

Forest Conservation (Amendment) Act: Real conservation or Dilution of forest rights

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Executive Summary

The Forest (Conservation) Amendment Act, 2023, abbreviated as FCAA, has been in the news headlines as it seeks to make major changes in India's environmental governance. While the legislative intent emphasises achieving national Net Zero targets by 2070 and fulfilling India's commitment to creating a carbon sink of 2.5 to 3.0 billion tons of CO₂ equivalent by 2030, the amendments introduce critical impacts. Specifically, critical impacts of 5 provisions of FCAA have been thoroughly discussed in the following text: Section 1A, exclusion of 'invisible' categories, 100 km border belt exemptions, redefinition of forestry activities, and Green Credit Rules (GCR) linkage.

Firstly, FCAA restricts the legal 'forest' definition to lands recorded after October 1980, stripping protection from millions of hectares of 'deemed forests'. Secondly, it risks mass ecological degradation by granting 100km border exemptions for strategic projects, particularly threatening Northeast India. Thirdly, by reclassifying safaris and eco-tourism as 'forestry activities', it permits permanent construction in fragile zones. Fourthly, it undermines indigenous sovereignty by bypassing Gram Sabha consent, contradicting the FRA 2006. Finally, through Green Credit linkages, it promotes market-based afforestation over traditional conservation and customary land rights.



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2. Background

The trajectory of forest management in India has been a historical struggle between centralised state control and the decentralised survival needs of its indigenous populations. The original Forest (Conservation) Act of 1980 was a reaction to the unregulated diversion of forest land for industrial and agricultural expansion by state governments. For 16 years, the Act was interpreted strictly, covering only lands formally classified as forests.

However, the landmark 1996 Supreme Court ruling in *TN Godavarman Thirumulpad v. Union of India* expanded this scope, mandating that the Act apply to all areas satisfying the dictionary meaning of 'forest' regardless of ownership or legal notification. This judicial intervention brought 'deemed forests,' sacred groves, and unclassed community lands under the protective umbrella of the central government's oversight. It had a positive result, which was, the effective curbing of the fragmentation of biodiversity hotspots that existed outside official records. So this was all about the background, which is culminating into a problem described below.

Problem: The Forest (Conservation) Amendment Act, 2023, represents a legislative attempt to 'remove ambiguities' arising from this expansive judicial interpretation (PRS Legislative Research 2023). But, critics argue it does so by drastically narrowing the definition of protected land.

Regulatory and Analytical Framework

The amendment limited the Act's application to two categories of 'protected lands' (Kukreti 2024):

- 1) Notified Forest Land - Any land that has been declared or notified as a forest under the Indian Forest Act, 1927, or any other law currently in force.
- 2) Recorded Forest Land - Land that is not notified but has been recorded in Government records (Revenue or Forest Department) as 'forest' on or after October 25, 1980.

Due to the aforementioned definition of 'protected land', 5 provisions of FCAA assume importance:

Provision of the FCAA	Impact
Section 1A of the Act limits the Act's scope to lands notified under the 1927 Act or recorded as forest in government records on or after October 25, 1980.	This cut-off date is pivotal. Land that was recognized as forest in the dictionary sense but never formally notified by a state government after 1980 is now excluded. As a result, experts estimate that nearly 1.97 lakh sq. km (roughly 28% of India's forest cover) sits outside the two official categories mentioned (CarbonCopy 2024).
Exclusion of 'Invisible' Categories, specifically impacts Unclassed forests, 'Forest-Like' Tracts (Pre-1980), and Sacred Groves.	These categories of land are now at high risk. Unnotified forests in the dictionary sense lose their protective cover, as stringent regulations that previously protected these areas from commercial abuse are diluted
Exempts 'strategic linear projects' within 100 kilometers of India's international borders from forest clearance.	This is perhaps the most significant threat to indigenous sovereignty in the Northeast. In states like Nagaland, Meghalaya, and Mizoram, almost the entire land area falls within this 100km zone.
Redefines zoos, safaris, and eco-tourism as 'forestry activities.'	Effectively bypasses the requirement for Gram Sabha consent for land diversion.
Close linkage to Green Credit Rules (2023) which is a market-based mechanism allowing 'credits' for planting trees on 'degraded' land.	Individuals and corporations can use these credits to satisfy compensatory afforestation requirements for projects that destroy natural forests elsewhere, incentivising a shift toward market-based mechanisms.

Below is an infographic which shows the statistical impact of the main provisions of the FCAA:

 Statistical Impact of FCAA 2023 			
Metric	Statistical Data	Relevance to FCAA 2023	Source
Total Forest Cover	713,789 sq km (21.71% of geographical area).	Serves as the baseline for conservation targets and Net Zero goals.	ISFR 2021/2023
Northeast Forest Cover	~64.66% of regional area; holds 21% of India's total forest.	Vulnerable due to the 100km border exemption for strategic projects.	ISFR 2021
Annual Forest Loss (NE)	1,020 sq km total loss in the Northeast between 2019-2021.	Amendment may increase this by removing regulatory barriers for infrastructure.	ISFR 2021
Unclassed/ Deemed Forest	~197,159 sq km (approx. 25% of total forest area).	At risk of losing protection if not recorded in govt files since 1980.	FSI Data
Carbon Sink Requirement	2.5 to 3.0 billion tons of CO2 eq by 2030.	Used to justify commercial afforestation via Green Credit Rules.I	India's NDC (PIB)

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Policy Options Analysis

1) Mandatory Harmonisation and Stage I Consent Reinstatement

This option proposes amending the Forest Conservation Rules of 2022 to explicitly require a certificate of complete FRA settlement and Gram Sabha consent before any 'In-principle' (Stage I) approval is granted for forest diversion.

Advantages
- Restores the democratisation of local communities. - Better long-term conservation than state-led oversight alone. - Reduces the risk of long-term legal battles and social unrest

Disadvantages
Slows down project timelines for infrastructure

2) State-Level 'Deemed Forest' Expert Committees and Cadastral Surveys

This option focuses on the 2024 Supreme Court interim order, requiring all state governments to complete the identification of all 'deemed forests' through Expert Committees before

any further land is diverted under the FCAA 2023 exemptions.

Advantages
- Protects community-managed lands - Prevents the loss of critical biodiversity - Provides much-needed regulatory certainty for industries and infrastructure agencies as it eliminates the 'legal ambiguity' of land status

Disadvantages
- Operational delays - Scope of corruption

3) Reform of the Green Credit

This option accepts the market-based approach of the FCAA but introduces rigorous, site-specific ecological and social safeguards. It mandates that Green Credit projects use indigenous species, maintain a minimum 10-year survival period, and provide a 25% 'Community Credit Share' to the local Gram Sabha.

Advantages	Disadvantages
• Rightfully benefits the local communities • Improves the quality of afforestation	• Operational delays • Scope of corruption

Recommendations

- 1) The Ministry of Environment, Forest and Climate Change (MoEFCC)
 - a) It must issue an official memorandum stating that the FCAA 2023 does not override the Forest Rights Act 2006.
 - b) To prevent misuse, the 100km border exemption should be strictly limited to 'linear' projects essential for national defense, such as border roads and tactical outposts.
 - c) There is an urgent need to redefine the Green Credit metric from a simple tree count to an ecosystem-service-based index that accounts for biodiversity, water recharge, and the presence of native biota.
- 2) The Ministry of Tribal Affairs (MoTA) must provide technical and financial assistance to Gram Sabhas in the Northeast and border areas to map their Community Forest Resources (CFR) and establish their historical land records before they are targeted for 'strategic' diversion.
- 3) Governments in states like Nagaland and Mizoram should pass legislative resolutions clarifying that the FCAA 2023 exemptions do not apply to lands held under customary tenure without the explicit consent of the state assembly and local councils.

Conclusion

The Forest (Conservation) Amendment Act, 2023, represents a pivotal moment in the history of Indian environmental law, one that prioritises centralised developmental goals over the decentralised conservation model that has evolved over the last four decades. While the Act is framed as a necessary step toward meeting India's global climate commitments and national security needs, the dilution of the definition of 'forest' and the systematic bypass of the Forest Rights Act create a dangerous regulatory vacuum.

The path forward requires a re-balancing of power. True forest conservation cannot

happen without the informed and voluntary participation of the communities that live within those forests. By harmonising the FCAA 2023 with the Forest Rights Act, reinforcing the role of the Gram Sabha, and ensuring that all ecologically significant lands (whether notified or not) remain under the protection of the state, India can achieve its climate and security goals without sacrificing its constitutional commitment to social justice and its rich natural heritage.

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