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FOREST AND TRIBAL LAWS

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I INTRODUCTION

THE WORLD has entered into a new phase of global boiling[1] (instead of global warming);and at half past since the start of sustainable development goals (SDGs) in 2016, one can comfortably feel that the world is falling short on nearly all of the goals (17 goals and 169 targets).[2]In fact, by now it is almost confirmed that it's impossible to turn back the clock to stop the extreme weather,[3] however, there is still distant belief that nations can build up their defenses by protecting forests and supporting tribes, and thus prevent further deterioration. For instance, there has been increase in the total number of climate change cases around the world,[4]

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1 Ajit Niranjan, "Era of global boiling has arrived, says UN chief as July set to be hottest month on record", *The Guardian* (July 27, 2023), *available at:*https://www.theguardian.com/science/2023/jul/27/scientists-july-world-hottest-month-record-climate-temperatures#:~:text=The%20era%20of%20global%20warming,the%20beginning%2C%E2%80%9D%20Guterres%20said. India too witnessed unusual patterns of rains, which wreaked havoc in the hill states, *see* Ravi Chpra, "Havoc in the hills has key lessons for India", *The Hindustan Times* (July 26, 2023).

2 *See* Bill Gates and Bjorn Lomborg, "SDGs are unlikely to be met. What comes next?", *The Hindustan Times* (July 26, 2023).

3 *See* Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis* (2021), *available at:*https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_Full_Report.pdf S*ee also* 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).

4 As on Dec. 31, 2022, the total number of climate change cases has more than doubled (from 884 in 2017 to 2,180 in 2022) in 65 jurisdictions, *see* United Nations Environment Programme (UNEP), *Global Climate Litigation Report: 2023 Status Review* (UNEP, Nairobi, 2023), *available at:*https://wedocs.unep.org/bitstream/handle/20.500.11822/43008/global_climate_litigation_report_2023.pdf?sequence=3

and therefore a case for the rights-based climate litigation.[5] Here, indigenous groups are becoming an important stakeholder in climate litigation.[6]

In this backdrop, the year 2023 saw some significant developments in the field of forest and tribal laws. In August, the Parliament passed two laws namely: the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 (translated to the Forest (Conservation) Act, 1980);[7] and the Biological Diversity (Amendment) Act, 2023.[8] There are observations *for* and *against* the amended laws.[9] In June, the Central Government issued a notification[10] on carbon credit trading scheme (CCTS); and in October, issued two notifications[11] on Green Credit Programme (GCP) and Ecomark scheme.[12] Further, India submitted its 3rd National Communication (TNC) to the United Nations Framework on Convention on Climate Change (UNFCCC),wherein she affirmed her firm stance in combatting the challenge of global warming through additional forest and tree cover by 2030 (by a method of adaptation and afforestation rather than mitigation).[13] However, a preliminary analysis of 109 national parks and sanctuaries in India by Vidhi Centre for Legal

5 *See* Arindam Basu, "Climate Change Litigation in India: Seeking a New Approach Through the Application of Common Law Principles", 1 *Environmental Law Practice Review* 35-51 (2011).

6 *See* Maria Antonia Tigre, "Climate Change and Indigenous Groups: The Rise of Indigenous Voices in Climate Litigation", 9)3) *e-Publica* (2022).

7 The Forest (Conservation) Amendment Act, 2023 (No. 15 of 2023).

8 The Biological Diversity (Amendment) Act, 2023 (No. 10 of 2023), *available at*:https://egazette.gov.in/WriteReadData/2023/247815.pdf (last visited on Jan 20, 2024).

9 *See* Tanvi Deshpande, "Weakened Forest, Biodiversity Laws Impact India's Environment In 2023", *India Spend Explainers* (Dec. 27, 2023), *available at*: https://www.indiaspend.com/explainers/weakened-forest-biodiversity-laws-impact-indias-environment-in-2023-887117; Swati Sharma, Gitika Suri &Toshita Jha, "Navigating Change: Unravelling the Biological Diversity (Amendment) Act, 2023", *Cyril AmarchandMangaldas Blogs* (Apr. 22, 2024), *available at*: https://corporate.cyrilamarchandblogs.com/2024/04/navigating-change-unravelling-the-biological-diversity-amendment-act-2023/#:~:text=The%20Biological%20Diversity%20(Amendment)%20Act%2C%202023%20stands%20as%20a,biodiversity%20management%20in%20the%20country (last visited on Jan 20, 2024).

10 S.O. 2825(E), issued under Energy Conservation Act, 2001, s. 14(w). Under CCTS, the Ministry of Power will identify sectors and obligated entities to be covered under the compliance mechanism

11 S.O. 4441(E) and S.O. 4458 (E).

12 Both GCP and the Ecomark Scheme, seeks to encourage environmentally friendly practices rooted in tradition and conservation; and reflecting the ideas of lifestyle for Environment (LiFE) movement.

13 *See* Third National Communication and Initial Adaptation Communication to the United Nations Framework on Convention on Climate Change (Ministry of Environment, Forest and Climate Change Government of India, 2023), *available at:*https://unfccc.int/sites/default/files/resource/India-TNC-IAC.pdf (last visited on Jan 20, 2024).

Policy found that 60 national parks have a minimum ESZ of 0km.[14] There have been some mixed outcomes from courts as well; for instance, the Supreme Court transgressed against its 2022 order[15] on uniform eco-sensitive zones (ESZs).[16]

II FOREST CONSERVATION ACT, 1980

With the introduction of the Forest Conservation Amendment Bill, 2023 (FCAB), which seeks to clarify what constitutes 'forest' and exempts certain forest lands from obtaining prior clearance. There was a belief that the FCAB unfortunately caused severe threat to the hard-earned progress in forest protection, and with the passing of the Forest (Conservation) Amendment Act, 2023 (FCAA), many opine that it will reverse decades of legal safeguards.[17] For instance, one of the major objectives of the FCAB is to remove ambiguity surrounding *TN Godavarman Thirumulpad* v. *Union of India*,[18] (hereinafter *TN Godavarman*) wherein the Court directed that "forests" will not only include forest as understood in the dictionary sense, but also any area recorded as forest in the government record irrespective of the ownership. In other words, the FCAA dilutes the provisions of 'deemed forest' in *TN Godavarman* (land which is recorded as forest in govt record required 'forest clearance'), by treating only those lands which are recorded as forests on or after 25 October 1980 as 'forest'. Also, for critical public utility projects, the FCAA exempts forest areas in 100km area from the international borders.

It is submitted that these proposed exemptions would directly violate the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA); and appears to be in continuation to the several other exemptions that Ministry of Environment, Forest and Climate Change (MoEFCC) has granted for making forest diversions easy for government and private

14 Out of the 109 sanctuaries for which data was assessed by Vidhi Centre for Legal Policy, 18 have an ESZ range of 0.01km to 0.5 km; 12 have an ESZ range of 0.6 to 1 km and only 3 have a range of 1.1 km to 5km. There are 567 wildlife sanctuaries and 106 national parks in the country and Vidhi is continuing with its study. *See* Jayashree Nandi, "ESZ of 0km Notifies by 60 National Parks: Study" *Hindustan Times* (May 02, 2023), *available at:*https://www.hindustantimes.com/india-news/indias-national-parks-and-sanctuaries-without-eco-sensitive-zones-preliminary-analysis-by-vidhi-centre-for-legal-policy-101682968028044.html (last visited on Feb. 10, 2024).

15 *SeeIn Re: T.N. Godavarman Thirumulpad* v. *Union of India*, MANU/SC/0751/2022. The Supreme Court directed that every protected forest, national park and wildlife sanctuary across the country should have ESZ of 1 km. *See also* Prakash Sharma, "Forest and Tribal Laws", 58 *Annual Survey of Indian Law* (2022).

16 *See T.N. GodavarmanThirumulpad* v. *Union of India*, MANU/SC/0458/2023.

17 Debadityo Sinha, "Forest bill poses a threat to hard-earned safeguards", *The Hindustan Times* (Aug. 02, 2023); Bhupendra Yadav, "Forest Conservation Bill: An encompassing green", *The Indian Express* (Aug. 07, 2023), *available at:*https://indianexpress.com/article/opinion/columns/forest-conservation-bill-pm-modi-bhupendra-yadav-new-india-8879804/; Jayashree Nandi, "Bill exempts certain land from forest clearance; Experts wary of 'dilution'", *Hindustan Times* (Mar. 29, 2023). *See also* Shailendra Yashwant, "The Ease of Doing Business in Forests", *The Free Press Journal* (Aug. 23, 2023), *available at:*https://www.freepressjournal.in/analysis/the-ease-of-doing-business-in-forests;

18 MANU/SC/0278/1997.

agencies.[19] MoEFCC had exempted compliance with FRA in forest diversions, in the case of:i) linear projects, ii) mineral prospecting, iii) forest diversion in areas without "tribal populations", iv) grant of mining leases, v) creation of land banks, etc.[20]

Rehabilitation of closed saw mills must not destroy the forest resources

In *Sanjib Kumar Mohanty* v. *State of Odisha*,[21] a public interest litigation was filed against the two saw mills which are situated within onekilometre radial distance of Mancha Bandha Reserve Forest, fivekilometres radial distance from Hatikote Reserve Forest, and 10 kilometres radial distance from Similipal Reserve Forest. In was alleged that the saw mills were operated and controlled bywood mafia who are involved in illegal felling of trees and wood laundering.An important legal issue in this case arises from the interpretation of section 4(1) of the Orissa Saw Mills and Saw Pits (Control) Act, 1991 (Act, 1991), along with the first proviso. This provision prohibits the establishment or operation of any saw mill or saw pit within a reserved forest, protected forest, or any forest area, as well as within ten kilometres from the boundary of such forests or forest areas.

The High Court of Orissa referred to the *TN Godavarman* decision,[22] wherein the Supreme Court had issued directions for the sustainable use of forests and created a'monitoring and implementation' system (through regional and State level communities) for regulating the felling, use and movement of timber across the country in hope of preserving the forest. The court emphasized upon the meaning to the word 'forest', and opined that it would cover all statutorily recognized forests whether designated as reserved, protected or otherwise for the purposes of Section 2(i), FCA. The court was of the view that it is the pivotal duty and responsibility of the State to protect the forest through its officials.[23]In other words, States can no longer de-reserve protected forests for commercial or industrial (non-forestry) use without permission.

Thereafter, the court referred to the Supreme Court's interim Order dated 16.08.2010, in which direction for rehabilitation of closed down saw mills to the State of Odisha were issued.It was suggested that in order to make necessary arrangements to have industrial estates, appropriate steps like amendments to the provisions of the Act,1991 and the Rules framed thereunder can be made.[24] In compliance of the order passed, the state government,in 2011 added third proviso, wherein power has been vested on the State Government to identify industrial

19 *See* Letter on behalf of Campaign for Survival and Dignity, Odisha Chapter, *available at*: https://www.sruti.org.in/wp-content/uploads/2022/06/Comments-Recommendations-of-proposed-FCA-1980-amendment-CSD-Odisha-25.10.2021_English.pdf (last visited on Jan 20, 2024).

20 It is argued that while the MoEFCC exemptions were in effect in violation of both Forest Conservation Act, 1980 (FCA) and FRA, the exemptions under FCA would still be in violation of FRA. *Ibid*.

21 MANU/OR/1583/2023.

22 *Supra* note 18.

23 *Sanjib Kumar Mohanty, supra* note 21 at para 9.18.

24 *Id*. at para 9.20.

estates (not exceeding two in one district) and accordingly allow the saw mills or saw pits for their establishment, relocation and functioning in such industrial estate. As a result, *via* routeof rehabilitation, closed saw mills are permitted to be opened at industrial estate area.

After explicitly determining the legal and factual matrix of the case, the court dismissed the writ petitionand held that in terms of the provisions contained under section 4(1) of the Act, 1991, read with the guidelines for establishment, relocation and functioning of saw mills, the two saw mills arecorrectly established and qualifies the parameters laid under the guidelines for establishment, relocation and functioning of saw mills.[25] Interestingly, while noticing the menace of pollution in Delhi, the court acknowledged the relevance of forest and accordingly opined:[26]

> …in the name of rehabilitation of closed saw mills, the State authorities including the forest officers, cannot and should not act detrimental to the interest of the public at large, which affects the public policy and very well come in realm of judicial review. Therefore, the forest department has to ensure that in the name of rehabilitation of closed saw mills, the forest resources made available should not be destroyed. In the event of any destruction thereof, the authorities, who are in the helm of affairs, should be put to task, because the human habitation are now facing severe crisis for their survival in a healthy environment, which should not be jeopardized further in any manner. In the interest of justice, equity and fair-play, both the human habitation and the forest growth simultaneously should have a healthy atmosphere and environment, as because any damage caused to the forest resources would definitely jeopardize human habitation.

Development of roads and bridges permissible activity

In *National Highways Authority of India* v. *The State of Maharashtra,*[27] some portion of the Vadodara Mumbai Expressway (Phase-II Main Alignment) from Km 26+320 to km 104+700 (km 390.864 of NH-8) of Main Expressway (Length 78.118 km), comes within Coastal Regulation Zone-IA area. As a result, a total of 1,001 mangrove trees located within the construction zone were required to be felled.The proposed expressway crosses Vaitarana River with Coastal Regulation Zone (CRZ). The National Highways Authority of India (NHAI) filed a petition before High Court of Bombay to execute the project.

The High Court of Bombay acknowledged the fact that NHAI has procured requisite permissions from all authorities for execution of proposed project, and at the same time, the authorities have imposed stringent conditions for grant of their respective permission.[28] Accordingly, owing to the fact that the need and

25 Vide notification no.13891-10F-Legal/3/2011 dated July 30, 2011.

26 *Sanjib Kumar Mohanty, supra* note 21 at para 12.

27 MANU/MH/0431/2023.

28 *Id*. at para 16.

importance of project is undisputed,[29] While allowing the petition, the Court emphasized the importance and need of carrying out large projects of public importance by maintaining environment balance and adhering to the principle of sustainable development.The court observed:[30]

> *Bharatmala Pariyojana* is a new umbrella program for the highways sector that focuses on optimizing efficiency of freight and passenger movement across the country by bridging critical infrastructure gaps through effective interventions like development of Economic Corridors, Inter Corridors and Feeder Routes, National Corridor Efficiency Improvement, Border and International connectivity roads, Coastal and Port connectivity roads and Green-field expressways. It's an ambitious and mammoth project of Government of India, of which Delhi-Mumbai express way is a part. Vadodara-Mumbai greenfield expressway which forms part of Delhi-Mumbai expressway corridor will benefit large sections of population in Maharashtra, Gujrat and Union Territory of Daman, Dadra and Nagar Haveli.

In *In Re: T.N. Godavarman Thirumulpad* v. *Union of India*,[31] the Supreme Court disposed of number of interlocutory applications (I.A.'s), contempt petition, and special leave petition (SLP).

Morphological features of ridge as notified areas

In one such I.A.,[32] the court on reference to the the Central Empowered Committee (CEC) Report, allowed construction of the Directorate of Revenue Intelligence, Ministry of Finance, Government of India office at Morphological Ridge Area. The court pointed out that apart from the notified area of ridge which is a protected area, there are other areas falling outside the demarcated notified ridge which also have similar "morphological features" of ridge. And owing to its 2016 decision,[33] land falling outside the demarcation of notified ridge but having similar "morphological features" of ridge should be given same protection as is given to the notified areas and no construction should be permitted. The court noticed that "it cannot be doubted that the ridge in Delhi acts as a lung, which supplies oxygen to the citizens of Delhi. The necessity to protect the ridge, therefore, cannot be undermined." However, due to difficulty in identifying the areas of ridge, which are not notified but also have the same features, the court directed the MoEFCC to appoint a committee consisting of the officials/officers, to work out the modalities for identifying the area which has similar "morphological

29 The concern raised on behalf of the Bombay Environmental Action Group was on the issue of permissibility of development of the project in the area falling within CRZ-IA, which in *Maharashtra Maritime Board* v. *Union of India*, MANU/MH/3493/2021, were already rejected. *Id*. at para 17.

30 *Id.* at para 24.

31 MANU/SCOR/21367/2023.

32 I.A. NO.191635/2022.

33 *Delhi Development Authority* v. *Kenneth Builders and Developers Pvt. Ltd*., (2016) 14 SCC 561.

features" as that of a notified ridge and which needs to be protected as a notified ridge.

Permission to minimal developmental activities

In another I.A.,[34] filed by the Himachal Pradesh to divert the forest land under FCA and FRA, the court opined that on account of its 2019 Order, there has been applications after applications by the State to seek permission to developmental activities related to roads, schools, dispensaries, *anganvadis*, hospitals, panchayat offices, *etc.* The court noticed that long delays has been caused in the execution of projects owing to the requirement of seeking permission for undertaking minimal developmental activities necessary for the citizens residing in rural/hilly areas. Accordingly, while allowing the application, the Court referred to the mandate of the statutory provisions (e.g. the FCA;Forest Conservation Rules, 2022; Compensatory Afforestation Fund Act, 2016 and Compensatory Afforestation Fund Rules, 2018) and the Order of the Principal Chief Conservator of Forests dated April 24, 2022,on compensatory afforestation. The court, however, clarified that the Order would not be applicable in respect of the forest areas falling within the National Parks and Wildlife Sanctuaries.

Likewise, the contempt proceeding was pertaining to the report which reveal that various constructions to advance the concept of jungle tourism have been carried out within the area of the Tiger Reserve in the State of Uttrakhand. The Court rightly opined that "the concept of protecting Tiger Reserves and National Parks is that the fauna must be permitted to reside in the natural habitat and not the artificial environs."Accordingly, the court, restrained the authorities from making any construction within the areas notified as Tiger Reserves and National Parks and Wildlife Sanctuaries, and called upon the National Tiger Conservation Authority (NTCA) to explain the rationale behind granting such a permission for permitting tiger safaris within Tiger Reserves and National Parks.

Delay in execution, escalates project costs

In the SLP,[35] challenge was made against the judgment and order of the Division Bench of the High Court of Calcutta, which held that felling of 356 trees was necessary for implementing the important public project of constructing the five railway over bridges (ROBs). The Division Bench also directed that the State shall carry out compensatory plantation of at least five trees for every tree felled in the same plot or in a plot as near to the plot as possible where the trees will be felled. Now via interim Order dated September 20, 2018, the Supreme Court stayed the operation of the judgment and order of the Division Bench, and appointed a Committee of Experts (CoE) comprising to take a decision about the best course to be adopted. Accordingly, the CoE recommended "that bridge will have to be constructed to resolve the congestion at the railway crossing... But this issue may be solved by constructing local over bridges, at the lower cost, and possibly save some of the 306 trees from the chopping block, adding to both economic and

34 I.A. NO.132892/2022.

35 SLP(C) No.25047/2018.

environmental value." The recommendations given by the CoE were unclear, besides owing to the interim orders, the project was stalled for almost five years. The court while dismissing the petition, noticed that "it cannot be forgotten that every day's delay in execution of projects escalates their costs."[36]

In another decision,[37] the Supreme Court addressed a peculiar issue *i.e.*, with regard to a temple situated amidst the Sariska Tiger Reserve and the number of devotees visiting the temple (a is concern affecting other National Parks and Sanctuaries). The Court was informed that the number of devotees visiting the temple every day is in the thousands, however on *mela* days it crosses lakhs.[38] Therefore, on account of unregulated entry of devotees, the management of Tiger Reserve gets adversely affected (in fact at time devotees wander anywhere in the forest). The court observed, on one hand, it is not possible for the administration to restrain such devotees from visiting the places of worship; andon the other hand, such uncontrolled visits of the devotees result in problems with the management of such Protected Areas.

In this regard, the Court referred to the note of Mr. K. Parameshwar, *amicus curiae*, who submitted that in order to overcome this situation, the entry to the forest for going to the temple should be permitted only through electric buses; and the said electric buses will carry the devotees from the entry gate of the Tiger Reserve to the temple, and in the same manner, back to the gate. The court was also informed about the Sariska Administration and the Ministry of Road Transport and Highways proposal to construct a 22 kms. elevated road so that the wildlife can freely travel from one side of the road to the other side. Accordingly, the court while appreciating the suggestions and before passing an Order, deemed it necessary to hear the MoEFCC, Ministry of Road Transport and Highways, and the State of Rajasthan.

III FOREST PRODUCE

In *Mahesh Udyog* v. *The State of Himachal Pradesh*,[39] the Himachal Pradesh High Court while disposing of the writ petition, allowed refund of illegal amount collected as road tax on a forest product 'cutch'. The factual matrix of the case is

36 The court observed, "The contest between development and environmental concerns is ever ongoing. While there is no doubt that ecology and environment need to be protected for the future generations, at the same time, development projects cannot be stalled, which are necessary not only for the economic development of the country, but at times for the safety of the citizens as well. No doubt that the protection of environment and ecology are important. However, at the same time, it cannot be denied that human life is also equally important. On account of non-construction of ROBs, a number of accidents have taken place at railway crossings resulting in death of hundreds of human beings. The Report of the Committee itself would show that there is a congestion, on account of which, the construction of the project is necessary. They have given an alternative that instead of ROBs local over bridges can be constructed." *Id*. at para 15.

37 *In Re: T.N. GodavarmanThirumulpad* v. *Union of India*, MANU/SCOR/58576/2023.

38 It was also brought to the notice of the court that even though the park is closed during monsoon season, the devotees visit the temple even during that period. *Id*. at para 8.

39 MANU/HP/1397/2023.

thus: the petitioner is a registered dealer for manufacture of 'kattha' and 'cutch' and allied products under the Himachal Pradesh (Taxation on Certain Goods carried by Road) Act, 1999 (Act of 1999). By a notification dated January 17, 2002, an amendment was made to the item no. 15(vi) of the Schedule-I of the Act of 1999, and new sub-item (ix) was added specifying rate of road tax on 'kattha' and 'cutch' separately. As a result, the rate of road tax for 'kattha' was fixed at Rs. 30/-per 10 Kg of part thereof, the rate for 'cutch' was only Rs. 1.70 per 10 Kg or part thereof. Accordingly, the petitioner contended that during the period November 13, 2000 to December 28, 2001, i.e. prior to the amendment made on January 17, 2002, the Excise Department charged tax on 'cutch' at Rs. 30 per 10 Kg. *i.e.* Rs. 300/-per quintal amounting to Rs. 40,48,125/-and that such road tax collected should be refunded.

It was argued that when there was no tax specified on 'cutch' prior to 17.01.2002, no tax could have been collected on the said product. The contention was rejected by the Assistant Excise and Taxation Commissioner, stating that the tax had been charged as per the prevalent law at rate of tax in force at that time. The petitioner thereafter appealed to the Deputy Excise and Taxation Commissioner-cum-Appellate Authority, which too rejected the claim.

The high court after careful perusal of facts opined that the issue is not whether both 'kattha' and 'cutch' are forest produce within the meaning ofsection 2(4) of the Forest Act, 1927, rather, the question is: whether for the purpose of Road Tax, both can be treated as one product or different products?In this regard, the court referred to the state government letter dated July 20, 2001, wherein it has taken a decision that both are different products and both cannot be taxed at same rate (because their price in the market varies).[40] Accordingly, the court allowed refund of amount, within eight weeks with interest @ 6% per annum from the date of payment till the date of refund.

In *Vidhmata Wood (Private) Limited* v. *State of Himachal Pradesh*,[41] the high court while finding merit in the petition, granted extension of time to the petitioner for demarcation of land, enumeration, marking and felling of trees. The case is an example of classical administrative lethargy causing unjustified trouble. The brief facts were that a land measuring 8162 *bighas* was granted to the forefathers of land owners by way of *inaam*/grant by late Raja Sahib Shri Siri Singh Ji of Chambain the year 1955. The land in question wrongly came to be recorded in revenue records in the ownership of Government of Himachal Pradesh. Theland owners filed an application for correction of records, which was rejected, andsubsequently, the Financial Commissioner, in an appeal, directed them to get their ownership established before a civil court. The land owners filed civil suit before senior sub judge, Chamba, and were declared to be owner-in-possession of the land. Thereafter, the judgment and decree were challenged up to the Supreme Court, but the same remained intact. Accordingly, the revenue record with regard to ownership and possessory rights of land owners was corrected.

40 *Id*. at para 14.

41 MANU/HP/2040/2023.

Now, in 1995, the land owners transferred the felling rights for felling of trees to Ravi Timbers, which were transferred to Shankar Industries. In August, 2018, Shankar Industries transferred the felling rights in favour of theVidhmata Wood (Private) Limited (the petitioner), who executed an agreement with land owners with respect to purchase of felling rights. In October, 2018, the petitioner applied for felling permission under Ten Year Felling Programme (TYFP). However, on account of adverse conditions, the demarcation/marking/enumeration *etc.,* of trees in pursuance to application could not be affected.Now, in terms of clause 8 of the Order dated September 10, 2002,[42] the petitioner applied to the competent authority for extension of time. The Divisional Forest Officer, Bharmour and Chief Conservator of Forests, Chamba, recommended for extension of time but no final decision on the request was taken by the competent authority. On March 19, 2019, another representation was made to the Chief Conservator of Forests. On March 30, 2019, Divisional Forest Officer, Bharmour addressed a letter to the Chief Conservator of Forests, Chamba, stating therein that due to heavy snow precipitation, frigid temperatures and non-availability of staff, no felling of trees from private land for sale under TYFP in the previous year took place, and therefore, considering genuineness of the case, the petitioner was recommended for extension.[43] The recommendation was also supported by the Principal Chief Conservator of Forests*via* communication dated September 27, 2019, wherein, it was observed that the felling in Tiyari beat area will not have any adverse impact from silviculture point of view (as no felling had taken place for the last more than two decades).[44]

Having taken note of the recommendation, in a letter dated June 29, 2020, the request for extension of time was rejected on the ground that it would amount to preponement of felling programme.[45] Against this communication, a civil writ petition was made. While allowing the petition, the Division Bench passed the judgment and categorically held that there was no legal impediment in allowing the request, especially when, the proposal was feasible and beneficial.[46] The, Division Bench quashed and set aside the rejection Order dated June 29, 2020, and directed the concerned authorities to consider the request of the petitioner for extension of time under clause 8 of Order dated September 10, 2002 and pass a speaking order (within six weeks from the date of production of a copy of the judgment).[47] Accordingly, aprayer was made for extension of time, which was again rejected.Against this background, the petitioner approached the high court.

42 Issued under the Himachal Pradesh Land Preservation Act, 1978 (Act of 1978), s. 4.

43 Interestingly, due to inadvertence, instead of using word "extension of time", Divisional Forest Officer used the phrase "incorporate Tiyari beat for the year 2019-20", which was thereafter followed in all future communications. *Vidhmata Wood (Private) Limited, supra* note 41 at para 8.

44 *Id*. at para 9.

45 *Id*. at para 10.

46 *Id*. at para 11.

47 *Ibid*.

Interestingly, the respondents intheir reply have not disputed the facts.[48]The first issue, was whether the area in question is '*gahar'*or'*gaharsarkar.'* The court refereed to its earlier Order dated July 17, 2023, wherein it found that when in the judgment and decree passed by civil court on April 22, 1965, it was settled that the land in dispute is in favour of land owners, the State must not have issued a Notification declaring land in question to be 'protected forest' (by changing the classification of the land from '*gahar*' to '*gaharsarkar*').

Having settled the issue pertaining to the title, the court thereafter took note of the fact that the respondents, in the case, pressed different argument andclaimed that even if land is not 'protected forest', the prayer cannot be allowed in view of *T.N. Godavarman* case, wherein it was held that, "ii) No deviation from the ten-year felling programme fixed by the Forest Department in accordance with the provisions of the Land Preservation Act, 1978 will be permissible." In this regard,the Court referred to the clauses 8 to 11 of the Order dated September 1, 2002, wherein, according to the court, the state government has power to extend time upto two years on account of the condition mentioned therein. Further, the court noticed that the proviso allows the state government may allow felling of trees upto two years and six months, of felling programme in snow bound areas. The court, accordingly hoped that the petitioner who has been fighting for its rightful claim for more than five years, shall be allowed extension of time for demarcation of land, enumeration, marking and felling of trees within six months.

In *Assistant Wild Life Warden*v. *K.K. Moideen*,[49] the facts were that the officers of the forest department stopped a lorry for inspection, which was carrying 37 illicit rosewood logs beneath ninety-two bunches of bananas and 26 bags of rice husk. The seized material was produced before the wildlife warden and an enquiry was conducted. Accordingly, a detailed *mahazar* (an attested document by several persons professing to be aware of the circumstances of the case and submitted with their signatures) was prepared. During enquiry, it was found that the rosewood logs were cut from the forest of Shrimangala, Ponnampet, Karnataka and lorry was coming from Kutta (Karnataka) side. While crossing the check post on Kutta side, the material loaded shown was bunches of bananas and bags of rice husk. Further, the driver who was driving the vehicle at the time of detention by the officer was found to be different than the one who was driving the vehicle when it crossed the check-post.

In the order dated June 27, 2005, the wildlife warden, recorded that the rosewood logs were government property and the vehicle was being used in commission of offence of illicit transport of forest produce. Both were seized to be confiscated. Against the order, an appeal[50] was filed before the district judge, which was dismissed. The matter was challenged before the high court, which directed return of the rosewood logs and lorry.

48 *Id.* at para 13.

49 MANU/SC/0855/2023.

50 The Kerala Forest Act, 1961, s. 61D.

In the meantime, an interesting development took place *i.e.*, the rosewood logs being perishable were sold on April 17, 2008, after the Order passed by the wildlife warden officer,[51] and the lorry was sold on June 10, 2009, in view of the instruction issued *vide* Government Order dated June 5, 2009 for selling of confiscated vehicles which were lying parked in the police stations. This aspect was noted by the Supreme Courtand was considered"a lapse on the part of the state to apprise the High Court of the true and up-to-date facts at the time of final hearing of the matter."[52] Accordingly, the court while disposing off the appeal, remitted the matter remitted back to the high court for fresh examination, and opined that if the case of respondents is accepted, they will be entitled to receive the amount collected by the state on the sale of rosewood logs and the lorry. Further, since the matter was quite old, the court also directed the high court to examine the desirability of awarding interest, from the date the amount on account of sale of lorry and rosewood logswas credited in the state exchequer.

IV BIODIVERSITY AND PROTECTION OF WILDLIFE

Mitigation of climate change is one of the several benefits derived from a rich and secured biodiversity.[53] It is the biodiversity that forms the basis of new sustainable green economy, wherein efforts to restore nature, sustain humane existence, and inspire solutions. As a result, measures are adopted to bring nature-based solutions to secure future. Perhaps, the need is to go back to the basics and think of a "multifunctional landscapes, where aspirations, beliefs, traditional knowledge, and direct participation of local communities" will become central to the notion of conserving and sustaining life on earth.[54]

The year 2023, saw some notable changes in the Biological Diversity Act, 2003.[55] These include the revised definition of "biological resources";[56] delineated distinct approval, registration processes for Indian entities and foreign entities seeking intellectual property rights;[57] and, in order to foster effective compliance, decriminalised the penal provision.[58]

51 It was confirmed by the district judge in his order dated June 2, 2007. *SeeAssistant Wild Life Warden,supra* note 49 at para 5.

52 *Id*. at para 8.

53 Kamal Bawa, "Biodiversity is Us and We are Biodiversity", *The Hindu* (June 01, 2023).

54 *Ibid*.

55 The Biological Diversity (Amendment) Act, 2023 (No. 10 of 2023), began its legislative journey in December 2021, when the Biological Diversity (Amendment) Bill, 2021 (the Bill) was first tabled in Lok Sabha and solicited public feedback before being referred to a Joint Parliamentary Committee. The committee's recommendations, which were submitted by December 2022, were incorporated into the Bill. It was subsequently reintroduced in Parliament and received presidential assent on August 3, 2023.

56 The Biological Diversity (Amendment) Act, 2023, s. 3. It included "derivatives" instead of "by-products".

57 The Biological Diversity (Amendment) Act, 2023, s. 8.

58 The Biological Diversity (Amendment) Act, 2023, s. 38. The amended law proposes a range of monetary penalties between Rs 1 lakh and Rs 50 lakh, and in case of continuing contravention, there may be an additional penalty of up to Rs 1 crore.

In *Vishalakshi Amma*v. *State of Kerala*,[59] under section 40 of the Wild Life (Protection) Act, 1972 (Act of 1972), every person who is in the control, custody or possession of any captive animal, shall, within 30 days from the commencement of the Act of 1972, is required to declare to the chief wild life warden or the authorised officer the number, description, and place where such animal or article was kept. At the same time section 40A of the Act of 1972, grants immunity in certain cases.[60] Now, in exercise of the powers conferred under section 40A read with Section 63 of the Act of 1972, the Central Government had made "the Declaration of Wild Life Stock Rules, 2003" (Rules, 2003). In this regard, the appellant filed the application under rule 4(2) of the Rules, 2003, which gives an extension of 180 days from the date of publication *i.e.*, October 18, 2003. The appellant herein filed the application on May 25, 2011 that was beyond the prescribed period provided under rule 4(2) of the Rules, 2003. Accordingly, the authority refused to issue ownership certificate in respect of the deer horn found from the house. Against this, a writ petition was made before the single judge, and a direction was issued to the chief wild life warden to consider whether time has been relaxed in any case for the purpose of granting the certificate of ownership. The order passed by the single judge was appealed before the Division Bench. The Division Bench of the high court while allowing the appeal and setting aside the order, observed that the time limit prescribed under rule 4(2) of the Rules, 2003 could not be relaxed and/or the period cannot be extended.

The issue before the Supreme Court was: whether the prescribed under rule 4(2) of the Rules, 2003 is mandatory or not? It was submitted on behalf of the appellant that owing to the High Court of Madras decision in *C.D. Gopinath* v. *State of Tamil Nadu*,[61] the time prescribed must not be considered as mandatory and can be relaxed in a given case. The court while rejecting the contention, noticed that the facts of the High Court of Madras case are different. Further, the court observed that the object and purpose of the Act of 1972, followed with that of the Rules, 2003 makes it mandatory. The court noted that:[62]

> …as per Rule 3 of the Rules, 2003, the Chief Wild Life Warden or the officer authorised by the State Government was duty bound to give wide publicity to the intent of this notification in the regional language through electronic or print media or such other means. The Sub-rule (2) of Rule 3 cast duty upon such officer to take necessary action to assist the local communities and individuals especially the poor and illiterate in the declaration of their possession, filling up the specified form and any other requirement

59 MANU/SC/0257/2023.

60 As per s. 40A, notwithstanding anything contained in Sub-sections (2) and (4) of Section 40 of the Act of the 1972, the Central Government may, by notification, require any person to declare to the Chief Wild Life Warden or the authorised officer, any captive animal, animal article, *etc.*

61 2010 SCC OnLine Mad 2851.

62 *Vishalakshi Amma, supra* note 59 at para 5.1.

> prescribed Under Rule 4(1). Thus, nobody can plead any ignorance and/or nobody can plead that he had no knowledge to make such declaration and/or application for ownership certificate and that too, within a period of 180 days as per Rule 4(2) of the Rules, 2003.

V NATIONAL PARK AND WILDLIFE SANCTUARIES

In *Prerna Singh Bindra* v. *Union of India*,[63] the Supreme Court examined the counter affidavit filed by the MoEFCC which indicated that: (i) the elephant reserve area in the country has increased to 77705.42 square kilometers; (ii) thirty two elephant reserves exist across the country; (iii) consent has been issued by the Ministry to declare the Terai Elephant Reserve in Uttar Pradesh; and (iv) in the process of validating elephant corridors across the country, about 52 per cent of the identified corridors listed in the *Gajah* report have been validated and the task of completing the validation of the other corridors is under process. The Court was informed about the minutes of the 54th meeting of the National Board of Wildlife (NBWL), held on 29 August 2019.[64] The court noticed that one of the recommendations was that the Project Elephant can be converted into a statutory agency[65] on the lines of the National Tiger Conservation Authority (NTCA) and that relevant amendments can be made to the Wildlife Protection Act, 1972 so as to effectuate the conferment of statutory status on the authority. The Court opined that since the proposal in the report would envisage a legislative amendment, therefore it will be appropriate for the MoEFCC and CEA to respond within a specified time frame.

Further, the court directed that the MoEFCC and the CEA, which had on December 28, 2018, constituted a Central Project Elephant Monitoring Committee for the purpose of monitoring and implementation of relevant directions and guidelines in regard to the conservation and protection of elephants, to provide an update on the same. Accordingly, the Court directed that within a period of four weeks: (i) MoEFCC and the CEA shall ensure that necessary steps are taken for facilitating an inspection of the protected areas so as to facilitate implementation of the recommendations of the Task Force as accepted in the minutes of the 54th Mini Meeting of the Standing Committee of the NBWL held on July 18, 2019 as communicated on August 29, 2019; (ii) MoEFCC shall respond to the recommendation made in the *Gajah* Report on conferring statutory status on the proposed body namely NETA; and (iii) MoEFCC shall collect the requisite information from the States in respect of compliance with the recommendations contained in the *Gajah* Report as accepted at the meeting held on July 18, 2019. In

63 MANU/SCOR/17315/2023.

64 The minutes recorded that the task force which was constituted in pursuance of the directions of the Supreme Court, recommended thirteen measures for implementation by electricity supply units; Power Grid Corporation of India Limited, the Central Electricity Authority (CEA) and the State Electricity Boards (SEBS). *Id*. at para 2.

65 The Task Force has proposed that the new body may be termed as the National Elephant Conservation Authority (NETA). *Id*. at para 6.

this respect, the court provided a questionnaire and directed concerned States to provide relevant information, as required by MoEFCC, within a period of four weeks. Accordingly, the court had the Ministry tp collate all the information and place it on affidavit.

In *Devendra Singh Adhikari* v. *State of Uttarakhand*,[66] a resident of village Dalipur, Kotdwar, Pauri Garhwal, Uttarakhand, in a writ petition, raised grievances regarding the environmental pollution caused by the setting up and running of the stone crusher unit, which is located at a terrestrial distance of 3.39 km from the actual boundary of the Eco-Sensitive Zone (ESZ) of Rajaji National Park.[67] The petitioner informed that in the 31st Expert Committee Meeting held on September 14, 2018, the MoEFCC, in the Declaration of the ESZ around Wildlife Sanctuaries/ National Parks, has categorically stated that ESZ is extended from 01 KM to 20 km in the district of Haridwar and Pauri Garhwal.[68] The respondents informed that the stone crusher is operating as per the Stone Crusher Policy, 2016, and is situated at terrestrial distance of about 13 km from the core zone of Rajaji National Park, and ata distance of 6.4 km telescopically from the core zone of the Rajaji National Park. Further, it was informed that stone crusher is not operating beyond the permitted timing, and is not exceeding the crushing capacity of 400 tonnes per day.

The following issues emerge: whether the existing permit/licence holder would be required to comply with the requirements of subsequently amended environmental laws/policies? The court opined that the mandate of environment jurisprudence suggests that there is a need to comply with the conditions/norms of the new/amended policies issued thereafter, from time to time. The court held:[69]

> Environmental laws and norms are framed, and updated from time to time, keeping in view the evolving situation with regard to the prevailing levels of pollution as it develops; due to the changing standards; the upgradation of technology; the scientific discoveries which may be made, and the like. These laws/norms are framed to tackle the alarmingly growing scourge of pollution due to greater industrial and developmental activity, and growing population, which is putting ever increasing strain on our natural resources. These norms are not static. No person can claim a right to continue to cause higher pollution-only because the level of pollution that he is causing was permissible, when he was granted permission to carry out his polluting activity. He must adapt and comply with the new norms, or close down his polluting activity. Larger public interest, in such matters, takes precedence over personal interests. To protect the future generations, and to ensure sustainable development, it is

66 MANU/UC/0002/2023.

67 In light of the judgment of the Supreme Court in *T.N. Godavarman* v. *Union of India*, MANU/SCOR/87480/2018, it was directed that "under the circumstances, we direct that an area of 10 KMs around these 21 National Parks and wildlife sanctuaries be declared as Eco-sensitive zone."

> imperative that pollution laws are strictly enforced as they exist. Under no circumstances can industries, which pollute beyond permissible limits, be allowed to operate unchecked, and degrade the environment.

Another issue was: whether the stone crusher unit satisfies the conditions laid down in the 2021 Policy by the State Government? In this regard, the court examined the latest "Uttarakhand Stone Crusher, Screening Plant, Mobile Stone Crusher, Pulveriser Plant, Hot Mix Plant, Ready-mix Plant Permit Policy, 2021",[70]and observed that the policies clearly stipulates that the licencees are obliged to comply with the norms, as framed from time to time.[71] Thereafter, the court examined few decisions, and opined that although thedecisionsare not squarely attracted (as one case is on mining and not stone crushing;[72] whereas the NGT orders relates to the Nandhaur Wildlife Sanctuary and, as such, did not deal with the ESZ around the Rajaji National Park[73]), yet, the rationale which applies for not permitting mining activity within 10 km of a National Park, also applies to the stone crushing activity *vis-a-vis* air, water and noise pollution that such activity causes in the vicinity of the National Park. The Court relied upon the Supreme Court's decision[74] wherein it was held that "a minimum width of 1 km ESZ ought to be maintained in respect of the protected forests, which forms part of the recommendations of CEC in relation to Category B protected forests."[75]

With respect to the sufficiency of the height of the boundary wall, dust spread, time set for operation, *etc.*, the court observed that "the reports placed on record are not very clear with regard to compliance of the aforesaid norms."[76] Nevertheless, the court found that "it is abundantly clear" that the plants are not situated outside the ESZ of the Rajaji National Park/Rajaji Tiger Reserve. In other

68 *Devendra Singh Adhikari, supra* note 66 at para 9.

69 *Id*. at para 86.

70 The previous policies were first notified in 2008, and there afterwards in 2011, and 2016. *Id.* at para 87.

71 Uttarakhand Stone Crusher, Screening Plant, Mobile Stone Crusher, Pulveriser Plant, Hot Mix Plant, Ready-mix Plant Permit Policy, 2021, clause 22(8). In fact, the Policy of 2016 also had similar provision *viz.* clause 6(7).

72 In *Ayub* v. *State of Uttarakhand*, MANU/UC/0413/2018, the High Court of Uttarakhand directed the State to ensure that no mining activity is carried out within the radius of 10 KM from the boundaries of all National Parks.

73 The National Green Tribunal in *Nandan Singh Bora* v. *Union of India*, in OA No. 88/2016 and 367/2016, dated Dec. 17, 2018, held that no stone crusher shall operate within 10 KM of the Nandhaur Wildlife Sanctuary; and in *LSC Infratech Ltd.* v. *Union of India*, Review Application No. 54 of 2018 filed in OA No. 367/2016, dated Jan. 4, 2019, it held that "we, therefore, direct that, as prayed for by the applicant in O.A. No. 367/2016, all the cases of mining and stone crushers operating within the 10 KM of Nandhaur Wildlife Sanctuary and within the ESZ, if so notified, will be referred to the National Board of Wildlife (NBWL). Till it is approved by the NBWL such operations will be stayed."

74 *In re T.N. GodavarmanThirumulpad* v. *Union of India*, MANU/SC/0751/2022.

75 *Id*. at para 54.

76 *Devendra Singh Adhikari, supra* note 66 at para 97.

words, the respondents are running the stone crusher plant in breach of the mandatory and binding obligation of obtaining the approval of the NBWL.The court also noticed the fact that the State Pollution Control Board was excluded by the state government from the joint inspection process in order to ascertain whether any project proponent is complying with the pollution control norms. In this regard, the court observed:[77]

> By doing so, the State Government is practically dismantling the statutory regime for protection of environment, and removing the vigilance that the State Pollution Control Board is mandated by law to maintain in the State to prevent pollution. We, therefore, completely disapprove of the exclusion of the State Pollution Control Board from the process of joint inspection and direct the State to ensure that the State Pollution Control Board shall be called for participation in all inspection exercises, whenever the viability of a project is being assessed from the point of view of pollution control. Any inspection reports prepared without the participation of the State Pollution Control Board shall be illegal and would not form the basis of grant of permission to either set up, or operate a polluting plant/ industry. We further direct that even in cases where inspections may have been undertaken in the past, without the participation of the State Pollution Control Board, re-inspection should be carried out with their participation within the next three months, and consequential action be taken on the basis of such inspection reports.

Accordingly, the High Court of Uttarakhand granted permission to halt the functioning of the stone crusher plants, contingent upon the consent from the NBWL.[78]

In *Nikhil Construction Group Pvt. Ltd.* v. *The State of Maharashtra*,[79] the High Court of Bombay (Aurangabad Bench) dismissed the writ petition. The fact was: the petitioner undertakes construction activity and was engaged in construction of roads, bridges, small city development projects and water line projects and even has received an award from the State Government for completion of its projects. Now, pursuant to a tender, the petitioner secured a contract for up-gradation/reconstruction of the existing highway from Adhalgaon to Jamkhed stretch which is of 62.775 kms. The work order was issued on February 11, 2022 and was expected to complete the project within 18 months. It has completed around 40% of that work. Further, in order to facilitate completion of the highway project the stone crushing plant has been set up temporarily for crushing rubbles

77 *Id.*at para 98.

78 It was informed to the court that the Respondents have never applied to the NBWL for its approval. *Id.* at para 7.

79 MANU/MH/1400/2023

and stone aggregate.[80]It was averred that except crushing of the stones no other activity is being undertaken.[81] Interestingly, at around 1000 meters away a site for excavation of mines and minerals was situated.

It was alleged that due to the political pressure a monitoring committee was constituted to monitor the activities, which recommended closer (citing Supreme Court's direction) without giving an opportunity to be heard.The issuewas: whether the authorities were justified in relying upon the directions of the Supreme Court? or in other words, whether the authoritiesattempt to enforce the directives can be held illegal? The court found that pursuant to the notification dated February 11, 2020,[82] a monitoring committee under the chairmanship of collector and nine members was constituted. The committee by its communication dated December 13, 2020 expressly directed authorities to not accord permission to any activity prohibited by the notification within the peripheral 1 km wide ESZ within the Great Indian Bustard Sanctuary, Karjator within 1 km of ESZ.[83] The Court referred to the *In re:T.N. Godavarman*, which expressly directs 1 km distance measured from the demarcated boundary of a National Park or a Wild Life Sanctuary as ESZ.On the basis of perusal of the notificationdated February 11, 2020 (which prescribes 400-meter-wide land around the boundary of Great Indian Bustard Sanctuary as ESZ), and the directions issued in the *In re:T.N. Godavarman*, the court opined that there is no fault with the decision to hold stone crushing plant as illegal. Further, it was argued that there is a distinction between the mining activity and a stone crushing activity. The court while referring to the clause 4 of the notification dated February 11, 2020, and observed:[84]

> Allowing any such distinction in the two activities of stone quarrying and stone crushing as distinct activities would clearly do violation to the whole purpose and object for which *T.N. Godavarman* declares 1 km wide ESZ around all National Parks and Sanctuaries. It would be easy for anybody to defeat such objectives and directions by running stone quarry just beyond 1 km peripheral ESZ and set up a plant inside that ESZ. Bearing in mind the fact that the stone crushing plant essentially indulges in crushing of stones, in our considered view no such distinction can be made between the two activities 'quarrying' and 'crushing'. Any attempt to do that according to us would be contrary to the notification dated 11.02.2020 and the directions in *T.N. Godavarman*.

80 The stone crusher plant was erected in the vicinity of Great Indian Bustard Sanctuary, Karjat. and, the petitioner has obtained on leave and licence basis lands for non-agricultural use under the Maharashtra Land Revenue Code, 1966, s. 45. *Id*. at para 5.

81 *Id*. at para 6.

82 The notification dated Feb. 11, 2020 only declares 400-meter-wide peripheral land around the Great Indian Bustard Sanctuary, Karjatas ESZ.

83 *In re:T.N. GodavarmanThirumulpad* v. *Union of India*, MANU/SC/0751/2022 expressly directs that minimum 1 km distance measured from the demarcated boundary of a National Park or a Wild Life Sanctuary as ESZ,*id*. at paras 42 and 44.

84 *Nikhil Construction Group Pvt. Ltd, supra* note 79 at para 15.

With respect to the principles of natural justice, the court observed that since the communications regarding the closer were issued in obedience to the notification and the directions in *In re:T.N. Godavarman*, "relegating the petitioner before the respondents would be an exercise in futility."[85]

In *Goa Foundation* v. *State of Goa*,[86] a public interest petition was instituted to seek directions to State of Goa to notify Mhadei Wild Life Sanctuary (MWLS) as a "tiger reserve."[87] It was informed to the Court that in January 2020, the petitioner and other environmentalists have raised the issue of tiger protection before the State (after a tigress and her three cubs died from poisoning in MWLS) yet, nothing was done. Further, beginning in 2011, the Central Government and the NTCA have repeatedly recommended the State of Goa to notify MWLS and certain other contiguous areas as a tiger reserve, yet they were ignored. It was contended before the High Court of Bombay that no rationale was provided for not following the NTCA recommendations. The court after careful examination,framed five issues, and accordingly disposed of the petition with six absolute rules.

The *first* issue was, whether the NTCA's communication, action taken report, expert committee report, amounts to "recommendations" under section 38-V (1) of the Wild Life (Protection) Act, 1972 (Act of 1972)? The court opined that section 38-V (1) provides that the State Government shall, "on the recommendation of the Tiger Conservation Authority", notify an area as a tiger reserve. Here, the Act of 1972 neither defines the expression "recommendation" nor prescribes any particular form or format in which the NTCA could make a recommendation. In this regard, it is permissible to afford a "natural meaning to the expression "recommendation", bearing in mind the context of its setting in the statutory scheme."[88] The court opined that NTCA's "communications contain proper recommendations, not merely suggestions or advice."[89]

Secondly, whether the provisions of section 38-V (1) of Act of 1972, which provides that the state government shall, on the recommendation of the NTCA, notify an area as a tiger reserve, is mandatory or only directory? The Court considered the section 38-V (1) as mandatory for the reasons (i) it uses the expression "shall"; and (ii) construing it as directory would grant State to defy the recommendation of NTCA, which is an expert, high-powered central body constituted by Parliamentary legislationfor the specific purpose of adequate protection of the tiger and tiger habitat in India.[90]

Thirdly, whether, for want of final notification under section 26-A of Act of 1972,or due to non-settlement of rights and claims of forest dwellers, can the state government refuse or unreasonably delay the notification of the tiger reserve? It

85 *Id*. at para 16.

86 MANU/MH/2961/2023.

87 Wild Life (Protection) Act, 1972, chapter IV-B.

88 *Goa Foundation, supra* note 86 at para 74.

89 *Id*. at para 83.

90 *Id*. at para 90.

was contended on behalf of the State that proposing certain areas (Bhagwan Mahaveer Wildlife Sanctuary; MWLS and Netravali Wild Life Sanctuary) as tiger reserves without settlement of rights and claims of the forest dwellers "may be a premature, and will adversely affect larger public interest and further aggravate man-tiger conflict."[91] Here, the court after examining the affidavit noticed that "the State does not contend that issuing final notification under section 26-A of the Act of 1972 is a *sine qua non* for declaring the area a tiger reserve."[92] The court observed that on the careful analysis of the scheme of Act of 1972, it is clear that there is no bar or a legal impediment to notify a protected area as a tiger reserve even though final notification under section 26-A may not have been issued. Further, section 26-A declaration is made when a notification is issued under section 18, which prescribes two-year timeline for the settlement of rights and claims of forest dwellers.Further, the court noticed that section 18(1) notification for Bhagwan Mahaveer Wildlife Sanctuary was issued in 1967; for MWLS and Netravali Wild Life Sanctuary in 1999; and till date, *i.e.,* for 56 and 24 years, the State (even after the Supreme Court's mandate[93]) has not settled the rights and claims of forest dwellers. In other words, the State is not only defying the statutory timelines but also the express direction of the Supreme Court.

Fourthly, whether there are any statutory procedural fetters for notifying a tiger reserve? Here, the arguments were: there are no resolutions to back "suggestions or advise" of the NTCA; and therefore, the NTCA's communications had no legal sanction;and lack ofproper procedure.[94] Responding to these arguments, the court opined that no such defencewas raised in the return filed on behalf of the state government, and therefore, in its absence, the argument pertaining to the resolutions cannot be accepted.[95] Responding onto the second argument, the Court observed that even in the absence of consistent practice and procedure, there are instances wherein the tiger reserves were approved even in the absence of any proposal from the state government.[96] Further, the court noted that the recommendation to notify MWLS was based on the recommendation contemplated by section 38-V (1) and directions issued under section 38-O (2) of the Act of 1972. In fact, in order to substantiate the argument of vague practice or undefined procedure it must meet requirements of Act of 1972.[97] Therefore, even

91 *Id*. at para 102.

92 *Id*. at para 103.

93 *Centre for Environment Law, WWF-India* v. *Union of India*, order dated Aug. 22, 1997 in Writ Petition No. 337 of 1995.

94 It was contended that contended that the NTCA procedure contemplates invitation of the proposal from the State to notify to constitute tiger reserve, grant of "in principle" approval by the NTCA to such proposals, and the final approval after the tiger reserve States submit the tiger conservation plan under s. 38-V (3) of the Wild Life (Protection) Act, 1972. *Goa Foundation, supra* note 86 at para 114.

95 *Id*. at para 115.

96 *Id*. at para 116.

97 The provisions of chapter IV-B of Act of 1972 do not expressly contemplate the invitation of the proposal from the State before any recommendation can be made or directions issued to notify a tiger reserve. *Id*. at para 122.

assuming that there is any procedure or practice, the same cannot operate as a fetter to the NTCA recommending the State Government to notify a tiger reserve.The Court opined:[98]

> The State Government cannot avoid notifying MWLS and other areas as a tiger reserve based upon such alleged and vague procedural fetters. Though the NTCA can formulate its procedure, it cannot impose any impediments when the Parliamentary Statute that constitutes it has chosen not to do so. So also, the states cannot place such fetters on the NTCA based on some vague practices or undefined procedures.

Fifthly, with respect to the State'sclaim that equal protection is due to all wild animals, and not just tigers, the court opined:[99]

> …the entire ecosystem, including other animals, is protected by protecting the tiger. As discussed earlier, the tiger is a unique animal which plays a pivotal role in the health and diversity of an ecosystem. It is a top predator at the apex of the food chain. Therefore, the presence of tigers in the forest is an indicator of the well-being of the ecosystem. Protection of tigers in forests protects the habitats of several other species. Indirect benefits of preserving a tiger include several ecosystem services like protection of rivers and other water sources, prevention of soil erosion and improvement of ecological services like pollination, water table retention etc. Conversely, the absence of this top predator indicates that its ecosystem is not sufficiently protected. Based on such considerations, not only was the Project Tiger formulated by the Central Government but the Parliament deemed it appropriate to arm this project with a statutory status by amending the Act of 1972 and constituting the NTCA to give special protection to tigers and tiger habitats.

VI INVOLUNTARY DISPLACEMENT

In *Anil Agarwal Foundation* v. *State of Orissa*,[100] Sterlite Foundation (which later changed its name to Vedanta Foundation) sought land from the State of Orissa for setting up of a university. In the application it was prayed that the government should make available 15,000 acres of contiguous land, and should also coordinate the land acquisition process. Thereafter, a memorandum of understanding was signed between the government and the company. The government confirmed the availability of contiguous land, along with an additional contiguous land and other facilities. In the meantime, the opinion of the law department was sought on the questions: whether the foundation is an education foundation; and whether land was required to be acquired for public

98 *Id*. at para 118.
99 *Id*. at para 125.
100 MANU/SC/0372/2023.

purpose.[101] Later, the opinion of the law department was again sought,which suggested that the land can be acquired for a 'Public Company' under LAA in accordance with Part VII. Accordingly, the Vedanta Foundation changed its name to Anil Agarwal Foundation, and in a meeting of the Board of Directors, a resolution was passed to change the status. Thereafter, notifications were issued for acquisition of land, awards were declared, and the possession of land was delivered.

Since, vast tract of lands belonged to the poor and small farmers,[102] two writ petitions (one by the original landowners whose lands have been acquired and one by way of public interest litigation on behalf of the small landholders, who could not approach the court and also on behalf of the people of the locality) were filed before the high court. The division bench of the High Court of Orissa allowed the writ petitions and quashed the land acquisition proceedings and the award passed. The high court also directed that the possession of the acquired lands shall be resorted to the respective land owners irrespective of the fact whether they had challenged the acquisition of their lands or not. Accordingly, the matter came before the Supreme Court.

The Supreme Court questioned the manner in which the State Government had dealt with and acquired the agricultural lands.On the perusal of facts, the Court noticed that the interest of the private limited company (which subsequently converted to a public company[103]) was favoured as against the poor families.[104] The court also noticed that just across the road, there was a Wildlife Sanctuary, which was just adjacent across the road to the proposed university and the lands acquired; andtherefore, the large-scale construction would adversely affect the wildlife sanctuary, the entire eco system and the ecological environment in the locality. The court observed that strangely this aspect was not at all been considered while considering the proposal and/or even the objections under section

101 The law department opined that the land could be acquired for the purpose of educational scheme under the Land Acquisition Act, 1894, (LAA) provided government sponsors to carry out an educational scheme or by a registered society with prior approval of the government. Alternatively, the law department opined that the administrative department may verify if acquisition of land can be made under section 15 of the Orissa Industrial Infrastructural Development Corporation Act, 1980. The administrative department was of the view that the second option to go through IDCO was not feasible and suggested to consider as to whether the Higher Education Department will sponsor and own the project directly and whether it would be done through a society to be framed by the Higher Education Department. Accordingly, it was decided to explore the alternative of the private company to be converted into a public company. *Id*. at para 3.

102 The Supreme Court noticed that the dispute is with respect to the acquisition of about 6000 acres of land belonging to about 6000 families, affecting approximately 30,000 people. *Id*. at para 2.1.

103 The court noticed this aspect and opined that "the subsequent alleged conversion from private company to public company was an attempt to get out of the statutory provision under the [LAA]" and therefore is "a *mala fide* exercise on the part of the Appellants". *Id*. at 8.6.

104 The court found that the statutory requirements of LAA and Land Acquisition (companies) Rules, 1963 were not complied with. *Id*. at para 8.2.

5A of the LAA.[105] For these reasons, the Supreme Court held that the high court was correct and justified in setting aside the entire acquisition proceedings, which was vitiated by non-compliance of the statutory provisions, *mala fides*, favourism, and non-application of mind.

It is the cardinal principle of the rule of law, that nobody can be deprived of liberty or property without due process, or authorization of law. Therefore, whenever a person is deprived of property, the State is required to show a higher responsibility in demonstrating that it has acted within the confines of legality, and, has not tarnished the basic principle of the rule of law.This aspect was carefully noticed by the High Court of Andhra Pradesh in *Mukkamala Estates Pvt. Ltd.* v. *Tahsildar, Irahimpatnam, Krishna District*.[106] While allowing the writ petition, the court observed thatcase has a chequered history (from 1970 to 2003). In fact, starting from 1970, the case saw multiple section 4 notifications.[107] The court observed that the petitioner's specific case was that the land was never notified,which appears to be correct on the basis unclear, vague, and ambiguous notifications issued under the Estate Abolition Act, 1948, the Andhra Pradesh Forest Act, 1967, and Rules thereunder. The requirement of land acquisition laws is quite clear, *i.e.,* the authorities while giving description of land must ensure that it is not vague description of the proposed area. In such cases, the statutory mandate should be scrupulously and strictly complied with. The court observed that the notifications should contain sufficient details of the land, extents proposed to be notified with Survey numbers etc.[108] Accordingly, the court held that on the basis of cumulative failures on part of Forest Department, the land in question,was not notified as a Forest Area, and accordingly, the petitioner's claim over the land was rightly upheld.[109]

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

The Panchayat Extension to Schedule Areas Act, 1996 (PESA) was enacted to protect tribals traditional way of living and customary rights. It provides for the extension of the provisions of Part IX of the Constitution relating to *Panchayats* to the Scheduled Areas.This aspect was noticed by the High Court of Chattisgarh in *Gulshan Kumar* v. *State of Chhattisgarh*.[110] The grievance of the petitioner was that without obtaining consent from the Gram Sabha of Cherwapara, the Chief Executive Officer, Zila Panchayat Koriya, had constructed 18 shops and was going to auction the same. It was alleged that the State authorities initiated the exercise of construction and allotment of shops over government lands situated within Gram Panchayat Cherwapara. Against which, the members of the Gram Sabha immediately passed a unanimous resolution raising objection against the construction and allotment of shops without seeking prior consent and approval

105 *Id*. at para 8.18.
106 MANU/AP/0412/2023.
107 Andhra Pradesh Forest Act, 1967, s. 4.
108 *Mukkamala Estates Pvt. Ltd., supra* note 106 at para 74.
109 *Id*. at para 75.
110 MANU/CG/1473/2023.

of Gram Sabha, Cherwapara.It was also informed thatthe *sarpanch* of Gram Panchayat Cherwapara has issued a certificate that no consent or approval was ever obtained from the Gram Sabha before raising the construction or development works in the Gram Panchayat. In response,the Chief Executive Officer, Zila Panchayat Koriya, submitted that in so far prior consent or approval is concerned, the matter of construction was taken up before the meeting of Gram Panchayat Cherwapara, wherein the issue was taken up and discussed among the members of the *panchayat* and appropriate consent has been given for auction of already constructed 18 shops. He further submitted that as per the contents of the resolution dated February 7, 2023 passed by the Gram Panchayat, it is clear that out of the 18 shops the rent derived from 9 shops shall be given to the Gram Panchayat for carrying out its developmental and welfare work.

While dismissing the writ petition, the High Court of Chhatisgarh observed thatthe Chief Executive Officer, Zila Panchayat Koriya, had stated in the reply that consent was obtained from the concerned Gram Panchayat, therefore, there is no violation of the provisions of section 4 of the PESA. Subsequently, the court examined the provision of PESA, specifically 4(d)[111] and section 4(i),[112] which together require compliance with the customary law, social and religious customs, and traditional management methods of community resources.

In *Vijay Singh Thakur* v. *Union of India*,[113] the High Court of Chhatisgarh dismissed the public interest litigation challenging the constitutionality of Madhya Pradesh Municipal Corporation Act, 1956 (MPMC) and Madhya Pradesh Municipalities Act, 1961, (MPMA) in so far it extends to the scheduled areas of Chhattisgarh notified under the Vth schedule of the Constitution of India. The contention was that both MPMC and MPMA are in violation of Article 243ZC of Constitution and till date the Parliament of India has not enacted any law extending the provision of Part-IX-A of the Constitution of India to the scheduled areas. Further, the application of MPMC and MPMA to the scheduled areas without giving exception and benefits to the tribal community (as given under the PESA) violates the fundamental rights of scheduled tribes under article 14 and 21 of the Constitution. In response, Union of India has filed its reply wherein it was submitted

111 The Panchayat Extension to Schedule Areas Act, 1996, s. 4(d), provides:

(d) every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution;

112 The Panchayat Extension to Schedule Areas Act, 1996, s. 4(i), provides:

(i) The Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of the land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level;

113 MANU/CG/0853/2023.

that the text in Article 243ZC(1)[114]and Article 243ZF[115] is quite clear, and as such no Bill has been passed by the Parliament to extend the provisions of Part-IXA of the Constitution to scheduled areas. The reply confirmed that"the provisions of Part-IXA do not extend to scheduled areas."[116]

In *Madhya Pradesh Adiwasi Vikash Parishad* v. *The State of Madhya Pradesh*,[117] a public interest litigation was filed against a function, to be organized, in a tribal area,which has the potential to offending the religious sentiments of the tribal population. The relevant provisions referred were sections 4 (d), 4 (f), and 4 (m) of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA) along with Article 19(5) and Schedule V of the Constitution. It was contended that a conjoint reading of the provisions suggests for seeking concurrence of Gram Panchayat to organize any religious or public function.

The court opined that on a combined reading or a separate reading of section 4 of the PESA, there is nothingwhich calls "for taking permission from the Gram Panchayat to organize any religious or public function."[118] According to the court, the correct position is that *Panchayats* in the Schedules area is given sufficient autonomy to function as an institution of self-government for which purpose autonomy is given. Now, with respect to the application of Schedule 5 of the Constitution, the court held that 5th Schedule does not provides for provisions as to the administration and control of scheduled areas and Scheduled tribes.[119] With respect to Article 19, the court referred to the Supreme Court decision,[120] wherein it held that:[121]

> The framers of the Constitution could have made a common draft of restrictions which were permissible to be imposed on the operation of the fundamental rights listed in Clause (1) of the Article 19, but that has not been done. The common thread that runs throughout sub-clauses (2) to (6) of the Article 19 is that the operation of any

114 It states that "nothing in this part (Part-IXA) shall apply to the Scheduled areas referred to in clause (1), and the tribal areas referred to in clause (2), of Article 244 of the Constitution of India."

115 It states that "notwithstanding anything in this Part (Part-IXA), any provision of any law relating to Municipalities in force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier."

116 *Vijay Singh Thakur, supra* note 113 at para 5.

117 MANU/MP/1345/2023.

118 *Id*. at para 16.

119 *Id*. at para 17. The court opined "As far as understanding of law goes Gram Panchayat is not bestowed with the authority to maintain law and order in the district or within the Gram Panchayat. Law and order still continue to be the exclusive domain of the district administration under the three-tier system of the public administration." *Id.* at para 18.

120 *Dharam Dutt* v. *Union of India*, MANU/SC/0970/2003.

121 *Id*. at para 35.

> existing law or the enactment by the State of any law which imposes reasonable restrictions to achieve certain objects, is saved; however, the quality and content of such law would be different by reference to each of the sub-clauses (a) to (g) of clause (1) of Article 19….

Accordingly, while dismissing the petition the court held that there is no material on record that any of the sentiments of the tribal population are going to be disturbed.

In *Marri Venkata Rajam* v. *Prl Secy, Panchayat Raj and Rural Devt Dept, Hyderabad*,[122] the High Court of Telangana, in its dismissal of the writ appeals, refrained from altering the directions issued by the single judge. The contention raised on behalf of the petitioners was that the Scheduled Areas (Part B States) Order 1950 dated December 7, 1950 issued under paragraph 6 of Fifth Schedule to the Constitution has not notified the Mangapet Mandal of Mulugu Taluq, Warangal District as scheduled area and the fact that as on the date of promulgation of Presidential Order on December 7, 1950, Mangapet Mandal was not in Paloncha Taluq but in Mulug Taluq and in the Presidential Order several villages of Mulug Taluq were notified as Scheduled Area but Mangapet Mandal and its villages were not notified as scheduled areas. It was further submitted that after the advent of the Constitution, irrespective of historical, factual or legal situation, no land or area can be declared or recognized as scheduled area unless so notified explicitly by Presidential Order as mandated by paragraph 6 of the Fifth Schedule of the Constitution of India.

The court observed that the rules framed under the Andhra (Telangana Tribal Areas) Regulation, 1359 Fasli,[123] with regard to exclusion of the jurisdiction of the civil and criminal courts to notified tribal areas and vesting of such powers in the agent or the tribal panchayats, appears to bein confirmation with Article 366(10) and Article 372(1) of the Constitution of India. And therefore, the court opined that in the absence of specific order denuding or deleting the tribal areas status conferred by the Tribal Areas Regulations, 1359 Fasli (1949 AD) to the 23 villages, it cannot be said that the status given to these villages as scheduled areas came to an end in view of adopting the Constitution or issuance of the Presidential Order *i.e.,* Scheduled Areas (Part B States) Order, 1950 on December 7, 1950. The court opined that the Notification dated November 16, 1949 issued by Government of Hyderabad is still in force as it is existing law. Thus, the law made prior to the adoption of the Constitution is enforceable even after adoption of the Constitution unless the competent legislature has amended the existing law to cater to the needs of the tribal community. Further, the court held that "writ petitioners cannot

122 MANU/TL/0912/2023.

123 Earlier, it was Tribal Areas Regulation, 1356 Fasli, *id.* at para 12. The Notification in issue (Notification No. 2 dated November 16, 1949) was issued in exercise of the powers conferred under sub-section (2) of section 1 of the Andhra (Telangana Tribal Areas) Regulation, 1359 Fasli, by the Government of Hyderabad.

take advantage of non-implementation" of the Regulations and the benefits derived from them.[124]

VIII CONCLUSION

In the face of climate crisis, the need to work together has never been more urgent. India has roughly 300 million people depending upon country's forest for their livelihood. As the loss of environment is becoming permanent, managing to protect forest is becoming a tougher task. For instance, on the occasion of 50 years of Project Tiger, the NTCA Chief, SP Yadav said that "there are 53 tiger reserves in the country and many more will be added to the list soon."[125] The move however was opposed by the indigenous *Idu Mishmi* people (also known as *Chulikota*), who have had a long tryst with displacement.[126] Interestingly, the Delhi Government launched aprogramme which provides free training to people interested in forest and wildlife conservation.[127] The objective is to increase conservation efforts amongst the people and accordingly boost forest and wildlife conservation efforts in the national capital. Also, the Delhi government has prepared a draft SOP (on the Order of High Court of Delhi) on Delhi Preservation of Trees Act, 1994 (on the Order of High Court[128] of Delhi) which contemplates establishment of forest stations with lock-up facilities, 24x7 control rooms at par with police control room, prosecution cell and creation of a dedicated website and mobile application.

Our courts too have exhibited a varied approach in dealing with matters pertaining to forests. While there have been important decisions made, the essential instructions given through *T.N. Godavarman* (the longest-running ongoing mandamus in India) need elucidation.[129] It is important to emphasise that forest regulations require a collaborative and coordinated effort from all parties involved,

124 *Id*. at para 21.

125 *See* Jayashree N. "Centre likely to soon notify Dibang Tiger Reserve", *Hindustan Times* (Mar. 29, 2023).

126 *See*SyedaAmbiaZahan, "A Defaced Mural, Two Arrests: Arunachal Pradesh's Tryst With Anti-Dam Movements", *Outlook* (Apr. 06, 2022), *available at:*https://www.outlookindia.com/national/will-a-defaced-mural-two-arrests-renew-arunachal-s-focus-on-anti-dam-movement—news-190158 (last accessed on); Manju Menon, "How consent for Dibang dam was manufactured by terrorising the people of Arunachal Pradesh", *Scroll.in* (Jul. 25, 2019), *available at*: https://scroll.in/article/931504/how-consent-for-dibang-dam-was-manufactured-by-terrorising-the-people-of-arunachal-pradesh (last visited on Feb. 20, 2024). For detailed information regarding *Mishmi's*, *see* P.M. Bakshi and Kusum (eds.), *Land System of Arunachal Pradesh* 86-108 (N.M. Tripathi, Bombay, 1989).

127 PTI, "Delhi govt to train people interested in wildlife conservation for free", *Business Standard* (Apr. 06, 2023), *available at*: https://www.business-standard.com/india-news/delhi-govt-to-train-people-interested-in-wildlife-conservation-for-free-123040600907_1.html (last visited on Feb. 20, 2024).

128 Priyangi Agarwal, "Forest station, control room among plans to protect trees", The Times of India (Jul. 26, 2023), *available at:* https://timesofindia.indiatimes.com/city/delhi/forest-station-control-room-among-plans-to-protect-trees/articleshow/102125555.cms (last visited on Feb. 20, 2024).

especially in the backdrop of global boiling.Perhaps, this is an opportune moment to recognise that forest conservation necessitatesa combined involvement of all stakeholders to achieve a shared outcome. Put simply, now is the moment to collaborate towards a future that remains within our power to shape.

129 *See* Nupur Chowdhury, "From Judicial Activism to Adventurism — The Godavarman Case in the Supreme Court of India", 17 *Asia Pacific Journal of Environmental Law* 177-189 (2014). The author establishes that the length of the *T.N. Godavarman* case (ongoing since 1995) is an "evidence of the Court's inability to provide a logical and targeted reason for its intervention." *Id*. at 189.