

Explained: Why govt proposes to redefine forests, and the concerns this raises

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Last week, the Ministry for Environment, Forests and Climate Change (MoEFCC) published proposed amendments to the Forest Conservation Act, 1980, easing diversion of forests and exempting certain categories of development from the need to take clearance from the Ministry. The Ministry has invited feedback from state governments and the general public within 15 days. After examining the feedback, it will draw up a draft amendment, followed by a second round of public consultation before an amendment Bill is finally drawn up and tabled in Parliament.

Why is the Act being amended now?

It has been amended only once before, in 1988. Ministry officials have said the current definition of forests has locked land across the country; even private owners cannot utilise their own property for non-forestry purposes. Under the Act, any diversion of any forest land for any purpose, including assignment of leases, needs prior approval of the Centre.

In 1996, ruling in *T N Godavarman Thirumulpad v Union of India*, the Supreme Court had expanded the definition and scope of forest land to include all areas recorded as forest in any government record, irrespective of ownership, recognition and classification. Previously, the Act had applied largely to reserve forests and national parks. The court also expanded the definition of forests to encompass the “dictionary meaning of forests”, which would mean that a forested patch would automatically become a “deemed forest” even if it is not notified as protected, and irrespective of ownership. The order was also interpreted to presume that the Act is applicable over plantations in non-forest land.

Ministry officials said the amendment is proposed to “streamline provisions of the Act”. It has said the identification of forest land is subjective and arbitrary and that the “ambiguity” has “resulted into lot of resentment and resistance particularly from private individuals and organisations”.

The Ministry has also cited “strong resentment in the Ministry of Railways, Ministry of Road, Transport & Highways”, which too require forest clearance. Officials said these clearances usually take several years, in turn delaying infrastructure projects.

What are the proposed amendments?

* The Ministry has proposed that all land acquired by the Railways and Roads Ministries prior to 1980 be exempted from the Act. It says these lands had been acquired for expansion, but subsequently forests have grown in these areas, and the government is no longer able to use the land for expansion. If the amendment is brought in, these Ministries will no longer need clearance for their projects, nor pay compensatory levies to build there.

* For individuals whose lands fall within a state-specific Private Forests Act or come within the dictionary meaning of forest as specified in the 1996 Supreme Court order, the government proposes to allow “construction of structures for bona fide purposes” including residential units up to 250 sq m as a one-time relaxation.

* Defence projects near international borders will be exempted from forest clearance.

* Oil and natural gas extraction from forested lands will be permitted, but only if technologies such as Extended Reach Drilling are used.

- * The Ministry has proposed doing away with levies for non-forestry purposes during the renewal of a lease, saying the double levy at the time of awarding of the lease and the renewal is “not rational”.
- * Strip plantations alongside roads that would fall under the Act will be exempted.

What are the concerns?

- * Activists and opposition leaders say the relaxation of forest rules will facilitate corporate ownership and the disappearance of large tracts of forests.
- * About the exemption of forests on private land, even former forest officials said many forests will disappear. For instance, 4% land in Uttarakhand falls under private forests.
- * Leaders such as Brinda Karat (CPM) have asked what will happen to tribals and forest dwelling communities — an issue the amendments do not address.
- * Environmentalists say exemption for Roads and Railways on forest land acquired prior to 1980 will be detrimental to forests as well as wildlife – especially elephants, tigers and leopards.
- * Environmentalists say one time exemption for private residences on private forest will lead to fragmentation of forests, and open areas such as the Aravalli mountains to real estate.

Do environmental groups note any positives?

They have welcomed the fact that the consultation paper has been public, and the decision to make changes through an amendment using the parliamentary process. Environmental lawyer Ritwick Dutta said that over the last decade and a half, irrespective of which party has been in power, the standard procedure has been to change laws through office memorandums and letters and not through statutory process.

Environmental groups have also acknowledged that:

- * The MoEFCC has pointed out where the pressure for forest land diversion has been coming from — Ministries such as Rail and Roads — and allowed a public debate on it.
- * It has proposed making forest laws more stringent for notified forests, making offences non-bailable with increased penalties including imprisonment of up to one year.
- * It has disallowed any kind of diversion in certain forests.
- * It has attempt to define and identify forests once and for all — something that has been often ambiguous.

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