13

FOREST AND TRIBAL LAWS

Prakash Sharma[*]

I INTRODUCTION

INDIA MAINTAINS a strong belief in natures conservation, and is reflected in its national laws, development agenda, and in its role in securing global consensus on environment protection and climate justice.At the same time,recent past saw the idea of environment conservation (or preservation) goingbeyondthe limits of mere demarcation and notification of sanctuaries, or eviction of people living within or on fringes of such areas.In fact, today, it has assumed a multi-dimensional problem.[1]

The vast biodiversity of the Indian sub-continent is witnessing many challenging issues, including wild lifeconflict, climate change issues, induced migration, heedless encroachment to forest cover, illegal wild animal trade, *etc*. In this perspective, the relevance of forests and its conservation remains not only uncontested but also crucial in mitigating andadapting newer strategies toaddresssuch prodigious challenges to humankind.[2]Having said this,the role of tribal communities hasalso been firmly acknowledged in the maintenance of ecosystems around the world.[3]In India, for centuries, tribes have helped in preserving natural habitats and promoting conservation through sustainable practices in farming, fishing, and cohabiting spaces with

* Assistant Professor, Vivekananda Institute of Professional Studies-Technical Campus, New Delhi. The author acknowledges the research assistance provided by Naveen Chandra Sharma, Advocate, High Court of Delhi, and Deepanshu Mathpal, 3rd Semester student, Faculty of Law, University of Delhi.

1 *See* Vasant Saberwal and Mahesh Rangarajan (eds.), *Battles Over Nature: Science and the Politics of Conservation* (Permanent Black, Delhi, 2002); David Arnold, *The Problem of Nature: Environment, Culture and European Expansion* (Blackwell, Oxford, 1996).

2 Madhav Gadgil and Ramachandra Guha, *This Fissured Land: An Ecological History of India* (Oxford University Press, New Delhi, 1992). *See also* David Arnold and Ramchandra Guha (eds.), *Nature, Culture, Imperialism: Essays on the Environmental History of South Asia* (Oxford University Press, New Delhi, 1996).

3 United Nations Declaration on the Rights of Indigenous Peoples, 2007, A/RES/61/295, *available at:*https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf (last accessed on Oct. 25, 2022).

wildlife.[4]Nonetheless, their relevance was purposely underminedby the colonial rulers,andcontinued there afterwards in the post-IndependentIndia.[5]

Of lately, ithas also been noticed that through colonial laws, the measures pertaining totheecological restoration isnot going to be properly shaped and any persistence wouldlargely overlook the concerns.[6] There had been some piecemeal measures adopted to address issues,[7] howeverthey remain largely scattered and way beyond reality.In this backdrop, the year under survey not only saw some encouraging

4 Ramachandra Guha, "The Prehistory of Community Forestry in India", 6(2) *Environmental History* 213-238 (2001).

5 The British regime discriminated between the tribal communities in the peninsular India (as partially excluded areas) and those in the North-East (excluded areas). *see*ApoorvKurup, "Tribal Law *vis-à-vis* Gram Nyayalayas Act, 2008", 51(2) *Journal of the Indian Law Institute* 238-39 (2009).The continuing colonial legacy of distinction between peninsular and north-eastern tribes has been a matter of both concern and criticism. *Id*. at 240. *See also* ApoorvKurup, "Tribal Law in India: How Decentralized Administration is Extinguishing Tribal Rights and Why Autonomous Tribal Governments are Better", 7(1) *Indigenous Law Journal* 87-126 (2008), *available at:*https://jps.library.utoronto.ca/index.php/ilj/article/view/27653/20384 (last accessed on Nov. 08, 2022).

6 Anirban Roy and Forrest Fleischman, "The Evolution of Forest Restoration in India: The Journey from Precolonial to India's 75th Year of Independence", 33(10) *Land Degradation & Development* 1527-1540 (2022).Further, the normal livelihood activities of tribals were criminalized and they were considered as encroachers, *see*O. Springate-Baginski et al., "Redressing 'historical injustice' through the Indian Forest Rights Act 2006: A Historical Institutional analysis of contemporary forest rights reform", Discussion Paper Series Number twenty-seven (Institutions and Pro-Poor Growth, Manchester, August 2009) *available at*: https://assets.publishing.service.gov.uk/media/57a08b66e5274a27b2000b05/dp27.pdf(last accessed on Nov. 08, 2022).*See also* Madhav Gadgil and Ramachandra Guha, *Ecology and Equity: The Use and Abuse of Nature in Contemporary India* (Routledge, London, 1995).

7 For instance, the monthly update on the status of implementation of Schedule Tribes and Other Traditional Forest Dwellers (Recognition of forest Rights) Act, 2006 (Forest Rights Act). *See*Ministry of Tribal Affairs, *Forest Rights Act: Monthly Progress Report* (2021), *available at*:https://tribal.nic.in/FRA.aspx#:~:text=The%20Forest%20Rights%20Act%20(FRA,and%20other%20socio%2Dcultural%20needs (last accessed on Nov. 10, 2022). The Forest Rights Act was brought to fulfill the need for a comprehensive legislation that gives due recognition to the forest rights of tribal communities. The legislation encapsulated the "struggle of India's most poverty-stricken population to establish control of forest land and resources. *See* Armin Rosencraz, "The Forest Rights Act 2006: High Aspiration, Low Realization", 50(4) *Journal of Indian Law Institute* 656 (2008). While the intent was appreciable yet on ground its application appears nocent. *See* Nikita Agarwal, "The State vs. Adivasis: Bastar's Criminal Justice Apparatus and the Story of Arjun Kashyap", *Völkerrechtsblog* (Oct. 27, 2022), *available at:*https://voelkerrechtsblog.org/the-state-vs-adivasis/ (accessed on Nov. 12, 2022). The author observed that "The Bastar region in southern Chhattisgarh has been the site of an ongoing armed conflict over the last decades. The armed struggle in the region arose due to the lack of adequate land reform, to the tyranny of forest rangers and local administrators as well as to the complete alienation of local Adivasi populations from official governance structures." *Ibid*

judgments but also witnessedvarious initiatives form the government that paves way towards an evolving environmental jurisprudence.[8]

II INDIAN FOREST ACT

In *Prabhagiya Van Adhikari, Awadh Van Prabhag* v. *Arun Kumar Bhardwaj (Dead) through Legal Representatives*,[9]the Supreme Court observed that merely on the basis of an entry in the revenue record, a lessee would not be entitled to any right. The revenue record is not a document of title. Therefore, even if the name of the lessee finds mention in the revenue record, such entry without any supporting documents of creation of lease contemplated under the Indian Forest Act, 1927remains inconsequential and does not create any right, title or interest over the land.

III FOREST PRODUCE

In another case,[10] the Supreme Court while examining the Kerala Forest Act, 1961 (KFA) opined that unlike other statutes, KFA does not create a presumption about a culpable mental state of the alleged offender. The facts were: upon receipt of information, officials of the Kerala Forest Department seized 37 cartons containing 460 kgs of sandalwood oil at Karipur airport, belonging to the Appellants.Later a criminal complaint was filed by the State, wherein the Appellants' premises were searched, which in turn yielded in seizure of another 73.6 kgs of sandalwood oil. The Appellant resisted the charges of illegal possession of forest produce, and its movement stating that they processed and manufactured sandalwood oil, which was then exported to four different countries. The complaint filed by the Kerala Forest Department, alleged that sandalwood oil was a forest produce and without a transit licence, its movement too was illegal. Against the complaint, the Appellant argued that sandalwood oil was not a forest produce and rather, that sandalwood was.

After considering the materials on record, the Judicial Magistrate convicted the Appellant, against which the Court of Session, held that in view of the certificate issued by the Central Excise authorities, the possession of sandalwood oil in the factory could not be termed as illegal and that a conviction under section 27 of the KFA could be recorded only if it was found that sandalwood oil was removed illegally, or without authorization from any reserve forest, or area proposed to be constituted as reserve forest. Against the acquittal appeal was preferred before the High Court, which reversed the judgment of the Sessions Court.

8 In October 2021, the Ministry of Environment, Forest and Climate Change (MoEFCC) had unveiled a note seeking comments on amendments in the Forest Conservation Act 1980, see F. No. FC-11/61/2021-FC, *available at:*https://moef.gov.in/wp-content/uploads/2021/10/Public-Consultation-Paper-2.10.21.pdf (last accessed on Nov. 12, 2022).. India is on course to achieve 175 gigawatts (GW) of renewable capacity by year 2022 and 450 GW by 2030, as affirmed under the 2015 Paris Agreement. See India set to achieve 450 GW renewable energy installed capacity by 2030: Ministry of New and Renewable Energy (MNRE) (Ministry of New and Renewable Energy, Oct. 11, 2021), *available at*: https://pib.gov.in/PressReleasePage.aspx?PRID=1762960(last accessed on Nov. 12, 2022).

9 MANU/SC/0791/2021.

10 *Bharath Booshan Aggarwal* v. *State of Kerala*, MANU/SC/0798/2021.

The Supreme Court found that there is no contest about the fact that the goods were seized from the premises of the Appellant, and belonged to him.[11] Further, sandalwood oil is a forest product.[12] However, seizure of forest produce belonging to the State, automatically can result in a presumption of culpable mental state of the accused, appears to be erroneous. Accordingly, the Court opined that the appellants who had furnished a series of documents explaining how they had sourced the oil in question, demand State's alertness in producing materials and proving that they were without credibility.[13] The Court held that section 27(1)(d) of the KFA requires conscious knowledge, of the nature of the goods, *i.e*., their illicit origin, which compels proof by the prosecution, beyond reasonable doubt.[14]

IV FOREST CONSERVATION ACT

The Forest Conservation Act, 1980 (FCA)was enacted with a view to check further deforestation which ultimately results in ecological imbalance. Accordingly, the provisions made therein for the conservation of forests (or matters connected)are required to be applied to all forests irrespective of the nature of ownership or classification.[15] This aspect becomes relevant, especially to advance crucial public projects like metro railways in urban cities.

In *T.N. GodavarmanThirumulpad* v. *Union of India*,[16] applications were moved apprehending potential threat to the ecology of National Capital Territory of Delhi (NCT of Delhi)/National Capital Region (NCR) considering Phase IV of the Mass Rapid Transit System Project (MRTS Project). It was argued that the earlier Phases of the MRTS Project had resulted in loss of vegetation as well as flora and fauna in Delhi, and therefore, the implementation of Phase IV of MRTS Project couldpose a threat to the ecology of NCT of Delhi/NCR.While disposing the applications, the Supreme Court in its Order dated 29.11.2021 held that whether the areas through which the metro railway lines are to be constructed and pass through are forest areas or non-forest areas, has to be determined by the Government of National Capital Territory of Delhi (GNCTD). The Court directed that theapplications filed by the Delhi Metro Rail Corporation Ltd. (DMRC) under the FCA before the Chief Conservator (Forest) and Nodal Officer, GNCTD, for seeking permission for diversion of the land for the construction of Metro, Phase-IV of MRTS Project, ought to be expeditiously considered by the concerned authorities.[17] Further, while keeping the

11 *Id*. at para 21.

12 *Id*. at para 22.

13 *Id*. at para 28.

14 *Id*. at para 29.

15 *See Ambica Quarry Works* v. *State of Gujarat*, 1987 (1) SCC 213;*Rural Litigation and Entitlement Kendra* v. *State of Uttar Pradesh*, 1989 Suppl. (1) SCC 504); *Supreme Court Monitoring Committee* v. *Mussoorie Dehradun Development Authority*, (1985 (3) SCC 643.

16 MANU/SC/1165/2021.

17 *Id*. at para 47. Here, the Court directed that "while considering the said applications, the directions and orders passed by this Court referred to above as well as the statutory scheme and guidelines and parameters prescribed by MoEF&CC [Ministry of Environment, Forest and Climate Change],GoI [Government of India], shall be borne in mind by the concerned authorities. The Reports referred to above may also be taken into consideration." *Ibid*.

precautionary and sustainable development principles in mind, the Court further directed the GNCTD and DMRC to conceive a plan of action for the purpose of planting trees in the NCT of Delhi and the same had to be submitted to the Court for her consideration.

In India, there is limited understanding on the preservation of mountain ecosystems, particularly from the perspective of climate change and biodiversity preservation. Laws too appears to be oblivious, and except for FCA and Himalayas and Ladakh Autonomous Hill Development Council Act, 1995, several other environmental enactments appear silent on this cause. This aspect was noticed in *S. Maheswari* v. *The State of Andhra Pradesh,*[18] wherein the Andhra Pradesh High Court allowed two Writ Petitions of different concerns claiming identical reliefs. The petitioners argued that owing to the conversion of Yetteri Gutta hillock for eventual assignment of house sites to houseless poor,will result in the removal of existing idols and temples and other religious places, and cause disappearance of grazing lands and hillock. It was alleged that anycontinuation of such housing assignments, willresult inthe disturbance to environment and biodiversity. The Court identified few issues, namely: Whether the petitioners in both the Writ Petitions being members of a community of Kuntrapakam Village are entitled to question the act of the respondents?;Whether the allotment of house sites to 300 beneficiaries is contrary to the order passed by the National Green Tribunal, Southern Zone, Chennai and the proposed allotment of house site causing disturbance to the environment besides serious effect on bio-diversity?; and Whether the respondent-Tahsildar be restrained from allotting house to the houseless poor? The High Court after examining regional and international instruments, and the settled law,[19] found that the acts of authorities were illegal and arbitrary.

In another case,[20] the question was whether an establishment contributing to the economy of the country and providing livelihood to hundreds of people should be closed down for the technical irregularity of shifting its site without prior environmental clearance (EC), in other words whether an EC granted for expansion to the Appellant without holding a public hearing was valid in law? The brief facts were that the appellant started a steel plant in 2008, and accordingly environmental clearance (EC) to set up an integrated steel plant on 1350 acres of land was duly obtained. After obtaining EC, the appellant applied for consent to establish (CTE)from Jharkhand State Pollution Control Board (JSPCB) and Consent to Operate (CTO)from appropriate authoties. Now, the appellant established its steel plant some 5.3 kms away from the site for which EC and CTE had been granted. It wasalleged that due to the change in the project site, the appellant had encroached uponthe forest land too.

18 MANU/AP/1210/2021.

19 Referring to *Hinch Lal Tiwari* v. *Kamala Devi*, MANU/SC/0410/2001; *M.C. Mehta* v. *Kamal Nath*, MANU/SC/1007/1997; T.*N. GodavarmanThirumalpad*v. *Union of India,* (2002) 10 SCC 606; and *Lal Bahadur*v. *State of U.P.*, MANU/SC/1742/2017.

20 *Electrosteel Steels Limited* v. *Union of India*, MANU/SC/1261/2021.

TheCourt noticed the appellant's assertation that no part of the premises of the integrated steel plant is in any forest, and drew attention to the Jharkhand High Court's interim Order which stayed operation, implementation and execution of the JSPCB's revocation Order against EC.[21]The Court noticed thatthe appellant had also applied for *ex post facto* Forest Clearance (FC), along with a revised EC.Further, The Court found that Ministry of Environment, Forest and Climate Change (MoEF&CC) too had passed an order according *ex post facto* approval for the forest diversion/clearance proposal.Thereafter, JSPCB filed an affidavit stating that it had no objection to extension of the interim orders by the Jharkhand High Court for the reason that the steel plant employed a large workforce. Upon examination, the Supreme Court allowed the appeals, and noticed that that continuance of the interim orders allowing operation of an industrial establishment or even the grant of revised EC to the industrial establishment cannot stand in the way of action against the establishment for contraventions, including the imposition of penalty, on the principle of polluter pays.[22] Accordingly the Court directed JSPCB to take a decision on the application of the revised EC in accordance with law (within three months from date), andpending such decision, the operation of the steel plant shall not be interfered with on the ground of want of EC, FC, CTE or CTO.

Forest Land for Non-Forest Purposes to Private Entities

The procedure for diversion of forest land for non-forest purposes is quite tricky and involves discharge/observation of multiple compliances along with strict observance of statutory obligations.[23] Part of the reason is the fact that forests are vital component in sustaining the life support system on Earth,and therefore, anyprogram for development needs to evolve a systemic approach so as to balanceeconomic development and environmental protection. Regulating the indiscriminatediversion of forest land for non-forest use is critical.Here, the role of government becomes crucial and the least that can be expected is that its action must appear to be beyond mere assurances. In *BirenRameshchandraPadhya* v. *Union of India*,[24] there was transfer of forest land for non-forest use, against which the petitioner had raised issues against the allotment, constructions, and method and manner of the allotment. The Central Government sought a report from the State Government, which confirmed volitationof the provisions of the Indian Forest Act, 1927.The State Government in its report stated that the area involved has been declared as a reserved

21 *Id*. at para 63.The Court noticed that JSPCB's Order was "*prima facie*…passed in violation of principles of natural justice, had serious repercussions on the unit of the Appellant which was a running unit, and had caused prejudice to the Appellant." *Ibid*.

22 *Id*. at para 95.

23 In this regard, section 2 of the FCA states that "No forest land shall cease to be reserved or shall be used for non-forest purposes, or shall be assigned to any private person, except with the prior approval of the Central Government." And accordingly, the Forest (Conservation) Rules, 2003, prescribes the procedure for submission of proposals seeking clearance under the FCA.

24 MANU/GJ/1652/2021.

25 *Id*. at para 21.

26 MANU/SC/0015/2021.

forest and found that buildings have been constructedto accommodate around 628 families. Subsequently, the matter was deliberated in two meetings of the Regional Empowered Committee, which approved the proposal of the State Government for imposing additional conditions against the user agency. The additional conditions were thereafter accepted by the Central Government. The Gujarat High Court while disposingof the public interest litigation directed theState and Union Government to ensure that forest land will be allotted in accordance with the policy and to the industries with credentials and not indiscriminately. The Court further directed that while the development must be facilitated, the conservation of forest shall never be sacrificed.[25]

In *Himachal Pradesh Bus Stand Management and Development Authority* v. *The Central Empowered Committee*,[26] the brief facts were: the Union Ministry of Environment and Forests (MoEF), on a proposal made by the State of Himachal Pradesh, permitted the diversion of 0.093 hectares of forest land for the construction of a parking space at McLeod Ganj in 1997. Later, in 2001 the MoEF issued another order for diverting 0.48 hectares of forest land for the construction of a bus stand at McLeod Ganj.Both pieces of land face each other and are a part of Banoi Reserve Forest. In 2005, construction of the Bus Stand Complex got started, without awaiting the permission of the Town and Country Planning Department (TCPD).

Now, during the construction, an application was presented before the Central Empowered Committee (CEC), alleging that the construction of the Bus Stand Complex was in violation of the FCA. The members of CEC visited the site and accordingly heard parties on multiple dates. The CEC submitted its report, which confirmed that a part of the Bus Stand Complex is in violation the provisions of the FCA. The CEC recommended demolition of the illegal portions. Against the CEC recommendation, matter was presented before the National Green Tribunal (NGT). The NGT accepted the findings of the CEC, and observed that the Bus Stand Complex seriously disturbs the ecology of the area in which it has been constructed. The NGT directed that the structure of the Hotel-cum-Restaurant in the Bus Stand Complex be demolished and compensation to be recovered.

The Supreme Court while disposing of the appeals upheld the directions issued by the NGT. The Court explained the concept of environment rule of law, which runs thus:[27]

> The environmental Rule of law, at a certain level, is a facet of the concept of the Rule of law. But it includes specific features that are unique to environmental governance, features which are *sui generis*. The environmental Rule of law seeks to create essential tools - conceptual, procedural and institutional to bring structure to the discourse on environmental protection. It does so to enhance our understanding of environmental challenges—of how they have been shaped by humanity's interface with nature in the past, how they continue to be affected by its engagement with nature in the present

27 *Id*. at para 47.

> and the prospects for the future, if we were not to radically alter the course of destruction which humanity's actions have charted. The environmental Rule of law seeks to facilitate a multi- disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions and policy perspectives in the field of environmental protection. It recognises that the 'law' element in the environmental Rule of law does not make the concept peculiarly the preserve of lawyers and judges. On the contrary, it seeks to draw within the fold all stakeholders in formulating strategies to deal with current challenges posed by environmental degradation, climate change and the destruction of habitats. The environmental Rule of law seeks a unified understanding of these concepts.

Holding construction of Hotel-cum-Restaurant as clear violation of the environmental Rule of law. In this regard, the Court observed:[28]

> Whatever else the environmental Rule of law may mean, it surely means that construction of this sort cannot receive our endorsement, no matter what its economic benefits may be. A lack of scientific certainty is no ground to imperil the environment.

Accordingly, the Court opined that the forest land was only allowed to be used by the MoEF for the specific purposes of constructing a parking spaceand bus stand.[29]Herein, the Court noticed that the MoEF made a conscious decision not to modify the terms of this permission, even when granted an opportunity to do so.[30]

V BIODIVERSITY

Human depend on biodiversity in their daily lives, in ways that are not always apparent or appreciated.[31]Biodiversity loss have direct andindirect impact on life. Having said this, too many tourists do have a negative, degrading effect on biodiversity and ecosystems too. This aspect was also noticed by the Niti Aayog in its 2018 report:[32]

> Specific negative impacts linked to the current form of tourism in [Indian Himalayan Region] IHR include the replacement of traditional eco-friendly and aesthetic architecture with inappropriate, unsightly and dangerous construction, poorly designed roads and associated infrastructure, inadequate solid waste management, air pollution, degradation of watersheds and water sources, and the loss of natural

28 *Id*. at para 53.

29 *Id*. at para 62.

30 *Ibid*.

31 ParthaPratim Mitra, "Hunting, Biodiversity and Right to Livelihood in India", in Sanjay Kumar Singh (eds.), *Environment Law and Climate Change* 17-38 (SBS Publishers, New Delhi, 2010). See also *See* P.P. Mitra, *Wild Animal Protection Laws in India* 115-117 (Lexis Nexis, Gurgaon, 2016).

32 Niti Aayog, *Contributing to Sustainable Development in the Indian Himalayan Region* 30 (2018, NITI Aayog, 2018), *available at*: https://gbpihed.gov.in/PDF/Policy%20Briefs/Summary_WGs.pdf (last accessed on Nov. 25, 2022).

> resources, biodiversity and ecosystem services. Cumulatively, they are affecting long-term tourism development prospects of IHR.

In *Citizens for Green Doon* v. *Union of India*,[33] a petition under Article 32 of the Indian Constitution was made to challenge the construction under the *ChardhamMahamarg Vikas Pariyojna* (the Project).The petitioners have argued that the development activity has a negative impact on the Himalayan ecosystem, as it will lead to deforestation, excavation of hills and dumping of muck, which will lead to further landslides and soil erosion, in an already sensitive environment.

The Court carefully examined the circulars and guidelines issued on behalf of the Ministry of Road Transport and Highways (MoRTH) and Ministry of Defence (MoD), which emphasized upon the infrastructural needs of the Armed forces. In this regard, the Court opined, "This Court, in its exercise of judicial review, cannot second-guess the infrastructural needs of the Armed Forces".[34] Herein, the Court found that the need for the development of national highways is proportionate to the object of fulfilling the security concerns of the nation as assessed by the MoD.[35] Thereafter, the Court dwelled into the findings of the High Powered Committee (HPC) which recommended for taking remedial measuresto improve the Projectin terms of its environmental impact and suggested mitigation strategies to implement the Project.[36] The Court was of the opinion that the need to proceed with the Project must besubject to the condition that it addresses all the concerns which have been raised by the HPC and the Court.[37]The Court was of the opinion:[38]

> The verdict of the HPC in its report indicates that the Project is riddled with environmental issues, which need to be resolved in order to make it environmentally sustainable. Unfortunately, due to the ongoing litigation in relation to the road-width issue, these concerns seem to have taken a back seat. However, that cannot be the case, going forward.

Accordingly, the Supreme Court stayed the felling of trees for the improvement and expansion of the National Highway and directed the National Green Tribunal (NGT) to decide the said action afresh. The Court asked the Government to make a significant alteration in the approach to theProject by adopting sustainable measures,as directed in the HPC recommendations.Further, in order to ensure implementation of these recommendations, the Court established as Oversight Committee (OC), which shall report directly to the Court.On this, the Court directed the Union of India, the Government of Uttarakhand, MoRTH, MoD and Ministry of Environment, Forest

33 MANU/SC/1251/2021. The case involved multiple proceedings before the National Green Tribunal (OA No. 99/2018) and the Supreme Court.

34 *Id*. at para 65.

35 *Id*. at para 71.

36 *Id*. at para 23.

37 *Id*. at para 99. The Court opined that "Piecemeal implementation of some mitigation measures for protection of the environment, without any concrete strategy in place, cannot pass muster." *Ibid*.

38 *Id*. at para 97.

and Climate Change (MoEF&CC) to provide all logistical and administrative assistance.Clarifying the objective of theOC, the Court opined thatOC will not undertake an environmental analysis of the Project afresh but to assess the implementation of the recommendations already provided by the HPC.[39]

VI PROTECTION OF WILDLIFE

Environmental justice could be achieved only if we drift away from the principle of anthropocentric to ecocentric.[40] In *M.K. Ranjitsinh* v. *Union of India*,[41]writ petition was filed to protect two species of birds namely the Great Indian Bustard (GIB) and the Lesser Florican (LF), which are on the verge of extinction.[42] The petition highlighted that due to the existence of overhead power lines, birds like GIB and LF, experience collision with power lines and are getting killed. The Court in its Order dated 19.04.2021, directed that both the State and the Central Government have a duty to preserve the endangered species, and incur expenses for the same.[43]In this regard, the Court noticed that under the provisions of the Compensatory Afforestation Fund Act, 2016 (CAFA), substantial funds are available with the National and State Authorities.[44]

VII NATIONAL PARKS AND SANCTURIES

In*MTR Moonadi Quarry* v. *Union of India*,[45] the petitioner was operating a granite building stone quarry. For the said operation they hadobtainedan environmental clearance in terms of the Environment Impact Assessment Notification, 2006 (EIA Notification, 2006). The quarry is located at 10 kms from the boundary of the Silent Valley National Park [established under the Wildlife (Protection) Act, 1972 (WPA)]. Now, under the office memorandum issued by the Ministry of Environment, Forest and Climate Change(MoEF&CC), clearance from the Standing Committee (constituted under constituted under section 5B of the WPA) for mining projects within 10 kms from the National Parks is required. Further, pursuant to the complaint lodged it was also alleged that the petitioner has been conducting blasting in the quarry in the early hours of the day and therefore, it has been decided to interdict the operation of the quarry on that ground also. The petitioner in theWrit Petition maintained that the

39 *Id*. at para 103.

40 ParthaPratim Mitra, "Tribal Rights and Wild Animal Protection: Coexistence in Nature and Balance in Law", in Yogesh Pratap Singh and Suvrashree Panda (eds.), *Tribal Justice: After Seventy Years of Working of Indian Constitution* 44-71 (Eastern Book Company, Lucknow, 2021).*See also*ParthaPratim Mitra, "Judicial Balance Between Wildlife Conservation and Indigenous People in Developing Indian Society", 5 *Environmental and Forest Law Times* 58 (2015); ParthaPratim Mitra and Prakash Sharma, "Role of the Supreme Court in Developing 'Animal Rights' Jurisprudence in India: A Study", 62(3) *Journal of the Indian Law Institute* 239-262 (2020).

41 MANU/SC/0288/2021.

42 *See* P.P. Mitra, *Birds, Wetlands and the Law*27, 159 (Thomson Reuters, Gurgaon, 2019).

43 *Supra* note 41 at para 5.

44 *Id*. at para 12. The Court specified that "Rs. 47,436 crores, out of a total of Rs. 54,685 crores CAMPA Fund have been transferred by the Union Environment Ministry to the States for afforestation projects." *Ibid*.

45 MANU/KE/1241/2021.

46 (2010) 13 SCC 740.

restrictions imposedby the office memorandum can be imposed only in accordance with the provisions of the Environment (Protection) Act, 1986 (EPA) and the Environment (Protection) Rules, 1986 (the Rules). The issue was whether the direction in the office memorandum insisting prior clearance of the Standing Committee for projects and development activities within 10 kms from National Parks applies to the project of the petitioner?; and whether the direction is sustainable in law?

The Kerala High Court in its Order dated 08.04.2021 observed that the restrictions for new projects and development activities around National Parks are required to governed by the directions issued in *T.N. GodavarmanThirumulpad* v. *Union of India,*[46] and in terms of the provisions of the EPA and the Rules.The Court noted:[47]

> Having regard to S. 3 of the Act and Rule 5 of the Rules, the Apex Court has held in Goa Foundation, in the context of prohibiting mining operations around National Parks, that until the Central Government takes into account various factors mentioned in sub-rule (1), follows the procedure laid down in sub-rule (3) and issues a notification under Rule 5 prohibiting mining operations in an area, there can be no prohibition under law to carry on mining activity beyond 1 km of the boundaries of National Parks prohibited by the Apex Court in *T.N. GodavarmanThirumulpad*.

Hence, unless the Central Government chooses to dispense with the procedure in Rule 5 in public interest, the procedure prescribed in the Rule is to be followed even for restriction of an operation that would fall within the scope of Rule 5 of the Rules in an area.The Court opined:[48]

> …if the notifications issued under S. 3 of the Act for declaring eco-sensitive zones around the National Parks are at the draft stage, is a restriction falling within the scope of S. 3(2)(v) of the Act, there cannot be any doubt that such an insistence can be made only in accordance with the procedure laid down in Rule 5 of the Rules.

Accordingly, the Court held the notifications issued under section 3 of the EPA is "a restriction falling within the scope of section 3(2)(v) of the EPA, and since the procedure has not been followed, the office memorandum is unsustainable in law."[49]

VIII INVOLUNTARY DISPLACEMENT

In 2021, 4.9 million people suffered internal displacement due to climate change in India.[50] Professor Upendra Baxiopinethe fact that people are notpartners in the process of decision-making regarding construction of dams, areas ofsubmergence, environment impact, allocation of resources and allocation of benefitsand adverse

47 *Id*. at para 8.

48 *Id*. at para 9.

49 *Id*. at para 10.

50 Internal Displacement Monitoring Centre,*GRID 2021:Internal Displacement in Changing Climate* (Internal Displacement Monitoring Centre and Norwegian Refugee Council, Geneva, 2021), *available at*:https://www.internal-displacement.org/sites/default/files/publications/documents/grid2021_idmc.pdf (last accessed on Nov. 27, 2022).

impacts of development, people suffer.[51]Here, dissemination of the news or the decision to the affected parties plays important role. This aspect was noticed by the Supreme Court in *Sridevi Datla* v.*Union of India*,[52] wherein the Project Applicant proposed the construction of a new Greenfield International Airport, and accordingly applied to the Ministry of Environment, Forests and Climate Change (MoEF) to seek environmental clearance (EC). The MoEF, after following the prescribed procedure granted approval, and the same was posted on the website of the MoEF.Thereafter, the Project Applicant also published the approval in an English daily. The issue was whether update on the MoEF website and publication in English daily amounts to proper communication.

The contention on behalf of the appellant was that the stipulations in the EC prescribes that the successful project applicant had to, in continuation to publishing the decision or intimation in local newspapers, ensure that the decision was forwarded to local communities through the Panchayats *etc*. for dissemination. It was contended that large projects which involve either displacement of people or affect habitats does have the tendency to damage or cause significant adverse impact upon the environment. Accordingly, appeal was made before NGT, which was rejected on the ground of delay. The Supreme Court while holding merits in the appellants argument, set aside the NGT order and accordingly condoned the delay.

IX VESTING AND ASSIGNMENT LAWS

In *The Conservator and Custodian of Forest*v. *Sobha John Koshy*,[53] under the provision of the Kerala Private Forest (Vesting and Assignment) Act, 1971 (KPFA), the land in dispute was declared as ecological fragile land. Against this, an application was moved before the Forest Tribunal, which rejected the claim. Thereafter, the matter was taken to the Kerala High Court, which remanded the matter to the Forest Tribunal for a fresh determination.After prolong litigation, the Division Bench of the Kerala High Court, which declared that lands in question are exempted from provisions of KPFA. The High Court also held that petitioners have proved cultivation and that the area was cultivated with plantation and crop.[54]Accordingly, the judgment of the Forest Tribunal was set aside. Following the decision restoration of several pockets of land were done, except for the appellants. It was noticed that their land was in possession of *adivasis*, who could not be dispossessed by the State, since there was an interim order operating in favour of the *adivasis*.

Consequently, a proposal was submitted by the Divisional Forest Officer (DFO) to allot alternative land, which could not materialised. The DFO recommended that

51 Upendra Baxi, "Development, Displacement and Resettlement: A Human Rights Perspective", in Hari Mohan Mathur (eds.), *India Social Development Report 2008: Development and Displacement* (Oxford University Press 2008).

52 MANU/SC/0138/2021.

53 MANU/SC/0065/2021.

54 *Id*. at para 7. The Kerala High Court noticed that "They have pleaded and proved that the lands in question are exempted from the provisions of Act 26 of 1971. They have proved cultivation and that the area cultivated with plantation crops cannot be forest. The Appellants have proved positively their case as on the appointed day." *Ibid*.

instead of restoration of the land, compensation be paid to the land owners whose land could not be restored, and the same was agreed. Against the proposal a Writ was preferred wherein it was prayed that either the original land be restored or compensation as assessed by the District Tehsildar (DT) be paid. The Single Judge allowed the petition whereas the Division Bench dismissed the appeal. The Division Bench held that under section 8 of KPFA, the custodian had statutory duty to restore the possession of such land on the basis of the order, which having not done, thus a statutory duty is violated.

The Supreme Court noticed that the litigation had continued for 45 years, and therefore the parties need not to be relegated to any other forum for determination of compensation with regard to benefits of the land to which they were entitled during the period they were deprived of the possession.[55] The Court accordingly allowed the claim of compensation to the extent of 50% of value of the land as computed by DT.[56]

In *State of Kerala* v. *Popular Estates*,[57]Popular Estates became owners of 1534.40 acres of land. Those lands were acquired by sale, by M/s. Popular Automobiles, a registered firm, through four registered deeds executed in 1963. These lands fell to Popular Estate's share upon partition of the firm's assets. Now, under section 3 of the KPFA, all private forests were vested in the State Government. Accordingly, KPFA was challenged before the Kerala High Court, which struck it downin 1972, a year later, the decision was reversed. Meanwhile, the forest authorities attempted to take possession of large areas of land occupied by Popular Estates, arguing that they were private forests and had vested in the state. The Popular Estates moved before the Forest Tribunal (FT) under section 8 of the KPFA, claimingthat no part of the estate consisting 1534.40 acres was liable to vest in the state,since it was being cultivated.

The FT appointed a commissioner to inspect the entire area and report. The commissioner after a preliminary inspection was of the view that a detailed survey of the land was necessary as most of the land was situated on hills, and therefore, inaccessible. Accordingly, FT appointed private surveyorsto survey the land, and accordingly were unable to complete the work. Thereafter, FT directed Forest Department Survey Officers to survey the lands, and thereafter dismissed the applications. It also made critical comments about the manner in which the surveyors had made the report.[58] Following the FT orders, the forest authorities attempted to

55 *Id*. at para 13.

56 *Id*. at para 14.

57 MANU/SC/1020/2021.

58 *Id*. at para 3. The FT observed "This exclusion by the forest officials, may be due to the fact that the magic money lulled them to sleep over the rights of the Government or may be due to the fact that the claim originally put forward by the forest officials was false. Neither way it is not very complimentary to the Respondents here or to those officials concerned. It is for the Government to make necessary immediate enquiry in this matter through some official, other than Forest Department official, if the Government so think and ascertain whether any area which legitimately come under the classification of private forest and which had vested in the Government besides bits 1 to 7 have been excluded by the forest officials or by the forest survey officials. On the basis of the Commissioner's report and the facts mentioned by him, I am inclined to think that prima facie it appears that areas which should really be vested forest have been excluded, when the claim was confined to 100 hectares."*Ibid*.

take possession of the land. In the meanwhile, the state issued notification No. 4713/ 1977 notifying 100 hectares of the estate as private forest, based on survey undertaken by the forest department.Against this, appeals and special leave petition were preferred, which were dismissed. Popular Estates then filed civil suits6 claiming that the state be permanently injuncted from taking possession. Initially, the civil court refused to register the plaint on grounds of maintainability, later, the suits were entertained on the intervention of the High Court in civil revision.[59]

On 1987, the Custodian and Conservator of Vested Forests issued a notification under section 6 of the KPFA demarcating 324 hectares of land belonging to Popular Plantation. This notification was challenged too, which were dismissed on the ground that alternate remedy is available before the FT. While dismissing the applications, FT opined that in its perivious order, it had only dealt with the status of 100 hectares of the land and, therefore, with regard to rest of the land the State was empowered to issue a fresh notification.[60]Against the order, an appeal was made before the Kerala High Court, whichby a common judgment, allowed the appeal and writ petition. The Kerala High Courtheld that the 1977 notification was valid, and there was no vesting in so far as the rest of the land was concerned. The High Court also directed the Custodian of Vested Forests to demarcate the boundaries. The decision caused another round of litigation before High Court, FT, and again High Court.

The Kerala High Court while relying on the full bench decisions,[61]observed that if the land vested in the government as a private forest on the appointed date, the owner cannot thereafter alienate or transfer or assign the land.[62] However, if it is not a private forest vested in the government there is no impediment for the title holder to transfer the land.[63]The Supreme Court while the definition of private forest, opined that "whether the lands were forest or cultivated plantations or estates, for the purposes of section 2(f)(1)(i)(B) of the KPFA, especially whether they stood excluded from operation, had to be considered independently."[64]Thereafter, the Court examined the relevance of findings by a statutory authority. In this regard, the Court referred to *Kunjanam Antony* v. *State of Kerala*,[65] wherein it was observed:[66]

> There can be no doubt that the order of the Thaluka Land Board, a statutory authority, is binding on the authorities under the Land Reforms Act. So far as the proceedings under the Forest Act are concerned, the order of the Thaluka Land Board would be a piece of evidence but it cannot be treated as a binding on the authorities under the Forest Act.

59 *Id*. at para 4.

60 *Id*. at para 5.

61 *Parameswara Sastrigal K.S.* v. *State of Kerala*, 2008 2 ILR 371; and *Bhawani Tea & Produce Co. Ltd.* v. State of Kerala, 1991 (2) SCC 463.

62 *Supra* note 57 at para 12.

63 *Ibid*.

64 *Id*. at para 34.

65 MANU/SC/0093/2003.

66 *Ibid*.

> Unless a contrary state of affairs is shown to exist, the order of the Thaluka Land Board would have to be given due weight. From the material placed before the High Court and also before us, it appears that there is no evidence in regard to the destruction of the rubber plantation due to fire. There is, however, material to show that the Appellant has been cultivating tapioca. Further, the High Court recorded a finding that there was no evidence indicating that the Appellant had intention to cultivate the land which only meant cultivation of rubber plantation. There is also nothing on record to show that absence of rubber plantation was for short period and that the land was in the process of rubber plantation.

In other words, the law holds that statutoryboard's determination could not operate as *res judicata*, but would be a piece of evidence.The Court noted:[67]

> …what can be seen is that the two reports: preliminary and final, filed by the Commissioner, in the first proceeding (instituted by Popular Estates in 1974 by two applications) were the nearest in point of time, to the appointed date.

The Court observed:[68]

> A combined reading of these materials, leads one to infer that a detailed inspection of the area took place. Only those areas that vested with the government were demarcated by the survey party, attached with the Superintendent, Land Records.

Accordingly, the Court dismissed the appeal and upheld the judgment of the Kerala High Court.

X PANCHAYATS (EXTENSION TO THE SCHEDULED AREAS)ACT, 1996

In *Biresh Chandra Naik* v. *State of Odisha*,[69] the petitioners claim that they are affected families of the submerged area under the Deo Irrigation Project (DIP), Karanjia in the district of Mayurbhanj. They claim to be agriculturists by profession.They also claimed that certain portion of their land was situated within the forest area, and being the forest dwellers,they maintained their families out of the forest products. It was argued that the Rehabilitation and Resettlement Policy is without the sanctity of law and against the mandatory provisions of Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA) and the Schedule Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. On the other hand, it was argued that the DIP is near completion, and the petitioners have not received rehabilitation and resettlement assistance and other benefits, only to avoid displacement.

The Orissa High Court while dismissing the Writ Petition, observed that all the land oustees, except petitioners, had been evacuated and compensation has been paid. The Court noticed that in case of some petitioners, even additional rehabilitation and

67 *Supra* note 57 at para 37.

68 *Id*. at para 38.

69 MANU/OR/0401/2021.

ex-gratia amount was also sanctioned. TheCourt found that petitioners were asked to furnish details of their bank account for transfer of land but they have not been complied with same.Also, the Court noted that that PESA is not applicable in the present proceeding, in view of the fact that the Notification under section 4(1) of the Land Acquisition Act, 1894 was issued on1991, whereas the PESA came into force on 1996.[70]Accordingly, the Court opined that the petitioners are resisting the development work without any reasonable basis.

XICONCLUSION

Ever since the contours of environmental law has expanded,the rights of tribals and conservation of forest had acquired meaningful attention.Simultaneously, globalization has brought a mixed bag of feelings, wherein technological innovation as well environment degradation is both taking place together. The Intergovernmental Panel on Climate Change (IPCC) released its Sixth Assessment Report (AR6), which presented a grim forecast on how global warming has impacted and will impact world in the near future.[71]Nevertheless, in 2021, India celebrated *Azadi ka Amrit Mahotsava*and accordingly undertook activities.[72] Besides these, India alsoaffirmed her ambitious commitmentto achieve net zero by 2070,[73] followed with measures such as the National Hydrogen Mission for clean energy,[74] and the global solar Green Grids initiative to transition away from coal.[75] Meanwhile, there are efforts to dilute serious efforts too.[76]

70 *Id*. at para 12.

71 *See* IPCC,*Climate Change 2021:The Physical Science Basis*(2021), *availableat:* https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_Full_Report.pdf (last accessed on Nov. 29, 2022); R. Venkata Rao and Prakash Sharma, "Linking Climate Change and Sustainable Development Goals: India's Responsive Efforts", 48(3&4) *Indian Bar Review* 17-27 (2021).

72 See Ministry of Environment, Forest and Climate Change, *Annual Report 2021-22* (Government of India, New Delhi), *available at*: https://moef.gov.in/wp-content/uploads/2022/03/Annual-report-2021-22-Final.pdf (last accessed on Nov. 30, 2022).

73 National Statement by Prime Minister Shri Narendra Modi at COP26 Summit in Glasgow, *available at:*https://pib.gov.in/PressReleasePage.aspx?PRID=1768712 (last accessed on Nov. 30, 2022).

74 English rendering of the text of PM's address from the Red Fort on 75th Independence Day, *available at:*https://pib.gov.in/PressReleseDetail.aspx?PRID=1746062(last accessed on Nov. 30, 2022).

75 Green Grids Initiative-One Sun One World One Grid Northwest Europe Cooperative Event, *available at*: https://pib.gov.in/PressReleasePage.aspx?PRID=1763712(last accessed on Nov. 30, 2022).

76 In January 2021, in January, the Ministry of Environment, Forest and Climate Change had amended the Island Coastal Regulation Zone Notification 2019, to move Great Nicobar from Group I of islands with a 200-metre buffer from the high-tide line to Group II with 100 metres' buffer. See Ministry of Environment, Forest And Climate Change Notification, REGD. No. D. L.-33004/99, *available at*: https://moef.gov.in/wp-content/uploads/2021/01/S.O.2A-DATED-01-01-2021.pdflast accessed on Nov. 30, 2022). In March 2021, the Central government had issued an amendment diluting the Environment Impact Assessment (EIA) framework of 2006. This change would exempt all projects from public hearing whose environmental clearance had expired and therefore had to apply afresh.*See*S.O. 1533(E), *available at*: http://www.environmentwb.gov.in/pdf/EIA%20Notification,%202006.pdf(last accessed on Nov. 30, 2022).

A quick look into the 2021case-laws reveal some interesting trends, including,determination of societal interest inthe development of area, environmental rule of law, community rights over forest resources,development *vs*sustainability debate, *etc*. The concept of environmental rule of law not only establishes a vital linkage amongst varied environmental concepts like sustainable development, the polluter pays principle and the trust doctrine, but also appears to be successful in establishing a sanctimonious norm thatthe universe of nature is indivisible and integrated. Similarly, rejecting States claim that part of the proceeds received as income from the illegally constructed commercial complex to be utilized to compensate the loss that might have been caused to the environment and ecology, appears to be brave and futuristic. At the same time, in matters pertaining to vesting and assignment laws it is noticed that matters are litigated for 4-5 decades. Overall, the judiciary have beenproactive in materialising the law in both letter and spirit.