



Forest Conservation Amendment Act, 2023: A challenge to Adivasi land rights and environmental protections

The FCAA, 2023 undermines Adivasi land rights, increasing ecological risks, displacement, and weakening protections for Indigenous people

A bench of Justice B R Gavai and Justice K Vinod Chandran, while hearing a batch of petitions against the 2023 amendments to the Forest Conservation Act, 1980, prohibited the Centre and States from taking any actions that would result in loss of forest area until further orders. The Forest (Conservation) Amendment Act, 2023 came into force on December 1, 2023, significantly altering the provisions of the Forest Conservation Act, 1980. Experts and citizens express concerns that the modifications would facilitate the authorities to reroute restricted forest areas for public infrastructure and commercial uses.

Thirteen petitioners, twelve of whom were former civil personnel, petitioned the Supreme Court to address their concerns regarding changes to the Forest Conservation Act of 1980 after the Amendment was passed. The amendment permits the diversion of forest land for linear projects related to “national security” and “defence” within a 100-kilometer radius along border territories, which was one of the primary concerns. In other words, it makes way for highway construction in biodiverse and ecologically sensitive regions of India’s frontier states.

Challenges to Forest Conservation Amendment Act, 2023

The petition emphasised how the amendment threatens India’s long-standing forest governance system, which was established by the implementation of the Forest Conservation Act, 1980, and the Supreme Court’s expansive definition of “forest,” which was established in its landmark ruling in *Godavarman v. Union of India* (1996).

The petition also argued that the modification exempted certain types of projects and activities from the Act’s provisions while arbitrarily permitting others on forest land. Safaris, zoos, and ecotourism establishments were haphazardly added to a list of activities for approved “non-forest purposes.”

The court asked in its interim decision that the states and Union Territories conduct in accordance with the definition of “forest” established by the Apex Court in its 1996 ruling in the case of *TN Godavarman Thirumulpad v. Union of India*. The petitioners claimed that Section 1A, which was added to the amended law, limited the broad meaning of a “forest” in the Apex Court’s ruling. According to the modified law, a piece of property cannot be considered a “forest” unless it is officially listed as such in a government record or is notified as such.

The amendment limited the Act’s application to two categories of lands as reported by *Downtoearth* (<https://www.downtoearth.org.in/forests/why-forest-conservation-amendment-act-may-be-deemed-unconstitutional-95218>):

- Areas that have been formally designated or notified as forests under the Indian Forest Act, 1927 (IFA) or any other applicable law, and
- Lands that do not come under the first category but are listed as forests in government records as of October 25, 1980.

The Apex Court in February, 2024 noted that approximately 1.99 lakh square kilometres of forest areas were excluded from the term of “forests” under the 2023 amended law on forest conservation, and instead were made accessible for other uses. The bench stated that any new plans to construct a zoo or start a “safari” on forest territory would now require permission from the Supreme Court as reported by *Supreme Court Observer* (<https://www.scobserver.in/journal/the-amended-green-law-is-full-of-red-flags-forests-amendment-act>).

A bench of Justice B R Gavai and Justice K Vinod Chandran while hearing the petitions against the amendment to the forest conservation law noted that, “*We will not permit anything which leads to reduction of forest area. We further order that until further orders, no steps will be taken by the Union of India or any state which will lead to reduction of forest land unless compensatory land is provided by the Centre or states.*”

Reverting to a colonial-era mentality that prioritises control over nature and legal recognition without recognising its inherent worth and value, regardless of its utility to humans, the Amendment Act is a regressive step. It is not in accordance with the developments in environmental law, which are generally moving towards acknowledging the “Rights of Nature.”

The Order may be read here:

Download PDF (https://Cjp.org.in/Wp-Content/Uploads/2025/02/40155_2023_2_32_59163_Order_03-Feb-2024.pdf)

Adivasi Land Rights

Significant concerns have been raised by the Forest (Conservation) Amendment Act, 2023, especially in light of its potential effects on Adivasi (Indigenous communities) land rights. The reforms include significant changes that could jeopardise the livelihoods and cultural links of communities living in forest areas by weakening the legal protections that are now in place.

The amended law's reduction of the concept of "forest" presents one of the biggest obstacles. Previously, the Forest (Conservation) Act, 1980 protected all statutorily recognised forests, whether or not they were registered, according to the expansive interpretation set by the *T.N. Godavarman v. Union of India* (1997) ruling. The 2023 Amendment, however, limits this description to land that is notified under the Indian Forest Act, 1927 or officially listed as forest in government records. Large areas of community forest, traditionally used land, and sacred groves—all of which Adivasis have depended on for centuries—are not included in this. This raises the possibility of relocation and the loss of ancestral areas because lands can now be diverted for non-forest uses without needing the stringent clearances that were previously necessary.

These risks are increased by the amendment's exemptions for particular projects. For activities pertaining to border security, defence infrastructure, ecotourism, and public utilities in specific regions, the amendment permits the government to circumvent the customary forest clearance regulations. These exemptions facilitate the establishment of major infrastructure projects, including roads, railroads, and industrial zones, in tribal areas without requiring approval from Gram Sabhas, or village councils. Adivasis are entitled to this privilege under the Forest Rights Act (FRA), 2006, and the Panchayats (Extension to the Scheduled Areas) Act (PESA), 1996. Their independence in deciding how to use the land is directly compromised, and the legal protections against forcible evictions are weakened.

The possibility of greater land alienation and privatisation is another significant problem. The amendment makes it easier for businesses like zoos, safaris, and tourism projects to access forest land, which may lead to the transfer of vast tracts of forest to private organisations. Adivasi tribes may experience financial hardship as a result of the commercialisation of their ancestral lands since they rely on these forests for farming, grazing, and gathering minor forest products. Conflicts, loss of livelihood, and forced migration could result from corporate interests superseding community rights in the absence of robust legal protections.

Furthermore, Adivasis residing in Fifth Schedule Areas, where constitutional protections were created expressly to stop the alienation of tribal territory, are disproportionately affected by the relaxing of forest diversion standards. Without taking into account the historical injustices and displacement that these communities have experienced, the amendment facilitates the government's allocation of land to development projects. This gives rise to concerns that the amendment might be utilised to expedite such projects without providing impacted Adivasi families with adequate consultation, rehabilitation, or compensation.

In essence, by limiting the definition of forests, avoiding consultation procedures, permitting extensive land diversion, and facilitating corporate access to forest resources, the Forest (Conservation) Amendment Act, 2023 erodes vital safeguards for Adivasi land rights. Legal protections are being diluted, endangering Indigenous groups' identity, culture, and means of subsistence in addition to the environment. Stricter enforcement of tribal land rights, increased community involvement, and making sure that development doesn't result in marginalisation and displacement are all necessary to address these issues.

Other Challenges to Adivasi Rights

The Madhya Pradesh government has taken a major step by deciding to withdraw nearly 8,000 forest criminal cases against Adivasi communities. Long-standing complaints about the criminalisation of Indigenous customs in forest regions are intended to be addressed by this ruling. But according to data gathered under the Right to Information Act, the state only intends to withdraw roughly half of these cases, meaning that many Adivasis are still facing legal issues.

The persistent challenges Adivasi communities face with regard to their land rights and customary activities are highlighted by this partial withdrawal. Even with legislative frameworks that acknowledge the rights of forest dwellers, such as the Forest Rights Act of 2006, many Adivasis still face partial displacement and legal challenges. The narrow range of case withdrawals emphasises the need for more extensive steps to guarantee the recognition and preservation of Adivasi land rights, particularly in view of recent legislative developments that could have an even greater effect on these people.

Conclusion

There are serious concerns about how the Forest (Conservation) Amendment Act, 2023, may affect Adivasi land rights, environmental preservation, and legal protections since it marks a dramatic change in India's forest governance structure. The amendment erodes the rights of Indigenous communities who have lived sustainably in these forests for generations by limiting the definition of forests and exempting certain initiatives from clearing requirements. Legal protections are being weakened, and corporate and infrastructure projects are being facilitated at the expense of environmental degradation, livelihood loss, and displacement.

The government contends that these modifications advance economic growth and national security, but they also jeopardise ecological balance, democratic involvement, and constitutional protections. Adivasi views must be heard, Gramme Sabha clearances must be respected, and compensating measures must be implemented.

be rigorously implemented going ahead. The destruction of forest ecosystems and the marginalisation of Indigenous communities cannot be the price of sustainable development.

(The legal research team of CJP consists of lawyers and interns; this legal research has been worked on by Adha)

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