

## [Commentary] The underbelly of the Forest Conservation (Amendment) Bill 2023

by C. R. Bijoy on 7 April 2023



- *The critiques of the Forest Amendment Bill revolve mostly around the attempts to minimise the extent of forest lands (that fall within the scope of FCA) for the diversion of non-forestry activities.*
- *The legal provisions for forest clearance for diversion for non-forestry purposes were tweaked to comply with the Forest Rights Act, 2006, then sidelined, violated and now dispensed with.*
- *The Ministry of Environment, Forest and Climate Change attempts to further smoothen the path to implant a fast-paced externally induced economic growth in the forests riding roughshod on forests and forest dwellers. The hegemonic control over the forests have progressively enhanced business-friendly forest clearances.*
- *The views in the commentary are that of the author.*

The Forest (Conservation) Amendment Bill 2023

([https://prsindia.org/files/bills\\_acts/bills\\_parliament/2023/Forest%20\(Conservation\)%20Amendment%20Bill,%202023.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2023/Forest%20(Conservation)%20Amendment%20Bill,%202023.pdf)) was introduced in the Lok Sabha on 29<sup>th</sup> March, to amend the Forest (Conservation) Act, 1980 (FCA). It was sent to the Joint Committee of the Parliament instead of the parliamentary Standing Committee on Science, Technology, Environment and Forests, one of the eight committees of the Rajya Sabha. The Joint Committee is expected to submit its report with recommendations in the upcoming monsoon session of the Parliament.

The critiques of the Forest Amendment Bill (<https://india.mongabay.com/2023/04/legal-protection-of-certain-forest-land-to-be-removed-as-government-pushes-security-projects/>) revolve mostly around the 'all-too-glaring' attempts to minimise the extent of forest lands (that fall within the scope of FCA) for the diversion for non-forestry activities. Forest and forest governance have come a long way undergoing fundamental changes since colonial times. The Ministry of Environment, Forest and Climate Change (MoEFCC) seems to be impervious of this transformation. Forests are no longer looked upon for maximising revenue extraction through its widespread destruction. The exclusionary fortress conservation approach is antithetical to conservation science. Human co-existence with wildlife is the unassailable law of nature.

Decolonisation and democratisation (<https://india.mongabay.com/2022/05/commentary-tracing-panchayati-rajs-role-in-deepening-democracy-and-decolonising-governance-over-30-years/>) of the forest governance is now vital to deal with the climate crisis and biodiversity loss and to ensure that ecology and livelihoods are at the core of conservation.

### Forest conservation in law and governance

Way back in the 1970s, the state governments diverted and de-reserved forest lands and promoted forest encroachment for various purposes, particularly agriculture, which led to the rapid destruction of forests. Vast forest areas had vanished.

The state governments buckled under domestic pressure for converting forests for non-forest use. Or so it was believed. The Parliament, responding to this, brought the subject of 'forests' under the purview of the union government by inserting it into the concurrent list which until then was a State subject through the 42nd Amendment to the Constitution in 1976.



Way back in the 1970s, the state governments diverted and de-reserved forest lands and promoted forest encroachment for various purposes, particularly agriculture. Photo by India Water Portal/Flickr.

Following this, the Forest (Conservation) Act was enacted in 1980 to regulate, not prohibit, forest diversion for non-forestry purposes by curtailing the then prevailing unilateral powers of the state governments to divert and de-reserve. An elaborate cumbersome bureaucratic procedure was set in that required the MoEFCC's approvals in a two-stage forest clearance process. This, it was thought, would slacken the speed and extent of forest diversion.

Then, the annual rate of forest diversion reportedly ([https://parivesh.nic.in/writereaddata/FC/HANDBOOK\\_GUIDELINES/Handbook\\_FC\\_Act\\_1980\\_June\\_2004.pdf](https://parivesh.nic.in/writereaddata/FC/HANDBOOK_GUIDELINES/Handbook_FC_Act_1980_June_2004.pdf)) fell from 1.50 lakh ha during 1950-1980 to 0.23 lakh ha during 1980-2004. The forest diversion shifted from agriculture to mining, dams and defence projects. The Supreme Court in Writ Petition (C) No. 202 of 1995 filed as a Public Interest Litigation case, popularly known as the Godavarman case (<https://indiankanoon.org/doc/187366700/>), added yet another layer of wetting and approval — the Central Empowered Committee in May 2002. The infamous 2002 order ([https://mpforest.gov.in/img/files/Prot\\_New79.pdf](https://mpforest.gov.in/img/files/Prot_New79.pdf)) of MoEFCC to evict post-1980 encroachments struck widespread terror across the country giving rise to a national uprising of the adivasis. Consequently, MoEFCC lost its monopoly over 'forest'.

### From a colonial regime to a democratic one

The subject 'all matters, including legislation, relating to the rights of forest dwelling scheduled tribes on forest lands' was carved out and allotted to the Tribal Affairs Ministry (MoTA) through an amendment to the Government of India (Allocation of Business) Rules, 1961

([https://cabsec.gov.in/writereaddata/allocationbusinessrule/completeaobrules/english/1\\_Upload\\_1368.pdf](https://cabsec.gov.in/writereaddata/allocationbusinessrule/completeaobrules/english/1_Upload_1368.pdf)) in March 2006. This was soon followed by the enactment of the Scheduled Tribes and Other Traditional Forest (Recognition of Forest Rights) Act in 2006 (<https://tribal.nic.in/FRA/data/FRARulesBook.pdf>) (FRA) and its Rules in 2008. Any decision or action of MoEFCC impinging on forest rights must now have the concurrence of MoTA.



Forest Department officials in India. Photo by Simon Williams, Ekta Parishad/Wikimedia Commons.

Forest rights (both individual and community rights), were recognised and vested on the forest dwellers when FRA was enacted. The gram sabha became the central statutory authority to determine and approve rights. Every habitation is to demarcate its customary and traditional boundary on forest lands as 'Community Forest Resource' (CFR) area.

The gram sabha also became the authority to protect the wildlife, forest, biodiversity, habitat, adjoining catchments area, water sources and other ecologically sensitive areas. Gram sabhas were to regulate access to forest resources and prevent activities that adversely effect the wild animals, forest and biodiversity in its CFR areas. The gram sabhas are also to finalise the CFR management plans, and to incorporate them into the Forest Department's Working Plan.

### CFRs – a new category of forests

MoEFCC, in its 2009 report to the FAO (<http://www.fao.org/3/am251e/am251e00.pdf>), conceded that FRA 'assigned rights to protect around 40 million ha of community forest resources to village-level democratic institutions. The fine-tuning of other forest-related legislations is needed with respect to the said Act'. A decade later, in November 2022 ([https://tribal.nic.in/downloads/FRA/MPR/2022/\(A\)%20MPR%20Nov%202022.pdf](https://tribal.nic.in/downloads/FRA/MPR/2022/(A)%20MPR%20Nov%202022.pdf)), only 49.62 lakh ha or 12 percent of the MoEFCC estimate has been titled to the gram sabhas. The Indian Forest Act (1927), and its state clones, and the Wildlife (Protection) Act (1972) are yet to be fine-tuned with the FRA.

Importantly, in April 2015, MoTA issued directions

([https://tribal.nic.in/downloads/FRA/Community%20Rights%20and%20CFR%20Rights/CFR-](https://tribal.nic.in/downloads/FRA/Community%20Rights%20and%20CFR%20Rights/CFR-4%20Guidelines%20regarding%20vesting%20of%20CFR%2023.04.2015.pdf)

[4%20Guidelines%20regarding%20vesting%20of%20CFR%2023.04.2015.pdf](https://tribal.nic.in/downloads/FRA/Community%20Rights%20and%20CFR%20Rights/CFR-4%20Guidelines%20regarding%20vesting%20of%20CFR%2023.04.2015.pdf)) under FRA that CFR areas "constitute a new category of forest area which should be recorded as 'CFRs' in the Record of Rights and be suitably incorporated in the records of the Forest Department". This is legally enforceable. CFR areas therefore constitute an entirely different genre of forest regime under the democratic governance of the gram sabhas. Consequently, the diversion of forests falling within the CFRs required a totally different treatment.

FCA that deals with forest diversion directly impinging on forest rights came under pressure from people's protests. In 2009, the MoEFCC issued an order

([https://forestsclearance.nic.in/writereaddata/public\\_display/schemes/981969732\\$3rdAugust2009.pdf](https://forestsclearance.nic.in/writereaddata/public_display/schemes/981969732$3rdAugust2009.pdf)) requiring gram sabha certification for completion of recognition of all forest rights under FRA and consent for the forest diversion as prerequisites for admissibility of proposals. This got incorporated into the FC Rules in 2014 and 2017 making the District Collector responsible to ensure that these mandatory requirements are adequately fulfilled. Soon, the District Collector's certificate replaced the gram sabha certificates.



*In 2009, the MoEFCC issued an order requiring gram sabha certification for the completion of recognition of all forest rights under FRA and consent for the forest diversion as prerequisites for admissibility of proposals. Photo by Subodhkiran/Wikimedia Commons.*

Over 0.34 million ha of forest lands (more than twice the size of the National Capital Territory of Delhi), were diverted during the period 2008-2023, 0.28 million ha for non-forestry purposes and another 0.06 million ha degraded forests for Compensatory Afforestation.

Besides issuing illegal orders for the exemption of FRA compliance in various cases of forest diversion such as in linear projects, the MoEFCC went a step ahead in 2019

([https://forestsclearance.nic.in/writereaddata/public\\_display/schemes/1191986937\\$26\\_2\\_19\\_FRA%20reg.pdf](https://forestsclearance.nic.in/writereaddata/public_display/schemes/1191986937$26_2_19_FRA%20reg.pdf)). It downgraded FRA compliance from the in-principle stage I approval, to the final stage II approval. MoEFCC was least concerned with the strong objections of MoTA

(<https://tribal.nic.in/fra/data/ComplianceoftheSOTFDRecognitionForestRightsAct2006regarding05042019.pdf>) to the various attempts to justify FRA violations. FRA compliance was itself finally struck off from the forest clearance process with the notification of FC Rules in 2022

(<https://forestsclearance.nic.in/writereaddata/Rules/FCRule2022Notificationdated28062022.pdf>).

MoEFCC simply brushed (<https://timesofindia.indiatimes.com/india/government-rebuffs-call-to-suspend-forest-conservation-rules-2022/articleshow/96670861.cms>) aside the demand of the National Commission of Scheduled Tribes to keep on hold the Rules, and instead, strengthen FRA compliance as these are followed "only in breach". MoEFCC justified its stand by stating that FRA implementation, and therefore compliance, was indeed the responsibility of the state governments and not the union government. None of the state governments and legislative assemblies have actually voiced the reinstating of FRA compliance through state legislations as a prerequisite for forest diversion proposals.

The FC Rules 2022 clarifies that the state governments "shall issue order for diversion, assignment of lease or dereservation as the case may be "...after fulfilment and compliance" with FRA "including ensuring settlement of rights". The state governments should tweak their forest law to incorporate the original 2009 MoEFCC FRA compliance order. MoTA too must issue a legally enforceable direction under FRA incorporating the original 2009 MoEFCC FRA compliance order. These are yet to be done.

MoEFCC steadfastly refused to concede that it shares the subject of 'forests' with MoTA, and therefore it should obtain MoTA's concurrence on all matters that impinges on forest rights. And that includes the present FC Amendment Bill 2023.

**Read more: [Analysis] Developers should pay a higher Net Present Value for cutting forests**

([https://india.mongabay.com/2022/04/analysis-developers-should-pay-a-higher-net-present-value-for-cutting-forests/?mc\\_cid=b30260b46c&mc\\_eid=UNIQID](https://india.mongabay.com/2022/04/analysis-developers-should-pay-a-higher-net-present-value-for-cutting-forests/?mc_cid=b30260b46c&mc_eid=UNIQID))

## FCA Amendment 2023

MoEFCC had put out a Public Consultation Paper (<https://india.mongabay.com/2023/03/your-environment-this-week-collecting-rhododendrons-spotting-a-grumpy-cat-and-detecting-climatic-spells-in-the-arctic/>) on the proposed amendments in the Forest (Conservation) Act, 1980 in 2021. This too was heavily criticised for attempting to take out a significant portion of forests out of the purview of FCA, bringing a number of non-forestry activities under the basket of forestry activities and the absence of any reference to FRA and gram sabha consent. The present FC Amendment Bill 2023 is but a truncated version of the earlier 2021 draft.

The Bill intends to reset 'forest' from the expanded definition that the Supreme Court provided on 12<sup>th</sup> December 1996. The Supreme Court defined 'forest land' (<https://indiankanoon.org/doc/298957>) in Section 2 of the FCA to mean that it 'will not only include 'forest' as understood in the dictionary sense, but also any area recorded as forest in the government record irrespective of the ownership of the land. The Bill takes out those forest lands from the purview of FCA that have already undergone change from forest to non-forest use on or before 12<sup>th</sup> December 1996. It also takes out those forest lands that are not notified as forests but were recorded as forests prior to 25 October 1980, usually categorised under "unclassified forests". Unclassed forests was 12.08 million ha (15.58%) out of the recorded forest area of 77.52 million ha in 2021.

The Bill provides a list of forest lands and projects that are readily and easily available for forest clearance by exempting them from the purview of FCA. These include forest lands alongside rail line or public road providing access to a habitation, a rail and roadside amenity up to 0.10 ha; area under tree plantations that are not part of the Recorded Forest Area; forest land within 100 kms of the international border or Line of Control for projects designated as projects of national importance or linear projects; and upto 10 ha for security related infrastructure; and defence related projects or camps for paramilitary forces or public utility projects not exceeding five ha in a Left Wing Extremism (LWE) affected area. LWE areas are presently in 70 districts of Chhattisgarh, Jharkhand, Odisha, Bihar, West Bengal, Andhra Pradesh, Telangana, Maharashtra, Madhya Pradesh and Kerala.



*Forest Conservation (Amendment) Bill 2023 provides a list of forest lands and projects that are readily and easily available for forest clearance by exempting them from the purview of FCA. Photo by Urbz/Flickr.*

The land use can be changed from forest to non-forests without requiring the cumbersome forest clearance under FCA, all the way Empowered Committee. This could also mean that the user agencies would now be exempted from paying the revised Net Present Value ([https://forestsclearance.nic.in/writereaddata/public\\_display/schemes/248973538\\$Rate%20of%20Revision%20of%20NPV%20dated%20from%20Rs.6,70,140%20to%20Rs.15,95,790%20per%20hectare%20that%20otherwise%20would%20have%20had%20to%20be%20paid%20for%20the%20forest%20land%20they%20receive%20Compensator%20diverted%20-%20equivalent%20land%20if%20land%20is%20revenue%20land%20,%20or%20double%20the%20land%20diverted%20if%20it%20is%20degraded%20land%20-%20would%20not%20be%20required%20to%20be%20approved%20by%20the%20Forest%20Conservation%20Committee%20\(FCC\).](https://forestsclearance.nic.in/writereaddata/public_display/schemes/248973538$Rate%20of%20Revision%20of%20NPV%20dated%20from%20Rs.6,70,140%20to%20Rs.15,95,790%20per%20hectare%20that%20otherwise%20would%20have%20had%20to%20be%20paid%20for%20the%20forest%20land%20they%20receive%20Compensator%20diverted%20-%20equivalent%20land%20if%20land%20is%20revenue%20land%20,%20or%20double%20the%20land%20diverted%20if%20it%20is%20degraded%20land%20-%20would%20not%20be%20required%20to%20be%20approved%20by%20the%20Forest%20Conservation%20Committee%20(FCC).)) from Rs.6,70,140 to Rs.15,95,790 per hectare that otherwise would have had to be paid for the forest land they receive. Compensator diverted – equivalent land if land is revenue land, or double the land diverted if it is degraded land – would not be required to be approved by the government may issue guidelines specifying terms and conditions including planting trees.

MoEFCC has shown incredible consistency in resisting democracy in the forest (<https://eprints.soas.ac.uk/38593/>). The hegemonic control over the forests have progressively enhanced business-friendly forest clearances. It has also brought within its fold increasing swathes of forest under the exclusionary protected area regimes – the national parks, wildlife

sanctuaries and tiger reserves – eyeing for and drooling over the mounting disposable income of small global leisured class through ecotourism, even if it be by importing wildlife from the African wild for their viewing pleasure.

*The author examines resource conflicts and governance issues. An independent researcher, he works with mostly people's initiatives on resource rights and democratic governance, such as forest rights, village self-rule and autonomy.*

**Read more: The state of India's forests: Losing forests, gaining plantations**

(<https://india.mongabay.com/2022/01/the-state-of-indias-forests-losing-forests-gaining-plantations/>)

**Banner image:** Forest conservation village initiative for CFR rights. Photo

([https://commons.wikimedia.org/wiki/File:Egs\\_work\\_for\\_Forest\\_conservation\\_village\\_initiative\\_for\\_cfr\\_rights.\\_Rojkund\\_village](https://commons.wikimedia.org/wiki/File:Egs_work_for_Forest_conservation_village_initiative_for_cfr_rights._Rojkund_village), by Lok Sangharash Morcha Jalgaon Maharashtra/Wikimedia Commons.

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