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Swinging an Axe at India's Forests

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The amended Forest (Conservation) Act reverses several decades of gains for forests and forest-dependent communities. At a time when India's green cover is degrading, the new law undermines the ability to equitably and scientifically govern forests.

In August 2023, the government amended the Forest (Conservation) Act of 1980. The legislation marked an end to an era of progressive legislation that advanced forest conservation, safeguarded ecological concerns, and fostered sustainability.

Rather than advancing conservation and curtailing forest diversion, which was the intent of the FCA, the amended act, now called the *Van (Sanrakshan Evam Samvardhan) Adhiniyam* [Forest (Conservation and Augmentation) Act, hereafter FCAA] whittles down protection for vast areas of India's forests, threatening their very existence. Several hard-won gains that conferred rights to forest dwellers are now in abeyance.

The amended law raises legitimate apprehensions about the future of India's forests and the many, often marginalised, communities that depend on them.

By according priority to offsetting forests diverted to non-forest uses with 'compensatory afforestation', the FCAA seemingly conflates forests with plantations. This is a disturbing proposition when alarms are already being sounded about the questionable quality of India's existing forest cover.

The FCA and forest conservation

The Forest (Conservation) Act of 1980 [FCA] was part of policies to rein in the rampant conversion of forest lands for infrastructural development and human settlement. Its enactment signalled a shift in governmental emphasis towards more holistic conservation for ecological benefits rather than preserving forests simply for revenue generation.

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Between 1951 and 1976, India lost an estimated 4.1 million hectares (41,350 sq km) of forests, almost 6% pct of the total forest cover. With the realisation that forests were declining, several safeguard measures were put in place in quick succession.

The 42nd Amendment of 1976 moved forests to the concurrent list of the Constitution from the state list. The FCA, which built on this, gave the union government control over states' 'de-reserving' notified forests or using such forest lands for non-forest purposes.

The act was criticised (see [Lele 2007](#), for instance) for shifting the balance of power to the union and for the questionable assumption that central oversight of forests was better than that of state or local governments. Yet data suggest that the FCA reined in forest clearances for industries, mines, and infrastructure. Between 1980 and 2021, forest diversion decreased to 0.99 mha. Coupled with the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereafter, Forest Rights Act or FRA), the FCA benefited forest-dependent communities.

Open-ended exemptions

These gains might now be lost, with the 2023 amendment listing a slew of exemptions to the FCA that remove the need for central government permission to denotify forests and fell them for a range of activities.¹

These activities include clear-felling of 10 ha of forest for purposes of "national security," up to 0.10 hectares of forests along railway lines and roads, and any amount of diversion for ecotourism activities, all without any need for central clearance. Other permissible activities include reconnaissance, prospecting, investigation or exploration, and an open-ended clause: "any other like purposes, which the Central Government may, by order, specify."

|| The removal of FCA protections [...] engulfs [...] fragile ecological zones that have witnessed extreme climate events in recent times.

Even more worrisome is the removal of FCA protections from forest lands lying within 100 kilometres of the international borders and required for “strategic projects.” This provision engulfs vast areas of the North Eastern states and the western Himalayan union territories and states of Jammu and Kashmir, Ladakh, Himachal Pradesh, and Uttarakhand – all fragile ecological zones that have witnessed extreme climate events in recent times.

More than four-fifths of the North Eastern states fall in this zone, a cause for concern when we note that these states have a quarter of both India’s forest cover and ‘dense forest’ cover.²

The FCAA also gives free rein to plantations (“silvicultural operations”) and wildlife safaris and resorts (“ecotourism”). [The recent plan for the development of a zoo-safari](#) in the Haryana Aravalli Hills to compensate for the loss of tropical rainforests on Great Nicobar Island (that are being clearfelled for a container port) supports these misgivings.

Degrading forest cover

The removal of protection for forests in large swathes of the country and in the pursuit of the above commercial activities is all the more alarming as the status of forests in India is today under question, both in terms of areal trends and quality.

The National Forest Policy requires India to have one-third of its geographic area under forest or tree cover. As of 2021, the actual forest cover was equivalent to just over [a fifth of its geographic area](#). Even including the tree cover, we have a gap larger than the area of Uttar Pradesh.³

The official figure of the area under forests is likely to be an overestimate.

Under the [current system of forest estimation](#), even small urban parks and tree-lined avenues are counted under forest cover. This makes it impossible to determine how much of the stated acreage is natural forest and how much is under artificial plantations. Numerous news reports expose the travesty of such misclassification of artificial plantations as forests, which experts believe leads to a situation wherein [“India is losing forests and gaining plantations.”](#)

Even if the figures are taken at face value, just over half of the existing forest cover is of good quality, either categorised as ‘very dense’ (70% canopy cover and above) or ‘moderately dense’ (40-70% canopy cover). The balance (43.2%) is likely to be degraded due to selective logging of trees, the spread of invasive species, forest fires, fragmentation, and inappropriate plantation activity.

There is already considerable [documentation of degradation](#) in India’s forests. Independent analyses also indicate a significant decline in India’s forest cover. For instance, Global Forest Watch, a forest monitoring centre, suggests a [5.6% decline in area between 2001 and 2022](#). These estimates question government figures that suggest [stability](#) or [marginal increases](#) in forest cover over shorter periods in recent years.

Diluted forest rights

The FCAA barely mentions anything on the right of forest-dependent communities under the Forest Rights Act 2006. This is particularly egregious since the 2023 amendments will affect the forest rights already conferred (or in the process of being conferred) under the 2006 act.

The Forest Rights Act allowed traditional forest dwellers to claim rights on forest land they cultivated (individual rights) or used as common property resources to meet their needs (community forest rights or CFR). Resulting from years of activism by rights groups representing tribals and forest dwellers, the FRA was seen as rectifying colonial and post-colonial injustices and marking a watershed in forest governance.

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The implementation of the FRA has been dogged by multiple reasons, including bureaucratic apathy and visible resistance by state governments, leading to poor technical or financial support for CFR areas. In parallel, a 2022 amendment to the FCA rules did away

with the requirement of the consent of the Gram Sabhas for forest denotification, removing a key component in vesting rights to forest communities. Yet, the Forest Rights Act remains a last resort for marginalised forest-dependent people to claim rights.

The rules framed under the amended act of 2023 continue to remain silent on the need for Gram Sabha consent. State governments can now issue orders for diversion after the Centre gives final approval and rights are settled under the FRA. The FCAA also fails to provide resolution for situations where areas that now may be denotified are under the control of communities via the FRA.

What the FCAA connotes for India's forests

The Supreme Court's *Godavarman* judgement of 1996 had explicitly expanded the umbrella protections of the FCA by bringing under it 'forests' based on the dictionary meaning of the word rather than on their ownership status. This was significant given that substantial areas of forests were until then devoid of any legal protection.

The FCAA overturns this and other provisions of the judgement. Now, only forests declared by law or explicitly labelled as forests in government records on or after 25 October 1980 require prior central approval for denotification. Forests that had already been converted for non-forest use prior to the judgement no longer qualify for FCA protection.

Forest-dependent communities in the North East are particularly vulnerable to takeover of their forest lands by governments or corporate bodies.

Ironically, the judgement's wide definition of forests and the implication that even unclassified forests fall within the scope of the FCA makes such forests a possible target for takeover under the amendment.

This poses an ominous situation for local forest autonomy across the country. The amendment allows the diversion of 'undeclared' forests – forests without any legal status, such as sacred groves or those which people use – if they are not recorded as forests in any government record. Such areas can simply be converted for various development projects without even a reference to earlier uses. This is unlike even the process of State Forest Departments declaring Wildlife Sanctuaries under the Wildlife Protection Act (1972), which requires, at the very least, the settlement of the bona fide rights of the local communities.

Forest-dependent communities in the North East are particularly vulnerable to takeover of their forest lands by governments or corporate bodies. More than half of the North East's forest area is 'unclassified' under forest acts and has historically been autonomously managed by communities, clans, and private individuals.⁴ These forms of administration and ownership are protected by the Sixth Schedule and provisions of Article 371 of the Constitution that safeguard local administration and ownership of forests and associated ecosystems.

Understandably, then, North Eastern states have reservations about the FCAA. Nagaland passed a resolution stating that the FCAA should only apply subject to the guarantees of Article 371 A. It further required that the provisions of the FCAA not be used to the detriment of the state and its people. Nagaland also issued an additional clause providing leeway to the state to divert its own forest lands in lieu of compensation. Mizoram, under Article 371 G, has rejected the FCAA.

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These concerns are also valid for other parts of India, where local communities have traditionally conserved sizeable areas of such unclassified forests. The Supreme Court had, in the *Godavarman* judgement, ordered states to identify and declare "deemed" forests. Not all states have done this to date. As a result, forests used informally by local people – like the Orans in Rajasthan or Mangar Bani in the Aravalli – are now vulnerable to diversion.

The FCAA potentially also exempts other forest lands lying outside the Recorded Forest Areas, including those awaiting declaration as Reserve or Protected Forests under Sections 4, 20, and 29 of the Indian Forest Act. Many of these have been pending since the abolition of the zamindari system but remained in limbo because of ownership hurdles, bureaucratic inertia, or other reasons.

Sadly, unlike in the North East, states in the rest of India have not pushed back against these provisions – including tribal-dominated states such as Jharkhand or Chhattisgarh – possibly due to a lack of similar constitutional guarantees enjoyed by the North East states.

Conclusion

The 2023 amendment to the FCA threatens to undo several decades of gains for forests and rights-based approaches to their governance. It complicates the implementation of forest laws and greatly undermines our ability to equitably and scientifically govern forests in the future.

The issuance of rules under the FCAA, which came into force in December, offers a brief reprieve of a year to address some of the concerns.

The rules enjoin state governments and union territories to prepare a consolidated list of lands to which the provisions of the FCAA would apply. This includes forest-like areas (“deemed forests”) identified by expert committees set up under the *Godavarman* judgement, unclassified forest lands, and community forest lands.

Failure to comply within a year will permanently disqualify unrecorded forest areas from FCA protection, impinging on the already dwindling and deteriorating forests of the country. It will also adversely impact the already all-too-marginal rights of forest-dependent communities.

It remains to be seen whether state governments and union territories will capitalise on this window to prepare a comprehensive record of forests for inclusion in government records or restrict themselves to already identified forest areas.

Given the amendments, in just a few years, the forest map of India will look very different. The adoption of the FCAA will set in motion a spate of deforestation that we can ill afford given our forests’ precarious ecology and diminishing extent.

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Footnotes:

- 1 We note that the amendment does not take away the states’ rights to impose restrictions.
- 2 Almost 86% of the area of the North East falls within the exemption zone. This is significant given that 64% of the total area of these states is forested, which goes up 77% if Assam is excluded. In the western Himalayas, the exempted zone is almost 70% of the area.
- 3 The area under forests in 2021 was 7,13,719 sq. km. Tree cover was 95,748 sq. km, or 2.91% of the geographic area.
- 4 They range from a low of 15.5% of the total forest area in Mizoram to a high of 88% in Meghalaya and 97.3% in Nagaland.

References:

Lele, Sharachchandra. (2007). “A ‘Defining’ Moment for Forests?” *Economic & Political Weekly* 42 (25): 2379-2383. (June 23-29, 2007).