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The Forest (Conservation) Amendment Act, 2023

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The Forest (Conservation) Amendment Act, 2023 or the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 (henceforth FCAA, 2023 or the Adhiniyam) as it has been retitled, has been challenged in the Supreme Court in the WP 1164/2023 Ashok Sharma & Ors vs Union of India. As has been [widely reported](#), the Chief Justice of India's bench gave an excellent [interim order](#) (detailed [here](#)) on February 19, 2024 upholding the Supreme Court directive in WP 202/96 or the Godavarman case, as it is known in common parlance, which defines what constitutes forests in our country.

The principle Forest (Conservation) Act (henceforth FC Act) was enacted in 1980 to curb the wanton destruction and diversion of forests. Before the FC Act 1980 came into existence, from the time of Independence, about 4.2 million hectares of forests were diverted for non-forestry purposes, while over 40 years since the enactment of the FC Act 1980, such diversion of forests was reduced to 1.5 million hectares.

The Supreme Court had said in its interim order that the final hearing will be in July 2024 and is expected to be posted for hearing soon. We have full faith that the Honourable Supreme Court will ensure the conservation and persistence of our forests, wildlife and biodiversity, and uphold the ecological security of our country. We hope that the FCAA 2023 is repealed and the Forest Conservation Act 1980 is restored, and effectively implemented.

The FCAA 2023 came into force on August 4, 2023. It was followed by rules and guidelines issued on November 29, 2023. Subsequently, a Consolidated Handbook of Guidelines was issued on December 30, 2023. Both the rules and guidelines are a composite enactment that could seriously impact the conservation fabric of our country. While there are many concerns regarding the [consequences](#) of the FCAA 2023, which we and others have articulated in different forums, we are encapsulating some of the most damaging outcomes of this amended act if implemented.

Overruling the Supreme Court order of WP 202/96 (Godavarman order)

The Adhinyam undoes the conservation gains from the Godavarman order and instead, introduces a highly diluted 'definition' of forests that denies legal protection against diversion to vast tracts of unnotified and unclassified forests as well as private plantations/forests. This will largely lead to the frightening pre-1980 scenario, when states and quasi-government entities could divert forests without any oversight of the Central Government.

Vast tracts of Unclassed forest being removed from legal protection of the FC Act 2023

The extent of forest land that will go out of the purview of legal protection of the Adhinyam is not known, but the guesstimate is an astounding 1,97,000 sq. km. of Unclassed forests. It would not be an overstatement to say that the various clauses of the FCAA make each and every patch of [forest of this country vulnerable](#).

This is inferred considering that the [SEC reports have not collated](#) this information and the Supreme Court's 2011 Lafarge order has not been implemented by the states, MoEF or the Forest Survey of India, as well as based on data revealed by MoEFCC and FSI reports.

Identifying highly restricted and diminished areas as forest as per the Adhiniyam 2023 and in effect regularising illegal diversions between December 1996 and now

The Rule 16(1) of GSR 869 (E) intends to identify a new set of forest lands based on the present situation and convenience of the states, in effect regularising all illegal diversions of forest land by the State between 1996 (Godavarman order) and now, which does not conform with the law. No format or agency has also been laid out for such an identification under the new rules, thereby allowing for manipulation, abuse and fudging. It is clear that the Rule 16(1) intends to replace the Godavarman order of 1996, and dilute and undo its conservation values. The problem of the introduction of Rule 16 is that it will serve to cover up the extent of illegal diversions of recorded forest areas in revenue records, deemed forests, unclassified forests etc., and forests as per the 'dictionary' meaning, that have taken place in the last 27 years since the Godavarman judgement, violating this order.

Allowing regularisation of diversions of forest land between December 1980 and December 1996 done by Government/quasi government authorities without the sanction of the Supreme Court in WP 202/96

The Adhiniyam also allows all diversions made by any government or quasi government authority between December 27, 1980 (FCA enactment) and December 12, 1996 (Godavarman order) to be legal. Shockingly, this amounts to the executive overruling a legal directive, as it has not been sanctioned by the Supreme Court in its WP 202/1996 order or subsequently. The extent of such diverted land is also not quantified and can only be inferred to be vast.

Use of Unclassed forests for Compensatory Afforestation compliance, which is not legal as per Godavarman order

The FCAA 2023 legalises Unclassed forests such as zudpi forests, chote bade jhar ke jungle, orange lands etc. (Unclassed forests that had to be identified and brought under the purview of the FC Act,) to be used for Compensatory Afforestation compliance. This is not as per law as the basic tenet of forest land intends that such a diversion should be “replacement of forest land by non-forest land, and tree for tree”. Instead, what is being legalised is replacement of diverted forest land with another forest land, which will diminish forest areas further. This is also not in consonance with the Indian Forest Policy 1988 accepted by the Parliament that envisages that 33.3 per cent of land in plains and 66.6 per cent of hill land should be forests. Currently, only 21 per cent of terrestrial India is under forests – which is [disputed](#) – in the country. One also wonders at the authenticity of periodic increases in forest cover shown by governments, especially given the [high rates of diversion of existing forests](#) and that India is [second](#) only to Brazil in deforestation rates.

Creating land banks of Unclassed forests for easy and smooth Compensatory Afforestation compliance in lieu of diversion of forest land

As per the Adhinyam rules, Unclassed forest land is being aggregated into land banks by concerned state Forest Departments to be offered to user agencies in lieu of diversions of notified forests for smooth and quick diversion of forest land, and to facilitate user agencies.

Green credit earned by private entities through afforestation to be traded as Compensatory

Afforestation (CA) for diverting notified forests for non-forestry activities

Rule 14(5)(I) of GSR 869(E) is applicable to private agencies to earn 'green credits' through afforestation, which can then be traded as CA for diverting notified forests for non-forestry activities.

It envisages that the Forest Department identify all open forest and scrub land, wastelands and catchment areas, under their administration and then hand them over to private agencies such as industries and corporations to create plantations on this forest land. This would be subject to the approval of the The Indian Council of Forestry Research and Education. Green credit is given to the agency at one green credit per tree grown with a minimum of 1,100 trees per hectare with a size of five hectares. Green Credit generated can then be exchanged for meeting the compliance of Compensatory Afforestation in case of diversion of forest land for non-forestry purposes under the FCAA 2023!

A neat deal for all entities concerned... except the forests.

This order, greenwashed as climate-friendly, is expected to trigger highly deleterious, damaging and irrevocable impacts. It is well-established that greening and afforesting of any and all forestlands can be ecologically disastrous. Grasslands, wetlands, deserts, scrub forests, open forests – typically defined and diverted as 'wastelands' – are distinct ecological entities and afforesting these will irrevocably alter their ecology, destroying vibrant ecosystems and the unique flora and fauna they support. The importance of such ecosystems is recognised globally; in India, they harbour remarkable diversity of species, many of which are endemic to the Indian subcontinent, including the Critically Endangered Great Indian Bustard, Lesser Florican, wolves, blackbucks etc. Such ecosystems also support the livelihoods of millions from pastoral and agro-pastoral communities across the country.

Importantly, the Green Credit rules undo the rationale behind Compensatory Afforestation to compensate loss of forest land by non-forest land and loss of trees by trees. What they allow for is loss of forest lands, twice over: first, for forest land being diverted for non-forestry purpose, and then forest land (notified or otherwise) is provided as 'compensation' for the loss of notified forest land that is diverted for non-forestry purpose. This is violative of the 202/96 order and even the FCAA 2023, and if allowed will whittle down our forests till none remain.

FCA requires that forest land diverted for non-forestry purpose can only be compensating by land which is not forest.

Compensatory Afforestation is being touted as the solution to meet national targets of Net Zero Emission by 2070, and to maintain or enhance the forest carbon stocks through ecologically balanced sustainable development.

Compensatory Afforestations cannot replicate natural forests and their ecological attributes and functions. Such plantations are usually monocultures, often exotic fast-growing species and money guzzlers with very poor outcomes; yet the Adhiniyam offers this as a panacea to increase forest cover and enhance carbon stocks towards achieving net-zero emissions even as it is well-known that it is old growth, natural and biodiverse forests which are more effective at sequestering carbon than plantations and monocultures.

Allows diversion of forest land by State Forest Departments without multi-layer scrutiny of expert committees of State and Central governments

- diversions, such as access to a public amenity or habitation to the extent of .01 hectare along a roadside or railway line.
- within a distance of 100 km. along international borders or Line of Control or Line of Actual Control proposed to be used for construction of strategic linear projects of national importance and concerning national security
- up to 10 hectares, proposed to be used for construction of security-related infrastructure (area not specified in the Act, therefore will apply to any forest in the country).
- security-related infrastructure for construction of defence-related projects, a camp for paramilitary forces, or public utility projects up

to five hectares in an extremism-affected area notified by the Central Government.

- All surveys, including seismic surveys, except for mining on forest land such as hydro-electric projects, wind energy farms, transmission lines, and railway lines, will be considered as a forestry activity if no breaking of forest land and cutting of trees is involved. No limit is prescribed for the number of surveys that can be granted in a forest likely resulting in pockmarking and fragmenting forest land. Allowing such scoping studies sends a clear message that all our forests are available for diversion and there is no forest that is sacrosanct for conservation.

In all the above scenarios, permission for diversion will be decided by an appointed Divisional Forest Officer, who will accept the application from the user agency, scrutinise it through the Nodal Officer of the Forest Department in-charge of the Adhiniyam and approved by the PCCF & HoFF of the state. This makes the FD, particularly officers at the DFO level who are junior in a hierarchical system, very vulnerable to coercion and political and other pressures from the Revenue Department, other government departments, and user agencies to accede to the proposal.

No definition is given for 'roadside amenity', 'strategic linear projects', 'security projects', and 'public utility projects', leaving them open for interpretation and misuse.

No number or upper limit is decided for such diversions, and therefore any number of such diversions can be done, creating islands of degradation pock-marking forests.

Compliance of FRA and PESA kept vague

The Rules are ambiguous about the protection of statutory rights of forest dwellers and scheduled tribes, including populations living in areas marked as Fifth Schedule Areas, and fail to provide any clarity about the procedure by which the Forest Rights Act and the Panchayat (Extension to Scheduled Areas) Act (PESA) requirements will be met. The implementation of these two laws has been kept vague to allow governments to exploit loopholes rather than implement them in letter and spirit.

Absolute powers cornered by the administration to frame guidelines without oversight of Parliament

Clause 24 under S.O. 5075(E) allows the Central Government under Section 3C of the Adhiniyam, to issue such directions to any authority under the Central Government, State Government or Union Territory Administration, or to any organisation, as may be necessary for the implementation of this Act. This is draconian and gives absolute powers to the administration, without oversight of the Parliament, to change rules and issue guidelines to suit the existing government regime to do as they please which – as the current trend of fast, easier forest and wildlife clearances shows – will inevitably benefit user agencies to the detriment of conservation. Introduction of this clause is tailored for the MoEFCC, as it now enables them to change or modify any guideline and dilute it at any time, in all likelihood, to benefit the user agency.

The Adhiniyam 2023 amended along with MMDR

That it may be noted that the Forest (Conservation) Act and the Mines and Minerals (Development and Regulation) Act were amended simultaneously in 2023 to complement each other and facilitate mining in forest areas.

Leased forest lands allow many crops such as oil palms to be raised easily

The guidelines allow for leasing of forest land to other agencies except for mining by signing a Memorandum of Understanding (MoU) between the state government and lessee agency. Raising of commercial plantations of low rotation, including medicinal plants, will be considered as a non-forestry activity, which will require prior approval of the Central Government. However, what is meant by “plantations of low rotation” is not defined. The FCA 1980 clearly stated that the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, and horticulture crops of medicinal plants were non-forestry activities and therefore growing such crops by the lessee required permission under the FC Act from the Central Government. This categorisation is not given in the Adhiniyam 2023. It may be noted that cultivation of tea, coffee, rubber, cardamom, and oil palm are not low rotation crops. Therefore, they are not covered by the new rules. These crops can now be cultivated by the lessee without permission under the Adhiniyam based on the lease MoU between the state and the lessee alone, which is highly detrimental to the ecology of forests and will result in their degradation and fragmentation. Growing oil palms by diverting natural forests is a one of the

biggest causes of forest destruction and [India is promoting oil palms](#) in a big way, more so in the [northeast](#), which is a global biodiversity hotspot. Bringing in this clause is no doubt to facilitate plantations of oil palm without having to undergo the rigours of obtaining permission under the FC Act. The ecological apocalypse to follow does not bear thinking.

Ease in setting up zoos and safaris

The Adhiniyam promotes setting up of zoos and safaris and offers this as providing employment to local communities – though how it will promote their livelihood even as the forests they depend on are diverted at a fast pace is uncertain. The guidelines have deliberately ignored the impacts of establishing a zoo, safari, ecotourism site, etc., most of which are increasingly mega infrastructure projects such as the Kevadiya zoo in Gujarat or the [proposed Aravali safari park](#), which destroy native habitats, ecology and wildlife. As tourism increases, habitations with shanties, shops, eateries, roads, vehicles, and other such anthropogenic activities that cause fragmentation and deterioration of forests mushroom. Instead of making efforts to restore the ecology of the forest earmarked for establishment of zoos and safaris, the MoEFCC is enabling further degradation and deterioration of the area through a large anthropogenic footprint. As had been witnessed across fragile landscapes across the country, ‘ecotourism’ infrastructure and visitation are anything but eco-friendly, besides destroying and fragmenting forests. Most such destinations suffer from water shortages and are defiled and ruined by trash and waste.

The cost involved in creating and maintaining zoos and safaris could be used better for protecting the existing forests, which are deteriorating often owing to lack of effective protection and patrolling.

In conclusion, in limiting the scope and ambit of the original Forest (Conservation) Act, 1980 the FCAA is removing crucial safeguards from a vast majority of India's biodiverse rich forests.

We have been witness to extreme environmental catastrophes taking place across the country: hundreds died in the most intense and prolonged heat waves on record this summer, even as fire, storm and flash flood swept India, one of the most climate vulnerable nations in the world. This not only compromises India's economic growth but threatens our food and water security and public health. It threatens the future of our children and shrinks their world.

At such a time, rather than exacerbate the existential environment crisis by laws such as the FCAA that weaken environment safeguards, every effort should be taken to enable a healthy environment and ensure the protection of our forests and wildlife.

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