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How Land Diversion Laws Threaten Forests and Forest Dwe

By C.R Bijoy | 25 Sept, 2020



Coimbatore: By bypassing the Forest Rights Act in acquiring land for compensatory afforestation and by allowing plantations to replace biodiverse forests as a part of this afforestation, two laws meant to protect forests and the environment are actually threatening India's dwindling forests and already marginalised forest dwellers, an analysis of land diversion data since 2008 and amendments to forest laws show.

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Data from different government sources on forest land diverted do not match and the land under compensatory afforestation is less than the forest land diverted between 2008 and 2019, even when the law mandates that at least an equal-sized tract of land should be afforested.

The two laws are the [Forest Conservation Act, 1980](#) (FCA), which regulates the diversion of forests for non-forest uses and the [Compensatory Afforestation Fund Act, 2016](#) (CAFA), which regulates the funds for compensatory afforestation.

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Through repeated and incremental amendments to these laws, successive governments, in 2013, 2014 and 2017 watered down the requirement of consent from Gram Sabhas (villagers coming together in a general assembly) before diversion of land and enabled bypassing the rights of people over forest land. Poor implementation of compensatory afforestation has also led to improper or no afforestation, which has harmed India's biodiversity.

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These and other amendments over the past [three decades](#) have weakened environmental safeguards to the extent that [environmental clearances](#) have become a paper-stamping exercise. Right now, the Ministry of Environment, Forest and Climate Change (MoEF&CC) is trying to introduce further changes through the [Environment Impact Assessment notification](#) for environmental clearances, which [environmentalists have criticised](#) as a move to [dilute](#) the requirements to [obtain green clearances](#).

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Statutory protections

Under the FCA, those who acquire forest land for non-forest use, such as pipelines, roads or industrial projects, must provide compensation to the government based on the size and biodiversity of the acquired land. To alleviate the harm to the environment and ecology, these funds are used for compensatory afforestation on an equal-sized tract of non-forest land or twice the size in the case of afforestation on 'degraded' forests (with a crown density below 40%, which is measured as the percentage of light blocked by trees). The funds are managed as per the CAFA.

Compensatory afforestation includes artificial regeneration of forests, pest and disease control, soil conservation, relocation of villages from protected areas and more. It is mandatory for forest diversion and became part of the FCA in [1992](#). These rules were replaced by new ones in [2003](#), and further [amended](#) in 2004, 2014 and 2017. Through amendments, the environment ministry has watered down the provisions requiring recognition of [rights of dwellers](#) and consent from Gram Sabhas as preconditions to diverting land.

Separately, there were "serious shortcomings in regulatory issues related to diversion of forest land", a [2013 report](#) by India's Comptroller and Auditor General (CAG), the government's auditor, said, [citing](#) instances of the purchase of land for afforestation of already afforested land and of dense forests, afforestation of unapproved sites and expenditure without work being carried out.

Another satellite imagery-based study in 2018, by the Community Forest Rights Learning and Advocacy Programme students from the University of Toronto, [found](#) instances of agricultural land being used for 'afforestation' and of forest land being cleared to create plantations in the name of 'compensatory afforestation'.

The CAG report had also highlighted "the abject failure to promote compensatory afforestation, the unauthorised diversion of forest land in the case of mining and the attendant violation of the environmental regime".

Shortfall in compensatory afforestation, data mismatch

In 2008, those acquiring forest land had to compensate for loss of biodiversity at a rate [ranging from Rs 4 lakh to Rs 5 lakh per hectare](#). In 2014, the environment ministry proposed the amount be increased to Rs 5.65 lakh to Rs 55.55 lakh per ha, per this November 2014 [report](#) by the Forest Survey of India. But this had not been implemented as of [March 2019](#).

These funds are collected in a compensatory afforestation fund, which amounted to nearly Rs 74,825 crore—more than the [union health budget in 2020-21](#)—by October 2019. Of this, about Rs 65,378 crore was released to the states, government data ([here](#) and [here](#)) show.

There are no guidelines for what kinds of forests should be nurtured on land taken up for compensatory afforestation. This results in tree plantations, mostly timber, replacing forests and their rich biodiversity. Such plantations, rather than restoring natural forests, encourage plantations of a single type of tree (monoculture) or a limited number of species which remove less carbon from the atmosphere than natural forests while destroying biodiversity, [IndiaSpend](#) [reports](#).



on July 1.

Even this compensatory afforestation falls short when compared to the land diverted for non-forest use, according to available data.

According to the government's [Parivesh portal](#), 232,952 ha of forest land--over 1.5 times the [size of the state of Delhi](#) diverted between 2008 and 2019. About 17,481 ha diverted for defence proposals, and another 2,746 ha not uploaded to the portal due to "compliance issues", bring the total diverted forest land to 253,179 ha, Anil Kumar, senior technical director, Environment Informatics Division of the environment ministry's computer cell, told **IndiaSpend** in an [Parivesh](#) is the "single window hub" that "automates the entire tracking of proposals" for all clearances in the environment ministry including forest clearances.

At the very least, the afforested land should be equal to the diverted land. But 182,817 ha were diverted for compensatory afforestation, equivalent to only 72% of the 253,179 ha of forest land diverted for non-forestry purposes between 2008 and 2019, data from the [E-Green Watch portal](#) show, as of August 20, 2020.

Of the land taken up for compensatory afforestation, 26% was degraded forest land. The rest was revenue land (including community land, agricultural land and homesteads) and common land, over which rights of people have not been recognised historically in the absence of a law such as the [Forest Rights Act, 2006](#) (FRA).

The FRA, operational since 2008, provides a simple, transparent and democratic framework to identify, demarcate and record customary and traditional, individual and collective rights of forest dwellers to protect, conserve and manage forests (it does not permit hunting).

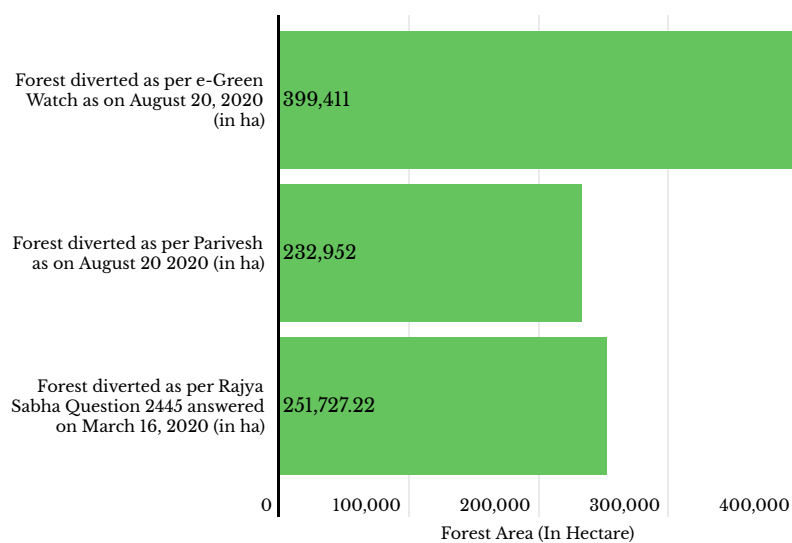
Data on forest diversions on the Parivesh Portal and that provided by the environment ministry do not match the data on the government's [E-Green Watch](#) website, which [defines itself](#) as the integrated, completely transparent, reliable and accountable system with real-time data that is publicly accessible for monitoring, evaluation, social and ecological audits by independent organisations, researchers and the public.

For instance, the figures for forest diversion under FCA, according to the environment ministry's [reply](#) in the Rajya Sabha for the period 2008 to 2019, was 251,727 ha, 63% of the 399,411 ha that E-Green Watch shows as forest diverted in the same period. The figures on E-Green watch are also higher than the 253,179 ha on the Parivesh portal.

"A significant percentage of [data](#) being uploaded... is either incorrect or incomplete" on E-green watch, the Inspector General of Forests confirmed in a [letter](#) to state Principal Secretaries of Forests on August 10, 2020. This is because of improper digitisation of the area diverted or afforested and incomplete details of plantations, among other reasons, the letter said.

Govt Departments Differ On Amount Of Forest Land Diverted

Between 2008-2019



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When we reached out to the environment ministry for clarification on this discrepancy, they explained to us, over emails, that the most reliable source of this data was not E-Green Watch. “E-Green Watch data is not updated”, “Parivesh portal is more reliable” and “regularly updated”, and that the figure given by the environment ministry in the Rajya Sabha is based on the “data available on Parivesh portal”, Kumar said.

Forest Rights Act

Before land is diverted for non forest-use, Gram Sabhas have to certify that the FRA is implemented in the proposed area and give consent for the diversion of land, according to an August 2009 environment ministry order. The state government also has to confirm that the project proposal was placed in front of all Gram Sabhas that govern that land and that they agreed to the diversion.

For instance, in 2013, when the Orissa Mining Corporation tried to take over 660 ha of land for bauxite mining without Gram Sabha consent, the Supreme Court said it was a “blatant disregard displayed by the project proponents with respect to rights of the tribals”. The court directed that Gram Sabhas take a decision on land diversion within three months. In several villages denied consent and the proposal was rejected.

Since its enactment, the FRA has “assigned rights to protect around 40 million hectares of community forest resources through village level democratic institutions”, said the 2009 Forestry Outlook Study of the MoEF&CC. This accounts for 56% of 71.22 million hectares of forests, as estimated in 2019, which is accessed and used by a fourth of India’s villages (around 170,000), reported a 2015 study by Washington D.C.-based Rights and Resources Initiative, a global coalition for policy and reforms, India-based Vasundhara, a policy advocacy, and National Resources Management Consultants.

Of 28 states and nine union territories (UTs), 20 states and one UT are implementing FRA, according to the Ministry of Tribal Affairs and a 2018 affidavit filed by the UT of Dadra & Nagar Haveli in the Supreme Court. A decade and a half after the law was passed, only 13% of the 40 million ha have been demarcated under the FRA by the environment ministry. Only 6.8% of the total recorded forests in India, as per data from the Ministry of Tribal Affairs.

There are several kinds of rights under the FRA, such as a person’s individual rights over land or area that can be used by the locals for collecting forest produce. There are no publicly available disaggregated data on land under different kinds of rights. Often, several different kinds of rights can exist over the same tract of land. For instance, areas claimed for

forest produce collection could overlap with areas claimed for cattle grazing, leading to double-counting and making the 13% figure an overestimation.

Afforestation could be over land claimed under forest rights

For forest land diverted under FRA, Gram Sabhas have to give prior informed consent but no such consent is required under the FCA before the diversion of land for compensatory afforestation. Still, consent is required under the 2001 [Forest Rights Act](#), which requires that when forest rights are acquired, the consent of the affected families and Gram Sabhas and the loss of their rights--both individual and community rights--be adequately compensated.

But, over 70% of the afforested lands were forests and many were on land claimed by individuals or communities. A 2017 FRA, found an [analysis](#) of 2,479 compensatory afforestation plantations in 10 states in 2017. Land in 53 of the 63 villages was taken without Gram Sabha consent and communities were not compensated for their loss, the analysis found. In many areas, such as Kasaundi and Tuhametha village in Chhattisgarh and [Harakabavi village](#) in Karnataka, compensatory afforestation plantations were fenced off to prevent access by local communities.

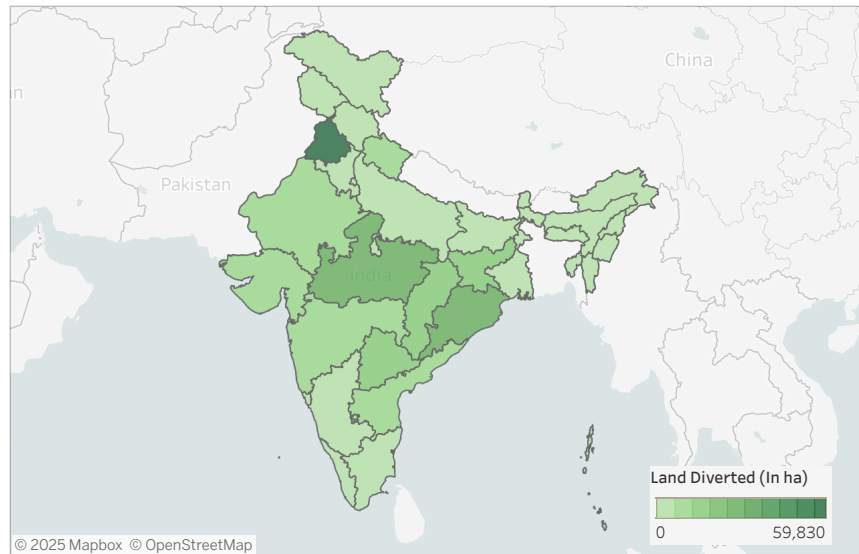
Government help to divert land

To make forest diversion faster and easier, the environment ministry asked state governments to identify revenue and degraded forest lands for compensatory afforestation, on [August 8, 2014](#) and on [November 8, 2017](#). The states identified 2.68 million hectares--an area two and a half times the size of Tripura--in Andhra Pradesh, Chhattisgarh, Madhya Pradesh, Jharkhand, Odisha, Tamil Nadu, Rajasthan and Uttar Pradesh, as [IndiaSpend reported](#) in September 2017.

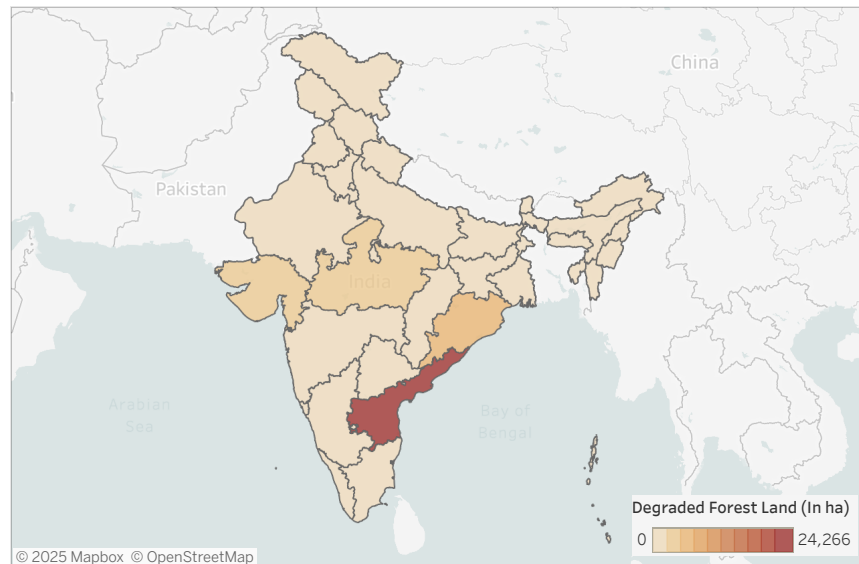
All 20 states that are implementing the FRA, except Kerala, are also implementing compensatory afforestation on non-forest lands. Four states (Punjab, Haryana, Arunachal Pradesh and Sikkim) and two UTs (Chandigarh and Delhi) are implementing compensatory afforestation but not the FRA, [even as they have recorded forests](#). Manipur diverts non-forest land for compensatory afforestation, [data](#) show.

Forest Land Diversions, 2008-2019

Forest Land Diverted For Non-Forest Use



Degraded Forest Land Diverted For Compensatory Afforestation



Sources: [State of Forest Report 1999, Rights and Resources Initiative](#), State-wise FCA projects from [Parivesh](#) of the Ministry of Environment, Forests and Climate Change. [FCA Project Plantations Reports](#) from e-Green Watch, [Monthly update](#) on status of implementation of the Scheduled Tribes and Other Traditional Forest Dweller (Recognition of Forest Rights) Act, 2006

Note: Explore data on potential area [here](#).

Attempts to circumvent FRA

Himachal Pradesh (HP) has [66.5% of its area](#) under forests. On the basis of a certificate from district collector Himachal Pradesh government claimed that there were no FRA claims in the state and the environment minister [exempted](#) them from FRA compliance on September 20, 2012. The state claimed that forest rights were settled during British period but in January 2020, proceeded to issue 164 titles for 1,921 ha from 2,700 claims under FRA, according to information from the [Ministry of Tribal Affairs](#).

Though FRA does not provide for any exemption, the environment minister [exempted](#) linear projects across the country like road construction, canals, laying of pipelines, optical fibres, transmission lines, etc., from Gram Sabha consent on February 2013. The exemption came with the caveat that it was not applicable where rights of Particularly Vulnerable Tribal Groups (PVTGs) were affected.

Tribal Groups—the most disadvantaged amongst tribal groups depending mostly on forest resources for survival involved. But, on March 7, 2014, the tribal ministry said it **disagreed** with any exception as the FRA “does not provide exemption to any category of projects”. “Even if [the] Ministry of Environment & Forest does not insist on compliance with FRA for linear projects, it cannot be said that this authorises the land acquisition/transfer authorities to violate FRA”. The tribal affairs ministry said in a letter to all states in 2014.

All matters including legislation relating to the rights of Scheduled Tribes on forest lands were **transferred** to the ministry in 2006, but the environment ministry continues to issue orders and amend laws despite objections from the tribal ministry. Further, the FRA says that governance of forests should be transferred to the Gram Sabhas from the bureaucracy. But, on the ground, the forest bureaucracy continues to govern forests with the environment ministry diluting the requirement of FRA implementation and consent from Gram Sabhas for forest diversion, our analysis follows.

In changing these laws, the environment ministry is going against its **own admission** that the “fine tuning of other related legislation” should be done only after taking the FRA into account. A violation of the provisions of FRA by a government official is an offence and anyone violating forest rights can be prosecuted under the FRA and the **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989**, the law says.

IndiaSpend reached out to the environment ministry for comment on this but did not receive a response. The story will be updated if and when the ministry responds.

Amendments To Laws/Rules On Forest Land Diversion			
Law	Year	Link	Amendment
Forest (Conservation) Act 1980	2003	Forest (Conservation) Rules 2003	This replaced the Forest (Conservation) Rules 1981, and provided details on who would receive proposals for forest diversions and the process for getting approvals.
August 1996	1996	F.No.1-FC (pt)	A guideline was issued which mandated consent from Gram Sabhas for forest diversion and implementation of the Forest Rights Act.
March 2014	2014	Forest (Conservation) Act	Instead of direct consent from the Gram Sabhas, the environment ministry said that District Collectors could issue a certificate showing consent of Gram Sabhas. Under the FRA, the final authority on the Forest Rights Act lies with the District Level Committee,

	h Amend 1 ment 4, Rules 2 2014 0 1 4	with the District Collector as Chairman. The 2017 amendment clarifies these rules and breaks them up into separate provisions.
	M Forest a (Conse rc rvation) h Amend 6, ment 2 Rules 0 2016 1 7	
F e b r u a r y 2 6, 2 0 1 9	File No.11- 43/201 3 FC	The environment ministry said that FRA compliance is not necessary for an 'in-principle' approval for forest diversion. Gram Sabha consent would be required only at the time of final approval. The tribal ministry opposed this change.
M a rc h 3 1, 2 0 2 0	F.No.1 1- 97/201 8-FC	The environment ministry agreed with the The Mineral Laws (Amendment) Act 2020 that new lessees of expired mines do not need fresh approval--and therefore Gram Sabha consent--to operate on the same land for two years.
Viol atio ns of	F. No.11- 9/98- FC(pt)	Even though the law does not allow it, the MoEFCC exempted linear projects such as roads, canals, pipelines/optical fibres, and transmission lines, etc., from obtaining Gram Sabha consent for forest diversion unless recognised rights of PVTGs are being affected. The ministry of tribal affairs did not agree with this change.

the Fore st Righ ts Act	u a ry 5, 2 0 1 3	
J a n u a ry 1 5, 2 0 1 5	F. No.11-306/2014-FC	In spite of opposition from the tribal ministry, the MoEFCC simplified the procedure for felling of trees in linear projects.
O ct o b e r 2 8, 2 0 1 4	Letter F.No.11-09/98-FC(pt)	The MoEFCC granted District Collectors unilateral powers to sanction diversion of forest land in areas notified as 'forest' less than 75 years before December 13, 2005 and with no record of tribal population as per Census 2001 and 2011. This amendment should not have been allowed because, for the FRA to be applicable, when the forest was itself notified is irrelevant and non-tribal forest dwellers have to prove their residence in the region prior to 1930 and not specifically on that forest land.

In October 2014, the environment ministry [exempted](#) FRA compliance in forest diversions in non-tribal villages whose forests were notified after December 13, 1930, making villagers ineligible for rights under FRA. Forests are notified by state governments. However, this exemption should not have been allowed as under the FRA, when the forest was notified after 1930, it is irrelevant and non-tribal forest dwellers have to prove their residence in the *region* prior to 1930 and *not* specifically on that forest land to be eligible to claim rights in that area under FRA, [according](#) to the Ministry of Tribal Affairs.

To further water down the need for Gram Sabha consent for diversion of land, the environment ministry amended [FCA Rules in 2014](#). It incorporated the [2009 FRA compliance order](#) for implementing FRA and taking the consent of Gram Sabhas, but added that, instead of certificates from each Gram Sabha, only a District Collector's certificate is required for approval under FRA. The District Collector, who heads the District Level Committee for FRA implementation, is responsible for [completing the recording of forest rights](#) and obtaining the consent of Gram Sabhas.

Through another amendment to the [rules](#) in 2016, the environment ministry further watered down the law on Gram Sabha consent. The ministry said that the district collector's certificate and Gram Sabha consent was no longer re-

before the project was approved. The district collector could give in-principle approval for diversion of land with certificate. The certificate would now only be needed at the final stage of the clearance process, which means that environmental damage could have taken place by the time Gram Sabha consent was required.

The tribal ministry which opposed the watering down of FRA at every stage, [said](#) that the diversion would now be accomplished”, which means that those impacted by it would have no choice but to accept the diversion of land.

(C.R Bijoy is with the Campaign for Survival and Dignity, a national coalition of Adivasi and forest dwellers’ organisations and works on natural resource politics and governance issues.)

We welcome feedback. Please write to respond@indiaspend.org. We reserve the right to edit responses for language grammar.

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