

Legal Initiative for Forest and Environment

Comments on

# FOREST (CONSERVATION) AMENDMENT BILL, 2023





## Key Concerns

The Following are the key concerns with respect to the Forest (Conservation) Amendment Bill, 2023

- The Bill cannot be termed as an Amendment and amounts to enactment of a new Legislation. The Amendment cannot be termed as Amendment of the Forest (Conservation) Act, 1980 since it fundamentally changes the entire object and purpose of the Act. This amounts to enactment of a new legislation. The purpose of the FCA, 1980 which was to prevent deforestation by restricting diversion of forest land is now proposed to be changed to a law that *facilitates* the diversion of forest land. There is a clear mismatch between the Preamble and the provisions contained in the Bill. The mismatch is so stark that it seems that the Preamble relates to a different Legislation altogether.
- The very fact that the Title of the Act is being changed to *Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980* reflects that it is a new Legislation. The title of the Act is impressible under Article 343 (1) of the Constitution read with the Official Language Act, 1963.
- The Bill reduces the Forest Department to a mute spectator to the diversion of Forest: The principle focus of the Bill is to facilitate the diversion of forest land. There is not a single provision in the Bill which relates either to ‘Sanrakshan’ (Conservation) or ‘Samvardhan’ (regeneration). Merely stating these words in the title of the Act carries no meaning unless there are enabling provisions.
- The Bill is based on the incorrect interpretation of the Godavarman case. The Bill incorrectly states that the wider interpretation of Forest was an outcome of the T.N Godavarman case whereas the Forest (Conservation) Act, 1980 itself clearly applied to ‘any forest land’. This was made clear in earlier judgments of the Supreme Court predating the Godavarman Case. Thus, the FCA, 1980 from 25<sup>th</sup> of October, 1980 applied to all forest land irrespective of ownership and classification.
- The Bill makes no reference to any other laws relevant to forest: The Forest Rights Act, 2006; the Biological Diversity Act, 2002 finds no reference either in the text of the Bill or the statement of Objects and Reasons. The fact that forest are not empty spaces but areas where there are rights conferred under the law finds no reference in the Bill. In the last few years, nearly 2, 95,000 Biodiversity Management Committees have been set up and are functional. Individual and Community Forest Rights (CFR) have been conferred on forest dwelling communities and *Gram Sabhas* are mandated to protect and conserve these Community Forest Resources. Yet, the Bill gives a *carte blanche* to divert forest on various grounds. There is no recognition of the efforts that might have been put in by communities in protecting and regenerating these forest areas.
- Complete disconnect between the preamble and the operative part of the Bill. The Preamble refers to rich tradition and culture of preservation of forest and biodiversity, however, none of the operative part of the Bill reflects how this is going to be achieved. Further, though, the Preamble states that ‘improvement of livelihood of forest dependent

communities is envisaged', how this will be achieved is unclear given that all that the Bill refers to is on facilitating the diversion of forest land.

- **No Consultation with States and National Commission on Schedule Tribes under Article 338 A of the Constitution:** It is not clear as to whether the MoEF&CC has had any consultation with the state government before drafting the Bill. Since the Bill allows for diversion of forest land which is under the management of States, detailed consultation with government and also CSO's and forest dwellers should have taken place. It is also not clear as to whether there has been any consultation with the National Commission on Scheduled Tribes by the Union Government under Article 338 of the Constitution since it mandates that the The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes.

## DETAILED COMMENTS ON THE BILL

Forest is under the Concurrent List (List III) under the Constitution. The Central Government has a Constitutional Duty to protect and conserve forest. It cannot absolve itself of its Constitutional duty even if it is part of the Directive Principles of State Policy. The Supreme Court in its recent judgment on *Aravallis (Narinder Singh Versus Divesh Bhutani, Civil Appeal No 10294 of 2013, Judgment dated 21st July, 2022)* has held as follows:

A conjoint reading of Articles 21, 48A and 51-A(g) of the Constitution of India will show that the State is under a mandate to protect and improve the environment and safeguard the forests.

The Amendment Bill will render the Forest Department as a mute spectator whenever diversion of forest land takes place. The blanket exemption given for security related infrastructure of upto 10 hectares; the exception for a range of projects within the 100 Km from International Borders will severely undermine the role of the forest department as protector and conservers of forest. In *Narinder Singh Versus Divesh Bhutani*, the Supreme Court highlighted the important role of the Forest Department in the following words:

"..The forest department is the custodian of forests. It is this department of the State which is under an obligation to protect the forests for upholding the constitutional mandate."

## Change in the Title of the Act – Hindi title in Roman Script

The Bill proposes that the Act will be known as *Van (Sanrakshan Evam Samvardhan) Adhiniyam*, 1980. It is not known as to why the title of the Act is being changed from English to Hindi given that the Hindi Version of the Act is mandatorily required to be published. It is pertinent to point out that as per Article 343 (1) of the Constitution, the official language of the Union is Hindi in Devanagari Script. The Official Language Act, 1963 clearly states that Hindi in *Devanagari* Script shall be the Official Language of the Union in addition to English for all official purpose. Since Section 5 of the Official Language Act, 1963 mandatorily provides for Hindi Translation of Central Act, the title of the Act should continue to remain in English. It is further pointed out that neither the Constitution

nor the Official Language Act, 1963 contemplates Hindi in Roman Script. The change in title of the Forest (Conservation) Act, 1980 which is in English to *Van (Sanrakshan Evam Samvardhan) Adhiniyam*, 1980 which is in Hindi in Roman Script is contrary to both Constitutional and Statutory provisions.

Notwithstanding the above legal issue, it is pertinent to point out that the word 'samvardhan' has been added to the Act. 'Samvardhan' refers to fostering, developing, facilitating the growth. Ironically, the entire thrust of the Bill is on facilitating the destruction/ diversion of Forest. Merely changing the title of the Act to reflect conservation, protection and development carries no meaning, if the substantive provisions of the law does not have any corresponding provisions to achieve the objectives as reflected in the title of the Act.

## COMMENTS ON THE STATEMENT OF OBJECTS AND REASONS

The statement of objects and reasons says that the Forest (Conservation) Amendment Bill 2023 intends to *"carry forward the rich tradition of preserving forest and the biodiversity symbiotically by enhancing forest based economic, social and environmental benefits, including improvement of livelihoods of forest dependent communities."* It is stated that is one among the reasons, "to broaden, the horizons of the act". A reading of the amendment bill however, clearly shows that there is not even one provision which reflects as to how this objective will be achieved.

The principal focus of the amendment bill is to facilitate the diversion of forest land, therefore it is difficult to comprehend as to how there will be enhancement of social, economic, and environmental benefits as well as livelihood improvements especially of forest dependent communities after forest lands are diverted for non-forest use.

Paragraph 3 of the Bill discusses the impact of the 12.12.96 order in *T. N Godavarman* case as follows:

*"3. Further, prior to the Judgment of the Hon'ble Supreme Court, dated the 12th December, 1996 (in the matter of TN. Godavarman Thirumulpad vs. Union of India and others), the provisions of the said Act were applied to notified forest lands and not to revenue forest areas, and non-forestry use in the revenue forest areas was allowed through permissions granted by the Government and various authorities. Subsequent to the said Judgment, the provisions of the Act were applied in the recorded forest areas including such recorded forests which had already been put to various type of non-forestry use, thereby restraining the authorities from undertaking any change in the land use and allowing any development or utility related work. Besides this, apprehensions prevailed regarding applicability of the Act in the plantations raised in private and Government non-forest lands. This situation resulted in misinterpretation of the provisions of the Act with respect to their applicability especially in recorded forest lands, private forest lands, plantations, etc. Therefore, it is considered necessary to prescribe the extent of applicability and non-applicability of the Act in various types of lands."*

The statement in para 3 that prior to the Supreme Court judgement of 12.12.1996, the provisions of this act applied only to notified forest lands and not to revenue forest lands, is incorrect. It is important to point out that Supreme Court order of 12.12.1996, does not expand the scope of the Act beyond what was intended by the Parliament. This is clear from the order of 12.12.1996 itself wherein the Supreme Court highlighted that, *"there is misconception in certain*

quarters about the true scope of the Forest Conservation Act and the meaning of the word 'forest' used therein." The Supreme Court order is essentially focused on clarifying the provisions of the FCA and to clear certain misconceptions that existed. The Supreme Court in its 12.12.1996 order made it clear the FCA was applicable in all forests and this had been clarified in earlier judgements of the court as well.

*"...provisions enacted in the FCA 1980 for the conservation of forests and matters connected therewith must apply to all forests so understood irrespective of ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this court in Ambica Quarry Works and ors. Versus State of Gujarat and ors. (1987 (i) SCC 213), xx Litigation and Entitlement Kendra versus State of U.P. (xxx) Suppl. (i) SCC 504), and recently in the order dated 29th November, 1996, in W.P. (C) No.749/95 (Supreme Court Monitoring Committee vs. Mussorie Dehradun Development Authority and ors.). The earlier decision of this court in State of Bihar vs. Banshi Ram Modi and ors. (1985 (3) SCC 643) has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this court to dispel the doubt, if any, in the perception of any State Government or authority."*

From a reading of the above paragraph from the judgement (12.12.1996) it is clear that the Supreme Court was only reiterating the settled position of law which had emerged from earlier decisions of the court. It is pertinent to mention that these interpretations were much prior to 12.12.1996 and came about soon after the Forest (Conservation) Act came into force. Thus for example, in *Ambica Quarry Works vs. State of Gujarat*, which was decided on 11.12.1986, the Supreme Court, held as follows:

*"All interpretations must subserve and help implement the intention of the act. The primary purpose of the act is to prevent further deforestation and ecological imbalance."*

Even in the 12.12.1996 order, it was made clear that the word forest in the Forest Conservation Act was not limited to Reserve forest or notified forest, or areas recorded as forest in government record. As is evident, on reading all the judgements, it is clear, that the intention of parliament was to protect and conserve forest irrespective of its legal classification.

*"1. In view of the meaning of the word "forest" in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any "forest"."*

In para 3 of the the Statement of objects and reasons of the FC Amendment bill, it is further stated that,

*"....Subsequent to the said Judgment, the provisions of the Act were applied in the recorded forest areas including such recorded forests which had already been put to various type of non-forestry use, thereby restraining the authorities from undertaking any change in the land use and allowing any development or utility related work"*

This again is wrong statement is also clear from the recent judgment in *Narinder Singh Case (Supra)*, wherein the Supreme Court held:

Clause (i) of Section 2 applies to a reserved forest within the meaning of any law for the time being in force in that State. Clauses (ii), (iii) and (iv) of Section 2 apply to “any forest land”. As clause (i) specifically refers to a reserved forest within the meaning of any law in force, it is obvious that clauses (ii), (iii) and (iv) apply to any other forest, whether or not recognized or declared as such under any law in force in that State. Hence, clauses (ii), (iii) and (iv) of Section 2 apply to any forest land which may not be necessarily a reserved forest or a protected forest or a private forest governed by Chapter V under the 1927 Forest Act. Restrictions imposed by Section 2 (except clause (i) thereof) apply to every forest land in respect of which no declarations have been made either under the 1927 Forest Act or any other law relating to the forests in force in that State

Further, the statement that the FCA restrains the authorities from undertaking any change in land use or doing any utility related work is factually and legally incorrect for the reason that the FCA allows non-forest use as well as development and utility related work on forest land by the state government and other authorities with prior-approval of the central government. Thus it is wrong to state there is an absolute prohibition or restraint in the FCA for such activities. Thus in the last five years only almost 88, 903 Hectares of Forest Land were diverted for non- forest purpose by the Government of India

Again, in *Narinder Singh Judgment*, the Supreme Court made it clear

The embargo imposed by Section 2 ensures that the development and use of a forest land for non-forest use is governed by the principle of sustainable development. In a sense, Section 2 promotes the development work on forest land only to the extent it can be sustained while alleviating environmental concerns. The power given to the Central Government under Section 2 must be exercised by adopting scientific and consistent yardsticks for applying the principles of sustainable development.

## CONCERNS WITH RESPECT TO PLANTATIONS

Para 3 of the Statement of objects and reasons of the FCA Amendment bill, further raises the issues of *apprehension* and *mis-interpretation* of the FCA regarding its applicability on plantations raised in private and Government non-forest lands,

*“Besides this, apprehensions prevailed regarding applicability of the Act in the plantations raised in private and Government non-forest lands. This situation resulted in misinterpretation of the provisions of the Act with respect to their applicability especially in recorded forest lands, private forest lands, plantations, etc. Therefore, it is considered necessary to prescribe the extent of applicability and non-applicability of the Act in various types of lands.”*

The aspect about applicability of the FCA on plantations, whether private or government non-forest lands, has already been clarified by various judgements, starting from the 12.12.1996 order itself. In numerous places in the 12.12.1996 judgment it stated, even while banning tree felling in forest



areas, that the ban would not affect felling in any private plantations comprising of trees planted by private persons.

- i. Himachal Pradesh and UP hills: *“ban will not affect felling in any private plantation comprising of trees planted in any area which is not a 'forest'; and which has not been converted from an earlier "forest" ”*
- ii. Tamil Nadu: Ban on felling trees will not affect *“(a) trees which have been planted and grown, and are not of spontaneous growth,”*

The record of proceedings by the MoEF&CC of its national level meeting on forests by dictionary meaning held on 25.08.2014 also prepared guidelines for identification of forests by dictionary meaning and clearly provided safeguards that plantations outside ‘recorded’ forest areas were not to be treated as ‘forests’

- (vii) Tea gardens, coffee plantations, cardamom plantations, arecanut groves, coconut groves, plantations of any other horticulture species and block plantations of any tree species which are outside the recorded forest areas will not be treated as “forest” irrespective of patch size and crown density.
- (viii) To ensure long term survival and scientific management, State Governments may consider to notify plantations raised on Government land as Reserved Forests (RF) or Protected Forests (PF). Till notification of such areas as RF/PF, these plantations shall not be treated as “forest” for the purpose of the FC Act.

The meeting ended with thanks to the Chair.

## ON FAST TRACKING OF STRATEGIC AND SECURITY RELATED PROJECTS

Para 4 of the Statement of objects and reasons of the FCA Amendment Bill 2023 raises the concern about fast tracking of strategic and security related projects.

“4. There is also a need to fast track the strategic and security related projects of national importance so as to ensure development of vital security infrastructures, especially along the international border areas such as Line of Actual Control, Line of Control and Left Wing Extremism affected areas.”

With respect to the need for fast tracking certain projects, as stated above, there is no debate on the same. However, the same can be achieved by fixing of timelines and reducing the turnaround time for appraisal of the same. Administrative need of fast tracking can be given special consideration by constituting a special FAC that is meant for security and strategic projects (on similar lines to the current practice of having different EACs for different thematic areas and projects). A Fast-track process with a special and separate FAC could meet as frequently as required and with a separate specified administrative process that can be geared up to completing studies, undertaking rapid assessments and appraisal of the same.

The need for fast-tracking does not and should not mean that the need for appraisal is done away with all-together. Studies on soil erosion, slope stability among would still have to be done and would minimise the long term internal environmental and climatic risk to the strategic and security projects themselves, look at cumulative issues, as well as mitigate their external impacts, without

compromising on the essential requirements of the project. Our northern international borders are in the Himalayas a geologically active region and the recent events in Joshimath have shown the importance of proper studies and their careful evaluation to ensure stability of strategic and security infrastructure in the region.

## CONCERNS WITH RESPECT TO BLANKET EXEMPTIONS

Though National security and defence related infrastructure should receive the highest consideration and should not face any bottleneck due to regulatory process, however, given the fact that the Bill aims to completely exempt all defence and security related infrastructure from the application of the FCA is problematic. This is in view of the following reasons:

- The FCA, 1980 also requires prior approval from the Central Government for diversion of forest land for non - forest purpose. There is no absolute prohibition on diversion of forest land for non - forest purpose.
- The proposals for diversion of forest land for non-forest purpose are considered by State level Regional Empowered Committee and Forest Advisory Committee at the central level.
- Analysis of data over the last many years shows that not a single Defence related project is rejected by the REC or FAC.
- Given the fact that forest related diversion involve fragile areas inhabited by tribal communities it is important to put in appropriate mitigation measures to minimise environmental damage as well as impact forest dwelling communities. It is therefore imperative to have some kind of screening before forest land is diverted. This is also true for linear projects such as power lines and roads which can severely impact the life of communities. It is very much possible to minimise the hardship or mitigate the loss of ecology by discussion between ecologists, representatives of tribal communities through the REC and FAC process. It has been observed that power lines erected without any community consultation has serious impact on the livelihood of tribal communities.
- The Bill allows for diversion of upto 10 hectares for forest land for security related infrastructure without approval under FCA, 1980. Again, 'security related infrastructure' is a broad term and could mean haphazard diversion of large tract of forest land. The very fact that security related infrastructure has not been defined means that it could include wide range of projects which are remotely connected to security.

### Suggestion

Given the important of National Security and to ensure that there is no delay in approval for proposals for diversion of forest for defence, it is suggested that the MoEF&CC should consider constituting a specific Forest Advisory Committee for Defence Related Projects. At present the MoEF&CC has only one Committee headed by DG Forest to consider all diversion of forest land above 40 hectares for grant of Forest Clearance. However, with respect to grant of Environmental Clearance, it has 12 number of Sector Specific Expert Appraisal Committee which includes Nuclear, Coal and Non Coal Mining, Hydro and three only for Infrastructure. Given the large number of proposals that come up for diversion, it is impossible for a single FAC to perform its functions. The major reason for the delay is also that the FAC usually meets once every month. It is therefore suggested as follows:



- Defence related projects including Linear projects should continue to seek prior Forest Clearance
- The MOEF should set up a Specific FAC only for Defence Projects and Linear Projects.
- The FAC's membership should include Members representing Tribal interest including representative from NCST/ MOTA.
- There should be time bound decision making by the FAC and MoEF&CC

## CONCERNS WITH RESPECT TO INCLUSION OF SILVICULTURE, SAFARI AND ECO TOURISM

Silvicultural activities are proposed to be considered as forest related activities, however the same involves felling of trees for commercial purpose. There has been significant concerns across the country (eg in Maharashtra and Chhattisgarh due to felling by Forest Development Corporation) by tribal and forest dwelling communities on the ground that mixed natural forest are felled and replaced by teak, acacia and eucalyptus. Therefore it is imperative that silvicultural operations should not be exempted under the Act since the same is not ancillary to conservation.

### IMPLICATION OF THE AMENDMENT OF THE FOREST (CONSERVATION) ACT, 1980 ON FOREST DWELLERS

The Bill Introduces a Preamble, which states the following with respect to Forest Dependent Communities

“AND WHEREAS, India has a rich tradition of preserving forests and their bio-diversity, and, therefore, enhancing forest based economic, social and environmental benefits, including improvement of livelihoods for forest dependent communities is envisaged”

AND WHEREAS, it is necessary to provide for provisions relating to conservation management and restoration of forests, maintaining ecological security, sustaining cultural and traditional values of forests and facilitating economic needs and carbon neutrality."

It is important to highlight that Preamble states that 'improvement of livelihoods of forest dependent Communities is envisaged, the subsequent Paragraph which deals with provisions for meeting the objecting of the previous paragraph makes no mention about improvement of livelihood of forest dependent communities. There is no provisions which relates to improvement of livelihood of forest dependent communities. Merely making a mention in the Preamble is of no relevance if there are no enabling provisions to achieve the objectives and goals mentioned in the Preamble

The Bill states as follows so far as the Application of the Forest (Conservation) Act is concerned.

‘1A. (1) The following land shall be covered under the provisions of this Act, namely: – (a) the land that has been declared or notified as a forest in accordance with the provisions of the Indian Forest Act, 1927 or under any other law for the time being in force;

(b) the land that is not covered under clause (a), but has been recorded in Government record as forest, as on or after the 25th October, 1980:

### Comments

The life of forest dwellers depend on forest land. The Forest (Conservation) Act, 1980 is the law to protect forest land from being diverted for non-forest purpose. Since the main objective of the FCA is conservation of forest, it is essential that it must apply to all categories of forest. As per the existing FCA, 1980, all areas, irrespective of whether they are recorded as forest in government record or not are treated as forest so long as they meet the criteria of dictionary meaning forest as defined by the State Expert Committees constituted pursuant to the Supreme Court judgment in *T.N Godavarman Thirumulpad versus Union of India* and *Lafarge* judgment. The New Bill, limits the application of the FCA only to those which are recorded as forest in Government record or declared or notified under Indian Forest Act or any other law. This is a very restrictive definition of forest. Significant forest areas across states are neither recorded as forest in government record nor notified as forest under the Indian Forest Act or other laws. In such a situation, large and significant forest land, on which the life, livelihood and culture of forest dependent communities depend will no longer be protected under the provisions of the FCA.

It is relevant to refer to Section 2 (d) of the Scheduled Tribes and Other Traditional Dwellers (Recognition of Forest Rights) Act, 2006 which defines 'forest land' as follows:

'forest land" means land of any description falling within any forest area and includes unclassified forests, undemarcated forests, existing or deemed forests, protected forests, reserved forests, Sanctuaries and National Parks'

Thus 'Forest Land' as defined under the FRA, 2006 means 'land of any description'. The use of the expression 'land of any description' means that it does not matter if the said forest land is notified, declared or forms part of government record. The use of the expression 'includes' to describe forest land means that the Legislature intended to ensure that a wide interpretation has to be given in order to encompass within the scope of FRA, forest land of any description irrespective of whether their legal status. The proposed Amendment of 2023 limits the application of Forest land to only areas which are legally notified or mentioned in government record. Thus the proposed Amendment is directly in conflict with the provisions of Forest Rights Act.

As a result of this exclusion, the Gram Sabhas or forest dwelling communities will no longer have the authority to conserve or protect or have the right to remain in occupation of them. It is important to highlight that by virtue of the Forest Rights Act, all forest land stood vested on forest dwelling communities who were in occupation as on 13-12-2005 by virtue of Section 4 of the Forest Rights Act. There is also protection against eviction by virtue of Section 4 (5) of the FRA which states:

(5) Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete

The restricted definition of Forest land would mean that the forest land which is not notified under the law or mentioned in government record could be diverted for non-forest purpose without seeking any prior approval under the Forest (Conservation) Act, 1980. By necessary implication this would also mean that the Forest Right Act will also not apply to such areas.

Suggestion:

Though the Preamble states that one of the aim of the amendment is to improve the livelihood of forest dependent community, however, there is not a single provision in the amendment Bill which

reflects this intention. On the contrary, by restricting the definition of forest land to only those legally recognised as forest under any law or government record, the Bill is in direct conflict with the Forest Rights Act, 2006. It rather than improving the livelihood of forest dependent communities, in fact will achieve just the opposite – take away the rights conferred under the Forest Right Act, 2006. The limited definition will allow not only diversion of forest but also lead to both eviction and displacement of forest dwelling communities in violation of Section 4 (5) of the FRA, 2006. It is therefore suggested that the limited definition of forest land should be deleted from the Bill and the existing provisions wherein Forest land is not defined should continue.

## CONCLUSION

The Bill in the present form should be withdrawn. The Forest (Conservation) Act, 1980 is a self-contained law for the preventing the diversion of forest land for non-forest purpose. The Central Government should complete the task of identification of forest in terms of dictionary meaning so as to ensure that natural forests are conserved in the larger interest of the nation.



PRINCIPAL OFFICE  
N-71, LGF, Greater Kailash 1  
New Delhi – 110048  
Phone: +91-11-49537774,  
41025852  
E-mail: [Info@lifeindia.net.in](mailto:Info@lifeindia.net.in)  
Website: [www.thelifeindia.org.in](http://www.thelifeindia.org.in)

REGIONAL OFFICE  
AC-160, Sector-1, Salt  
Lake, Kolkata - 700064  
Phone: 033-40607481