

Legislative Brief

The Compensatory Afforestation Fund Bill, 2015

The Bill was introduced in the Lok Sabha on May 8, 2015.

It was referred to the Standing Committee on Science & Technology, Environment & Forests on May 21, 2015. The Committee is scheduled to submit its Report on the first day of the Winter session of Rajya Sabha.

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Highlights of the Bill

- ◆ The Bill establishes the National Compensatory Afforestation Fund under the Public Account of India, and a State Compensatory Afforestation Fund under the Public Account of each state.
- ◆ These Funds will receive payments for: (i) compensatory afforestation, (ii) net present value of forest (NPV), and (iii) other project specific payments. The National Fund will receive 10% of these funds, and the State Funds will receive the remaining 90%.
- ◆ These Funds will be primarily spent on afforestation to compensate for loss of forest cover, regeneration of forest ecosystem, wildlife protection and infrastructure development.
- ◆ The Bill also establishes the National and State Compensatory Afforestation Fund Management and Planning Authorities to manage the National and State Funds.

Key Issues and Analysis

- ◆ The Bill establishes the Funds for compensatory afforestation and forest conservation. However, there are several factors (other than administration of funds) which affect compensatory afforestation and forest conservation. These factors are mentioned below.
- ◆ A 2013 CAG report noted that state forest departments lack the planning and implementation capacity to carry out compensatory afforestation and forest conservation. With the share of funds transferred to states increasing from 10% to 90%, effective utilisation of these funds will depend on the capacity of state forest departments.
- ◆ Procuring land for compensatory afforestation is difficult as land is a limited resource, and is required for multiple purposes, such as agriculture, industry, etc. This is compounded by unclear land titles, and difficulties in complying with procedures for land use.
- ◆ A High Level Committee on Environment Laws observed that quality of forest cover has declined between 1951 and 2014, with poor quality of compensatory afforestation plantations being one of the reasons behind the decline.
- ◆ The Bill delegates the determination of NPV (value of loss of forest ecosystem) to an expert committee constituted by the central government. As NPV constitutes about half of the total funds collected, its computation methodology would be important.

PART A: HIGHLIGHTS OF THE BILL

Context

Forests are regulated by both the centre and states under Entry 17A of the Concurrent List of the Constitution. State governments identify forest lands within their states, and these are protected and regulated under various laws like the Indian Forest Act, 1927 and the Forest (Conservation) Act, 1980 (FCA). The key law governing diversion or use of forests for non-forest purposes (like industrial or infrastructure projects) is the FCA.

When an agency seeks diversion of forest land for a project, afforestation must be carried out to compensate for loss of forest cover.² This is called ‘compensatory afforestation’. The agency seeking diversion must provide land for compensatory afforestation, and pay for the plantation of trees on the land provided to the state. In addition, loss of the forest ecosystem must be compensated through payment of net present value of forest (NPV). There may also be other project specific payments. Currently, compensatory afforestation and NPV payments account for 13% and 51% of the total funds collected by states.³ Table 1 provides the extent of forest diversion that has taken place under the FCA, and the compensatory afforestation achieved.

Table 1: Facts on diversion of forests (in sq.kms)

Total Forest Cover (2013)	697,898
Forests Diverted (1980-2014)	12,006
Compensatory afforestation targeted*	8,482
Compensatory afforestation achieved	6,747 (i.e.80%)

* Projects involving diversion upto 1 hectare, underground mining below 3 metres, etc. do not require compensatory afforestation

Sources: State of Forest Report 2013; Parliamentary Questions¹; PRS.

In 2002, the Supreme Court noted that states were underutilising the collected funds, and ordered that they be centrally pooled in a Compensatory Afforestation Fund.⁴ Subsequently, the Court set up the National Compensatory Afforestation Fund Management and Planning Authority (National CAMPA) to manage this Fund.⁵ A Bill was introduced in Parliament in 2008 to provide a statutory framework for this authority, but it lapsed with the dissolution of the 14th Lok Sabha. In 2009, states also set up State CAMPAs which presently receive 10% of the funds from the National CAMPA and use them on afforestation and forest conservation.⁶ However, a 2013 CAG audit report noted that these funds continue to be underutilised.⁵ As on May 2015, the National CAMPA alone had accumulated Rs 38,000 crore as unspent funds.

The Compensatory Afforestation Fund Bill, 2015, was introduced in Lok Sabha on May 8, 2015 to regulate the collected funds. The Standing Committee on Environment & Forests is currently examining this Bill.

Key Features

Establishment of Funds and their administration

The Bill establishes National and State Funds for compensatory afforestation and forest and wildlife protection and brings them under the Public Account of India*, or the concerned state Public Accounts, respectively.

Table 2: Features of the proposed National and State Funds

Subject	National Fund	State Funds
Sharing of funds collected for diversion of forests	<ul style="list-style-type: none"> 10% of all monies collected (currently, centre keeps 90% of funds collected, and passes on 10% to states) 	<ul style="list-style-type: none"> 90% of all monies collected
Utilisation of funds	<ul style="list-style-type: none"> Schemes related to the forestry or wildlife sectors; Monitoring and evaluation of activities undertaken with the National Fund and State Funds 	<ul style="list-style-type: none"> Compensatory afforestation component on site specific schemes approved by the government alongside diversion; Net present value component on forest regeneration and protection, and infrastructure development
Fund Management Authorities	<ul style="list-style-type: none"> National CAMPA will be set up comprising up to 49 members (Environment Minister, government and forest officers, experts); National CAMPA will have: (i) a governing body to formulate policy, (ii) a monitoring group for monitoring and auditing, and (iii) an executive committee to decide and implement schemes 	<ul style="list-style-type: none"> State CAMPAs will be set up comprising up to 52 members (Ministers, government and forest officers, experts, representatives of NGOs and local bodies); State CAMPAs will have: (i) a governing body to formulate policy, (ii) a steering committee to monitor utilisation, and (iii) an executive committee to decide and supervise annual operations

* Money held in provident funds, small savings, government income for expenditures on specific projects, etc. form part of the Public Account. Funds in the Public Account must be utilized for the specific purpose assigned to them.

Determination of Net Present Value (NPV)

NPV is the quantification of environmental services provided by the diverted forest area. It will include: (i) goods and services (like wood and tourism), (ii) regulating services (like climate regulation), (iii) non-material benefits (like recreation), etc. NPV will be determined by an expert committee set up by the central government.

PART B: KEY ISSUES AND ANALYSIS

Factors that affect compensatory afforestation and forest conservation

Statement of
Objects &
Reasons,
Clauses 3, 4, 5
& 6 of the Bill

The Bill sets up National and State Funds that collect payments for diversion of forest land for non-forest purposes (like industrial or infrastructure projects). Currently, 90% of these funds are kept at the centre, and the remaining are disbursed to the states. The Bill reverses this by providing 10% of the monies to the National Fund, and 90% to the State Funds. Therefore, the Bill envisages making more funds available to the states to undertake compensatory afforestation and forest conservation.

Compensatory afforestation involves undertaking afforestation to compensate for loss of forest cover. Forest conservation includes regenerating forests, forest and wildlife protection, developing infrastructure for these purposes, etc. However, there are several factors (other than how these funds are administered) which affect compensatory afforestation and forest conservation. These include:

- **Lack of capacity:** In a 2013 CAG audit report, it was observed that states did not utilise 39% of the funds released to them from the centre because their forest departments lacked the planning and implementation capacity.⁵ 11 out of the 30 states audited were unable to spend more than half of their funds between 2009 and 2012. With more funds available to the states, effective utilisation of these monies will depend on the capacity of forest departments to carry out compensatory afforestation and forest conservation.
- **Difficulty in procuring land:** Both the CAG and the government have noted that it is difficult to procure land for compensatory afforestation.^{5,7} The principle of compensatory afforestation requires that when forest land is diverted for an agency, the agency must purchase an equivalent piece of land for compensatory afforestation. This 'land for land' requirement is difficult to satisfy as land is a limited resource, and is required for multiple purposes (such as agriculture, industry, etc.). Further, several issues arise with regard to purchase of land, such as lack of clear land titles, difficulty in complying with procedures for land use, etc.⁸ Also, land for compensatory afforestation cannot be acquired under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.⁹
- **Poor quality of compensatory afforestation:** In 2014, a High Level Committee reviewing environmental laws noted that while total forest and tree cover has increased (4 lakh sq. kms in 1951 to 7.7 lakh sq. kms in 2014), the quality of this cover has significantly declined.¹⁰ The Committee observed that one of the reasons behind this decline is the poor quality of compensatory afforestation plantations. When plantation quality is poor, the saplings planted may not survive because of poor soil conditions, lack of proper maintenance, etc.⁵

Determination of NPV

Clause 2(j) of
the Bill

Other than compensatory afforestation payments, the National and State Funds include payments for net present value of forests (NPV). NPV is the valuation of loss of the forest ecosystem (such as timber, biodiversity, carbon storage). The Bill delegates determination of NPV to an expert committee set up by the central government (composition of committee not been provided). However, as NPV accounts for 51% of the collected funds, it may be important to understand the nature of the function delegated, i.e. how NPV is computed.³

In the past, expert committees have examined methodologies for computation of NPV, and have made varying recommendations.¹¹ Broadly, the computation of NPV involves categorizing forests on the basis of their ecological value, and valuing a selected basket of forest goods and services for these categories over a period of time. Currently, NPV is computed on the basis of the recommendations of the Supreme Court appointed Centrally Empowered Committee (2007). Subsequently, the government appointed the Madhu Verma Committee to examine the methodology of computing NPV and recommend revisions to the methodology. This committee submitted its report in 2014. Table 3 summarizes the key differences between the current practice of determining NPV and recommendations of the Madhu Verma Committee (2014).

Table 3: Comparison of current practice and expert committee recommendations on NPV

	Current Practice	Madhu Verma Committee (2014)
Classification of forests to calculate NPV	18 categories based on forest type and density	Expanded to 56 categories using same factors (forest type, density) allowing for more forest site-specific calculations
List of forest goods and services valued	11 goods and services (such as timber, fuel-wood, carbon storage, eco-tourism)	12 goods and services (adds soil conservation, water recharge, etc.; removes ecotourism, etc.)
Time period of calculation	Valuation over a 20 year period	Depends on time taken by the dominant species in each category of forests to mature
Use of NPV money	Centre (90%) and states (10%)	Centre (16%), state (34%) and local (50%) as local groups depend the most on forests for livelihood and subsistence

Sources: Revision of NPV (Madhu Verma Committee), 2014; Centrally Empowered Committee, 2007; Supreme Court decision⁷; PRS.

Comparison with 2008 Bill and Standing Committee Recommendations

The Compensatory Afforestation Fund Bill, 2008 sought to establish a National Fund. The Standing Committee examining this Bill observed that this would cause centralisation of power, and noted that the Bill had been drafted without consulting states. In this context, it recommended the Bill be withdrawn.¹²

Table 4: Comparison between 2015 Bill, 2008 Bill and Standing Committee Recommendations

2008 Bill	Standing Committee on the 2008 Bill	2015 Bill
Allocation of funds		
<ul style="list-style-type: none"> ▪ Sets up a National Fund to receive funds for diversion of forest land; ▪ National CAMPA will determine allocations to states on the basis of their contributions and court orders 	<ul style="list-style-type: none"> ▪ This will centralise control, and delay compensatory afforestation as states collect and use the funds; ▪ Encroaches upon states powers and functions 	<ul style="list-style-type: none"> ▪ Sets up National (10% funds) and State Funds (90% funds) ▪ National CAMPA will no longer decide allocations to states as funds sharing ratio is provided in the Bill
Utilisation of funds		
<ul style="list-style-type: none"> ▪ Generally on afforestation, monitoring, etc.; specifically <ul style="list-style-type: none"> • compensatory afforestation payments on site specific schemes approved alongside diversion, • NPV on Green India programme*, regeneration of forests, etc. 	<ul style="list-style-type: none"> ▪ Compensatory afforestation funds must be <i>only</i> spent on compensatory afforestation (not on afforestation, monitoring, etc.)** 	<ul style="list-style-type: none"> ▪ Forestry and wildlife related schemes, monitoring, etc.; specifically <ul style="list-style-type: none"> • compensatory afforestation funds: same as the 2008 Bill • NPV: same as 2008 Bill except Green India no longer specified
Functions of the fund management authorities		
<ul style="list-style-type: none"> ▪ Achieve afforestation, oversee Green India programme and watershed development, monitor fund utilisation, withhold funds if there is improper utilisation, formulate policy, etc. 	<ul style="list-style-type: none"> ▪ Authority should be responsible for <i>achieving</i> compensatory afforestation, not afforestation programmes, watershed development, monitoring, etc. 	<ul style="list-style-type: none"> ▪ Formulate broad policy, formulate and execute forestry and wildlife related schemes, decide and supervise annual operations to be undertaken from funds, monitor and audit fund utilisation, etc.

* Programme for afforestation ** Compensatory afforestation is different from afforestation because it is additional plantation activity to compensate for loss of forests; Sources: Compensatory Afforestation Fund Bill, 2015; Compensatory Afforestation Fund Bill, 2008; 194th Report of Standing Committee on Science & Technology, Environment and Forests; PRS.

1. Starred Question No. 84, Rajya Sabha, April 30, 2015; Starred Question No. 117, Lok Sabha, July 28, 2015.
2. Handbook of Forest (Conservation) Act, 1980, Ministry of Environment & Forest, 2004.
3. Summaries of FCA Projects, Website of e-Green Watch, Last visited on October 5, 2015.
4. TN Godavarman vs Union of India, Writ Petition 202 of 1995, Supreme Court, October 29, 2002, March 12, 2014.
5. Report of the Comptroller and Auditor General of India on Compensatory Afforestation in India, Report No. 21 of 2013.
6. The Guidelines on State Compensatory Afforestation Fund Management and Planning Authority, July 2, 2009.
7. F. No. 11-306/2014-FC, Government of India, Ministry of Environment, Forests & Climate Change, August 8, 2014.
8. Chapter II of Economic Survey, 2013-14.
9. Section 2, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
10. Report of High Level Committee to review various Environment Acts, November 2014.
11. Central Empowered Committee Report, 2007, Report on the Revision of Rates of NPV, 2014.
12. 194th Report, Standing Committee on Science & Technology, Environment & Forests, October 22, 2008.

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