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**POLICY
ANALYSIS
SERIES**

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TAKING AN IN-DEPTH LOOK AT
POLICIES AFFECTING THE EASTERN
HIMALAYA

ABOUT



Reading Himalaya is an independent Research & Policy Consultancy, focusing on Himalayan society, environment, development and politics.



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**POLICY
ANALYSIS # 1**

**FOREST
(CONSERVATION)
AMENDMENT ACT,
2023**

MONA CHETTRI, RINAN SHAH & ANISA BHUTIA

SUMMARY

The Forest (Conservation) Amendment Act, 2023 came into effect on December 1, 2023. This Act re-defines the meaning of forests, and sets new legislative guidelines for access and use of forest lands and resources.

In the eastern Himalaya, this Act is set to introduce new challenges around balancing environmental concerns with development and securitisation of border states.

There is an immediate need for a multi-scalar, intersectional assessment of the impacts of the Forest (Conservation) Amendment Act, 2023 on local communities and environment of the eastern Himalaya.



The Forest (Conservation) Amendment Act, 2023 (FCA 2023) came into effect on December 1, 2023. The current Act was preceded by the Indian Forest Act, 1927, and most importantly, the Forest Conservation Act, 1980, which had been enacted amidst concerns around rapid deforestation and depletion of forests in India.

Climate change adaptation and economic development, through natural resource management, serve as the rationale for the recent overhaul of the Forest Conservation Act, 1980. The 2023 Amendment seeks to achieve:

- a. National target of Net Zero emissions by 2070 and enhanced carbon stocks through ecologically balanced sustainable development.
- b. Increased forest and tree cover over one-third of the country's land area (to be achieved primarily through plantation forests).
- c. Enhanced forest-based economic, social and environmental benefits, including for forest-dependent communities.

“

In India, there is no single, legislative definition of forests; forest areas are legally notified under the Indian Forest Act, 1927 as reserved, protected or village forests.

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Prior to the 2023 amendment, the definition and use of forest lands was based on the landmark judgement issued by the Supreme Court of India in response to a writ petition filed by T.N. Godavarman Thirumulkpad in 1996.

This judgement had been vital in defining and identifying forests as, ‘any piece of land that resembles the dictionary meaning of forest’ for the purposes of implementing the Forest (Conservation) Act, 1980.

Despite the inherent ambiguity, this definition covered all statutory recognised forests, whether designated as reserved, protected, or otherwise; it also included any area recorded as forest in Government records, irrespective of the ownership.

According to this broader definition, any forest thus defined, regardless of ownership, would be subject to Section 2 of the Forest Conservation Act, 1980. The Act specifies that no state government or other authority may allow the use of any forest land for any non-forestry purpose without prior approval from the central government.

The ruling also restricted non-forest activities in forest lands and created new institutional mechanisms to check the exploitation of forests, with the aim of simultaneously empowering local, forest-based communities, organisations and networks.

EXEMPTIONS AND EXCLUSIONS: OPENING UP MORE FOREST LANDS TO DEVELOPMENT AND SECURITISATION

The FCA, 2023 is significant on multiple levels, as it redefines* the meaning, access and use of forests and forest lands. According to the new Act, only those forest lands will come under the purview and protection of the Act:

- a. that have been declared or notified as 'forest' in accordance with the provisions of the Indian Forest Act, 1927 or any other law for the time being in force,
- b. land that has been recorded in Government record as forest, as on or after 25th October, 1980.

Private or community-owned forest land and any land, formerly considered as forest, but not recorded as such in official documents, will not be protected by the FCA, 2023. These changed parameters will exclude 27.62 per cent of forest cover in India, and further restrict the limited rights of forest, and forest dwellers.

*On February 19, 2024, the Supreme Court of India directed governments to follow the 'broad and all encompassing' definition of forests as laid down in the 1996 Godavarman case until a consolidated record of all kinds of forests across the country is prepared.

Additionally, contrary to the responses submitted to the Joint Parliamentary Committee on the FCA Bill submitted in July 2023, the environment ministry has neither any record of reports by state expert committees, nor documentation of geo-referenced forest plots.

Thus, in the light of this new information, the Supreme Court, in its interim order also directed that the State Expert Committee reports to be submitted to the Ministry by March 31, 2024, and that the environment ministry maintain these records, digitise it and make it available on its official website by April 15, 2024.

Additionally, more forest land has now become accessible for non-forest purposes, as new exemptions have also been introduced for the following categories of forest land:

(a) Forest land situated alongside a rail line or public road maintained by the Government, which provides access to a habitation, or to a rail, and roadside amenity up to a maximum size of 0.10 hectare in each case.

(b) Forest land as is situated within a distance of one hundred km along international borders or LoC or Line of Actual Control, proposed to be used for construction of strategic linear projects of national importance and concerning national security/ security related infrastructure.

Such exemptions will also apply to defence projects, paramilitary camps and public utility projects, which remain undefined, as specified by the Central Government.

What is a forest?

According to a dictionary definition, a forest is a large area of land that is thickly covered with trees.

A Forest Advisory Committee (FAC) came together to discuss the ambiguity of the definition of forest and observed that there is no uniform criteria to define forest in India due to the 'India's varied geophysical unit and soil climatic conditions resulting in a number of forest types'.

Thus, it was then decided that individual state's definition of forest would be all binding, and not be subject to the approval of the Ministry of Environment Forests and Climate Change (MoEFCC).

NATIONAL LAWS, LOCAL IMPACTS

Sikkim, Darjeeling, Kalimpong, and the Duars, are located on a strategic international borderland. The region is home to many indigenous and tribal groups, forest villages and communities who live on forest land, and in the vicinity of national highways and new infrastructural projects.

Class Wise Statistics of Forest Cover of FSI (2021)

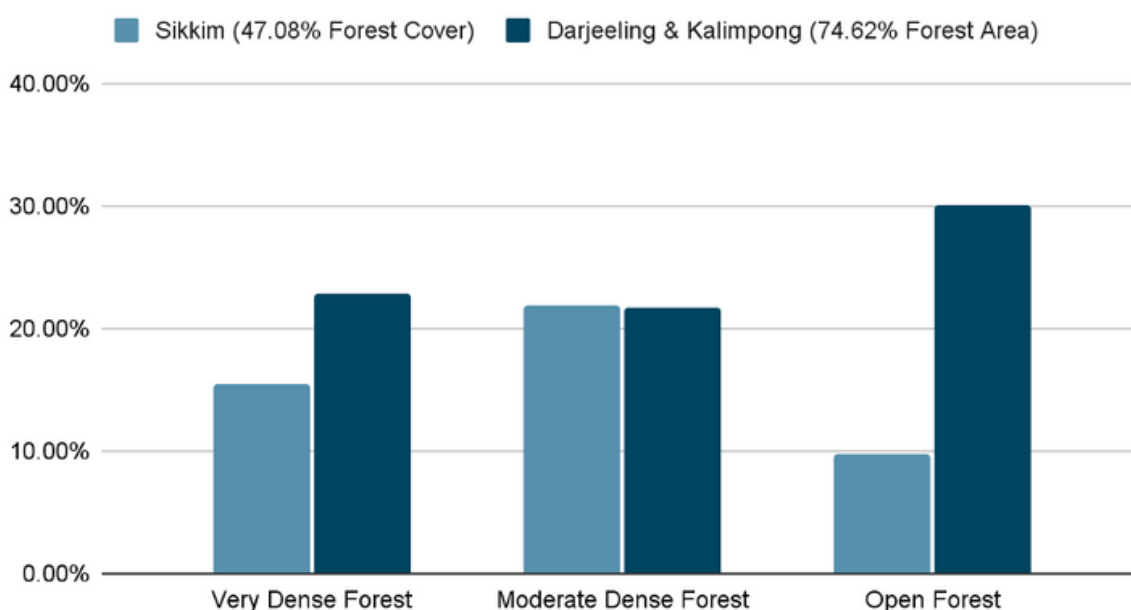


Image 1. Class wise statistics of Forest Cover of FSI (2021).

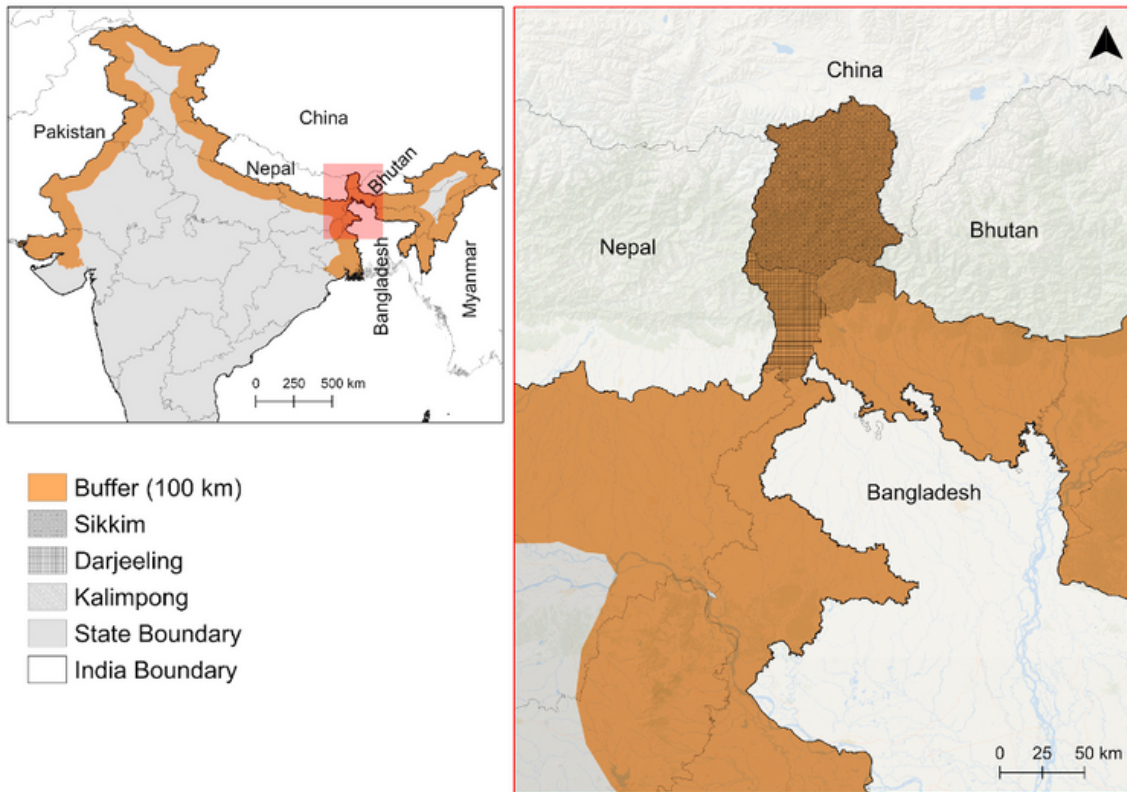
Note: West Bengal is shown to have only 1 hill district instead of 2 - Darjeeling and Kalimpong. Hence, both have been combined here.

The FCA, 2023 will have a significant impact on conservation, access and use of forest in North-East India and the eastern Himalayan regions of Sikkim and northern West Bengal; areas which are already undergoing environmental stress and transformation as a result of climate-induced changes and anthropogenic activities.

As discussed below, the impacts of the FCA, 2023 therefore, have to be understood against the specific environmental, cultural and political context of the region.

FOREST LANDS SITUATED WITHIN A DISTANCE OF 100 KM ALONG THE INTERNATIONAL BORDERS, ARE EXEMPT FROM THE PURVIEW OF THE FCA, 2023

These forest lands can be used for construction and other ‘strategic linear projects’ of national security, as deemed important by the central government. Additionally, forest lands alongside a rail line or public road maintained by the government are also exempt.



Map 1. Indicating the 100km buffer from the international borders.

In its submission to the Joint Committee of Parliament, the Government of Sikkim raised concerns about impact on the local biodiversity and suggested that the ‘proposed exemption may be reduced to 2 kms from 100 kms’ from the international border. There is no publicly available information on whether these concerns and recommendations are/were considered by the central government.

Thus, when these two exemptions are combined, all forest, forest villages and forest-fringe communities in Sikkim and Darjeeling hills, and Duars fall outside the purview of the FCA, 2023 (Map 1). This could *potentially* make it easier to open forest lands for ‘development’ by private developers, with minimum consultation and consensus of local bodies and communities.

AMBIGUITY OVER CONFLICT WITH PRE-EXISTING LEGISLATION

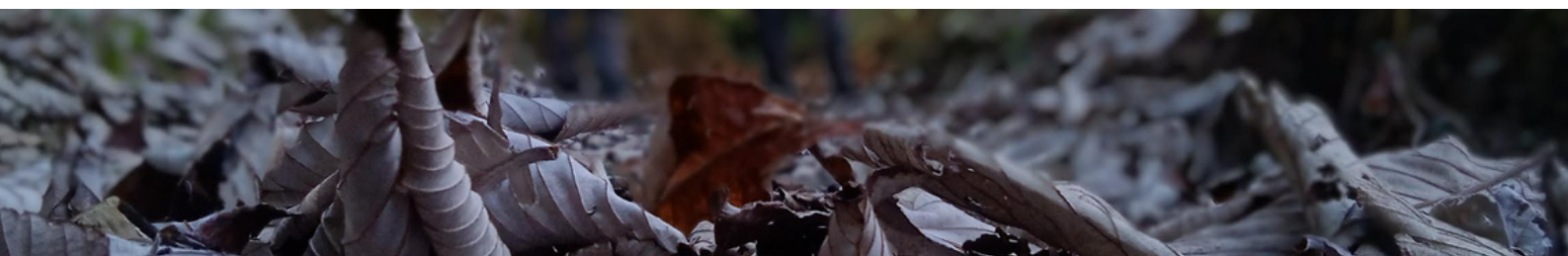
The FCA, 2023 has been criticised both for its contents as well as the process whereby it became an Act. There is a marked lack of clarity over how the FCA, 2023 will navigate around the different forest and land-related legislations that are already in place in Sikkim and the Darjeeling Himalaya.

The Forest Rights Act (FRA), 2006 had been introduced and mandated by the Ministry of Tribal Affairs, Government of India, with the aim of correcting historical injustices meted out to traditional forest dwellers. However, there are no clear guidelines on whether rights bestowed to local communities and forest dwellers by FRA, 2006 will be protected/retained or merged under the FCA, 2023. This ambiguity will have an important bearing on the residents of over 92 Forest villages in Darjeeling and Kalimpong District, 79 of which have already been converted into Revenue villages.

Although Sikkim has not implemented* the Forest Rights Act, 2006, forest laws, definitions and rights are laid out in the Sikkim Forest and Water Courses (Protection and Conservation) Bill, 2007, which works similarly to the FCA, 1980.

Thus, in Sikkim, it remains unclear if the implementation of the FCA, 2023 would lead to complications over jurisdiction between the state and central governments in Sikkim. Also, in the case of Sikkim, greater clarity is required over whether the FCA, 2023, in part or totality, contradicts Sikkimese land rights as enshrined in Article 371f of the Indian constitution.

* Sikkim, like other North-Eastern states like Arunachal Pradesh, Meghalaya, Manipur has not implemented the FRA 2006 as, 'there are no forest dwelling Scheduled Tribes and Other Traditional Forest Dwellers in the true sense of the terms. Most of the Scheduled Tribes of Sikkim hold revenue land in their own name and they are not solely dependent on the forests for their livelihood,' (source: Ministry of Tribal Affairs).



INCREASED POTENTIAL FOR CORPORATE LAND-GRABS

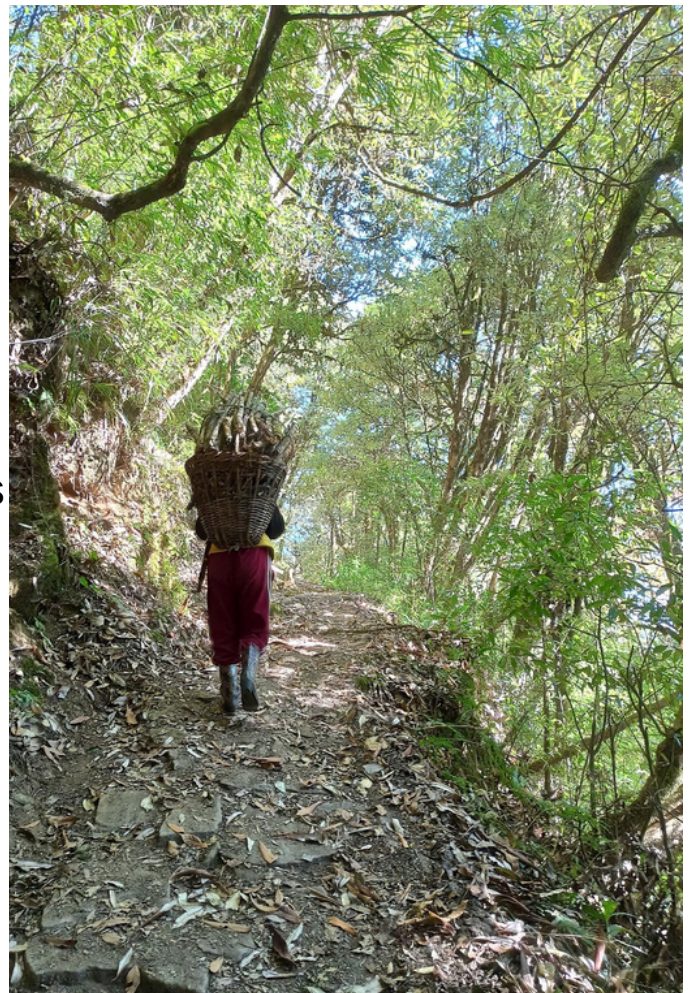
In the last two decades, the eastern Himalaya has witnessed an increased proliferation of private corporations especially in the hydropower and pharmaceutical sectors. Private companies seeking to buy, construct or use land had to consult and attain clearance from the Gram Sabha during Stage 1 of the project cycle, along with clearance from other relevant state departments. While numerous other legislations have continued to erode the Gram Sabha's role, the FCA, 2023 weakens it further. The central government now has overarching discretion over access and use of forest land, thereby making local-level engagement and consent redundant.

The Act also states that 'the Central Government, may by order, specify the terms and conditions subject to which any survey, such as reconnaissance, prospecting, investigation or exploration including seismic survey, *shall not be treated as non-forest purpose*' (emphasis ours).

Similarly, Section 2 (1) b (viii) gives the Central Government freedom to 'specify' any non-forest activities in reserve forest areas that it may deem important.

This, in effect, eliminates the requirement for local people's consent to access certain land. Private companies, therefore benefit from easier clearance and access to land for construction of new infrastructural projects like, hydropower plants, and factories.

FCA, 2023 raises important questions about the transparency and accountability of institutional decision-making processes, engagement with local environmental concerns and genuine public consultations on these new projects.



POTENTIAL COMMERCIALISATION OF NATIVE FORESTS

Simultaneously, by removing the requirement for obtaining clearance from the central government for non-forest, commercial use of forests, the FCA, 2023 creates easy access and opportunities for the potential commercialisation of forests by private corporations.

The FCA, 2023 enables various non-forest activities on forest land (like the establishment of eco-tourism facilities, and zoos) which could destabilise the fragile ecology of the eastern Himalaya.

Also, commercial, monoculture plantation may continue to be classified as 'forest'* as per the criteria set by the Forest Survey of India and enumerated in annual/decadal surveys and census on forest cover, despite them not being an organic part of the natural ecology of the region.

This could potentially lead to an increase in the felling and deforestation of native forests, only to be replaced by monoculture, plantations forests, as is already underway in some parts of north-east India.

*All lands more than 1 ha in area, with tree canopy density of more than 10 percent, including tree orchards, bamboos, palms, etc.



CONCLUDING REMARKS



- The Forest (Conservation) Amendment Act, 2023 will have far-reaching impacts on forests, forest lands and those living in or in the vicinity of forests.
- Infrastructural, environmental, and social transformation is set to continue, and perhaps even accelerate, with the implementation of the FCA 2023.
- There is a dire need for local and regional engagement (both academic and political) with policies and policy-makers.
- Greater public awareness and engagement on the impacts of the FCA 2023, is vital. This is especially pertinent in the context of new large-scale infrastructural developments (viz. railway construction, hydropower projects, factories) on forest lands.
- It is also imperative to build and strengthen an informed, apolitical environment-focused civil society, to ensure transparency and accountability from the government, developers, funders and other organisations.
- One of the biggest hurdles for research and/or public engagement with policies, is access to information. Hence, exhaustive, high-quality data sets need to be made available on publicly accessible portals.
- Transparency and access to information on bureaucratic mechanisms related to forest governance would make it easier to understand the processes and actors involved in policy-making at the local level. This would be key to ensuring accountability of participating individuals and organizations.

All of these will enable better understanding and engagement with policies that have important ramifications on our society, environment, communities and economy.

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