

Forest Clearance for Mining Projects and the Need to Conduct Rigorous Audit of Stage I Forest Clearance

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Abstract-- The Forest (Conservation) Act 1980 including Forest Conservation Rules 2003, Forest Conservation Amendment Rules 2014 prescribe the necessary guidelines for use of forest land for non forest activities. The act and rules made there under tries to make a balance between forest conservation and economic development. This act is regulatory in nature than prohibitory. The process of decision making involving diversion of forest land for non forest purpose have been decentralized, depending on the area of forest land diversion. The paper discusses in detail the salient features of the Indian Forest Act (1927) and process of Forest Clearance as per the Forest Conservation Act 1980 (Including forest conservation amendment Rules 2014) and critically examines the efficacy of the present Forest Clearance process. The paper also highlights how auditing of conditions of Stage I forest clearance help expedite the obtaining of Stage II clearance. The rigorous auditing of Stage I forest clearance help us identify the lacuna in compliances and help us improve the same before obtaining stage II forest clearance.

Key Words: Forest, conservation, protection, wild life, land, rules, compensatory afforestation

1. Introduction: The subject of Forests was originally included in the State List as entry 19. This has resulted in to non uniform policy by States towards the conservation, protection and management of forests. By 42nd Amendment Act (1976) the Forest was put in to concurrent list as entry 17-A, the parliament has also acquired the law making powers along with the States on issues related to Forests. The Forest conservation act 1980 is recognized as a unique piece of legislation not only in our country but also internationally towards the protection, conservation and management of the forests.

2. Conservation, protection and Management of forests in India: As per the current estimates, India has 6,92,027 sq Km of forest cover which is 21.05% of the geographic area of the country. The forest cover includes all lands which have a tree canopy density of more than 10% when projected vertically on the horizontal ground, with a minimum extent of one hectare. The details are tabulated below:

TABLE 1 : CLASSIFICATION OF FORESTS

Class	Description
Very Dense Forest	All lands with tree canopy density of 70% and above
Moderately Dense Forest	All lands with tree canopy density of 40% and more but less than 70%.
Open Forest	All lands with tree canopy density of 10% and more but less than 40. %.
Scrub	Degraded forest lands with canopy density less than 10%.
Non-forest	Lands not included in any of the above classes.

Source: India State of Forest Report, FSI 2013

TABLE 2: FOREST COVER OF INDIA

Class	Area (sq. km.)	Per cent of Geographical Area
Forest Cover		
a) Very Dense Forest	83,502	2.54
b) Moderately Dense Forest	318,745	9.70
c) Open Forest	295,651	8.99
Total Forest Cover*	697,898	21.23
Scrub	41,383	1.26
Non Forest	2,547,982	77.51
Total Geographic Area	3,287,263	100.00

* Includes 4,629 sq km under mangroves. Source: India State of Forest Report, FSI 2013

Over the years, for various developmental activities like infrastructure constructions, mining etc as well as to create new settlements including agriculture, forests are being cut down and forest land being diverted both legally as well as illegally for non forest purpose.



To protect these forests, Government has declared the forests as Protected or Reserved and formulating various rules and regulations to safeguard them. Most important among them are Indian Forest Act 1927, Forest Conservation Act 1980 including Forest Conservation amendment Rules 2014.

2.1 The Indian Forest Act (1927) : The preamble to the Indian Forest Act, 1927 (16 of 1927) states that the Act seeks to consolidate the law relating to forests, the transit of forest produce and the duty that can be levied on timber and other forest produce. The Indian Forest Act, 1927 (16 of 1927) has 86 Sections and it has been divided into thirteen chapters relating to i) Preliminary, ii) Reserved Forests, iii) Village Forests, iv) Protected Forests, v) the Control Over Forests and Lands not Being the Property of Government, vi) the Duty on Timber and Other Forest Produce, vii) the Control of Timber and Other Forest Produce in Transit, viii) the Collection of the Drift and Stranded Timber, ix) Penalties and Procedure, x) Cattle-Trespass, xi) Forest Officers, xii) Subsidiary Rules, and xiii) Miscellaneous. According to the nature and extent of human activities permitted in them, the forests have been categorized in to Reserved & Protected Forests.

2.1.1 Reserved Forests (RF) : Any forest land or waste land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest produce over which the government claim is entitled. Reserved Forests are notified under Section 20 of the Indian Forest Act (1927) or under the reservation provisions of the Forest Acts of the State Governments. Reserved Forests has to be constituted and notified by concerned State Government as per the procedure described under section 3 to section 20 of the Act.

2.1.2 Protected Forests (PF) : any forest-land or waste-land which,, is not included in a reserved forest but which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest produce of which the Government is entitled.

2.1.3 Village-Forests: it is constituted under section 28 of the act.

2.1.4 Formation of village-forests. (1) The State Government may assign to any village-community the rights of Government to or over any land which has been constituted a reserved forest, and may cancel such assignment. All forests so assigned shall be called village-forests.

(2) The State Government may make rules for regulating the management of village forests, prescribing the conditions under which the community to which any such assignment is made may be provided with timber or other forest-produce or pasture, and their duties for the protection and improvement of such forest.

(3) All the provisions of this Act relating to reserved forests shall (so far as they are not inconsistent with the rules so made) apply to village-forests. The parcels of lands notified as Village Forests are marked on the settlement revenue maps of the villages.

2.1.5 Difference between RF & PF: In RF rights to all activities like hunting, grazing etc are banned unless specific orders are issued otherwise, whereas, in case of PF the rights to all activities like hunting, grazing etc in PF are allowed unless specific orders are issued otherwise. RF & PF both are declared by the respective State Governments. Indian Constitution or the relevant laws do not make any distinctions as far as their protection is concerned with respect to the procedure for the diversion of the forest land for non-forest purposes.

2.1.6 Up gradation: RFs are often upgraded to the status of Wild Life Sanctuaries, which in turn may be upgraded to the status of National Parks with each category receiving a higher degree of protection and government funding.

2.2 FOREST (CONSERVATION) ACT, 1980(WITH AMENDMENTS MADE IN 1988)

Section 1 :

(i) This is an Act to provide for the conservation of forests and for matters connected therewith or ancillary or incidental thereto

(ii) It extends to the whole of India except the State of Jammu and Kashmir.

(iii) It shall be deemed to have come into force on the 25th day of October, 1980.

Section 2 :

No State Government or other authority shall make, except with the prior approval of the Central Government, any order directing

- (i) that any reserved forest (within the meaning of the expression " reserved forest " in any law of the time being in force in that State) or any portion thereof, shall cease to be reserved;
- (ii) that any forest land or any portion thereof may be used for any non-forest purpose;
- (iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority ,corporation, agency or any other organization not owned ,managed or controlled by Government;
- (iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion ,for the purpose of using it for reafforestation.

Explanation - For the purpose of this section , "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for -

- a. the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;

- b. any purpose other than reforestation; but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.

Section 3 :

1. The Central Government may constitute a committee of such number of persons as it may deem fit to advise that Government with regard to -

- (i) the grant of approval under Section 2; and
(ii) any other matter connected with the conservation of forest which may be referred to it by the Central Government.

A. Whoever contravenes or abets the contravention of any of the provisions of Section 2, shall be punishable with simple imprisonment for a period which may extend to fifteen days.

B. Where any offence under this act has been committed -

- a. by any department of Government, the head of Department; or
b. by any authority, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the authority for the conduct of the business of the authority as well as the authority; shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render the head of the department or any person referred to in clause (b), liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

2. Notwithstanding anything contained in sub-section (1), where an offence punishable under the Act has been committed by a department of Government or any authority referred to in clause (b) of sub-section (1) and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any officer, other than the head of the department, or in the case of an authority, any person other than the persons referred to in clause (b) of the sub-section (1), such officer or persons shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Section 4

The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

2.3 Forest (Conservation) Amendment Rules, 2014. The MoEF (Ministry of Environment and Forests) has brought out a notification detailing the amendments to the Forest Conservation rules of 2003. The new rules link together sustainable development; hereafter mining in forest areas has been regulated with detailed observation required from all parties while seeking permission. The proposal also requires suggestions for restriction on the use of any forest land for any non-forest purpose in order to minimise adverse environmental impact. Overall, this will in turn pave way for the democratization of the structure of governance of India's forests. Mandatory public hearings unfortunately do not find a mention.

THE TABLE BELOW SUMMARISES THE CHANGES;

SN	Summary
1	Under the rule for diversion of forest land, prospecting of minerals is also included now.
2	MoEF and other departments receipt of approval also required.
3	Before submission to central government, settlement of forest rights to be completed, consent of the Gram Sabhas also required.
4	Proposals with forest land above five hectares and up to forty hectares and all proposals for regularisation of encroachments and mining up to forty hectares to be sent to an advisory group.
5	A new form C also inserted which will be applicable for mining in forest land.

2.4 Procedure for obtaining Forest clearance for use of Forest Land for Non Forest Purposes (s): Obtaining forest clearance for use of forest land for non forest purpose is very tedious and time consuming process due to various technical reasons and incomplete submission of necessary documents by the user agency to and concerned authorities at State and Central Government levels. Delay in obtaining necessary clearances/approvals lead to time and cost escalations. Many a times Forest Clearances take 1-3 years. To tackle this problem, Govt. of India through MoEF has issued several guidelines/clarifications under Forest Conservation Act (1980) & Forest Conservation Rules 2003 & Forest Conservation Amendment Rules 2014. The sole purpose of these guidelines is to avoid any kind of alteration in forest ecosystem and if it is not possible to fully avoid that, then stipulate strict conditions and ensure through monitoring to minimize any adverse impact on forests. There are certain statutory provisions under the rules and guidelines which have to be followed for obtaining approval.



According to the existing procedure, the project proponent has to fill the prescribed form A related to obtaining forest clearance (seeking approval of the proposal by the State Government and other authorities under section 2 of the (Forest Conservation Act 1980) that has to be vetted/approved by the State Government (through various steps involving approval/recommendations from District Forest Officer/Chief Conservator of Forests/ State Forest Department (Part I to Part V of the form A for Forest Clearance) and then finally by Central Govt. at the MoEF/any other authority, depending upon the area of the forest land proposed to be acquired by the project proponent. Proposals involving forest land up to 40 hectare are sent to the concerned regional offices of MoEF. These offices are situated at Shillong, Lucknow, Chandigarh, Bhopal, Bhuneshwar and Bengaluru. In regional offices of the MoEF, proposal involving Forest land between 5-40 ha are examined by the State advisory Group (SAG) pertaining to the concerned State/UT. The decision is then taken by the competent authority in the MoEFCC, New Delhi on the basis of the recommendation of the SAG. The Chief Conservator of Forests, who heads the Regional Office, has been empowered to take decision on proposals involving Forest land up to 5 ha except the proposals relating to mining and regularization of encroachment. In MoEFCC at New Delhi, the proposals involving more than 40 ha are examined by Forest Advisory Group (FAC) constituted under Sec 3 of the Forest (Conservation) Act 1980. The decision is then taken by the Competent Authority in the MoEFCC on the basis of the recommendations of the FAC.

2.5 Conditions for Forest Clearance: Whenever forest clearance (i.e. Stage I) is accorded for any project including mining project for diversion of forest land under the provisions of Section 2 of the Forest (Conservation) Act 1980, several conditions are imposed by MoEFCC to minimize impact on forest land. These conditions include General Conditions, Standard Conditions and Specific Conditions which are stipulated keeping in view the impact of the project on forests. A brief description of these conditions are given below :

2.5.1 General Conditions: These conditions are stipulated in almost all the proposals and are applicable for all types of projects requiring forest land for non forest purpose. It includes the following:

- (i) Cost of compensatory afforestation as per the CA scheme may be realized from the user agency.
- (ii) Net Present Value (NPV) of the forest land being diverted for non forestry purpose may be realized from the user agency, as per Ministry's directions issued vide letters No. 5-3/2007-FC dated 5th February 2009 and Hon'ble Supreme Court of India's Order dated 30th October 2002, 28th March, 2008, 24th April, 2008 and 9th May 2008.
- (iii) As per orders of the Government of India vide letter No. 5-2/2010- CAMPA dated 24.06.2011, the net present value of the forest land and all other CA levies shall be deposited in State specific CAMPA account (s) maintained by the Ad-hoc CAMPA at New Delhi and this office may be informed along with a duly filled in prescribed proforma.
- (iv) The user agency shall furnish an undertaking to pay additional amount of NPV, if so determined as per final decision of the Hon'ble Supreme Court of India and
- (v) A certificate in respect of complete settlement of rights, in terms of the Scheduled Tribes and Other Traditional Forest Dwellers (*Recognition of Forest Rights*) Act, 2006, if any, on the forest land proposed to be diverted along with documentary evidence stipulated by the Ministry in its letter No. 11-09/1998-FC (pt) dated 3rd August, 2009, 5th February, 2013, and 5th July, 2013, as applicable to this project, be submitted.

The use of forest land will not be allowed till final approval is accorded.

2.5.2 Conditions to be complied with after Stage II approved is accorded (These Conditions shall also be imposed at the time of according Stag-II Approval)

2.5.2.1 General Conditions:

1. Legal status of the forest land will remain unchanged;
2. The forest land will not be used for any other purpose than that mentioned in the proposal;
3. The forest land proposed to be diverted shall under no circumstances be transferred to any other agency, department, or person without approval of the competent authority.
4. The layout plan of the proposal shall not be changed without the prior approval of the Central Government.
5. No damage will be done to the adjoining forest land;
6. No labour camp shall be established on the forest land;
7. Compensatory afforestation will be done within one year from the date of issue of final approval over the extent of land as approved, out of the funds provided by the user agency;
8. The user agency shall carry out muck disposal at pre-designated sites in such a manner so as to avoid its rolling down and should be taken up as per the scheme approved by the Forest Department
9. As recommended by the Geologist and Task Force, the required soil conservation measures should be taken up by the user agency for which fund should be provided as per the current rate of works;



10. The User Agency shall provide firewood preferably alternate fuels to the labourers and the staff working at the site so as to avoid any damage and pressure on the nearby forest areas;
11. The boundary of the forest land being diverted shall be demarcated on ground at the project cost, using four feet high RCC pillars, each pillar inscribed with the serial number, DGPS coordinates, forward and backward bearings and distance from pillar to pillar *etc.*;
12. The User Agency shall ensure that because of this project, no damage is caused to the flora and the wildlife available in the area;
13. The user agency will assist the State Government in conservation and preservation of flora and fauna of the area in accordance with the plan prepared by the Chief Wildlife Warden of the State.
14. The user agency in consultation with the State Government shall create and maintain alternate habitat/home for the avifauna: whose nesting trees are to be cleared in this project. Bird's nests artificially made out of eco-friendly material shall be used in the area, including forest area and human settlements, adjoining the forest area being diverted for the project;
15. Any other condition that this Regional Office may stipulate, from time to time, in the interest of conservation, protection and development of forests & wildlife;
16. The User agency shall submit the annual self compliance report in respect of the above conditions to the State Government and to the concerned Regional Office of the Ministry regularly; and
17. It will be the responsibility of the State Government/User Agency to obtain all other prior approvals/clearances under all other relevant Acts/Rules/Court's Rulings/instructions, etc., including environmental clearance, as applicable to this proposal.
18. The Regional Office may revoke/suspend the clearance, if implementation of any of the above conditions is not satisfactory. State Government will ensure compliance of these conditions through forest department.

2.5.2.2 Specific Conditions for Mining Sector:

- i. The mining is open cast for extraction of slates. No blasting in the area shall be done and no damage will be caused to the adjoining forest area;
- ii. The conditions stipulated while giving approval under the Forest (Conservation) Act, 1980 for diversion/renewal of lease of forest land for mining purposes shall be monitored as per Para 4.16 (ii) & (iii) of the guidelines issued under Forest (Conservation) Act, 1980;
- iii. There will be regular monitoring by the Forest Department for compliance of conditions including the quantity extracted;
- iv. The operation of mine should be as per the approved mining plan and user agency shall submit annual self-compliance report to the authority concerned;
- v. Debris will be used locally behind retaining walls, depression/ improvement of grades. It will in no way be thrown down the hill slopes/nallahs, etc, and shall be reclaimed;
- vi. Reclamation of mined area shall be done at the cost of user agency as per proposed scheme. Reclamation work will be taken up after the expiry of this extension or if possible, before that in part (s) of the area;
- vii. All the protection/precautionary measures for stability of the forest area be strictly adhered to;
- viii. Safety Zone Area Treatment Plan will be implemented as per the proposal;
- ix. Wherever possible and technically feasible, the User Agency shall undertake by involving local community, the afforestation measures in the blanks within the lease area, as well as along the roads outside the lease area diverted under the approval. In consultation with the State Forest Department at the project cost;
- x. The period of diversion of the said forest land under this approval shall be for a period co-terminus with the period of the mining lease proposed to be granted under the Mines and Minerals (Development & Regulating) Act, 1957, or Rules framed there under
- xi. User agency either himself or through the State Forest Department shall undertake gap planting and soil & moisture conservation activities to restock and rejuvenate the degraded open forests (having crown density less than 0.40), if any, located in the area within 100 m. from outer perimeter of the mining lease;
- xii. The user agency shall undertake mining in a phased manner after taking due care for reclamation of the mined over area. The concurrent reclamation plan as per the approved mining plan shall be executed by the User Agency from the very first year, and an annual report on implementation thereof shall be submitted to the Nodal Officer in the State Government and this Regional Office. If it is found from the annual report that the activities indicated in the concurrent reclamation plan are not being executed by the User Agency, the Nodal Officer or the Regional Office may direct that the mining activities shall remain suspended till such time, such reclamation activities are satisfactorily executed.
- xiii. The User Agency either himself or through the State Forest Department shall undertake fencing, protection and afforestation of the safety zone area (*7.5 meter strip all along the outer boundary of the mining lease or mining cluster, as applicable, and such other areas as specified in the approved mining plan*) at the project cost;



- xiv. The User Agency either himself or through the State Forest Department shall undertake afforestation on degraded forest land, one and half time in extent to the area used for safety zone;
- xv. In case of underground mines, areas on surface shall be fenced and afforested from the funds to be provided by the user agency;
- xvi. The user Agency shall implement the R & R Plan as per the R & R Policy of State Government in consonance with National R & R Policy, Government of India before the commencement of the project work and implementation. The said R & R Plan will be monitored by the State Government/Regional Office along with indicators for monitoring and expected observable milestones;
- xvii. The user agency shall undertake de-silting of the village tanks and other water bodies located within five km from the mine lease boundary so as to mitigate the impact of salutation of such tanks/water bodies, whenever required;
- xviii. The following activities shall also be undertaken by the User Agency at the project cost:-
 - a. Preparation and implementation of a plan containing appropriate imitative measures to minimize soil erosion and choking of streams;
 - b. Planting of adequate drought hardy plant species and sowing of seeds in the appropriate area within the mining lease to arrest soil erosion;
 - c. Construction of check dams, retention/toe walls along the contour to arrest sliding down of the excavated material;
 - d. Stabilize the overburden dumps by appropriate grading/benching so as to ensure that that angles of repose at any given place is less than 28 degree; and
 - e. Strict adherence to the prescribed top soil management

2.6 NET PRESENT VALUE (NPV) OF THE FOREST : Project authorities requiring diversion of forest land for other uses have to pay appropriate opportunity cost such as costs of CA, NPV of the land being diverted, and expenses towards mitigating the environmental damages including catchment area treatment, wildlife preservation, biodiversity conservation and rehabilitation of displaced persons, if any. NPV : Net present value represents the quantification of value of the environmental services provided for the forest area diverted to non-forestry uses as determined by the Central Government (i.e. MoEF) from time to time by appointing an expert committee.

NPV refers to the “ the discounted sum of rupee values of ecosystem goods and services that would flow from a forest over a period of time net of cost incurred.”. It does not capture the value of the forest health or possible change in it, only the flow of goods and services are taken in to account. Thus in the context of diversion of forest land to non-forestry use, NPV refers to the loss of value of the forest resources to the stakeholders or the users as at the time of diversion for non-forest use, but it does not include the value either accrued or created by the user agency who uses it for non forest purposes. Thus, in the estimation of NPV, the positive contribution to society in the form of social and economic terms or contribution to national wealth/benefits by the user agency(as a non-forest user) of the forest land diverted for non-forest purposes is not taken in to account.

TABLE 3 : FORESTS CATEGORIZED IN TO BROAD ECOLOGICAL CLASSES

OFType of Forest	Eco class
Tropical wet evergreen forests	Eco-Class I
Tropical semi evergreen forests	
Tropical moist deciduous forests	
Littoral and swamp forest	Eco Class II
Tropical dry deciduous forests	Eco class III
Tropical thorn forests	Eco class IV
Tropical evergreen forests	
Sub tropical broad leaved hill forests	Eco Class V
Sub tropical pine forests	
Sub tropical dry evergreen forests	
Montane wet temperate Forests	Eco Class VI
Himalayan moist temperate forests	
Himalayan Dry temperate forests	
Sub alpine forests	
Moist alpine forests	
Moist alpine scrub	
Dry alpine scrub	

Source : <http://envfor.nic.in/sites/default/files/report.pdf>

TABLE 4 : NPV OF DIFFERENT ECO-VALUE/CANOPY DENSITY CLASSES

Eco value class	Very dense forests (Rs per hectare)	Dense forests per hectare)	(Rs	Open forests Rs per hectare)	(
Class I	10,43,000.00	9,39,000.00		7,30,000.00	
Class II	10,43,000.00	9,39,000.00		7,30,000.00	
Class III	8,87,000.00	8,03,000.00		6,26,000.00	
Class IV	6,26,000.00	5,63,000.00		4,38,000.00	
Class V	9,39,000.00	8,45,000.00		6,57,000.00	
Class VI	9,91,000.00	8,97,000.00		6,99,000.00	

Source : Rates recommended by Centrally empowered committee (<http://envfor.nic.in/sites/default/files/report.pdf>)

2.6 Forest Rights Act (FRA) 2006 : The Schedule Tribes and other traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 is most commonly known as Forest Rights Act (FRA) 2006. This act became effective from 1st January 2008 after its notification. This act recognizes and vests the forest rights and occupation in the forest land to the forest dwelling schedule tribes and other traditional forest dwellers, who have been residing in such forests for generations, but whose rights could not be recorded and were forced to relocate their dwellings due to State development interventions. The main objective of this act is to give individual property rights to the tribals and other forest dwellers on the forest lands under their occupation for cultivation and dwellings and community rights on forest resources. A most significant feature of the act is that all these rights are also available in Protected Area (i.e. Wild Life Sanctuaries and National Parks) too. The Act stipulates that no member of a Forest dwelling Schedule Tribe (FDST) or other traditional forest dwellers are to be evicted or removed from forest land under his occupation till the recognition and verification procedure is completed. It also recognizes the right to in-situe rehabilitation, including alternative land in cases where schedule tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement to rehabilitation prior to 13 December 2005. According to this Act, the Gram Sabha has been designated as the competent authority for initiating the process of determining the nature and extent of individual or community forest rights or both. The free informed consent of the Gram Sabhas and package is to be obtained in writing in the concerned areas of proposed resettlement and no resettlement may take place until facilities and land allocation at the resettlement location are to be completed as per the promised package. It also stipulates that ceiling of occupation of forest land is to be provided for the purpose of recognition of forest rights to the area of actual occupation (not exceeding an area of 4 ha). According to the provisions of the Act, forest rights recognized in National Parks and Sanctuaries (renamed as critical wildlife habitats) may subsequently be modified or resettled except the resettlement of forest rights holders for wildlife conservation, provided that these habitats may not be subsequently diverted for any other purposes by the State or Central Govt. Further, as per the provisions laid down in this Act, the forest rights shall be conferred free from all encumbrances and procedural requirements, including clearance under the Forest Conservation Act 1980, requirement of paying the NPV, and CA for the diversion of forest land except those specified in the Act.

The experience regarding the implementation of this Act over the last 7 years has not been very encouraging. As per the Ministry of Tribal Affairs, rejection rates for claims for rights are still very high and rejected claimants are not informed about the reasons for the rejection or given an opportunity to appeal against the rejection. Moreover, when the land rights are recognized, the area for which the title is issued is much less as compared to what these people are actually entitled to, forcing a large number of people to be displaced from their homes. Accordingly, MOTA has requested various State Governments to take necessary actions for its implementation as per the spirit of the law. Important amongst them is the provisions of videotaping the “Gram Sabha” Meetings for FRA, specially related to diversion of forest land, to ensure transparency and reduce manipulation and disputes. The Forest Conservation Act 1980 (including Forest conservation rules 2003 and subsequent amendments 2014) provide guidelines for the diversion of forest land for non-forest purpose (i.e. forest clearance). As far as possible, diversion of forest land for non forest purpose should be avoided by any user agency. If that can’t be avoided, the requirement should be kept minimum and request for the diversion of forest land for non-forest activity should be made in the prescribed format (Form A) along with the necessary documents/enclosures justifying the same. Delay in processing the request for forest land diversion by the user agency at different levels (e.g. State & central Govt. Levels) generally occurs due to incorrect/ incomplete submission of documents/enclosures required for further processing the case. The Forest conservation amendments rules 2014 clearly specify the time frame at each level as well as the time required in transit period also. A “check-list” of documents/information required during the submission of proposal for diversion of forest land for non-forestry use under Forest (Conservation) Act (1980) is also available at (<http://nromof.gov.in/Proforma/Check-list.pdf>) and can be referred by user agency. Many a times, area of forest land proposed to be diverted is not justified or is on higher side than what can be technically or actually required by the user agency. Many a times the land records made available by the user agency do not match with the records of forest department and this leads to delay in processing the cases. This discrepancy of the records needs to be sorted out at the earliest for forest land diversion cases to be processed at different levels.

3. AUDIT OF STAGE I CLEARANCES: The stage I Forest clearance is for 5 years. During this 5 year period, the User agency has to submit the annual self compliance report in respect of the Stage I conditions to the State Government and to the concerned Regional Office of the Ministry regularly. Though the compliances are submitted as ritual, but on deeper analysis, various lacunas are found. Some of them are listed below. The audit of Stage I forest clearance has revealed many facts and have shown the way to improve the things.

The performance review may be categorized in the following six themes:

- (i)Regulatory shortcomings in diversion of forest land;
- (ii)Failure to promote compensatory afforestation;
- (iii)Diversion of forest land for grant/ renewal of mining leases;
- (iv)Environmental issues;
- (v)Other issues of land management; and
- (vi)Inadequate and ineffective application of penal clause.

3.1. Regulatory shortcomings in diversion of forest land

3.1.1 Non receipt of non forest land in lieu of diverted forest land:

3.1.2 Non-transfer of non forest land to Forest Department and non-declaration as Reserve Forest/Protected Forest

3.1.3 Irregular permission to pay for afforestation on double the area of degraded forest

3.1.4 Non reconciliation of figures of land diverted/ received

3.1.5 Failure to conduct Cost Benefit Analysis:

As per Annexure VI(a) of the Guidelines issued under FC Act, 1980, for all project proposals involving forest land more than 20 hectare in plains and more than five hectare in hills cost-benefit analysis was required to be conducted to determine that the diversion of the forest land to non-forest use was in the overall public interest. During audit, it was observed that no records were available in many cases to show that cost-benefit analysis had been carried out for the above purpose and the forest land was diverted without ascertaining the overall public interest.

3.1.6 Non-revocation of in-principle approval:

As per para 4.2 of the Guidelines issued under the FC Act, 1980, forestry clearance was to be accorded in two stages. However in cases where compliance of the conditions stipulated in the in-principle approval was awaited for more than five years from the State Government, the in-principle approval was to be summarily revoked by Regional office or MoEF as the case may be. After the revocation of the in-principle approval, if State Government/ user agency was still interested in the project, they would be required to submit a fresh proposal which was to be considered de-novo. During audit it was observed that there were no records to indicate the extent to which the conditions like transfer, mutation and declaration of equivalent non-forest land and its declaration as RF/PF, funds for CA etc. had been complied/not complied with. Thus there was no proper follow up in MoEF/ RO to monitor the status of compliance with conditions stipulated at in-principle approval.

3.1.7 Irregular change of status of forest land: As per FC Act, 1980, notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority was to make, except with the prior approval of the Central Government, any order directing that any Reserve Forest or any portion thereof, should cease to be reserved. During audit, it was observed that in some cases land coming under RF had been diverted without prior approval of the Central Government. Not only this, the State government did not recover any money for CA, NPV etc. In addition the user agency also benefited from not being required to replace the diverted forest land with equivalent area of non-forest land which would have cost it huge money.

3.1.8 Excess use of forest land : As per Section 3A of the Forest (Conservation) Act, 1980, whoever contravenes or abets the contravention of any provisions of Section 2, is punishable with simple imprisonment for a period which may extend to 15 days. During audit it was observed that some mining companies used excess forest land and No remedial action was taken by MoEF nor any penal provision under Section 3A of the Forest (Conservation) Act, 1980 was invoked.

3.1.9 Non-revocation of in-principle approval: As per para 4.2 of the Guidelines issued under the FC Act, 1980, forestry clearance was to be accorded in two stages. However in cases where compliance of the conditions stipulated in the in-principle approval was awaited for more than five years from the State Government, the in-principle approval was to be summarily revoked by Regional office or MoEF as the case may be. After the revocation of the in-principle approval, if State Government/ user agency was still interested in the project, they would be required to submit a fresh proposal which was to be considered de-novo. The onus to comply with conditions stipulated in the in principle approval lay with the user agency and the State/ UT Governments concerned.



3.13 Encroachment of forest land: As per FC Act, 1980, Annexure-IV (3.1), the encroachments which have taken place after 24 October 1980 should not be regularised. Immediate action should be taken by State/ UT Government to evict the encroachers. Supreme Court in its order of November 2001 expressed great concern over the continued encroachments and directed MoEF to frame time bound programme for eviction of encroachments in the country. State Forest Departments were required to prepare a comprehensive list of all encroachments and detailed quarterly progress report of the action taken, area evicted and area reclaimed/ planned etc. commencing from July 2002.

3.2: Failure to promote compensatory afforestation :

3.2.1 Inadequate compensatory afforestation done in lieu of forest land diverted:

As per para 3.1(i) of the Guidelines issued under the Forest (Conservation) Act 1980, Compensatory Afforestation is one of the most important conditions stipulated by the Central Government while approving proposals for de-reservation or diversion of forest land for non-forest uses. It was essential that for all such proposals, a comprehensive scheme for Compensatory Afforestation (CA) was formulated and submitted to MoEF. Further as per para 3.2(i) of the Guidelines issued under the FC Act, 1980, CA was to be done over equivalent area of non-forest land subject to the following:

- (a) As far as possible, the non-forest land for CA was to be identified contiguous to or in the proximity of Reserved Forest or Protected Forest to enable the Forest Department to effectively manage the newly planted area.
- (b) In case, non-forest land of CA was not available in the same district, it was to be identified anywhere else in the State/Union Territory near to the site of diversion, so as to minimise adverse impact on the micro-ecology of the area.
- (c) Where non-forest lands were not available or non-forest land was available but lesser in extent to the forest area being diverted, CA could be carried out over degraded forest twice in extent to the area being diverted or to the extent of the difference between the forest land being diverted and the available non-forest land, as the case be.
- (d) The non-availability of suitable non-forest land for CA in the State / Union Territory would be accepted by the Central Government only on the basis of a Certificate of the Chief Secretary to the State/Union Territory Government to that effect.

The clarification below the para 3.2 (i) provides that as a matter of pragmatism, the revenue lands / *zudpi jungle/chhote/bade jhar ka jungle/jungle-jhari land/civil-soyam* lands and all other such categories of lands, on which the provisions of FC Act, 1980 are applicable, shall be considered for the purpose of compensatory afforestation provided such lands on which compensatory afforestation is proposed shall be notified as Reserve Forest (RF) under the Indian Forest Act, 1927. The exceptions to the general conditions laid down in para 3.2 (i) of the Guidelines issued under the FC Act, 1980, are listed below:

- (i) As per para 3.2(vi) of the Guidelines issued under the FC Act, 1980, certain categories of project are exempted from providing equivalent non forest land. In such cases CA was to be raised over degraded forest land twice in extent of the forest area being diverted/ dereserved.
- (ii) As per para 3.2 (viii) raising CA is not to be insisted upon in certain category of projects like diversion of forest land upto one hectare, cleaning of naturally grown trees in forest land, under ground mining in forest land below three meter etc.
- (iii) As per para 3.2 (ix) in case of central government/ central undertaking projects, CA is to be raised on degraded forest land twice in extent of forest area being diverted without insisting for the certificate of Chief Secretary regarding non-availability of non-forest land.

Para 3.4(i) of the Guidelines issued under the Forest Conservation Act, 1980 state that equivalent non-forest land identified for the purpose is to be transferred to the ownership of the State Forest Department and declared as reserved/protected forests (RF/PF), so that the plantation raised could be maintained permanently. The transfer is to take place prior to the commencement of the project.

As per para 4.15(v) of the Guidelines issued under the FC Act 1980, the nodal officer was to monitor the implementation of the conditions of compensatory afforestation and the survival ratio of the seedlings planted. The Supreme Court also in its order dated 3 April 2000, fixed the responsibility of ensuring the proper carrying out of compensatory afforestation on Ministry of Environment and Forests and stated that it was for the Ministry to monitor the conditions stipulated at the time of grant of forest clearance. During the Audit it was found that, the afforestation activity in non forest land was limited to only four States of Assam, Chhattisgarh, Odisha and Tamil Nadu. In fact, 95 *per cent* of all afforestation done on non forest land in the country was in one State viz Odisha. Aside of Odisha, the total afforestation undertaken in the country on non forest land was a mere 329.30 hectare. The status of number of plants raised and their survival ratio was also not made available by the Forest Department in most of the States.

In pursuance to Supreme Court's order dated 5 May 2006, funds realized from the user agency for creation and maintenance of CA were transferred to the Ad-hoc CAMPA. All CA activities came to standstill till the Supreme Court vide their order dated 10 July 2009 allowed the Ad-hoc CAMPA to release a part of these funds to the concerned State CAMPAs with an annual ceiling of ` 1,000 crore per annum for release of CAMPA funds. Transfer of CA funds to the Ad-hoc CAMPA without any release to State/



UT Governments from 2006 to 2009 and putting up of an annual ceiling on their release from 2009 onwards by the Supreme Court resulted in accumulation of CA funds. The MoEF stated that it had initiated a proposal to obtain approval of the Supreme Court to constitute regular CAMPAs with adequate manpower, both at national and each State/ UT level to ensure expeditious utilization of CAMPA funds. It is a fact that between May 2006 and July 2009, no funds for compensatory afforestation were released to State Forest Departments by Ad-hoc CAMPA, hence, slowing down the activity of CA.

3.2.2 Non-maintenance of records relating to Compensatory Afforestation As per CAMPA notification dated 23 April 2004 the money received for CA, ACA was to be used as per the site specific schemes received from the States and UTs along with the proposal for diversion of the forest land under FC Act, 1980. As per para 4.10(iv) of the Guidelines issued under the FC Act, 1980, for the proposals of renewal of leases, the regional offices of the Ministry were to submit a copy of the report of the latest monitoring done (one year before the expiry of lease period) along with the abstract of monitoring report of the project during the lease period specially highlighting the conditions which were not fulfilled, with complete details of the reasons for not fulfilling the stipulated conditions. The conditions which had been complied with were also to be highlighted with the quality of performance of the project authorities, a short note justifying desirability of renewal of lease and other recommendations. Based on the report, the renewal of lease was to be accorded by MoEF.

From the audit of the records it is seen that:

- (i) Against the receivable NFL of 1,03,381.91 hectare, only 28,085.90 hectare or 27 *percent* of NFL was received. Of the NFL so received, CA activity had been undertaken only on 7,280.84 hectare of land which is a miniscule seven *percent* of the receivable non forest land.
- (ii) It was further observed that against receivable NFL of 1,03,381.91 hectare the area identified for compensatory afforestation was 16,683.89 hectare which works out to only 16 *percent* of the NFL receivable. There against afforestation was carried out only on 7,280.84 hectare which is only 44 *percent* of the area of non-forest land identified for afforestation.
- (iii) The afforestation activity in non forest land was limited to only four States of Assam, Chhattisgarh, Odisha and Tamil Nadu. In fact, 95 *percent* of all afforestation done on non forest land in the country was in one State viz Odisha. Aside of Odisha, the total afforestation undertaken in the country on non forest land was a mere 329.30 hectare.
- (iv) Odisha exceeded the target for afforestation on NFL it set for itself and Assam achieved hundred *percent* of the target. MoEF stated in (May 2013) that in pursuance to Supreme Court's order dated 5 May 2006, funds realized from the user agency for creation and maintenance of CA were transferred to the Ad-hoc CAMPA. All CA activities came to standstill till the Supreme Court vide their order dated 10 July 2009 allowed the Ad-hoc CAMPA to release a part of these funds to the concerned State CAMPAs with an annual ceiling of ` 1,000 crore per annum for release of CAMPA funds. Transfer of CA funds to the Ad-hoc CAMPA without any release to State/ UT Governments from 2006 to 2009 and putting up of an annual ceiling on their release from 2009 onwards by the Supreme Court resulted in accumulation of CA funds.

It is a fact that between May 2006 and July 2009, no funds for compensatory afforestation were released to State Forest Departments by Ad-hoc CAMPA, hence, slowing down the activity of CA. However, an amount of ` 2,925.65 crore that was received by the State Forest Departments (including J&K) towards CA funds during the period 2009-12 out of which an amount of 1,149.80 crore remained unutilised in the accounts of the respective State Forest Departments.

It is evident that on one of the most important conditions of the Guidelines under FC Act, 1980 viz. undertaking compensatory afforestation on forest land diverted, the record, as borne out by the facts, has been very dismal.

- Total forest land diverted during the period 2006-12 was 1,14,877.26 hectare. Non-forest land measuring to 1,03,381.91 hectare was receivable after excluding exempted categories but against this only 28,085.90 hectare was received. In four states non-availability certificates of non-forest land measuring to 1,426.10 hectare were available. Hence non-forest land measuring to 75,905.47 hectare was not received which was 73 *percent* of receivable non-forest land. Even these non forest lands in most cases were not transferred/ mutated in favour of the State Forest Department (SFD).
- Neither the State Nodal Officer/ PCCF nor MoEF ensured the receipt of non-forest land and the final clearances were given without ensuring the receipt of equivalent non-forest land from the user agencies. Thus, MoEF failed in ensuring the compliance of its own regulatory provisions for forestry clearance.
- MoEF has no mechanism in place to ensure that the entire NFL which is due to be transferred and mutated in favour of the State Forest Departments has actually been received and mutated. The situation was even more alarming considering the fact that such transfer and mutation is vital precondition to permit diversion of forest land and ensuring that the forest land of the country are not depleted and must be fulfilled before giving final clearance. It is also of concern that though final clearances had been given without ensuring fulfilment of the key conditions, which invited invoking of the penalty clause under Section 3A of the Forest (Conservation) Act, 1980.

- Declaration of the non-forest area, identified for CA, as RF/PF is a time taking process and, therefore, keeping in mind the diverse administrative procedures followed by the different states and different degree of public resistance to declaration of area as RF/PF, uniformity and promptness in declaration of the forest area as RF/ PF by the States may not always be possible. However, considerable progress has been made in declaration of CA areas as RF/PF.
- Whether requisite non-forest land for CA, wherever applicable, had been transferred and mutated in favour of the SFDs and notified as Reserve Forest/ Protected Forest in accordance with the provisions of the Indian Forest Act, 1927 / local Forest Act. The committee would *inter-alia* prepare up-to-date inventory of such land and reconcile it with the land records and that MoEF would issue appropriate directions to ensure transfer and mutation of the non-forest land in favour of the concerned State Forest Department within a reasonable time, say one year from the date of issue of such direction.
- Audit observation on absence of a MIS and a robust monitoring system.
- Where non-forest land are not available or non-forest land is available in less extent to the forest area being diverted, compensatory afforestation is to be carried out over degraded forest twice in extent to the area being diverted or to the difference between forest land being diverted and available non-forest land, as the case may be. As per para 3.2 (v) of the Guidelines issued under the FC Act, 1980, non-availability of suitable non-forest land for compensatory afforestation in the entire State/ UT would be accepted by the Central Government only on the certificate from the Chief Secretary to the State/ UT Government to this effect. In case of Jammu & Kashmir State the certificate is to be issued by Deputy / Divisional Commissioner.
- Non availability of forest land was not certified by the Chief Secretary/ Deputy or Divisional Commissioner. It was observed that the final clearances were given by the committee headed by the Director General of Forests & Special Secretary, Ministry of Environment and Forests by allowing compensatory afforestation on the degraded forest twice the extent of forest land diverted either without obtaining the certificate or by accepting ineligible certificates of the competent authority.
- Compensatory afforestation on double degraded forest land was not admissible on the basis of the certificate of the Chief Secretary about one district. There are substantial variation between the figures provided by the RO and the State Forest Department. In fact in not a single State/ UT did there was convergence of data between the concerned State Forest Department and the Regional Office of MoEF. Not only does it highlight lack of a system of periodic reconciliation of data between the two authorities but also raises doubts on the reliability of the data. In the absence of authenticated data and non-production of proof of mutation/ transfer of identified land in favour of Forest Department, it cannot be assured that the final clearances were given only on the fulfillment of all the stipulated conditions and the forest lands have been appropriately safeguarded.

The two controlling authorities did not have in place a robust MIS to monitor the extent to which forest land had been diverted and to judge the extent to which these forest lands had been depleted due to non-providing of NFL. This data was also critical to monitor the compliance with the conditions imposed at in-principle clearance prior to giving final clearance. The absence of such a system puts to question the entire monitoring mechanism in MoEF and State Forest Department in this regard.

3.4 Environmental issues

3.4.1. Diversion of forest land for mining without environmental clearance: As per para 2.3(i) of the Guidelines issued under the FC Act 1980, project proposals requiring clearance from environmental angle as per notifications issued from time to time under Environment (Protection) Act, 1986, require clearance separately under procedure laid down by the Environment Wing of MoEF. Environmental clearances where required are to be applied for separately and simultaneously with forest clearance. For a project requiring clearances from forest as well as environment angles, separate communication of sanctions was to be issued, and the project was deemed to be cleared only after clearances were received from both the angles. While granting final approval, it should have been ensured by MoEF that the environment clearance certificate had been obtained. In both the above cases it was observed that even after reporting by the Regional offices, MoEF did not initiate any action against the defaulting agencies and granted final clearance without ensuring environmental clearance.

3.4.2 Adverse effects of mining on Forest and Wildlife: As per para 4.16 (ii) and (iii) of the Guidelines issued under the Forest (Conservation) Act, 1980, while according approval for diversion/renewal of forest land for mining purposes, the leases were to be renewed / monitored after every five years. The Regional Office was to monitor the main parameters/ conditions of formal approval as frequently as possible, at least once in a year. At least once in five years a comprehensive monitoring as to the effect of mining on air and water pollution was also to be carried out. Regional Offices were required to send such reports/certificates in respect of the monitoring mechanism indicated above to the MoEF, so that a view could be taken on continuation of mining lease beyond five years. Even after receiving adverse reports from the RO, no corrective/ remedial action was taken by MoEF and it continued to grant clearances ignoring the violation of the forestry guidelines by the user agencies. MoEF did not revoke the mining lease granted to the user agencies. MoEF stated (May 2013) that in the extant case monitoring reports contained general observation that mining activities in the projects was affecting, flora and fauna and forest and wildlife adversely. Mining projects by their very nature does affect flora and fauna adversely to some extent. Violation or non-compliance to any of the stipulated

conditions has however, not been reported in any of these cases. In the absence of specific violation or non-compliance to any of the stipulated conditions, it is not appropriate for the MoEF to take any punitive action against such lessees.

3.4.3 Renewal of environmentally damaging mining lease by MoEF:

3.5 Other issues of Land management: Inadequate and ineffective application of penal clause; Section 2 of the Forest (Conservation) Act, 1980, imposes restrictions on dereservation of forest or use of forest land for non forest purposes. It envisages that no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing dereservation of reserve forest, use of forest land for non forest purpose, lease out the forest land and clearing of the trees over the forest land. The authorities authorised to grant forest clearances are the Chief Conservator of Forests/Additional Principal Chief Conservator of Forests of the Regional Office and the Director General of Forests of MoEF. As per Section 3A of the Forest (Conservation) Act, 1980, whoever contravenes or abets the contravention of any provisions of Section 2, is to be punishable with simple imprisonment for a period which may extend to fifteen days. Where any offence under this act had been committed by any department of the Government or any authority, every person who, at the time the offence was committed was directly in charge of, and was responsible to, the authority for the conduct of the business of the authority as well as the authority was to be deemed to be guilty for the offence and liable to be proceeded against and punished accordingly.

4. Conclusions: Forests are a vital component in sustaining the life support system on Earth. Any programme for development needs to evolve a systemic approach so as to balance economic development and environmental protection. Regulating the indiscriminate diversion of forest land for non-forest use is, therefore, critical. Accordingly, compensatory afforestation has been made one of the most important conditions while approval is accorded in case of proposals for dereservation or diversion of forest land for non-forest uses. It is envisaged that compensatory afforestation will be done on equivalent area of non-forest land which is to be transferred to the ownership of State Forest Department or on double the extent of area of forest land diverted on degraded forest land under certain circumstances. Mines particularly coal mines in India require huge quantum of forest land diversion for meeting the needs of coal in the country. The audit of Forest Clearance conditions help us identify the critical parameters, which in the quest of coal production is being overlooked and needs to be taken care of so that both the conservation of ecology and development can take place simultaneously and a balance is met. The audit of Stage I Forest Clearance individual mines involving forest land diversion will help scrutiny and compliance of Stage I conditions and hence compounding of problem is not likely to occur and the stage I forest clearance audit will help improve the ultimate aim of protection of environment while meeting the development needs of the country.

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