

Conservation & Rights of Indigenous People – A Legal Perspective

Nadisha Vazirani¹

Abstract

Ecosystem dwellers' of all kinds – wild animals, plants and indigenous people inhabiting these natural spaces are in a crisis today.² Adding to the complications, are the wildlife conservation strategies of modern nation States that tend to view indigenous people as being opposed to cause of conservation. World-over, including in India, wildlife conservation and the rights of indigenous people tend to be viewed as mutually exclusive goals. This is despite reports of U.N and other international organizations, recognizing Indigenous peoples' stewardship and relationship with nature.³ Exclusionary conservation regimes in India too, have not taken the rights of forest dwellers, including inter alia their right to forest produce, into account. There is a need to reconcile the conflicting goals of conservation and indigenous peoples' rights', so as protect them both.⁴ This paper is an exercise to that end.

Introduction

The co-existence of wildlife and indigenous populations has mostly evoked diverse reactions.⁵ Given their symbiotic relation with nature and dependence on forest produce, this paper examines how exclusionary conservation regime in the form of Protected Area (PA) network impinges on indigenous peoples' access to their resource base, thereby threatening their livelihood. The sub-parts of this research paper address the afore-said issues in the international and Indian legal context. For the purposes of this paper, the researcher has adopted the doctrinal research method, relying on databases and secondary source of information available in libraries including books, journals, articles, reports and government /official publications.

Indigenous peoples make up around 5 per cent of the global population and occupy, own or manage an estimated 20 per cent to 25 per cent of the Earth's land

¹ Ms. Nadisha Vazirani, PhD Scholar @ University of Mumbai, Email: nadishav@gmail.com

² Ashish Kothari and Neema Pathak, *Conservation and Rights in India: Are we moving towards any kind of harmony?* in Rights and Resource Initiative, "Deeper Roots of Historical Injustice: Trends & Challenges in the Forests of India", (Rights and Resource Initiative, Washington DC, 2012)

³<https://www.culturalsurvival.org/publications/cultural-survival-quarterly/conservations-impacts-indigenous-peoples-conversation>

⁴ Supra note 2

⁵ A.K. Jha, *Wildlife and Indigenous People*, Vol. 29, No. 33, E.P.W., p. 2131 (Aug. 13, 1994)

surface.⁶ This brings us to the question, who are indigenous people? There is no universally accepted definition of indigenous people that captures their diversity. The International Labor Organization (ILO), Indigenous and Tribal People Convention, C.169 (Convention No.169) uses the terms “*indigenous and tribal people*.” Article 1.2 of the ILO Convention No. 169 also states that: “*self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply*”.

Based on the principles of equality and non-discrimination which govern the ‘human rights’ framework, indigenous people have the same ‘human rights’ as any other individual.⁷

Inhabiting varied landscapes, including inaccessible terrains, hills and dense forests, the indigenous people are dependent on their habitat for survival. Thus access to land and productive resources (forest, fishing, water, etc.) are pre-requisite to indigenous people’s right to food and livelihood. The cultural identity and heritage of indigenous people is inseparable from their traditional lands. Indigenous People obtain food directly from their lands by hunting, gathering or cultivating; they may also acquire food indirectly by marketing their produce.⁸

The United Nations Declaration on the Rights of Indigenous People (UNDRIP) is an important legal instrument for the recognition, promotion and protection of the rights and freedom of the indigenous people. Article 26 of the UNDRIP declares that, “Indigenous People have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired and States shall give legal recognition and protection to them”.

Additionally, the ILO Convention No.169 is a call to states to respect indigenous lands and territories. It states that, “the rights of indigenous People to the natural resources pertaining to their lands shall be specially safeguarded”.⁹ Agenda 21, which was adopted by the United Nations Conference on Environment and Development (Earth Summit) in 1992, also mandates protection of indigenous

⁶<https://www.un.org/development/desa/indigenouspeoples/meetings-and-workshops/expert-group-meeting-on-conservation-and-the-rights-of-indigenous-peoples.html>

⁷United Nations Declaration on the Rights of Indigenous People (UNDRIP), Article 1 states that, “*Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.*”

⁸FAO, Right to Food and Indigenous People, https://www.unscn.org/web/archives_resources/files/Focus_Right_to_food_and_Indigenous__566.pdf (May.8, 2017, 18:00 p.m.)

⁹ ILO Convention No.169, Article 15(1) and (2)

people's rights. It provides for the protection and strengthening of indigenous People' access to and utilization of resources which form the basis for ensuring indigenous People' food security.¹⁰ Reportedly¹¹, there is a significant overlap between ancestral lands of Indigenous Peoples and areas which retain the highest levels of biodiversity on earth.¹² These lands make up about 22% of the world's land surface and contain approximately 80% of the planet's biodiversity.¹³ Particularly in the Americas, Australia, New Zealand, India, Nepal, and the Philippines, many protected lands are on Indigenous lands.¹⁴ These facts require a conservation approach that accounts for the rights and experiences of Indigenous Peoples.¹⁵ They often face the negative impacts of 'fortress' conservation programs - based on the concept of protecting biological resources and land and seascapes, while excluding human beings from these areas.¹⁶

The ensuing discussion throws light on such 'fortress' conservation approach and its legal implications on the rights of indigenous peoples, in particular to their rights to land and resources.

'Fortress' Conservation v/s Indigenous Peoples' Rights – The Global Context

The origin of "Protected Areas" as form of conservation lies in the context of 19th century colonialism. Protected Area means a "geographically defined area which is designated or regulated and managed to achieve specific conservation objectives."¹⁷ The first "modern" protected areas with an understanding of "pristine nature" devoid of human intervention and occupation began in the United States with the establishment of Yellowstone National Park in 1872¹⁸ followed by the establishment of the Yosemite National Park in 1890 whereby the US government violently expelled Native Americans living in or dependent on the resources in the areas.¹⁹

¹⁰ Agenda 21, Chapter 26, Recognizing And Strengthening The Role Of Indigenous People And Their Communities, United Nations Conference on Environment & Development Rio de Janeiro, Brazil, 3 to 14 June (1992) <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>

¹¹ Victoria Tauli-Corpuz, *UN Special Rapporteur on the Rights of Indigenous Peoples*, Report to the 71st Session of the UN Human Rights Council, 29 July 2016, A/71/229, <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2019/01/N1624109.pdf>

¹² Ibid

¹³ Ibid

¹⁴ Ibid

¹⁵ Ibid

¹⁶ <https://www.un.org/development/desa/indigenouspeoples/meetings-and-workshops/expert-group-meeting-on-conservation-and-the-rights-of-indigenous-peoples.html>

¹⁷ Convention on Biological Diversity, 1992, Art. 2.

¹⁸ Anju Lis Kurian, C Vinodan, Origin of Conservation Refugees: The Downside of Environment Protection In India, vol LIII nos 26 & 27 E.P.W. 48, 48-55 (JUNE 30, 2018)

¹⁹ Supra note 11

The exclusionary “fortress” approach to protected-area management spread across North America, to Africa, Australia, New Zealand, and the Russian Federation and to parts of Asia and Latin America. Reportedly, Protected Areas have almost doubled in size since 1980 alone, from 8.7 million square kilometers to 16.1 million square kilometers in 2000.²⁰ Such displaced people are “conservation refugees.”²¹ It has been estimated that 50 per cent of protected areas worldwide has been established on the traditional territories (lands and waters) of indigenous peoples. This proportion is even higher in the Americas, where it may exceed 90 per cent in Central America. Bolivia, Brazil, Chile and Colombia, as well as Canada and the United States of America, all have a high percentage of protected areas on indigenous traditional territory. Overlap is also significant in Australia and New Zealand. Most of the protected areas in India, Nepal and the Philippines include the territories of indigenous peoples. Botswana, Cameroon, Kenya, Namibia, South Africa and the United Republic of Tanzania are among the African countries in which large parts of the protected areas are located on indigenous peoples’ ancestral domains, thus reflecting that, colonial mindsets persists globally.²² Colonial and post-colonial administrations around the world claimed common land for the State, without regard for the existing rights of traditional ownership and use under customary tenure, dispossessing and alienating millions of indigenous people from their livelihood resources.²³

In light of the above let us turn to the situation in our country. To this end, the ensuing discussion focuses on the policy and legal developments concerning conservation and its interface with tribal forest dwellers of India.

Conservation v/s Indigenous People – The Indian Context

The extensive network of Protected Areas (hereinafter ‘PAs’) *covering nearly 5% of the country’s territory*²⁴ are not only home to some of India’s most traditional communities – *the forest dwellers* (tribal as well as non-tribal), but also repositories of valuable natural resources.²⁵ Therein lay a cauldron of simmering conflicts. Reportedly,

²⁰ Jenny Springer and Fernanda Almeida, Protected areas and Land Rights of Indigenous Peoples and Local Communities, (Rights and Resources Initiative, 2015).

²¹ Supra note 18

²² Supra note 11

²³ Ibid

²⁴ *Official statistics reveal a total of 764 PAs in our country (viz., 103 NPs, 543 WLSs, 73CRs and 45 Community Reserves),* http://www.wiienviis.nic.in/Database/Protected_Area_854.aspx (September 15, 2017, 12:00 p.m.)

²⁵ Ashish Kothari, Saloni Suri and Neera Singh, *Conservation in India: A New Direction*, Vol. 30, No. 43 E.P.W. 2755, pp. 2755-2766 (October 28, 1995)

human population inside PAs is estimated at 2.5 to 3 million.²⁶ These PAs, envisaged under the Wildlife Conservation Act (hereinafter 'WLPA'), 1972.²⁷ In PA after PA a variety of issues have been reported²⁸ and such PAs have become a hot-bed of struggle for the forest dwellers in respect of their access to the forest produce contained therein.²⁹ Some examples illustrate this complex reality such as the banning of NTFP collection by Soliga tribes from the Biligiri Rangaswamy temple (BRT) Wildlife³⁰ or the eviction of Saharias, one of the country's 75 most vulnerable tribal groups from the Kuno Wildlife Sanctuary which reportedly resulted not only in a food crisis, but a break-down of their entire livelihood.³¹ In Kanha, one of India's largest PAs, any form of human interference such as accessing forest produce, hunting etc is completely prohibited. The 'fences and fines' regime under the Wildlife Protection Act, 1972 also reportedly affected those who survived on making and selling of bamboo articles, as collection of bamboo was prohibited from the Kanha National Park. These are symptomatic of the forest dwellers' plight in other PAs as well such as, in the Pench Tiger Reserve, the Phoolvari Ki Nal, the Sitamata Sanctuary, the Simplipal Tiger Reserve, the Rajaji National Park, the Sariska Tiger Reserve, the Melghat Sanctuary and Tiger Reserve, the Nagarhole National Park, amongst others. Though degree of deprivation varies depending upon the category of PAs, it is reportedly absolute.³² Apart from forced/induced displacement, the more common impact has been the curtailment or extinguishing of access to natural resources inside PAs. This has reportedly had a direct impact on their survival and livelihood base.³³ The ensuing discussion attempts to throw light on the same by expounding the wildlife conservation law in India.

The present-day State conservation strategy in the form of wildlife sanctuaries and national parks viz., Protected Areas has its predecessor in sporadic attempts by

²⁶ Ashish Kothari and Neema Pathak, *Conservation and Rights in India: Are we moving towards any kind of harmony?* in Rights and Resource Initiative, "Deeper Roots of Historical Injustice: Trends & Challenges in the Forests of India", (Rights and Resource Initiative, Washington D.C., 2012)

²⁷ Section 2(2A) "protected area" means a National Park, a sanctuary, a conservation reserve or a community reserve notified under sections 18, 35, 36A and 36C of the Act. Ins. by Act 16 of 2003, s. 3 (w.e.f. 1-4-2003)

²⁸ Supra note 25

²⁹ Ananya Mukherji, *Conflict and Co-existence in a National Park*, Vol.44, No.23 E.P.W. p.52, pp. 52-59 (June 6-12, 2009)

³⁰ Ashish Kothari, Saili Palande, Milind Wani and Keya Acharya, *Forest Fires And The Ban On NTFP Collection In Biligiri Rangaswamy Temple Sanctuary, Karnataka: Report of a Field Investigation and Recommendations for Action* (Kalpavriksh, 25th June, 2007)

³¹ Asmita Kabra, *Conservation-induced Displacement: A Comparative study of Two Indian Protected areas*, *Conservation and Society* 7(4): 249-267, 200

³² Report of the Workshop on *Declining Access to and Control over Natural Resources in Sanctuaries and National Parks by the People*, PRIA and RLEK; 28-30 October, 1993

³³ Supra note 25

previous rulers of India.³⁴ The work of historians and other scholars reveal several aspects of *forest and wildlife conservation of the 'Arthashastra'*, a treatise on Statecraft (attributed to Kautilya in 300 BC).³⁵ The Mughals reigned during the seventeenth century. It is well documented that there were a range of imperial hunting grounds of the Mughal emperors in different subas or provinces.³⁶ However, the Colonial 'conservation' regime was clearly a notable break from the past.³⁷ Colonial rulers introduced a centralised and commerce-oriented system of natural resource management.³⁸ In keeping with this line of approach, 19th century witnessed exclusionary models of conservation. Colonial rulers enacted the 'National Parks Act, 1934' and created the country's first Protected Area (PA) viz., the Corbett (then Hailey National Park).³⁹ In the garb of 'Conservation' the basic agenda was to have tracks of land with privileged access for a few.⁴⁰ This exclusionary model of conservation has been carried forward and forms the basis of the official conservation strategy of independent India. Following the enactment of the Wildlife Protection Act, 1972, State governments rapidly expanded their network of Protected Areas.

The Wildlife Protection Act, 1972 empowers the government to notify its intention to constitute areas of adequate ecological, faunal, floral, geomorphological, natural or zoological significance as a Wild Life Sanctuary⁴¹ or a National Park.⁴² It is pertinent to note that the relevant provisions⁴³ of the Wildlife Protection Act, 1972 do not provide any scope for public consultation before notification of an area as a

³⁴ Neema Pathak and Ashish Kothari, *Sharing Benefits of Wildlife Conservation with Local Communities: Legal Implications*, Vol. 33, No. 40 E.P.W. p. 2603, pp. 2603-2610 (Oct. 3-9, 1998)

³⁵ Manju Arora, *Forests and Wildlife Law & Rights of Indigenous People* (The Institute of Constitutional and Parliamentary Studies, New Delhi and Hope India Publications, Gurgaon, 2009)

³⁶ Mahesh Rangarajan, *India's Wildlife History: An Introduction* (Permanent Black, Delhi 2001)

³⁷ Vasant Saberwal, Mahesh Rangarajan and Ashish Kothari, *People, Parks and Wildlife; Towards Co-existence* (Orient Longman, New Delhi, 2001)

³⁸ Supra note 34

³⁹ R.P. Tucker, *The Depletion of Forest Under British Imperialism* in D. Worster (ed), *The Ends of the Perspectives on Modern Environmental History* (Cambridge University, New York, 1988) in Vasant Saberwal, Mahesh Rangarajan and Ashish Kothari, *People, Parks and Wildlife; Towards Co-existence* (Orient Longman, New Delhi, 2001)

⁴⁰ Vasant Saberwal, Mahesh Rangarajan and Ashish Kothari, *People, Parks and Wildlife; Towards Co-existence* (Orient Longman, New Delhi, 2001)

⁴¹ Section 18 (1) The State Government may, by notification, declare its intention to constitute any area other than an area comprised within any reserve forest or the territorial waters as a sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance, for the purpose of protecting, propagating or developing wild life or its environment.

(2) The notification referred to in sub-section (1) shall specify, as nearly as possible, the situation and limits of such area

⁴² Section 35 (1) Whenever it appears to the State Government that an area, whether within a sanctuary or not, is, by reason of its ecological, faunal, floral, geomorphological or zoological association or importance, needed to be constituted as a National Park for the purpose of protecting, propagating or developing wild life therein or its environment, it may, by notification, declare its intention to constitute such area as a National Park

⁴³ WLP, Section 18 (1) and Section 35 (1)

Wild Life Sanctuary or a National Park. This is bound to impact forest dwellers residing in such areas and depending on the natural resources, especially various kinds of forest produce in the area, for their food and livelihood. The Wildlife Protection Act, 1972 empowers the Collector to inquire into, and determine, the existence, nature and extent of the rights.⁴⁴ The process of the so-called 'settlement of rights' includes the issue of a proclamation by the Collector requiring claimants to prefer their claims within two (2) months of the issue of Proclamation in the prescribed form, specifying the nature and extent of such right. Moreover, Wildlife Protection Act, 1972 requires the claims to be in a 'prescribed form' and filed within two months of the issue of a proclamation. Ironically, no form as such has been prescribed in the Wildlife Protection Act, 1972, though the statute uses the term 'prescribed'. The procedure of filing claims seems lengthy and complicated. Thus, the procedure prescribed for the 'settlement of rights' appears to be fraught with technicalities and seems to play on people's ignorance.⁴⁵ It is also pertinent to note that the Wildlife Protection Act, 1972 bars the accrual of rights.⁴⁶ Firstly, the term 'rights' is not defined in the Wildlife Protection Act, 1972, though the same is significant from the point of view of affected people. The lack of a statutory definition of the term 'rights' could be interpreted to mean 'individual' rights (a term not in existence among the forest dwellers) as opposed to 'community rights', resulting thereby in loss of access to forest produce by the forest dwellers.⁴⁷ Thus, such a provision in the Wildlife Protection Act, 1972 reeks of a colonial mindset. Moreover, once a Wildlife Sanctuary⁴⁸ or a National Park⁴⁹ is notified, a regime of

⁴⁴ *Section 19. Collector to determine rights.*—When a notification has been issued under section 18, the Collector shall inquire into, and determine, the existence, nature and extent of the rights of any person in or over the land comprised within the limits of the sanctuary

⁴⁵ *Ibid*

⁴⁶ *Section 20. Bar of accrual of rights* — after the issue of a notification under section 18, no right shall be acquired in, on or over the land comprised within the limits of the area specified in such notification, except by succession, testamentary or intestate.

⁴⁷ Report of the Workshop on *Declining Access to and Control over Natural Resources in Sanctuaries and National Parks by the People*, PRIA and RLEK; 28-30 October, 1993

⁴⁸ *Section 26A. Declaration of area as sanctuary.*

(1) When— (a) a notification has been issued under section 18 and the period for preferring claims has elapsed, and all claims, if any, made in relation to any land in an area intended to be declared as a sanctuary, have been disposed of by the State Government; or (b) any area comprised within any reserve forest or any part of the territorial waters, which is considered by the State Government to be of adequate ecological faunal floral geomorphological, natural or zoological significance for the purpose of protecting, propagating or developing wild life or its environment, is to be included in a sanctuary, the State Government shall issue a notification specifying the limits of the area which shall be comprised within the sanctuary and declare that the said area shall be sanctuary on and from such date as may be specified in the notification

⁴⁹ *Section 35 (4).* When the following events have occurred, namely,—

(a) the period for preferring claims has elapsed, and all claims, if any, made in relation to any land in an area intended to be declared as a National Park, have been disposed of by the State Government, and

(b) all rights in respect of lands proposed to be included in the National Park have become vested in the State Government, the State Government shall publish a notification specifying the limits of the area which shall be

statutory permits & prohibitions follows. The Wildlife Protection Act, 1972 restricts entry in a Wildlife Sanctuary without permission. The relevant statutory provision begins with the words, “no person.....shall enter or reside in the sanctuary, except under and in accordance with the conditions of a permit.”⁵⁰ Thus by a stroke of pen, the Wild Life Protection Act, 1972 would have the effect of rendering forest dwellers homeless. Further, the statute expressly prohibits removal of forest produce from a Protected Area. The provisions of Section 29⁵¹ in case of Wild Life Sanctuaries and Section 35 (6)⁵² in case of National Parks begin with the words, “no person....” and prohibits the destruction, exploitation or removal of “any wild life including forest produce.....except under and in accordance with a permit granted by the Chief Wild Life Warden...” It is pertinent to note that the words “no person” would also include forest dwellers residing in and around such Wildlife Sanctuaries or National Parks. Further, the word ‘wildlife’ is inclusive in scope. It covers within its ambit, “any animal and aquatic or land vegetation, which is a part of any habitat”.⁵³ In fact any attempts by forest dwellers to access forest produce amounts to a punishable offence.⁵⁴ Such a statutory prohibition would impinge the access of forest dwellers

comprised within the National Park and declare that the said area shall be a National Park on and from such date as may be specified in the notification.

⁵⁰ Section 27. *Restriction on entry in sanctuary* (1) No person other than,— (a) a public servant on duty, (b) a person who has been permitted by the Chief Wild Life Warden or the authorized officer to reside within the limits of the sanctuary, (c) a person who has any right over immovable property within the limits of the sanctuary, (d) a person passing through the sanctuary along a public highway, and (e) the dependents of the person referred to in clause (a), clause (b) or clause (c), shall enter or reside in the sanctuary, except under and in accordance with the conditions of a permit granted under section 28.

⁵¹ Section 29. *Destruction, etc., in a sanctuary prohibited without a permit.*

No person shall destroy, exploit or remove any wild life including forest produce from a sanctuary or destroy or damage or divert the habitat of any wild animal by any act whatsoever or divert, stop or enhance the flow of water into or outside the sanctuary, except under and in accordance with a permit granted by the Chief Wild Life Warden, and no such permit shall be granted unless the State Government being satisfied in consultation with the Board that such removal of wild life from the sanctuary or the change in the flow of water into or outside the sanctuary is necessary for the improvement and better management of wild life therein, authorizes the issue of such permit:

Provided that where the forest produce is removed from a sanctuary the same may be used for meeting the personal bona fide needs of the people living in and around the sanctuary and shall not be used for any commercial purpose

⁵² Section 35 (6) *Declaration of National Parks*

No person shall destroy, exploit or remove any Wild Life including forest produce from a National Park or destroy or damage or divert the habitat of any wild animal by any act whatsoever or divert, stop or enhance the flow of water into or outside the National Park, except under and in accordance with a permit granted by the Chief Wild Life Warden, and no such permit shall be granted unless the State Government being satisfied in consultation with the National Board that such removal of wild life from the National Park or the change in the flow of water into or outside the National Park is necessary for the improvement and better management of wild life therein, authorizes the issue of such permit:

Provided that where the forest produce is removed from a National Park, the same may be used for meeting the personal bona fide needs of the people living in and around the National Park and shall not be used for any commercial purpose.]

⁵³ Section 2(37) “wild life” includes any animal, aquatic or land vegetation which forms part of any habitat;

⁵⁴ Section 51. *Penalties* (1) Any person who contravenes any provision of this Act [(except Chapter VA and section 38J)] or any rule or order made there under or who commits a breach of any of the conditions of any

to forest produce thereby threatening their very survival. Limited access to resources in protected areas is also a form of population displacement even if affected groups are not physically evicted or relocated. Thus, inhabitants of protected areas living under restrictions are also considered as conservation refugees; they are victims of occupational and economic displacement.⁵⁵

From the above discussion, it can be inferred that the goals of wildlife conservation and livelihood of the forest dwellers (viz., forest produce) have hitherto been treated as incompatible in the scheme of things, barring some recent legal developments, such as 'Critical Wildlife Habitat' (herein after 'CWH')⁵⁶ vide the Forest Rights Act, 2006 and 'Critical Tiger Habitat' (herein after 'CTH')⁵⁷ vide the Wildlife (Protection) Amendment Act, 2006. They envisage creation of inviolate areas for wildlife in a participatory manner and relocation of forest dwelling communities there from with their informed consent as more particularly discussed hereinafter. However, administrative slackness thwarts progressive legislative measures. The MoEF&CC has not notified any CWH till date. In an order-cum-letter dated 28th March, 2017, the National Tiger Conservation Authority ('NTCA') ordered against the recognition of forest rights (which are rights recognizable under the Forest Rights Act, 2006) in 'critical tiger habitats' (hereinafter 'the NTCA Order').⁵⁸ For instance, the traditional livelihood of the Mankidias, a Particularly Vulnerable Tribal Group (PVTG), living in the forests of Odisha's Mayurbhanj district and involved in collecting Non-Timber Forest Produce (NTFP) in the core of Simlipal Tiger Reserve is now threatened owing to the NTCA order.

From the afore-said analysis of relevant legal provisions, it appears that our conservation approach largely ignored the symbiotic relations between the forest dwellers and their habitat viz., the forest.

license or permit granted under this Act, shall be guilty of an offence against this Act, and shall, on conviction, be punishable with imprisonment for a term which may extend to 3 [three years], or with fine which may extend to [twenty-five thousand rupees], or with both.

⁵⁵ EPW Article Origin of Conservation Refugees

⁵⁶ Section 2 (b) "critical wildlife habitat" means such areas of National Parks and Sanctuaries where it has been specifically and clearly established, case by case, on the basis of scientific and objective criteria, that such areas are required to be kept as inviolate for the purposes of wildlife conservation as may be determined and notified by the Central Government in the Ministry of Environment and Forests after open process of consultation by an Expert Committee, which includes experts from the locality appointed by that Government wherein a representative of the Ministry of Tribal Affairs shall also be included, in determining such areas according to the procedural requirements arising from sub-sections (1) and (2) of section 4;

⁵⁷ Section 38V (i) core or critical tiger habitat areas of National Parks and sanctuaries, where it has been established, on the basis of scientific and objective criteria, that such areas are required to be kept as inviolate for the purposes of tiger conservation, without affecting the rights of the Scheduled Tribes or such other forest dwellers, and, notified as such by the State Government in consultation with an Expert Committee constituted for the purpose

⁵⁸ National Tiger Conservation Authority (NTCA) Order No. F.No. 1-7/93.PT (Vol.1) states that "in absence of guidelines for notification of critical wildlife habitats, no rights shall be conferred in Critical Tiger Habitats which is notified under section 38 V (4) (i), of the Wildlife (Protection) Act, 1972."

Way Forward

It is abundantly clear that the inhabitants of Protected Areas viz., people and wildlife share a common habitat. Sadly today, they compete for the same thing – a hope for survival. We need to shed our blinkers to view their interests as complimentary and not competing concerns. To this end, there is a pressing need to harmonize laws regarding Indigenous rights and conservation efforts, such as the Forest Rights Act, 2006 and the Wildlife Protection Act, 1972 in our country. This is also endorsed by the report⁵⁹ of the Special Rapporteur UN Special Rapporteur on the Rights of Indigenous Peoples. This is much needed, especially in view of our commitment to International instruments and their principles such as the right of Self-determination - an overarching right to indigenous peoples enshrined within both the International Covenant on Civil and Political Rights 1966⁶⁰, and the International Covenant on Economic, Social and Cultural Rights 1966⁶¹, and is included in the United Nations Declaration on the Rights of Indigenous Peoples 2007.⁶² Additionally the Right of Free, Prior and Informed Consent, enshrined in ILO Convention No. 169 and many other legislative and administrative measures, emphasizes the requirement to respect and incorporate the rights and interests of Indigenous peoples, most notably in regards to their ancestral lands and its conservation. The Convention on Biological Diversity, adopted in 1992, specifically calls on member states to respect and maintain Indigenous knowledge, innovations, and practices in order to create more sustainable and ethical protected areas.⁶³ Though conservation is gradually embracing a human rights-based approach, like in India, significant challenges remain as discussed hereinbefore and much ground needs to be covered.

BIBLIOGRAPHY

- Ashish Kothari and Neema Pathak, *Conservation and Rights in India: Are we moving towards any kind of harmony?* In Rights and Resource Initiative, "Deeper Roots of Historical Injustice: Trends & Challenges in the Forests of India", (Rights and Resource Initiative, Washington DC, 2012)
- A.K. Jha, *Wildlife and Indigenous People*, Vol. 29, No. 33, E.P.W., p. 2131 (Aug. 13, 1994)
- Victoria Tauli-Corpuz, *UN Special Rapporteur on the Rights of Indigenous Peoples*, Report to the 71st Session of the UN Human Rights Council, 29 July 2016, A/71/229
- Anju Lis Kurian, C Vinodan, *Origin of Conservation Refugees: The Downside of Environment Protection In India*, vol LIII nos. 26 & 27, E.P.W. 48, 48-55 (JUNE 30, 2018)

⁵⁹ Supra note 11

⁶⁰ Article 1

⁶¹ Article 1

⁶² Article 3, 29

⁶³ Article 8 (j)

- Jenny Springer and Fernanda Almeida, Protected areas and Land Rights of Indigenous Peoples and Local Communities, (Rights and Resources Initiative, 2015)
- Ashish Kothari, Saloni Suri and Neera Singh, *Conservation in India: A New Direction*, Vol. 30, No. 43 E.P.W. 2755, pp. 2755-2766 (October 28, 1995)
- Ananya Mukherji, *Conflict and Co-existence in a National Park*, Vol.44, No.23 E.P.W. p.52, pp. 52-59 (June 6-12, 2009)
- Ashish Kothari, Saili Palande, Milind Wani and Keya Acharya, *Forest Fires And The Ban On NTFP Collection In Biligiri Rangaswamy Temple Sanctuary, Karnataka: Report of a Field Investigation and Recommendations for Action* (Kalpavriksh, 25th June, 2007)
- Asmita Kabra, *Conservation-induced Displacement: A Comparative study of Two Indian Protected areas, Conservation and Society* 7(4): 249-267, 200
- Report of the Workshop on *Declining Access to and Control over Natural Resources in Sanctuaries and National Parks by the People*, PRIA and RLEK; 28-30 October, 1993
- Neema Pathak and Ashish Kothari, *Sharing Benefits of Wildlife Conservation with Local Communities: Legal Implications*, Vol. 33, No. 40 E.P.W. p. 2603, pp. 2603-2610 (Oct. 3-9, 1998)
- Manju Arora, *Forests and Wildlife Law & Rights of Indigenous People* (The Institute of Constitutional and Parliamentary Studies, New delhi and Hope India Publications, Gurgaon, 2009)
- Mahesh Rangarajan, *India's Wildlife History: An Introduction* (Permanent Black, Delhi 2001)
- Vasant Saberwal, Mahesh Rangarajan and Ashish Kothari, *People, Parks and Wildlife; Towards Co-existence* (Orient Longman, New Delhi, 2001)
- Citizens' Report on Promise and Performance of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, after 10 years of its Enactment, December 2016.

WEBLIOGRAPHY

- <http://tribal.nic.in/Content/AnnualReportsOtherLinks.aspx>
www.cfrla.org.in
- <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/conservations-impacts-indigenous-peoples-conversation>
- <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2019/01/N1624109.pdf>
- <https://www.un.org/development/desa/indigenouspeoples/meetings-and-workshops/expert-group-meeting-on-conservation-and-the-rights-of-indigenous-peoples.html>