

“DYING FOR DEVELOPMENT: CONSTITUTIONAL SAFEGUARDS IGNORED IN PURSUIT OF GROWTH WITH SPECIAL REFERENCE TO DEFORESTATION IN INDIA”

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ABSTRACT

The growing preference for economic development over environmental protection has heightened constitutional issues relating to forest governance in India. Infrastructure expansion, mining, industrialisation and strategic projects are often justified in the name of national development, but they have led to accelerated deforestation, weakened ecological safeguards and undermined the constitutional rights of forest-dependent communities. The paper is a critical analysis of the constitutional aspects of development-induced deforestation with reference to Forest (Conservation) Amendment Act, 2023, Draft Environmental Impact Assessment Notification, 2020 and recent judicial developments. It examines the impact of dilution of safeguards of the environment on the guarantees under Articles 21, 48A and 51A(g) of the Constitution and the rights of Scheduled Tribes under the Fifth and Sixth Schedules and Forest Rights Act, 2006. The study also analyzes the essential constitutional doctrines of sustainable development, the public trust doctrine, the precautionary principle, intergenerational equity and rights-based environmental governance. Using judicial precedents, legislative developments, empirical data on forest loss, government conservation initiatives and recent case studies such as Hasdeo Arand, Great Nicobar, and Aarey Forest, the article emphasizes the huge ecological, social and constitutional costs of unbridled developmental policies. It argues that constitutional governance demands a development model that integrates environmental justice, democratic participation, and ecological sustainability rather than treating them as obstacles to economic growth. The article concludes by recommending legislative reforms, stronger environmental institutions, judicial vigilance, and community-centred forest governance to restore the constitutional balance between development and environmental protection.

Keywords: Deforestation, Forest Conservation Act, Constitutional Safeguards, Article 21, Tribal Rights, CAMPA, Forest Conservation Amendment Act 2023, Environmental Governance

INTRODUCTION

The Constitution of India provides for a democracy which is committed to economic development, but in a manner consistent with the protection of fundamental rights, environmental sustainability and social justice. Since independence, rapid industrialisation,

infrastructure expansion, urbanisation and resource extraction have been significant drivers of economic growth. But these developmental projects have also led to large scale deforestation, ecological destruction, loss of biodiversity and displacement of indigenous and forest dependent communities. The conflict

which has emerged from it between developmental objectives and constitutional environmental obligations has become one of the most important constitutional challenges confronting contemporary India. While there is no specific mention of a separate right to environment in the Constitution of India, the constitutional jurisprudence has gradually developed to make protection of environment an integral and inseparable part of the right to life under Article 21. In a series of landmark judgments, the Supreme Court has held that the right to live in a healthy, pollution-free and ecologically balanced environment is part of the right to life. Articles 48A and 51A(g) impose constitutional duties on the State and citizens for the protection of forests, wildlife and the natural environment. These constitutional provisions collectively make environmental protection a fundamental component of constitutional governance, rather than merely a policy goal.

Despite this constitutional framework, recent legislative and regulatory developments indicate a gradual shift towards facilitating developmental projects at the cost of ecological conservation. The Forest (Conservation) Amendment Act, 2023, the proposed dilution of environmental impact assessment procedures, and increasing exemptions granted to strategic and infrastructure projects have generated serious constitutional concerns regarding environmental governance, public participation, tribal rights, and the rule of law. These developments raise important questions regarding the compatibility of contemporary developmental policies with constitutional guarantees, judicial precedents, and India's international environmental commitments.

This article critically examines the constitutional link between development and environmental protection from the specific viewpoint of deforestation in India. It analyses the conceptual bases of constitutional environmentalism, evaluates the legal regime governing forest conservation and critically assesses the constitutional validity of recent policy reforms affecting forests. The study also has empirical

data on forest loss, judicial interpretation, government conservation measures and some case studies to show the real-world effects of dilution of the constitution. The article argues that development cannot be regarded as constitutionally legitimate if it undermines ecological integrity, weakens environmental justice, or compromises the rights of present and future generations. Sustainable development, as envisioned by constitutional jurisprudence, requires that economic progress be pursued within constitutional limits that safeguard environmental resources, democratic participation, and social equity. By examining the constitutional cost of deforestation, this article seeks to contribute to the evolving discourse on environmental constitutionalism and proposes reforms aimed at restoring the balance between developmental aspirations and ecological justice in India.

CONCEPTUAL FRAMEWORK : DEVELOPMENT, CONSTITUTIONALISM AND ENVIRONMENTAL JUSTICE

The understanding of development in India requires examination of specific context through the combined study of constitutionalism and environmental justice. Contemporary scholarly research and judicial interpretation now acknowledge that economic development should be evaluated through the protection of constitutional rights and environmental sustainability. The article establishes essential conceptual foundations which researchers use to study the conflicts between development activities and constitutional protection mechanisms through the examination of important doctrines and principles and theoretical frameworks.

DEVELOPMENT AND CONSTITUTIONALISM

The Indian Constitution does not define development through an explicit definition yet its provisions create an inclusive and fair rights-oriented development vision. Development must proceed according to the normative framework which establishes fundamental rights and Article 21's right to life and the Directive Principles of

State Policy. The judicial interpretation established the understanding that Article 21 includes the right to live with dignity and to access clean water and to have a pollution-free environment.³⁵⁷ The constitutional vision of development creates conflicts with state-led economic policies which prioritize rapid industrialization and infrastructure development. The tension between these two points of view reveals an underlying problem which arises from the gap between constitutional standards and actual governance methods. The Constitution exists to bring about human development yet policy frameworks use it as a goal which results in the neglect of environmental and social justice issues.

SUSTAINABLE DEVELOPMENT AND ITS LIMITATIONS

The doctrine of sustainable development serves as the primary doctrine which enables societies to achieve economic progress while protecting environmental resources. The Brundtland Commission established an international environmental law definition of development which allows present needs to be met without endangering future generations ability to satisfy their requirements.³⁵⁸ The Supreme Court of India has integrated the doctrine into Indian laws because it serves as a fundamental element of environmental regulations.³⁵⁹ Sustainable development requires intergenerational equity together with the precautionary principle and the polluter pays principle as core principles for implementation.³⁶⁰ The doctrine lacks practical value because it presents undefined standards which can be bent by users.

Critics argue that sustainable development exists as a justification system which permits businesses to continue their environmentally damaging operations while pretending to protect competing interests. The doctrine has proven ineffective as an environmental

protection mechanism because it has allowed environmental harm to occur which protects constitutional rights through its implementation.

PUBLIC TRUST DOCTRINE AND STATE ACCOUNTABILITY

The public trust doctrine establishes essential rules which explain how the State should oversee its natural resource responsibilities. The doctrine requires the State to act as the responsible trustee who protects and maintains public resources because it establishes that specific resources belong to the public and must be safeguarded by the State.³⁶¹ Indian courts have applied the public trust doctrine to prevent the misuse and privatisation of natural resources, emphasizing that the State cannot abdicate its responsibility as a trustee.³⁶² The implementation of this doctrine becomes essential for development projects which involve transferring public resources through land acquisition and mining operations and industrial growth projects to private companies.

The public trust doctrine requires both strong enforcement measures and institutional integrity to achieve its intended outcomes. Economic interests influence policy decisions while weak regulatory systems have caused the doctrine to lose its original purpose. The present legal systems fail to protect constitutional principles because they lack proper methods for establishing accountability.

PRECAUTIONARY PRINCIPLE AND ENVIRONMENTAL RISK

The precautionary principle requires environmental governance to shift from its current state of responding to problems toward establishing protective measures. The rule requires that environmental protection measures must be implemented when scientific evidence remains uncertain until scientists prove environmental damage.³⁶³ The Indian

³⁵⁷ *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598; *M.C. Mehta v. Union of India*, (1987) 1 SCC 395.

³⁵⁸ World Commission on Environment and Development, *Our Common Future* (Oxford University Press, 1987).

³⁵⁹ *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647.

³⁶⁰ United Nations Environment Programme, *Judicial Handbook on Environmental Law* (UNEP, 2005).

³⁶¹ *Ibid.*

³⁶² *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388.

³⁶³ Rio Declaration on Environment and Development, 1992, Principle 15.

judiciary has recognised the precautionary principle as a fundamental aspect of environmental law which requires people who wish to conduct dangerous activities to prove their case.³⁶⁴ The principle holds special importance for modern environmental problems which include groundwater contamination and industrial pollution because their effects will not show up right away.

The Precautionary Principle has not been implemented consistently throughout its usage. Decision makers prioritize economic factors over precautionary practices which results in decisions that protect development interests while damaging environmental resources and public safety. The statement demonstrates how legal doctrines lack effectiveness when there is lack of proper institutional frameworks.

RIGHTS BASED FRAMEWORK OF DEVELOPMENT

The current development model needs a fundamental change because existing doctrines and governance systems have reached their operational boundaries. A rights-based approach to development establishes constitutional guarantees as the primary element which drives policy development to protect fundamental rights during economic growth. The approach needs three essential components which include developing legal systems, increasing institutional responsibility, and enabling affected communities to take part in decision-making processes. The process requires environmental factors to be included at every phase of development planning which will create a connection between economic goals and constitutional principles.

This approach unites development with constitutionalism and environmental justice to find solutions for economic growth and sustainable development while solving the fundamental problems which create the development-related “constitutional cost”.

INDIA'S DEFORESTATION: SCALE, TRENDS, AND REALITY

One of India's most urgent environmental problems is still deforestation. The Forest Survey of India (FSI) reports that a significant amount of forest land has been taken for industrial development, transmission lines, roads, railroads, mining, and irrigation projects. According to recent reports, the Forest (Conservation) Act has authorized the diversion of thousands of hectares of forest land. Due to coal mining and industrial operations, states with abundant mineral resources have seen the greatest levels of forest degradation. Among the effects on the environment are:

Ecological Consequences

1. Loss of biodiversity.
2. Increased carbon emissions.
3. Soil erosion and land degradation.
4. Disturbance of hydrological cycles.
5. Increased vulnerability to floods and droughts.

Social Consequences

1. Displacement of tribal communities.
2. Loss of traditional livelihoods.
3. Cultural disintegration.
4. Food insecurity among forest dwellers.

The growing tension between economic development and ecological conservation demonstrates the constitutional dilemma surrounding forest governance in India.

THE CONSTITUTIONAL ARCHITECTURE OF FOREST PROTECTION IN INDIA

THE DIRECTIVE PRINCIPLES OF STATE POLICY AND FUNDAMENTAL RIGHTS

The Constitution of India added provision regarding the protection and improvement of environment under Article 48A through 42nd amendment act, 1976. The article imposes

³⁶⁴ *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647.

directives over state to “endeavour to protect and improve the environment and to safeguard the forest and wildlife of country.”³⁶⁵ Corresponding to this it is the duty of the citizens under Article 51A(g) “to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.”³⁶⁶ While DPSP are not directly enforceable by courts and duties does not have a binding force, so the Supreme Court of India, through various decisions treated Article 48A as a constitutional imperative which help in judicial interpretation of Fundamental Rights under Part III of Constitution of India. In *M.C. Mehta vs Kamal Nath*³⁶⁷, SC harmonised Article 48A and 51A(g) by reading them under the scope of Article 21, and held that these provisions collectively impose justiciable obligations to maintain ecological integrity.

The Right to Life and a wholesome Environment under Article 21

Among the biggest jurisprudential developments in Indian constitutional law is the constitutional amendment shifting environmental protection to Article 21. The Supreme Court’s expansive interpretation of the right to life has made it the pivot of all environmental adjudication. In *Subhash Kumar v. State of Bihar*,³⁶⁸ the Court held that right to live is a fundamental right under Article 21 and it includes right to enjoyment of pollution free water and air for full enjoyment of life.

This view was reiterated in *Vellore Citizens’ Welfare Forum v. Union of India*,³⁶⁹ where the Court incorporated the precautionary principle, the polluter pays principle and sustainable development as integral components of the Indian environmental law. The Court said: “We consider the ‘Precautionary Principle’ and the ‘Polluter Pays’ principle, without hesitation, as

essential features of ‘Sustainable Development’ and... form part of the Environmental Law of the Country.”³⁷⁰

Most recently, the Supreme Court has provided new constitutional ground by recognising, for the first time in 75 years, in a landmark 2024 ruling, that Article 21 encompasses not just the right to a clean and healthy environment, but a right against the adverse effects of climate change.³⁷¹ This is a big deal for deforestation, because forest loss is one of the primary drivers of climate disruption.

Forests Under the Federal Structure: Schedule VII and Tribal Safeguards

Entry 17A of the Concurrent List of the Seventh Schedule includes forests, which means that both Parliament and the State Legislatures can make laws on this subject. But there are specific constitutional protections that sit on top of this legislative framework for tribal communities. The Scheduled Areas, governed by the Fifth Schedule (Article 244) provides that tribal land cannot be transferred and that State laws affecting rights of Scheduled Tribes shall require assent of the President. The Sixth Schedule empowers Autonomous District Councils with legislative and judicial powers to manage forests in certain north-eastern states like Assam, Meghalaya, Tripura and Mizoram.

These provisions are a constitutional compact with the 104 million Scheduled Tribe population in India, a large proportion of which are forest-dwelling communities. The Forest Rights Act, 2006 has reinforced the judicial recognition of their rights in forests which itself carries constitutional status by virtue of its grounding in the constitutional protections accorded to tribal communities.

³⁶⁵The Constitution of India, art. 48A (inserted by the Constitution (Forty-Second Amendment) Act, 1976).

³⁶⁶The Constitution of India, art. 51A(g).

³⁶⁷*M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388. See also Shrutika Pandey and Lavanya Rajamani, ‘Guest Blog: Pioneering Decision from the Indian Supreme Court Recognizing Freedom from the Adverse Effects of Climate Change as a Fundamental Right’, Columbia Law School Climate Law Blog (Aug. 28, 2024), <https://blogs.law.columbia.edu/climatechange/2024/08/28/>.

³⁶⁸*Subhash Kumar v. State of Bihar*, AIR 1991 SC 420.

³⁶⁹*Vellore Citizens’ Welfare Forum v. Union of India*, (1996) 5 SCC 647.

³⁷⁰*Ibid.*, at Para 16.

³⁷¹Supreme Court Observer, ‘Supreme Court Review 2024: Speaking Green, Acting Grey on Key Environmental Issues’, *SCObserver* (Jan. 4, 2025), <https://www.scobserver.in/journal/supreme-court-review-2024-speaking-green-acting-grey-on-key-environmental-issues/>.

THE LEGISLATIVE AND REGULATORY FRAMEWORK FOR FOREST CONSERVATION

THE FOREST CONSERVATION ACT, 1980

The Forest Conservation Act, 1980 was passed after a prolonged period of rampant deforestation, during which India lost vast tracts of forests due to agricultural expansion, dam construction and industrial development. Section 2 of the act prohibits de-reservation of the forests or the use of forest land for non-forest purpose without the prior approval of Central Government. This provision had extraordinary impact on state level forest diversions.

The scope of the Forest Conservation Act is drastically expanded by Supreme Court in *T.N. GodavarmanThirumulpad vs Union of India*.³⁷² The court held that the word “forest” in Section 2 must be understood in dictionary sense i.e. covering all areas “recorded as forest in the Government record irrespective of the ownership or classification.”³⁷³ This interpretation extended Forest Conservation Act protection to millions of hectares of de facto forests, placing a substantial ecological buffer against developmental-led deforestation. The court mandated for the constitution of expert committees in each state to identify “deemed forest.”³⁷⁴

The Scheduled Tribes and Other Traditional Forest Dwellers (recognition of Forest Rights) Act, 2006

The Forest Rights Act, 2006 was enacted to address what the Statement of Objects and Reasons called the “historical injustice” that forest living communities faced, like these people were systematically pushed away from their lands, mainly through colonial forest laws and then the post-independence state did very little efforts to fix it. Under the FRA, 2006, both individual as well as community forest rights

were recognised, so it was not only about owning something, but also the right to stay, to cultivate, and to guard forest areas. And importantly, Section 6 required the free prior and informed consent (FPIC) of the Gram Sabha before any forest land could be diverted for development projects, that obligation basically puts participatory decision making in the center, and it also supports democratic ecological sovereignty.

THE FOREST CONSERVATION AMENDMENT ACT, 2023: A CONSTITUTIONAL CRISIS IN LEGISLATIVE FORM

KEY PROVISIONS AND THEIR IMPACT

With the implementation of the Forest Conservation Amendment Act, 2023 (FCAA) on December 1, 2023, India's forest governance framework underwent its most substantial and regressive revision since the FCA. The Amendment, which is now known as the *Van Sanrakshan Evam Samvardhan Adhiniyam*, adds a number of clauses that together change the FCA from a conservation law to a tool for development.

The most important change brought by Amendment in Section 1A is to narrow the scope of the FCA. The Amendment limits this protection to (i) land which is designated as forest under the Indian Forest Act, 1927 or any other applicable law; and (ii) land recorded as forest in government records on or after 25th October, 1980 or which was diverted from forest to non-forest use prior to 12th December, 1996.³⁷⁵ This single piece of legislation overturns nearly thirty years of constitutional interpretation that had extended forest protection to de facto forests based on ecological character rather than administrative record. The Amendment also exempts forest clearance for the following forest land: (i) forest land along government-maintained public roads or railway lines, (ii)

³⁷²T.N. *GodavarmanThirumulpad v. Union of India*, (1997) 2 SCC 267 ('Godavarman') and subsequent orders in the continuing mandamus.

³⁷³Explained: Judgment That Defined "Forests" in India', *The Analysis* (June 9, 2024), <https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/>.

³⁷⁴ Id. See also Supreme Court Observer, *supra* note 15 (noting that despite the 1996 direction, only a handful of states had constituted expert committees to identify "deemed forests" even 28 years later).

³⁷⁵ 'An Analysis on the Forest (Conservation) Amendment Act, 2023', *Mondaq* (May 14, 2024), <https://www.mondaq.com/india/constitutional-administrative-law/1464154/an-analysis-on-the-forest-conservation-amendment-act-2023>.

forest land within 100 kilometers of international borders, the Line of Control, or the Line of Actual Control for strategic linear projects of national importance.³⁷⁶ This final exemption is extremely problematic since the northeastern states, which are home to some of India's most ecologically rich and biodiversity-rich forests, are almost out of this 100-km zone.³⁷⁷

THE CONSTITUTIONAL INFIRMITIES OF THE FCAA, 2023

i. Violation of Article 21

As stated before, the Supreme Court has often held that the right to a clean and healthy environment is integral to Article 21. Deforestation resulting from development projects that do not undergo environmental scrutiny in terms of air quality, water availability and climate stability directly affects the right to life. "This is a regression from the principles of environmental protection that have been constitutionalized through decades of court interpretation. It allows large-scale forest diversion without sufficient ecological study."³⁷⁸ The Supreme Court in *M.C. Mehta v. Union of India* (2004)³⁷⁹ observed that "deforestation has caused ecological imbalance and it has become a social menace which should be prevented." Obligations to society must come before obligations to the individual. This basic ideal is hard to reconcile with an amendment which always puts development before conservation.

ii. Exclusion of Tribal Communities and Violation of the Forest Rights Act

Perhaps the most serious constitutional flaw in the FCAA is its studied silence on the Forest

Rights Act, 2006. The Amendment avoids the requirement of Gram Sabha's consent under the FRA by creating wide exemptions, particularly for projects in border areas and strategic infrastructure.³⁸⁰ This is in violation of constitutional rights under the Fifth and Sixth Schedules, statutory protections of the FRA and the directive principles ensuring social justice for historically marginalized communities. Section 1A of the Amendment exempts millions of hectares of unclassified woods from the FCA's reach. This exception could immediately rob entire communities of their constitutional forest rights in the northeastern states where unclassified forests constitute 97.3% of the Recorded Forest Area in Nagaland, 88.2% in Meghalaya and 76% in Manipur.³⁸¹

iii. Regression from T.N.

GodavarmanThirumulpad v. Union of India

The Amendment has been subject to a lot of criticism as it is in direct contradiction to the Godavarman interpretation of the word "forest" under the FCA.³⁸² Several constitutional challenges including the petition in *Ashok Kumar Sharma v. Union of India*³⁸³ are now pending before the Supreme Court. The Supreme Court bench headed by the then Chief Justice passed an interim order on February 19, 2024, directing the state governments to prepare consolidated records as per the Godavarman definition of "forest". The court had clearly indicated that the main provisions of the Amendment were in conflict with the Constitution.³⁸⁴

iv. Federal Concerns and North-Eastern States

Several northeastern legislatures passed resolutions condemning the Amendment. Sikkim,

³⁷⁶ Id.

³⁷⁷ 'What Does the Forest Conservation Amendment Act Mean for Northeast India?', *Mongabay India* (Sept. 27, 2024), <https://india.mongabay.com/2023/08/commentary-what-does-the-forest-conservation-amendment-act-mean-for-northeast-india/>.

³⁷⁸ Forest Conservation Amendment Act, 2023–24: Constitutional and Ecological Issues', *LawCurb* (Dec. 8, 2025), <https://www.lawcurb.in/post/forest-conservation-amendment-act-2023-24-constitutional-and-ecological-issues>.

³⁷⁹ *M.C. Mehta v. Union of India*, (2004) 12 SCC 118. See also 'Right to Environment and Right to Development: A Judicial Perspective', (2011) *Christ University Law Journal* 85, 95.

³⁸⁰ Forest Conservation Amendment Act, 2023: A Challenge to Adivasi Land Rights and Environmental Protections', *Citizens for Justice and Peace* (Apr. 29,

2025), <https://cjp.org.in/forest-conservation-amendment-act-2023-a-challenge-to-adivasi-land-rights-and-environmental-protections/>.

³⁸¹ Forest Conservation and Tribal Rights in Northeast India', *Drishiti LAS*, <https://www.drishitias.com/daily-updates/daily-news-analysis/forest-conservation-and-tribal-rights-in-northeast-india>.

³⁸² Mondaq, *supra* note 16.

³⁸³ Why Forest Conservation Amendment Act May Be Deemed Unconstitutional', *Down to Earth* (May 13, 2024), <https://www.downtoearth.org.in/forests/why-forest-conservation-amendment-act-may-be-deemed-unconstitutional-95218>.

³⁸⁴ Id. (reporting the Supreme Court's interim order of February 19, 2024, directing state governments to comply with the Godavarman definition of "forest" while preparing consolidated records).

in particular, objected to the 100 km border exemption clause, Mizoram and Tripura tabled official resolutions against its contents, and Nagaland was persuaded to follow suit.³⁸⁵ The northeast's legislative resistance is as much about real constitutional fears as it is about political differences: the Amendment's border exception language could override The Sixth Schedule, Article 371A (Nagaland) and Article 371G (Mizoram), constitutional safeguards to protect tribal land rights from central interference.³⁸⁶

THE EIA NOTIFICATION, 2020: DEVELOPMENT OVER DUE DILIGENCE

A. Environmental Impact Assessment and Its Constitutional Basis

Environmental impact assessment is the primary method of evaluating the ecological impacts of development projects prior to approval. In *Samarth Trust v. Union of India*,³⁸⁷ the Delhi High Court recognized EIA as a participatory process of environmental governance. In a series of rulings, the Supreme Court has held that prior environmental evaluation is a substantive requirement under Article 21.

The first EIA notification was issued in 1994, and an amended one was issued in 2006. Despite their limitations, these notices initiated a four-stage environmental clearance process of screening, scoping, public participation, and appraisal.

B. The Draft EIA Notification, 2020: A Systemic Dilution

The Ministry of Environment, Forests and Climate Change (MoEFCC) on April 11, 2020 released the Draft EIA Notification 2020 to replace the 2006 notification. The draft was met with immediate and widespread criticism from ecologists,

lawyers, civil society groups, and legislative committees.³⁸⁸

The most egregious dilution introduced by the 2020 Draft is the normalization of ex post facto clearance, which allows the regularization of projects that have already commenced construction without first obtaining environmental clearance.³⁸⁹ That effectively turns the rationale for preventive environmental governance on its head. In *Alembic Pharmaceuticals Ltd. v. Rohit Prajapati* (2021),³⁹⁰ the Supreme Court categorically ruled that ex post facto clearances are violative of the precautionary principle and the rule of law. The Draft Notification also limits public participation substantially by increasing the list of projects that do not require public hearing and by exempting projects within 100 kilometres of international boundaries from the requirement of consultation. This creates a regulatory vacuum in India's most ecologically fragile frontier zones, similar to the border exemption of the FCAA.³⁹¹

THE EMPIRICAL REALITY: DEFORESTATION DATA AND GROUND TRUTH

A. ISFR 2023: The Numbers Behind the Headlines

India's overall forest and tree cover has grown by 1,445 sq. km since the 2021 assessment, taking the country's green cover to 25.17% of its total land area, says the officially optimistic India State of Forest Report 2023, released in December 2024.³⁹² But looking more closely at the ISFR data, a more worrying trend is apparent:

- India lost 24,651 sq km (6.3%) of dense forest between 2003 and 2023, including 3,913 sq km of Very Dense Forest and Moderately Dense Forest in 2021-2023 alone.³⁹³

³⁸⁵Forest Conservation and Tribal Rights in Northeast India', *Drishti IAS*, *supra* note 22.

³⁸⁶Mongabay India, *supra* note 18.

³⁸⁷*Samarth Trust v. Union of India*, (1995) DLT 181 (Delhi HC).

³⁸⁸Draft Environment Impact Assessment Notification 2020, India: A Critique', 5 *Chinese Journal of Environmental Law* 11 (2021) (Brill), https://brill.com/view/journals/cjel/5/1/article-p11_2.xml.

³⁸⁹Centre for Social and Environmental Policy, 'India Needs to Strengthen, Not Dilute, Environmental Assessments', *CSEP Blog* (Aug. 17, 2021),

<https://csep.org/blog/india-needs-to-strengthen-not-dilute-environmental-assessments/>.

³⁹⁰*Alembic Pharmaceuticals Ltd. v. Rohit Prajapati*, (2020) 17 SCC 157.

³⁹¹Oxford Human Rights Hub, 'The Dilution of Environment Impact Assessment Norms in India', *OHRH* (2021), <https://ohrh.law.ox.ac.uk/the-dilution-of-environment-impact-assessment-norms-in-india/>.

³⁹²Ministry of Environment, Forest and Climate Change, *India State of Forest Report 2023*, *supra* note 1.

³⁹³Tarun IAS, *supra* note 2.

- The northeastern states are India's richest forest zone with 67% forest cover.³⁹⁴ During the current evaluation period, they lost 327.30 square kilometers of forest cover. In the last decade, these states have lost a total of almost 3,877 square kilometers of forest cover.³⁹⁵
- The Western Ghats, a global biodiversity hotspot and a UNESCO World Heritage site, lost 58.22 sq. km of forest cover since 2013 with the eco-sensitive zones bearing a disproportionate burden.³⁹⁶
- During 2011-21, scrub increased by 5573 sq. km and Very Dense Forest, Moderately Dense Forest and Open Forest degraded into non-forest areas over an area of 46707 sq. km.³⁹⁷

The ISFR 2023 is silent on "carbon unlocked due to increased deforestation", Debadityo Sinha, Senior Resident Fellow, Vidhi Centre for Legal Policy told The Indian Express. He emphasizes that India is clearly moving away from natural primary forests to commercial plantations.³⁹⁸ The report's headline statistic combines plantation cover with natural forest – a methodological mistake that obscures the real extent of ecological loss.

B. Global Forest Watch Data: The International Perspective

According to the Global Forest Resources Assessment 2025 by the FAO, India ranked ninth in the world in terms of total forest area. The country has reported a net gain in forest area during 1990-2025 due to afforestation activities.³⁹⁹ The same survey, however, ranks India second globally and accounts for 9% of the

world's wood removals, a fact that contradicts the conservation narrative in the country.⁴⁰⁰

India lost 414,000 hectares of humid primary forest between 2002 and 2023, equivalent to 18% of the country's total tree cover loss, according to Global Forest Watch. India has lost over 18,200 hectares of primary forest in 2024.⁴⁰¹ Indian forests emitted an average of 51 million tonnes of CO2 equivalent per year due to loss of tree cover between 2001 and 2022 and absorbed 141 million tonnes through sequestration, a net sink that is increasingly vulnerable.⁴⁰²

GOVERNMENT MEASURES: INTENT, IMPLEMENTATION, AND CRITICAL ANALYSIS

A. Compensatory Afforestation Fund Management and Planning Authority (CAMPA)

In T.N. Godavarman Thirumulpad v. Union of India (2002), the Supreme Court found that the states were not utilizing the compensating afforestation subsidies received from the project developers to any significant extent, and hence constituted CAMPA as an ad hoc body.⁴⁰³ Later, CAMPA got a permanent formal basis with the enactment of Compensatory Afforestation Fund Act, 2016 that established a National Fund and State Funds in ratio of 10:90. States had received some ₹54,685 crore till 2019 under the ad hoc CAMPA.⁴⁰⁴

As per the FCA framework, when forest land is diverted for non-forest use, the project developer is liable to pay the Net Present Value (NPV) of the diverted forest and provide non-forest land for afforestation on a one-to-one basis. Conservationists have criticized the 2023 Amendment's Rules (2025) for making

³⁹⁴ 'The Shrinking Forests in India's Green Frontier', *IndiaSpend* (March 8, 2025), <https://www.indiaspend.com/earthcheckindia/the-shrinking-forests-in-indias-green-frontier-944624>.

³⁹⁵Id. (noting a cumulative loss of 3,877 sq. km of forest cover in Northeast states over the last decade).

³⁹⁶PWOnly IAS, 'India State of Forest Report (ISFR) 2023', <https://pwnonlyias.com/current-affairs/india-state-of-forest-report/>.

³⁹⁷Forest Survey Reveals India's Shift Towards Plantations, a Threat to Natural Ecosystems', *Mongabay India* (Jan. 22, 2025), <https://india.mongabay.com/2024/12/forest-survey-reveals-indias-shift-towards-plantations-a-threat-to-natural-ecosystems/>.

³⁹⁸Id. (quoting Debadityo Sinha, Vidhi Centre for Legal Policy).

³⁹⁹Press Information Bureau, Government of India, 'GFRA 2025 Ranks India 9th Globally in Total Forest Area', PIB Release (2025), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2182269>.

⁴⁰⁰Id. (reporting India's second-place global ranking in wood removals with a 9% share).

⁴⁰¹Id.

⁴⁰²Id. (citing Global Forest Watch data on India's average annual forest emissions and carbon sequestration between 2001 and 2022).

⁴⁰³National Forest Policy and Green India Mission UPSC Notes', *Legacy IAS Academy*, <https://www.legacyias.com/national-forest-policy-nap-campa-bamboo-mission-green-india-mission-upsc-notes/>.

⁴⁰⁴Id. (noting ₹54,685 crore transferred from ad hoc CAMPA to states by 2019).

notification of CA land optional and not mandatory.⁴⁰⁵

Critical Analysis:

CAMPA has raised a huge amount of money, but structural and conceptual weaknesses greatly undermine the program. First, the monoculture plantations, the dominant mode under CAMPA, cannot match the biodiversity, ecological services and carbon sequestering capacity of the natural forests that they replace. Critics have correctly identified compensatory afforestation as a form of “greenwashing” that employs biological illusions to justify forest destruction.⁴⁰⁶ Secondly, the E-Green Watch platform, developed to ensure transparency of CA projects, has been characterized as a “bureaucratic maze” which negates the possibility of finding or confirming project implementation.⁴⁰⁷ It's Third, the Forest Rights Act of 2006 is violated when forest officials control the funds with little involvement of the community. The Parliamentary Committee itself has pointed out the bureaucratic complexity of the CAF Act and the absence of binding implementation schedules.⁴⁰⁸

B. The Green India Mission (GIM)

Launched in February 2014 under the National Action Plan on Climate Change, the Green India Mission (GIM) was envisioned as a game-changing initiative to improve the quality of forest cover in an additional 5 million hectares and increase the forest and tree cover by 5 million hectares by 2020.⁴⁰⁹ The programme also aimed at improving livelihood incomes for about 3 million forest-dependent families. The Union Budget for 2025–26 has allocated ₹3,412.82 crore for the MoEFCC, showing a 9% increase over the revised estimate for 2024–25.⁴¹⁰

Critical Analysis:

The GIM performance record is a case study in government underperformance. The Mission covered only some 44,000 hectares against a target of 67,000 hectares between 2015–16 and 2016–17, a shortfall of 34 per cent.⁴¹¹ The first implementation period (2015–2021) concluded with around 30% of GIM's initial afforestation target achieved.⁴¹² The Parliamentary Committee said it was “minuscule proportion” of the annual afforestation plans of GIM against the requirement of additional 30 million hectares of forest cover to meet the carbon sequestration target of India's Nationally Determined Contributions by 2030”.⁴¹³ The revised GIM Plan 2021–2030 announced on June 17, 2025, World Day to Combat Desertification, adopts an ecological approach with a region-specific focus on the Western Ghats, Himalayas and Aravallis. This is a welcome focus on priority ecosystems, but critics say that while it addresses the symptom, the legislative framework that underpins the underlying problem still allows for forest loss.

C. The National Green Tribunal and Judicial Monitoring

The National Green Tribunal (NGT) is an important institutional actor to prevent deforestation and was established under the National Green Tribunal Act, 2010. In December 2024, the NGT took suo motu cognisance of a Global Forest Watch study that showed that India had lost 2.3 million hectares of forest cover since 2000, which is roughly 15 times the size of Delhi.⁴¹⁴

One of the longest continuing judicial environmental monitoring programmes in any democracy is the ongoing mandamus in the Godavarman case by the Supreme Court which

⁴⁰⁵[d].

⁴⁰⁶Central Empowered Committee Report on CAMPA', *Drishiti IAS* (Aug. 1, 2025), <https://www.drishitiias.com/daily-updates/daily-news-analysis/central-empowered-committee-report-on-campa>.

⁴⁰⁷'India's Compensatory Afforestation Efforts Need Reset, Accountability', *Business Standard* (Dec. 19, 2024), https://www.business-standard.com/opinion/columns/india-s-compensatory-afforestation-efforts-need-reset-accountability-124121901371_1.html.

⁴⁰⁸Compensatory Afforestation Fund Management and Planning Authority (CAMPA)', *Strive Edge IAS* (Nov. 5, 2025), <https://striveedgeias.in/campa-compensatory-afforestation-fund-india-challenges/>.

⁴⁰⁹Revised Green India Mission', *Drishiti IAS* (June 18, 2025), <https://www.drishitiias.com/daily-updates/daily-news-analysis/revised-green-india-mission>.

⁴¹⁰PIB, *supra* note 40.

⁴¹¹'National Mission for a Green India', *BYJU'S IAS* (Dec. 2, 2022), <https://byjus.com/free-ias-prep/green-india-mission-gim/>.

⁴¹²Legacy IAS Academy, *supra* note 45.

⁴¹³BYJU'S IAS, *supra* note 53.

⁴¹⁴Business Standard, *supra* note 49.

has continued for nearly three decades. The Court's 2024 judgment asking state governments in Rajasthan to consider Orans (holy groves) as "deemed forests" serves as a reminder of the continuing importance of judicial intervention.⁴¹⁵

CASE STUDY I: HASDEO ARAND FOREST, CHHATTISGARH

Hasdeo Arand is one of the largest contiguous forest areas in India and is often called the "lungs of Chhattisgarh". The region has a rich biodiversity and is an important elephant corridor.

Several coal mining projects have been proposed within the area, despite strong opposition from indigenous communities. Local residents say mining would lead to massive felling of trees, loss of wildlife habitat and displacement of tribal population. Reports in the Hindu and Indian Express detailed continued protests by tribal communities demanding the cancellation of mining approvals. The case is an example of the constitutional clash between economic development and environmental protection.

CASE STUDY II: GREAT NICOBAR DEVELOPMENT PROJECT

The Great Nicobar Development Project is among India's largest infrastructure initiatives involving ports, airports, tourism infrastructure, and urban development.

Environmental experts have raised concerns regarding:

- Large-scale tree felling.
- Destruction of tropical forests.
- Threats to endangered species.
- Disturbance of indigenous communities.

Various environmental organizations have questioned whether adequate environmental impact assessments were conducted before project approvals.

The project demonstrates how strategic developmental objectives may conflict with ecological sustainability and constitutional environmental obligations.

CASE STUDY III: AAREY FOREST CONTROVERSY

The Aarey issue came to the fore when thousands of trees were to be felled for the Mumbai Metro project. Environmental activists said Aarey was an urban forest that offered biodiversity and climate resilience.

The controversy attracted nationwide attention and resulted in litigation in courts. In the end the row became symbolic of the larger debate about whether development projects should be allowed to proceed without proper regard to the environmental consequences.

THE CONSTITUTIONAL COST OF DEFORESTATION

The constitutional cost of deforestation extends beyond environmental damage. It includes:

Ecological Cost

- Loss of biodiversity.
- Climate change acceleration.
- Carbon sequestration decline.

Social Cost

- Tribal displacement.
- Cultural loss.
- Livelihood insecurity.

Constitutional Cost

- Dilution of Article 21.
- Weakening of Article 48A.
- Erosion of environmental justice principles.
- Violation of intergenerational equity.

Development that destroys forests without adequate safeguards effectively transforms constitutional promises into symbolic guarantees.

⁴¹⁵ Supreme Court Observer, *supra* note 15.

THE CONSTITUTIONAL CRISIS: DEVELOPMENT AGAINST DEMOCRACY

The arc of this article reveals a pattern that goes beyond any single legislative change or policy. India's evolving state has systematically pursued three interlinked strategies to bypass constitutional forest protections: institutional capture (changing regulatory bodies like CAMPA and MoEFCC from conservation to development facilitation); procedural elimination (reducing or eliminating public consultation, Gram Sabha consent and prior environmental clearance); and legislative narrowing (reducing the definition of "forest" and the scope of environmental law). The most affected are the Adivasi groups in the Fifth and Sixth Schedule areas who are routinely denied their constitutional rights to forest governance. The Forest Conservation Amendment Act, 2023 is not an administrative mistake of the Forest Rights Act, but a constitutional abdication. Citizens for Justice and Peace said the Amendment "erodes vital safeguards for Adivasi land rights" by narrowing the definition of forests, bypassing consultative procedures and allowing corporate access to forest resources in the name of national security.⁵⁹

Even more complicated than these internal constitutional questions are India's obligations under international environmental law. India has ratified the 1992 Convention on Biological Diversity, the 2015 Paris Agreement and the 2022 Kunming-Montreal Global Biodiversity Framework, all of which have high targets for ecological restoration and forest conservation. Given India's stated goal of creating a 2.5 to 3 billion tonne carbon sink by 2030, it is difficult to reconcile the domestic legislative backsliding that the FCAA and the Draft EIA Notification 2020 stand for with these international commitments.⁶⁰

THE WAY FORWARD: CONSTITUTIONAL RESTORATION AND ECOLOGICAL JUSTICE

1. India's deforestation situation necessitates a multifaceted solution that

reinstates the constitutional agreement between the government, its people, and the environment:

1. Parliament should revisit the Forest Conservation Amendment Act, 2023 and repeal or amend its constitutionally suspect provisions especially the timelines for forest protection, the exemption clause on borders and the silence on Forest Rights Act compliance. There is a need for statutory recognition of the Godavarman definition of "forest".
2. The EIA framework should be strengthened not weakened. The proposal for ex-post facto permissions should be withdrawn from the Draft EIA Notification 2020 and the criteria for public consultation should be strengthened and made more accessible to the affected people, especially the indigenous communities in forest areas.
3. In order to make compensatory afforestation ecologically meaningful, CAMPA needs to be amended to give priority to native species, natural forest regeneration and community-based management over monoculture commercial plantations. The E-Green Watch platform should be very transparent and auditable by third parties.
4. The judiciary must keep vigorously enforcing the environmental aspects of Article 21 through the continuing mandamus in Godavarman and the increasing body of jurisprudence on climate rights. Currently, the Supreme Court is hearing the case of Ashok Kumar Sharma v. Union of India on the constitutionality of the FCAA. This is the best opportunity to delineate constitutional boundaries that no future Parliament can easily overturn.
5. India needs an independent, statutory National Forest Commission with real monitoring, assessment and

enforcement powers, as a bulwark against the short-term pressures of the developing state on forest governance. This commission would be as autonomous and powerful as the Election Commission.

CONCLUSION

The Constitutional promise of sustainable development is premised on the assumption that economic growth and environmental protection are complimentary rather than competing objectives. However, the current trajectory of forest governance in India shows a growing preference of developmental expediency over constitutional accountability. The cumulative effect of legislative amendments, regulatory relaxations, diluted environmental assessments and declining public participation has adversely tilted the balance envisaged by the constitution between development, environmental protection and social justice. This study reveals that deforestation is not merely an ecological issue but a constitutional issue with far-reaching impacts. The degradation of forests impinges on the right to life under article 21, weakens the directive principles contained in article 48a, undermines the fundamental duty under article 51a(g) and disproportionately impacts the constitutional rights of scheduled tribes and other forest-dependent communities. Judicial doctrines such as sustainable development, the precautionary principle, the public trust doctrine, and intergenerational equity have evolved to safeguard this constitutional balance, yet their effectiveness depends upon faithful legislative implementation and robust institutional enforcement. The analysis of the forest (conservation) amendment act, 2023, the draft EIA notification, 2020, empirical deforestation data, and contemporary case studies reveals a pattern of regulatory dilution that prioritises short-term economic gains over long-term ecological security. Such an approach risks transforming constitutional guarantees into symbolic commitments while weakening

democratic participation and environmental governance.

Equally significant is the growing disconnect between India's domestic environmental policies and its international commitments under global climate and biodiversity pacts. Therefore, a constitutionally valid model of development must go beyond compensatory mechanisms and incorporate ecological sustainability as a core constitutional value. This involves re-establishing stronger statutory protections for forests, ensuring meaningful participation of gram sabhas and indigenous communities, strengthening environmental impact assessment procedures, enhancing institutional independence and reinforcing judicial oversight. The protection of forests should not be seen as an obstacle to development but rather as an essential prerequisite for inclusive, equitable and sustainable development. We conclude that the constitutional future of India depends not on the choice between development and environmental protection but on the harmonisation of both through the principles of constitutionalism, environmental justice and democratic governance. Only a model of development that respects constitutional rights and maintains ecological integrity can protect the interests of present and future generations and realize the transformative vision of the constitution.