



# Lex Terra

Centre for Environmental Law, Advocacy and Research (CELAR)  
National Law University and Judicial Academy, Assam

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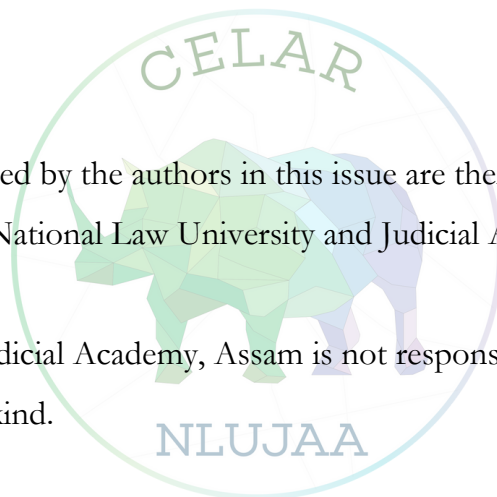
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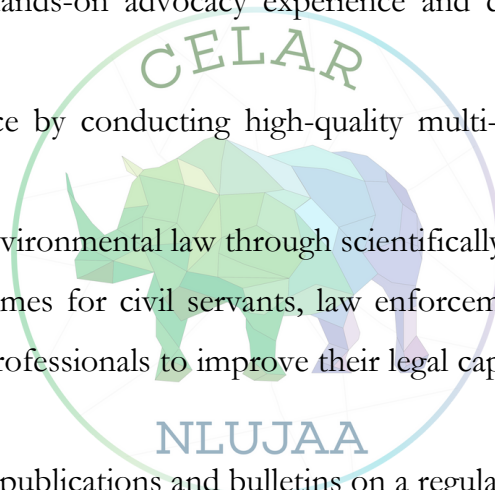
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# ABOUT CELAR

The fundamental aim of the **Centre for Environmental Law, Advocacy, and Research (CELAR)**, National Law University and Judicial Academy, Assam, is to participate in advocacy and research on public interest environmental concerns. It endeavours to do so by holding workshops and seminars to educate and improve skills, convening conferences to encourage an exchange of ideas, conducting training programmes for capacity building in environmental law issues, undertaking legal research, and publishing newsletters and journals regularly.

The main objectives of CELAR can be elucidated as follows:

- Providing students with hands-on advocacy experience and direct exposure to the issues to inspire and educate them.
- Strengthen access to justice by conducting high-quality multi-disciplinary research on current environmental legal issues.
- Advocate for reforms in environmental law through scientifically sound legislative proposals.
- Organize training programmes for civil servants, law enforcement agencies, non-governmental organisations, and media professionals to improve their legal capacity on environmental laws and policy.
- Publish environmental law publications and bulletins on a regular basis.



Thus, to meet the last objective, ***‘Lex Terra’*** is an initiative undertaken by CELAR. Through Lex Terra, we strive to provide a voice to various aspects of the environment, published quarterly, to create a community of environmentally conscious individuals from the legal and non-legal fraternity. Each issue of Lex Terra features important environmental news from across the world and from within the nation. This bulletin is meticulously compiled by CELAR members and is dedicated to enviro-legal enthusiasts around the country.

# MESSAGE FROM THE CHIEF MENTOR

It is, unfortunately, true that inadvertently, we humans are responsible for the deterioration of this planet without recognising the negative consequences of minor things we do to contribute towards its dilapidation. Education and awareness generation can be one of the positive moves to fix the irreparable damage that we have done to our Mother Nature, and in furtherance to such moves, we as a legal institution, are continuously striving to bring environment related news and views for several environmentally sentient readers.

In this context, it delights me to note that the *Centre for Environmental Law, Advocacy and Research (CELAR)*, National Law University and Judicial Academy Assam, is releasing a new issue of its webzine, '*Lex Terra*'. Lex Terra aims to be an e-forum that involves, promotes and engages students, scholars and anyone interested in environmental law, to express and share their opinions and ideas. It is our fervent expectation that this webzine will keep providing an academic forum to bring all ecologically conscious minds together to deliberate on environment related developmental decisions.

I congratulate the entire team of CELAR for bringing out this webzine which justifies one of the significant mandates of National Law University and Judicial Academy, i.e., rendering a socially relevant legal education. I appreciate the efforts made by the student editors and peer reviewers in bringing out this webzine. I also bring on record the constant guidance being provided by CELAR teacher members to the students.

I am certain that this modest endeavour of CELAR will continue to stimulate and proliferate environmental legal awareness.

**Prof. (Dr.) V.K. Ahuja,  
Vice-Chancellor, NLUJAA**



# EDITORIAL NOTE

*“If we don't put our differences aside in the name of the greater good, life on the planet will be in danger and it will be too late to cry.”*

- Luiz Inacio Lula da Silva,  
President of Brazil at COP-28, Dubai, UAE

The 28th Conference of Parties (COP-28) convened in Dubai, UAE, gathering representatives from 197 countries to confront the urgent need for global climate action. This pivotal event unfolded as a milestone within the framework of the Paris Agreement, highlighting both encouraging progress and persistent challenges in the ongoing battle against climate change. COP-28 signifies a substantial leap forward in international efforts to combat global warming.

A key outcome of COP-28 was the emergence of the Global Stocktake (GST), a review mechanism established under the Paris Agreement. This visionary text outlines eight crucial steps to limit global temperature rise to 1.5 degrees Celsius. Notable goals include tripling global renewable energy capacity, doubling the global average annual rate of energy efficiency improvements by 2030, and substantial reductions in non-CO2 emissions, especially methane emissions, globally by 2030.

COP-28 issued a resounding call for a just, orderly, and equitable transition away from fossil fuels in energy systems. This imperative action aims to accelerate efforts in the critical decade leading up to 2050, with the ultimate goal of achieving net-zero emissions. Prioritizing adaptation measures, COP-28 emphasized enhancing adaptive capabilities and minimizing vulnerability for sustainable development. The conference advocated for a doubling of adaptation finance, plans for assessments, and monitoring of adaptation needs, with explicit 2030 targets for water security, ecosystem restoration, and health. Addressing the pressing issue of financial support owed by wealthier nations to developing counterparts, COP-28 introduced the New Collective Quantified Goal (NCQG). Developed nations are proposed to owe USD 500 billion to developing countries in 2025, with a new collective quantified goal starting at USD 100 billion per year, covering mitigation, adaptation, and loss and damage.

Crucially, an agreement was reached to operationalize the Loss and Damage (L&D) fund, designed to

compensate countries grappling with climate change impacts. Specific provisions allocate a percentage of the fund to Least Developed Countries and Small Island Developing States, with initial oversight by the World Bank.

COP-28 witnessed the introduction of a pledge in which signatories committed to tripling the world's installed renewable energy generation capacity to at least 11,000 GW by 2030. Simultaneously, they pledged to double the global average annual rate of energy efficiency improvements, aiming for over 4% annually until 2030. Sixty-six national government signatories pledged to collaboratively reduce cooling-related emissions by at least 68% globally relative to 2022 levels by 2050, acknowledging the importance of addressing this often overlooked aspect of climate action. COP-28 featured a declaration aiming to triple global nuclear energy capacity by 2050, highlighting the multifaceted approach required to meet growing energy needs while reducing carbon emissions.

In summary, COP-28 represents a significant stride in the global commitment to combat climate change, with tangible actions and pledges set forth. While acknowledging the positive momentum, it is imperative for the international community to remain vigilant and collectively ensure the implementation of these measures to secure a sustainable and resilient future for generations to come.

In the context of COP-28 outcomes, the **43rd Issue** of *Lex Terra* addresses critical issues related to climate change and presents avenues for creating a more sustainable world. By delving into the complexities of environmental challenges, this issue provides insights into how legal frameworks, policies, and collective efforts can foster a planet where the delicate balance between humanity and nature is preserved. *Lex Terra* Issue 43 serves as a timely resource for navigating the legal dimensions of climate action and envisioning a future where the world thrives sustainably.

The *first* article explores the concept of Environmental Impact Assessment (EIA). The author delves into the international legal framework surrounding EIA, highlighting the pivotal Principle 17 of the Rio Declaration. The author examines the necessity for EIA in various international instruments, such as UNCLOS and the Convention on Biodiversity, and emphasises the importance of foreseeability in conducting an EIA. The discussion extends to transboundary EIAs, procedural aspects, and judicial review. The author raises critical concerns about the adequacy of the existing legal framework, the lack of international guidelines, and the limited scope of the International Court of Justice in addressing environmental claims.



In the *second* article, author Yashaswi Sharma conducts a meticulous legal scrutiny of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, emphasizing the pivotal role of Social Impact Assessment (SIA). The analysis delves into the categorization and goals of SIA, outlining the ensuing Social Impact Management Plan and practical hurdles in its implementation. Sharma expresses concerns about potential circumvention of the SIA process through state amendments and the urgency clause. The review underscores the need for greater uniformity and scholarly examination to improve the Act's evaluation of social impact.

The *third* article critically examines the Forest (Conservation) Amendment Act, 2023, aimed at aligning with global climate goals. The amendment's narrower definition of "forest land" raises concerns about its compatibility with the Forest Rights Act, 2006. Mittal highlights ambiguities in the Act's objectives, particularly regarding compensatory afforestation and potential ecological consequences. The author underscores the importance of clarity in defining matters of national significance and proposes solutions such as addressing uncertainties in the amendment and ensuring alignment with environmental and community protection laws. The author emphasizes the need for a balanced approach to prevent unintended consequences and ecological imbalances.

The *fourth* article by Virendra Ashiya and Nandini Ravishankar critically explores the environmental impact of unlawful mining on the Aravalli Range. Renowned for its mineral wealth, the Aravalli region confronts ecological challenges due to activities such as unauthorized mining. The authors evaluate the magnitude of illegal mining, referencing reports that highlight considerable depletion in specific areas. They examine the repercussions, encompassing land degradation, sandstorms, and ecological disruption. The paper scrutinizes the Draft Regional Plan 2041 for the National Capital Region (NCR) as a potential remedy but expresses concerns about its effects on environmental conservation. The authors advocate for stringent measures, including designating the entire Aravalli range as a biosphere reserve and a world heritage site, to safeguard its ecosystem.

In '*Green Criminology and India*', Dr. Sameera Khan highlights the critical environmental challenges facing India, emphasizing the shortcomings of existing laws in addressing issues like deforestation and pollution. The author proposes a multifaceted solution through Green Criminology, advocating for legal amendments, rigorous environmental impact assessments, criminological analysis, interdisciplinary collaboration, stakeholder engagement, and robust enforcement. This comprehensive

approach addresses the inadequacies in the current legal framework, offering a strategic path to combat environmental crimes and promote sustainable development in India.

In the final article of this publication, the authors provide a comprehensive critique of the Forest (Conservation) Amendment Act, 2023, offering a well-argued evaluation of the legislative revisions. They express concerns regarding the altered short title's shift to Sanskrit, suggesting potential exclusion of a significant population segment. The newly introduced preamble, emphasizing net-zero emissions and forest carbon stocks targets, is criticized as overly idealistic and incongruent with practical amendments. Scrutiny is applied to the Act's scope, exemptions, and endorsement of non-forest activities, including zoos and safaris, with concerns raised about potential adverse environmental consequences. The review aptly raises valid points about the Act's susceptibility to exploiting forest resources, neglecting the rights of forest dwellers, and posing risks to the biodiverse Northeast region. The overarching argument suggests that rather than rectifying deficiencies, the amendments may contribute to a decline in forest cover and environmental imbalance, contradicting the original conservation objectives.

**Lex Terra Editorial Board**

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# ENVIRONMENTAL IMPACT ASSESSMENT

- Pragyant Khare\*

## I. ENVIRONMENTAL IMPACT ASSESSMENT IN INTERNATIONAL LAW

Environment Impact Assessment (EIA) is codified in numerous international instruments, with particular significance attached to Principle 17 of the Rio Declaration.<sup>1</sup> The Principle states that an EIA must be undertaken for activities likely to impact the environment significantly.<sup>2</sup> It has been held that this principle becomes applicable if the harm complained of is 'significant'<sup>3</sup>, thereby precluding the consideration of a minor injury. Interpretation of 'Significant' is to be done via adherence to Articles on the Prevention of Transboundary Harm from Hazardous Activities (hereinafter, "ILC's Articles") by the International Law Commission (hereinafter, "ILC").<sup>4</sup> Moreover, Principle 17 necessitates that the harm envisaged must be foreseeable before an EIA is conducted.<sup>5</sup> In essence, the foreseeability of harm is a condition precedent of conducting an EIA. The literal interpretation of this principle has been critiqued as 'circular' and 'potentially self-defeating'.<sup>6</sup>

The need for conducting an EIA is also embodied under Article 206 of the United Nations Convention on Law of Sea (hereinafter, "UNCLOS")<sup>7</sup> and Article 14 of the Convention on Biodiversity (hereinafter, "CBD")<sup>8</sup>. The UNEP Goals and Principles of Environmental Impact Assessment also formulated this foundational principle.<sup>9</sup> Article 206 of UNCLOS places an obligation on the State to evaluate the consequences of planned activities that possess the potential to inflict substantial harm to the marine environment.<sup>10</sup> Similarly, Article 14 of CBD stipulates that States are required to conduct an EIA before the implementation of any project

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<sup>1</sup> United Nations Conference on Environment and Development, June 3-4, 1992, *Rio Declaration on Environment and Development*, Principle 17, UN Doc. A/CONF.151/26/Rev.1.

<sup>2</sup> *Id.*

<sup>3</sup> PATRICIA BIRNIE, ALAN BOYLE, CATHERINE REDGWELL, *INT'L LAW & ENVIR.* 171 (3<sup>rd</sup> ed., 2009).

<sup>4</sup> International Law Commission, Articles on Transboundary Harm, UN Doc. A/RES/56/82 (May 11, 2001).

<sup>5</sup> *Supra*, note 7.

<sup>6</sup> *Supra*, note 7.

<sup>7</sup> United Nations Convention on the Law of the Sea, 16<sup>th</sup> November 1994, 1833 U.N.T.S 397.

<sup>8</sup> The Convention on Biodiversity, 5<sup>th</sup> June 1992, 1760 U.N.T.S 69.

<sup>9</sup> United Nations Environment Program, *Goals and Principles of Environmental Impact Assessment* (June 17, 1987).

<sup>10</sup> Article 206, United Nations Convention on Law of Seas, 16<sup>th</sup> November, 1994, 1833, U.N.T.S 397.

that can have an adverse effect on biodiversity.<sup>11</sup> Furthermore, the Espoo Convention<sup>12</sup> and Stockholm Declaration<sup>13</sup> also talk about the necessity of conducting an EIA.

### *1.1 Transboundary EIA*

It is an established principle of general international law that an EIA must be conducted for activities that can cause significant transboundary harm.<sup>14</sup> When a proposed action of One State can likely impact any shared resource or any other state, the necessity of an EIA becomes indisputable. The World Court, in the ruling of Pulp Mills, affirmed that this obligation constitutes an integral part of a state's duty to observe due diligence and avert transboundary harm.<sup>15</sup>

The judgment did not create any new principle of law; instead, it acknowledged a pre-existing practice as the principal customary international law. Several treaties and conventions mandating a transboundary EIA contribute substantially to this legal framework. Article 7 of ILCs Articles,<sup>16</sup> Espoo Convention, 1991<sup>17</sup> is the most comprehensive and prominent instrument on the subject. These elements collectively constitute the *opinio juris* for a transboundary EIA. States and international organizations' practices further promote the requirement of an EIA in a transboundary context. For example, countries such as the USA, India, Germany, and Austria have all enacted domestic laws mandating an EIA.<sup>18</sup> International Organizations, like the World Bank, also require an EIA as a prerequisite for their lending operations in cases where proposed activities can potentially cause transboundary harm.<sup>19</sup> States may also carry out an EIA of their own volition for actions that might exert transboundary effects as a prudent measure. Any State alleged to have omitted its duty of conducting an EIA may argue that there was no need to

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<sup>11</sup> Article 14, The Convention on Biodiversity, 5<sup>th</sup> June 1992, 1760 U.N.T.S 69.

<sup>12</sup> Convention on Environmental Impact Assessment in a Transboundary Context, 27<sup>th</sup> June, 1997, 30 *ILM* (1971) 802.

<sup>13</sup> The United Nations Conference on Human Environment, June 5-16,1972, *Stockholm Declaration*, Principle 21, UN Doc.A/CONF/48/14/REV.1

<sup>14</sup> Alan Boyle, *Developments in the International Law of Environmental Impact Assessments and their Relation to Espoo Convention*, 20 (3) *REV OF EUR COMP & INT'L ENVIR LAW.*, (2011).

<sup>15</sup> *Argentina v. Uruguay*, [2006] ICJ Rep 113.

<sup>16</sup> International Law Commission, Articles on Prevention of Transboundary Harm, Article 7, UN Doc. A/RES/56/82 (2001).

<sup>17</sup> *Supra*, note 12.

<sup>18</sup> Nicholas A Robinson, *International Trends in Environmental Impact Assessment*, 19 *BOSTON COL. ENVIR. AFF. LAW REV.*, 1992.

<sup>19</sup> *Supra*, note 7.

carry out an EIA in the given circumstances.<sup>20</sup> Alternatively, it may assert that an EIA was conducted.

In the *Gabcikovo-Nagymaros* case, the ICJ drew a clear distinction between two phases of assessment concerning projects: one occurring before the commencement of the project and one carried out during the project's operational phase.<sup>21</sup> The latter phase primarily deals with monitoring a project and assessing its environmental impact after the commencement of operations.<sup>22</sup> An EIA is typically carried out before a project is implemented, mainly due to its potential influence on whether to proceed. However, in some instances, a post-project analysis might be carried out in addition to an EIA.

### *1.2 Content of an EIA*

There is no standardized procedure for conducting an EIA under any international instrument. While States are obliged to take appropriate measures to evaluate the potential harm, the exact measures that ought to be taken have yet to be laid down under CBD. Article 7 (c) of CBD grants States the latitude to employ any technique or procedure for conducting an EIA.<sup>23</sup> These discretionary powers given to the States to adopt any method for carrying out an assessment are further underscored by using the term 'reasonable' in Article 206 of UNCLOS.<sup>24</sup> Consequently, States retain the autonomy to determine the content and methodology of an EIA.

However, it is noteworthy to highlight that the commentary on Article 7 of ILC's Articles on transboundary harm says that an EIA should assess any adverse or harmful impact of a project on the environment. It should not be restricted solely to impact on any individual or property but should also cover environmental effects under its fold.<sup>25</sup> The ICJ reiterated this point in the *Pulp Mills Case*, wherein it was held that the substance of an EIA should be determined following an evaluation of the "Nature and Magnitude of a proposed development" within the context of the anticipated environmental repercussions of such an

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<sup>20</sup> *Supra*, note 7.

<sup>21</sup> *Hungary v. Slovakia*, [1997] ICJ Rep 7.

<sup>22</sup> *Id.*

<sup>23</sup> Article 7 (c), The Convention on Biodiversity, 5<sup>th</sup> June 1992, 1760 U.N.T.S 69.

<sup>24</sup> Article 206, United Nations Convention on Law of Seas, 16<sup>th</sup> November, 1994, 1833, U.N.T.S 397.

<sup>25</sup> *Supra*, note 18.



activity.<sup>26</sup> The ICJ also clarified that an EIA need not be a strict legal requirement but can also be integrated as a component of authorization.<sup>27</sup>

### *1.3 Process*

Various jurisdictions worldwide adhere to distinct EIA procedures according to their municipal laws. In general, an EIA is carried out in 8 steps. The first step is to ascertain whether an EIA is required for a proposed project, often resembling a screening process or initial environmental examination.<sup>28</sup> After that, the scope of the EIA or the key issues to be covered by it is delineated. This is followed by the comprehensive EIA, which rigorously evaluates the proposed project's environmental impact. In cases where the EIA identifies potential adverse impacts, suggestions to mitigate the effects are recommended.<sup>29</sup> The findings are then reported to the decision-making authorities, who decide concerning the execution of the project.<sup>30</sup> This usually marks the end of an EIA process unless a post-project analysis or ongoing project monitoring supplements it.

### *1.4 Judicial Review*

Before conducting an EIA, any State potentially affected has the right to petition the ICJ for the implementation of an assessment. The World Court may issue provisional measures obligating a State to carry out an EIA.<sup>31</sup> However, once an EIA is conducted in a *bona fide* manner using appropriate methods, the Court only interferes with it if it is glaringly inadequate or inconsistent with the standard practice.<sup>32</sup> If a State fails to discharge its obligation to conduct an EIA and subsequently causes some transboundary harm, it shall not be absolved of liability.

## **II. HUMAN RIGHTS, STAKEHOLDERS AND EIA**

In the Pulp Mills case, The ICJ held that there was no inherent obligation on a State to consult the affected population of the other State.<sup>33</sup> This implies that one State's activities in furtherance of its economic development may impact the residents of another state, raising

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<sup>26</sup> *Supra*, note 15.

<sup>27</sup> *Id.*

<sup>28</sup> Protocol on Environmental Protection to the Antarctic Treaty, October 3, 1991, 30 I.L.M 1461.

<sup>29</sup> CENTRE FOR SCIENCE AND ENVIRONMENT, *UNDERSTANDING EIA*, <https://www.cseindia.org/understanding-eia-383> (Last visited Sep. 2<sup>nd</sup> 2023).

<sup>30</sup> *Id.*

<sup>31</sup> *Australia v. Japan: New Zealand intervening*, Judgment, I.C.J. Reports 2014, p. 226.

<sup>32</sup> *Ireland v. United Kingdom*, ICGJ 343, ITLOS 2001.

<sup>33</sup> *Supra*, note 26.

questions about compliance with International human rights laws. Instead of mandating States to consult with all affected individuals and stakeholders, the World Court opted to dispense the requirement for such consultation while conducting an EIA.

The engagement of stakeholders in the EIA process not only facilitates its successful execution but also leads to a better implementation of the proposed project. Involving stakeholders provides immense social and monetary benefits.<sup>34</sup> It ensures that local experience and traditional knowledge of the communities are noticed.<sup>35</sup> This helps in fostering accountability and preventing an unproductive and ineffective assessment. Additionally, it aids in the comprehensive identification of all critical issues and mitigation measures.<sup>36</sup> Community participation mitigates the feeling of bitterness and potential discontent towards both the new project and the government. Moreover, it also provides the local communities with opportunities to learn about new technology. Further, involving the community in the assessment process ensures that the social impact of a proposed project is considered while deciding with regard to the execution of the project.

Though desirable, the Participation of stakeholders is a difficult target to achieve. Numerous obstacles prevent the involvement of communities in the assessment process.<sup>37</sup> Firstly, many stakeholders lack the necessary financial resources or time to engage effectively in the assessment process. Secondly, a language barrier can pose a significant hurdle as local communities often speak a distinct language. The assessment segments are primarily in English, a language not commonly spoken among the locals. Consequently, they encounter difficulties in comprehending and participating in the assessment. Thirdly, many stakeholders lack the competence to understand the technical aspects of an assessment process.<sup>38</sup> Additionally, cultural disparities are often an issue as well.<sup>39</sup> The approach taken by the local communities to resolve a problem differs from that of the people conducting the assessment, potentially hindering the identification of crucial issues. Lastly, municipal laws frequently exhibit ambiguity, lacking the necessary clarity on the evaluation.

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<sup>34</sup> Ross Hughes, *Environmental Impact Assessment and Stakeholder Involvement*, IIED, (1998).

<sup>35</sup> *Id.*

<sup>36</sup> Raphael Mwalyosi, Ross Hughes & David Howlett, *Public and Stakeholder Involvement in EIA*, IIED, ORIENTATION COURSE ON ENVIRONMENTAL IMPACT ASSESSMENT IN TANZANIA: RESEARCH HANDBOOK, 1203-274, (1999).

<sup>37</sup> *Id.*

<sup>38</sup> *Supra*, note 38.

<sup>39</sup> *Supra*, note 40.

### III. CRITICISM

Governments often prioritize developmental projects at the expense of environmental considerations, resulting in the approval of unassessed projects and constructions. This lax oversight has occasionally led to catastrophic incidents like the Bhopal Gas leak or the recent LPG Gas Leak in Visakhapatnam. With the growing concern over environmental issues and climate change, the significance of provisions relating to the conservation of natural wildlife, forest cover, and EIA have come to light. The author contends that the existing legal framework concerning EIA is grossly inadequate and profoundly deficient. The discretion granted to nations to choose the content of the EIA is frequently misused for economic benefits. Moreover, the prevailing model of EIA that is followed by States lacks an interdisciplinary approach and often disregards social factors. Additionally, the limited authority of the ICJ to scrutinize an EIA is highly insufficient, allowing States to escape their obligations under many international conventions designed to safeguard the interests of the environment.

There are no international guidelines as to the content of an EIA; instead, treaties and conventions focus on the importance of an EIA. They leave it to the States to carry it out in any manner. The criteria for triggering an EIA, as established by different treaties and conventions, is notably lenient. Principle 17 of the Rio Declaration, Article 206 of UNCLOS, sets a low threshold by necessitating an EIA only when there is a foreseeability of harm.<sup>40</sup> The States also decide whether or not to carry out an EIA. Moreover, the content of an EIA is left to the states to decide, something that is susceptible to abuse by the States, which, more often than not, carry out a highly inadequate mode of assessment.

Two prevalent models of conducting an assessment are followed across jurisdictions - Mandatory assessment and Administrative discretionary assessment.<sup>41</sup> States are free to choose which model they want to follow. Nations adhering to the mandatory system must compulsorily conduct an EIA before granting clearances for developmental activities. They have well-defined legislation concerning EIA that outlines the procedure and assessment standards.<sup>42</sup> In contrast, States such as India and Canada, following an administrative discretionary model,

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<sup>40</sup> *Supra*, note 2.

<sup>41</sup> P. Leelakrishnan, *Environmental Impact Assessment: Legal Dimensions*, 34(4) J.I.L.I., October-December, 541-562 (1992).

<sup>42</sup> *Id.*

vest the authority to decide on the question of an assessment, its scope and restriction in the hands of the executive.<sup>43</sup> The executive or administrative agency controls the process of the EIA, with the government possessing the discretion as to whether to carry out an EIA or not, and as such, it is not a mandatory requirement. While the compulsory model is not flexible and necessitates strict adherence to the law, it is more environmentally viable.

While it is indisputable that a State has sovereignty over their territorial activity, the absence of clear rules, procedures, strategies or support for an EIA at the domestic level is discouraging. The lack of international guidelines on EIAs conducted within nations is highly problematic. Although recognition of transboundary EIAs has been recognized as a principle of customary international law and is a step in the right path, the extensive discretion allowed to states in determining the content of such assessments without checks and balances threatens to upend the entire purpose of mandating a transboundary EIA. Without comprehensive guidelines to abide by, the states can abuse the choice given to them, leading to transboundary harm. Therefore, establishing comprehensive guidelines and rules pertaining to the content of an EIA becomes imperative.

Secondly, EIA lacks a comprehensive, multi-dimensional approach to analyzing situations. Notably, critical social factors often fall outside the purview of EIA. The sociological ramifications of a proposed project on a community are not considered at all.<sup>44</sup> Community rights, their habilitation, and their impact on their jobs and lives are completely thrown out of the window. Legislation and guidelines predominantly focus on assessing a project's environmental impact while mainly overlooking the broader societal consequences of such a project. The recognition of ecological impact assessment as part of EIA has also been slow.<sup>45</sup> Statutes typically afford minimal attention and importance to ecological factors. Furthermore, there is limited involvement of women in the assessment process. Women do not hold influential positions in the assessment process.<sup>46</sup> This hampers the representation of women's issues in the EIA process.<sup>47</sup> Their concerns in different facets of the environment are not

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<sup>43</sup> *Supra*, note 59.

<sup>44</sup> Miachel Gismondi, *Sociology and Environmental Impact Assessment*, 22(4) CAN J SOCIOL, 457- 479 (1997).

<sup>45</sup> J. Treweek, *Ecology and Environmental Impact Assessment*, 33(2) J APPL ECOL., 191, 191-199, (1996).

<sup>46</sup> Simon Goudie & Darryll Kilian, *Gender and Environmental Impact Assessment*, 29 AGENDA: EMPOWERING WOMEN FOR GENDER EQUITY, 43, 43-54 (1996).

<sup>47</sup> *Id.*

addressed. In sum, the prevailing models of EIAs do not follow a multifaceted approach and tend to overlook crucial social factors.

Lastly, the ICJ's decisions often lack the stringency to restrain parties from pursuing developmental activities. It becomes difficult to succeed in an environmental claim before the ICJ. Scholars have contended that the limited jurisdiction of ICJ in the Pulp Mills Case restricted it from deciding on issues such as air pollution, human health and noise pollution.<sup>48</sup> Moreover, it becomes challenging to adduce evidence in the court establishing a potential risk associated with a project without any assessment of the said project.<sup>49</sup> Without such an impact assessment, identifying potential harm or impact stemming from a project cannot be found, making it challenging for affected states seeking a transboundary EIA to furnish sufficient evidence. Moreover, the provisional measures issued by the court after a project has commenced operations could result in significant revenue loss for States, potentially making them reluctant to abide by the court's decisions. Consequently, the ICJ's contributions to effectively curbing unrestrained economic development have been limited.

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<sup>48</sup> Cynie R. Payne, *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, 105(1) AM J INT. LAW, 94-01 (2011).

<sup>49</sup> *Id.*



# DISCERNING THE ‘SIA’ VIA THE LENS OF RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013

- Yashaswi Sharma\*

## I. INTRODUCTION

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (“RFCTLARR Act”, “Land Acquisition Act, 2013” and “the Act”) came into force in January 2014, replacing the Land Acquisition Act of 1894. The latter act was known for its reliance on the Eminent Domain of the state in order to acquire land of private individuals.<sup>50</sup> The Act dedicates an entire chapter to the stage of preliminary investigation. As per its terms, a “Social Impact Assessment” (“SIA”) is to be carried out. A Social Impact Assessment is a commonly used preliminary tool in large infrastructure projects, such as those carried out by International Financial Institutions (e.g. World Bank).

A Social Impact Assessment requires a comprehensive study of the sociological, economic and cultural practices of those inhabiting the area. This could include inquiries into how the people carry about their day to day lives; how they carry about their sources of livelihood; what their religious beliefs are; what their linguistic habits look like; how their systems of political participation are and what the political make-up is; the availability of medical facilities and the status of their physical and mental well-being and status of the women and children in the area, among other considerations.<sup>51</sup> Understanding that a lot of these considerations are tied to interactions of the people with their surrounding environment, such as health and nutrition, this assessment also needs to look into the environmental impacts of the proposed project.<sup>52</sup> As a result, there are a number of overlaps with the process of carrying out a “Environmental Impact Assessment (“EIA”)”. As opposed to an EIA, however, a Social Impact Assessment is more people-centric. However, community engagement is central in order to successfully carry out both processes. In fact, during the initial conception of the idea of an EIA in the ‘70’s, a Social Impact Assessment was

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<sup>50</sup> Preeti Jain Das, *Social Impact Assessments under the RFCTLARR Act, 2013: A Critical Analysis*, 15 JOURNAL OF RESOURCES, ENERGY, AND DEVELOPMENT 1&2, 63–76 (2018).

<sup>51</sup> F. Vanclay, *International Principles for Social Impact Assessment*, 21(1) IMPACT ASSESSMENT AND PROJECT APPRAISAL 5–11(2003).

<sup>52</sup> *Supra* note 2.

considered to be a sub-part of the same, in order to assess the social impact – when the SIA mechanism came to be on its own, the objective became mitigation of negative social impacts.<sup>53</sup>

## II. TAXONOMY OF SIA

The Land Acquisition Act, 2013 lays down the purposes for which land can be acquired by the state. These are namely – military and strategic purposes; agro-processing activities; industrial and mining activities; water harvesting; educational, healthcare and sports among others.<sup>54</sup> The list is non-exhaustive due to the catch-all sub-section of S. 2(b)(vii), which includes “any infrastructure as may be notified in this regard by the Central Government and after tabling of such notification in Parliament”.<sup>55</sup> In general, the assessment entails a study into identifying the most vulnerable sections affected by the acquisition and how their situation can be improved.<sup>56</sup>

The Land Acquisition Act, 2013 mandates that post the preparation of the assessment, a Social Impact Management Plan (“SIMP”) would be published, which lays down the corrective measures in order to ameliorate the issues flagged in the assessment. Post the preparation, a public hearing is required to be held in the areas to be affected by the project, with sufficient due notice. This is called a “*Jun Sunwai*”, and is presided over by the officials of the Requiring Body and functionaries of land acquisition, rehabilitation and resettlement.

As the Social Impact Assessment is to be conducted by an independent entity, it is further to be appraised by an “Expert Group”, a body consisting of two non-official social scientists, two representatives of Panchayat, Gram Sabha, Municipality or Municipal Corporation, as the case may be; two experts on rehabilitation; and a technical expert in the subject relating to the project. Further, once the SIA report is published, the same has to be made available in the local language of the inhabitants by making it available in the Panchayat/Gram Sabha/Municipality/Municipal Corporation office. This allows the process to be as transparent as possible, since it is completely dependent on participation from the public.

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<sup>53</sup>Ana Maria Esteves (et. al.), *Social Impact Assessment: The State of the Art*, 30(1) IMPACT ASSESSMENT AND PROJECT APPRAISAL, 34–42 (2012).

<sup>54</sup>The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, S. 2(b), No. 30, Acts of Parliament, 2013 (India).

<sup>55</sup>*Id.*

<sup>56</sup>*Supra* note 1.

Thus, the Assessment Report goes through multiple levels of deliberation between concerned stakeholders, i.e., the people represented by the local body and external experts, i.e., social scientists. The introduction of this process has been held to be a major step towards a system that is more equitable and accountable. Complementing this SIA is the act of receiving consent from the land-owners, which is at 80% for land acquired by private companies and 70% for Public-Private Partnerships (“PPP”).

However, the Land Acquisition Act, 2013 also provides for certain cases to be exempt from requiring a Social Impact Assessment from being conducted.<sup>57</sup> The Act lays down that in cases of urgency, the Government can take on possession even in the absence of an award for the same. However, this power is limited to that area which would be required for purposes of defence, national security or natural calamities and the emergency arising thereof. The urgency clause, however, is prone to being overused – as has been seen from instances in other legislations. For instance, the erstwhile West Bengal Land (Requisition and Acquisition) Act, 1948 was put into place in order to acquire land so as to accommodate refugees from East Pakistan. The act had more power than the central act in that compensation could be given after acquisition. This act continued to be in existence till 1993, much after the urgency due to which it was enacted had eased out. In that period, the act was also used to acquire land for industrial purposes.<sup>58</sup> Yet, despite this looming possibility, the urgency clause still exists.

### **III. A WORRYING CIRCUMSCRIPTION OF THE SIA**

Despite the oft-stated importance of conducting a Social Impact Assessment, there have been instances of state governments themselves coming up with mechanisms to circumvent the process, for reasons such as retardation of infrastructural development in matters of state importance – this has been done through Art. 245(2) of the Constitution.<sup>59</sup> The first such instance was by Tamil Nadu, which enacted the RFCTLARR (Tamil Nadu Amendment) Act, 2014. This amending act stated that the central act would not be applicable in situations when land is acquired under three heads. As a result, acquisitions under these acts would not have to go through a Social Impact Assessment at all. These were namely - The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, The Tamil Nadu Acquisition of

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<sup>57</sup> *Supra* note 6. S. 9.

<sup>58</sup> A. Guha, *Challenges to Corporate Social Responsibility: A Case Study from Kharagpur, West Bengal*, 60 SOCIOLOGICAL BULLETIN 1, 79-98 (2011)

<sup>59</sup> INDIA CONST. Art. 245(2).

Land for Industrial Purposes Act, 1997 and The Tamil Nadu Highways Act, 2001.<sup>60</sup> Around 80% of all land acquisitions in the state of Tamil Nadu are carried out under the ambit of these acts, and thus the assessment wouldn't have to be carried out in a major chunk of cases.

Similar situations have taken place in Gujarat, Telangana, Andhra Pradesh, Telangana and Jharkhand; where exemptions have been provided for projects relating to areas such as national security, electrification, affordable housing and industrial corridors.<sup>61</sup> Further, exemptions in states such as Gujarat and Telangana have also been sought for PPPs. On the contrary, the Act places more safeguards in case of PPPs, requiring the “free, prior and informed consent” of landowners during assessment, i.e., the threshold for permissions is generally higher. In case of PPPs, 70% consent of total land-owning affected families would be required – whereas these amendments sought to do away with the assessment process completely.

Thus, especially on the question of PPPs, this is a worrying trend, owing to the denudation of accountability mechanisms that were put in by the Land Acquisition Act, 2013. In a way, this takes the system backwards and on the lines of the previous Land Acquisition Act, 1894, where the State had unlimited power to acquire land belonging to private persons. The system was in dire need of an overhaul, having repeatedly failed those who had to give up their lands without much power – only to receive inadequate compensation and rehabilitation. Recently, this has been observed and criticized by J. A. M Khanwilkar in the Supreme Court.<sup>62</sup>

#### **IV. INTERPLAY OF THE LAND ACQUISITION ACT WITH OTHER LEGISLATIONS**

It has been seen that in many cases, land acquired under the Coal Bearing Areas Act, 1957, according to which, the state has the final power to acquire land for the purpose of coal mining – which also includes Adivasi lands.<sup>63</sup> This means that the lands acquired under the

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<sup>60</sup> *In Crucial Verdict, Supreme Court Allows TN to Acquire Land Using State Laws, Not LARR*, THE WIRE (July 24, 2021) <https://thewire.in/law/supreme-court-tamil-nadu-land-acquisition>

<sup>61</sup> *Social Impact Assessment: Can we do Away with it?* TERIIN (Jan. 2, 2019), <https://www.teriin.org/article/social-impact-assessment-can-we-do-away-it>.

<sup>62</sup> *G. Mohan Rao & Ors v. State of Tamil Nadu & Ors.*, Writ Petition (Civil) No. 1411 Of 2020

<sup>63</sup> *India: Indigenous Peoples Demand 'Water, Forests, Land' Before Coal*, GREEN LEFT (Oct. 26, 2021), <https://www.greenleft.org.au/content/india-indigenous-peoples-demand-water-forests-land-coal>.

aforementioned act do not have to go through a Social Impact Assessment at all.<sup>64</sup> This act has also superseded the Forest Rights Act, 2006 and the Panchayat (Extension to Scheduled Areas) Act, 1996, which are known for being poorly implemented. Further, the Coal Bearing Areas Act, 1957 is also being sought to be amended in order to make acquisition of tribal/Adivasi lands easier. The draft of this proposition, unsurprisingly, has not been made available to the public nor has any public consultation taken place regarding it.<sup>65</sup> It has been understood so far that the proposed amendment seeks to make the central government—instead of the state government – the entity responsible for acquisition of land in the coal sector. The delegation of rights to the state would be done post-acquisition. Further, it is also proposed that land would be acquired under the Coal Bearing Areas Act, 1957 not only for coal mining purposes but now also for infrastructural uses and activities related to coal mining. As the current act stands, there is a clear objective – that the act will only be used to acquire land for purposes of coal extraction.<sup>66</sup> As a result, the proposed amendment would increase the ambit of the act and only result in further weakening of the Land Acquisition Act, 2013.

As it already stands, the categories exempted from a Social Impact Assessment also include that of industrial corridors, which was put into place through an amendment.<sup>67</sup> The exemption provision was seen as a means to dilute the assessment and consent process, and potentially reducing it to a mere formality.

## V. IMPLEMENTING THE SIA

Looking at the practical application of the assessment process itself, there are manifold barriers towards conducting an effective Social Impact Assessment in India. Currently, the process is governed by the Act and the RFCTLARR (Social Impact Assessment and Consent) Rules, 2014 (“The Rules”). One of the major concerns about the process is the lack of scholarship examining the process – this aspect is common to the operational parts of the Land Acquisition Act.<sup>68</sup>

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<sup>64</sup> *How Coal Companies let Greed (and Loopholes) Come in the way of Adivasi Rights*, THE SCROLL (July 13, 2016) <https://scroll.in/article/811646/how-coal-companies-let-greed-and-loopholes-come-in-the-way-of-ativasi-rights>

<sup>65</sup> *Proposed Amendments to Coal Bearing Areas Act will Change Land Acquisition for Mining: Experts*, DOWNTOEARTH, (Aug. 10, 2021). <https://www.downtoearth.org.in/news/mining/proposed-amendments-to-coal-bearing-areas-act-will-change-land-acquisition-for-mining-experts-78388>

<sup>66</sup> The Coal Bearing Areas (Acquisition And Development) Act, 1957, No. 20, Acts of Parliament, 1957 (India)

<sup>67</sup> The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014, No. 9, Ordinance of Parliament, 2014 (India).

<sup>68</sup> *Supra*, note 1.



From the information available to the public about the SIA and the SIA reports available, it has been observed that these assessments are carried out rather extensively by educational institutions. However, in adherence to methodology provided in the Act and the Rules, there is much variance. For instance, certain assessments such as the Barapullah Elevated Road Corridor Project in Delhi NCR, the aspect of “economic impact of acquisition on women” has been looked at. Impacts are often gender-specific, and women constitute a substantial part of breadwinners and hence need to be looked at closely. However, upon studying other publicly available reports such as the IIT Palakkad Project in Kerala or the Amravati Smart Capital City Project in Andhra Pradesh – the same is missing.<sup>69</sup> There have also been cases where the SIA has been made into a standardized form of three pages – proving that in certain cases the process has been used for the sake of it.

## **VI. CONCLUSION**

The introduction of a revolutionary land acquisition act was surrounded by much discussion and deliberation – in order to fill in the gaping gaps left by the previous colonial act of 1894. The latter has been notorious for unfairly depriving landowners of their lands and not providing adequate compensation mechanisms. In order to correct the same, The RFCTLARR Act, 2013 puts into place multiple checks and balances – a Social Impact Assessment being one of them. In its theory, the assessment similar to one followed world-over by International Financial Institutions such as World Bank as part of their project investment cycle. The Act places sufficient means to make the process as transparent and open to public participation as possible. Yet, there are two means of circumvention of the process – through the “urgency” clause in the Act and through state amendments.

Further, through a study of the implementation of the SIA itself, it has come to be observed that they suffer from a lack of uniformity. However, this could also be due to reasons such as the uniqueness of the project itself, or more realistically, the lack of resources to conduct a thorough assessment. Due to the lack of available empirical research on this, these can only be speculations. In order to strengthen the SIA process under The RFCTLARR Act, 2013, there needs to be more scholarship available. In order to do the same, an important step would be for states to make publicly available the released reports. Enforcing the same would

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<sup>69</sup> *Supra*, note 1.

help make the process even more open to discussion and deliberation – and add to the scholarship around the Act in the process.

# ADDRESSING CHALLENGES TO THE FOREST (CONSERVATION) AMENDMENT ACT, 2023: A CRITICAL ANALYSES

- Yash Mittal\*

## I. INTRODUCTION

With the aim to recognize India's global obligations and its domestic goal of attaining Net Zero Emissions by 2070 through the preservation and augmentation of forest carbon reserves, additionally to meet India's Nationally Determined Contribution by establishing a carbon absorption capacity of approximately 2.5 to 3.0 billion tons of CO<sub>2</sub> equivalent by 2030 and to expand India's forest and tree coverage to encompass one-third of the nation's land area<sup>70</sup>, the Parliament had brought in amendment to the **Forest (Conservation) Act, 1980** ("FCA") giving a new definition to "forest land" and renaming it as **Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980** ("Amendment Act").

The situation as existed before the passing of the FCA was that the States were too liberal in granting permission to the use of forest land for the non-forest purposes, especially for the cultivation. But, with the **42<sup>nd</sup> Constitutional Amendment**, the Parliament has curbed the wholesome legislative power of the States in relation to the forests and transferred the subject "forest" to the concurrent list, which led to the culmination of the FCA requiring the states to have a prior sanction of the Central Government before diverting forests for non-forest activities.<sup>71</sup>

The purpose of this legislative comment is to: *firstly*, understand the term "forest land", *secondly*, find out how the amendment act goes against the preamble of the act itself, and *thirdly*, understand how the amendment act vitiates Supreme Court ruling in Niyamgiri Case and takes away the protection granted to forest under Forest Rights Act, 2006.

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<sup>70</sup>Nawneet Vibhaw, *EXPLAINER: What is the Forest (Conservation) Amendment Bill, 2023 and why it matters*, ENERGYWORLD.COM (Sep. 17, 2023, 08:30 AM), <https://energy.economictimes.indiatimes.com/news/renewable/explainer-what-is-the-forest-conservation-amendment-bill-2023-and-why-it-matters/102238129>.

<sup>71</sup>Sharachchandra Lele, *Forest law amendments: Rich in rhetoric, poor in substance*, INDIAN EXPRESS (Sep. 17, 2023, 08:45 AM), <https://indianexpress.com/article/opinion/columns/forest-conservation-amendment-bill-2023-positive-environmental-benefits-green-gutting-sc-1996-godavarman-order-8871986/>.

## II. UNDERSTANDING THE TERM “FOREST LAND”

It is worthwhile to mention that the term forest as per the FCA meant that area which finds its place in the revenue record of the government, however, the Supreme Court in *T.N. Godavarman*<sup>72</sup> has whittled away the narrow and pedantic approach given to “forest land”, and rather added the wider connotation to it by bringing forest land within the purview based on the dictionary meaning, irrespective of ownership.

Nonetheless, the 2023 amendment i.e., VSESA offers a significantly more restricted definition of "forest land" by introducing Section 1A, which includes only two categories of land: land officially designated or announced as forest under the Indian Forest Act, 1927, or other relevant regulations, and land documented in government records on or after October 25, 1980. Consequently, the new provision contradicts the SC’s *Godavarman* ruling as it exempts those forest land converted for non-forest purpose before the *Godavarman* judgment, thereby by default declining any protection to the 28% of the India’s Forest Land lying outside the Recorded Forest Areas (RFA).<sup>73</sup>

## III. AMENDMENTS MADE WITH UNCLEAR OBJECTIVES

The Act commences with a preamble advocating a pro-environment stance, but it includes a series of exemptions that dilute the current regulations concerning forest diversion. These exceptions apply to forest areas located adjacent to a government-maintained railway line or public road, especially for the development of nationally significant projects with implications for national security.<sup>74</sup>

Additionally, they pertain to the construction of security-related infrastructure, defense projects, paramilitary force camps, and projects related to public utilities. The Act also allows for the liberal allocation of forested land for non-forestry purposes, including the installation of wireless communication systems, the construction of fences, boundary markers, bridges, culverts, check dams, waterholes, trenches, and pipelines, as well as the establishment of zoos, safaris, and eco-tourism facilities, among other activities. Amongst all such exemptions,

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<sup>72</sup>T.N. Godavarman Thirumulkpad v. Union of India & Ors., (1997) 2 SCC 267.

<sup>73</sup>Pia Sethi, *What does the Forest (Conservation) Amendment Act mean for northeast India?*, MONGABAY (Sep. 17, 2023, 12:00 PM), <https://india.mongabay.com/2023/08/commentary-what-does-the-forest-conservation-amendment-act-mean-for-northeast-india/>.

<sup>74</sup>Lele, *supra* note 2, at 2.

the exemptions for linear projects provide a carte blanche not only to the military but to the government, as it can classify virtually anything as "strategic" or of "national significance."<sup>75</sup>

The issue has a greater ramification in the north-eastern states where exemption would cover almost the entire region, therefore, states such as Nagaland and Tripura demanded to make the area of exemption to be flexible in terms of the land area of the states.<sup>76</sup> Additionally, the amendment lacks clarity regarding its intentions concerning compensatory afforestation as a means to combat climate change or boost carbon storage while permitting the conversion of natural forest land for non-forestry purposes. It also fails to address the potential consequences such as biodiversity loss, ecological disruption, or harm to wildlife resulting from the clearance of forested areas.

#### **IV. VSESA BYPASSES NIYAMGIRI JUDGMENT AND IS IT AGAINST FOREST RIGHTS ACT**

The amendment does not indicate its approach to ensuring the livelihoods of communities dependent on forests, without even acknowledging the **Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights Act), 2006 ("FRA")**, designed to safeguard the rights of scheduled tribes and other forest-dependent communities by vesting rights over forest to such tribes and communities. The VSESA appears to take away the power of the forest dwelling communities to pass a resolution in the Gram Sabha to undertake diversion of any forest land for non-forest use, as provided by FRA. Section 6 of the FRA stipulates that the Gram Sabha's decision is transmitted to the Sub-divisional level committee, then to the district level committee, and oversight is carried out by a State Level Monitoring Committee.<sup>77</sup>

Moreover, in the 2013 Niyamgiri case<sup>78</sup>, the Supreme Court upheld the community's entitlement to participate, leading to the cancellation of the Vedanta bauxite mining project as one village after another declined consent for diversion. Consequently, it can be inferred that

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<sup>75</sup>*Id.* at 2.

<sup>76</sup>Rishika Pardikar, *Explained | What will the amended Forest (Conservation) Act change?*, THE HINDU (Sep. 17, 2023, 02:00 PM), <https://www.thehindu.com/sci-tech/energy-and-environment/explained-what-will-the-amended-forest-conservation-act-change/article67146543.ece>.

<sup>77</sup>Tellmy Jolly, *A Look At The Forest Conservation (Amendment) Bill, 2023*, LIVE LAW (Sep. 18, 2023, 10:00 AM), <https://www.livelaw.in/articles/analysis-forest-conservation-amendment-bill-forest-dwellers-rights-godavarman-thirumulkpad-v-union-of-india-233198>.

<sup>78</sup>*Orissa Mining Corporation v. Ministry of Environment & Forest*, (2013) 6 SCR 881.



the 2006 Act establishes an equilibrium between safeguarding forest rights and preserving the rights of forest-dwelling communities, albeit through a detailed process that necessitates approval from multiple authorities.<sup>79</sup>

## **V. CONCLUSION**

Although matters of national significance and security are undeniably vital and non-negotiable, there are also legitimate concerns that warrant attention. For instance, providing a blanket exemption of forest land within 100 KMs of the international border may severely impact the large forest cover as there is no determining objective clarity on what constitutes the matters involving national interests, which in turn have the tendency to divert forest land to non-forest use under the guise of strategic and national importance. Thus, the removal of “deemed forest”, determined by the Supreme Court in *Godavarman*, from the purview of Amendment Act without undertaking an exercise to determine the area of forest would undermine the objectives of the Act and may lead to ecological imbalance and loss of habitat for several human beings.

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<sup>79</sup>Jolly, *supra* note 8, at 3.

# ASSESSING THE ENVIRONMENTAL IMPACTS OF ILLEGAL MINING ON THE ARAVALLI RANGE AND EVALUATING THE PROSPECTS OF SUSTAINABLE DEVELOPMENT THROUGH THE DRAFT REGIONAL PLAN 2041 NCR

- Virendra Ashiya\*  
Nandini Ravishankar\*\*

## I. INTRODUCTION

The Aravalli is the oldest mountain range and has a diverse ecosystem running around 692 km across Delhi, Haryana and Rajasthan. The Aravalli region possesses extensive deposits of various minerals such as copper, lead, zinc, rock phosphate, soapstone, silica sand, limestone, marble, and gypsum. The process of mining exerts significant environmental pressure throughout its various stages, which include exploration, extraction, processing, and the subsequent closure of mines. Among the crucial environmental concerns associated with mining activities are land degradation, which encompasses the aridification process, the dispersal of wind-blown sand onto agricultural fields, gully erosion, soil contamination, and the pollution of both surface and groundwater.<sup>80</sup>

Additionally, Aravalli is currently confronted with the issue of rampant illegal mining in and around the hills range, posing a severe threat to its biodiversity and ecosystem. To tackle this predicament, the Draft Regional Plan 2041 for the NCR has been proposed as an all-encompassing strategy for sustainable development in the region.<sup>81</sup>

This paper endeavors to conduct a comprehensive analysis of the deleterious impacts of illicit mining on the Aravalli Range and scrutinize the potential exploitation that could be caused by the Draft Regional Plan 2041 for the National Capital Region (NCR). The Aravalli Range, a crucial ecological and geological landmark, has been enduring the adverse repercussions of unauthorized mining activities for an extended period.

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<sup>80</sup>Jitendra and Shagun, *Aravallis broken beyond repair*, DOWN TO EARTH | LATEST NEWS, OPINION, ANALYSIS ON ENVIRONMENT & SCIENCE ISSUES INDIA, SOUTH ASIA (Apr. 9, 2019), <https://www.downtoearth.org.in/news/mining/aravallis-broken-beyond-repair-63812> (last visited Sept. 20, 2022).

<sup>81</sup>Draft Regional Plan 2041 National Capital Region, Notification, XXXX (India), <https://ncrpb.nic.in/drp2041.html> (last visited May 17, 2023).

## II. THE EXTENT OF ILLEGAL MINING

According to a report that was published in 2018 by the Central Empowered Committee (CEC), which was appointed by the Supreme Court, it has been ascertained that a considerable portion, specifically 25 per cent, of the Aravalli range in Rajasthan has been depleted as a consequence of unauthorized mining activities.<sup>82</sup>

The disappearance of the hills in the Aravalli range due to illegal mining, land encroachment, and urbanization has resulted in an escalation of sandstorms in Rajasthan, as per a study conducted by the Central University Rajasthan.<sup>83</sup> The findings of the study indicated that from 1975 to 2019, around 3676 square kilometers and 776.8 square kilometers of land transformed into barren and settlement areas, respectively, while 5772.7 square kilometers (7.63 per cent) of forest land experienced a decline in the Aravalli region. By the year 2059, a total of 16360.8 square kilometers (21.64 per cent) of forest land will be converted into a settlement classification.<sup>84</sup> Ground Truthing is the necessary step to be taken to calculate the overall extent of illegal mining in the hills. However, this process has been not given much attention by the governments.

In the matter of T.N. Godavarman Thirumulpad v. Union of India & Others, the Supreme Court of India issued an order concerning the issue of illegal mining in Aravalli, Rajasthan. The Supreme Court observed that as of now, 27% of the ground truthing process has been concluded, with the remaining portion currently underway. However, a mere 31% of the ground truthing exercise has been completed even after three months.<sup>85</sup> The Apex Court, deeming the progress report highly unsatisfactory, has directed the Chief Secretary of the State of Rajasthan to personally appear in Court and elucidate the reasons behind the incomplete ground truthing exercise aimed at ascertaining the extent of illegal mining in the region.

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<sup>82</sup>Raza Ali, *The Consequences Of Excluding India's Oldest Mountain Range From The 2041 Plan For India's Capital*, ARTICLE 14 (Nov. 17, 2022), <https://article-14.com/post/the-consequences-of-excluding-india-s-oldest-mountain-range-from-the-2041-plan-for-india-s-capital--6375a66560d1b> (last visited Aug. 10, 2023).

<sup>83</sup>PTI, *Illegal mining, land encroachment in Aravallis behind increase in sandstorms in Rajasthan: Study*, THE PRINT (June 5, 2023), <https://theprint.in/india/illegal-mining-land-encroachment-in-aravallis-behind-increase-in-sandstorms-in-rajasthan-study/1612940/#:~:text=The%20disappearance%20of%20hills%20is,HOD%20Environmental%20Science%20at%20CURAJ.> (last visited Sept. 6, 2023).

<sup>84</sup>*Id.*

<sup>85</sup>Godavarman Thirumulpad v. Union of India & Ors, 1997 SCC 2 202.

A joint committee report, dated November 28, 2022, has been released addressing the issue of illegal sand and stone mining occurring in various locations within the Aravali range, specifically in the districts of Faridabad, Gurugram, and Nuh, Haryana. It has been stated in the report that in the areas of Aravalli where mining has transpired through the vertical removal of hill slopes, the restoration of the landscape to its original state is not a viable option.<sup>86</sup> The committee has taken into account the closure of mining pits and the reclamation/rehabilitation of the affected land, and as a result, has put forth the following suggestion. In areas where mining has taken place and, in those regions where the slopes have maintained a gentle to moderate inclination, the land can be rejuvenated through the implementation of terracing and re-afforestation methods.

However, it should be noted that a concern persists regarding the insufficient soil depth in the Aravallis and the nutrient deficiency caused by the presence of gravels and rocks on the surface of the mined areas, as stated in the aforementioned joint committee report.<sup>87</sup> Re-afforestation of such mining areas through plantation becomes very difficult and highly cost-intensive because mining activity removes the fertile topsoil and after mining such areas are devoid of nutrients.<sup>88</sup> The report recommended that such areas be reclaimed/reforested using natural regeneration wherein intervention is limited to the protection of the area. The protection could be achieved by closure of the area by fencing and continuous trenching. The other intervention that could be made is the seeding of native species through seed balls in such closed lands.<sup>89</sup>

### **III. ATTEMPT TO DILUTE THE PUNJAB LAND PRESERVATION ACT**

The Punjab Land Preservation Act (PLPA) of 1900, which has been in existence for 123 years, serves the purpose of safeguarding regions that have not been officially designated as reserve or protected forests under the Indian Forest Act in the states of Haryana and Punjab.<sup>90</sup> The areas within the Aravalli region that have been identified under the PLPA have been

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<sup>86</sup>ILLEGAL MINING: REAFFORESTATION IN THE ARAVALLIS MAY BE VERY DIFFICULT AND COSTLY, THE INDIAN EXPRESS, <https://indianexpress.com/article/cities/delhi/illegal-mining-reafforestation-aravallis-difficult-costly-committee-8295617/>"<https://doi.org/>" (last visited Mar. 8, 2023).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup>Abraham Thomas, *SC extends green protection to forest land in Aravalli ranges*, HINDUSTAN TIMES (July 22, 2022), <https://www.hindustantimes.com/india-news/sc-extends-green-protection-to-forest-land-in-aravalli-ranges-101658427914967.html>.

regarded as forests by rulings made by the Supreme Court in 2002 and 2004, reaffirmed in 2008 and 2009 (MC Mehta case), and further clarified in 2018 (Kant Enclave matter). Any activities unrelated to forestry, such as real estate development or mining, are strictly prohibited in the forested areas that are protected under Special Sections 4 and 5 of the PLPA in Haryana.<sup>91</sup> India possesses legislation that aims to achieve this objective; however, some of these laws are so poorly contrived that they appear to be intentionally designed to falter.

Moreover, certain laws have been effectively neutralized due to substandard execution and enforcement, or as a result of corruption involving elected officials and civil servants. Consequently, important government overseers stand idly by as uncontrolled mining activities jeopardize the well-being, livelihoods, and natural surroundings of entire communities. Additionally, there have been instances where public institutions have been defrauded of substantial revenues that could have been allocated towards enhancing the government's insufficient provision of healthcare, education, and other fundamental services, as stated in the report. An example of this was the Haryana government's revised bill on PLPA, which intends to render the aforementioned Act entirely superfluous within the state, as it would permit the utilization of 33% of the land previously designated as forested area under the PLPA for purposes such as urbanization, mining, and advancement of the real estate sector.<sup>92</sup> Although SC has asked them to withdraw, it clearly shows the intentions of the government about environment preservation.

#### **IV. DRAFT REGIONAL PLAN 2041 NCR: PAVING THE PATH TO ENVIRONMENTAL PERIL**

The NCR Draft Regional Plan 2041 is intended to supersede the 2021 NCR Regional Plan, which has been in effect since 2005. Implemented by the National Capital Region Planning Board (NCRPB), the draft has faced criticism for its regressive nature and its potential to jeopardize air quality, groundwater recharge, forest coverage, and wildlife habitats across 25 districts in four states.<sup>93</sup> The modified draft plan, which has incorporated feedback from state governments, proposes the replacement of Natural Conservation Zones (NCZ) with Natural Zone (NZ). However, the alteration in the nomenclature poses a potential threat to certain

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<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Supra* note 2.

vulnerable zones within the NCR. This plan grants state governments the authority to determine the destiny of natural resources.

Furthermore, there has been a decrease in the extent of forested land, which has decreased from the previously reported 4.02% in the NCR Plan 2021 to 3.27% in the new plan for 2041.<sup>94</sup> Additionally, the objective of achieving a forest cover that amounts to 10% of the entire region's area, as proposed in the NCR Regional Plan 2021, has been eliminated from the updated plan for 2041. The environmentally sensitive natural features in the National Capital Region (NCR) are required to be identified as the Natural Zone (NZ).<sup>95</sup> The Natural Zone encompasses any natural features, including mountains, hills, rivers, and water bodies, that have been formed by natural processes. These natural features are designated for preservation or conservation under the relevant Central or State laws and are officially recognized as such in the land records over time. This designation includes forests that have been notified under the Forest (Conservation) Act of 1980, wildlife sanctuaries that have been notified under the Wildlife (Protection) Act of 1972, eco-sensitive zones, wetlands, and conservation areas that have been duly notified under the Environment Protection Act of 1986.

It further says that these aforementioned Acts, along with their amendments, as well as the Notifications issued under them, shall be applicable and will be implemented by the judgments of the Honorable Supreme Court/High Courts/NGT, as applicable.<sup>96</sup> This is the kind of sugarcoating that the government does every time to avert the public reaction to various issues. This plan needs to be revisited according to the needs of a sustainable environment, because if this guiding document itself is diluted, the states can then further dilute it.

## **V. IMPACT ON GOVERNANCE AND PUBLIC POLICY**

The government is deprived of a crucial source of revenue due to the evasion of taxes and royalties by illegal miners. According to the regulatory framework, formal mining companies that operate legally are obligated to pay corporate taxes, royalties, and other fees to the

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<sup>94</sup> *Supra* note 2, at 24.

<sup>95</sup> MINING IN INDIA SHOWS REGULATORY FAILURE, SAYS HUMAN RIGHTS WATCH, MONEYLIFE NEWS & VIEWS (2012), <https://www.moneylife.in/article/mining-in-india-shows-regulatory-failure-says-human-rights-watch/26331.html> (last visited Apr 20, 2023).

<sup>96</sup> *Id.*

government based on their production and profits. However, illegal miners operate outside this framework and fail to contribute to the government's revenue stream.<sup>97</sup> Annually, the state exchequer in Haryana loses more than Rs 5,000 crore<sup>98</sup>. Illegal mining weakens governance structures and undermines the rule of law. It facilitates corrupt practices, bribery, and illicit activities, which erode the integrity and effectiveness of institutions responsible for regulating and managing the mining sector. Consequently, the weakened governance environment can impede economic growth and discourage investment by creating an uncertain business climate.

The implications of the chaos in India's mining sector are becoming increasingly political and economic. The state governments of Karnataka and Goa were both overshadowed by scandals in 2011, which stemmed from public revelations regarding corruption and abuse within the mining sector. The chief minister of Karnataka was compelled to resign, and as a result of a delayed government crackdown, a significant portion of the state's mining industry was effectively halted, resulting in substantial economic ramifications. In March 2012, the state government of Goa was voted out of office partly due to the mounting public outrage surrounding the scandals that plagued the mining industry in that state.<sup>99</sup>

## **VI. CONCLUSION AND WAY FORWARD**

The prohibition of mining activities throughout the Aravalli range in all states is imperative, and it is essential to undertake indigenous afforestation and restoration endeavors in all regions that have undergone degradation as a result of mining. Given the failure of state governments to safeguard the Aravallis, it is imperative to establish an autonomous Aravalli Protection Authority. This entity shall be responsible for the preservation of the complete Aravalli range, considered a unified ecosystem spanning four states: Delhi, Haryana, Rajasthan, and Gujarat.<sup>100</sup> Strict measures must be implemented to address the actions of the mining syndicate involved in the unlawful felling of trees and mining operations, as well as

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<sup>97</sup>Crawford G & Botchwey G, *'Militarisation and criminalisation of ASM: the State and the So-Called "Galamsey Menace" in Ghana'*, 45(56) ROAPE 321, (2018).

<sup>98</sup>Harish Manav, *Rampant Illegal Mining Costs Haryana Rs 5,000 Cr Loss Annually Besides Human Lives And Crops*, [HTTPS://WWW.OUTLOOKINDIA.COM/](https://www.outlookindia.com/) (Sept. 5, 2022), <https://www.outlookindia.com/national/rampant-illegal-mining-costs-haryana-rs-5-000-cr-loss-annually-besides-human-lives-and-crops-news-221100>.

<sup>99</sup>MINING, REGULATORY FAILURE AND HUMAN RIGHTS IN INDIA, HUMAN RIGHTS WATCH 2012, <https://www.hrw.org/reports/india0612ForUpload.pdf> (last visited June 30, 2023).

<sup>100</sup>Ipsita Pati, *Set up Special Cell to Protect and Manage Aravallis: NGT to Haryana*, THE TIMES OF INDIA (Oct. 24, 2022), <https://timesofindia.indiatimes.com/city/gurgaon/set-up-special-cell-to-protect-and-manage-aravalis-ngt-to-haryana/articleshow/95057412.cms>.

the officials who are willfully neglecting their responsibility to prevent the degradation of the Aravalli hills. The quantity of forest and police checkpoints, along with the number of patrolling guards in the Aravalli forests, should be substantially increased, while the utilization of drones for surveillance purposes must be employed to detect and halt any instances of illegal tree-cutting and mining activities. The preservation of the Aravalli ecosystem is imperative through the declaration of the entire Aravalli range as a permanent biosphere reserve and world heritage site, wherein all forms of mining, real estate activities, and other commercial endeavors are strictly prohibited. This measure will effectively safeguard the critical water recharge zone, mitigate against desertification, regulate the climate, and maintain the significant wildlife habitat of North West India.<sup>101</sup>

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<sup>101</sup> *Id.*



# GREEN CRIMINOLOGY AND INDIA: A SOLUTION TO ENVIRONMENTAL ISSUES

- Dr. Sameera Khan\*

## I. INTRODUCTION

Criminologists have expressed concern for the non-inclusivity of green perspectives in criminology. Lynch and Stretesky stated:

*“As criminologists, we are not simply concerned that our discipline continues to neglect green issues, we are disturbed by the fact that, as a discipline, criminology is unable to perceive the wisdom of taking green harms more seriously, and the need to reorient itself in ways that make it part of the solution to the large global environmental problems we now face as the species that produces those problems.”<sup>102</sup>*

Green Criminology is a new branch of study that seeks to change it. It mainly focuses on the crimes and harmful activities that have detrimental and hazardous effects on the environment. The activities include both human-made and natural events that cause damage to the environment and the living creatures within it. Green criminology has become increasingly important in a globalised world as the negative implications of human activities on the environment continue to rise. The field of green criminology can provide an interdisciplinary approach to handling environmental crimes, combining insights from the natural sciences, social sciences, and law.

In India, environmental crimes are of grave concern, with a range of activities such as deforestation, wildlife poaching, unreported and unregulated fishing, air and water pollution, and hazardous waste disposal causing substantial harm to the environment and human health.<sup>103</sup> The scale and extent of these crimes often go unreported and unaddressed, due to a lack of awareness, limited resources, and weak enforcement of environmental laws.<sup>104</sup> As a

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\* PhD from Department of Law, AMU.

<sup>102</sup> MICHAEL J. LYNCH & PAUL B. STRETESKY, *EXPLORING GREEN CRIMINOLOGY: TOWARD A GREEN CRIMINOLOGICAL REVOLUTION* (2014).

<sup>103</sup> Ankita Singh, *Environmental Crime: A Serious Threat to Our Future*, LEGALSERVICEINDIA.COM (Sep 18, 2023, 11:31 PM), <https://www.legalserviceindia.com/legal/article-8841-environmental-crime-a-serious-threat-to-our-future.html>.

<sup>104</sup> Ground Report, *78% increase in environmental crimes in 2020: NCRB report*, GROUND REPORT (2021) (Sep 18, 2023) <https://groundreport.in/78-increase-in-environmental-crimes-in-2020-ncrb-report-80866-2/>.

result, in India, green criminology can play a significant role in addressing environmental crimes, promoting sustainable development and achieving environmental management.<sup>105</sup>

## II. ENVIRONMENTAL CRIMES IN INDIA

India is a developing country that has been undergoing rapid industrialization and urbanization. The population growth and expansion of the economy have led to increased pressure on natural resources and the environment. This has contributed to environmental harm through the increased usage of chemicals and other toxic substances which leads to air pollution and water pollution. It also impacts the health and well-being of the public at large. Moreover, it affects the forest cover adversely and leads to the depletion of biodiversity.

A report by the Centre for Science and Environment (CSE) states that environmental crimes in India continue to grow year-on-year with 136,621 environment-related crimes registered in 2021, compared to 64,471 the previous year. The courts are overburdened with more than 77,000 cases awaiting trial which was further inflated by the backlog from the previous years.<sup>106</sup> Northeast India has been severely affected by environmental crimes with a report by the Centre for Science and Environment (CSE) indicating that at this point it is more vulnerable to drought compared to Rajasthan, which is a desert state. The reasons for the same are multi-faceted. They include the impact of climate change on the monsoons, along with unsustainable land use practices, deforestation, and changing river courses.<sup>107</sup> These are all examples of environmental crimes committed in India. These crimes not only impact the environment but also have serious consequences for public health and the economy. In recent years, the Indian government has taken several steps to control the damage to the environment and promote sustainable development.

Air pollution is a major issue in India, with several cities ranking among the most polluted in the world.<sup>108</sup> The primary sources of air pollution are vehicular emissions, industrial

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<sup>105</sup> AP Maheswari, *Time to Assign High Priority to Environmental Crimes!*, FINANCIAL EXPRESS (Sep 18, 2023, 11:43 PM) <https://www.financialexpress.com/life/science-time-to-assign-high-priority-to-environmental-crimes-2505621>.

<sup>106</sup> Ground Report, *136,621 environment-related Crimes Registered in 2021: CSE Report*, GROUND REPORT (Sep 18, 2023, 11:43 PM) <https://groundreport.in/why-environmental-crimes-are-rising-in-india/>.

<sup>107</sup> Ground Report, *Northeast India More Prone to Drought than Rajasthan: CSE Report*, GROUND REPORT (Sep 18, 2023, 11:43 PM) <https://groundreport.in/northeast-india-more-prone-to-drought-than-rajasthan-cse-report/>.

<sup>108</sup> DHNS, *Air quality: India at Its Worst*, DECCAN HERALD (Sep 18, 2023, 11:44 PM) <https://www.deccanherald.com/opinion/editorial/air-quality-india-at-its-worst-1139012.html>.

pollution, and the widespread use of biomass fuels for cooking and heating. These pollutants have serious consequences for public health, including respiratory problems, increased risk of heart disease and stroke, and reduced life expectancy. The Indian government has implemented several measures, including the implementation of Bharat Stage (BS) emission standards for vehicles.<sup>109</sup> Moreover, there have been efforts for the promotion of clean energy sources. This has been highlighted by the FAME scheme for EVs and PLI schemes for solar energy products.<sup>110</sup>

The Indian Ministry of Environment, Forest and Climate Change released a new categorisation of industries which is based on their pollution load. The Pollution Index PI of any industrial sector is a number from 0 to 100 and the increasing value of PI denotes the increasing degree of pollution load from the industrial sector. Any industry with a PI of under 20 is to be treated as a ‘White Industry’ which does not require environmental clearance.<sup>111</sup> It also helps in the identification of highly polluting industries and provides scope for their regulation.

In recent years, India has also lost a majority of its forest cover. The forest cover has declined to only 20 percent of the country and the decline has coincided with the increasing industrial projects.<sup>112</sup> The other causes are illegal logging, conversion of forestland for agriculture, and construction of infrastructure projects. Deforestation also contributes to global climate change by reducing the amount of carbon stored in trees.<sup>113</sup>

Wildlife trafficking is a significant concern in India. A variety of species are hunted for their body parts, which are used in traditional medicine or sold as exotic pets.<sup>114</sup> This threatens the survival of endangered species and has serious consequences for the ecosystem, as it disrupts

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<sup>109</sup> Express Web Desk, *What Are Bharat Stage Emissions standards?*, THE INDIAN EXPRESS (Sep 18, 2023, 10:22 PM), <https://indianexpress.com/article/explained/what-are-bharat-stage-emissions-standards-5416034/>.

<sup>110</sup> NITI AAYOG & ROCKY MOUNTAIN INSTITUTE, *TOWARDS A CLEAN ENERGY ECONOMY Post-COVID-19 Opportunities for India’s Energy and Mobility Sectors* (Sep 19, 2023, 9:12 PM) [https://www.niti.gov.in/sites/default/files/2020-06/India\\_Green\\_Stimulus\\_Report\\_NITI\\_VF\\_June\\_29.pdf](https://www.niti.gov.in/sites/default/files/2020-06/India_Green_Stimulus_Report_NITI_VF_June_29.pdf).

<sup>111</sup> Press Information Bureau, *Environment Ministry Releases New Categorisation of Industries*, PIB (Sep 19, 2023, 8:16 AM), <https://pib.gov.in/newsite/printrelease.aspx?relid=137373>.

<sup>112</sup> Himadri Ghosh, *In Just 30 years, India Has Lost Large Forests to 23,716 Industrial Projects*, SCROLL (Sep 19, 2023, 8:22 AM), <https://scroll.in/article/809286/in-just-30-years-india-has-lost-large-forests-to-23716-industrial-projects>.

<sup>113</sup> Natasha Gilbert, *Deforestation slowed last year — but not enough to meet climate goals*, NATURE (Sep 19, 2023, 8:22 AM), <https://www.nature.com/articles/d41586-022-03372-6>.

<sup>114</sup> Anusha Krishnan, *Why Is India a Major Hub for Wildlife trafficking?*, MONGABAY-INDIA (Sep 19, 2023, 8:37 AM), <https://india.mongabay.com/2022/06/explainer-why-is-india-a-major-hub-for-wildlife-trafficking/>.

the balance of predator-prey relationships. To address this issue, the Indian government has strengthened the Wildlife Protection Act of 1972 which provides penalties for those who engage in illegal hunting and trade of wildlife. The government has also established several anti-poaching units and created wildlife crime databases to monitor and prevent illegal wildlife trade.

### **III. NEED FOR GREEN CRIMINOLOGY IN INDIA**

Environmental laws are critical for the protection of the environment and the preservation of natural resources. Environmental laws in India are often poorly enforced, and companies and individuals often violate these laws with little consequence.<sup>115</sup> This is partly due to the limited resources and capacity of the enforcement agencies, as well as the lack of political will to effectively enforce these laws. This makes it difficult to prevent environmental crimes and degradation.

Another major flaw in environmental laws in India is the lack of public participation and stakeholder involvement. Environmental laws in India are often developed without sufficient public consultation and participation, which means that the perspectives and concerns of local communities and stakeholders are often not taken into account. This can lead to laws that are not well-suited to local conditions and that do not effectively address the needs and concerns of the people who are affected by environmental degradation.<sup>116</sup>

Another problem with environmental laws in India is the lack of effective penalties and sanctions for those who violate environmental laws. The fines imposed for environmental crimes are often not sufficient to act as a deterrent for companies and individuals from engaging in environmental crimes, leading to continued environmental degradation.<sup>117</sup> In addition to these problems, environmental laws in India are often complex and difficult to

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<sup>115</sup> Ayushi Singh, *Environmental Criminal law: Is It the Need of the Hour in India?*, THE DAILY GUARDIAN (Sep 18, 2023, 9:41 AM), <https://theguardian.com/environmental-criminal-law-is-it-the-need-of-the-hour-in-india/>.

<sup>116</sup> Mridula Vijairaghavan, *A Seat at the table: Public Participation in the Environmental decision-making Process in India – the Leaflet*, THELEAFLET.IN (Sep 18, 2023, 9:45 AM), <https://theleaflet.in/a-seat-at-the-table-public-participation-in-the-environmental-decision-making-process-in-india/>.

<sup>117</sup> The Hindu, *Just fine: the Hindu Editorial on Amending Environmental Laws*, THE HINDU (Sep 19, 2023, 11:03 AM) <https://www.thehindu.com/opinion/editorial/just-fine-the-hindu-editorial-on-amending-environmental-laws/article65612132.ece>.

understand, making it difficult for people to understand their rights and responsibilities.<sup>118</sup> This complexity can also make it difficult for enforcement agencies to effectively enforce these laws, as they may not have the expertise or resources to understand and apply the laws.

Green criminology in India can be instrumental in encountering these environmental crimes by promoting greater awareness of the issues and promoting the development of more constructive environmental policies, regulations and judicial activism. It can also accomplish the development of more effective enforcement mechanisms to ensure that environmental laws are successfully enforced.<sup>119</sup>

#### **IV. CONCLUSION – A WAY FORWARD**

India is one of the fastest developing economies in the world and has been garnering a lot of international attention as one of the best places to do business. However, this changing scenario can adversely impact the environment since development, particularly of an industrial nature, often comes at the cost of the environment. ‘Green Criminology’ is an interdisciplinary field that allows us to incident how our actions towards the environment are those of a criminal nature and can cause irreparable damage to the environment.

Whilst ‘Green Criminology’ can provide a long-term solution to environmental issues, its practical implementation in modern times, particularly in a country like India is difficult. In India, the rule of law is often subverted by political interests and corruption. In such situations, the enforcement of environmental regulations and standards continues to remain a challenge. Despite the presence of several environmental protection laws and the efforts of dedicated individuals and organizations, environmental crimes continue to thrive in India. The rampant illegal logging, widespread air and water pollution, and the illegal trade in wildlife and their parts are but a few examples of the persistent and pervasive nature of these crimes.

Therefore, it is essential that the government and society at large takes a more proactive and holistic approach to address the root causes of environmental crimes in India. This must be done by improving the enforcement of existing environmental laws, strengthening the

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<sup>118</sup> Jan Laitos & Lauren Wolongevicz, *Why Environmental Laws Fail*, 39 WILLIAM & MARY ENVIRONMENTAL LAW AND POLICY REVIEW 1 (2014), <https://scholarship.law.wm.edu/wmelpr/vol39/iss1/2/>.

<sup>119</sup> Angus Nurse, *Green criminology: shining a critical lens on environmental harm*, 3 PALGRAVE COMMUNICATIONS (2017), <https://www.nature.com/articles/s41599-017-0007-2>.

capacity of regulatory agencies, switching more towards renewable energy resources, accelerating the transposition to more efficient and cleaner technologies and increasing public awareness about the importance of protecting our planet. Moreover, International cooperation is also important since developed countries have a tendency to outsource pollution-heavy industries to developed countries. This makes it difficult for developing countries to maintain suitable standards for environmental conservation. This issue needs to be addressed.

In this situation, 'Green Criminology' offers an effective solution for affixing liability for environmental harms while also deterring the perpetrators with the fear of penal sanction. As a developing nation, India's climatic adaptations, global energy projections and mitigation aspirations are essential for its growth. There are a number of steps which can be taken by India to strengthen its regulatory framework while simultaneously working on its enforcement to effectively deal with environmental crimes and take steps to prevent them to conserve our planet and ensure that the country does not go further into an environmental crisis.

To address the root causes of the flaws and problems in environmental laws in India, a scientific and criminological framework under the umbrella of Green Criminology can be applied. The following are some key elements of such a framework:

1. ***Amendment of Existing Environmental Laws:*** Green Criminology should advocate for a critical review and necessary amendments to existing environmental laws in India. These amendments should reflect the evolving understanding of environmental issues and incorporate new scientific findings. This process should also focus on closing loopholes and strengthening provisions to make the laws more effective in deterring environmental crimes. Additionally, it should address inconsistencies and contradictions that may exist within the legal framework.
2. ***Environmental impact assessments:*** Environmental impact assessments (EIAs) are an important tool in understanding the potential impact of human activities on the environment. By conducting a thorough and systematic evaluation of the potential impact of a proposed project or activity, EIAs can help to identify and address the root causes of environmental degradation in India.

3. ***Criminological analysis:*** A criminological analysis can help to identify the factors that contribute to environmental crimes and degradation in India. This may include the motivations of individuals and organizations that engage in environmental crimes, the societal and economic conditions that contribute to these crimes, and the lack of effective enforcement mechanisms that allow these crimes to occur.
4. ***Interdisciplinary approach:*** An interdisciplinary approach, combining insights from the natural sciences, social sciences, and law, can provide a comprehensive and effective response to the root causes of environmental crimes in India. This approach can help to address the complex and interconnected issues that contribute to environmental degradation and ensure that the response is grounded in a scientific understanding of the environment and the impact of human activities.
5. ***Stakeholder engagement:*** Engaging with stakeholders, including local communities, government agencies, and industry representatives, is critical in addressing the root causes of environmental degradation in India. By involving stakeholders in the development and implementation of environmental policies and regulations, it is possible to create a more effective and comprehensive response that takes into account the needs and concerns of all parties involved.
6. ***Effective enforcement:*** Effective enforcement of environmental laws is critical in addressing the root causes of environmental degradation in India. This may involve increasing the resources and capacity of the enforcement agencies, increasing public awareness of environmental crimes, and imposing penalties and sanctions that are proportionate to the harm caused by environmental crimes.

# **GREEN DECEPTION: CRITICAL ANALYSIS OF THE FOREST (CONSERVATION) AMENDMENT ACT, 2023**

- Hitesh M\*  
Sumedha M\*\*

*“What we are doing to the forests of the world is but a mirror reflection of what we are doing to ourselves and to one another”*

- M. K. Gandhi

## **I. INTRODUCTION**

The Forest (Conservation) Act, 1980,<sup>120</sup> (“Principal Act”), a landmark piece of legislation, is a testament to the commitment of India towards the protection of its precious natural resources which transpired after the Stockholm Declaration of 1972. It was enacted by the Parliament primarily with the objective to preserve and manage the country’s rich and diverse forest ecosystems by encoding the various principles of conservation and forestry which have been part of the human civilization since its advent contained in the various ancient texts such as Vedas, Upanishads, Aranyakas and Smritis. This act marked a significant shift in India’s approach towards striking a balance between economic development with environment protection on the basis of sustainable development. The Forest (Conservation) Act, 1980 was further amended by The Forest (Conservation) Amendment Act, 2023,<sup>121</sup> (“The Act”).

## **II. AMENDED PROVISIONS**

### *2.1. Short Title*

The amendment substitutes the short title of the Principal Act to Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980, so as to ensure that the potential in the provisions is reflected in the title, while aiming to foster inclusivity and participation by all.<sup>122</sup>

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<sup>120</sup> The Forest (Conservation) Act, 1980, No. 69, Acts of Parliament, 1960 (India).

<sup>121</sup> The Forest (Conservation) Amendment Act, 2023, No. 15, Acts of Parliament, 2023 (India).

<sup>122</sup> The Forest (Conservation) Amendment Act, 2023, § 3, No. 15, Acts of Parliament, 2023 (India).



## *2.2. Preamble*

The Amendment has inserted a preamble to the Principal Act which establishes the target of Net Zero Emission by 2070 and to maintain or enhance the forest carbon stocks through ecologically balanced sustainable development. It also envisages as per the Nationally Determined Contributions (NDCs) with regards to the Paris Agreement to create a carbon sink of an additional 2.5 – 3.0 billion tons of CO<sub>2</sub> by 2030. It also ideally aims to increase the nations forest and tree cover to one-third of its land area (33%) as per the National Forest Policy 1988.<sup>123</sup>

## *2.3. Scope of the Act*

The Act clearly determines as to what forestlands the scope of the legislation covers, as there was no clear definition as to what lands were protected under the ambit of the Principal Act. Land declared or notified as forests according to the Indian Forest Act, 1927, and the lands that have been recorded but not notified as forests as per the records of State Governments as on or after 25<sup>th</sup> October, 1980, are the only lands that will be considered as forestlands for the purpose of the Act. The Act further exempts forestlands which were already converted for non-forest purposes on or before 12<sup>th</sup> December, 1996.<sup>124</sup>

## *2.4. Exemptions Provided*

The Act provides for various exemptions unheard of in the Principal Act, by introducing exemptions which have prior approval as the Act excludes these lands from its scope and hence receives a blanket exemption from the forest clearance procedure. The exemptions are of 0.10 hectare alongside of rail line or public road for access to habitation, roadside amenities. Further, 10 hectares for construction of security related infrastructure or up to 5 hectares for defence or public utility projects in Left Wing Extremism affected areas. Any forestland within a distance of 100 km International Borders proposed for strategic linear projects of national importance and national security are exempted. Finally, the trees, plantations and reforestation on private forests and agro-forests are also exempted.<sup>125</sup>

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<sup>123</sup> The Forest (Conservation) Amendment Act, 2023, § 2, No. 15, Acts of Parliament, 2023 (India).

<sup>124</sup> The Forest (Conservation) Amendment Act, 2023, § 4 (1), No. 15, Acts of Parliament, 2023 (India).

<sup>125</sup> The Forest (Conservation) Amendment Act, 2023, § 4 (2), No. 15, Acts of Parliament, 2023 (India).

### *2.5. Non-Forest Activities*

The Act gives prior approval to a range of non-forest activities which are to be included under the exempted category under the Principal Act and allows them to be conducted in the forest such as eco-tourism initiatives, establishment of zoos and safaris, silvicultural operations and any other purpose the Central Government determines. Further, surveys and investigation in forestlands would not be considered non-forestry activity henceforth.<sup>126</sup>

### *2.6. Assignment / Leasing of Forestland*

The Act dictates that the State Governments need prior approval or must comply with the terms and conditions as determined by the Central Government to assign forest land by way of lease to any entity, even if it is owned, managed or controlled by the State Government.<sup>127</sup>

## **III. CRITICAL ANALYSIS**

The Parliament before passing the Act have not duly deliberated on the Bill and have not considered the voices of the opposition, and outrightly ignores the dissent notes of 6 out of 31 Joint Parliamentary Committee members due to the majority of the ruling Government and have passed the Bill into an Act without any change.<sup>128</sup> The Members of Parliament (MPs) of the opposition walked out instead of deliberating on the Bill citing lack of statement by Prime Minister Narendra Modi on the violence in Manipur, and a discussion on the same. As a result, no dissent was tabled against the Bill during the legislative process, though some members raised concerns but to no avail.

### *3.1. Short Title and Preamble*

The Act substitutes the Short Title of the Principal Act to Van (Sanrakshan Evam Samvardhan) Adhinyam, 1980. The substitution of the title from English to Sanskrit under the garb of promoting inclusivity clearly leaves behind a huge tract of population from the South and Northeast India. The proposed name neither adds any value to the statute and its provisions nor serves any purpose to the scope and objectives of the Act.

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<sup>126</sup> The Forest (Conservation) Amendment Act, 2023, § 5, No. 15, Acts of Parliament, 2023 (India).

<sup>127</sup> *Id.*

<sup>128</sup> Sobhana K. Nair, *Six Opposition members file dissent notes on Forest Conservation Bill*, THE HINDU, (July 12, 2023, 08:48 AM IST), <https://www.thehindu.com/sci-tech/energy-and-environment/six-opposition-members-file-dissent-notes-on-forest-conservation-bill/article67067932.ece>

The Preamble is not in harmony with the Amendments which are made through the Act. The Preamble sets out the idealistic visions of the Government, while not addressing the deficiencies in the present system which may lead to serious ecological imbalances.

### *3.2. Scope of the Act – Constrained?*

The Act seeks to clarify the scope and applicability of the Principal Act but in practice it overturns the 12<sup>th</sup> December, 1996 Judgement of the Hon'ble Supreme Court in T.N. Godavarman Case<sup>129</sup>. This was a Writ Petition before the Supreme Court for the stoppage of destruction in the tropical rainforest of Nilgiris, as it would bring serious ecological impacts and imbalance that affected lives and livelihood. It was ruled that there was need to clear the misconception about the scope of the Principal Act and the meaning of 'Forest'. It was held, that the Principal Act is applicable to all forests irrespective of the nature of ownership or classification. The dictionary definition of forest must be utilized and every forestland that falls under the definition must be protected.

The Act excludes the lands that were recorded but not notified for reasons such as non-maintenance of proper records, or merely for not being notified by the State Governments from 21<sup>st</sup> September, 1927 to 25<sup>th</sup> October, 1980 by the State Governments. Further the exclusion of forestlands converted for non-forest purposes from 25<sup>th</sup> October, 1980 to 12<sup>th</sup> December, 1996 is excluded from the purview of the act even if the assignment / lease term has expired which fundamentally results in the loss of forest cover, biodiversity hotspots as it is prone to deforestation for non-forest activities as they are no longer protected. This results in automatically divesting 28% of forest cover from the protection of the Act as it lies outside the Recorded Forest Areas (RFA) as defined by Forest Survey of India (FSI).<sup>130</sup> Notwithstanding this, large swathes of forestlands are exempt from the Act for projects of national importance and other reasons.

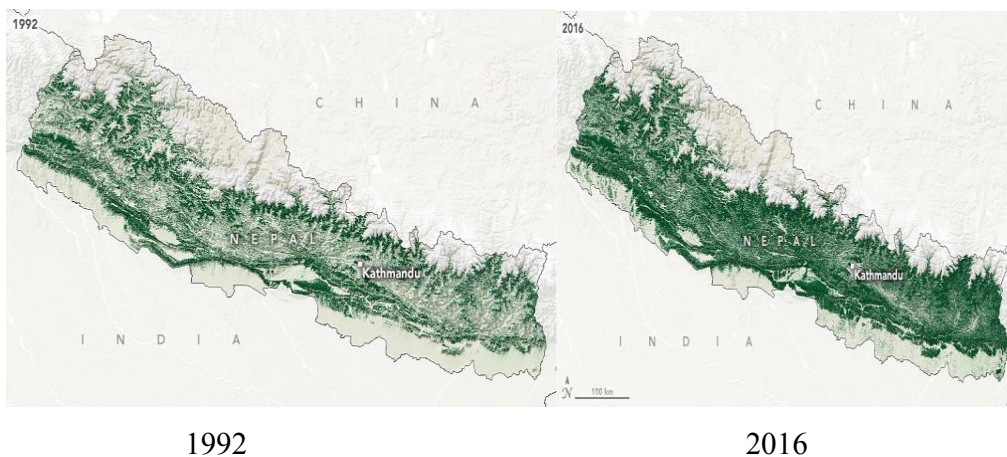
### *3.3. Overlooked Forest Dwellers*

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<sup>129</sup> T. N. Godavarman Thirumulkpad v. Union of India and Others, (1997) 2 SCC 267.

<sup>130</sup> Forest Survey of India (Ministry of Environment Forest and Climate Change), *India State of Forest Report 2021 (ISFR)*, (Jan. 13, 2022, 1:41 PM), <https://fsi.nic.in/isfr19/vol11/chapter1.pdf>

The definition of forestland under Forest Rights Act, 2006, (“FRA”) includes unclassified forests, un-demarcated forests, deemed forests, protected forests, reserved forests, sanctuaries, and national parks.<sup>131</sup> However, the Act fails to make any reference or exception to FRA, leaving room for possible conflict between the Rights of the Forest Dwellers and Rights of the Government to exploit forest land for economic and security activities. The Act ignores vulnerable indigenous tribes located in the exempted forestlands while taking no mitigative measures such as relocation of the tribes. The Act does not recognize the need for the cooperation and participation of the local communities, this leads to disfranchisement of the locals which is clearly in disharmony with the objectives of the Act. Learning from the example of Nepal which transferred its forests to local communities for conservation and management increased forest cover from 26% to 45% in about three decades, this indisputably establishes the need for local participation.<sup>132</sup>



Source – NASA Earth Observatory<sup>133</sup>

#### 3.4. Ploy for Forest Exploitation

The Act introduces a range of non-forest activities which are permitted on forestlands such as establishment of zoos, safaris, eco-tourism initiatives, silviculture and any other purpose as determined by the Central Government. This amendment clearly is against the Order of the

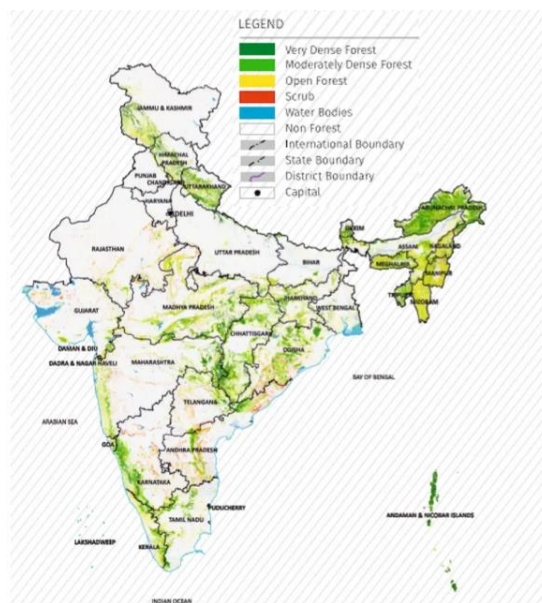
<sup>131</sup> The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, § 2 (d), No. 2, Acts of Parliament, 2007 (India).

<sup>132</sup> Emily Cassidy, *How Nepal Regenerated Its Forests*, NASA Earth Observatory, (Feb. 09, 2023), <https://earthobservatory.nasa.gov/images/150937/how-nepal-regenerated-its-forests>

<sup>133</sup> *Id.*

Supreme Court in February 2023, wherein the court disapproved the establishment of Zoos and Safaris inside Tiger Reserves (Jim Corbett National Park).<sup>134</sup> The establishment of zoos and safaris require road networks and infrastructure in forests which would lead to concrete structures being built, these initiatives are potentially destructive of the natural habitat and leads to commercialisation of the ecology.

### 3.5. Covert interests in Northeast?



Source - FSI<sup>135</sup>

The densest forest cover in the country is situated in the Northeast region owing to its geography as seen above. This whole region will be encompassed under exemption of 100 kms along International Borders for the development of strategic linear projects of national importance and national security due to the peculiar shape of Northeast. The total forest cover in the Northeast region is 1,69,521 sq. km, which is 64.66% of its geographical area.<sup>136</sup> This region falls under the Indo-Burma Biodiversity Hotspot which is one of the richest areas in terms of gene pool diversity in the entire world, it may no longer be considered a forest.

<sup>134</sup> In Re: T.N. Godavarman Thirumulpad v. Union of India and Others, 2023 LiveLaw (SC) 104, [https://www.livelaw.in/pdf\\_upload/104-in-re-tn-godavarman-thirumulpad-v-union-of-india-8-feb-2023-459030.pdf](https://www.livelaw.in/pdf_upload/104-in-re-tn-godavarman-thirumulpad-v-union-of-india-8-feb-2023-459030.pdf)

<sup>135</sup> Forest Survey of India (Ministry of Environment Forest and Climate Change), *India State of Forest Report 2021 (ISFR)*, (Jan. 13, 2022, 1:41 PM) <https://fsi.nic.in/isfr-2021/chapter-2.pdf>

<sup>136</sup> Forest Survey of India (Ministry of Environment Forest and Climate Change), *India State of Forest Report 2021 (ISFR)*, (Jan. 13, 2022, 1:41 PM) <https://fsi.nic.in/forest-report-2021-details>

These exemptions will lead to heavy deforestation in the Northeast region for development purposes. Looking back at the Joshimath Incident<sup>137</sup> and Beas Valley Incident<sup>138</sup> caused by unabated construction of roads, highways, dams and tunnels in highly sensitive geographies such as Himalayan and Trans-Himalayan region which is prone to land sliding as they are naturally a tremor-prone zone due to tectonic activity. The whole of Northeast India comes under such exclusively sensitive geography which will bring about disastrous effects when disturbed with heavy construction activities. State Governments have opined that ‘National Importance and National Security’ must be defined and clarify what exactly the projects refer to.<sup>139</sup> Acknowledging that strategic development is essential, an exemption of 2 Km from the International Borders is acceptable when compared to the vastness of 100 Km for proposed Linear Projects which refers to construction of roads, trails, sidewalks, or rail lines which is completely illogical and irrational. The Act vests absolute autocratic powers with the Central Government undermining the powers of State Governments though ‘Forests’ is a Concurrent List matter under the Seventh Schedule of the Indian Constitution.<sup>140</sup>

#### IV. CONCLUSION

The Principal Act proved to be very beneficial for the conservation and protection of forests clearly as from 1951 – 1975 close to 4-million-hectare forestlands were converted for non-forest purposes, whereas from 1980 – 2023 only 1-million-hectare forestlands have been converted which is significantly less owing to the stringent forest clearance procedure under the Principal Act.<sup>141</sup> The Act instead of addressing the flaws in the clearance system have travelled beyond the objective of the Principal Act by exempting large tracts of land, resulting in loss of forest cover and undermines the system of checks and balances instituted in the Principal Act. The present

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<sup>137</sup> Ismat Ara, *Joshimath crisis: A story of criminal neglect*, Frontline The Hindu, (Jan. 26, 2023, 10:45 IST), <https://frontline.thehindu.com/environment/ground-report-at-the-fault-lines-why-joshimath-crisis-is-a-story-of-criminal-neglect/article66408426.ece>

<sup>138</sup> Kanwardeep Singh, *48 hours that broke paradise*, The Times of India, (Aug 5, 2023, 07:43 IST), <https://timesofindia.indiatimes.com/india/48-hours-that-broke-paradise/articleshow/102438846.cms?from=mdr>

<sup>139</sup> Jay Mazoomdaar, *Bill to amend Forest (Conservation) Act passed in Parliament: objections, concerns around it*, The Indian EXPRESS, (August 2, 2023, 22:29 IST), <https://indianexpress.com/article/explained/explained-climate/forest-conservation-act-objections-concerns-8867644/>

<sup>140</sup> INDIA CONST. art. 246 (2), Schedule VII, List III, *Concurrent List*, Item 17A (Forests), ins. by the Constitution (Forty-second Amendment) Act, 1976.

<sup>141</sup> Jacob Koshy, *Explained | Why is there a controversy on the forest Bill?*, The Hindu, (July 27, 2023 12:48 AM IST) <https://www.thehindu.com/sci-tech/energy-and-environment/explained-why-is-there-a-controversy-on-the-forest-bill/article67084769.ece>

forest cover is 24.62% inclusive of plantations and private forests.<sup>142</sup> Hence, the exclusion of large tracts of forestlands including plantations, private forests and agro-forestry ultimately leads to decrease in forest cover and is adverse in relation to the Noble Vision of increasing forest cover to one-third of total land area. The various exemptions in the Act are not backed by any assessments and mitigation strategies which renders it arbitrary and irrational. The Act purported to rectify the deficiencies in the forest clearance system, but rather goes far from the Principal Act by granting blanket exemptions for fast-tracking strategic and security related development leading to exploitation of Forests.

*“A nation that destroys its soils destroys itself. Forests are the lungs of our land, purifying the air and giving fresh strength to our people.”*

- *Franklin D. Roosevelt*

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<sup>142</sup> Forest Survey of India (Ministry of Environment Forest and Climate Change), *India State of Forest Report 2021 (ISFR)*, (Jan. 13, 2022, 1:41 PM), <https://fsi.nic.in/isfr-2021/chapter-1.pdf>



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