

To,
Shri Manish Kumar,
AIG(FP), MOEFCC,
New Delhi, 110033

Date: 31st July, 2022

Subject: Comments/views on the proposed amendment to the Indian Forest Act 1927

Dear Sir,

We have looked at the Notice for Public Consultation dated 09.07.2022. We understand that the current amendment is proposing to two major proposed amendments:

1. In case of offences in Reserved Forests, imprisonment has been scrapped and a fine of up to Rs. 500/- and compensation for damage caused whose amount is to be decided by relevant court has been added.
2. In case of protected forests, imprisonment has been scrapped and a fine of up to Rs. 500 has been decided.

First of all, we would like the Ministry to consider the amendments in decriminalisation which has been long due causing immense hardships for in most cases carrying out mere livelihoods/sustenance activities by the members of scheduled tribes and other traditional forest dwellers, particularly for women.

We would however, like to make the following points which must be considered towards these amendments:

1. Forest offences under the IFA in the context of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights Act), 2006: Owing to the enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights Act), 2006 many 'offences' listed in the IFA are in fact rights of eligible claimants under the Act, including grazing, practising season use of landscape (like shifting cultivation), collection, processing and sale of NTFP etc. In order to recognize this a clause is required to be added in both sections saying that,

"In light of the enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, any person classified as a Scheduled Tribe or Other Traditional Forest Dweller under the Act, whose rights have been recognized or who has claimed rights or whose claim remains pending or has been under appeal under the Act, cannot be termed as an offender under the IFA, and this clause does not apply to him/her."

2. Differentiation to be made between actors who are responsible for offences and reasons therein:

We believe that the offences mentioned in the Act can be looked at as grave or minor depending on the 'person' causing the damage. Certain serious issues like breaking up of forest land, felling of trees, mining and quarrying for purposes other than subsistence activities are serious issues affecting the ecological security of the country currently. Such activities carried out in violation under the IFA (without receiving final forest and environmental clearance) by commercial and corporate entities such as a mining or infrastructure company, cannot be treated at par with collection of NTFP or season use of landscapes by forest dwelling Scheduled Tribes and Other Traditional Forest Dwellers. Therefore, a distinction needs to be made between who carried out these offences and penalties need to be fixed depending on that:

- 'Persons' who can be defined as "User Agency" under the Forest Conservation Act need to be dealt with differently for committing offences mentioned under the IFA. It is important that such offenders are then provided stricter punishments. A mere fine of Rs. 500/- would be insufficient from such agencies.
- On the other hand, long drawn Court cases for activities carried out to meet basic livelihood or subsistence needs have caused serious injustice to scheduled tribes and other traditional forest dwellers. For example, data from Madhya Pradesh for offences prosecuted under the Wildlife Protection Act, a harsher penal law than the IFA, show 133 cases of fishing filed against Adivasi and forest-dwelling communities. Section 26 in its sub sections also allow for the criminalization of fishing activities secured as a right as per the Forest Rights Act, and yet punishable with imprisonment. This subsection is not sought to be decriminalised as part of the amendment despite its overlap with the Forest Rights Act.

3. In the context of amendments on decriminalisation, it is also important to have a closer look at Chapter IX of the Act and include such distinctions between offenders to those sections as well. Specifically, no proceedings under section 52 for confiscation of property by the Forest Department should be initiated against forest dwelling communities with respect to the offences that the government proposes to amend the penalties for.

4. In light of the legislation of the Forest Rights Act, Section 70 in its entirety, needs to be reviewed and if need be, scrapped.

5. The proposed amendment makes a case for differentiated penal provisions for those termed as Habitual Offenders (HOs) and other offenders under IFA through partial decriminalization. There is no central legislative definition for a 'habitual offender' and this gives the Forest Department wide discretionary powers to treat accused persons as HO's. In practice, the determination of an individual as a HO is not contingent upon a conviction; a mere registration of a POR (Preliminary Offence Report) is sufficient. Therefore, the classification of HOs by the Forest Department is a reversal of the presumption of innocence. They also are subject to monitoring at range and divisional level and their offences become non-compoundable.

The opening of a History Sheet however remains contingent upon a conviction. This history sheet includes information such as the name, a photograph, caste and profession of the history sheetee, their physical characteristics, their addresses, names and addresses of relatives and known associates, and their place of habitual resort and usual field of operation. Names of those termed as History Sheetees can only be deleted upon their death or once they have permanently moved away from the region where they are registered. As a result of this several people continue to be classified as HOs despite their acquittals by Courts. Further, we discovered that those termed as HOs primarily belong to the Adivasi communities residing near National Parks and buffer zones of national parks are often charged with minor offences.

Due to the ambiguity in who is a 'habitual offender', accused persons are also subject to extensive surveillance even in the absence of any conviction. Given this background, the distinction sought to be made between HOs and other offenders is fraught with problems and to the detriment of rights of accused persons belonging to Adivasi communities

Finally, but most importantly we understand that Forest management and penalties are state subjects. We also understand that most states have state acts under which there are varying provisions related to offences under the IFA, leading to immense hardships to forest dwelling communities for minor offences. Would help to specify, that as per Article 254 of the Constitution of India, all state amendments, to the extent that they deal with penalties prescribed for offences dealt with above, will become void.

Submissions made by:

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