

F. No. FC-11/61/2021-FC
Government of India
Ministry of Environment, Forest and Climate Change
(Forest Conservation Division)

Indira Paryavaran Bhawan,
Aliganj, Jorbagh Road,
New Delhi - 110003
Dated: 02nd October, 2021

To

1. Addl. Chief Secretary (Forest)/Principal Secretary (Forests), All States/UTs
2. PCCF, All States/UTs
3. Regional Officers, All IROs, MoEFCC
4. All concerned

Sub: Inviting comments/suggestions on proposed amendments in Forest (Conservation) Act, 1980 – reg.

Madam/Sir,

I am directed to inform that Central Government proposes to bring certain amendments in the Forest (Conservation) Act, 1980, to streamline the provisions of the Act. During the intervening period of 40 years, there has been considerable change in the ecological, social and environmental regimes in the country. Efforts have been made during the intervening period to keep the provisions of the Act in tandem with the dynamic changes in the ecological and economic needs of our country by introducing appropriate legislations in the form of rules and guidelines. Yet, to effectively fit into the present circumstances, particularly for accelerated integration of conservation and development, it has become necessary to further amend the Act. A Public Consultation Paper on the proposed amendments in the Forest (Conservation) Act, 1980 is enclosed herewith and a copy of the same uploaded on the website of the Ministry, which may kindly be accessed at www.parivesh.nic.in.

In view of the above, I am further directed to request the State Governments, UT Administrations and all concerned to share their comments/suggestions on the proposed amendments in the Forest (Conservation) Act, 1980 within a period of 15 days from date of issue of this letter. Comments may kindly be submitted through email at fca.amendment@gov.in.

This issues with the approval of the competent authority in the Ministry.

Encl: As above.

Yours faithfully,
Sd/-

(Sandeep Sharma)

Assistant Inspector General of Forests

Copy to:

1. Director (Technical), NIC with a request to upload the paper in Ministry website

Consultation Paper
on
Proposed amendments in the
Forest (Conservation) Act, 1980

Ministry of Environment, Forest and Climate Change

Government of India

IP Bhawan

Jorbagh Road, New Delhi

October, 2021

A. BACKGROUND

1. The Forest (Conservation) Act was promulgated and made applicable from 25th October 1980 (hereinafter referred to as the Act). The preamble of the Act describes that this is an Act to provide for the conservation of forests and for matter connected therewith or ancillary or incidental thereto. While presenting the Bill before the Parliament (Bill no. 201 of 1980) the statement of objects and reasons given to this Bill was as follows:

STATEMENT OF OBJECTS AND REASONS

Deforestation causes ecological imbalance and leads to environmental deterioration. Deforestation had been taking place on a large scale in the country and it had caused widespread concern.

2. *With a view to checking further deforestation, the President promulgated on the 25th October, 1980, the Forest (Conservation) Ordinance, 1980. The Ordinance made the prior approval of the Central Government necessary for de-reservation of reserved forests and for use of forest land for non-forest purposes. The Ordinance also provided for the constitution of an advisory committee to advise the Central Government with regard to grant of such approval.*

3. *The Bill seeks to replace the aforesaid Ordinance.*

2. In 1988 the Act was amended. After the amendment in 1988, the form of the Act as on date is **annexed**.

3. Till 12.12.1996, the general practice was that the State Governments, Union territory Administrations and Central Government used to apply the provisions of the Act only to the forests notified under the Indian Forest Act, 1927 or any other local law, and to forests which were under the management control of the Forest Department. After the Hon'ble Supreme Court in their Judgment dated 12.12.1996 passed in the Writ Petition (Civil) No. 202/1995 in the matter of T.N. Godavarman Thirumulpad *versus* Union of India and Others, clarified the scope of the applicability of the Act, the provisions of the Act became applicable to:

- a. all areas which are recorded as 'forest' in any government record irrespective of ownership, recognition and classification. This included areas notified as forest under any law;
- b. all areas, other than those covered under sub-para (a) above and conform to the '*dictionary*' meaning of 'forest'.
- c. all areas which are identified as 'forest' by the expert committee constituted in pursuance of the 12.12.1996 order of the Supreme Court and affidavit and have been filed in the Supreme Court in 1997 accordingly.

The State Governments also started applying the provisions of the Act to any other area identified by the Expert Committee in each State as 'forest' and to lands that were covered under the dictionary meaning of forest. The above court order was also interpreted to presume that the Act is applicable over plantations in non-forest land.

4. As per the provisions of the Act, prior approval of Central Government is mandatory before a State Government or UT Administration makes an order for diversion, dereservation or assignment of lease of any forest land.

B. Issues for consultation

1. In the present context all Government Forest lands (whether notified or not) and area recorded as forest in any government record come under the ambit of the Act. Besides, the lands bearing vegetation irrespective of ownership and classification also attract the provisions of the Act, if same are considered forest based on some locally defined criteria. Identification of such land is subjective and arbitrary to some extent. This leads to ambiguity and has been observed to be resulted into lot of resentment and resistance particularly from private individuals and organizations. Considering any private area as forest, would restrict the right of an individual to use his/her own land for any non-forestry activity. Many a times the proposed change in the land use is not considered by Government even under the provisions of the Act. Even if the same is allowed, the owner has to provide equivalent non-forest land and other compensatory levies, for use of his own land for intended non-forestry purpose. This has further lead to the development of a tendency to keep most of the private lands devoid of vegetation even the land has scope for planting

activities. In view of this, it is felt extremely necessary to define the scope of application of the Act in an objective manner.

2. There is a strong resentment in the Ministry of Railways, Ministry of Road, Transport & Highways, etc. for interpretation of the scope of applicability of the Act over the right of way (RoW) of railways, highways, etc. In most cases, these RoWs are claimed to have been formally acquired by these developmental organisations long before 1980, with a specific purpose to construct / establish rail line and roads. Part of the land was used for the purpose it was acquired before 1980 and the remaining part of the acquired land was left as such for future constructions/expansions. Trees or forest existing on the leftover acquired land were, thus, left as such (prior to 1980) and further the blank areas were planted under different government schemes. In order to ensure protection to such plantations over the acquired land, in quite a few cases, these were notified as protected forests. With the enactment of the Act and further clarification on its scope of applicability by Hon'ble Supreme Court, all such land requires prior approval of Government of India for the non-forestry use. Thus, a landholding agency (Rail, NHAI, PWD, etc) is required to take approval under the Act as well as pay stipulated compensatory levies such as Net Present Value (NPV), Compensatory Afforestation (CA), etc. for use of such land which was originally been acquired for non-forest purposes. Ministry is considering now to exempt such lands acquired before 25.10.1980 from the purview of the Act.
3. (i) It is also a fact that India being largely a tropical country, there is a natural tendency of a land to grow spontaneous wild growth of vegetation, which if left on its own will develop a forest like vegetation over a period of time, bringing such unattended lands under the category of deemed forest as per dictionary meaning. Such lands would continue to attract provisions of the Act. Therefore, people in general have a tendency to prevent any tree like vegetation growing on their land.

(ii) The required pace of tree plantation to keep the target in National Forest Policy, 1988 of achieving one-third area of the country under forest & tree cover attainable, is far from satisfactory. The forest and tree cover of the country at present is around 24.56% of the geographical area and there is a practical limitation to increase forest cover. Therefore, more and more non-

forest lands including land under private ownership are required to be brought under the tree cover for ecological, economic and environmental benefits.

(iii) Further considering Nationally Determined Contribution (NDC) target for the country, of creating carbon sink of additional 2.5 to 3.0 billion tons of CO₂ equivalent by 2030 and to reduce the flow from foreign exchange for import of wood and wood derivatives to the tune of approximately Rs 45 thousand crore, it is necessary that extensive plantations and afforestation are encouraged in all possible available lands outside the government forests. But to ensure this, there is a need to dispel the apprehension among tree growers that vegetation or tree plantation raised on their private/ non forest lands will not attract the provisions of the Act.

4. In India there are different land records of forests. Many a times there are contrasting entries of the same land in revenue and also in the forest records. This has created a scope of mis-interpretation and litigation. Therefore, clarity is needed in these terms also as to the applicability of the Act to them. Revenue records have to statutorily reflect the occupier and the nature of land including forest. It is strongly felt that this recording in revenue record of plantation, afforestation etc. on any non-forest land after 12.12.1996 remain outside the purview of the Act to encourage forestry activities (including agroforestry and other tree planting systems).
5. Alongside many roads and railway lines, strip plantations have been developed and notified as forests. In many areas road/rail side amenities/habitations have been developed all along such lands. These facilities (both private and government) need access (approach roads/rail) and that invariably pass through the strip of notified forest area along the road/rail line. Since the activity is a non-forestry use of forest land, these require prior approval of Central Government. The requirement of forest land in each case is around 0.05ha. Ministry is of the view that, an exemption up to 0.05ha for each such accesses may be allowed to alleviate the hardship of the residents/business owners.
6. Current provisions of the Act are regulatory and not prohibitory and hence there are no provisions in the Act for prohibiting non-forestry use of certain areas which require higher degree of protection due to their uniqueness and

high landscape integrated value. Moreover, during the intervening period of more than 40 years, since the enactment of the Act, there has been considerable change in the ecological and environmental regimes. Policies and programmes towards the conservation, protection and development of the natural resources have witnessed transformational shift across the globe to cope up with the changing ecological, social and economic environment. In order to address such dynamic changes, Ministry is considering introducing an enabling provision in the Act to keep certain pristine forests showcasing rich ecological values intact for a specific period.

7. Development of infrastructure along the international border areas is crucial for keeping our borders intact and to uphold the sovereignty of the country. Given the present scenario of obtaining approval for non-forestry use of forest land, many a times, strategic and security projects of national importance get delayed resulting in setback to development of such infrastructure at critical locations. Whether, such projects should be exempted from obtaining prior approval of Central Government under the provision of the Act and allow the States to permit non-forest use of forest land for implementation of such strategic and security projects that are to be completed in a given time frame.
8. It is further noted that in case of mining leases, the application of Sub-Section 2(ii) and 2(iii) of the Act together create confusion in many respects. Sub-Section 2(iii) provides for assignment of lease, whereas Sub-Section 2(ii) provides for use of forest land for non-forestry purpose. As per the present provision for permission under Sub-Section 2(iii), only the NPV of the forest land is payable. Further during the process of considering such permission there is less scope for due diligence. Whereas for permission under Sub-Section 2(ii), a very detailed examination of a proposal using the Decision Support System and various methodologies prescribed in rules/guidelines and in pursuance of some court orders are adopted. In addition to the NPV of the forests, other compensatory levies such as Compensatory Afforestation (CA) money, CA Land, safety zone plantation, etc. are payable. Thus, a mining leaseholder may take permission under Sub-Section 2(iii) and hold a large chunk of forest area just by paying the NPV money. It is also not clear whether such permission under Sub-Section 2(iii) will be construed as 'forest clearance' or not, and 'environment clearance' under Environment (protection) Act, 1986 will be allowable as per Hon'ble Supreme Court to

avoid a *fait accompli* situation, in cases where Sub-Section 2(iii) permission has been taken but the lessee has not even applied under Sub-Section 2(ii). Originally, Sub-Section 2(iii) was meant to be applied to lease related to purpose such as plantation (where breaking or clearing of land is not the purpose) and not to other lease whose purpose is to break / clear the forest land such as mining lease. But later, Sub-Section 2(iii) was started to be applied to mining and such other types of leases also. Therefore, it is proposed to delete the Sub-Section 2(iii) of the Act and clarify that sub-section 2 (ii) can be invoked for any kind of lease assignment having an intention of using for non-forestry purpose.

9. New technologies are coming up such as Extended Reach Drilling (ERD), which enables exploration or extraction of oil & natural gas deep beneath the forest land but making drilling holes from outside the forest areas and without impacting the soil or aquifer that supports the forest in the forest land. Ministry considers use of such technology is quite environment-friendly and as such should be kept outside the purview of Act.
10. To ease the grievances of the private individuals whose lands come within the State specific Private Forests Act or coming within the purview of dictionary meaning of forest in terms of Supreme Court order dated 12.12.1996 and accordingly where FC Act is applicable now, it has been proposed to allow such owners for construction of structures for bonafide purposes including forest protection measures and residential unit upto an area of 250 sq mtr as one time relaxation.
11. The clause of explanation to 'non-forestry use' in Section 2 of the Act, identifies activities which are to be regarded as non-forestry activity and which are not for the purpose of that Section. It is understood that activities which are ancillary to conservation of forests and wildlife should not be considered as non-forestry activities. Accordingly, it has been proposed that, establishment of zoos, safaris, Forest Training infrastructures etc should not come within the meaning of "non-forestry activity" for the purpose of Section 2(ii) of the Act.
12. Imposition of compensatory levies is mandatory so that in due course the forest land and the ecosystem services that it provides are made good after the land allowed for use for non-forestry purposes. It is felt that double imposition

of any levy such as at the time of renewal of lease for same purpose is not rational.

13. Despite clear penal provisions in the law, there have been instances of violation of the provision of the Act. Ministry is of the view that to make the punishment more stringent to further discourage offences under the law. In this regard, offences under Section 2 is now proposed to be made punishable with simple imprisonment for a period which may extend to one year and the offence shall be cognizable and non-bailable. It has also been proposed to introduce the provisions for penal compensation in addition to the punishment under section 3A to make good for the damages already made. Also, it is proposed that in case any authority in the State Government or Union territory Administration is involved in the offence under the Act, amount to be received as penal compensation shall be deposited in the National CAMPA rather than in State CAMPA.
14. Survey and investigation activities are procedures prior to considering or proposing actual non-forestry activity on the forest land. In many of such activities the forest land is used for a very short time and also there is no perceptible change in the forest land or the biodiversity thereon. But since such activities are considered non-forestry activity, prior approval of central Government is sought following formal procedure which in fact takes a lot of time. To address this, particularly in such activities where the impact is not perceptible, the provisions of the Act may not be applicable.

Annexure

THE FOREST (CONSERVATION) ACT, 1980
(with amendments made in 1988)

An Act to provide for the conservation of forests and for matters connected therewith or ancillary or incidental hereto.

Be it enacted by Parliament in thirty-first Year of the Republic of India as follows:-

1. Short title, extent and commencement-

- (1) This Act may be called the Forest (Conservation) Act, 1980.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall be deemed to have come into force on the 25th day of October 1980.

2. Restriction on the de-reservation of forests or use of forest land for non-forest purpose

Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing -

- i. that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;
- ii. that any forest land or any portion thereof may be used for any non-forest purpose;
- iii. that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;
- iv. that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reforestation.

Explanation - For the purpose of this section, "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for-

- a. the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;
- b. any purpose other than reforestation;

but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.

3. Constitution of Advisory Committee -

The Central Government may constitute a Committee consisting of such number of persons as it may deem fit to advise that Government with regard to

- i. the grant of approval under Section 2; and
- ii. any other matter connected with the conservation of forests which may be referred to it by the Central Government.

3A. Penalty for contravention of the provisions of the Act -

Whoever contravenes or abets the contravention of any of the provisions of Section 2, shall be punishable with simple imprisonment for a period, which may extend to fifteen days.

3B. Offences by the Authorities and Government Departments -

1) Where any offence under this Act has been committed -

(a) by any department of Government, the head of the department; or

(b) by any authority, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the authority for the conduct of the business of the authority as well as the authority;

shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render the head of the department or any person referred to in clause (b), liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

- 2) Notwithstanding anything contained in sub-section (1), where an offence punishable under the Act has been committed by a department of Government or any authority referred to in clause (b) of sub-section (1) and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any officer, other than the head of the department, or in the case of an authority, any person other than the persons referred to in clause (b) of sub-section (1), such officer or persons shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

4. Power to make rules -

- 1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.
- 2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

5. Repeal and saving -

- (1). The Forest (Conservation) Ordinance, 1980 is hereby replaced.
- (2). Notwithstanding such repeal, anything done or any action taken under the provisions of the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.
