

SOME CLARIFICATIONS ON OUR COMMENTS ON THE PROPOSED FOREST CONSERVATION ACT AMENDMENT BILL

There are two comments that have come as feedback to our comments on the proposed FC Act Amendment Bill. We give our response to the comments, which will help clear the confusion or doubts that may have arisen.

1. (b) the land that is not covered under clause (a), but has been recorded in Government record as forest, as on or after the 25th October, 1980:

Responses have come that all forests that have been recorded irrespective of ownership prior to 25th October 1980 as well as tracts recorded as forests after 25th October 1980 are covered under this clause. The emphasis being given to the words “as on”. While a more clear expression/language would have been preferable, we understand that it does not mean forests recorded on the specific date of 25th October 1980 and that recorded thereafter only but means all forests that have been recorded as a forest prior to the cutoff date being included as forests. Therefore, the word “as on” or “on” 25th October 1980 will have the same implication. We therefore infer that all such forests irrespective of ownership recorded as forests prior to 25th October 1980 or after are covered under the proposed FCA Bill.

However, the Godavarman 202/96 judgement states that any **forest based on dictionary meaning** or **where the land is recorded as forests** will be considered to be a forest. To quote:

“The Court while placing reliance on the T.N. Godavaraman Thirumulpad v Union of India, (1997) 2 SCC 267 case charted the meaning of “forests” under Section 2 of 1980 Act to include three categories:

- (a) statutorily recognised forests including reserved or protected forests which are covered under Section 2(i);
- (b) any “forest” as defined in accordance with dictionary sense, which is covered under Section 2(ii) to (iv); and
- (c) an area which is actually classified as a forest in government records.”

Therefore, as per the 202/96 order, forests are all those areas which are designated forests as per records AND have the nature or characteristics of forests as per dictionary meaning, irrespective of ownership over the land.

Therefore, if the FCA Bill is brought into force, only those areas classified as forests as per records on 25th October, 1980 or after will continue to get protection under the FC Act while large tracts of forests having **the nature of forests but not recorded as forests in any records will be removed from the ambit of “forests” and therefore will not have the protection of the FC Act. The amended FCA, if adopted, will have systematically and legally removed these forests from legal protection of the FC Act.**

This is clearly stated in our comments which are reproduced below:

“With this, the proposed amendment drastically reduces the ambit and scope of the original Forest Conservation Act. It dilutes the Hon. Supreme Court’s 1996 landmark Godavarman judgement which widened the scope of the FCA to apply to any land recorded as forest by the government irrespective of its ownership. The bill proposes to limit the Act’s ambit to include only those lands which are recorded as forests on or after 25 October 1980. This will have the effect of removing the protection of the Act from millions of hectares of land that have the characteristics of forests, but are not notified as such. thereby exempting significant forests across the country. Put another way, bulk of the Aravallis, tiger habitats of the Terai and Central India, the Western and Eastern Ghats and the biodiversity hotspots of the north-east, will no longer be considered ‘forest’ and can potentially be sold, diverted, cleared, felled, utilised, exploited without any regulatory oversight, if the bill as passed.”

Therefore, whether it is stated as “**as on**” or “**on**” large tracts of forests such as the Aravalis, Terai, Central India, Western and Eastern Ghats, north-east forests, mangroves across the coasts not recorded/classified as forests will be potentially up for conversion, minus the FCA safeguards. Many of such forests are under private ownership or if with the government have not been recorded as forests in any document.

2. [The second comment that has come up is that “the Godavarman judgement is an overreach and if we can suggest ways to amplify the coverage of FCA but reduce its ambiguity on what is a forest \(which is so wide and all-encompassing that it makes the implementing officers fearful and paranoid.\)”](#)

We respond to this comment by saying that such fears are notional and justification for various officers and agencies to continue to allow diversions. Further, addressing this does not require any legislation. It is brought to attention that after the Godavarman judgement, the Supreme Court, dated 12.12.1996, the Hon'ble Court has directed the State Govt. to:

- (I) Each State Government should constitute within one month an Expert Committee to:
 - (i) Identify areas which are "forests", irrespective of whether they are so notified, recognised or classified Page 11 (J) Appln. Nos.14 & 16 (THC) of 2013 NGT (WZ) under, any law, and irrespective of ,the ownership of the land of such forest;
 - (ii) Identify the areas which were earlier forest, but stand degraded, denuded, cleared and,
 - (iii) to identify the areas covered by plantations.

Further clear instructions were given on parameters to be applied in identifying a forest which was to be used by the states and their expert committees.

<https://indiankanoon.org/doc/143789117/?type=print> (Please refer this link)

However, this direction has not been carried out by all states. The few reports, submitted, are inadequate. Most of the reports are not thorough or complete or have not followed the prescribed parameters. Areas identified as forests, as per prescribed parameters have not been included. It would be more in order, given its mandate, that the MoEFCC try to get order of the Hon'ble Supreme Court scrupulously implemented rather than create new legislation apparently in a bid to address this. .

The FCA amendment, instead, proposes to emasculate the SC judgement, and limit the ambit and scope of the FC Act.

Further, there may be a study conducted as to how almost no agency is abiding by the order of the Hon'ble Supreme Court and diverting and allotting such lands which are recordically forests and having nature of forests as per dictionary meaning covered by the 202/96 judgement, for non-forestry purposes such as issuing *pattas* for residential buildings, permissions for luxury hotels, resorts, housing and just about any purpose!

Further, these *pattas* are issued and diversions done and other diversions of land without consulting the Forest Department causing large infrastructure to come up in wildlife and elephant corridors. This further exacerbates human wildlife including human elephant conflict, causing loss of life and immense damage to property. We can safely say, that if the FC Act and the judgment in 202/96 had been followed, this would have been minimised.

Chinnakanal, Pallivasal and Kattapana in Munnar, Kerala present classic examples of the above.

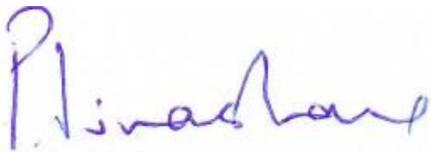
A simple analysis of land use and its allotment in Chinnakanal, Pallivasal and Kattapana will reveal that many of these areas were recorded as forests in government records. Yet, in past 20 years these lands have been given *pattas* and permissions for diversion by the Revenue Department without any consideration to the Supreme Court order in 202/96. In fact the Central Committee report referred in our comments as ***Annexure "B" of Annexure-I***, except for recommendation (1), none of the other recommendations were implemented and instead many of the lands have been diverted and allotted for non-forestry purposes.

If the FCA amendment Bill it will open the floodgates, facilitating further such diversions as there will be no legal safeguards or recourse.

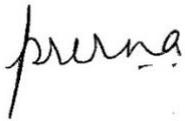
While the example given is of Kerala, there are innumerable such examples across the country. To establish this, the need of the hour is to institute a study to collate, interpret such data across the country, which, we fear, will show the extent of the diversions and forest loss, and may well be damning to/implicate various agencies on violations of the FC Act and Supreme Court order in the 202/96 case.

We once again reiterate that the present Forest Conservation Act 1980 along with the judgement in the Supreme Court order in WP 202/96 is a strong piece of legislation and requires no amendment but better and effective implementation.

Yours sincerely,



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