

UPDATE

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FINDING “CONSERVATION” IN FOREST (CONSERVATION) AMENDMENT BILL, 2023: AN ANALYSIS OF PROPOSED AMENDMENTS TO THE PRINCIPAL ACT AND THEIR ECOLOGICAL IMPACT.

A. Introduction

We couldn't agree more with Franklin D. Roosevelt when he said, “A nation that destroys its soils destroys itself. Forests are the lungs of our land, purifying the air and giving fresh strength to our people.” The principles of conservation and forestry have been part of human civilization through the centuries and are embodied in ancient texts such as *Aranyakas*, *Upanishads*, and *Smritis* while also finding a place in modern international conventions such as Kyoto Protocol. These principles have been encoded by the Indian Parliament in the Forest (Conservation) Act, 1980 (“**Principal Act**”), which essentially regulates the use of forest land for non-forest purposes. Forwarding to the year 2023, the Ministry of Environment Forest and Climate Change (“**MOEFCC**”) proposes to amend the Principal Act, and the reasoning given by the Ministry is that the Act needs to be brought to speed with the changing ecological conditions, achieving net zero emission targets and matching the aspirations of the people. The Parliament, amidst the opposition clamour and unenthusiastic “ayes” passed the Forest (Conservation) Amendment Bill, 2023 (“**the Bill**”), without any amendments. It is now imperative to analyze these amendments against the backdrop of overall environmental impact.

B. Historical Timeline of Forest Legislations

- *Indian Forest Act, 1865*- Authorised the Government to declare any forest land as Government land.
- *Indian Forest Act, 1927*- consolidates the laws regarding forests, to regulate timber and other forest produce.
- *42nd Constitutional Amendment, 1976* - Transfers “forest” from State List to Concurrent List.
- *The Forest Conservation Act, 1980*- Act was enacted to prevent deforestation and diversion of forest land.
- *1996*- Hon'ble Supreme Court pronounced its judgment in the case of *T.N. Godavarman Thirumulpad v. Union of India*¹ spelling out the applicability of the Forest Conservation Act, 1980
- *Forest (Conservation) Rules, 2003*- Rules enacted to regulate the Forest (Conservation) Act, 1980.
- *Forest (Conservation) Bill, 2023*- A bill to amend the Forest (Conservation) Act, 1980.

¹ T.N. Godavarman Thirumulpad v. Union of India, (1997) 2 SCC 267

C. Key Amendments which are Proposed to be Brought by the Bill

1. Amendment to the Preamble and Short Cause Title of the Act

Clause 1 of the Bill seeks to add a Preamble to the Principal Act to keep the provisions of the Act in tandem with the dynamic changes in the ecological, strategic, and economic aspirations of the country.² The Preamble sets out the object of the Act as follows:

- i. Enabling achievement of national targets of Net Zero Emission by 2070 to maintain/enhance the forest carbon stock for sustainable development;
- ii. Creating a carbon sink of an additional 2.5 to 3.0 billion tons of CO₂;
- iii. Improving forest and their biodiversity, national and ecological security;
- iv. Increasing forest and tree cover to 1/3rd of the country's land;
- v. Providing livelihood to forest-dependent communities.

The proposed Preamble is not in consonance with the Amendments which are proposed to be brought to the Principal Act. Though the Preamble sets out the Nobel vision of the Government, the proposed amendment in the act may lead to serious ecological imbalances (*discussed in the subsequent part of the newsletter*). Conclusively, the noble vision of the Preamble is futuristic and needs more clarity, it shuts its eyes to the ongoing deficiencies in the present system.

The bill further seeks to amend the short cause title of the Act as “*Van (Sanrakshan Evam Samvardhan) Conservation Adhiniyam*” which roughly translates to “*Forest (Conservation and Augmentation) Act*”.³ However, the proposed name neither adds any value to the statute nor serves any purpose to the scope and objectives of the principal Act. Further, the proposed amendment in the short cause title is non-inclusive as it leaves out the vast tracks of the population both in South India and North East India.⁴

2. Amendment to the applicability of the Act

As mentioned earlier, Indian Forest Act, 1927 was the first legislation which has consolidated the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce. During pre-independence era, besides the local Acts, majority of forests were being managed and protected under the provisions of the Indian Forest Act, 1927⁵. After independence, between 1950 to 1980, about 45 lakh hectares of pristine natural forest land was diverted for Non-forestry purposes by the various State / Union Territory (UT) Governments⁶. The Parliament taking cognizance of such deforestation enacted the Forest (Conservation) Act, 1980 with the object to regulate large-scale deforestation which has caused ecological imbalance and led to environmental deterioration⁷. However, the applicability of the Act was not laid out explicitly, therefore as a general practice the

² Report of Joint Committee on the Forest (Conservation) Amendment Bill, 2023, Seventh Lok Sabha.

³ Lok Sabha passes Bill to let forest land be used for strategic needs, INDIAN EXPRESS, (Jul 27, 2023 05:12), <https://indianexpress.com/article/india/lok-sabha-nod-forest-conservation-amendment-bill-8861270/>

⁴ Report, *Supra Note 2*

⁵ *Ibid*

⁶ Ministry of Environment, Forest and Climate Change, *Minister of Environment an Forests' statement regarding steps taken by the Government for regularizing forest land being cultivated by the farmers in Lok Sabha*, Press Information Bureau, May 10, 2005

⁷ Statement of Objects and Reasons, the Forest (Conservation) Bill, 1980 (Bill no. 201 of 1980).

State Governments, Union Territory Administrations and Central Government used to apply the provisions of the Principal Act only to the forests notified under the Indian Forest Act, 1927 or any other local law, and to forests which were under the management control of the Forest Department⁸. Owing to the misconception about the scope and applicability of the Act, the Hon'ble Supreme Court of India in *T.N. Godavarman Thirumulpad (supra)*⁹ laid down that the provisions made in the Act for the conservation of forests and for matters connected therewith must apply to all forests irrespective of the nature of ownership or classification thereof, not only that but the provisions of the Act was made applicable to:

- i. All forests irrespective of the ownership or classification thereof;
- ii. The word forest must be understood according to its dictionary meaning, i.e. a large area of land covered with trees and plants;
- iii. Any area recorded as forest in the Government record irrespective of the ownership;
- iv. The Hon'ble Apex court had also set up an expert committee which identified the forests in the States and submitted its report in 1997.

Four decades after the passing of the initial Act MOEFCC proposes to amend the Principal Act to clarify the scope and applicability of the Act. The amendments are proposed with the object to facilitate economic growth, rehabilitation, and development of strategic infrastructure, it attempts to overturn the judgment of the Hon'ble Supreme Court by excluding private and non-forest lands from the applicability of the Principal Act. As per *Clause 4* of the Bill, the applicability of the Act would be limited to:

- i. Land which has been declared or notified as a forest under any law for the time being in force;
- ii. Land which is recorded in the Government Records as forest as on or after 25th October 1980 (date of the enforcement of the Principal Act).

However, the following land would be excluded from the applicability of the Act:

- i. Land which has changed use for non-forest purposes on or before 12th December 1996 [date of the Hon'ble Supreme Court's Judgment in *T.N. Godavarman (supra)*] in pursuance to any order by any authority;
- ii. Forests situated alongside a rail line or a public road which provide access to a habitation, or to a road and roadside amenity up to a maximum size of 0.10 hectare in each case;
- iii. Any tree and plantation which has not been raised in the forest land;
- iv. Any forest land which is situated within a distance of 100 Kilometers along the international borders proposed to be used for security purposes;
- v. Any forest land, upto 10 hectares proposed to be used for defence infrastructure;
- vi. Forest land not exceeding 5 hectares in Left Wing extremism affected areas which are proposed to be used for defence infrastructure, camp for paramilitary forces or public utility projects.

The reasoning given for exclusion is to provide better accessibility to the habitats and to ensure strategic and national security. However, we cannot lose sight of its impact on the ecology, as a major part of the land will fall out of the regulation envisaged in the Principal Act which may further lead to

⁸ Consultation Paper on Proposed amendments in the Forest (Conservation) Act, 1980, Ministry of Environment, Forest and Climate Change Government of India, October 2021.

⁹ *T.N. Godavarman Thirumulpad, Supra Note 1*

diversion of forest land. Therefore, at this stage, it is imperative to lay down the ecological impact of the proposed amendments:

- a. Exclusion of major forest land: The Bill proposes to limit the applicability of the Principal Act to areas which are notified or recorded as forest. 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 categorized 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 cover¹⁰. Further, in various states major forest lands are not recorded as forest and no proper land records are maintained, this will lead to unnecessary conversion of forest land which will ultimately lead to ecological imbalances.
- b. Large forest cover in the northeast region will fall under exemption: Total Forest cover in the North Eastern region is 1,69,521 sq km, which is 64.66% of its geographical area¹¹. The region falls under Indo-Burma Biodiversity Hotspot which is one of the richest areas in terms of gene pool diversity in the entire world, it may no longer be considered a forest. The Bill exempts any forest land which is situated within 100 Kilometers along the international borders proposed to be used for security purposes, which will lead to heavy deforestation in the northeast region. Further, given the peculiar shape of the Northeast except Assam all states will be excluded.
- c. Non-consideration Forest Dweller's Rights: The Forest Rights Act ("**FRA**"), 2006 was enacted to recognize the rights of the forest-dwelling tribal communities and other traditional forest dwellers to forest resources¹². The definition of forest land under Forest Rights Act, 2006 includes unclassified forests, un-demarcated forests, existing or deemed forests, protected forests, reserved forests, sanctuaries, and national parks¹³. However, the present Bill fails to make any reference or exception to FRA, leaving room for possible conflict between the Rights of the Forest Dwellers and Rights of the Government to exploit forest land for economic and security activities.
- d. Legalizes diversion of forest lands between 1980 to 1996: Proviso given in Section 1(A)(1)(b) legalizes the diversion of forest lands between 1980 to 1996. Various stakeholders have objected to such legalization stating that in the past, forest land has been converted for several non-forest uses like plantation of cash crops, infrastructure development, mining leases, etc. The Principal Act mandates that any such diversion of forest lands or the extension of leases over such areas requires proper prior approval. Exempting the spectrum of these activities for obtaining forest clearances will not comply with the Principal Act's conservation objectives¹⁴.

¹⁰ Report Of The High-Level Working Group On Forest (Conservation) Bill, 2023, VIDHI Centre for Legal Policy.

¹¹ Forest Survey of India (Ministry of Environment Forest and Climate Change), Government of India, India State of Forest Report, 2021.

¹² Preamble, The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

¹³ The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, Section 2(d), § 2(d), No. 2, Act of Parliament, 2007.

¹⁴ Report, *Supra Note 2*

3. Amendments to activities which are permitted on the forest land

As per Section 2 of the Principal Act, forest land for non-forest purposes can only be used after the approval of the Central Government, however, this does not include work relating or ancillary to conservation, development and management of forest and wildlife, 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 purposes (“**exempted category**”). The Bill now proposes to amend the section and add the following activities under the exempted category such as the establishment of Zoo, Eco-Tourism, Tiger Conservation Plan, Wildlife Management Plan, Safari, Sanctuaries, establishment of check-posts and infrastructure for the front line forest staff, Silviculture, or any other like purpose as prescribed by the Central Government and these establishments will be permitted by the Central Government. Further, the insertion of Clause 2 in Section 2 of the Principal Act also declares that any survey, such as reconnaissance, prospecting, investigation, or exploration including seismic survey, shall not be treated as non-forest purpose, and shall be allowed upon the discretion of Central Government on specific terms and conditions.

The Bill overlooked that these above activities are potentially destructive for the ecosystem as it will not only commercialise the forest land but also affect the rights of the Forest Dwellers which are protected under FRA, 2006. The allowance of exempted activities tends to cause ecological imbalance and will cause following impact on the environment:

- i. Dispensation to Zoos and Safari may lead to concrete structures and road networks in the forest areas;
- ii. Privatisation of these activities will interest the private corporations which will prioritise profit generation over environmental protection;
- iii. The proposed provision is likely to create a new system of commercial ecology;
- iv. Inclusion of zoos, safaris, and ecotourism facilities can be potentially destructive and come at the cost of native vegetation and wildlife habitat because there are endemic species, which are very important and these have to be protected.

As enumerated above, the exempted activities have the potential to cause serious disturbance to natural habitat. The Amendments further give power to Central Government to specify any other like activity to be carried out in the forest land which will open the floodgates. In our opinion, this amendment needs serious revisit, if any activity is exempted it should be clearly defined and should be permitted so long as it is in tune with the natural ecology.

4. Amendments giving more authority to the Central Government

Originally the “Forest” was a subject in the List-II (State list) of the Constitution, however in the year 1976 it was included in the List-III (Concurrent List) vide 42nd Constitutional Amendment, 1976, thereby making the administration of the forest a federal subject. As a word of caution, it may be noted that “forest” is not a Central Subject, however, certain provisions of the Bill give overriding and sweeping powers to the Central Government, same is enumerated hereinbelow:

- i. Central Government may exempt any activity to be carried out in the forest land relating to construction of defence related project or a camp for paramilitary forces or public utility

projects in a Left-Wing Extremism affected area, which will also be notified by the Central Government¹⁵;

- ii. The Bill gives power to Central Government to exempt any activity in the forest land¹⁶;
- iii. The Central Government has power to issue direction to the State Government for the implementation of the Act¹⁷

Conferring such one-sided powers upon the Central Government is not only arbitrary but is also bound to create disputes between the two organs of the Federation, as it is the States which maintain most of the forests except certain national reserved forests. Further, under clause 6 of the Bill absolute power has been provided to the Central Government to issue direction to State Government for implementation of the Act. The said clause gives unfettered powers to the Central Government which will affect the policy decisions and schemes of the State Government adopted for the conservation of Forests.

D. Conclusion

It is undeniable that the object which the Bill seeks to achieve is crucial, however, the Bill falls short of realizing the aims of net zero emission, increasing forest tree cover, carbon neutrality etc. The current Act, further supplemented by the Orders of the Courts, is a strong piece of legislation and requires no amendment but better effective implementation. It is interesting to note that after the enforcement of the Act and Implementation of National Forest Policy, 1988, the Forest Cover of the nation has increased from 6,39,182 sq. kms. which is 19.44 % of the total geographical area of the country in 1991 to 7,13,789 sq km which is 21.71% of the geographical area of the country in 2021. To achieve the goals set out by India in various international fora it is imperative that we have a strong conservation policy at place. Thus, the amendments which the Bill seeks to bring require revision after considering the suggestions by various stake holders.

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¹⁵ The Forest (Conservation) Amendment Bill, 2003, Clause 4(2)(c)(iii).

¹⁶ The Forest (Conservation) Amendment Bill, 2003, Clause 5(II)(viii).

¹⁷ The Forest (Conservation) Amendment Bill, 2003, Clause 6.