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FOREST AND TRIBAL LAWS

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I INTRODUCTION

APART FROM significant judgments of the Supreme Court, High Courts and the National Green Tribunal, the year under survey saw the release of two documents- India's National Wildlife Action Plan (hereinafter NWAP) for the period 2017-2031 and Secure Himalaya by the Government of India on 2nd October 2017 exactly a year after India ratified the Paris Convention on 2nd October in 2016. The Plan focuses on preservation of genetic diversity and sustainable development. The NWAP has five components, 17 themes, 103 conservation actions and 250 projects. The five components are – strengthening and promoting the integrated management of wildlife and their habitats; adaptation to climate change and promoting integrated sustainable management of aquatic biodiversity in India; promoting eco-tourism, nature education and participatory management; strengthening wildlife research and monitoring of development of human resources in wildlife conservation and enabling policies and resources for conservation of wildlife in India. The Plan will help to mainstream wildlife conservation in development planning processes.[1]

II FOREST RIGHTS ACT

The case *Social Action for Forest and Environment (SAFE)* v. *Union of India*[2] is an important case which has come before the National Green Tribunal, principal bench at New Delhi. In this case the Social Action for Forest and Environment had filed an application praying that the Tribunal should direct closure and removal of the camps along the River Ganga from Shivpuri to Rishikesh as they were causing environmental and water pollution in River Ganga and the areas where they were located. It was further

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1 *Available at:* http://pib.nic.in/newsite/PrintRelease.aspx?relid=171329 (last visited on November 3, 2017). See also, Vishwa Mohan, "Government Launches Project to Conserve Biodiversity in High Himalayan reaches', *Times of India*, October 2, 2017.

2 2017 (7) FLT 467.

prayed that there should be a regular policy for regulating such activities, which are recreational facilities for tourists. No camp should be allowed to operate in areas which are part of the forest land without specific approval under the Forest (Conservation) Act, 1980 and it was also prayed for the restoration of area and removal of garbage or any other wastes from the camping site at the cost of the camp owners in accordance with, the Polluter Pays Principle.[3]

The Tribunal referred to its judgment dated 10th December, 2015, where in it noted that, after considering certain serious deficiencies; violations of the Rules in force and serious problems in relation to environment and water pollution arising therefrom, had also noticed that requirement of sustainable tourism had to be satisfied subject to compliance of the environmental laws. Right to decent and clean environment is a Fundamental Right under article 21 and the Right to carry on business under article 19 of the Constitution of India is subject to limitations imposed by law. We may notice that under our Constitution, framers have now prescribed for a specific right and obligations in relation to the environment and it could be termed as environmental triangle comprised of articles 21, 48A and 51A(g). The State thus cannot shirk from its responsibilities to conserve and protect the forests and environment, on the plea of earning revenue. The entire Himalayan region, stretching nearly 3200 km along India's northern frontiers is an eco-sensitive area. It is more so in the case of State of Uttarakhand where different rivers flow from the Himalayan Mountains and are the lifeline for a large population of the country. River Ganga is one of the main rivers which need environmental protection with definite emphasis. It was noticed in the said judgment that there were permanent or semi-permanent structures raised in and around the sites. The Tribunal noted that the concept of 'Back to Nature' ought not to be used for revenue generation at the cost of environment and ecology.[4]

In the course of the judgment the Tribunal referred to several orders passed by the Supreme Court of India in different PILs relating to the problems involving rivers and lakes where the Courts have ordered against the activities that harm the ecology and environment of the water bodies. The Tribunal cited the decision in *A.P. Pollution Control Board* v. *Prof. MV Nayudu,*[5] where in the Supreme Court of India held that "the basic insight of ecology is that all living things exist in interrelated systems; nothing exists in isolation. The world system is weblike; to pluck one strand is to cause all to vibrate; whatever happens to one part has ramifications for all the rest. Our actions are not individual but social; they reverberate throughout the whole ecosystem". The Tribunal further went on to cite the case of *M.C. Mehta* v. *Union of India,*[6] in which the Supreme Court of India observed that "The functioning of ecosystems and the status of environment cannot be the same in the country. Preventive measures have to be taken keeping in view the carrying capacity of the eco-systems operating in the environment surroundings under consideration".[7]

3 *Id.* at para 1.
4 *Id.*at para 3.
5 1999 (2) SCC 718.
6 (1996) 8 SCC 462.
7 *Id.* at para 29.

The above enunciated principles have more often than not been reiterated by the Supreme Court of India as well as the High Courts. The Courts have ordered that the Precautionary Principle makes it mandatory for the State Government to anticipate, prevent and attack the causes of environmental degradation. Therefore, it is necessary to limit the construction activity in close vicinity of lakes or water bodies. The riparian zones are buffers which are important for good water quality, vegetation, nutrients for stream communities, stabilizing banks, filter sediments, filter chemicals and nutrients and also helping in maintaining environmental and ecological balance. We have noticed above that river rafting is not an activity which per se has any adverse impacts and may not directly cause pollution. But it still has certain negative effects or impacts such as vegetation loss, habitat loss, disturbances, man wildlife conflicts, increase in traffic and tourists which puts excess pressure on the river. It also has some positive impacts like employment and source of enjoyment but this is not so very true about camping sites. The camping activity thus has direct impacts in relation to construction on forest or beaches, generation of waste, pollution of water, impacts on vegetation and forest areas, etc.[8]

The Tribunal cited the observation of Mr. Jeffrey L. Marion Unit, Professor of Virginia Tech/Department of Forestry Patuxent Wildlife Research Center, U.S. who has spelt out that the resource impacts caused by hiking, boating and camping activities. It further stated that the obvious conclusion that would follow is that not only the camping activity has adverse impacts but even boating i.e., rafting also does have some limited impacts in any event the adverse impacts of camping activity are much more significant and cannot be ignored while balancing the eco-tourism activity with protection of nature.

In *Themrei Tuithung* v. *Union of India*,[9] which is a decision of the national green tribunal eastern zone bench, Kolkata. Though technically the judgment is related to review application under section 19 (4)(f) of the National Green Tribunal Act, 2010 read with rule 22 of the NGT (Practices and Procedure) Rule, 2011. Review of the judgment has been sought for on as many as six grounds but pertinent for the survey is appeal No. 04/2014/EZ which had been filed by the review applicants challenging the Forest Clearance (FC) under section 2 of the Forest (Conservation) Act, 1980 granted by the State of Manipur vide letter dated 15.01.2014 to the Thoubal Multipurpose Project proposed at the tri-junction of Ukhrul, Senapati and Thoboul Districts of Manipur for diversion of 595.00 ha of forest land on various grounds. Barring the technicalities involved the Tribunal enunciated the objectives of the Forest Right Act where in it mentioned that:[10]

> It would be pertinent to observe that one of the objects of enacting the FRA was that it had become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Schedule Tribes and other traditional forest dwellers including those who were forced to relocate their dwelling due to State development intervention.

8 Id. at para 30.

9 2018 (8) FLT 1.

10 Id. at para 37.

The Tribunal stated that the profound nature of the Act and its statutory object have been articulated most succinctly and referred to the decision of the Supreme Court of India in cases such as the *Orissa Mining Corporation Ltd.* v. *Ministry of environment and Forests.*[11] It opined that it will not go into the details of the judgement, but mentioned that the relevant portions are to be found from paragraph 38 to 57. More importantly it observed that compliance of the law on the part of the state has been made obligatory and even brought to the fore the problems faced by the Ministry of Tribal Affairs (MOTA) which were impeding the implementation of the Forest Right Act in its letter and spirit.

The Nagpur Bench of the Bombay high court in *Lalba Nana Bethekar* v. *The Sub-Divisional Officer & Forest Rights Coordinator, Amravati,*[12] is another important judgment where the scope of the Forest Right Act was discussed. The fact of the case was that the petitioner claiming to be "Korku", which is recognized as Scheduled Tribe in the State of Maharashtra, applied for recognition of forest rights as per section 3 of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (for short "Forest Rights Act, 2006"). This application was rejected by the impugned order. The court observed that the impugned order is cryptic and no reason is recorded for rejection of application of the petitioner except that the petitioner (applicant) is not eligible as per the provisions of law.[13]

In response to the notice issued by this Court, the respondents have filed their reply stating that the petitioner has failed to produce birth certificates and death certificates of his forefathers for establishing the rights claimed as per Forest Rights Act, 2006. In view of the stand taken in submissions filed before this Court, the learned A.G.P. was asked to make the record available at the time of hearing. Accordingly, the record is made available.[14]

This case dealt succinctly with the legislative intent behind the enactments of the Forest Rights Act, 2006. As per the court's interpretation the law was enacted with the object of recognizing and vesting the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in forests for generations but whose rights could not be recorded. It further stated that the Act provides for the framework for recording of forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land. Dealing with the scope and ambit of the Act the court stated that the Forest Rights Act, 2006 was enacted by the Parliament after it was felt necessary to address longstanding insecurity of tenurial and access rights of forest dwelling Scheduled Tribes and other traditional forest dwellers including those who were forced to relocate their dwelling due to State development interventions.[15]

11 (2013) 6 SCC 476.

12 2017 (7) FLT 619.

13 *Id.* at para 3.

14 *Id.* at para 4.

15 *Id.*at para 5.

The Court also referred to section 2(c) and section 2(o) of the Forest Rights Act, 2006 which define the "forest dwelling Scheduled Tribes" and "other traditional forest dweller" which are reproduced as follows as it is important to decide the current legal issue:

> Section 2(c) "forest dwelling Scheduled Tribes" means the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribes pastoralist communities."

Section 2(o) "other traditional forest dweller" means any member or community who has for at least three generations prior to the 13th day of December,2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs.

Explanation - For the purposes of this clause, "generation" means a period comprising of twenty-five years.

As far as vesting of authorities and procedure for vesting of forest rights are concerned the court dealt with Chapter IV of the Forest Rights Act, 2006 which provides for the aforementioned rights. Particularly it dealt with section 6(1) which falls in chapter IV of the Forest Rights Act, 2006 which provides that the Gramsabha shall be the Authority to initiate the process for determining the nature and extent of individual or community forest rights or both, that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers. It is provided that after receiving the claim, the Gramsabha has to verify the claim and prepare a map delineating the area of each recommended claim in such manner as may be prescribed and then pass a resolution and forward a copy to the Sub-Divisional Level Committee. Sub-section (2) of the Forest Rights Act, 2006 provides that any person aggrieved by the resolution of Gramsabha may prefer a petition to the Sub-Divisional Level Committee constituted under sub-section (3) and Sub-Divisional Level Committee shall consider and dispose such petition. The first proviso below sub-section (2) of section 6 provides limitation of 60 days from the date of passing of the solution by Gramsabha for filing the petition to the Sub-Divisional Level Committee and the second proviso below sub-section (2) of section 6 lays down that the petition shall not be disposed against the aggrieved person unless he is given an opportunity to present his case. Sub-section (4) of section 6 lays down that any person aggrieved by the decision of the Sub-Divisional Level Committee may prefer a petition to the District Level Committee within 60 days from the date of decision of the Sub-Divisional Level Committee. The first proviso below sub-section (4) of section 6 lays down that no petition shall be preferred directly before the District Level Committee against the resolution of Gramsabha unless the same has been preferred before and considered by the Sub-Divisional Level Committee. The second proviso below sub-section (4) of section 6 provides that the petition shall not be disposed against the aggrieved person unless he has a reasonable opportunity

to present his case. Sub-section (6) of section 6 lays down that the decision of the District Level Committee on the record of forest rights shall be final and binding.[16]

While dealing with the legislative source of the Forest Right Act, the court stated:[17]

> Scheduled Tribes and other Traditional Forests Dwellers (Recognition of Forest Rights) Rules, 2008 (for short "Forest Rights Rules, 2008") are made in exercise of the powers conferred by section 14(1) of the Forest Rights Act, 2006. Rule 3 of the Forest Rights Rules, 2008 provides for procedure to be followed for convening Gramsabhas and election of Forest Rights Committee. Rule 4 provides for the functions of the Gramsabhas. Rule 5 provides for the constitution of Sub-Divisional Level Committee. Rule 6 provides for the functions of the Sub-Divisional Level Committee. Rule 7 provides for the constitution of District Level Committee. Rule 8 provides for the functions of District Level Committee.

The court in order to determine the issue in the present case referred to Rule 11 of the Forest Rights Rules, 2008 which lays down the procedure for filing, determination and verification of claims by Gramsabha. Rule 12 of the Forest Rights Rules, 2008 provides for the process of verifying claims by Forest Rights Committee. Rule 13(1) and Rule 13(2) refer to the evidence which can be considered for determination of various rights. Sub-rule (3) of Rule 13 lays down that the Gramsabha, the Sub-Divisional Level Committee and the District Level Committee shall consider the evidence/evidences referred in sub-rules (1) and (2) of rule 13 for determining the forest rights.[18]

The court observed that under the scheme of the Act and the Rules, burden to substantiate the claim is not placed on the member of forest dwelling Scheduled Tribe or other traditional forest dweller. A duty is cast on the Gramsabha to initiate the process of determining the nature and extent of forest rights and to prepare a list of claims and to maintain a register containing such details of the claimants and their claims. The Gramsabha initiated the process and passed a resolution on the recommendation of Forest Rights Committee recognizing the right of the petitioner. The proposal was forwarded to the Sub-Divisional Level Committee which approved the proposal of the Gramsabha and referred it to District Level Committee. Surprisingly, the District Level Committee rejected the claim of the petitioner without recording any reasons and without recording that the resolution of the Gramsabha or the decision of the Sub- Divisional Level Committee is improper or unsustainable.

16 *Id.* at para 5.
17 *Id.* at para 6.
18 *Ibid.*

Sub-section (2) of section 6 of the Forest Rights Act, 2006 provides that any person aggrieved by the resolution of Gramsabha may prefer a petition to the Sub-Divisional Level Committee. In the present case there is nothing on the record to show that the resolution of Gramsabha was challenged by anybody before the Sub-Divisional Level Committee. The resolution passed by the Gramsabha was perhaps forwarded to the Sub-Divisional Level Committee as required by sub-section (1) of section 6 of the Forest Rights Act, 2006. Again there is nothing on the record to show that the decision of Sub-Divisional Level Committee was challenged before the District Level Committee as per sub-section (4) of section 6 of the Forest Rights Act, 2006, however, the claim of the petitioner is rejected by the District Level Committee without recording any reasons and giving a complete go-bye to the provisions of the Forest Rights Act, 2006 and the Forest Rights Rules, 2008. Rule 8 provides that the District Level Committee shall ensure that the requisite information under clause (b) of rule 6 has been provided to Gramsabha or Forest Rights Committee to examine whether all claims specially those of primitive tribal groups, pastoralists and Nomadic Tribes have been approved keeping in mind the objectives of the Act and to consider and finally approve the claims and record of forest rights prepared by the Sub- Divisional Level Committee. The provisions of the Act and the Rules show that a duty is cast on the Gramsabha, the Sub-Divisional Level Committee and the District Level Committee to ensure that the claims of the claimants are approved keeping in mind the objectives of the Act, however, attitude of the District Level Committee is like an adjudicatory authority.

The Forest Rights Committee, the Gramsabha and the Sub-Divisional Level Committee having concluded in favour of the petitioner recording his claim of forest rights under the Act, the District Level Committee could not have rejected the claim of the petitioner without recording reasons and without recording a finding that the report of the Forest Rights Committee and the resolution of the Gramsabha are not acceptable in view of the evidence which is required to be considered as per rule 13(1) and 13(2) of the Forest Rights Rules, 2008 while determining the forest rights. The District Level Committee has not discharged its functions as required under scheme of the Forest Rights Act, 2006 and the Forest Rights Rules, 2008. The District Level Committee which comprises of very highly placed officials and is entrusted with the work of fulfilling the objectives of the Forest Rights Act, 2006 have acted in a high-handed manner because of which not only the petitioner is put to a serious prejudice but the very object of the Act is frustrated.

III RESERVED FOREST

In *Radhey Shyam* v. *State of U.P.*[19] the court enunciated and elaborated upon the scope and amplitude of the Forest Act of 1927. It stated that the Forest Act,1927,

19 2017 (8) ADJ 372.

was enacted to consolidate the law relating to forest, the transit of forest-produce and other connected matters. Chapter 11 of the Act relates to reserved forest. It dealt with the scope of section 3 to 23. Particularly to begin with from section 3 which provides the power to reserve forests. This section provides that the State Government may constitute any forest land or waste land which is the property of Government or over which the Government has proprietary rights, a reserved forest.[20]

The scheme of the Forest Act, is evident from the various provisions as referred above, clearly proved that in the proceeding beginning by notification under section 4 all claims regarding land included in the notification are adjudicated by an authorised officer. All claims to the land can be made and adjudicated. Section 8 gives all powers of the Civil Courts to the forest settlement officer available in trial of the suits. There is appeal provided under section 17 to higher forum. The notification under section 4 is published in Official Gazette appointing forest settlement officer to inquire and determine any right in or over any land. Forest Settlement Officer also issues a proclamation in every town and village in the neighbourhood to make the proceedings known to all concerned. The adjudication of all claims to the land is by a special Court with right of appeal. The enquiry regarding claims is for the purpose of finding out as to whether the land in question can be declared as reserved forest or it cannot be declared reserved forest due to the rights or claims of claimants and the provision further contemplates that even if right or claim of claimants has been established there is procedure for coming to agreement with the owner for surrender of his right or to acquire such land in the manner provided by the Land Acquisition Act. The provision of the Act contemplates extinction of all rights regarding land included in the reserved forest.[21]

According to the court in this judgment the word "forest" came for consideration before the Apex Court in *T.N. Godavarman Thirumulkpad* v. *Union of India,*[22] wherein the Apex Court said that the word 'forest' must be understood according to its dictionary meaning and will not only include forest as understood in the dictionary sense but also any area recorded as the forest in the Government record irrespective of the ownership. In paragraph 4, it was laid down by the Apex Court that:[23]

> Forest must 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 20(1) of the Forest Conservation Act. 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.

20 *Id.* at para 16.
21 *Id.* at para 29.
22 (1997) 2 SCC 267.
23 *Id.* at para 39.

Thus, in the court in the present case held that if any area of land is in nature of forest and is recorded in the tenure of any tenure-holder or in the name of intermediary/ proprietor the kedar (as before abolition of zamindari), the land can be declared as reserved forest irrespective of the ownership of land. Under Indian Forest Act, 1927, power is given to declare the forest land/waste land as reserved forest irrespective of its ownership. Thus, even if forest land or waste land is included in a tenure-holder's tenure, there is no prohibition in any law from declaring the said land as forest land.[24]

In *Yogindra Mohan Sengupta* v. *Union of India,*[25] which is a decision of the National Green Tribunal, Principal bench at New Delhi, the environmental concerns of the fragile Himalayan eco system is being dealt with in details. The introductory reference to the National Wildlife Action Plan and SECURE Himalayas initiative launched by the Government of India therefore becomes inevitable. The Tribunal while dealing with the concept of sustainable development and of precautionary principle stated as under:[26]

> Sustainability of nature is paramount for human existence. Unsustainable and irreversible interference by human conduct with our natural assets leads to destruction of such assets and profoundly contributes to natural calamities. The elements of 'Precautionary Principle' for conservation or preservation of nature can be defeated by indiscriminate and disproportionate damage to natural assets; unsustainable development exposes our natural assets and makes them vulnerable to vagaries of disasters and calamities. The cases in hand are the glaring examples of consequences that will flow from violating the Principle of Sustainable Development and Precautionary Principle with impunity. As per the report of the Government of India on Spatial Distribution and Concentration of Landslides released in 2003, nearly 97.42% of the total geographical area of Himachal Pradesh is prone to landslides.

Referring to Shimla, the Tribunal held that it is among the other districts in the State of Himachal Pradesh which falls in the severe landslide hazard risk category. Development involving reckless and excessive constructions and indiscriminate felling of trees is the root cause of a spurt in landslides, taking heavy toll on human lives and destroying property. Undisputedly, these are ecologically fragile areas as these are part of the youngest mountain ranges and also fall in seismic zone IV and V. The slope landslides are mostly man-made.[27]

24 *Ibid.*

25 MANU/GT/0122/2017.

26 *Id.* at para 1.

27 *Id.* at para 2.

On cumulative reading of the laws referred, it is evident that the framers of the law clearly intended to protect natural resources and environment. The purpose is to effectively implement and enforce the laws and regulation relating to development and protection of environment. Then alone the twin objects adherence to law and protection of environment and ecology could be achieved. Protection of environment and natural resources is absolutely essential for human existence. At the cost of repetition, we must notice that the concept of regularization of deviation from sanctioned plan cannot be brought in such an insidious manner. This is a limited and restricted power. The concept of compounding cannot be permitted to be used and diminish or even destroy the natural resources, environment and ecology. Irreparable damage to these would more often lead to disasters causing serious damage to person, property and environment. Another contention raised before the Tribunal by the applicants is that they have a right to construct over the lands of which they are the owners, even though the lands are located in Core area, Forest/Green areas. This contention is misconceived in law as well as in the facts of the present case. On the one hand, the State and its instrumentalities have failed to discharge their Constitutional obligations in terms of article 48A of the Constitution and the citizens have failed to discharge their Constitutional duties in terms of article 51A(g) for protection and improvement of environment and forest etc.[28]

The right to construct on one's own land, particularly, in relation to prohibited area/restricted area have to be examined in light of the constitutional mandate. Article 19(f) was omitted by the 44th amendment of the Constitution and article 300A was added. Article 300A even permitted a person to be deprived of his property by authority of law. The right to construction is, however, regulated by the Town and Country Planning Department and the Municipal laws in force in a State. In other words, it is not an absolute right by any stretch of imagination but is restricted and regulated right. Such statutory right can only be exercised, subject to the limitation and restrictions imposed and by complying with the prescribed procedure. Such restrictions are neither unknown nor unforeseeable. There are statutorily notified eco-sensitive areas or sanctuaries or national parks where construction of any kind is prohibited. This is a reasonable restriction and is primarily imposed in the interest of environment ecology and biodiversity.[29]

We have already noticed that the laws in force in the State of HP read with the constitutional provisions and Environment (Protection) Act, 1986, tilt the balance completely in favour of protection of environment and sustainable development. Restrictions in that behalf have to be imposed and enforced in accordance with law. Desired directions, whether prohibitory or regulatory in nature, restrictions and mandates of compliance should be passed when called for. We entertain no doubt in the facts and circumstances to pass appropriate declarations, guidelines and directions

28 *Id.* at para 3.

29 *Id.* at para 2.

in this case that are required to be passed to not only to protect environment, ecology and natural resources but even life of public at large and their property.[30]

In *Banwarilal Newatia* v. *State of Odisha,*[31] the factual matrix of the case in a nutshell pertains to the grant of mining lease and legal issues arising thereof but more relevant for the purpose of survey is the concept of Net Present Values (hereinafter NPV) related to forest. Before addressing on the merits of the issue involved in this case, the court deemed it apposite to bring on record the object and reasons behind imposition of NPV. The court opined and observed that the natural resources are the assets of the entire nation. Therefore, it is the obligation of the Union Government as well as the State Governments to conserve and not to waste these resources. As per the provisions contained in article 48A of the Constitution of India, States shall make all endeavours to protect and improve the environment and to safeguard the forest and wildlife of the country. Similarly, under article 51A the duty has been cast on every citizen to protect and improve the natural environment including forest, lakes, rivers and wildlife and to have compassion for living creatures. Therefore, for the question with regard to conservation, preservation and protection of forest and the ecology, it is to be considered that if the forest land is used for non-forest purposes what steps/measures are required to be taken to compensate for loss of forest land and effect on the ecology.[32]

While mentioning about the importance of forest cover the court stated that forests are a vital component to sustain the life support system on the earth. The national development, if any, has to be in consistent with the protection of environment not at the degradation of the same. Therefore, policy or vision for overall development has to evolve a systematic approach so as to balance the economic development and environmental protection. The economic development at the cost of degradation of environment would be ultimately counterproductive. Therefore, it is necessary to take a precautionary measure when forest lands are diverted for non-forest use. Thus, before diversion of forest land for non-forest purposes and consequential loss of benefit occurring from the forest should not be the user-agency and such land be required to compensate for the diversion. In this back-drop, the NPV has to be determined.[33]

Stating the reason behind the enactment of the Forest Conservation Act (hereinafter the FC Act) the court stated that being conscious of the above stated position, the legislature was empowered to provide for conservation of forest and for matters connected therewith or ancillary or incidental thereto. As a result the FC Act, 1980, was enacted which postulates that no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing that any forest land or any portion thereof may be used for any non-forest purpose. As

30 *Id.* at para 111.
31 124 (2017) CLT 138.
32 *Id.* at para 13.
33 *Id.* at para 14.

a corollary, the Central Government under the FC Act has been empowered to constitute a committee to advice it with regard to grant of approval. Therefore, contravention of any of the provisions contained in section 2 of the FC Act, 1980 has been made an offence, the court opined.[34]

While dwelling on the significance of environmental legislation to protect the environment the court also threw light on the background of the Environment (Protection) Act, 1986 (for short "EP Act, 1986"). It stated that the Act has been enacted with an object and reason that although there are existing laws dealing directly or indirectly with several environmental matters, but it is necessary to have a general legislation for environment protection to prevent decline in environment quality due to increasing population, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risks of environmental accidents and threats to life support system. Under the Act, the Central Government has been given wide powers to take measures to protect and improve the environment as provided under section 3 including the power to constitute an authority or authorities for the purpose of exercising and performing such of the powers and functions, including the power to issue directions under section 5 of the Act, and for taking measures, with respect to such of the matters referred to in sub-section (2) of section 3 as may be mentioned in the order and subject to the prejudice and control of the Central Government. The Parliament has also enacted enactments to prevent and control water pollution and air pollution, such as the Water (Prevention and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution) Act, 1981.[35]

With regard to change of use of forest land for non-forest purpose the court opined that in order to achieve the above objective, the Ministry of Environment and Forests (MOEF) was also directed to formulate a scheme providing that whenever any permission is granted for change of use of forest land for non-forest purposes and one of the conditions of the permission is that there should be compensatory afforestation, then the responsibility of the same should be that of user-agency and it should be required to set apart a sum of money for doing the needful. In such a case, the State Government will have to provide or make available land on which reforestation can take place and this land may have to be made available either at the expenses of user-agency or of the State Government, as the State Government may decide. It was decided that the scheme shall ensure that afforestation takes place as per the permission which are granted and there should be no shortfall. Consequentially, MOEF had to issue guidelines from time to time under the FC Act, 1980 and the procedure for receipt and utilization of funds for compensatory afforestation, activities permissible under compensatory afforestation, adequate compensation for loss of forest land, recovery of NPV, funds for catchment area, treatment plant and involvement of user-agency for compensatory afforestation.[36]

34 *Id.* at para 15.

35 *Id.* at para 16.

36 *Id.* at para 17.

IV NATIONAL PARKS AND SANCTUARIES

In *Pramod K.P.* v. *State of Kerala,*[37] writ petitions were filed by tribal/forest dwellers, who were given rights to forest land under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. They were aggrieved by the denial of permission to cut and remove Anjili trees and Jackfruit trees from the settlement area. The petitioners trace out their right for cutting and removing trees based on the Forest Right Act and also with reference to some of the Government Orders. In this context, the Court felt it necessary to understand the nature of right devolved upon them in the light of legislative history related to conservation of forest land. The court further went on to elaborate that Parliament enacted Forest (Conservation) Act, 1980 with a view to conserve forest land. Dealing with the scope of the Act, the court mentioned that the Act placed restriction on use of forest land for non-forest purpose; particularity prohibited deforestation, without the permission of the Central Government. The said Act was enacted according to the court, essentially, with the intention of preserving forest and to prevent felling of naturally grown trees.[38]

With reference to the scheme of the Forest Right Act, two types of rights are conferred; namely community right and individual right. Clauses a-k of section 3 of the Act delineate forest rights of Forest dwelling Scheduled Tribes and other traditional forest dwellers which secure individual or community tenure or both. As far as the present writ petition is concerned, the claim of the petitioners in these writ petitions is based on individual right. They claim unfettered right to cut and remove trees from the settlement area assigned to them. The question is, whether they can be permitted to cut and remove trees either based on the Forest Right Act or based on the Government Orders.

The court while referring its previous averments mentioned that the assignment of forest right to the forest dwellers is essentially recognizing the occupancy right to occupy the forest land. That transfer does not include transfer of forest land to the forest dwellers. Thus, the State continued to be the holder of the land, having control of such forest land. Ownership and possession to hold the land belongs to the State, even though, the right to hold forest lands perpetually can be claimed as heritable in terms section 4(4) of the Act 2/2007. Since the forest dwellers do not keep possession or ownership over the land, they can be permitted to cut and remove trees only in accordance with the provisions of the Act 2/2007. The Act 69/1980 is the enactment against deforestation. In the light of the provisions under the said Act, it is not possible to permit the assignees to cut and remove trees from any reserve forest or forest land for any non-forest purpose, except with the prior approval of the Central Government. However, the Act 2/2007 permits assignees to cut and remove trees for the specific

37 ILR 2018 (1).

38 *Id.* at para 12.

purpose mentioned therein. Under section 3(2) of the Act 2/2007, the Central Government can permit diversion of forest land not exceeding 75 trees per hector for certain purposes mentioned therein. Thus, the felling of the trees can be permitted only in accordance with the provisions of the Act 2/2007.[39]

It is equally important to note that certain rights are given to individuals under the Forest Right Act and the Conservation of Forest Act 1980.[40] Section 3(a) of the Forest Right Act allows individual to hold forest land for self-cultivation for livelihood. If an occupant of a forest land, to whom a title has been given as a part of self-cultivation, planted tree for livelihood, certainly he/she can be permitted to cut and remove such trees. Felling of trees, otherwise, is only permitted in accordance with the other provisions of the Act 2/2007. Based on the title to occupy, no forest dwellers are entitled to cut and remove any trees, so long as the restriction under the Conservation of Forest Act, 1980 would apply to such areas. It is also to be noted that there is no transfer of interest involved in terms of the Forest Right Act, while giving title of the forest land to the forest dwellers for occupation. What is given is only a right to have occupation. The forest rights conferred upon the dwellers are in the nature of permissions to occupy the forest land and use it for the purpose for which permissions are granted. Therefore, as a matter of right, the forest dwellers or occupants, who are given title cannot be permitted to fell trees, from the land where prohibition of the Forest Conservation Act would apply. The Government, in fact, diluted the provisions of the Forest Conservation Act 1980, by allowing cutting and removing of trees. The Government cannot issue any order without previous approval of the Central Government. Any Government Order issued permitting felling of trees contrary to the Forest Conservation Act, 1980 is legally unsustainable. So far as the issue in these writ petitions are concerned, this Court is of the view that, if the petitioners are given title under the Forest Right Act, 2007, they can be permitted to cut and remove any trees, which they have planted as a part of self-cultivation for livelihood. No doubt, if any tree pose danger to the dwellers, which also can be permitted to cut and remove. However, those trees belong to the Government and not to the dwellers. In respect of the trees planted and cultivated by the dwellers, the Government cannot claim any right over it, as it is a part of permitted activity and the dwellers can appropriate it. Therefore, in the light of the discussions made above, these writ petitions are disposed of, directing the Chief Conservator of Forests to take a decision on the claim of the petitioners. The Chief Conservator of Forests can only permit the petitioners to cut and remove trees which were planted as part of self-cultivation. Appropriate decision shall be taken within a period of two months. The Government Orders issued contrary to law declared by this Court shall be withdrawn by the Government.[41]

39 *Id.* at para 13.

40 *Id.* at para 15.

41 *Id.* at para 16.

V PROTECTION OF WILDLIFE

In *Vikash Mahto* v. *The Union of India,*[42] which is a decision by the Jharkhand high court, the concern of the judiciary towards protection of wildlife and tiger in the Palamau Tiger Reserve was in issue. At the outset, the court mentions that it has taken note of several steps that have been taken by the Respondent authorities of the State i.e. Ministry of Forest, Environment and Climate Change and Government of Jharkhand pursuant to its order dated 28.02.2017. However, as also observed earlier on the said date, the efforts undertaken by the Respondents are definitely continuous in nature and is a work in progress.[43]

The court also took cognizance of the fact that as a matter of further report of progress a supplementary counter affidavit has been by the concerned authorities in an effort to bring on record further details in relation to the management intervention for improvement of Palamau Tiger Reserve which included Protection Plan, Water Management Plan, Grassland Management Plan and Eco-development Plan, etc.[44]

As a matter of action taken in the above direction, the court took note of the steps taken towards construction of 100 multipurpose towers during the current financial year; Increase in hand held GPS foot patrolling up to 20121 km. Transfer of an amount of Rs.44,44,600/- by the PTR authority to the Director, Wildlife Institute, Dehradun have also been made to conduct a feasibility study of tiger and prey supplementation in PTR. Maintenance work of 287 hectare of Grassland was completed against the target of 362 hectare for the current financial year, in regard to the Habitat Management. Whereas, against the planned creation/rehabilitation of 385 hectare Grassland, the achievement is 205 hectare till the end of November. In pursuit of the efforts for village relocation, authorities have met with success in respect of inhabitants of Kujrum village and were taking steps to motivate other villagers to relocate outside the Core Area of Palamau Tiger Reserve.[45]

With the launch of the Wild life action Plan as mentioned in the introductory paragraph, it becomes more important to revisit our conservation plan. Specifically with reference to Tiger Conservation Plan the court while dealing with its legislative background noted that the Tiger Conservation Plan (2013-14 to 2022-23) has been approved by the National Tiger conservation Authority, Ministry of Environment, Forest and Climate Change, Government of India under the provisions of section 380(1)(a) of the Wildlife (Protection) Act, 1972, as per the decision contained in letter dated 02.11.2015 of the Inspector General of Forests (NTCA) with several conditions.[46]

42 2017 SCC OnLine Jhar 2472.
43 *Id.* at para 1.
44 *Id.* at para 2.
45 *Id.* at para 3.
46 *Id.* at para 7.

The court while mentioning about the statutory regime emphasized that it has taken detail note of the aforesaid facts and the statutory regime created to ensure that aims and objects conceived under the Tiger Conservation Plan, as approved under the Wildlife (Protection) Act, 1972, are realized and implemented within a time bound manner. A legally enforceable statutory framework has been laid down with a laudable objective to ensure that efforts for conservation and procreation of Tiger and Wildlife do not suffer.[47]

In *Maria de Lourdes Filomena Figueiredo de Albuquerque* v. *The Ministry of Environment, Forest and Climate Change,*[48] the challenge in this petition is to the order dated 22.09.2016, whereby the respondent has refused to revoke the abeyance of the Environmental Clearance (EC) in respect of the Title Concession (TC) No. 65/51, "Pola Dongor Iron and Manganese Ore" of the petitioner, on the ground that a part of the mining area, is a forest land, in respect of which, forest clearance has not been obtained.[49] The court stated that it has given its anxious consideration to the rival circumstances and the submissions made. As noticed earlier, the respondent has refused to revoke the abeyance, on the basis of the provisions of the FC Act and more particularly, section 2 thereof and para 4.4 of the guidelines. The court dealt with the scope of section 2 of the FC Act which to the extent relevant reads thus:[50]

> Section 2. 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).... (ii) that any forest land or any portion thereof may be used for any non-forest purpose; (iii) .... (iv)....

The court observed that it can thus be seen that under the said section, State Government or other Authority shall not make, except with the prior approval of the Central Government, any order, directing permitting the use of any forest land or any portion thereof for any non-forest purpose. It further opined that section 2 of the FC Act cannot apply where there is no diversion or use of the forest land for any non-forest purpose.

Most importantly in this case the Court dealt with the doctrine of proportionality. It is thus stated:[51]

> Time has come for us to apply the constitutional "doctrine of proportionality" to the matters concerning environment as a part of the process of judicial review in contradistinction to merit review. It cannot be gainsaid that utilization of the environment and its natural resources

47 *Id.* at para 9.

48 2017 (3) Bom CR 230.

49 *Id.* at para 2.

50 *Ibid.*

> has to be in a way that is consistent with principles of sustainable development and intergenerational equity, but balancing of these equities may entail policy choices. In the circumstances, barring exceptions, decisions relating to utilization of natural resources have to be tested on the anvil of the well-recognized principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint. Once this is ensured, then the doctrine of "margin of appreciation" in favour of the decision-maker would come into play.

The court dealt with certain parameters from the administrative law aspect. It mentioned that while examining the decision making process, the Court has to see (i) whether all relevant factors have been taken into account (ii) whether any extraneous factors have influenced the decision (iii) whether the decision is strictly in accordance with the legislative policy underlying the law, if any, that governs the field and (iv) whether the decision is consistent with the principles of sustainable development, in the sense that the decision-maker has taken into account the said principle and on the basis of relevant considerations, arrived at a balanced decision?[52]

While applying the above mentioned principles to the fact of the case the court found that MoEF has not taken into consideration the fact that the forest area has been cordoned off and there is no non-forest activity being carried out or proposed to be carried out in the forest area. The court also came to the conclusion that para 4.4 of the guidelines could not have been invoked in this case, for refusing to revoke the abeyance. In conclusion it stated that the legislative policy underlying the Forest Conservation Act is to preserve and conserve forests and prohibit the use of forest land for non-forest purpose. Once it is found that the forest area is not being put to any non-forest use, the legislative policy underlying the Forest Conservation Act, cannot be said to be violated. For these reasons, we find that the impugned order cannot be sustained.[53]

51 *Id.* at para 30.

52 *Id.* at para 15.

53 *Id.* at para 16.

VI CONCLUSION

Due to the vast biodiversity of the Indian sub-continent, there are many issues which the wildlife in general and tribal population in particular are facing. The works of authors such as Ramachandra Guha, Ranjit Guha and those of conservationist and naturalists needs to be taken into consideration in order to arrive at a pragmatic solution in our conservation efforts. There are various issues facing the wildlife in the country from the high plateaus of Ladakh to the western and eastern ghats. Animal wild life conflict, climate changed induced migration of wildlife further exacerbating the whole problem. Another important issue which often gets ignored is the death of elephants due to railway accidents. Reports of elephants (jumbos) dying in large numbers are not a new thing which are doing the round in the dailies. Interlinking of rivers such as the Ken-Betwa and other ambitious projects should take wildlife displacements and relocations into consideration in the whole exercise of development. Wild life concerns should be mainstreamed into developmental activities including tourism. A harmonious blend of eco-tourism and conservation of nature should be at the forefront of all legislative and judicial rule making. Another important concern facing the wild life at the international level is the trade in wild life which has become a huge international market. From the Tibetan antelope (chiru) occupying the high lands of Ladakh whose product (shatoosh) is much sought after to the poaching of rhinos in the Kaziranga national park, there is a wide spread illegal trade in the market today. The Convention of International Trade in Endangered Species (CITES) is a mechanism which exists to address the above issue.

On the brighter side, the recent launch of National Wild Life Action Plan has taken all the above problems into consideration which is a sound step at the legislative front. The judiciary of the country including the National Green Tribunal have been proactive in materialising the law in both letter and spirit as is evident from the judgments surveyed so far. The relevance of the doctrine of proportionality and administrative law principle while exercising the power of judicial review in matters related to environment is another 'judicial innovation' which will go a long way in enriching the evolving environmental jurisprudence of the country.