

Background Note on The Forest Conservation (Amendment) Bill, 2023

Background

- India is a nation known for its diverse ecosystems and abundant forest areas. The need for strong legislation to address the challenges of forest conservation while ensuring sustainable management and protection of its forests has long been in demand. The newly introduced Forest (Conservation) Amendment Bill of 2023 in Parliament promotes the integration of forest conservation and development and safeguards the land from encroachment by various factors. It was initially presented in the Lok Sabha on March 29, 2023, and subsequently referred to a Joint Committee of the Houses. The committee was instructed to submit its report by the end of the first week of the Monsoon Session of 2023. The Bill will be considered for passing in the Lok Sabha after the Joint Committee's report is presented during the Monsoon Session 2023.

Salient Features of the Bill

- The aim of the Bill is to:
 - Modify the preamble of the Act to encompass the country's longstanding commitment to forest preservation, biodiversity, and addressing challenges posed by climate change.
 - Expand the list of activities covered by the Act, including zoos and safaris governed by the Wild Life (Protection) Act of 1972, eco-tourism facilities, silvicultural operations, and any other purpose specified by the central government.

- Encompass two types of land under the Act's jurisdiction: Land officially declared or notified as a forest under the Indian Forest Act of 1927 or other laws, and land not falling into the first category but recognized as a forest in government records¹ after October 25, 1980. Additionally, the Act will not apply to land converted from forest use to non-forest use prior to December 12, 1996, under the authority of a state or UT.² This has been introduced with a view to remove ambiguities and bring clarity.
- Grant the central government the authority to issue directives for the Act's implementation to any other recognized authority or organization under the central, state, or UT governments.

What's in the Bill?

Clause	Gist of variation	Significant Variations
2	Insertion of a Preamble	<p>The Preamble has been added to the Bill with an aim to provide the objectives of the Bill and highlighting the significance of forests in overcoming the challenges of climate change. The Preamble, in it, enshrines the following objectives-</p> <ul style="list-style-type: none"> ● significance of forests in achieving the national targets of Net Zero Emission by 2070, ● maintaining or enhancing forest carbon stocks through sustainable development, ● the Nationality Determined Contribution targets aiming to create an additional carbon sink of 2.5 to 3.0 billion tons of CO₂ equivalent by 2030, ● objective to increase forest and tree cover to one-third of the country's land area, which requires an enhanced growth trajectory, <p>The Preamble further provides the manner in which these objectives</p>

¹ Clause 4, Forest (Conservation) Amendment Bill, 2023. Available at: [Forest \(Conservation\) Amendment Bill, 2023](#).

² Explanation to Clause 4, Forest (Conservation) Amendment Bill, 2023. Available at: [Forest \(Conservation\) Amendment Bill, 2023](#).

		<p>need to be met-</p> <ul style="list-style-type: none"> ● promoting forest-based economic, social, and environmental benefits, ● improving the livelihoods of forest-dependent communities. ● establish provisions that focus on conserving, managing, and restoring forests, ensuring ecological security, preserving cultural and traditional values associated with forests, and facilitating economic needs while striving for carbon neutrality.
3	Amendment to Section 1 of Act to alter the title.	"Forest (Conservation) Act", to be replaced with "Van (Sanrakshan Evam Samvardhan) Adhiniyam"
4	Insertion of new section 1A to mention what land shall be covered and shall not be covered under the Act.	<ul style="list-style-type: none"> ● Section 1A of the Bill covers specific types of land, including officially declared forests under the Indian Forest Act of 1927 or any other prevailing law. ● Land recorded as forest in government records from October 25, 1980, onwards is also included, except for land converted for non-forest purposes before December 12, 1996, with authorization from a State Government or UT Administration. ● Exemptions from the Act apply to forest land adjacent to government-maintained rail lines or public roads, with a maximum size of 0.10 hectare for habitation or rail and roadside amenities. ● Tree plantations not falling under the aforementioned categories are also exempted, along with specific forest land near international borders, strategic projects, security-related infrastructure, defense-related projects, and paramilitary camps, subject to conditions specified by the

		<p>Central Government.</p> <ul style="list-style-type: none"> • The exemptions mentioned are subject to compensatory tree planting guidelines established by the Central Government.
5	<p>Amendment to Section 2 in the Act to give more powers to the Central Government to define activities which may be taken up in the forests.</p>	<ul style="list-style-type: none"> • The Amending Bill allows forest land to be leased or assigned to non-government entities subject to specified terms and conditions set by the Central Government, thereby providing power to decide leasing of forest land to the Central Government. • The said land can be leased for activities like silvicultural operations, establishment of check-posts, infrastructure for forest staff, construction of fences and bridges, check dams, waterholes, eco-tourism facilities, and other purposes specified by the Central Government. Additionally, the Bill also grants the Central Government authority to define conditions where certain surveys are not considered non-forest purposes.
6	<p>Insertion of new section 3C thereby defining the power of the Central Government to issue directions.</p>	<p>This section empowers the Central Government to issue directions for the implementation of the Act to any authority under the Central Government, State Government, UT Administration, or any recognized organization, entity, or body by the Central Government, State Government, or UT Administration.</p>

Discussion around the Bill: Pros and Cons

- **The Bill holds profound importance as it endeavors to protect the vast expanse of India's cherished forested realms.** Introducing this bill in the legislative arena signifies a determined effort to revitalize the forests and enhance their growth. By embracing the

aforementioned recommendations, we can fortify the guardianship of our forest lands, alleviate encroachment concerns, and safeguard invaluable natural resources, ensuring their preservation for the prosperity of generations to come.

- **The addition of the Preamble** to encompass the country's longstanding commitment to forest preservation, biodiversity, and addressing challenges posed by climate change is a welcoming step and it would enable the authorities to understand the basic principles of the legislation.
- **The proposed Bill introduces measures that could legitimize forest diversions.** It aims to narrow the definition of forests by including only lands recorded as forests from October 25, 1980 onwards, which limits the interpretation established by the Supreme Court in the *T.N. Godavarman Thirumulpad vs. Union of India*³ case. It also introduces exemptions for certain types of lands. The exemptions cover forest land near government rail lines or public roads, limited to 0.10 hectare, areas near international borders or strategic projects within 100 km, up to 10 hectares for security-related infrastructure, and 5 hectares for defense and public utility projects in left-wing extremism-affected regions.
- **Uncertainty surrounds the treatment of unclassified forests in the Bill.** While it asserts that all forests, including unclassified forests, fall under the purview of the Act, unclassified forests lack legal protection despite constituting approximately 15% of India's total forest cover.⁴ Although the Bill mentions the invocation of section 6 to prevent misuse of forest land, there is no guarantee that this safeguard will be implemented. Consequently, the potential encroachment by development projects upon unclassified forests, lacking legal protection, is very much possible. The Bill's absence of clear guidelines on determining whether a project is "in the public interest" leaves room for the approval of initiatives that could detrimentally impact forests.⁵

³ A Brief Commentary on The Forest (Conservation) Amendment Bill 2023 by Vidhi-Centre of Legal Policy, 2023. Available at: <https://vidhilegalpolicy.in/blog/a-brief-commentary-on-the-forest-conservation-amendment-bill-2023/>.

⁴ New Amendment Bill Will Endanger India's Most Ecologically Rich Forests, Hindustan Times, May 2023. Available at: [New amendment bill will endanger India's most ecologically rich forests: Experts to JPC](#)

⁵ Interview | Why There Is Mistrust About Proposed Changes to Forest Conservation Law. The Wire, 2023. Available at: <https://thewire.in/environment/interview-why-there-is-mistrust-about-proposed-changes-to-forest-conservation-law>.

- **The Bill does not address the protection of rights for forest dwelling communities.** It failed to outline provisions for the treatment of existing rights of proprietary, customary, and livelihood use concerning net zero compliant lands or new forest land diversions. This omission disregards the rights of forest-dwelling communities and widens the gap between forest and land rights.⁶
- The Bill contains **terms such as "public utility specified by central government," "ecotourism facilities," and "any other purposes" that are ambiguous and lacking clarity,** which could lead to potential misuse or misinterpretation. Additionally, the Supreme Court's judgment in the *T.N. Godavarman Thirumulpad vs. Union of India*⁷ case provided a definition of 'forest' for the application of the Act. It was anticipated that the amendment would provide a clear definition of 'forest' to avoid any misunderstandings. However, the same has not been so.
- **The proposed Bill grants exclusive authority to the Central Government, neglecting the fact that forests are a subject under the Concurrent List.** It is recommended that both the Central and State Governments have equal involvement in the jurisdiction to establish a system of checks and balances. This would ensure a more balanced and collaborative approach in managing forest-related matters.

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⁶ *Ibid.*

⁷ (1997) 2 SCC 267.