

EXPLAINER: WHAT ARE THE PROPOSED AMENDMENTS TO THE FOREST CONSERVATION ACT ABOUT?

Relevant for: Environment | Topic: Environmental Conservation, Sustainable Development, and EIA

There have been at least two major amendments to the FCA — in 1988 and 1996. File photo for representation. | Photo Credit: [M. Sathyamoorthy](#)

What is the Forest Conservation Act?

The Forest (Conservation) Act, 1980, came into force to address deforestation. Though the Indian Forest Act has been in force since 1927, it was geared to allow the colonial British administration to control the extraction of timber and not aimed at preserving forests or addressing deforestation.

While States had already notified forest land, the FCA made it necessary to get the Centre's permission for using such forest land for "non forestry purposes" and the creation of an advisory committee to recommend such re-classification.

Has the FCA ever been amended?

There have been at least two major amendments to the FCA — in 1988 and 1996. Till 1996, 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 or control of the Forest Department. However what constituted a "forest" was dramatically expanded following a Supreme Court judgment in a petition filed by the late Godavarman Thirumulpad. Now, "forest" also included all areas recorded as "forest" in any government record, irrespective of ownership, recognition and classification; all areas that conformed to the "dictionary" meaning of "forest", and all areas which are identified as "forest" by an expert committee constituted by the Supreme Court following the 1996 order. This judgment also paved the way for the calculating the net present value, or the economic value of the portion of forest being razed for development work that had to be paid by project proponents; the creation of a compensatory afforestation fund; and providing non-forestry land in lieu of the diverted forest.

Why is the FCA again being amended?

The essential tension in the FCA is that the state is committed to a principle of increasing forest cover, and this makes it harder to access land for infrastructure projects by States and private entities.

India's aim is to have at least 33% of India's geographical area under forest and tree cover, and increasing the latter is a major thrust. So far, forest cover is around 22% and because increasing core forest land is increasingly hard, the mode of expansion includes expanding the notion of what constitutes forest land. Thus, even degraded lands, if they have been recorded anywhere as "forest" in land records count, and even commercial plantations or regions with trees of a certain canopy cover and density count as "forest".

On the other hand, with more land coming under the definition of "forest", it's becoming harder for State Governments or private industry to use land that falls under the definition of "forest" for

non-forestry purposes. Through the years, this has given rise to multiple instances of litigation, as well questions on the legal definition of “forest”. States have been told to provide a definition of what constitutes a forest, but several haven’t given them because this has political consequences. All of this has led to conflicting interpretations of the FCA through the years.

What is the latest amendment about?

In March, the Centre moved a draft Cabinet note that sought to update the FCA. This wasn’t made public but portions of it were reported in some newspapers. This week, the Environment Ministry has released a “consultative paper” that spells out proposed changes. This is open to public comment for a fortnight. Broadly, it proposes to exempt certain categories of infrastructure project developers from approaching the Centre for permission to use forest land for non-forestry purposes.

For instance, it has proposed absolving agencies involved in national security projects, border infrastructure projects, land owned by the Railways or the Road Transport Ministry that was acquired before 1980 or when the Act came into force.

There were several instances of portions of land being used for afforestation projects requiring the owners of such land to take permission from the Centre for diverting it for non-forestry uses and even pay the mandatory compensatory cess as well as arrange for alternate land. There were also instances, the Ministry claims, of national security projects that were on hold due to the requirement of Central approval.

India, as part of its climate change action plan, has committed to create a carbon sink to lock in 2.5 to 3 billion tonnes of CO₂ by 2030. This can be achieved only through planting trees on private land and the current laws pose an impediment to encouraging private landowners to grow more trees.

The current laws also have complicated definitions of the forest land that those leasing mining spaces could hold, and there were also developments in drilling technology that helped scope certain tracts of forest land without causing fundamental damage to the underlying aquifers. Thus, they too could be exempted.

The Ministry has proposed some provisions where the penalties of non-compliance could include jail terms, but the overall tenor of the proposal is to make it a little easier to use forest land for non-forestry purposes. However, this still requires approval by the Cabinet and possibly the Parliament.

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Environment Ministry told the SC earlier this month that 7 hydroelectric power projects can go ahead

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