



**Whose Fund is it anyway?**

**The turf on the funds under Compensatory Afforestation Fund Bill in India**

**By**

**Enviro Legal Defence Firm**

**August 2015**



## A Policy Brief on Compensatory Afforestation Fund Bill 2015

Compiled by ELDF  
(Briefing Paper III for FGSG)

### Policy Pointers

India has a large sum of money that has been collected in an Ad-Hoc CAMPA fund to be used of Afforestation activities

Concept of collection of funds for Compensatory for diversion of forest land introduced by the Supreme Court of India in 2002

Initiatives for optimal utilization of the existing resources needed rather than fighting over control over the money.

Real question on how to compensate the loss of forests, how to secure the livelihoods of those dependent upon diverted forests and how to settle the rights of communities is completely overlooked

Measures needed to involve and support communities in afforestation activities through existing forestry and programs

### Executive Summary:

India has a vast pool of funds collected for carrying out Afforestation activities (over Rs. 38,000 crores and interest on accumulated unspent balance- approximately Rs. 6,000 crore per annum<sup>1</sup>) that is lying unspent in an Ad Hoc Central Fund. There has been an ongoing dispute over the control and utilization of these since 2006. Recently, a “Compensatory Afforestation Fund Bill, 2015”, was introduced in the Indian Parliament to establish an institutional and regulatory framework for the same. However, the provisions of the bill continue to be a source of conflict on control of funds between the center, states and the forest department with disputes regarding the strong control of the Central Government, the stringent directives for utilization of funds and absence of funds for forestry activities in states where no forest diversion has taken place. The bill also raises critical issues relating to the potential impact that effective management of the funds could have on the forest dwelling communities and how the funds can help India meet its targets for climate change. But in this war of control of the money, what is being thrown to the background is the real issue- how do we compensate for the loss of valuable forest cover in the country and more importantly the manner in which regeneration of forests in India is being planned.

### Introduction:

The Compensatory Afforestation Fund Bill, 2015, introduced in the Indian Parliament on 29<sup>th</sup> April 2015, seeks to provide an institutional mechanism, both at the Centre and State, to manage the funds collected from user agencies diversion of forests land for non forestry purposes under the Forest (Conservation) Act, 1980<sup>2</sup> (FCA). To this end, the bill seeks to constitute authorities and a Compensatory Afforestation Fund (CAF) at the national level and at each of the State and Union Territory<sup>3</sup>.

### Proposed Institutional Framework for Fund Management

The overall structure proposed by the bill is creation of funds at the national level -Nation Compensatory Afforestation Fund (NCAF) and at state level- State Compensatory Afforestation Fund (SCAF). These are to be backed by national and state authorities and a national level monitoring agency.

<sup>1</sup> [http://pmindia.gov.in/en/news\\_updates/compensatory-afforestation-fund-bill-2015/](http://pmindia.gov.in/en/news_updates/compensatory-afforestation-fund-bill-2015/)

<sup>2</sup> These include funds collected for compensatory afforestation, additional compensatory afforestation, penal compensatory afforestation, net present value, undertaking activities related to protection of biodiversity or wildlife and all other amounts recovered from such agencies under the Forest (Conservation) Act, 1980

<sup>3</sup> These, as per the Bill, include “artificial regeneration (plantations), assisted natural regeneration, protection of forests, forest related infrastructure development, Green India Programme, wildlife protection and other related activities and for matters connected therewith or incidental thereto”.



#### **Institutional Structure Proposed in the Bill:**

- (i) National and State Funds to credit amounts collected by State/ Union Territories
- (ii) National Authority.
- (iii) State Authority in each State/ Union Territory
- (iv) Monitoring Group, consist of experts in the field of environment, economics, forest, remote sensing and geographical information system and social sector and the DG-FSI, MOEFCC to assist the National Authority in monitoring and evaluation

#### **Powers and functions of the Authorities:**

The three arms of the national and state authorities (governing, executive and monitoring) have specific functions. The governing body has to formulate policy, approve proposal for schemes, provide mechanism to States to resolve inter-State or Centre-State issues and formulate procedures for delegation of financial and administrative powers. The executive body has to implement to decisions of the governing body and the monitoring group has to evolve independent system for monitoring and evaluation of the works implemented. Further, the Comptroller and Auditor-General of India also has the power to audit the fund utilization. The Center has wide rule making powers relating to management of funds, their utilization and accounting procedure of crediting funds.

#### **Direct fund transfer to States diverting forest land**

The biggest change proposed by the bill is permitting funds for diverted land to be credited directly to the State authorities rather than being released through the Central authority. Needless to say, that this mechanism would be extremely attractive for the states since they would get access to the entire sum of money for the diverted forestland.

#### **Release of accumulated funds from Ad Hoc Authority to States**

In addition to this the states would get control over the long pending huge sums of funds lying with the ad hoc CAMPA body. However, this is being perceived as a downside by states with low forest cover since under the new mechanism, they would not receive any funds for investment in rejuvenating the forest cover in their states.

#### **Demarcation of funds for specific activities**

A positive aspect of the bill is the mandatory requirement for State Authorities to use funds collected under different heads for specific purposes and release monies to as per plan of operation finalized by State and National Authority.

#### **Utilization of Funds:**

***Compensatory Afforestation including , additional CA, penal CA and CATP*** - Used as per site-specific schemes submitted by the State along with the approved proposals under FCA

***Net present value and penal net present value*** -Used for artificial regeneration (plantation), assisted natural regeneration, forest management, forest protection, infrastructure development, wildlife protection and management, supply of wood and other forest produce saving devices and other allied activities



**Interest accrued on funds** -Used for conservation and development of forest

**Funds accrued through diversion of Protected Areas:** Used exclusively for undertaking protection and conservation activities in protected areas of the States/ Union territory and in exceptional circumstance, a part of the corpus may also be used subject to prior approval of the National Authority;

**Trans-boundary forestry issues:** to be decided by and transferred to requisite states by National Authority, in consultation with the concerned State Authorities

## 1. Key Issues that emerge from the Bill:

### Overarching Issue

- **Shift of focus from Compensatory Afforestation to Fund Management:** As evident from the by the title of the Bill i.e. “Compensatory Afforestation Fund Bill”, the entire focus of the bill revolves around the fund management. The real reason due to which the entire concept of Compensatory Afforestation arose and the need to create a fund to ensure due governance of compensatory afforestation has been lost. The primary issue that needs to be revisited and assessed is whether the current framework is offsetting the loss of forests and in case of the latter what is the alternate mechanism that needs to be established and how.

### Institutional Issues:

- **Lack of clarity on reconstituting the existing CAMPA framework in all state states:** The implementation of the bill would lead to an overhaul in the existing framework in states for CA and the programs that are already underway. How this would be done is still unclear.
- **Issues relating to crediting the funds to states from where forests are diverted:** The provisions for direct crediting of funds to states where diversion has taken place would imply investment in selective forest rich states. It is believed that one of the main reasons for the country’s forest loss or degradation has been lack of adequate investment in the forestry sector<sup>4</sup>. This provision has therefore been opposed on the grounds that these funds should be used for investment in forest irrespective of the state<sup>5</sup> with extra funding for states/ UTs where actual deforestation takes place.
- **Mainstreaming National Authority with forestry wing of Environmental Ministry(MOEFCC):** It is proposed that a more prudent approach might be to mainstream the fund management into the main structure of the MOEFCC’s forestry wing. MoEFCC may consider creation of Forestry Commission on the lines of British Forestry Commission or Forestry Board on the lines of Swedish Forestry Board under the Chairmanship of DGF & SS with three clear wings of Forest, Wildlife and CA. Rest of the structure as proposed in the Bill can continue. This will provide flexibility to manage the fund could have been accordingly proposed. However, this would not ensure optimum utilization of the funds for afforestation, which is the real issue at hand.

### Environmental Issues:

- **Assessment of the Loss and its Compensation:** The assessment of the loss of forest cover, the loss of biodiversity and the nature of forests diverted till date needs more introspection. The fact as to whether can natural forests and their diversion be really compensated especially from the livelihood perspective are critical issues that are missing in the current Bill.

<sup>4</sup> Since independence not more than 1% of the plan outlay has been allocated to forestry sector

<sup>5</sup> Perusal of the statement of CAMPA fund ( As on 31.3.2014 ) on website of MoEF , reveals that out of total principal amount of Rs 23,901 crores with Ad-hoc CAMPA , Rs 17,919 crores ( 75 % ) are from 9 states only. It means as per current proposal , 75 % money will go to these 9 states only.



- **Clarity on selection of CA land:** More clarity is needed on the criteria for selection of CA land and settling the rights of the forest dependent communities whose land is taken for CA and ensuring CA land to be in the same ecosystem as the diverted land.
- **Involvement of Communities in CA activities:** Involvement of communities in compensatory Afforestation and related activities needs more thinking and integration.

### **Issues Relating to Fund Utilization**

- **Lack of provisions for linking the utilization of funds collected to other ongoing forestry activities:** There are no provisions for linking collected funds for JFM activities, for post claim support under FRA or for meeting India's commitments under the REDD+ framework.
- **Approval from National Authority for fund utilization:** Even though plan for undertaking CA are submitted and approved by MOEFCC with the original proposal for diversion of forestland, the Bill mandates fresh from state and national authorities for undertaking CA activities. This duplication of approvals would cause delay in Afforestation activities. It would be more prudent to allow States / UTs to use specific project based money for site specific activities approved with the FC clearance as soon it is received rather than seeking fresh approvals with monitoring from National Authority.
- **Utilizing NPV collected for supporting forest conservation in all states:** Perhaps the funds collected as NPV should used for activities proposed for the entire country rather than limiting to the States where actual diversion has taken place. The entire concept of NPV is to compensate for the ecological damage due to deforestation. Since environment & ecology is all pervasive, it is not appropriate to limit its use to that particular state only.

#### **Would making rules under FC Act be better than a new Act altogether?**

The very need of the Bill has been questioned on the grounds it does not alter the existing operating management system. The same could be achieved either through executive order (EO) or making rules under FCA. The positive side of either is easy amending power. However, downside is that both EO and rules do not have strength of law and hence would be always be on a weaker footing.

## **2. Concluding remarks:**

The bill holds true only to its name—"Compensatory Afforestation Fund Bill". It proposes only a mechanism for management of funds collected for compensatory afforestation. However, it fails to deal with the critical issues of how to compensate for the loss of forest cover and is mere fund collection sufficient to offset forest cover loss. The critical questions relating to CA of who maps the loss in forest cover, ensures and monitors that the loss is commensurate for and that too in the same ecosystem, what is the mechanism and what are the safeguards that need to be kept in consideration while planning for compensatory afforestation, who decides the state priorities and how do we elicit forest dependent communities' views in utilisation of CAMPA funds are questions that are overlooked in the bill. Even if the focus of the present bill is only fund management all the above are aspects that need deliberation and parallel action in order to effectuate really effectuate the need and purpose of compensatory afforestation.