

Amendment to Forest Conservation Act (FCA)

April 7, 2021

In news: Recently, Several amendments to the Forest (Conservation) Act, 1980 (FCA) have been proposed by the Ministry of Environment, Forest and Climate Change

Key amendments

The proposed amendments seek to make additions and changes to Section 1 and 2. The proposed amendments enable infrastructure projects to come up in the forest areas more easily, some of the amendments are:

- **Exemptions:** The draft amendments grant exemptions to railways, roads, tree plantations, oil exploration, wildlife tourism and 'strategic' projects in forests
- **Empower state governments:** The proposal also aims to empower state governments to lease forest land to private individuals and corporations.
- **Amendments propose two changes that strengthen the applicability of the FCA:**
 - To complete the **process of forest identification** in a time-bound manner
 - To enable the creation of **'no-go' areas**, where specific projects would not be allowed

Details of the proposed amendments

Exemption of survey and exploration:

- In the proposed new section 1A, a proviso has been added to exempt application of FCA on forest land that is used for underground exploration and production of oil and natural gas through Extended Reach Drilling (ERD)

originating outside forest land

- A new explanation added to Section 2 says that “survey, reconnaissance, prospecting, exploration or investigation” for a future activity in the forest will not be classified as a “non-forestry activity”

Exemptions to Railways and roads inside forests

- Land acquired by the railways for establishing a rail line or a road by a government agency before 25.10.1980 (the day the FCA was passed) would be exempted from seeking a forest clearance, if they put the land to the same use for which it was acquired.
- This is included in a proviso in the proposed section 1A.
- The exemption is subject to terms and conditions that the central government will lay down through guidelines, which include planting trees to compensate for the loss of forests.

Deleting Section 2(iii) on Leases on forest land

The amendment deletes Section 2(iii) of the FCA which requires the central government’s approval before assigning forest lands on lease to any private person / corporation / organisation not owned or controlled by the central government and empowers states to issue leases for the use of forest land without the Centre’s prior approval.

Section 2: Exemptions to plantations:

A new explanation to Section 2 proposes to exempt plantation of native species of palm and oil-bearing trees from the definition of “non-forest purpose”.

Exemptions to training infrastructure & wildlife tourism,

- The FCA classifies activities related to wildlife conservation as “non-forestry” purposes, which means

such activities building checkpoints, communication infrastructure, fencing, boundary, etc which do not need a forest clearance.

- The proposed amendment claims to add to this list “forest and wildlife training infrastructure” and the “establishment of zoos and safaris” managed by the government or any authority under the Wildlife Protection Act, 1972.

Clearance for strategic / security projects by State govts

The proposed Section 2A may empower the central government to provide for state government approval for projects on forest land for “strategic” or security projects of “national importance

Insert new Section 2B for the creation of ‘No-Go’ areas

- The proposed amendment inserts a new Section 2B, which will allow the central government to delineate forest areas where conversion to specific non-forest uses would not be permitted for a fixed period of time.
- The delineation would be based on the basis of pre-defined criteria.

What are the problems with the proposed amendments?

- The concern is that, if the proposed amendments come into force, they **would dilute the provisions of the landmark 1996 decision of the Supreme Court in Godavarman case** (TN Godavarman Thirumulkpad vs Union Of India & Ors).
- The Godavarman case had started off as a petition to stop illegal felling of timber in the Nilgiri hills, but ended up expanding the coverage of the FCA.
- The Supreme Court had held that the meaning of “forest” under the FCA would include not only statutorily recognised forests; it would include any area recorded as forest in government records, regardless of

ownership.

- The restrictions in the FCA would, therefore, be applicable to both de jure and de facto forests.
- The proposed amendment purportedly seeks to reduce the scope of this judgment by limiting the applicability of the FCA to only such land that has been:
 - Declared or notified as forest under the Indian Forest Act, 1927
 - Recorded as forest land in the government record prior to 25 October 1980, with the exception of such land if its use has been changed from forest to non-forest purpose prior to 12 December 1996
 - Identified as “forest” by a state government expert committee up to one year from the date of the amendment.

The judgment interpreted the Act as it stood then. The addition of a specific definition thus limits the scope of the judgment. De facto forests are, therefore, excluded from the purview of the FCA

The Forest (Conservation) Act, 1980

- It is the principal legislation that regulates deforestation in the country. It prohibits the felling of forests for any “non-forestry” use without prior clearance by the central government.
- The clearance process includes seeking consent from local forest rights-holders and from wildlife authorities.
- The Centre is empowered to reject such requests or allow it with legally binding conditions.
- In a landmark decision in 1996, the Supreme Court had expanded the coverage of FCA to all areas that satisfied the dictionary definition of a forest; earlier, only lands specifically notified as forests were protected by the enforcement of the FCA.
- The FCA is a brief legislation with only five sections.

Section 1 defines the extent of coverage of the law, Section 2 restrictions of activities in forest areas, and the rest deals with the creation of advisory committees, powers of rule-making and penalties.