

# Comprehending the Forest Law in the Context of Jharkhand

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Date : 27-7-2025

# Brief Legislative History of Forest Law in India



- Indian Forest Act, 1865 – Enforced on 24th February, 1865
  - First legislation to assert state control over forest resources.

- Indian Forest Act, 1927 – Enforced on 21st September, 1927
  - Consolidated previous Acts; serves as the primary legislation for forest governance in India.

1878

1865

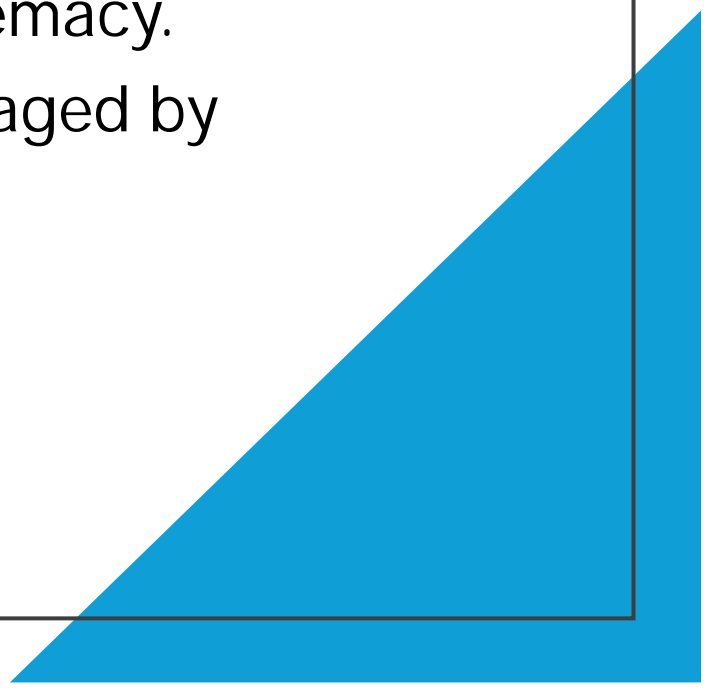
1927

- Indian Forest Act, 1878 – Enforced on 8th March, 1878
  - Introduced classification of forests into Reserved, Protected, and Village Forests.

# Essential Legal References

- **Sec. 86 – Indian Forest Act, 1927**  
Prior laws/notifications remain unless inconsistent.
- **Sec. 24 – General Clauses Act, 1897**  
Continuity of existing laws.
- **Art. 372A(1) – Constitution of India**  
continuance of existing laws after the Constitution came into effect.
- **Adoption of Laws (No. 3) Order, 1956**  
under Art. 372A.
- **Sec. 84 – Bihar Reorganisation Act, 2000**  
Existing laws apply in Jharkhand until altered.

## Categorisation of Statutory Forests under the Indian Forest Act, 1927

- **Reserved Forest** – Complete state control.
  - **Protected Forest** – Limited rights with state supremacy.
  - **Village Forest** – Managed by village communities.
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# Protected Forest

Section 29 to 34 of the Indian  
Forest Act, 1927



# Queries

Pertaining to the Declaration of Protected Forests  
under Section 29 of the Indian Forest Act, 1927



# Section 29 of The IFA, 1927

**29. Protected forests.**—(1) The State Government may, by notification in the Official Gazette, declare the provisions of this Chapter applicable to any forest-land or waste-land which is not included in a reserved forest, but which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forests produce of which the Government is entitled.

(2) The forest-land and waste-lands comprised in any such notification shall be called a “protected forests”.

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(3) No such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forest-land or waste-land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as the 1 [State Government] thinks sufficient. Every such record shall be presumed to be correct until the contrary is proved:

Provided that, if, in the case of any forest-land or waste-land, the [State Government] thinks that such inquiry and record are necessary, but that they will occupy such length of time as in the mean time to endanger the rights of Government, the 1 [State Government] may, pending such inquiry and record, declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities.

**Statutory  
preconditions to  
declare Protected  
Forest ??**

**Q-1** What are the statutory conditions precedent for declaring any land as a Protected Forest under Section 29 of the Indian Forest Act, 1927?

Sl. No.	Nature of Statutory Conditions	Corresponding Provisions	Statutory Requirements
1	Authority competent to declare.	Section 29(1)	The declaration must be made by the State Government.
2	Mode of declaration.	Section 29(1)	Declaration must be published in the Official Gazette.
3	Classification of land	Section 29(1)	Land must be either forest land or waste land

4	Exclusion from Reserved Forest	Section 29(1)	Land must not be part of a Reserved Forest as per Section 20 of the Indian Forest Act, 1927.
5	Ownership and proprietary rights	Section 29(1)	The land must either be <u>Government property,</u> OR <u>Government has control</u> OR the land belongs to the Private Individual, but the Government must be wholly or partially entitled to the forest produce therefrom.

6	Enquiry and recording of rights	Section 29(3)	<p>If Government-owned: Rights of individuals and/or communities must be inquired into and recorded.</p> <p>If privately owned:  Rights of the Government must be recorded.</p>
7	Method of recording such rights	Section 29(3)	<p>Rights must be recorded through <u>Survey Settlement proceedings,</u> or <u>by any other method deemed sufficient by the State Government.</u></p>

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**Q-2.** What is the legislative intent behind sub-section (3) of Section 29, which mandates inquiry into and recording of rights of individuals or communities?

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**Q-3.** What is the legal connotation of the expressions “**in**” and “**over**” land comprised within a notified Protected Forest under Section 29 of the Indian Forest Act, 1927?

Ref: section 29(3) No such notification shall be made unless the nature and extent of the **rights** of Government and of private persons **in or over** the forest-land or waste-land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as the State Government thinks sufficient. Every such record shall be presumed to be correct until the contrary is proved:

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**Q-4.** How is the term “rights” under sub-section (3) to be interpreted—does it encompass only usufructuary entitlements, or may it extend to proprietary claims?

Or

what are differences between rights (servitudes) and Ownership.

**Q-5.** Is there any express or implied temporal limitation for conducting the inquiry and recording of rights under sub-section (3)?

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**Q-6.** Does non-compliance with the mandate of sub-section (3) of section 29 — either by omission or delay—vitiate the legality or enforceability of the Protected Forest notification?

**Q-7.** Whether the act of recording rights under sub-section (3) of section 29 carries any legal implication upon the question of title, or is it confined solely to non-proprietary usage rights without displacing the proprietary domain?



Pertinent Legal and Historical Context to be  
Kept in Contemplation

# Bihar private Forest Act, 1947

## 2. Act not to apply to certain lands.

- This Act shall not apply-

(a)to any land which is vested in the Government; or

(b)to any land in respect of which notifications and orders issued under the Indian Forests Act, 1927 (XVI of 1927), are in force.

## 3. Definitions.

(6)"**Landlord**" means the owner of the estate or tenure in which a forest is comprised who is entitled to exercise any rights in the forest;

(9) "**Private forest**" means forest which is not the property of the [Government] [Substituted by A.L.O.] or over which the [Government] [Substituted by A.L.O.] has no proprietary rights or to the whole or any part of the forest produce of which the [Government] [Substituted by A.L.O.] is not entitled;

Separate paging is given to this Part, in order that it may be filed as a separate compilation.

## PART II.

Regulations, Orders, Notifications, Rules, etc., issued by the Governor  
of Bihar and by Heads of Departments.

## REVENUE AND LABOUR DEPARTMENTS

## NOTIFICATIONS

The 12th August 1946

**No. 7340—VIF-92/46-R.**—Whereas the Governor of Bihar is satisfied that it is necessary in the public interest to apply to the private forest described in the First Schedule hereto annexed the provisions of Chapter III of the Bihar Private Forests Act, 1946 (Bihar Act III of 1946).

Now, therefore, in exercise of the powers conferred by section 14 of the said Act, the Governor is pleased to declare his intention of constituting the said forest a private protected forest and to direct that any landlord whose interests are likely to be affected by the said declaration may within three months from the date of this notification present to the Deputy Commissioner of Ranchi, an application in writing stating his objections to the said forest being constituted a private protected forest.

2. The Governor is further pleased, in exercise of the powers conferred by sub-section (1) of section 21 of the said Act, to order that until the publication of a notification under section 29 of the said Act in the *Bihar Gazette*, all rights to cut, collect and remove any trees, or any class of trees, in or from the said forest shall, subject to the conditions and exceptions specified in the Second Schedule hereto annexed and notwithstanding anything to the contrary contained in any contract, grant or record-of-rights, cease to exist.

## THE FIRST SCHEDULE.

Serial no.	Name of village.	Thana.	Thana no.	Name of owner.	Description of forest.
1	2	3	4	5	6
1	Okra	Torpa	1	Thakur Mahendranath Sahdeo of Jarja, Gulam Nurul Aman of Ranchi, Abdul Kalam and others of Roro, Sk. Abdul Gani and others of Roro and Abdul Azim of Tapkara.	All forest lands in the villages mentioned in column 2 of this schedule which have been entered in the latest record-of-rights prepared under the Chota Nagpur Tenancy Act, as forest, jungle, jungle-jhari, or any synonymous terms and which are included in khatian, part II, when such a record exists.
2	Pandra	Do.	2	Thakur Mahendranath Sahdeo of Jarja.	Ditto.
3	Roro	Do.	6	Narayan Singh of Roro, Most. Rajdan and others, Sk. Zabar Milan and others of Roro and Sk. Abdul Samad and others of Roro.	Ditto.
4	Sardkel	Do.	9	Jitnath Singh of Sardkel and Mr. K. E. Bhowas of Ranchi.	Ditto.
5	Simla	Do.	12	Sukhnath Ray of Simla, Kasi-nath Ray of Simla, Jagdish Nath Ray of Simla, Dalgobind-nath Ray and others and Mani-nath Ray of Simla.	Ditto.

The 12th April 1948.

**No. 3735-VIF—166/48-R.**—Whereas notification no. 7341-VIF—92/46-R., dated the 12th August 1946, was issued under section 14 of the Bihar Private Forests Act, 1946 (Bihar Act III of 1946), declaring that it is proposed to constitute the private forests described in the first schedule annexed thereto a private protected forest, and whereas no objection was presented under clause (c) of section 14 of the said Act and whereas the Provincial Government consider that an area of 16531.32 acres included in the aforesaid notification should be constituted a private protected forest.

Now, therefore, in exercise of the powers conferred by sub-section (3) of section 15 of the Bihar Private Forests Act, 1947 (Bihar Act IX of 1948), which re-enacts the Bihar Private Forests Act, 1946 (Bihar Act III of 1946), the Governor of Bihar is pleased to declare that it has been decided to constitute the said area described in the schedule annexed hereto, a private protected forest.

The Governor is further pleased, in exercise of the powers conferred by clause (c) of the said sub-section (3) of section 15 to appoint Mr. Bishwanath Tewary to be the Forest Settlement Officer to enquire into and determine the existence, nature and extent of any rights other than landlord's rights, alleged to exist in favour of any person in or over any of the said forests or in or over any forest produce to be found therein and to deal with the same as provided in Chapter III of the said Act.

SCHEDULE.

Serial no.	Name of village.	District.	Thana.	Thana no.	Name of owner.	Area.	Revisional settlement plot nos. or any other specification of the situation and limit of the area.
1	2	3	4	5	6	7	8
						Acres.	
1	Sumandih..	Ranchi..	Bundu..	1	Manki Sitanath of Burhadih.	2065.52	134, 171, 180, 230, 231, 372, 413, 425, 499, 546, 823, 25/849, 423/850, 546/851, 546/852.
2	Erkia ..	Do. ..	Do. ..	2	Bhaotaram Mahto of Sirkadih.	29.28	509, 560, 721, 734, 292/766, 714, 291, 292, 722.
3	Baghadih..	Do. ..	Do. ..	8	Mahendianath Ganjhu and others of Baghadih.	61.85	1204.
4	Buradih..	Do. ..	Do. ..	9	Lakhidas Mahto and	15.71	399.



## 20. Prohibition of further contracts.

- After the issue of a notification under Section 14, the landlord of the forest specified in such notification shall not except with the permission of the [State] [Substituted by A. L.O.] Government or any authority appointed by them in this behalf, enter into any contract with any person conferring on such person the right to cut, collect or remove timber or other forest produce or trees in or from such forest, or to re-claim any part of the forest for the purposes of cultivation or otherwise and any such contract entered into after the issue of a notification under Section 14 shall be void:

Provided that this restriction shall, without prejudice to the other provisions of this Act, cease if the proposal to constitute the forest concerned a private protected forest is dropped or the forest is eventually constituted a private protected forest.

# Bihar Land Reforms Act, 1950

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Operation of Section 3 and 4(a) of the said Act

Letter no. C./P. F. 10143/52, 68-R., dated, Patna, the 5th January, 1953 from the Secretary to Government of Bihar, Revenue Department to the Chief Conservator of Forests, Bihar.

SUBJECT .— Protection of forests under the Indian Forests Act, 1927.

I am directed to refer to the correspondence resting with your letter no. 6975, dated the 22nd August, 1952 on the subject noted above.

2. Government have since received the position in regard to the protection under the Indian Forests Act, 1927 of the forests vested in Government as a result of the application of the Land Reforms Act, 1950, in consultation with their legal advisors. They are advised that since the records of the last survey and settlement operations were prepared long ago, they may not constitute legally good records of the nature and the extent of the rights of Government or of private persons as contemplated in section 29(3) of the Indian Forests Act. They have, therefore, decided that notifications under the proviso to sub-section (3) of section 29 of the Indian Forests Act 1927 should immediately issue in respect of such forests of estates or tenures which have since vested in Government under the Bihar Land Reforms Act in order to maintain the continuity of the legal control over them and their



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inquired into and recorded at a survey or settlement,

or

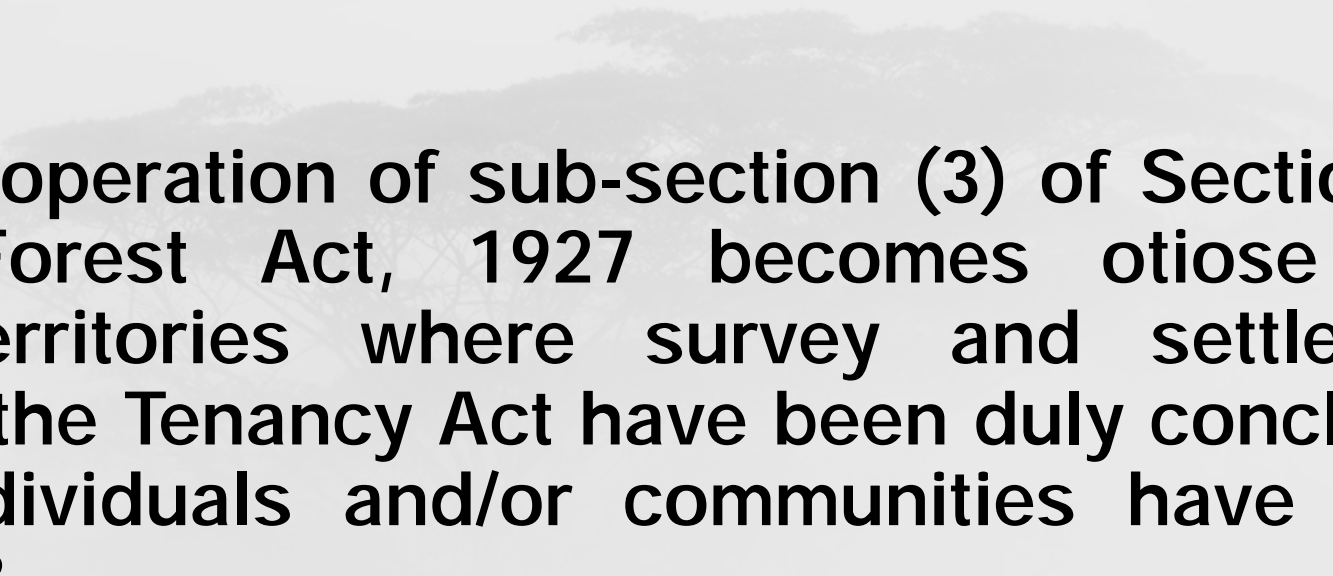
in such other manner as the State Government thinks sufficient.

Every such record shall be presumed to be correct until the contrary is proved:

# The Chota Nagpur Tenancy Act, 1908

- 81. Particulars to be recorded - Where an order is made under Section 80, the particulars to be recorded shall be specified in the order and may include, either without or in addition to other particulars, some or all of the following, namely :-
    - **(m) [the existence, nature and extent of] the right of any person whether a landlord or tenant or not, to take forest-produce from jungle-land or waste-land, or to graze cattle on any land [or to take fish from any water, or of any similar right] in any village in the area to which the record-of-rights applies;**
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**Q-8 . Whether the provisions of sub-section (3) of Section 29 of the Indian Forest Act, 1927, mandating an inquiry into and recording of rights prior to the declaration of Protected Forest, are applicable in regions where such rights have already been conclusively recorded under a statutorily governed survey and settlement Act?**



**Q-9. Whether the operation of sub-section (3) of Section 29 of the Indian Forest Act, 1927 becomes otiose and inoperative in territories where survey and settlement operations under the Tenancy Act have been duly concluded and rights of individuals and/or communities have been lawfully recorded?**

**Q-10. Can a subsequent inquiry under Section 29(3) of the Indian Forest Act, 1927 override or reopen settled and crystallised rights recorded under the Applicable Tenancy Act, particularly in light of the principles of *lex specialis derogat legi generali* and statutory finality?**

**Q-11. Whether the incorporation of a reference to the proviso to Section 29(3) of the Indian Forest Act, 1927 in a forest notification is legally valid in regions like Chota Nagpur, where no such fresh inquiry into rights is warranted due to the prior conclusion of formal settlement processes under the CNT Act, 1908?**



Thank You