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Compensatory Afforestation Fund Act and Rules: Deforestation, Tribal Displacement and an Alibi for Legalised Land Grabbing

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K. B. Saxena[1]

Compensatory afforestation means the afforestation of plantations of an equivalent area of non-forest land or of double the area of degraded notified forest to compensate for the loss of forests diverted for development activities. The user of this diverted forest is required to pay its 'net present value' to the forest department for this purpose. On the direction of the Supreme Court, a law has been enacted and rules framed to manage the money collected for afforestation. The contents of this legislation and the manner of its enforcement have, however, led to a severe reduction of the tribals' access to forest resources, forcible plantation on their village commons, pastures and even on patta land, and the relocation of their settlements from forests, thereby violating their rights in land and forests. It has also led to severely eroding their means of livelihood besides creating a perverse incentive for deforestation. This has created a new area of conflict between tribal communities and the state.

Keywords
Compensatory Afforestation Fund Act, forcible plantations, deforestation, tribal rights, displacement

[1] Distinguished Faculty, Council for Social Development, New Delhi, India.

Corresponding author
K. B. Saxena, Distinguished Faculty, Council for Social Development, 53 Lodi Estate, New Delhi 110053, India.
Email kbsaxenacsd@gmail.com

The state's assault on tribal rights and entitlements in land and forests continues unabated notwithstanding the protection they enjoy in the Constitution. Starting from the failure to check tribal land alienation due to poor implementation to massive acquisition of tribal land for 'public purpose' without providing alternative land to them to resistance to enforcing Panchayats (Extension to Scheduled Areas—PESA (Ministry of Law and Justice (Legislative Department), 1996) and the subversion of the Forest Rights Act (Ministry of Law and Justice (Legislative Department), 2006, by the forest bureaucracy, tribals are finding themselves targetted for grabbing whatever is left of their rights and resources for livelihood for dignified survival as a distinct ethnic and cultural group. The latest in this series is the Compensatory Afforestation Fund Act (CAFA) 2016 and Rules (2018) for its operation. The law was enacted hurriedly without any prior legislative scrutiny and amidst protests by several members of the opposition, taking advantage of the direction given by the Supreme Court. It goes further than any other law in the past in denying tribals' rights in the forests, grabbing their village forests, pastures and commons, and intensifying their forcible relocation from protected forests. The following narrative explains why the law was enacted, how it is being enforced and what its wide-ranging implications are.

What is Compensatory Afforestation?

As the term suggests, it means afforestation carried out as compensation against the loss of forest. The genesis of the CAFA and Rules can be traced to the Forest (Conservation) Act 1980 enacted by the Government of India. Alarmed at the rapid loss of forest cover, the government resolved to arrest this process. It laid down that no forest land shall cease to be reserved, and no forest land may be used for any non-forest purpose without the prior approval of the Government of India. This implied that any development project which involves the diversion of forest land would need prior clearance from the Ministry of Environment, Forests and Climate Change (MoEFCC, 2017) before approval. The idea was to make such clearance difficult and, therefore, to deter the user project agency from seeking it to reduce any diversion of forest. This clearance, when granted, would be subject to the compliance of certain conditions aimed at minimising damage to forests. The Forest (Conservation) Act originally did not stipulate any compensatory afforestation (CA) as a condition of forest clearance. But later rules, as amended in 1988 and 2003, began making CA a mandatory condition for the issue of such clearances. The condition laid down was that the user agency would have to 'compensate' for the loss of forest by either raising or maintaining a plantation over an equivalent area or depositing money with the forest department to do so. From the mid-1990s onwards, the Supreme Court with its ruling in the T.N. Godavarman Thirumulpad case started issuing directions over a period of time leading to the existing conceptualisation of CA. This mandates that whenever forest land is diverted for non-forest purposes, non-forest land equal to the size of forest is to be diverted in the same or adjacent districts, and, if that is not available, then the degraded notified forest on double the area diverted shall be afforested.

This afforestation was to be carried out by the forest department of the concerned state government instead of user agencies. For the expenditure incurred, including the purchase of non-forest land, funds were to be provided by the user agencies and given to the forest department.

In 2002, the Supreme Court ruled that the deposited money should be constituted as a separate 'fund' and in 2006 introduced the concept of forest valuation in terms of money. It stipulated that the user agency would have to pay the net present value (NPV) of the loss of biodiversity content and environmental services in forests from this diversion to the concerned forest department. This fund would be used for afforestation. The concept of NPV and the mechanism of its computation took shape from 2006 onwards from the orders of the Supreme Court. This would take into account biological and spatial variations in bio-geographical zones, and numerical value would be calculated according to site/region-specific 'scientific, biometric and social parameters' (Ghosh, 2017). The Supreme Court appointed an expert committee for such a valuation. So, the Kanchan Chopra Committee quantified NPV as ₹438,000–1,043,000 per ha and also recommended that the largest portion of this fund should be given to Panchayats, and the remaining portion shared between the centre and states. Besides CA, a provision was made in the guidelines for penal CA. This compensation was in lieu of the area over which non-forestry activities had been carried out without obtaining prior approval of the competent authority established under the Forest (Conservation) Act, 1980. In view of the large and continuous diversion of forest land, more than ₹400 billion has accumulated in the Compensatory Afforestation Fund over a period of time.

Though some CA was being carried out even before the Supreme Court's interventions laid down its contours and modalities of management of the funds collected for it, the earlier monies allocated for this purpose remained underutilised. The Court in 2002, therefore, directed setting up a Compensatory Afforestation Fund Management and Planning Authority (CAMPA). This authority comprised state government officials and one representative of a centrally empowered committee constituted by the Court. The authority was empowered to release ₹10 billion per year to state governments. In 2014, the Court permitted state governments to constitute state CAMPAS to use the funds for afforestation and conservation. Further, on the direction of the Court, the central government enacted the CAFA 2016 (Ministry of Law & Justice, 2016), and in August 2018, MOEFCC (2018) the rules for the operation of this act were also notified. Both the enactment of law and notification of rules were not without contestations both within Parliament and outside, highlighting concerns about protection of rights of tribals as conferred by the Forests Right Act (FRA). Both the act and the rules pushed by the government, against protests by the opposition and rights groups, constitute the worst assault on the rights of tribals. Before discussing how these rights are infringed, let us identify some provisions in these rules which can be considered to be the proverbial red herrings.

The CAFA, 2016, was *prima facie* enacted to utilise monies deposited with the forest department for carrying out CA in lieu of forest diverted. But the preamble of the act has gone beyond CA and includes in its approved list of activities to be carried out from the CA fund, besides artificial regeneration (plantations) and

assisted natural regeneration, protection of forests, infrastructure development, wildlife protection and other related activities and an independent system of concurrent monitoring and evaluation. These objectives have been elaborated in the rules notified for the enforcement of the act from which it is clear that virtually every activity which the forest department handles is included in it. The fund thus functions as a parallel budget for the forest department. This enabling provision has been stretched so as to include activities of the Green India Mission and even the facilitation of the voluntary relocation of villages from protected areas in Section 6(d) of the Act and Rule 5(b) (III) in the rules, planning and rejuvenations of forest cover on non-forest land falling in wildlife corridors, which, among others, have serious adverse implications for tribals and other forest-dwelling communities and violate their existing rights. This aspect will be elaborated in later sections. At this stage, suffice it to say that the use of this money will strengthen the regulatory hold of the forest department and encourage a much tighter management of entire forest areas since it does not exclude areas under community forest management or potential community forest management and individual occupation. These provisions are what raises the hackles of rights groups and some members of opposition parties.

Absence of Participation

The act constituted the National CAMPA and the State Authorities for Afforestation, Fund Management and Planning. The national authority has a governing body, which has besides the Union Minister of Environment, Forests and Climate Change as its chairperson, 26 members of which 21 are officials and 5 experts nominated by the government. There is no representation of forest dwelling or tribal communities. The governing body is to be assisted by an executive committee consisting of 15 members (assuming that there are only 4 regional heads of the Ministry of Environment, Forest and Climate Change — MoEFCC), of which 12 are officials and 3 experts nominated by the government. Here too, there is no representation of local communities. Thereafter, there is a monitoring group which consists of six experts where again there is no representation of tribals and other forest dwellers. This structure is replicated at the state level too. The governing body of the state authority consists of, besides the Chief Minister as its chairperson, 15 other members. Here too, there is no representation of local tribals. This governing body is assisted by a steering committee and an executive committee. This committee, apart from all officials, has also included (reluctantly it seems) an expert in tribal matters or as an option a representative of the tribal communities and that too appointed by the state government as a member. The executive committee similarly consists of all officials, except two eminent NGOs to be appointed by the government and an expert on tribal matters or as an option a representative of tribal communities. Similarly, in the committee constituted for identifying non-forest land for inclusion in the Land Bank for CA, there is no representation of tribal communities.

There is no greater example of the complete bureaucratisation of the decision-making structure and the complete absence of participation of stakeholders (Hans India, 2017) than this legislation. It is also a total reversal of the FRA, which makes the Gram Sabha the pivot round which all decision-making revolves. It displays a classic distrust of affected tribal people who are vitally affected by the forest and its operations and are an integral part of its ecosystem. That such a law has been passed by a legislature, which had enacted the FRA a decade ago with overwhelming support, speaks volumes for a total lack of empathy for tribals by the current dispensation. It also conveys a signal that forests are a fiefdom of the forest bureaucracy with no other stakeholders, not even forest dwellers: this notwithstanding the fact that as per the Rules of Business, 'all matters, including legislation, relating to the rights of forest dwelling Schedule Tribes on forest lands' are outside their purview. This is a complete U-turn of the FRA's preamble, which seeks to correct the historical injustice inflicted on tribals and other forest dwellers ever since colonial times and provides for a participatory management of forests. Evidently, this has been done precisely to reverse the gains obtained by tribal communities through the FRA enacted by previous regimes and to perpetuate historical injustice. It also shows that the political executive completely backs the scuttling of participatory management of forests and its transformative potential so strenuously sought by the forest bureaucracy. Ultimately, it also sows seeds of conflict as the enforcement of this model of afforestation will not go unchallenged. This is already happening, if one follows the Campaign for Survival and Dignity initiated in 2016.

The rules also negate the democratisation of decision-making in relation to forest management and rights adjudication ethos more specifically. Section 2, which deals with 'definitions' of terms used in the CAFA 2016, strikes a blow to the FRA and PESA when it defines Village Forest Management Committee in 2(f) of CAFA Rules 2018 as one 'constituted for joint forest management by the competent authority in the State'. This committee is then equated with the Gram Sabha, a statutory authority under FRA (Section 2 (g)), which consists of all adult members of a village with full and unrestricted participation of women and powers to determine the 'nature and extent of rights' (Section 6 (1)) and protect, preserve and regulate access to the forests (Section 5). Under PESA, too, according to Section 4 (c), the 'Gram Sabha consists of all persons whose names are included in the electoral rolls for the Panchayat at the village level' with the law itself primarily detailing the jurisdiction of its authority to deal with land, resources and all related activities. These central laws still are on the statute book. But CAFA rules violate them. The committee constituted for the Joint Forest Management (JFM) is only an administrative construct of the bureaucracy under its control. It was a structure of decision-making created in respect of participatory forest management in a specified area prior to the enactment of FRA, which is dominated by forest officials with the representation of a few tribal members from the villages. It was touted as an example of participatory management simply due to the inclusion of some tribals but where decisions were completely controlled by the forest bureaucracy. This committee has no legal validity in respect of areas where the FRA applies. The critique of the JFM projects has been well

documented. Rights group never accepted the legitimacy of this participatory arrangement even in the JFM as tribals failed to get benefits promised to them while they were used primarily for policing forest and for regulating the behaviour of forest users such as checking violations of the committee's decisions. Under the FRA, the Gram Sabha is the sole decision-making body at the grassroots level, which is empowered to entertain claims, individual and community, filed by tribals and other forest dwellers, verifying them and recommending them. But the CAFA rules adhere to the JFM structure in open violation of the FRA.

Similarly, a definition of the 'working plan' talks of the management plan of forest land approved by officials of the forest department. It does not mention the fact that in areas where community forest resource rights (Section 3, (1) (ii)) are being claimed under the FRA, the forest bureaucracy has no role in preparing a working plan. It is the Gram Sabha constituted committee under Rule 4 (1) (e) which has to undertake this task. The forest department is supposed to incorporate the Gram Sabha's plan in its working plan. However, the National Working Plan Code 2014 has not been made compliant of this rule and has not envisaged that the Gram Sabha and its committee have to work out a plan as per the contents provided by the forest department and its working plan. CAFA and its rules simply ignore the FRA. By doing so and usurping the power of the Gram Sabha in areas of community forest management conferred by it, it has negated the existence of the Gram Sabha and its right to manage forests, thereby virtually replacing the law. It also infringes PESA under which the Gram Sabha has the authority to take development decisions in Fifth Schedule areas. The explanation to this definition of a 'working plan' in the rules says that 'words and expression used and not defined in these Rules but defined in various forest acts including FRA (but not PESA) (Ministry of Law & Justice, 1996) shall have some meaning as assigned to them under the concerned Act'. Since the working plan has already been defined in the rules and the FRA has not been brought within its ambit, while the PESA has not even been mentioned as if it is totally irrelevant to the subject of forest management, its preparation by the Gram Sabha in areas claimed for community forest resource rights (which is the 'customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities' (Section 2(a), FRA) has been obliterated.

Ambit of Activities under CAFA

The activities relating to forest and wildlife management on which not less than 80 per cent of the money received from the fund would be spent include in Rule 5(2), 'voluntary relocation of villages from the protected areas'. This activity has no direct connection either with forest diversion or with CA. It is a part of the forest bureaucracy's long-standing agenda to drive out tribal communities settled for a long time in protected areas, thus denying them any claim to land or access to forest resources. This agenda is driven by its conceptual understanding that wildlife protection is contingent on the wilderness of its habitat demarcated by the forest bureaucracy, and no human being other than foresters should be seen anywhere in or near it.

The FRA does mention the need for the modification or resettlement of rights recognised in it in 'inviolate areas for wildlife conservation' but mandates that following conditions must be satisfied before resorting to it: the processing of recognition and the vesting of rights of forest dwellers are complete; activities and the presence of rights holders will cause irreparable damage to wild animals and threaten their existent habitat; no reasonable options of coexistence are available; a resettlement package has been prepared and communicated to rights holders that provides secure livelihood to affected individuals and communities and fulfils their requirements in various policies and laws of the central government; free and informed consent of the Gram Sabha has been obtained in writing; and no resettlement shall take place until facilities and land relocation at resettlement site are complete. These conditions were violated with impunity by the forest bureaucracy backed by the state when it stalled the notification of FRA by a full year so as to rush in with an order on 16 November 2007 to notify 30,466 km of tiger reserves as 'critical tiger habitat' out of the protected areas under the Wildlife (Protection) Act 1972, just before the date of enforcement of the FRA so as to avoid complying with these conditions and to deprive tribals of their rights in these areas (Bijoy, 2011). These conditions continue to be violated since then in the relocation of communities where even now CAFA and its rules would facilitate and encourage it. The process of relocation is being projected as 'voluntary' though it is wholly forced.

The proviso to this section in CAFA rules lays down that all activities in sub-rules (2) and (3), which includes 'voluntary' relocation of villages from protected areas shall be carried out in consonance with the FRA but also qualifies it with the expression, 'and guidelines issued there under it wherever applicable'. It has been pointed out correctly by rights groups that 'wherever applicable' has a limiting connotation. It applies to only those cases where claims have been filed, recognised, approved and *patta* (title) issued.

The forest bureaucracy specifically disallows any rights of tribals under the FRA in 'critical tiger habitats'. This is evident from the National Tiger Conservation Authority's illegal direction issued on 28 March 2017 barring the recognition of rights under the FRA in critical tiger habitats of tiger reserves (Campaign for Survival and Dignity, 2017). In general, the forest department's refuting of claims in tiger reserves, saying that the FRA is not applicable there, is false. This qualification narrowly restricts the FRA application to settled rights holders. Section 4(1) of FRA recognises and vests in tribals and other forest dwellers, rights over all types of forestland and provides a framework for recording them and ensuring their protection until this recognition process, including the verification preceding it, is completed. This is because a large number of claims are rejected or kept pending with no further movement not only on account of the resistance by the forest and revenue bureaucracy but also deliberately to include the claimed area for CA and then use it as an alibi to reject the claim (Aggarwal and Kukreti, 2017). Besides, in a large number of cases, claims have not been filed due to a lack of assistance from either the government or NGOs/activists to the concerned tribal rights claimants who are unaware of the procedure and incapable (mostly not literate enough) to do so. This includes claims currently pending or over which

communities have pre-existing rights but have not initiated the process of filing claims. It is estimated that such rights cover a minimum of 47 per cent of India's forest (Rights & Resources, 2018). According to the MoEFCC, this will extend to 'around 40 million hectares of community forest resources which makes it 56.48 per cent of India's forests' (Food and Agriculture Organization [FAO], 2009). The provisions in the CAFA rules limit the area where the FRA will be applicable to rights which have been settled, that is, where a formal *patta* has been issued. This area is a mere 3 per cent of the potential area where communities have traditional interests. The intention is to restrict the rights of forest dwellers to the least possible area.

Second, the FRA clearly mentions that such relocation can only be done with the consent of the Gram Sabha. This provision has also been violated. Under the CAFA rules, which only provide for 'consultation' and not 'consent' of the Gram Sabha, this makes relocation, on the face of it, a forced one as no tribal community will ever agree to its relocation and get deprived of its rights of livelihood resources, habitat and ecological setting. Such forced relocation also violates the SC and ST (Prevention of Atrocities), Amendment Act, 2016, under which wrongful occupation and dispossession of land, Section 3 (1) (g), interference with rights, including rights over forest, as defined under the FRA, land and water [Section 3(1) (g)] and obstruction of rights to common property resources (Section 3(1)(za)(A)) are punishable offences. Under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, fishing rights in reservoirs and loss of rights over forest as per the FRA have to be quantified and paid to displaced individuals. Third, the rules equate Village Forest Management Committees with the Gram Sabha under the FRA, which is a clear violation of the law. The intention is clear that CAFA and its rules have been used to nullify the crucial empowering sections for the FRA. This is why the Act and rules have been so stoutly opposed by rights groups (Dubey, Chitkara & Dash, 2018) and some members of the opposition in Parliament.

Further, sub-rule (J) of rule 5 (2) lays down that this fund will be used for planting and rejuvenating forest cover on non-forest land falling in wildlife corridors. This corridor may also pass through non-forest areas where communities have individual and common lands. A forest department in a state has no right or claim over such land unless the state government acquires this land, if privately held, under the 2013 Land Acquisition Act and transfers it to the forest department which then notifies it as a reserve forest. Alternatively, in case of privately held individual land, the forest department will have to purchase it from the owner, get it mutated in its favour before proceeding to notify it as reserve forest. The rules do not mention that such land will be acquired or purchased (if individual) under the appropriate central/state law. This implies that the forest department has sought to empower itself through this provision to forcibly undertake plantation against the consent of individuals or village communities. This is quite simply, an unabashed land grab.

The Act and rules have been opposed both in Parliament and outside. A petition has also been sent by the All India Forum for Forest Movements and Community Forest Rights to the Parliamentary Committee on Petitions demanding

that the law must be amended to make it FRA compliant—that is, taking the consent of the Gram Sabha before plantation on their traditional lands. They have charged that plantations will now be used as a tool to extend control over traditional forests managed by tribals where rights are recognised by the FRA (Mote, Nandi, Dash, Dubey, & Radhika, 2018; Singh, 2017). At the time of the enactment of the CAFA, the then Forest Minister assured Rajya Sabha that the CAFA rules will address forest rights concerns and include consultation with Gram Sabhas for the implementation of CAFA programmes. This assurance itself was a negation of the FRA as this Act does not talk about 'consultation' with the Gram Sabha but 'consent' of the Gram Sabha. In the FRA, the Gram Sabha is the decision-making body for receiving claims, verifying and recommending them and has been entrusted with the duty of protecting wildlife, forest biodiversity and habitat of tribals. But the rules make the forest bureaucracy the final decision-makers even in areas where tribals have potential claims of having traditionally managed forests or have claims filed but are pending final disposal. The motive is precisely to deny rights under the FRA so as to retain total control of forests. After the notification of the rules, the former Minister for Environment & Forest, Jairam Ramesh, complained in a letter to the Chairperson of the Rajya Sabha that the Minister's assurances in the House have not been honoured (Aggarwal, 2018; Rajalakshmi, 2016).

Political Economy of CAFA: Double Deprivation

The CAFA has a huge negative impact on tribals and forest-dwelling communities and victimises them twice. The first level of deprivation takes place when the government decides to divert forest land for non-forest purposes without their consent. This results in a loss of access to ecosystem services on which their survival depends. They derive numerous benefits from forest resources, including their livelihood and food security, through the gathering of fruits, roots, tubers and so on. This is particularly true of the particularly vulnerable tribal groups (PVTGs) and pastoralist nomads. Women suffer the most as they have to traverse long distances to collect grasses and wood for fuel. This diversion also denies forest rights already recognised under the FRA. This is not only a permanent loss of source of sustenance but also a destruction of community ecology and culture with which it is intertwined and which is irreversible. The compulsory deforestation and resultant deprivation of livelihood and food security is wholly negative and cannot be restored by any environmental offset system (Ghosh, 2017).

The second deprivation takes place from CA activities which are intended to be taken up on lands not recorded as forests in lieu of the diverted forests. These lands of various categories like village forest, village commons, zamindari forests and government/Panchayat lands all carry certain rights of access, recorded or unrecorded, legal or customary, for collecting fuel wood, grazing animals and so on. Thus, the communities bear two losses—access to forest resources in forests diverted for development and access to land not recorded as forest for CA. Local communities have traditionally used both these lands (forests and non-forests) for diverse purposes, the loss of which is not compensated either monetarily or in terms of alternate sources of obtaining services.

As regards the first layer of deprivation, forest land is diverted under the Forest Conservation Act (FCA) 1980, without ensuring compliance with the FRA, in terms of the recognition of right of tribals and forest dwellers and obtaining the consent of the Gram Sabha despite the MoEFCC laying down (order no: F.No11-9/1998-FC, 3 August 2009) clear directions. Although the responsibility of FRA compliance squarely rests with the Union Ministry with a view of absolving itself of this responsibility, it passed it on to the state governments by amending the FCA rules in 2014. Later, these have been further revised in 2017 so that now district collectors settle rights under the FRA, obtain the consent of the concerned Gram Sabhas and issue a certificate to this effect. Based on the certificates issued by the collectors, the Ministry clears proposals. But these certificates are issued without attaching any details of compliance, with procedures and outcomes. Such bland certificates, therefore, are, on the face of it, false and have been issued to push proposals of forest clearance in collusion with forest bureaucracy. There is an implied connivance to this violation of FRA at all levels of the government (Rajalakshmi, 2016). In this manner, the diversion of forests is taking place fraudulently without any compliance with the FRA and the Ministry's own guidelines of 2009.

In one or two cases, such as Niyamgiri (Odisha), the Kashang Hydroelectric Project (Himachal Pradesh), Tipaimukh (Manipur) and Tashiding Hydel Power Project (Sikkim) where this manner of clearance was challenged, the Supreme Court/National Green Tribunal invalidated them (Rajalakshmi, 2016). The Gram Sabha consent was considered mandatory. Quite apart from violation of the FRA, PESA, 1996, is also infringed in that the role of the Gram Sabha has been ignored altogether in this diversion. Under Section 4(a), the Gram Sabha has been authorised to safeguard and preserve community resources (forest land is also a resource of the community) and under Section 4 (e) (i) to give its approval of plans, programmes and projects for social and economic development before these are taken up at the village level. This implies that such diversion proposals have to be placed before the Gram Sabha. But, unfortunately, PESA has been ignored in the discourse on CA altogether. On non-forest land, no prior environmental or social impact assessment is carried out about its legal status, existing users and validity of their claims, and nature and diversity of resource that would be lost (Ghosh, 2017). All such lands (CPRs) are used by local communities for grazing, fuel wood collection and timber depending on the resource profile of the area. In this manner, both layers of deprivation of rights and benefits become invisible.

Flawed Assumptions

The framework of CA and the discourse surrounding it are embedded in certain flawed assumptions. One is that there are only two classifications of land which define their character—forest and non-forest. Non-forest land is assumed to be a single uniform category in terms of legal status, use, nature of resource and so on. This is factually incorrect. In terms of legal status, non-forest land has diversity of tenures on which a variety of rights and interests subsist. The pattern of use is

also diverse, ranging from cultivation to grazing to other utilitarian activities. The nature of resource on non-forest land also differs from area to area. It could be cultivable, pasture, bushes, tree bearing and simply hard brown landscape—plain or hilly. Non-forest land is also governed by different laws, which define rights, uses and management responsibility. These characteristics have to be taken into account before considering whether they can be used for CA.

The second flawed assumption is that non-forest land is vacant, plentiful, unencumbered by any rights and interests and is freely available for the asking. Non-forest lands are neither vacant and freely available nor unencumbered but bear diverse tenures, rights and interests and uses which are governed by different laws, customs and traditional practices, recorded or unrecorded, in different states and regions within them. Before such lands are identified for CA, and transferred to forest departments, control over them would have to be acquired by the government through a legal process. It cannot be done by simply issuing an executive order. The third assumption is that loss of livelihood, habitat and cultural links with land (forest and non-forest) and loss of biodiversity can be redeemed by merely focussing on resource replacement through afforestation. Whether such afforestation through tree plantation can ever replace resources in natural forests and a complex ecosystem which has evolved over hundreds of years and loss of community ecology where culture and ecology are intertwined is itself questionable (Karthik & Kodiveri, 2018). Further, plantations usually carried out by forest departments have resorted to monoculture—eucalyptus, teak, acacia by and large—and cannot replace natural forests which have a rich biological diversity and provide a variety of environmental services which a monoculture plantation cannot reproduce. Also, when there is no community participation in the afforestation exercise, it is not difficult to guess the enormous continuing loss to local communities.

CA also raises the fundamental question whether nature can be reduced to monetary value? Can natural forests which grow over hundreds of years and their biological diversity be valued in terms of money? Can there be a reasonable mechanism of putting value to environmental services provided by them to the local population and help sustain non-human living species some of whom may be lost forever? The obvious answer is in the negative. The capitalisation of nature resorted to in assessing the NPV of the forests lost suffers from a basic flaw that in assigning quantitative monetary value to forests, biological, spatial and social distinctions and the uniqueness of each forest gets ignored (Ghosh, 2017). The reality is that both the executive and judiciary have merely facilitated the process of diversion of forest to subserve the political goal of neo-liberal growth in which neither people nor nature matter, and the mechanism of monetisation of forest lost is resorted to merely to satisfy public conscience by balancing public and private interests.

The fourth flawed assumption is that the loss of forests due to diversion is a loss only to the government since both forests and common lands are the property of the government, and, therefore, payment to it is equivalent to the value of forests destroyed or for recreating this resource elsewhere will suffice as a fair transaction and compensation to the government. This assumption ignores the fact

that the destruction of nature, its rich biodiversity and the culture around it are irreplaceable and have intergenerational adverse effects in terms of non-availability of ecosystem services. This resource is even a greater loss to the local communities who use it, share its benefits and care for its health and is not recognised much less, given significant stake, in control over it and the expenditure to be incurred and activities to be undertaken from it despite the FRA recognising forest dwellers as an integral part of ecosystem (Ghosh, 2017).

This is most glaringly evident from the way the forest bureaucracy is all pervasive in the structure of management of the fund under CAFA and its rules and the processes of expenditure and selection of activities to be undertaken of this resource. The ambit of expenditure neither provides communities any compensation for loss of their stake (right of access to resources) as this is considered the responsibility of the user agency to pay nor the range of activities so elaborately mentioned provide any benefit to them. This is evident from the fact that the Government of India rejected the demand of the Arunachal Pradesh government for the payment of compensation to project-affected families from this fund who were deprived of access to the land and its resources through diversion of forests (Ghosh, 2017). The framework of CA treats local communities as totally alien to its structure and processes. They are not considered an essential, integral part of the forest ecosystem which has been maintained by them even before the forest department came into existence.

Land Grab

As the scale of diversion taking place is quite large (30,000 ha in three years alone, 2011–2013), an equivalent area of non-forest land will be required for CA. This excludes additional afforestation, penal afforestation and catchment area plantation that the forest clearances issued for the projects may have mandated. Where will such large amounts of non-forest land come from? This will either need land acquisition on an unprecedented scale under the power of Eminent Domain or it will lead to huge land grab which is precisely what is happening. In a research study covering some projects in Maharashtra, Telangana/Andhra Pradesh, Arunachal Pradesh and Sikkim, it has observed that non-forest land identified for CA was taken from Scheduled or predominantly tribal areas which are either *jhum* (swidden cultivation) lands and other community forests as in Arunachal and Sikkim or old *zamindari* forests presently used for *nistar* in Maharashtra, Telangana/Andhra Pradesh or government-owned reserved forests and notified wildlife areas. All these areas are covered by community rights under different land and forest laws with divergent land tenures and recorded/unrecorded customary practices in respect of land use besides constitutional protection available to the communities particularly in respect of protection of their land. Besides, official records which are not updated may not reflect the real status of land use on the ground as was evident in Telangana/Andhra Pradesh where community forests were classified as non-forest in records (Ghosh, 2017). In any case, any non-forest land with recorded rights will have to be acquired before its transfer to forest department which would then have to notify it as reserved/

protected forest before using it for CA. With regard to degraded forests, the rights and interests of forest dwellers will have to be first recognised under the FRA.

The task is not easy, and, therefore, sufficient land to fulfill legal requirement may not be available. This has led the MoEFCC to issue directions to state governments, for instance, in its letter of 8 August 2014 and 8 November 2017 to identify Degraded Forest Land and Non-Forest Land for the Land Bank under the FCA Act, 1980, for CA. Non-forest lands to be credited to the bank would come from revenue lands, *zudpi jungle, chhote bade jhar ka jungle, jungle jhari* land, civil-soyam land and all such categories of land on which provisions of the Forest (Conservation) Act 1980 are applicable and other wastelands and non-forest lands (MoEFCC, 2017). Certain areas were considered for inclusion on priority in the land bank such as degraded forest areas with crowd density up to 40 per cent falling under wildlife corridors, areas falling in and around the protected areas, eco-sensitive zone of protected areas, habitat of rare and endangered species of flora and areas falling in catchment areas of important rivers, water and supply schemes, irrigation and hydroelectric projects (MoEFCC, 2017). Over 2.68 m ha of such lands for a land bank have been identified in Andhra Pradesh, Chhattisgarh, Madhya Pradesh, Jharkhand, Odisha, Tamil Nadu, Rajasthan and Uttar Pradesh (Dubey et al., 2018). Of these, except the areas which are under the administrative control of state forest departments, other areas will either be government/Panchayat lands or village commons or privately owned lands. These lands cannot be used straightaway for CA because they bear various rights and interests, and the required procedures under relevant land laws will have to be followed before state governments take control and transfer these lands to the forest departments for inclusion in the land bank.

Forcible Plantations

Many such areas have been included for CA without even the knowledge of local communities let alone their consent and settlement of their rights currently enjoyed. Field reports have revealed that in 53 out of 63 cases studied, no consent was taken from the Gram Sabha for plantation. In two cases, consent was obtained from the JFM committee, which has no legal validity, and in some villages in Odisha and Maharashtra, consent under coercion was obtained with violence and illegal arrests (Karthik & Kodiveri, 2018; Rights & Resources, 2018). In the case of forest lands, the claims already filed have to be adjudicated through the legal process till the stage of final appeal, and consent from Gram Sabhas will have to be obtained before including them as CA sites. There is no evidence that this is being done. Forest departments in state governments have been carrying out CA activities even before the CAFA was enacted, and Supreme Court directions were issued. Whether before the CAFA enactment or after it, they have been carrying out plantations forcibly on common lands and or those used for pasture, grazing and *nistar* and enclosing them and disallowing collection of minor forest produce from them. Reports from non-official agencies in Odisha, Chhattisgarh, Maharashtra, Jharkhand, Rajasthan and Himachal Pradesh have cited several examples of such

forcible plantations by forest departments in flagrant violation of the constitutional and forest rights of tribals and forest dwellers. Besides, more than 70 per cent of the recently undertaken CA has been carried out on forest lands, mostly in dense forested areas of Gadchiroli in Maharashtra and Kandhmal district in Odisha in violation of the Ministry's own guidelines. The forest departments are purposely choosing forest areas for CA where there is a potential for recognition of individual and community forest rights or where such rights are already vested (Hans India, 2017). In many villages, as cited by Dubey et al., 2018, the FRA claims are kept pending or outrightly rejected so that they can be included as sites for CA, and, therefore, the claim can be denied altogether. Out of 56 villages in Chhattisgarh, Jharkhand and Odisha, CA plantations have been forcibly taken up on community forest lands in violation of the FRA. In certain villages of Odisha and Chhatisgarh CA Plantations have been carried out on individual cullivable and homestead land which include those of PVTG, Kutia Kondh' of Odisha, this particularly vulnerable tribe has been cultivating forest land but without any legal title. FRA recognizes such cultivation as valid right. The members of the community had filed claims to get formal recognition i.e., title over this land. These have been recognised. Yet, CA plantations have been carried out over these lands with a view to depriving these tribals of the rights they had gained. This has severely impacted their food security. The significance lies in establishing the bias of forest bureaucracy against tribals' claim to forest land notwithstanding the right to claim having been validated by FRA of (Aggarwal & Kukreti 2017; Dubey, Chikara, Dash 2018).

In Chhattisgarh, from ten villages of Balodo Bazar area, people have complained that their community forests have been shown as CA sites which have also been enclosed with a fence. These villages filed claims for community forest rights in 2015 which have not been disposed of (Aggarwal & Kukreti, 2017). This practice has increased after the 8 November, 2017 guidelines issued by the MoEFCC for creating land banks from revenue forests. Besides, common lands, even in the Fifth Scheduled Areas, are being encroached for CA (Mote et al., 2018) without the knowledge and consent of the Gram Sabhas. Activists have complained that when local communities protested against these encroachments, forest officials filed false cases against them, arrested and even physically assaulted them, forcing them to sign blank papers or have held consultation with defunct JFM committees.

New Enclosures

Forest departments follow the practice of fencing plantation sites, posting guards, installing CCTV cameras and fixing boards, which completely prevent the entry of tribals and forest dwellers. This deprives the latter of their grazing rights, from collecting non-timber forest produce, accessing cultural and religious sites, burial grounds and even sports fields. Evidence has been collected from 63 such fenced off sites of CA out of 39 cases violated not only the FRA but also the SCs/STs (Prevention of Atrocities) Act, 2016 (Dubey et al., 2018). Another study cites the example of Tadoba-Andheri Tiger Reserve (TATR) where wildlife authorities have incorporated CA sites in its buffer zone and have prevented people from

using their *nistar* rights for grazing, firewood, timber collection and community access to forests for livelihood, which are violation of both FRA and amended Wildlife (Protection) Act (2006) which allow community access to forests for livelihood. TATR has also usurped officially non-forest village land after this reserve was declared a ‘Critical Tiger Habitat’ besides having incorporated *nistar* covered forests as well as two beats of reserve forests with denial of community rights of access in them. There are other examples as well where grazing areas of common use have been incorporated in ‘Reserve Forests’ followed by their notification as degraded notified forest to be used as sites for CA (Ghosh, 2017). In Rangamatia village located in Keonjhar district, Odisha Tata Steel and the forest department have fenced the village’s community forests and erected three boards declaring them sites for plantations—two for iron and manganese mines and one for plantation (Dubey et al., 2018).

Besides grabbing non-forest lands and enclosing them, there is also a systematic attempt to remove people from wildlife conservation areas. CAFA money can now be used to enlarge existing protected area by even purchasing privately held land for ‘consolidation of forests’. More funds are being sought under CAFA for relocation of settlements in tiger reserves notwithstanding the protests from civil society groups. It is feared that this will embroil government agencies in dubious land dealings (Karthik & Kodiveri, 2018). This manner of tribal dispossession from forests and access to its resources is bound to exacerbate conflicts with the forest department as is already happening.

Perverse Incentive for Diversion

CA is intended not only to offset the loss of diverted forests by imposing a penalty on the user agency through depositing the NPV of the lost forest, the cost of afforestation of an equivalent of non-forest land or double the amount of degraded forest land, but it is also perceived as a check on or deterrent to the diversion of forest or at least reducing its quantum. But the way CA and its implementation is unfolding, it will have the opposite effect. The scheme makes available to the forest bureaucracy the kind of money it would be hard pressed to access through budget allocations while the law and rules that have been framed give them the freedom to spend it on a diverse range of activities of which plantation is only one. Since the user agency is usually a private one and the state is a willing partner in this decision, a nexus is created for increasing diversions. This is evident from the data available of forest diversion, which shows its increasing propensity. Between 1980 and 2016, 15,101,46 ha of forest land was diverted of which 46 per cent (7,02,551 ha) occurred between 2006 and 2016: Jharkhand accounted for 64 per cent for such diversion, that is the period after the enactment of the FRA (Dubey et al., 2018) During 2011–2013, alone clearance was given for the diversion of 29,445,486 ha of forests, and between June 2014 and April 2016, approval was granted for the diversion of 47,500 ha of forests. The investigation of cases of diversion of forests in some states has shown that of the proposals

submitted for forest clearance by user agencies, very few were rejected. In fact, between 2006 and July 2010 and between April 2007 and December 2012, no proposal was rejected (Ghosh, 2017). Thus, the CA has not succeeded in controlling the scale of deforestation.

Market demand, state willingness and money received for expenditure in lieu of diversion make the forest bureaucracy amenable to ignoring regulatory provisions and acceding to CA proposals. The report of the Comptroller and Accountant General (CAG) provides ample evidence of the laxity in enforcing legal provisions of CA (Comptroller and Auditor General [CAG], 2013). The same forest agencies that are so vigorous in checking the tribal's entry into forests for grazing or collection of the minor forest produce seem so willing in diverting forests to corporate agencies. This process will intensify with the centre and states aggressively promoting large investments in infrastructure projects, and corporations' frenzied effort to grab land which for them is green gold and a durable, non-depreciable asset.

Potential for Corruption

Where there is large money to spend, there is potential for corruption and the CA plantations have been no exception. Corrupt practices have resulted in good natural forest areas being cleared for mono-culture of commercial timber species which have adversely affected traditional agriculture practices, agro-diversity and livelihoods of people. Women among the affected communities suffer the most as they are the mainstay of the forest-based economy and are the forest-agriculture interface (Mote et al., 2018). Evidence has been provided by Ghosh of the 'false information and notoriously erroneous' data on plantations posted on E-Green watch. In Arunachal Pradesh and Sikkim, many plantations seen in government records are not visible on the ground. In Maharashtra, no verifiable or even partially authentic data is available on CA plantations. The position is no different from that of Arunachal and Sikkim. In Chandrapur district around Durgapur mines in Maharashtra where except a few patch plantations in small clearings inside existing forests (not degraded forests) no other plantations could be located (Ghosh, 2017). Forest departments have also passed off natural forests under community management as CA (Dubey et al., 2018 2016).

The CAG report also brings out the misutilisation of CAFA funds. In Maharashtra, money was spent on the purchase of furniture, vehicles, laptops, mobile phones, office equipment and guns for forest bureaucracy and repair of office building and even ecotourism. Arunachal Pradesh also showed a similar tendency. As per this report, the forest regulatory structure neither has the capacity nor has the knowledge base to effectively administer CA funds. It also points to other irregularities such as the wrong citing of CA plantations on existing teak and acacia plantation or on lands earmarked for road widening or in the middle of dense vegetation. The lack of maintenance leading to a failure of plantation was also observed in 53 out of the 56 CA plantations raised on the Jhabua Land Bank in Gujarat between 1997 and 2000 and a survival rate of 0 to 75 in the Jatropha plantation in Tamil Nadu (Dubey et al., 2018).

Conclusion

The entire arrangement of CA with its legitimisation by the judiciary opens up a huge potential for conflict particularly in tribal areas and those affected by left-wing extremism between affected local communities battered by deprivation of livelihoods, relocation of settlements, land grab and enclosures, between environmental activists and rights groups on the one hand and the government on the other hand. Already evidence has been collected from 44 such conflicts linked to forest plantations impacting 51,000 people and 114,000 ha of forest lands (Dubey et al., 2018). Those espousing the cause of tribals thought that the battle was won with the enactment of the FRA for undoing the historical injustice suffered since colonial times and recognition of traditional rights of local tribal communities. They were mistaken. In the face of continuing war of the state on tribal rights and livelihoods, they would now have to mobilise for another and more vicious struggle to reclaim these rights usurped by a powerful caucus of corporates, bureaucracy and the political class combined. They should remember that the battle for rights is never finally won, and the field is never quiet.

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