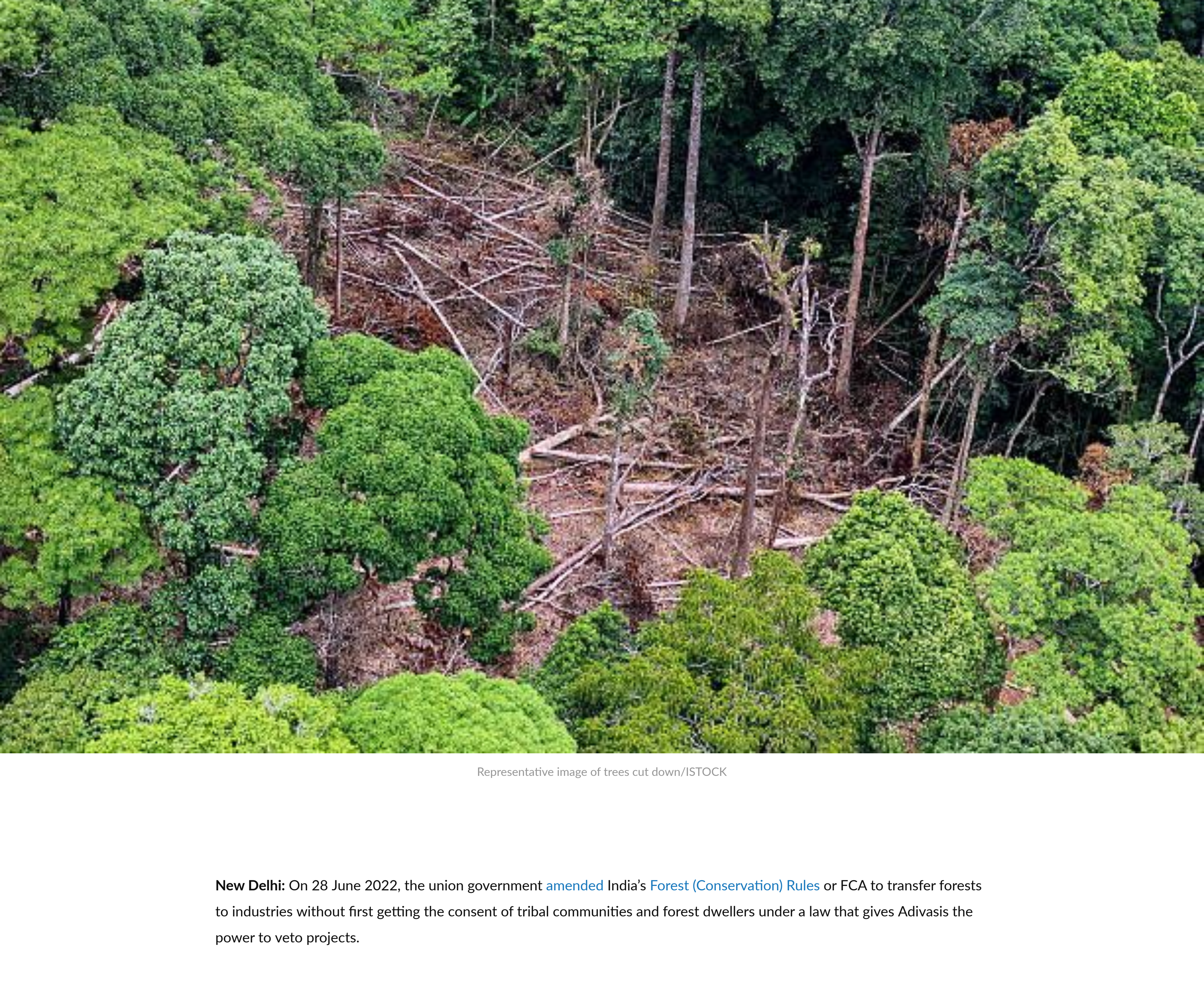


# Minister Says New Forest Laws Don't Dilute Tribal Rights. They Do —And Govt Planned Dilution since 2019

TAPASYA 19 Sep 2022 7 min read [Share](#)

In July 2022, India's environment minister Bhupender Yadav claimed that the legal rights of millions of Indian Adivasis or tribals had not been diluted in new changes to procedures that govern how forests are given to industry. But government documents reveal that doing away with the Centre's responsibility to verify tribal rights had been the environment ministry's intent since 2019.



Representative image of trees cut down/ISTOCK

**New Delhi:** On 28 June 2022, the union government amended India's Forest (Conservation) Rules or FCA to transfer forests to industries without first getting the consent of tribal communities and forest dwellers under a law that gives Adivasis the power to veto projects.

After the news broke, opposition parties, led by the Congress, which promulgated the Forest Rights Act (FRA) in 2006, accused the Modi government of being "at its crony best", destroying forest rights law and disempowering tribal or Adivasi communities.

Union environment, forests and climate change minister Bhupender Yadav responded: "No rule or provisions of any act are being diluted. The process has been streamlined for reducing timelines for arrival at the final decision".

Union tribal affairs minister Arjun Munda accused the Congress party of "trying to mislead the nation by making frivolous and baseless allegations" and said that "at no point, the provisions of FRA 2006 have been diluted".

But documents and internal files accessed by The Reporters' Collective reveal the environment ministry had been planning to dilute its responsibility of ensuring tribal rights under the FRA for over two years.

The FRA requires forest dwellers to provide consent before giving up their land to companies to clear forests.

New amendments to the forest conservation rules have now made it easier for companies to take over forests, bypassing such consent.

**The environment ministry's internal records reveal it termed its responsibility of ensuring tribal rights as "redundant" and diluted its own role in ensuring these rights.**

Demands made by railways, power, coal, steel and petroleum ministries and the NITI Aayog found these regulations to be "bottlenecks" slowing down the process of giving licences to companies to cut forests.

The environment ministry did not consult the tribal affairs ministry—the nodal ministry for the FRA—as it changed the rules in favour of industry. The environment ministry initially wanted to water down the rules further and avoided the topic of tribal rights while drafting the new rules until the law ministry pointed it out.

### 'Redundant Responsibility'

The government's intention from the start—when it began to draft the changes to forest conservation rules in 2021—was to first give the go-ahead to companies to take over forest land in return for money and later present the states with a fait accompli: to secure the consent of tribal communities.

**Documents show the ministry termed its existing responsibility to protect tribal rights while giving forest-cutting licences as "redundant", and officials said the purpose of the new rules was to 'delink' FRA compliance from the union government's licensing process.**

#### ii. Eliminating Redundant Responsibilities of Central Govt.

The procedure of Stage-I and Stage-II clearances has been proposed to be done away with, and the present Stage-I approval will be construed as Prior-Approval of the Central Government. The State Government will ensure that the stated conditions of the Prior Approval imposed by the Central Government have been complied with by the user agency, and issue order to hand over forest land to user agency.

In a June 2021 file noting of the environment ministry, scientist Charanjeet Singh said that the ministry will eliminate its redundant responsibility of ensuring compliance with the Forest Rights Act, 2006.

In addition, following modifications have also been made in the Draft FC Rules 2021 for bringing more efficiency and effectiveness:

**1. State Government to have its own procedure for processing FC Proposals:** In line with spirit of the Act, that prior approval is accorded by Central Government, new provision as below has been made:  
State Government may adopt the PSC model, as given at Schedule-2 or may develop its own procedure which would be state-specific and more effective.

**2. FRA is not linked to prior approval: Settlement of rights under FRA is the responsibility of concerned State Government. Same shall be ensured before diversion/ handing over of the forest land by the State Government and Govt would not link it to prior approval.**

The environment ministry always intended to de-link the Forest Rights Act from the forest licensing process, as this December 2021 internal note from the director general of forests and special secretary of the ministry for environment, forests and climate change indicates.

### Dilution Planned Since 2019

Other government documents reveal that the environment ministry's thinking in delinking FRA compliance from forest licensing—to make clearances easier for the private sector—date back to 2019.

The environment ministry acknowledged as much on record in a meeting convened by the cabinet secretariat, which coordinates between ministries to smoothen decision-making. The meeting included representatives of the coal, power, railway and environment ministries.

Dilutions in 2022 were made on demands from the ministries of railways, power, coal, steel and petroleum and the government's think tank, NITI Aayog, which termed the existing levels of scrutiny of proposals and compliance checks as "bottlenecks", documents show.

**The environment ministry noted in its records: "Eliminating the factors causing substantial impediments in the process of seeking approval under the Forest Conservation Act. For instance, identification of lands for raising compensatory afforestation, field verification of the proposal, multiple queries, etc have been reviewed as major bottlenecks of the process."**

One such hurdle identified by the ministry was its responsibility of ensuring compliance with FRA and affirming rights of tribals before cutting down forests.

8. Current mechanism of process provided under the FC Rules, 2003 has also been scrutinized in the various high level forum, including in NITI AAYOG, Group of Infrastructure etc. wherein it was desired that there is need to further streamline the process of forest clearance by introducing effective strategies and procedures and for eliminating the factors causing substantial impediments in the processes seeking approval under the FC Act. For instance, identification of lands for raising compensatory afforestation, field verification of the proposal, multiple queries etc have been reviewed as major bottlenecks, by way of revising in the existing provisions and if possible by way of revamping the whole processes, to remove such bottlenecks.

From environment ministry's "Justification for proposed FC Rules", June 2021

### Past Safeguards For Adivasi Rights

Forest laws during colonial rule deprived Adivasi and forest-dwellers of legal rights over forests that they traditionally lived in or lived off.

Decades after independence, the government continued to treat Adivasis as "encroachers", leading to everyday harassment, thousands of cases against tribals for petty offences, and, often, mass eviction, in the name of conservation or for mining and other industrial projects in forests.

Responding to the uproar against violent evictions, the ruling alliance of Congress and Left parties (United Progressive Alliance or UPA) passed the FRA in 2006, despite resistance from the forest bureaucracy and other interest groups.

The FRA, placed under the ministry of tribal affairs, formally established the rights of tribal communities and non-tribal forest-dwellers who have been living in a forest area for three generations or 75 years.

But the 42-year-old FCA, implemented by the ministry for environment and forests, allowed the government to give away forests to industries through a discretionary process governed largely by bureaucrats.

**To ensure the FCA synced with the new FRA, the UPA government passed an order in 2009. It said the environment ministry shall not give industries licences to cut forests till it has seen evidence of the state having completed the process of recognising tribal rights.**

Before any land was handed over to industry, tribals and forest-dwellers had to provide consent in writing through the local gram sabha or village assembly.

### The Supreme Court Confirms Adivasi Consent

The Supreme Court in a 2013 judgement, popularly known as the Vedanta order, reaffirmed the need for consent from tribal communities and forest-dwellers through gram sabhas. The order stopped a plan by Vedanta Resources Plc to mine bauxite in the Niyamgiri hills of Orissa after 12 gram sabhas rejected their mining project.

Taking off from the court's ruling, the environment ministry in 2017 codified the need for consent with greater detail in the FCA. This gave the requirement of consent a higher order of legal importance.

According to the 2017 rules, a project developer wanting to cut down forestland, had to first apply to the state for a licence. The district collector would begin the process to ensure the rights of tribal and forest-dependent communities on forestland.

The collector would also start the process to seek the consent of the gram sabha to chop down forests, while the state concerned forwarded the proposal to the environment ministry.

The process had to be wrapped up by the time the environment ministry granted an in-principle approval as part of a two-stage process. Stage 2 or final approval was given only when all these and other statutory and regulatory compliances and conditions (including collecting compensation from industry) had been met and verified.

These provisions have now been discarded.

**The new regulations now allow the environment ministry to issue the licence, collect money from the developer and leave it to the state government concerned to pursue the rights-settlement process and consent from the people affected.**

Industries and forest bureaucracy had attempted to undermine the consent safeguard during the UPA regime, but the tribal affairs ministry, the nodal ministry for FRA, stood in the way.

### New Rules Ignore Adivasi Consent

In September 2019, a meeting of the Committee of Secretaries, including officials from the ministry of coal, power, environment and the cabinet secretary, the union government's top bureaucrat, discussed "major hurdles" in granting approvals under the FCA.

The environment ministry said that it was in the process of delinking FRA from the rules to allow the grant of licences to clear forests. At the time, it was suggested that the environment ministry make these changes after consulting the tribal affairs ministry.

7. Secretary, MoEFCC briefed about the major hurdles being faced in granting approval under the Forest (Conservation) Act, 1980. The State Governments take a lot of time in making land available for Compensatory Afforestation (CA). To remedy the same, Central PSUs are being allowed to use degraded forests and their own land like closed mines and ash ponds for CA. Further, land not notified as forest under the Act but listed as forest in the State Revenue Records may also be taken up for CA. It was suggested that MoEFCC may see if the facilitation being given to CPSUs may also be extended to private sector. State Governments also take a long time in the approval of R&R plan. Secretary, MoEFCC intimated that certificate under FRA is not being insisted upon prior to Stage-I FC. MoEFCC is in the process of delinking FRA from FCA. It was suggested that MoEFCC may carry out proposed changes in their rules, in consultation with Mo Tribal Affairs. MoEFCC is

From the minutes of the meeting of the Committee of Secretaries, 5 September 2019, convened by the Cabinet Secretariat.

However, this time around, the records suggest, the tribal affairs ministry was not consulted when framing the new forest clearance rules, while other ministries, including railways, civil aviation, road transport and highways, power, steel, coal, petroleum and mines and the NITI Aayog were consulted.

The draft rules were sent to the law ministry for review. The law ministry said that the ministry should not use generic terms to rid itself of its responsibilities of ensuring FRA compliance.

been made. These cross references needs to be ensured and the copy of the same may be placed in the file. (f) there are some other points also which have been highlighted at the appropriate places in the body of the draft. The same also needs to be incorporated.

In March, 2022, while vetting a draft of modifications to the Forest (Conservation) Rules, the law ministry highlighted the portion on compliance with the FRA and asked the environment ministry to incorporate this.

(ii) The State Government or Union Territory Administration, as the case may be, after receiving the prior approval (final) of the Central Government under Section 2 of the Act, and after fulfilment and compliance of the provisions of all other acts and rules made thereunder, as applicable including ensuring settlement of rights under the Forest Rights Act 2006 (No. 2 of 2007), shall issue order for diversion, assignment of lease or dereservation, as the case may be.

The portion on FRA compliance in the draft Forest (Conservation) Rules highlighted by the law ministry.

The environment ministry initially wanted to further water down the forest clearance rules by reducing the two-stage process to a single step, leaving it to the states to check whether the project developer had followed up on all the conditions imposed or not.

A file noting shows the environment ministry wanted to "entrust the state government with the process of granting stage-2 approval". Eventually, the ministry settled for a process in which the project developer would pay the Centre for a licence to cut down a forest, before the state government reviewed compliance with all laws, including the FRA.

(c) It has been proposed in rule 9 that the prior approval shall be made in two stages, namely- in principle approval and final approval. But on perusal of draft rules, it appears that the contents and placements as proposed in rule 9 especially with regard to the "in principle approval" and "final approval" appears to be vague and creates doubt which may create problem in future. It needs to be modified which may clearly indicate that from which sub-rule to which sub-rule is with regard to "in principle approval" and from which sub-rule to which sub-rule is with regard to "final approval".

The law ministry pointed out in March 2022 that the approval process proposed by the environment ministry was "vague".

The environment ministry did so after the ministry of law and justice pointed out that the proposed single-step process was "vague and creates doubt which may create problem (sic) in the future".

(Tapasya is a journalist with The Reporters' Collective, a journalism collaborative that publishes in multiple languages and media.)

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