

Compensatory Afforestation Bill : A Spell Of Doom For India's Forests And Its Inhabitants

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The proposed changes in the form of the compensatory a forestation fund bill

The compensatory a forestation fund bill: capitalisation of nature

On 28th July, 2016, the Rajya Sabha unanimously passed the deeply troublesome compensatory afforestation fund management bill, 2016. The bill was earlier passed by Lok Sabha without much ado. The bill seeks to set up a compensatory afforestation management and planning authority which will have the trusteeship of Rs. 42000 Crore to be distributed to the states in their efforts to promote compensatory Afforestation.² The bill is a result of a long period of contemplation regarding the need to stop the further receding of the forests. The MOEF has heaved a sigh of relief in a recent statement welcoming the bill as a much needed legislation required to kick start all the stalled projects in relation to the restocking of the degraded forests of India. But the bill has received much flak from environmental groups and the forest dwellers for its incoherence and myopic vision. It comes in direct conflict with the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 ("Forest Rights Act") and reflects an archaic colonial mind set of dealing with the environment in a reductionist manner in isolation from the people that inhabit it.³

The Forest ecosystem is an important component of the natural environment of a country. India ranks 10th in the list of nations with most forest cover with 76.87 million hectares of forest and tree cover⁴. The Indian forests are home to 2-3% of the world's biodiversity. Apart from supporting a huge diversity of fauna and flora, Indian forests have the potential to help

in carbon sequestration and act as carbon sinks and help in mitigation of climate change. Many people living in urban areas more or less depend on the forests for a variety of natural resources starting from timber to other raw materials. And there are other people whose livelihood is intricately linked with the forests. Native forests trap enough rainwater to give birth to rivers and they support a complex web of life starting from the lichens and mosses to big animals. Forests also act a buffer against pest infestations, storms and other natural disasters⁵. There are various stakeholders involved who depend on forests for their varied needs. There are people who live inside the forests often as hunter gatherers or shifting cultivators who depend on the forest resources on a subsistence basis. These include the Bodo tribes of Assam, the Gond tribes of MP, Munda tribe of Jharkhand etc. who constitute 8.2% of the population. Then there are agriculturists and livestock owners who live around the forests and depend on forest supplements partly for subsistence and partly for economic reasons to improve the productivity of agriculture. There are also people who depend on forests for a variety of commercial activities like logging, mining etc. for their own profit generation.⁶

The recent state of forest report in India registered a continuous decline of tree cover from 1951. During 1951-1980, India has diverted 62% of its forest land for the purpose of agriculture which amounts to 42,380 sq km land. From then on, there has been no looking back on shrinkage on forests. The forest cover in India was 640819 square kilometres in 1987. The percentage of forest cover was 19% of the territory of the country. It gradually reduced by 0.23% of the land area in 1991. Then at a

faster pace, the forest cover decreased by 0.08% by 1995.⁷ The government has in recent times claimed a substantial increase in the green cover of the country. But the bare truth has been veiled behind statistical jugglery and elusive numbers given by the forest administration of India. The forest survey of India biennial report on the forests declared an addition of 0.16% of forests⁸. In 2012, India seemed close to reaching the target of 33% forest cover at 692,000 sq km. But what we don't realize is that Dehradun based forest survey of India has been using a very flawed definition of forest cover. The FSI breaks up land into 1 hectare plots and it deems any land which has more than 10% of canopy cover as 'forests' without any regard to the questions of purpose of land, the kind of trees on the land, the ownership of the land etc. The definition is so expansive that it includes orchards, plantations, botanical gardens within 'forests'.⁹ So, even places like Delhi's Lodi gardens which is a mix of trees, grassy knolls, sand and dirt get covered under the wide definition of 'forests'.¹⁰ Native forests are clearly distinguishable from plantation and a mere 10% canopy cover for their intricate interconnections and their evolution over millions of years. A 2011 paper titled 'cryptic destruction of India's native forests', by researcher Priya Davidar and others, says area under plantations doubled between 1995 and 2005, from 146,200 sq km to 300,280 sq km and that these figures have been used by the Forest department to bolster their numbers. The paper also says that native forests actually fell from 514,000 sq km to 390,000 sq km¹¹.

The quandary that every developing nation faces is that although forests provide valuable ecological services, they are often 'diverted for non-forest uses' to meet the growing development needs of the country. The forest act 1980 calls for the afforestation of non-forest land equal to the size of the land being diverted. But mere call for afforestation elsewhere doesn't compensate for the economic loss from goods

and services that the original forest would have provided. These goods and services include timber, fuel wood, carbon sequestration, water recharge and seed dispersal. Afforested land takes substantial amount of time to give the same economic returns as a native forest. So, in the interim period, the law seeks the calculation of the Net present value (NPV)¹² for the diverted forest and claims such value from the "user agency"¹³ that is the proponent of the diversion. It is a very convenient mechanism by which the user agency, in most cases a private company is merely expected to fund the government expenditure. The government is then expected to undertake the whole project of planting the trees in non-forest land. In the end, the forest is given to the forest department for maintenance¹⁴.

This is the basic idea behind compensatory afforestation. Whenever any development project is sought to be started in a national park or a sanctuary, certain amount of levy is imposed on the project proponent. The proliferating amount of developmental projects for which forests are being routinely averted has led to the deposition of huge amount of funds in the government's coffers amounting to more than Rs 40000 crore till now with an additional increase of Rs 6000 crore every year. The government is now intent on releasing these funds to state governments. The bill seeks to create a CAMPA at the central level and a CAMPA each at the state level. In corollary to that, a national compensatory afforestation fund is proposed to be created one in each state and UT¹⁵. The bill seeks to distribute the funds received by the central fund to the various state governments holding back 10% of the amount to create administrative expenses.¹⁶

The Supreme Court has strived to change the way forests are managed since 1996. In 2006, it ordered the establishment of an ad hoc "CAMPA" till a permanent one is established. Initially, there was no requirement of disbursement to states but eventually but due to the persistent delay in

the creation of a final CAMPA, the SC allowed the release of funds up to Rs 1000 crore for distribution among the states. From then on, the fund has become ossified because of the non-formation of a perennial authority. A similar law was due to be passed by the government but lapsed due to the lack of consensus.¹⁷

The impact and the problems with the bill

Internal critique

The bill can be criticised both for its internal structure and its external impact and effectiveness at the ground level. Internally, there is a problem with the implementation especially in context of the difficulty in availing of non-forest land for afforestation purposes.

The bill proposes the establishment of authorities at the national and state level to be mainly dominated by the forest bureaucracy who have overriding and unilateral discretionary powers as to the purpose and the nature of the spending of the accumulated funds with no provision for a transparent mechanism. The law prescribes the selection of land contiguous to the diverted forest land and if it is difficult to find one so closely located, then land in any part of the state may be utilised. But in cases degraded land is chosen for the purpose, it might require double the area as the diverted land. Given the already heavy demands on the land in the growing urban sprawls in different states, it is arduous to find a suitable plot especially in heavily forested states like Chhattisgarh.¹⁸

Another allegation with respect to the bill is its inclusion of a wide range of purposes on which the expenditure under the fund is sought to be spent. The bill has expanded the list of the projects including the general afforestation programme under the Green India mission, forest management, forest and wildlife related infrastructure projects etc. This expansion draws concern in the face of the ample evidence pointing to lack of any substantial impact from

investment of Rs 4600 crores from various investment agencies like the world bank, USAID, UN economic commission for Europe and the extremely poor results of the afforestation programme¹⁹. In Karnataka where almost Rs 1500 crore has been spent on the afforestation efforts over the past 30 years, the FSI statistics show that the dense and moderately dense tree cover actually went down by 2898 km² between 1997 and 2011²⁰. In states like Maharashtra, Plantations have claimed the major share under the afforestation programs and a recent evaluation of 10 year old plantations shows that 74% of them have failed to compensate for the loss of forests and ecosystems services²¹. The parliamentary standing committee on science and technology and environment and forests in 2015 claimed that despite elephantine budgetary quotas, 40% of Indian forests still remain degraded and decadent. The government is only adding to the huge treasure of funds stultified for lack of proper usage²².

A 2011 book on compensatory afforestation in India by Kanchi Kohli points out that Goa used as much as 69% of its allocation for afforestation for buildings, computers etc. Likewise, AP has used 53% of funds on construction activity, HP 53% AND Tamil Nadu 67%.²³ The DG of forests Kumar even proposed setting up of research institutes with the funds for compensatory afforestation. Often, it is also difficult to find suitable land in the same ecological niche. One biologist working on forest restoration points out that the afforestation of a mere 8-9 species doesn't compensate for the 50-55 species lost in rich biological systems²⁴. The forest department plants trees which both meet the targets and contribute towards economic revenue generation at the same time. Instead of Sal trees, the planting of acacia trees ensures quick growth. As native botanical diversity is eroded, the dependent fauna also faces the threat of extinction and it takes years before a natural forest is raised. For

example, in Karnataka, the dwindling numbers of the woodpeckers points to the drive behind planting teak trees instead of the natural Sal which are the mainstay of woodpecker density²⁵.

Recently, due to the increase of private sector driven afforestation programmes and financing from foreign donors like the Japan international cooperation agency has resulted in the proliferation of fast growing species like acacia, eucalyptus, rubber etc. grown to meet the demand for plywood but which suck the land dry by consuming loads of water as we see in the case of Punjab.

The harbinger of ruin for Tribals and the forests

Apart from the potential non-execution of funds, the CAMPA bill also suffers from the ailment of being in unequivocal and direct opposition to the interests of the forest dwellers and their environment. Usually, when defectively planned infrastructural projects barge into the core of the forest or any protected area, they tend to tear up the area into bits and pieces by fragmenting huge blocks of land into smaller and more vulnerable parts. This mutilation causes considerable harm to the efforts at long term biodiversity conservation resulting in certain catastrophic impacts; it seriously affects the continuity of landscape, the habitat of the animals and creates new edges that expose the land and the people's lives to degradation.²⁶ Unfortunately, the government has entirely missed the point. Instead of coming up with solutions to address the issue of forest loss and disruption in the harmonious balance of the ecosystem, the government is merely trying to "indemnify" for the loss by growing artificial plantations in degraded lands.

Apart from its operational inefficiency, it also comes into collision with tribal rights and ends up being an ecological cataclysm. In an effort to compensate for the Kudremukh iron ore limited Company's strip-mining of the pristine rainforests

in the heart of Karnataka's Kudremukh national park, the government went on a herculean afforestation splurge. In addition to the dumping of tailings (waste mud left from extraction of low grade iron ore) into a deep sylvan valley, the planting of trees has created problems. Wholly useless non-native species were planted on an ecologically important watershed of Bard River. Compensation has resulted in additional destruction. It is laughable that the government is portraying such attempts at conservation as a march towards 'green India'.²⁷

In India, forests have been a disputed domain since the times of yore. By enactment of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, also known as Forest Rights Act (FRA), the Government had in one stroke settled the claims for justice of the hundreds of tribal's in 1, 77,000 villages over at least 40 million hectares of forest land. The tribal's were given rights over management of the forests and usage of the products from it. They were made trustees of the virgin ecological spaces. For many years the forest bureaucracy and the private companies have expropriated the fair share of Tribals in the forest ecosystem with utter disregard to the intricate relationship of the lives of the tribal's with the forests and their contribution in maintenance of a sustainable and congruous environment. Even after the passage of the forest rights act, the entrenched colonial mind set of viewing forests as spaces for exploitation has not unfastened from our forest bureaucracy which continues to whitewash over the act by giving free rein to businesses trading in non-timber forest produce²⁸. The CAMPA bill strengthens the control that the forest department has over settlement of rights claims of the forest dwellers. It provides no respite from the bullying of the officials and the companies. The bill turns a blind eye to the community forest resource rights presently under the governance of the gram

sabhas of the tribal villages under the forest rights act. Both the central and state level authorities have no representation from the tribal's and forest dwellers²⁹. The three-judge bench in the Niyamgiri hills case held that "forest approval cannot be granted to a developmental project without the decision of the gram sabhas, taken after proper consideration and in a duly convened gram sabha and passed by resolution".³⁰ Instead of a conscientious assessment of the impact on the tribal's as recommended by the Kanchan Chopra committee and the IIFM committee, the bill will accentuate the resource grabbing nature of the avaricious bureaucracy who act as scourges rather than the servants of people³¹. The bill violates the Gandhian principle of decentralised governance espoused in the 73rd and 74th amendments and side tracks from the Modi's pronounced promise of minimum government. China on the other hand has handed over 100 million hectares of forest land to the tribal communities and local households and invested 50 billion dollars to spur the locals to conserve the forests³². Instead, we are merely perpetuating a gigantic wastage of funds by putting them at the beck and call of unscrupulous forest officials. In May, in a detailed note to the tribal affairs and environment Ministers Jubal Orem and Prakash Javdekar, Congress Rajya Sabha MP and former environment minister Jairam Ramesh wrote that the CAMPA Bill must be amended so that it will not result in gross violation of the Forest rights act, 2006.³³

Many remote tribal villages like Rangmatia, a Juang village in the hilly region of Keodhar in North Orissa have seen installation of boards in the middle of densely forested areas issuing the notice for afforestation. Many such community forests which were eligible for grant of special habitat rights under FRA are being marked off for non-native plantations in the name of compensation. This is simply resulting in double ruination by the acquisition of land for a

commercial purpose in the first instance and then destruction of forests for afforestation³⁴.

The 'managerial approach of government': amendments to EPA

The government's recent proposed amendments to the EPA act belie its call to end environmental violations. It has launched a two stage plan in an attempt to alter the different kinds of actions that can be launched against the violators of the EPA act and its rules and notifications related to impact assessment, waste disposal regulation etc³⁵. The amendments proposed have shifted a protection based regime to managerial control intent on recovering the costs of violation but ignoring the inherent destruction caused by the violation itself.

First, the government has proposed a short term notification to provide a lateral entry to companies who have already started their operations pending the full assessment as per the environmental approval process. The MoEF plans to shift the focus from damage and criminal persecution of the violators to the calculation of the economic cost that resulted from the violation of the act. This approach ignores the fact that people are affected in ways apart from mere damage.³⁶

Such violations of the act cause permanent damage to the people, especially children living around the area due to the exposure to toxics and other harmful substances. The destruction of the environment may in the long term affect the climate of the area resulting in lasting damage to the farm productivity, life of the livestock and loss of a healthy environment for the future generations. The April 2016 draft cabinet note suggests that civil penalties would make companies conform to the polluter pay principle without resulting in their closure³⁷.

The March 14 notification issued by the ministry issued for a period of 6 months allows businesses who have already started their operation in violation of EIA, 2006 to apply or

a post facto clearance.³⁸ The statistics reveal that 70% of the projects who have applied for terms of reference for post facto EIA are from the mining sector and many others from the building sector mostly from TN.³⁹ While pronouncing the need for a strict environmental protection regime, the ministry has also given unconditional clearance to a multitude of projects. The government has proposed the establishment of an adjudicating mechanism which will decide upon the existence of violation and the fee to be imposed on the proponent which will later be transferred to the consolidated fund of the government for future use in restoration of the environment.⁴⁰ The government will merely count its collections in the future rather than taking a balanced approach with all the stakeholders involved. The government should look up to the precedent of the Compensatory Afforestation Management and Planning Authority in which a similar fund created out of revenues of the companies became an unutilised fossil while the violations continue.⁴¹

In the latest draft, the government argues for imposition for a penalty of Rs.10 crore with an additional levy of maximum Rs. 50 lakh per day calculated on a daily basis of continuing pollution.⁴² The government doesn't clarify on what would happen to the people, animals and other living beings and food webs affected by the environment and how it will use the money in actual rehabilitation. The amendment provides a very vague categorisation of the damages without any substantial effort at creating different groups of damages. Although the proposed bill recognises an upper limit of levy, it doesn't put any lower cap on the amount imposed. This leaves a lacuna in the regulation resulting in categorisation of every environmental violation as 'minor'. Many environmental violations including dust pollution, mangroves encroachment progress on an accretion basis and so, small fines for 'on the spot penalty' are not sufficient to deter the continuation of violation⁴³.

The proposed amendment leaves a huge amount of discretion with an unspecified authority to be created in the future leading to the possibility of non-efficient imposition of levies with the smallest of fines levied on the harshest of violations.

Conclusion

In the recent times, the government has started collaborating with the private interests in creating a very loose regulatory regime compromising the objectives of social welfare of the various state agencies. All the competing interests are being coerced to propagate the ease of doing business that the government is actively advocating. But such an approach completely ignores the rights of the tribal communities living in the project areas, the balance of ecosystem that needs to be maintained to ensure a sustainable development for all. A perfectly rich forest ecosystem is proposed to be converted into artificial plantations and tribals are fighting for their livelihood, homes and their mandated rights in the midst of debauchery and erosion of democracy. Instead of creating a completely new environmental mechanism, it would do good to understand the limitations of the previous agencies like the national environmental appellate authority before which appeals against environmental approvals could be brought always had a lack of manpower and gradually became a dead cell. The national tribunal act, 1995 which proposed the creation of a similar body was never implemented. The government should try to concentrate on a more balanced and sustainable approach instead of harping on the 'conflict of interest' between development which will catapult India into the growth trajectory and the rights of people in protecting the environment they live in. Amidst a growing body of evidence pointing to the wisdom of the Tribals in effective protection of landscapes, it is expedient for the government to let go of its pursuit of development and ease of doing business and focus on the devolution of democratic rights in the interests of justice.

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