

# Fading green



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Forest (Conservation) Amendment Bill is rich in rhetoric, but dilutes regulations to protect green cover

GREENWASHING REFERS TO actions that claim to provide positive environmental benefits but don't achieve much. With the Forest (Conservation) Amendment Bill 2023, the government is going one step further and indulging in "green-gutting" — using pro-environment language while actually undermining regulations. The Bill introduces a preamble that sounds wonderfully pro-conservation. But then it goes on to nullify the Supreme Court's 1996 *Godavarman* order, and provides exemptions that further weaken the already emaciated regulations around forest diversion.

The Forest Conservation Act, 1980 (FCA) originated in the belief that state governments were being too liberal in doling out forest land for non-forest activities, particularly for cultivation. The 42nd constitutional amendment brought forests into the concurrent list, and that enabled the passing of a central Act that required states to get the central government's approval before diverting forests for non-forest activities.

Did the passage of the FCA lead to reductions in forest diversion? Yes and no — in the initial years, diversion definitely slowed down. But post-1991, the pressure to allow diversion for so-called "development projects" (highways, dams, mining) increased, and only diversion for agriculture (somehow not seen as "developmental") was prevented. Nevertheless, the regulatory process did slow down diversions. The compensatory afforestation requirement was largely window dressing — plantations often failed to come up, but it served to expand the estates of the forest departments.

In 1996, in *TN Godavarman*, the Supreme Court asked whether the FCA was being consistently applied to all forests. There are pockets across the country where land covered by natural forest has not been officially recorded as "forest" under any law, so its diversion was not being regulated under the FCA. By one estimate, this could be as much as 25 per cent of the country's forest cover. The Court brought this land under the ambit of the FCA by ordering that the actual vegetation should determine FCA applicability. This eventually led to the creation of a new legal category called "deemed forest" land. This is no doubt a clumsy approach, because the physical sta-

tus is ephemeral and administrative machinery works best with records. Moreover, it created a misplaced fear among private forest owners and even plantation owners that they would lose control over their lands, even for sustainable timber harvest. Nevertheless, the 1996 order did ensure that all government lands covered by forest were regulated against casual diversion.

The passage of the Forest Rights Act in 2006 brought in an additional regulator: The local community that held rights over the forest. In the *Niyamgiri* case in 2013, the Supreme Court reaffirmed the local community's right to have a say, and the Vedanta bauxite mining project was cancelled as village after village refused consent for diversion.

But the developmental lobby, within the government and outside, has always chafed against all such regulation, and since 2014, the process of gutting the FCA (and other environmental regulations) began in full swing. A discourse of "delays in clearances" was created to build pressure. The lack of any clear thresholds or criteria in the FCA regarding when diversion may be permitted was conveniently exploited. The Forest Advisory Committee was openly exhorted to keep developmental and national security concerns paramount. The *Niyamgiri* judgment notwithstanding, consent from local rights-holders was almost always bypassed. In most cases, district collectors reportedly certified that no community rights existed, when in fact the process of community rights recognition under the FRA was not even initiated. Further, "linear projects" such as railway lines and highways were exempted from obtaining community consent by the Environment Ministry. The Andhra Pradesh High Court struck down this exemption, but this judgment has been simply ignored.

Over the past year, two formal steps have been taken to complete the green-gutting process. In June 2022, new rules were notified under the FCA. These rules further relaxed the guidelines for compensatory afforestation, making it into a "business" or rather a game where any land can be shown as compensating for any project anywhere. Furthermore, the rules relegated local community consent to a footnote, to be carried out independent of, rather than as a prerequisite to, the "forest

clearance". The Chairperson of the National Commission for Scheduled Tribes opposed this trampling of Adivasi rights. But he resigned last month, allegedly under pressure.

With this backdrop, the changes proposed in the FCA Amendment Bill 2023 that has already been passed by the Lok Sabha become easier to understand. Inserting the preamble is the greenwash, while the main amendments actually undermine regulations. One amendment reduces the scope again to land "recorded as forest", rendering the *Godavarman* order meaningless. This means that the *Niyamgiri* forests can be taken up for mining now, as most of them are not notified forests — a problem bedeviling the majority of forests in Odisha as well as the northeastern states.

Another amendment provides complete exemption for linear projects meant for "strategic project of national importance and concerning national security" within 100km of the national border, a carte blanche to not just the military but the government as such, because anything can be described as "strategic" and of "national importance". A third exempts security camps in Maoist-affected districts — when deforestation caused by security camps is emerging as a major issue in the Bastar region.

A fourth, more hilarious, amendment treats the creation of zoos and safaris as still being a "forestry purpose" and leaves space for more such hilarity. The greenwash of compensatory plantations remains, but as the Great Nicobar case shows, the FCA Rules of 2022 allow the loss of Nicobarese tropical forest to be compensated by plantations in Haryana, and these can now be converted to safaris or zoos as well!

It is unlikely that even the Rajya Sabha can stop the green-gutting juggernaut. But it is hoped that the wider public will see through the verbiage of the preamble, ignore the false drumbeat of development, national security and strategic importance, and mobilise for the long battle ahead to regain our right to govern our environments and forests in a meaningful way.

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