

# Legislative Brief

## The Forest (Conservation) Amendment Bill, 2023

The Forest (Conservation) Amendment Bill, 2023 was introduced in Lok Sabha on March 29, 2023. It was subsequently referred to a Joint Parliamentary Committee for examination.

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June 28, 2023

### Highlights of the Bill

- ◆ The Bill amends the Forest (Conservation) Act, 1980 to make it applicable to certain types of land. These include land notified as a forest under the Indian Forest Act, 1927 or in government records after the 1980 Act came into effect. The Act will not be applicable for land converted to non-forest use before December 12, 1996.
- ◆ It also exempts certain types of land from the purview of the Act. These include land within 100 km of India’s border needed for national security projects, small roadside amenities, and public roads leading to a habitation.
- ◆ The state government requires prior approval of the central government to assign any forest land to a private entity. The Bill extends this to all entities, and allows the assignment to be made on terms and conditions specified by the central government.
- ◆ The Act specifies some activities that can be carried out in forests, such as establishing check posts, fencing, and bridges. The Bill also allows running zoos, safaris and eco-tourism facilities.

### Key Issues and Analysis

- ◆ The Bill excludes two categories of land from the purview of the Act: land recorded as forest before October 25, 1980 but not notified as a forest, and land which changed from forest-use to non-forest-use before December 12, 1996. This provision may go against a 1996 Supreme Court judgement on preventing deforestation.
- ◆ Exempting land near border areas for national security projects may adversely impact the forest cover and wildlife in north-eastern states.
- ◆ A blanket exemption for projects like zoos, eco-tourism facilities, and reconnaissance surveys may adversely affect forest land and wildlife.

## PART A: HIGHLIGHTS OF THE BILL

### Context

The Indian Forest Act, 1927 was framed with the objective of managing timber and other forest resources.<sup>1,2</sup> It provides for state governments to notify any forest land they own as reserved or protected forests. All land rights in such land are subject to the provisions of the Act. The Forest (Conservation) Act, 1980, was enacted to prevent large-scale deforestation.<sup>3</sup> It requires the central government’s approval for any diversion of forest land for non-forest purposes.<sup>4</sup>

Forest cover refers to land greater than one hectare in size with tree canopy density (percentage of land covered by tree canopy) is greater than 10%.<sup>5</sup> India’s total forest cover underwent a net increase of 38,251 sq. km from 2001 to 2021. This increase was mainly in terms of open forest cover, where tree canopy density is 10-40% (see Table 1). In the same period, forest cover with canopy density above 40% declined by 10,140 sq. km.

**Table 1: India's forest cover (in sq. km)**

Tree canopy density	2001	2021	Change
10% to 40% (Open)	2,58,729	3,07,120	4,391
Above 40%	4,16,809	4,06,669	-10,140
<b>Total forest cover</b>	<b>6,75,538</b>	<b>7,13,789</b>	<b>38,251</b>

Note: 2001 data, unlike 2021 data, does not distinguish between moderately dense forest (above 40% to 70% canopy density) and very dense forest (above 70% canopy density). This table combines 2021 data for very dense and moderately dense forest for comparison. Sources: India State of Forest Report for 2001 and 2021; PRS.

The Standing Committee on Science and Technology, Environment and Forests (2019) noted that pressure on forest land has increased due to several reasons such as industry demands, agriculture, and demand for forest produce.<sup>6</sup> The 1980 Act specifies certain restrictions on diverting forest land for non-forest purposes. The Bill modifies the criteria for including and excluding forest land from the purview of the Act.<sup>7</sup> It also expands the list of forest activities that will be permitted on forest land. The Bill has been referred to a Joint Parliamentary Committee (Chair: Mr. Rajendra Agrawal).

## Key Features

- **Land under the purview of the Act:** The Bill provides that two types of land will be under the purview of the Act: (i) land declared/notified as a forest under the Indian Forest Act, 1927 or under any other law, or (ii) land not covered in the first category but notified as a forest on or after October 25, 1980 in a government record. Further, the Act will not apply to land changed from forest use to non-forest use on or before December 12, 1996 by any authority authorised by a state/UT.
- **Exempted categories of land:** The Bill exempts certain types of land from the provisions of the Act, such as forest land along a rail line or a public road maintained by the government providing access to a habitation, or to a rail, and roadside amenities up to a maximum size of 0.10 hectare. Forest land that will also be exempted includes: (i) land situated within 100 km from international borders, Line of Control, or Line of Actual Control, for construction of a strategic linear project of national importance and concerning national security, (ii) land up to 10 hectares, for constructing security-related infrastructure, or (iii) land proposed to be used for constructing defence related projects, camps for paramilitary forces, or public utility projects up to five hectares in a left-wing extremism affected area. These exemptions will be subject to the terms and conditions specified by the central government by guidelines.
- **Assignment/leasing of forest land:** Under the Act, a state government requires prior approval of the central government to assign forest land to any entity not owned or controlled by government. In the Bill, this condition is extended to all entities, including those owned and controlled by government. It also requires that prior approval be subject to terms and conditions prescribed by the central government.
- **Permitted activities in forest land:** The Act restricts the de-reservation of forests or use of forest land for non-forest purposes. Such restrictions may be lifted with the prior approval of the central government. Non-forest purposes include use of land for cultivating horticultural crops or for any purpose other than reforestation. The Act specifies certain activities that will be excluded from non-forest purposes, meaning that restrictions on the use of forest land for non-forest purposes will not apply. These activities include works related to the conservation, management, and development of forest and wildlife such as establishing check posts, fire lines, fencing, and wireless communication.  
  
The Bill adds more activities to this list such as: (i) zoos and safaris under the Wild Life (Protection) Act, 1972 owned by the government or any authority, in forest areas other than protected areas, (ii) ecotourism facilities, (iii) silvicultural operations (enhancing forest growth), and (iv) any other purpose specified by the central government. Further, the central government may specify terms and conditions to exclude any survey (such as exploration activity, seismic survey) from being classified as non-forest purpose.
- **Power to issue directions:** The Bill adds that the central government may issue directions for the implementation of the Act to any authority/organisation under or recognised by the centre, state, or union territory (UT).

## PART B: KEY ISSUES AND ANALYSIS

### Certain types of forest land may be excluded from the purview of the Act

Act: Section 2  
Bill: Clause 4

The Forest (Conservation) Act, 1980 provides for the conservation of forests by putting certain restrictions on the use of forest land. The Bill amends the Act to cover specific forest lands, and exclude certain forest lands. Land that will be covered under the Act is: (i) land declared/notified as a forest under the Indian Forest Act, 1927 or under any other law; (ii) land recorded as a forest in a government record on or after October 25, 1980. This implies that any land that was recorded as a forest before this date, but not notified as one by the state government, will be excluded from the purview of the Act. The Bill also exempts from its purview forest land that was changed to non-forest purpose on or before December 12, 1996 by any state/UT authority. These exclusions may be going against a Supreme Court judgment (1996) in two aspects.

#### Exclusion of land that has been recorded as a forest before October 25, 1980, but not notified as such

While clarifying the scope of the 1980 Act, the Supreme Court (1996) held that the Act intends to check deforestation that disrupts the ecological balance. Therefore, the Act must apply to all forests irrespective of the nature of ownership or classification.<sup>8</sup> This includes all forests as per the dictionary meaning of ‘forest’ and any

area recorded as forest in the government record irrespective of the ownership. Therefore, excluding land that was not notified as a forest before October 25, 1980 from the purview of the Act, but recorded as such in government records, may go against the judgment. Restrictions that seek to preserve forests will not apply to land excluded under the Bill. This may have adverse impacts on the forest cover and wildlife.

### **Exemption of land which changed from forest use to non-forest use before December 12, 1996**

The Supreme Court (1996) also directed that all ongoing non-forest activities in forests must be stopped if they have only received approval from the state government and not the central government. It noted that all such activities would be in violation of the 1980 Act.<sup>8</sup> The Bill states that land which changed from forest to non-forest use before the date of the judgement will be exempted from the purview of the 1980 Act. In carving out this exemption, the Bill may be going against the judgement.

This also implies that any forest land upon which a non-forest activity was approved between October 25, 1980 and December 12, 1996 (under the 1980 Act) would not be covered by the Act. For example, if a mining lease was approved on a forest land within this period, the land would be outside the purview of the Act (even if such lease has expired). Therefore, non-forest activities can be undertaken on such land without requiring any approval under the Act.

### **Exempted categories of land**

Under the 1927 Act, decisions regarding diversion of forest land for non-forest purposes are taken by the state government.<sup>9</sup> The 1980 Act requires additional prior approval from the central government. The Bill adds that such approval will not be required when forest land is diverted for constructing (i) strategic linear projects (such as roads or railways) of national importance and concerning national security within 100 km from India's borders; (ii) security-related infrastructure up to 10 hectares; or (iii) defence related projects, a camp for paramilitary forces, or public utility projects as specified by the central government, not exceeding five hectares in a left-wing extremism affected area.

These exemptions will be subject to the terms and conditions specified by the central government. There may be some issues with such exemptions. We discuss these below.

### **Exemptions near border areas would cover large parts of the north-eastern region**

In India, the north-eastern states have the highest proportion of forest cover with respect to the total geographical area of the state. Mizoram has 85% forest cover, followed by Arunachal Pradesh (79%), Meghalaya (76%), Manipur (74%), Nagaland (74%), and Tripura (74%).<sup>10</sup> These states are also biodiversity hotspots.<sup>6</sup> Over the years, forest cover in the north-eastern states has been declining due to shifting cultivation, felling of trees, natural calamities, anthropogenic pressure, and developmental activities.<sup>2</sup> Allowing diversion of forest land for construction of security-related projects and within 100 km of the international border/LoC/LAC may hasten the decline in forest cover in these areas. The 100 km distance from international borders would cover most of these states as well as Sikkim, with 47% forest cover, and Uttarakhand, with 45% forest cover.

While compensatory afforestation may seek to undo this loss in forest cover, it fails to replace the loss of biodiversity that can result from the destruction of forest habitats.<sup>11</sup> Further, linear projects can reduce biodiversity in an area greater than their own footprint.<sup>12</sup> Each kilometre of road can have a detrimental effect on up to ten hectares of habitat.<sup>12</sup>

### **Forest clearance exemptions for security projects may not reduce overall delays in such projects**

The Bill removes the mandatory central government approval for diversion of forests in certain cases. This means that decisions regarding the diversion of forest land would be taken by state governments and the UT administration only. According to the Statement of Objects and Reasons of the Bill, there is a need to fast-track strategic and security-related projects. However, such projects get delayed due to various reasons. Further, giving a blanket exemption for all security related projects may not be appropriate given the impact it may have on forest cover and biodiversity.

A significant proportion of delays in forest clearances takes place at the state level. The Ministry of Defence (2019) stated that 51 border road projects (non-Indo-China border roads) were pending due to forest clearances.<sup>13</sup> Of these, 29 were pending with the state governments. As of May 2023, of the 2,235 applications for all forest clearances pending for the first stage of approval, 1,891 are pending with state government authorities, and the remaining are with the central government.<sup>14</sup> Other processes and compliances such as land acquisition and wildlife clearances also delay such projects.<sup>13</sup> The Ministry stated that with respect to border road projects, there were 593 pending cases related to land compensation.<sup>13</sup> Other causes of delay include: (i) climatic conditions, (ii) terrain, and (iii) shortages of skilled labour and construction material.<sup>13</sup> Since the central government is not responsible for most delays in defence-related projects, the necessity of blanket exemptions from its approval is not clear.

The central government has already created similar exemptions for certain projects through guidelines under the 1980 Act, most recently in 2019.<sup>15</sup> These projects include security related projects near borders, infrastructure

Act: Section 2  
Bill: Clause 4

projects in left-wing extremism-affected areas, and linear projects. The exemptions are subject to certain conditions such as: (i) the forest area involved must not be within a National Park and/or a Wild Life Sanctuary, (ii) the user agency must have explored all feasible alternatives to minimise the use of forest land, and (iii) land diverted for some uses, including border security, will continue to be deemed as forest land. The Bill does not include such conditions when granting exemptions.

## Balancing forest conservation and economic activities

Act: Section 2  
Bill: Clause 5

**Ensuring balance between forest conservation and economic activities:** The 1980 Act was enacted to curb deforestation. Hence, diversion of forest land for non-forest purposes requires the prior approval of the central government. Further, the activities allowed in forests (without such prior approval) are related to the conservation and management of forests and wildlife. For example, permitted activities include establishing check posts and fire lines. The Bill adds certain activities to this list such as silvicultural operations, safaris, and eco-tourism facilities. The Bill also allows the central government to specify terms and conditions for carrying out certain surveys without its approval. These include reconnaissance, prospecting, investigation or exploration, and seismic surveys. These activities may help in economic development, and in the case of prospecting for minerals (which may lead to mining) may even contribute to national priorities such as energy security and industrial growth. However, there may be a need to balance economic benefits of such activities with that of conserving forests. It is not clear why the requirement of a case-by-case examination by the central government to determine such balance is being replaced by a blanket exemption.

**Purpose of zoo inside forest is unclear:** The Bill also exempts zoos from requiring prior approval under the 1980 Act. The purpose of allowing a zoo inside a forest is not clear. The Supreme Court (2023) has remarked that they do not appreciate the necessity of having a zoo inside tiger reserves or national parks.<sup>16</sup> This was in the context of the National Tiger Conservation Authority granting permission for allowing tiger safaris within tiger reserves and National Parks. The idea of such tiger reserves and national parks is that such fauna resides in its natural habitat and not in an artificial environment.<sup>16</sup>

1. [Report of the High Level Committee to Review Various Acts Administered by Ministry of Environment, Forest & Climate Change](#), November 2014.
2. [The Indian Forests Act, 1927](#).
3. The Forest (Conservation) Bill, 1980, as introduced in Lok Sabha.
4. [The Forest \(Conservation\) Act, 1980](#).
5. Glossary, [India State of Forest Report 2021](#), Forest Survey of India, Ministry of Environment, Forest and Climate Change.
6. Report no. 324, Standing Committee on Science and Technology, Environment and Forests: "Status of Forests in India", Rajya Sabha, February 12, 2019.
7. [The Forest \(Conservation\) Amendment Bill, 2023](#), as introduced in Lok Sabha.
8. [T.N. Godavarman Thirumulpad Vs. Union of India & Ors.](#), Writ Petition (Civil) No. 202 of 1995, the Supreme Court of India, December 12, 1996.
9. Section 27, [The Indian Forest Act, 1927](#).
10. [Chapter 2, India State of Forest Report 2021](#), Forest Survey of India, Ministry of Environment, Forest and Climate Change.
11. [Report of the Expert Committee on Net Present Value](#) 2006.
12. "[Framing Ecologically Sound Policy on Linear Intrusions Affecting Wildlife Habitats: Background Paper for the National Board for Wildlife](#)", T. R. Shankar Raman, January 20, 2011.
13. Report No. 50, Standing Committee on Defence: "[Provision of all weather road connectivity under Border Roads Organisation \(BRO\) and other agencies up to International borders as well as the strategic areas including approach roads- An appraisal](#)", Lok Sabha, February 12, 2019.
14. [Forest Clearance Dashboard](#), Parivesh, as accessed on May 16, 2023.
15. "[Handbook of guidelines for effective and transparent implementation of the provisions of Forest \(Conservation\) Act, 1980](#)", Ministry of Environment, Forest, and Climate Change, March 28, 2019.
16. [Contempt Petition \(C\) NO.319/2021](#), the Supreme Court of India, February 8, 2023.

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