

Seeing forests everywhere: A cure is finally within sight

The court's sweeping application of what constitutes forest land has resulted in the barring of land-use that could serve legitimate purposes without posing an ecological threat.

Abhishek Singh, Bhuvana Anand

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Now that the government proposes to amend the Forest Conservation Act, we can expect some relief from the affliction of forests being seen everywhere in defiance of ground reality.

Lawmakers are set to discuss the Forest Conservation (Amendment) Bill, 2023, in the monsoon session of Parliament that started on Thursday. This is a rare opportunity for India to correct a 27-year-old policy logjam that is holding up growth and employment opportunities, without helping the country substantially conserve our forests.

The Forest Conservation Act, as it stands, requires that approval from state authorities and the Centre must be obtained before any non-forest activity can be undertaken on any land that may have been notified as 'forest'. Even trivial requests, such as one for

building an access path from one's private premises to a public road, must get a sign-off from eight officials spread across local, state and central administrations.

This forest-clearance approval is one of the most difficult permits to obtain in India, requiring a wait of sometimes as long as 365 days, and, reportedly, often lakhs of rupees in bribes. Applicants have to go through local forest officials all the way to forest 'experts' sitting in the leafy Jor Bagh locality of Delhi. Incidentally, if one looks at the map around Paryavaran Bhawan, some of the area is marked as dense forest land. It is not clear if concessions were made to get forest-clearance approval for it.

The Union government is trying to correct consequential mistakes made by the judiciary in the Godavarman case in defining the scope of forest laws in India. By holding that the Act would apply to all parcels of land recorded as forest land in any government record, the court's decision precluded all common sense discussion of whether a piece of land was actually a forest or a fragile ecosystem. The resultant enterprise of seeing forests everywhere has led to some absurd consequences.

It was forgotten that the state of land records in India is horrid—parcels demarcated as forest in one government record may be classified differently in another. Land owners then face grim consequences; once classified as forest, it is very difficult for a piece of land to be put to any use, and impossible specifically for some kinds of uses (constructing houses, for example). A national daily recently discovered that the Reserve Bank of India and much of Lutyens' Delhi is built on land recorded as 'forest land'. Inconsistency in land records has also negatively affected businesses—about 30 resorts in Karnataka were recently caught in the crossfire between the state's revenue and forest departments, which could not decide whether or not the land used by these resorts was forest land.

To make matters worse, the court order was worded such that it led states to avoid reclassifying even those parcels of land that did not pass the smell test of being a forest. To illustrate, many states had notified all footpaths as 'strip forests' decades before the Forest Conservation Act was implemented. While the earlier effects of such notifications were minor, the implementation of the court's order meant that people would need to knock on the doors of Paryavaran Bhawan if they wanted to construct an access road to their property.

Today, constructing approach roads are the predominant reason why people apply for forest-clearance approvals. To elaborate, applications for passageways constitute 67.5% of all requests for forest clearances in Punjab. The typical application for the

construction of a passageway asks for permission to use just 0.012 hectares of roadside strips of land.

Finally, the order also weakened property rights by restricting the use of private land. According to the order, the Forest Conservation Act was to also apply to all parcels of land satisfying the dictionary definition of the word 'forest'. By implication, it would apply even to land privately owned. Builders in Uttar Pradesh, for instance, were prevented from building residential buildings on land they owned because the land was understood to satisfy the dictionary definition of 'forest land'.

The Parliament of India has a moral duty to address the worst consequences of the Supreme Court's 1996 order. In the first place, Parliament should have clearly ring-fenced the definition of a forest in the original law. The Supreme Court took an ambiguous law, expanded it dramatically, and shut the door for any course-correction that may have been felt necessary with experience.

Today, Parliament is trying to correct this series of mistakes. The amendment bill to achieve that was scrutinized and recently endorsed by a 31-member joint parliamentary committee. This particular effort of the government deserves to be supported.

Environmentalists are right in asking us to treat our natural heritage with respect and care, but surely, we should call a spade a spade and only a forest a forest?

The sorry saga of forests being seen everywhere should also serve as a cautionary tale of policymaking being captured by courts, rather than staying squarely in the domain of the legislature or executive.

For nearly three decades, action in good faith by the courts resulted in paralysis that front-line officials could not correct. It fostered a different kind of centralization, and precluded any adaptive response by local and state governments.

Everyone knew the emperor wore no clothes, but no one could call it out. It is time to do right by our forests and by the land that is not a forest.