



**PRIMER ON PROSECUTION UNDER  
THE VAN (SANRAKSHAN EVAM  
SAMVARDHAN) ADHINIYAM**

September ~ 2024



**PRIMER ON PROSECUTION UNDER  
THE VAN (SANRAKSHAN EVAM SAMVARDHAN)  
ADHINIYAM**

**[KNOWN AS THE FOREST CONSERVATION ACT, 1980]**

**A Joint Publication By:**



National Law School of India University, Bengaluru



Centre for Environmental Law, Education, Research & Advocacy



Ministry of Environment, Forest and Climate Change,  
Government of India, New Delhi

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## **FOREWORD**

As the country strives to meet the demands of a growing population and rapidly expanding economy, infrastructure projects such as roads, railways, dams, and power lines are inevitable, and forest land use is often necessitated. Balancing these developmental needs with the imperative to conserve forests and biodiversity is a challenging task, and decision-making must be both legally sound and ecologically responsible.

The “Primer on Prosecution under the Van (Sanrakshan Evam Samvardhan) Adhiniyam 1980” represents a pioneering effort in forest law. It stands out as the first piece of practical research work to provide a comprehensive guide on operationalizing the violation provisions under this law. It is valuable as a reference for legal interpretation, a manual for operational guidance, and a resource for training and capacity-building. It fills a significant gap in the available literature and offers much-needed support to those on the front lines of forest conservation. The key strength of the Primer is its dual focus on legal interpretation and practical application. It goes beyond merely outlining the provisions of the law to delve into its operational aspects, offering a step-by-step guide for those tasked with enforcing its mandates.

This Primer is the product of a collaborative endeavor led by the Centre of Environmental Law, Education, Research & Advocacy (CEERA), National Law School of India University (NLSIU), Bengaluru, and it draws on the active involvement and cooperation of a wide array of stakeholders, including practicing foresters, legal experts, policymakers, and environmental advocates. Particularly, the involvement of practicing foresters has added a critical layer of practical insight that sets it apart from any other available legal briefing or commentary. Consideration of on-the-ground experience has informed the practical orientation, making it a hands-on guide that reflects the real-world challenges of forest management and law enforcement. This practical orientation is complemented by contributions from legal scholars and policy experts, who provide a broader contextual

understanding of the law's objectives and its place within India's environmental governance framework.

As the government continues to plan for the dual objectives of development and environmental sustainability, this Primer offers a timely and valuable resource that can inform and support the work of the agencies tasked with fulfilling these objectives. The authors have done an admirable job of translating complex legal language into accessible terms, ensuring that the Primer is useful for legal experts as well as practitioners on the ground who need to navigate the intricacies of the law in their daily work.

I am confident that the ease of understanding Primer offers will promote more effective enforcement of the Van (Sanrakshan Evam Samvardhan) Adhiniyam 1980. I specifically commend **Prof. (Dr.) Sairam Bhat**, Professor of Law, NLSIU, **Shri. Mahesh Kumar Shambhu, IFS** (Director General of Forests of Forests (Central), RO, Bengaluru), Team CEERA & the National Law School of India University, Bengaluru, and all the contributors for their efforts in bringing this valuable resource to fruition.

September 2024

**DR. JAGMOHAN SHARMA, IFS, PHD**  
**DIRECTOR**  
INDIRA GANDHI NATIONAL FOREST ACADEMY, DEHRADUN

## ACKNOWLEDGMENT

It gives me immense privilege and satisfaction to share this Primer on the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980, a culmination of intensive research coupled with a pragmatic understanding of the law and its practice towards supporting the prosecution of offences under the VSESA, 1980. This Primer is an outcome of the collective knowledge acquired through various academic, research, litigation, advocacy, drafting, training, and capacity-building activities of the Centre for Environmental Law, Education, Research and Advocacy [CEERA] at the National Law School of India University, Bengaluru.

At the outset, I express my gratitude for the support extended by **Shri. Chandra Prakash Goyal, IFS** (Director General of Forests & Special Secretary, GoI) and the entire team at MoEFCC, New Delhi, **Shri. Mahesh Kumar Shambhu, IFS** (Director General of Forests of Forests (Central), RO, Bengaluru) from the Regional Office of the Ministry of Environment, Forest & Climate Change, Government of India, and **Shri. Sunil Kumar Mishra, IFS**, Nodal Officer (FCA) for the grants received from the Forest Department, Government of Chhattisgarh, which enabled us to publish this Primer.

I express our deepest gratitude to **Prof. (Dr.) Sudhir Krishnaswamy**, Vice Chancellor, National Law School of India University who has always been our constant source of inspiration, encouragement, and motivation.

Further, I extend my wholehearted appreciation to each member of the CEERA Team who has contributed to this endeavour. I would like to thank Mr. Vikas Gahlot, Adv. Rohith Kamath, Adv. Jaibatraka Mohanta, Ms. Gayatri KK, & Adv. Gayathri Gireesh for their valuable contributions.

Lastly, in the spirit of collective responsibility for the future of environmental law, I hope that this Primer serves as guiding material for the Forest Officers of various state governments, and Officers of the Ministry of Environment, Forest & Climate Change, Government of India, who are empowered to ensure the implementation of the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980.

**PROF. (DR.) SAIRAM BHAT**  
**PROFESSOR OF LAW**

CEERA, NATIONAL LAW SCHOOL OF INDIA UNIVERSITY (NLSIU), BENGALURU



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## PREFACE

The Forest (Conservation) Act, 1980 (FCA) [renamed as the *Van (Sanrakshan Evam Samvardhan) Adhiniyam*, 1980 (VSESA)] is an important Central Legislation that is dedicated to safeguarding India's forest cover from indiscriminate exploitation. VSESA aims to preserve forests and achieve a critical balance between conservation and development, especially with regard to the diversion of forest land for non-forest purposes. It mandates obtaining prior approval (Forest Clearance) from the Central Government before a State Government or any other authority passes any order diverting forest land.

In one of the major amendments to the Act in 1988, the contravention of the provisions of the Act was criminalised by inserting Sections 3A and 3B. Since then, a lot of development has taken place, and the Act has been supplemented by a host of instruments such as Forest Conservation Rules, Guidelines and Clarifications issued from time to time. Further, the Supreme Court of India and the High Courts have played an instrumental role in strengthening the evolving jurisprudence related to forest conservation.

The effective enforcement of environmental legislation is vital for the preservation and sustainable management of natural resources. However, since VSESA is a short piece of legislation, there is a lack of statutory clarity concerning several procedural aspects. Though there are guidelines and handbooks on the implementation of various aspects of VSESA, such as the MoEFCC Handbook of Forest (Conservation) Act, 1980 Consolidated Guidelines and Clarifications issued under *Van (Sanrakshan Evam Samvardhan) Adhiniyam*, 1980 and *Van (Sanrakshan Evam Samvardhan) Rules*, 2023 and the Handbooks issued by various states such as Andhra Pradesh, they do not adequately cover the modalities of investigation and prosecution of offences under VSESA. Further, these issues are not sufficiently addressed in other books and manuals on forest crimes in India.

Therefore, the VSESA was enacted in 1980 to bring about a uniform centralized regulatory framework for forest governance in India. The purpose and aim was to alter the right of the state governments in dealing with forest land, hence the Act provides for primarily sanction and liability to be imposed only on government officers who permit or regularize the diversion of forest land for non-forest purposes.

A token imprisonment of fifteen (15) days is prescribed under this legislation, which though emphasizes that the state has penal consequences, however, does not invoke serious implementation and prosecution. Thus, there has been a need from the Ministry of Environment, Forest and Climate Change that there is a lack of prosecution jurisprudence under the VSESA. The process, procedure, evidence, and documentation have never been attempted to be formulated, and hence in pursuit of the above and to develop a toolkit for prosecution the very first of its kind, has been undertaken in this project.

In light of the above and to address this gap, this Primer covers the procedural aspects of penal provisions under VSESA. A toolkit with the Incident report, offence report, format of complaint before the Magistrate, accused challan, seizure list & prosecution report is appended at the end so that it serves as a ready reckoner for the officers in the field. It is an attempt to provide clarity and transparency on issues related to the prosecution of offences under VSESA, based on practical insights and experiences in the criminal justice administration system. The primer provides a guidance-based approach based on flexible, alternative practices to facilitate the effective implementation of VSESA.

Even with sincere and substantial efforts, the task of managing the environmental landscape continues to be extremely complex, mainly given the challenge of striking a harmonious balance between development and conservation.

This Primer has been drafted in a manner that gives insight to on-ground field officers, lawyers, judges, adjudicating agencies, researchers, and environmentalists. It begins with analyzing the VSESA and discussing the ambit of non-forest purposes. Further, the violations under the DSESA are discussed, followed by the pre-trial compliance and the procedure for prosecution. Lastly, the toolkit towards the end serves as a guide for the documentation to be produced before the Courts.

Towards the end, this Primer aims to strengthen forest management efforts by eliminating procedural ambiguity and providing guidance on the practical legal aspects of enforcing penal provisions under VSESA. It is hoped that this Primer will aid the Forest Department in deterring illegal activities that undermine the integrity of forest ecosystems and will foster the seamless enforcement of the provisions of VSESA.

**PROF. (DR.) SAIRAM BHAT**  
**PROFESSOR OF LAW**

CEERA, NATIONAL LAW SCHOOL OF INDIA UNIVERSITY (NLSIU), BENGALURU

# **1 THE VAN (SANRAKSHAN EVAM SAMVARDHAN) ADHINIYAM, 1980**

## **1.1 ABOUT THE LAW**

The Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 (VSESA), formerly known as the Forest Conservation Act, 1980 (FCA), is one of the shortest enactments in the area of environmental law, comprising just 5 sections. It was enacted with the aim to provide for the conservation of forests, to check the indiscriminate deforestation and diversion of forest land, and to achieve a critical balance between conservation and development. VSESA was designed to achieve these objectives by regulating the de-reservation of forests and diversion of forest land for non-forest purposes, for which it mandated the prior approval of the Central Government.<sup>1</sup> Since, the enactment of VSESA, the diversion of forest land has decreased notably from 41.35 lakh hectares (between 1955-1980) to 10.04 lakh hectares (from 1980-present), with 12.39 lakh hectares of compensatory afforestation being undertaken.<sup>2</sup>

The 1988 amendment to the Act criminalised the violation of its provisions by inserting Sections 3A and 3B. Section 3A prescribes simple imprisonment of 15 days for anyone who contravenes or abets the contravention of Section 2. Section 3B holds the heads of the government departments, or person-in-charge of any authority, criminally responsible for the commission of offences by their respective department or authority by postulating a vicarious ‘deemed guilty’ criminal liability. However, the criminal provisions of VSESA have remained under-utilized due to lack of procedural knowledge and clarity. The manuals, guidelines, and handbooks available on the implementation of various aspects of VSESA such as the MoEFCC, Handbook of Forest (Conservation) Act, 1980 Consolidated Guidelines and Clarifications issued under Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 and Van (Sanrakshan Evam Samvardhan) Rules, 2023 and the Handbooks issued by various states such as Andhra

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<sup>1</sup> The 42<sup>nd</sup> amendment to the Constitution, shifted ‘forest’ and ‘wildlife’ into the concurrent list, Seventh schedule of the Constitution of India, thereby giving Central Government prominence in bringing a new law on forest governance in the country. Before 1980, forest was solely governed under the provisions of the Forest Act 1927 and some State Forest legislations.

<sup>2</sup> The statistics are based on a presentation made by MoEFCC during the Orientation Session on “Dissemination of the provisions of the Forest (Conservation Amendment Act, 2023, held on Sept. 14, 2023.

Pradesh, do not adequately cover the modalities of investigation and prosecution of offences under VSESA. Further, these issues are also not sufficiently addressed in other books and manuals on Forest Crimes in India. A watershed moment in the history of forest conservation and governance in India was the landmark Supreme Court judgement in the case of *T.N. Godavarman Thirumulpad v. Union of India*<sup>3</sup> issued on 12 December 1996, wherein the Apex Court adopted the dictionary meaning of forest to clarify the scope of the Act, and held that:

“4...The term “forest land” occurring in Section 2, will not only include “forest” as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act”.

In this case, also known as “the forest case”, the Supreme Court left behind the conventional role of an interpreter of the law and donned various roles such as administrator, lawmaker, and policymaker with respect to forests. Through the writ of continuing mandamus, the Supreme Court took over the monitoring, governance, and administration of forests in India and established a Centrally Empowered Committee to oversee the grant of approvals with respect to the diversion of forests. However, the adoption of the dictionary definition of ‘forest’ did create some confusion with respect to the application of the Act and resulted in the evolution of the concept of ‘deemed forest’. This concept has been interpreted and implemented differently by different agencies. In this regard, a differential view was taken by the High Court of Karnataka in *Dhananjay v. State of Karnataka*<sup>4</sup> & *D M Deve Gowda v. The Principal Chief Conservator of Forests*,<sup>5</sup> wherein the High Court held that the concept of deemed forest is foreign to Indian law. The Court opined that either the land is to be classified as forest or forest land; there is no such thing as deemed forest and the authorities cannot classify a land as ‘deemed forest’ while dealing with applications under Section 2 of VSESA. It is to be noted that after the TN Godavarman judgement, the Forest Department has applied the interpretation of the Supreme Court on the definition on forest to manage and regulate activities in ‘deemed forest areas’, thereby making VSESA applicable to such forests.

Although VSESA is generally regarded as a pivotal legislation, over the course of 43 years of its implementation, several issues, challenges, and ambiguities have emerged that require addressing. These challenges include ambiguities related to the meaning and interpretation of “forests” and “deemed forests” (particularly after the landmark judgement of

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<sup>3</sup> T.N. Godavarman Thirumulpad v. Union of India, AIR 1997 SC 1228.

<sup>4</sup> Dhananjay v. State of Karnataka, LAWS(KAR)-2019-6-34.

<sup>5</sup> D M Deve Gowda v. The Principal Chief Conservator of Forests, 2022 Live Law (Kar) 227.

*Godavarman Thirumulpad*), the necessity to create a level playing field with regard to leasing of forest land, the requirement to give statutory recognition to certain exemptions related to strategic and public utilities, amongst others. Moreover, VSESA has to keep up with a dynamic and rapidly evolving national and international environmental landscape, while acknowledging contemporary issues like climate change, global warming, and India's commitment towards Net Zero Emissions and Nationally Determined Contributions (NDCs).

The Forest (Conservation) Amendment Act, 2023 (**2023 Amendment**) was enacted to address these issues. It makes significant amendments to VSESA that include the insertion of a preamble, clarification of the application of the Act, statutory support to certain practiced exemptions, and broadening the delegated legislation power of the Central Government, among others. Key highlights of the Forest (Conservation) Amendment Act, 2023 include:

- **INSERTION OF PREAMBLE:** The Amendment Act inserts a preamble in VSESA. The preamble gives statutory recognition to India's commitment of achieving its Net Zero Emission by 2070, NDC targets by 2030, and increasing India's forest and tree cover to one-third of its land area. Further, the preamble emphasizes India's rich tradition of preserving forests and biodiversity and envisages enhancement of forest-based economic, social, and environmental benefits, including improvement of livelihoods for communities that are dependent on forests.<sup>6</sup>
- **APPLICATION OF THE ACT:** The newly inserted Section 1A demarcates the land that will be covered by VSESA and also exempts certain lands from the applicability of VSESA. Section 1A (1) provides that the Act will be applicable to
  - (a) forest lands i.e. either declared or notified as a forest under the Indian Forest Act, 1927 or any other Act in force; and
  - (b) those lands which have been recorded as forests in Government records on or after October 25, 1980.

However, the Act will no longer apply to those recorded forest lands that have been duly diverted for non-forest use before December 12, 1996. For clarity, the explanation appended to Section 1A (1) provides that government records mean the records "held by" the Revenue or Forest Departments of the State Government or Union Territories,<sup>7</sup> or any other

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<sup>6</sup> The Forest (Conservation) Amendment Act, 2023 § 2.

<sup>7</sup> See, *Narinder Singh v. Divesh Bhutani*, where the Supreme Court in 2022 dealt with the Punjab Land Preservation Act, 1900 attempted to define Government Records in Para 24, 41, and 49.



authorities, local bodies, communities, or councils that are recognized by the State Government or the Union Territories.

## **1.2 EXEMPTIONS UNDER VSESA**

Section 1A (2) of VSESA<sup>8</sup> lists certain categories of land that are exempted from the purview of the Act. They are:

- (a) Forest land situated along rail lines or public roads maintained by the government providing access to a habitation, rail, or roadside amenity of a maximum size of 0.10 hectares. This will assist forest-dwelling and rural communities gain accessibility to civic amenities and mainstreaming the indigenous population with the rest of the country.
- (b) Tree, tree plantations, or reforestation raised on lands that are neither declared/notified as forests nor are recorded as forests in any government records. This exemption clarifies that private plantations will not be considered as deemed forests. This is to encourage private plantations to contribute to greater tree cover, therefore helping India's commitment to achieving 1/3<sup>rd</sup> of our land areas as Ecological areas for our commitments laid out in the NDCs under the Paris Agreement.
- (c) The Forest land that is:
  - i. situated within 100 kms [aerial distance] of international borders/ Line of Control/Line of Actual Control, to be used for the construction of strategic linear projects of national importance and concerning national security.
  - ii. forest land of area of up to 10 hectares (10 ha) that is to be used for building security infrastructure, and
  - iii. forest land area of up to five hectares (5 ha) that is proposed to be used for defence-related or public utility projects or for building paramilitary camps in a Left-Wing Extremism (LWE) affected area, as notified by the Central Government.

However, these exemptions are not blanket exemptions. They will be subject to terms and conditions as laid down by the guidelines of the Central Government, which will be issued from time to time. These terms and conditions can include requirements such as compensatory afforestation activity to compensate for the felling of trees in such forest areas.<sup>9</sup>

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<sup>8</sup> The Forest (Conservation) Amendment Act, 2023, § 4 [The Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980, §1A (2)].

<sup>9</sup> The Forest (Conservation) Amendment Act, 2023, § 4 [The Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980, §1A (3)].

### 1.3 AMBIT OF NON-FOREST PURPOSE

The primary objective of VSESA is to regulate the diversion of forest land for ‘non-forest purpose’. Hence, it was crucial to specify the meaning and scope of non-forest purpose. Towards this end, the Explanation appended to Section 2 of the unamended VSESA stated that non-forest purpose means the “breaking up or clearing of any forest land or portion thereof” for either cultivation of certain specified types of crops and plants,<sup>10</sup> or any other purpose other than reforestation. However, the explanation also specified that certain activities that are related or ancillary to the conservation, development, and management of forests and wildlife are not counted as non-forest purposes. These activities included the establishment of check-posts, fire lines, wireless communications, and construction of fencing, bridges, culverts, dams, waterholes, trench marks, boundary marks, pipelines, or other like purposes.<sup>11</sup> The Amendment Act has further narrowed down the scope of non-forest purposes by expanding the list of activities that are not counted as “non-forest purpose”. According to the Amendment Act, the following list of works are no longer considered non-forest purposes:<sup>12</sup>

- (i) silvicultural operations including regeneration operations.
- (ii) establishment of check-posts and infrastructure for the front-line forest staff.
- (iii) establishment and maintenance of fire lines.
- (iv) wireless communications.
- (v) construction of fencing, boundary marks or pillars, bridges, and culverts, check dams, waterholes, trenches and pipelines.
- (vi) establishment of zoos and safaris, that are owned by government or any authority, in forest areas other than protected areas.
- (vii) eco-tourism facilities that are included in the Forest Working Plan or Wildlife Management Plan or Tiger Conservation Plan or Working Scheme of that area; and
- (viii) Any other Like purposes, which the Central Government may, by order, specify.

Thus, apart from expanding the list of activities that are not to be considered as “non-forest purpose”, the Amendment Act also empowers the Central Government to expand this

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<sup>10</sup> The Forest (Conservation) Act, 1980, § 2 explanation (Cultivation of “tea, coffee, spices, rubber, palms, oil-bearing plants, horticulture crops or medicinal plants”).

<sup>11</sup> *Id.*

<sup>12</sup> The Forest (Conservation) Amendment Act, 2023, § 5(a) [The Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980, §2(1) explanation].

list through orders.<sup>13</sup> Further, the newly inserted Section 2(2) also empowers the Central Government to lay down terms and conditions subject to which surveys, such as reconnaissance, prospecting, investigation or exploration including seismic survey, will also not be regarded as ‘non-forest purpose’.<sup>14</sup>

This was done considering the fact that such surveys and explorations in forest areas do not involve a perceptible change in forest land use. This exception for surveys and exploration is significant considering the need to plan and strategize mines and mineral explorations, and map and keep data of activities organised in forest areas.

A typical concern arises thereof, from various aspects including the 2021 Guidelines pertaining to Eco-Tourism, “Development/construction of facilities which are not permanent, in forest areas for ecotourism by Government authorities shall not be considered as a non-forestry activity for the purpose of the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 (VSESA).”<sup>15</sup> The same has been expanded in detail in Table – 3 below.

Prior to the 2023 amendment, VSESA regulated the assignment or lease of forest land by State Governments to private entities by mandating the prior approval of the Central Government before such assignment or lease. However, it did not restrict nor mandate prior approval of the Central Government for the assignment or lease of forest land to government agencies. This was considered unfair. The law must create a level playing field between State Agencies and Private Entities. According to the amendment,<sup>16</sup> the State Government will now also require prior approval of the Central Government before it assigns or leases out forest state-owned/controlled/managed agencies. The words “not owned, managed or controlled by the government”<sup>17</sup> that created this exemption have been removed. Further, the amended Section 2(1)(iii) also empowers the Central Government to lay down terms and conditions to regulate such grants of forest land.

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<sup>13</sup> *Id.*

<sup>14</sup> The Forest (Conservation) Amendment Act, 2023, § 5(b) [The Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980, §2(2)].

<sup>15</sup> In a contrary instance, concerning Jungle Lodges and Resorts Limited, the High Court of Karnataka held that no permission of the Central Government was required to construct lodges/ resorts within the reserve forest area at Dubare in Kodagu district as the concerned company is owned and controlled by the Karnataka Tourism Development Corporation. A government owned enterprise.

<sup>16</sup> The Forest (Conservation) Amendment Act, 2023, § 5(a)(I) [Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980, §2(1)(iii)].

<sup>17</sup> *Id.*

## **1.4 CENTRAL GOVERNMENT’S POWER OF DELEGATED LEGISLATION**

Prior to the amendment, the power of the Central Government to make delegated legislation was limited to making Rules only. To ensure proper implementation of the provisions of the Act, the delegated legislation-making power of the Central Government has been expanded and it has now been bestowed with the power to issue “directions” to any central government authority, State Governments, Union territories, or to any organisation, entity or body recognized by them.<sup>18</sup>

## **1.5 CONSOLIDATED GUIDELINES ISSUED BY THE MINISTRY OF ENVIRONMENT, FOREST & CLIMATE CHANGE FROM TIME TO TIME**

Further, the Ministry of Environment, Forest & Climate Change (MoEFCC) formulated the Van (Sanrakshan Evam Samvardhan) Rules, 2023<sup>19</sup> and issued the Consolidated Guidelines and Clarifications<sup>20</sup> to supplement the provisions of VSESA. However, the issues pertaining to criminal prosecution for violation of VSESA are also not sufficiently addressed in the latest rules and guidelines nor addressed in other manuals on Forest Crimes in India. This lack of procedural knowledge and clarity creates several issues in effective utilisation and implementation of the penal provisions of VSESA by the officers such as who is authorized to file the complaint, who is authorized to investigate, what kind of evidence is required, what is the applicability of Code of Criminal Procedure, 1973. Thus, VSESA is inherently a legislation paving means for a regulatory clearance procedure, rather than criminal prosecution.

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<sup>18</sup> The Forest (Conservation) Amendment Act, 2023, § 6 [The Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980, § 3C].

<sup>19</sup> Van (Sanrakshan Evam Samvardhan) Rules, 2023.

<sup>20</sup> Ministry of Environment, Forests & Climate Change, Consolidated Guidelines and Clarifications issued under the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 and Van (Sanrakshan Evam Samvardhan) Rules, 2023,

[https://parivesh.nic.in/writereaddata/FC/HANDBOOK\\_GUIDELINES/Consolidated%20Guidelines%20-Handbook.pdf](https://parivesh.nic.in/writereaddata/FC/HANDBOOK_GUIDELINES/Consolidated%20Guidelines%20-Handbook.pdf).

## 2 VIOLATIONS UNDER VSESA, 1980

### 2.1 RESTRICTION ON DE-RESERVATION OF FOREST LAND

VSESA strictly regulates the de-reservation or diversion of forest land for non-forest purposes. In this regard, Section 2 of VSESA imposes restrictions on the State Governments and other authorities from passing orders for the de-reservation of forests or the use of forest land for non-forest purposes. Section 2(1) states:

**“2. Restriction on the de-reservation of forests or use of forest land for non-forest purpose.** — (1) Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing—

- (i) that any reserved forest (within the meaning of the expression “reserved forest” in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved.
- (ii) that any forest land or any portion thereof may be used for any non-forest purpose.
- (iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization subject to such terms and conditions, as the Central Government may, by order, specify;
- (iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.”<sup>1</sup>

As per Section 2, the Central Government’s prior approval<sup>2</sup> is mandatorily required before the State Government or any other authority can issue an order directing the de-tour reservation of a forest or allowing the diversion of forest land for non-forest purposes. Not obtaining the prior approval of the Central Government before passing such an order constitutes a violation of VSESA, 1980. Further, violations of VSESA, 1980 can take various forms. They can be civil<sup>3</sup> as well as criminal.<sup>4</sup> A careful perusal of Section 2, read in light of the

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<sup>1</sup> The Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980, § 2(1).

<sup>2</sup> The prior approval is known as “Forest Clearance”.

<sup>3</sup> The Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980, § 2A.

<sup>4</sup> The Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980, §§ 3A & 3B.

various judgements<sup>5</sup> and the hosts of subordinate legislations and Guidelines issued by the Ministry of Environment, Forests, and Climate Change (MoEFCC),<sup>6</sup> highlights that the essence of violation of VSESA lies in the “diversion<sup>7</sup> of forest land for non-forest purposes without the prior approval of Central Government”. Thus, understanding the following four terms is critical for understanding the true nature of violations of VSESA and conducting an effective and well-organized prosecution:

- (i) **Forest Land** i.e. what is the nature of the land in question and whether VSESA is attracted over such land
- (ii) **Diversification** i.e. what constitutes diversion.
- (iii) What is a **non-forest purpose** i.e. the distinction between forest purpose v. non-forest purpose.
- (iv) without **prior approval** of the Central Government.

## 2.2 APPLICABILITY OF VSESA, 1980 - WHAT IS FOREST LAND?

As per the Section 1A inserted into VSESA by the 2023 amendment, VSESA will apply to:

- (a) lands which are declared or notified as forests under the Forest Act, 1927 and any other law for the time being in force. This provision makes it clear that VSESA will not only apply to the lands declared or notified as forests under the Indian Forest Act, 1927 but also to lands declared or notified as forests under various state forest enactments, and other laws such as the Punjab Land Preservation Act, 1900,<sup>8</sup> the Karnataka Preservation of Trees Act, 1976,<sup>9</sup> amongst others.
- (b) It will also encompass lands which are characterized as ‘forests’ in Government records on or after October 25, 1980. The term ‘Government records’, as defined under the

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<sup>5</sup> See, e.g., T.N. Godavarman Thirumulpad v. Union of India, I.A. Nos. 1868, 2091, 2225-227, 2380, 2568 and 2937, in Writ Petition (C) No. 202 of 1995, decided on 6 July 2011 (Supreme Court); Orissa Mining Corporation v. Ministry of Environment & Forests, 2013 AIR SCW 2508; Himachal Pradesh Bus Stand Management & Development Authority (HPBSM&DA) v. The Central Empowered Committee, AIR 2021 SC 657; Nature Lovers Movement v. State of Kerala, 2009 AIR SCW 3656; Vimal Bhai v. MoEFCC, Appeal No. 5 of 2011, decided on 14 December 2011 (NGT).

<sup>6</sup> See e.g., Van (Sanrakshan Evam Samvardhan) Rules, 2023; Ministry of Environment, Forest and Climate Change, *Consolidated Guidelines and Clarifications issued under Van (Sanrakshan Evam Samvardhan) Adhinyam, 1980 and Van (Sanrakshan Evam Samvardhan) Rules, 2023* (2023), See also *Forest Clearance (Acts, Rules & Guidelines)*, PARIVESH, (last visited March 15, 2024) (for a consolidated list of all the rules, guidelines, and comprehensive guidelines issued by MoEFCC under the VSESA, 1980).

<sup>7</sup> For the purpose of this manual & to maintain brevity, the term diversion also includes the term dereservation.

<sup>8</sup> The Punjab Land Preservation Act, 1900 § 3.

<sup>9</sup> The Karnataka Preservation of Trees Act, 1976.

explanation to Section 1A (1), means records held by the revenue department or forest department, of the State Government or Union territory Administration or any authority, local body, community, or council recognized by the State Government or Union Territory Administration. Further, Rule 16 of the *Van (Sanrakshan Evam Samvardhan) Rules, 2023* mandates State Governments and Union Territory Administration to prepare a consolidated record of such lands including the forest-like areas identified by the Expert Committee constituted for this purpose, unclassified forest lands or community forest lands on which VSESA shall apply.<sup>10</sup>

However, on February 19, 2024, in the case of *Ashok Kumar Sharma v. Union of India*<sup>11</sup> the Supreme Court has directed the State Governments and Union Territory Administration to ensure strict compliance with the dictionary definition of forests as was held in the *T.N. Godavarman Thirumulpad v. Union of India* while preparing such consolidated records. The definition of forest as held in the *Godavarman* case expands the scope and ambit of what would be considered as forest.

- (c) However, if a land was being utilized or was changed from forest use to use for non-forest purposes in pursuance of an order, issued by any authority authorised by a State Government or an Union Territory Administration on or before December 12, 1996, i.e., the date of the *T.N. Godavarman* judgement,<sup>12</sup> such land will be beyond the scope of VSESA.

It is clarified that the change to non-forest use shall be construed to such change after following the due process and procedure established under the applicable laws.

- (d) A catalogue of lands which are exempted from the coverage of VSESA has been enumerated under Section 1A (2) of VSESA. For instance, lands located within a distance of one hundred kilometres from international borders or lands up to 10 hectares proposed to be utilized for developing security infrastructure will not require prior approval from the Government of India under VSESA.<sup>13</sup> The same is required to be cross-verified and checked before taking necessary action, in accordance with latest notification issued in this regard.

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<sup>10</sup> Van (Sanrakshan Evam Samvardhan) Rules, 2023, Rule 16.

<sup>11</sup> *Ashok Kumar Sharma v. Union of India*, Writ Petition (Civil) No 1164 of 2023 (SC).

<sup>12</sup> *T.N. Godavarman Thirumulpad v. Union of India*, AIR 1997 SC 1228.

<sup>13</sup> The Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980, § 1A (2); *See also* Chapter 1.

## **A perplexing issue is whether VSESA will apply to ‘deemed forests’?**

The concept of deemed forests comes from the celebrated judgment of *T.N. Godavarman Thirumulpad v. Union of India*,<sup>14</sup> wherein it was held that:

"Forest: to be understood according to its **dictionary meaning**. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act." (emphasis applied).

Thus, even those lands which are technically not notified or declared as forest land in a statute, but fall within the dictionary meaning of forest will be deemed to be forest land for the purposes of diversion under Section 2(i) of the Act (before the 2023 amendment). However, the 2023 amendment has attempts to lay a framework for Forest Governance under VSESA, which so far was governed through TN Godavarman Orders. The Supreme Court in its interim order has directed strict compliance with the definition of forest as held in the *Godavarman* case and directed the Government of States and Union Territories to prepare consolidated reports of forest lands.

Some examples of ‘deemed forest’ can be Devara Kadu, Baane, Kanu Forest, Kumki Land, Amrith Mahal Kaval, Jammabaane, Soppina Detta etc. What is a deemed forest is a subject-matter of fact. In *Narinder Singh v. Divesh Bhutani*,<sup>15</sup> the Supreme Court held that certain lands covered by the special orders issued under Section 4 of the Punjab Land Preservation Act, 1900 which has the trappings of a forest will fall within the meaning of forest as under Section 2 of VSESA (prior 2023 Amendment). Thus, irrespective of the ownership of the land, VSESA will apply in case if there is use of ‘forest land’ for ‘non-forest purpose’ without the ‘prior approval of the Central Government’.

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<sup>14</sup> T.N. Godavarman Thirumulpad v. Union of India (1997) 2 SCC 267).

<sup>15</sup> Narinder Singh v. Divesh Bhutani, AIR 2022 SC 3479.



The following table elaborates on the kind of forest lands on which provisions of VSESA can be applied:

TABLE 1: APPLICABILITY OF VSESA – TYPES OF FOREST LAND	
TYPE OF FOREST	DEFINITION
<b>Recorded Forest</b>	<p><i>As per VSESA 2023, the Recorded Forest means a Forest recorded as such in a "Government record". The VSESA has defined Government Record to mean such record held by the Revenue Department or Forest Department of the State Government or Union territory Administration, or any authority, local body, community or council recognised by the State Government or Union territory Administration.</i></p> <p>The same position has been adopted by the Supreme Court in <b>Narinder Singh &amp; Ors. v. Divesh Bhutani &amp; Ors.</b> They held that “<i>If a land is shown as a forest in Government records, it will be governed by Section 2</i>”, which will also include records of forest lands, duly maintained by the Forest Department.<sup>16</sup> In The Supreme Court in Goa Foundation v. State of Goa,<sup>17</sup> observed that,</p> <p>“A clear distinction emerges between „Forest Cover“ and Recorded Forest Area.“ Forest Cover“ encompasses all lands exceeding 1 (one) hectare in size with a tree canopy exceeding 10%, regardless of land use, ownership, and legal status. This category may encompass various features like orchards, bamboo groves, palm plantations, etc., and is evaluated through remote sensing techniques. Conversely, the term “Recorded Forest Area“ or “Forest Area“ refers to all geographic areas officially designated as Forests in government records. Recorded forest areas primarily include Reserved Forests (RF) and Protected Forests (PF), which are notified under the provisions of the Indian Forest Act, 1927, or equivalent State Acts. In addition to RFs and PFs, the recorded forest area may also cover regions recorded as forests in revenue records or established as such under any State Act or local laws.”</p>
	<p><b>Reserve Forest</b></p> <p><b>Sections 3 to 27</b> of the <b>Indian Forest Act, 1927</b> deal with <b>Reserved Forests.</b></p> <p>State Governments have the power to constitute through a notification in the Official Gazette, any forestland or wasteland over which it has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled, as ‘reserve forest’ (<b>Section 3</b>)</p> <p>Once notified as a Reserve Forest, no rights will accrue on such land and the Forest Settlement-Officer appointed under</p>

<sup>16</sup> As per the **2019 Forest Survey of India, ‘Recorded Forest Area’** “*is defined for all such lands which have been notified as forest under any Government Act or Rules or recorded as ‘forest’ in the Government records.*”

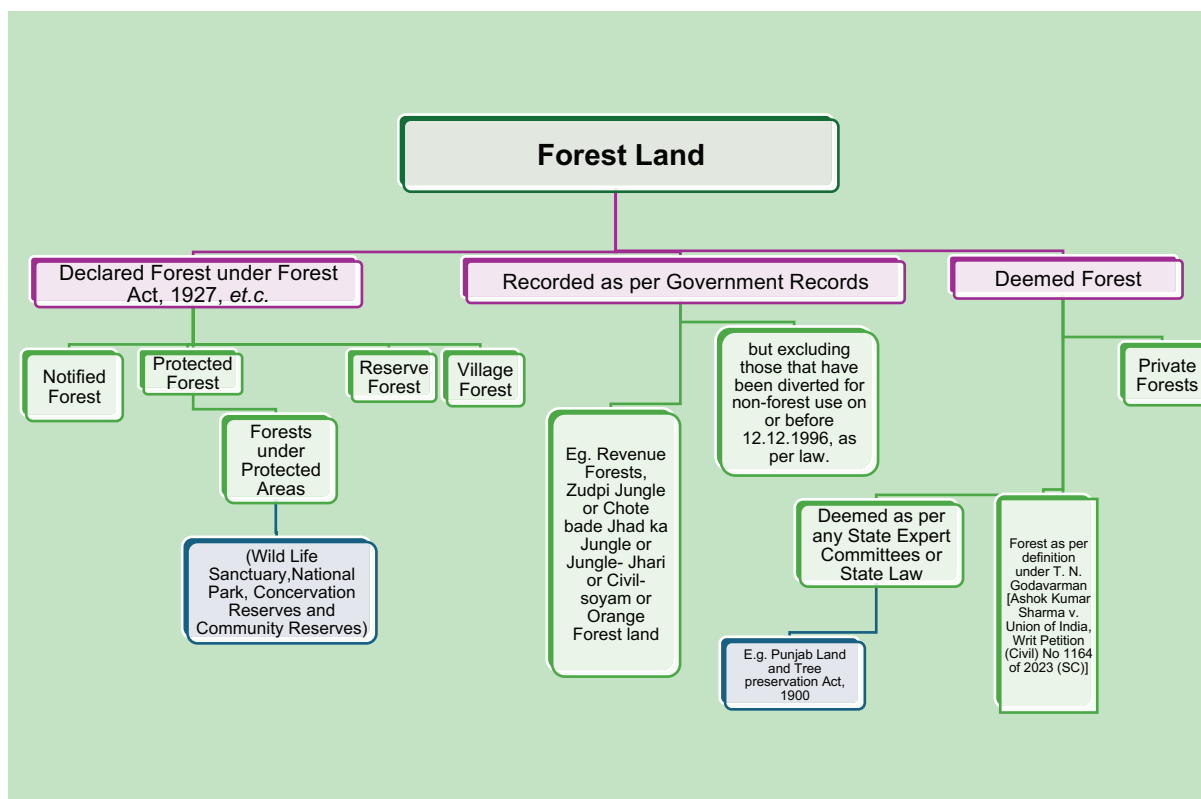
<sup>17</sup> Original Application No. 98 OF 2022 (WZ).

		Section 4(1)(c) will determine the existing claims over such lands.
	<b>Protected Areas</b>	<b>Such forest lands notified as Sanctuary or National Parks in accordance with the Wildlife Protection Act, etc</b>
	<b>Protected Forest</b>	<b>Sections 29 to 34</b> of the <b>Indian Forest Act, 1927</b> deal with <b>Protected Forests</b> . State Governments have the power to declare through Gazette notification any forestland or waste-land, which is not included in a reserve forest, but is a property of the Government, or over which the Government has proprietary rights, or to the whole or any part of the forests produce of which the Government is entitled. ( <b>Section 29</b> )
	<b>Private Notified Forests</b>	Recorded Forest also includes Private Forest that may be recognized by respective State Forest legislation such as the Karnataka Forest Act 1963. <b>Chapter V</b> of the <b>Indian Forest Act, 1927</b> deals with forests and lands that are not the property of the government which can be classified as <b>Private Forests</b> . VSESA does not apply to trees, plantation and afforestation raised on private lands except on private notified forests. <sup>18</sup>
<b>Deemed Forest</b>	<p>No definition has been provided by the VSESA or the Indian Forest Act, 1927.</p> <p>This concept stems from <i>T.N. Godavarman Thirumulpad v. Union of India</i> (1997) 2 SCC 267) in which it was held that:</p> <p>"Forest: to be understood according to its <b>dictionary meaning</b>. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act." (emphasis applied).</p> <p><b>Ministry of Environment, Forest and Climate Change</b> issued letter dated 14<sup>th</sup> November 2019 to the Principal Secretary (Forests) and all State and Union Territory Governments, defining the 'dictionary meaning of forest' as contained in the <i>Godavarman</i> case. In this letter, it was clarified that:</p> <p>"As far as developing criteria for 'deemed forests' is concerned, there cannot be any uniform criteria applicable to all forest types or all states. There has to be different criteria for different forest types or states".</p> <p>Sacred groves such as <i>Devara Kadu, Baane, Kanu Forest, Kumki Land, Amrith Mahal Kaval, Jammabaane, Soppina Delta</i>, as available in Karnataka may fall squarely under the concept of 'Deemed Forest'.</p>	

Table 1 – Types of Forest Lands

<sup>18</sup> Ministry of Environment, Forests & Climate Change, Consolidated Guidelines and Clarifications issued under the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 and Van (Sanrakshan Evam Samvardhan) Rules, 2023, Chapter 1- 1.1. (iv).

A flow chart to have a schematic understanding of the term Forest Land is imperative, and the readers may observe the categorization of the types of Forest Lands based on the chart hereinbelow.



### UNDERSTANDING FOREST LAND

## 2.3 WHAT CONSTITUTES “DIVERSION” OF FOREST LAND UNDER VSESA, 1980?

Although VSESA neither defines nor uses the term ‘diversion’, through a host of subordinate legislations under the Act, judgements, and wide-spread usage, this term has assumed significance in relation to VSESA. In fact, it is widely understood and accepted that “**diversion**” of forest land for non-forest purpose without the prior approval of the Central Government is the crux and essence of the violation of VSESA, 1980. Due to its significance, and accepted usage, the term ‘diversion’ is defined under Rule 2(1)(i) of the *Van (Sanrakshan Evam Samvardhan) Rules, 2023* as follows:

“**diversion**” means an order issued by the State Government or Union territory Administration or any authority thereof for the use of any forest land

for non-forest purpose or assignment of a lease of any forest land for non-forest purpose.<sup>19</sup>

Thus, diversion is:

- (i) Order.
- (ii) issued by the State Government or UT administration or any authority thereof.
- (iii) authorizing either:
  - a. the use of any forest land for non-forest purpose, or
  - b. assigning any forest land on lease for non-forest purpose

Further, to maintain the simplicity and brevity of this Primer in understanding the violation of VSESA, 1980 we are including the term ‘de-reservation’ also within the meaning and purview of the term ‘diversion’. The term ‘de-reservation’ has been defined under Rule 2(1)(h) of the *Van (Sanrakshan Evam Samvardhan) Rules, 2023* as follows:

“**de-reservation**” means an order issued by the State Government or Union territory Administration or any authority thereof, for change in the legal status of a land statutorily or otherwise recognized as forest to any other category of land.<sup>20</sup>

Hence, a conjoint reading of Rule 2(1)(i), Rule 2(1)(j) of the *Van (Sanrakshan Evam Samvardhan) Rules, 2023*, and Section 2 of the *Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980*, will highlight that the term **diversion would mean** - an order issued by the State Government or Union Territory Administration or any authority:

- Changing the legal status of land statutorily or otherwise recognized as reserved forest or any other category of forest or any portion thereof to any other category of land (de-reservation)
- Authorizing the use of any forest land or any portion thereof for non-forest purpose
- Assigning by lease or otherwise any forest land or any portion thereof for non-forest purposes to any private person, authority, corporation, agency, or any other organization
- Authorizing clearing of naturally grown trees in any forest land or any portion thereof to use that forest land for reforestation.

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<sup>19</sup> Van (Sanrakshan Evam Samvardhan) Rules, 2023, Rule 2(1)(i).

<sup>20</sup> Van (Sanrakshan Evam Samvardhan) Rules, 2023, Rule 2(1)(h).

## 2.4 FOREST PURPOSE & NON-FOREST PURPOSE

The concept of diversion is intricately linked with the concepts of forest purpose and non-forest purpose. Hence, it is very pertinent to understand what activities could be considered as forest purpose and what amounts to non-forest purpose. The following table illustrates various activities that can be categorized as forest and non-forest purposes, as has been declared by the Act and through various guidelines and case laws.

TABLE 2: FOREST PURPOSE & NON-FOREST PURPOSE	
FOREST-PURPOSES	NON-FOREST PURPOSES
<b>(A) LEGISLATIVE PROVISIONS</b>	
<ul style="list-style-type: none"> <li>▪ Explanation to Section 2 of VSESA states that any work relating to or ancillary to conservation, development and management of forests and wildlife, namely:                             <ul style="list-style-type: none"> <li><b>a)</b> Silvicultural operations including regeneration operations.</li> <li><b>b)</b> the establishment of check-posts, fire lines, wireless communications, and construction of fencing, bridges, and culverts, check dams, waterholes, trenches, boundary marks, pipelines.</li> <li><b>c)</b> establishment of zoo and safaris owned by the government or any authority as per the Wildlife (Protection) Act, 1972.</li> <li><b>d)</b> eco-tourism included in the Forest Working Plan or Wildlife Management Plan or Tiger Conservation Plan or Working Scheme of that area.</li> <li><b>e)</b> other like purposes</li> </ul> </li> </ul> <p>Furthermore, as per the latest amendment to the Forest Conservation Act in 2023, and subject to certain restrictions, survey, such as, reconnaissance, prospecting,</p>	<ul style="list-style-type: none"> <li>▪ As per <b>Section 2 of VSESA</b>, as amended by the Forest (Conservation) Amendment Act 1988, “non-forest purpose” means the breaking up or clearing of any forest land or portion thereof for (i) The cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants; or (ii) Any purpose other than reforestation.</li> <li>▪ <b>Mining Projects</b> (Chapter 7 of the Consolidated Guidelines and Clarifications issued under Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 and Van (Sanrakshan Evam Samvardhan) Rules, 2023) states that Mining including underground mining is a non-forestry activity. Therefore, prior approval of the Central Government is essential before a mining lease is granted in respect of any forest area. The Act would apply not only to the surface area beneath the forest. A renewal of an existing mining lease in a forest area also requires the prior approval of the Central</li> </ul>

<p>investigation, or exploration including seismic survey, shall not be treated as non-forest purpose.</p> <ul style="list-style-type: none"> <li>▪ As per the Revised Guidelines for Tusser Cultivation (Vanya Silk Cultivation) tusser cultivation in trees reared by tribals and non-tribals living in and around the forest as a means of their livelihood without undertaking mono-culture plantation shall be treated as a forestry activity.</li> <li>▪ Specific plantation for providing host trees to the silk cocoons shall be treated as forestry activity not requiring prior approval of the Central Government provided such plantation activity does not involve any felling of existing trees; provided further that while undertaken such plantations, at least three species are planted, of which no single species shall cover more than 50% of the planted area.</li> </ul>	<p>Government.</p> <ul style="list-style-type: none"> <li>▪ <b>Quarry:</b> Boulders, bajri, stone, etc., in the riverbeds located within forest area as would constitute a part of the forest land and their removal would require prior approval of the Central Government.</li> <li>▪ <b>Commercial Plantations:</b> Raising of commercial plantations of low rotation, including plantation of medicinal plants in the forest land shall be considered as non-forestry activity.</li> <li>▪ <b>Sawmills:</b> As held by the Supreme Court in <i>T.N. Godavarman Thirumulpad v. Union of India</i>,<sup>21</sup> running of sawmills of any kind including veneer or plywood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government.</li> </ul>
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**(B) CASE-LAWS**

CASE	DECISION
<p style="text-align: center;"><b><i>S. Jayachandran v. Union of India,</i></b> W.P. No. 19498 and 19842 of 1999</p>	<p>The petitioner had approached the Court against the respondents for carrying on activities related to film shooting as well as to dismantle the film sets erected. The <b>Madras High Court</b> held that <b>breaking up of a forest area involves extensive digging etc. and mere carrying on of film shooting with temporary sets would not fall in that category.</b></p> <p>It was noticed in this judgment that <b>extensive digging of wells or foundation of houses or tilling the land for the purposes of cultivation in a forest area may amount to breaking up of the forest land.</b> The breaking up should be such, as to have some</p>

<sup>21</sup> T.N. Godavarman Thirumulpad v. Union of India, (1997) 2 SCC 267

	<p>degree of permanence and there should be danger of deforestation by the activity.</p>
<p><b><i>Social Action for Forest and Environment v. Union of India,</i></b> O.A. No. 87 of 2015 (M.A. No. 262 of 2015 &amp; M.A. No. 528 of 2015)</p>	<p>The case arose with regard to the <b>35 – 40 camping sites and almost 800 – 1000 River rafting beach camps that have been permitted by the State agencies by issuing licenses.</b> The camps were located and are operating in a forest area or the riverbank. The camps were also found to have tampered with the banks of the river by flattening them. <b>The Court opined that an ecotourism activity is being carried out on a commercial basis and the period involved cannot be termed as temporary.</b></p> <p>The leases were being granted for a tenure of 5 years and activities are carried on effectively for ten months over a year. The structures being raised are of temporary and semi-permanent nature. It is an activity in the forest area, covering an area of 20,000-50,000 sq. mtr. in each site. Wires are laid down and electricity is supplied. <b>All other facilities are provided; thus, it is obviously a non-forest purpose/activity in the forest area and is not the purpose covered under the explanation of Section 2 of the Conservation Act.</b> The cumulative effect is that the approval of the Central Government, even as a policy matter, would be necessary. Compliance to the provisions of Section 2 in these cases is mandatory.</p>
<p><b><i>Tribunal on its own motion-Suo Motu initiated proceedings based on the news item in the Hindu paper, Chennai Edition dated 07.09.2020 under the caption “Illegal road in Sanctuary poses threat to wildlife” v. Ministry of Environment, Forest, and Climate Change,</i></b> O.A. No. 177 of 2020 (SZ)</p>	<p>Improvement of the mud road to Tar Road may facilitate increasing the speed of vehicles plying on the road and there is a possibility of accidents due to wild animals crossing. Therefore, black-topping of roads in Ecologically Sensitive Areas may be termed as non-forest activity.</p>

Table 2 – Forest Purposes & Non-Forest Purposes

## 2.5 NEED FOR FOREST CLEARANCE

It is relevant to note that, many issues have been time and again brought before the Courts to determine whether the activity is forest purpose or non-forest purpose and hence whether the diversion of forest land for such activity will require forest clearance or not. The following table highlights some of the cases that the Courts have had the opportunity to adjudicate upon:

<b>TABLE 3: ACTIVITIES REQUIRING FOREST CLEARANCE FOR DIVERSION OF FOREST LAND</b>			
<b>Sl. No.</b>	<b>Scenario</b>	<b>Whether non-Forest Purpose, or prior approval required from Central Government for diversion of Forest Land?</b>	<b>Case Law</b>
1.	Opening of a Snack Bar and a restaurant to cater to the needs of tourists in Reserve Forests by Collector of the Union Territory, Daman	Prior Approval of the Central Government is required, even if the action is taken by Union Territories. Non-Forest Purpose.	<i>Union of India and Ors v. Kamath Holiday Resorts Pvt. Ltd.</i> , [1996 SCC (2) 471]
2.	Strengthening of Existing Dam	Prior Approval from the Central Government is not required. Forest Purpose	<i>Mullaperiyar Environmental Protection Forum v. Union of India</i> , (2006) 3 SCC 643
3.	Renewal of Mining Lease, where Right of Extension given to the Lessee	Prior Approval of the Central Government is required. Non-Forest Purpose.	<i>Rural Litigation and Entitlement Kendra v. State of U.P.</i> , [1989 Supp (1) SCC 504]
4.	Laying of Power Transmission Lines in forest areas with the presence of rare/endangered species under approval for Simplified Procedure for Linear Projects circular issued by the Ministry of	Prior Approval from the Central Government is not required. Although amounts to non-Forest Purpose, so long as the simplified procedure has been followed, the Project is valid.	<i>Shree Degray Oran Temple and Oran Development Institute v. State of Rajasthan</i> , [National Green Tribunal, Delhi Original Application No. 90/2020 (CZ)]



<b>TABLE 3: ACTIVITIES REQUIRING FOREST CLEARANCE FOR DIVERSION OF FOREST LAND</b>			
<b>Sl. No.</b>	<b>Scenario</b>	<b>Whether non-Forest Purpose, or prior approval required from Central Government for diversion of Forest Land?</b>	<b>Case Law</b>
	Environment, Forests, and Climate Change on 28 August 2015		
5.	Laying of Power Transmission Lines on Forest Lands	Prior Approval of the Central Government is required. Non-Forest Purpose.	<i>T.N. Godavarman Thirumulpad (86) v. Union of India, (2006) 5 SCC 25 IA No. 1351 in IAs Nos. 1212-13 in WP (C) No. 202 of 1995</i>
6.	Construction of Resorts, where Private Ownership subsists	Prior Approval of the Central Government is required. Non-Forest Purpose.	<i>M/S. Gateway Hotels &amp; Gateway v. Nagarahole Budakattu Hakku, [1999 (5) KarLJ 63]</i>
7.	Widening of Existing Road in Wildlife Sanctuary	Prior Approval of the Central Government is required. Non-Forest Purpose. Additionally, permission from the Chief Wildlife Warden is also required.	<i>T.N. Godavarman Thirumulpad v. Union of India [(2011) 15 SCC 260]</i>
8.	Use of Forest Land for Water Supply by Local Authority such as Water Supply Board	Prior Approval of the Central Government is required. Non-Forest Purpose.	<i>T.N. Godavarman Thirumulpad (80) v. Union of India, (2006) 5 SCC 45</i>
9.	Infrastructure Projects such as Mass Rapid Transportation Systems in Delhi Ridge Areas	Prior Approval of the Central Government is required. Non-Forest Purpose.	<i>T.N. Godavarman Thirumulpad v. Union of India, [(2022) 4 SCC 289 [IA No. 105674 of 2020]]</i>

<b>TABLE 3: ACTIVITIES REQUIRING FOREST CLEARANCE FOR DIVERSION OF FOREST LAND</b>			
<b>Sl. No.</b>	<b>Scenario</b>	<b>Whether non-Forest Purpose, or prior approval required from Central Government for diversion of Forest Land?</b>	<b>Case Law</b>
10.	Sawmills of any kind including veneer or plywood mills, and mining of any mineral	Prior Approval of the Central Government is required. Non-Forest Purpose.	<i>T.N. Godavarman Thirumulpad v. Union of India, (1997) 2 SCC 267</i>
11.	Gift of Village Forest Lands to any Private Person	Prior Approval of the Central Government is required. Non-Forest Purpose.	<i>B.L. Wadhwa v. Union of India, (2002) 9 SCC 108</i>
12.	Leasehold of Forest Land for Areca Nut Cultivation	Prior Approval of the Central Government is required. Non-Forest Purpose.	<i>K. Balakrishnan Nambiar v. State of Karnataka, (2011) 5 SCC 353</i>
13.	Construction of Building prior to Notification of area as “Forest”	Prior Approval is not required, hence permitted	<i>M.C. Mehta (Kant Enclave matters) v. Union of India, (2018) 18 SCC 397</i>
14.	Modern Techniques for Shrimp Cultivation in the Mangrove Forests without Traditional Cultivation	Prior Approval of the Central Government is required. Non-Forest Purpose.	<i>S. Jagannath v. Union of India, (1997) 2 SCC 87</i>
15.	Renovation work relating to Fort inside Forest area permitted in the light of report of CEC	Prior Approval of the Central Government is required. Non-Forest Purpose.	<i>T.N. Godavarman Thirumulpad v. Union of India and Ors., (2011) 15 SCC 567 IA No. 1861 with 3276 in WP (C) No. 202 of 1995</i>
16.	Increasing of Height of the Existing Dam	Prior Approval of the Central Government is required. Non-Forest Purpose.	<i>Centre for Environmental Law, Worldwide Fund-India v. Union of India, (2013) 8 SCC 266 [IA No. 27]</i>

<b>TABLE 3: ACTIVITIES REQUIRING FOREST CLEARANCE FOR DIVERSION OF FOREST LAND</b>			
<b>Sl. No.</b>	<b>Scenario</b>	<b>Whether non-Forest Purpose, or prior approval required from Central Government for diversion of Forest Land?</b>	<b>Case Law</b>
17.	Construction of a Hotel in an area approved for a Bus Stand and Parking Facility	Prior Approval of the Central Government is required, as there can be no diversion of approved purpose. Non-Forest Purpose.	<i>H.P. Bus-Stand Management &amp; Development Authority v. Central Empowered Committee,</i> (2021) 4 SCC 309
18.	Felling of Trees from plantations raised on private lands.	If the forest is a notified private forest, prior approval is required.  For other private lands, Prior Approval of the Central Government is not required. But the same is subject to various State Acts, Rules, and Regulations.	<i>T.N. Godavarman Thirumulpad v. Union of India and Ors.,</i> (2011) 15 SCC 260 [IAs Nos. 2777-78]
19.	Felling of Bamboo Shoots	Part of Minor Forest Produce. Prior Approval of the Central Government is not required	<i>T.N. Godavarman Thirumulpad (88) v. Union of India,</i> (2006) 10 SCC 482 [IA No. 1407 in IAs Nos. 22 and 23]
20.	The traditional activity of manual removal of boulders and shingles	Prior Approval of the Central Government is required. Non-Forest Purpose.	<i>T.N. Godavarman Thirumulpad v. Union of India,</i> (2012) 12 SCC 297 [IAs Nos. 2421-22]
21.	Issue of Title Documents such as Patta, Khata in respect of Forest Lands	Prior Approval of the Central Government is required. Non-Forest Purpose.	<i>T.N. Godavarman Thirumulpad (88) v. Union of India,</i> (2006) 10 SCC 482 [IA No. 1408]

<b>TABLE 3: ACTIVITIES REQUIRING FOREST CLEARANCE FOR DIVERSION OF FOREST LAND</b>			
<b>Sl. No.</b>	<b>Scenario</b>	<b>Whether non-Forest Purpose, or prior approval required from Central Government for diversion of Forest Land?</b>	<b>Case Law</b>
22.	Renewal of Lease for mining of Limestone by way of Registered Lease Deed	Prior Approval of the Central Government is required. Non-Forest Purpose.	<i>State of M.P. v. Krishnadas Tikaram, 1995 Supp (1) SCC 587</i>
23.	Construction of Fencing on International Borders underlying Forest Lands	<p>Prior Approval of the Central Government is required. Non-Forest Purpose. However, the 2023 Amendment introduced relaxations the following category of lands:</p> <p>(i) situated within a distance of one hundred kilometers along international borders or Line of Control or Line of Actual Control proposed to be used for construction of strategic linear projects of national importance and concerning national security.</p> <p>(ii) up to ten hectares, proposed to be used for construction of security-related infrastructure; or</p> <p>(iii) as is proposed to be used for the construction of defence-related projects or a camp for paramilitary forces or public utility projects, as may be specified by the Central Government, the extent of which does not exceed five hectares in a Left-Wing</p>	<p><i>Centre for Environmental Law, WWF-India v. Union of India, (2011) 14 SCC 283: 2011 SCC OnLine SC 1303 at page 284</i></p> <p><i>Item 301. IA No. 141 in IAs Nos. 124-25</i></p>

<b>TABLE 3: ACTIVITIES REQUIRING FOREST CLEARANCE FOR DIVERSION OF FOREST LAND</b>			
<b>Sl. No.</b>	<b>Scenario</b>	<b>Whether non-Forest Purpose, or prior approval required from Central Government for diversion of Forest Land?</b>	<b>Case Law</b>
		Extremism affected area as may be notified by the Central Government.	
24.	Construction of Railway Track in Forest Lands	<p>Prior Approval of the Central Government is required.</p> <p>Non-Forest Purpose.</p> <p>The Amendment of 2023 introduced gives relaxation thereat, whereby it is provided that such forest land situated alongside a rail line, or a 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, would be excluded for the purposes of Forest Conservation Act, 1980.</p>	<i>T.N. Godavarman Thirumulpad v. Union of India, (2013) 8 SCC 228[IAs Nos. 3486-87]</i>
25.	Change of Status of “Reserved Forest” under Municipal Laws	<p>Prior Approval of the Central Government is required.</p> <p>Non-Forest Purpose.</p>	<i>T.N. Godavarman Thirumulpad v. Union of India, (2002) 10 SCC 606</i>
26.	Construction near Bird Sanctuary, but where Revenue Records does not classify as Forest Lands	Prior Approval is not required, hence may be considered as Forest Purpose.	<i>Noida Memorial Complex Near Okhla Bird Sanctuary, In re, (2011) 1 SCC 744</i>
27.	Cultivation of tea, coffee, spices, rubber, and palms is a non-forestry activity,	<p>Prior Approval of the Central Government is required.</p> <p>Non-Forest Purpose.</p>	<i>Pursuant to Section 2 of VSESA</i>

<b>TABLE 3: ACTIVITIES REQUIRING FOREST CLEARANCE FOR DIVERSION OF FOREST LAND</b>			
<b>Sl. No.</b>	<b>Scenario</b>	<b>Whether non-Forest Purpose, or prior approval required from Central Government for diversion of Forest Land?</b>	<b>Case Law</b>
	attracting the provisions of the Act.		
28.	Plantation of mulberry for silkworm rearing is a non-forestry activity, attracting the provisions of the Act.	Prior Approval of the Central Government is required. Non-Forest Purpose.	<i>Pursuant to Section 2 of VSESA.</i>
29.	Mining including underground mining is a non-forestry activity. Therefore, prior approval of the Central Government is essential before a mining lease is granted in respect of any forest area. The Act would apply not only to the surface area beneath the forest. A renewal of an existing mining lease in a forest area also requires the prior approval of the Central Government.	Prior Approval of the Central Government is required. Non-Forest Purpose.	<i>Pursuant to Section 2 of VSESA.</i>
30.	Camping sites and river rafting beach camps permitted by the State agencies by issuing licenses	Ecotourism activity is being carried out on a commercial basis and the period involved cannot be termed as temporary.  Prior Approval of the Central Government is required. Non-Forest Purpose.	<i>Social Action for Forest and Environment v. Union of India &amp; Ors. [2015 SCC OnLine NGT 843]</i>

<b>TABLE 3: ACTIVITIES REQUIRING FOREST CLEARANCE FOR DIVERSION OF FOREST LAND</b>			
<b>Sl. No.</b>	<b>Scenario</b>	<b>Whether non-Forest Purpose, or prior approval required from Central Government for diversion of Forest Land?</b>	<b>Case Law</b>
31.	Use of Forest Land for Film Sets and connected purposes	<p>mere carrying on of film shooting with temporary sets does not require prior approval.</p> <p>However, extensive digging of wells or foundations of houses or tilling the land for the purposes of cultivation in a forest area may amount to breaking up of the forest land.</p> <p>The breaking up should be such, as to have some degree of permanence and there should be danger of deforestation by the activity.</p> <p>Non-Forest Purpose. Hence, Prior Approval of the Central Government is required.</p>	<i>Veeru Devgan v. State of Tamil Nadu &amp; Ors., [2000-1-L.W. 301]</i>
32.	Right holders in whose favour right over the forest land is accorded following the procedure prescribed under the provisions of Forest Rights Act, 2006	Prior Approval is not required, hence may be considered as Forest Purpose.	
33.	Investigation and surveys including reconnaissance surveys in National Parks without felling of Trees	Prior Approval is not required, but the same is subject to various State Acts, Rules, and Regulations.	<i>Guideline F. No. 11/306/ 2014-FC dated 07/10/2014, issued by MoEFCC, GoI.</i>
34.	Dumping of Mineral Waste in a Forest Land	Prior permission of the Central Government in mandatory. Non-Forest Purpose.	<i>Goa Foundation v. Union of India, (2014) 6 SCC 590</i>

TABLE 3: ACTIVITIES REQUIRING FOREST CLEARANCE FOR DIVERSION OF FOREST LAND			
Sl. No.	Scenario	Whether non-Forest Purpose, or prior approval required from Central Government for diversion of Forest Land?	Case Law
35.	Investigations and surveys for mining projects involving clearing of forest area or felling of trees.	Prior permission of the Central Government in mandatory. Non-Forest Purpose.	<i>Guideline F. No. 5-3/2007—FC dated 24/12/2018, issued by MoEFCC, GoI.</i>
36.	Cultivation of fruit-bearing trees or oil-bearing plants or medicinal plants when: (a) The species to be planted are indigenous to the area in question, and (b) Such planting activity is part of an overall afforestation programme for the forest area in question.	Forest Purpose.	As per the Consolidated Guidelines and Clarifications issued under Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 and Van (Sanrakshan Evam Samvardhan) Rules, 2023 on VSESA, the same is regarded as Forest Activity.
37.	Establishment of Zoo over forest area by the Forest Department/State Zoo Authority and its management by the Forest Department/ State Zoo Authority after it is duly approved by CZA, a central regulatory authority under the Ministry	Forest Activity, <b>provided</b> the same is approved by the Central Zoo Authority	Clarification dated 08 June 2022 bearing File No.27-7/2020-CZA

Table 3 – Activities requiring Forest Clearance for Diversion of Forest Land



## **2.6 CIVIL V. CRIMINAL VIOLATIONS UNDER VSESA, 1980 AND THE ROLE OF THE NATIONAL GREEN TRIBUNAL**

Issues arising from the violation of the *Van (Sanrakshan Evam Samvardhan) Adhiniyam*, 1980 can be civil as well as criminal. Civil disputes relating to the violations of Section 2 of VSESA can be heard and decided by the National Green Tribunal as per Section 2A of VSESA and Section 16(e) of the National Green Tribunal Act, 2010 read with Section 14(1) and Schedule I of the NGT Act, 2010. Section 2A of VSESA states as follows:

**“2A. Appeal to National Green Tribunal.** — Any person aggrieved, by an order or decision of the State Government or other authority made under section 2, on or after the commencement of the National Green Tribunal Act, 2010, may file an appeal to the National Green Tribunal established under section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act.”

As per Section 2A, the NGT is the appellate body to appeal against the order passed under Section 2 of VSESA. It has authority to set aside the order of diversion of forest land. Civil disputes pertaining to violations of Section 2 of VSESA may include issues such as:

- Whether the land was forest land?
- Whether the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 applies to the land in question?
- Whether the land in question is covered under any of the exemptions provided in the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980?
- Whether the State Government or the authority have the authority to pass the order under Section 2 of VSESA?
- Whether the order of the State Government or the authority to divert forest land is valid?<sup>22</sup>
- Whether there was diversion of forest land?
- Whether the diversion was for forest purposes or non-forest purpose?
- Whether the prior approval of the Central Government is required or not?
- Whether the cost-benefit analysis has been properly conducted while applying for a grant of Forest Clearance (FC)?<sup>23</sup>

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<sup>22</sup> Sri Narayana Manjunatha Hegde v. Sri Gopalkrishna Gajanana Hegde, Application No. 1 of 2012 (SZ), decided on 8 February 2017 (NGT).

<sup>23</sup> Vimal Bhai v. MoEF, Appeal No. 5 of 2011, decided on 14 December 2011 (NGT).

- Whether Forest Clearance (FC) was granted based on wrong, incorrect, false, and misleading information?<sup>24</sup>
- Whether the Forest Clearance (FC) was granted in consonance with the principle of sustainable development and precautionary measures?<sup>25</sup>
- Whether the conditions of Forest Clearance (FC) have been complied with i.e. whether there is any violation of FC conditions?
- Disputes relating to the aspects of environmental clearance which are linked with forest clearance.<sup>26</sup>
- Dispute related to the calculation of Net Present Value (NPV)
- Disputes related to appraisal of Environmental Impact Assessment<sup>27</sup>
- Disputes related to the grant of ex-post facto clearance.
- Disputes relating to non-effective conduct of public hearings.
- Disputes relating to non-settlement of the Forest Rights Act before granting Forest Clearance.

However, the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 is not only a civil law but also a criminal law containing penal provisions for its violation. Section 3A of the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 states:

**“3A. Penalty for contravention of the provisions of the Act. —** Whoever contravenes or abets the contravention or any of the provisions of section 2, shall be punishable with simple imprisonment for a period which may extend to fifteen days.”

Further, Section 3B of VSESA provides criminal vicarious liability for head of the government department, or person in charge of an authority and holds them **deemed guilty** in case the violation of Section 2 is committed by any department of the government or any authority.<sup>28</sup>

**The offences under VSESA are non-cognizable and bailable.** The distinction between civil and criminal violation of VSESA can be summarized as follows:

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<sup>24</sup> See *Citizens of Green Doon v. Union of India*, Written Submissions filed on behalf of the Appellant, Appeal No. 29 of 2021 (NGT).

<sup>25</sup> *Vimal Bhai v. MoEF*, Appeal No. 5 of 2011, decided on 14 December 2011 (NGT).

<sup>26</sup> See *Budhsen Rathur v. Union of India*, Appeal No. 06, 2020, order dated 9 March 2022 (NGT).

<sup>27</sup> See *Citizens of Green Doon v. Union of India*, Written Submissions filed on behalf of the Appellant, Appeal No. 29 of 2021 (NGT).

<sup>28</sup> The Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980, § 3B.

<b>TABLE 4: VSESA VIOLATIONS- CIVIL &amp; CRIMINAL</b>	
<b>CIVIL</b>	<b>CRIMINAL</b>
<ul style="list-style-type: none"> <li>▪ Dispute regarding the nature of the land – whether it is forest land or not?</li> <li>▪ Disputes relating to the applicability of VSESA, 1980?</li> <li>▪ Whether the land in question is covered under any of the exemptions provided in the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980?</li> <li>▪ Dispute regarding land records – revenue records &amp; documentation.</li> <li>▪ Requirement of prior approval from Central Government.</li> <li>▪ Disputes relating to the validity of the order passed by the State Government or any other authority diverting forest land.</li> <li>▪ Whether the diversion was for forest purposes or non-forest purpose?</li> <li>▪ Dispute related to grant of forest clearance (FC) – whether there was a cost-benefit analysis done prior to the grant of FC? Whether the FC was granted based on wrong, incorrect, false, and misleading information? Whether the FC was granted in consonance with the principles of sustainable development and precautionary measures</li> <li>▪ Disputes related to aspects of environmental clearance that are linked with forest clearance.</li> <li>▪ Disputes related to Ex-post facto clearance, calculation of Net Present Value (NPV)</li> <li>▪ Appraisal of Environmental Impact Assessment, non-effective conduct of public hearing,</li> <li>▪ Non-settlement of Forest Rights Act before FC</li> </ul>	<ul style="list-style-type: none"> <li>▪ Intentionally, knowingly, deliberately, negligently or under the mischief rule passing an order for dereservation or diversion or conversion of forest land for non-forest purpose.</li> <li>▪ Handing over forest land to other agencies without notifying the forest department.</li> <li>▪ Intentionally violating Forest clearance/ VSESA conditions after notice has been served.</li> </ul>
<b>Remedy:</b> Appeal before the National Green Tribunal	<b>Remedy:</b> Criminal Prosecution before the Judicial Magistrate
<b>Sections:</b> Section 2A of VSESA, 1980 Section 16(e) of the NGT Act, 2010	<b>Sections:</b> Section 3A and 3B of VSESA, 1980

*Table 4 – VSESA Violations- Civil & Criminal*

Lastly, in circumstances where the National Green Tribunal's Fact-Finding Committee records a finding of deliberate/ intentional conversion/ diversion of Forest Land in the Committee Report (may be considered as an Incident Report) and in the same report it identifies any officer or authority – the same could be the basis for the Offence Report to be prepared by the Divisional Forest Officer (DFO) or the Deputy Conservator of Forests. It can also be utilized for instituting a criminal proceeding against the violating officer/authority.

## **2.7 WHAT IS THE RELEVANCE OR IMPORTANCE OF MUTATION REGISTER IN THE PROSECUTION OF OFFENCES UNDER VSESA, PARTICULARLY WHERE THERE IS AN ENCROACHMENT?**

Revenue Records, including the Mutation Register, play a crucial role in the claim for title of the lands, including those that are tantamount to forest lands. In such circumstances, the interface between the law of title, possession, and forest conservation, serves as a dichotomy to one another. As such it is relevant to understand the importance of such documentation.

- In general, where lands are transferred to another person, modification of name comes to be entered in title records such as the Mutation register.
- The Himachal government first wrote to the MoEFCC on December 5, 2018, seeking clarification on whether forest land could be “transferred by way of mutation” in the name of the developer who had received forest clearance for the land, in the record of rights maintained by the state’s revenue department.
- The MoEFCC responded July 30, 2019, stating that such a mutation could not be done. During prosecution, the Mutation Register may be produced as evidence to establish the ‘diversion’ of forest land. Any such transfers may be required to be treated as Encroachment for the purposes of Forest Conservation.
- The term ‘Encroachment’ however, is not defined under VSESA 1980, but may be defined in various State Laws.

For instance, the ‘Encroachment’ of forest land is regulated under the **Karnataka Forest Act, 1963** from the following provisions:

- **S.24.** Acts prohibited in reserved forests:(g) clears or breaks up any land for cultivation or any other purpose;(gg) unauthorisedly occupies land for any purpose.

- **S.33.** Power to make rules for district forests: (iii-a) prohibit unauthorized occupation of land for any purpose; (gg) unauthorisedly occupies land for any purpose.
- **S. 64A.** Penalty for unauthorisedly taking possession of land constituted as reserved forest, [district forest, village forest, protected forest, and any other land under the control of the Forest Department]
- **S. 73.** Penalty for counterfeiting or defacing marks on trees or timber and for altering boundary marks. (d) alters, moves, destroys, or defaces any boundary mark of any forest or waste land to which the provisions of this Act are applicable.

Under these circumstances prosecution may be initiated through a combination of provisions of respective State Forest law and VSESA 1980, as has been the case while prosecuting private individuals and government officials.

- In a landmark case in ***B.L. Diwakar v. State of Karnataka***,<sup>29</sup> Case I.A. No. 276 with I.A Nos 413,437,453,454) the D.C.F., Chikmagalur had submitted charge-sheet against the accused persons for an offence punishable under Sections 24(g) and (h) and 73(d) of Karnataka Forest Act, 1963, Section 8 read with Section 22 of Karnataka Preservation of Trees Act, 1976 read with Section 3-A of VSESA, 1980. Also, the application was made to initiate the contempt proceedings against the violators of the existing orders of the Supreme Court of India on encroachment. The Hon'ble Supreme Court directed the Survey of India to submit the report on such encroachment. The Hon'ble Court directed for a voluntary return of the encroached land to the Forest Department, upon which there shall be no penalty.
- In a similar matter involving encroachment of forest lands, viz. ***K.T. Girianna v. The Range Forest Officer, Kaggalipura Range, Kaggalipura***<sup>30</sup> prosecution under section 2 of Forest (Conservation) Act, 1980, read with Section 33 (2) (iii-a), 73 (d) of Karnataka Forest Act, 1963. The allegation in the complaint was that the petitioner had encroached an area to the extent of 6 acres 38 guntas in Sy. No. 42 situated at Thurahalli Minor Forest Area which constitute an offence punishable u/s 33(2) (iii-a) of the Karnataka Forest Act and Rule 25 of the Rules made therein. The Court directed for the Joint survey by the revenue and forest authorities to ascertain the total acres of forest land encroachment.

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<sup>29</sup> (1999) 11 KAR CK 0029.

<sup>30</sup> (2012) 5 KarLJ 49.

- Similarly, in *Smt Jeanne Pinto v. Deputy Conservator of Forests*,<sup>31</sup> a suit for declaration was filed by the Plaintiff that she had acquired title over the suit schedule properties (which was a forest land as per the government records) by way of adverse possession and for permanent injunction restraining the Deputy Conservator of Forests from interfering with her possession over the suit schedule properties. The Karnataka High Court held that when the legal status of land has been as “forest land under government records” there shall be no claim of adverse possession.
- In the case of *Nature Lovers Movement v. State of Kerala*,<sup>32</sup> the Hon’ble Supreme Court observed “when the State Government decides to assign 10,000 hectares of forest land to unauthorised occupants/encroachers, it shall do so only after obtaining prior approval of the Central Government and the latter shall take an appropriate decision keeping in view the object of the 1980 Act and the guidelines framed for regularization of encroachments on forest land” It is very clear that even in cases where the state governments have to regularise the encroachment of forest land, the prior central government approval is mandatory under the FCA 1980.

## **2.8 CAN THE STATE GOVERNMENT REGULARIZE THE ENCROACHMENT OF FOREST LAND WITHOUT OBTAINING PRIOR APPROVAL OF CENTRAL GOVERNMENT UNDER VSESA, 1980?**

It should be noted that regularization of encroachment of forest land by the State Government, by way of assignment of such land to unauthorized occupants/encroachers, is also considered as “diversion of forest land”, as clarified under the 2004 Guidelines by the Ministry of Environment and Forests regarding regularization of encroachment on forest land. A precursor reference for understanding the regularisation of such encroachments is as follows:

<p>Encroachments happened prior to 24.10.1980</p>	<ul style="list-style-type: none"> <li>• If already regularized before or prior to 24.10.1980 – No application of VSESA.</li> <li>• subsisting case of encroachment – State Government considering regularization – Require prior Forest Clearance from Central Government only for the ‘ELIGIBLE’ category of encroachment.</li> </ul>
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<sup>31</sup> RFA No.988/2013 Karnataka High Court.

<sup>32</sup>Nature Lovers Movement v. State of Kerala, 2009 AIR SCW 3656.

	<ul style="list-style-type: none"> <li>subsisting case of encroachment – State Government considering regularization – but falls under the ‘INELIGIBLE’ category of encroachment for regularization – <b>cannot be regularized.</b></li> </ul>
Encroachments after 24.10.1980	<b>Cannot be regularized</b>

In the case of *Nature Lovers Movement v. State of Kerala*<sup>33</sup> The Supreme Court of India declared the decision of the Kerala Government to assign 10,000 hectares of forest land to unauthorized occupants/encroachers (pre 24.10.1980 encroachment – ELIGIBLE category – State Government was considering regularization), without obtaining the approval of the Central Government, as violative of the provisions of VSESA.

It is clarified that the forest land diverted for non-forestry purpose under VSESA will have legal status as ‘forest’ even after diversion. Hence, the diverted forest land cannot be transferred by way of mutation in the name of User Agency / User Department in the record of rights (Revenue record) by the Revenue Department.

The handbook of the FCA, 1980 and Forest Conservation Rules, 2003 published by the MoEFCC in 2019 states that the diversion of forest land for non-forest purposes is only a “right to use” granted to the user agency without any change in the legal status of the forest land, and that the entity using the forest and cannot mortgage, reassign or sublease it [*Chapter I: Court Orders and General Clarifications, Paragraph 1.9*].

“1.9. Any diversion of forest land for non-forest purpose is only a “right to use” granted to the User Agency without any change in ownership and legal status of the forest land. As such, the diverted forest land cannot be mortgaged or reassigned or subleased by the User Agency”<sup>34</sup>

## 2.9 PENALTY FOR CONTRAVENTION OF VSESA

### 2.9.1 IMPRISONMENT

Sections 3A and 3B of the Forest Conservation Act, 1980 deal with punishments. Section 3A states that whoever contravenes the provisions under Section 2, shall be punished with a period of up to fifteen days. The fact that the State Government has not taken approval from the

<sup>33</sup> *Nature Lovers Movement v. State of Kerala*, 2009 (5) SCC 373.

<sup>34</sup> Ministry of Environment, Forest and Climate Change, Government of India, Handbook of Forest (Conservation) Act, 1980 and Forest Conservation Rules, 2003 (Guidelines & Clarifications), [https://www.dgms.net/handbook\\_guidelines18\\_03\\_2019.pdf](https://www.dgms.net/handbook_guidelines18_03_2019.pdf) Pg 40.

Central Government was sufficient to render the State Government's order under Section 2 illegal and void.<sup>35</sup>

On the other hand, Section 3B lays down stringent punishment. It states that when an offence has been committed by any government department or head of the department, or by any authority, then every person who was directly in charge of that authority will be deemed guilty. Even if the authority is not the head of the department, he can be punished if it can be proven that the alleged act has been done with his consent or connivance. A person won't be punished under this Section if they can show that the offence had been committed without their knowledge or that all due diligence had been exercised by them to prevent the commission of the offense. The maximum punishment under this provision, however, has not been specified.<sup>36</sup>

### **2.9.2 MONETARY PENALTY-WHETHER ALTERNATE?**

Point 1.16 of the 2023 Guidelines prescribes monetary penalties for various kinds of violations.

- i. If forest land is diverted while the proposal for Forest Clearance is under consideration, a fine of up to five times the Net Present Value (NPV) of forest land from the year of violation plus 12% (percent) simple interest per annum till the deposit is made. The State Government would also be required to take disciplinary action against its officials. The Central Government can initiate suitable action against the offender and the user agency may be prosecuted under State laws for an illegal diversion without the State authority's permission.
- ii. The penalty for non-compliance of conditions imposed while granting Forest Clearance is twice the normal NPV.

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<sup>35</sup> K.V. Shanmugam v. State of Tamil Nadu (1998) 1 MLJ 417. The ratio of this case is that without proper approval from the Central Government, activities prohibited under Section 2 cannot be carried out.

<sup>36</sup> 3B. Offences by authorities and Government departments. —

(1) Where any offence under this Act has been committed—

(a) by any department of Government, the head of the department; or

(b) by any authority, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the authority for the conduct of the business of the authority as well as the authority, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render the head of the department or any person referred to in clause (b), liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence punishable under the Act has been committed by a department of Government or any authority referred to in clause (b) of sub-section (1) and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any officer, other than the head of the department, or in the case of an authority, any person other than the persons referred to in clause (b) of sub-section (1), such officer or persons shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.]



- iii. The penalty is two times the NPV with 12% simple interest from the date of actual violation and if the violation is related to the change in land use except for mining operations. However, it may be noted that where a diversion has been made in consonance with a permissible change in the mining plan, no penalty can be imposed.

### 2.9.3 WHETHER THE MONETARY PENALTY IS A SUBSTITUTE FOR IMPRISONMENT?

There is no mention in the 2023 Guidelines that monetary penalty can act as a substitute for imprisonment. Prosecution can be initiated against user agencies even if user agencies pay the prescribed amount. However, there have been instances where user agencies have paid the prescribed fees and has not faced imprisonment. In a request for granting *ex-post facto* clearance for a violation that has been going on for 44 years in an area spanning 96.868 hectares, the user agency was asked to pay the prescribed fines and bear the cost of compensatory afforestation.<sup>37</sup> As per Criminal Law, prescription of Imprisonment or Fine, or both for the offences committed are prescribed. Regardless of the imposition of the fine or imprisonment, or both, a Monetary Penalty may be levied for the offences thereof at the time of grant of Ex Post Forest Clearance.

**It shall be noted that the imposition of a Monetary Penalty may be in addition to the prosecution for offences committed under VSESA thereof.**

## 2.10 CRIMINAL VIOLATIONS UNDER VSESA, 1980

The Criminal Violations elucidated in Para 1.16 of Chapter 1 – *General Clarifications and Court Orders* of the Consolidated Guidelines and Clarifications Issued under Van (Sanrakshan Evam Samvardhan) Adhinyam, 1980 and Van (Sanrakshan Evam Samvardhan) Rules, 2023, (**hereinafter referred to as 2023 Guidelines**) may be summarized as follows:

<b>CRIMINAL VIOLATIONS UNDER VSESA, 1980<sup>38</sup></b>			
<b>Sl. No.</b>	<b>Violation</b>	<b>Proceeding Under</b>	<b>Penal Provision</b>
1.	The land has been diverted for non-forest purposes without the prior approval of the	Indian Forest Act, 1927 and other State Acts	Section 29 of the Indian Forest Act, 1927 The land will not be considered as diverted under VSESA and the legal

<sup>37</sup> Minutes of the Meeting of Advisory Committee meeting dated 20.10.2023.

<sup>38</sup>– Consolidated Guidelines and Clarifications Issued under Van (Sanrakshan Evam Samvardhan) Adhinyam, 1980 and Van (Sanrakshan Evam Samvardhan) Rules, 2023, ¶ 1.16.

<b>CRIMINAL VIOLATIONS UNDER VSESA, 1980<sup>38</sup></b>			
<b>Sl. No.</b>	<b>Violation</b>	<b>Proceeding Under</b>	<b>Penal Provision</b>
	competent authority in the State		status of the land shall continue as 'forest land'
2.	Permission for the diversion of the land for non-forest purposes has been granted by the competent state authority without prior approval of the Central Government	VSESA, 1980 read with Consolidated Guidelines and Clarifications Issued under Van (Sanrakshan Evam Samvardhan) Adhinyam, 1980 and Van (Sanrakshan Evam Samvardhan) Rules, 2023	Section 3A or 3B whichever is applicable. A Report with full details of the violation shall be submitted by the State Government on the Recommendation of the Forest Department of the State to the MoEFCC, New Delhi Formal Inquiry to be conducted by the Regional Office of the MoEFCC
3.	The proposal for Forest Clearance under VSESA is under consideration and the forest land is diverted before the grant of FC.	VSESA, 1980 read with Consolidated Guidelines and Clarifications Issued under Van (Sanrakshan Evam Samvardhan) Adhinyam, 1980 and Van (Sanrakshan Evam Samvardhan) Rules, 2023  Central and other local forest laws (such as the Indian Forest Act, 1927)  Disciplinary Proceedings under relevant Service Laws	(i) State Government shall institute disciplinary proceedings against the official concerned for not being able to prevent use of forest land for non-forest purpose. (ii) The Central Government will initiate suitable action against the concerned offender. (iii) User Agency will be criminally responsible for violation and will be prosecuted under relevant local laws or Central laws for unauthorized use of forest land. (iv) Penalty: Equal to NPV of forest land per hectare for each year of violation from the date of diversion with a maximum of up to Five (5) times the NPV plus 12% (percent) Simple Interest from the date of raising such demand till the deposit is made.
4.	Violation or non-compliance of any Forest Clearance Conditions	VSESA, 1980 read with Consolidated Guidelines and Clarifications Issued under Van (Sanrakshan Evam Samvardhan) Adhinyam, 1980 and Van (Sanrakshan Evam Samvardhan) Rules, 2023	(i) Penalty will be imposed on the recommendation of Dy. Director General of Forests (Central), Regional Office in whose jurisdiction the alleged violation has occurred. (ii) The violation will be reported to REC/AC and the committee will give time to comply with the conditions within stipulated time. (iii) In case the offence is proved then the penalty shall be imposed for violation committed over forest

<b>CRIMINAL VIOLATIONS UNDER VSESA, 1980<sup>38</sup></b>			
<b>Sl. No.</b>	<b>Violation</b>	<b>Proceeding Under</b>	<b>Penal Provision</b>
			area without approval equal to twice the normal NPV
5.	Violation on account of change of land use	VSESA, 1980 read with Consolidated Guidelines and Clarifications Issued under Van (Sanrakshan Evam Samvardhan) Adhinyam, 1980 and Van (Sanrakshan Evam Samvardhan) Rules, 2023	Any violation of change in land use, other than mining operations, a penalty of two times the NPV plus simple interest 12% (percent) from the date of the actual violation committed shall be imposed.
6.	Violation not attributable to the User Agency	VSESA, 1980 read with Consolidated Guidelines and Clarifications Issued under Van (Sanrakshan Evam Samvardhan) Adhinyam, 1980 and Van (Sanrakshan Evam Samvardhan) Rules, 2023	No penalty shall be imposed on the user agency.

Table 5 – Criminal Violations under VSESA

## **2.11 WILL PROSECUTION FOR THE OFFENCE OF TRESPASS UNDER THE FOREST ACT, 1927 CONTINUE, DESPITE A ‘NOT-GUILTY’ VERDICT UNDER THE VSESA?**

The essential elements of both the provisions do not overlap with each other. In general, if a person is prosecuted for trespass under the Forest Act and is subsequently acquitted of the charges under VSESA, it is not necessary that the prosecution under the provisions of the Forest Act will be discharged. The case can proceed for the provisions under the Forest Act which deal with the offence of trespassing. VSESA may provide for additional legal mechanisms for prosecution under the Forest Act, but it does not necessarily supersede or nullify ongoing provisions under the Forest Act.

## **2.12 CAN THE CONCEPT OF ENCROACHMENT AND OTHER LEGISLATION SUCH AS THE PUBLIC PREMISES EVICTION OF UNAUTHORISED OCCUPANTS ACT, 1971, BE APPLIED IN THE CASE OF OFFENCES UNDER VSESA?**

Land Encroachment (of Government Land) can be defined as the “Unauthorized occupation of any land which is the property of Government”<sup>39</sup> Encroachment of Forest Land continues to be an offence under Section 26 of the Indian Forest Act, 1927 punishable with imprisonment of 6 months (maximum) or fined up to 500 Rupees or both.

- However, State Governments generally have their own legislation on eviction. These legislations also called as Public Premises Eviction Act can be utilised to evict the encroachers from forest land. For instance, in *State of H.P. v. Shri Roshan Lal*<sup>40</sup> & *Ishwar Singh v. State of H.P.*,<sup>41</sup> the Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971 was utilised to evict encroachers/unauthorized occupants of forest land. Further, as per Section 64A of the Karnataka Forest Act, Summary Eviction can be done by a Forest Officer (not below the Rank of an Assistant Conservator of Forests) for encroachment of any land in reserved forest, district forest, village forest, protected forest, and any other land under the control of the Forest Department. But, before passing any order of eviction, a reasonable opportunity to be heard should be given to the encroachers/unauthorized occupants.
- Additionally, the National Green Tribunal can also order for eviction from encroached forest land. However, it does not have the jurisdiction to order eviction from encroachment of non-forest land. For instance, in the case *Santanu Kumar Bhukta v. M/S GM Iron and Steel Company*,<sup>42</sup> the National Green Tribunal utilised the Orissa Prevention of Land Encroachment Act, 1972 to evict encroachers from the forest land.

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<sup>39</sup> See, The Andhra Pradesh Land Encroachment Act, 1905, §3; The Telangana Land Encroachment Act, 1905, §3; The Tamil Nadu Land Encroachment Act, 1095, §3; The Orissa Prevention of Land Encroachment Act, 1972, §3.

<sup>40</sup> *State of H.P. v. Shri Roshan Lal*, RSA No. 343 of 2008 along with CMP No. 5004 of 2016, decided on 27 December 2016 (HP HC).

<sup>41</sup> *Ishwar Singh v. State of H.P.*, CWP No.737 of 2019, decided on 3 May 2019 (HP HC).

<sup>42</sup> *Santanu Kumar Bhukta v. M/S GM Iron and Steel Company*, Original Application No. 45/2022/EZ decided on 12 February 2024 (NGT East Zone Bench).

## **2.13 WHO CAN BE HELD LIABLE FOR AN OFFENCE UNDER VSESA?**

Section 3A of the uses the phrase “*Whoever contravenes or abets the contravention of any of the provisions of Section 2.*” “Whoever” may mean to include any person, company, firm, association of persons, etc., as may be required to be interpreted, and may also extend to pinning of vicarious liability as per applicable law.<sup>43</sup>

- As for the meaning of the phrase “*contravenes or abets the contravention*”, Section 107 of the Indian Penal Code, 1860, (Section 45 of the Bharatiya Nyaya Sanhita, 2023) provides that, a person who instigates any person to do a thing; or engages with one or more persons in any conspiracy and an act or illegal omission takes place in pursuance of that conspiracy in order to the doing of a thing; or intentionally aids, by any act or illegal omission, the doing of a thing, is said to have abetted in the doing of that thing.
- As mentioned in Point 2.7 (a), if a government department is involved in the commission of the offence under Section 3A, the departmental head or a person in charge of the concerned authority would be liable for punishment.<sup>44</sup> If a VSESA offence was committed with the consent or connivance of an officer other than the departmental head or the person in charge, the Forest officer would be penalized. Similarly, a Forest officer would be held responsible if the impugned offence could be attributed to their negligence in discharging duties under the law.<sup>45</sup>

## **2.14 CAN A PRIVATE INDIVIDUAL BE PENALISED UNDER VSESA, 1980?**

The Jharkhand High Court in *State of Jharkhand v. Jodhi Yadav*<sup>46</sup> declined to treat Section 2 as a penal provision that can be resorted to against a private person. The court held that the restriction on the use of forest land for non-forest purpose is merely cast upon the State Government or a public authority. While this decision acts as a deterrent to prosecute private individuals under VSESA there is no bar to add the private person as ‘abettor of an offence’.

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<sup>43</sup> Rai Bahadur Seth Shreeram Durgaprasad v. Director of Enforcement, (1987) 3 SCC 27.

<sup>44</sup> Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980, § 3B.

<sup>45</sup> *Id.*

<sup>46</sup> State of Jharkhand v Jodhi Yadav, (2019) 12 JH CK 0266.

However, it is recommended that where it may be shown that a private person is a beneficiary of any order or direction –

- (i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved.
- (ii) that any forest land or any portion thereof may be used for any non-forest purpose.
- (iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency, or any other organisation not owned, managed, or controlled by the Government.
- (iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reforestation; then Private Persons may be accused of the offence of abetting an offence under the Forest Conservation Act, 1980.

Similarly, the Kerala High Court in *Angels Nair*,<sup>47</sup> directed the State to proceed against officials or “the company” if they are in contravention of the Act. In this case, the Government counsel had argued that under Section 3A, it is the duty of the State to proceed against erring officials or “any other person”, if they have violated the provisions. The Court, while not explicitly confirming the same, did not refute the contention.

**Hence, Private Persons may also be prosecuted as an ‘abettor’ under VSESA.**

## **2.15 IS THERE ANY PROTECTION AVAILABLE TO OFFICERS FOR ACTING IN GOOD FAITH, SIMILAR TO THE PROTECTION AVAILABLE IN THE INDIAN FOREST ACT, 1927/ WILDLIFE PROTECTION ACT, 1972 TO PREVENT ANY VEXATIOUS LITIGATION?**

Good faith exemptions are provided under various statutes offering a shield to certain persons from legal proceedings for actions taken in good faith. As per Section 3(14) of the General Clauses Act, 1977 a thing shall be deemed to be done in ‘good faith’ if that thing has been done honestly, even if it is done negligently or not. Whereas both the Indian Penal Code, 1860<sup>48</sup> and

<sup>47</sup> *Angels Nair v. Govt. of Kerala*, [2019] SCC OnLine Ker 2282.

<sup>48</sup> The Indian Penal Code, 1860, § 52.

the Bharatiya Nyaya Sanhita, 2023<sup>49</sup> (which will replace the Indian Penal Code) provides certain exemptions for acts done in ‘good faith’ which are acts done or believed in good faith with due care and attention. For example, an act done by a person due to mistake of fact in good faith believing himself to be bound by law to do that act will not constitute an offence.<sup>50</sup> This exemption is generally available for public servants to ensure smooth discharge of public duties without worrying about malicious prosecution.<sup>51</sup> Some of the environmental legislations such as the Wildlife (Protection) Act, 1972<sup>52</sup> and the Indian Forest Act, 1927<sup>53</sup> also contain ‘good faith’ provisions affording protection to public servants.

Under Section 211 of the Indian Penal Code (S. 246 of BNSS 2023), the interest of the officers initiating actions are protected where actions are taken in good faith. Only when and where false charges are framed, Section 114 of the Karnataka Forest Act, also provides for protection of actions taken by officers to prosecute the offenders under the Karnataka Forest Act.

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<sup>49</sup> The Bharatiya Nyaya Sanhita, 2023, § 3(11).

<sup>50</sup> The Indian Penal Code, 1860, § 77; The Bharatiya Nyaya Sanhita, 2023, § 14.

<sup>51</sup> Vijay Rajmohan v. State, Represented by the Inspector of Police, CBI, AIR 2022 SC 4974.

<sup>52</sup> Wildlife (Protection) Act, 1972, § 60.

<sup>53</sup> Indian Forest Act, 1927, § 72.

## 3 PRE-TRIAL COMPLIANCE

### 3.1 RELEVANCE OF PRE-TRIAL PROCESS AND PROCEDURE

Section 4 of VSESA confers the power on the Central Government to make rules for the implementation of the Act. Accordingly, Van (Sanrakshan Evam Samvardhan) Rules, 2023 were drafted. Rule 15 confers the power on the Central Government to authorize any officer of the rank of Divisional Forest Officer or Deputy Conservator of Forests and above, having territorial jurisdiction over the forest land in which the offence has been alleged to be committed, to file complaints against the person prima-facie found guilty of offence under the Act or the violation of the rules made thereunder, in the court having jurisdiction in the matter. MoEFCC has authorized officers of the rank of Divisional Forest Officer (DFO)/Deputy Conservator of Forests (DCF) and above of the concerned State Government or Union territory for this purpose.<sup>1</sup>

Originally, Rule 9 of the 2003 Rules which dealt with the procedure for prosecution stated that no complaint will be filed before giving the affected parties a chance to explain their action. Going by the rules of administrative law, this made the designated authority a quasi-judicial authority, since they must follow the rules of natural justice. However, this provision does not exist in the 2023 Rules.

An offence committed under VSESA, before reaching the court, has to be meticulously observed and recorded. The steps involved in the pre-trial compliance can be explained with the help of the following hypothetical situation.

**Situation:** A Forest Guard/Patrolling Team in the Forest sees a Forest area being converted/used for non-forest purposes. Once they see this violation of VSESA – the procedure that must be followed is as follows:

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**Step – 1**

The Forest Guard/Ranger officer/Ranger prepares an Incident Report (IR) of the entire incident in which they observed that the Forest area is being converted/used for non-forest purposes.

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<sup>1</sup> The Gazette of India, June 3, 2023, Part I-Section 1.



	<p><b>Note:</b> Incident Report – is a fact-finding document. This document mentions the facts of the incident. It is the preliminary document that has been prepared on account of the alleged incident.</p>
<b>Step – 2</b>	The Incident Report is sent to the District Forest Officer ( <b>DFO</b> ) for review.
<b>Step – 3</b>	<p>The DFO/Deputy Conservator of Forests (<b>DCF</b>) on the basis of the Incident Report and after consultation with the Forest Guard/Ranger officer – prepares detailed Offence Report.</p> <p><b>Note:</b> Offence Report – is a detailed document mentioning the following:</p> <ol style="list-style-type: none"> <li><b>a.</b> Names of the alleged violators.</li> <li><b>b.</b> Description of the alleged violation and the offence.</li> <li><b>c.</b> Description and measurement of the forest land, along with the revenue record (if possible)</li> <li><b>d.</b> A mention of the violated sections under VSESA along with any other section from the relevant criminal legislation(s)</li> </ol> <p>An offence report can be equated to a charge-sheet prepared by a Police officer in Criminal cases.</p>
<b>Step – 4</b>	<p>The Offence Report is sent to the Ministry of Environment, Forest, and Climate Change (MoEFCC) for examination. The MoEFCC shall determine and communicate to the concerned State Authorities if any provision of VSESA has been violated and shall direct for filing of the Complaint against the offenders before a Court having the required jurisdiction.<sup>2</sup></p> <p>This sanction/communication shall act as a prerequisite for the authorized officer to file a Complaint before the respective jurisdictional Court.<sup>3</sup></p> <p><b>Note:</b> As per the law, the Officer who has been empowered to take cognizance, can independently launch the prosecution by sending of Offence Report. It is believed that as the Forest Department, is a joint administrative structure between Union and State (Concurrent), the Officers of the State are independent to report any such violation and seek authorisation, and any authorisation through proper channel may be considered to be dispensed of with.</p>
<b>Step – 5</b>	<p>Once sanction/communication is received from the MoEFCC within 45 days from the receipt of the communication the Complaint must be filed before the Court having requisite jurisdiction.</p> <p><b>Note:</b> Sanction under Section 197 of the Criminal Procedure Code, 1973 (Section 218 of the Bharatiya Nagarik Suraksha Sanhita, 2023) is not required since under Section 3B of VSESA the offence has already been stated as deemed to be guilty.<sup>4</sup></p>
<b>Step – 6</b>	The matter proceeds before the Hon'ble Court

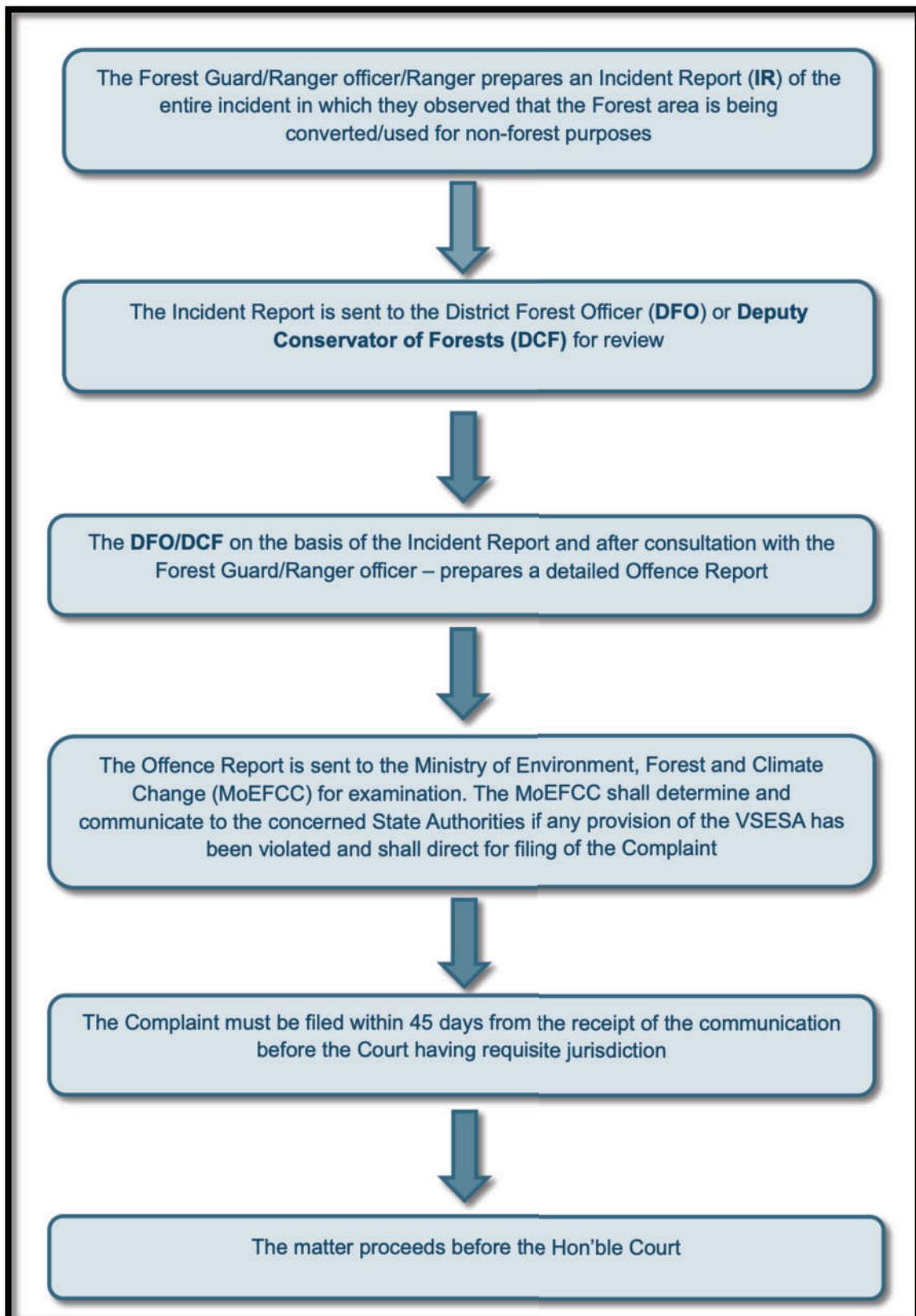
*Table 6 – Modalities of reporting the violation until it reaches the Court*

<sup>2</sup> Van (Sanrakshan Evam Samvardhan) Rules, 2023, Rule 15(2).

<sup>3</sup> *Id.*

<sup>4</sup> See, Noorulla Khan v. Karnataka State Pollution Control Board, (2021) 17 SCC 524.

### 3.2 FLOWCHART - PRE-TRIAL COMPLIANCE UNDER VSESA, 1980 BY STATE AUTHORITIES

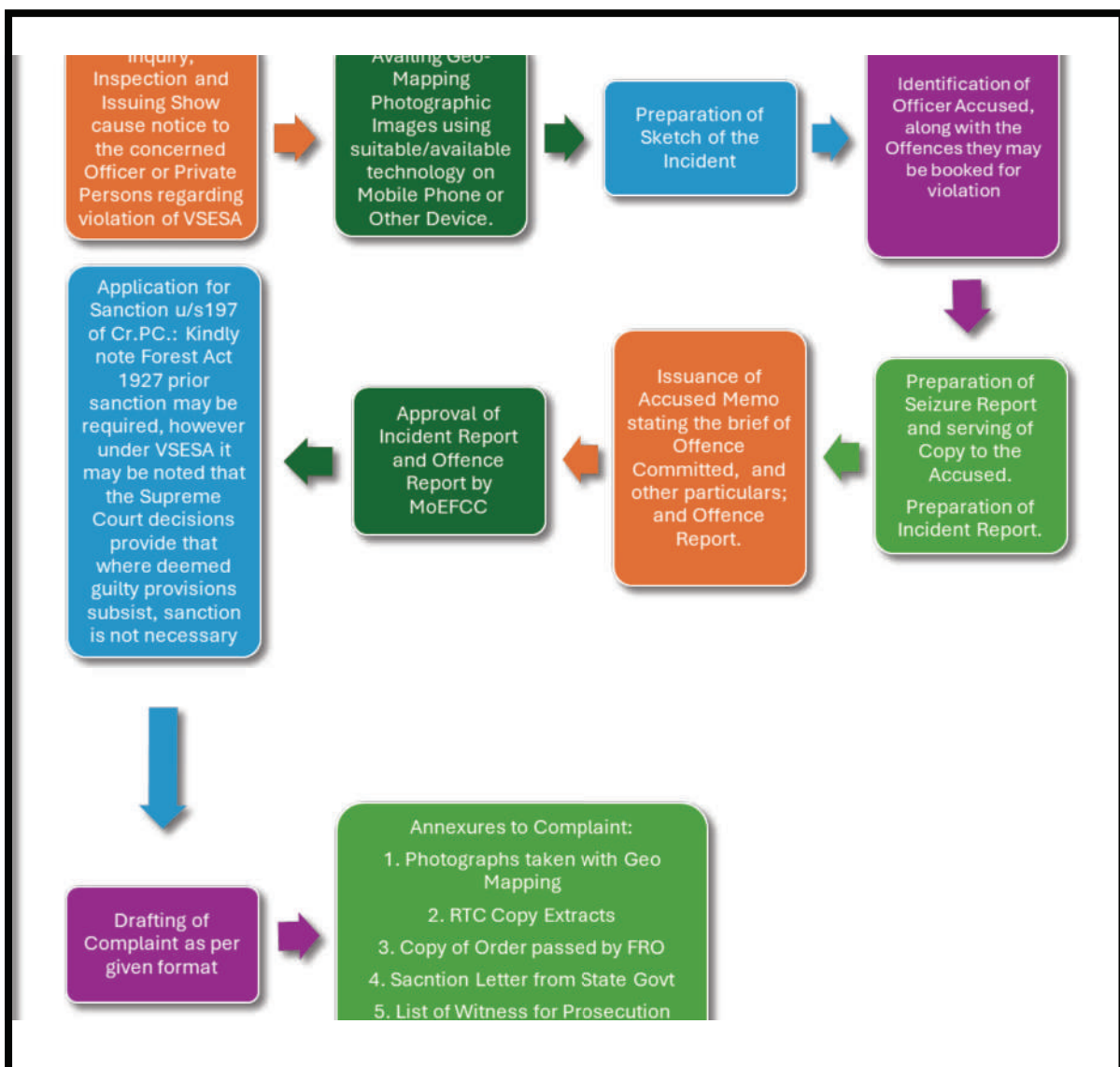


### 3.3 FLOWCHART - PRE-TRIAL COMPLIANCE UNDER VSESA, 1980 BY AUTHORITIES OF THE CENTRAL GOVERNMENT

It is to be noted that the Regional Office of MoEFCC may undertake actions on any purported violation of VSESA, 1980, under the following circumstances:

- (i) failure from State Authority to bring to the notice of MoEFCC of short comings.
- (ii) Where State Authority undertakes alternate mechanism, other than prosecution.

The Assistant Inspector General or higher-ranking officer as authorized by the Government of India, may initiate prosecution under his discretion, where he deems fit and necessary, and may use the following streamlined mechanism for the same:



However, it is to be noted that the Right to prosecute must be exercised judiciously, in coordination with the State Government, in spirit of Cooperative Federalism, where they seek to prepare the Incident Report, including a Joint Survey. Inspection, Calling for Records, and such other Investigative tools, for cognizance of offence. Any such action should follow MoEFCC, Standard Operating Procedure, if any and Guidelines issued from Time to Time.

### **3.4 PRE-TRIAL DOCUMENTATION**

#### **3.4.1 INCIDENT REPORT**

Incident Report (**IR**) is a document prepared by the Forest Guard/Ranger officer/Ranger detailing the entire violation. It essentially is a fact-finding document. It is the preliminary document that is prepared on account of the alleged incident and is sent to the Divisional Forest Officer (DFO) or Deputy Conservator of Forests (DCF) for review. A similar report is drawn by the Protection Officer or the Service Providers under the Protection of Women from Domestic Violence Act, 2005,<sup>5</sup> which will be considered by the Magistrate before passing any order on an application made before him under this Act. This indicates the relevancy of such a report in the earliest reporting of criminal violations.

Incident Report is to take cognizance of violation; to measure, survey and report the extent of violation and furthermore to track, trace the violations. It is a report that will help the forest officers monitor the situation and violations to record and report the same to the higher authorities. Further, it is a critical 'knowledge transfer' document which is useful when officers are frequently transferred. They help in identifying relevant areas which may be vulnerable and susceptible to VSESA violations.

It is not mandatory for the Magistrates to consider the Incident Report, however it becomes a record for the department which will be crucial document for initiating departmental enquiry in case prosecution under VSESA is not initiated.

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<sup>5</sup> The Protection of Women from Domestic Violence Act 2005, § 2(e).

### 3.4.2 SUGGESTIVE CHECKLIST TO BE FOLLOWED BY OFFICERS AT THE TIME OF INSPECTION OR APPREHENSION:

- In Preparation of map/ Rough sketch:
  - Ensure that the sketch is drawn to scale with mentioning of all angles and status of all articles at the establishment.
  - Providing a detailed description of all articles at the establishment inspected.
  - Mention the position of witnesses, if any.
  - Mention any other details as necessary.
- After Inspection:
  - Referring and cross-checking the details in the IR with the witnesses if any.
  - Preparation of Prosecution Report and drafting of the complaints to be filed before courts of law.
  - Preparation and presentation of complaints before the courts of law.
  - Determining the Officer empowered to file the complaint.
  - Determining the Agency, Department or Authority against whom complaint is to be filed.
  - Provisions of law for filing complaint.
  - **For template of Incident Report, see ANNEXURE – I**

### 3.4.3 OFFENCE REPORT

The offence Report is similar to a charge-sheet, prepared by the DFO/DCF after reviewing the IR after consultation with the Forest Guard/Range Officer and is sent to MoEFCC for examination. The offence Report should be more detailed than the IR. Thus, every relevant information should be included in it. **For a template of the Offence Report, see ANNEXURE – III.**

Depending on the scenario the concerned officer empowered to prosecute shall prepare the following type of the Report, viz.

- **Compounding Offence Report [COR]**, where the offence is compoundable in nature. It is to be noted that in the FCA/VSESA 1980 there are no compoundable offences.
- **Undetected Offence Report [UDOR]**, where an offence is envisaged to be conducted, however, the perpetrator accused could not be identified.
- **Prosecution Report**, where the perpetrator accused has been identified, and a

prosecution can be initiated effectively.

The Report is required to describe the nature of the violation in a self-contained note along with supporting documents, and more particularly the names and designations of the officials/persons who are prima-facia responsible for the contravention of the Act. Where the officer is unable to fix the responsibility for the commission of the contravention, a separate explanation to that effect is required to be provided in the report.

#### **3.4.4 COMMUNICATION FROM MOEFCC**

Once the Offence Report is received by the MoEFCC, it shall determine if there has been any violation of VSESA and communicate the same to State authorities directing them to proceed with filing a complaint. Such a complaint must be filed within 45 days from the receipt of the communication before the Court having requisite jurisdiction.

### **3.5 IS SANCTION UNDER SECTION 197 OF THE CODE OF CRIMINAL PROCEDURE (Cr.P.C) & BNSS, A PRE-REQUISITE FILING A COMPLAINT UNDER VSESA, 1980?**

Under Section 197 of the Code of Criminal Procedure (Section 218 of the Bharatiya Nagarik Suraksha Sanhita, 2023), a criminal action can be undertaken in a court having jurisdiction against a public servant acting or purporting to act in the discharge of his duties only through the sanction of the government under whom he was employed or was in connection with the affairs of such Government.<sup>6</sup> This sanction is a prerequisite to the process of prosecuting any public servant accused of a crime.<sup>7</sup> The objective of the sanction, as reiterated by the courts, is to ensure the discouragement of fraudulent, doubtful and frivolous prosecution against public servants.<sup>8</sup>

However, it is pertinent to note that Section 3B of VSESA, 1980 which authorizes the initiation of criminal proceedings against head of government departments and person in charge or authorities is a “deemed guilty criminal provision” i.e. it assumes the concerned officer guilty by way of legal fiction. Deemed guilty criminal provisions are a common feature in environmental jurisprudence in India. Similar provisions are contained under the Water

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<sup>6</sup> The Code of Criminal Procedure, 1973, § 197.

<sup>7</sup> Dowlath v. Dey, District Forest Officer (1953) 2 MLJ 128.

<sup>8</sup> CBI v. Ashok Kumar Aggarwal, 2007 98 DRJ 80.

(Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 The requirement of Sanction under Section 197 under these legislations was discussed by the Supreme Court in *Noorulla Khan v. Karnataka State Pollution Control Board*, *Karnataka State Pollution Control Board v. B Heera Naik*, and *V.C. Chinnappa Goudar v. Karnataka State Pollution Control Board*, wherein the hon'ble Apex Court has held that the presence of a deeming fiction on guilt, the protection under Section 197 of the Code would not be available and the matter ought to be considered *de hors* such protection.

In *Noorulla Khan v. Karnataka State Pollution Control Board*<sup>9</sup>, the Hon'ble Supreme Court while interpreting Section 48 of the Water (Prevention and Control of Pollution) Act, where a deemed guilty provision has been used for determination of liability of public servants, the Court categorically held that the protection of sanction under Section 197 of Code of Criminal Procedure is not available to public servants prosecuted under Section 48 of the Water (Prevention and Control of Pollution) Act. The Court held that Section 197 would be inapplicable on the following counts:

- (a) If the violation of the provisions was at the hands of a Department, the Head of the Department would be deemed to be guilty. This would of course be subject to the defences which are available to him to establish whether the offence in question was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.
- (b) By virtue of the decision of the Supreme Court in *V.C. Chinnappa Goudar*,<sup>10</sup> because of deeming fiction under Section 48 of the Water Act, the protection under Section 197 of the Code would not be available and the matter ought to be considered *de hors* such protection.
- (c) If the concerned public servant happens to be a Chief Officer or Commissioner of a Municipal Council or Town Panchayat, he cannot strictly be called the Head of the Department of the Government. According to said decision, even in such cases, the deeming fiction available under Section 47 of the Water Act would disentitle the public servant from the protection under Section 197 of the Code.

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<sup>9</sup> (2021) 17 SCC 524.

<sup>10</sup> (2015) 14 SCC 535.

- (d) If the offenders are other than public servants or where the principal offenders are corporate entities in private sectors, the question of protection under Section 197 would not arise.

Hence, on the similar lines, it can be stated that since VSESA, 1980 is a special environmental legislation containing a deemed guilty provision under Section 3B, the requirement of prior sanction under Section 197 Cr.P.C. (BNSS) may be dispensed with for prosecuting government officers for the violation of VSESA, 1980.

### **3.6 DOES THE CENTRAL BUREAU OF INVESTIGATION HAVE THE POWER TO INQUIRE INTO CASES CONCERNING VIOLATION OF VSESA?**

It is pertinent to note that the Central Bureau of Investigation (CBI) may inquire into VSESA offences. In order to understand the jurisdiction of the, and the procedure to hand over cases to the CBI, a few points are illustrated below:

- i. State Police organizations hold original jurisdiction to investigate any crime. CBI does not have the power to investigate a case in a State (except Union Territories or railway areas) except with the consent of that State Government under Section 6 of the Delhi Special Police Establishment Act, 1964. This consent is of two types. One is a 'general consent' which is a blanket consent, and the other is 'special consent' wherein CBI would require to obtain the consent of the State Government for each case.
- ii. Furthermore, the CBI can undertake investigations when State Governments transfer particular cases due to their political sensitivity or significant media attention. This transfer occurs through specific case-by-case notifications issued by the State Government to shift the already registered case from the State Police Organization to the CBI, with the consent of the Government of India.
- iii. Lastly, the Constitutional Courts such as the High Courts and the Supreme Court may direct the CBI to initiate fresh investigations or transfer cases from State Police organizations.

**The Forest Department, by itself, cannot hand over cases to the CBI. However, at the discretion of the Department, a petition before the High Court may be filed for directions, citing necessary grounds.**



Precedents reveal that the Court considers a variety of factors before handing over a case to the CBI. One of them is the steps taken by the State Government into the matter. In *T.N. Godavarman Thirumulpad v. Union of India*,<sup>11</sup> it was prayed to the Supreme Court to issue a direction, inter alia, for CBI inquiry into an offence under VSESA. The case involved the question of the legality of mining in an un-demarcated forest area. Here, the Court considered the actions undertaken by the State and denied the plea for a CBI inquiry because the State Government had already intervened effectively by taking necessary steps.

The Court may also look into the matter irrespective of State intervention and direct a CBI inquiry. In *Obulapuram Mining*,<sup>12</sup> the Court found prima facie proof of alleged illegalities in the grant of mining leases in the Bellary Forest Area and decided to direct the CBI to inquire into the matter. In *Samaj Samudaya*,<sup>13</sup> the Court considered whether any prejudice would be caused to the parties if CBI is directed to inquire certain illegal mining and allied activities. Answering the question in the negative, the Court directed the CBI to investigate the matter. Recently, the Uttarakhand High Court, in September 2023, had ordered the CBI to inquire into the case of illegal construction and felling of 6,000 trees in the Corbett Tiger Reserve.<sup>14</sup>

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<sup>11</sup> *T.N. Godavarman Thirumulpad v. Union of India* [2018] 9 SCC 760.

<sup>12</sup> *Govt. of A.P. v. Obulapuram Mining Co. (P) Ltd.*, [2011] 14 SCC 608.

<sup>13</sup> *Samaj Parivartan Samudaya v. State of Karnataka*, [2012] 7 SCC 407.

<sup>14</sup> *Suo Motu PIL in the matter of illegal construction in Corbett Tiger Reserve vs. Union of India and Ors.*, AIR 2023 Utr 174.

## **4 PROCEDURE TO BE FOLLOWED FOR PROSECUTION**

### **4.1 PROCEDURE OF PROSECUTION**

VSESA is a concise legislation which has no mention of procedural details regarding the prosecution of offences under it. Hence, the relevant procedure laid out in the Code of Criminal Procedure will be applicable to the prosecution of offences under VSESA, 1980 by virtue of Section 4 of the Code of Criminal Procedure, 1973, (Section 4 of Bharatiya Nagarik Suraksha Sanhita, 2023).

The Central Government has recently authorized officers of the rank of Divisional Forest Officer (DFO)/Deputy Conservator of Forests (DCF) and above of the State Government or Union territory Administration to file complaints against any person, authority or organization for violation of VSESA provisions, including the diversion of forest land.<sup>1</sup> After receiving information from the officers regarding the commission of an impugned offence, the Central Government may communicate its approval for filing a formal complaint against the offenders.<sup>2</sup> In conformity with such direction, the authorized officer may file a complaint within forty-five days of being notified by the Central Government.<sup>3</sup>

As per Rule 15 of the 2023 Rules, the authorities at the state level must forward a report disclosing the nature of the violation to the Ministry of Environment based on the State Forest Department's recommendations in case of a wrongful diversion of forest land under VSESA. Subsequently, a formal enquiry is to be conducted by the Ministry's Regional Office. The Additional Principal Chief Conservator of Forests' Regional office in whose jurisdiction a violation has occurred has been empowered to recommend the imposition of penalty.

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<sup>1</sup> The Gazette of India, June 3, 2023, Part I-Section 1.

<sup>2</sup> Van (Sanrakshan Evam Samvardhan) Rules, 2023, Rule 15.

<sup>3</sup> *Id.*

## **4.2 CAN POST FACTO CLEARANCE BE A GROUND TO WAIVE OFF THE RIGHT TO INITIATE CRIMINAL CASES UNDER VSESA, 1980?**

Ex-post facto approvals are approvals given for the diversion of forest land after the diversion has happened. The Supreme Court reprimanded the Mussoorie Dehradun Development Authority (MMDA), and directed the MMDA and the State of U.P to enlist cases in which they gave permission to make use of any forest land for non-forest purposes without seeking the prior approval of the Central Government and directed that the said list shall be forwarded to the Central Government for seeking ex post facto subject to examination by the Central Government as to whether these permissions were granted on extraneous considerations or were only by way of a bona fide mistake. If the Central Government concludes that they were granted extraneous considerations they will try to identify the officer/person responsible for the same and also ascertain if the action of that person amounts to an offence under any provision of law and if yes, to take consequential action.<sup>4</sup>

**Hence, the grant of Ex-Post Facto clearance under VSESA does not amount to a waiver of prosecution under VSESA. The Officer granting Ex Post Facto Clearance shall in the Order granting Clearance, reserve the right to prosecute under VSESA.**

Drawing reference from a similar matter, in *Sweta Estate Private Limited v. Haryana State Pollution Control Board* the Hon'ble Supreme Court deliberated the validity of prosecution where a post-facto Consent to Establish along with an Environmental Clearance was issued to a real estate developer, with a pre-condition that, the prosecution action will be taken against the unit which violated the provisions of the Water/Air Acts by not obtaining prior consent to establish from the Board, as a past violation. The Supreme Court categorically refused to agree to the presupposition of the Appellate Authority observed that, *"the appellant was bound by condition no. 4 in the ex-post facto CTE granted on 18 October 2017. In fact, the judgment of the Appellate Authority shows that the attention of the Appellate Authority was invited to the aforesaid condition. After having acted upon the ex-post facto CTE dated 18 October 2017, the appellant cannot be allowed to approbate and reprobate.*

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<sup>4</sup> Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority, Record of Proceedings), Writ Petitions (C) No. 749 of 1995 with No. 469 of 1996, decided on November 29, 1996.

*Therefore, interference by the Appellate Authority by its judgment dated 15 March 2018 was illegal and uncalled for.*<sup>5</sup>

It may thus be observed that even where post-facto clearance is obtained under the Forest Conservation Act, 1980, in so far as, the Authority reserve their right to prosecute at the time of grant of such approvals, the Authority may initiate prosecution of offenders under the Forest Conservation Act, 1980.

### **4.3 CAN A REGULAR DEPARTMENTAL ENQUIRY BE INITIATED PARALLELLY TO THE PROCESS OF PROSECUTION FOR VIOLATION OF VSESA, 1980?**

Criminal trials often are time-consuming. Also, the standard of proof required in a criminal case is proof beyond reasonable doubt whereas in the departmental proceedings, the standard of proof is preponderance of probability. As per Article 311 of the Constitution of India, a civil servant cannot be dismissed or removed or reduced in rank unless an inquiry has been conducted wherein, he is given a reasonable opportunity of being heard. Further, the Central Civil Services (Classification, Control, and Appeal) Rules, 1965 also provides detailed modalities of department enquiry for central government employees. In *M Janakarajan v. The District Forest Officer*,<sup>6</sup> the Madras High Court has held that there is no restriction for initiating departmental enquiry against simultaneously during the pendency of a criminal trial. The Court observed that *“it is pertinent to note the fact that the object of such departmental proceedings is not to penalise but to assist in restoring the morale of Government servants.”*

### **4.4 LIMITATION PERIOD**

The limitation period for filing of complaint is governed by Chapter XXXVI of the Code of Criminal Procedure, 1973 (Chapter XXXVIII of the Bharatiya Nagarik Suraksha Sanhita, 2023). **Section 468 of the Code of Criminal Procedure** (Section 514 of Bharatiya

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<sup>5</sup> Sweta Estate Private Limited v. Haryana State Pollution Control Board, Civil Appeal No. 2212 of 2020 decided on November 10, 2023.

<sup>6</sup> M.Janakarajan v. The District Forest Officer, W.P.(MD) No. 9497 of 2009 and M.P.(MD) No. 1 of 2009 (Madras HC).

Nagarik Suraksha Sanhita, 2023) prescribes the period of limitation for a court to take cognizance of certain criminal offences, as follows:

- a) For offences that are punishable with fine only – 6 months.
- b) For offences that are punishable with imprisonment for a maximum term of 1 year – 1 year.
- c) For offences that are punishable with imprisonment for a term exceeding 1 year, and up to 3 years – 3 years.

**Under VSESA the punishment under Section 3A is 15 days of simple imprisonment thus the limitation period is only **ONE YEAR** from the date of commission of the offense.**

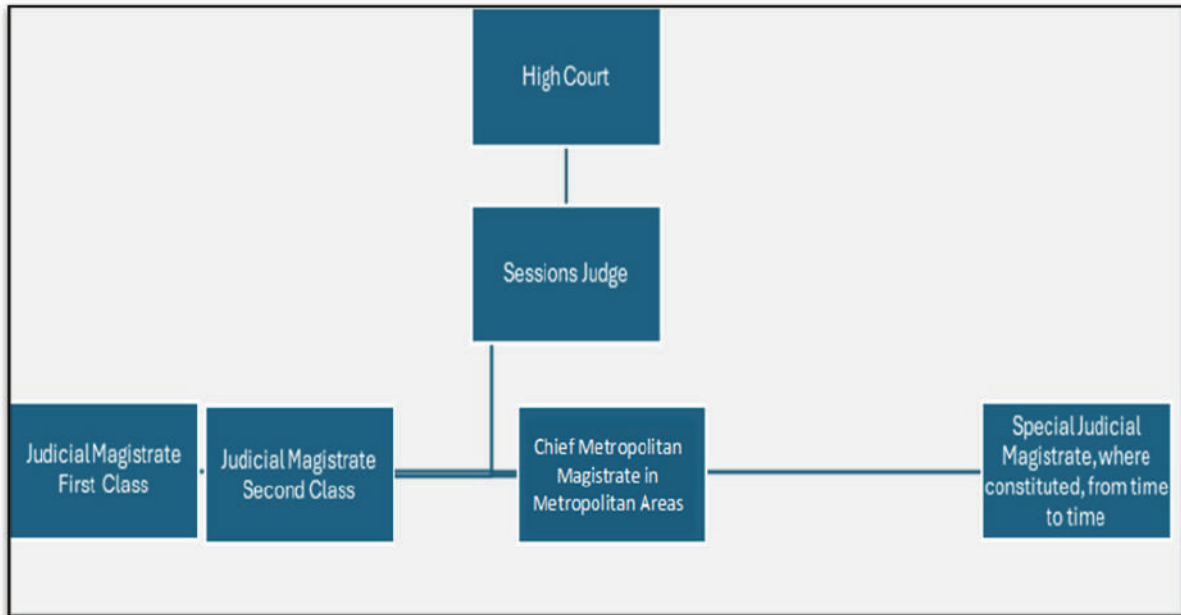
Upon expiry of the limitation period, a court cannot take cognizance of such offences. However, Sections 470-473 of the Code of Criminal Procedure (Sections 516-519 of the Bharatiya Nagarik Suraksha Sanhita, 2023) also state that the limitation period can be extended in certain cases and that the period will start afresh at every moment when an offence of a continuing nature is involved. This is especially relevant for environmental crimes, which often continue for long periods. However, the court may refuse to take cognizance of the matter if there is an inordinate delay in the initiation of prosecution.

#### **4.4.1 TIME SPENT TO AVAIL SANCTION: IS THIS EXCLUDED FROM LIMITATION?**

It is herewith expressly clarified that pursuant to Section 470(3), (Section 516(3) of the BNSS, 2023) Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded thereof.

## **4.5 ASPECTS OF JURISDICTION**

An officer authorized to file a complaint is required to do so before a competent court having territorial and subject-matter jurisdiction so that the court can duly take cognizance of the matter.



Thus, a complaint can be filed by the officer for VSESA violation before a Judicial Magistrate of the Second Class, or Judicial Magistrate First Class (in the absence of the Second Class) such other Court of appropriate jurisdiction, viz. Special Judicial Magistrate. It is relevant to observe that the Chapter XIII of the Code of Criminal Procedure (Chapter XIV of Bharatiya Nagarik Suraksha Sanhita, 2023) will be applicable to determine which Court or Magistrate has the territorial jurisdiction to try the matter. The jurisdiction would thus be dependent on the place where the offence has been committed, and the nodal office of the authority, government department and other relevant factors.

Hence, the **local criminal court of first instance**, including the Metropolitan Magistrates and such other classes of criminal court can be approached to file violations under VSESA.

#### **4.6 SHOULD A CASE BE FILED AS A COMPLAINT BY AN AUTHORIZED OFFICER UNDER THE CODE OF CRIMINAL PROCEDURE OR SHOULD IT BE FILED BEFORE THE POLICE?**

As mentioned earlier, pursuant to Section 4 of VSESA, 1980 read with Rule 15 of the 2023 Rules, the Central Government has authorised officers of the rank of Divisional Forest Officer/ Deputy Conservator of Forests and above, having territorial jurisdiction over the forest land in

respect of which the said office is said to have been committed, to file complaints against the person(s) prima-facie found guilty of offence under the Act or the violation of the rules made thereunder, in the court having jurisdiction in the matter. Now the question arises where this complaint should be filed.

Section 2(d) of the Code of Criminal Procedure 1973 (Section 2(h) of the Bharatiya Nagarik Suraksha Sanhita, 2023) defines a complaint as “any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a Police report”.

Section 154 of the Code of Criminal Procedure (Section 173 of the Bharatiya Nagarik Suraksha Sanhita, 2023) explains that every information which is related to the commission of a cognizable offence, should be given to the officer-in-charge of the police station in writing, and if given orally, the officer, or someone under his direction, shall reduce it to writing, and such information shall be signed by the person giving it. However, if a police officer refuses to record information, then the person so aggrieved can send a letter to the Superintendent of Police who shall investigate the case himself or direct the police to investigate.

There is a difference between a First Information Report (FIR) and a Private Complaint. Sections 154 and 155 of the Code of Criminal Procedure (Sections 173 and 174 of Bharatiya Nagarik Suraksha Sanhita, 2023) talk about FIR in cognizable cases. A cognizable offence, according to section 2 (c) of Code of Criminal Procedure (Section 2(g) of Bharatiya Nagarik Suraksha Sanhita, 2023) is any offence for which the police officer can arrest without a warrant. Whereas a non-cognizable offence, as defined by Section 2(l) of Code of Criminal Procedure (Section 2(o) of Bharatiya Nagarik Suraksha Sanhita, 2023) is an offence for which the police cannot arrest without a warrant. **The following table illustrates the difference between FIR and Private Complaint**

<b>FIR</b>	<b>Complaint</b>
<b>INFORMANT</b>	<b>COMPLAINANT</b>
Informant not under oath while giving information for FIR	Generally, Complainant should make a statement under Oath while filing a complaint. But in cases of offences under VSESA, since the Complainant is a Government Officer, the requirement is dispensed with generally.
FIR is made to Police officer	The complaint is made to the Magistrate

FIR is reported to the Magistrate and then cognizance is taken	Cognizance of the complaint is taken by the Magistrate at the first step.
Different procedures for cognizable and non-cognizable offences	No distinction between cognizable and non-cognizable offences

*Table 7 – Difference between FIR and Private Complaint*

Under VSESA, the Forest Department can take cognizance of offences and are authorized to file criminal complaints by approaching the Magistrate. Hence, under VSESA, Private Complaint under Section 200 of the Code of Criminal Procedure (Section 223 of the Bharatiya Nagarik Suraksha Sanhita, 2023) should be filed to initiate prosecution. It is generally understood that a private complaint filed before a magistrate in India under the Code of Criminal Procedure should be complete in most aspects, even though there is no set format or prescribed method. This is because the complainant bears the responsibility of persuading the magistrate that the matter warrants attention.

In the case of Complaints by Forest Officers filed before the Magistrate, the same may be filed with a Verifying Affidavit following the ingredients mentioned in 4.7. below and the Reference Format provided in Annexure III appended hereto.

**Approaching the Judicial Magistrate First Class/Second Class; or Special Judicial Magistrate for filing a Complaint is the appropriate course of action.**

#### **4.6.1 CAN MAGISTRATE DIRECT FOR POLICE INVESTIGATION?**

It is to be noted that while the Power is granted to the Officials to file a Complaint, directly before the Magistrate, at times, if a Prima Facie Case is not made out from the Complaint, the Magistrate may choose to either do the following:

- dismiss the complaint, if no prima facie offence is made out and there is no sufficient ground for proceedings, or
- postpone issue of process pending further inquiry by himself, or investigation by police or any other person as he deems fit.

In *Madhao v. State of Maharashtra*,<sup>7</sup> the Hon'ble Supreme Court observed that “When a magistrate receives a complaint, he is not bound to take cognizance if the facts alleged in the complaint disclose the commission of an offence. The magistrate has discretion in the matter. If on a reading of the complaint, he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation

<sup>7</sup> 2013 (82) ACC 378 (SC).



*under Section 156(3) will be conducive to justice and save the valuable time of the magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence itself. As said earlier, in the case of a complaint regarding the commission of cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). However, if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to revert back to the pre-cognizance stage and avail of Section 156(3).”*

## **4.7 NECESSARY PARTS OF A COMPLAINT**

Therefore, some of the most crucial parts or factors that ought to be included in a private complaint that would be filed by the Nodal Officer are as follows:

### **(i) LONG CAUSE TITLE**

This includes the name of the relevant Court having the territorial and subject-matter jurisdiction to entertain the matter; the names, age, and addresses of the parties (both the complainant and the accused person/s). The addresses are required later on for the issuance of process, delivery of legal communication etc. by the Magistrate.

### **(ii) DELEGATION AND AUTHORISATION TO FILE THE COMPLAINT**

The Complaint should specifically state that the Notification by means of which powers to file the complaint has been bestowed on the complainant. By virtue of the Gazette issued on June 03, 2023, the Central Government has authorized officers of the rank of Divisional Forest Officer (DFO)/Deputy Conservator of Forests (DCF) and above of the State Government or Union territory Administration, having regional jurisdiction over the forest land in respect of which any offence under the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 (VSESA) is alleged to have been committed, to file complaints against persons prima-facie found guilty of such offence, in the court having jurisdiction in the matter.

### **(iii) DETAILS OF ACCUSED PERSONS**

This includes the names, ages, professions, and designations of the persons accused or suspected of committing the offences alleged in the complaint. The accused persons may be both natural and artificial/juridical persons (for instance, corporate entities and their employees or officers, govt. departments etc). It would be pertinent to mention any previous criminal history of the

accused persons, with respect to similar or different offences, and the same would be relevant for the purposes of determining culpability.

- (a) Primary Offender
- (b) 'whoever' abets the Offence.

**(iv) DETAILS OF THE INCIDENT/ EVENTS IN CHRONOLOGICAL ORDER**

This includes the place where the offence has been committed, the time and date at which it took place, and the details of how the events transpired, in what sequence or order etc. It will also include if the offence has been continuing for a certain duration, and the nature of the offence committed etc.

**(v) SOURCE OF INFORMATION**

The complainant may also include the source from which it came to know about the commission of the alleged persons by the accused persons. This is especially relevant if the complainant is a regulatory/statutory/governmental authority. It may be pertinent to provide proof of documents or government records, to show the commission of offence under Section 2 of VSESA.

**(vi) DETAILS OF COMPLAINANTS AND VICTIMS**

A brief description is to be added about the complainant and/or the victim, their names, places of residence, and professions. In the case of regulatory authorities, this will also include the relevant legal framework under which the authority has been set up, its scope and ambit of work, its powers, and functions etc.

It is necessary to state in the complaint that, the complainant is a public servant and thus the Hon'ble Court may be asked to exempt the complainant from recording sworn statement.

**(vii) ESSENTIAL INGREDIENTS OF THE OFFENCE**

The complaint should establish and highlight the linkage between the facts mentioned in the complaint and the essential ingredients of the offences being alleged to have been committed by the accused persons.

It is pertinent that under VSESA 1980, the culpability of the Government Departments and or any authority have been deemed to be guilty, and as such where any private person is

accused in the Complaint it is pertinent to mention such facts and circumstances, which determine the culpability of the person.

**(viii) NATURE OF OFFENCE**

The Complaint should also state the nature of the offence(s) committed by the accused persons.

**(ix) STEPS TAKEN AND COLLECTION OF EVIDENCE**

Since a police investigation is not triggered in cases of private complaints, the complainant must bear the burden of presenting the requisite oral, documentary, and material evidence that supports the allegations in the complaint. This can take the form of expert evidence, government records, copies of orders, laboratory tests and reports, witness testimonies etc.

**(x) JURISDICTION**

The Complaint should very clearly state the jurisdiction under which the complaint is being filed before the said Hon'ble Court.

**(xi) EXPLANATION FOR DELAY**

In case there has been a delay on behalf of the complainant in filing the complaint or taking steps to initiate the criminal process against the accused persons, the complaint must include the reasons explaining the same. This is necessary to satisfy the Magistrate on the absence of any bad faith/ *mala fide* prosecution or negligence on the part of the complainant.

**(xii) STATUTORY PROVISIONS AND CASE LAWS**

The complaint must also include the relevant sections of the statutes, pertaining to the offences alleged to have been committed. Moreover, relevant case laws that support the complainant can also be included. This could exercise persuasive effect on the Magistrate when he takes decisions of cognizance, investigation etc.

**(xiii) PRAYER TO TAKE COGNIZANCE AND HOLD TRIAL**

Lastly, the complaint must mention the relief that the complainant seeks from the court for taking cognizance of the complaint and to hold the trial. This can include arrest of the accused persons, issuance of summons to them, commencement of trial etc.

**(xiv) AFFIDAVIT**

An affidavit needs to be submitted by the complainant stating that the facts mentioned, and documents submitted in support of the accusations made are true and correct to the best of

their knowledge. The Affidavit is considered for the statement of oath where a Private Complaint is filed before the Court as per the procedure.

**(xv) DOCUMENTS TO BE PRODUCED IN COURT**

The documents to be produced should essentially include, among others, the following:

- (a) **Complaint(s)** – The complaint is a legal document that outlines the nature of the alleged harm and the legal claims being asserted by the Board (the party bringing the suit) against the defendant (the party being sued).
- (b) **Application to the Court** – Along with producing copies of the complaint(s), the Officer also has to draft and produce an application highlighting the nature of the offence and why the application is being submitted in the first place.
- (c) **Any Communications/Correspondences** – These could include letters, emails, or other documents exchanged between the parties involved in the case or between the parties and regulatory agencies or other third parties. These communications may help to establish the facts of the case and the actions taken by the parties involved.
- (d) Documents such as Orders, Office Memorandums, Official Records, Gazette Notifications, etc – Documents which indicate that the complaining officer has the requisite authorization to file the complaint, and such other information as may be relevant to determine the commission of the offence under Section 2 of the Forest Conservation Act, 1980.

**For template of the Complaint to be filed with the appropriate Court, generally Magistrate, See ANNEXURE – III**

**4.8 IS PROSECUTION UNDER THE FOREST CONSERVATION ACT IN THE NATURE OF A SUMMONS CASE OR A WARRANT CASE?**

The violation under the Forest Conservation Act shall attract the nature of being a summons case. Since summon cases are those where offenses that are not punishable for more than two years. **In the present case of VSESA, the maximum imprisonment is for a period of 15-days, as such the nature of offence would be a Summons Case.**

#### **4.9 IS A SUMMARY TRIAL POSSIBLE/ MANDATORY?**

A summary trial is possible as per Section 260 – 265 of the Code of Criminal Procedure, 1973 (Section 283-288 of the Bharatiya Nagarik Suraksha Sanhita, 2023). Summary trials are generally carried out in cases involving petty offence, where the maximum punishment is up to two years of imprisonment, or cases that are deemed to be of a summary nature by law.

#### **4.10 BURDEN OF PROOF**

In so far as the Head of Department of Government or other authority are concerned, pursuant to Section 3B, they are deemed to be guilty, and the burden of proof may be shifted to the accused to prove that they are not guilty. The law is well settled on this point that once it is established that a forest offense has been committed, it is for the accused to prove their innocence or any legal justification for their actions.

However, in connection with prosecution of private individuals, the burden of proof vests with the Complainant, and the Forest Official will have to establish and prove that the said private individual has been involved in the abetment of the offences under VSESA.

#### **4.11 SHOULD THE PROVISIONS OF THE INDIAN PENAL CODE, 1860 (IPC) (BHARATIYA NYAYA SANHITA, 2023) BE INCLUDED IN THE PRIVATE COMPLAINT ALONG WITH VSESA OFFENCES?**

Cases dealing with violations of VSESA may include violations or commission of offences as specified under the Indian Penal Code, 1860 (Bharatiya Nyaya Sanhita, 2023) as well. Certain provisions under IPC are closely connected to the offences under VSESA as well as the Forest Act.

**Section 186** of the IPC (**Section 219** of the BNS, 2023) provides for punishment for obstructing public servant in discharge of public function. It states that:

“whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.”

In *G Ramdas Chowdhary v. State of Andhra Pradesh*,<sup>8</sup> a petition was filed dealing with offences under A.P. Forest Act, 1967, Section 2 of VSESA, Prevention of Damage Public Property, 1984 Act and Section 379 of the Indian Penal Code (Section 303 of the Bharatiya Nyaya Sanhita, 2023) for the theft of forest produce. Section 379 lays down the punishment of theft which is imprisonment of either description for a term which may extend to three years, or with fine, or with both. Similarly, in *Nandalal Rungta v. State of Odisha*,<sup>9</sup> several provisions of IPC, inter alia, along with VSESA was before the consideration of the Orissa High Court.

**Thus, IPC or the provisions of Bharatiya Nyaya Sanhita 2023 [BNS], along with the provision of the Forest Act, 1927 can be included in the complaints filed for violations under VSESA.** The inclusion of provision of IPC/BNS in complaints majorly dealing with VSESA enables a comprehensive legal approach to tackling violations and offences committed in relation to forests.

#### **4.12 SHOULD OFFICERS ATTEND ALL COURT PROCEEDINGS/ HEARINGS?**

Although procedural requirements may vary depending on the applicable laws and the merits of the case, officers are generally bound by these laws and are expected to support and assist the court during trials and processes. Generally, officers have the responsibility to comply with inspection processes for verification of a complaint upon receipt of information or even during trial, which include determining if the complaint is within the jurisdiction of the relevant official.

#### **4.13 WHO ARE THE OFFICERS EMPOWERED TO ATTEND THE TRIAL PROCESS?**

Any officer not below the rank of Divisional Forest Officer or Deputy Conservator of Forests, having territorial jurisdiction over the forest land in which the offence has been alleged to be committed, who have been authorised by the Central Government to file complaints under VSESA.

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<sup>8</sup> *G Ramdas Chowdhary v. State of Andhra Pradesh*, 2020 SCC OnLine AP 1643.

<sup>9</sup> *Nandalal Rungta v. State of Odisha*, 2022 SCC OnLine Ori 744.

#### **4.14 EVIDENCE COLLECTED DURING THE COURSE OF PROCEEDINGS**

It is relevant to note that the evidence which has been collected shall be admissible in a subsequent trial before a Magistrate if it is taken in the accused person's presence.

#### **4.15 GROUNDS FOR DISPOSAL OF CASES**

On perusal of various cases, below are some of the reasons that have been cited by the courts in dismissing/disposing cases filed, which may be reasonably be the grounds under which offences under VSESA could also be disposed thereof:

- i.** Accused has not committed any offence attributable under the relevant law.
- ii.** No proper address of the accused furnished.
- iii.** No further steps taken by Complainant even after sufficient opportunity was given.
- iv.** Complainant does not present before the court for a long time and not showing interest to prosecute.
- v.** Discharge on the ground of no prima-facie materials to frame charges.
- vi.** Critically, officers should bear in mind that the provisions of VSESA attract imprisonment of insignificant duration and is not entirely in tune with that of any comparable penal statute. In *Prasad Paswan v. State of Jharkhand*,<sup>10</sup> the Court held that the lower courts had erred, and conviction was held to be “not sustainable in law” and the accused was acquitted.

#### **4.16 COMPOUNDING OF OFFENCES**

The Forest Act, 1927 provides for compounding of certain offences under the Act which means that the State Government may authorize a Forest officer to accept a compensatory sum of money for compounding the offence.<sup>11</sup>

VSESA is silent on the question of compounding. In a case of forest encroachment, the Kerala High Court while allowing compounding of offences under the Kerala Forest Act, 1961, due to the existence of an express provision, opined that offences under VSESA are not

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<sup>10</sup> 2019 SCC OnLine Jhar 772.

<sup>11</sup> The Indian Forest Act, 1927, § 68.

compoundable in nature.<sup>12</sup> It is a well-established principle under Criminal Law that unless and until, there is specific legislative intent to allow Executive to compound offences, the same cannot be made.

However, a harmonious interpretation of all the statutes that Govern 'forest' in India does suggest that penal fine/penalty or monetary punishment in lieu of imprisonment is permitted in law. As per sec. 2(k) of the Compensatory Afforestation Fund Act 2015, which defines 'penal compensatory afforestation-to mean in lieu of the extent of area over which non-forestry activities have been carried out without obtaining prior approval of the competent authority under FCA. Hence as per the Guidelines issued by MOEF on CAMPA and read with sec 6 of the CAMPA Act 2016, penal CAMPA amount can be imposed for the violation of FCA while additionally reserving the right to prosecute, if any. Hence under VSESA, the appropriate course of action is to file the complaint before the Magistrate, besides imposition of any monetary penalty.

#### **4.17 PLEA BARGAINING UNDER VSESA**

The term "plea bargaining" means a pre-trial negotiation between the prosecutor and the accused whereby the accused agrees to plead guilty, and the prosecution agrees to provide some concession or lesser punishment to the accused based on his plea of guilty. This concept was introduced in the Code of Criminal Procedure, 1973, through the Criminal Law (Amendment) Act, 2005. Plea-bargaining is applicable only to those offences for which maximum punishment is imprisonment up to seven years but it does not apply to offences that affect the socio-economic condition of the country or have been committed against a woman or a child below 14 years.<sup>13</sup> Since the punishment for violation of VSESA is only 15 days, and is not a socio-economic crime or a crime against a woman or a child below 14 years, plea-bargaining will be applicable to offences under VSESA.

#### **4.18 APPEAL FROM THE TRIAL COURT**

Pursuant to Section 372 of the Code of Criminal Procedure, 1973, an appeal may be preferred to such Court that may ordinarily have an Appellate Jurisdiction. In connection with offences

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<sup>12</sup> K. Gireeshan v. State of Kerala, CrI. Misc. No. 4301 of 2008.

<sup>13</sup> The Code of Criminal Procedure, 1973, § 265A.



under VSESA 1980, the last Court of Appeal the Court of Sessions, as it is provided under Section 376 (Sec. 417 of BNSS) of the Code of Criminal Procedure, 1973, that:

“376. Notwithstanding anything contained in section 374, there shall be no appeal by a convicted person in any of the following cases, namely:—

(a) where a High Court passes only a sentence of imprisonment for a term not exceeding six months or of fine not exceeding one thousand rupees, or of both such imprisonment and fine;

(b) where a Court of Session or a Metropolitan Magistrate passes only a sentence of imprisonment for a term not exceeding three months or of fine not exceeding two hundred rupees, or of both such imprisonment and fine;

(c) where a Magistrate of the first class passes only a sentence of fine not exceeding one hundred rupees; or

(d) where, in a case tried summarily, a Magistrate empowered to act under section 260 passes only a sentence of fine not exceeding two hundred rupees: Provided that an appeal may be brought against such sentence if any other punishment is combined with it, but such sentence shall not be appealable merely on the ground—

(i) that the person convicted is ordered to furnish security to keep the peace; or

(ii) that a direction for imprisonment in default of payment of fine is included in the sentence; or

(iii) that more than one sentence of fine is passed in the case, if the total amount of fine imposed does not exceed the amount hereinbefore specified in respect of the case. and, if it makes such complaint, the provisions of that section shall apply accordingly. (2) An order under this section, and subject to any such order, an order under section 340, shall be final, and shall not be subject to revision.”

However, it is often that the accused may prefer to approach before the Hon'ble High Court of respective States exercising the Inherent Powers of the High Court under Section 482 (Sec. 528 BNSS) of the Cr.P.C 1973, and seek to quash the proceedings initiated under VSESA, 1980.

#### **4.19 CAN REGULAR DEPARTMENTAL ACTION BE INITIATED IN LIEU OF PROSECUTION?**

Often the strict requirements of the Criminal Laws, deter the Authorities from initiating Criminal Prosecution. In that context it is essential to note that the standard of proof required in a criminal case is proof beyond reasonable doubt whereas in the departmental proceedings, the standard of proof is preponderance of probability. Hence, a strict and timely action may be taken under departmental proceedings vis-à-vis Criminal Prosecution. However, it may be

noted that if the delinquent Officer who has violated VSESA is not from the Forest Department, the said Department Enquiry by the concerned State Authority will act as a 'parallel proceedings' and should not deter pursuing prosecution for violation of VSESA.

**4.19.1 WHETHER OFFICER PROSECUTED FOR VIOLATION MAY BE SUSPENDED THROUGH DISCIPLINARY ENQUIRY EVEN BEFORE CONVICTION?**

An Officer against whom prosecution is initiated, or trial is pending in accordance with the violations of VSESA may be suspended from service during the pendency of trial. In *Niranjan Singh and other v. Prabhakar Rajaram Kharote*,<sup>14</sup> the Supreme Court observed that a government servant against whom serious charges have been framed by a criminal court, should be under suspension.

**4.19.2 IN WHAT CIRCUMSTANCES CAN PUNITIVE ACTION BE IMPOSED WITHOUT A DISCIPLINARY ENQUIRY?**

Pursuant to Article 311 of the Constitution, a government servant may be dismissed or removed from service or reduced in rank without an inquiry. It is to be noted that, a Departmental Enquiry is of little use or relevance where a conviction of the government official is obtained.

A Disciplinary Enquiry can be avoided on satisfaction of two counts, viz:

- (i) the disciplinary authority must be satisfied that it is not reasonably practicable to hold inquiry in a particular case and
- (ii) the authority must record the reasons for his decision.

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<sup>14</sup> *Niranjan Singh and other v. Prabhakar Rajaram Kharote*, (1980) 2 SCC 559.



# ANNEXURES



## ANNEXURE – I INCIDENT REPORT

### VAN (SANRAKSHAN EVAM SAMVARDHAN) ADHINIYAM, 1980

#### INCIDENT REPORT

1. Name of the Forest Range:		
2. Division:	3. District:	4. Taluk:
5. Number of the Case in Range Officer Register:		
6. Forest Offence Number:		
7. Date:		
8. Name of the Forest Block or Place where violation was committed/ detected/ discovered		
9. Date on which violation was detected/ committed/ discovered/ reported		
10. How the violation was detected/ discovered/ reported		
11. Name & Designation of the Officer who investigated or enquired into the violation		
12. Nature of the Violation		
13. Applicable Section of VSESA, 1980		
14. Name of the User Agency		

15. Name & Details of the Project	
16. Area of the Forest Land involved	
17. Name, parentage and full residential address of the Person-in-charge of the Project	
18. Whether Forest Clearance Obtained?	Yes / No (if yes enclose a copy of the FC)
19. Whether any approval from State Government/ Local Authority Obtained?	Yes / No (if yes enclose a copy of the Order)

20. Name, Designation, Address of the Officer issuing diversion order under point 19.	
21. Details of the violation:	
22. Name, parentage and full residential address of the accused/suspects	
23. Whether the accused/suspect was arrested/detained, if so, by whom?	
24. Place and time of arrest/detention of the accused/suspect	
25. Where or in whose custody the arrested/detained person are kept	
26. Details of the articles seized (if any)	
27. Where or in whose custody the seized articles are kept	



28. Name, addresses and signature of the independent witnesses, if any

**DECLARATION**

I, \_\_\_\_\_, hereby declare that the information provided in this incident report is accurate and complete to the best of my knowledge.

**Name & Designation of the Officer**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

**Enclosures:**

1. Copy of the Record showing the land is forest land.
2. Photographs & Sketch of the site where violation was committed.
3. Statement of the Person in Charge
4. Copy of the Forest Clearance (if any)
5. Copy of the State Government / Local Authority Order diverting forest land
6. List, parentage, and full address of the accused persons.
7. List of articles/ properties (if any) seized.

To

The Deputy Conservator of Forests

(Name, Place & Address)

Copy to: -

1. The Chief Conservator of Forests \_\_\_\_\_
2. Assistant Conservator of Forests \_\_\_\_\_

## ANNEXURE-II OFFENCE REPORT

### OFFENCE REPORT FILED UNDER THE VAN (SANRAKSHAN EVAM SAMVARDHAN) ADHINIYAM, 1980

Number:

Date:

1.	Offence Place	
Range:		Division:
3.	Date on which the violation was detected/discovered	
3	Date on which the Incident Report was filed	
4.	Officer who prepared the Incident Report	
5.	Nature of the land (Forest land/non-forest land) [enclose relevant document]	
6.	Name of the User Agency	
7.	Name of the Project	
8.	Nature of activity done in the forest land	
9.	Extent of forest land involved in the activity	
10.	Whether Forest Clearance was obtained for the diversion?	Yes/No  (If yes, attach a copy of FC)

11.	Whether any approval from State Government/ Local Authority was obtained	Yes / No  (if yes enclose a copy of the Order)
12.	Name/s of the officers responsible for approval	
	Name:	Designation:
13.	Nature of violation	
14.	Applicable Section of VSESA, 1980	
15.	Duration of violation	Start Date:  End Date:
16.	Duration of violation (start date-end date)	
17.	Details of the accused	
	Name:	Age:
		Address:

Any other remark:

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### DECLARATION

I, \_\_\_\_\_, hereby declare that the information provided in this incident report is accurate and complete to the best of my knowledge.

**Enclosures:**

1. Copy of Incident Report
2. Copy of the Record showing the land is forest land.

3. Photographs & Sketch of the site where violation was committed.
4. Copy of the Forest Clearance (if any)
5. Copy of the State Government / Local Authority Order diverting forest land
6. List, parentage, and full address of the accused persons.
7. List of articles/ properties (if any) seized.

**Name & Designation of the officer  
sending the Offence Report**

## ANNEXURE – III FORMAT OF COMPLAINT BEFORE MAGISTRATE OR APPROPRIATE COURT

Contained hereinbelow is a case-study(fictitious) but based on true events at Bengaluru, as to the manner in which an Officer of the Forest Department is to prepare for prosecution for offences under the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980.

On 15 February 2024, Mr. Officer, DCF of areas falling under a Forest Area falling under the Revenue Authority adjacent to Bengaluru, carries his usual inspection in the Forest Trail.

At the end of the Forest Trail, he identifies three persons, digging tranches, next to a semi-constructed building for purposes of Eco-Tourism. The three persons sought to ward off the officers by hurling stones and other objects, in an attempt to run away. On inquiry, the DCF learnt of an Order dated 10/01/2024 passed by the Assistant Commissioner under Section 136(2) of the Karnataka Land Revenue Act, 1964, cancelling mutation entries made in the Revenue Records in favor of the Forest Department.

On further inquiry it was observed that there seemed to be some connivance between the Assistant Commissioner and the person carrying out the non-forest activities on the said converted Forest Lands.

A Seizure of all materials such as Ropes, Bricks, Cement, etc. is made and a Seizure Report is issued to the occupant of the Premises.

The DCF seeks to prepare the Incident Report, Offence Report and for initiation of Prosecution:

- Section 2, Section 3A and 3B of the Forest Conservation Act, 1980
- An Accused Memo is prepared and issued to the occupant of the premises and to the Assistant Commissioner.
- DSC seeks to prepare a Complaint in the manner illustrated below.

**IN THE HON'BLE COURT OF THE CHIEF METROPOLITAN MAGISTRATE  
AT BENGALURU**

P.C.R. No \_\_\_\_\_ / 2024

IN

C.C. No \_\_\_\_\_ / 2024

**IN THE MATTER OF:**

The Deputy Conservator of Forests, represented  
by Mr. \_\_\_\_\_.

**COMPLAINANT**

**v.**

1. Assistant Commissioner, Bengaluru Urban

**....ACCUSED NO. 1**

2. Mr .C

**.....ACCUSED NO. 2**

**INDEX**

<b>SR. NO.</b>	<b>PARTICULARS</b>	<b>PAGE</b>
1.	Complaint u/s 200 (u/s 233 BNSS) against the Accused	[•]
2.	Verifying Affidavit	[•]
3.	List of Annexures	[•]
4.	Certificate under Section 65 B of Indian Evidence Act (Section 63 of Bharatiya Sakshya Adhinyam 2023) in form of Affidavit	[•]

**Advocate for Complainant**

**Place: Bengaluru**

**Date:**

**IN THE HON'BLE COURT OF THE CHIEF METROPOLITAN MAGISTRATE  
AT BENGALURU**

P.C.R. No \_\_\_\_\_ / 2024

IN

C.C. No \_\_\_\_\_ / 2024

**IN THE MATTER OF:**

The Deputy Conservator of Forests, represented  
by Mr. \_\_\_\_\_.  
Aged \_\_\_ years, having office at  
Address

**COMPLAINANT**

**v.**

1. Assistant Commissioner, Bengaluru Urban

**....ACCUSED NO. 1**

2. Mr. C

**.....ACCUSED NO. 2**

**MEMORANDUM OF COMPLAINT UNDER SECTION 3A/3B OF THE VAN  
(SANRAKSHAN EVAM SAMVARDHAN) ADHINIYAM, 1980 READ WITH SECTION  
200 OF THE CODE OF CRIMINAL PROCEDURE (SECTION 223 OF THE  
BHARTIYA NAGRIK SURAKSHA SANHITA) FOR THE OFFENCES PUNISHABLE  
UNDER SECTION 2 OF THE VAN (SANRAKSHAN EVAM SAMVARDHAN)  
ADHINIYAM, 1980**

The Complainant most respectfully submits as follows:

1. The Complainant respectfully submits that s/he is the authorized officer and has received the requisite authorisation from the Ministry of Environment, Forest and Climate Change & Department of Forests, Karnataka and has the authority to file this Complaint before this Hon'ble Court. A Certified Copy of the Notification dated 25/05/2023 is produced herewith at **ANNEXURE I.**

2. It is further submitted that the Complainant is a public servant as per section 113 of Karnataka Forest Act of 1963, and also falls within such meaning as provided under section 21 of the Indian Penal Code. Hence it is prayed that this Hon'ble Court be pleased to take on record the said compliant and set into motion the wheels of Justice and permit the complainant to investigate the case and to file the final report.

3. The Complainant respectfully submits that for the purpose of court notice, summons etc. from this Hon'ble Court the address is as stated in the cause title above and they may be also served through their counsel Mr. Counsel, having office at Bengaluru Main Road, Bengaluru Cross, Bengaluru-560001.

4. The Complainant respectfully submits that the address of the Accused Nos. 1 and 2, for the purpose of notice, summons etc. from this Hon'ble Court is as stated in the cause title above.

5. The Complainant respectfully submits that the Accused No. 1, is a Public Servant appointed under Section 10 of the Karnataka Land Revenue Act, 1964, and the Accused No. 2 is engaged in the business activity of holiday activities and adventure sports. A copy of the Appointment Letter of Accused No. 1, along with Registration Documents of Business of Accused No. 2 is annexed herewith and produced at **ANNEXURE II and ANNEXURE III.**

6. On the 15<sup>th</sup> of February 2024, during a routine inspection, the Complainant observed that certain construction activity and bon-fire was being carried out in respect of the lands at Survey Number XX, XYZ Hobli, Bengaluru, which were under the title and ownership of the said lands was entrusted to the Forest Department. The Geo-mapped Images of the activities at the said Forest Lands are annexed herewith and produced at **ANNEXURE-IV.** The Title Records as available with the Forest Department is annexed herewith and produced at **ANNEXURE- V.**

7. On enquiry, the persons engaged in Construction, called to MR. C , the alleged owner of the said premises, who callously claimed to be the owner of the said forest lands, and that he had the authority to do as he pleases, as he is in receipt of an order passed by the Assistant Commissioner, Bengaluru Urban dated 10/01/2024, cancelling the mutation entries in favor of the Forest Department. The Copy of the order dated 10/01/2024 is annexed herewith and produced at **ANNEXURE-VI.** A memo describing the nature of offences purported to be committed issued to the Accused No.2 is annexed herewith and produced at **ANNEXURE-VII.**



8. The Complainant respectfully submits that Accused No.1 has failed to comply with the requirements contained hereinabove, and has committed the following contravention:

a By virtue of exercise of powers under Section 136(2) of the Karnataka Land Revenue Act, 1964, the Accused No. 1 passed an order cancelling the mutation in revenue entries and records that denoted the ownership of a said portion of the Forest Lands, to conclusively be owned by Mr. C, a private individual engaged in the business of Adventure Sports, which amounts to diversion of forest land for non-forest purposes.

9. It is submitted that pursuant to Section 2 of the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980, *“Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing— (i) that any reserved forest (within the meaning of the expression “reserved forest” in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved; (ii) that any forest land or any portion thereof may be used for any non-forest purpose; (iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation subject to such terms and conditions, as the Central Government may, by order, specify; (iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reforestation.”*

10. The Complainant respectfully submits that Accused No. 1 has usurped the powers of his office and failed to comply with the requirements contained under Section 2 of the VSESA, and has committed the following contravention:

- (a) Passed an Order directing Forest Lands to be used for Non-Forest Purposes; and
- (b) Caused to cease the reservation of a Forest Land, by according title to MR. C, an Individual-third party
- (c) Caused to transfer forest land or any portion thereof to a private person.

11. It is further respectfully submitted that the MR. C, is the ultimate beneficiary of the said order passed by the Assistant Commissioner, and there appears to be no bona fide grounds for claim on the title of the said forest lands provided under **ANNEXURE V**, and there appears to be

a prima facie case of the involvement of MR. C is aiding and abetting the contravention of rules caused to the Description of the act of abetment of such contravention by Accused No. 1.

12. **Violation committed by the Accused No. 2:** Wrongful conversion of Forest Lands owned by the Forest Department by aiding and abetting the Accused No. 1, Construction of Eco-tourism resort, clearing forest, and, and preparation for Bon-Fire on the Forest' Lands.

13. It is further submitted that the Accused has been served a Show Cause Notice dated 16/03/2024, and the Forest Department received a Reply Letter dated 25/03/2024. The Copy of the Show Cause Notice dated 16/03//2024 and Reply from the Accused dated 25/03/2024 are furnished for the perusal of the Hon'ble Court, as **ANNEXURE VIII and ANNEXURE IX**.

14. The Complainant thereafter has submitted an Incident Report dated 15/02/2024 and Prosecution Report dated 30/03/2024 to the Central Government, and thereafter the Central Government has issued a communication to the State of Karnataka, and a time period of 45 days from the date of communication of reply has lapsed, and as such the pre-requisite for filing of this Complaint has been completed. A copy of the Incident Report, Prosecution Report along with the communication letter dated dd/mm/yyyy issued to the State Government is furnished for the perusal of the Hon'ble Court hereto and marked as **ANNEXURE X, ANNEXURE XI and ANNEXURE XII**.

15. The Complainant further submits that the sanction under Section 197 of the Criminal Procedure Code, 1973 (Section 218 of the Bharatiya Nagarik Suraksha Sanhita, 2023) is dispensed off as pursuant to Section 3B of the Van (Sanrakshan Evam Samvardhan) Act, 1980 (**VSESA, 1980**) there is a deeming provision for guilt of offences under Section 2 of VSESA. ***[This requirement may vary if the same is a different state, if the State Governments have specifically made a notification requiring sanction]***

16. Therefore, in light of the above, without any other alternative, the Complainant has decided to prosecute the Accused Nos. 1 and 2 for the violations under the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980.

17. The Complainant respectfully submits that the accused have contravened the provisions of VSESA, 1980 in as much as, on account of

- a. Violation of Section 2 of VSESA by Accused No.1, by causing diversion of forest land for non-forest purposes by alteration of the mutation records renouncing the ownership of the Forest Department of such lands more fully described and ascertained from **ANNEXURE IV and ANNEXURE V.**
- b. Violation of Section 3A by the Accused No. 2, who by his involvement has aided and abetted the Accused No. 1 in achieving the diversion of forest land for non-forest purposes by alteration of the mutation records renouncing the ownership of the Forest Department of such lands more fully described and ascertained from **ANNEXURE II and ANNEXURE III.**

The violation has been noted and evidenced from the List of Seizure dated 15/02/2024 and the Mahazar/Panchnama prepared at the location as on 15/02/2024, copies of which are annexed hereto and produced at **ANNEXURE XIII and ANNEXURE XIV.**

18. It is submitted that the Offence has been committed as on 10/07/2022 and is of continuing nature and that this Hon'ble Court has jurisdiction to entertain this complaint based on the territorial jurisdiction.

#### **PRAYER**

WHEREFORE, the Complainant most humbly prays that this Hon'ble Court be pleased to:

- (a) That a Complaint be registered under the provisions of Section 3B of the Van (Sanrakshan Evam Samvardhan) Act, 1980.
- (b) Take cognizance of the offences, punishable under Section 2 read with Section 3A and Section 3B of the Forest Conservation Act, 1980 committed by the Accused No. 1
- (c) Take cognizance of the offences, punishable under Section 3A the Forest Conservation Act, 1980 committed by the Accused No. 2
- (d) Secure the presence of the accused persons before this Hon'ble Court;
- (e) Award compensation under Section 397A (Section 395 of BNSS, 2023) to the complainant on account of Environmental Damage;

- (f) Pass appropriate relief to defray the expenses properly incurred in the prosecution of the accused

And pass any such other order/s as this Hon'ble Court deems fit and proper under the facts and circumstances of the case, in the interests of justice and equity.

**COMPLAINANT**

**Advocate for Complainant**

**VERIFICATION**

I, Mr./Ms. [•], Authorised Officer, do hereby verify and declare on behalf of the Complainant Board that the averments made in Paragraphs 1 to 18 of the complaint are true and correct to the best of my knowledge, information and are based on the official records maintained in my office and I have not concealed any material facts there from.

**COMPLAINANT**

**Advocate for Complainant**

Place: Bengaluru

Date:

**IN THE HON'BLE COURT OF THE CHIEF METROPOLITAN MAGISTRATE  
AT BENGALURU**

P.C.R. No \_\_\_\_\_ / 2024

IN

C.C. No \_\_\_\_\_ / 2024

**IN THE MATTER OF:**

The Deputy Conservator of Forests, represented  
by Mr. \_\_\_\_\_.

**COMPLAINANT**

**v.**

1. Assistant Commissioner, Bengaluru Urban

**....ACCUSED NO. 1**

2. Mr .C

**....ACCUSED NO. 2**

**VERIFYING AFFIDAVIT**

I, Mr. \_\_\_\_\_s/o \_\_\_\_\_, aged about \_\_\_ years, residing at \_\_\_\_\_, the  
Complainant in this given matter cited in the Cause-Title hereinabove, do hereby solemnly affirm  
and state as follows:

1. I am the Deputy Conservator of Forests.
2. I submit that, the averments made from Paras 1 to 18 in the accompanying Complaint  
are true and correct to the best of my knowledge, belief and information.
3. I submit that, documents produced Annexure I to XIV are the copies of the originals.

Identified by me

Advocate

Complainant-Deponent

Place: Bengaluru

Date:

**IN THE HON'BLE COURT OF THE CHIEF METROPOLITAN MAGISTRATE  
AT BENGALURU**

P.C.R. No \_\_\_\_\_ / 2024

IN

C.C. No \_\_\_\_\_ / 2024

**IN THE MATTER OF:**

The Deputy Conservator of Forests, represented  
by Mr. \_\_\_\_\_.

**COMPLAINANT**

**v.**

1. Assistant Commissioner, Bengaluru Urban

**....ACCUSED NO. 1**

2. Mr .C

**....ACCUSED NO. 2**

**LIST OF ANNEXURES**

<b>Sr. No.</b>	<b>Annexure</b>	<b>Description</b>	<b>Page Nos.</b>
<b>1.</b>	<b>Annexure – I</b>	Certified Copy of the Notification dated 25/05/2023 Authorization and sanction order to file Complaint under VSESA, 1980,	
<b>2.</b>	<b>Annexure – II</b>	Appointment Letter of Accused No. 1,	
<b>3.</b>	<b>Annexure – III</b>	Registration Documents of Business of Accused No. 2	
<b>4.</b>	<b>Annexure – IV</b>	Geo-mapped Images of the activities at the said Forest Lands	

5.	<b>Annexure – V</b>	Title Records as available with the Forest Department denoting ownership of the Forest Department	
6.	<b>Annexure – VI</b>	Copy of the order dated 10/01/2024 passed by Accused No. 1	
7.	<b>Annexure – VII</b>	Memo describing the nature of offences purported to be committed issued to the Accused No.2	
8.	<b>Annexure – VIII</b>	Show Cause notice issued to the Accused No. 1	
9.	<b>Annexure – IX</b>	Reply to the Show Cause notice sent by the Accused No. 1	
10.	<b>Annexure – X</b>	Copy of the Incident report	
11.	<b>Annexure – XI</b>	Prosecution Report	
12.	<b>Annexure – XII</b>	Copy of Communication from the Central Government to the State Government	
13.	<b>Annexure – XIII</b>	Seizure List	
14.	<b>Annexure – XIV</b>	Mahazar report or Panchnama	

**Place:**

**Date:**

**Advocate for Complainant**

**IN THE HON'BLE COURT OF THE CHIEF METROPOLITAN MAGISTRATE  
AT BENGALURU**

P.C.R. No \_\_\_\_\_/ 2024

IN

C.C. No \_\_\_\_\_/ 2024

**IN THE MATTER OF:**

The Deputy Conservator of Forests, represented  
by Mr. \_\_\_\_\_.

**COMPLAINANT**

**v.**

1. Assistant Commissioner, Bengaluru Urban

**....ACCUSED NO. 1**

2. Mr .C

**....ACCUSED NO. 2**

**CERTIFICATE UNDER SECTION 65B (SECTION 63) IN FORM OF AFFIDAVIT**

I, Mr. \_\_\_\_\_s/o \_\_\_\_\_, aged about \_\_\_ years, residing at \_\_\_\_\_, the Complainant in this given matter cited in the Cause-Title hereinabove, do hereby solemnly affirm and state as follows:

1. I state that I have produced the printouts of photographs taken through the mobil device as follows:
  - i. The copy of the Geo Mapped Photographs marked at ANNEXURE IV
2. The print out of the same are taken from the computer accessed by me and the said computer device and details are as follows:
  - a. OS Name
  - b. Version
  - c. OS Manufacturer
  - d. System Name
  - e. System Manufacturer



- f. System Model
  - g. Processor
  - h. RAM:
3. I further state that I am confirm the truth and veracity of the printout of the photographs that I am submitting towards which I present this certificate to certify that:
- a. That the printouts are true copies of the geomapped photographs.
  - b. That the printouts are absolutely identical to the original.
  - c. That this certificate, therefore, in the facts and circumstances of the case is sufficient compliance of S. 65B of Indian Evidence Act (Section 63 of Bharatiya Sakshya Adhiniyam 2023).
4. I further state that That the statements made above are true to best of my knowledge and belief.

Before me

Advocate

Place: Bangalore

Date:

DEPONENT

**ANNEXURE – IV ACCUSED CHALLAN**

(1) Name of Court:

(2) Case Ref:                      State v.

(3) Case No.:

(4) Case V/S:

(5) Name of Accused

with address:

(a)

(b)

(c)

(d)

**Authorised Officer**

## **ANNEXURE – V SEIZURE LIST**

1. Date and time of Seizure:
  
2. Place of Seizure:
  
3. Name and address of person.  
from whom seized:
  
4. Name and Designation of  
person making Seizure:
  
5. Description of Articles Seized:
  
6. Name of Witnesses of Seizure:
  
7. Signature of Above Witnesses:
  
8. Signature of the person from  
whom Seized:

**Prepared by Authorised Officer:**

**Verified and Submitted by Authorised Officer:**

## ANNEXURE VI PROSECUTION REPORT

Form No. - **Forest Department, Name of State**

Statement showing offences committed in the.....Range that offenders desire to compound.

Serial No. of case	Range and locality in which the offence is suspected to have been committed. Date of detection and of arrest	Full report of offence showing section of the Forest Act under which punishable and evidence in support	Persons Implicated		Product, removed or damaged		Name and rank of informant who brought the case to light and record of reward if, when paid	Statement of accused denying the offence and giving any explanation he may have to offer, if willing to compound	Written record of enquiry held by the Divisional Officer or Officer who compounds the offence	Compounding officer's Orders	Sanction No. Of 20 20
			Serial Annual No.	Name, parentage and residence of offender or offenders.	Description	Estimated Value					
							Range Officer. ..... ..Range.		Compensation of Rs.....only accepted Compensation- Realised vide Dr.- Item No.- Dated.-		

N.B. - The Range Officer should inform the accused that it is optional for the accused to pay compensation or to stand trial in Court for the offence.

Dated .....20

Authorized Signatory





## ABOUT THE CENTRE FOR ENVIRONMENTAL LAW, EDUCATION, RESEARCH AND ADVOCACY

The Centre for Environmental Law, Education, Research and Advocacy (CEERA), established in 1997, is a premier research centre at the prestigious National Law School of India University (NLSIU), Bengaluru, and plays a significant role in promoting environmental governance, legal education, and research in India and abroad. Over the years, CEERA has successfully completed multiple research projects, under the aegis of international and national agencies such as the World Bank, UNDP, MoEFCC, Ministry of Law and Justice amongst others. It actively engages with all stakeholders, regularly undertakes research, training and capacity building exercises, and provides consultancy services in the field of environmental and contract law.

### ABOUT THE PRIMER

This Primer has been published in pursuance of the project granted to CEERA-NLSIU by the Ministry of Environment, Forest & Climate Change (MoEFCC) for the “Preparation of Handbook for the prosecution of offences under the Forest Conservation Act, 1980”. Under this project, the Forest Conservation Act (FCA) was thoroughly reviewed, and a manual for prosecuting offences under the same has been developed. This project aims to fill in the gap of a lack of procedural clarity for prosecuting offenders for violations under the FCA [renamed in 2023 as VSESA]. The ultimate goal has been to bring a uniform process, procedure, evidence and documentation for prosecution under the FCA.

### CONTACT US

Website: [www.ceerapub.nls.ac.in](http://www.ceerapub.nls.ac.in)

Email: [ceera@nls.ac.in](mailto:ceera@nls.ac.in)

