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FOREST AND TRIBAL LAWS

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I INTRODUCTION

HISTORICALLY, FORESTS were owned by local chiefs with access rights being awarded to local communities. The practice was gradually withdrawn by the colonial rulers. The British established a mode of forest governance that imposed restrictions on local forest dwelling communities "through a definition of forests as national property for colonial objectives."[1] With Independence, local forest-dependent people expected to get their rights back. But far from improving, the situation actually worsened.[2] In other words, though the policy-makers changed, the policies remained more or less the same. In fact, the existing laws on forest and forest land are nowhere sympathetic towards tribals and their natural rights. For this reason, forest governance in post-colonial India accosts a survey of its own.[3]

In present times, the role forest plays in the sustenance of human life are beyond contest, and so does the part tribals and other forest dwellers communities for their conservation.[4] In this perspective, the year under survey saw significant decisions coming from the Supreme Court, and the High Courts. The decisions

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1 Sanjoy Patnaik, "PESA, the Forest Rights Act, and Tribal Rights in India", *Proceedings: International Conference on Poverty Reduction and Forests*, Bangkok, September 2007, *available at:* file:///Users/prakashsharma/Downloads/4946.pdf (accessed on Feb. 28, 2023).*See also* Madhav Gadgil and Ramachandra Guha, *This Fissured Land: An Ecological History of India* (Oxford University Press, New Delhi, 1992).

2 *See* Usha Ramanathan, "Sovereign Forest", 49 *Afterall* 15-26 (2020); Usha Ramanathan, "A Word on Eminent Domain", in Lyla Mehta (ed.), *Displaced by Development: Confronting Marginalisation and Gender Injustice* 133-145 (Sage, New Delhi, 2009).

3 Sanjoy traces post-independence forest governance in three phases, *viz*.,Phase-I of commercial exploitation of forests for industrial development; Phase-II of conservation with increased Government control; and Phase-III of treating forest as a local resource with local participation. Sanjoy Patnaik (2007), *supra*note 1 at 4.

4 *See* Partha Pratim 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).

explain why the subject of *Forest and Tribal Laws*, which stands in relation to the general study of environmental law and other allied laws, deserve special attention.[5] Having said this, the survey year also saw release of the *Forest Conservation Rules, 2022* (Rules, 2022),[6] which drew curious attention of many.[7] The Government is of the belief that the Rules, 2022, will streamline the process of approvals and allow parallel processing under other acts and rules;[8] the conservationists and foresters opine that the move vouches for greater State control on forests and thereupon dilutes the rights of tribals.[9]

II FOREST CONSERVATION ACT, 1980

In *Narinder Singh* v. *Divesh Bhutani*,[10] an application was filed for inviting the attention of the NGT to the illegal non-forest activities of the encroachers on the village lands. The NGT passed the order restraining the carrying on of any non-forest activities on the subject lands. The NGT proceeded on the footing that the lands covered by the order [under Section 4 of the Punjab Land Preservation Act, 1900 (PLPA)] were forest lands within the meaning of the Forest (Conservation) Act, 1980 (FCA). Now, before the order was passed, a notification under section 3 of the PLPA was issued notifying the entire area. The issue was: whether a land covered under a special order issued by the Government of Haryana is a "forest land" within the meaning of the FCA?

5 *See* Stanzin Chostak, "Forest and Tribal Laws", 51 *ASIL* 631-653 (2015). The author opined that the subject (forest and tribal laws) examines "the interface between the environmental law *vis-à-vis* the tribal community and other forest dwelling communities."*Id*. at 652.*See also* land mark decisions: *Samatha* v. *State of Andhra Pradesh*, AIR 1997 SC 3297, and *T.N. Godavarman Thirumulkpad* v. *Union of India*, AIR 1997SC 1228.

6 Ministry of Environment, Forest and Climate Change, Notification: G.S.R. 480(E), *available at:* https://thc.nic.in/Central%20Governmental%20Rules/Forest%20(Conservation)%20Rules,%202022.pdf (accessed on Mar. 02, 2023).

7 The Forest Conservation Rules, 2022 have raised a significant debate, particularly centered around two issues, namely: What are the Forest Conservation Rules and how will it affect forest dwellers and tribals?; and what is the government's position on the updated rules?. *See* Jacob Koshy, "The Debate Around the Forest Conservation Rules", *The Hindu* (July 15, 2022).

8 Ministry of Environment, Forest and Climate Change, "New Forest Conservation Rules, 2022", *available at:*https://pib.gov.in/PressReleasePage.aspx?PRID=1845824 (accessed on Mar. 05, 2023).

9 Zoya Hussain, "End the 'Ease of Living': What Are Forest Conservation Rules 2022? Why Do They Matter?", *available at:*https://www.indiatimes.com/explainers/news/end-the-ease-of-living-what-are-forest-conservation-rules-2022-why-do-they-matter-574486.html (accessed on Apr. 05, 2023). *See also* Puneet Nicholas Yadav, "Forest Conservation Rules help raze forests, rights and all in between", The Federal (July 17, 2022), *available at:*https://thefederal.com/news/forest-conservation-rules-help-raze-forests-rights-and-all-in-between/ (accessed on Mar. 09, 2023). The author writes,"the new rules [Rules, 2022] which replace the Rules, 2003] and various amendments made to them in subsequent years, make a mockery of the Forest Rights Act, 2006 and its reading by the Supreme Court."

10 MANU/SC/0908/2022.

The petitioner's primary submission was that merely because the subject lands are covered by the notifications/orders issued by the State of Haryana, the same cannot be *ipso facto* be treated as forest lands within the meaning of the FCA. Further, it was submitted that though the lands in question have been shown as unclassified forests in the records of the State Forest Department, it cannot be treated as conclusive, since the Forest Department is only a supervisory department. While disposing off the appeal, the Court held that the lands covered by the special orders have the trappings of forest lands within the meaning of section 2 of the FCA and, therefore, the State Government or competent authority cannot permit its use for non-forest activities without the prior approval of the Central Government.[11] The Court observed:[12]

> The prior permission of the Central Government is the quintessence to allow any change of user of forest or so to say deemed forest land. Even during the subsistence of the special orders under section 4 of PLPA, with the approval of the Central Government, the State or a competent authority can grant permission for non-forest use. If such non-forest use is permitted in accordance with section 2 of the [FCA], to that extent, the restrictions imposed by the special orders under section 4 of PLPA will not apply in view of the language used in the opening part of section 2 of the [FCA].

The Court further clarified that only because there is a notification issued under section 3 of the PLPA, the land which is subject matter of such notification, will not *ipso facto* become a forest land within the meaning of the FCA.[13] Consequently, the Court opine that the lands covered by the special orders will be governed by the orders passed by the Supreme Court,[14] which had directed authorities to remove the illegal structures.[15]

III BIODIVERSITY AND PROTECTION OF WILDLIFE

Pertaining to protection of forest lands in Nilgiri district, in 1995 a writ petition was instituted by a great conservationist T.N. Godavarman Thirumulpad.[16] Subsequently, the scope of that writ petition was enlarged so as to protect natural resources throughout the country. Furthering this cause, the Supreme Court delivered two important decisions in 2022. Both the judgment and the order, add to the already enriched list of judgment/orders emerging since 1996.

11 *Id*. at para 36.

12 *Id*. at para 64.

13 *Ibid*.

14 *Municipal Corporation of Faridabad* v. *Khori Gaon Residents Welfare Association through its President*, Special Leave to Appeal (Civil) Nos. 7220-7221 of 2017.

15 Herein, the Court directed that before the action of removal of the illegal structures and/or action of stopping non-forest activities, "the competent authority shall afford an opportunity of being heard to the affected persons and conclude such proceedings finally not later than three months from today and submit compliance report in that regard within the same time."*Narinder Singh,supra* note 10 at para 66.

16 Although, the petitioner, Godavarman Thirumulpad died in 2016, he left a rich legacy for the future of environmental jurisprudence. *See* P.K. Manoharpraveen Bhargav, "The Architect of an Omnibus Forest-Protection Case", *The Hindu* (July 05, 2016).

In *T.N. Godavarman Thirumulpad* v. *Union of India,*[17] the Court while disposing of Interlocutory Applications, passed an order wherein it upheld the revocation made by Central Empowered Committee (CEC) against the recommendation approved by National Board for Wildlife (NBWL) for wildlife clearance for doubling of existing railway line from Castle rock (Karnataka) to Kulem (Goa).

The issue was pertaining to the project sanctioned by the Ministry of Railways at the cost of Rs. 2127 Crores. Accordingly, the Rail Vikas Nigam Limited (RVNL) proposed the project and it was approved by NBWL. Against the project, Goa Foundation raised objections and placed the same before CEC.

The CEC also referred to the observations made by the National Tiger Conservation Authority (NTCA), which highlighted the impact of the doubling of the railway line on wildlife in the region.[18]The CEC further observed that the Standing Committee of NBWL did not obtain any specific recommendation on mitigation measures from the Wildlife Institute of India, Dehradun before approving the proposal in respect of the Goa portion.[19]

The Court while acknowledging the role of western ghats eco-system,[20] noted the relevance of precautionary principle. The Court observed:[21]

> The principle of precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. It is based on scientific uncertainty. Environmental protection should not only aim at protecting health, property and economic interest but also protect the environment for its own sake. Precautionary duties must not only be triggered by the suspicion of concrete danger but also by justified concern or risk potential.

The test therefore anticipates a case of *irreparable damage to the environment*. Thus, precautionary principle requires anticipatory action to be taken to prevent harm and that harm can be prevented even on a reasonable suspicion. Here, for proving irreparable damage it is not always necessary that there should be direct evidence of harm to the environment. Accordingly, the Court asked for fresh assessment of the impact by RVNL on the impact of the proposed project on the biodiversity and ecology of the protected areas under the wildlife sanctuary.

17 MANU/SC/0657/2022.

18 *Id*. at para 10.

19 *Ibid*.

20 *Id*. at para 4. The western ghat is one of world's eight hotspots and the landscape forms one of the largest and most contiguous Protected Area networks in the country. It is spread across 9 National Tiger Reserves, 20 National Parks and about 68 Wildlife Sanctuaries.

21 *Id*. at para 17. Here, the Court referred *A.P. Pollution Control Board* v. *Prof. M.V. Nayudu*, (1999) 2 SCC 718.

The Supreme Court in *In Re: T.N. Godavarman Thirumulpad* v. *Union of India*,[22] examined as to what would constitute the buffer zones on eco-sensitive zone (ESZ) in respect of national parks and wildlife sanctuaries, as there is divergence of views among the various stakeholders. The first issue arises out of a report of the CEC dated 20th November 2003, pertaining to the Jamua Ramgarh wildlife sanctuary, which covers an area of about 300 square kilometres. The report gave a horrific picture of ravaging of a protected forest mainly by private miners mostly with temporary working permits obtained from the Governmental agencies.[23]Against this report, the Supreme Court set of recommendations.[24]

The CEC on 20th September 2012, submitted a second report, which went beyond the Jamua Ramgarh Sanctuary and dealt with creation of identification and declaration of safety zones around protected forests all across the country. The question of having ESZ around the protected forests was examined in *Goa Foundation* v. *Union of India*.[25] Thereafter, the Court has issued various circulars for enforcement of environmental laws and to prevent illegal mining in different States. As a result, there arise certain overlapping issues.

In addition, a set of Guidelines for Declaration of ESZ around National Park and Wildlife Sanctuaries had been formulated by the Ministry of Environment, Forest and Climate Change (MoEF&CC) of the Government of India on 9th February 2011 (MoEF&CC Guidelines, 2011).[26] These Guidelines deal with the process and procedures to be adopted for declaring ESZ. Thereafter, by an order passed on 4th August 2006, the Court restrained grant of temporary working permits for mining within safety zones around any national park/wildlife sanctuary declared under sections 18, 26A, and 35 of the Wild Life (Protection) Act, 1972.

Here, the Court was of the view that the role of the State cannot be confined to that of a facilitator or generator of economic activities for immediate upliftment of the fortunes of the State. In other words, it has to act as a trustee for the benefit of the general public in relation to the natural resources so that sustainable development can be achieved in the long term. The Court referred *M.C. Mehta* v. *Kamal Nath,*[27] wherein the Court explained the Public Trust Doctrine:[28]

22 MANU/SC/0751/2022.

23 *Id*. at para 2.

24 *T.N. Godavarman Thirumulpad* (2022), *supra* note 17.

25 MANU/SC/8941/2006.

26 *See* F. No. 1-9/2007 WL-I (pt), *available at:*https://forestsclearance.nic.in/writereaddata/Addinfo/0_0_1113121612211GuidelinesforESZ.pdf (accessed on Mar. 10, 2023).

27 (1997) 1 SCC 388. *See also* Joseph L. Sax, "The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention", 68(3) *Michigan Law Review* 471-566 (1970). According to Professor Sax, the Public Trust Doctrine imposes the following restrictions on governmental authority:

> Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for particular types of uses. *Id*. at 477.

28 *M.C. Mehta* (1997), *id*. at para 25.

> The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes

The Court observed that the ratio of *M.C. Mehta*was adopted in the series of earlier orders passed by the Court.[29] The Court was of the view that the relevance of public trust doctrine has gained greater significance, particularly with the threat of climate catastrophe resulting from global warming looming large.[30]

Further, the MoEF&CC was against having a uniform ESZ for all national parks and reserved forests. In this perspective, the Court opined that "the Guidelines framed on 9th February 2011 appears to be reasonable",[31]the Court accepted the view of the Standing Committee of National Board of Wildlife (SCNBW) that "uniform Guidelines may not be possible in respect of each sanctuary or national parks for maintaining ESZ."[32]Having said this, the Court was of the view that "a minimum width of 1 kilometre ESZ ought to be maintained in respect of the protected forests, which forms part of the recommendations of the CEC in relation to Category B protected forests."[33] This rule, according to the Court "would be the standard formula, subject to changes in special circumstances."[34]

Further, the Court considered both CEC's recommendation that the ESZ should be relatable to the area covered by a protected forest, and the SCNBW's view that the area of a protected forest may not always be a reasonable criterion, also merits consideration. In other words, it was argued that the 1 kilometre wide "*no-development-zone*" may not be feasible in all cases. Here, the Court was informed about the special case of Sanjay Gandhi National Park and Guindy National Park in Mumbai and Chennai metropolis respectively which have urban activities in very close proximity.

Keeping these factors in mind, the Court accordingly examined the relevance of no development zone *vis-à-vis* Jamua Ramgarh sanctuary. The Court noticed that the first report of the CEC proposed 100 metres as ESZ, and in the second report, one kilometre width has been recommended for all protected forests falling under category B (the Jamua Ramgarh sanctuary comes in that category). The

29 Oder passed on 30th October 2002, 26th September 2005 and 13th February 2012.See *In Re:T.N. Godavarman Thirumulpad* (2022), *supra* note 22 at para 29.

30 *Id.* at para 28.

31 *Id.* at para 42.

32 *Ibid.*

33 *Ibid.*

34 *Ibid.*

Court further noticed that in the order (passed on 4th August 2006), one kilometre as buffer zone has been prescribed. Considering these factors, the Court opined that the margin of 25 metres (as contemplated in1994 Mineral Policy of the State of Rajasthan) as "grossly inadequate".[35]

Consequently, the Court declared Jamua Ramgarh sanctuary as a special case for fixing the ESZ, and accordingly declared ESZ of 500 metres as a reasonable buffer zone. Herein, the Court clarified that "for commencing of any new activity which would be otherwise permissible, the ESZ norm of one kilometre shall be maintained for Jamua Ramgarh sanctuary."[36]Accordingly, the Court issued certain directions. Importantly, the Court while acknowledging the earlier orders/directions ,also clarified that "the direction issued *via* this judgment are in addition to the previous orders/directions passed."[37]

IV NATIONAL PARK AND WILDLIFE SANCTUARIES

National Parks and Wildlife Sanctuaries are protected areas declared by Government with the primary objective to preserve wildlife, save flora & fauna and restore the natural ecological balance.[38]In present times, the use of protected areas as a valid and effective tool for conservation has markedly improved in both policy and practice worldwide.[39] Despite that continuous industrialisation and deforestation have posed a threat of extinction to wildlife. Further,

In *Bolusani Gowri Shankar*v. *The State of Telangana*,[40] a petition is filed to issue writ of Mandamus declaring the action in issuing notices directing to stop de-casting of sand from the *patta* lands as arbitrary, illegal and violative of Article 21 of the Constitution and to set aside the same with a consequential direction to not interfere. The issue was: flash floods during rainy season bring sand deposits to the petitioner's land (about three meters in the area). The normal process is that after de-casting of the sand, the land becomes fit for cultivation. In this regard, Rule 7 of the Telangana State Mining Rules, 2015allows de-casting of mines from *patta* lands. Accordingly, the petitioner moved applications before the Assistant Director of Mines and Geology Department, who was the Member Convenor of the District Level Sand Committee (DLSC). Thereafter, a joint inspection was conducted and proposals were discussed in the DLSC meeting, which allowed de-

35 *Id*. at para 43. In fact, later the Mining Policy of 2015 for the State of Rajasthan had come and it does not have any specified safety zone. *Id*. at para 41.

36 *Ibid*.

37 *Id*. at para 5.

38 These natural habitats are declared by the government of a country according to the IUCN Regulations. See India Today Web Desk, "What is the difference between Wildlife Sanctuaries and National Parks", *India Today* (Sep. 24, 2020), *available at*: https://www.indiatoday.in/education-today/gk-current-affairs/story/difference-between-wildlife-sanctuaries-and-national-parks-1724972-2020-09-24 (accessed on Mar. 14, 2023).

39 Barbara Lausche, *Guidelines for Protected Areas Legislation* xv (IUCN, Gland, 2011), *available at:*https://portals.iucn.org/library/efiles/documents/eplp-081.pdf (accessed on Mar. 17, 2023).

40 MANU/TL/1028/2022.

casting of sand of 2,09,130 cubic meters from the *patta* lands through M/s. Telangana State Mineral Development Corporation Limited (TSMDC) on certain conditions.[41] Pursuant to the agreements entered, the de-casting operations commenced immediately. Subsequently, the Forest Range Officer, Eturunagaram (South) issued a letter stating that the subject area was falling under ESZ of Eturunagaram Wild Life Sanctuary and directed to stop the de-casting operations in the *patta* lands. Immediately, the TSMDC addressed a letter to the District Collector, Mulugu informing that the Forest Officials were interfering with the de-casting operations.

On behalf of the petitioners, it was argued that they are marginal farmers and due to inundation of flood and the sand casted in their lands, they were not in a position to carry on their agricultural activities. They also argued that the area was not notified as ESZ, and in this regard, no draft map was available in the public domain. The respondents argued that the grant of de-casting permissions is subject to obtaining Environmental Clearance (EC), Consent for Establishment (CFE) and Consent for Operation (CFO) before excavation of sand,[42]and in the absence of necessary clearances, the Forest Range Officer, Eturunagaram was justified in issuing the notice to stop the de-casting of sand.[43]It was argued that the ESZ of Eturunagaram Wild Life Sanctuary, where ESZ notification was not notified, falls within 10 kms as per the Supreme Court orders and guidelines and prior clearance from the SCNBWC was mandatory for sand mining.

On the basis of facts, the Telangana High Court framed the issue: whether de-casting of sand from the *patta* lands require prior clearance from the SCNBWC on the ground that the said *patta* lands were within the ESZ.

The Court examined that as per the MoEF&CCGuidelines, 2011, for declaring ESZ around National Parks/Wild Life Sanctuary, a buffer zone is required to be created around the National Parks and Sanctuaries to act as some kind of shock absorber for the protected areas.[44] Further, the Court observed that NBWL maintains that the activities in the ESZ should be of regulatory in nature rather than prohibitive nature, unless and otherwise so required.[45] Here, the Court was of the view that the State Government should endeavour to convey a very strong message to the public that ESZs are not meant to hamper their day to day activities, but instead, are meant to protect the precious Forests/Protected Areas in their locality from any negative impact and also to refine the environment around the protected areas. Having said this, the Court noticed that while commercial mining is shown as prohibited activity, but ongoing agricultural and horticulture practises

41 *Id*. at para 3.

42 *Id*. at para 4.

43 *Id*. at para 7.

44 *Id*. at para 15. The activities which were prohibited, restricted with safeguards and permissible are listed in Annexure to the MoEF&CC Guidelines, 2011.

45 *Ibid*. NBWL categorized the activities into three categories: (i) Prohibited, (ii) Restricted with safeguards and (iii) Permissible.

by local communities is permitted category of activity (as per the MoEF&CC Guidelines, 2011).

Thereafter, the Court referred to the issue of prior clearance from the SCNBWC. The Court found that as per the clarification obtained from the MoEF&CC, prior clearance is be required outside protected area in certain cases.[46] Examining these cases to the facts of the case, the Court observe:[47]

> …prior clearance from the SCNBWC is required for activities located within 10 kms of National Parks/Wildlife Sanctuaries wherein ESZ has not been finally notified and listed in the Schedule of the EIA Notification 2006 and requiring Environmental clearance. For such activities only, prior clearance was required from the SCNBWC. It was specifically mentioned that the ESZ should be notified (not being draft notification), but in the present case as per the counter filed by the respondent No. 5, only the ESZ draft notification was under process and no final notification was issued. Prior clearance from SCNBWC was also required only in cases which would require environmental clearance. But, as per the proceedings of the DLSC dated 29.06.2021, no environmental clearance was required in this case. Hence, as seen from the office Memorandum dated 08.08.2019 which was subsequently clarified vide letter dated 16.07.2020, no prior clearance from SCNBWC was required, as no final notification of ESZ was issued and activity of de-casting of sand from patta lands of the petitioners abutting the river also would not require environmental clearance. Hence, the impugned notices issued by the 5th respondent dated 18.12.2021 and 01.01.2022 stopping the de-casting of sand from the patta lands of the petitioners as against the proceedings issued by the District Level Sand Committee permitting the same, is also not justified.

The Court also referred to the *Goa Foundation* v. *Union of India*,[48] and clarified the position that that no direction either interim or final was given by it

46 *Id*. at para 22. These are:

i. Proposals involving project/activity located within the notified ESZ (not being draft notification) and listed in the Schedule of the EIA Notification 2006 and requiring environment clearance, prior clearance from Standing Committee of the National Board for Wild Life will be required.

ii. Proposals involving activity project located within 10 km of National Park Wildlife Sanctuary wherein ESZ has not been finally notified and listed in the Schedule of the EIA Notification 2006 and requiring environment clearance, prior clearance from Standing Committee of the National Board for Wild Life will be required.

iii. Proposals involving activity project, falling outside the protected areas linking one protected area or tiger reserve with another protected area or tiger reserve, prior clearance from the Standing Committee of the National Board for Wild Life as per the section 38 O(1)(g) of the Wild Life (Protection) Act, 1972 will be required.

47 *Id*. at para 23.

48 2014) 6 SCC 590.

prohibiting even mining activities within 10 kms. of the boundaries of National Parks or Wildlife Sanctuaries.[49]

Accordingly, the Court opined that de-casting of sand in the *patta* lands cannot be considered as a commercial mining activity, but an activity to make use of the land fit for agriculture by the local communities.[50] As a result, the Court set aside the notices issued against petitioners and held that the usage of machinery for de-casting of sand from the *patta* lands itself cannot be the basis for considering the activity as a commercial.[51]

Similarly, in *State of Uttar Pradesh*v. *Anand Engineering College*,[52] the Supreme Court while disposing of petition passed an order. The facts were: respondents were running an educational institution in the area at Agra-Mathura Road, which is in the close vicinity of the National Chambal Sanctuary Project undertaken by the State Government. The effluent flowing out of the premises of the college had resulted in serious threat to the ecology of the area, as well as causing environmental damage and consequently has endangered the flora and fauna as well as the wildlife in the sanctuary. The Forest Department had issued various notices (since 2003), regarding threat to the environment on account of effluent flowing in the sanctuary area. Without giving much significance to the notices, the respondents continued to discharge the effluent. As a result, the Forest Department had imposed damages of Rs. 10,00,00,000 upon the respondents. The said order imposing damages upon the respondents was brought before the High Court.It was argued that the order imposing damages was in gross violation of principles of natural justice as no show cause notice was ever issued to them in respect of the proposed action of imposing damages.

The High Court while allowing the writ petitions, set aside the order/notice imposing damages. Against the order of the High Court, the State preferred a special leave petition. The Supreme Court examined the scope of section 33 of the

49 The Court referred to para 50 which runs thus:

> When, however, we read the order dated 4.12.2006 of this Court in Writ Petition (C) No. 460 of 2004 (Goa Foundation v. Union of India), we find that the Court has not prohibited any mining activity within 10-kilometer distance from the boundaries of the National Parks or Wildlife Sanctuaries…. It will be clear from the order dated 4.12.2006 of this Court that this Court has not passed any orders for implementation of the decision taken on 21st January, 2002 to notify areas within 10 kms. of the boundaries of National Parks or Wildlife Sanctuaries as eco sensitive areas with a view to conserve the forest, wildlife and environment. By the order dated 04.12.2006 of this Court, however, the Ministry of Environment and Forest, Government of India, was directed to give a final opportunity to all States/Union Territories to respond to the proposal and also to refer to the Standing Committee of the National Board for Wildlife the cases in which environment clearance has already been granted in respect of activities within the 10 kms. zone from the boundaries of the wildlife sanctuaries and national parks. There is, therefore, no direction, interim or final, of this Court prohibiting mining activities within 10 kms. of the boundaries of National Parks or Wildlife Sanctuaries. *Ibid*.

50 *Bolusani Gowri Shankar, supra* note 40 at para 28.

51 *Id*. at para 31-32

52 MANU/SC/0913/2022.

Wild Life (Protection) Act, 1972. The Court noticed that although section 33 affords wide power to ensure the security of wild animals in the sanctuary and the preservation of the sanctuary and wild animals,[53] yet on the basis of factual position of the case, "mere issuance of notice"was not considered suffice.[54] The Court opined that the appropriate authority must have, on the basis of following principle of natural justice, availed measure such as closure of an institution in case of repeated breaches.

In so far, with respect to imposing damages is concerned, the Court was of the view thatit is expected that authority should have first initiated appropriate proceedings before the appropriate court/forum to determine/ascertain the damages;and cannot straightway exercise powers under section 33 to imposed damages. The court observed:[55]

> The authorities may not stop taking any further action and be satisfied by issuing notice only. If the discharge of the effluent is a threat to the environment and/or wild life in the national sanctuary, the authorities have to take further steps to stop such use and/or threat to the environment and wild life in the national sanctuary, in accordance with law.

V INVOLUNTARY DISPLACEMENT

One significant attribution of justice is her timely dispensation. The Supreme Court in *Mahanadi Coal Fields Ltd.* v. *Mathias Oram*,[56] noted this tangled and torturous journey of landowners (predominantly scheduled tribes) who had been involuntarily severed from their land since 1988 without compensation. The brief facts were: the Mahanadi Coalfields Ltd., which is a subsidiary of Coal India Ltd., wasaggrieved by an order of the Orissa High Court, which directed the Central Government and Mahanadi Coalfields Ltd.to immediately proceed under provisions of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (CBA) to determine and disburse compensation payable to landowners within six months. Thereafter, the Central Government issued the preliminary notification,[57]notificationfor acquisition of the notified lands,[58] and declaration of acquisition of the land.[59] Thereafter, the Central Government issued another notification,[60] vesting the acquired land and all rights therein in Mahanadi Coalfields Ltd.

53 *Id*. at para 5.
54 *Ibid*.
55 *Id*. at para 6.
56 MANU/SC/1426/2022.
57 Coal Bearing Areas (Acquisition and Development) Act, 1957, s. 4(1).
58 Coal Bearing Areas (Acquisition and Development) Act, 1957, s. 7(1).
59 Coal Bearing Areas (Acquisition and Development) Act, 1957, s. 9.
60 Coal Bearing Areas (Acquisition and Development) Act, 1957, s. 11.

On the basis of perusal of case laws,[61] the Court opined that acquisition of land does not violate any constitutional/fundamental right of the displaced persons.[62] At the same time, the Court observed that they are entitled to resettlement and rehabilitation as per the policy framed for the oustees of the project concerned.In this regard, the Court referred to the *Narmada Bachao Andolan*v. *Union of India*,[63]wherein it held:[64]

> The displacement of the tribals and other persons would not per se result in the violation of their fundamental or other rights. The effect is to see that on their rehabilitation at new locations they are better off than what they were. At the rehabilitation sites they will have more and better amenities than those they enjoyed in their tribal hamlets. The gradual assimilation in the mainstream of the society will lead to betterment and progress.

And her 2010 decision,[65] wherein it noted:[66]

> …A blinkered vision of development, complete apathy towards those who are highly adversely affected by the development process and a cynical unconcern for the enforcement of the laws lead to a situation where the rights and benefits promised and guaranteed under the Constitution hardly ever reach the most marginalised citizens.

Now, in so far, the issue ofgranting extra consideration,[67] and applicability of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR) is concerned, the Court opined:[68]

> Having regard to the provisions of the [RFCTLARR],especially the First, Second and Third Schedules thereof, the position taken by [Mahanadi Coalfields Ltd.] in this Courts' opinion cannot be countenanced. Undoubtedly the Gopalpur model of determining compensation applied in respect of the villages for which reports were prepared and approved by the Courts (Gopalpur, Sardega, Balinga, Bankibahal, Tikilipara, Garjanbahal, Kulda, Karlikachhar,

61 *State of Kerala* v. *Peoples Union for Civil Liberties*, MANU/SC/1302/2009; *Jilubhai Nanbhai Khachar* v. *State of Gujarat*, MANU/SC/0033/1995; *Chameli Singh* v. *State of U.P.*, MANU/SC/0286/1996.

62 On the contrary, the Court had also held that Article 300A is not only a constitutional right but also a human right. See *Lachhman Dass* v. *Jagat Ram*, MANU/SC/7133/2007; and *Amarjit Singh* v. *State of Punjab*, MANU/SC/0780/2010.

63 (2000) 10 SCC 664.

64 *Id*. at para 62.

65 *Mahanadi Coalfields Ltd.* v. *Mathias Oram*, MANU/SC/0484/2010.

66 *Id*. at para 10.

67 Since acquisition notification was issued in 1988 and finalised in 1990; and the judgment indicating the methodology for compensation determination was delivered in 2010.

68 *Mahanadi Coal Fields Ltd*. (2022*), supra* note 56at para 32 and 35.

> Siarmal, and Bangurkela). However, in regard to four villages i.e., Tumulia, Jhupuranga, Ratansara, and Kirpsara, no award has yet been approved. The report for Tumulia village was prepared on 04.04.2020 and thereafter filed in court, awaiting its approval. The report in respect of the village Jhupuranga has been placed on record; the same is pending approval of this Court.
>
> …Court is of the opinion that with the issuance of the notification on 28.10.2015 and the clarification by the Central Government to [Mahanadi Coalfields Ltd.] on 04.08.2017, the question of paying or depositing compensation in terms of the [CBA] cannot arise after 28.10.2015. This is because the requirement of compensation determination under the [CBA] ceased by virtue of section 105(3) [of the RFCTLARR]. The statutory regime under the [CBA] was superseded and substituted with the provisions of the First Schedule to the [RFCTLARR].

Further, the Court clarified the position:[69]

> …the First Schedule of the [RFCTLARR] is applicable to the acquisition in question, made by the Central Government in favour of [Mahanadi Coalfields Ltd.], in respect of the villages, the reports of which were not approved prior to 28.10.2015. Accordingly, the compensation based upon the market value for the four villages i.e., Tumulia, Jhupuranga, Ratansara, and Kirpsara have to be re-determined in accordance with the provisions of the First Schedule to the [RFCTLARR]. Since the extent to land involved, identification of land owners, and the basic market value along with solatium and interest payments, have been determined, the only additional exercise which the Commission has to carry out is the differential payable after the re-determination in respect of all the elements i.e., the market value, solatium, and further interest. It is also further clarified that the villages in respect of which this Court has already approved reports of the Commission, and entitlements have been determined, even availed of, or pending implementation, i.e., the other ten villages, the issues shall stand finalized-there can be no re-determination on the basis of the present judgment.

Here, the Court referred to the *Parichha Commission Report,* whose reasons were accepted by the Court.[70] The Courtalso observed that the resettlement of the displaced families and their rehabilitation have been mandated by the RFCTLARR and Rehabilitation and Resettlement Policy 2006 (R&R Policy).[71] Both RFCTLARR and R&R Policymandates that the benefits of the displaced persons are not put to grave and irreparable prejudice by denying them their status as SC/ST, has to be

69 *Id*. at para 34.

70 *Id*. at para 15.

71 Further amended in 2013.

ensured. The Court opined that since it is not in dispute that the displaced families/ land owners are residents of the Fifth Schedule Areas, thus the "statutory mandate and obligation cannot be denied by the State or agency, as a matter of law."[72]

In *Shashwat* v. *The State of Bihar*,[73] the Patna High Court addressed the question: what is the nature of consideration to be weighed by the State when a project of public importance is to have an impact on the surrounding ecology? The primary issue was the translocation of the trees for construction of National Highways. Considering the importance of the conservation of the environment on one hand and the development of amenities/facilities on the other, the Courtobserved thatthe task of the courts is to balance the two competing interests.

In this regard, the Court referred to the constitutional mandate,[74] international law,[75] and judicial pronouncements,[76] and issued appropriate directions.[77] The Court noticed that "India was the first country in the world to enshrine environmental protection as a State goal in its Constitution."[78] The Court pointed out how integration of ecosystem and biodiversity values in planning are crucial for ensuring a healthy environment.

The Court also noted that environment must be given an equal consideration as opposed to any other need to which it may be juxtaposed. In other words, every effort demand consistent engagementof finding the balance amongst environment and development. In this perspective, the Court referred to the *Indian Council for Enviro-Legal Action* v. *Union of India*,[79] wherein it was opined:[80]

> While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and *viceversa*, but there should be development while taking due care and ensuring the protection of environment.

72 *Mahanadi Coal Fields Ltd*. (2022*), supra* note 56at para 67.

73 MANU/BH/1259/2022.

74 Constitution of India, 1950, arts. 48A, and 51A(g).

75 For e.g., Stockholm Declaration, 1972, principles 2,4,8, and 11; Sustainable Development Goals, Goal 15; United Nations General Assembly Resolution onthe Human Right to a Clean, Healthy and Sustainable Environment,A/76/L.75, *available at:*file:///Users/prakashsharma/Downloads/A_76_L.75-EN.pdf(accessed on Mar. 20, 2023).

76 *Karnataka Industrial Areas Development Board,* v. *C. Kenchappa,* MANU/SC/8159/2006; *Essar Oil Ltd.* v. *Halar Utkarsh Samiti*, MANU/SC/0037/2004; *Indian Council for Enviro-Legal Action* v. *Union of India*, MANU/SC/1189/1996; *Vikram Trivedi* v. *Union of India*, MANU/GJ/1120/2013;

77 *Shashwat, supra* note 73 at para 34.

78 *Karnataka Industrial Areas Development Board, id.* at para 34.

79 (1996) 5 SCC 281.

80 *Id*. at para 31.

The Court noticed that in the present case, the felling and translocation of trees is has already undertaken for the purposeof construction of highway. Further, the number of trees to be planted to compensate for the loss also stands decided with an outer limit prescribed to the concessionaire by when to complete the same. In this regard, the Court acknowledged the process of compensatory afforestation as equivalent to the obligation imposed by the precautionary principle. Accordingly, the Court observed that "it is essential that all action be taken to mitigate the damage caused by the undertaking over development project. So, even when there exists no doubt, the obligation of maintaining or compensating the environment, continues with force."[81]The Court also noticed that the constitution of the State Compensatory Afforestation Fund Management and Planning Authority, as envisaged under section 10 of the Compensatory Afforestation Fund Act, 2016 (CAFA), stand unclear. Appropriately, the Court directed the State of Bihar through its Chief Secretary, Patna to immediately take steps for complying with the provisions of CAFA.[82]

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

It is worth to quote here reason behind bringing PESA. During the 1990s, the Eminent Domain of the Government was challenged by activists andhuman rights movements. Rights of the tribals over local resources were consideredsacrosanct and non-negotiable and a move was initiated to secure constitutional recognitionfor these rights. The sustained campaign led first to the 73rd Amendment of the Constitution and then the constitution of the*Bhuria Committee*.[83] Based on the recommendations of the *Bhuria Committee*,the Parliament passed a separate legislation as an annexure to the 73rdAmendmentspecifying special provisions for *panchayats* in Schedule-V areas. The Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA)decentralized existing approaches to forestgovernance by bringing the *Gram Sabha*at the center stage and recognized the traditional rights oftribals over community resources i.e., meaning land, water, and forests.

It is to be noted here that the special protection afforded to scheduled tribes under the Constitution and other relevant statutory laws is to withhold their ethnic, linguistic and cultural identity.In *Heera Singh Pangtey* v. *State of Uttarakhand*,[84] a writ petition was preferred before the Uttarakhand High Court againstan acquisition of landproposed to be acquired for the purposes of meeting out the defence need of the Indo Tibetan Border Police Force (ITBPF). The petitioners contended that they belonged to a scheduled tribes i.e.,"*bhotia*", which is a class of tribes protected by the Constitution of India.[85] Further, it was contended that

81 *Shashwat, supra* note 73 at para 32.

82 *Id*. at para 10-11.

83 Sanjoy Patnaik (2007), *supra* note 1 at 5.

84 MANU/UC/0064/2022.

85 Scheduled Tribes Uttar Pradesh Order of 1967.

under the provisions of the PESA,[86] U.P. Zamindari Abolition and Land Reforms Act, 1950,[87] and the RFCTLARR,[88] their land ought not to have been acquired.

The issue was: whether scheduled tribe's personal rights would prevail over right and interest of nation? The Court referred to *Hari Krishna Mandir Trust* v. *State of Maharashtra*,[89] wherein it was held that held that the right of propertyis a constitutional right, and is protected under Article 300A of the Constitution of India. According to the Court, Article 300Ais also construed as the human right,[90] and therefore,the Uttarakhand High Court opined that the executive or administrative decision cannot be arbitrarily exercised *dehors* the spirit of Article 300A.[91]While keeping these factors in mind, the Court carved a case for exception i.e.,case of urgency, and accordingly dismissed the appeal. The Courtwas of the view that owing to strategic location and defence need, personal rights of person or community cannot override rights or need of defence of country.[92]

Further, the Court found that in the absence of credible material on record, the land fails to receive the protection of scheduled area.[93]And in so far,the embargo of section 41 of the RFCTLARR is considered, it opined that the same does not provide any immunity due to the topographical, climatic limitations, and strategic restrictions.[94]

86 The Panchayats (Extension to the Scheduled Areas) Act, 1996, s. 3(zd).

87 The U.P. Zamindari Abolition and Land Reforms Act, ss. 4,6, and 129.

88 The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, ss. 40 and 41.

89 (2020) 9 SCC 356.

90 *Id*. at para 96. Here, the Supreme Court referred to *Vimlaben Ajitbhai Patel* v. *Vatslaben Ashokbhai Patel,* MANU/SC/7334/2008.

91 *Heera Singh Pangtey*, *supra* note 84 at para 106.

92 The Court opined that "irrespective of the personal rights of a person or a community, it can under no set of circumstances, override the rights or need of the defence of the country." *Id.* at para 118.

93 *Id.* at para 38. Also, the Court rejected the claim of exclusive ownership under the U.P. Zamindari Abolition Act, 1950. And on the basis of materials placed, doubted their possession of the land from 1880. The Court noticed, "…the *khatauni* entries, which has been relied and placed on record by the petitioners themselves in its column '3', shows their possession to have commenced from 1374 *fasli*, that means, under revenue law would be w.e.f. 1967."*Id*. at para 49.

94 The court noted, "since there is no other alternative, suitable and safe land available, in any adjoining area proposed to be acquired, it would be deemed, that it was only by way of a last resort, which was available to the State to acquire the land and in these circumstances." *Id*. at para 39. Here, one important aspect which found missing in the decision was lesser emphasis to section 42 of the of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which directs that whenever lands of SCs/STs are acquired necessitating their displacement, either in terms of territories or the areas they reside in, leading to their movement to other areas, where their tribe or caste may not necessarily be recognised as SCs/ST, the status which they enjoy but for the displacement has to be preserved and protected.

VII CONCLUSION

Over the years, while India is benefitting economically, she is losing forest at an alarming rate.[95] Over and above, the impact of global warming is adding intense burden to her biodiversity.[96] These factors perhaps invite courts to adopt a holistic and pro-active approach, in other words, ratherthan viewing environmental problems in isolations within the strict confines of legalism, efforts must result inempowerment.In this perspective, decisions in *Mahanadi Coal Fields Ltd., Shashwat,* and *T.N. Godavarman Thirumulpad*, are welcome step towards ensuring forest and tribal justice,however, true realization of their rights (still) awaits a genuine acknowledgement from the system. Here, the efforts on behalf of the government are also forward-looking. In fact, after assuming Presidency of G20 in December 2022,[97] greater emphasis is placed upon generating clean power including renewable energy. These are remarkable measures, considering the fact that climate change had already threatened indigenous peoples' livelihoods and economies. Here, greater attention to the role played by tribalstowards forest conservation could act as a lesson for world to discern.

95 In 2021, India lost 127kha of natural forest, equivalent to 64.4Mt of CO emissions. *See* Global Forest Watch, India, *available at:*https://www.globalforestwatch.org/dashboards/country/IND (accessed on Mar. 22, 2023). Interestingly, the Government maintains that India's forest cover had increased to 24.56%. *See* Ministry of Environment, Forest and Climate Change, "Total Forest and Tree Cover rises to 24.56 percent of the total geographical area of the Country", *available at:* https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=1597987 (accessed on Mar. 25, 2023).

96 Luther M. Rangreji, "Some Reflections on 'The Future We Want': Is the 'Sustainable Development' Paradigm as a Guarantor of Ecological Security under Serious Threat?", 10(2) *Indonesian Journal of International Law* 237-260 (2013). Here role of higher educational institutes becomes crucial,*see*Nuzhat Parveen Khan and Ashish Saraswat, "Role of Higher Education in Disaster Preparedness and Management in India", in S. Anand Babu (ed.), *5th World Congress on Disaster Management* (Routledge, New Delhi, 2023). Also, efforts must be made towards sustainable technology transfer, *see* Prakash Sharma, "Climate Change, Technology Transfer and Access to Clean Energy: The Role of Intellectual Property Rights in the Transfer of Environmentally Sustainable Technologies", in T.V. Subba Rao, V.S. Mallar and S. Anuja (eds.), *Socio-Legal Dimensions of Climate Change* 51-71 (ENVIS Centre on Environmental Law and Policy, National Law School of India University, Bengaluru, 2018).

97 India is the only G20 nation achieving its climate mitigation commitments in the Paris Accords without external support. *See* Phalak Vyas, "India at the G20: Prioritizing Climate Finance", *South Asian Voices* (Oct. 20, 2022), *available at:*https://southasianvoices.org/india-at-the-g20-prioritizing-climate-finance/ (accessed on Mar. 26, 2023).