

## A Synergistic Constitutional & Policy Framework: Preserving & Empowering Forest Dwellers

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### ABSTRACT

The forests of India have been the ancestral homeland and livelihood source for millions, especially scheduled tribes and traditional forest dwellers. These forests provide vital resources and habitats, but indigenous people's identities and rights lack recognition in society. This paper explores challenges and conflicts regarding forest dwellers' identity and rights, focusing on the Forest Rights Act. While the Act aims to secure tenurial rights and sustainable forest use, development programs often fail to include and uplift tribal populations. The paper argues for inclusive tribal development, assesses the Act's effectiveness, proposes improvements, and highlights historical injustices, constitutional provisions, and the significance of forests. Movements like the Bishnoi, Chipko, Appiko, Silent Valley, and Jungle Bachao Andola demonstrate public advocacy for environmental preservation and sustainable forest management.

**Keywords:** Forest Dwellers, Policy Framework, forest protection.

### INTRODUCTION

Indian forest is home to lacks of people, including the many Scheduled Tribes who live in or near forest areas of the country. In order to understand the schedule tribe and other traditional forest dwellers act let us first understand the historical background which led to the passage of this as many tribal people

and other forest communities have dependent on forest for generations forest are the source of their livelihood customs traditions and identity over the issue of community access and rights over natural forest and resources have always been contentious Dense forests were viewed as crownlands and extensive trapped of forests were declared as reserve forest this declaration process lead to the extinguishment of the traditional rights forest welling communities tribes as well as non-tribal after independence the second phase of extension of government control over the forest begin this started with the setting up of a network of protected areas which for the eroded rights of these forests dwelling communities in fact the modern conservation approaches always advocated their exclusion rather than their integration in the absence of clearly defined property right millions of forest welding families living in and around forest have been perceived as encroachers or illegal occupants in addition to this the simplicity of the tribal people and their ignorance of modern regulatory Framework precluded them from asserting their genuine claim to resources in areas where they belong to in security of tenure and fear from eviction the two factor in security of tenure and fare from eviction from the land with these people had tried for generations was perhaps the biggest factor by tribal community in India felt emotionally as well as physically alienated from forest and forest land so we see that a lot of historical injustice was done to the forest

dwelling communities in order to undo this historical injustice the Government of India in the year 2006 and acted the scheduled tribes and other traditional forest dwellers recognition of forest rights Act was enacted by the parliament in the winter session of 2006 and it came into effect from 31st December 2007 supplemented by the rules framed under it known as Scheduled Tribes and other traditional forest dwellers recognition of forest rights rules and in addition to it guidelines are framed by the central government this act is commonly known as forest rights act. the forest rights act was passed to give legal rights to these forest dwellers their home, lands, and livelihood. The act crucial to the rights of millions of tribals in the forest dwellers spread across multiple states of our country as it provides for the restitution of deprived for tribes. But several wildlife groups say the act has encouraged for the encroachment on the already battered forest lands.

the constitution provides special provisions relating to Scheduled Tribes article 342 Lays down that president may specify the tribes or tribal communities or part of or groups within tribes or tribal communities or for parts deemed Scheduled Tribes. article 164 provide for a Ministry of Tribal welfare in each of the state of Bihar Madhya Pradesh and Orissa which have large concentration of Scheduled Tribes population. article 244 provides a fifth schedule in the constitution for incorporating provisions for the administration of Scheduled Areas and tribes of the states which have tribal population. the constitution prescribes protection and safeguards for Scheduled Tribes to promote their educational and economic interest under article 330 and 332 of the Indian Constitution. 3000 reserved for scheduled tribes in Lok Sabha and state vidhansabha government has also made provisions for its adequate representation in the services. Scheduled Areas have been declared in the state of Andhra Pradesh Bihar Gujarat Madhya Pradesh Maharashtra Orissa Himachal Pradesh and Rajasthan. the scheme of administration of

Scheduled Areas on the fifth schedule visualizers a division of responsibility between the state and union government. the fifth schedule of the constitution provides for the setting up of tribes Advisory Council in each of the state having Scheduled Areas under article 338 of the Indian Constitution or commissioner has been appointed by the President of India to investigate all natural relating to the safeguards for scheduled castes and Scheduled Tribes under the constitution and report the president on working of the safeguard. measures to provide educational facilities have been taken by the government. officials is being laid on vocational and Technical training. the central government awards scholarships to deserving students for higher studies in foreign countries. tribal Research Institute which undertakes intensive studies of tribal our culture and Customs have been set up in Bihar Madhya Pradesh Orissa Rajasthan and West Bengal.

#### **POSITION AND IMPORTANCE OF FORESTS SINCE ANCIENT INDIA**

Forest played a key role in the civilization of India. As Rabindranath Tagore once wrote in his essay Tapovan, Indian civilisation grew from the forest and learnt its principles of democracy and diversity from it. Enshrined in folklore, documented in historical texts and reflected in the daily lives of people is a multitude of evidence that supports the fact that coexistence with nature has been an integral part of Indian culture since time immemorial.<sup>477</sup>

#### **IN ANCIENT INDIA, THE ENVIRONMENT WAS NOT AN ISOLATED ENTITY, INDEPENDENT OF MANKIND.**

The relationship between people and the environment in ancient India was one of harmony, coexistence, mutual care and concern – the two supporting and complementing each other in their own way. For instance, some of the fundamental principles of ecology – the interrelationship and

<sup>477</sup> 'History of Forests in India'  
<<http://edugreen.teri.res.in/explore/forestry/history.htm>> accessed 26 May 2023.

interdependence of all life – are reflected in the ancient scriptural text, the Upanishad. It says:

**“Each individual life-form must learn to enjoy its benefits by forming a part of the system in close relation with other species. Let not anyone species encroach upon the other’s rights.”<sup>478</sup>**

The concept of participatory forest management was also prevalent in ancient India as illustrated by the examples of village committees overseeing the maintenance of panchavatis (a cluster of five types of trees) in the ancient Indian forest texts or Aranyakas. Vedic-era traditions also affirm that every village will be complete only when certain categories of forests are protected i.e mahavan (the natural forest), shrivan (the forest of prosperity) and tapovan (the forest of religion).

The post-vedic period saw the evolution of various ethno-forestry practices and cultural landscapes for conservation as agriculture emerged as the dominant economic activity. The most prominent ruler in ancient India who focused on clean environment and wildlife conservation was Emperor Ashoka.

Under him, the Mauryan state maintained the empire’s forests, along with fruit groves, botanical pharmacies and herbal gardens that had been established for the cultivation of medicinal herbs. Hunting certain species of wild animals was banned, forest and wildlife reserves were established and cruelty to domestic and wild animals was prohibited.

In one of his minor edicts, Ashoka states:

**“Wherever medical herbs suitable for humans or animals are not available, I have had them imported and grown. I have planted mango groves, and I have had ponds dug up and shelters erected along the roads at every eight kilometers. I have had banyan trees planted**

**on the roads to give shade to man and beast.”<sup>479</sup>**

One of the finest examples of tree conservation practices that arose in ancient India has been the maintenance of certain patches of land or forests as “sacred groves” dedicated to a village deity. Protected and worshiped, these sacred groves are found all over India, especially along the Western Ghats. In Kerala, there are hundreds of small jungles called sarpakavus dedicated to snakes. In Kodagu district in Karnataka, the Kodava tribe has maintained over a thousand Devakadu groves dedicated to Aiyappa, the forest god. Along river Tamraparani in Tamil Nadu, there are 150-odd temples, each with a sacred grove called nandavanam that provides a window into an ecosystem’s past. Devrais in Maharashtra, kovilkadus in Tamil Nadu and pavitraskhetralu in Andhra Pradesh are other examples of sacred groves in south India.

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Among the largest sacred groves in north India are the ones in Hariyali, near Ganchar in Chamoli district of Uttarakhand, and the Deodar grove in Shipin near Shimla in Himachal Pradesh. There are several other sacred groves as well called deobhumis in Himachal, beeds in Haryana, sarnas in Jharkhand, jaheras in Odisha and harithans in West Bengal.

Northeast India too has a well-documented culture of sacred groves. The most famous of

<sup>478</sup> Sanchari Pal, ‘Barking Up The Right Tree: The Fascinating History of Tree Conservation Movements in India’ (*The Better India*, 15 February 2017) <<https://www.thebetterindia.com/87219/history-tree-conservation-india/>> accessed 26 May 2023.

<sup>479</sup> Sanchari Pal, ‘Horrified by The Cruelty of War, Emperor Ashoka Built an Infrastructure of Goodness’ (*The Better India*, 5 December 2021) <<https://www.thebetterindia.com/267947/emperor-ashoka-mauryan-empire-rock-edicts-sanchi-stupa-sarnath-ashok-chakra/>> accessed 26 May 2023.

these are the law kyntangs of Meghalaya – two large groves being in Mawphlang and Mausmai – that are associated with every village to appease the forest spirit. The thans of Assam, mauhaks of Manipur and gumpa forests of Sikkim and Arunachal Pradesh too act as reservoirs of rare fauna, and more often rare flora, amid rural and even urban settings.

There were many movements to protect the environment through changes in the public policy. Some of the prominent are:

### ***Bishnoi Movement***

Bishnoi is a non-violent community of nature worshippers. This movement was started by sage Sombaji around 1700 AD against deforestation.<sup>480</sup>

### ***Chipko Movement***

It was launched from Gopeshwar in Chamoli district,<sup>481</sup> Uttarakhand in 1973. The movement was to prevent illegal cutting of trees in the Himalayan region (Uttarakhand).<sup>482</sup>

### ***Appiko Movement***

In 1983, on the lines of Chipko Movement, Pandurang Hegde launched a movement which is come to known as Appiko Movement in Karnataka.<sup>483</sup> Its main objectives were afforestation as well as development, conservation and proper utilization of forests in the best manner.

### ***Silent Valley Movement***

It is an area of tropical evergreen forests in Kerala. It is very rich in biodiversity. The environmentalists and the local people strongly objected to the hydel power project being set up here in 1973.

<sup>480</sup> Ishani Vajpai, 'Bishnois: The Pioneers in Environmental Conservation through Socio-Cultural Embedding' (2020).

<sup>481</sup> 'Chipko Movement | History, Causes, Leaders, Outcomes, & Facts | Britannica' <<https://www.britannica.com/topic/Chipko-movement>> accessed 26 May 2023.

<sup>482</sup> 'The Appiko Movement: Forest Conservation in Southern India' (29 July 2021) <<https://www.culturalsurvival.org/publications/cultural-survival-quarterly/appiko-movement-forest-conservation-southern-india>> accessed 26 May 2023.

<sup>483</sup> *ibid.*

### ***Jungle Bachao Andola***

The tribal community of Singhbhum district of Jharkhand agitated against the forest policy of the Government in 1982.

### ***Armada Bachao Movement***

The environmentalists and the local people started protest against the building of Dams on the Narmada for the production of hydro-electricity since 1985 which was popularly known as Narmada Bachao Aandolan. Medha Patkar has been the leader of this aandolan who got support from the Arundhati Roy, Baba Amte and Aamir Khan.

### ***Tehri Dam Conflict***

This movement was started by the local people around 1980s and 1990s because the dam project would constructed in the seismic sensitive region and people think that it causes submergence of forest areas along with Tehri town.<sup>484</sup>

## **CONSTITUTIONAL PROVISIONS AND IMPORTANCE**

The protect and improve the environment is a constitutional mandate. It is a commitment for a country wedded to the ideas of a welfare State. The Indian Constitution contains specific provisions for environment protection under the chapters of Directive Principles of State Policy and Fundamental Duties. The absence of a specific provision in the Constitution recognizing the fundamental right to clean and wholesome environment has been set off by judicial activism in the recent times.

## **CONSTITUTIONAL PROVISIONS**

### ***Article 48A & 51A Clause (g)***

Initially, the Constitution of India had no direct provision for environmental protection. Global consciousness for the protection of environment in the seventies, Stockholm Conference and increasing awareness of the

<sup>484</sup> 'Indian Villagers Protest Tehri Dam Construction, 2001-2002 | Global Nonviolent Action Database' 20 <<https://nvdatabase.swarthmore.edu/content/indian-villagers-protest-tehri-dam-construction-2001-2002>> accessed 26 May 2023.

environmental crisis prompted the Indian Government to enact 42<sup>nd</sup> Amendment to the Constitution in 1976. The Constitution was amended to introduce direct provisions for protection of environment. This 42<sup>nd</sup> Amendment added Article 48-A to the Directive Principles of State Policy.<sup>485</sup>

Article 48-A – Protection and improvement of environment and safeguarding of forests and wildlife. The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.<sup>486</sup>

Article 51-A (g) which deals with Fundamental Duties of the citizens states: “It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.” Thus, protection and improvement of natural environment is the duty of the State (Article 48-A)

and every citizen (Article 51- A (g)).<sup>487</sup>

### **Article 49-A**

The Article states:

“The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.”<sup>488</sup> The said amendment imposed a responsibility on every citizen in the form of Fundamental Duty.

### **Article 21**

Article 21 of the constitution of India provides for the right to life and personal liberty. It states that “no person shall be deprived of his life or personal liberty except according to procedure

established by law. “In Rural Litigation and Entitlement.”<sup>489</sup>

### **Article 253**

Article 253 states that ‘Parliament has power to make any law for the whole or any part of the country for implementing any treaty, agreement or convention with any other country. In simple words this Article suggests that in the wake of Stockholm Conference of 1972, Parliament has the power to legislate on all matters linked to the preservation of natural environment.<sup>490</sup>

Parliament’s use of Article 253 to enact Air Act and Environment Act confirms this view. These Acts were enacted to implement the decisions reached at Stockholm Conference.

### **Article 19(1)(g)**

(g) to practice any profession, or to carry on any occupation, trade or business.<sup>491</sup>

### **Article 51**

Promotion of international peace and security the State shall endeavour to<sup>492</sup>

- (a) promote international peace and security;
  - (b) maintain just and honourable relations between nations;
  - (c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and encourage settlement of international disputes by arbitration
- PART IVA FUNDAMENTAL DUTIES.

<sup>485</sup> ‘Article 48A and Article 51A (g) Of Constitution of India – Aishwarya Sandeep’ <<https://aishwaryasandeep.com/2021/09/17/article-48a-and-article-51a-g-of-constitution-of-india/>> accessed 26 May 2023.

<sup>486</sup> ‘The Constitutional Scheme of Animal Rights in India | Animal Legal & Historical Center’ <<https://www.animallaw.info/article/constitutional-scheme-animal-rights-india>> accessed 26 May 2023.

<sup>487</sup> ‘Article 51A in The Constitution Of India 1949’ <<https://indiankanoon.org/doc/867010/>> accessed 26 May 2023.

<sup>488</sup> ‘Section 49A in THE ADVOCATES ACT, 1961’

<<https://indiankanoon.org/doc/1897685/>> accessed 26 May 2023.

<sup>489</sup> ‘Article 21: Protection of Life and Personal Liberty | Career Launcher UPSC’ <<https://www.careerlauncher.com/upsc/article-21/>> accessed 26 May 2023.

<sup>490</sup> ‘Article 253: Legislation for Giving Effect to International Agreements’ (*Constitution of India*) <<https://www.constitutionofindia.net/articles/article-253-legislation-for-giving-effect-to-international-agreements/>> accessed 26 May 2023.

<sup>491</sup> ‘Article 19: Protection of Certain Rights Regarding Freedom of Speech, Etc.’ (*Constitution of India*) <<https://www.constitutionofindia.net/articles/article-19-protection-of-certain-rights-regarding-freedom-of-speech-etc/>> accessed 26 May 2023.

<sup>492</sup> ‘Article 51A in The Constitution Of India 1949’ (n 11).

**ARTICLE 14 PROTECTION OF THE ENVIRONMENT*****Environment and Citizens:***

The Constitution of India has made a double provision:

(i) A directive to the State for protection and improvement of environment.

(ii) Imposing on every citizen in the form of fundamental duty to help in the preservation of natural environment. This is the testimony of Government's awareness of a problem of worldwide concern. Since protection of environment is now a fundamental duty of every citizen, it is natural that every individual should do it as personal obligation, merely by regulating the mode of his natural life. The citizen has simply to develop a habitual love for pollution.

**PRE- AND POST-INDEPENDENCE POLICIES**

India is one of the First countries in the world to have stated scientific management of its forests. During the year 1864 the then British India Government started the Imperial Forest Department. The first Inspector General of Forests was Dr. Dietrich Brandis, a German Forest officer who was appointed in 1866. In 1987, the Imperial Forest Service was constituted to organize the affairs of the Imperial Forest Department. In addition, Provincial Forest Service and Executive & Subordinate Services were also constituted for effective management of forest resources the British India Government. Initially, the subject of "Forestry" which was managed by the Federal Government which was later transferred to the "Provincial List" by the Government of India Act, 1935 and subsequently recruitment to the Imperial Forest Service was discontinued.

The Indian Forest Service was constituted in the year 1966 under the All India Services Act, 1951 by the Government of India. The main mandate of the service is the implementation of the National Forest Policies. Since 1935 the management of the forests remained in the hands of the Provincial Governments in pre-

independence era, and even today the Forest Departments are managing the forests of the country under the respective State governments.

Systematic management of forests began in the mid-nineteenth century. The first forest policy of India enunciated in 1894 focused on commercial exploitation of timber and gave importance to permanent cultivation. The 1952 revision of the policy recognized the protective role of forests and proposed that one-third of the land area of the country be retained under forest and tree cover. The Forest policy of 1988 focused on environmental stability and maintenance of ecological balance.

***National Forest Policies Post Independence***

Since independence, there have been three forest policy pronouncements in India.

They are listed as follows:

- National Forest policy, 1952
- The National Commission on Agriculture, 1972
- The Wildlife Protection Act, Rules 1973 and Amendment 1991
- National Forest Policy, 1988
- Forest Right Act, 2006 & The Wild Life (Protection) Amendment Act, 2006
- National Green Tribunal Act, 2010

***National Forest policy, 1952***

The first National Forest Policy Resolution was adopted by the government in 1952. Though the resolution highlighted the ecological and social aspects of forest management, giving secondary importance to the needs of commerce, industry and revenue, it did not call for any change in the forest law and remained only a pious declaration. The National Commission on Agriculture, 1972

The Ministry of Forest was originally a part of the Ministry of Agriculture. In 1972, the Ministry appointed a National Commission on Agriculture. The multivolume Report of the National commission on Agriculture, published in 1976, covered forests in the 9th Part.9. The

commission recommended that the revised national forest policy should be based on important needs of the country. All forest lands should be classified into protection forests, production forests and social forests. It gave the highest priority to production forests and the lowest priority to social forests. The object of forest management should be that 'each hectare of forest land should be in a position to yield a net income of many more times than is being obtained at present.' It recommended enactment of a revised all India forest act.

However, in 1985, the Forest Department was shifted from the Ministry of Agriculture to the Ministry of Environment and Forests (MoEF). The MoEF was established as a nodal agency for planning, coordination and implementation of environmental and forestry programmes. This helped to shift the emphasis from revenue to environmental concerns.

#### ***The Wildlife Protection Act, Rules 1973 and Amendment 1991***

The Wildlife Protection Act, Rules 1973 and Amendment 1991 provides for the protection of birds and animals and for all matters that are connected to it whether it be their habitat or the waterhole or the forests that sustain them. The Wildlife Protection Act, 1972, provided for the protection of the wild animals, birds and plants. The Act was substantially amended in 2002. A major objective of this amendment was to update the law to deal with sharply escalating levels of organized poaching. The Ministry of Environment and Forest formally notified this Amendment Act on 1st April, 2003. (Handbook of Wildlife Protection Society of India, 2006).

#### ***Current National Forest Policy – National Forest Policy, 1988***

The main objectives of the National Forest Policy, 1988 are as follows:

- Maintenance of environmental stability through preservation and, where necessary, restoration of the ecological balance that has

been adversely disturbed by serious depletion of the forests of the country.

In December 1988, the Parliament passed a new forest policy resolution more or less rejecting the recommendations of the National Commission on Agriculture. The resolution stressed the welfare of forest dwelling communities as a major objective of the forest policy, and categorically stated that the life of tribals and other poor living within and near forests revolves around forests and that the rights and the concessions enjoyed by them should be fully protected. Their domestic requirements of fuelwood, fodder, minor forest produce and construction timber should be the first charge on forest produce. However, while the resolution adopted a pro-tribal policy, the old Act of 1927 with all the subsequent amendments remained unchanged.

Conserving the natural heritage of the country by preserving the remaining natural forests with the vast variety of flora and fauna, which represent the remarkable biological diversity and genetic resources of the country.

Checking soil erosion and denudation in the catchment areas of rivers, lakes, reservoirs in the "interest of soil and water conservation, for mitigating floods and droughts and for the retardation of siltation of reservoirs.

Checking the extension of sand-dunes in the desert areas of Rajasthan and along the coastal tracts. Increasing substantially the forest/tree cover in the country through massive afforestation and social forestry programmes, especially on all denuded, degraded and unproductive lands. Meeting the requirements of fuel-wood, fodder, minor forest produce and small timber of the rural and tribal populations. Increasing the productivity of forests to meet essential national needs. Encouraging efficient utilisation of forest produce and maximising substitution of wood. Creating a massive people's movement with the involvement of women, for achieving these

objectives and to minimise pressure on existing forests.

**The legal framework of the forestry sector can be classified into three categories:**

- The first set of Acts regulates access and use of forest products such as the Indian Forest Act (1927).
- The second set focuses on conservation such as the Wildlife Act (1972) and the Forest Conservation Act (1980).
- The third set comprises enabling laws that encourage private investment as well as restrictive laws with regard to land ceilings, tree felling, transit passes and marketing that have discouraged the private sector from engaging in farm forestry and agro-forestry.

The National Forestry Action Programme (NFAP) was initiated in 1999. It is a comprehensive long-term strategic plan for the next 20 years. It identifies the issues and programs for achieving sustainable forestry development in India by harmonizing the activities of different stakeholders. The NFAP evolved through coordinated centre-state strategic planning with inputs from many national and international consultants.

It identifies five programs:

- (1) Protect existing forest resources
- (2) Improve forest productivity
- (3) Reduce total demand,
- (4) Strengthen the policy and institutional framework and
- (5) Expand the forest area.

***The Wild Life (Protection) Amendment Act, 2006***

The Wild Life (Protection) Amendment Act, 2006 has come into force on 4th September 2006. The Act provides for creating the National Tiger Conservation Authority and the Tiger and Other Endangered Species Crime Control Bureau (Wildlife Crime Control Bureau).

***Forest Rights act 2006***

**Main features of the act are:**

- The act recognize and vest the forest rights and occupation in Forest land in forest Dwelling Scheduled Tribes (FDST) and Other Traditional Forest Dwellers (OTFD) who have been residing in such forests for generations.
- The act also establishes the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance of FDST and OTFD.
- It strengthens the conservation regime of the forests while ensuring livelihood and food security of the FDST and OTFD.
- It seeks to rectify colonial injustice to the FDST and OTFD who are integral to the very survival and sustainability of the forest ecosystem.
- The act identify four types of rights:
  - Title Rights
  - Use Rights
  - Relief and development rights
  - Forest management rights

**Importance of the Act:**

- The acts looks to right the wrongs of government policies in both colonial and independent India toward forest-dwelling communities, whose claims over their resources were taken away during 1850s.
- The act also has potential of sustainably protecting forest through traditional ways along with providing tribes means of livelihood.
- It expands the mandate of the Fifth and the Sixth Schedules of the Constitution that protect the claims of indigenous communities over tracts of land or forests they inhabit.
- The alienation of tribes was one of the factors behind the Naxal movement, which affects states like Chhattisgarh, Odisha and Jharkhand. The act through



identifying IFR and CFR tries to provide inclusion to tribes.

- It has the potential to democratise forest governance by recognising community forest resource rights over an estimated 85.6 million acres, thereby empowering over 200 million forest dwellers in over 1,70,000 villages.
- The act will ensure that people get to manage their forest on their own which will regulate exploitation of forest resources by officials, forest governance and management as well as tribal rights etc.

#### Challenges:

- Administrative apathy: Implementation of the act is a biggest challenge, as tribals are not big vote banks.
- Lack of awareness: Unawareness at the Lower level of forest officials who are supposed to help process forest rights claims is high and majority of the aggrieved population too remains in the dark regarding their rights.
- Dilution of Act: Certain sections of environmentalist raise the concern that FRA bend more in the favour of individual rights, giving lesser scope for community rights.
- Reluctance of the forest bureaucracy to give up control: There has been deliberate sabotage by the forest bureaucracy, both at the Centre and the states, and to some extent by big corporates.
- Institutional Roadblock: Rough maps of community and individual claims are prepared by Gram Sabha which at times often lack technical knowhow and suffers from educational incapacity.

#### Suggestions:

The government of India views MFP (Minor Forest Produce) rights as a means to curb Naxalism since the states most affected by Naxalism are also home to the maximum number of people dependent on forest produce.

The recognition of CFR (Community Forest Rights) rights would shift forest governance in India towards a community conservation regime that is more food security and livelihood oriented.

Large-scale awareness and information dissemination campaigns are required at local level informing both tribal and lower level officials.

It is important to develop a detailed strategy of training and capacity building of people responsible for implementing the FRA, such as Panchayats, Gram Sabha, village level Forest Rights committee etc.

The relevant maps and documents should be made available to the Forest rights committee and claimants to simplify the task of the Gram Sabha in identifying and filing claims for individual and community rights.

Providing clarity on the time limit for settling claims the act does not specify any time limit for resolving claims. In most of the areas, both the officials and beneficiaries are unaware of this fact.

Centre should take more proactive role in pushing states to honour a law that could change the lives of millions.

#### ***National Green Tribunal Act, 2010***

The NGT was established on October 18, 2010 under the National Green Tribunal Act 2010, passed by the Central Government. The stated objective of the Central Government was to provide a specialized forum for effective and speedy disposal of cases pertaining to environment protection, conservation of forests and for seeking compensation for damages caused to people or property due to violation of environmental laws or conditions specified while granting permissions.

The NGT is not bound by the procedure laid down under the Code of Civil Procedure, 1908, but shall be guided by principles of natural justice. Further, NGT is also not bound by the

rules of evidence as enshrined in the Indian Evidence Act, 1872. Thus, it will be relatively easier (as opposed to approaching a court) for conservation groups to present facts and issues before the NGT, including pointing out technical flaws in a project, or proposing alternatives that could minimize environmental damage but which have not been considered.

While passing Orders/decisions/awards, the NGT will apply the principles of sustainable development, the precautionary principle and the polluter pays principles.

However, it must be noted that if the NGT holds that a claim is false, it can impose costs including lost benefits due to any interim injunction.

You will have to approach the State High Court or the Supreme Court through a Writ Petition (PIL) or file an Original Suit before an appropriate Civil Judge of the taluk where the project that you intend to challenge is located.

#### **Powers:**

The NGT has the power to hear all civil cases relating to environmental issues and questions that are linked to the implementation of laws listed in Schedule I of the NGT Act. These include the following:

- The Water (Prevention and Control of Pollution) Act, 1974;
- The Water (Prevention and Control of Pollution) Cess Act, 1977;
- The Forest (Conservation) Act, 1980;
- The Air (Prevention and Control of Pollution) Act, 1981;
- The Environment (Protection) Act, 1986;
- The Public Liability Insurance Act, 1991;
- The Biological Diversity Act, 2002.

This means that any violations pertaining only to these laws, or any order / decision taken by the Government under these laws can be challenged before the NGT.

#### **Concerns:**

- Importantly, the NGT has not been vested with powers to hear any matter relating to the Wildlife (Protection) Act, 1972, the Indian Forest Act, 1927 and various laws enacted by States relating to forests, tree preservation etc. Therefore, specific and substantial issues related to these laws cannot be raised before the NGT.
- In the last nine years, the NGT has never got the minimum strength of ten judicial and ten expert members to address the increasing number of environmental litigations across the country. Currently, with only four judicial and two expert members, the NGT appears paralysed.
- With no indication of appointment of more judicial and expert members from the MoEF&CC, the four zonal benches have been completely shut over the past one year. Hearing of the zonal bench litigation is nowadays taking place via video-conference and that too only for one to two hours.
- Many lawyers practicing in the NGT have expressed their discomfort with the video conference hearing which they feel has put enormous cost and burden on their clients. Hearings are adjourned or listed in an unfashionable manner, without giving sufficient time to lawyers and clients to present their matter.
- There are also serious challenges as far as implementation of the NGT orders is concerned. For example, Rule 35 (1) of the Act specifies that the compensation amount as ordered by the tribunal should be remitted to the authority of the Environmental Relief Fund within a period of 30 days from the date of order or award or as otherwise ordered by the tribunal. Invariably, it is observed that the polluters don't abide by this rule.
- Second, the NGT orders are increasingly challenged in the Supreme Court, where a heavy penalty has been imposed by

the tribunal. Third, there is no institutional mechanism to ensure that the environmental regulatory authorities comply with the orders of the tribunal.

- Most of the landmark orders of the NGT related to Ganga water pollution, Delhi air pollution, illegal mining, and solid waste management remain unenforced.
- Countries like New Zealand and Australia, which have specialised environmental courts, quite regularly restructure administrative and financial support for the court to increase efficiency and reduce costs, and in an ideal world, create benefits of true cost-efficiency. In contrast, efforts in India have been directed towards diluting the role and function of the NGT. Given the current state of the NGT, it is reasonable to claim that the multiple objectives of access to justice, efficiency, cost-efficiency, and protection of the environment through the NGT Act, have been defeated.

#### **CONCERNS OF FOREST AMENDMENT BILL 2021**

##### ***Proposed Amendments***

- The Ministry has proposed that all land acquired by the Railways and Roads Ministries prior to 1980 be exempted from the Act. It says these lands had been acquired for expansion, but subsequently forests have grown in these areas, and the government is no longer able to use the land for expansion. If the amendment is brought in, these Ministries will no longer need clearance for their projects, nor pay compensatory levies to build there.
- For individuals whose lands fall within a state-specific Private Forests Act or come within the dictionary meaning of forest as specified in the 1996 Supreme Court order, the government proposes to allow “construction of structures for bona fide purposes” including residential units up to 250 sq m as a one-time relaxation.

- Defence projects near international borders will be exempted from forest clearance.
- Oil and natural gas extraction from forested lands will be permitted, but only if technologies such as Extended Reach Drilling are used.
- The Ministry has proposed doing away with levies for non-forestry purposes during the renewal of a lease, saying the double levy at the time of awarding of the lease and the renewal is “not rational”.
- Strip plantations alongside roads that would fall under the Act will be exempted.

##### **Concerns:**

- Activists and opposition leaders say the relaxation of forest rules will facilitate corporate ownership and the disappearance of large tracts of forests.
- About the exemption of forests on private land, even former forest officials said many forests will disappear. For instance, 4% land in Uttarakhand falls under private forests.
- Leaders such as Brinda Karat (CPM) have asked what will happen to tribals and forest dwelling communities – an issue the amendments do not address.
- Environmentalists say exemption for Roads and Railways on forest land acquired prior to 1980 will be detrimental to forests as well as wildlife – especially elephants, tigers and leopards.
- Environmentalists say one time exemption for private residences on private forest will lead to fragmentation of forests, and open areas such as the Aravalli mountains to real estate.

##### **Positives:**

##### **Environmental groups have also acknowledged that:**

- The MoEFCC has pointed out where the pressure for forest land diversion has been coming from – Ministries such as

Rail and Roads – and allowed a public debate on it.

- It has proposed making forest laws more stringent for notified forests, making offences non-bailable with increased penalties including imprisonment of up to one year.
- It has disallowed any kind of diversion in certain forests.
- It has attempted to define and identify forests once and for all – something that has been often ambiguous.

#### CONCLUSION

Connecting human rights and environment is a valuable sourcebook that explores the uncharted territory that lies between environmental and human rights legislation. Human beings can ensure fundamental equality and adequate conditions of life in an environment that permits a life of dignity and well-being. There is an urgent need to formulate laws keeping in mind the fact that those who pollute or destroy the natural environment are not just committing a crime against nature, but are violating human rights as well. Indeed, health has seemed to be the subject that bridges gaps between the two fields of environmental protection and human rights. The advancement of the relationship between human rights and environment would enable incorporation of human rights principles within an environmental scope, such as antidiscrimination standards, the need for social participation and the protection of vulnerable groups.

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