

The Legal Protection of Forests

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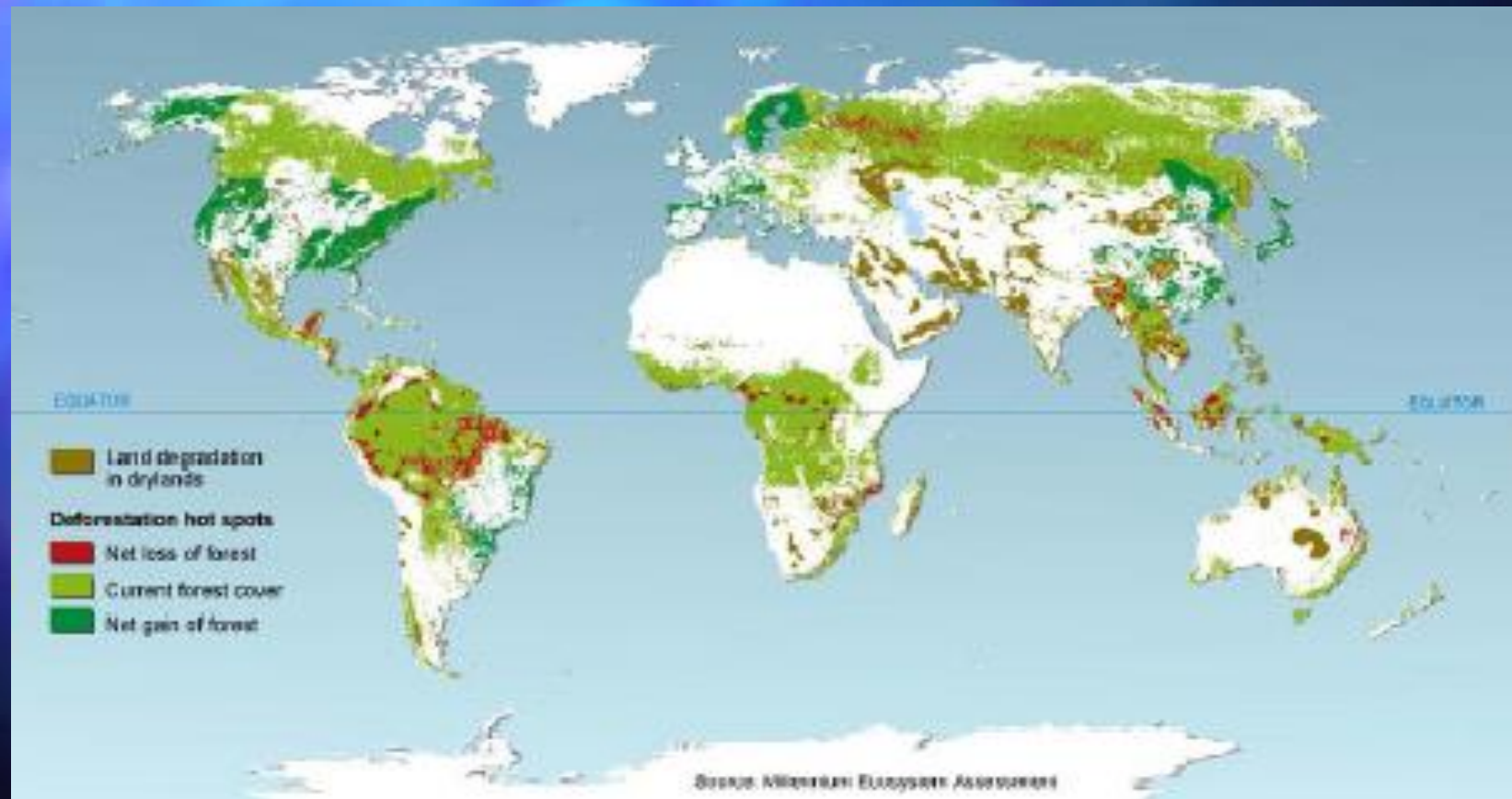
Overview

- Constitutional recognition as a fundamental right and duty
- Emerging Environmental Law principles applicable to forests
- Models of legal protection of forests
- Limitations of judicial intervention

Forest Systems



Critical Areas of Deforestation



Constitutional Right and Duty

- “The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country” (article 48A)
- “It shall be the duty of every citizen of India: (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures” (article 51A)

Emerging Environmental Law Principles Applicable to Forests

- Principle of Ecological Function of Property Rights
- *In dubio pro Natura* Principle
- Principle of *propter rem* nature of environmental obligations
- Principle of non-regression

Legislative Models

- Comprehensive model: general protection of forests by the Constitution, laws and regulations
- Area-based protection
 - Protected areas, like National Parks
 - “Reserved Forests” and “Protected Forests” (India)
- Ecosystem or biome protection
 - Legislation or provisions tailored for specific, but comprehensive, ecosystems or biomes, like mangroves, tropical forests, mountain forests, etc
- Habitat protection for wildlife
 - “Critical Wildlife Habitat” (Indian Forest Rights Act, 2006)

Legislative Models

- Protection of particular species
 - Listing of endangered or protected species
- Regulation of commerce and use
 - Requirement of prior approval by the Central government for any use of “non forest purpose” (Section 2, 1980 Forest Conservation Act, amended in 1988)
 - Prohibition of clearing of naturally grown trees in forest land for reforestation (Sub-clause 2, IV, 1980 Forest Conservation Act, amended in 1988)
- Protection of individual trees

Limitations of Judicial Intervention in Protecting Forests

- Vast powers, limited powers
- No good ruling can save a bad law
 - Work to be done at the law drafting stage
- One good ruling does not protect the environment
 - We need an environmental judicial practice, not just an isolated decision by a brave judge

Facing the Forest Ignorance of Judges

- It should begin in law schools
- Judicial schools: institutional channels
- Specialized judges
 - From “Forest Courts” to Environmental Courts
- Environmental Rule of Law and forests