

https://www.academia.edu/116507439/Will_Forest_Conservation_Act_of_2023_sound_the_death_knell_for_India_s_forests_Frontline_21_March

HOME / ENVIRONMENT ENVIRONMENT

Will Forest Conservation Amendment Act of 2023 sound the 'death knell' for India's forests?

The amendments in FCAA have diluted the definition of "forests" and stripped local communities of their rights in forest management.

Published : Mar 21, 2024 11:00 IST - 7 MINS READ

C.R. BIJOY

COMMENTS



FOLLOW US

SHARE



READ LATER



Explore Premium

A wild elephant walks through a coffee estate in the Western Ghats. | Photo Credit: Getty Images

“Death knell” for India’s forests is how a PIL petition filed in the Supreme Court by Ashok Kumar Sharma, Indian Forest Service (retd), and others last October described the amendments made to the Forest (Conservation) Act (FCA), 1980. The original Act was hugely problematic in itself: it violated the rights of forest dwellers and made the Union government the final arbiter for forest diversion for non-forestry purposes. The amended Act—the Forest (Conservation) Amendment Act (FCAA) of 2023, which received the President’s assent in August 2023 after Parliament passed it in July—even discards the need to obtain consent from habitation level gram sabhas before final forest clearance.

Try our 15 days of Free trial ▶ Join our 60k+ readers and dive deeper into the topics that matter to you

Activate Free Trial

Know More

The FCAA violates the landmark legislation the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (also known as the Forest Rights Act, or FRA), which designated forest dwellers and gram sabhas as the statutory protectors of forests and their wildlife and biodiversity.

Also Read | [How green is the green credit programme?](#)

Historical injustice

In March 2006, the Environment Ministry lost its monopoly over forests when “all matters, including legislation, relating to the rights of forest dwelling Scheduled Tribes on forest lands” was allotted to the Ministry of Tribal Affairs through an amendment to the Government of India (Allocation of Business) Rules, 1961.

The FRA emerged to explicitly undo the “historical injustice” that resulted from the inadequate recognition of “forest rights on ancestral lands and their habitat... in the consolidation of State forests during the colonial period as well as in independent India”. The FRA added another important layer to forest conservation. It made the gram sabhas of some 1.79 lakh habitations the statutory authority to protect, conserve, and manage

Explore
Premium

the forest, wildlife, and biodiversity falling within their traditional boundaries.



Young girls of the Dongria tribal community in the Niyamgiri hills in Odisha. | Photo Credit: Biswaranjan Rout

The most celebrated instance when the FRA prevailed over the FCA in protecting forests is the Niyamgiri case of Odisha. In 2013, the Supreme Court, affirming the FRA, asked gram sabhas of the Dongria Kondh and Kutia Kondh Adivasis to consider the diversion of 660.749 hectares (ha) of forests under the FCA for bauxite mining in favour of the Odisha Mining Corporation Ltd, which had earlier been granted final clearance under the FCA. The gram sabhas refused consent; the project was dropped, and the Niyamgiri forests survived.

Explore
Premium

Last October's PIL petition that challenged the constitutional validity of the FCAA averred that the amendments diluted the expansive definition of forest that the Supreme Court had constructed in its judgment of December 12, 1996, in T.N. Godavarman v. Union of India. According to this judgment, the term "forest land" would not only include its dictionary meaning but also any area recorded as forest in government records

irrespective of the ownership of the land.

Until then, the FCA had been applicable only to forests notified under the colonial Indian Forest Act, 1927, and similar State laws. Forests were usually declared at will whether there were actually forests or not, such as grasslands, agricultural and pastoral lands, common lands, streams, rivers, sea coasts, and mangrove forests, traditionally accessed by millions for their livelihood.. Neither did these notifications cover all that were actually forests or forest like.

No credence to local bodies

While the Supreme Court expanded the scope of the Godavarman case to cover all aspects of forests as a continuing mandamus, it has never addressed the rights of forest dwellers or the conversion of forest villages into revenue villages. It has failed to give credence to local bodies and forest communities to have the primary say in what constitutes forests and how they should be conserved.

Similarly, for the FCAA, the petitioners said that about 1.97 lakh sq km would be excluded from the ambit of the FCA, but it is silent on what happens to FRA compliance and gram sabha consent when forests under community rights are diverted.

The concept of conservation, post-Independence, came into being some four decade and is now driven by the huge growth in the ecotourism sector that taps into the ra] increasing disposable income of a minuscule privileged class.

Explore
Premium



A member of the Soliga community in Karnataka's Hills holds up a herb collected from the forest. | Photo Credit: Special Arrangement

Added to this, harvesting carbon credits from forests to offset carbon emissions has kicked up a storm in the investment world. Forests and forest conservation are now recast as a grand woodlot that can sink carbon efficiently to be sold as carbon credit globally.

Explore
Premium

Under the guise of forest conservation, large-scale tree plantations are leveraged over large forest tracts to rake in massive profits in the near future, or so it is believed. The FCAA is tuned to serve this growth, to improve the ease of doing business, and to generate capital faster. This, it is believed, will open up the floodgates of global investment.

In 2008, those acquiring forest land under the FCA had to compensate for the loss of

biodiversity at a rate ranging from Rs.4 lakh to Rs.10.43 lakh a hectare. In 2022, the rate was hiked to range from Rs.6.70 lakh to Rs.15.95 lakh. These funds are to be deployed ostensibly for compensatory afforestation.

National parks up eighteenfold

Conservation has simultaneously tread two paths. The first is the establishment of protected areas (national parks and sanctuaries) through the Wildlife (Protection) Act, 1972. Its 2006 amendment added another statutory category, tiger reserves. More categories such as elephant reserves and wildlife corridors have been added administratively though not yet by law. In the last five decades, national parks jumped eighteenfold from 5 (covering 2,403.24 sq km) to 106 (44,402.94 sq km); sanctuaries went up twelvefold from 59 (10,738.27 sq km) to 573 (1,27,197.55 sq km). Together, they cover 5.26 per cent of India's land mass.

The second path to conservation is a regulatory regime that controls forest diversion for non-forest purposes, which decimates forests. From 1951 to 1975, some 41,350 sq km of forest land is estimated to have been diverted for non-forest use, such as dams, mining, industries, and infrastructure. This was the primary reason for enacting the FCA in 1980. After its enactment, forest diversion for non-forestry purposes declined by a third.

Forest diversions, however, continue. They not only threaten livelihoods but also dispossess millions. About 5,928.57 sq km of forest was diverted from 1980 until 2000 when the FRA became operational. After that, another 2,951 sq km has been diverted without complying with FRA.

Explore
Premium



The Toda community takes part in a ritual to welcome the New Year in Nilgiris district, Tamil Nadu. | Photo Credit: PTI

Last year, the FCAA exempted a list of projects from its purview to enable fast and easy forest clearance. These include forests alongside rail lines or public roads providing access to habitations; areas under tree plantations that are not part of the recorded notified forest area; forest land within 100 km of the international border or Line of Control for projects of national importance, defence-related projects or camps for paramilitary forces; or public utility projects not exceeding 5 ha in a Left Wing Extremism (LWE) affected area. The LWE areas are at present in 70 districts of Chhattisgarh, Jharkhand, Odisha, Bihar, West Bengal, Andhra Pradesh, Telangana, Maharashtra, Madhya Pradesh, and Kerala.

Explore Premium

Responding to the petitioners in February this year, a Supreme Court bench headed by Chief Justice D.Y. Chandrachud did not stay the FCAA. Instead, it passed an interim order upholding the court's 1996 ruling redefining forest land.

Also Read | **Mizoram's Dampa: A tiger reserve without tigers**

The court went on to reiterate Rule 16 of the FCAA, according to which an expert committee constituted by the States and Union Territories is to prepare a consolidated record of lands where the FCA will apply, “including the forest like areas identified by the expert committee... unclassified forest lands or community forest lands on which the provisions of the [FCAA] shall be applicable”, within one year. The timeline was tweaked by the court, with the record of forest land to be readied by March 31; the Environment Ministry is to ensure it is digitised and made public by April 15. The final hearing is set for July 19.

The FRA too is facing a constitutional challenge in the Supreme Court. Significantly, it has been challenged also by conservationists and former forest officials in the name of forest conservation. By not reckoning with the legal dismantling of the colonial forest regime in parts of the forests that fall under the purview of the FRA, and the long history of people’s struggles to protect and conserve forests, the governments and the courts are on a denial trip to disaster.

C.R. Bijoy examines natural resource conflicts and governance issues.

Explore
Premium

COMMENTS

 FOLLOW US

SHARE

Related stories



Greenlight for destruction:
Controversial forest Act
opens door to unfettered
deforestation



How rising tiger
population has made life
dangerous for families in
Uttar Pradesh