



LAW AND SOCIAL  
POLICY REVIEW

VOLUME 1 AND ISSUE 1 OF 2023

INSTITUTE OF LEGAL EDUCATION



**Law and Social Policy Review [ISBN - 978-81-960677-7-9]**

**(Open Access Journal)**

**Journal's Home Page - <https://Ispr.iledu.in/>**

**Journal's Editorial Page - <https://Ispr.iledu.in/editorial-board/>**

**Volume 1 and Issue 1 (Access Full Issue on - <https://Ispr.iledu.in/category/volume-1-and-issue-1-of-2023/>)**

### **Publisher**

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

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## A COMPREHENSIVE CONSTITUTIONAL AND POLICY FRAMEWORK FOR FOREST CONSERVATION: PRESERVING BIODIVERSITY

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**Best Citation** – Shanaz & Prof. Dr. TR Maruthi, A COMPREHENSIVE CONSTITUTIONAL AND POLICY FRAMEWORK FOR FOREST CONSERVATION: PRESERVING BIODIVERSITY, *Law and Social Policy Review*, 1 (1) of 2023, Pg. 105-111, ISBN - 978-81-960677-7-9

### ABSTRACT

*The paper explores the challenges faced by indigenous communities, particularly Scheduled Tribes, in India regarding their forest rights. It discusses the introduction of Community Forest Rights and the need for sustainable forest use and conservation. The paper highlights the failure of existing development programs and advocates for inclusive tribal development. It evaluates the effectiveness of the Forest Rights Act and suggests improvements for future amendments. The historical background and constitutional provisions for Scheduled Tribes are examined, emphasizing the establishment of Tribal Advisory Councils and safeguard measures. The government's efforts in education, vocational training, and research institutes are also mentioned. Overall, the paper emphasizes the importance of protecting forests and recognizing tribal rights through an inclusive approach to development.*

**Keywords:** Constitutional, Forest policy, Forest, biodiversity and Environment policy

### INTRODUCTION

India is one of the First countries in the world to have stated scientific management of its forests. During the year 1864 the then British India Government started the Imperial Forest Department. The first Inspector General of Forests was Dr. Dietrich Brandis, a German Forest officer who was appointed in 1866. In 1987, the Imperial Forest Service was constituted

to organize the affairs of the Imperial Forest Department. In addition, Provincial Forest Service and Executive & Subordinate Services were also constituted for effective management of forest resources the British India Government. Initially, the subject of "Forestry" which was managed by the Federal Government which was later transferred to the "Provincial List" by the Government of India Act, 1935 and subsequently recruitment to the Imperial Forest Service was discontinued.

The Indian Forest Service was constituted in the year 1966 under the All India Services Act, 1951 by the Government of India. The main mandate of the service is the implementation of the National Forest Policies. Since 1935 the management of the forests remained in the hands of the Provincial Governments in pre-independence era, and even today the Forest Departments are managing the forests of the country under the respective State governments.

Systematic management of forests began in the mid-nineteenth century. The first forest policy of India enunciated in 1894 focused on commercial exploitation of timber and gave importance to permanent cultivation. The 1952 revision of the policy recognized the protective role of forests and proposed that one-third of the land area of the country be retained under forest and tree cover. The Forest policy of 1988 focused on environmental stability and maintenance of ecological balance.



The constitution provides special provisions relating to Scheduled Tribes article 342 Lays down that president may specify the tribes or tribal communities or part of or groups within tribes or tribal communities or for parts deemed Scheduled Tribes. article 164 provide for a Ministry of Tribal welfare in each of the state of Bihar Madhya Pradesh and Orissa which have large concentration of Scheduled Tribes population. article 244 provides a fifth schedule in the constitution for incorporating provisions for the administration of Scheduled Areas and tribes of the states which have tribal population. the constitution prescribes protection and safeguards for Scheduled Tribes to promote their educational and economic interest under article 330 and 332 of the Indian Constitution. 3000 reserved for scheduled tribes in Lok Sabha and state Vidhana Sabha government has also made provisions for its adequate representation in the services. Scheduled Areas have been declared in the state of Andhra Pradesh Bihar Gujarat Madhya Pradesh Maharashtra Orissa Himachal Pradesh and Rajasthan. the scheme of administration of Scheduled Areas on the fifth schedule visualizers a division of responsibility between the state and union government. the fifth schedule of the constitution provides for the setting up of tribes Advisory Council in each of the state having Scheduled Areas under article 338 of the Indian Constitution or commissioner has been appointed by the President of India to investigate all natural relating to the safeguards for scheduled castes and Scheduled Tribes under the constitution and report the president on working of the safeguard measures to provide educational facilities have been taken by the government. officials is being laid on vocational and Technical training. the central government awards scholarships to deserving students for higher studies in foreign countries. tribal Research Institute which undertakes intensive studies of tribal our culture and Customs have been set up in Bihar Madhya Pradesh Orissa Rajasthan and West Bengal.

### CONSTITUTIONAL PROVISIONS

#### Article 48A & 51A Clause (g)

Initially, the Constitution of India had no direct provision for environmental protection. Global consciousness for the protection of environment in the seventies, Stockholm Conference and increasing awareness of the environmental crisis prompted the Indian Government to enact 42<sup>nd</sup> Amendment to the Constitution in 1976. The Constitution was amended to introduce direct provisions for protection of environment. This 42<sup>nd</sup> Amendment added Article 48-A to the Directive Principles of State Policy.

Article 48-A – Protection and improvement of environment and safeguarding of forests and wildlife. The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

Article 51-A (g) which deals with Fundamental Duties of the citizens states:

“It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.”

Thus, protection and improvement of natural environment is the duty of the State

(Article 48-A) and every citizen (Article 51- A (g)).

#### Article 49-A

The Article states:

“The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.” The said amendment imposed a responsibility on every citizen in the form of Fundamental Duty.

#### Article 21

Article 21 of the constitution of India provides for the right to life and personal liberty. It states that “no person shall be deprived of his life or



personal liberty except according to procedure established by law.” In Rural Litigation and Entitlement.

#### Article 253

Article 253 states that ‘Parliament has power to make any law for the whole or any part of the country for implementing any treaty, agreement or convention with any other country. In simple words this Article suggests that in the wake of Stockholm Conference of 1972, Parliament has the power to legislate on all matters linked to the preservation of natural environment. Parliament’s use of Article 253 to enact Air Act and Environment Act confirms this view. These Acts were enacted to implement the decisions reached at Stockholm Conference.

Article 19(1)(g) to practice any profession, or to carry on any occupation, trade or business.

#### Article 51

Promotion of international peace and security  
The State shall endeavour to

- (a) promote international peace and security;
  - (b) maintain just and honourable relations between nations;
  - (c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and encourage settlement of international disputes by arbitration
- PART IVA FUNDAMENTAL DUTIES.

### ARTICLE 41 PROTECTION OF THE ENVIRONMENT

#### *Environment and Citizens:*

The Constitution of India has made a double provision:

- (i) A directive to the State for protection and improvement of environment.
- (ii) Imposing on every citizen in the form of fundamental duty to help in the preservation of natural environment. This is the testimony of Government’s awareness of a problem of

worldwide concern. Since protection of environment is now a fundamental duty of every citizen, it is natural that every individual should do it as personal obligation, merely by regulating the mode of his natural life. The citizen has simply to develop a habitual love for pollution. Since independence, there have been three forest policy pronouncements in India.

They are listed as follows:

- National Forest policy, 1952
- The National Commission on Agriculture, 1972
- The Wildlife Protection Act, Rules 1973 and Amendment 1991
- National Forest Policy, 1988
- Forest Right Act, 2006 & The Wild Life (Protection) Amendment Act, 2006
- National Green Tribunal Act, 2010

#### ***National Forest policy, 1952***

The first National Forest Policy Resolution was adopted by the government in 1952. Though the resolution highlighted the ecological and social aspects of forest management, giving secondary importance to the needs of commerce, industry and revenue, it did not call for any change in the forest law and remained only a pious declaration.<sup>139</sup>

#### ***The National Commission on Agriculture, 1972***

The Ministry of Forest was originally a part of the Ministry of Agriculture. In 1972, the Ministry appointed a National Commission on Agriculture.<sup>140</sup> The multivolume Report of the National commission on Agriculture, published in 1976, covered forests in the 9th Part.9. The commission recommended that the revised national forest policy should be based on important needs of the country. All forest lands should be classified into protection forests, production forests and social forests. It gave the

<sup>139</sup> ‘Forest Policy Reforms in India - Evolution of the Joint Forest Management Approach’ <<https://www.fao.org/3/XII/0729-C1.htm>> accessed 26 May 2023.

<sup>140</sup> ‘Interim Report of the National Commission on Agriculture on Establishment of Agrometeorological Divisions in Agricultural Universities’ (INDIAN CULTURE) <<http://indianculture.gov.in/reports-proceedings/interim-report-national-commission-agriculture-establishment-0>> accessed 26 May 2023.



highest priority to production forests and the lowest priority to social forests. The object of forest management should be that 'each hectare of forest land should be in a position to yield a net income of many more times than is being obtained at present.' It recommended enactment of a revised all India forest act.

However, in 1985, the Forest Department was shifted from the Ministry of Agriculture to the Ministry of Environment and Forests (MoEF). The MoEF was established as a nodal agency for planning, coordination and implementation of environmental and forestry programmes. This helped to shift the emphasis from revenue to environmental concerns.

### ***The Wildlife Protection Act, Rules 1973 and Amendment 1991***

The Wildlife Protection Act, Rules 1973 and Amendment 1991 provides for the protection of birds and animals and for all matters that are connected to it whether it be their habitat or the waterhole or the forests that sustain them. The Wildlife Protection Act, 1972, provided for the protection of the wild animals, birds and plants. The Act was substantially amended in 2002. A major objective of this amendment was to update the law to deal with sharply escalating levels of organized poaching. The Ministry of Environment and Forest formally notified this Amendment Act on 1st April, 2003. (Handbook of Wildlife Protection Society of India, 2006).<sup>141</sup>

### ***Current National Forest Policy – National Forest Policy, 1988***

The main objectives of the National Forest Policy, 1998 are as follows:<sup>142</sup>

- Maintenance of environmental stability through preservation and, where necessary, restoration of the ecological balance that has been adversely disturbed by serious depletion of the forests of the country.

<sup>141</sup> 'Wildlife Protection Act, 1972' <<https://www.drishitias.com/daily-updates/daily-news-analysis/wildlife-protection-act-1972>> accessed 26 May 2023.

<sup>142</sup> English Releases' <<https://pib.gov.in/newsite/erecontent.aspx?relid=57051>> accessed 26 May 2023.

In December 1988, the Parliament passed a new forest policy resolution more or less rejecting the recommendations of the National Commission on Agriculture. The resolution stressed the welfare of forest dwelling communities as a major objective of the forest policy, and categorically stated that the life of tribals and other poor living within and near forests revolves around forests and that the rights and the concessions enjoyed by them should be fully protected. Their domestic requirements of fuelwood, fodder, minor forest produce and construction timber should be the first charge on forest produce. However, while the resolution adopted a pro-tribal policy, the old Act of 1927 with all the subsequent amendments remained unchanged.

- Conserving the natural heritage of the country by preserving the remaining natural forests with the vast variety of flora and fauna, which represent the remarkable biological diversity and genetic resources of the country.

- Checking soil erosion and denudation in the catchment areas of rivers, lakes, reservoirs in the "interest of soil and water conservation, for mitigating floods and droughts and for the retardation of siltation of reservoirs.

- Checking the extension of sand-dunes in the desert areas of Rajasthan and along the coastal tracts.

- Increasing substantially the forest/tree cover in the country through massive afforestation and social forestry programmes, especially on all denuded, degraded and unproductive lands.

- Meeting the requirements of fuel-wood, fodder, minor forest produce and small timber of the rural and tribal populations.

- Increasing the productivity of forests to meet essential national needs.

- Encouraging efficient utilisation of forest produce and maximising substitution of wood.

- Creating a massive people's movement with the involvement of women, for achieving these



objectives and to minimise pressure on existing forests.

**The legal framework of the forestry sector can be classified into three categories:**

- The first set of Acts regulates access and use of forest products such as the Indian Forest Act (1927).<sup>143</sup>
- The second set focuses on conservation such as the Wildlife Act (1972) and the Forest Conservation Act (1980).<sup>144</sup>
- The third set comprises enabling laws that encourage private investment as well as restrictive laws with regard to land ceilings, tree felling, transit passes and marketing that have discouraged the private sector from engaging in farm forestry and agro-forestry.

**The National Forestry Action Programme (NFAP) was initiated in 1999.**

It is a comprehensive long-term strategic plan for the next 20 years.<sup>145</sup> It identifies the issues and programs for achieving sustainable forestry development in India by harmonizing the activities of different stakeholders.<sup>146</sup> The NFAP evolved through coordinated centre-state strategic planning with inputs from many national and international consultants.

It identifies five programs:

- (1) Protect existing forest resources
- (2) Improve forest productivity
- (3) Reduce total demand,
- (4) Strengthen the policy and institutional framework and

<sup>143</sup> 'Forest Laws and Laws Governing the Control of Timber and Forest Produce' <<https://blog.ipleaders.in/forest-laws-and-laws-governing-the-control-of-timber-and-other-forest-produce/>> accessed 26 May 2023.

<sup>144</sup> PMF IAS, 'Wild Life Protection Act, Forest Conservation Act, Forest Rights Act' (PMF LAS, 8 May 2019) <<https://www.pmfias.com/wild-life-protection-biodiversity-forest-conservation-rights/>> accessed 26 May 2023.

<sup>145</sup> 'ENVIRO NEWS, November 1999' <<https://envisjnu.tripod.com/envnews/nov99/action.html>> accessed 26 May 2023.

<sup>146</sup> 'MoEF ANNUAL REPORT 1999-2000' 1999-2000 <<http://moef.gov.in/wp-content/uploads/report/9900/chap03.html>> accessed 26 May 2023.

- (5) Expand the forest area.

**The Wild Life (Protection) Amendment Act, 2006**

The Wild Life (Protection) Amendment Act, 2006 has come into force on 4th September 2006. The Act provides for creating the National Tiger Conservation Authority and the Tiger and Other Endangered Species Crime Control Bureau (Wildlife Crime Control Bureau).<sup>147</sup>

**Forest Rights act 2006**

**Main features of the act are:<sup>148</sup>**

- The act recognize and vest the forest rights and occupation in Forest land in forest Dwelling Scheduled Tribes (FDST) and Other Traditional Forest Dwellers (OTFD) who have been residing in such forests for generations.
- The act also establishes the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance of FDST and OTFD.
- It strengthens the conservation regime of the forests while ensuring livelihood and food security of the FDST and OTFD.
- It seeks to rectify colonial injustice to the FDST and OTFD who are integral to the very survival and sustainability of the forest ecosystem.
- The act identify four types of rights:
  - Title Rights
  - Use Rights
  - Relief and development rights
  - Forest management rights

**Importance of the Act:**

- The acts looks to right the wrongs of government policies in both colonial and independent India toward forest-dwelling communities, whose claims

<sup>147</sup> 'Wild Life (Protection) Amendment Act, 2006 (Act No. 39 of 2006). | UNEP Law and Environment Assistance Platform' <<https://leap.unep.org/countries/in/national-legislation/wild-life-protection-amendment-act-2006-act-no-39-2006>> accessed 26 May 2023.

<sup>148</sup> 'Welcome to Forest Rights Act Website' <<http://www.fra.org.in/>> accessed 26 May 2023.





over their resources were taken away during 1850s.

- The act also has potential of sustainably protecting forest through traditional ways along with providing tribes means of livelihood.
- It expands the mandate of the Fifth and the Sixth Schedules of the Constitution that protect the claims of indigenous communities over tracts of land or forests they inhabit.
- The alienation of tribes was one of the factors behind the Naxal movement, which affects states like Chhattisgarh, Odisha and Jharkhand. The act through identifying IFR and CFR tries to provide inclusion to tribes.
- It has the potential to democratise forest governance by recognising community forest resource rights over an estimated 85.6 million acres, thereby empowering over 200 million forest dwellers in over 1,70,000 villages.
- The act will ensure that people get to manage their forest on their own which will regulate exploitation of forest resources by officials, forest governance and management as well as tribal rights etc.

#### **Challenges:**

- Administrative apathy: Implementation of the act is a biggest challenge, as tribals are not big vote banks.
- Lack of awareness: Unawareness at the Lower level of forest officials who are supposed to help process forest rights claims is high and majority of the aggrieved population too remains in the dark regarding their rights.
- Dilution of Act: Certain sections of environmentalist raise the concern that FRA bend more in the favour of individual rights, giving lesser scope for community rights.
- Reluctance of the forest bureaucracy to give up control: There has been deliberate sabotage by the forest

bureaucracy, both at the Centre and the states, and to some extent by big corporates.

- Institutional Roadblock: Rough maps of community and individual claims are prepared by Gram Sabha which at times often lack technical knowhow and suffers from educational incapacity.

#### **CONCLUSION**

Connecting human rights and environment is a valuable sourcebook that explores the uncharted territory that lies between environmental and human rights legislation. Human beings can ensure fundamental equality and adequate conditions of life in an environment that permits a life of dignity and well-being. There is an urgent need to formulate laws keeping in mind the fact that those who pollute or destroy the natural environment are not just committing a crime against nature, but are violating human rights as well. Indeed, health has seemed to be the subject that bridges gaps between the two fields of environmental protection and human rights. The advancement of the relationship between human rights and environment would enable incorporation of human rights principles within an environmental scope, such as antidiscrimination standards, the need for social participation and the protection vulnerable groups.

#### **Suggestions:**

The government of India views MFP (Minor Forest Produce) rights as a means to curb Naxalism since the states most affected by Naxalism are also home to the maximum number of people dependent on forest produce. The recognition of CFR (Community Forest Rights) rights would shift forest governance in India towards a community conservation regime that is more food security and livelihood oriented. Large-scale awareness and information dissemination campaigns are required at local level informing both tribal and lower level officials. It is important to develop a





detailed strategy of training and capacity building of people responsible for implementing the FRA, such as Panchayats, Gram Sabha, village level Forest Rights committee etc. The relevant maps and documents should be made available to the Forest rights committee and claimants to simplify the task of the Gram Sabha in identifying and filing claims for individual and community rights. Providing clarity on the time limit for settling claims the act does not specify any time limit for resolving claims. In most of the areas, both the officials and beneficiaries are unaware of this fact. Centre should take more proactive role in pushing states to honour a law that could change the lives of millions.

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