

Tropical forests in Greater Nicobar Islands to Aravalli forests in Haryana

The “Green” connection between politicians and their corporate allies

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On October 27, 2022, the Union Environment Ministry gave hush-hush clearance for deforesting 131 sq. km of forests in Great Nicobar Island to accommodate a mega industrial project, a pet project of the present government, ignoring the fact that the forest in question was part of an exclusive “*tribal reserve*” notified under the Andaman & Nicobar Islands (Protection of Aboriginal Tribes) Regulation, 1956 promulgated by the President of India under Article 242 of the Constitution. It also meant wiping out almost the entire extent of a unique UNESCO-recognised tropical evergreen hot spot of rich biodiversity.

Compensatory afforestation:

In the well-known Godavarman case, the Supreme Court stipulated, while interpreting the ambit of the Forest (Conservation) Act [FCA], 1980, that deforestation should not be resorted to in a routine manner, as the very purpose of the FCRA was to conserve the scarce forest resources of the country, as envisaged in Article 48A of the Constitution. The court ruled that diversion of forest lands for non-forest purposes could only be for exceptional reasons. When it becomes inevitable to resort to such deforestation, introducing the idea of “*compensatory afforestation*” (CA), the apex court stipulated that for every acre of forest uprooted for a project, two acres of fresh afforestation should be undertaken. The Environment Ministry was never enthusiastic about it, as evident from the over exuberance it displayed often towards diverting large tracts of forests for projects and rarely demonstrating its commitment to making compensatory afforestation a reality.

Pretend raising forests in Haryana to deforest Great Nicobar Island:

In the specific case of the egregious Great Nicobar mega project, since it would be stripping the island of its entire stretch of forest cover and depriving the local tribal communities of their

exclusive habitat, the Ministry came up with the clever ploy of providing compensatory afforestation on “*non-notified forest land*” in Haryana, 2000 kilometres away, as if it would compensate for the loss of local biodiversity that is central to the ecology of the island. Evidently, the Ministry thought that the loss of biodiversity of a stand-alone island in the midst of the Bay of Bengal could be compensated by creating a mythical forest inland thousands of kilometres away. The Ministry thought that any land that was not notified by the local forest officials in Haryana should be considered vacant, capable of being readily afforested, or if there were non-notified forest lands having vegetation existed in Haryana, the Ministry could count those forest lands towards nominal compliance with the Godavarman norm for afforestation, indicating its sheer indifference to the Constitutional obligation it had under Article 48A to conserve forests and a lack of adequate commitment to the rationale underlying the well thought out Godavarman norm.

Re-define “forests” to be able to deforest:

The Godavarman judgement itself widened the meaning of a “*forest*” to include not only forests formally notified under the Indian Forest Act but also the other stretches of vegetation, not so notified, as they too represent forests as understood by communities that benefit from them. Thus, even if a non-notified forest land is to be diverted for a project, it attracts the prohibitory provisions of the FCA, which the present-day rulers found to be a vexatious hurdle to handing over precious public lands to their corporate allies. That explains the brazen way in which the Environment Ministry recently amended the definition of the term “forest” in the FCA to exclude non-notified forests, doing away with the need to go through the rigmarole of identifying alternate lands for compensatory afforestation, thereby ignoring the very foundation of the Godavarman judgement. The Ministry's determination to get the amendment enacted by the Parliament was so strong that it not only chose to ignore the well-reasoned objections raised by the Chairman of the National Commission for the Scheduled Tribes (NCST), an authority set up under Article 338A of the Constitution to safeguard the interests of the tribals but also failed to apprise the Parliament of those objections.

The amendment which has since become a part of the FCA makes it easy for the Environment Ministry and the States to transfer vast stretches of public lands, along with their rich forest resources, to private promoters of industry and real estate developers.

Aravalli forests in Haryana fall prey to real estate greed:

The way the Haryana government has dealt with its own notified and non-notified forest lands in the ecologically sensitive Aravalli range presents an excellent case study of how the strong nexus that exists between politicians and their corporate allies has set in motion an ecological disaster in the Aravalli hill range in Haryana.

The Aravalli hill range, the oldest range of fold-mountains in India, stretches from Gujarat to Haryana over a length of 670 km. In Haryana, at least two-thirds of the Aravalli forest area is protected under the Punjab Land Preservation Act (PLPA) originally enacted by the British in 1900 “*for the better preservation and protection of certain portions of the territories of the Punjab situate within or adjacent to the Siwalik Mountain range*”. As far as the other tree cover is concerned, not notified under the PLPA, the Haryana government in anyway has the obligation to protect it under the FCA and in line with the Godavarman stipulation.

A mention needs to be made here to an important direction issued by the Supreme Court to the States on January 28, 2011 (Jagpal Singh & Ors vs State Of Punjab & Ors) that common lands vested in the local village authorities should not be alienated to private parties. More often than not, most States were either unaware of that direction or chose to remain non-compliant.

Meanwhile, as a result of the sky-rocketing value of land in Delhi's suburbs including parts in Haryana, most of the protected lands in Aravallis became a target of real estate developers, leading to rampant corruption among officials, brazen infringement of the provisions of the PLPA and the FCA and open defiance of the apex court's stipulations.

Even the last vestige of protection afforded by the PLPA for the Aravalli forests in Haryana seemed to pose a hurdle to the State government handing over forest lands to private agencies. To clear it, the Haryana government amended that Act in 2019 to clear the way for land deals to flourish. The Aravalli forest lands have since become a playground for politicians, unethical officials and real estate developers to make easy money.

As a result of these legal twists and turns, both notified and non-notified forest lands in Haryana have fallen prey to real estate development as evidenced by a three-part painstaking investigative report by Business Standard in 2019, “*How Haryana govt is facilitating illegal privatisation of Kot common lands*” (https://www.business-standard.com/article/current-affairs/how-haryana-govt-is-facilitating-illegal-privatisation-of-kot-common-lands-119060601408_1.html).

Illegal privatisation of vast tracts of common village lands took place in the guise of “*consolidation of land holdings*” under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. Interestingly, it was the often-transferred, much-harassed Ashok Khemka, the then Director General of Consolidation of (Land) Holdings in Haryana who cancelled one such land consolidation in Kot village in Faridabad district in 2012 saying that “*the consolidation law meant to reverse fragmentation of agricultural holdings and for preserving the village commons was rampantly abused to allow influential private players to get possession of hilly and non-agricultural common land, including forests in the Aravallis located contiguously south of the Gurgaon-Faridabad road comprising the four villages of Mangar, Bandhwari, Rozka-Gujar and Kot.....Huge investments of black money and ill-gotten money have been made through companies in the purchase of land of some villages in Gurgaon-Faridabad districts to benefit from the consolidation scheme.*” (https://www.business-standard.com/article/current-affairs/how-haryana-govt-is-facilitating-illegal-privatisation-of-kot-common-lands-119060601408_1.html). No wonder that Khemka found himself transferred again!

The Supreme Court recently held in their judgement of July 21, 2022 (Narinder Singh vs Divesh Bhutani (CA No 10294/2013)], that the “*lands covered by the special orders issued under Section 4 of PLPA have all the trappings of forest lands within the meaning of Section 2 of the 1980 Forest Act and, therefore, the State Government or competent authority cannot permit its use for non-forest activities without the prior approval of the Central Government with effect from 25th October 1980*”. One would have expected that this judgement of the apex court would deter Haryana from destroying more Aravalli forests. Unfortunately, the rulers of Haryana seem to act otherwise.

More recently, a further investigative news report by Reporters Collective (<https://www.reporters-collective.in/trc/as-haryana-kept-aravallis-unprotected-patanjali-quietly-traded-forestland>) corroborated the findings of the earlier Business Standard report. Referring to the slew of illegal transactions transferring Aravalli forest lands in and around Faridabad in Haryana, the report says, “*Judicial records, policy papers and government records reveal a concerted effort from the Haryana government to ensure parts of these sensitive Aravalli Range do not get any protection. The state stonewalled two crucial Supreme Court orders of 1996 and 2022 that offered protection to these forests, the state deforestation laws and a Union government law that protects ecologically vital lands in and around Delhi*”.

A recent Hindustan Times report on the same subject (<https://www.hindustantimes.com/india-news/central-act-amendment-to-benefit-firms-owning-deemed-forest-land-in-aravallis->

101696269138769.html) indicates that “in Mangar village (Faridabad district) spread over 4262 acres (of which 3810 acres is hill area), a large part of land that should have been identified as forest as per dictionary meaning is in fact owned by three private companies, Ireo Private Limited, M3M India Private Limited, and Patanjali Yogpeeth Trust , and a web of their subsidiaries . A part of the biodiversity rich sacred grove, Mangar Bani, one of the last remaining patches of primary forest in this entire region, is also owned by one of these companies, papers show”.

In all these investigative reports, a few private entities including Baba Ramdev's Patanjali Group and their respective webs of subsidiaries are mentioned consistently, with their primary activity revolving around real estate transactions involving huge profits. Considering the steeply rising market price of land in this area and the large extents of land involved in these transactions, the volume of those financial transactions may run into thousands of crores of rupees. With political parties adopting innumerable ways to extract donations from private parties, including Electoral Bonds which assure anonymity for donors, one should not be surprised if large amounts from the Haryana real estate boom flowing back into the political parties' coffers. After all, it is money power that seems to drive democracies these days.

Most of these land deals may involve money laundering and tax evasion, which the Central investigating agencies should worry about. However, the ecological costs they impose on the society are far more deleterious, about which the nation as a whole should feel deeply concerned.

It is ironic that it was the British who showed concern for conserving the Aravalli ecology as early as 1900, when they enacted the PLPA. It is the present-day democratically elected governments that have created loopholes to destroy it.

Aravalli forests can mitigate Delhi's pollution problems:

Delhi, the capital city of the country, often figures these days among the most polluted cities in the world, with air pollution causing bronchial and other debilitating diseases among its residents. It is ironic that the governments of the day, both at the Centre and in Haryana, should disregard such a sad state of affairs and, instead of promoting vegetation to absorb at least a portion of the pollution, should choose to destroy the vegetation by promoting mindless real estate development.

The larger ecological crisis at the national level:

The man-made Aravalli ecological crisis represents a much larger ecological crisis that the country

faces today. According to the information available from the Forest Survey of India's State of Forest Report (2021), the extent of land covered by vegetation outside the notified forests is around 19.7 million hectares, which, as a result of the ill-advised FCA amendment so brazenly brought into force by the Environment Ministry, will soon face the risk of being handed over to private agencies for projects or, as in the case of the Aravallis, to real estate developers. Apparently, the Environment Ministry which is expected to function as the custodian for conserving forests under Article 48A, has reoriented its role as a promoter of private business interests, reminding one of the Panchatantra story on how a donkey tried to assume the role of a dog and paid the price for it.

Forest resources represent nature's gift of a highly valuable, renewable resource. In addition, it provides rich biodiversity that is essential for sustaining the future of the planet. It is unfortunate that the Indian planners should fail to appreciate the social and economic value of forests in comparison with the short-term, transient benefits that industrial projects offer. "The Economics of Biodiversity: The Dasgupta Review" (February 2021), a study commissioned by the UK government provided an estimate of the economic value of biodiversity.

[https://assets.publishing.service.gov.uk/media/602e92b2e90e07660f807b47/The_Economics_of_Biodiversity_The_Dasgupta_Review_Full_Report.pdf] The Union Environment Ministry can learn valuable lessons from it and institutionalise "biodiversity impact assessment" as a part of the existing "environment impact assessment" of projects.

Both forests and their biodiversity are inter-generational assets that the present generation should zealously conserve and hand over to its successor. By wantonly destroying such a precious asset, the present governments are perhaps committing an inter-generational crime which cannot be condoned.

The manner in which our environmental norms are being progressively diluted and the way forests, both notified and non-notified, including community forests, are being denuded today points to an imminent ecological crisis that will soon overtake us, unless we take urgent steps to contain it.

Importance of community forest resources:

The apex court's landmark judgement of January 28, 2011 (Jagpal Singh & Ors vs State Of Punjab & Ors) directly referred to the ecological significance of community vested lands and forest resources that should not be alienated to private parties. It is the local communities that have a direct stake in such resources and it is they that need to have a say in managing them. Gandhiji's idea of Gram Swaraj is based on that premise. The concept of self-governance at the village level

finds its place in Part IX of the Constitution, the provisions of which are yet to be operationalised fully. The Panchayats (Extension to the Scheduled Areas) Act [PESA] applicable to areas notified under the Fifth Schedule and the Scheduled Tribes And Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act [“Forest Rights Act” or FRA] applicable to all forests in general confer special powers on the local Gram Sabhas and community rights over natural resources. The governments of the day consider the PESA and the FRA to be constraints to be ignored and bypassed, which can have long-term adverse implications.

Involving local communities in decisions on local resource management can make the process of decision making more participative and acceptable. The problem we face in India today is that governance is becoming more and more centralised and non-participative, a sure sign of a decline in democracy.

Had the Union Environment Ministry listened carefully to the objections raised by the Great Nicobar Island's Tribal Council and been more sensitive to the concerns of the local Shompen and Nicobarese communities, it would have hesitated to clear the mega project in Great Nicobar island.

Similarly, had the Haryana authorities cared to respect the intent underlying the norms stipulated by the apex court in the Godavarman judgement and complied fully with the PLPA, instead of mindlessly altering its provisions, they would have done justice to the ecology of the Aravalli hills.

Finally, had the Union Environment Ministry fully complied with its own obligation to conserve the forests as required in Article 48A and respected the Godavarman judgement instead of diluting the FCA as it has done, it would have done justice to its own role as the custodian of forest resources in the country.

Ancient wisdom on environment:

Those who harp on the need to respect the Sanatana Dharma should also try to appreciate the ancient wisdom on the importance of conserving the environment.

Atharva Veda (12.1.35) says

“Whatever I dig out from you, Oh Earth,
May that have quick regeneration again;

May we not damage thy vital habitat and heart”

There is a lot for the Union Environment Ministry to learn from the above and re-orient its role.

