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## [Commentary] Unravelling forest conservation

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5 hours ago



Forest Dept Boat Jetty on Idukki Reservoir, Cheruthony, Kerala

- *Colonisation of the forests devastated them and their inhabitants, the forest dwellers and wildlife. To rein in the recalcitrant state governments for their unchecked forest diversion, the union government declared itself to be the final authority for forest diversion through the Forest (Conservation) Act, 1980.*
- *Allegations of rampant forest diversions and destructions continued without respite; the Supreme Court stepped in and installed the Central Empowered Committee at the apex to further regulate forest diversion even as it outlined the boundaries of what constitutes the forests.*

- *In a historic turnaround, the forest dwellers of over a hundred and seventy thousand villages became the statutory protectors of forests, its wildlife, and biodiversity, over half of all forests, with the Forest Rights Act, 2006. The Forest (Conservation) Amendment Act of 2023 tries to undo this much-awaited democratisation of forest governance.*
- *The views in the commentary are that of the author.*

On February 19, 2024, the Bench headed by Chief Justice D.Y. Chandrachud refused to stay the [Forest \(Conservation\) Amendment Act](#) of 2023 (FCAA). Instead, an interim order was passed upholding the 1996 Supreme Court [ruling](#) in the T.N. Godavarman v. Union of India in W.P. (C) No. 202/1995 defining forest land. The Supreme Court had then defined ‘forest land’ in Section 2 of the Forest (Conservation) Act, 1980 (FCA) to ‘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 of the land.’ Until then, FCA was applicable to ‘any reserved forest’ and ‘any forest land’ irrespective of the legal status of the land, which, in practice, was applied only to the forests notified under the colonial Indian Forest Act, 1927, and similar state laws. FCAA recast this definition, even narrowly doing away with the Supreme Court’s expansive version, and much more. It also renamed FCA as *Van (Sanrakshan Evam Samvardhan) Adhiniyam*.

The Court also directed the environment ministry to ready the consolidated record of forest lands as per its 1996 definition by March 31, digitised and made public by April 15, 2024. Rule 16 of the F.C. Rules 2023 required expert committees constituted by the states and union territories (UTs) to prepare a consolidated record of lands where FCA will apply ‘including the forest-like areas identified by the expert committee constituted for this purpose, unclassified forest lands or community forest lands on which the provisions of the *Adhiniyam* shall be applicable’ within one year. The ministry could [upload](#) the reports from only 20 out of 28 States and 6 out of 8 U.T.s as of April 15.

Earlier too in 1996, the Supreme Court had similarly directed State governments to constitute expert committees within one month to ‘identify areas which are “forests,” irrespective of whether they are so notified, recognised or classified under any law, and irrespective of the ownership of the land of such forest; areas which were earlier forests but stand degraded, denuded or cleared; and areas covered by plantation trees belonging to the government and private persons.’ These expert committees were ‘requested’ to give their report within one month of being constituted. This remained undone even after close to three decades.

In the latest [plea](#) filed in October 2023, the petitioners objected to the inclusion of construction of zoos, wildlife safaris, and ecotourism facilities amongst the list of activities that are exempted from the purview of FCA as these are deemed to be ‘relating to or ancillary to conservation, development, and management of forests and wildlife.’ The petitioners argued that supporting infrastructure for these commercial activities endangers the forests and wildlife. The apex court evaded this, directing that zoo/safaris in forest areas other than protected areas can be finally approved with the Court’s prior permission until the final judgement on this is pronounced by the Bench presided by the same number of judges.

For the moment, the petitioners and respondents heaved a sigh of relief and happiness. The final hearing is set for July 19.

The Supreme Court was [hearing](#) a public interest [litigation](#) (PIL) filed by Ashok Kumar Sharma, IFS (Retd.) & Ors challenging the constitutional validity of the FCCA, alleging that it sounded the ‘death knell’ to India’s forests. They maintained that the FCAA diluted the expansive definition of forest that the 1996 Supreme Court had constructed, thereby excluding about 1.97 lakh sq km from the application of FCA. A few more litigants have petitioned the Court challenging FCAA on various grounds.

In [November 2023](#), Balbir Singh, the Additional Solicitor General of India, assured a bench of Justice B. R. Gavai and Justice P. S. Narasimha that the central government would notify the guidelines for granting exemptions. He assured that no ‘precipitative actions’ would be taken by the union government until further orders on ‘forest’ as understood in accordance with the dictionary sense.



Luxury airconditioned tourist tents at 'Lion safari Camp' in Gir forest. Photo by Rudolph.A.furtado/Wikimedia Commons.

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## The Amendment

The Parliament passed FCAA on July 26, 2023, and it received Presidential assent on August 4, 2023. FCAA restricts the application of FCA to those lands that have been notified as forest and lands recorded in government records as forest on or before October 25, 1980, when FCA was enacted. It excluded forest lands that had been converted to non-forest purposes on or before December 12, 1996, when the Supreme Court gave its version of forest.

FCAA also exempts a list of forest lands and projects from its purview of forest clearance. These include forest lands alongside rail lines or public roads providing access to a habitation, a rail, and roadside amenity up to 0.10 ha; area under tree plantations that are not part of the recorded or notified forest area; and forest land within 100 km of the international border or Line of Control for projects designated as projects of national importance or linear project, up to 10 ha for security-related infrastructure, and defence-related projects or camps for paramilitary forces

or public utility projects not exceeding five ha in a Left Wing Extremism (LWE) affected area. As many as [70 districts](#) in Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Kerala, Madhya Pradesh, Maharashtra, Odisha, Telangana, and West Bengal are designated as LWE areas. LWE, for the first time, now finds pride of place in a central statute.

The F.C. [Rules](#) notified on November 29, 2023, superseded the F.C. Rules, 2022, and took effect on December 1, 2023. They provide for the Constitution of the advisory committee, the regional empowered committee, and the project screening committee, their functions, and a shortened timeline for processing forest diversion projects.

The environment ministry issued three sets of notifications setting out the terms and conditions for (a) [exemption for strategic linear projects](#) of national importance located within hundred kilometres of aerial distance from the international borders, Line of Control or Line of Actual Control, and twelve categories of security-related and public utility infrastructure for Left Wing Extremism affected Districts; (b) [surveys](#) including seismic survey, for mining purposes, exploratory drilling of petroleum mining leases, and (c) pertaining to [assignment of forest land on lease](#) to government as well as the private entities. These notifications largely spell out the administrative procedures, leaving out the substantive issue of forest conservation that is to be decided by the designated authorities of the state and the centre.

## The making of the forests

The colonial Indian Forest Act, 1927, and similar state laws provide for notifying any government-owned forest land, wasteland, or any land as a reserved forest, protected forest, or village forest. While permitted forest rights can only be exercised by forest dwellers in reserved forests, all rights, except those that are expressly banned, are permitted in protected forests. Village forests are reserve forests assigned to village communities. Overall, the trend has been to progressively restrict rights while extracting labour and forest wealth from forest dwellers, legally and illegally.

Around [7,13,789 sq km](#) or 21.71% of the country are notified forests. The [recorded forest area](#) is a bit more, 7,75,288 sq km or 23.58% consisting of 4,42,276 sq km reserved forests (57.05%), 2,12,259 sq km protected forests (27.37%) and 1,20,753 sq km unclassified forests (15.58%). The unclassified forests are largely community forests. Most forests in the north-east are community-controlled.



convert them into revenue villages in 1990, and a similar provision in the Forest Rights Act 2006, most of them are still not converted to revenue villages, often retained as captive labour.

Numerous peoples with their distinct cultures, knowledge, and lifestyles sprang up from within these ecologies, and so too glorious histories of civilizations and resistances.

## Forest and wildlife protection

Forest and wildlife protection emerged as a major global concern some six or so decades ago. The Wildlife (Protection) Act 1972 (WLPA) created the protected area regime within the forests by creating national parks and sanctuaries on notified forests, conservation reserves on government lands, and community reserves on private or community lands. Tiger reserves, an administrative category, became yet another statutory category by an amendment in 2006. Elephant and biosphere reserves and elephant and wildlife corridors are among the newer administrative categories that are increasingly being drawn up within forests and outside them as well.

Around 5.44% of our land area, or [1,78,640.69 sq km](#), is under the Protected Area regime. The bulk of this, 171,600.49 sq km, is carved out of notified forests: 106 National Parks (44,402.94 sq km) 573 Sanctuaries (1,27,197.55 sq km) covering about a quarter of the notified forests and 5.26% of our land area. No rights are permissible in the national parks; rights that are expressly permitted are allowed in sanctuaries, which, over the years, have declined. WLPA does not prohibit the diversion of protected areas for non-forest activities. Ironically, WLPA instead requires relocation of forest dwellers from Critical Tiger Habitats (CTHs) or core areas (43,513 sq km) of (77,052.52 sq km) to keep them inviolate. There were [2,808 villages](#) (2018) in CTHs. As of July 12, 2019, there were [57,386](#) families in these CTHs, of which 42,398 remained inside 50 tiger reserves. Notifications of Tiger Reserves and relocations, tagged 'voluntary,' [continue unabated and unmindful](#) of the applicable laws. At least over [a lakh](#) have been displaced from Protected Areas as of over three decades ago; even an approximate figure is not available.

Conversion of the diverse natural ecosystems, what is left of it, into tree plantations has not only meant loss of biodiversity but also a decline in the livelihood of forest dwellers and driving wildlife out in search of food into human habitations, resulting in loss of human lives and property.

## In the name of forest conservation

The regulatory regime for forest diversion for non-forest purposes that decimates the forests got established with the enactment of FCA in 1980. These forest diversions are to serve the national interests, primarily development and infrastructure. It provides a diversion of forest land, including those from protected areas, for non-forestry activities. The protected area regime and national interests provide high moral grounds to justify forest diversion under FCA.

Consequently, rejection of proposals for forest clearance is very [rare](#).

The FCA enactment followed the 42nd amendment to the Constitution in 1976, which transferred the subject of forests and wildlife from the State List to the Concurrent List. FCA, it was argued then, was necessary to rein in the recalcitrant State Governments who mindlessly diverted forests. The environment ministry estimated that [45,000 sq km](#) of forests were diverted at 1,500 sq km annually between 1950 and 1980 for agriculture, infrastructure, mines, dams, etc. The full-fledged Ministry of Environment and Forests was set up in 1985, and climate change was added to its portfolio in 2014.

Under pressure from the Supreme Court in 2008, the user agencies acquiring forest lands under FCA began to pay the Net Present Value to compensate for the loss of biodiversity at a rate ranging from Rs. 4 lakh to Rs. 10.43 lakh per hectare. This was marginally [hiked](#) in 2022 to Rs.6.70 lakh to Rs. 15.95 lakh per hectare. These funds are deployed for a wide variety of activities, including relocation of forest dwellers and compensatory afforestation, etc. By October 2019, the funds swelled to over [Rs. 74,825 crores](#).

Post-1980, the forest diversion for non-forestry purposes [declined](#) but the diversion continued. The forests all across the country were etched with protests, big and small, by forest communities against FCA-induced forest diversion for dams, mining, industries, and infrastructure, and now increasingly against mindless afforestation. These continue without respite to date. These FCA-based forest destructions not only threatened their livelihoods but also dispossessed millions. Many conservationists and environmentalists also took up cudgels against such FCA-based forest diversions. As a result, hundreds of cases littered the courts all over to protect the forests and against unjust displacements from FCA-based forest destructions.



The Supreme Court ordered the electoral bonds data be released. [Photo](#) by Pinakpani/Wikimedia Commons.

The Godavarman case added another layer of filtration when the Supreme Court constituted the Central Empowered Committee (CEC) to oversee the forest diversions approved under FCA by the state and the union government. It was believed that the CEC would itself rein in the state and the centre, accused of progressively brushing aside forest conservation in favour of forest diversion for ‘development’. However, forest clearance got fine-tuned for speedy disposal, overwhelmingly in favour of diversion.

About [5,928.57 sq km](#) of forests were diverted under FCA during the period from 1980 to 2007. That was when history was made; democracy was ushered in the forest. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) [Act](#), 2006 (FRA) became operational with the notification of its Rules in 2008.

## **Democracy in the forests: Conservation that is to be**

In early 2002, the Supreme Court, responding to intervention applications in the Godavarman case, asked the states, ‘What steps have been taken to clear the encroachments from the forest.’

The environment ministry, not to lose the opportunity, [ordered the states](#) to evict ineligible encroachers and all post-1980 encroachers from forest lands in a time-bound manner and, in any case, not later than September 30, 2002. This misadventure resulted in a nationwide struggle, resulting in FRA.

In 2004, the environment ministry [acknowledged](#) in its affidavit in the Godavarman Case that ‘the historical injustice done to the tribal forest dwellers through non-recognition of their traditional rights must be finally rectified’. In March of 2006, the environment ministry lost its monopoly over forests. ‘All matters, including legislation, relating to the rights of forest-dwelling scheduled tribes on forest lands’ was carved out from the subject of forests and allotted to the ministry of tribal affairs through an amendment to the [Government of India \(Allocation of Business\) Rules, 1961](#).

FRA emerged to explicitly undo this ‘historical injustice’ that resulted from inadequate recognition of ‘forest rights on ancestral lands and their habitat...in the consolidation of state forests during the colonial period as well as in independent India.’ FRA, adopting the 1996 Supreme Court definition of forests, [defined](#) ‘forest land’ as ‘land of any description falling within any forest area and includes unclassified forests, un-demarcated forests, existing or deemed forests, protected forests, reserved forests, Sanctuaries and National Parks.’ It recognised all customary and traditional forest rights – individual and community rights – on all forest lands, including in the Tiger Reserves. The habitation level Gram Sabha is to democratically determine and demarcate the forest rights that FRA recognised and vested in them.

In its 2009 [report](#) to the FAO, the environment ministry conceded that the FRA ‘assigned rights to protect around 40 million ha of community forest resources to village-level democratic institutions. The fine-tuning of other forest-related legislation is needed with respect to the said Act.’ Both these works have yet to be done. On the contrary, FRA has been systematically undermined. About 5 to 6 million ha have so far been titled under FRA, a mere 13-15% of the minimum potential in over 15 years.

FRA introduced ‘[community forest resource](#)’ or ‘CFR,’ a new category of forests, in revenue and forest records, the ‘forest land within the traditional or customary boundaries of the village.’ FRA, being a latter central law, overrides IFA, WLPA, and FCA. Most importantly, FRA added yet another powerful layer to forest conservation: the Gram Sabhas of some 1.79 lakh habitations who are now the statutory authority to protect, conserve, and manage the forest, wildlife, and biodiversity falling within their customary and traditional boundary. In addition, the ‘local body’

that constitutes the Biodiversity Management Committee entrusted with the promotion of conservation, sustainable use, and documentation of biological diversity under the [Biological Diversity Act, 2002](#), in the CFR forests is now the Gram Sabha.



Gram sabha in Mendha (Lekha), Gadchiroli. Forest Right Act added a powerful layer to forest conservation: the Gram Sabhas, the statutory authority to protect, conserve, and manage the forest, wildlife, and biodiversity falling within their customary and traditional boundary. [Photo](#) by Subodh Kulkarni/Wikimedia Commons.

The Environment Ministry issued an [order](#) in 2009 requiring Gram Sabha certification for completion of recognition of all forest rights under FRA and consent for the forest diversion as prerequisites for the admissibility of proposals under FCA. The most celebrated instance of FRA protecting the forests from FCA is the Niyamgiri case of Odisha. The Supreme Court, affirming FRA and the statutory requirement of consent of Gram Sabhas, asked Gram Sabhas of Dongaria and Kutia Kondh Adivasis to consider the diversion of 660.749 ha of forests under FCA for bauxite mining in favour of Odisha Mining Corporation Ltd. in 2013 that had been earlier granted final forest clearance under FCA. The Gram Sabhas refused to consent; the project was dropped, and the Niyamgiri forests were protected and conserved.

FRA compliance and Gram Sabha consent for the forest diversion got progressively downgraded to being required only for final approval (Stage II) by 2022. Around [3,05,945.38 hectares](#) of forest land have been approved for non-forest use under the Forest (Conservation) Act, 1980, from 2008-09 to 2022-23 without complying fully with FRA. FCAA has now made Gram Sabha's consent a farce by making it a post-final approval step.

FRA also introduced 'Critical Wildlife Habitat' (CWH), a new category within the protected area regime. CWHs, too, are 'required to be kept as inviolate for the purposes of wildlife conservation.' But unlike WLPA, once notified and forest dwellers are relocated, CWHs cannot be diverted subsequently under FCA. This is the only instance in any law where a forest category cannot be diverted for non-forest activities. The environment ministry, the authority to determine and notify CWHs, issued [the guidelines](#) belatedly in 2018 under pressure from the Court; no CWH has been notified to date.

## **Fast-tracking forest for business**

Conservation, meanwhile, is now driven by the high-growth ecotourism sector tapping into the rapidly increasing disposable income of a minuscule global leisured class. To this, harvesting carbon credits from forests to offset carbon emissions that threaten the earth itself is being leveraged as a good investment, netting huge future returns. Forest and forest conservation are now to be recast as a grand wood lot that sinks carbon efficiently (a dubious notion) to be sold as carbon credits in the global market to sustain carbon emissions. The FCAA serves this growth trajectory as an effective ease-of-doing business instrument to generate capital faster for its onward deployment and even more profits.

The exclusion of a range of forest lands and projects from the purview of FCA by FCAA opens up three arenas of major social conflicts. No FRA compliance and Gram Sabha consent is required for diversions in a range of forests that are now excluded. No Gram Sabha consent is required for the range of projects that are excluded now. But Gram Sabhas, and not the forest department, is the statutory authority over the CFR forests in these forest lands. Where FCA is now applicable, state governments are now pushed into an absurd situation. They are left with FRA compliance for diversion and settlement of rights after the final forest clearance and before finally handing over the land to the user agency. FCAA will unleash increased conflicts and violence.



FRA also introduced 'Critical Wildlife Habitat' (CWH), a new category within the protected area regime. Deer Park on the way to Tirumala. [Photo](#) by Hemanth/Wikimedia Commons.

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## Selective amnesia

Despite 75 years of independence, a forest regime to colonise the forests and her peoples for control over and exploit its rich resources refuses to be dismantled and reformed, despite democracy being ushered in by law into forest governance. All that has primarily changed is a transition from timber extraction to that of its minerals, both over ground and underground, and water, to fuel the rapacious growth juggernaut that engines development and its concomitant urbanisation. Its fallouts contributing to global warming have propelled forests to be prime carbon sinks for mitigating global warming. Ecotourism adds to the lure of profits.

FRA, too, faces constitutional challenge (yet to be argued) in the Supreme Court since 2008. Instead, in 2019, the Supreme Court [ordered](#) the eviction of about a million claimants whose claims had been rejected. The state governments conceded that these required to be reviewed as rejections were mostly unlawful; the eviction order is [kept on hold](#). Significantly, FRA, too, has

been challenged by conservationists and former forest officials just as the FCAA 2023, and that too in the name of forest conservation.

By not conforming to the legal reality that the rights-negating colonial forest regime has been legally knocked down in parts of the forests that fall under the purview of FRA and the historical and ground reality, the governments and the courts are bent on entering a perilous twilight zone. The Supreme Court, even while expanding the scope of the 1996 Godavarman case to cover various aspects of forests as a continuing mandamus, failed to address the historical injustice to forest dwellers and the rights of forest dwellers. Neither are the statutory institutions of democracy as the Gram Sabhas and forest communities duly recognised while addressing forest conservation despite the precedent set in the aforementioned Niyamgiri case.

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*The author examines natural resource conflicts and governance issues.*

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**Banner image:** Forest Department Boat Jetty on Idukki Reservoir, Cheruthony, Kerala. The Supreme Court has directed the environment ministry to ready the consolidated record of forest lands as per its 1996 definition. [Photo](#) by Timothy A. Gonsalves/Wikimedia Commons.

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