



EAS Sarma &lt;eassarma@gmail.com&gt;

**(napmap) Proposed amendments to Forest Conservation Act- imprudent- strengthen the Act for upholding tribal rights and for conservation of biodiversity, not dilute**

6 messages

**EAS Sarma** <eassarma@gmail.com>

26 March 2021 at 16:22

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To

Shri R P Gupta

Secretary

Ministry of Environment, Forests and Climate Change (MEFCC)

Govt of India

Dear Shri Gupta,

I understand from a Down to Earth news report (<https://www.downtoearth.org.in/news/forests/draft-amendment-to-forest-conservation-act-may-dilute-protection-to-forests-76145>) that your Ministry is about to issue several crucial amendments to the Forest Conservation Act which exempt from its purview a wide range of projects ("strategic", "linear" projects) and introduce new provisions to permit the leasing of the forests to private agencies. According to this news report, some of these amendments also seem to aim at re-defining the "no-go" forest blocks where projects will not be permitted. Either in granting such exemptions for projects from prohibitive provisions of the Forest Conservation Act or in the matter of restricting the extent and the number of no-go forest blocks in the guise of a re-survey, your Ministry should exercise utmost prudence and circumspection, for the following reasons.

**Godavarman Case**- Hon'ble Supreme Court's directions:

The apex court has defined a "forest" to include not only the forests notified as such by the Forest Department but all other areas containing a reasonable extent of vegetation, as "deemed" forests. The court had expressed concern at the increasing degradation of the forests leading to a serious ecological imbalance and, therefore, laid down the concept of "compensatory afforestation" that required twice the extent of the forest land diverted for non-forest purposes to be earmarked elsewhere for fresh afforestation. The fact that the directions of the apex court stand largely violated has been brought to light by the C&AG in their Report no. 21/2013. The enthusiasm displayed by the government in diverting forests for projects has not been matched by a resolve to compensate for such diversion as mandated by the apex court. Keeping this in view, there is greater need to tighten the provisions of the Forest Conservation Act rather than diluting it. The social cost of loss of forest cover is far greater than the perceived benefits of many projects.

**Biodiversity**- Additional requirement:

Forests not only provide forest resources but also host biodiversity, the loss of which has enormous social and economic costs. I enclose here a well analysed report on this, "***The Economics of Biodiversity- The Dasgupta Review (February 2021)***" which provides a comprehensive evaluation of the value of biodiversity. Loss of forest cover results in loss of biodiversity, which is not fully compensated by Compensatory Afforestation alone. There is therefore a strong case for looking at the forests, not merely from the narrow

perspective of their being a source of forest produce, but from the larger perspective of their being a natural source of biodiversity. Many countries are making Biodiversity Impact assessment (BIA) an essential component of Environment Impact Assessment (EIA). India should not therefore take any retrograde step by diluting the forest laws and thereby disrupting the biodiversity.

### **Forest-Tribal Interface:**

More than 60% of the forest area in the country falls within 187 tribal districts, the extent of which is mostly covered by the areas notified under the Fifth and the Sixth Schedules to the Constitution. The Scheduled Areas are governed by laws, such as PESA and the Forest Rights Act (FRA), that confer wide ranging powers on the local tribal Gram Sabhas. Therefore, the forest laws cannot be modified in a manner that conflicts with the authority of the tribal Gram Sabhas and hurts the tribals' interests. In fact, Clause 5 of the Fifth Schedule to the Constitution provides for amending any law applicable to the Scheduled Areas to be adapted to suit the interests of the tribals. Instead of diluting the forest laws to accommodate projects and facilitate the entry of private agencies, therefore, it is imperative that the existing forest laws are adapted to promote the interests of the tribals.

The forest laws look upon the forests merely as a source of forest resources, not as the exclusive habitat of the tribals. There is a symbiotic relationship between the lives of the tribal communities and their forest habitat. To this extent, there is an urgent need to adapt the forest laws to include the concept of treating the forests as an integrated part of the lives of the tribals. Article 21 of the Constitution entitles the tribals to live in their forest habitat, having an unfettered right of access to the forests and their resources. Both PESA and FRA recognise this right in an unambiguous manner.

It is therefore desirable that MEFCC takes into confidence, not only the Union Ministry of Tribal Affairs and the National Commission of Scheduled Tribes (NCST) set up under Article 338A of the Constitution but also the States who have a direct stake in the governance of the Scheduled Areas and the well being of the tribals.

The latest amendments to the forest laws seem to grant exemptions for "strategic" projects, "linear" projects etc. from the operation of the Forest Conservation Act. Unless the description, "strategic" is well defined, it will open the floodgates to all kinds of projects to the detriment of conserving the forests. Also, as far as "linear" projects such as railway tracks, roads etc. are concerned, exempting them from the mandated EIA process is bad in law as it will deprive those affected from expressing their objections. Public consultation is an essential component of any democratic system and any attempt to do away with it will be undemocratic.

In the specific case of the Scheduled Areas, MEFCC had earlier erroneously granted exemption for linear projects from prior consent of the tribal Gram Sabhas. In WP No 231/2013 before Hon'ble AP High Court, I along with Samata, an NGO, had sought judicial intervention to hold such exemption violative of the provisions of PESA. I enclose a copy of the judgement dated 6-3-2019 in that WP in which the court held the MEFCC order to be invalid. This is just to caution your Ministry to be wary of any legislative action that could violate the provisions of either PESA or FRA.

### **Leasing forests to private agencies- Doctrine of Public Trust:**

Forests constitute a natural resource that belongs to the people at large. Leasing forests to private parties excludes the entry of the tribals and the public, which violates the Doctrine of Public Trust and the principles laid down by the apex court in the well known case of M C Mehta vs Kamal Nath & Others. I have extracted below the apex court's observations on the subject.

*"The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life.... Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third property must be maintained in particular types of uses"*

The National Environment Policy (NEP) also seeks “to ensure equitable access to environmental resources and quality for all sections of society, and in particular, to ensure that poor communities, which are most dependent on environmental resources for their livelihoods, are assured secure access to these resources”.

It will therefore be imprudent and prima facie illegal to provide for leasing of the forests to private agencies.

**Forests sustain important river catchments:**

A large proportion of the forests in India are a part of the catchments of the major rivers. Any diversion of such forests for non-forest purposes will adversely affect the water inflows into the rivers and the lives of the downstream residents. Any move to disturb the forests without due consideration of this aspect will therefore have serious long-term consequences.

**Ease-of-doing-business vs MEFCC's obligation under Article 48A:**

In several ways, these days, MEFCC seems to be deviating from its primary obligation under Article 48A of the Constitution to conserve the environment. Apparently, the Ministry is finding itself pressured by extraneous considerations to relax the statutory provisions one by one to suit the business interests. The draft 2020 EIA notification, the more recent amendment to the CRZ notification and the latest amendments to the Forest Conservation Act seem to be a part of this. Dilution of the environment laws and notifications may benefit the business interests in the short-term but they lead to long-term social and economic costs and erode the credibility of your Ministry as the custodian of the environment. Perhaps, a time has come when MEFCC should review its own role in the government vis-a-vis the need for public accountability in the overall context.

I hope that what I have indicated above will make MEFCC ponder over the adverse implications of diluting the environment laws and notifications in general and the forest laws in particular.

Regards,

Yours sincerely,

E A S Sarma

Former Secretary to GOI

Visakhapatnam

26-3-2021

 [Dasgupta\\_Review\\_-\\_Full\\_Report copy.pdf](#)

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—  
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postmaster@network18publishing.com <postmaster@network18publishing.com>  
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26 March 2021 at 16:22



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Recipient

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### How to Fix It

The address may be misspelled or may not exist. Try one or more of the following:

- Send the message again following these steps: In Outlook, open this non-delivery report (NDR) and choose **Send Again** from the Report ribbon. In Outlook on the web, select this NDR, then select the link "**To send this message again, click here.**" Then delete and retype the entire recipient address. If prompted with an Auto-Complete List suggestion don't select it. After typing the complete address, click **Send**.
- Contact the recipient (by phone, for example) to check that the address exists and is correct.
- The recipient may have set up email forwarding to an incorrect address. Ask them to check that any forwarding they've set up is working correctly.
- Clear the recipient Auto-Complete List in Outlook or Outlook on the web by following the steps in this article: [Fix email delivery](#)

[issues for error code 5.1.10 in Office 365](#), and then send the message again. Retype the entire recipient address before selecting **Send**.

If the problem continues, forward this message to your email admin. If you're an email admin, refer to the **More Info for Email Admins** section below.

Was this helpful? [Send feedback to Microsoft](#).

## More Info for Email Admins

Status code: 550 5.1.10

This error occurs because the sender sent a message to an email address hosted by Office 365 but the address is incorrect or doesn't exist at the destination domain. The error is reported by the recipient domain's email server, but most often it must be fixed by the person who sent the message. If the steps in the **How to Fix It** section above don't fix the problem, and you're the email admin for the recipient, try one or more of the following:

**The email address exists and is correct** - Confirm that the recipient address exists, is correct, and is accepting messages.

**Synchronize your directories** - If you have a hybrid environment and are using directory synchronization make sure the recipient's email address is synced correctly in both Office 365 and in your on-premises directory.

**Errant forwarding rule** - Check for forwarding rules that aren't behaving as expected. Forwarding can be set up by an admin via mail flow rules or mailbox forwarding address settings, or by the recipient via the Inbox Rules feature.

**Recipient has a valid license** - Make sure the recipient has an Office 365 license assigned to them. The recipient's email admin can use the Office 365 admin center to assign a license (Users > Active Users > select the recipient > Assigned License > Edit).

**Mail flow settings and MX records are not correct** - Misconfigured mail flow or MX record settings can cause this error. Check your Office 365 mail flow settings to make sure your domain and any mail flow connectors are set up correctly. Also, work with your domain registrar to make sure the MX records for your domain are configured correctly.

For more information and additional tips to fix this issue, see [Fix email delivery issues for error code 5.1.10 in Office 365](#).

### Original Message Details

Created Date: 3/26/2021 10:52:21 AM  
 Sender Address: [eassarma@gmail.com](mailto:eassarma@gmail.com)  
 Recipient Address: [editor@ibnlive.com](mailto:editor@ibnlive.com)  
 Subject: Proposed amendments to Forest Conservation Act- imprudent-strengthen the Act for upholding tribal rights and for conservation of biodiversity, not dilute

### Error Details

Reported error: 550 5.1.10 RESOLVER.ADR.RecipientNotFound; Recipient [editor@ibnlive.com](mailto:editor@ibnlive.com) not found by SMTP address lookup  
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 Date: Fri, 26 Mar 2021 16:22:21 +0530  
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 Subject: Proposed amendments to Forest Conservation Act- imprudent- strengthen  
 the Act for upholding tribal rights and for conservation of biodiversity, not dilute  
 To: [secy-moef@nic.in](mailto:secy-moef@nic.in), [dgfindia@nic.in](mailto:dgfindia@nic.in), [secy-tribal@nic.in](mailto:secy-tribal@nic.in), [secy@ncst.nic.in](mailto:secy@ncst.nic.in),  
[cabinetsy@nic.in](mailto:cabinetsy@nic.in)  
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 BCC: [editor@ibnlive.com](mailto:editor@ibnlive.com)  
 Return-Path: [eassarma@gmail.com](mailto:eassarma@gmail.com)  
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Final-Recipient: [rfc822;editor@ibnlive.com](mailto:rfc822;editor@ibnlive.com)

Action: failed

Status: 5.1.10

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Cc:

Bcc: [editor@ibnlive.com](mailto:editor@ibnlive.com)

Date: Fri, 26 Mar 2021 16:22:21 +0530

Subject: Proposed amendments to Forest Conservation Act- imprudent- strengthen the Act for upholding tribal rights and for conservation of biodiversity,  
 not dilute

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To

Shri R P Gupta

Secretary

Ministry of Environment, Forests and Climate Change (MEFCC)

Govt of India

Dear Shri Gupta,

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It is therefore desirable that MEFCC takes into confidence, not only the Union Ministry of Tribal Affairs and the National Commission of Scheduled Tribes (NCST) set up under Article 338A of the Constitution but also the States who have a direct stake in the governance of the Scheduled Areas and the well being of the tribals.

The latest amendments to the forest laws seem to grant exemptions for "strategic" projects, "linear" projects etc. from the operation of the Forest Conservation Act. Unless the description, "strategic" is well defined, it will open the floodgates to all kinds of projects to the detriment of conserving the forests. Also, as far as "linear" projects such as railway tracks, roads etc. are concerned, exempting them from the mandated EIA process is bad in law as it will deprive those affected from expressing their objections. Public consultation is an essential component of any democratic system and any attempt to do away with it will be undemocratic.

In the specific case of the Scheduled Areas, MEFCC had earlier erroneously granted exemption for linear projects from prior consent of the tribal Gram Sabhas. In WP No 231/2013 before Hon'ble AP High Court, I along with Samata, an NGO, had sought judicial intervention to hold such exemption violative of the provisions of PESA. I enclose a copy of the judgement dated 6-3-2019 in that WP in which the court held the MEFCC order to be invalid. This is just to caution your Ministry to be wary of any legislative action that could violate the provisions of either PESA or FRA.

### **Leasing forests to private agencies- Doctrine of Public Trust:**

Forests constitute a natural resource that belongs to the people at large. Leasing forests to private parties excludes the entry of the tribals and the public, which violates the Doctrine of Public Trust and the principles laid down by the apex court in the well known case of M C Mehta vs Kamal Nath & Others. I have extracted below the apex court's observations on the subject.

*"The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life.... Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third property must be maintained in particular types of uses"*

The National Environment Policy (NEP) also seeks *"to ensure equitable access to environmental resources and quality for all sections of society, and in particular, to ensure that poor communities, which are most dependent on environmental resources for their livelihoods, are assured secure access to these resources"*.

It will therefore be imprudent and prima facie illegal to provide for leasing of the forests to private agencies.

### **Forests sustain important river catchments:**

A large proportion of the forests in India are a part of the catchments of the major rivers. Any diversion of such forests for non-forest purposes will adversely affect the water inflows into the rivers and the lives of the downstream residents. Any move to disturb the forests without due consideration of this aspect will therefore have serious long-term consequences.

### **Ease-of-doing-business vs MEFCC's obligation under Article 48A:**

In several ways, these days, MEFCC seems to be deviating from its primary obligation under Article 48A of the Constitution to conserve the environment. Apparently, the Ministry is finding itself pressured by extraneous

considerations to relax the statutory provisions one by one to suit the business interests. The draft 2020 EIA notification, the more recent amendment to the CRZ notification and the latest amendments to the Forest Conservation Act seem to be a part of this. Dilution of the environment laws and notifications may benefit the business interests in the short-term but they lead to long-term social and economic costs and erode the credibility of your Ministry as the custodian of the environment. Perhaps, a time has come when MEFCC should review its own role in the government vis-a-vis the need for public accountability in the overall context.

I hope that what I have indicated above will make MEFCC ponder over the adverse implications of diluting the environment laws and notifications in general and the forest laws in particular.

Regards,

Yours sincerely,

E A S Sarma

Former Secretary to GOI

Visakhapatnam

26-3-2021

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**EAS Sarma** <eassarma@gmail.com> 26 March 2021 at 16:25  
To: Medha Patkar <nba.medha@gmail.com>, Medha Patkar <medha.narmada@gmail.com>, Virginius Xaxa <virg1978@gmail.com>, PS Ajay <psajay123@gmail.com>, Rajendra Singh <jalpurushtbs@gmail.com>, satyanarayana boliseti <bolisettisatyanarayana@gmail.com>, Colin Gonsalves <colin.gonsalves@hrln.org>, Prashant Bhushan 1 <prashantbhushan@gmail.com>

----- Forwarded message -----

From: **EAS Sarma** <eassarma@gmail.com>

Date: Fri, 26 Mar 2021 at 16:22

Subject: (napmap) Proposed amendments to Forest Conservation Act- imprudent- strengthen the Act for upholding tribal rights and for conservation of biodiversity, not dilute

To: <secy-moef@nic.in>, <dgfindia@nic.in>, <secy-tribal@nic.in>, <secy@ncst.nic.in>, <cabinetsy@nic.in>

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**EAS Sarma** <eassarma@gmail.com> 26 March 2021 at 16:31  
To: Benarjee Pothuraju <pj.benarjee.dfo@gmail.com>, esg@esgindia.org, Leo Saldanha <leo@esgindia.org>, bhargavi@esgindia.org, Babu Rao Kalapala <baburaokalapala@gmail.com>, vijayk68@rediffmail.com

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**EAS Sarma** <eassarma@gmail.com> 26 March 2021 at 17:10  
To: PO ITDA Paderu <poitda.pdr@gmail.com>, Urmila Pingle <upingle@gmail.com>, Subcollector Paderu <subcollectorpaderu@gmail.com>

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Date: Fri, 26 Mar 2021, 16:22

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**EAS Sarma** <eassarma@gmail.com> 26 March 2021 at 17:19  
To: gn.raju@nic.in, C Rammanohar Reddy <crr100@gmail.com>, Mrutyumjaya rao <mrutyumjaya@hotmail.com>, Biksham Gujja <gujjab@gmail.com>

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