

Forests as a Public and Free Good

Forests run the risk of getting privatized with the proposed Forest Conservation (Amendment) Act, 2021.

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Abstract

The need of the hour for any country is to protect and preserve its forest for combating the climate crisis. Although India is nowhere close to achieving its target of ensuring that 33 percent of its geographical area is under forest cover as laid in its National Forest Policy, 1988, it does not appear to be making much effort towards it. The recent proposed amendments in the Forest Conservation Act, 1980 run the risk of making forests a contested market commodity among private players and big corporations like railways and highway authorities. It further runs the risk of deteriorating the status of forests, taking away the element of public good, and putting it in the category of private goods and thus making it excludable and rivalrous.

Keywords- Forest Conservation Act, 1980, Public Good, Private Good

This article critically analyses the recently proposed amendments by the Ministry of Environment, Forest and Climate Change in the Forest Conservation Act, 1980 by applying the economic principles of public and private goods, and establishes constructive critique on how the amendments run the risk of changing the economic character of the forest and making it a private good.

A public good, also called a social good or collective good, is a good that is both non-excludable and non-rivalrous (Oakland, 1987). Forests can be considered a public good because of the benefits they produce such as oxygen, flora-fauna diversity, maintaining the food chain, a carbon sink, water retention, balancing the climate change, protection against hazards like tsunamis (mangrove forest) and many others. Everyone is using these benefits without hampering the usage of the other, thus usage by one does not exclude usage by another and hence it is also non-rivalrous.

It is important to have an understanding of how the recently proposed amendments in the Forest Conservation Act (FCA), 1980 by the Ministry of Environment, Forest and Climate Change of India (MoEFCC, October 2, 2021) can not only deteriorate the status of forests but also run the risk of putting forests in the category of private goods thus making it excludable and rivalrous. The proposed amendments are complex and are designed to provide a cushion to influential agencies, both government and private. The amendment puts the public good component of forests at risk.

The Forest (Conservation) Act (FCA) 1980 was an outcome of the Centre's realization in the 1980s that deforestation causes ecological imbalance and leads to environmental deterioration. The FCA provides for the conservation of forests and matter connected therewith or ancillary or incidental thereto. The Act restricts the powers of the State Government or other authorities to de-reserve forests or use them for non-forest purposes. Under the Act, non-forest purpose means the breaking up or clearing of any forest land or portion thereof for any purpose other than reforestation (Forest Conservation Act, 1980). A clear definition of forests was not provided in the Act. Until 12 December 1996, forests that were notified under the Indian Forest Act, 1927 or any other local law and managed by the Forest Department were considered forests by the State Governments, Union Territory Administrations, and the Central Government. It was only in 1995 when T.N. Godavarman Thirumulpad approached the Supreme Court of India with a writ petition for protection of forest land in the Nilgiris district of the state of Tamil Nadu that the definition of the word 'forest' changed (Writ Petition (Civil) No. 202/1995, T.N. Godavarman Thirumulpad vs. Union of India and Ors). In response to the petition, the Supreme Court emphasized that the word 'forest' must be understood according to the dictionary meaning of the term irrespective of the nature of the ownership and classification thereof. The Oxford English dictionary meaning of forest says 'any large area covered chiefly with trees and undergrowth' (Hornby, 1995). This verdict brought private lands and land acquired by the Railways, Ministry of Road Transport and Highways, National Highways Authority of India, and many such agencies under the purview of the Act, thereby making it mandatory to seek permission from the Central Government for any non-forestry purpose of the land. Thus, these authorities lost full control of their land.

The consultation paper on proposed amendments to Forest Conservation Act, 1980 (MoEFCC, October 2, 2021) strongly highlights two points: first, private landowners and agencies harbour resentment because they are unable to use their own land, and second, even when they get permission to use their own land they have to arrange for and provide an equivalent land area of non-forest land or pay compensatory levies. Therefore, even when the land is suitable to undertake plantation activities, private landowners and agencies opt to keep it devoid of

vegetation so that it never gets included in the definition of 'forest'. According to the Ministry, this is suppressing a lot of opportunities for forestation (MoEFCC October 2, 2021, Consultation Paper on Proposed Amendments to FCA, 1980). Here, it can be argued and noted that the present private owners of forest lands are looking for avenues to get exclusive property rights over the land so that it can be used for non-forest purposes. If private owners are hunting for such opportunities, why would private owners whose land is still not considered a forest, look forward to growing vegetation on their land? In the present context, private owners understand that land is the most valuable asset one can own and they will not undertake any plantation activities which run the risk of putting their land at stake. If the government truly intends for private owners to take up afforestation activities, it could have tried to provide an incentive to those private owners whose land is not classified as 'forests' yet, to grow vegetation to support timber development and the carbon sink.

Further, the consultation paper on proposed amendments in FCA, 1980 reflects that large-scale plantations are required in all the possible lands outside the government forests for creating additional carbon sinks of 2.5 to 3.0 billion tons of CO₂ equivalent by 2030 and reducing the foreign exchange for import of wood, which presently amounts to 45,000 crore INR. The paper also acknowledges the fact that the country has just 24.56 percent of land as forest cover as against the required 33 percent which was the target of the National Forest Policy, 1988 (MoEFCC, October 2, 2021).

Through the proposed amendments, the government is trying to avoid the most contentious part of the Act which is Sub-sections 2(ii) and 2(iii) which provide restrictions on the dereservation of forests or the use of forest land for the non-forest purposes and provide the Central Government with the authority to make decisions on matters of mining and non-forest matters.

The consultation paper on the proposed amendments to the FCA, 1980 favours new technologies such as Extended Reach Drilling (ERD) which enables the exploration and extraction of oil and natural gas by drilling holes deep beneath the forest land without entering it. The Ministry of Environment, Forest and Climate Change in the consultation paper considers this process as 'environment friendly' and claims to not disturb the soil and water aquifers of the forests (MoEFCC, October 2, 2021). However, the Ministry is unable to provide any supporting example or data of instances when the technology was used and scientific evidence of not disturbing the forest's natural resources. The consultation paper also does not talk about any regulatory measures that would be applied to make ERD activities less disturbing to the ecosystem. However, there are ample examples where the companies do not conduct biodiversity assessments and public hearings as mandated by the Environment Impact Assessment (EIA) Notification of 2006 which emphasizes illegal practices and flouting of rules during such explorations and extractions. The recent case of the Assam gas and oil leak (Baghjan gas leak) that took place on 27 May 2020 provides strong evidence of how oil companies flout the laws once they acquire permission for oil exploration and extraction (Karmakar, 2020).

The Ministry also considers that activities like ERD must be kept outside the purview of the Act. It is difficult here to establish criteria according to which certain activities can be exempt from the application of the Act. The Ministry further considers activities such as zoos, safaris, forest training infrastructures as ancillary to the conservation of forest and wildlife and argues that these should not be considered 'non-forest-activity'. In short, the government has argued on behalf of various agencies and has considered justifying the usage of forest land for activities with non-forestry purposes.

The government through the consultation paper on proposed amendments in FCA, 1980 proposes to allow private owners to construct structures for bonafide purposes including forest protection measures and residential units up to an area of 250 sq meters as a one-time relaxation (MoEFCC, October 2, 2021). It needs to further elaborate on the term 'bonafide purposes' by giving a proper definition and examples as the term is presently very arbitrary. This arbitrariness will be used as a loophole by private parties to ensure that trading and exploitation of forest land become easy.

India has lost over 1.6 million hectares of tree cover between 2001 and 2018 according to the non-profit organisation World Resources Institute. This information was established by using datasets collated by the University of Maryland, Google, US Geological Survey, and NASA, besides satellite images (Moudgil Manu, 2019). Forests generate public and free goods for society. Non-rivalry means that one person's consumption of a good does not diminish the ability of another person to consume and benefit from the same good at the same time. Diluting the existing provisions of the FCA will make forest land a tradable market commodity and hence will leave it vulnerable to profiting, manipulations, and exploitations. With this vulnerability, forest lands will move from the hands of one private party to another, at times corporations will buy forest land for private agencies and this will lead to a lot of market distortion. Gradually, it will move to the hands of large private influential players having diplomatic relationships with government officials and politicians. The state would lose control of this trading.

Zoos and safaris in excess disturb the biodiversity of forests and make them vulnerable to anthropogenic activities, especially of the urban populace who do not understand the fragility of forests and biodiversity. With these interventions, the forests will be full of plastic, the most dangerous negative externality of urban entertaining in forests. The disturbed biodiversity will lead to an imbalance in the intricate web of the ecosystem, leading to a deteriorating forest belt. This will lead to poor oxygen production capacity, disturbed food chains, poor carbon sink, and weak protection against climate change and hazards. Thus, the whole character of the forest will be negatively modified from having the capacity to produce larger public goods to producing goods that can be availed of only by those who can pay. Thus, the larger benefits of forests that make them a 'Public Good' will soon be diminished and will be available only to those who can pay.

The demand for forest land will increase congestion and will further push public and free goods towards being private goods. This will change the economic character of forests and forest land. The proposed amendments in the FCA will give exclusive property rights to the private owners of the forest land and the mining companies. They will have open access to forest resources, leading to overconsumption and loss of efficiency over time. By giving exclusive property rights, the government is incentivizing the individuals to apply for the same, which will lead to overexploitation of the resource from a social and ecological perspective. Natural forest resources yield scanty rents (if only economic activities are considered) but have huge potential – ecologically and environmentally, without which lives can be at stake. Humans cannot survive without oxygen, water, and biodiversity.

Stakeholders such as forest-dwellers and tribes residing in the Fifth and Sixth Schedule regions of the country are completely neglected in the consultation paper of proposed amendments in the FCA. As of 2019, out of 4.22 million individual claims under The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, (FRA), 2 million claims are rejected, observed the 2019 Down To Earth report by Sahu and Kukreti (Sahu and Kukreti, 2019). Even after a decade of implementation of FRA and after district-level committees have been formed for easing the process, the lack of progress on this front shows a dearth of political

commitment to it. Although the Act exists, the tribals continue to face difficulties regarding their recognition and receiving land entitlements and rights. This highlights the differential treatment being given to different stakeholders; agencies like railways and private owners receive a preferential form of treatment while forest dwellers and tribals do not. According to Article 14 of the Constitution of India which ensures equality before the law (The Constitution of India, Part III, Fundamental Rights), it is the constitutional obligation of the state to ensure that people are not discriminated against and that its citizens have the benefit of all the laws that protect them. Regarding the granting of land rights, the state is blatantly favouring private owners and corporations.

Existing legislations like the FRA and Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA) empower the Gram Sabha to take decisions on any developmental activities in their region. The proposed amendments in the Forest Conservation (Amendment) Act, 2021 will be directly in conflict with the provisions and processes under the FRA and the PESA as they empower private owners and agencies to easily bypass the gram sabha decisions in the tribal regions. The conflicting situations arising in the region will have unfair consequences for the tribal populace.

In conclusion, the proposed Amendments in the Forest Conservation Act need to be viewed in a larger framework considering the economic, social, ecological, and environmental impact.

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