-owned forests in the 19th century. However, their imagination of forests as tree-covered land ignored the complex mosaic of ecosystems that existed, from grasslands

and shrublands to savanna and deserts. We call this an arboreal imaginary as the colonial forest department favoured commercially valuable trees like teak, pine and sal over shrubs and grasses. They and their postcolonial successors forced a binary between forest and non-forest land and prioritised legal ownership over complex histories of informal, customary uses of the forest.

The Supreme Court's first *Godavarman* order (1996) extended protection under the Forest Conservation Act (FCA) 1980 to all areas that adhered to the dictionary meaning of forests and "any area recorded as forest in the government record irrespective of ownership". Thus, *Godavarman* continued with the idea that only an agglomeration of trees made a forest and neglected other terrestrial ecosystems. Such landscapes, known as Open Natural Ecosystems (ONEs), are critically important and harbour several endangered species. ONEs are often recorded as wastelands or village commons in public records and are easily diverted for industrial and infrastructure projects. The narratives of degradation and deforestation that underpinned the *Godavarman* judgment also privileged the view of forests as stable end points of ecological succession that are always negatively affected by human activities. Within ecological science however, this view has been challenged. Forests are seen not as pristine nature but as dynamic ecosystems that respond to both natural and human-induced disturbances. From the Terai grasslands to the dry deciduous forests in central India and the evergreen forests of the Eastern Himalayas, the ecosystem structure and function of forests have been shaped by centuries of human use including fire, livestock grazing, and shifting cultivation.

Godavarman legitimised the role of the Centre as the pre-eminent institutional agent of forest conservation through the FCA. After 1996, any landscape covered by the dictionary definition of forest is protected by the FCA and the Centre's approval is required for its diversion for non-forest purposes. This centralising tendency in forest governance runs opposite to community-based models of conservation and national legislations such as Forest Rights Act, 2006 (FRA) that recognise the habitation and livelihood rights of forest dwellers.

The Supreme Court has now expanded the definition of forests beyond the original *Godavarman* view. It has extended the applicability of FCA to Orans and Zudpi lands. Telling the Rajasthan government that all Orans must be classified as forests, the Court approved the recommendation of the CEC viz. "in Rajasthan, large arid areas with sparse vegetation, grasslands and unique desert ecosystems, including rocky outcrops and stony deserts, should be considered as 'forestland'". For the Court, the way forward seems to be that ONEs and other terrestrial ecosystems should be classified as forests and brought under the ambit of FCA. While seeing the forests beyond the arboreal imaginary is welcome, is FCA the most appropriate way of extending statutory protections to ONEs? Especially, when, from 2008 to 2023, the Centre allowed the diversion of 300,000 hectares of forests to build highways, large dams and mines. In the case of Orans, despite noting the local community's role in their conservation over centuries, the court does not seem to favour community ownership and governance. Although it recommends that they may be declared as community reserves under the Wildlife Protection Act, the emphasis of final directions is on statutory protection under FCA. In the case of Zudpi lands, the court has directed they should be handed over to the forest department and be used for compensatory afforestation, seeing them as degraded forests to be reforested under State control.

This perpetuates the arboreal imaginary and excludes community-based conservation of ONEs. Unfortunately, the court did not acknowledge the dependence of tribal communities on Zudpi lands and their protests against the classification of these lands as State-owned forests. In both the judgments, the court did not invoke FRA to promote community-based conservation. This goes against overwhelming research that local communities have a greater stake in ONEs and have frequently performed better than State in conservation of forests. It is time to recognise and prioritise the social, cultural and ecological forest over the legal forest.

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