



WILDLIFE FIRST

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Submissions on the proposed amendments to The Forest (Conservation) Act, 1980

1. Executive Summary

The Hon'ble Prime Minister made a commitment at the Asia Ministerial Conference 2016, where he said, "*I strongly believe that tiger conservation, or conservation of nature, is not a drag on development...*" The Consultation Paper, in our considered view, is not in conformity with the letter and spirit of the said statement of the Hon'ble Prime Minister. Furthermore, it ignores the current scientific knowledge on conservation of forests.

What's Positive - The term 'Pristine Forests' must not be restricted to just areas with Very Dense or Dense forests but must encompass all unique natural ecosystems with high biodiversity values and providing refuge to endangered species, including Protected Areas. The proposal to enhance the penal provisions for violation of Section 2 is absolutely necessary to enhance deterrence. However, a period of one year, in our view, is grossly insufficient.

What's Missing - The consultation paper, regrettably, has completely missed the most important forest conservation issue that is central to the legislation that is under review viz. *Forest fragmentation*. It would therefore be critically important to have a specific provision in the Act to curb further fragmentation of large, contiguous forested landscapes. The CAG has found that 73% of non-forest land that had to be transferred and notified as RF / PF in lieu of diversion of forest land had not been received. Monitoring of conditions imposed is the weakest link in the forest clearance process. Since most violations are clearly intentional, there is little or no scope for rectification later. Many user agencies including Government authorities commence work on the non-forest land portions first, and present the FAC with a *fait accompli*. The Supreme Court in the Lafarge Judgment (2011) has clearly flagged this aspect and has directed that remedial measures be put in place. We are therefore of the opinion that these major loopholes require to be plugged by way of specific provisions in the legislation - which are included in this submission - and not merely by way of Guidelines.

What's Retrograde - The proposal to exempt lands acquired by certain agencies for Railways, Highways etc is highly objectionable. It is a fact that the claims of such User Agencies on Rights of Way (RoWs) in many cases is tenuous. Therefore, such proposals may be considered *de novo* and, on a case-by-case basis under the Act. The proposal of exempting Extended Reach Drilling (ERD) – for exploration and extraction of oil and natural gas – from the purview of the Act is extremely detrimental to forest conservation at multiple levels. The proposal to re-classify Zoos, Safari parks, Forest training infrastructure and delete them from the category of non-forestry activity is retrograde and must not be considered.

It is requested that the Ministry of Environment considers these pragmatic and properly justified comments and suggestions appropriately and ensures that the Forest (Conservation) Act, 1980 is amended to carefully balance conservation imperatives and development aspirations.



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2. Opening Statement

The Hon'ble Prime Minister made a commitment at the Asia Ministerial Conference 2016, where he said, "*I strongly believe that tiger conservation, or conservation of nature, is not a drag on development... All we need is to re-orient our strategy by factoring in the concerns of the tiger in sectors where tiger conservation is not the goal... Thus, we need to define conservation as a means to achieve development, rather than considering it to be anti-growth*".

The Consultation Paper on the proposed amendments to the Forest (Conservation) Act, 1980 is, in our considered view, not in conformity with the letter and spirit of the said statement of the Hon'ble Prime Minister. Furthermore, it is devoid of the current scientific knowledge on conservation of forests. Consequently, in our opinion, the proposed amendments will fail to strike a reasonable balance between conservation imperatives and development aspirations.

Our pragmatic submissions are based on over three decades of active field work on conservation of forests and wildlife, interventions on policy and law, including our body of work on the National Board for Wildlife, and the sub-committee on amendments to the Wildlife (Protection) Act, 1972, the Boundary Rationalisation Committee, collaboration with State Forest Departments and site inspection committees of the NTCA.

3. Specific Comments and Submissions on the Consultation Paper

3.1: What's Positive about the proposed amendments –

3.1.1: The proposal to introduce an enabling provision in the Act to keep certain pristine forests with high ecological values intact is welcome and in line with the objects of the law.

However, two suggestions to ensure that it is further strengthened are as follows –

- *The clause "for a specific period" be deleted since such pristine natural forests are national treasures and require to be protected in posterity for future generations; and*
- *The term 'Pristine Forests' must not be restricted to just areas with Very Dense or Dense forests but must encompass all unique natural ecosystems including grasslands, wetlands, deserts, thorn forests etc with high biodiversity values and providing refuge to endangered species, including Protected Areas.*

3.1.2: The proposal to enhance the penal provisions for violation of Section 2 is



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absolutely necessary to enhance deterrence. However, a period of one year, in our view, is grossly insufficient. We therefore suggest the following –

- *That the term of imprisonment for any person who contravenes or abets the contravention of Section 2 must exceed two years and also with fine which shall not be less than five lakh rupees. Apart from increased deterrence, this will ensure that the procedure applicable for warrant cases under the Code of Criminal Procedure, 1973, will apply. As correctly stated in the Consultation Paper, the offence must be classified as Cognizable and Non-bailable. Further a proviso may be added to clarify that if a public servant is alleged to have committed or abetted the commission of an offence, prior sanction of the Government to prosecute would not be necessary.*

3.2: What's Missing from the proposed amendments –

3.2.1: Forest Fragmentation or Honeycombing: The consultation paper, regrettably, has completely missed the most important forest conservation issue that is central to the legislation that is under review viz. **Forest fragmentation**, which is the breaking up of large blocks of forests into smaller patches due to ill-planned intrusion of developmental projects. Scientists of the National Remote Sensing Centre (NRSC), in a published peer reviewed scientific paper titled - **National assessment of forest fragmentation in India**, have concluded that - *"Fragmentation is one of the single most important factors leading to the loss of bio-diversity in forest landscapes... The analysis revealed that in all biogeographic zones, more than 90% of total number of forest fragments consists of patches having area less than 1 km².... The decreased mean patch size, increased edge density and increased number of patches from 1975 to 2005 indicates ongoing fragmentation in biogeographic zones. The very high fragmentation in Trans Himalayas is contributed mostly by the natural factors while in other biogeographic zones, increased fragmentation is due to deforestation...The results are advocating the need for rational management of the forest cover of India".*

It would therefore be critically important to have a specific provision in the Act to curb further fragmentation of large, contiguous forested landscapes applying the principle of avoidance. Further, clearance for forest land only for those site-specific project components –while diverting all other components to areas outside forests Eg. Components of a Mining Project viz. Site-specific - Ore body; Non-site specific - Beneficiation/Pellet Plant, Township; will greatly minimize the impact of fragmentation and loss of natural forests.

This is crucial for keeping natural landscapes intact, which is key to mitigate the impact of climate change and for securing wildlife corridors. Based on the findings of the Government's own scientific agency, and in order to ensure a pragmatic balance between conservation and development, we suggest the inclusion of the following provision in the Act -



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- *Section 2 (iii) that any proposal for diversion of forest land amidst large forest blocks or forming part of a contiguous forested landscape, or both - irrespective of the extent of the area sought – shall ordinarily not be considered.*

Provided that in small, scattered pockets of forests that do not form part of a Protected Area or contiguous forested landscape connecting two or more Reserved Forests, or an important wildlife niche or wetland, General Approval may be considered for critical development and public utility projects proposals, excluding mining and encroachment regularisation, based on appropriate Guidelines that incorporate due safeguards and mitigation measures.

3.2.2. The CAG in their Audit Report No. 21 of 2013 had found that over 75,000 ha of non-forest land that User Agencies had to mutate and transfer to the Forest Department in order to secure Stage II clearance, had not been received. This amounted to a staggering 73% of non-forest land that had to be transferred and notified as RF / PF in lieu of diversion of forest land. This is thus a major loophole in the Guidelines that requires to be plugged by legislation. The transfer or mutation of non-forest land immediately adjacent to RFs/PFs and/or within enclosures of RFs or PAs/Tiger Reserves or buffers or in areas forming important wildlife corridors can significantly contribute to consolidation of forests, which will in turn mitigate the impact of fragmentation and ensure afforestation in such buffer areas which will be of greater value than in scattered parcels of land.

It is therefore our view that this loophole must be decisively plugged by inclusion of the following new section which could be in the following form –

- **2A. Transfer and Mutation of non-forest land.** – Notwithstanding anything contained elsewhere in this Act, the User Agency shall transfer and mutate suitable non-forest land, immediately adjacent to RFs/PFs or within enclosures of RFs or Protected Areas or, in Buffer Areas of Tiger Reserves or wildlife corridors, identified and included in the Land Bank prepared by the State Forest Department, before grant of Stage II clearance.

3.2.3: **Monitoring mechanism:** Monitoring of conditions imposed is the weakest link in the forest clearance process. The loopholes in the current regime - including the current on-line forest clearance system - give ample scope for exploitation by unscrupulous project proponents in collusion with authorities involved. Since most violations are clearly intentional, there is little or no scope for rectification later without timely detection, as is the situation now. This forecloses the option of preventing the destruction of forests, which is the primary object of this legislation.



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It is therefore our view that this important regulation **must be included in the Act and not merely in the Guidelines**. This, in conjunction with the proposed increase in penalties, will further increase deterrence and contribute to prevention of forest destruction.

We therefore suggest that this important lacuna is appropriately addressed by the introduction of a new section which could be in the following form –

- **2B. Monitoring of Projects.** - Any non-forestry activity approved under Section 2 shall be monitored throughout the validity of the period for which the approval has been granted, by the Deputy Conservator of Forests having jurisdiction over the area along with the Regional Empowered Committee.

Explanation. - For the purposes of this section, “monitoring” means site inspection of the project area at the time of commencement or breaking up of forest land, and during all key identified project milestones set forth in the approval, and annually including randomly at any time, if complaints of violations are received.

3.2.4 Preventing *Fait accompli* situations: Where portions of forest and non-forest land are involved in a project, many user agencies including Government authorities / PSUs deviously commence work on the non-forest land portions first, and present the FAC with a *fait accompli*. Citing the investments made, they then seek – and usually receive - ex-post facto clearances. Many agencies are even using this as a clever strategy by splitting up projects to secure clearances that otherwise would not have been possible. This is particularly true in cases of linear intrusions like highways, power lines etc. The Supreme Court in the Lafarge Judgment (2011) has clearly flagged this aspect and has directed that remedial measures be put in place.

We are therefore of the opinion that this major loophole requires to be plugged by way of a specific provision in the legislation and not merely by way of Guidelines. In this view of the matter, we suggest that the following section be included in the Act –

- **2C. Regulation on Ex-post facto Clearances.** - (1) Every user agency, shall ensure, in cases where projects involve forest as well as non-forest land, that work shall not commence on non-forest land till approval of the Central Government for release of forest land under Section 2 has been obtained.
- (2) Proposal seeking ex-post facto clearance shall not be considered and approval shall not be granted unless the Central Government being satisfied, in consultation with the Forest Advisory Committee, only in exceptional cases, after charging NPV at the highest applicable rate, for the



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entire extent of non-forest land as well, where work was carried out, grant clearance on a one-time basis only in respect of the User Agency.

Explanation. – For the purposes of this section –

- (a) “*Ex-post facto clearance*” means clearance under Section 2 for diversion of forest land, after commencement of work on non-forest land by splitting or bifurcation of a project or otherwise.
- (b) “*One -time basis*” means one single consideration in respect of the User Agency or Government Department for the first offence only.

3.3: What’s Retrograde in the proposed amendments -

3.3.1 The proposal to exempt lands acquired by certain agencies for Railways, Highways etc is highly objectionable.

Fundamentally, this proposal forecloses the application of several principles prescribed by the current legal regime including landmark Judgments of the Hon’ble Supreme Court which include payment of Net Present Value, appraisal of the proposal in terms of site specificity, prescription of the principle of avoidance of linear intrusions as a primary criterion, and evaluation of feasible alternative alignments etc.

It is a fact that the claims of such User Agencies on Rights of Way (RoWs) in many cases is tenuous to say the least and may not be supported by proper documentation and records. This has the potential of creating legal complications with conflicting claims of ownership, and, consequently, prolonged litigation.

Therefore, the proposals, if any, moved by such User Agencies may be considered *de novo* and on a case-by-case basis under the Act.

We therefore submit that the proposal to exempt lands acquired by certain agencies for Railways, Highways etc deserves to be completely excluded.

3.3.2 The proposal of exempting Extended Reach Drilling (ERD) for exploration and extraction of oil and natural gas from the purview of the Act is extremely detrimental to forest conservation at multiple levels. When seen in conjunction with the proposal to exempt survey and investigation from the regulations contained in the Act, this proposal can have cascading negative impacts. Riding on these exemptions, several ancillary non-forest activities like roads, power lines, pipe lines etc will piggy back on the exempted activity, with potentially serious consequences. When such ERD technologies are not even being insisted upon for laying of HV DC Power Cables, OFCs etc, it would not be appropriate to keep ERD outside the purview of the Act.



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We are therefore of the clear view that this proposal must be completely removed and should not be considered.

3.3.3 The proposal to re-classify Zoos, Safari parks, Forest training infrastructure and delete them from the category of non-forestry activity is retrograde. If this is permitted, the demand to include other activity like Elephant Camps, Eco-tourism infrastructure, visitor centres etc will surely follow. Therefore, Zoos, Safari parks and Forest training infrastructure must continue to be classified as non-forestry activity.

4. Conclusion:

It is requested that the Ministry of Environment, Forests & Climate Change considers these pragmatic and properly justified comments and suggestions appropriately and ensure that the Forest (Conservation) Act, 1980 is amended to carefully balance conservation imperatives and development aspirations.

Sincerely

Praveen Bhargav
Trustee