V | D H | Centre for Legal Policy

COMMENTS ON THE PROPOSED AMENDMENTS TO THE INDIAN FOREST ACT, 1927

Submission to
The Ministry of Environment, Forest & Climate Change
Government of India

COMMENTS ON THE PROPOSAL TO AMEND THE INDIAN FOREST ACT, 1927

Submission to Ministry of Environment, Forest and Climate Change, Government of India

31 JULY 2022

V | D H | Centre for Legal Policy

Cover Image: Indian Peafowl in Alwar Forest Division, Rajasthan (photo: Debadityo Sinha)

> This is an independent, non-commissioned piece of work by the Vidhi Centre for Legal Policy, an independent think-tank doing legal research to help make better laws and improve governance for public good.

About the Authors

Tarika Jain, Senior Resident Fellow- Climate & Ecosystems, Vidhi
Debadityo Sinha, Senior Resident Fellow and Lead-Climate & Ecosystems, Vidhi
Himanshu Ahlawat, Research Fellow- Climate & Ecosystems, Vidhi

The authors would like to thank Keshav Padmanabhan (Communications Associate-Vidhi), Parul Gupta (Independent Lawyer) and Akash Chandra Jauhari (Senior Resident Fellow, Corporate Law and Financial Regulation-Vidhi) for sharing their inputs.

Correspondence

For any clarifications/ queries in relation to this submission, please contact:

Vidhi Centre for Legal Policy
A-232, Ratanlal Sahdev Marg,
Defence Colony, New Delhi-110024

011-43102767/43831699
environment@vidhilegalpolicy.in

Table of Contents

Summary of Recommendations **3**

I. Introduction **4**

II. Overarching issues with the IFA **6**

A. Archaic and exploitative approach of IFA 6

→ The Government as a monopolistic owner of forests 6

→ Exploitative understanding of forests 7

→ Absence of wildlife conservation from IFA's purview 7

B. Revising the penalty amount 8

III. Specific Issues with the proposed amendments **9**

A. Lack of clarity on decriminalisation vs. criminal liability with lower punishment 9

B. Prescribed penalty of Rs. 500 is too low to be deterrent 10

C. Penalty needs to account for the damage caused 11

Summary of Recommendations

The proposed amendments make piecemeal revisions to decriminalise select violations and retain the fine of Rs.500 only. We suggest that the proposed amendments be revisited because of the following reasons:

1. Overarching issues with the IFA
   1.1. The approach of the IFA needs to be revisited to identify the government as a trustee of forests rather than owners.
   1.2. A polycentric framework of decision-making needs to be devised to include the voices of tribal communities, forest dwellers, gram panchayats and other local communities.
   1.3. Categorization of wildlife as a 'forest-produce' should be changed to a more conservationist approach.
   1.4. The penal framework of the Act as a whole need to be updated to ensure they are in tandem with the other environmental legislations such as the Forest Rights Act 2006, Environment (Protection) Act, 1986 and Wildlife (Protection) Act, 1972.

2. Specific Issues with the proposed amendments
   2.1. The proposed amendments do not decriminalise the offences. They continue to be criminal wrongs but without imprisonment as a punishment. There needs to be clarity on whether the intent is to decriminalise or whether it is to retain criminal liability.
   2.2. Prescribed penalty of Rs. 500 is too low to act as a deterrent and should be updated in the present context.
   2.3. The prescribed penalty should account for the damage caused to the forest and its resources.

I. Introduction

On 9th July 2022, the Ministry of Environment, Forest and Climate Change ("**MoEFCC**") invited public comments on the proposed decriminalisation of certain offences under the Indian Forest Act, 1927 ("**IFA**"). The last date for submission of comments was stated to be 31st July 2022. As per the Notice for Public Comments released by the MoEFCC, the amendments have been proposed with the following objectives:

- Decriminalisation of relatively minor violations of law
- Expeditious resolution through compounding of relatively smaller offences
- Reducing compliance burden on citizens
- Rationalisation of penalties
- Preventing harassment of citizens

It is further explained that there are difficulties in differentiating minor and major offences, because of which there are no differential punishments, which in turn abets repeat offences.

Table 1: Amendments proposed to IFA

Offence	Earlier Punishment	Proposed Punishment
Section 26(1) **Violations in reserved forests.** (c) Kindling, keeping or carrying any fire except at such seasons as the Forest-officer may notify (d) Trespassing or pasturing cattle, or permitting cattle to trespass (e) Causing any damage by negligence in felling any tree or cutting or dragging any timber	1) Imprisonment up to 6 months, OR 2) Fine up to Rs. 500, OR 3) Both AND Such compensation for damage done to the forest as the convicting Court may direct to be paid.	**Under proposed Section 26(1A)** 1) Fine up to Rs. 500 AND Such compensation for damage done to the forest as the convicting Court may direct to be paid.
Section 33 **Violations with respect to reserved trees and contravention of rules pertaining to protected forests.** (a) Leaving burning any fire kindled by the person in the vicinity of any tree reserved under section 30, whether standing fallen or felled, or closed portion of any protected forest	1) Imprisonment up to 6 months, OR 2) Fine up to Rs. 500, OR 3) Both	**Under proposed Section 33(1A)** Fine up to Rs. 500

(b) Felling any tree or dragging any timber so as to damage any tree reserved as aforesaid (c) Permitting cattle to damage any such tree		

To this end, amendments have been proposed to Section 26 and Section 33 of the IFA wherein the imprisonment prescribed for three violations under each of the sections has been removed. Therefore, these violations are now proposed to be only punishable with a fine. The details of the proposed amendments are provided in Table 1 above. In this regard, Vidhi Centre for Legal Policy ("**Vidhi**") is submitting its comments on the proposed amendments.

II. Overarching issues with the IFA

A. Archaic and exploitative approach of IFA

1. The Government as a monopolistic owner of forests

It is well known that the IFA is a colonial legacy that perpetuates the notion that the government enjoys a monopoly over forest and its resources, and any other individual is an intruder with no right in these. It builds on the assumption of the Colonial British Government that local 'communities were incapable of scientific management, and that only a trained, centrally organised cadre of officers could manage forests.'[1] There is abundant literature and research that proves the inherent fallacy of such an approach.

The perspective of the independent government towards the forests has however been evolving. Article 48A and Article 51A(g) of the Constitution of India specifically impose a duty on the state to protect and improve the environment, including the forests. In fact, the Supreme Court has reiterated that the government must act as a trustee of natural resources like forests to ensure their protection for the enjoyment of the general public.[2] It is the very premise of the well-established Doctrine of Public Trust that the government must not use these resources for its economic upliftment or for commercial purposes.

Further, as a result of continuous resistance of tribal communities and forest dwellers, their traditional rights came to be recognized under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. Similarly, Panchayats (Extension to Scheduled Areas) Act, 1996 envisages a participatory approach to forest resource management. A polycentric approach to decision making that accounts for the experiences and needs for the local community that has historically been interdependent with the forest has proven to be more effective in conservation and management of forest resources.[3]

The Act needs to be modified to suitably adapt to the socio-economic and cultural context of the present day. An observation on these lines was made by the Department Related Standing Committee on Science and Technology, Environment and Forests in its 231st Report on the Indian Forest (Amendment) Bill, 2012.[4]

---

[1] Introduction to the Indian Forest Act, 1927 <https://thc.nic.in/Central%20Governmental%20Acts/Indian%20Forest%20Act,%201927.pdf> accessed 29 July 2022

[2] *In Re: T.N. Godavarman Thirumulpad vs. Union of India and Ors.* 3rd June 2022, I.A. No.1000 of 2003, order dated 3 June, 2022.

[3] Harini Nagendra & Elinor Ostrom, 'Polycentric governance of multifunctional forested landscapes' (2012) International Journal of the Commons. 6. 104. 10.18352/ijc.321

[4] Department-Related Parliamentary Standing Committee on Science & Technology, Environment & Forests, Two Hundred and Thirsty First Report on The India Forest (Amendment) Bill, 2012 (Rajya Sabha) (26 November 2012)

2. Exploitative understanding of forests

The first National Forest Policy, 1894, prioritised agriculture promotion over forest protection. The second National Forest Policy, 1952 also stressed upon promoting pastures and timber production. Both of these thus took an exploitative approach towards forests. However, the third National Forest Policy, 1988 took a more protectionist approach towards forest. This transition in approach, from exploitation by the government to conservation, which is critical to sustainable interaction with forest resources is entirely absent from the journey and framework of the IFA.

Further, the (Forest Conservation) Act, 1980 includes 'deemed forests' under Section 2 while IFA does not. Deemed forests are those forests which have not been notified by the state government but by virtue of having characteristics of forests, have been recorded as forests in the Government records.[5] It is important to revise IFA to include these deemed forests within its scope. This will also aid the government in reaching the target set under the National Forest Policy, 1988 to increase forest cover to 33% of the total geographical area. Therefore, the IFA needs to be revised to align with the principles enshrined in these legislations and to adopt a protectionist view of the forests.

3. Absence of wildlife conservation from IFA's purview

The IFA currently treats wild animals as 'forest-produce' under Section 2(4). This approach promotes commodification of wildlife rather than a conservation-based approach of these natural resources which are critical to the ecosystem. This is extremely problematic given the fact that even though 22% of the land is covered under forests, only 5% of this coincides with the Protected Areas ("**PA**") network under the Wildlife (Protection) Act, 1972.[6] Further, reportedly, 36 mammal species of India are found in state owned forests and outside of PAs.[7] This includes a significant population of the big carnivores such as Royal Bengal Tiger, Striped Hyena, Dhole, Sloth Bear, Grey Wolf, Golden Jackal which can be found in areas outside the PAs in forests, shrublands and grasslands.[8] Additionally, 35% of tiger range continues to be outside of PAs.[9] In this background, it is important for IFA to take a holistic approach and acknowledge that forests are used by wildlife as habitats and movement corridors. The IFA

---

[5] Debadityo Sinha, et al, *Forestation on Private Land in Karnataka: Analysis of Legal Provisions* (Vidhi Centre for Legal Policy, 2021) <https://vidhilegalpolicy.in/wp-content/uploads/2021/08/Forestation_Private_Lands_Karnataka_VCLP_10August_2021-3-1.pdf> accessed 31 July 2022

[6] Debadityo Sinha & Mridhu Tandom, 'Safeguarding Wildlife Beyond Protected Areas in India: A Review of Laws, Policies and Other Conservation Tools' RGNUL Student Research Review (2021) <http://rsrr.in/wp-content/uploads/2021/05/Debadityo-Sinha-and-Mridhu-Tandon.pdf> accessed 31 July 2022

[7] Krishnan, P., Ramakrishnan, R., Saigal, S., Nagar, S., Faizi, S., Panwar, H.S., Singh, S. and Ved, N., *Conservation Across Landscapes: India's Approaches to Biodiversity Governance* (United Nations Development Programme, 2012)

[8] Ministry of Environment and Forestry, Government of India, Status of Tigers Copredators & Prey in India 2018 <moef.gov.in/wp-content/uploads/2020/07/TigerStatus-Report-2018_For-Web_compressed_compressed.pdf> accessed 31 July 2022; Melurs usursinus Sloth Bear Vulnerable, IUCN, <https://www.iucn.org/sites/dev/files/import/downloads/sloth_bear.pdf> accessed 31 July 2022.

[9] Gross, Jayasinghe, Brooks, Polet, Wadhwa. and Hilderink-Koopmans, *A Future for All: The Need for Human-Wildlife Coexistence* (WWF, 2021) 16 <https://wwfint.awsassets.panda.org/downloads/a_future_for_all__the_need_for_human_willdife_coexistence.pdf> accessed 31 July 2022

must be revised to fill in the gaps of the framework of the Wildlife (Protection) Act, 1972 so that forest conservation is not viewed as being separate or exclusive of wildlife conservation.

In this background, it is absolutely necessary to revisit the IFA as a whole and comprehensively revise all its provisions to align them with the more recent developments in the forest and wildlife regulation policies of the country.

B. Revising the penalty amount

Currently, the highest fine prescribed under the IFA is a meagre Rs. 500. This fine was prescribed when the Act was first promulgated in 1927 and has since then remained unchanged. Needless to say, this amount is too petty to deter offenders or correct any environmental damage in the present day.

A deterrent penalty is one which outweighs the benefit gained from committing the violation such that the violator is dis-incentivised to commit the violation. Thus, it should be set at an amount which mandatorily removes any unlawful gains that a person is likely to gain from committing the wrong. Therefore, it is imperative that all the penal provisions under the Act are updated together to account for the inflation over the years and align them with the penalty prescribed in other environmental laws which prescribe much higher penalties such as the Forest Rights Act 2006, Environment (Protection) Act, 1986 and Wildlife (Protection) Act, 1972.

III. Specific Issues with the proposed amendments

A. Lack of clarity on decriminalisation vs. criminal liability with lower punishment

Currently, the proposed amendments simply do away with imprisonment as a punishment for the above mentioned six offences. We submit that this is merely a reduction in punishment and not an actual decriminalization of the offences. To decriminalize an offence, the criminality of the offence needs to be replaced with a civil liability. However, in the current case, these six offences continue to be criminal in nature. This is even reflected in the usage of the words 'offences', 'fine' and 'convicting Court' in the proposed insertions which are associated with criminal wrongs.

For a wrong to be civil in nature, there needs to be an alternate adjudicatory mechanism that lies outside the courts. The amount of penalty is then determined by this adjudicatory mechanism on a case-to-case basis. To illustrate the difference between decriminalisation and reducing punishment for criminal wrongs, below is a breakdown of the recommendations of the Company Law Committee, 2019 which undertook a thorough examination of offences to understand how decriminalisation should occur[10].

Decriminalisation: Changing criminal liability to civil liability	**Reducing punishment for criminal wrongs**
Re-categorisation of compoundable offences: Compoundable offences are those where the offender can simply pay the amount of damage caused and in lieu of this amount, criminal court proceedings against him/her are suspended. Since compounding is generally permitted for minor offences only which do not involve substantial public interest, the Committee proposed that these offences should simply be categorised as civil wrongs. Instead of approaching the courts, these civil wrongs can be adjudicated upon by an in-house adjudicatory mechanism.	**Compoundable offences punishable by fine only:** The Committee also proposed that 11 of the remaining compoundable offences should be punishable by fine only. In this case, the offence continues to be criminal in nature and only the punishment is reduced. This technically does not constitute decriminalisation of the offence.

[10] Ministry of Corporate Affairs, Report of the Company Law Committee (November, 2019) <https://www.mca.gov.in/Ministry/pdf/CLCReport_18112019.pdf> accessed 31 July 2022

Omission: The offences which were punishable under other statues were proposed to be omitted.	**Double fine for non-compliance:** It was also proposed that where a person fails to comply with a compounding order, then a fine double the amount of initial fine should be imposed.

Thus, decriminalising offences requires a deeper understanding of the nature of the offences and their implication on the public at large. Even if the government wants to decriminalise minor offences where there is no element of *mala fide*, then an alternate adjudicating mechanism is needed to impose the final civil penalty. Merely removing imprisonment does not change the nature of the offence. It continues to fall within the ambit of criminal law but simply with a weaker deterrent effect on account of the lowered punishment. In the context of the IFA, perhaps the government can consider increasing the scope of the power of the forest officers to impose civil penalties.

We therefore suggest that the government should revisit its proposal to first identify whether it intends to truly decriminalise these offences or where it simply wants to retain their criminal nature but with a lower punishment.

B. Prescribed penalty of Rs. 500 is too low to be deterrent

As mentioned above, the proposed amendments in Section 26 and Section 33 only remove imprisonment for certain offences while retaining the prescribed penalty of Rs. 500. This amount is too low to act as a deterrent and recover the cost of environmental damage. Consequently, various states that have adopted the law have increased the penalty amount.

Table 2: Fine prescribed under state amendments.

S. No	State	Fine under Section 26	Fine under Section 33	Year when the fine was prescribed
1.	Bihar	Rs. 1,000 - Rs. 5,000	Rs. 1,000 - Rs. 5,000	1989
2.	Chhattisgarh	Rs. 10,000	Rs. 10,000	2014
3.	Haryana	Rs. 1,000	Rs. 1,000	1973
4.	Himachal Pradesh	Rs. 5,000	Rs. 5,000	1991
5.	Jharkhand	Rs. 1,000 - Rs. 5,000	Rs. 1,000 - Rs. 5,000	1989
6.	Madhya Pradesh	Rs. 15,000	Rs. 15,000	2009
7.	Maharashtra	Rs. 5,000 (Can be doubled in some cases)	Rs. 5,000	2013
8.	Jammu and Kashmir and	Rs. 25,000	Rs. 25,000	2020

	Ladakh (UTs)			
9.	Uttar Pradesh	First violation: Rs. 1,000 Repeat violation: Rs. 1,000 - Rs. 2,000	First violation: Rs. 5,000 Repeat violation: Rs. 10,000	2000
10.	Uttarakhand	First violation: Rs. 1,000 Repeat violation: Rs. 1,000 - Rs. 2,000	First violation: Rs. 5,000 Repeat violation: Rs. 10,000	2001
11.	West Bengal	Rs. 1,000	Rs. 1,000	1988

From the above table it is evident that where the fine amount has been revised more recently, such as in Jammu and Kashmir and Chhattisgarh, the prescribed amount is much higher than where the fine has not been revised for decades. Thus, it is extremely important for the Centre to set a high penalty amount in the legislation to inspire state governments to also amend their legislations and prescribe a higher penalty amount.

C. Penalty needs to account for the damage caused

As a consequence of the proposed amendments, the cutting of trees in a reserved forest {Section 26(1)(f)} and cutting of reserved trees in protected forests {Section 33(1)(a)} continues to be punishable with imprisonment of maximum six months under the original provisions. However, it has been proposed to remove imprisonment for (i) causing any damage by negligence in felling any tree or cutting or dragging any timber in reserved forests[11], and (ii) causing damage to any reserved tree while felling any tree or timber.[12]

In other words, it is proposed to remove imprisonment for the act of causing any damage without actually cutting the tree in question. Therefore, in both cases the penalty prescribed should be such that it recovers the economic and environmental cost of the damage caused to the forest and its resources. Such an assessment of the damage needs to be done by the competent body. A suitable provision to this effect has been included in the proposed Section 26(1A) wherein it is stipulated that the convicting Court may direct the payment of the compensation for the damage done to the forest. As we have submitted in the section above, the phrase 'convicting Court' is inappropriate in the current context. Regardless, we suggest that a similar provision, wherein an award to recover damage caused to a tree is made by an adjudicating body, should also be included in the proposed Section 33(1A) to make good the damage caused to reserved trees.

[11] Proposed Section 26(1A)(c)

[12] Proposed Section 33(1A)(b)

V | D H | Centre for Legal Policy

A-232, Ratanlal Sahdev Marg,
Defence Colony, New Delhi-110024
011-43102767/43831699

www.vidhilegalpolicy.in