



# Environmental Deregulation of Forests, Biological Resources and Offshore Aquatic Biodiversity

An Analysis of Three Important Bills Passed in the  
Monsoon Session (2023) of the Parliament

October 2023



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**Published by:** Rajiv Gandhi Institute for Contemporary Studies,  
New Delhi



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**Rajiv Gandhi Institute for Contemporary Studies (RGICS)  
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Jawahar Bhawan, New Delhi 110 001**

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# 1 Introduction

The 1970s and 1980s were watershed decades of environmental regulations in India. In these less than 20 years, India constituted its Environmental Ministry along with a number of environmental legislations such as the Water Act, 1974, the Wildlife (Protection) Act, 1972, the Air Act, 1981, the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986. These laws along with institutions to enforce them, helped build India's robust environmental regulation framework.

Unfortunately, over the years, these regulations were propagated as hurdles and bottlenecks in the faster infrastructural development. Therefore, various attempts have been made to dilute the environmental legislative framework. The recently concluded Monsoon session of the Parliament from 20th July to 11 August 2023 has witnessed direct and assertive approach of the government to not just dilute but dismantle environmental protections.



*Source: <https://www.mapsofindia.com/ci-moi-images/my-india/2018/07/Environment-Protection-Act-1986.jpg>*

The Monsoon session (2023) of the Indian Parliament held from 20th July to 11th August 2023 passed 23 different Bills. Of these, 3 Bills relating to the environment have deregulated forests, offshore mining areas and biological resources of this country. These three laws are as follows:

1. The Biological Diversity (Amendment) Act, 2023
2. The Forest (Conservation) Amendment Act, 2023
3. The Offshore Areas Mineral (Development and Regulation) Amendment Act, 2023.





The Forest (Conservation) Amendment Bill, 2023 and the Biological Diversity (Amendment) Bill, 2021 were discussed in the joint committee of Parliament. The joint committee formed for the Biological Diversity (Amendment) Bill, 2021 received hundreds of memoranda and representations from state governments, State Biodiversity Boards, civil society institutions, conservationists and activists criticising various provisions of the Bill.

Yet the committee approved all major provisions of the Bill. This Bill, which has now been approved by the President of India as an Act has deregulated the production and harvesting of biological resources and associated traditional knowledge which is codified in authoritative books. Experts have argued that almost everything is codified in one book or the other, so effectively the amendment to the Act has deregulated most of the bio resources of the country.



Source: <https://s3-ap-south-1.amazonaws.com/adda247jobs-wp-assets-adda247/articles/wp-content/uploads/2023/03/30210329/Forest-Conservation-Amendment-Bill-2023.jpg>

The Forest (Conservation) Amendment Bill, 2023 was also discussed by the joint committee of the Parliament and has received hundreds of memoranda from state governments, civil society institutions and activists explaining potential threats to forests if the suggested amendments to the Act were passed.

However, the committee accepted all changes proposed by the government through the Bill. This amendment Bill has deregulated more than 27% of the Indian forest land and allowed many commercial activities inside regulated forests under the Forest (Conservation) Act, 1980.

The third Bill namely the offshore areas mineral (Development and Regulation) Amendment Bill, 2023 has withdrawn all environmental safeguards relating to offshore mining mandated by the Offshore Areas Mineral (Development and Regulation) Act, 2002.

This Bill has further opened the offshore area mining to private companies and companies without really having expertise and technology required for sustainable offshore mining.

While these Bills have also brought few positive amendments, the larger motive of these amendments remained environmental deregulation. These three Bills have undone decades of progressive environmental work in the sector of forest, biological diversity and sustainable exploration and access to sea resources. This article attempts to highlight major environmental deregulations carried by these three Bills.

## 2 The Biological Diversity (Amendment) Act, 2023

The Biological Diversity (Amendment) Bill was first introduced in Lok Sabha on 16th December 2021. The Bill was then referred to a joint committee of the Parliament for further discussion and deliberation.

The committee recommended minor changes in the Bill and the updated Bill was passed by the Lok Sabha and Rajya Sabha in the Monsoon Session of the Parliament in 2023. The Bill has amended the Biological Diversity Act, 2002.

The Bill has amended various sections of the principal Act, but major amendments are relating to exclusion of codified biological resources based on traditional knowledge from the purview of the Act.

Further, the amendments have also diluted the autonomy and independence of the National Biodiversity Authority. These two amendments and their potential consequences are discussed as follows:



Source: [https://vajiram-prod.s3.ap-south-1.amazonaws.com/The\\_Biological\\_Diversity\\_Amendment\\_Bill\\_2021\\_c39286a743.jpg](https://vajiram-prod.s3.ap-south-1.amazonaws.com/The_Biological_Diversity_Amendment_Bill_2021_c39286a743.jpg)

### 2.1 Deregulation of codified traditional knowledge

India has a rich tradition of utilizing, experimenting and developing products based on available biological resources it has. The principal legislation of Biological Diversity enacted in 2002 had protected all documented and undocumented knowledge and bio resources from being commercial exploitation without sharing benefits with people who conserved that. However, new amendments to the Act have excluded authoritatively documented traditional knowledge from the purview of this Law.

Amendments to section 7 of the Act provides for the exclusion of codified traditional knowledge, and cultivated medicinal plants and its products from all regulatory provisions laid out by the Biological Diversity Act, 2002.



Any Indian individual, body corporate, association or organization registered in India can have free access to commercially utilize codified traditional knowledge without sharing benefits arising from it with benefit claimants. Moreover, the amendments to the section 2(3) of the Act also allow these privileges to body corporate, association and organization with participation of foreign citizens in shareholding and management.

The amendment Act in Section 3 defines codified knowledge as knowledge derived from authoritative books specified in the First Schedule to the Drugs and Cosmetics Act, 1940. This schedule includes 59 Ayurveda books, 31 Siddha and 14 Unani Tibb System books. These books are part of our rich traditional knowledge and most of the bio-resources we use are described in these books in one way or the other.



Source: <https://ayugreen.com/wp-content/uploads/2016/10/Ayurveda-history.jpg>

Many representatives from state biodiversity boards, forest department and state governments recorded their objection in the joint committee on Biological Diversity Act of the Parliament. The Tripura Forest Department had argued that this amendment will exclude everyone from sharing any benefit arising from commercialization of Indian biological resources as most of it is well documented.

The Assam State Biodiversity Board had argued that most of the traditional knowledge used in the AYUSH system of medicine is codified. So, with this amendment no benefit claimants will be able to claim benefits arising from biological resources. Moreover, the State Biodiversity Board of Andhra Pradesh, Madhya Pradesh, Uttarakhand, Maharashtra, Chhattisgarh, Bihar and Goa have also objected to this amendment on the same ground.<sup>[1]</sup>

The amendment Act has also excluded cultivated medicinal plants from the regulatory purview of this Act. The amendment to section 7 provides that provision of the Act relating to seeking prior permission to access biological resources for commercial use and benefit sharing mechanism is not applicable to cultivated medicinal plants and its product along with codified traditional knowledge.



This has further created loopholes in the system as it is going to be difficult to ascertain if the biological resources are cultivated or not. In this case the possibility of illegal exploitation of naturally grown biological resources may increase.

The Biological Diversity Act, 2002 was a progressive law to conserve biodiversity of the country and provide nature based new livelihood to conserve biodiversity. However, it could not be implemented. In the last twenty years, not much revenue has been collected using the access and benefit sharing mechanism of the Act due to non-implementation of the law.

On the direction of National Green Tribunal, the process of constituting Biodiversity Management Committee (BMC) and preparation of People's Biodiversity Register (PBR) has begun. However, with this amendment to the law, most biological resources have been exempted from regulations. It will increase free and uncontrolled harvesting of biological resources by companies. In the absence of any regulation on harvesting of codified biological resources, over and unsustainable exploitation of India's biodiversity will increase.

## **2.2 Compromising autonomy and independence of highest regulating body – the National Biodiversity Authority**

The Biological Diversity Act, 2002 provides a three tier governance system to regulate use of biological resources and associated traditional knowledge namely National Biodiversity Authority (NBA), State Biodiversity Boards (SBBs) and Biodiversity Management Committees (BMCs).

The act maintains the autonomy and independence of these institutions in bringing knowledge and skill to conserve and develop biological resources in the country. The Biological Diversity (Amendment) Act, 2023 has made few changes in the governance of all these institutions, which may compromise their autonomy and independence.



Source: [https://dwtyzx6upklss.cloudfront.net/Pictures/1024x536/3/7/1/11371\\_biodiversity\\_hero\\_989681.jpg](https://dwtyzx6upklss.cloudfront.net/Pictures/1024x536/3/7/1/11371_biodiversity_hero_989681.jpg)

The amendment Act provides for appointment of member secretary in the National Biodiversity Authority by the central government. The member secretary will be the chief coordination officer and convener of NBA. Moreover, the member secretary has regulating authority along with the Chairperson of NBA, which may lead to continuous conflict between two authorities.

Further, the amendment to section 18 of the Act has taken away the power of National Biodiversity Authority to autonomously issue regulations of access to biological resources and determination of fair and equitable benefit sharing.

Now, it is mandatory for the NBA to issue any regulation pertaining to these two subjects after seeking approval of the central government. This change in the law may increase involvement of the union government in rational and scientific decision making of the National Biodiversity Authority.

The amendment to the Act has also reduced penalty on violation of various provisions of the Act. The principal act had provision of imprisonment up to five years or penalty up to ten lakh rupees or both on violation of provisions under section 3, 4 and 6.

For violation of provisions under section 7 the penalty was imprisonment of up to 3 years or penalty of Rs. 5 lakh or both. The amendment to the Act has removed the provision of imprisonment. The amended penalty for violation of any provision of the law is fine ranging from Rs. one lakh to Rs. 50 Lakh.

The amended governance of the National Biodiversity Authority by appointing member secretary and seeking approval of the central government for issuance of regulations increases interference of government in the day to day functioning of the NBA.

The NBA will lose its autonomy and independence to decide on cases related to access and benefit sharing. Moreover, the removal of provision of imprisonment for violation of the Act will encourage more violations of the law and illicit practices of unsustainable harvesting of biological resources.



Source: <https://piedmontmastergardeners.org/wp-content/uploads/2023/01/garden-shed-biodiversity-1-637x320@2x.jpg>



### 3 Forest (Conservation) Amendment Act, 2023

The Forest (Conservation) Amendment Act, 2023 has made substantial changes in the principal act- the Forest (Conservation) Act, 1980. The amendment Act has inserted India's national and international climate and conservation targets such as achieving net zero by 2070 and INDC target of 2030 in the preamble of the Forest (Conservation) Act, 1980.

The reaffirmation of net zero and NDC targets create hopes for more sustainable and progressive law that addresses contemporary challenges related to environment and climate change. However, all other amendments to the principal Act are contrary to the updated preamble.

The Act has deregulated more than 27% of India's forest and has allowed many commercial activities inside regulated forests under this law in the name of ancillary activities for conservation and development of forests. Major amendments and their consequences are discussed as follows:

#### 3.1 Deregulation of more than 27% of India's forests



Source: [https://media.licdn.com/dms/image/D5612AQHHEUK1CPesNA/article-cover\\_image-shrink\\_720\\_1280/0/1678981304465?e=2147483647&v=beta&t=yGOLc1trlWDX9r1gKSMS1G3wleCeg3yjDdFn1YPpfxk](https://media.licdn.com/dms/image/D5612AQHHEUK1CPesNA/article-cover_image-shrink_720_1280/0/1678981304465?e=2147483647&v=beta&t=yGOLc1trlWDX9r1gKSMS1G3wleCeg3yjDdFn1YPpfxk)

The Forest Conservation Act, 1980 was applicable to all types of forests without any distinction and exemption. However, the Forest (Conservation) Amendment Act, 2023 has created a space for exempted forests from the purview of this Act by listing forests which shall be covered by the provisions of this Act.

According to the amended provisions only following forests will be covered by the Act:

- a.) the land that has been declared or notified as a forest in accordance with the provisions of the Indian Forest Act, 1927 or under any other law for the time being in force;
- b.) the land that is not covered under clause (a), but has been recorded in Government record as forest, as on or after the 25th October, 1980.

The amendment Act has further created a new list of forest lands which shall not be covered by the Forest (Conservation) Act, 1980. The exempted forest land is as follows:

i) Land declared as forest under the Indian Forest Act, 1927 or recorded in government record as forest on or after the 25th October, 1980, has been changed from forest use to use for non-forest purpose on or before 12th December, 1996, shall be exempted from provisions of this Act.

ii.) Forest land situated alongside of railway line and 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

iii.) Tree plantation raised on land other than recorded forest under any law.

iv.) Forest land situated within 100 km along the international border, LAC and LoC as the case may be, is proposed to be used for construction of strategic linear projects of national importance and concerning national security.

v.) Land required up to ten hectares for security related infrastructure

vi.) Land required for defence projects



Source: [https://cdn.climatechangenews.com/files/2022/02/14144150/40402030021\\_0c735a39b1\\_c.jpg](https://cdn.climatechangenews.com/files/2022/02/14144150/40402030021_0c735a39b1_c.jpg)

Between the above listed exempted and non-exempted forest land, there exists a huge forest land which is not mentioned here. Water tight boundaries created for non-exempted forest land will eventually exclude such forest land from the purview of the Act.

The India State of Forest Report (ISFR) reveals that more than 27% (i-e 1,97,159 sq km) of forest land surveyed as forest is not recorded under any law including the Indian Forest Act, 1927 and other state specific laws.



By defining the forest land to be covered by the Forest (Conservation) Act, 1980, the amendments have opened more than 27% of India's forest land for non-forest activities.

It is worthwhile to mention here that successive ISFR reports show that canopy density is improving in non-recorded forests at a higher rate compared to the recorded forests. This issue was raised by some people through their written objections to the Joint Committee of Parliament examining the Bill.

However, the MoEFCC misguided the committee stating that non-recorded forest reported by ISFR is recorded in revenue records and forest owned by individuals.<sup>[2]</sup> However the ISFR clearly mentions that forest recorded as forest in revenue records or land notified as forest by any other state and local law is reported as recorded forest in ISFR.<sup>[3]</sup>

A lot of forest land is owned by private individuals and community groups across the country. Many of them play a critical role in the local ecosystem. The amendment Act has also excluded such forest from the purview of this Act. Some activists and conservationists have raised issues of protection of such forests including Shola grasslands, Myristica Swamps and privately owned mangroves.

The short listing of forest land to be included under the Forest (Conservation) Act, 1980 and listing out forest land to be exempted from the principal Act has opened non-forest activities in a very large forest land of India. Moreover, the Act legalizes all illegal forest diversions that took place before 12 December 1996.



Source: <https://apparelresources.com/wp-content/uploads/2023/09/Leading-exporter%E2%80%99s-factory-polluting-water-bodies-in-Shivamogga.jpg>

Between the above listed exempted and non-exempted forest land, there exists a huge forest land which is not mentioned here. Water tight boundaries created for non-exempted forest land will eventually exclude such forest land from the purview of the Act.

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### 3.2 Opening of floodgate of commercial activities in forests in the name of ancillary activities



Source: [https://cdn.downtoearth.org.in/library/large/2020-11-27/0.20228700\\_1606479915\\_34.jpg](https://cdn.downtoearth.org.in/library/large/2020-11-27/0.20228700_1606479915_34.jpg)

Apart from exempting huge forest areas of India from the purview of the Forest (Conservation) Act, 1980, the amendment Act has opened the forest land for many economic/business activities in the name of ancillary to the conservation, development and management of forest and wildlife. The amendment Act provides that following more activities will not be considered as non-forest use of forest land covered by this Act:

1. establishment of zoo and safaris referred to in the Wild Life (Protection) Act, 1972, owned by the Government or any authority, in forest areas other than protected areas;
2. eco-tourism facilities included in the Forest Working Plan or Wildlife Management Plan or Tiger Conservation Plan or Working Scheme of that area; and
3. any other like purposes, which the Central Government may, by order, specify."

These newly added provisions are in addition to original provision of ancillary activities such as establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.

Insertion of purely commercial activities such as zoos, safari and eco-tourism will lead to more fragmentation of forest and disturbance to wildlife and overall ecosystem provisions. Moreover, the Act has empowered the central government to include more activities under this provision through executive order.

Many state governments including Sikkim, Meghalaya and Mizoram have objected to provisions giving authority to the central government to decide on more exempted ancillary activities under the law. Moreover, some members of the joint committee of the parliament and conservationists raised issues related to inclusion of commercial activities such as zoos, safari and eco-tourism. It was argued that these activities will also require other construction activities in the forest such as roads, hotels, restaurants and increased number of vehicles in the forest area.



Moreover, it was also argued that expansion of the ancillary activities through the amendment Act and keeping the list open for amendment by the central government through executive order will open a floodgate for all kinds of commercial activities in the forest land bypassing provisions of the Forest (Conservation) Act, 1980. Yet, the joint committee of parliament approved all amendments to the Act proposed by the government.

In its preamble, the amendment Act has inserted and reaffirmed India's national target of meeting net zero by 2070 and international commitment in form of INDC of creating carbon sink of additional 2.5 to 3.0 billion tonnes of CO<sub>2</sub> equivalent by 2030. Further, it reaffirms that India has envisaged an increase in the forest and tree cover to one-third of its land area.

All these progressive targets can be achieved by protecting existing forest, enhancing the canopy density of existing forest and expanding the forest cover outside the recorded forest land. However, all amendments made to the principal Act lead to fragmentation and commercial exploitation of forest resources.

Moreover, a large forest land has been excluded from the purview of the Forest (Conservation) Act, 1980. The inserted new preamble and amendments made under section-1 and section-2 of the Act are opposite and contradictory to each other.

## **4 The Offshore Areas Mineral (Development and Regulation) Amendment Act, 2023**

Moreover, it was also argued that expansion of the ancillary activities through the amendment Act and keeping the list open for amendment by the central government through executive order will open a floodgate for all kinds of commercial activities in the forest land bypassing provisions of the Forest (Conservation) Act, 1980.



Source: <https://apparelresources.com/wp-content/uploads/2023/09/Leading-exporter%E2%80%99s-factory-polluting-water-bodies-in-Shivamogga.jpg>

Yet, the joint committee of parliament approved all amendments to the Act proposed by the government. In its preamble, the amendment Act has inserted and reaffirmed India's national target of meeting net zero by 2070 and international commitment in form of INDC of creating carbon sink of additional 2.5 to 3.0 billion tonnes of CO<sub>2</sub> equivalent by 2030. Further, it reaffirms that India has envisaged an increase in the forest and tree cover to one-third of its land area.

All these progressive targets can be achieved by protecting existing forest, enhancing the canopy density of existing forest and expanding the forest cover outside the recorded forest land. However, all amendments made to the principal Act lead to fragmentation and commercial exploitation of forest resources. Moreover, a large forest land has been excluded from the purview of the Forest (Conservation) Act, 1980. The inserted new preamble and amendments made under section-1 and section-2 of the Act are opposite and contradictory to each other.

The Indian Parliament passed the Offshore Areas Mineral (Development and Regulation) Act in 2002 to regulate mineral resources in the territorial waters, continental shelf, exclusive economic zone and other maritime zones of India. With a delay of about 8 years, the act was notified in 2010.

The Act applies to all minerals including atomic minerals but excluding oils and related hydrocarbons. According to the latest Mineral Year Book of India published in July 2023, India has signed 541 contracts of offshore mining till now, out of which 186 are operational.<sup>[4]</sup> However, most of these contracts are related to oil and other hydrocarbons, which are out of the preview of above mentioned law.



Source: <https://i0.wp.com/iascurrentaffairs.com/wp-content/uploads/2023/08/Offshore-Areas-Mineral-Development-and-Regulation-Amendment-Bill-2023.jpg?fit=640%2C427&ssl=1>

India has been allocated an area of 75,000 sq km for exploration in the Central Indian Ocean Basin. The preliminary estimates show that there are about 380 million metric tons (MMT) of polymetallic Nodules comprising Copper, Nickel, Cobalt and Manganese in the area allotted to India.<sup>[5]</sup> Though it is considered crucial for India's economic development and strategic interests, very little progress has happened in mining of offshore minerals.



The amendments to the Offshore Area Minerals (Development and Regulation) Act, 2002 passed by the Parliament in the Monsoon session has the primary objective to make the system easier for offshore exploration and production.

While doing this, the Bill has compromised serious environmental issues pertinent to aquatic biological diversity. The Bill has withdrawn all environmental safeguards provided by the principal Act of 2002. Major provisions of the amendment bill and their environmental consequences are as follows:

#### **4.1 Removal of environmental safeguards in the process of granting of licenses and leases**

The amendment in the principal act introduces the new category namely Composite License by combining license for exploration and production lease. The composite license will be awarded for the area where the existence of minerals is not adequately established.

The composite license provides three years' time to the grantee to explore allotted sites which shall not exceed 30 minutes latitude by 30 minutes longitude.

This part of the composite license can further be extended maximum up to two more years. After the exploration for offshore mining is completed the grantee of the composite license can be allotted one or more production leases of 50 years. The total size of allotted production lease shall not be more than 15 minutes latitude by 15 minutes longitude.



Source: <https://www.adb.org/sites/default/files/page/655306/images/img-environmental-safeguards.jpg>

The government can invite applications from eligible persons for auctioning offshore mining where the existence of minerals has already been adequately established. One production lease in this case does not exceed a block of 15 minutes latitude by 15 minutes longitude. And the lease will be granted for 50 years.



## 4.2 Issues

1.) The amendments do away with all environmental safeguards while doing offshore exploration and mining. It also removes the condition on grantees to prove that they have requisite technical ability and financial resources to undertake exploration and production based on set scientific parameters.

2.) It also takes away all environmental safeguards while undertaking exploration and production in terms of minimizing pollution and protecting the environment. The principal Act had strict provisions regulating exploration/production schedule, methods of operation and expenditure incurred.

3.) The amendment also removes monitoring of offshore operation by administering authority to safeguard the environment and aquatic biological diversity.



Source: <https://www.teriin.org/sites/default/files/inline-images/marine-biodiversity.jpg>.

## 4.3 Operation in reserved offshore blocks



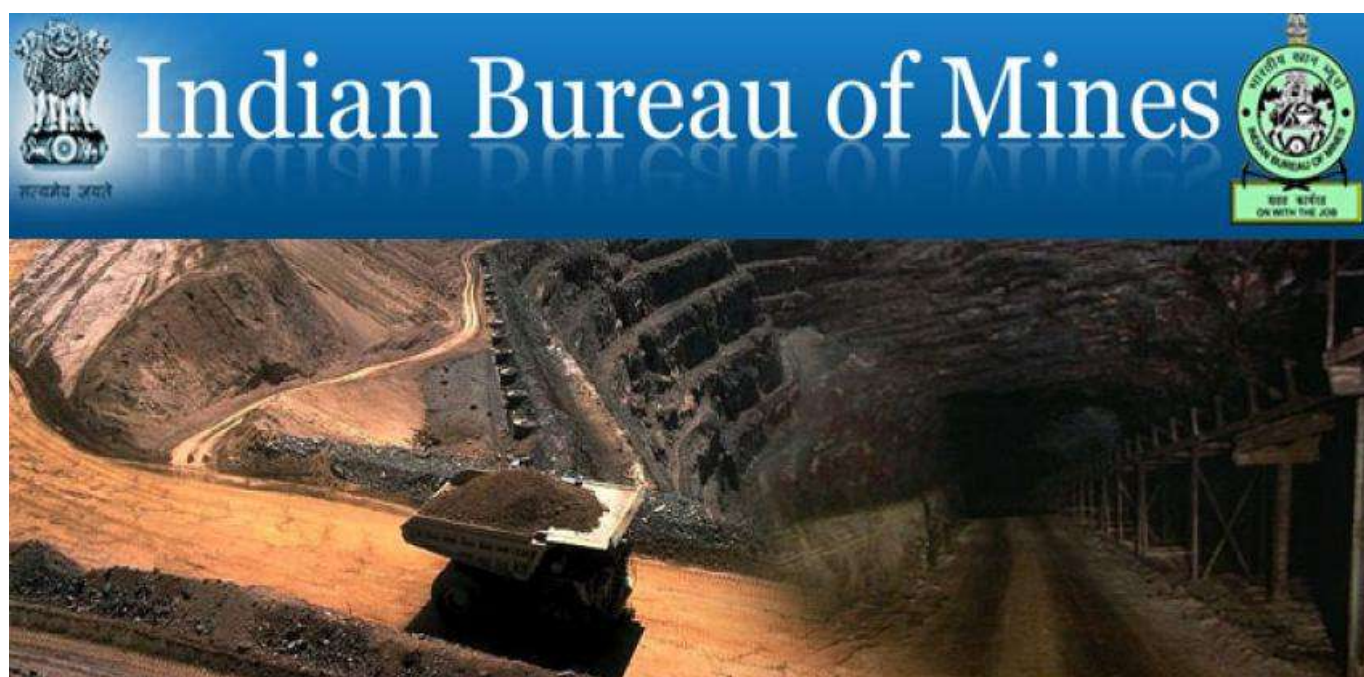
Source: <https://chemindigest.com/wp-content/uploads/2023/10/ONGC-to-Explore-Partnership-Possibilities-with-Oil-and-Gas-Majors-for-Offshore-Blocks.jpg>.

The principal act provides for reserving any offshore block which is not under any mining and exploration operation. However, the amendment to the Act now opens mining in these reserved blocks as well without de-reserving them as prescribed in the principal Act. As per new amendment, the administering authority can grant exploration license, composite and production leases to government or government owned companies/corporations. It further provides space for private companies in reserved blocks through forging joint ventures with grantee government agencies.

This amendment to the section 8 of the principal Act effectively removes any benefit of reserved offshore blocks. Moreover the conditions laid out in the section 12 and 13 to regulate granting of different licenses and leases under this Act have also been waived in the case of reserved offshore blocks.

#### **4.4 Removal of environmental reporting requirements by licensee**

The section 5 of the principal Act provides for a detailed reporting system for licensees of reconnaissance, exploration or production. It mandated the operating agency to furnish data collected during reconnaissance, exploration and production such as bathymetry, geomorphology, mineral distribution, anomaly maps, sections, core logs, location maps, plans, structures, contour maps, chemical analysis, data on current tides, waves, wind, other geophysical and geotechnical data and any other data collected to different concerned higher authorities of government of India such as Geological Survey of India and Bureau of Mines.



Source: [https://education.sakshi.com/sites/default/files/styles/slider/public/2021-11/indian\\_bureau\\_of\\_mines\\_0.jpg?h=ed058017](https://education.sakshi.com/sites/default/files/styles/slider/public/2021-11/indian_bureau_of_mines_0.jpg?h=ed058017)

It also had provision for mandatory six monthly reporting and final reports disclosing data such as geological, geophysical, geochemical, geo environmental or other valuable data collected to the Bureau of Mines. Such regulations were important to ensure ecologically sustainable operation in the offshore areas and restrict licensees to use harmful methods and techniques for exploration and production.

The amendment to section 5 of the Act has removed all these procedures. New provisions do talk about reporting of data and findings by licensee but no details of data/sample are mentioned. Also it keeps reporting duration unclear as against fixed six monthly reports in the principal Act.

This vagueness and deliberate attempt to dilute the original detail provision may allow licensees to freely operate in the offshore area without any regulation. It may also create a threat to aquatic biological diversity.



## 5 Political economy of resource grabbing and conclusions

The overall purpose of amendments to the Forest (Conservation) Act, 1980, the Biological Diversity Act, 2002 and the Offshore Areas Mineral (Regulation and Development) Act, 2002 is to reduce scope of environmental safeguards in the area of forest land, offshore areas mineral and biological resources belonging to India.

These changes were primarily driven by an objective to maximize commercial exploitation of these resources.



Source: <https://grain.org/system/articles/logos/000/000/093/larger/landgrab.jpeg>

The MoEFCC has stated that the amendments to the Biological Diversity Act, 2002 is for ease of doing business, research and innovation.<sup>[6]</sup> Similarly, in the case of amendments to the forest (conservation) Act, 1980 the MoEFCC has stated that the Act was gradually extended to all kinds of forest, which created a lot of ambiguities.<sup>[7]</sup>

To resolve these ambiguities, the amendment was proposed to limit its jurisdiction to land that is recorded as forest under the Indian Forest Act, 1927 and other state and local laws. The amendments to the Offshore Area Minerals (Regulation and Development) Act were also proposed to expedite extraction of offshore minerals and ease of doing business.

Overall, these three amendments Acts are result of the government's direct and assertive approach to pave the way of commercial exploitation of bio resources of the country at the cost of environment, biological diversity and natural resources.

In each case, the attempt is to dismantle environmental safeguard and provide easy access of natural resources to commercial entities without any environmental obligation and accountability. These amendments have deregulated more than 27% of India's forest, all codified bio-resource and traditional knowledge there to and aquatic biodiversity of 75,000 sq km area of Central Indian Ocean Basin allotted to India.

The implementation of these three laws varies substantially. For example, the Offshore Mineral Areas (Development and Regulation) Act, 2002 has not been implemented much. Not many offshore mining leases have been allotted. However, the law was very stringent to ensure sustainable mining of offshore minerals. The biological diversity Act, 2002 was half-heartedly implemented.



It was the National Green Tribunal which forced state governments to constitute Biodiversity Management Committees (BMCs) at local level and prepare the People's Biodiversity Register (PBR). On the other hand, the forest (Conservation) Act, 1980 was relatively better implemented. Moreover, the Supreme Court judgement on 12 December 1996 passed in the writ petition (civil) No. 202/1995 (popularly known as Godavarman case) ensured stricter implementation of the law.

Whether these laws were implemented well or not, the progressive regulatory framework provided by all these three laws was in the direction of sustainable use of India's forest land, all biological resources and traditional knowledge thereto and marine biodiversity of the Central Indian Ocean Basin belonging to the country.

However, these legislations were considered a hurdle in the ease of doing business by infrastructure, mining, herbal, pharmaceutical and cosmetic industries. However, the data available on the Parivesh portal of MoEFCC shows that not a single out of 10,618 project proposals for forest land diversion was rejected.

The careful examination of projects and ensuring compensatory regeneration ensured by institutions such as the Forest Advisory Committee, the National Biodiversity Authority, the State Biodiversity Boards and the Indian Bureau of Mines have been resisted by industries on two grounds, on the ground that that it takes some time in investigation and decision making and second, it imposes reporting requirements and accountability.



Source: <https://thomsonmason.com/wp-content/uploads/2009/07/pulp-mill1.jpg>

A petition (M/S) No. 3437/2016 filed by M/s Divya Pharmacy in Uttarakhand High Court against state biodiversity board of Uttarakhand is a classic case of defying law and lobbying for deregulation. The Divya Pharmacy in this case unsuccessfully argued in the court that they will not pay any amount towards the Access and Benefit Sharing (ABS) mechanism to benefit claimers as they are an Indian company.<sup>[8]</sup>

The Union Ministry of AYUSH in its written reply to the joint committee of Parliament has accepted that it had been lobbying with MoEFCC and National Biodiversity Authority to exempt the entire AYUSH industry from provisions of the biological diversity Act, 2002.

The AYUSH Ministry had itself revealed that the market size of this industry is about 18.1 billion USD and it has grown 17% from 2014 to 2020. Despite this growth the industry is reluctant to pay 0.1% to 0.5% of their gross ex-factory sale to the benefit claimants as ABS.



Source: [https://ayush.mp.gov.in/images/Slider/new\\_slide4.jpg](https://ayush.mp.gov.in/images/Slider/new_slide4.jpg)

These commercial interests of free riding at the cost of environment, ecology and local subsistence have succeeded in environmental deregulation. The MoEFCC and the Ministry of Mines have argued in the Parliament and JPC that these amendments are brought to pave the way for ease of doing business and clarifying ambiguities pertaining to commercial and infrastructural use of forests land and biological resources of the country.

One another interesting observation of these amendments is that the preambles of the Forest Conservation Act and Biological Diversity Act have been updated in accordance with India's international commitments.

The NDCs of the country for creating carbon sinks of additional 2.5 to 3 billion tonnes of CO<sub>2</sub> equivalent by 2030 and net zero by 2070 have been inserted in the forest conservation Act and included Nagoya Protocol on Access and Benefit Sharing under UN Convention on Biological Diversity. These insertions by the government indicate that it wants to maintain its global image of responsible state when it comes to global targets related to biodiversity conservation and climate change.

India has envisaged meeting its NDC target by 2030 with the help of further enriching existing forests and creating new forests outside the recorded forests. However, the amendment to the Act has opened more than 27% of its forest and all planted forest and green cover for every kind of commercial exploitation including deforestation without forest conservation regulations. Moreover, despite expressing its commitment to the Nagoya protocol on ABS, the amendment Act has effectively deregulated commercial exploitation of almost all biological resources in the name of codified knowledge.



The intention of these three amendments Acts is to aid the grabbing of natural resources by corporate interests. The ownership and entitlements of indigenous people, farmers, fisher folk, tribes and rural poor people has been a major hurdle in this blind race of natural resources grabbing. These three amendment Acts carefully curtail rights and entitlements of local guardians. These laws will delegitimize resistance of local people against unfair and unsustainable exploitation of natural wealth by industries.

The deregulated 27% forest land can now be protected only by using the Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. Forest recognized as community forest under this law can be protected under the newly amended Forest (Conservation) Act, as it specifies that community owned forest recognized by the government will be governed by the provisions of the Forest (Conservation) Act, 1980.

Efforts may be increased in implementation of the Forest Rights Act, more specifically recognition of the community forest rights. Today, for all conservationists including those who have challenged the Forest Rights Act, 2006 have only this legislation to conserve deregulated forests.



Source: [https://assets.thehansindia.com/hansindia-bucket/Forestland\\_6924.jpg](https://assets.thehansindia.com/hansindia-bucket/Forestland_6924.jpg)


Deregulation of biological resources and associated traditional knowledge is also a big setback to community led conservation and subsistence. For more than a decade, benefit claimer could not use their rights and entitlements, now when BMCs have been constituted in almost all villages and municipalities, the amendment Act has withdrawn their rights and entitlement. In the changed regulatory framework, BMCs do not have any incentive to protect biological diversity around them from unsustainable exploitation.

Moreover, these committees are also helpless in protecting biological resources for their own subsistence. A robust and detailed People's Biodiversity Register (PBR) can only help BMCs to protect their biological resources. PBR collecting all details of bio resources and local traditional knowledge can distinguish their records from codified knowledge as defined in the Act. Therefore, more efforts may be made in strengthening BMCs and preparation of highly detailed PBRs. Overall, empowering communities and their institutions to assert their rights and entitlements can only help in arresting blind race of resource grabbing.



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