

WATERED DOWN LAW

Forest Conservation (Amendment) Act, 2023 raises concerns
of diluting norms to safeguard forests

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FORESTS HAVE played an integral role in human history, deeply intertwined with our societies, economies and the health of our ecosystems. The very concept of a forest has undergone a profound transformation, shaped by human needs and evolving perceptions. The term “forest” traces its origins to the Latin word *foris* that means “outside the settlement.” Initially, it referred to uncultivated lands without specific tree-related criteria. Over time, tree plantations became common to meet construction and energy needs. Today, we predominantly define a forest as a vast area characterised by dense tree growth, an understanding that has gained significance in the last few centuries. As our societies develop and our demands for timber and energy grow, forests have become managed resources. Unfortunately, this has led to the loss of the actual forests and wildlife, prompting a realisation of the urgent need to protect the repositories of biodiversity.

Consequently, our policies have shifted to reflect this growing awareness.

In the contemporary context, as we grapple with the impacts of climate change, the global discourse surrounding forests has evolved again. Today, the predominant focus is on the carbon sequestration potential of forests, with a heightened emphasis on expanding forest cover. The Forest (Conservation) Amendment Act, 2023, is a testament to this fundamental shift in government policy towards forests. However, to truly appreciate the significance of these latest amendments, it is essential to delve into history and understand the context in which they have emerged.

DATA DIVE

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➤ Forestland diversion

Forest regulation in India before Independence

India's forest regulation can be traced to as early as the 3rd century, during the Mauryan Empire. The ancient text *Arthashastra* mentions a superintendent of forest produce responsible for safeguarding and imposing fines on those who harm forests. Until the precolonial era, rulers of Indian kingdoms managed economically valuable trees and exercised control over forests for recreational hunting, leaving most forest resources for communal use.

The British colonial period drastically transformed forest management. Forests became revenue sources for industries like shipbuilding and railways. The Indian Forest Service was established in 1864 and the Indian Forest Act was introduced a year later. The Act defined forests as “land covered with trees, brushwood, and jungle” and authorised the government to designate tree-covered land as “government forest”. The Act later went through revisions in 1878 and 1927, with the latter remaining in force with numerous amendments.

Also, in 1894, the country saw introduction of the National Forest Policy that classified forests for protection, commerce, minor use, and pasture lands, prioritising agriculture and revenue generation over preservation. Notably, private forests supplied the most timber but were rarely regulated. These privately controlled and managed forests were overseen by tribal leaders, local rulers and landowners, among others. They were known to lease out portions of forests for commercial plantations but were often hesitant to lease them to the government, fearing a loss of control. There were instances where the government forcefully took control of private forests, but some were later returned when they proved unprofitable for the British administration.

Nevertheless, privately owned or managed forests were not subject to specific recognition or regulation until the revised Indian Forest Act of 1927, which contained provisions that granted the government the authority to assume control over such private forests. However, these provisions were rarely invoked.

While the Forest (Conservation) Act helped slow the rate of deforestation, it failed to prevent logging outside protected or reserve forests. This failure can be attributed in part to the lack of a clear definition of forest in the law

Forest regulations in India after Independence

Post-independence, states sought control over privately-owned forests. Laws like the United Provinces Private Forest Act, 1948 and the West Bengal Private Forests Act, 1948, exemplified these efforts. In 1952, the National Forest Policy was revised by the then Union Ministry of Food and Agriculture that categorised forests into “protection forests”, “national forests”, “village forests” and “tree lands”. It also introduced the idea of a minimum forest cover, emphasised sustainable timber extraction and prioritised agriculture. Additionally, it highlighted the imperative to protect forests for wildlife preservation. However, India experienced rapid forest loss after independence—according to government estimates, 4 million hectares of forests were lost in 1950-80 for agriculture, industries and other developmental purposes, says “Forest, People and Livelihoods: The need for participatory management”, a document published by the UN Food and Agriculture Organization.

In 1976, forests were shifted from the State list to the Concurrent list of the Constitution, allowing the Union government to legislate on forest matters. This led to the formation of the Forest (Conservation) Act (FCA), 1980, which required states to seek the Centre's permission for non-forest use of forests. Following this, the newly formed Union Ministry of Environment and Forest revised the National Forest Policy again in 1988, placing a strong emphasis on forest protection for environmental stability and the maintenance of ecological balance, stating that direct economic benefits should be secondary to these fundamental goals. As per government data, since the enforcement of FCA, the annual rate of forestland conversion for non-forestry uses has significantly decreased from 150,000 hectares a year to less than 38,000 hectares per year.

While FCA helped slow the rate of deforestation, it failed to prevent logging in forests outside protected or reserve forests. This failure can be attributed in part to the absence of a clear definition of forest within the law, which states interpreted as applicable only to lands formally designated as forests under the Indian Forest Act or equivalent state laws. Another notable criticism of FCA pertained to the ineffective implementation of compensatory afforestation, which was mandated to offset forest area lost due to non-forest use.

In a pivotal moment on December 12, 1996, the Supreme Court while hearing a case *T N Godavarman Thirumulpad V. Union Of India & Others* based on a public interest litigation on rampant deforestation in the Nilgiris, interpreted the term forest

according to its dictionary meaning. For the purposes of FCA Section 2, which mandated Union government's permission for all non-forest uses, the court instructed states to form expert committees to categorise all forested land of the country into three distinct categories. The first are areas recognised as forests under any law, regardless of ownership; the second category include former forests that now degraded, denuded, or cleared; and the third are lands covered by tree plantations belonging to both government and private properties.

This interpretation gave rise to three broad categories of forests: statutorily recognised forests (which are notified as forests under any law), lands documented as forests in government records (but not legally notified under any law), and forest-like areas identified by state expert committees under the Supreme Court order. Forests in the third category are commonly referred to as "deemed forests", and have been at the centre of forest-related politics ever since. However, plantations outside any of these categories that were never recorded or notified as forest in any government record were kept outside the purview of the Section 2 of FCA by the Supreme Court.

While some states failed to constitute expert committees, those that did have these bodies grappled with constant revisions and a lack of a definitive criteria for identification of forest-like areas in their respective state. Some examples are the *orans* and *rundh* areas (open rocky land in Aravallis) in Rajasthan and the Mangar Bani forests in the National Capital Region (NCR), traditionally conserved by local communities as forests and possessing rich ecological services and biodiversity, have not been officially recognised as deemed forests by the state. This issue becomes further complicated by ownership disputes, unclear boundaries and significant pressure from real estate corporations and the government to utilise these lands for industrial and infrastructure development.

There are also concerns of states and lower courts misinterpreting the Supreme Court order. For instance, in a case from West Bengal, the Calcutta High Court upheld an order by a district-level officer to prohibit a citizen from cutting a tree in his garden, citing the apex court ruling in the Godavarman case. The Supreme Court had to clarify that the ban on tree felling did not apply to non-forest private plantations or orchards.

Although little progress has been made by states in declaring areas as deemed forests, monitoring by the Supreme Court has ensured that forest-like areas are not diverted for non-forest purposes



Similarly, in another case, the Supreme Court permitted the felling of more than 6,000 trees in Noida in an area classified as forest under the Forest Survey of India report, disputing the criteria established by the State Level Expert Committee and asserting that the land in question was a plantation that was neither “notified” nor “recorded” as forest in government records.

Nevertheless, the Supreme Court ruling became a cornerstone of forest conservation in India, lending much-needed strength to FCA. Although little progress has been made by states in declaring areas as deemed forests, ongoing monitoring by the Supreme Court has ensured that forest-like areas, which are yet to be formally recognised as forests, are not diverted for non-forest purposes. Furthermore, the enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act or the Forest Rights Act of 2006 has safeguarded the rights of forest-dependent communities by mandating gram sabha consent for any developmental activities inside forests—although this was changed with the Forest (Conservation) Rules, 2022.

Concerns regarding the dilution of forest protection

In August 2023, the Parliament passed the Forest (Conservation) Amendment Act, 2023. Originally introduced in March 2023, the Bill was first referred to a 31-member joint parliamentary committee that received more than 1,300 submissions and dissent notes from five Members of Parliament who were part of the committee. Yet, the Bill was passed without a single change, even amidst walkouts from opposition parties during debates in the Parliament. Conservationists, scientists and retired bureaucrats also protested, arguing that the amendments are *ultra vires* (contrary to the mandate of the law), regressive (as they reverse protective measures), and breach the public trust doctrine.

The 2023 amendments bring substantial changes, reshaping FCA’s scope and



PHOTO: CSE

introducing exemptions to certain non-forest activities, with the primary objective of making forest lands available for infrastructure development while relaxing Union government oversight. However, it also grants sweeping powers to the Centre for regulatory adjustments through guidelines, which essentially allows bypassing public consultation or parliamentary approval if done through amendments or Rules.

The amendments introduce a “Preamble” that underscores the country’s ambitious goal of achieving net-zero emissions by 2070 and creating carbon sinks totaling 2.5-3.0 billion tonnes of CO₂ equivalent (a measure used to compare the emissions from various greenhouse gases with that from carbon dioxide or CO₂) by 2030. Additionally, the Act highlights the government’s aim of covering one-third of the land with forests and trees, a move anticipated to yield economic, social, and environmental benefits while concurrently enhancing the livelihoods of forest-dependent communities. However, a mere reading of the actual changes introduced reflects a great level of inconsistencies with the Preamble as well.

One of the key changes brought about by the amended law is the inclusion of lands not officially notified as forests but recorded as forest in any government record, within the ambit of FCA. The definition of government record is expanded to explicitly include records held by various authorities including local bodies, communities or councils recognised by the respective state or Union Territory. This is a positive development as far as legal clarity is concerned. However, there are two primary concerns stemming from this new definition of forest.

First is that forest-like areas, which are not included as forests in government records, might lose protection. Areas that were originally intended to be declared as forests under existing laws but did not undergo the formal process due to land disputes or other issues, and therefore never came into the government records, are also put at risk. The lack of

clarity on these lands had, until now, maintained a kind of status quo as developers were hesitant to invest in them. Now, such forest-like areas could potentially be vulnerable to conversion to non-forest land use.

This alteration in definition of forests also gives rise to complications and challenges in certain northeastern states such as Assam, Meghalaya, Mizoram, and Tripura, which have been granted special status under Article 244 of the Constitution, read in conjunction with the Sixth Schedule. These provisions empower autonomous district councils within these states to enact laws pertaining to forests, excluding those notified as reserve forests by the state. Additionally, Nagaland and Manipur are designated as special states under Article 371 of the Constitution, introducing exceptions concerning land ownership and transfers. Due to these unique constitutional provisions, a significant portion of the forests in the northeastern states remains categorised as “unclassified forests”. For instance, 97.3 per cent of forest cover in Nagaland, 88.2 per cent in Meghalaya, 76 per cent in Manipur, 53 per cent in Arunachal Pradesh, 43 per cent in Tripura, and 33 per cent in Assam fall under this category. Unclassified forests, as per the Forest Survey of India report for 2021, encompass all forests outside of statutorily notified forests and include both unrecorded and recorded forests. Publicly available information does not indicate how many of these unclassified forests are recorded as forests in government records. Given the recent push for oil palm plantations and the exemptions granted for strategic linear projects within 100 km of international borders, this amendment poses a substantial risk to this biodiversity-rich hotspot and the tribal communities of Northeast India, making them susceptible to unsustainable development and irreversible ecological losses.

Second, the amendment inserts a *proviso* stating that the new definition of forest will not apply to lands that saw a shift in use from forest to non-forest activities prior to the Supreme Court’s 1996 order. This creates an exception for violations of FCA since 1980, when it was first enforced. The very basis of the Supreme Court’s intervention.

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Concerns regarding sweeping exemptions

The 2023 amendments introduce two major types of exemptions from the applicability of FCA. First, certain activities that were previously regulated under the law are now completely exempted from its scope through changes to Section 1. Second, the list of activities no longer classified as “non-forest” has been expanded, exempting them from Union government approval through amendments to Section 2. In both instances, the Centre retains the right to specify terms and conditions through guidelines that were published in November 2023.

Exemptions under Section 1 include diverting forest lands up to 0.10 hectares situated alongside rail lines or public roads, to facilitate access to habitations and roadside amenities; using land located within 100 km of international borders for strategic linear projects of national importance and national security; and using land up to 10 hectares for constructing security-related infrastructure and up to 5 hectares for defence or paramilitary-related activities or for public utility projects in left-wing extremism affected areas. A major concern here is the lack of specific cases or evidence from the Union Ministry of Environment, Forest and Climate Change (MOEFCC) illustrating how FCA had been impeding these activities. The law until now did not prohibit any of these activities but enforced some kind of mandatory safeguards like impact assessments and mitigation measures reviewed by experts before undertaking such activities on forest land.

In response to some border states such as Nagaland, Sikkim, Mizoram and Tripura opposing the provision on strategic linear projects within 100 km of international borders, moefcc made a submission to the joint parliamentary committee stating that “the 100 km distance is the maximum allowable distance. The use of exemption will be need based i.e. may be used within 5 km or 10 km.” This response not only lacks clarity but also

undermines the necessity of such broad and sweeping exemptions, particularly when they encompass nearly all of the Northeast—a region recognised as a global biodiversity hotspot encompassing unique and endangered flora and fauna found nowhere else in the world.

FCA was originally intended to ensure that such activities were undertaken only when absolutely necessary and that site-specific assessments were conducted to evaluate the impact on ecosystems, wildlife, and forest-dependent communities. This oversight was administered through the Forest Advisory Committee and regional offices of MOEFCC, who deliberated on these proposals and offered site-specific recommendations to the ministry. However, the current amendments backtrack from such regulatory and scientifically informed monitoring, signalling that India's forests are now open for such development activities. States and other government departments are likely to aggressively plan and execute these projects, as they are essentially pre-approved, even with central guidelines.

Furthermore, the exemptions include loosely defined terms like “roadside amenity”, “public utility” and “security-related infrastructure” without clear definitions, which can be misinterpreted to justify various infrastructure developments. For instance, as per documents from the National Highways Authority of India, roadside amenities include *dhabas*/restaurants, parking lots, dormitories, and landscaping. Similarly, the Legal Services Authorities Act of 1987 describes “public utility” to include transport, postal, telephone, power, water, hospitals, and insurance services. Moreover, the amendments

to Section 2 explicitly exempt commercial activities such as zoos, safari parks, and ecotourism from the classification of “non-forest” activities, meaning that no permission under FCA will be required to undertake such activities within forests.

It is essential to understand that all these exemptions, when combined with other associated development projects such as roads, lighting, power, sewage, and waste disposal, will cumulatively lead to severe fragmentation of our forests and render them uninhabitable for various species, pushing them towards extinction. Additionally, activities like zoos and safari parks are ex-situ conservation methods and should not be prioritised at the expense of natural habitats for wild animals.

One counter-argument presented by the government is that these activities pertain to forests outside of protected areas (wildlife sanctuaries or national parks) and will have minimal impact on biodiversity. However, such arguments do not align with facts or ecological principles. One-third of the population of India's national animal, the tiger, resides outside of protected areas, while studies have indicated that a majority of wild animals like leopards, hyenas, and elephants are also outside these zones. Even wildlife living within protected areas do not recognise political boundaries and often move in search of food and forage in nearby forests and neighbouring protected areas. These forests are already threatened by human settlements and any policy-level efforts must be directed at improving safeguards from further disturbances. The amendments also undermine the ecosystem services provided by natural forests and go against the interests of forest-dependent communities whose livelihoods greatly depend on these forests.

Another major concern is the exemption for reconnaissance and prospecting surveys from the category of non-forest activities, which opens the floodgates for commercial mining within forests. These surveys result in significant disruptions to ecosystems and wildlife due to activities such as drilling, digging, land levelling, high-decibel noise and the creation of roads. Such amendments also send a message that forests are available for commercial exploitation if resources are discovered, contrary to the objectives of the National Forest Policy, the goals of FCA, and the constitutional duty of the state as a custodian of forests held in public trust.

The Forest (Conservation) Amendment Act, 2023, places a strong emphasis on the carbon sequestration benefits of forests and operates under the assumption that the loss of forests due

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PHOTO: CSE

to development can be compensated for by establishing tree plantations. It is critical for the government to recognise that planting a limited number of tree species cannot replicate the complexity, diversity, and resilience of natural forests. Compensatory afforestation programs are accepted as a great failure as they do not account for offsetting the biodiversity loss nor succeed in restoring the forests that are lost.

As we confront an increasing frequency of extreme weather events, such as flash floods, landslides, and droughts, natural forests stand as our primary defence against the climate crisis. This significance extends beyond ecological concerns; it holds paramount importance from economic and social perspectives. Ensuring heightened protection for forests in fragile ecosystems and ensuring a safe future of our threatened flora and fauna is imperative.

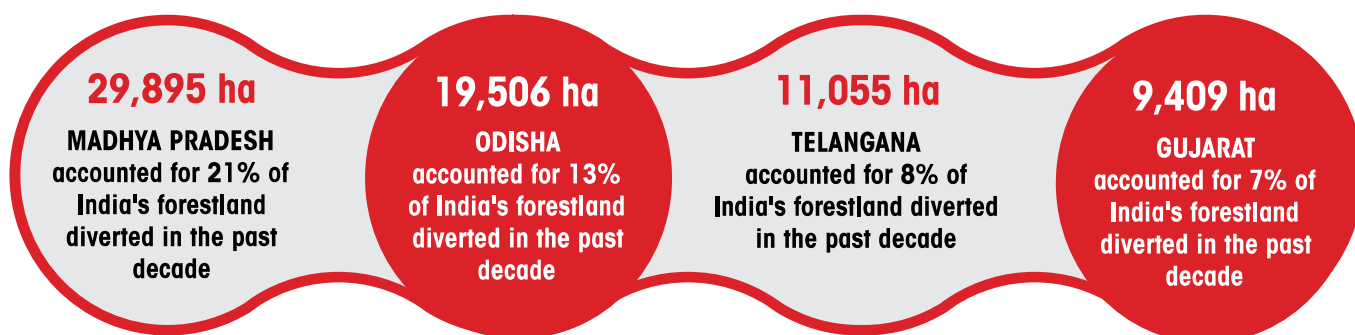
We must acknowledge that, unlike other economic losses that can be mitigated with financial investments, losses in ecosystems are typically irreversible and incurable, bearing substantial economic consequences for generations to come. ■

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FORESTLAND DIVERSION

In 2022-23, forestland spread across 17,381.88 hectares was diverted for non-forestry purposes. This is 3.5 per cent more than what was diverted in 2021-22. Close to 50 per cent of these diversions were recorded in just five states—Odisha, Madhya Pradesh, Gujarat, Uttarakhand and Uttar Pradesh

Four states that saw the highest forestland diversion in the past decade (2014-15 to 2022-23)



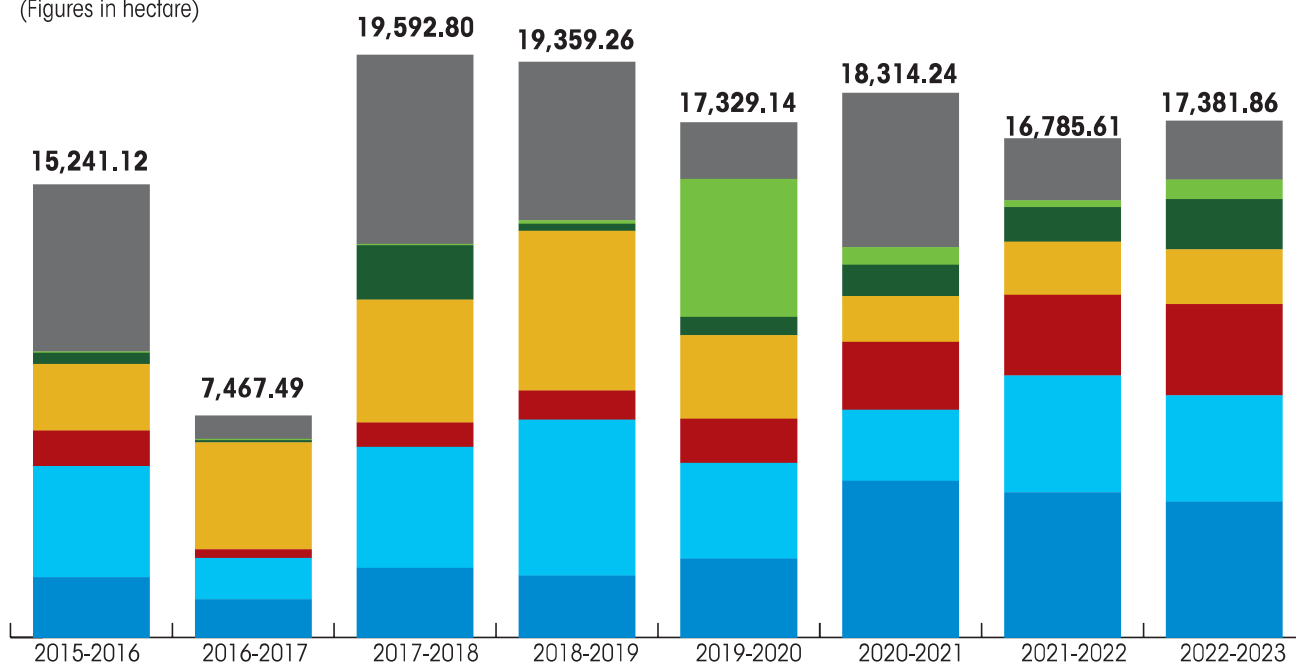
Major culprits

Of the 17,381 hectares of forestland diverted during the fiscal year 2022-23, approximately 65% was allocated for projects related to road construction, mining activities, and transmission line development

Purposes for which forestland is diverted

■ Road ■ Mining ■ Transmission Line ■ Irrigation ■ Railway ■ Hydel ■ Others*

(Figures in hectare)



*Others include forest village conversion, defence, pipeline, drinking water, village electricity, rehabilitation, optical fibre cable, approach access, encroachments, dispensary/hospital, school, industry, canal, sub-station, quarrying, thermal, wind power, borehole prospecting and solar power

Source: Ministry of Environment, Forest and Climate Change, as on August 7, 2023

SHRINKING FORESTS

In 2022-23, at least 32 out of 36 Indian states and UTs diverted forestland for non-forestry use under the Forest (Conservation) Act, 1980. Forestland diversion between 2021-22 and 2022-23 increased in 18 of these states/UTs

STATE / UT		Forestland diverted in 2022-2023 (in hectare)	% increase (↑) or decrease (↓) in forestland diverted between 2021-22 and 2022-23
Andaman and Nicobar	0.00		-100.0 ↓
Andhra Pradesh	162.28		-46.44 ↓
Arunachal Pradesh	1,105.53		-22.49 ↓
Assam	45.42		-58.58 ↓
Bihar	467.88		222.50 ↑
Chandigarh	0.00		-100.0 ↓
Chhattisgarh	476.45		-67.70 ↓
Dadar & Nagar Haveli	0.00		-100.0 ↓
Daman and Diu	0.00		-100.0 ↓
Delhi	63.30		191.03 ↑
Goa	178.19		4,576.90 ↑
Gujarat	1,474.30		-12.01 ↓
Haryana	127.97		-77.61 ↓
Himachal Pradesh	650.29		42.95 ↑
Jammu and Kashmir	186.51		-20.75 ↓
Jharkhand	879.36		18.83 ↑
Karnataka	661.17		597.80 ↑
Kerala	137.19		3,417.69 ↑
Madhya Pradesh	2045.71		-41.39 ↓
Maharashtra	822.68		42.53 ↑
Manipur	337.12		39.23 ↑
Meghalaya	27.39		100.0 ↑
Mizoram	150.05		-16.11 ↓
Orissa	2,748.43		174.26 ↑
Punjab	374.81		-49.50 ↓
Rajasthan	1,096.92		166.96 ↑
Sikkim	104.67		418.17 ↑
Tamil Nadu	46.65		165.21 ↑
Telangana	181.51		-12.36 ↓
Tripura	254.42		3.26 ↑
Uttar Pradesh	1,124.36		-33.31 ↓
Uttarakhand	1,183.55		130.29 ↑
West Bengal	267.78		205.938 ↑

Source: Ministry of Environment, Forest and Climate Change, as on August 7, 2023