



## Kalpavriksh Environment Action Group



To  
Shri Rajendra Agarwal  
Chairman, Joint Parliamentary Committee on the Forest (Conservation) Amendment Bill 2023  
New Delhi

Date:16-05-2023

Subject: Comments on the Forest (Conservation) Amendment Bill, 2023

Dear Chairman and members,

We hereby submit our comments on the Forest (Conservation) Amendment Bill 2023, as directed by you via a Press Communiqué published by the Parliament of India, Lok Sabha Secretariat titled, “Joint Committee on the Forest (Conservation) Amendment Bill, 2023 Invites Suggestions on ‘Examination of the Forest (Conservation) Amendment Bill 2023’” dated 3<sup>rd</sup> May 2023.

At the outset, we would like to emphasize the importance of amending the Forest (Conservation) Act, 1980 as since its enactment, several judgments of the Honorable Supreme Court as well as several Acts have been enacted that have significantly impacted the governance and management of forests in the country and as such need to be reflected in the statute.

However, the current Forest (Conservation) Amendment Bill 2023 as has been tabled in Parliament needs considerable improvement if it is meant to significantly improve and protect the ecological functions that the forests need to keep performing at a time when the country is facing catastrophic effects of climate change.

From a reading of the proposed amendments, it is clear that a gamut of large infrastructural activities are being exempted from the Act and coupled with the addition of the phrase ‘subject to terms and conditions specified by the central government’, provide scope for the Central Government to proactively issue several notifications exempting more projects prospectively.

At the same time, other important provisions of legislations relating to forest land and ecology that have been subsequently either amended or notified including the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights Act, or the Forest Rights Act, 2006; the Wildlife (Protection) Act, the Biological Diversity Act, 2002 as well as the Panchayats (Extension to

Scheduled Areas) Act, 1996 should have been incorporated under these amendments to bring the Forest (Conservation) Act up to date with their provisions, as well as remove ambiguities and inconsistencies vis-à-vis the Forest (Conservation) Act. The current amendments fail to do so.

We are therefore proposing in detail below some of our concerns and suggestions regarding the proposed amendments.

We would also be grateful if we could present our concerns and suggestions before the committee in person, if the committee would permit us to appear before it.

### Comments and Suggestions:

Provisions of the current Forest (Conservation) Act, 1980	Amendments proposed in the Forest (Conservation) Amendment Bill, 2023	Comments and Suggestions
	In the Forest (Conservation) Act, 1980 (hereinafter referred to as the principal Act), after the long title and before the enacting formula, the following preamble shall be inserted, namely:— "WHEREAS, the importance of forests is to be realised to enable achievement of national targets of Net Zero Emission by 2070 and maintain or enhance the forest	<p>The preamble of any Act positively lays down the direction that the statute shall take in its provisions. It is important to realize that the FCA was enacted at a time when there was a tremendous loss in forest cover due to developmental activities and forests were being diverted using the provisions of Section 27 of the Indian Forest Act, 1927<sup>1</sup> by which any forest land could be reserved through a notification or direction by state governments and would therefore be open to diversion.</p> <p><b>The Act was therefore enacted as a way of bringing in scientific vigor and objectivity in decision-making regarding diversion of forest land for any purpose.</b></p> <p>However, the current preamble fails to mention this primary objective of the statute, which is to regulate and control the diversion of forests.</p>

<sup>1</sup> Section 27: Power to declare Forest no longer reserved: (1) The State Government may, by notification in the Official Gazette, direct that, from a date fixed by such notification, any forest or any portion thereof reserved under this Act shall cease to be a reserved forest.(2) From the date so fixed, such forest or portion shall cease to be reserved; but the rights (if any) which have been extinguished therein shall not revive in consequence of such cessation.

	<p>carbon stocks through ecologically balanced sustainable development;  AND WHEREAS, Nationality Determined Contribution targets of the country envisage creating carbon sink of additional 2.5 to 3.0 billion tons of CO<sub>2</sub> equivalent by 2030;  AND WHEREAS, the country envisages an increase in the forest and tree cover to one-third of its land area, which is to be given impetus with an enhanced growth trajectory;  AND WHEREAS, India has a rich tradition of preserving forests and their biodiversity, and, therefore, enhancing forest-based economic, social and environmental benefits, including improvement of livelihoods for forest-dependent communities is envisaged;  AND WHEREAS, it is necessary to provide for provisions relating to conservation management and restoration of forests,</p>	<p>Instead, it lays emphasis on ‘increasing forest and tree cover by creation of carbon sinks’; ‘improvement of lives and livelihoods of forest communities’ and ‘conservation and management and restoration of forests’, which are aspects already covered under the Indian Forest Act, 1927; The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights), Act; The Wildlife (Protection) Act and the Biological Diversity Act, 2002.</p> <p><b>This rather large preamble defeats the very purpose of the FCA. We recommend that it be entirely deleted and request that it could instead read as follows: “<i>An act to regulate, through scientific and objective criteria the diversion of forests in order to maintain their ecological security, sustain cultural and traditional values of forests for forest-dwelling communities and enhance the ability of forests to abate impacts of climate change</i>”.</b></p>
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	maintaining ecological security, sustaining. cultural and traditional values of forests and facilitating economic needs and carbon neutrality."	
<b>Section 1: Short Title, extent and commencement</b>  (1) The Act may be called the Forest (Conservation) Act, 1980	<b>Section 1: Short title, extent and commencement</b>  (1) The Act may be called Van (Sanrakshan Evam Samvardhan) Adhiniyam.	We humbly submit that it is very unclear why the Hindi name of the Act has been inserted into its English version. This is a central statute which will be applicable all over India. While Hindi is the official language of the Union, it does not apply to all states. Besides, only Hindi in Devanagari script is the official language of the Union of India as per Article 343 (1) of the Constitution of India. The Act will be translated into Hindi and other official languages so it is very unclear as to why it has been included in the official version of the Act. This needs to be entirely deleted from the proposed amendments.
<b>Section 1: Short title, extent and commencement</b>  (1) This Act may be called the Forest (Conservation) Act, 1980. (2) It extends to the whole of India.(3) It shall be deemed to have come into force on the 25th day of October, 1980.	<b>Section 1A.</b> (1) The following land shall be covered under the provisions of this Act, namely:— (a) the land that has been declared or notified as a forest in accordance with the provisions of the Indian Forest Act, 1927 or under any other law for the time being in force;	The insertion of Section 1A, while attempting to lay down applicability of the Act has drastically restricted the scope of the FCA. It overturns the order of the Supreme Court of India dated 12-12-1996 in T. N. Godavarman Thirumalpad V. Union of India and Ors, where the court explicitly laid down that this Act would be applicable to all forest land as understood in the dictionary sense as well as any area recorded as forest in the Government record irrespective of ownership <sup>2</sup> . This order was of particular significance since it applied the provisions of the Forest (Conservation) Act, 1980 to any forest land in the country, irrespective of its status. As per sub-clause (a) and (b) the act is made applicable to “land declared or notified as forests in accordance with provisions of the

<sup>2</sup> <https://main.sci.gov.in/jonew/judis/14617.pdf>

	<p>(b) the land that is not covered under clause (a), but has been recorded in Government record as forest, as on or after the 25th October, 1980:          Provided that the provisions of this clause shall not apply to such land, which has been changed from forest use to use for non-forest purpose on or before the 12th December, 1996 in pursuance of an order, issued by any authority authorised by a State Government or an Union territory Administration in that behalf:  <i>Explanation.</i>—For the purposes of this sub-section, the expression "Government record" means record held by Revenue Department or Forest Department of the State Government or Union territory Administration, or any authority, local body, community or council</p>	<p>Indian Forest Act, 1927" (IFA) or any recorded forest land in any government records on or after 25<sup>th</sup> October 1980".          As you are aware, there are large swathes of forest lands in the country that are 'deemed forests" where only the notification of intent has been published and yet all the provisions of the IFA are applicable. At the same time, almost 12000 sq kms of land in central India is classified as 'orange areas' or land which is either included in revenue records, as well as forest records or the status, is unclear. Further, in North Eastern states there are unclassified forests that customarily belong to the local communities.</p> <p>It is unclear according to the current amendments whether the Act ceases to be applicable over such areas. If the Act is only applicable to 'recorded forests", then large swathes of ecologically biodiverse and sensitive areas will be left out of the purview of the Act, which in turn will allow their unscientific and unobjective clear-felling, diversion, exploitation without any regulatory oversight.</p> <p>Further, the proviso clause mentions that this Act shall be unapplicable to forest and changed for non-forest purposes on or before 12<sup>th</sup> December 1996. We would like to point out that the implications of this clause are ominous. Forest land has been converted for several uses like plantation of cash crops, mining leases, etc and the present Act mandates that any new opening up of such areas or the extension of leases over such areas passes through the regulatory framework of the FCA. Removing the gamut of these activities from the purview of obtaining forest clearance will not serve objectives of the FCA.</p> <p>We recommend that Clause (1A) is removed from the Amendments. Instead, we recommend that the FCA is brought in tune with the provisions of the Forest Rights Act, customary laws and PESA by stating that the diversion, de-reservation and leasing of any forest</p>
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	<p>recognised by the State Government or Union territory Administration.</p> <p>(2) The following categories of land shall not be covered under the provisions of this Act, namely:—</p> <p>(a) such forest land situated alongside a rail line or a public road maintained by the Government, which provides access to a habitation, or to a rail, and roadside amenity up to a maximum size of 0.10 hectare in each case;</p> <p>(b) such tree, tree plantation or reafforestation raised on lands that are not specified in clause (a) or clause (b) of sub-section (1); and</p> <p>(c) such forest land,—</p> <p>(i) as is situated within a distance of one hundred kilometres along international borders or Line of Control or Line of Actual Control, as the case may be, proposed to be used for construction of strategic</p>	<p>land can only be granted final forest clearance if the free prior informed written consent of 50% of the members of the gram sabha or village council or community affected by the diversion has been obtained.</p> <p><b>At the outset, we recommend that several clauses under Sub Clause (2) need to be struck down from the amendment bill owing to the ambiguous use of terms and antithetical nature to the preamble of the Act as well as the purpose of the Act.</b></p> <p>We recommend that Sub clause (a) be removed since it clears from the purview of the Act areas upto the size of 0.1 ha along railway lines, roads and roadside amenities. This may seem miniscule if applied to a single road or railway. However, according to the Government of India's own estimate, the total area covered only by National Highways is more than 1 lakh 44 thousand kilometers and it plans to add 65 thousand kilometers to this network. The total railway network in the country is more than 1 lakh 23 thousand kilometers and is also set to rise in the coming years. Some of these roads and railway lines also pass through Protected Areas. Excluding such linear areas from forest clearance processes under the FCA can be detrimental to the health of forests in the country.</p> <p>Sub clause (b) gives way for diversion of such plantations and afforestation efforts that have not be recorded as forests in government records. In areas like Uttarakhand, where vegetation has grown over agricultural land which has been left fallow for several reasons like migration, this clause could be useful for local people where they could fell such vegetation without having to go through the entire process of obtaining forest clearance. At the same time, plantations have also been raised on commons and other forest areas by communities for their own use and for maintaining ecological security around their villages. Such areas need to be protected from unregulated destruction and diversion and communities need to be</p>
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	<p>linear project of national importance and concerning national security; or (ii) up to ten hectares, proposed to be used for construction of security related infrastructure; or</p> <p>(iii) as is proposed to be used for construction of defence related project or a camp for paramilitary forces or public utility projects, as may be specified by the Central Government, the extent of which does not exceed five hectares in a Left Wing Extremism affected area as may be notified by the Central Government.</p> <p>(3) The exemption provided under sub-section (2) shall be subject to such terms and conditions, including the conditions of planting trees to compensate felling of trees undertaken on the lands, as the Central Government may, by guidelines, specify.’.</p>	<p>empowered to protect or use such areas. This clause therefore needs further clarity.</p> <p>Sub clause (c) (i) excludes 100 sq km land along LoC and LoA from forest clearance for construction of linear projects which are ‘strategic, of national importance and concern national security’. Similarly, in sub-clause (c)(ii) any forest land up to 10 ha can be used for creating ‘security related infrastructure’. Lastly, in sub clause (iii), upto 5 ha forest land in left wing extremism affected areas can be used for construction of ‘defence related project, camp for paramilitary forces or public utility’. While this is important, it is unclear as to why such a large area is being completely excluded from the purview of the Act. The process of obtaining Forest Clearance under the Forest Conservation Act also ensures that mitigation measures are put in place and monitored by the central government. It is also unclear as to what constitutes strategic and national importance projects. The term security related infrastructure and public utility projects have also not been defined properly. These clauses as they stand in the current amendments need to be repealed.</p>
<b>Section 2: Restriction on the Dereservation of forests or</b>	<b>Sub-Section 1: Restriction on the Dereservation of</b>	In Sub-clause (1) (iii) the words "not owned, managed or controlled by Government" have been substituted by the words “subject to such terms and conditions, as the Central Government may, by order,

<p><b>use of forest land for non-forest purposes</b></p> <p>Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing--</p> <p>(i) that any reserved forest (within the meaning of the expression reserved forest in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved; (ii) that any forest land or any portion thereof may be used for any non-forest purpose.(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by Government;</p>	<p><b>forests or use of forest land for non-forest purposes</b></p> <p>Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing--</p> <p>(i) that any reserved forest (within the meaning of the expression reserved forest in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved; (ii) that any forest land or any portion thereof may be used for any non-forest purpose. (iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization subject to such terms and conditions, as the Central</p>	<p>specify”. This grants a wide range of powers to the central government to decide which lands can be diverted or given on lease while conservation concerns of state governments or forest officials or local communities who manage such lands will have no bearing over such a decision. We recommend that this section be changed to state that Central Government can lease forests only if the free, prior informed written consent of 50% of the gram sabha; or of the member of the scheduled tribe or of other traditional forest dwellers or local communities who have either obtained title or the forest land or are in the process of filing their claims under the FRA, or have customary rights over such land under PESA or any other law in force has been obtained.</p> <p>Further, in the Explanation, we congratulate the government for excluding establishment and maintenance of fire-lines from the non-forest use, but it is important to specify that any private farmer or member of village gram sabha or ward sabha can establish and maintain these fire-lines on any portion of forest land.</p> <p>Further, the establishment of Zoos and Safaris in forest areas must not be excluded from the provisions of the Act. They certainly cannot be included as ‘forestry’ activities since their construction and use will allow their rampant diversion. An example is the proposed safari park in the Aravallis<sup>3</sup>. Any construction activity and establishment of roads either permanent or temporary in forest areas needs to be scientifically and objectively weighed for its impact on forest ecology and therefore cannot be exempted from the purview of this Act.</p> <p>The clause (vii) should not be included since it will promote excessive delegation of powers by allowing the government to exempt any project from the purview of the Act. Such exemptions</p>
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<sup>3</sup> <https://www.downtoearth.org.in/news/forests/stop-10-000-acre-aravalli-safari-park-to-save-fragile-ecosystem-activists-to-haryana-cm-moefcc-87249>



<p>(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.]</p> <p>[<i>Explanation</i>--For the purposes of this section non-forest purpose means the breaking up or clearing of any forest land or portion thereof for</p> <ul style="list-style-type: none"> <li>(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;</li> <li>(b) any purpose other than reafforestation,</li> </ul> <p>but does not include any work relating or ancillary to conservation, development and management of forests and wild life, namely, the establishment of check-posts, fire lines, wireless communications and</p>	<p>Government may, by order, specify</p> <p>(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.]</p> <p>[<i>Explanation</i>--For the purposes of this section non-forest purpose means the breaking up or clearing of any forest land or portion thereof for</p> <ul style="list-style-type: none"> <li>(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;</li> <li>(b) any purpose other than reafforestation,</li> </ul> <p>but does not include any work relating to or ancillary to conservation, development and management of forests and wildlife, such as—(i) silvicultural operations including regeneration operations;(ii) establishment</p>	<p>need to be deliberated upon by the parliament to ensure that the ecological sanctity of our forests are maintained.</p>
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<p>construction of fencing, bridges and culverts, dams waterholes, trench marks, boundary marks, pipelines or other like purposes.]</p>	<p>of check-posts and infrastructure for the front-line forest staff;</p> <p>(iii) establishment and maintenance of fire lines;</p> <p>(iv) wireless communications;</p> <p>(v) construction of fencing, boundary marks or pillars, bridges and culverts, check dams, waterholes, trenches and pipelines;</p> <p>(vi) establishment of zoo and safaris referred to in the Wild Life (Protection) Act, 1972, owned by the Government or any authority, in forest areas other than protected areas;</p> <p>(vii) eco-tourism facilities included in the Forest Working Plan or Wildlife Management Plan or Tiger Conservation Plan or Working Scheme of that area;</p> <p>and (viii) any other like purposes, which the Central Government may, by order, specify.";</p>	
	<p><b>"(2) The Central Government may, by order, specify the terms and conditions</b></p>	<p>The implication of this clause is that Survey activities, such as reconnaissance, prospecting, investigation or exploration including seismic survey which requires approval under the FCA clearance, will be exempted. This is another dangerous insertion, which would open vast tracts of wildlife rich forests tiger areas, elephant habitats,</p>

	<b>subject to which any survey, such as, reconnaissance, prospecting, investigation or exploration including seismic survey, shall not be treated as non-forest purpose."</b>	biodiversity hotspots across the country for scoping, prospecting and surveys for coal, iron ore, diamond, lithium and other mining, as well as for oil. By removing this safeguard, the amendment FC Bill informs that all our forests are available for development activities without environmental safeguards. This is a dangerous intent to convey through forest conservation legislation.
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**We would further also state that these amendments if read in conjunction with the Forest Conservation Rules** contradict the stated objectives and spirit of the Forest Conservation Act (FCA) which are-to strictly regulate and control indiscriminate diversion of forests for the sake of current and future generations. The exclusion of large swathes of forest land from the process of forest clearance will have significant negative impact on the forest ecology in several ways including by equating dense plantations of any type with biologically and culturally diverse old growth forests. They will also severely impact the rights of the Scheduled Tribes and Other Traditional Forest Dwellers (STs and OTFDs) as recognized under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights Act) (FRA) 2006, including the right to sustainably use, manage and conserve forests within their customary boundaries and protect their natural and cultural heritage from external threats as provided under Sections 3(1)(i) Section 5 and Rules 4 (1) (e) and (f) of the FRA. The amendments if incorporated stand in contravention of the Government of India's commitments under the Convention on Biological Diversity and Climate mitigation targets, both of which strongly advocate central role of the local communities and indigenous peoples with full and effective recognition of their rights in achieving conservation goals as well as climate targets.

We therefore request the Joint Parliamentary Committee to seriously consider the impact of these amendments and suggest changes to the Forest Conservation Amendment Bill 2023 accordingly.

Thanking you in anticipation,

Kalpavriksh

For correspondence, please write to: [kalpavriksh.info@gmail.com](mailto:kalpavriksh.info@gmail.com)