

REPORT OF THE HIGH-LEVEL WORKING GROUP ON THE FOREST (CONSERVATION) AMENDMENT BILL 2023

Submission to The Joint Committee on The Forest (Conservation) Amendment Bill 2023



REPORT OF THE HIGH-LEVEL WORKING GROUP ON THE FOREST (CONSERVATION) AMENDMENT BILL 2023

Submission to The Joint Committee on The
Forest (Conservation) Amendment Bill 2023

18 May 2023

V I D H I | Centre for
Legal Policy

This is an independent, non-commissioned piece of work by a High-Level Working Group (HLWG) constituted by the Vidhi Centre for Legal Policy, an independent think-tank doing legal research to help make better laws and improve governance for public good.

Members of the HLWG (in alphabetical order)

1. **Ms Akanksha Sood Singh**- National Award-Winning Wildlife Filmmaker
2. **Dr Ankila Hiremath**- Senior Adjunct Fellow, Ashoka Trust for Research in Ecology and The Environment (ATREE)
3. **Dr Arvind Kumar Jha (IFS)**- Former Principal Chief Conservator of Forest & Director General (Social Forestry), Maharashtra
4. **Dr Asad Rahmani**- Wildlife Scientist and Former Director, Bombay Natural History Society
5. **Ms Bhanu Tatak**, Co-Founder- Indigenous Research & Advocacy Dibang, Arunachal Pradesh
6. **Mr Brij Kishore Singh (IFS)**- Former Principal Chief Conservator of Forest-Head of Forest Force, Karnataka
7. **Mr Debadityo Sinha**- Lead, Climate & Ecosystems, Vidhi Centre for Legal Policy
8. **Mr Dev Prakash Bankhwal (IFS)**- Former Principal Chief Conservator of Forest & Chief Wildlife Warden, Assam
9. **Dr Dhvani Mehta**- Lawyer and Co-Founder, Vidhi
10. **Dr Harendra Singh Bargali**- Deputy Director (North India), The Corbett Foundation
11. **Ms Madhu Sharma (IFS)**- Former Principal Chief Conservator of Forest, Karnataka
12. **Dr M.D. Madhusudan**- Co-Founder, Nature Conservation Foundation
13. **Ms Meera Chandran**- Conservationist & Ecorestoration Expert, Kerala & Karnataka
14. **Dr M.K. Ranjitsinh (IAS)**- Distinguished Conservationist & Wildlife Expert
15. **Ms Neelam Ahluwalia Nakra**- Co-Founder & Trustee, Aravalli Bachao Citizens Movement
16. **Ms Neema Pathak Broome**- Coordinator, Conservation and Livelihoods Programme, Kalpavriksha
17. **Ms Ritwika Sharma**- Lawyer and Lead- Charkha (Constitution Law Centre), Vidhi
18. **Mr Vijay Dhasmana**- Curator, Aravali Biodiversity Park, Gurugram

The High-Level Working Group (HLWG) on the Forest (Conservation) Amendment Bill 2023 adopted a participative and inclusive approach by actively seeking suggestions from experts and stakeholders from diverse backgrounds. They also relied upon the secondary literature in the form of international conventions, domestic best practices, case studies, news articles, and reports/ studies from various government and non-government organizations. This approach ensured that a wide range of perspectives and expertise were considered during the formulation of the submission. The HLWG aims to ensure that its recommendations are well-informed, widely understood, and can contribute to informed decision-making processes.

The HLWG held two virtual meetings and discussions over email to refine the submission. These virtual meetings allowed members to participate and contribute remotely, overcoming geographical barriers. The finalization and approval of the submission took place during a meeting held in New Delhi on 18th May 2023. During the meeting, 13 out of the 18 members of the HLWG were present in-person, while the remaining 5 members joined virtually.

Furthermore, the HLWG records its desire to present the submissions in detail before the Joint Committee of the Parliament.

The HLWG would like to thank Himanshu Ahlawat, Shashank Pandey and Shikha Sharma- Research Fellows at the Climate & Ecosystems team, Vidhi for their research assistance. The group would also like to thank all the stakeholders consulted for sharing their views and suggestions as part of consultation individually and through the public participation platform CIVIS.

Correspondence

For any communications or clarifications in relation to this submission, please contact:

Debadityo Sinha
Senior Resident Fellow & Lead- Climate & Ecosystems
Vidhi Centre for Legal Policy
A-232, Ratanlal Sahdev Marg,
Defence Colony, New Delhi-110024

011-43102767/43831699
debadityo.sinha@vidhilegalpolicy.in

Table of Contents

Executive Summary	1
1. The Proposed Amendments Contrary to The Preamble	3
2. Comments on Section 1A (1)	6
2.1 Concerns About Forests Proposed to Be Notified	7
2.2 Concerns With Forests Recorded Before 25 October 1980	7
2.3 Concerns Regarding Forests Neither Notified nor Recorded as Forests	9
2.4 Concerns Regarding Diversion of Forests for Non-Forest Use Before 12th December 1996.....	11
2.5 Suggested Changes	11
3. Comments on Section 1A (2)	13
3.1 Concerns Regarding Roadside Amenities	14
3.2 Concerns Regarding Plantations/ Reafforestation Lands	16
3.3 Concerns Regarding Strategic Linear Projects, Defence Related Infrastructure and Public Utility Projects	17
I. Exemptions for Strategic/ Security related Linear Projects 100 km along international borders or Line of Control or Line of Actual Control.....	17
II. General Exemptions to Security-Related Infrastructure.....	20
III. Exemptions to 'Public Utility' Projects.....	20
IV. Concerns Regarding Plantations to Compensate Felling of Trees and Silvicultural Operations	20
3.4 Suggested Changes	21
4. Comments on Section 1A (2)	23
4.1 Leasing of Forest Lands by The States	24
4.2 Exemptions to Establishment listed under Sub-section (ii)-(v).....	25
4.3 Exemptions to Eco-tourism Facilities	25
4.4 Exemptions to Zoo and Safari.....	26
4.5 Exemptions For Any Other Like Purposes Specified by The Central Government.....	27
4.6 Exemptions for Surveying Activities	28
4.7 Suggested Changes	28
5. Concerns Related to Rights and Livelihoods of Forest Dependent Communities	31
6. Summary of Suggested Changes	33
Annexure	37

Executive Summary

The Ministry of Environment, Forest & Climate Change introduced the Forest (Conservation) Amendment Bill, 2023 (“**Bill**”) in Lok Sabha on 29th March 2023, proposing amendments to the Forest (Conservation) Act, 1980 (“**FCA**”). The Bill has been referred to the Joint Committee of the Parliament (“**JC**”) for examination, which is expected to give its report in July 2023. The JC vide press communication CBC 31201/11/0001/2324 has invited views/ suggestions on the proposed amendment. This submission seeks to express concerns and make suggestions on the same.

Vidhi Centre for Legal Policy constituted an independent High-Level Working Group (“**HLWG**”) for a comprehensive analysis and submission to the JC. The HLWG consisted of reputed environmental professionals, including retired bureaucrats from Indian Administrative Services/ Indian Forest Services, experts on the forest, wildlife conservationists, scientists, social activists, and lawyers. The HLWG adopted a participative and inclusive approach, inviting suggestions from experts and stakeholders from diverse backgrounds. The HLWG met twice virtually and finalized this submission at a meeting held in New Delhi on 18th May 2023. This submission also relies upon the secondary literature in the form of international conventions, domestic best practices, case studies, news articles, and reports/ studies from various government and non-government organizations.

The submission has been organized into 6 Chapters covering a clause-wise discussion of the Bill. Each Chapter presents a detailed analysis of the clause, concerns with respect to that clause, and suggests modifications.

In **Chapter 1**, the newly inserted Preamble is discussed. While the Preamble sets ambitious targets for the FCA, a mere comparison with other proposed amendments gives a contradictory understanding of the purpose of the Bill.

Chapter 2 reviews the insertion of Section 1A (1) to the FCA. This section provides for the category of lands that shall be covered under FCA. The proposed amendment creates ambiguity and exceptions of certain forest categories, which are discussed in detail with the help of examples from various parts of India. These categories include forests proposed to be notified under Indian Forest Act, 1927, lands recorded as forest in government records before 25th October 1980, and forests which are neither notified nor recorded as forests. Concerns are also raised over the proposed exemptions to forests diverted for non-forest use (without permission under Section 2 of the FCA) by the States before the 12th of December 1996 judgment of Hon’ble Supreme Court in *T.N. Godavarman vs. Union of India*.

The HLWG suggested adding an explanation to Sub-section (b), some clarifications to Sub-section (b), and insertion of a new Sub-section (c) to make it consonant with the purpose of the FCA and directions of the Supreme Court. The suggested changes in the proposed Section 1A are also provided in a tabular format.

Chapter 3 evaluates the merits of the proposed insertion of Section 1A (2) to the FCA, which exempts certain categories of land from the applicability of the FCA. These include forest lands up to 0.10 ha alongside roads and rail lines, plantations and reforestation on lands not covered under Section 1A(1), forest lands within 100 kilometres from the international border/ Line of Control / Line of Actual Control for the purpose of strategic linear projects, up to 10 ha for security-related infrastructure, construction of defence related projects and public utility projects. The HLWG discussed the potential impact of such blanket exemptions in the form of fragmentation of forests, and destruction of wildlife habitats and corridors. The blanket exemption to the strategically linear projects was observed to be unreasonable and unwanted as these are already given permissions expeditiously by the Central Government. The HLWG also highlighted the role of unsustainable construction activities in intensifying environmental disasters like landslides and cloud bursts near border areas of the

Himalayan states. They also highlighted how the proposed changes are contrary to National Forest Policy, 1988, and inconsistent with the original mandate of the FCA. Exemptions looked for other defence-related infrastructure, public utility projects, and roadside amenities were termed as regressive and *ultra vires* the FCA.

The HLWG further highlighted that compensatory afforestation practices in India do not promote ecological restoration and therefore do not recreate natural biodiversity and ecosystem services lost to development. Therefore, it is essential to prioritise the protection and restoration of natural forests and to manage them sustainably, rather than relying on plantations as a replacement.

The HLWG suggested removing most of the proposed clauses under Section 1A (2), as forest clearance under Section 2 of the FCA was already being given expeditiously. Giving blanket exemptions will be detrimental to the forest, wildlife and ecosystem services and thus would be inconsistent with the purpose of the FCA. The suggested changes in the proposed clauses are also provided in a tabular format.

In **Chapter 4**, the HLWG discussed the amendments proposed to Section 2 of the FCA, which exempts various activities from the requirement of forest clearance. The HLWG expressed concerns over exempting activities like the establishment of zoos and safaris, and eco-tourism facilities by listing them as activities ancillary to the conservation, development, and management of forests. Concerns were also raised regarding the proposed clauses, which grant the Central Government power to prescribe 'any other like purpose'. This delegates excessive power to the executive to bring significant changes in the law, which would have otherwise needed public consultation and parliamentary approval. A proposal for a general approval for surveying and exploration activities was also discussed and was found to be inconsistent with the purpose of the FCA.

The exemptions about zoos, safaris, eco-tourism facilities, prospective surveys, exploration *etc.* are contrary to the National Forest Policy 1988 and were found to be regressive and *ultra vires* the FCA as they relax the existing safeguards for commercial utilisation of forests. Such clauses are suggested to be deleted in entirety. To prevent misuse of clauses related to 'ancillary to conservation', the HLWG suggested modifying the proposed clauses to bring clarity and accountability to the authorities involved. The suggested changes in the proposed clause are also provided in a tabular format.

Chapter 5 deals with the implication of the proposed amendment on the rights and livelihoods of forest-dependent communities. The HLWG deliberated how the rights of local communities under various legislations like *The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006* and *The Panchayats (Extension to The Scheduled Areas) Act, 1996* are affected by the proposed exemptions in the Bill.

The Bill undermines constitutionally guaranteed rights such as Right to clean environment, right to access to information, participation in decision-making, and access to justice, especially for forest-dependent communities. The exemptions from the requirement of permissions under the FCA for activities proposed under newly inserted Section 1A and amendments to Section 2 of the FCA directly affect such rights. Forest dwellers, including tribal communities and other traditional forest-dependent communities, have long-standing rights and deep connections to forest lands spread over generations. The forest-dependent communities rely on the forests for their livelihoods, cultural practices, and overall well-being. The HLWG suggested that any development or conservation efforts must be cognisant of the forest dwellers' rights, participation, and consent, respecting their intimate connection with the forests and their sustainable practices.

A clause-wise summary of the suggested changes to the content of the Bill is provided in **Chapter 6**.

1. The Proposed Amendments Are Contrary to The Preamble

The Forest (Conservation) Act 1980 ("**FCA**", also referred as "**Act**") starts with an objective which states, 'An Act to provide for the conservation of forests and for matters connected therewith or ancillary or incidental thereto.' The Forest (Conservation) Amendment Bill ("**Bill**") has now inserted a new Preamble to the Act which reads as follows:

"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 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 CO2 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 bio-diversity, 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, maintaining ecological security, sustaining cultural and traditional values of forests and facilitating economic needs and carbon neutrality."

The Preamble proposed in the Bill, and the amendments which followed are contrary to each other. The proposed amendments undermine the need to protect and conserve old-growth forests and glorify the artificial plantations as a carbon sink.

In 1950, India's forest cover was 23.06% which was reduced to 19.13% in the year 1970.¹ Since the enactment of the Forest (Conservation) Act in 1980, the forest cover increased to 20.34% in the year 2000 and 21.71% in the year 2021. However, according to some estimates, India has lost 3.4% of its primary forest between 2002-2020.² Between 1990 and 2000, India witnessed a loss of 3,84,000 ha of forests, but this number increased to 6,68,400 ha between 2015 and 2020. The deforestation rate of our country is second highest in the world, only next to Brazil (16,95,700 ha) between 2015 and 2020.³

The Preamble also sets a target of increasing forest cover to one-third of the country's land area. However, the proposed amendments instead of halting fragmentation and loss of forests, only promote non-forest uses of commercial nature by exempting a large tract of natural old-growth

¹ 'Forest Resources Assessment 1990 - Tropical Countries'
<<https://www.fao.org/3/t0830e/t0830e00.htm>> accessed 17 May 2023

² '2022 Deforestation Statistics for India' (Mongabay)
<<https://rainforests.mongabay.com/deforestation/archive/India.htm>> accessed 16 May 2023

³ 'India Lost 668,400 Ha Forests in 5 Years, 2nd Highest Globally: Report'
<<https://www.downtoearth.org.in/news/wildlife-biodiversity/india-lost-668-400-ha-forests-in-5-years-2nd-highest-globally-report-88337>> accessed 16 May 2023

forests from the applicability of the Act. This is inconsistent with the mandate of the Act, India's National Forest Policy 1988 ("NFP") and backtracks the efforts to protect old-growth forests from further destruction.

Also, it is quite ironic that when the Forest Survey of India ("FSI") uses roadside plantations, tea/coffee plantations, orchards, palm cultivation *etc.*⁴ to report India's forest cover in 2021, the Bill proposes to remove legal protection from natural forests, which are impossible to replace with plantations.

The amendments proposed in Section 1 and Section 2 are targeted at lifting restrictions on infrastructure development in existing forests in some of the most biodiversity-rich forests of the world. It also goes to an extent of exempting lands recorded as forests before the enactment of the Act out of the purview of the same. In another provision, it also legalizes any transfer of any forest land to non-forest use before 12 December 1996, i.e. the date of Supreme Court judgment in *T.N Godavarman vs Union of India*⁵. The Bill also proposes to amend crucial sections to give blanket exemptions for the development of infrastructure in the name of security, public utility, roadside amenities, zoo/ safari, eco-tourism activities *etc.*, all of which harm the forest and wildlife.

The Bill also takes a myopic approach of compensating for the loss of natural forests with plantation of trees, glorifying only the carbon sequestration benefits. However, it must be understood that carbon sequestration is just one of the many greater roles a forest plays. Natural Forests, apart from better carbon sequestration play very important role as habitats of variety of flora and fauna, providing ecological services, maintaining soil moisture, providing buffer against zoonotic diseases, and supporting livelihood requirements.

While plantations may provide some benefits, they cannot recreate the complexity and diversity of natural forests. Plantations are monocultures that lack the interactions and relationships between plants, animals, and microorganisms that occur in natural forests. They do not provide suitable habitats for a range of wildlife and do not provide the same level of ecosystem services and benefits to the local communities. In many cases, plantations drive native flora and fauna towards extinction, change soil characteristics, deprive communities of the forest produce and other ecological services, and may compromise an ecosystem's resilience to extreme climate events. Natural forests and grasslands are more effective in carbon sequestration and building resilience to extreme weather events by maintaining soil health and supporting various life forms. Replacing them with trees often leads to more freshwater problems and a decline in soil nutrients and moisture, multiplying the impact of the climate crisis.

The Preamble also mentions India's rich cultural and traditional values of preserving forests and biodiversity. However, it undermines the livelihood and other rights of communities dependent on forests. Exemptions of various lands and activities from the applicability of the Act means the communities are also deprived of their traditional rights and livelihood benefits from such forests. The Bill completely ignores the importance of the forests as habitat for rare, endangered, and threatened species. It does not prescribe a single amendment aimed at strengthening the Act. Instead, the proposed amendments lean towards unlocking the forest land for commercial purposes, which is clearly against the National Forest Policy 1988, which asks for the protection of existing forests to sustain all life forms.

⁴ 'Plantations, Invasive Species... What All India Counts as "Forest"'

<<https://www.downtoearth.org.in/news/forests/plantations-invasive-species-what-all-india-counts-as-forest--81282>> accessed 16 May 2023

⁵ (1997) 2 SCC 267

A mere comparison of the proposed amendment in the Bill to the proposed Preamble gives a contradictory understanding of the purpose of the Bill. Further, several of the proposed amendments are inconsistent with the objectives of the FCA, the NFP, and directions of the Supreme Court and contrary to the Government's constitutional duty as enshrined under the Directive Principles of State Policy⁶ to safeguard forests and wildlife in the public trust.⁷

Further, it is also worth mentioning that the proposed change in the title of the English version of the Act to "Van (Sanrakshan Evam Samvardhan) Adhiniyam" will be unwanted imposition of a language on non-Hindi speaking states.

A Clause wise observation of the Bill, along with suggested changes, are provided in the following Chapters.

⁶ Constitution of India 1950, *Article 48A*

⁷ *M.C. Mehta v Kamal Nath* (1997) 1 SCC 388

2. Comments on Section 1A (1)

<p>Proposed Amendment (New Section Inserted)</p>	<p>1A. (1) The following land shall be covered under the provisions of this Act, namely: –</p> <p>(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;</p> <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:</p> <p>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:</p> <p>Explanation. –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 recognised by the State Government or Union territory Administration.</p>
<p>Key Concerns</p>	<p>A. The new changes are contrary to the National Forest Policy 1988 and are also regressive to the FCA as it potentially relaxes the existing safeguards.</p> <p>B. Subsection 1A(1)(b) along with the <i>proviso</i> can be potentially misinterpreted to create an exception to the Supreme Court's judgment in <i>T.N. Godavaraman</i> case dated 12.12.1996.</p> <p>C. The new changes also omit the category of lands which are neither notified nor recorded as forests in any government records but qualify the characteristics of a natural forest including those proposed to be notified as forest.</p> <p>D. The new changes also exclude those forest lands which are proposed to be declared forests but yet to be notified under Section 4 of the Indian Forest Act, 1927 or other state laws.</p>

The proposed insertion of new clauses creates ambiguity and can be misused for clearing vast tracts of forest. The newly inserted sub-clause 1A(1)(b) can be potentially misinterpreted to create an exception to the directions of the Supreme Court of India in *T.N Godavarman vs Union of India* ("**Godavarman judgment**") dated 12th December 1996. This has negative implications on the applicability of Section 2 of the Act, which mandates permission of the Central Government for any non-forest activity on lands recorded as forest in 'government record', which also includes lands that are not notified under a statute. Thus, this clause is inconsistent with the objective of the Act and the

proposed Preamble provided in the Bill. The concerns are further discussed below, followed by the suggested changes.

2.1 Concerns About Forests Proposed to Be Notified

As per the Indian Forest Act, 1927 (“IFA”), States can declare Reserved Forests (“RF”) by notifying their intent to protect as forest as reserved through a gazette notification under Section 4, and thereafter a final gazette notification declaring a RF under Section 20. Similarly, Protected Forests (“PF”) are declared through a gazette notification under Section 29 of IFA. Thus, any declaration under the IFA and other State statutes must be published as a gazette notification. However, the notification process under Sections 4, 20 and 29 is cumbersome, and a sizable portion of forest land has been awaiting such notification for decades due to various challenges.

For instance, in Uttar Pradesh, 881 sq.km. and 4,643 sq.km. of land are proposed to be notified under Section 4 and Section 20 of the IFA, respectively.⁸ Similarly, in Assam, nearly 730 sq.km. of lands are in the process of notification as RF from the existing category of Proposed RF under Assam Forest Regulation Act, 1891.⁹

Similar status of forest lands exists in all States where notifications of forests under Section 4 and Section 20 are pending since the abolishment of Zamindari system, which dates decades before 1980. These forest areas are often contiguous to existing RFs and other Protected Areas (“PA”) (Wildlife Sanctuary/National Park, etc.), which are rich in wildlife and have immense livelihood benefits for local communities. While most of such lands are managed by the forest departments, a sizeable portion of forest areas are also under private ownership and face the threat of illegal developments. The proposed amendment may remove the existing protection from such areas. It may also legalise the violations in such forests, which are yet to be notified but have been managed and protected as forests by the concerned forest departments.

2.2 Concerns With Forests Recorded Before 25th October 1980

The Bill seeks to limit the applicability of the FCA only to *the land that has been recorded in Government record as forest, as on or after 25th October 1980*, thus creating an exception to the Supreme Court direction of 12th December 1996, which imposed the applicability of Section 2 of the Act to any area

⁸ As per information obtained under RTI from the office of Principal Chief Conservator of Forests, Uttar Pradesh, Lucknow, by Debadityo Sinha, 25 January 2022

⁹ As per discussion with Mr D.P. Bankhwal, Former PCCF- Assam

recorded as forest in the Government record irrespective of the ownership and date. Following is the excerpt from the *T.N Godavarman vs Union of India* (1996):

The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognized forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act.

The Supreme Court directions in *Godavarman judgment* does not supply any cut-off date and applies to all such lands recorded as forests in any government record without any exception. The proposed amendment creates a new category by inserting a cut-off date.

The term 'as on or after 25th October 1980' can be interpreted in several ways. One interpretation may **include all lands recorded as forests till 25th October 1980 and thereafter**. However, if this is the original intention of the proposed amendment, then there should be no need to include the term as on or after 25th October 1980. Supplying any cut-off date is infructuous as it does not intend any exclusion. However, retention of the date in the clause may cause confusion and may lead to misinterpretations.

The other way, this new sub-clause can be interpreted is to **include those lands recorded as forests on or after 25th October 1980**. This will be the most perverse interpretation of the clause and endanger most unclassified forests that got protection since the *Godavarman judgment*. This may include forests yet to be notified under Section 4 and Section 20 of the IFA and lands recorded in various government records before 25th October 1980- all of which got protection under the *Godavarman judgment*. It will threaten a vast tract of forest land by creating an exemption from the Act. That will lead to massive deforestation, fragmentation of existing forests and cause irreparable damage to biodiversity and other ecological services.

Acknowledging the importance of lands recorded as 'forest' in government records before 25th October 1980 is critical in protecting the existing forests as many of them are recorded as 'unclassified forest'- land not part of RFs and PFs notified under a statute. Many such lands are also recorded as 'jhudupi jungle,' 'jhaad ke jungle', and other local terminology in the government records decades/ years before 1980.

As per the latest FSI's "India State of Forest Report" (2021), out of the total forest area of 7,75,288 sq.km. of India, 1,20,753 sq.km. are categorised as Unclassed Forests. Thus, Unclassed Forests account for approximately 15% of India's total forest cover, and in some States and Union Territories Unclassed Forests are a massive portion of their total forest cover. Some of these states constitute some of India's most unique and endangered biodiversity-rich regions (biodiversity hotspots). For instance, in Northeast India, 97.2% of Nagaland's, 88.2% of Meghalaya's, 75.6% of Manipur's, 53% of Arunachal Pradesh's and 33.4% of Assam's total forest are categorised as unclassified forest. There is a concern that most of such lands may be exempted from the FCA as they are recorded as forests much before 1980. A state-wise summary of FSI's India State of Forest Report 2021 showing proportion of unclassified forests and notified forests is provided in **Annexure**.

2.3 Concerns Regarding Forests Neither Notified nor Recorded as Forests

In many States, distinct types of important ecosystems are protected and managed as forests even though they are not notified or recognized as forests. Some of them also include sacred groves and privately managed lands which have high ecological significance. For instance, in Karnataka's Kodagu district, out of a total district area of 4,097 sq. Km., only 1,439 sq. Km. is notified forests. Remaining equally good forest patches in the district are classified as *bane lands* (867 sq. km.), *paisari lands* (772 sq. km.), *devarkadu* (30 sq. km.), *urudve* (35 sq. km.), *uruguppe* (4 sq. km.) etc. in the government records. Many of such ecologically important areas are not recognized as forests and have been conveniently diverted for non-forest uses by the States.

The Maharashtra government recently notified a 1,463 ha of mangrove areas as forest, while a sizable portion is yet to be notified as forest.¹⁰ Several states are yet to follow such steps to identify and notify mangroves under a forest law. The Hesaraghatta grasslands in Bengaluru are another example where the State is yet to recognize/notify the area as forests.¹¹ The sacred forest of Mangar Bani in Gurugram, rich in wildlife but recorded as '*gair mumkin pahad*', is also awaiting recognition as forest by the State.¹² Reportedly, the forest status of 50,000 acres of Aravalli areas is yet to be determined by the government.¹³ Similarly, large tracts of scrub lands in Western Rajasthan have been managed as forests by the local communities for generations, and one of the last habitats of the critically endangered Great Indian Bustard is yet to be recognized as a forest. One such case is Rajasthan's *oran* and *rundh* areas which the Supreme Court has directed the State to declare as 'deemed forests'.¹⁴ Similarly, other important ecosystems such as, scrublands, wetlands, hills, etc., in various parts of the country are neither recognized nor notified as forests but are extremely valuable ecological landscapes.

The above examples highlight that notified and recorded forests are just one part of India's forest cover. A large tract of forest does not necessarily fall in either category but continues to exist as a forest. Such lands also represent region-specific key ecological areas and include several sacred groves. These areas are under immense threat from urbanization and other infrastructure developments as

¹⁰ '1,463 Hectares of Mangrove Cover Notified by Maharashtra Government as "reserved" Forest | Navi Mumbai News - Times of India' <<https://timesofindia.indiatimes.com/city/navi-mumbai/1463-hectares-of-mangrove-cover-notified-by-maharashtra-government-as-reserved-forest/articleshow/92890089.cms>> accessed 16 May 2023

¹¹ 'Bengaluru: Plea to Notify Hesaraghatta Grassland as Reserve | Bengaluru News - Times of India' <<https://timesofindia.indiatimes.com/city/bengaluru/bengaluru-plea-to-notify-hesaraghatta-grassland-as-reserve/articleshow/93842185.cms>> accessed 16 May 2023

¹² As per discussion with Mr Chetan Aggarwal

¹³ 'Haryana seeks to limit 'Aravalis' to only the stretches in Gurugram - Times of India' <<https://timesofindia.indiatimes.com/city/gurgaon/haryana-seeks-to-limit-aravalis-to-only-stretches-in-gurugram/articleshow/61908385.cms>> accessed 16 May 2023

¹⁴ 'Lack of Registration for Oran Land in Rajasthan Threatens Wildlife Conservation' <<https://www.landconflictwatch.org/conflicts/lack-of-registration-for-oran-land-in-rajasthan-threatens-wildlife-conservation>> accessed 16 May 2023

States have failed to recognize them as forests. Such forests are not only biodiversity-rich and important wildlife habitats but are of immense national importance for the ecological services and carbon sequestration benefits they provide.



Photo 1. Left: Orans in Jaisalmer, Rajasthan (Photo: Parth Jagani/ Mongabay India); Right: Forests of Mangar in Gurugram (Photo: Vijay Dhasmana). Both these landscapes are yet to receive legal status of a 'forest'



Photo 2. Hesarahatta grasslands in Bengaluru, Karnataka (Photo- Debadityo Sinha). The grassland is severely threatened from urbanisation and plantation of trees.

2.4 Concerns Regarding Diversion of Forests for Non-Forest Use Before 12th December 1996

The proviso to Section 1A exempts the applicability of FCA for lands that have been changed from forest use to use for non-forest purpose on or before 12th December 1996 in pursuance of an order by a State Government or a Union Territory Administration. This categorically exempts the State's mandate of obtaining permission under Section 2 of the FCA for forests diverted for non-forest activities before the *Godavarman judgment* on 12th December 1996.

There have been many instances where the States have unlawfully diverted lands recorded as forests for non-forest activities in the violation of the Act. The proposed amendment attempts to legalize such diversions. The Supreme Court has reiterated that the primary purpose of the FCA is to prevent further deforestation, and any interpretations must sub-serve and help implement the intention of the Act.¹⁵ The apex court has also made it clear that once a land is qualified within the meaning of Section 2 of the Act, States cannot permit its use for non-forest activities without the prior approval of the Central Government with effect from 25th October 1980.¹⁶

Further, it is worth pointing out that many of such forest lands were diverted on lease for activities such as plantations, mining etc., by the States before 12th December 1996 or even before the enactment of the FCA in 1980. For instance, Gavi, a RF in the core area of the Periyar Tiger Reserve, was leased to Kerala Forest Development Corporation for the cultivation of cardamom before 1980. The lease is set to expire in 2026, after which new permission will be required to be obtained under Section 2 of the Act. However, if the proposed amendment is accepted, many of such leased forest areas may get permanently diverted for such non-forest activity.¹⁷ This may also allow the lessee to change the nature of such plantation for other non-forest purposes like tourism, infrastructure etc.

Therefore, the proposed amendment is clearly contrary to the orders under the *Godavarman judgment* and inconsistent with the objective of the Act.

2.5 Suggested Changes

¹⁵ *Ambica Quarry Works v. State of Gujarat*, [1987] 1 SCC 213

¹⁶ *Narinder Singh v. Divesh Bhutani*, [2022] SCC OnLine SC 899

¹⁷ Consultation with Perna Bindra, based on her representation co-authored with Prakriti Srivastava on the Forest (Conservation) Amendment Bill, 2023.

Provision	Provision After Amendment	Suggestion For Re-Drafting
1A. (1)	<p>The following land shall be covered under the provisions of this Act, namely: –</p> <p>(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.</p> <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:</p>	<p>The following land shall be covered under this Act, namely: –</p> <p>(a) the land that has been declared or notified or is under the process of being notified as a forest following the provisions of the Indian Forest Act, 1927 or under any other law for the time being in force.</p> <p>(b) the land that is not covered under clause (a) but has been recorded in Government records as forest irrespective of their ownership.</p> <p>(c) the land that is not covered under clauses (a) or (b) but is recognizable as forests by local communities or in terms of its ecological and cultural significance.</p> <p>(d) the land that is not covered in clauses (a), (b), (c) but identified or used for compensatory afforestation in lieu of forest diverted under Section 2 of the Act.</p>
	<p>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:</p>	To be deleted from the amendment
	<p><i>Explanation.</i>—For the purposes of this subsection, 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 recognised by the State Government or Union territory Administration.</p>	No Change

3. Comments on Section 1A (2)

<p>Proposed Amendment (New Inserted)</p> <p>Section</p>	<p>1A. (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 linear project of national importance and concerning national security; or</p> <p>(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>Key Concerns</p>	<p>A. The new changes are contrary to the National Forest Policy 1988 and is also regressive to the FCA as it potentially relaxes the existing safeguards.</p> <p>B. Strategically important linear infrastructures are already given permissions expeditiously by the Central Government under 'general approval' scheme. In such circumstance, blanket exemption is unreasonable and unwanted.</p> <p>C. Exemptions for other security and defence related infrastructure, public utility projects, and roadside amenities are regressive and <i>ultra vires</i> the FCA.</p> <p>D. The new changes will fragment forest areas and will be detrimental to wildlife habitats and corridors.</p> <p>E. Plantations do not restore the ecological benefits and biodiversity loss of an old growth forest.</p>

The proposed changes under this Section are unreasonable and contrary the Preamble and objective of the Act. All the defence related activities are already granted expeditious permissions under Section 2 of the FCA. Blanket exemptions from the Act will lead to massive fragmentation of forests and will have irreversible damages to the wildlife habitats and corridors. Exempting such a wide range of activities from the regulatory oversight is also inconsistent with the constitutional duty of the State to safeguard forests and wildlife as a trustee. A Clause wise discussion is provided in following paragraphs.

3.1 Concerns Regarding Roadside Amenities

In general understanding, 'roadside amenities' involve numerous infrastructures like petrol pumps, restrooms etc. The National Highway Authority of India's '*Policy Guidelines for the Development of Wayside Amenities along National Highways and Expressways*' provide an insight into the mandatory and permissible facilities.¹⁸ The guideline includes food court/ restaurants, dedicated area for promoting local artisans up to an area of 1000 sq. ft, landscaping and others as mandatory facility category. Similarly, the Uttar Pradesh Public Works Department clarification with respect to roadside amenities along the State Highways and Major District Road describes 'roadside amenities' to include dhabas, separate parking for cars, buses and trucks, open-air rest area with benches and tables, dormitories for drivers/ truckers and others, etc.¹⁹ These facilities virtually provide townships along highways and the lack of specifics with respect to the frequency of these facilities along such linear projects makes vast forest areas susceptible.

¹⁸ Circular, Ministry of Road Transport and Highways of India, 1478967/2021/RO Patna, 11th February 2021, Policy Guidelines for Development of Wayside Amenities along National Highways and Expressways, https://morth.nic.in/sites/default/files/circulars_document/Policy%20Guidelines%20for%20Development%20of%20Wayside%20Amenities%20along%20NHs%20and%20Expressways%20%281%29.pdf accessed 10 May 2023

¹⁹ Uttar Pradesh, Public Works Department, Development of road side amenities along the State Highways and Major District Roads across the State, <http://uppwd.gov.in/site/writereaddata/siteContent/201911301619248701BACKGROUND%20NOTE-1.pdf> accessed 10 May 2023



Photo 3. A railway line and road running parallel to each other fragmenting a forest land in Ganjam, Odisha. In 2012, a herd of 6 elephants including 2 calves were killed by speeding train in this area. (Photo- Debadityo Sinha)

India has a 63,31,791 km. of road network across the country, wherein almost 60,20,000 km. are not categorised as National Highways or State Highways.²⁰ These are mainly district roads, and village Roads 'maintained by the government'. Similarly, as of 2020, the route length of Indian railways is roughly 68,000 kms.²¹ Forest land along such vast network will be excluded from the purview of the FCA for providing access to habitation and amenities.

Already many railway lines and roads pass through sensitive biodiversity rich areas. More road and railways infrastructure are proposed to be constructed in upcoming years, which are going to fragment forests and affect wildlife in other parts of the country.²² Granting any exemptions to areas alongside the roads will not only lead to massive deforestation but create multiple disturbance to forests and put immense pressure on wildlife. For instance, the areas alongside the railway line passing through core area of Dudhwa Tiger Reserve may be used for developing infrastructure using the exemptions.²³

Encouraging any development on forest lands alongside road/rail will create further fragmentation and irreparable damage to habitats for wildlife. For instance, Hoolock Gibbon, an exclusive tree-dwelling ape species endemic to North-East India, has suffered immensely due to breaking of tree canopy linkage in Gibbon Wildlife Sanctuary of Assam owing to a railway line. Reportedly 5 Families of Hoolock gibbons have been stranded in a small forest patch, and the Gibbons have never used the

²⁰ Ministry of Road Transport and Highways, *Annual Report 2022-23*, <<https://morth.nic.in/sites/default/files/MoRTH%20Annual%20Report%20for%20the%20Year%202022-23%20in%20English.pdf>> accessed 10 May 2023

²¹ The Network, 'Indian Railways Civil Engineering Portal' <<https://ircep.gov.in/AboutUs.html>> accessed 16 May 2023

²² 'Factsheet Details': <<https://pib.gov.in/FactsheetDetails.aspx?Id=148574>> accessed 16 May 2023; ANI, 'Railways Targets 7,000 Km New Railway Tracks in FY 2023-24' (*ThePrint*, 3 February 2023) <<https://theprint.in/india/railways-targets-7000-km-new-railway-tracks-in-fy-2023-24/1352986/>> accessed 16 May 2023

²³ 'You Will Soon Be Able to Travel through Dudhwa Tiger Reserve in Vistadome Coaches' *The Times of India* <<https://timesofindia.indiatimes.com/travel-news/you-will-soon-be-able-to-travel-through-dudhwa-tiger-reserve-in-vistadome-coaches/articleshow/86289853.cms>> accessed 16 May 2023

bridge constructed by the forest department to connect the canopy to move between the fragmented forests.²⁴

While in some cases, such linear infrastructure significantly affects and reverses the decades old conservation efforts to protect endemic flora and fauna, in many cases roads and railways are one of the major reasons of fatalities of protected species. According to reports, 45 elephants died between 2019-2021 and 26 tigers died between 2010-2021 due to railway accidents.²⁵

Thus, developing any kind of infrastructure in the name of roadside amenities alongside roads/railway lines passing through forests must be prohibited as government policy. They are bound to exacerbate the damage to forests and wildlife already caused by construction of such linear infrastructures. Diversion of such lands alongside roads and railways must be given only after rigorous impact assessment following the requirements under the FCA. Any kind of blanket exemptions through the amendment is not recommend as it is inconsistent with the purpose of the FCA. For development of access roads to adjoining villages or human habitations, diversion of forest lands must be allowed judiciously following due procedure of forest clearance under Section 2 of the Act and in such a manner that it causes minimum disturbance to the forest and wildlife.

3.2 Concerns Regarding Plantations/ Reafforestation Lands

In general parlance, afforestation and reforestation have different meanings. Usually, afforestation means planting trees on non-forest land, while reforestation involves planting trees on a land which was previously a forest. The applicability of FCA becomes important in this respect, as any land used for reforestation which is previously notified or recorded as forest shall continue to be protected under FCA. Also, legal protection for the lands used for compensatory afforestation (“CA”) in lieu of the diversion of forest land for non-forest purpose under Section 2 of the FCA, must be addressed. The ambiguity of the definition of ‘reafforestation’ within the FCA and Forest (Conservation) Rules, 2022 (“Rules”) should not be misused to exclude such lands. It is submitted that such lands used for reforestation on existing forest land and those lands used for CA, irrespective of their land use history, must be regulated under the FCA for any future non-forest activities. Additionally, “reafforestation” is not defined in FCA or Rules. The courts have repeatedly ordered to follow the requirement of reafforestation with respect to existing legal regime.²⁶ However, the legal ambit of the process is unclear. The dictionary meaning of reafforestation is understood to be interchangeable with

²⁴ Bhattacharya M, ‘Offtrack in Hollongapar Gibbon Sanctuary | RoundGlass Sustain’ (30 September 2021) <<https://roundglassustain.com/conservations/hollongapar-gibbon-sanctuary-railway-line>> accessed 16 May 2023

²⁵ ‘45 Elephants Killed in Train Accidents in 2019-2021: Govt’ (*The Indian Express*, 4 August 2022) <<https://indianexpress.com/article/cities/bangalore/45-elephants-killed-train-accidents-in-2019-2021-govt-8071210/>> accessed 16 May 2023

²⁶ *NHAI v. Pandarinathan Govindarajulu*, [2021] 6 SCC 693

“reforestation” which is explained by courts as “restocking of existing forest and wetlands with native trees.”²⁷ Therefore, for clarity, the Act must define the term “reafforestation”.

3.3 Concerns Regarding Strategic Linear Projects, Defence Related Infrastructure and Public Utility Projects

According to the Compensatory Afforestation Fund Management and Planning Authority, between 1996-2016, defence projects have taken up the second largest amount of forest land (1,549 sq.km.), second only to mining (4,947 sq.km.).²⁸ Such projects are already given expeditious permissions under Section 2 of the Act through relaxation of the norms. In such cases, any blanket exemptions are unreasonable. The concerns related to each of the sub-clauses under the proposed subsections are discussed in greater details below.

I. Exemptions for Strategic/ Security related Linear Projects 100 km along international borders or Line of Control or Line of Actual Control

The sub-section allows exemption from forest clearance for construction of strategic linear infrastructure on forest land within 100 km from international borders or Line of Control (“LOC”) or Line of Actual Control (“LAC”).

Majority of the international border of India lies on the ecologically fragile regions of Himalayas and North-East India which are also vulnerable because of the seismic risks, climate change induced extreme weather events which have been on the rise since the past few decades.²⁹ These biodiversity hotspots are known for hosting wide variety of endemic wildlife such as Red Panda, Snow Leopard,

²⁷ *A. Chowgule & Co. Ltd. v. Goa Foundation*, [2008] 12 SCC 646

²⁸ Himadri Ghosh, ‘In Just 30 Years, India Has Lost Large Forests to 23,716 Industrial Projects’ (*Scroll.in*, 4 June 2016) <<http://scroll.in/article/809286/in-just-30-years-india-has-lost-large-forests-to-23716-industrial-projects>> accessed 16 May 2023

²⁹ ‘Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation | Climatology and Climate Change’ (Cambridge University Press) <<https://www.cambridge.org/ch/academic/subjects/earth-and-environmental-science/climatology-and-climate-change/managing-risks-extreme-events-and-disasters-advance-climate-change-adaptation-special-report-intergovernmental-panel-climate-change>, <https://www.cambridge.org/ch/academic/subjects/earth-and-environmental-science/climatology-and-climate-change>> accessed 16 May 2023; Roy S and Roy S, ‘Spatial Patterns of Long-Term Trends in Thunderstorms in India’ (2021) 107 *Natural Hazards* 1

Kashmir Stag, Tibetan Antelope, Markhor, Hoolock Gibbons, etc. and many other flora and fauna endemic to this region. These forests also include catchment of many rivers, destruction of which would have consequences on water security of the country. The Himalayan and North-Eastern States alone constitute approximately 30% of the total forest cover of India, majority of which falls within 100 km from the international border or LAC/LOC. Additionally, forests on western border also have endemic biodiversity rich regions of *Thar* and *Kutch* which is known for many unique assemblages of flora and fauna, including the critically endangered Great Indian Bustard and Indian Wild Ass. The *orans* of Rajasthan are the last repositories of our climax xerophytic flora on which depends the survival of marginalized pastoral communities and which are sacred to them.

Similarly, the forests along the coastal regions of India constitute, the most productive land-aquatic ecosystem in the world and the greatest bulwark against cyclones. The blanket exemptions for linear projects in such a large area will reverse the decades of conservation efforts to protect the unique ecosystems and the biodiversity of these regions, found nowhere else in the world. These places are national assets and part of India's rich natural and cultural heritage.

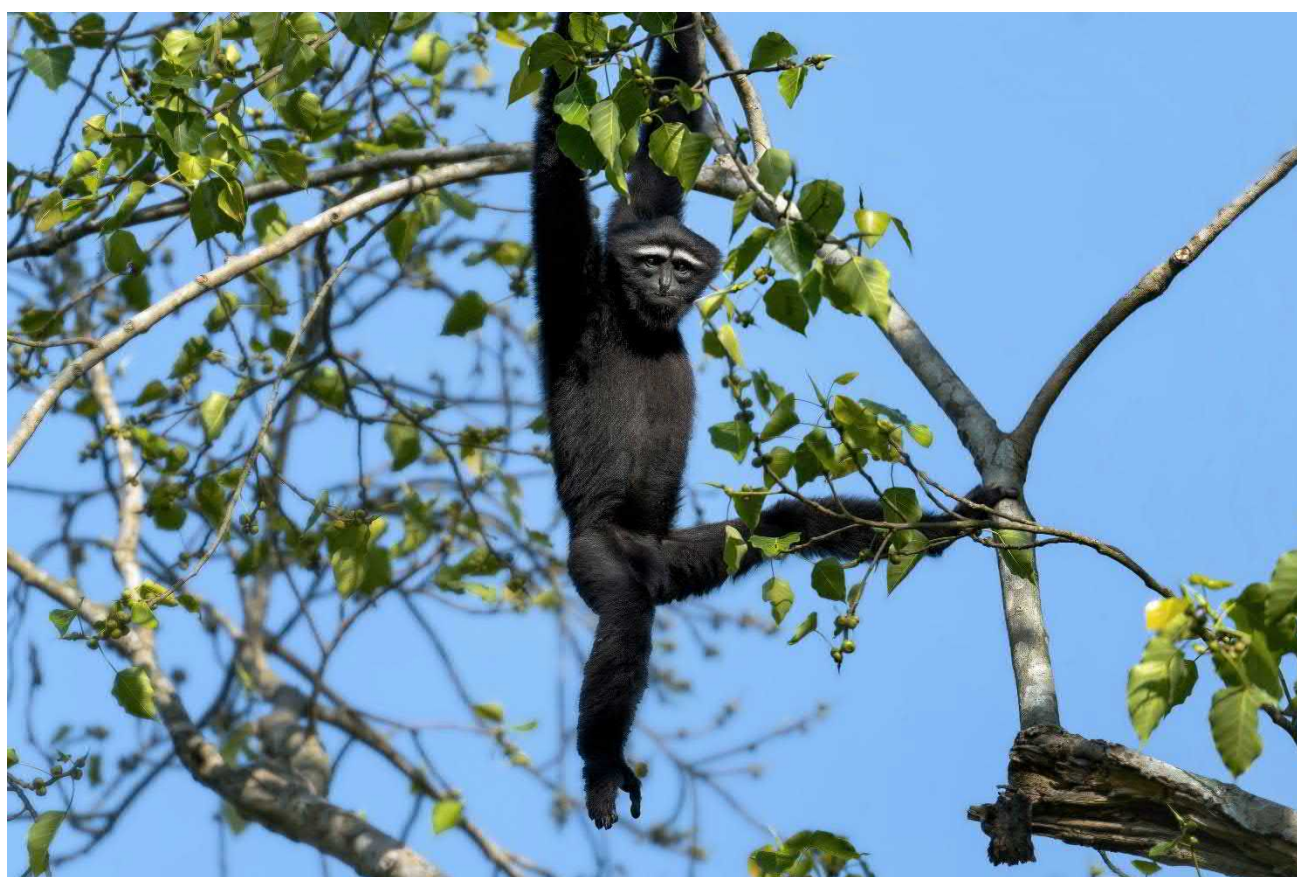


Photo 4. Hoolock gibbon is the only species of ape found in India, confined to the forests of North-East India. They are exclusively arboreal creatures and need dense forests with tall canopies to brachiate. Fragmentation of canopy is a threat to their survival. (Photo: Debadityo Sinha)

Infrastructure and linear development projects in Himalayan and North-Eastern India involve activities such as blasting and excavation, creating tunnels, damming of water streams etc., which has significant and irreversible damage to the ecologically sensitive landscape of these regions. The rubbles and muck generated from excavation of soil and cutting of hills dumped on the roadsides magnify the damage to these ecologically fragile areas. These rubbles and mucks not only render the hill sides sterile and interfere with hydrology but are responsible for disasters during events of cloud bursts and avalanches as seen in Uttarakhand and other hill states. Experts have pointed out the role of such infrastructure development as a significant contributor in intensifying the impact of extreme weather events leading

to landslides and severe floods.³⁰ For instance, over half of landslides studied following the Kashmir earthquake were linked to human activity.³¹ Such landslides have caused damage to the infrastructure which connects remote villages and army bases in the region. Thus, unfettered deforestation and infrastructure development in border areas are likely to increase the intensity of environmental disasters and adversely impact defence infrastructures. The review of such projects under the FCA will only help prevent such environmental disasters.

The Central government has, on multiple occasions, supplied exemptions to defence infrastructures. For example, in July 2014, the Ministry of Environment, Forest and Climate Change of India ("MoEFCC") granted general approval for the diversion of forest land for constructing and widening two-lane roads by various defence-related organizations in areas falling within 100 km of aerial distance from Line of Actual Control.³² General approvals have also been granted to border security-related infrastructure, including roads and border outposts, fencing, floodlights, surveillance and power infrastructure. In January 2015, general approval was granted for the diversion of forest land for such activities within 5 km aerial distance from international borders for paramilitary organizations such as *Sashastra Seema Bal* and Border Security Force.³³

Concerned Ministries may prepare a list of administrative divisions near vulnerable areas near LOC/LAC and forest clearances in such areas may be granted expeditiously in a time-bound manner taking into confidence the concerned Ministries, State Departments, and local governments. The forest areas contiguous with friendly countries like Myanmar, Bangladesh, Bhutan, and Nepal should not be diverted for unnecessary defence infrastructures. The National Parks, Wildlife Sanctuaries, and other forest areas important as wildlife habitat and movements near LOC/LAC must be protected from such developments.

³⁰ 'DRP NB 31 August 2020: No Rule of Environment Law in Char Dham Highway – SANDRP' <<https://sandrp.in/2020/08/31/drp-nb-31-august-2020-no-rule-of-environment-law-in-char-dham-highway/>> accessed 16 May 2023; 'The Road So Far: Forest Rights Act In J&K' (*Outlook India*) <<https://www.outlookindia.com/national/the-road-so-far-forest-rights-act-in-j-k-news-286443>> accessed 16 May 2023; 'Uttarakhand, Himachal Pradesh See Huge Rise in Landslides' (*The New Indian Express*) <<https://www.newindianexpress.com/thesundaystandard/2021/aug/15/uttarakhand-himachal-pradeshsee-huge-rise-in-landslides-2344776.html>> accessed 16 May 2023

³¹ Sian Hodgkins Geology for Global Development, 'Mass Movement Events in the Himalaya: The Impact of Landslides on Ladakh, India.' <<https://www.geolsoc.org.uk/~media/shared/documents/Events/Past%20Meeting%20Resources/Himalaya%2014%20Landslides%20in%20Ladakh.pdf>> accessed 11 May 2023

³² MoEFCC, F. No. 11-246/2014-FC, 4 November, 2017, 'General approval under Section-2 of the Forest (Conservation) Act, 1980 for diversion of forest land' <[https://forestsclearance.nic.in/writereaddata/public_display/schemes/677288723\\$11%20246%202014.pdf](https://forestsclearance.nic.in/writereaddata/public_display/schemes/677288723$11%20246%202014.pdf)> accessed 11 May 2023; MoEFCC, F. No. 11-246 2014-FC, 29 January, 2015 'General approval under Section-2 of the Forest (Conservation) Act, 1980 for diversion of forest land' <[https://forestsclearance.nic.in/writereaddata/public_display/schemes/371830551\\$11%20246%202014%20ii.pdf](https://forestsclearance.nic.in/writereaddata/public_display/schemes/371830551$11%20246%202014%20ii.pdf)> accessed 11 May 2023; MoEFCC, No. 11-246 2014-FC, 28 August, 2017 'Clarification regarding inclusion of Army infrastructure' <[https://forestsclearance.nic.in/writereaddata/public_display/schemes/964208709\\$11%20246%202014.pdf](https://forestsclearance.nic.in/writereaddata/public_display/schemes/964208709$11%20246%202014.pdf)> accessed 11 May 2023

³³ MoEFCC, F. No. 11-246 2014-FC, 29 January 2015 'General approval under Section-2 of the Forest (Conservation) Act, 1980 for diversion of forest land' <[https://forestsclearance.nic.in/writereaddata/public_display/schemes/371830551\\$11%20246%202014%20ii.pdf](https://forestsclearance.nic.in/writereaddata/public_display/schemes/371830551$11%20246%202014%20ii.pdf)> accessed 11 May 2023

Considering the relaxations already available to strategically important linear infrastructures near LAC for fast approval of forest clearance under the Act, there is absence of any logical reason for granting blanket exemptions to such projects in future.

II. General Exemptions to Security-Related Infrastructure

The grant of exemption of 5 or 10 ha for availing of such exemptions is unreasonable and will lead to cancerous growth inside some of the best-RFs untouched by such anthropogenic disturbances. For instance, user agencies may not develop a project in total but in different phases of 10 ha each. Also, such projects will not exist in isolation. Any human settlements for security or any other purpose will also require basic amenities like electricity, water, waste disposal facilities, access roads, fuel supply, emergency storage, parking facilities, etc., which have a substantial cumulative impact on the forests and wildlife. The opening of forests to the movement of people and heavy vehicles significantly affects species sensitive to such disturbances. Such sweeping exemption will jeopardise the conservation efforts in RFs as well as Protected Areas notified under Wild Life (Protection) Act, 1972.

Security-related infrastructure is already given permissions under the FCA, which ensures that any unwanted construction is avoided, and the user agencies take proper mitigation efforts. However, any permission for such activities must be granted on a case-on-case basis following the due procedure under Section 2 of the Act.

III. Exemptions to ‘Public Utility’ Projects

The ‘Public Utility’ phrase is an open-ended term with broad interpretations. The phrase commonly includes those services that the government deems essential to citizens’ requirements. This includes transport, postal, telephone, power, water, hospitals, insurance service, etc.³⁴ This would virtually allow the setting up of townships within the forests.

Such blanket exemptions are not only unjustified, undesirable but are also inconsistent, regressive, and *ultra vires* to the purpose of FCA. Accordingly, any permission for such activities must be granted on a case-on-case basis following due procedure under Section 2 of the Act.

IV. Concerns Regarding Plantations to Compensate Felling of Trees and Silvicultural Operations

The compensatory afforestation practices in India do not promote ecological restoration and therefore do not recreate natural biodiversity and ecosystem services lost to development. The National Afforestation Programme scheme promotes intensive tree plantations with few selected fast-growing non-native species that may cause ecological and economic harm. Such schemes and policies are unfavourable to forests, converting non-forest ecosystems into sterile monocultures and ignoring their

³⁴ The Legal Services Authorities Act 1987, s 22A (b)

intrinsic ecosystem values and benefits to local communities. Forest dwellers who depend on these ecosystems for sustenance are also impacted.³⁵

It must be understood that natural forests are complex ecosystems that consist of diverse flora and fauna, providing a range of ecosystem services such as carbon sequestration, soil fertility, and water regulation. While plantations may provide some benefits, they do not provide the same level of ecological services as natural forests. Plantations, however, can exacerbate soil erosion and degrade soil quality, as they often require intensive fertilization, pesticide use, and irrigation.

Further, plantations do not provide habitat for the wildlife, as they do not contain the structural complexity and diversity of natural forests. Natural forests have a range of habitats that support different species, including canopy, understory, and forest floor. In contrast, plantations have a single, uniform structure that does not provide suitable habitat for many species. Also, plantations can have negative impacts on the surrounding environment and communities. They often require the use of heavy machinery, which can lead to soil compaction and damage to the surrounding ecosystem. Plantations may also require the use of pesticides and fertilizers, which can contaminate nearby water sources and harm human health.

Therefore, it is important to prioritize protection and restoration of natural forests and to manage them sustainably, rather than relying on plantations as a replacement. Any afforestation and silvicultural operation must be undertaken with the objective of ecological restoration and augmenting native biodiversity. Plantation of trees not native to the concerned forest range and pruning of existing trees which are used as habitat, shelter and foraging of important species of birds, reptiles, mammals, etc. must be prohibited.

3.4 Suggested Changes

Section	Amendment in Bill	Suggestions for Redrafting
1A. (2)	<p>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>	To be deleted from the amendment

³⁵ M.K. Ranjitsinh et.al., Compensatory Conservation in India: An Analysis of the Science, Policy and Practice- Report submitted to Hon'ble Supreme Court of India pursuant to the directions dated 25 March 2021 in SLP (Civil) No. 25047 of 2018

1A. (2) (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	such tree, tree plantation or reafforestation raised on lands that are not specified in clause (a) to (d) of sub-section (1)
1A. (2) (c)	<p>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 linear project of national importance and concerning national security; or</p> <p>(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>	To be deleted from the amendment
1A (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.	To be deleted from the amendment

4. Comments on Section 2

<p>Proposed Amendment (New Changes and Insertions)</p>	<p>2. Restriction on the dereservation of forests or use of forest land for non-forest purpose.—</p> <p>(1) 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 RF (within the meaning of the expression “RF” in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;</p> <p>(ii) that any forest land or any portion thereof may be used for any non-forest purpose.</p> <p>³⁶[(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 subject to such terms and conditions, as the Central 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>³⁷[<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> <p>(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;</p> <p>(b) any purpose other than reforestation,</p> <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 construction of fencing, bridges and culverts, dams waterholes, trench marks, boundary marks, pipelines or other like purposes.</p> <p>but does not include any work relating to or ancillary to conservation, development and management of forests and wildlife, such as—</p> <p>(i) silvicultural operations including regeneration operations;</p> <p>(ii) establishment 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>
---	---

³⁶ Ins. by Act 69 of 1988, s. 2 (w.e.f. 15-3-1989)

³⁷ Subs. by s. 2, *ibid.*, for the *Explanation* (w.e.f. 15-3-1989)

	<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; and</p> <p>(viii) any other like purposes, which the Central Government may, by order, specify."]</p> <p>(2) The Central Government may, by order, specify the terms and conditions subject to which any survey, such as, reconnaissance, prospecting, investigation or exploration including seismic survey, shall not be treated as non-forest purpose.</p>
Key Concerns	<p>A. The exemptions about zoo, safari, eco-tourism facilities, prospective survey, exploration etc. are contrary to the National Forest Policy 1988 and is also regressive and <i>ultra vires</i> to the FCA as it relaxes the existing safeguards for commercial utilization.</p> <p>B. The exemptions granted to activities ancillary to conservation practices can be misused and must have sufficient reasoning to prove the necessity of that activity in implementing forest management and wildlife conservation goals.</p> <p>C. 'Any other purpose' to be prescribed by Central Government delegates excessive power to the executive to bring important change in the law bypassing public consultation and parliamentary scrutiny.</p>

There is a mismatch between the Preamble of the Act and Section 2. The proposed amendment under Section 2 does not allow the achievement of the projection made under the Preamble of the Bill. On the contrary, these proposed amendments will harm forests and forest conservation and will be detrimental to the attainment of commitments made by India to prevent climate change. A detailed discussion on the proposed amendments under this Section is provided below.

4.1 Leasing of Forest Lands by The States

The term 'subject to such terms and conditions, as the Central Government may, by order, specify;' is redundant as the Section 2 mandates prior approval of the Central Government for leasing the forest land. Further, the purpose of such leasing must be conservation of forests and wildlife only.

4.2 Exemptions to Establishment Listed Under Sub-Section (ii)-(v)

Several activities relating to or ancillary to conservation, development and management of forests and wildlife are exempted from the requirement of permission under Section 2 of the FCA. Such activities must be undertaken when necessary and after exploring all suitable alternatives. It must be ensured that such infrastructure does not cause any disturbance to wildlife and their movement. The purpose for all such establishments must be to protect and conserve the forests and wildlife, and not for any leisure or commercial purposes. Thus, it is essential that sufficient reasoning is provided for such developments as a necessity for forests and wildlife conservation. Under the provision on exemption of works 'ancillary to conservation', the Act must also specify the Certified Authority which would decide whether the work falls under the category of ancillary or related work. It is suggested that the Certified Authority with respect to conservation of wildlife should be the Chief Wildlife Warden or Principal Chief Conservator of Forest ("PCCF") with respect to forest conservation.



Photo 5. A Tourist Rest House constructed inside core area of Manas Tiger Reserve, Assam (Photo: Rohit Choudhury/Twitter)

4.3 Exemptions For Eco-tourism Facilities

Eco-tourism is supposed to support conservation of forests because of economic incentives to local communities, but when integrated with market demands and other associated cumulative developments, it can lead to deforestation, fragmentation of the landscapes and negatively affected wildlife. In fact, several peer-reviewed studies point out that eco-tourism activities can stimulate forest

loss.³⁸ Eco-tourism facilities are known for obstructing wildlife movement, alter the land use and land cover, pollute the landscape, increase human-wildlife conflict etc.^{39,40,41} It also leads to further fragmentation of a landscape in terms of linear disturbances like access roads, as well as puts great pressure on land and water resources.

Similar concerns are reflected in the National Wildlife Action Plan 2017-31 (“**NWAP**”) which mentions that in recent years mushrooming of tourism facilities has led to overuse, disturbance and serious management problems in several PAs.⁴² The NWAP defines eco-tourism as eco-friendly and regulated wildlife-based tourism. It also states that in case of any conflict between tourism and conservation interests of a PA, the paradigm for the decision must be that tourism exists for the Protected Areas and not vice versa, and that demands of tourism must be subservient to and in consonance with the conservation interests of Protected Areas. Although the NWAP states this in context of Protected Areas, the impact of eco-tourism activities also holds true for RFs/ PFs areas as well, which may not be part of a Protected Area network but play the same role for ecosystem services and are important wildlife habitats. Eco-tourism activities, when proposed within a forest, have a severe negative impact on the forest and wildlife and cannot be termed as a conservation activity under the Act. Even those proposed in the vicinity of forest boundaries must be planned after extensive carrying capacity studies, environmental impact assessment and should be strictly regulated.

It is suggested that the exemption of establishment of eco-tourism facilities be deleted as it is inconsistent with the purpose of the Act. They may be regulated as per the existing procedure of forest clearance under Section 2 of the FCA and decided on a case-to-case basis keeping in view the local circumstances and species affected.

4.4 Exemptions For Zoo and Safari

Most of the PAs and RFs in India are small, isolated patches of fragmented wilderness in a sea of human settlements. Forests in the vicinity of the PAs are used by wild animals as habitat, routes for seasonal dispersal/ migration and other survival requirements like food, water, etc. Forests outside PAs are already under significant anthropogenic disturbances and require conservation attention.

³⁸ Brandt JS and others, ‘Effects of Ecotourism on Forest Loss in the Himalayan Biodiversity Hotspot Based on Counterfactual Analyses’ (2019) 33 Conservation Biology 1318

³⁹ Perna Bindra, Report on impact of tourism on tigers and other wildlife in Corbett Tiger Reserve, for Ministry of Tourism, <http://www.indiaenvironmentportal.org.in/files/corbett_tourism_report.pdf> accessed 13 May 2023

⁴⁰ Brandt JS and Buckley RC, ‘A Global Systematic Review of Empirical Evidence of Ecotourism Impacts on Forests in Biodiversity Hotspots’ (2018) 32 Current Opinion in Environmental Sustainability 112

⁴¹ ‘Leopards in Jawai Gasp for Breath amid Increasing Encroachment | Jaipur News - Times of India’ <<https://timesofindia.indiatimes.com/city/jaipur/leopards-in-jawai-gasp-for-breath-amid-increasing-encroachment/articleshow/78224690.cms>> accessed 16 May 2023

⁴² ‘National Wildlife Action Plan 2017-31’ <https://wii.gov.in/nwap_2017_31> accessed 16 May 2023

Activities such as Zoos and safaris are *ex-situ* conservation tools, and they must not come at the cost of natural habitats of wildlife. Such establishments not only come at the cost of fragmentation and destruction of existing forest and wildlife habitats, but have a huge cumulative impact from associated infrastructure, access routes, public amenities and other disturbances which cannot be termed as beneficial to the forests and wildlife. The cumulative impact of such establishments, including buildings, access to roads, power transmission lines, vehicular movement, light and noise pollution etc. has a significant impact on an otherwise intact forest and have an immense impact on species conservation.

For instance the proposal related to eco-tourism activities in Sajjargarh Wildlife Sanctuary submitted to the Standing Committee of National Board for Wild Life , includes establishment of tribal museum, interpretation centre, wax museum, Souvenir shops, parking facilities, resting point for tourists etc.⁴³ Similarly, the proposed Aravalli Safari Park by Haryana government, includes structures such as clubs, restaurants, aquarium, cable car, open-air theatres, animal cages, entertainment parks, landscaped gardens, electricity lines, road networks etc.⁴⁴ All such activities cannot be termed as forest activities under the FCA.

Therefore, allowing zoos and safaris within the scope of non-forest activities in the FCA will disproportionately commercialise forests and wildlife which is not the purpose of the Act and is against the NFP 1988.

It is suggested that the exemption of establishment of zoos and safaris must be deleted from the amendment as it is completely inconsistent with and impermissible under the Act.

4.5 Exemptions For Any Other Like Purposes Specified by The Central Government

To allow forests to be used for “any other like purposes” specified by the Central Government is vague and gives wide discretionary powers to the Central Government. Further, such excessive powers delegated to the executive jeopardise the public participation as well as parliamentary scrutiny of the future amendments to the Act. Any exemptions to activities previously regulated under the Act must be brought through a proper amendment Bill and undergo the process of public consultation and parliamentary scrutiny. To prevent misuse of this *proviso*, it must be specified that such powers shall be exercised for the purpose of conservation of forests and wildlife.

⁴³ MoEFCC, F. No. 6-259/2022, 27 January 2023

<https://forestsclearance.nic.in/writereaddata/Order_and_Release/11130121212151Minutesof71stmeetingofSC-NBWL.pdf> accessed 11 May 2023

⁴⁴ Haryana Tourism Corporation, Expression of Interest for International Design Competition for Development of Aravali Safari Park - District Gurugram and Nuh,

<https://haryanatourism.gov.in/WriteReadData/downloads/tender_safari22.pdf> accessed 11 May 2023

4.6 Exemptions for Surveying Activities

The Bill proposes to exempt survey, such as reconnaissance, prospecting, investigation, or exploration, including seismic survey, from forest clearance under Section 2 of the FCA. The proposed amendment in this regard is not in keeping with the purpose of the FCA, which is conservation of forests. Exemption of permission for conducting such surveys will open the floodgates for conducting surveys for purely commercial activities like mining. Some of these surveys or investigations might require drilling/digging of surface, clearing of vegetation, levelling of ground, creating access roads and producing high decibel noise or use of light at night or any other activity which might be detrimental to the wildlife and the ecosystem. Furthermore, it conveys the message that the forest areas are open for commercial exploitation in future, which itself is against the NFP 1988 and is inconsistent with the purpose of the Act.

Recently, the Gauhati High Court stayed Environmental Clearance to Oil India Limited with respect to exploration and drilling through extended reach drilling for hydrocarbons at seven locations in Dibru Saikhowa National Park due to the absence of a Biodiversity Impact Assessment.⁴⁵

Therefore, a blanket exemption to such surveys is not recommended. It is suggested that the exemption to survey, such as, reconnaissance, prospecting, investigation, or exploration be deleted, and the existing procedure for permission under Section 2 of the Act be continued for such activities.

4.7 Suggested Changes

Provision	Provision After Amendment	Suggestion For Re-Drafting
Section 2(1) (iii)	(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 Government may, by order, specify;	(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 unless it is in the interest of <i>in situ</i> conservation of forest and wildlife, subject to such terms and conditions, as the Central Government with reason prescribe;
Section 2 (1) (b)	any purpose other than reafforestation,	any purpose other than reafforestation,

⁴⁵ *Mrinmoy Khatanar & Anr v. Union of India*, [2022] SCC OnLine Gau 826

	but does not include any work relating to or ancillary to conservation, development and management of forests and wildlife,	but does not include any work relating to or ancillary to conservation, development and management of forests and wildlife, which shall be certified by the concerned Chief Wildlife Warden or Principal Chief Conservator of Forests with reasons in writing.
Section 2(1) (b)	i. silvicultural operations including regeneration operations;	i. silvicultural operations including regeneration operations which are purported to restore the original flora of the area and do not include plantation of species exotic to the area in question or causing disturbance to the wildlife;
	ii. establishment of check-posts and infrastructure for the front-line forest staff;	ii. establishment of check-posts and infrastructure for the front-line forest staff, that do not affect or disturb the movement of wild animals;
	iii. establishment and maintenance of fire lines;	No Change
	iv. wireless communications;	iv. wireless communications which are required for the front-line forest staff;
	v. construction of fencing, boundary marks or pillars, bridges and culverts, check dams, waterholes, trenches and pipelines;	v. construction of fencing, boundary marks or pillars, bridges and culverts, check dams, waterholes, trenches and pipelines, solely required for the purpose of forest and wildlife conservation and certified as such by the concerned Chief Wildlife Warden or Principal Chief Conservator of Forest;
	vi. establishment of zoo and safaris referred to in the Wild Life (Protection) Act, 1972, owned by the Government or any authority, in	To be deleted from the amendment

	forest areas other than protected areas;	
	vii. eco-tourism facilities included in the Forest Working Plan or Wildlife Management Plan or Tiger Conservation Plan or Working Scheme of that area; and	To be deleted from the amendment
	viii. any other like purposes, which the Central Government may, by order, specify."]	viii. any other like purposes necessary for conservation of forest and wildlife, which the Central Government shall by reason prescribe.
Section 2 (2)	The Central Government may, by order, specify the terms and conditions subject to which any survey, such as, reconnaissance, prospecting, investigation or exploration including seismic survey, shall not be treated as non-forest purpose.	To be deleted from the amendment

5. Concerns Related to Rights and Livelihoods of Forest Dependent Communities

The Parliament of India in all its wisdom has recognized that the forest dependent people including tribal communities are integral to the survival and sustainability of forest ecosystems and biodiversity. In furtherance of this it enacted legislations such as *The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006* ("**FRA**") and *The Panchayats (Extension to The Scheduled Areas) Act, 1996* ("**PESA**"). To ensure that the FRA is followed correctly, the Ministry of Environment and Forests issued a letter on August 3, 2009,⁴⁶ later supported by a Supreme Court judgement in *Orissa Mining Corporation v. MoEF & Others*⁴⁷ in 2013. This circular was backed by the Forest (Conservation) Rules amendments in 2014⁴⁸ and 2017.⁴⁹ These amendments emphasised the need for the consent of the Gram Sabhas (local village councils) and the completion of the rights recognition process before any forest diversion could take place. The 2022 Amendment to the Rules, however instead of strengthening, downgraded the importance of FRA compliance from the initial Stage I approval to the final Stage II approval, disregarding the objections raised by the Ministry of Tribal Affairs against attempts to justify FRA violations. This removed the requirement of prior informed consent of Gram Sabhas for the forest diversion or for compensatory and ameliorative measures. It is contrary to the recently agreed Kunming-Montreal Global Biodiversity Framework adopted in December 2022 by the Conference of Parties to the UN Convention of Biological Diversity which asks for the full and active involvement of relevant stakeholders in decision-making including indigenous peoples and local communities.⁵⁰

Many of the proposed amendments in the Bill [Section 1A (1)(b) and Section 1A (2)] adversely affect the protection accorded to Scheduled Tribes ("**STs**") and other Traditional Forest Dwellers ("**OTFDs**") under the FRA because if the land falls outside the scope of the FCA, it effectively eliminates the requirement of obtaining consent from the Gram Sabha for diversion of that land. The FRA provides for recognition of the forest rights of the STs and OTFDs, and by doing so, it intends to undo the historic injustice these communities have faced because of the denial of their forest rights. Failure to

⁴⁶ Letter, MoEFCC, F. No. 11-9/1998-FC (pt), 3 August, 2009

⁴⁷ *Orissa Mining Corpn. Ltd. v. Ministry of Environment & Forests*, [2013] 6 SCC 476

⁴⁸ Forest (Conservation) Amendment Rules, 2014,
<<https://forestclearance.nic.in/writereaddata/Rules/FC%20Amedment%20Rule%202014.pdf>>
accessed 11 May 2023

⁴⁹ Forest (Conservation) Amendment Rules, 2017,
<<https://forestclearance.nic.in/writereaddata/Rules/FC%20Amedment%20Rule%202017.pdf>>
accessed 11 May 2023

⁵⁰ 'COP15: Final Text of Kunming-Montreal Global Biodiversity Framework' (*Convention on Biological Diversity*) <<https://www.cbd.int/article/cop15-final-text-kunming-montreal-gbf-221222>> accessed 16 May 2023

recognise the rights of forest dependent people under the FRA and PESA will continue the historic marginalisation and cause greater injustice.

Most of the proposed amendments in the Bill not only diverge from the protectionist approach of the FCA but also undermine the constitutionally guaranteed rights such as Right to clean environment, Right to access to information, participation in decision making and access to justice by the people, especially forest-dependent communities. The exemptions from the requirement of forest clearance for activities proposed under newly inserted Sections 1A and amendments to Section 2 of the FCA directly affects such rights. Forest dwellers, including tribal communities and other traditional forest-dependent communities, have long-standing rights and deep connections to forest lands spread over generations. The forest-dependent communities rely on the forests for their livelihoods, cultural practices, and overall well-being.

For instance, exemptions proposed for tree plantations or reforestation on lands not specified in clause (a) or clause (b) of sub-section (1) under Section 1A(2)(b) can potentially encourage commercial tree plantations or reforestation initiatives that may not align with the needs and interests of forest-dependent communities. Suppose these initiatives prioritise monoculture plantations or non-native species. In that case, it can result in the loss of biodiversity, disruption of local ecosystems, and reduced availability of diverse forest resources that communities rely on. This, in turn, can undermine their traditional livelihoods and cultural practices intimately tied to the surrounding forests.

Similarly, exemptions proposed under Section 1A(2)(c) for strategic linear projects within 100 km of international border/LAC/LOC; up to 10 hectares for security-related infrastructure; construction of defence related project or a camp for paramilitary forces or public utility projects, etc. in forest lands further disrupt the traditional territories and resource access of forest-dependent communities, limiting their ability to gather forest products or engage in customary practices that sustain their livelihoods. It can also lead to the loss of ecosystem services these communities rely on, such as water sources or non-timber forest products.

Forest dwellers, including tribal communities, are integral to the survival and sustainability of forest ecosystems and biodiversity. Additionally, including and expanding such activities may lead to displacement, loss of access to essential resources, and disruption of their traditional way of life. Moreover, the Central Government's authority to specify 'any other like purpose' under the proposed amendment to Section 2 further raises concerns about potential misuse or arbitrary decisions that could further adversely dilute/infringe the rights and interests of forest dwellers. Therefore, it is crucial to ensure that any development or conservation efforts consider forest dwellers' rights, participation, and consent, respecting their intimate connection with the forests and their sustainable practices. It is essential to consider the potential social and ecological consequences of these exemptions and ensure that adequate measures are in place to safeguard the rights and well-being of forest-dependent communities.

6. Summary of Suggestions

Section	Text in the Bill	Suggestion for Re-Drafting
1	This Act may be called the Van (Sanrakshan Evam Samvardhan) Adhiniyam 1980	This Act may be called the Forest (Conservation) Act, 1980
1A. (1)	<p>The following land shall be covered under the provisions of this Act, namely: –</p> <p>(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.</p> <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:</p>	<p>The following land shall be covered under this Act, namely: –</p> <p>(a) the land that has been declared or notified or is under the process of being notified as a forest following the provisions of the Indian Forest Act, 1927 or under any other law for the time being in force.</p> <p>(b) the land that is not covered under clause (a) but has been recorded in Government records as forest irrespective of their ownership.</p> <p>(c) the land that is not covered under clauses (a) or (b) but is recognizable as forests by local communities or in terms of its ecological and cultural significance.</p> <p>(d) the land that is not covered in clauses (a), (b), (c) but identified or used for compensatory afforestation in lieu of forest diverted under Section 2 of the Act.</p>
	<p>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:</p>	To be deleted from the amendment
	<p>Explanation.—For the purposes of this sub-section, the expression "Government record" means record</p>	No Change

	held by Revenue Department or Forest Department of the State Government or Union territory Administration, or any authority, local body, community or council recognised by the State Government or Union territory Administration.	
1A. (2) (a)	<p>The following categories of land shall not be covered under the provisions of this Act, namely:—</p> <p>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>	To be deleted from the amendment
1A. (2) (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	such tree, tree plantation or reafforestation raised on lands that are not specified in clause (a) to (d) of sub-section (1)
1A. (2) (c)	<p>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 linear project of national importance and concerning national security; or</p> <p>(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>	To be deleted from the amendment

1A (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.	To be deleted from the amendment
Section 2(1) (iii)	(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 Government may, by order, specify;	(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 unless it is in the interest of in situ conservation of forest and wildlife, subject to such terms and conditions, as the Central Government with reason prescribe;
Section 2 (1) (b)	any purpose other than reafforestation, but does not include any work relating to or ancillary to conservation, development and management of forests and wildlife,	any purpose other than reafforestation, but does not include any work relating to or ancillary to conservation, development and management of forests and wildlife, which shall be certified by the concerned Chief Wildlife Warden or Principal Chief Conservator with reasons in writing.
Section 2(1) (b)	i. silvicultural operations including regeneration operations;	i. silvicultural operations including regeneration operations which are purported to restore the original flora of the area and do not include plantation of species exotic to the area in question or causing disturbance to the wildlife;
	ii. establishment of check-posts and infrastructure for the front-line forest staff;	ii. Establishment of check-posts and infrastructure for the front-line forest staff, that do not affect or disturb the movement of wild animals
	iii. establishment and maintenance of fire lines;	No Change
	iv. wireless communications;	iv. wireless communications which are required for the front-line forest staff;
	v. construction of fencing, boundary marks or pillars, bridges and culverts, check dams, waterholes, trenches and pipelines;	v. construction of fencing, boundary marks or pillars, bridges and culverts, check dams, waterholes, trenches and pipelines, solely required for the purpose of forest and wildlife conservation and certified as such by the concerned Chief Wildlife Warden or Principal Chief Conservator of Forest.

	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;	To be deleted from the amendment
	vii. eco-tourism facilities included in the Forest Working Plan or Wildlife Management Plan or Tiger Conservation Plan or Working Scheme of that area; and	To be deleted from the amendment
	viii. any other like purposes, which the Central Government may, by order, specify."]	viii. any other like purposes necessary for conservation of forest and wildlife, which the Central Government shall by reason prescribe.
Section 2 (2)	(2) The Central Government may, by order, specify the terms and conditions subject to which any survey, such as, reconnaissance, prospecting, investigation or exploration including seismic survey, shall not be treated as non-forest purpose.	To be deleted from the amendment
Section 3C	The Central Government may, from time to time, issue such directions, to any authority under the Central Government, State Government or Union territory Administration, or to any organisation, entity or body recognised by the Central Government, State Government or Union territory Administration, as may be necessary for the implementation of this Act.	The Central Government may issue such directions, to any authority under the Central Government, State Government or Union Territory Administration, or to any organisation, entity or body recognised by the Central Government, State Government or Union Territory Administration for the implementation of the Act, as may be necessary for the protection and conservation of forests.

Annexure

Stagewise Details of Forest Cover with Percentage of Unclassed Forests (High to Low)

State	Total Forest (sq.km.)	Reserve and Protected Forest (sq.km.)	Unclassed Forest (sq.km.)	% of Unclassed Forest / Total State Forest Cover (sq.km.)
Nagaland	8623	234	8,389	97.29
Meghalaya	9496	1125	8,371	88.15
Lakshadweep	13	2	11	84.61
Manipur	17418	4238	13,180	75.67
Punjab	3084	1181	1,903	61.71
Arunachal Pradesh	51540	24228	27,312	52.99
Tripura	6294	3590	2,704	42.96
Assam	26836	17864	8,972	33.43
Uttar Pradesh	17384	11856	5,528	31.79
Goa	1271	874	397	31.24
Gujarat	21870	17472	4,398	20.11
Himachal Pradesh	37948	30770	7,178	18.92
Chhattisgarh	59816	49933	9,883	16.52
Puducherry	0	0	0	15.58
Mizoram	7479	6322	1,157	15.47
Karnataka	38284	32621	5,663	14.79
Haryana	1559	1407	152	9.75
West Bengal	11879	10826	1,053	8.86
Chandigarh	35	32	3	8.57
Bihar	7442	6876	566	7.61

Maharashtra	61952	57298	4,654	7.51
Tamil Nadu	23188	21576	1,612	6.95
Jharkhand	25118	23422	1,696	6.75
Rajasthan	32863	30719	2,144	6.52
Uttarakhand	38000	36432	1,568	4.13
D & N Haveli and Daman & Diu	214	208	6	2.80
Madhya Pradesh	94689	92984	1,705	1.80
Telangana	27688	27392	296	1.07
Andhra Pradesh	37258	37028	230	0.62
Odisha	61204	61182	22	0.04
Delhi	103	103	0	0
Kerala	11522	11522	0	0
Sikkim	5841	5841	0	0
A & N Islands	7171	7171	0	0
Jammu& Kashmir	20199	20199	0	0
Ladakh	7	7	0	0
TOTAL	775288	654535	120753	15.58

Source: '61,952 Sq. Km. of Recorded Forest Area in Maharashtra'

<<https://pib.gov.in/PressReleaselframePage.aspx?PRID=1806315#:~:text=Maharashtra%2C%20the%20third%20largest%20state,km%20of%20Unclassed%20Forests%20area.>> accessed 17 May 2023



Image- Forests from Upper Dibang Valley, Arunachal Pradesh. Photo: goldentakin/ Wikimedia

V | D | H | Centre for
Legal Policy

A-232, Ratanlal Sahdev Marg,
Defence Colony, New Delhi-110024

011-43102767/43831699

www.vidhilegalpolicy.in