



Balancing Conservation and Community: Critical Analysis of Legal Mechanisms Protecting Wildlife and Indigenous Rights in India

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Abstract. Over the past century, global and domestic environmental regulations have heavily relied on "fortress conservation," an exclusionary model that coercively displaces indigenous populations under the premise of environmental protection. However, empirical evidence demonstrates that tribal sovereignty and biodiversity conservation are deeply intertwined, with the cultural and economic practices of forest-dwelling communities acting as custodians rather than vectors of ecological degradation. India, rich in both biodiversity and indigenous populations, faces acute conflicts between modern wildlife conservation policies and the traditional rights of these communities. This paper provides an exhaustive critical analysis of the legal mechanisms designed to balance wildlife protection with indigenous rights in India. It examines the evolution of the international legal framework, tracking the paradigm shift from the assimilationist approach of early ILO Conventions to modern models emphasizing self-determination. Domestically, the research critically evaluates India's constitutional framework and key legislation, including the Wildlife Protection Act of 1972, the Forest Rights Act of 2006, and the Biological Diversity Act of 2002. Ultimately, the study highlights the substantial contradictions embedded within recent legislative amendments, underscoring the escalating tension between centralized macroeconomic development and decentralized ecological governance.

Keywords: Fortress conservation, Indigenous rights, Wildlife protection, Forest Rights Act, Ecological governance, Indian constitutional law

1. Introduction

A major aspect of life on Earth is the relationship between humans and other living forms. Humans play an unmatched role on Earth. The law on environmental conservation and Indigenous rights is very controversial and sensitive spanning legal, environmental, and socio-economic issues. For more than a century, global and domestic forest regulations have been based on an exclusionary model, or "fortress

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conservation," which holds that environmental conservation can only be achieved by coercively removing humans. Empirical ecological sociology and Indigenous rights law show that forest-dwelling populations do not cause environmental degradation. Instead, their cultural, spiritual, and economic traditions depend on the forest habitat. Biodiversity conservation and tribal sovereignty are interdependent.

India is rich in biodiversity and fauna. At the same time, it is home to many indigenous tribes, including Scheduled Tribes and other traditional forest dwellers, whose lives are tightly tied to forests and wildlife. These populations have relied on trees for food, shelter, livelihood, culture, and spirituality for ages. Modern wildlife conservation initiatives often collide with indigenous rights.

This comprehensive, critical study examines the techniques used to reconcile animal conservation with indigenous rights. The growth of international legal instruments, including ILO Conventions and Agenda 21, is extensively examined. It also critiques India's constitutional and legal framework, including the Wildlife Protection Act of 1972, Forest Rights Act of 2006, Forest Conservation Act of 1980, Biological Diversity Act of 2002, and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act of 2013. Finally, it critically evaluates recent legislative amendments' substantial contradictions, which show the growing conflict between macroeconomic imperatives of centralised economic development and micro-level ecological imperatives of decentralised ecological governance.

2. Balancing Conservation And Community: International Framework

The international legal framework that regulates and manages indigenous populations and ecological conservation has witnessed a substantial paradigmatic shift over the past seven decades. It has evolved from a paternalistic, assimilatory model aligned with postcolonial state-formation imperatives to a modern model that emphasises self-determination, free, prior, and informed consent, and recognises indigenous populations as custodians of ecological conservation.

2.1 The Assimilationist Era: ILO Convention No. 107 (1957)

In 1957, the UN adopted the Indigenous and Tribal Populations Convention, the first international instrument to address indigenous rights. ILO Convention 107, drafted during the Assimilationist Era of nation-state-led development, represents the

assimilationist perspective.[1] ILO Convention 107 held that indigenous and tribal peoples could only survive by integration into the nation-state's socio-economic framework. The landmark ILO Convention 107 established minimum land ownership standards and prohibited arbitrary dispossession, but its focus on assimilation gave nation-states supreme authority to direct indigenous peoples' development, industrialization, and conservation policies. Indigenous cultures were seen as transitional stages of human growth that industrialization will replace. [1] By the mid-1980s, the international world, influenced by the global indigenous rights movement, recognized that ILO Convention 107's paternalistic attitude was obsolete and harmful to indigenous cultures, territories, and the environment. ILO Convention 107 is no longer accessible to new ratifications, however certain governments that have ratified it but not its more progressive counterpart remain legally binding. The Republic of India follows ILO Convention 107.

2.2 The Transition to Self-Determination: ILO Convention No. 169 (1989)

In 1989, the International Labour Organisation implemented the Indigenous and Tribal Peoples Convention to remedy the ethnocentric, assimilationist, and top-down administration problems of the preceding instrument (Swepston, 2004). This binding agreement substitutes assimilationist policy with non-negotiable respect for indigenous cultures, lifeways, and traditional institutions. Convention No. 169 requires consultation and active participation before governmental action impacting indigenous peoples. [2]

Two Convention No. 169 articles are crucial to environmental conservation and natural resource management. First, indigenous peoples have the right to freely choose their own development priorities when it directly affects their lives, beliefs, institutions, spiritual well-being, and the lands they occupy or use. Article 7 requires direct participation by indigenous peoples in complete impact evaluations of proposed development activities' social, spiritual, cultural, and environmental aspects. [2]

Article 15 also grants indigenous peoples the right to use, manage, and conserve natural resources in their native regions. In sovereign states possessing sub-surface or mineral resources, governments have legal and moral obligations to consult the people before exploring or exploiting. A consultative procedure ensures indigenous peoples' participation in resource use and compensation for unfavorable repercussions. ILO Convention No. 169 is the most advanced and extensive treaty on indigenous peoples'

rights, although it has achieved little global ratification and typically falls behind the non-binding UN Declaration on the Rights of Indigenous Peoples. [3]

2.3 Agenda 21 and the Earth Summit (1992)

In 1992, Brazil hosted the UN Conference on Environment and Development, or Earth Summit. It was a pivotal point in incorporating Indigenous rights into the global environmental agenda. The Earth Summit endorsed Agenda 21, a holistic sustainable development plan. Indigenous Peoples are a "Major Group" in the global environmental agenda. [3] It recognizes Indigenous Peoples' traditional knowledge, past occupation of the land, and sustainable practices as essential to environmental management. It also requires the recognition of Indigenous rights to their lands and the incorporation of their traditional knowledge into the global environmental agenda. The Earth Summit established global recognition of the outstanding

3. India's Position: Constitutional Framework and Environmental Jurisprudence

India's balancing approach between wildlife conservation and community rights is the result of a rich historical complexity in its colonial legacy, its constitutional intricacy and protectionism, and its current challenges in balancing the effects of industrialization and the energy revolution.

3.1 India's Stance on International Conventions

After ratifying ILO Convention 107 in 1958, India strategically avoided ratifying 169. The Indian Government's formal stance on international conventions stems from the subcontinent's demographic and historical complexity. [4] The independent State claims that all Indians are "indigenous" since independence from the British Empire and avoids using the international phrase "indigenous peoples." Indian authorities prefer the constitutional title "Scheduled Tribes" (STs) or the common name "Adivasis." [4]

The Indian government is not required to comply with ILO 169's strict self-determination and Free, Prior, and Informed Consent obligations as a state. Instead, the Indian government is proud of its complex constitutional and regulatory frameworks for balancing environmental and tribal rights. [5] The Universal Periodic Review of the UN Human Rights Council advised India to ratify ILO 169 to align its

international human rights standards and best practices. This recommendation is unfulfilled.

3.2 Article 21: The Right to Life and the Evolution of Ecological Integrity

Environmental law in India has been influenced by judicial activism in interpreting Article 21 of the Indian Constitution, which guarantees life and liberty. The Supreme Court of India has gradually extended Article 21 of the Constitution, which was strictly interpreted after independence, during the late 1980s and 1990s. The Supreme Court of India declared that the right to life includes the right to a clean, pollution-free environment and strong ecological integrity in landmark cases like *Subhash Kumar v. State of Bihar* (1991), *Virender Gaur v. State of Haryana* (1994), and *M.C. Mehta v. Kamal Nath* (2000). Industrial pollution and deforestation threatened life and human dignity. [6]

The Supreme Court's April 2024 decision in *M.K. Ranjitsinh & Ors. v. Union of India* made this innovative approach historic and universal. The Supreme Court developed a crucial principle to resolve a complex conflict between conservation needs for the critically endangered Great Indian Bustard (GIB) and rapid renewable energy infrastructure development, including overhead power lines for solar and wind farms in Rajasthan and Gujarat. [7] A Division Bench led by the Chief Justice established the "right to be free from adverse effects of climate change." Environmental degradation and climate change infringe Article 21 and Article 14's right to equality, according to the Supreme Court's *Ranjitsinh* ruling. The impoverished, forest dwellers, and tribal populations, whose culture, livelihood, and identity are directly affected by land, forest cover, and ecological stability, were also at risk, according to the Supreme Court. Even while an expert committee can assess the energy infrastructure project, a constitutional climate right improves Indigenous peoples' judicial remedies against state or corporate polluters. [8]

3.3 Directive Principles of State Policy and the Fundamental Duties (DPFD)

This framework of environmental conservation and the protection of the marginalized sections of the community is further strengthened by the Directive Principles of State Policy (Part IV) of the Constitution. The provisions of Part IV of the Constitution are a reference for the Government while framing policies. The 42nd Amendment (1976) to the Constitution included provisions for environmental

protection. [9] The provisions of Article 48-A of the Constitution direct the State to “endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.” This provision of the Constitution is supplemented by the provision of Article 51-A(g), which is a fundamental duty of the citizens to “protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures.” Additionally, the provisions of the Directive Principles of the Constitution under Articles 39(a) and (e) direct the State to secure adequate means of livelihood for citizens. The provisions of Article 47 of the Constitution direct the State to raise the level of nutrition and improve the health of the people. [10]

While Article 37 of the Constitution provides that the Directive Principles shall not be enforceable by any court, the Supreme Court has interpreted Part IV in consonance with Part III. [11] The judiciary has held the provisions of Part IV of the Constitution to be a constitutional obligation of the State to protect the environment. The eccentric approach of the judiciary to the provisions of the Constitution has held the State to be a trustee of the resources of the environment. The provisions of the Constitution have often been at odds with the socio-economic realities of the people of the country. The provisions of the Constitution have often been in conflict with the provisions of the Wildlife Protection Act.

3.4 The Fifth and Sixth Schedules: Governance of Tribal Lands

The Indian Constitution's Fifth and Sixth Schedules, based on Article 244, provide specialized and asymmetrical administrative systems to protect tribal populations from historical land alienation, coercive assimilation, and economic exploitation. These two Schedules respect tribal communities' unique sociocultural makeup and grant them geographic autonomy.

The Fifth Schedule applies to "Scheduled Areas" outside the Northeast, such as Andhra Pradesh, Chhattisgarh, Gujarat, Maharashtra, etc. The Fifth Schedule guarantees tribal land ownership. This Schedule gives the State's Governor broad latitude to change, modify, or repeal any parliamentary or State law if it harms indigenous people. [12] It also requires a Tribes Advisory Council (TAC) to advise the Governor on tribal welfare. The Supreme Court's 1997 ruling in *Samatha v. State of Andhra Pradesh* declared the leasing of government-owned land in the "Scheduled Areas" to private non-tribal mining companies to be null and void, ruling that such

actions violate the Fifth Schedule's protections. The Samatha case established that only the government or tribal cooperative groups can utilize resources in "Scheduled Areas". This verdict protects tribal people against corporate exploitation, but its execution is problematic[12].

The Sixth Schedule covers Assam, Meghalaya, Tripura, and Mizoram's tribal areas. The Sixth Schedule created the Autonomous District Councils (ADCs) and Regional Councils to give tribal people more political and administrative autonomy than the Fifth Schedule because tribal people have distinct identities. The ADCs have substantial legislative, executive, and judicial responsibilities, including the management of all woods until the State declares them "reserved forests". The Sixth Schedule of the Constitution has accepted the ILO Convention 169's self-determination rules and given indigenous people the power to manage their own ecological resources[5].

4. The Indian Statutory Framework: A Critical Analysis

The current statutory regime on forests, wildlife, and the rights of indigenous peoples is a complex amalgamation of punitive colonial-era regulations, current environmental regulations with very strict controls, and rights-based legislation. The interplay of these different sets of regulations results in a fragmented and often contradictory model of governance where the State is simultaneously the guardian of tribal rights and the primary perpetrator of displacement[18].

4.1 The Wildlife Protection Act (WPA), 1972: The Architecture of Fortress Conservation

Enacted in response to the marked decline of India's flora and fauna in the decades of unregulated growth in the post-independence period, the Wildlife Protection Act of 1972 is a paradigm of a fortress approach to environmental governance[19]. The Act introduced a rigid framework for the demarcation of Protected Areas, mainly National Parks, Wildlife Sanctuaries, and Conservation Reserves. Under the architectural framework of the WPA, the coexistence of human beings within the National Parks has been construed as antagonistic to the conservation of wildlife and has been effectively criminalized. The Act prohibits villagers living within and around the periphery of the National Parks from collecting and gathering fodder, grazing cattle, hunting for subsistence, and utilizing Non-Timber Forest Products (NTFPs) within the confines of the parks. The regulatory framework has thus broken the symbiotic relationship that

had been hitherto established between the tribal people and their ancestral lands[19].

The exclusionary approach of the WPA has been heightened manifold with the amendment to the Act in 2006, which has specifically designated the concept of 'Critical Tiger Habitats' (CTHs) for tiger reserve forests. These have been mandated to be maintained as 'inviolable areas,' which have been construed by the forest authorities to mean areas completely devoid of the presence of human beings. Thus, the approach has led to the systematic displacement of the Indigenous populations living within the tiger reserve forests[20]. The approach has therefore led to the structural displacement of the tribal people, resulting in significant socio-economic marginalization and the perpetuation of conflict at the dense fringes of the parks, where the displaced people have to fight for scarce resources. Notably, the WPA does not have adequate provisions for providing compensation to the victims of animal attacks, which has led to the marginalization of the people living at the fringes of the parks[20].

4.2 The Forest Conservation Act (FCA), 1980 and the Regressive 2023 Amendments

The Forest Conservation Act of 1980 was a direct result of unchecked, rampant deforestation driven by state-sponsored industrial expansion, mining, and agricultural development. The core of the FCA is the principle of centralization, whereby any transfer of forest lands for purposes of "non-forest purposes" is subject to the mandatory approval of the Central Government[21]. The Supreme Court significantly expanded the scope of protection under the FCA in the landmark judgment *T. N. Godavarman Thirumulpad v. Union of India* (1996). In the face of rampant timber smuggling, the Supreme Court held that the protective regulations of the FCA are not limited to legally notified or reserved forests but apply to all lands that fall within the dictionary meaning of the term "forest," regardless of their status or designation. This judicial expansion of the FCA's protective scope has provided a protective umbrella for the millions of Adivasis who depend on forests for their survival.

On the other hand, the Forest (Conservation) Amendment Act (FCAA) of 2023 represents a major and contentious reversal of environmental and indigenous rights. Primarily aimed at providing 'ease of business,' the FCAA fundamentally alters governance through several assertive measures[22]:

1. The FCAA limits the definition of 'forest' to officially designated lands from October 25, 1980, or lands notified under the colonial Indian Forest Act of 1927, negating the

progressive Godavarman judgment. This legislative move puts 28% of the country's woods, including sacred groves and massive tribal-used unclassified forests, at risk of commercial exploitation and monoculture crops.

2. Border Exemptions and Infrastructure: The FCAA exempts lands within 100 km of international boundaries and the Line of Control for strategic linear projects of national significance. Nearly the whole territory of ecologically vulnerable and tribal-dominant Northeast Indian states like Mizoram, Tripura, Meghalaya, and Nagaland falls inside the 100-kilometer buffer zone.

3. Gram Sabha Consent Diluted: The modification defines eco-tourism, safaris, and zoos as valid forestry activities, excluding a broad land category from the Act. This classification shift allows the state and capital to avoid Gram Sabha consultation and consent. This disenfranchises indigenous people and dilutes their democratic self-governance over their ecological resources .

4.3 The Forest Rights Act (FRA), 2006: Reclaiming the Commons

In response to colonial-era forest legislation and the Forest Conservation Act (WPA)'s exclusionary policies, the Indian Parliament passed the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The FRA legalizes the symbiotic relationship between the environment and the people who have historically preserved the woods, supporting the inclusive conservation paradigm and changing the fortress conservation paradigm[23]. The FRA gives 150 million forest-dwellers over 40 million hectares of land full rights. The FRA grants Individual Forest Rights (IFR) for dwelling and self-cultivation and Community Forest Rights (CFR) for protecting, regenerating, conserving, and managing any community forest resource the Adivasis have traditionally protected for sustainable use. Individuals must have depended on the forest for at least 75 years before December 13, 2005, to be OTFDs[23]. The Act guarantees the Gram Sabha's free, prior, and informed consent for any forest land development project without displacement for wildlife sanctuaries. The Supreme Court upheld the cultural, religious, and environmental rights of the indigenous Dongria Kondh community through the implementation of the FRA and Panchayats (Extension to Scheduled Areas) Act, PESA, declaring that the Gram Sabhas of the tribal community have definitive power and authority. This case shows the FRA's great potential. The tribal Gram Sabhas' referendum on Vedanta's proposal was also hailed as an example of environmental democracy and Free, Prior, and Informed

Consent worldwide. Despite its promise and legal framework, the FRA has always had implementation issues. Bureaucratic forest groups see the FRA as a threat to their territorial claims. Due to inaccurate mapping, state organizations' refusal to acknowledge Community Forest Rights, and technical grounds, more real applications are being dismissed[23].

4.4 The Biological Diversity Act (BDA), 2002 and the 2023 Amendments

To fulfill India's sovereign commitments as a signatory to the UN Convention on Biological Diversity, the 2002 Biological Diversity Act (BDA) and 2023 amendments were passed. The BDA protects biological diversity, promotes sustainable use, and ensures fair and equitable Access and Benefit Sharing (ABS) from commercial use of biological diversity. Biodiversity Management Committees (BMCs) at the panchayat level document traditional knowledge in People's Biodiversity Registers under the BDA's original decentralized structure. The *Divya Pharmacy v. Union of India* case showed that even Indian domestic enterprises must follow ABS principles and share biological diversity benefits with the local community[24].

However, the Biological Diversity (Amendment) Act, 2023, drastically shifts the legislative balance from protecting indigenous traditional knowledge to facilitating commercial, pharmaceutical, and agricultural business. Several key modifications include: Exemption of Key Sectors: The amendment aggressively decriminalizes Act crimes, replacing administrative penalties. The exemption of AYUSH practitioners, codified traditional knowledge, and domestic firms from ABS's strict profit-sharing provisions with indigenous people is more notable. Dilution of Community Consent and Participation: The amendments significantly change ABS negotiations by removing local bodies and communities benefiting from traditional knowledge from directly representing and participating in determining mutually agreed terms for benefit sharing[21].

Only BMCs through the NBA can negotiate today. The BDA amendments make community involvement in ABS negotiations an administrative formality, making them more vulnerable to corporate biopiracy and undermining the Nagoya Protocol's true spirit by removing the direct legal and financial link between corporate entities extracting resources and indigenous communities using traditional knowledge.

4.5 RFCTLARR Act, 2013: Safeguards in Land Acquisition

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013, was a landmark legislation that attempted to replace the earlier punitive colonial-era regulations for the exercise of Eminent Domain with a new paradigm that takes into consideration the values of humanity, participation, and transparency. The Act recognizes the historic trauma faced by the tribal people due to displacement caused by the construction of dams, mining activities, and the formation of protected areas, and thus incorporates a number of safeguards within Chapter III of the Act[21].

1. Section 41: This section provides for the principle that, as far as possible, there should be no acquisition of land in the Scheduled Areas. In cases where acquisition is absolutely necessary, the acquisition must be undertaken as a “demonstrable last resort,” and the consent of the Gram Sabha or the Autonomous District Councils must be obtained before the issue of the notification for acquisition.
2. Section 42: In cases of acquisition of Scheduled Tribal lands, the resettlement of the tribal people must be undertaken as a compact block so as to maintain the tribal identity of the people. Significantly, all the statutory safeguards, reservations, and area benefits enjoyed by the tribal people in the original habitat must also be conferred on the new resettlement area, irrespective of the scheduling status of the new area.

Despite its apparent strength and theoretical soundness, the effectiveness of the Act in reality has been marred by a number of shortcomings and lacunae. The state governments have often been found to have exploited the regulations for the exercise of Eminent Domain, treating the consent of the Gram Sabha as a coercive bureaucratic requirement rather than a free, prior, and informed consent requirement. The compensation packages also often ignore the loss of Community Forest Resources and the intangible heritage of the tribal people, leaving the tribal people economically vulnerable.

5. Legal And Administrative Challenges For India

This part of the analysis reveals a basic tension in the country's administrative and legal structures. It is a tension between two different epistemologies of governance, each of which has a different history. The contemporary State is governed by a

jurisprudence of rights, democracy, and the rule of law, encapsulated in the Constitution (Article 21, the Fifth and Sixth Schedules), the Forest Rights Act (FRA), and the Rights of Forest Dwellers (RFCTLARR) Act. The other, a colonial legacy of centralized control over resources, is reflected in the Wilds Protection Act (WPA), the Indian Forests Act (IFA), and the recent amendments to the relevant legislation passed in 2023. This tension points to a continuing schism in the country's institutional structures[21].

5.1 Illusion of Administrative Efficiency over Democratic Rights

The recent spate of legislation, particularly the Forest (Conservation) Amendment Act (FCAA) 2023 and the Biological Diversity (Amendment) Act 2023, suggests a carefully crafted strategy by the central Government to overcome the problem of democracy in the pursuit of infrastructure growth, border security, and capitalization of the economy. The recent amendments to the Forest Conservation Act have granted sweeping powers to the executive branch of the Government. The amendments have also redefined the term 'forest.'[26] This suggests a conscious effort to undermine the democratic rights enshrined in the Forest Rights Act and the 1996 Godavarman judgment. The trajectory of the recent legislation suggests a solution to the problem of the environmental development nexus. The solution lies in the exclusion of tribal populations from the democratic process. The emerging model of governance privileges administrative convenience over the rule of law, environmental considerations, and the rights of Indigenous populations[22].

6. Concluding Remarks: Fortress Conservation Vs. Human-Wildlife Coexistence

The bureaucratic Indian forest management system has long fought Gram Sabha decentralisation. High and arbitrary rejection rates of real land claims on superficial grounds. State forest authorities rarely provide polygon mapping data for claim papers or acknowledge vast Community Forest Rights. At the demand of animal conservation group petitioners, the Supreme Court evicted over a million forest dwellers whose FRA-based claims were rejected by state governments, exposing the extreme legal vulnerability of these rights.

The Wildlife Protection Act's strict and occasionally severe application has generated socio-ecological inequalities. Critical Wildlife and Tiger Habitats are

overemphasized, resulting in “green militarization.” With significant authority, forest guards oversee Adivasi tribes' foraging, firewood collection, and cattle grazing. This displacement in the name of conservation contradicts global scientific findings indicating Indigenous people with traditional knowledge systems conserve biodiversity best. Evictions break community cohesion and push poor communities to live in extreme poverty outside protected zones, violating their Article 21 constitutional rights to livelihood, health, and human dignity. Hostility and non-compliance persist despite progressive tribal rights laws like the FRA and FRCTLAR.

The social and political ramifications and procedural errors caused the eviction order to be stayed immediately, but it highlights how easy exclusionary conservation measures can violate statutory Indigenous rights. The colonial Indian Forest Act of 1927 and the Wildlife Protection Act (WPA) allow forest departments to circumvent the FRA and criminalize free speech.

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