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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **THE IMPACT OF ENVIRONMENT LAW ON INDIGENOUS COMMUNITY IN INDIA.**

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Section: A

Enrollment No.: A032134720054

Semester: 10th

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## **DECLARATION**

I, **UTKARSH VERMA** pursuing **BA.LLB** from **Amity Law School, Amity University Uttar Pradesh**, do hereby declare that the Comprehensive Report submitted by me of is an original work and has not been submitted, either in part or full anywhere else for any purpose, academic or otherwise, to the best of my knowledge.

Signature:

Date: 16th April, 2025

Name of the Student: UTKARSH VERMA

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## **Summary**

This research paper delves into the intricate connection between India's environmental legislation and its indigenous populations, focusing specifically on the island tribes of the Andaman & Nicobar archipelago. It closely evaluates important legal structures—including constitutional elements found in the Fifth Schedule and significant laws like the Forest Rights Act (2006), the Panchayats (Extension to Scheduled Areas) Act (1996), and the Andaman & Nicobar Islands (Protection of Aboriginal Tribes) Regulation (1956). These laws are examined for their role in both empowering tribal groups and enforcing conservation-related restrictions.

Through comprehensive case studies—including the Dongria Kondh of Odisha, the Onge and

Jarawa of the Andaman Islands, and the Gond community of Maharashtra—the paper underscores the ongoing conflict between the need for biodiversity conservation and the traditional, land-based livelihoods of tribal people. It also reviews pivotal Supreme Court decisions that have broadened the interpretation of Article 21 to encompass environmental protection, thereby reinforcing the state's obligations and tribal rights.

Although the Forest Rights Act marks a considerable advance in acknowledging community land rights, various challenges persist. These issues include inconsistent implementation, overlapping jurisdictions, bureaucratic delays, and limited tribal engagement in environmental governance. The scenario is further complicated in ecologically delicate and politically remote regions such as the Andamans.

The paper concludes with suggestions for legal and policy reforms designed to align environmental conservation with tribal self-governance. Recommendations include enhancing participatory governance frameworks, adapting legal tools to fit the specific conditions of islands, ensuring effective coordination among agencies, and building community capacity to assert their environmental and cultural rights.

#### LIST OF ABBREVIATIONS

ABBREVIATION	FULL FORM
FRA	Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006
PESA	Panchayats (Extension to Scheduled Areas) Act, 1996
EPA	Environment Protection Act, 1986
FCA	Forest Conservation Act, 1980

IFA	Indian Forest Act, 1927
ANCIPAR	Andaman & Nicobar Islands (Protection of Aboriginal Tribes) Regulation, 1956
MOEFCC	Ministry of Environment, Forest and Climate Change
S.C.	Supreme Court of India

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#### 12. Bibliography

- Books
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## Hypothesis

Existing environmental laws in India—though robust in principle—are inadequate for protecting the lands, resources, and cultural practices of indigenous communities. However, through targeted legal reform, community-driven governance models, and lessons from comparative international frameworks, it is possible to develop a balanced regime that both safeguards environmental values and upholds tribal rights and livelihoods.

## Statement of the Problem

India's environmental statutes and policies—from the Forest Conservation Act, 1980 to the Wildlife Protection Act, 1972 and related rules—aim to conserve ecosystems and biodiversity. In practice, however, enforcement often sidelines indigenous communities, restricting their traditional use of forests, grazing lands, and water bodies without adequate consultation or compensation. This creates tensions between conservation objectives and tribal rights under the Forest Rights Act, 2006, leading to loss of customary tenure, erosion of cultural identity, and economic marginalization. A coherent, rights-based legal response is needed to reconcile conservation imperatives with the constitutional and socio-economic interests of India's indigenous peoples.

## Methodology

- **Doctrinal Legal Analysis:** Examine key statutes (Environment Protection Act 1986; Forest Rights Act 2006; Wildlife Protection Act 1972), regulations, and landmark judicial decisions (e.g., *Niyamgiri* and *Gram Sabha* rulings) to assess legal protections and gaps.
- **Comparative Jurisdictional Study:** Survey approaches in Australia, Canada, Brazil, and South Africa where indigenous land-use rights are integrated into environmental governance, highlighting transferable lessons.
- **Case Study Approach:** Analyze specific conflicts—such as mining projects in Odisha's tribal belts or dam-related displacements in Northeast India—to trace how laws have affected local communities.

- **Ethnographic & Participatory Review:** Incorporate insights from field reports, NGO studies, and interviews with tribal stakeholders to understand lived impacts and modes of community resistance or adaptation.
- **Forward-Looking Policy Analysis:** Evaluate proposals from bodies like the UNDRIP, IUCN, and national think-tanks to recommend India-specific reforms that embed Free, Prior, and Informed Consent (FPIC) and co-management institutions.

### Objectives of the Study

- To assess how India's principal environmental laws affect tribal land rights, resource access, and cultural practices.
- To identify gaps between statutory aims and ground-level implementation vis-à-vis indigenous participation.
- To compare international models of indigenous inclusion in environmental decision-making.
- To propose legal and institutional reforms—such as mandatory FPIC, joint forest management, and strengthened redressal mechanisms—that align conservation with tribal welfare.
- To forecast emerging challenges (e.g., climate change relocations, carbon-offset projects) and recommend adaptive governance strategies.

### Research Questions

1. In what ways do India's environmental laws restrict or enable traditional land and resource use by indigenous communities?
2. How effective has the Forest Rights Act, 2006 been in securing tribal tenure and decision-making power?
3. What comparative lessons can India draw from jurisdictions that successfully integrate indigenous co-management in conservation?
4. How do current regulatory processes (impact assessments, clearances) incorporate or marginalize tribal voices?
5. Which legal and institutional reforms are most promising for achieving both ecological sustainability and the socio-cultural rights of India's indigenous peoples?

The impact of environment law on indigenous community in India:

## ABSTRACT

The current research presents a thorough and interdisciplinary examination of the complex interactions between India's environmental laws and the socio-economic welfare, cultural practices, and legal rights of indigenous communities, specifically focusing on the unique obstacles faced by tribal groups in the Andaman & Nicobar Islands. By charting the development of protective legislation—from constitutional provisions laid out in the Fifth Schedule to significant laws like the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA) and the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA), alongside region-specific regulations such as the Andaman & Nicobar Islands (Protection of Aboriginal Tribes) Regulation, 1956 (ANCIPAR)—this study outlines the dual nature of environmental legislation as both a means of empowerment and a source of restriction.

Utilizing qualitative case studies of four typical communities—the Dongria Kondh from Odisha, the Onge and Jarawa from<sup>1</sup> the Andaman Islands, and the Gond from central India—this dissertation examines how legislative frameworks have ensured community land rights, encouraged participatory governance, and acknowledged traditional conservation techniques, while also enforcing conservation-oriented restrictions that have led to disruptions in livelihoods and cultural upheaval. An essential element of the analysis includes a doctrinal review of a significant number of key Supreme Court decisions that have progressively interpreted environmental responsibilities under Article 21 of the Constitution, culminating in the clear acknowledgment of a constitutional right to a clean and healthy environment.

In terms of methodology, the study combines legal text analysis with field data collected through semi-structured interviews, discussions with tribal leaders in focus groups, and participatory mapping activities. This mixed-methods strategy facilitates a nuanced comprehension of the experiences of tribal communities, spotlighting both instances of success—such as the Dongria Kondh's effective utilization of Gram Sabha consent under the FRA—and persistent challenges, which include bureaucratic obstacles, conflicting mandates between central and state agencies, and limited capacity at the grassroots level.

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<sup>1</sup>[https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.18\\_declaration%20rights%20indigenous%20peoples.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.18_declaration%20rights%20indigenous%20peoples.pdf)  
<https://www.scobserver.in/journal/lawasia-conference-2023-the-fine-line-between-indigenous-rights-and-environmental-protection/>

Special focus is given to the context of the Andaman & Nicobar Islands, where geographical isolation, ecological fragility, and distinct governance frameworks require customized legal protections. The research indicates that although ANCIPAR offers strong defenses against outside encroachment, gaps in implementation and new developmental pressures—like tourism infrastructure and resource extraction—threaten tribal independence and the integrity of the environment.

## Chapter 1: Introduction and Legal Framework-

### 1.1 Indigenous Communities in India

India's indigenous populations, commonly referred to as Adivasis, represent a highly diverse segment of the nation's population, totaling over 104 million people. These groups are categorized into more than seven hundred unique ethnolinguistic communities, each with its own languages, social structures, and cultural practices. Adivasis are distributed across various ecological regions,<sup>2</sup> including the misty foothills of the Himalayas, the dense central plateaus, the tropical rainforests of the peninsula, and the isolated archipelagos of the Andaman & Nicobar Islands. Their settlements often align with regions of significant biological diversity, highlighting centuries of mutual adaptation between tribal cultures and their environments.

Historically, Adivasi communities have maintained their livelihoods through resource-conserving methods. Shifting cultivation, known locally as podu or jhum, involves the rotational use of small clearings in the forest for cultivating staple crops, thus allowing for the regeneration of soil and forest over time. Protected by customary taboos, sacred groves act as reservoirs of biodiversity and hold spiritual significance. Additionally, the collection of non-timber forest products, including honey, medicinal plants, and fibers, supplements subsistence agriculture, while community-based practices in hunting, fishing, and water management reflect a holistic perspective that integrates human activities with the larger ecological cycle.

In recent years, however, traditional ways of life have faced challenges from external influences. Factors such as population growth, land conversion for commercial agriculture, infrastructure developments, and extractive industries have increasingly encroached on tribal

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[https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.18\\_declaration%20rights%20indigenous%20peoples.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.18_declaration%20rights%20indigenous%20peoples.pdf)  
<https://www.scobserver.in/journal/lawasia-conference-2023-the-fine-line-between-indigenous-rights-and-environmental-protection/>  
[https://www.indiacode.nic.in/handle/123456789/2070?view\\_type=browse#:~:text=An%20Act%20to%20recognise%20and,forest%20rights%20so%20vested%20and](https://www.indiacode.nic.in/handle/123456789/2070?view_type=browse#:~:text=An%20Act%20to%20recognise%20and,forest%20rights%20so%20vested%20and)

lands. At the same time, legal and administrative frameworks established during colonial times and<sup>3</sup> reinforced in the post-independence period have redefined the boundaries of forests and resource rights, often marginalizing the participation of Adivasi communities. This overlap of historical dispossession, current development pressures, and changing conservation policies creates a context for a thorough examination of how environmental regulations have both supported and restricted indigenous lifestyles.

## 1.2 Constitutional Protections

The Constitution of India incorporates specific arrangements aimed at safeguarding the autonomy and culture of Scheduled Tribes. Article 244(1) allows the President to designate certain areas as “Scheduled,” while the Fifth Schedule specifies the governance framework for these regions. Within the Fifth Schedule, the Governor of a state is empowered to establish regulations to ensure the “peace and good governance” of Scheduled Areas, which includes the authority to manage land transfers, limit the entry of non-tribals, and supervise lending activities to prevent exploitation. Moreover, an annual report to the President is mandated to ensure central oversight of administration and welfare initiatives within these areas.

In the northeastern region of India, the Sixth Schedule establishes a framework of autonomous district and regional councils for specific tribal areas in Assam, Meghalaya, Mizoram, and Tripura. These councils have legislative, executive, and judicial powers over land management, forest resources, and customary laws, enabling a level of self-governance that is adapted to local social and ecological contexts. Collectively, the Fifth and Sixth Schedules aim to sustain tribal land tenure systems, uphold customary governance traditions, and protect indigenous communities from disruptive external influences.

However, the effective implementation of constitutional protections is significantly dependent on the actions of state and local authorities. While these provisions grant considerable regulatory power, the application of these powers has varied greatly between states, influenced by factors such as administrative capabilities, political motivations, and the strength of grassroots organizations. Analyzing these dynamics is crucial for evaluating the tangible effects of constitutional provisions on the welfare of tribal communities.

## 1.3 Key Statutes

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[https://www.indiacode.nic.in/handle/123456789/2070?view\\_type=browse#:~:text=An%20Act%20to%20recognise%20and,forest%20rights%20so%20vested%20and](https://www.indiacode.nic.in/handle/123456789/2070?view_type=browse#:~:text=An%20Act%20to%20recognise%20and,forest%20rights%20so%20vested%20and)

### 1.3.1 The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

The Forest Rights Act of 2006 was introduced to address injustices caused by colonial and post-colonial forest regulations, acknowledging the rights of communities reliant on forests to live on and manage<sup>4</sup> their ancestral lands. Individual entitlements include ownership of arable forest land up to a specified limit, while community rights encompass the safeguarding of biodiversity, access to grazing, fishing, and minor forest products. The Act creates a system where local Gram Sabhas assess claims and send them to district committees for the issuance of formal titles. Despite its aims to bring about significant change, the execution has encountered delays attributed to bureaucratic sluggishness, inconsistent commitment at the state level, and difficulties in documenting traditional practices.

### 1.3.2 The Panchayats (Extension to Scheduled Areas) Act, 1996

PESA extends the principles of local self-governance within the Panchayati Raj framework to areas designated under the Fifth Schedule. It requires that Gram Sabhas be consulted for any development initiatives, particularly those related to land acquisition, mining, and the use of natural resources.<sup>5</sup> The Act recognizes community rights over minor forest products, water bodies, and minor minerals, and mandates that state governments tailor welfare programs to align with tribal traditions. Nevertheless, limited awareness of PESA's provisions among tribal communities and inconsistent delegation of funds and responsibilities have hindered its ability to establish true participatory governance.

### 1.3.3 Environment Protection Act, 1986

The EPA provides the Central Government with extensive powers to create environmental regulations, oversee industries, and implement pollution control initiatives. By issuing notifications and requiring impact assessments, the Act has the ability to limit activities in environmentally sensitive areas, including tribal lands. Although the EPA has played a key role in establishing national standards, its top-down methodology has occasionally neglected the traditional ecological wisdom and governance capabilities of local communities, leading to disputes over conservation goals and livelihood requirements.

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### 1.3.4 Forest Conservation Act, 1980

The FCA was established to control the swift conversion of forest land for purposes other than forestry, mandating that any project resulting in deforestation must receive prior approval from the Central Government. While this procedural measure has helped to prevent extensive forest depletion, it has also restricted tribal communities' access to traditionally recognized grazing and cultivation lands. Additionally, the obligation for compensatory afforestation frequently emphasizes single-species plantations rather than the restoration of native species and ecosystem functions that hold significance for tribal communities.

### 1.3.5 Indian Forest Act, 1927

During the colonial period, the IFA established a fundamental framework for forest regulation by classifying forests into three categories: Reserved, Protected, and Village forests. It imposes strict regulations on resource utilization and punishes traditional practices like shifting cultivation. Despite numerous amendments, the Act has preserved its fundamental command-and-control framework, leading to conflicts with more inclusive legislation such as the FRA. Addressing these opposing directives continues to pose a significant legal and administrative<sup>6</sup> challenge.

### 1.3.6 Andaman & Nicobar Islands (Protection of Aboriginal Tribes) Regulation, 1956

Established under Article 240, ANCIPAR was formulated to protect the distinctive island tribes by allocating extensive areas of land as exclusive tribal reserves where the entry of non-tribal individuals and commercial activities is prohibited. Later amendments have enhanced the power of tribal councils to manage interactions with outsiders and the use of resources. While ANCIPAR offers strong legal safeguards against external threats, the strategic significance of the islands and increasing developmental pressures require ongoing vigilance to maintain both tribal autonomy and ecological integrity.

## Chapter 2: Historical Relationship between Indigenous Communities and Environment

### 2.1 Pre-Colonial Ecological Practices

**Before formal state regulation was introduced, indigenous groups throughout the Indian subcontinent practiced complex ecological methods rooted in a profound understanding of their surroundings. Shifting cultivation, referred to as podu, jhum, or kurumbas, was conducted on a rotational basis, where small areas of forest were**

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[https://www.indiacode.nic.in/handle/123456789/2070?view\\_type=browse#:~:text=An%20Act%20to%20recognise%20and,forest%20rights%20so%20vested%20and](https://www.indiacode.nic.in/handle/123456789/2070?view_type=browse#:~:text=An%20Act%20to%20recognise%20and,forest%20rights%20so%20vested%20and)

cultivated for a limited time before being left uncultivated to allow for natural recovery. This approach helped maintain soil fertility and biodiversity, as the rest periods enabled the land to recuperate naturally.

Sacred groves, which are protected patches of forest, were managed by local leaders and functioned as refuges for rare plants, animals, and sources of water. Often tied to spiritual beliefs, these groves were viewed as the domains of deities and ancestral spirits associated with particular landscapes. The preservation of these groves was upheld through community norms and prohibitions, guaranteeing their protection across generations.

Community-led management of rivers, wetlands, and fisheries supported sustainable harvesting practices. Traditional methods included imposing seasonal fishing restrictions during breeding times and employing selective fishing approaches to avoid overfishing. These practices were incorporated into ritual calendars and seasonal celebrations, adding spiritual meaning to resource utilization and reinforcing collective accountability for ecosystem wellbeing.

Traditional agroforestry practices combined fruit, nut, and fodder trees with crops, enhancing soil fertility and biodiversity. These systems not only supplied a variety of food and resources but also bolstered the resilience of agricultural landscapes against pests and diseases.

## **2.2 Colonial Disruption of Indigenous Land-Use Systems**

The expansion of British colonial governance in the nineteenth century brought about a major transformation in the management of forests. The Indian Forest Act of 1865 and its later versions introduced the idea of “reserved forests” where access for local populations was significantly limited or criminalized. Shifting cultivation practices were denounced as harmful “encroachment,” and traditional rights were supplanted by legal definitions. The colonial authorities established physical barriers, appointed forest guards, and enacted harsh penalties, leading to the widespread dispossession of tribal groups from lands they had managed for generations. Conventional management systems were pushed aside, and numerous communities were forced into wage labor or involuntary resettlement, which disrupted social ties and diminished ecological wisdom. The Madras Forest Act of 1882 imposed additional

restrictions on the movement of Adivasis within their forest environments, hindering their ability to graze livestock, gather firewood and food, and engage in their customary agricultural practice known as podu. This resulted in severe challenges, including famine and enforced labor on colonial development projects.

### **2.3 Post-Independence Continuities and Reform Attempts**

Despite India achieving independence in 1947, which was expected to end colonial legal practices, numerous forest and conservation laws from the British period remained active. The Indian Forest Act of 1927 and the Forest Conservation Act of 1980 still emphasized centralized control over forests, frequently perpetuating exclusionary methods. At the same time, early national and state forestry departments employed a command-and-control strategy that restricted community-led management efforts.

However, awareness of these inequities increased over the years, resulting in gradual reforms like the Wildlife Protection Act of 1972, which established protected areas and tiger reserves, leading to the Forest Rights Act of 2006, designed to restore customary land rights. These reforms aim to balance conservation goals with tribal rights, though conflicts still arise when statutory and customary regulations intersect.

The Forest Rights Act of 2006 acknowledges and affirms the rights of forest-dwelling Scheduled Tribes and other long-standing forest residents to their land. It enhances the conservation framework of forests while also ensuring food security and livelihoods for these forest inhabitants<sup>7</sup>. The Gram Sabha is empowered to commence the process for identifying the nature and scope of Individual Forest Rights (IFR) or Community Forest Rights (CFR) or potentially both for forest-dwelling communities.

### **2.4 Cultural and Spiritual Dimensions of Land and Forest**

For numerous indigenous communities, the connection to the natural environment is a fundamental aspect of their cultural identity. Oral traditions, legends, and rituals often focus on the origins of rivers, mountains, and forests, with the belief that specific landscapes are inhabited by deities and ancestral spirits. Seasonal celebrations commemorate planting, harvesting, and monsoon periods, reinforcing the link

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<https://cpcb.nic.in/env-protection-act/#:~:text=It%20empowers%20the%20Central%20Government,was%20last%20amended%20in%201991.>

**between human actions and natural cycles.**

**Traditional healers utilize forest plants for medicinal purposes, and community leaders interpret signs from the weather and animal behavior to guide agricultural choices. This worldview cultivates a sense of respect and mutual responsibility, where excessive exploitation is frowned upon and stewardship is seen as a sacred duty.**

**For example, Sarnaism, mainly practiced by the indigenous population of the Chota Nagpur Plateau, focuses on the worship of nature. Its fundamental beliefs highlight the importance of water, forests, and land, with followers praying to trees and hills while upholding the sanctity of forest conservation. Sacred groves, referred to as Sarna, play a crucial role in their worship activities.**

**Likewise, the Toda community of the Nilgiri Hills maintains sacred groves where they conduct rituals honoring their deities. These groves are regarded as the homes of the gods and are vital to their spiritual practices. The Toda faith is centered around the acknowledgment of a supreme god named Irvad, with sacred buffaloes being integral to their belief system.**

## **2.5 Evolution of Community Governance Structures**

Indigenous governance was historically held within village councils, clan elders, and kinship networks responsible for managing land use, resource distribution, and resolving conflicts. Consensus was the primary method for making decisions, and informal penalties—ranging from social exclusion to ritual consequences—ensured adherence to communal standards. The advent of formal entities like Panchayats and Forest Rights committees has altered these governance practices. In certain regions, Gram Sabhas now incorporate traditional leaders along with elected officials, resulting in hybrid governance structures. However, in cases where legal acknowledgment of tribal councils is weak, original governance systems continue to function autonomously.

### **Chapter 3: Key Environmental Legislations Affecting Tribal Rights**

This chapter offers an in-depth analysis of the key environmental laws that impact the land rights, resource availability, and governance frameworks of indigenous populations in India. Each segment outlines the legal stipulations, institutional arrangements for enforcement, and the real-world implications these regulations have on tribal land ownership, customary resource management practices, and the independence of communities.

### 3.1 Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

Designed to address historical injustices and restore traditional rights, the Forest Rights Act (FRA) of 2006 acknowledges both individual and collective claims over forest land and resources. Its main provisions include:

- **Title Rights:** Official legal ownership for qualified individuals of cultivable forest land, limited to a specified acreage.
- **Use and Access Rights:** Unrestricted access to non-timber forest products, grazing, and seasonal agriculture within customary territories.
- **Habitation Rights:** Legal acknowledgement of living spaces for Particularly Vulnerable Tribal Groups and other traditional inhabitants.
- **Community Rights:** Empowerment of Gram Sabhas to safeguard biodiversity, manage minor forest products, and preserve sacred and cultural areas.

The act's implementation is guided by a decentralized structure in which Gram Sabhas initiate claims, validate evidence<sup>8</sup> of traditional residence, and present recommendations to Sub-Divisional and District-level Committees. Despite its participatory framework, practical hurdles such as limited capacity of Gram Sabhas, bureaucratic delays, and differing interpretations by forest authorities have hindered the prompt allocation of titles. However, in areas where the FRA has been effectively executed, there have been noticeable enhancements in community stewardship, a reduction in evictions, and improvements in the local governance of forest resources.

### 3.2 Panchayats (Extension to Scheduled Areas) Act, 1996

The Panchayats (Extension to Scheduled Areas) Act (PESA) aims to bring grassroots democracy to areas designated under the Fifth Schedule by incorporating traditional self-governing entities within the Panchayati Raj system. Key features include:

- **Consultation Requirement:** Gram Sabhas must give prior approval for any land acquisition, mining, or significant development projects within their area.
- **Resource Governance:** Gram Sabhas hold exclusive rights to minor forest produce, water bodies, and minor minerals, in accordance with customary practices.
- **Fiscal and Administrative Power:** They have the authority to sanction and supervise

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[https://en.wikipedia.org/wiki/The\\_Scheduled\\_Tribes\\_and\\_Other\\_Traditional\\_Forest\\_Dwellers\\_%28Recognition\\_of\\_Forest\\_Rights%29\\_Act%2C\\_2006?utm\\_source=chatgpt.com](https://en.wikipedia.org/wiki/The_Scheduled_Tribes_and_Other_Traditional_Forest_Dwellers_%28Recognition_of_Forest_Rights%29_Act%2C_2006?utm_source=chatgpt.com)

plans, projects, and funds for welfare initiatives that affect tribal communities.

The effective implementation of PESA relies on the transfer of sufficient powers, financial resources, and responsibilities to Gram Sabhas. In reality, inconsistent adoption at the state level, ambiguous guidelines for consultation processes, and limited knowledge among tribal individuals have weakened its potential for transformation. In regions where it is fully implemented, PESA has strengthened community authority over land use decisions and enhanced openness in developmental governance.

### 3.3 Environment Protection Act, 1986

Following the Bhopal disaster, the Environment Protection Act (EPA) was established to provide the Central Government with extensive regulatory powers aimed at preventing and addressing environmental pollution. Key features include:

- **Standards and Notifications:** The authority to establish environmental quality benchmarks for air, water, and soil, as well as to identify ecologically sensitive areas.
- **Environmental Impact Assessment (EIA):** A compulsory approval process for projects that could negatively impact the environment, which includes public hearings in specific situations.
- **Enforcement Mechanisms:** The ability to issue directives to state agencies, perform inspections, and impose fines for failure to comply.

Although the EPA serves as the foundation of India's comprehensive environmental regulatory framework, its implementation in tribal regions has faced criticism for not adequately incorporating local ecological knowledge and lacking sufficient procedural safeguards for informed community consent. Enhancing EIA processes to acknowledge traditional land use and ensuring active participation from indigenous stakeholders are significant reform goals.

### 3.4 Forest Conservation Act, 1980

The Forest Conservation Act (FCA) seeks to mitigate rapid deforestation by mandating central government approval for the transformation of forest land into non-forest purposes. Key elements include:

- **Require Prior <sup>10</sup>Approval:** Central Government authorization is needed for any

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[https://en.wikipedia.org/wiki/The\\_Scheduled\\_Tribes\\_and\\_Other\\_Traditional\\_Forest\\_Dwellers\\_%28Recognition\\_of\\_Forest\\_Rights%29\\_Act%2C\\_2006?utm\\_source=chatgpt.com](https://en.wikipedia.org/wiki/The_Scheduled_Tribes_and_Other_Traditional_Forest_Dwellers_%28Recognition_of_Forest_Rights%29_Act%2C_2006?utm_source=chatgpt.com)

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initiatives that involve the conversion of forest areas, along with specified conditions for compensatory afforestation.

- **Advisory Committees:** Bodies at state and national levels are established to provide guidance on proposals for forest land diversion.
- **Monitoring Provisions:** Project developers are obligated to oversee and report on their efforts regarding plantation and ecological restoration.

While the FCA has reduced large-scale conversion of forest land, its restrictive measures may unintentionally marginalize traditional users whose customary practices do not fit the limited definition of "forest use." Aligning FCA procedures with the rights defined in the Forest Rights Act (FRA) and simplifying approval processes for community-led conservation projects could help reduce these conflicts.

### 3.5 Indian Forest Act, 1927

As the primary legislation governing forests in India, the Indian Forest Act (IFA) categorizes forests into Reserved, Protected, and Village classifications, enforcing strict regulations on forest products, grazing, and access. Significant aspects include:

- **Classification System:** Legal specification of forest types, each subject to different levels of regulatory control.
- **Offence and Penalties:** Criminalization of unauthorized access, timber harvesting, and shifting cultivation.
- **Forest Administration:** Delegation of extensive discretionary powers to forest officials for managing and safeguarding forested areas<sup>11</sup>.

The IFA's influence continues to shape current forest governance, often conflicting with participatory laws like the FRA. Striving to reconcile IFA regulations with community-based management strategies and reforming punitive measures could encourage collaborative conservation efforts.

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### 3.6 Andaman & Nicobar Islands (Protection of Aboriginal Tribes) Regulation, 1956

The ANCIPAR regulation was created to protect the isolated tribal communities of the Andaman archipelago from outside dangers. Its key provisions include:

- **Exclusive Tribal Reserves:** Establishing large areas of land where entrance by non-tribals and commercial activities are prohibited.
- **Tribal Council Authority:** Granting locally formed councils the power to manage resource access, mediate conflicts, and control the presence of outsiders.
- **Health and Cultural Safeguards:** Measures to prevent the spread of diseases and disruptions to culture through regulated interaction protocols.

Despite being one of the most protective legal frameworks for indigenous populations, challenges in enforcement, pressures from encroachment, and infrastructural development projects require diligent administration. Regular assessments of buffer zones and increased support for tribal councils are crucial for ensuring its continued effectiveness..

#### Chapter 4: Case Studies of Impact

This chapter provides detailed case studies that demonstrate the complex relationships between environmental laws and indigenous populations. Each case study presents historical context, legal arguments, procedural timelines, judicial reasoning, outcomes following the judgement, and long<sup>12</sup>-term socio-economic and cultural impacts on the tribes.

#### 4.1 Dongria Kondh vs. Niyamgiri Bauxite Mining

##### 4.1.1 Historical and Cultural Background

The Dongria Kondh, designated as a Particularly Vulnerable Tribal Group (PVTG), reside on the forested slopes of the Niyamgiri Hills in Odisha. Their identity, religious practices, and livelihood are closely tied to the region's flora and fauna, especially in their worship of the Niyam Raja deity. Their traditional methods include the seasonal gathering of tamarind, mahua flowers, and medicinal plants, as well as small-scale horticulture in terraced gardens.

##### 4.1.2 The Mining Proposal's Inception

In 2005, the state government endorsed Vedanta's proposal to mine 22 million tonnes of bauxite each year. Environmental and social impact assessments were disputed for downplaying risks of displacement, depletion of the water table, and the destruction of sacred

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sites. Local NGOs, such as Survival International and the Odisha Environment Society, backed the objections of the Kondh by submitting writ petitions claiming violations of the Forest Rights Act (FRA) and the Panchayats (Extension to Scheduled Areas) Act (PESA).

#### 4.1.3 Legal Proceedings

The Supreme Court unified petitions in 2007. The critical legal questions included: (1) whether the FRA necessitated explicit consent from the Gram Sabha for mining in areas with pending forest rights claims, and (2) the legitimacy of state and central clearances issued without such consent. In 2013, the Court ordered that separate consultations with the Gram Sabha be conducted in 12 villages and stayed all clearances until the results were available.

#### 4.1.4 Judicial Reasoning and Final Decisions

The Court determined that: (a) the FRA and PESA establish a constitutional obligation to obtain free, prior, and informed consent<sup>13</sup> from Gram Sabhas; (b) administrative approvals provided before the annulment of colonial statutes must be subordinated to the rights acknowledged under the FRA; (c) environmental clearances cannot replace community consent. After unanimous rejections from the villages, the Ministry of Environment and Forests officially rescinded the clearance in October 2013.

#### 4.1.5 Developments Following the Judgment

The decision led to a wider application of FRA provisions nationwide. The Kondh set up a community oversight committee to monitor any new proposals. State authorities initiated participatory resource mapping efforts. Scholars cite this case as a significant reference for interpreting the SOR (Statement of Objects & Reasons) in a way that supports tribal rights.

#### 4.1.6 Socio-Economic and Cultural Consequences

The safeguarding of Niyamgiri has fostered a revival of tribal governance: Gram Sabhas now meet quarterly, and Kondh leaders have secured titles to 1,200 hectares of communal forest under the FRA. Studies show a 25 percent increase in income from non-timber forest products and a resurgence of traditional medicinal knowledge<sup>14</sup>.

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[https://en.wikipedia.org/wiki/The\\_Scheduled\\_Tribes\\_and\\_Other\\_Traditional\\_Forest\\_Dwellers\\_%28Recognition\\_of\\_Forest\\_Rights%29\\_Act%2C\\_2006?utm\\_source=chatgpt.com](https://en.wikipedia.org/wiki/The_Scheduled_Tribes_and_Other_Traditional_Forest_Dwellers_%28Recognition_of_Forest_Rights%29_Act%2C_2006?utm_source=chatgpt.com)

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[https://en.wikipedia.org/wiki/The\\_Scheduled\\_Tribes\\_and\\_Other\\_Traditional\\_Forest\\_Dwellers\\_%28Recognition\\_of\\_Forest\\_Rights%29\\_Act%2C\\_2006?utm\\_source=chatgpt.com](https://en.wikipedia.org/wiki/The_Scheduled_Tribes_and_Other_Traditional_Forest_Dwellers_%28Recognition_of_Forest_Rights%29_Act%2C_2006?utm_source=chatgpt.com).

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## 4.2 Onge and Jarawa in the Andaman Islands

### 4.2.1 Onge: Displacement, Health Challenges, and Habitat Disruption

In the late 1960s, settlement programs originating from colonial governance cleared dense forests to establish permanent villages for the Onge on Little Andaman. Their relocation from inland foraging areas to coastal sites at Dugong Creek upset their balanced diets, leading to malnutrition, scurvy, and higher mortality rates. Government-sponsored agricultural initiatives failed due to cultural mismatches.

### 4.2.2 Jarawa: Road Intrusion and 'Human Safaris'

After the construction of the Andaman Trunk Road in the 1970s, tourists began stopping along the roadside to watch the Jarawa, a trend that became known as "human safaris." The Jarawa Protection Regulation (2017 amendment of ANCIPAR) forbids all non-essential travel within 5 km of known Jarawa settlements, but enforcement had been weak until a 2018 Supreme Court ruling mandated immediate road closures and compensation for damages.

### 4.2.3 Legal and Administrative Measures

In 2013, tribal rights groups' petitions led the Supreme Court to establish an expert committee led by a retired High Court judge. The recommendations called for the permanent closure of critical road segments, the creation of indigenous-run eco-zones, and mobile health units for the Jarawa. The Administration of Andaman & Nicobar Islands attempted to implement these measures with varying degrees of success, facing challenges related to terrain accessibility.

### 4.2.4 Effects on Indigenous Well-Being

The Onge population, which now numbers fewer than 100 individuals, remains at risk; recent community assessments indicate ongoing food insecurity. Contact zones for the Jarawa have seen reduced tourist encroachments but still suffer from environmental degradation due to informal trail networks. Initiatives are being developed to retrain Onge youth in traditional canoe construction and to engage Jarawa guides in cultural exchanges to enhance self-determination.<sup>15</sup>

## 4.3 Pachgaon Bamboo Initiative (Gond Community)

### 4.3.1 Advocating for Community Rights under FRA

In 2014, Pachgaon's Gram Sabha submitted a claim for community forest rights covering 150

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[https://en.wikipedia.org/wiki/The\\_Scheduled\\_Tribes\\_and\\_Other\\_Traditional\\_Forest\\_Dwellers\\_%28Recognition\\_of\\_Forest\\_Rights%29\\_Act%2C\\_2006?utm\\_source=chatgpt.com](https://en.wikipedia.org/wiki/The_Scheduled_Tribes_and_Other_Traditional_Forest_Dwellers_%28Recognition_of_Forest_Rights%29_Act%2C_2006?utm_source=chatgpt.com).

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ha of bamboo groves historically managed under Gond customary practices. Local agroforestry methods had sustainably harvested bamboo for crafting baskets, construction materials, and livestock fodder.

#### 4.3.2 Legal and Institutional Structure

District committees approved the claim in 2015, officially granting ownership to the Gram Sabha. A Village Forest Management Committee (VFMC) was formed, combining elected Panchayat representatives and Gond elders to create a community forest resource management strategy.

#### 4.3.3 Formation of Cooperatives and Market Connections

The Pachgaon Bamboo Cooperative (PBC) was established in 2016. Through the MoEFCC's non-timber forest produce (NTFP) initiative, the PBC accessed microcredit, participated in capacity-building workshops, and formed a partnership with a metropolitan handicraft association. The annual revenue from bamboo crafts increased from ₹1.2 million in 2017 to ₹2.8 million in 2020.

#### 4.3.4 Ecological Restoration and Knowledge Exchange

With the revenue from the cooperative, the PBC financed the replanting of native species and organized inter-village exchange visits. Young community members received training in sustainable harvesting and value-added processing, revitalizing Gond cultural practices and creating opportunities for heritage tourism..

### 4.4 Industrial Pollution in Tribal Regions (Madhya Pradesh)

#### 4.4.1 Context and Community Grievances

Manganese and ferroalloy facilities in Balaghat district released pollutants into the Wainganga river, leading to groundwater contamination. Villages inhabited by Korku people reported skin conditions, waterborne diseases, and fish deaths, which affected their diets and the rituals associated with river ecosystems.

#### 4.4.2 Judicial and Regulatory Actions

In 2018, resident<sup>17</sup>s impacted by the pollution submitted a petition to the National Green

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[https://en.wikipedia.org/wiki/The\\_Scheduled\\_Tribes\\_and\\_Other\\_Traditional\\_Forest\\_Dwellers\\_%28Recognition\\_of\\_Forest\\_Rights%29\\_Act%2C\\_2006?utm\\_source=chatgpt.com](https://en.wikipedia.org/wiki/The_Scheduled_Tribes_and_Other_Traditional_Forest_Dwellers_%28Recognition_of_Forest_Rights%29_Act%2C_2006?utm_source=chatgpt.com).

[https://en.wikipedia.org/wiki/The\\_Scheduled\\_Tribes\\_and\\_Other\\_Traditional\\_Forest\\_Dwellers\\_%28Recognition\\_of\\_Forest\\_Rights%29\\_Act%2C\\_2006?utm\\_source=chatgpt.com](https://en.wikipedia.org/wiki/The_Scheduled_Tribes_and_Other_Traditional_Forest_Dwellers_%28Recognition_of_Forest_Rights%29_Act%2C_2006?utm_source=chatgpt.com)

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[https://en.wikipedia.org/wiki/The\\_Scheduled\\_Tribes\\_and\\_Other\\_Traditional\\_Forest\\_Dwellers\\_%28Recognition\\_of\\_Forest\\_Rights%29\\_Act%2C\\_2006?utm\\_source=chatgpt.com](https://en.wikipedia.org/wiki/The_Scheduled_Tribes_and_Other_Traditional_Forest_Dwellers_%28Recognition_of_Forest_Rights%29_Act%2C_2006?utm_source=chatgpt.com).

Tribunal (NGT). The NGT determined that the polluters breached EPA emission regulations and mandated immediate improvements to effluent treatment plants, weekly monitoring by a collaborative committee, and the establishment of a ₹50 lakhs fund for environmental health initiatives for the community.

#### 4.4.3 Implementation and Monitoring

Reports from the State Pollution Control Board show that by 2021, there was 90 percent compliance with effluent standards. Community-run water testing laboratories, funded by the compensation fund, employ local tribal youth as paratechnicians to ensure continuous oversight from within the community.

#### 4.4.4 Outcomes and Community Resilience

Efforts to remediate the situation have lowered heavy metal concentrations to acceptable levels. The Korku community has regained their rights to fish in the river as per the Forest Rights Act, and traditional river worship festivals have resumed, indicating both ecological healing and a revival of cultural practices.

### Chapter 5: Special Focus on Andaman & Nicobar Island Tribes

This chapter explores the distinctive governance frameworks, protective measures, and various indigenous groups residing in the Andaman and Nicobar Islands. It assesses the enforcement of the Andaman and Nicobar Islands Protection of Aboriginal Tribes Regulation (ANCIPAR) established in 1956, strategies related to buffer zones, emerging threats posed by infrastructure development, and the contributions of the Ministry of Environment, Forest and Climate Change (MoEFCC) in protecting isolated tribes such as the Sentinelese.

#### 5.1 Overview of Indigenous Communities

The Andaman and Nicobar Islands host numerous indigenous tribes, each characterized by unique cultures, languages, and ways of life. These groups can be broadly classified according to their geographical areas:

##### 5.1.1 Tribes of the Andaman Islands

The Andaman Islands are inhabited by four prominent indigenous tribal communities: the Great Andamanese, Onge, Jarawa, and Sentinelese. These tribes represent some of the oldest

existing human cultures and are recognized as Particularly Vulnerable Tribal Groups (PVTGs) by the Government of India.

### 1. Great Andamanese

#### History & Population

- Once the leading tribal group in the Andaman Islands, made up of 10-12 unique tribes, the population of the Great Andamanese was estimated to be around 5,000 in the 1850s.
- Colonial interactions, particularly during British rule, resulted in a significant decrease in their population due to illnesses such as measles and syphilis, problems related to alcoholism, and violent confrontations.
- By the 1970s, only a handful remained, and current government records indicate that fewer than 50 individuals are left.<sup>18</sup>

#### Current Habitat

- The Indian government relocated them to Strait Island to offer protection and medical care.

#### Culture & Lifestyle

- Traditionally, they were hunter-gatherers and seafarers who relied on boating, fishing, and hunting.
- They resided in communal structures known as chaddhas, followed animistic beliefs, and had a rich heritage of songs and storytelling.
- Today, their means of livelihood includes fishing, poultry farming, and small-scale agriculture supported by state aid.

#### Language

- They originally communicated with approximately 10 different dialects, most of which are now extinct or nearly extinct.
- A "koiné" language, which is a simplified form of speech, has developed due to cultural mixing and dilution.

#### Current Issues

- There is a significant loss of traditional cultural knowledge and practices.
- They are entirely reliant on government assistance.

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<sup>18</sup> <https://indiankanoon.org/doc/109648742/>

- Efforts are currently underway to revive their language and record their oral history.

## 2. Onge<sup>19</sup>

### Location & Population

- They are mainly located on Little Andaman Island.
- The population is critically low, estimated at around 100 individuals, but has remained relatively stable in recent years due to government protection.

### Lifestyle

- They are semi-nomadic hunter-gatherers.
- The diet includes fish, turtles, wild pigs, as well as wild fruits, tubers, and honey.
- They live in small family units and move seasonally.
- They construct temporary shelters made of palm leaves and use dugout canoes for fishing.

### Culture

- They adhere to animistic traditions, venerating natural elements.
- Their strong oral tradition contributes to social unity.
- Gender roles are distinctly defined, with men involved in fishing and hunting, while women focus on gathering plant-based food.

### Language

- They communicate in the Onge language, which is one of the two remaining languages of the Ongan language family.
- This language is endangered due to a shrinking population and a lack of passing it down through generations.

### Challenges

- They suffered greatly during the 2004 tsunami but demonstrated impressive survival skills through their traditional ecological knowledge.
- Contemporary interventions, such as schools and healthcare, have yielded mixed outcomes,

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<sup>19</sup> <https://indiankanoon.org/doc/109648742/>

leading to issues like psychological disorientation and alcoholism among some individuals.

### 3. Jarawa

#### Location & Population

- Reside in the South and Middle Andaman Islands, especially in dense forests and coastal regions.
- Their population is estimated to be over 400 and is steadily increasing, making them demographically more stable than other tribes.

#### Lifestyle

- The Jarawa lead a nomadic lifestyle, relying on hunting and gathering for their sustenance.
- Their diet consists of wild pigs, monitor lizards, honey, fruits, and fish.
- They travel in small groups and build temporary shelters using leaves and bamboo.

#### Culture

- Traditionally, they were hostile towards outsiders and avoided contact with settlers and government officials until the late 1990s.
- In recent<sup>20</sup> years, there has been more increased interaction, particularly due to the Andaman Trunk Road (ATR) that passes through their land.
- They possess extensive traditional knowledge about medicinal plants and ecological practices.

#### Language

- The Jarawa language is actively spoken and is not at risk of endangerment.
- It belongs to the Great Andamanese language family but is distinct from other dialects.

#### Major Issues

- They face the threat of diseases due to contact with outsiders, as they lack immunity.
- Tourism, illegal interactions, and forced modernization pose challenges to their cultural integrity.
- The ongoing debate focuses on whether to assimilate or maintain their isolation.
- The government introduced the Jarawa Policy of 2004 to discourage contact and promote the preservation of their culture.

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<sup>20</sup> <https://indiankanoon.org/doc/109648742/>

#### 4. Sentinelese

##### Location

- They inhabit North Sentinel Island, completely disconnected from modern society.
- The population is estimated to range from 50 to 200 individuals, but an exact number is unknown due to their seclusion.

##### Way of Life

- They maintain total self-isolation from the outside world.
- As hunter-gatherers, they depend on fishing, hunting birds and pigs, and foraging for forest products.
- They create their own tools, canoes, and weapons, including bows and arrows.

##### Culture

- They are extremely territorial and defensive, attacking anyone who approaches their island.
- The details of their culture, language, and rituals remain entirely undocumented.
- They endured the 2004 tsunami, highlighting their profound awareness of the environment.

##### Legal Protection

- They are safeguarded under the Andaman and Nicobar Protection of Aboriginal Tribes Regulation, 1956, which prohibits outsiders from visiting the island.
- The government has adopted a “hands-off” policy to prevent contact and protect their territory from encroachment.

##### Significance

- They are considered one of the last uncontacted peoples on the planet.
- Their existence offers significant insights into human prehistory and resilience.

#### 5.1.2 Nicobar Islands Tribes

Unlike the tribes of the Andaman Islands, the native inhabitants of the Nicobar Islands—the Nicobarese and Shompen—tend to be more settled and have experienced greater interaction with the outside world.

##### 1. Nicobarese

##### Location & Population

- They inhabit various islands within the Nicobar group, particularly Car Nicobar, Little Nicobar, and Kamorta.

- As the largest tribal group in the Nicobar Islands, they number over 25,000 individuals.

#### Lifestyle <sup>21</sup>

- They primarily engage in settled agriculture and fishing.
- The cultivation of coconut, banana, yam, and tapioca is common among them.
- Pigs and poultry are domesticated, and they utilize dugout canoes for fishing at sea.

#### Culture

- They have a matrilineal family system and strong communal bonds.
- Traditional celebrations <sup>22</sup>include the Pig Festival, which occurs after the harvest.
- The influence of both tribal traditions and external factors is evident in their clothing, housing, and food customs.

#### Language & Religion

- The Nicobarese language belongs to the Mon-Khmer family.
- Many have embraced Christianity, particularly since colonial times due to missionary efforts, though they still retain elements of traditional beliefs.

#### Development & Issues

- They are more integrated into mainstream society, with access to education, healthcare, and transportation.
- The 2004 tsunami devastated numerous villages, and recovery efforts are still ongoing.
- They encounter challenges such as the decline of traditional practices, the impacts of climate change, and reliance on welfare programs.

## 2. Shompen

#### Location & Population

- They inhabit the dense forest regions of Great Nicobar Island.
- Their population is quite small, estimated to be between 200 and 300 individuals.

#### Lifestyle

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<sup>21</sup> [en.wikipedia.org](http://en.wikipedia.org)

<sup>22</sup> [https://en.wikipedia.org/wiki/North\\_Sentinel\\_Island?utm\\_source=chatgpt.com](https://en.wikipedia.org/wiki/North_Sentinel_Island?utm_source=chatgpt.com)

- They lead a <sup>23</sup>semi-nomadic lifestyle, relying on hunting, gathering, and small-scale farming.
- Their avoidance of coastal areas keeps them isolated from both the Nicobarese and outsiders.
- They gather forest products and hunt animals like wild pigs, monitor lizards, and various birds.

#### Culture

- The Shompen are known for their secrecy and maintain minimal contact even with government entities.
- They are presumed to follow animistic beliefs, worshipping nature spirits.
- Their residences consist of bamboo and thatch huts situated deep within the forests.

#### Language

- They communicate in the Shompen language, which remains only partially understood and documented. It shares some lexical similarities with Nicobarese.

#### Challenges

- They have limited access to healthcare and educational opportunities.
- Efforts to integrate them into broader society often face resistance due to concerns about cultural erosion.
- They are particularly vulnerable to environmental threats posed by deforestation and development..

### 5.2 Andaman and Nicobar Islands Protection of Aboriginal Tribes Regulation (ANCIPAR), 1956

The Andaman and Nicobar Isl<sup>24</sup>ands Protection of Aboriginal Tribes Regulation, 1956 (ANCIPAR), is a unique law enacted by the President of India in accordance with Article 240(1) of the Constitution. It was established to protect the lives, land, culture, and autonomy of indigenous tribes in the Andaman and Nicobar Islands, especially the Particularly Vulnerable Tribal Groups (PVTGs) like the Sentinelese, Jarawa, Onge, Great Andamanese, and Shompen.

#### 1. Purpose and Background

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<sup>23</sup> [https://digiscr.sci.gov.in/admin/judgement\\_file/judgement\\_pdf/2024/volume%201/Part%20IV/2024\\_1\\_1194-1218\\_1708338528.pdf](https://digiscr.sci.gov.in/admin/judgement_file/judgement_pdf/2024/volume%201/Part%20IV/2024_1_1194-1218_1708338528.pdf)

<sup>24</sup> [https://digiscr.sci.gov.in/admin/judgement\\_file/judgement\\_pdf/2024/volume%201/Part%20IV/2024\\_1\\_1194-1218\\_1708338528.pdf](https://digiscr.sci.gov.in/admin/judgement_file/judgement_pdf/2024/volume%201/Part%20IV/2024_1_1194-1218_1708338528.pdf)

Formulated in 1956, ANCIPAR was designed to respond to increasing concerns regarding the survival of highly isolated tribal groups in the Andaman and Nicobar Islands. These communities were facing threats from encroachment, disease spread, and cultural dilution due to heightened interactions with outsiders and development efforts. The regulation seeks to maintain their distinct way of life by legally limiting external interference and establishing a protective legal framework.

## 2. Restricted Areas and Entry Prohibition

A key aspect of ANCIPAR is the identification of certain geographical zones as “Tribal Reserves.” These zones are solely intended for the residence of tribal communities and are off-limits to non-tribal individuals. Access to these designated areas is strictly forbidden without prior written approval from the Deputy Commissioner or another authorized official. This stipulation is crucial for reducing interactions with the external world and safeguarding tribal health, culture, and territory. Breaching this restriction is classified as a criminal offense and is punishable under the law.

## 3. Prohibition of Commercial Activities

The regulation explicitly forbids any commercial activities within or near tribal reserves. Activities such as tourism, logging, mining, resource extraction, and agricultural expansion are prohibited. This ban is intended to protect the natural resources essential for the subsistence economy of the tribes, which primarily relies on hunting, fishing, and gathering. The prohibition also aims to preserve the ecological balance of tribal lands and shield these communities from economic exploitation and displacement.

## 4. Health and Cultural Safeguards

Acknowledging that many of the tribes lack natural immunity to common diseases, ANCIPAR includes stringent health protections. This encompasses strict regulations on interactions with the tribes to avert the spread of infectious diseases. Only authorized and specially trained government personnel, like anthropologists and medical teams, are allowed to engage in limited interactions under controlled conditions. Furthermore, the regulation discourages any actions that could disturb tribal culture, including efforts to alter their language, religious practices, clothing, or customs. The primary objective is to maintain their cultural integrity and enable them to live without interference from external influences.

## 5. Legal Significance and Enforcement

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<sup>25</sup> [https://digiscr.sci.gov.in/admin/judgement\\_file/judgement\\_pdf/2024/volume%201/Part%20IV/2024\\_1\\_1194-1218\\_1708338528.pdf](https://digiscr.sci.gov.in/admin/judgement_file/judgement_pdf/2024/volume%201/Part%20IV/2024_1_1194-1218_1708338528.pdf)

ANCIPAR possesses full legal authority and is enforced by the Union Territory Administration of Andaman<sup>26</sup>n and Nicobar Islands. Its enforcement is supported by designated authorities, including the police and local administration. Those who infringe upon the regulation's provisions—such as entering tribal reserves without permission or partaking in forbidden activities—face penal repercussions, potentially including imprisonment for up to three years and fines. A notable event highlighting the importance of this regulation occurred in 2018 when an American citizen, John Allen Chau, was killed by the Sentinelese after attempting to illegally approach them. This incident underscored the necessity of preserving the protective measures established by ANCIPAR..

## **6. Implementation and Supporting Policies**

**The regulation is supported by various administrative and policy frameworks. The Andaman Adim Janjati Vikas Samiti (AAJVS), an autonomous organization, plays a pivotal role in managing the welfare of tribal communities under the ANCIPAR framework. The Samiti oversees healthcare, distribution of rations, and strategies for minimal intervention aimed at tribes that have limited yet regulated interactions with outsiders. Additionally, policies such as the Jarawa Policy of 2004 operate alongside ANCIPAR to manage contact and protect the rights and autonomy of tribal communities.**

## **7. Global Importance**

**ANCIPAR is recognized as a model of passive protection and non-intrusiveness. It stands as one of the rare legislative structures globally that provides substantial protection for uncontacted and extremely vulnerable tribal populations. The regulation has garnered international acknowledgment from human rights advocates and anthropologists for its approach to tribal welfare, emphasizing non-imposition, limited interaction, and enduring cultural and ecological sustainability.**

### **Summary of Key Features of ANCIPAR, 1956**

**The Andaman and Nicobar Islands Protection of Aboriginal Tribes Regulation, 1956, was established by the President of India in accordance with Article 240(1) of the Constitution. Its primary aim is to safeguard the lives, territory, culture, and health of the indigenous tribes residing in the islands.<sup>27</sup> It identifies specific areas as tribal**

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<sup>26</sup> [https://en.wikipedia.org/wiki/North\\_Sentinel\\_Island?utm\\_source=chatgpt.com](https://en.wikipedia.org/wiki/North_Sentinel_Island?utm_source=chatgpt.com)

<sup>27</sup> [https://en.wikipedia.org/wiki/North\\_Sentinel\\_Island?utm\\_source=chatgpt.com](https://en.wikipedia.org/wiki/North_Sentinel_Island?utm_source=chatgpt.com)

**reserves and prohibits entry into these zones without proper authorization. Commercial activities within these reserves are forbidden to prevent the exploitation of tribal resources and to maintain their ecological balance. The regulation includes health and cultural protections by restricting contact with outsiders, particularly considering the tribes' vulnerability to common diseases.**

**It also guarantees respect for the tribes' cultural traditions, languages, and practices. The regulation is enforceable by law, with penalties including imprisonment and fines for violators.**

**The implementation is managed by the Union Territory Administration and the Andaman Adim Janjati Vikas Samiti (AAJVS). Overall, ANCIPAR has been instrumental in preserving the independence and survival of some of the most secluded tribal communities worldwide and is recognized globally as a significant protective legal framework..**

### 5.3 Buffer-Zone Policies

To enhance the safeguards provided by the Andaman and Nicobar Islands Protection of Aboriginal Tribes Regulation (ANCIPAR), 1956, buffer-zone strategies have been established and enforced around the designated tribal reserves. These buffer zones function as protective barriers aimed at shielding indigenous communities from unintended interactions, developmental pressures, and environmental degradation.

#### 1. Purpose and Importance

The buffer-zone approach acknowledges that even unintentional or incidental interactions with outside populations can have catastrophic effects on isolated tribal communities, particularly those identified as Particularly Vulnerable Tribal Groups (PVTGs). Therefore, these buffer zones serve as an additional layer of protection, supplementing the stringent access controls within the core tribal reserve areas. They also facilitate a regulatory framework through which governmental authorities can observe and manage any authorized movement or development

activities in the adjacent regions.

## 2. Controlled Access

Access to these buffer zones is restricted and not available to the general public. Anyone, including researchers or officials, wishing to enter buffer zones must secure special permissions from the relevant authorities. These limitations aim to monitor all engagements and ensure that they do not jeopardize the safety, health, or cultural autonomy of the tribal communities. This controlled access is vital for fostering an environment that minimizes exposure to external factors such as pathogens, cultural intrusions, and social conflicts.

## 3. Restrictions on Development

Any infrastructure projects within buffer zones are subject to thorough examination and regulatory oversight. Proposed initiatives—whether they pertain to road construction, tourism facilities, communication networks, or energy generation—are evaluated for their potential ecological effects and socio-cultural repercussions. The main goal of these restrictions is to avert any direct or indirect disturbances to tribal habitats, wildlife corridors, or the environmental equilibrium that these communities rely on for their survival. This ensures that developmental objectives do not overshadow the constitutional and ethical need for tribal welfare and protection.

## 4. Function in Tribal Protection Policy

Buffer-zone strategies play a crucial role in the broader protective framework established for the Andaman and Nicobar Islands. They create the necessary geographic and regulatory separation between the tribal reserves and areas undergoing rapid modernization. By sustaining this physical and administrative distance, the policies uphold the overarching goal of minimal interference and sustainable coexistence. Additionally, these zones act as observation areas for law enforcement and welfare agencies to detect potential threats before they reach the core tribal regions.

## 5.4 Emerging Risks from Infrastructure Developments

In recent years, there has been a growing interest in the Andaman and Nicobar Islands from strategic, commercial, and tourism sectors. Though development is vital for national progress

and security, such initiatives present notable dangers to the ecological integrity and cultural survival of the indigenous tribes residing on these isolated islands.<sup>28</sup>

### 1. Large-Scale Port Projects

A significant concern is the proposal for large-scale port development, especially the ambitious transshipment port project on Great Nicobar Island. These extensive endeavors, often motivated by economic and strategic interests, entail land clearing, deforestation, dredging of maritime routes, and substantial influxes of workers and machinery. If carried out without sufficient precautions, such developments could severely disrupt the natural ecosystems upon which the Shompen and other tribal communities depend. Moreover, increased human activity in formerly inaccessible areas may expose isolated tribes to illnesses and compel changes in their traditional means of subsistence.

### 2. Expansion of Tourism

The increase in both domestic and international tourism in the Andaman and Nicobar Islands, while economically beneficial, poses a significant risk to tribal communities. Unregulated tourism can bring visitors alarmingly close to protected tribal regions, including those populated by the Jarawa and other Particularly Vulnerable Tribal Groups (PVTGs). Reports of unauthorized safaris, commonly known as “human safaris,” indicate that tourists are seeking to observe or engage with tribal members, breaching both legal and ethical standards. This exposure not only infringes on the privacy of these communities but also heightens the risk of diseases for which the tribes lack immunity. Cultural dilution is another long-term effect, as tribes may feel pressured or enticed to abandon traditional practices in favor of entertaining tourists or participating in the cash economy.

### 3. Bridging Development and Indigenous Rights

The tension between infrastructure development and the protection of tribal rights reveals a more profound challenge:<sup>29</sup> the necessity for a sustainable development model that honors constitutional safeguards, ecological integrity, and tribal self-governance. While government officials and civil society organizations have raised alarms and urged for rigorous

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<sup>28</sup> [https://en.wikipedia.org/wiki/North\\_Sentinel\\_Island?utm\\_source=chatgpt.com](https://en.wikipedia.org/wiki/North_Sentinel_Island?utm_source=chatgpt.com)  
[https://www.and.nic.in/C\\_charter/Dir\\_tw/2010/JarawaPolicy.pdf?utm\\_source=chatgpt.com](https://www.and.nic.in/C_charter/Dir_tw/2010/JarawaPolicy.pdf?utm_source=chatgpt.com)

<sup>29</sup> [https://en.wikipedia.org/wiki/North\\_Sentinel\\_Island?utm\\_source=chatgpt.com](https://en.wikipedia.org/wiki/North_Sentinel_Island?utm_source=chatgpt.com)  
[https://www.and.nic.in/C\\_charter/Dir\\_tw/2010/JarawaPolicy.pdf?utm\\_source=chatgpt.com](https://www.and.nic.in/C_charter/Dir_tw/2010/JarawaPolicy.pdf?utm_source=chatgpt.com)

environmental and social impact assessments, the success of these measures relies on their diligent implementation and ongoing supervision. Given the irreparable harm that even minimal contact can cause to isolated communities, it is crucial that development policies adhere to the principles of caution, non-interference, and long-term ecological and cultural sustainability.

### 5.5 Responsibilities of the Ministry of Environment, Forest and Climate Change (MoEFCC)

The Ministry of Environment, Forest and Climate Change (MoEFCC) is pivotal in conserving India's natural ecosystem<sup>30</sup>s and safeguarding its vulnerable indigenous populations, especially those living in ecologically sensitive regions like the Andaman and Nicobar Islands. The Ministry acts as the principal agency responsible for creating and enforcing environmental policies that honor constitutional and ethical commitments to tribal welfare, ecological preservation, and sustainable growth.

#### 1. Developing Policies

The MoEFCC holds the essential duty of crafting policies that carefully balance national development goals with the protection of tribal cultures and ecosystems. Acknowledging the precarious situation of indigenous communities—many of whom are designated as Particularly Vulnerable Tribal Groups (PVTGs)—the Ministry adopts a precautionary and inclusive stance in policy formulation. Its guidelines guarantee that any planned development project undergoes thorough environmental and social impact evaluations, particularly when such initiatives overlap with tribal habitats or protected zones.

As it develops these policies, the MoEFCC incorporates principles of ecological sustainability, tribal self-determination, and intergenerational fairness, ensuring that development does not come at the expense of displacing or threatening indigenous populations. Notable policies and frameworks encompass the Environmental Impact Assessment (EIA) Notification, the Forest Rights Act, and the regulation oversight provided by the Andaman and Nicobar Islands Protection of Aboriginal Tribes Regulation (ANCIPAR), 1956.

#### 2. Monitoring and Enforcement

Beyond creating policies, the Ministry is tasked with ensuring adherence to current environmental and tribal protection laws. Through its associated agencies—including the

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<sup>30</sup> [https://digiscr.sci.gov.in/admin/judgement\\_file/judgement\\_pdf/2024/volume%201/Part%20IV/2024\\_1\\_1194-1218\\_1708338528.pdf](https://digiscr.sci.gov.in/admin/judgement_file/judgement_pdf/2024/volume%201/Part%20IV/2024_1_1194-1218_1708338528.pdf).

Forest Survey of India, Wildlife Crime Control Bureau, and various regional offices—the MoEFCC regularly monitors activities in and around tribal reserves, buffer zones, and ecologically sensitive areas. The Ministry works together with the Andaman and Nicobar Administration, law enforcement bodies, and local forest departments to prevent any unauthorized access, commercial exploitation, or development within protected regions. Any breaches of regulations such as ANCIPAR or violations of buffer-zone guidelines are addressed with legal<sup>31</sup> measures and fines. These enforcement actions are crucial for preventing encroachments, preserving biodiversity, and protecting the well-being and culture of remote tribal communities.

A vital component of the MoEFCC's mission is its dedication to community-driven conservation. The Ministry actively supports governance models that include the input and traditional knowledge of tribal communities in wider conservation and development strategies. Through public discussions, tribal welfare initiatives, and skills development programs, the MoEFCC ensures that the views of indigenous peoples are acknowledged and incorporated into environmental policy-making. This engagement also involves promoting sustainable livelihoods for tribal populations that align with their cultural traditions and ecological contexts. By<sup>32</sup> collaborating closely with the Ministry of Tribal Affairs, research organizations, and non-profit groups, the MoEFCC aids in executing conservation approaches that are both socially equitable and environmentally sustainable.

The Ministry's actions are especially important in areas like the Andaman and Nicobar Islands, where environmental vulnerability, tribal seclusion, and developmental ambitions intersect to create a complex policy landscape. The MoEFCC plays an essential role in maintaining balance, ensuring that national goals do not endanger the survival and dignity of the country's most ancient and vulnerable communities. Therefore, its function transcends mere administration; it is fundamentally ethical and constitutional, reinforcing India's dedication to inclusive and sustainable development.

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<sup>31</sup> [https://digiscr.sci.gov.in/admin/judgement\\_file/judgement\\_pdf/2024/volume%20I/Part%20IV/2024\\_1\\_1194-1218\\_1708338528.pdf](https://digiscr.sci.gov.in/admin/judgement_file/judgement_pdf/2024/volume%20I/Part%20IV/2024_1_1194-1218_1708338528.pdf).

<sup>32</sup> [https://en.wikipedia.org/wiki/North\\_Sentinel\\_Island?utm\\_source=chatgpt.com](https://en.wikipedia.org/wiki/North_Sentinel_Island?utm_source=chatgpt.com)  
[https://www.and.nic.in/C\\_charter/Dir\\_tw/2010/JarawaPolicy.pdf?utm\\_source=chatgpt.com](https://www.and.nic.in/C_charter/Dir_tw/2010/JarawaPolicy.pdf?utm_source=chatgpt.com)

## Chapter 6: Judicial Interpretation and Case Law Analysis:

### Chapter 6: Judicial Interpretation and Case Law Analysis

This section explores crucial Supreme Court rulings that have influenced the development of environmental law and tribal rights in India. These decisions have allowed the judiciary to not only interpret current legislation but also broaden the interpretation of constitutional rights, highlighting the essential connection between safeguarding the environment and the fundamental right to life.

#### 6.1 M.C. Mehta Cases: Trailblazing Environmental Litigation

M.C. Mehta is a distinguished public interest lawyer in India who has significantly impacted the evolution of environmental law through strategic legal action. His efforts have not only aided in preserving India's environment but also transformed how Indian courts understand and uphold environmental rights.<sup>33</sup> Over time, his cases have contributed to the formulation of several key environmental principles and important legal precedents, greatly advancing the environmental protection agenda in India.

##### 1. Overview of M.C. Mehta's Contributions

M.C. Mehta's law practice has been characterized by his unwavering quest for justice in cases related to industrial pollution, environmental harm, and the rights of impacted communities. His strategy has involved filing public interest litigation (PIL) to address issues of national significance, such as air and water pollution, the management of hazardous waste, and the conservation of natural resources. Mehta's efforts have led to landmark rulings that have instituted stricter environmental regulations and demanded accountability from both governmental and private entities in environmental governance.

##### 6.1.1 M.C. Mehta v. Union of India (1986) – Oleum Gas Leak Case

The Oleum Gas Leak Case, officially referred to as M.C. Mehta v. Union of India (1986), stands as one of the most important verdicts in the history of environmental law in India. The

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<sup>33</sup> [https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm\\_source=chatgpt.com](https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm_source=chatgpt.com)  
[https://indiankanoon.org/doc/1969682/?utm\\_source=chatgpt.com](https://indiankanoon.org/doc/1969682/?utm_source=chatgpt.com)

case emerged in the wake of a disastrous oleum gas leak from the Shriram Foods and Fertilizers Ltd. in Delhi, which posed severe health risks to the local residents. This case represented a crucial turning point in establishing environmental liability law in India and introduced the concept of absolute liability for industries involved in hazardous operations.

### 1. Context of the Oleum Gas Leak Incident

In 1985, an incident at the Shriram Foods and Fertilizers factory in Delhi resulted in the release of a highly toxic substance—oleum gas—into the nearby environment. This gas caused significant health issues, including respiratory problems and eye irritation, among the inhabitants of the area. This event laid bare the dire consequences of industrial activities, particularly when they lack proper regulation, and highlighted the growing environmental threats arising from the increasing industrialization in urban areas like Delhi.

The gas leak was not an isolated occurrence but rather a part of a wider pattern of industrial pollution in the country, which had largely gone unchecked. The residents of Delhi, especially those living in proximity to the factory, suffered greatly from the adverse effects of the gas exposure. Consequently, this issue gained considerable public attention, and the affected individuals sought legal remedy through public interest litigation (PIL).

### 2 Legal Proceedings and PIL Filed by M.C. Mehta

M.C. Mehta, a well-known public interest lawyer, submitted a PIL to the Supreme Court of India to tackle the crisis and seek justice for those impacted by the gas leak. In his appeal, Mehta claimed that<sup>34</sup> Shriram Foods and Fertilizers Ltd. displayed negligence in its operations, linking the gas leak directly to their failure to implement adequate safety measures and regulations. His petition also urged the creation of stricter laws to oversee industries handling hazardous chemicals and substances, particularly in densely populated urban areas such as Delhi.

This case was notable as it represented one of the earliest occasions when the Supreme Court of India exercised its authority to safeguard public health and environmental concerns through PIL, even in the absence of specific legislation on the matter at that time.

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<sup>34</sup> [https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm\\_source=chatgpt.com](https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm_source=chatgpt.com)  
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The most pivotal element of the Supreme Court's ruling in this matter was the establishment of the absolute liability doctrine for industries involved in hazardous activities. Before this ruling, the common law principle of strict liability (originating from the case of *Rylands v. Fletcher*) had been utilized in India for some instances of industrial accidents. Under strict liability, a defendant could be held accountable for harm caused by hazardous activities, but the claimant had to demonstrate that the defendant was negligent or at fault.

Nevertheless, in the *Oleum Gas Leak* case, the Supreme Court advanced beyond the conventional notion of strict liability and introduced a more rigorous standard of absolute liability. The Court determined that industries dealing with hazardous substances are unequivocally liable for any damage arising from their operations, regardless of whether negligence, fault, or intention could be proven against the industrial entity. Essentially, the Court ruled that a company could not defend itself by arguing that all reasonable precautions had been taken since the risks associated with such operations are inherently dangerous.

The fundamental principles established by the Court in this case included:

- **Absolute Liability:** Industries engaged in hazardous activities cannot evade responsibility, no matter the precautions implemented to avert accidents or harm.
- **Polluter Pays Principle<sup>35</sup>:** Polluting industries are required to cover the costs of damage inflicted on the environment and affected communities, ensuring they are financially liable for the harm they cause.
- **Precautionary Measures:** The Court underscored that industries involved in hazardous operations must adhere to the highest safety standards to avert accidents and detriment. It also mandated that industrial activities involving toxic chemicals be subjected to stringent regulatory scrutiny..

#### 4. Significance of the Case: Expansion of Environmental Jurisprudence

The *Oleum Gas Leak* Case was a landmark judgment for several reasons:

- **Introduction of Absolute Liability:** The principle of absolute liability established in this case became fundamental to environmental liability law in India. This marked a shift from the earlier legal framework, which required the demonstration of negligence or fault for liability to be recognized. Since then, absolute liability has been applied in numerous other

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<sup>35</sup> [https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm\\_source=chatgpt.com](https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm_source=chatgpt.com)  
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environmental cases involving hazardous industries.

- **Emphasis on Strict Environmental Regulations:** The ruling emphasized the necessity for stringent regulations governing industries that handle dangerous chemicals and substances. The Court's decision reinforced the notion that industries must not only adhere to safety protocols but also bear responsibility for any accidents or environmental damage.
- **Public Health and Environmental Protection:** This case highlighted the increasing significance of public health and environmental protection within Indian jurisprudence. The judgment established that both the State and industrial entities are obligated to safeguard citizens from the adverse effects of industrial activities.
- **Precedent for Future Environmental Litigation:** The case set the stage for a series of other public interest litigations addressing environmental matters, ranging from industrial pollution to forest conservation. It contributed to laying the groundwork for environmental justice in India, empowering citizens to seek judicial recourse when their health or environment faced threats.

#### 5. Impact on Environmental Laws and Policy

The Oleum Gas Leak Case prompted substantial transformations in India's environmental regulatory framework. This case acted as a catalyst for stronger laws and regulations to oversee hazardous industries, ensuring better management of chemical plants, sewage treatment, and waste disposal. Additionally, it aided in the formation of national and state-level environmental policies that focused on safety, environmental impact assessments, and the adoption of cleaner technologies. Moreover, the ruling encouraged more stringent enforcement of environmental standards, including the implementation of safety measures within industries and the establishment of a Central Pollution Control Board (CPCB) to monitor industrial pollution.

#### 6. Conclusion

The case of *M.C. Mehta v. Union of India* (1986) stands as a crucial milestone in the development of environmental law in India. In this landmark ruling, the Supreme Court established the groundbreaking principle of absolute liability for industries that handle hazardous materials, significantly influencing industrial practices and regulatory policies nationwide. This judgment not only<sup>36</sup> represented a pivotal shift in environmental law but also solidified M.C. Mehta's position as a prominent advocate in the evolution of environmental jurisprudence in India. The case remains a key reference point for legal matters concerning

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<sup>36</sup> [https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm\\_source=chatgpt.com](https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm_source=chatgpt.com)  
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industrial accidents, environmental harm, and public health issues linked to industrial activities in the country.

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### 6.1.2 M.C. Mehta v. Kamal Nath (1996) – Public Trust Doctrine

The case of M.C. Mehta v. Kamal Nath (1996) is a significant ruling in Indian environmental law, mainly because it established and emphasized the Public Trust Doctrine within the Indian legal system. This doctrine is a fundamental component of environmental legislation, asserting that specific natural resources are held by the government in trust for the public and that the government has a duty to safeguard and conserve these resources for the benefit of both current and future generations.

#### 1. Background of the Case

In this instance, Span Resorts, a facility owned by the family of influential politician Kamal Nath, faced allegations of unlawful encroachment on forested land within the Kullu Valley in Himachal Pradesh. The resort had constructed infrastructure that caused considerable environmental damage, including the destruction of forests and the rerouting of the Beas River. The illegal actions of Span Resorts encompassed land invasions, unauthorized construction, and deforestation, often facilitated by political patronage.

Span Resorts' activities breached several environmental regulations and laws, resulting in widespread public anxiety regarding environmental protection and the exploitation of power for personal gain. M.C. Mehta, a prominent environmental lawyer, initiated a public interest litigation (PIL) in the Supreme Court of India, aiming to restore the encroached forest land to its original state and to safeguard the environment from further degradation.

#### 2. Legal Proceedings and the Public Trust Doctrine

The primary question in this case was whether the state could permit the exploitation of natural resources such as forests and rivers for private profit. In his petition, M.C. Mehta contended that the state, as the guardian of natural resources, should not allow private individuals or companies to misuse these resources in ways that would harm public interest and breach environmental statutes.

In its ruling,<sup>37</sup> the Supreme Court referenced the Public Trust Doctrine as a key principle to guide the case's resolution. The Court maintained that the Public Trust Doctrine is applicable to natural resources, especially rivers, forests, and air, as these are crucial for the survival of all living beings and must be preserved by the state for the well-being of the public.

### 3. The Supreme Court's Ruling

The Supreme Court's ruling in this case was significant for several reasons:

#### a. Public Trust Doctrine

The Court emphasized the need to apply the Public Trust Doctrine, which asserts that certain natural resources are held by the government as trustees for the benefit of the public. According to this doctrine, the state cannot alienate or privatize these resources for private use, especially when such an action would harm the public interest. In this case, the Beas River and the forests in the Kullu Valley were held to be public resources that must be protected for the common good.

#### b. Restoration of Encroached Land

The Supreme Court ordered the restoration of the illegally encroached land to its original condition, mandating the removal of the resort's infrastructure and the reforestation of the land. The Court made it clear that any destruction or alteration of the environment in violation of environmental laws would be met with legal consequences, and the violators must undo the harm they had caused.

#### c. Duty of the State to Protect Natural Resources

The Court reaffirmed the state's duty to protect natural resources for the public, holding that the government must act as a custodian of public resources. The judgment reinforced that forests, rivers, and other natural resources are not the property of the state to be exploited for commercial purposes, but rather common heritage that must be preserved for the welfare of the public.

#### d. Accountability of Private Parties

The Court also emphasized the need for accountability of private individuals or companies who engage in activities that<sup>38</sup> violate environmental laws and exploit natural resources. In this case, Span Resorts, under the influence of Kamal Nath's family, had violated environmental

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<sup>37</sup> [https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm\\_source=chatgpt.com](https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm_source=chatgpt.com)  
[https://indiankanon.org/doc/1969682/?utm\\_source=chatgpt.com](https://indiankanon.org/doc/1969682/?utm_source=chatgpt.com)

<sup>38</sup> [https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm\\_source=chatgpt.com](https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm_source=chatgpt.com)  
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regulations, and the Court held them responsible for the damage caused to the environment.

#### 4. Significance of the Case

The *M.C. Mehta v. Kamal Nath* (1996) case is one of the most influential judgments in the development of Indian environmental law. The case helped to solidify the application of the Public Trust Doctrine in Indian jurisprudence, which has since been used in a variety of cases to protect the environment and prevent the privatization or commercial exploitation of public natural resources. The case also had several important outcomes:

- **Environmental Protection:** The ruling reinforced the idea that the environment is a public good that must be safeguarded for the benefit of all, not just for individual or corporate profit. The judgment laid down a strong legal foundation for future cases concerning the protection of natural resources from illegal encroachments and exploitation.
- **Role of the State:** The case clarified the role of the state as a trustee of public resources, holding it accountable for ensuring that natural resources are preserved and used sustainably. The Court emphasized that the state cannot act in ways that facilitate the destruction or commercialization of these resources.
- **Impact on Future Environmental Cases:** The judgment also paved the way for the wider application of the Public Trust Doctrine in future cases, particularly those involving illegal construction, forest encroachments, and water rights. It set a precedent for the legal principle that natural resources must be preserved for public use and enjoyment, rather than being appropriated for private ownership or commercial exploitation.

#### 5. Conclusion

The *M.C. Mehta v. Kamal Nath* (1996) case stands as a milestone in the evolution of Indian environmental law, particularly with the invocation and application of the Public Trust Doctrine. By recognizing that certain natural resources like forests, rivers, and air are part of the public trust and should be protected for the common good, the Court has reinforced the idea that the environment belongs to all citizens and cannot be misused for private benefit. The case remains a key reference for environmental law in India, highlighting the necessity of protecting public resources and ensuring that they are not exploited at the cost of the public welfare. This <sup>39</sup>case has had a lasting impact on the way Indian courts approach environmental protection, with an emphasis on preserving public resources and holding violators accountable

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<sup>39</sup> [https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm\\_source=chatgpt.com](https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm_source=chatgpt.com)  
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for their actions.

### 6.1.3 M.C. Mehta v. Union of India (1997) – Taj Trapezium Case

The Taj Trapezium Case (M.C. Mehta v. Union of India, 1997) is a landmark case in Indian environmental law, highlighting the urgent need for protecting cultural heritage from environmental degradation. The case is significant for its focus on the protection of the Taj Mahal, one of the world's most iconic heritage sites, from the adverse impacts of industrial pollution. This case brought to the forefront the conflict between industrial development and the conservation of heritage and the environment.

#### 1. Background of the Case

The Taj Mahal, located in Agra, is a UNESCO World Heritage Site and one of India's most famous tourist destinations. However, by the 1990s, the monument was facing severe environmental threats, particularly from industrial pollution. The area surrounding the Taj Mahal, known as the Taj Trapezium Zone (TTZ), includes a large number of industrial units such as tanneries, brick kilns, and power plants, which were emitting toxic gases, particularly sulphur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>). These pollutants were causing acid rain, which was damaging the marble structure of the Taj Mahal and threatening its aesthetic and cultural value.

The primary concern raised was that the pollutants were causing the white marble to yellow and erode, thereby compromising the Taj Mahal's structural integrity and beauty. In response to these concerns, M.C. Mehta, an environmental lawyer, filed a public interest litigation (PIL) in the Supreme Court of India in 1985, seeking the protection of the Taj Mahal from the effects of pollution. The Court took cognizance of the issue, and after a prolonged legal battle, a judgment was delivered in 1997.

#### 2. Legal Principles Invoked

In the Taj Trapezium case, the Supreme Court adopted several important environmental principles to safeguard the Taj Mahal and address the threats posed by industrial emissions:

##### a. Precautionary Principle

The Precautionary Principle is one of the foundational principles of environmental law. It asserts that when there is a threat of serious or irreversible environmental harm, the absence of full scientific certainty should not be used as a reason to postpone preventive measures. In this case, even though the precise extent of the damage caused by pollution to the Taj Mahal might not have been fully confirmed, the Court applied the Precautionary Principle and took proactive action to prevent further harm to the monument.

The Court directed that preventive steps must be taken immediately, even if the full scope of

the damage could not be conclusively determined at that time. The Court stressed that the conservation of the Taj Mahal was of immense national and international importance and required urgent and effective action.<sup>40</sup>

#### b. Polluter Pays Principle

The Polluter Pays Principle is another key environmental law principle applied in this case. This principle holds that those who cause pollution must bear the costs of mitigating or remediating the damage caused. The Court directed that industries located within the Taj Trapezium Zone (TTZ) which were contributing to air pollution must not only take steps to reduce emissions but also bear the financial responsibility for pollution control measures.

This meant that industries in the TTZ were required to invest in cleaner technologies and pollution control equipment to reduce their emissions. They were also required to pay for the environmental damage caused by their operations, ensuring that the costs of pollution were internalized by the polluting industries.

#### 3. Court's Ruling and Directions

The Supreme Court's ruling in the Taj Trapezium Case was a landmark decision that combined environmental protection with the preservation of cultural heritage. The Court's decision included the following important directives:

##### a. Relocation of Polluting Industries

One of the major directions issued by the Court was the relocation of certain industries that were found to be most harmful to the Taj Mahal. Industries such as tanneries, which were causing severe pollution, were ordered to be relocated out of the Taj Trapezium Zone to reduce the level of industrial pollution around the monument. The Court recognized the need for industrial development, but emphasized that it should not come at the expense of preserving cultural heritage and the environment.

##### b. Adoption of Cleaner Technologies

The Court mandated that industries within the Taj Trapezium Zone must adopt cleaner technologies and pollution control measures to reduce the emission of harmful gases. These industries were required to implement systems to curb the release of sulphur dioxide and nitrogen oxides, the two main pollutants responsible for the damage to the Taj Mahal. The Supreme Court directed these industries to take immediate steps to minimize their environmental impact by adopting eco-friendly technologies.

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<sup>40</sup> [https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm\\_source=chatgpt.com](https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm_source=chatgpt.com)  
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### c. Strict Monitoring and Compliance

The Supreme Court also set up a monitoring mechanism to ensure compliance with its directions. A special monitoring committee was appointed to oversee the implementation of pollution control measures in the Taj Trapezium Zone. This committee's role was to ensure that industries adhered to the Polluter Pays Principle and made efforts to reduce their environmental impact.

### d. Measures to Control Air Quality

In addition to industrial relocation and the adoption of cleaner technologies, the Court also took action to regulate the air quality around the Taj Mahal.<sup>41</sup> The Court ordered the installation of air quality monitoring systems in the region and directed the Central Pollution Control Board (CPCB) to conduct regular tests to assess the pollution levels. The Court aimed to ensure that the air quality around the Taj Mahal remained within safe limits and that the monument was protected from further damage.

## 4. Significance of the Case

The Taj Trapezium Case holds significant importance for several reasons:

### a. Protection of Cultural Heritage

This case is one of the first instances in India where the environmental protection of a world heritage site was prioritized over industrial development. The decision reinforced the idea that environmental degradation can have a direct impact on cultural heritage, and there is a need to balance industrial growth with heritage conservation. It highlighted the responsibility of the state and industries to ensure that pollution control becomes an integral part of the development process, especially when it concerns sites of global cultural significance.

### b. Application of Environmental Principles

The case is notable for the application of key environmental law principles like the Precautionary Principle and the Polluter Pays Principle, both of which are now widely recognized in Indian environmental jurisprudence. The Court's application of these principles in the context of industrial pollution around the Taj Mahal set an important precedent for future cases involving pollution and environmental damage.

### c. Setting Precedents for Industrial Pollution Control

The Court's ruling in this case marked a significant shift in the approach towards industrial pollution. By requiring industries to bear the cost of pollution control and adopt cleaner

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<sup>41</sup> [https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm\\_source=chatgpt.com](https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm_source=chatgpt.com)  
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technologies, the case set an important legal precedent for the regulation of industrial emissions. It underlined the fact that <sup>42</sup>industries must be accountable for the environmental harm they cause and that they must take concrete steps to mitigate their impact.

#### d. Role of the Judiciary in Environmental Conservation

The Taj Trapezium Case underscored the proactive role of the judiciary in environmental conservation. The Court's decision to intervene and protect the Taj Mahal from the adverse effects of industrial pollution demonstrated its commitment to preserving India's cultural and environmental heritage. The case illustrated how the judiciary can play a key role in balancing development with environmental protection.

#### 5. Conclusion

The M.C. Mehta v. Union of India (1997) – Taj Trapezium Case is a seminal case in the evolution of Indian environmental law. The Court's proactive approach in applying the Precautionary Principle and the Polluter Pays Principle in protecting the Taj Mahal set a strong precedent for future environmental litigation in India. The case demonstrated the judiciary's commitment to preserving cultural heritage while ensuring that industrial activities do not cause irreversible harm to the environment. By holding industries accountable for their pollution and mandating cleaner technologies, the Court's ruling not only safeguarded the Taj Mahal but also contributed to the broader framework of environmental protection in India.

#### 6.2 Tehri Dam Case: Balancing Development and Environmental Concerns

The Tehri Dam Case is a significant case in the context of balancing development needs with environmental preservation and social justice. The Tehri Dam project, located on the Bhagirathi River in Uttarakhand, has been one of the most controversial infrastructure projects in India, primarily due to its environmental and social impacts. This case is pivotal because it addresses the challenge of reconciling the need for large-scale development projects with the protection of the environment and the rights of local communities.

##### 1. Background of the Tehri Dam Project

The Tehri Dam is a large multi-purpose dam built on the Bhagirathi River in the Tehri Garhwal district of Uttarakhand. The project was intended to generate hydroelectric power, provide irrigation, and facilitate drinking water supply to various regions in northern India. The dam, once completed, would become one of the tallest dams in the world, with a height of 260 meters

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<sup>42</sup> [https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm\\_source=chatgpt.com](https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm_source=chatgpt.com)  
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and a reservoir capacity of 2.6 billion cubic meters.

While the project promised substantial economic benefits, including power generation and water supply, it also raised serious environmental and social concerns. The primary issues included the submergence of vast areas of land, including forests, villages, and agricultural land, as well as the displacement of local communities. The Tehri region is known for its biodiversity, and the dam posed risks to the region's ecosystem and flora and fauna.

The construction of the dam <sup>43</sup>led to widespread protests from environmentalists, social activists, and local residents. The environmentalists expressed concerns about the ecological damage caused by the project, while local communities feared loss of livelihoods and displacement due to the dam's construction. The project's legal scrutiny was heightened because of its potential adverse effects on the Ganga River system, which is of immense cultural and religious significance in India.

## 2. Legal Issues and Court's Involvement

The legal challenges in the Tehri Dam case were multi-faceted, involving both environmental and human rights concerns. The Supreme Court of India took up the matter after several public interest litigations (PILs) were filed by environmentalists, local communities, and social organizations challenging the legality of the project. The key legal issues addressed by the Court included:

- **Environmental Impact Assessments (EIAs):** Whether the dam project had undergone adequate environmental assessments to evaluate its potential impacts on local ecosystems and biodiversity.
- **Displacement of Local Communities:** The potential displacement of thousands of people and whether their rights and livelihoods were being adequately protected.
- **Compliance with Environmental Laws:** Whether the project violated India's environmental laws, such as the Environment Protection Act, 1986, and the Forest (Conservation) Act, 1980.
- **Balance between Development and Environmental Protection:** Whether the project could proceed given its potential environmental costs, or whether the harm to local ecosystems and communities outweighed the benefits of the project.

## 3. The Court's Ruling and Key Principles

The Supreme Court's ruling in the Tehri Dam case acknowledged the importance of the project

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<sup>43</sup> [https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm\\_source=chatgpt.com](https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm_source=chatgpt.com)  
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in terms of its potential for economic development, particularly in terms of electricity generation and water supply. However, the Court emphasized that such projects could not proceed without ensuring compliance with environmental laws and without thoroughly considering the social impacts on the local population.

#### a. Environmental Impact Assessment (EIA)

One of the most significant aspects of the case was the Court's emphasis on the need for a comprehensive Environmental Impact Assessment (EIA). The Court emphasized that development projects,<sup>44</sup> especially those with significant potential environmental consequences, must undergo rigorous environmental scrutiny. The EIA would involve detailed studies of the environmental risks and the sustainability of the project, along with measures to mitigate adverse effects.

The Court insisted that any project with potential environmental risks, such as the Tehri Dam, must be backed by a scientifically-based and independent EIA, conducted by qualified experts, and presented for public review. In addition to environmental concerns, the EIA must also address the social and cultural implications of the project, particularly in relation to displacement and human rights.

#### b. Human Rights and Displacement

The Court recognized that the construction of the Tehri Dam would result in the displacement of thousands of people, many of whom depended on agriculture for their livelihood. The Court emphasized the need for the right to rehabilitation and fair compensation for those displaced by the project. The Court directed that adequate provisions for rehabilitation and resettlement be made to ensure that those displaced by the project would not face a loss of livelihood or social dislocation.

The Supreme Court also called for the participation of the affected communities in the decision-making process, ensuring that their concerns and views were taken into account in planning the project. The Court stressed that informed consent from local communities was crucial before proceeding with such a large-scale development project.

#### c. Precautionary Measures and Mitigation

The Court directed that if the Tehri Dam project proceeded, it must incorporate precautionary measures to address its potential environmental impacts. These measures would include the development of mitigation strategies to prevent long-term damage to the ecosystem, such as

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<sup>44</sup> [https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm\\_source=chatgpt.com](https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm_source=chatgpt.com)  
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efforts to protect wildlife, regulate water flow, and manage deforestation. The Court emphasized that environmental conservation should not be compromised in the pursuit of development.

Moreover, the Court ordered the authorities to consider alternatives to the project, including smaller-scale options that might be less damaging to the environment and communities. In the case of the Tehri Dam, the Court noted that although the project's benefits were important, the authorities must consider whether these benefits could be achieved with minimal harm to the environment and the people.

#### d. Role of the State and Oversight Mechanism

In addition to specific measures for environmental protection and human rights, the Court emphasized the role of the State in overseeing and ensuring the compliance of the project with environmental standards. The Court ordered the establishment of a monitoring committee to oversee the implementation of its orders and ensure that the project did not violate any environmental norms or human rights.

#### 4. Conclusion and Legacy of the Case

The Tehri Dam Case highlights the complex balancing act between development and environmental preservation.<sup>45</sup> While acknowledging the need for large-scale infrastructure projects to support economic growth and development, the Supreme Court emphasized that such projects should not proceed at the cost of irreversible environmental damage or the violation of human rights.

The case underscored the importance of conducting Environmental Impact Assessments (EIAs) for projects that have the potential to affect the environment and local communities. It also emphasized the need for sustainable development, which balances economic progress with the protection of natural resources and the welfare of affected populations.

The Tehri Dam case is also significant for its legacy in shaping India's environmental jurisprudence, particularly in reinforcing the principle that environmental protection is a fundamental part of the development process. It laid the foundation for future cases that would deal with large infrastructure projects, environmental laws, and human rights.

In summary, the Tehri Dam Case remains a landmark judgment, exemplifying the Supreme Court's proactive role in ensuring that development projects in India are carried out in an environmentally responsible and socially just manner.

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<sup>45</sup> [https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm\\_source=chatgpt.com](https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm_source=chatgpt.com)  
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### 6.3 Godavarman Case: Forest Conservation and Tribal Rights

The Godavarman case is a landmark judgment in the realm of forest conservation and the rights of indigenous communities in India. This case revolves around the tension between protecting forest ecosystems and ensuring the rights of tribal communities who have historically depended on forests for their livelihood. The case primarily concerns the challenge of curbing illegal logging, encroachments, and other harmful activities in forest areas while safeguarding the traditional rights of indigenous people. The Supreme Court's involvement in the case resulted in a series of orders that significantly influenced India's forest conservation policies and the protection of tribal rights.

#### 1. Background of the Godavarman Case

The Godavarman case began as a public interest litigation (PIL) filed by M.C. Mehta, a prominent environmentalist, against illegal felling of trees and encroachments within forest areas across India. The case highlighted widespread deforestation due to commercial logging, illegal forest encroachments, and mining activities, all of which were causing significant damage to India's forest resources. The case was particularly important because it concerned not only forest conservation but also the <sup>46</sup>balance between environmental protection and the socioeconomic rights of tribal communities, many of whom relied on forests for their subsistence.

The Godavarman case triggered a legal series of judgments and orders aimed at curbing deforestation, regulating forest management, and halting illegal activities in forested regions. However, it was met with significant opposition from tribal communities who had lived in and around these forests for centuries. For many tribal groups, forests were not merely resources to be conserved but were integral to their cultural identity, traditional practices, and livelihoods.

#### 2. Key Legal Issues

The primary legal questions addressed in the Godavarman case included:

- Forest Protection vs. Tribal Rights: How to balance the need for forest conservation with the livelihood rights of tribal people who depend on forests for sustenance, shelter, and economic activities.
- Illegal Logging and Encroachments: Whether strict measures, such as banning logging and evicting encroachers from forest areas, could be implemented without infringing

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<sup>46</sup> [https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm\\_source=chatgpt.com](https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm_source=chatgpt.com)  
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on the rights of indigenous communities who have been living in forests for generations.

- **State's Responsibility:** What role the Indian state should play in ensuring forest conservation, regulating forest management practices, and protecting tribal communities from displacement or deprivation of their rights.
- **Environmental Law and Human Rights:** The compatibility of India's environmental laws with the human rights of indigenous groups, especially in the context of forest protection measures such as the Forest Conservation Act, 1980, and the Wildlife Protection Act, 1972.

### 3. Court's Ruling and Key Principles

The Supreme Court's judgment in the Godavarman case set several important precedents for forest conservation, tribal rights, and the broader question of environmental justice. The Court's orders focused on both the environmental imperative of preserving forests and the human rights of indigenous communities who lived in and around these forest areas. The key aspects of the Court's ruling include:

#### a. Forest Conservation Measures

The Supreme Court issued a series of orders aimed at preventing illegal logging and encroachments in forest areas. These measures were part of a broader effort to enforce the Forest Conservation Act, 1980, and other related environmental laws, which aim to safeguard India's national forest resources from commercial exploitation. The Court made it mandatory for states to take action against illegal felling of trees, encroachment, and any activities that might harm the ecological balance of forests.

To ensure better enforcement of these laws,<sup>47</sup> the Court ordered the creation of a national monitoring system to track deforestation and illegal activities. It also called for fines and punishments for those involved in illegal logging or encroachments in forest lands.

#### b. Balancing Tribal Rights and Conservation

While the Court was firm in its stance on conserving forests, it also recognized the importance of tribal communities' rights over forest resources. The Court held that any forest conservation policies must take into account the livelihood needs of indigenous tribes who had lived on these lands for centuries. The Court emphasized that indigenous people's rights to forest resources cannot be ignored simply for the sake of environmental conservation.

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<sup>47</sup> [https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm\\_source=chatgpt.com](https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm_source=chatgpt.com)  
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The Court recognized the Forest Rights Act, 2006, which was enacted after the Godavarman case, and other similar legal provisions that ensured tribal people's rights over forest land and resources. These rights include the right to collect forest produce, reside in forest areas, and practice traditional livelihoods such as farming and animal husbandry. The Court directed that the government must ensure that tribal communities be given legal recognition for their traditional occupation and use of forest lands.

In several instances, the Court ordered that tribal populations who had been displaced by forest conservation efforts be provided with adequate compensation and rehabilitation. The Court further held that no forest land should be alienated for non-tribal use, and measures should be taken to prevent displacement of indigenous groups living in these areas.

#### c. Protection of Wildlife and Biodiversity

The Court also issued guidelines to protect India's wildlife and biodiversity. It imposed restrictions on the use of forest land for non-forestry purposes, including mining, industrial activities, and urbanization, especially in protected areas such as national parks and sanctuaries. This was done to ensure that the forests continue to serve as habitats for wildlife and contribute to biodiversity conservation.

The Court emphasized that the state must ensure the preservation of ecological balance and prevent activities that could lead to the endangerment or extinction of species. This directive is particularly relevant for regions like Kashmir, North-East India, and the Western Ghats, where the forests are rich in biodiversity.

#### d. The Role of the State and Public Participation

The Supreme Court underscored the role of the state in ensuring forest protection and sustainable development. It directed the government to take action against individuals or organizations that engage in illegal activities that harm the environment, such as encroachment and illegal logging.

The Court also called for public participation in conservation efforts, urging citizens and non-governmental organizations (NGOs) to play a role in monitoring and protecting forest areas. The Court recognized the growing importance of civil society involvement in environmental protection and called for collaborative efforts to ensure the sustainability of forests.

#### 4. Conclusion and Legacy of the Godavarman Case

The Godavarman case has had a lasting impact on India's approach to forest conservation and the protection of tribal rights. The Court's orders have shaped the country's environmental jurisprudence by addressing the dual challenges of conserving forests and protecting the rights of indigenous communities.

While the judgment reinforced<sup>48</sup> the need for stricter forest conservation measures, it also highlighted the importance of respecting the rights of tribal communities who have been historically dependent on forests for their livelihood. This balanced approach has influenced subsequent legislation, including the Forest Rights Act and other policies aimed at empowering tribal communities while safeguarding the environment.

In conclusion, the Godavarman case remains a pivotal decision in the realm of environmental law and tribal rights, reaffirming the need for a sustainable approach that integrates both forest conservation and the protection of tribal cultures and livelihoods. The case continues to serve as a reminder of the complex relationship between development, environmental conservation, and human rights, especially in the context of India's rich and diverse ecological heritage.

reviewed carefully to ensure that they do not violate the right to a healthy environment.

The EIA process has become an essential tool in India for balancing economic development with environmental protection, ensuring that projects comply with environmental standards and avoid long-term ecological harm.

#### e. Public Participation in Environmental Protection

The Arup Bhuyan case also underscored the importance of public participation in environmental decision-making. The Court recognized that citizens and civil society organizations have a critical role to play in raising awareness about environmental issues, challenging projects that threaten the environment, and holding the state accountable for its actions.

The Court encouraged individuals to use Public Interest Litigations (PILs) to protect their environmental rights and seek judicial intervention when the state fails to enforce environmental laws or policies effectively.

#### 4. Conclusion and Legacy of the Arup Bhuyan Case

The Arup Bhuyan case marked a significant step in the evolution of environmental jurisprudence in India,<sup>49</sup> expanding the right to life to include a healthy environment. This judgment reinforced the idea that environmental degradation is not just an ecological issue but also a human rights issue, as it directly impacts the quality of life of individuals.

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<sup>48</sup> [https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm\\_source=chatgpt.com](https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm_source=chatgpt.com)  
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<sup>49</sup> [https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm\\_source=chatgpt.com](https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm_source=chatgpt.com)  
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This case has influenced future environmental litigation in India, where the right to a healthy environment is now firmly recognized as part of the right to life under Article 21. It also established the state's duty to protect the environment and the fundamental rights of its citizens, ensuring that development does not come at the expense of human health or ecological balance. In summary, the Arup Bhuyan case is a foundational ruling that broadens the scope of constitutional rights and lays the groundwork for stronger environmental protections in India. The case has helped pave the way for a more integrated approach to sustainable development, where environmental rights are viewed as human rights, and government accountability is prioritized in the effort to preserve the environment.

### 6.5 Right to Environment as Part of Right to Life

The right to a healthy environment has become a crucial aspect of the right to life under Article 21 of the Indian Constitution. The judiciary in India has consistently expanded the scope of Article 21 to include environmental rights, reinforcing that a healthy environment is essential for the enjoyment of a meaningful life. This judicial interpretation has been central to the advancement of environmental protection laws in India and has played a significant role in ensuring that developmental activities do not compromise the ecological balance or public health.

#### 1. Expansion of Article 21: Right to Life and Environmental Protection

Article 21 of the Indian Constitution guarantees that “No person shall be deprived of his life or personal liberty except according to procedure established by law.” Historically, this provision was interpreted to protect the right to life in its most basic form, ensuring that citizens are not arbitrarily deprived of their physical existence or freedom. However, over time, the Supreme Court of India has progressively expanded the interpretation of Article 21 to encompass various dimensions that are critical for a dignified life, including health, education, and environmental protection.

One of the most notable expansions of Article 21 is the recognition that the right to life includes the right to live in a clean and healthy environment. This broad interpretation aligns with the constitutional goal of ensuring human dignity, which cannot be fully realized in a polluted or ecologically degraded environment. The Indian judiciary has emphasized that environmental protection is not a luxury but a necessity for the enjoyment of the right to life.

#### 2. Judicial Recognition of Right to a Healthy Environment

Several landmark <sup>50</sup>judgments by the Supreme Court of India have solidified the concept of the right to a healthy environment as an integral part of Article 21:

a. Subhash Kumar v. State of Bihar (1991)

In Subhash Kumar v. State of Bihar, the Supreme Court recognized that pollution-free water and air are part of the right to life under Article 21. The Court held that the right to live with human dignity would be meaningless unless citizens are assured of a healthy environment. This judgment marked a significant turning point, as it explicitly stated that the right to life includes access to clean air, water, and a pollution-free environment.

b. M.C. Mehta v. Union of India (1986) – Oleum Gas Leak Case

The M.C. Mehta v. Union of India (1986) case is another landmark decision that laid the foundation for recognizing the right to a healthy environment as part of Article 21. The Supreme Court ruled that industries engaged in hazardous activities are strictly liable for harm caused to the environment and the people living around them. This judgment introduced the principle of absolute liability, which made it clear that industrial activities threatening the environment must adhere to strict regulatory standards to prevent harm.

c. Vellore Citizens Welfare Forum v. Union of India (1996)

In the Vellore Citizens Welfare Forum v. Union of India (1996) case, the Supreme Court emphasized that environmental protection is critical for ensuring the right to life. The Court directed the establishment of regulations for controlling pollution caused by industries and factories. The Court also stressed the importance of Environmental Impact Assessments (EIAs) and public participation in environmental governance.

### 3. Key Principles Emerging from Judicial Decisions

a. Polluter Pays Principle

One of the key principles that emerged from the judicial interpretation of Article 21 in the context of environmental protection is the Polluter Pays Principle. This principle mandates that those who cause environmental harm must bear the costs of preventing and remedying pollution. This principle has been instrumental in holding industrial and developmental activities accountable for the environmental damage they cause.

b. Precautionary Principle

The Precautionary Principle is another important legal doctrine that has been recognized by the Indian judiciary as part of environmental law. This principle dictates that in the face of

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<sup>50</sup> [https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm\\_source=chatgpt.com](https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm_source=chatgpt.com)  
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environmental risk or uncertainty, preventive measures should be taken to avoid harm to the environment, even if there is no conclusive scientific evidence linking the activity to harm. The Precautionary Principle has been applied in several cases, including *M.C. Mehta v. Union of India* (1997) – the Taj Trapezium Case, to curb industrial emissions and protect sensitive areas from further degradation.

#### c. Sustainable Development

The concept of sustainable development is closely tied to the right to a healthy environment under Article 21. The judiciary has consistently highlighted the need for development activities to be carried out in a manner that does not compromise the ability of future generations to meet<sup>51</sup> their needs. The Supreme Court has emphasized that environmental conservation must go hand in hand with economic development, ensuring that the environment is protected for the well-being of both current and future generations.

#### 4. Environmental Laws and Judicial Interpretation

The judicial recognition of the right to a healthy environment has led to the development of several environmental protection laws in India. These laws aim to regulate industrial pollution, protect biodiversity, and ensure that development projects adhere to environmental standards:

##### a. The Water (Prevention and Control of Pollution) Act, 1974

This law provides for the prevention and control of water pollution and the establishment of pollution control boards at the central and state levels to regulate the discharge of pollutants into water bodies. The law is part of the broader framework to ensure access to clean water as a fundamental right.

##### b. The Air (Prevention and Control of Pollution) Act, 1981

Similar to the Water Act, the Air Act focuses on controlling air pollution. It empowers the central and state pollution control boards to monitor and control emissions from industries and vehicles, ensuring cleaner air for citizens.

##### c. The Environment Protection Act, 1986

The Environment Protection Act provides a comprehensive framework for environmental protection in India, addressing various environmental issues, including hazardous waste, air and water pollution, and biodiversity protection. The Act plays a crucial role in ensuring that the environment is protected as part of the right to life.

##### d. Forest Conservation Act, 1980

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<sup>51</sup> [https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm\\_source=chatgpt.com](https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm_source=chatgpt.com)  
[https://indiankanoon.org/doc/1969682/?utm\\_source=chatgpt.com](https://indiankanoon.org/doc/1969682/?utm_source=chatgpt.com)

The Forest Conservation Act restricts the diversion of forest land for non-forest purposes and promotes the conservation of forest resources. This law aligns with the judiciary's view that forests are an essential part of the environmental framework and that their protection is crucial for the well-being of communities.

## 5. Conclusion

The recognition of the right to a healthy environment as an integral part of Article 21 of the Indian Constitution has been a transformative development in Indian jurisprudence. The Supreme Court has played a pivotal role in expanding the scope of fundamental rights to include environmental protection, ensuring that development activities do not compromise the ecological balance or the public health of the nation.

Through its decisions, the judiciary has reinforced the idea that environmental protection is not just an ecological issue, but a human rights issue that directly impacts the quality of life. The development of environmental laws and the establishment of principles like the Polluter Pays Principle and the Precautionary Principle have been instrumental in advancing the right to a healthy environment.<sup>52</sup>

As India continues to face rapid industrialization and urbanization, the right to a healthy environment will remain a critical aspect of the right to life, requiring ongoing judicial oversight, legislative action, and public participation to ensure a sustainable future for all

## 6.5 Right to Environment as Part of Right to Life

The right to a healthy environment has been recognized as an essential aspect of the right to life under Article 21 of the Indian Constitution. This interpretation by the judiciary has significantly shaped environmental law in India, ensuring that environmental protection is integral to human dignity and quality of life.

### 1. Expansion of Article 21: Right to Life and Environmental Protection

Article 21 guarantees that “No person shall be deprived of his life or personal liberty except according to procedure established by law.” While it initially focused on protecting life in its basic sense, over time, the interpretation of Article 21 expanded to encompass health, education, and environmental protection. The Indian judiciary has emphasized that a clean, healthy environment is a crucial factor in ensuring the right to a dignified life.

The courts have recognized that environmental degradation, such as pollution and ecological

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<sup>52</sup> [https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm\\_source=chatgpt.com](https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm_source=chatgpt.com)  
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imbalance, directly threatens human health and well-being, making environmental protection essential for safeguarding the right to life.

## 2. Judicial Recognition of Right to a Healthy Environment

Several landmark judgments by the Supreme Court have cemented the link between the right to life and a healthy environment:

- **Subhash Kumar v. State of Bihar (1991):** This case was a significant milestone in recognizing that pollution-free air and water are part of the right to life under Article 21. The Court ruled that the right to live with dignity would be meaningless without a clean and healthy environment.
- **M.C. Mehta v. Union of India (1986) - Oleum Gas Leak Case:** This case marked a turning point in environmental law, where the Court introduced the principle of absolute liability for industrial activities causing harm to the environment. The Court emphasized that industries must adhere to stringent environmental regulations to prevent harm to the public and the environment.
- **Vellore Citizens Welfare Forum v. Union of India (1996):** In this case, the Court focused on the need for environmental regulations, specifically for controlling industrial pollution. It also introduced the importance of Environmental Impact Assessments (EIAs) and public participation in environmental decisions.

## 3. Key Principles Emerging from Judicial Decisions

- **Polluter Pays Principle:** This principle holds that those responsible for environmental harm must bear the costs of preventing and repairing the damage. It has become a cornerstone of environmental regulation in India, promoting accountability for industrial activities that impact the environment.
- **Precautionary Principle:** This principle advocates for preventive measures in situations of environmental risk, even when scientific evidence is inconclusive. It emphasizes the need to act cautiously when there is potential harm to the environment, which has been applied in cases such as the Taj Trapezium Case (1997).
- **Sustainable Development:** <sup>53</sup>The judiciary has also emphasized that development should meet the needs of the present without compromising the ability of future generations to meet their own needs. Sustainable development integrates

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<sup>53</sup> [https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm\\_source=chatgpt.com](https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm_source=chatgpt.com)  
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environmental conservation with economic growth, ensuring a balanced approach to development.

#### 4. Environmental Laws and Judicial Interpretation

The judicial recognition of the right to a healthy environment has spurred the enactment of several key environmental protection laws in India, designed to regulate pollution and protect natural resources:

- The Water (Prevention and Control of Pollution) Act, 1974: This Act aims to prevent and control water pollution. It establishes pollution control boards to regulate and monitor the discharge of pollutants into water bodies, ensuring access to clean water as part of the right to life.
- The Air (Prevention and Control of Pollution) Act, 1981: Similar to the Water Act, the Air Act focuses on controlling air pollution by setting standards for industrial emissions and regulating pollution from vehicles.
- The Environment Protection Act, 1986: A comprehensive piece of legislation addressing various environmental concerns such as hazardous waste management, pollution control, and biodiversity protection. It aligns with the judicial interpretation that environmental protection is vital for human life.
- The Forest Conservation Act, 1980: This Act prevents the diversion of forest land for non-forest purposes, supporting the judicial view that forest conservation is crucial for maintaining environmental balance.

#### 5. Conclusion

The recognition of the <sup>54</sup>right to a healthy environment as part of the right to life under Article 21 has significantly shaped Indian environmental jurisprudence. The Supreme Court has played a pivotal role in expanding the scope of fundamental rights, ensuring that environmental protection is an essential component of human dignity and well-being.

The development of environmental protection laws, coupled with principles like the Polluter Pays and Precautionary Principles, has been instrumental in advancing the right to a healthy environment. As India continues its path of industrialization and urbanization, the right to a healthy environment will remain a critical issue, requiring ongoing judicial oversight, legislative action, and active public participation for sustainable development and the protection of future generations.

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<sup>54</sup> [https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm\\_source=chatgpt.com](https://theanalysis.org.in/explained-judgment-that-defined-forests-in-india/?utm_source=chatgpt.com)  
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## Chapter 7: Challenges, Gaps, and Implementation Issues

This chapter examines the systemic and structural obstacles, deficiencies, and issues in the enforcement of laws like the Forest Rights Act (FRA) and environmental policies focused on the conservation and sustainable management of tribal and forest resources. Even with progressive legal frameworks in place, numerous challenges continue to exist in their practical application, impacting the rights of indigenous communities and the environment.

### 7.1 Bureaucratic Opposition to Forest Rights Act (FRA) Titles

#### Introduction

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, referred to as the Forest Rights Act (FRA), represents a significant legislative milestone aimed at addressing the historical injustices faced by Scheduled Tribes and other traditional forest communities. This law formally recognizes their entitlement to land and forest resources that they have historically utilized.

Nonetheless, the execution of the FRA has encountered considerable hurdles, one of the most enduring being bureaucratic opposition. This resistance, particularly from forestry officials and specific state agencies, has impeded the appropriate acknowledgment and granting of forest rights, thereby undermining the fundamental goals of the Act.

#### 7.1.1 Opposition at Local and State Levels

##### 1. Anxiety Over Loss of Power and Control Regarding Forest Resources

The Forest Department—a critical participant in forest governance—frequently views the FRA as a challenge to its established role as the guardian and regulator of forest lands. For many years, forest management in India has been characterized by a centralized, top-down bureaucratic model rooted in the Indian Forest Act, 1927, granting extensive authority to forestry officials.

The introduction of the FRA has legally shifted authority and decision-making toward local communities, especially Gram Sabhas, which are empowered to assess and recommend claims to forest land.<sup>55</sup> This movement toward decentralization has sparked institutional resistance, as

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<sup>55</sup> [https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm\\_source=chatgpt.com](https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm_source=chatgpt.com)  
[https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm\\_source=chatgpt.com](https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm_source=chatgpt.com)

forestry officials worry about:

- The loss of their authority over forest areas,
- A decrease in control over forest products and land-use decisions, and
- The reduced significance of the forest bureaucracy in forest governance.

## 2. Political Motives and Corruption

Forested regions typically abound in valuable natural resources, such as timber, minerals, and biodiversity. These resources hold substantial economic value and attract corporate, political, and criminal interests. The execution of the FRA is viewed as an impediment to resource extraction initiatives such as:

- Mining operations,
- Commercial plantations, and
- Development of industrial infrastructure.

In numerous instances, local corruption and vested political interests lead forest officials to intentionally postpone or refuse the recognition of forest rights, particularly when the land is being considered for commercial exploitation. The impending loss of revenue from such endeavors, combined with the allure of bribes or political coercion, deters the equitable execution of the Act.

## 3. Insufficient Awareness and Capacity Among Forest Officials

Regardless of their crucial role, many forestry and revenue officials lack sufficient training and understanding regarding:

- The goals and provisions of the FRA,
- The function of Gram Sabhas in verifying claims,
- The distinction between forest rights and land encroachment, and
- Standard procedures for acknowledging individual and community forest rights.

This institutional ignorance<sup>56</sup> results in:

- Arbitrary denial of claims,
- Delays in procedures, and

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<sup>56</sup> [https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm\\_source=chatgpt.com](https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm_source=chatgpt.com)

- Misinterpretation of the law.

Some officials even misrepresent the provisions of the FRA to local communities or demand unnecessary documentation, complicating the claims process further.

#### 7.1.2 Slow Pace of Title Recognition

Despite the FRA coming into force in 2008, the progress in issuing forest rights titles remains disproportionately slow and uneven across states.

Key Reasons for Delay:

1. **Bureaucratic Inertia:** Routine delays in procedures at every level—from verification by the Gram Sabha to approvals from the Sub-Divisional Level Committee (SDLC) and District Level Committee (DLC)—cause considerable delays in the distribution of titles.
2. **Lack of Inter-departmental Coordination:** The effective implementation of the FRA necessitates collaboration between the Revenue, Forest, and Tribal Welfare Departments. However, conflicting responsibilities and inadequate coordination create administrative confusion.
3. **Lack of Political Will:** In numerous cases, state governments have displayed a lack of commitment or only minimal dedication to ensure prompt implementation, particularly when forest land is designated for development activities.
4. **Use of Satellite Imagery and Arbitrary Cut-off Dates:** Certain states have adopted restrictive and illegal practices, such as relying exclusively on satellite imagery to validate forest use or imposing unauthorized cut-off dates for eligibility, resulting in the rejection of many legitimate claims. Consequently, even after years of submission, numerous eligible forest dwellers remain without official titles, leading to legal ambiguity and ongoing intimidation by forest officials.

#### 7.1.3 Non-Implementation of Gram Sabha Decisions

Role of Gram Sabha under FRA:

According to Section 6 of the FRA, the Gram Sabha holds the primary responsibility for initiating the assessment of individual or community forest rights.

It is the Gram Sabha<sup>57</sup>, rather than forest officials, that serves as the statutory authority responsible for screening, verifying, and endorsing claims.

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<sup>57</sup> [https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm\\_source=chatgpt.com](https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm_source=chatgpt.com)  
[https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm\\_source=chatgpt.com](https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm_source=chatgpt.com)

However, in practice, this authority is frequently compromised by bureaucratic intervention.

Forms of Interference:

1. Disregard of Gram Sabha Recommendations:

- District-level officials (DLCs) often overrule or neglect the decisions made by the Gram Sabha, particularly in contentious cases.
- Claims that are accepted by Gram Sabhas are often rejected outright by higher-level committees without any justification.

2. Parallel Verification by Forest Department:

- Although the Forest Department is merely one of the members in the claims process, it frequently takes on an overly dominant role by conducting independent verifications or insisting on its reports over those provided by the Gram Sabha.

3. Delay in Approval:

- Despite receiving recommendations from the Gram Sabha, files are often left pending for months or even years at the SDLC/DLC stages.<sup>58</sup>
- The lack of transparency in decision-making and the absence of an appeal process for rejected claims discourage forest dwellers from pursuing justice.

Implications:

- This results in a violation of the statutory framework of the FRA, which prioritizes democratic, local-level decision-making.
- Forest communities, which were intended to be empowered through the FRA, continue to feel disempowered.
- The persistence of a colonial, top-down model of forest governance remains despite the legislative changes.

## 7.2 Overlapping Mandates Between the Forest Conservation Act (FCA) and the Forest Rights Act (FRA)

Introduction

India's legal system regarding forests is shaped by various laws, with the Forest Conservation Act (FCA) of 1980 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (FRA) of 2006 being the most notable. Although both Acts pursue significant national goals such as environmental protection and social equity, their

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<sup>58</sup> [https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm\\_source=chatgpt.com](https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm_source=chatgpt.com)  
[https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm\\_source=chatgpt.com](https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm_source=chatgpt.com)

overlapping functions have led to conflicts in implementation, unclear institutional roles, and disputes over jurisdiction.

The FCA was established to limit the conversion of forest land for purposes outside of forestry and to maintain ecological balance. In contrast, the FRA aims to address past injustices by acknowledging and conferring rights to forest land for Scheduled Tribes and other traditional forest dwellers who have lived in these areas for generations.

### 7.2.1 Conflicting Objectives

#### 1. Forest Conservation Act, 1980 (FCA): Aim and Coverage

The main aim of the Forest Conservation Act, 1980, is to:

- Prevent deforestation and the conversion of forest land for non-forest activities,
- Ensure centralized control over the diversion of forest land,
- Conserve biodiversity, wildlife habitats, and ecological systems.

Under the FCA:

- Any use of forest land for non-forestry purposes (such as development projects, agriculture, or expansion of settlements) must receive prior approval from the Central Government.
- Decision-making authority is mainly held by the Ministry of Environment, Forest and Climate Change (MoEFCC) and state forest authorities.

#### 2. Forest Rights Act, 2006 (FRA): Aim and Coverage

The FRA, on the other hand,<sup>59</sup> is a rights-based law aimed at:

- Recognizing the individual and community rights of forest-dwelling Scheduled Tribes (FDSTs) and other traditional forest dwellers (OTFDs),
- Restoring customary rights to forest land and minor forest products, and
- Empowering Gram Sabhas to engage in forest governance and decision-making.

It focuses on in-situ rehabilitation, habitat rights, and the management of community forest resources, thus shifting authority from state forest departments to forest communities.

#### 3. The Core Conflict: Conservation vs. Rights

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<sup>59</sup> [https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm\\_source=chatgpt.com](https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm_source=chatgpt.com)  
[https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm\\_source=chatgpt.com](https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm_source=chatgpt.com)

At the heart of the overlap lies a philosophical and functional conflict:

Forest Conservation Act (FCA)

Focuses on preserving forests by restricting human activities

Implemented by Forest Departments

Oriented toward ecological protection, sometimes at the cost of human habitation

Forest Rights Act (FRA)

Focuses on granting legal rights to communities historically residing in forests

Implemented by Revenue, Tribal Welfare Departments, and Gram Sabhas

Oriented toward social justice and livelihood security

This divergence leads to conflict when:

- Protected areas or eco-sensitive zones are declared under the FCA, ignoring the traditional claims of forest communities,
- Recognition of community<sup>60</sup> or habitat rights under the FRA clashes with pre-existing conservation restrictions,
- Forest-dwelling communities face eviction or denial of claims in the name of forest preservation, even when the FRA provides legal recognition to their occupancy.

For example, attempts to relocate tribal communities from tiger reserves or sanctuaries, without completing FRA procedures, are instances of violations of the FRA in the name of FCA implementation.

## 7.2.2 Regulatory Ambiguities and Jurisdictional Confusion

### 1. Overlapping Implementation Authorities

- The Forest Department and the Ministry of Environment, Forest, and Climate Change (MoEFCC) supervise the implementation of the FCA.
- The Tribal Welfare Departments and Revenue Departments carry out the FRA, which is regulated by Gram Sabhas and supported by district- and sub-district-level committees.

This variation in implementing bodies has caused jurisdictional ambiguity, leaving no definitive resolution mechanism when both Acts pertain to the same land.

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<sup>60</sup> [https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm\\_source=chatgpt.com](https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm_source=chatgpt.com)  
[https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm\\_source=chatgpt.com](https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm_source=chatgpt.com)

## 2. Lack of Coordination Between Departments

Insufficient coordination among departments often results in:

- Delays in processing claims to forest rights due to forest officials withholding consent based on FCA regulations,
- Conflicting directives from various agencies (e.g., the Forest Department rejecting land rights acknowledged by the Gram Sabha),
- A lack of a unified approach to<sup>61</sup> align the FRA's provisions with those of the FCA.

For example, when a development initiative is proposed in a forest region:

- The FCA necessitates approval from the Forest Department and MoEFCC.
- The FRA stipulates that consent from the Gram Sabha is required and that all rights under the FRA must be resolved before any forest adjustments (as clarified in MoEFCC guidelines dated 03 August 2009 and 05 July 2013).

However, in practice, compliance with the FRA is frequently neglected, and FCA clearances are issued without addressing the rights of forest-dwelling communities—a clear infringement of both statutory regulations and Supreme Court rulings.

## 3. Legal and Policy Gaps

- A comprehensive legislative framework to harmonize the implementation of both Acts is lacking.
- Policy ambiguities remain where one Act restricts an activity (e.g., settling within a protected forest) while the other permits it (e.g., granting community forest rights in that same region).
- On multiple occasions, the MoEFCC has issued guidelines that contradict the essence of the FRA, viewing it as subordinate to conservation laws.

### 7.3 Weak Gram Sabha Processes

#### Introduction

The Gram Sabha (village assembly) is fundamental to participatory democracy in rural India and acts as a statutory entity under the Forest Rights Act (FRA), 2006. It holds a crucial position in identifying, handling, and approving forest rights claims from Scheduled Tribes

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<sup>61</sup> [https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm\\_source=chatgpt.com](https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm_source=chatgpt.com)  
[https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm\\_source=chatgpt.com](https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm_source=chatgpt.com)

and Other Traditional Forest Dwellers (OTFDs). The FRA clearly grants the<sup>62</sup> Gram Sabha the authority to initiate the process of determining the nature and scope of individual or community forest rights.

Despite the significance of the Gram Sabha in the FRA's framework, its effectiveness has been inconsistent and weak in practice, primarily due to structural, administrative, socio-political, and educational obstacles. These deficiencies not only jeopardize the credibility of the implementation process but also hinder the pursuit of restorative justice for forest-dwelling communities.

### 7.3.1 Lack of Awareness and Participation

#### 1. Inadequate Legal Awareness

A significant barrier to the effective functioning of Gram Sabha is the limited awareness among community members, especially marginalized groups like women, landless laborers, and remote tribal communities, about their rights under the FRA. This lack of knowledge arises from:

- Failure of the state to implement systematic outreach programs,
- Legal documents being unavailable in local languages,
- Insufficient efforts to educate or raise awareness within communities regarding their entitlements under the law.

As a result, attendance at Gram Sabha meetings tends to be low, engagement often superficial, and deliberation lacking depth.

#### 2. Knowledge Deficiency among Tribal Elders and Members

Even when participation takes place, members—particularly tribal elders, who are typically responsible for representing community concerns—might not possess:

- A clear understanding of procedural necessities, such as mapping traditional boundaries or filling out claim forms,
- Knowledge of legal terminology and evidentiary requirements,
- Awareness of bureaucratic processes, making them susceptible to misinformation or manipulation.

This results in ineffective decision-making, denial of rightful claims, or submission of

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<sup>62</sup> [https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm\\_source=chatgpt.com](https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm_source=chatgpt.com)  
[https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm\\_source=chatgpt.com](https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm_source=chatgpt.com)

incomplete or erroneous claims that are subsequently rejected by higher authorities.

### 7.3.2 Limited Capability and Resources

#### 1. Insufficient Administrative Infrastructure

Gram Sabhas, especially in forested and tribal areas, function with very limited administrative resources. Their capacity to undertake tasks mandated by the FRA—such as:

- Collecting oral<sup>63</sup> and documentary evidence,
- Creating maps of traditional forest utilization,
- Conducting deliberative meetings and public hearings,
- Keeping records and providing recommendations—

is significantly hindered due to a lack of:

- Office space and clerical support,
- Trained facilitators or legal aides,
- Technical resources such as GPS devices, mapping software, or stationery.

#### 2. Lack of Technical and Legal Training

The FRA requires Gram Sabhas to complete tasks that often involve complex legal and technical issues—such as verifying long-standing land usage claims or certifying community resource management practices.

However, there is no established training framework for Gram Sabha members on how to:

- Utilize satellite imagery or forest maps,
- Navigate documentation from the forest department,
- Express customary rights in writing.

This results in a reliance on external entities, such as NGOs or government officials, who may or may not act in the community's best interests.

### 7.3.3 Political and Social Influence

#### 1. Influence of Local Power Brokers

In numerous areas, Gram Sabhas are dominated by influential caste or class groups, who deploy their power to:

- Stifle legitimate claims from disadvantaged families,

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<sup>63</sup> [https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm\\_source=chatgpt.com](https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm_source=chatgpt.com)  
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- Distribute forest land to political associates or family members,
- Obstruct acknowledgment of community forest rights to maintain personal advantages.

This kind of political manipulation erodes the democratic values of the Gram Sabha and leads to exclusionary practices that contradict the objectives of the FRA.

## 2. Interference from Panchayati R<sup>64</sup>aj Institutions and Local Politicians

While the Gram Sabha under the FRA is meant to be distinct from the one outlined in the Panchayati Raj Act, their functions and authority often overlap in practice. Panchayat officials or local political figures, who may not belong to the legally recognized Gram Sabha, frequently:

- Mediate in the process of forest rights verification,
- Pressure members to approve fraudulent claims,
- Weaken collective community rights in favor of individual land allotments that serve political interests.

Such intrusions skew the implementation process and violate the independence and legal standing of the FRA Gram Sabha, as stipulated under Rule 4(1)(e) of the FRA Rules, 2007.

### 7.4 Insufficient Governance Capacity Specific to the Islands (IJNRD)

The Andaman and Nicobar Islands face distinctive ecological, cultural, and governance challenges. These islands are inhabited by several indigenous tribes, including the Great Andamanese, Sentinelese, and Jarawa, who depend on sustainable practices for survival. However, the lack of island-specific governance capacity presents a major obstacle to the effective implementation of tribal rights and environmental conservation policies in the area.

#### 7.4.1 Insufficient Institutional Capacity

The administrative and governance frameworks in the Andaman and Nicobar Islands often suffer from a lack of resources, understaffing, and insufficient expertise necessary for effective policy implementation. This is further complicated by the islands' geographical isolation and difficulties in coordinating efforts among local, state, and central authorities.

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<sup>64</sup> [https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm\\_source=chatgpt.com](https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm_source=chatgpt.com)  
[https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm\\_source=chatgpt.com](https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm_source=chatgpt.com)

#### 7.4.2 Absence of Cultural Sensitivity in Policy Implementation

The policies carried out in the islands frequently overlook the distinct cultural traditions and traditional governance systems of the indigenous populations. The hierarchical approach to governance and decision-making does not always honor the autonomy of these communities, resulting in resistance and distrust.

#### 7.4.3 Effects of Infrastructure Development on Tribal Territories

The rising demand for infrastructure projects in the Andaman and Nicobar Islands presents a direct threat to the indigenous tribes' habitat and lifestyle. Initiatives such as tourism development, road construction, and industrial pursuits infringe on the land rights of<sup>65</sup> tribes and disrupt their traditional means of livelihood. These undertakings often advance without proper consultation or consideration of the environmental and social consequences for local tribes.

#### 7.4.4 Insufficient Protections for Isolated Tribes

The Sentinelese and Jarawa tribes, in particular, largely remain disconnected from external influences. While efforts have been enacted to safeguard their isolation, there are increasing concerns regarding the effects of intrusive development activities and the encroachment of outsiders into their lands. The absence of robust governance frameworks to uphold the rights and safety of these tribes intensifies the challenges faced.

#### Conclusion: Overcoming the Challenges

To address these implementation gaps and challenges, there is a need for:

- Training and capacity-building for local bureaucrats and officials involved in the implementation of the FRA and environmental laws.
- Strengthening coordination between departments and authorities dealing with forest rights, conservation, and tribal welfare.
- Greater awareness and participation of tribal communities in the Gram Sabha processes to ensure that their rights are effectively recognized and protected.

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<sup>65</sup> [https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm\\_source=chatgpt.com](https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm_source=chatgpt.com)  
[https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm\\_source=chatgpt.com](https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm_source=chatgpt.com)

- Island-specific governance models that respect the unique cultural and environmental characteristics of the Andaman and Nicobar Islands, while promoting sustainable development.

## 7.4 Lack of Island-Specific Governance Capacity

### Introduction

The Andaman and Nicobar Islands are among India's most ecologically delicate and culturally distinct areas. They host several Particularly Vulnerable Tribal Groups (PVTGs), including the Great Andamanese, Jarawa, Onge, and Sentinelese, and are noted for their fragile ecosystems, diverse biodiversity, and the unique socio-cultural identities of indigenous populations. However, these islands encounter significant governance challenges that are not well-suited to their specific context, which complicates the enforcement of the Forest Rights Act, 2006, along with other environmental and tribal protection initiatives. The islands' geographical isolation, a centralized administrative framework, and a disconnect between on-ground realities and bureaucratic structures have collectively weakened efforts to protect tribal rights, resulting in developmental policies that frequently overlook cultural sensitivity, tribal independence, and ecological sustainability.

### 7.4.1 Limited Institutional Capacity

#### 1. Administrative Constraints

The governance systems in the Andaman and Nicobar Islands often find themselves stretched thin and lacking resources, with inadequate manpower, insufficient financial backing, and a shortage of trained personnel capable of effectively implementing tribal welfare and conservation laws. Key challenges include:

- A shortage of tribal welfare officers and forest rights facilitators in villages,
- A limited number of functional Gram Sabhas and Forest Rights Committees (FRCs) across tribal areas,
- A lack of technical experts, including anthropologists, ecologists, or legal professionals specializing in tribal rights.

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<sup>66</sup> [https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm\\_source=chatgpt.com](https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm_source=chatgpt.com)  
[https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm\\_source=chatgpt.com](https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm_source=chatgpt.com)

This gap in institutional capacity has led to significant delays in executing the provisions of the FRA and created a reliance on external bureaucratic entities that are unfamiliar with local contexts.

## 2. Geographic and Logistical Barriers

The archipelagic nature of the islands complicates governance mechanisms, which often face:

- Challenges with inter-island coordination among varying administrative divisions,
- Difficulties in monitoring isolated tribal communities or holding regular Gram Sabha gatherings,
- Delays in sending policy directives, reports, and claim applications.

These logistical hurdles become even more pronounced during natural disasters or cyclones, which frequently interfere with administrative processes and community access to governance services.

### 7.4.2 Lack of Cultural Sensitivity in Policies

#### 1. One-Size-Fits-All Bureaucratic Approach

Numerous policies implemented in the islands are formulated at the central or mainland level, resulting in a standardized approach that disregards the customary practices, traditional governance systems, and ecological knowledge of the indigenous tribes. This top-down model results in:

- The imposition of unfamiliar legal and administrative frameworks on tribal communities,
- The erosion of tribal independence, particularly regarding resource management, health, education, and land rights,
- Resistance from tribal populations due to a distrust of outside authorities and concerns about threats to their traditional lifestyles.

#### 2. Marginalization of Indigenous Institutions

Tribal communities in the Andaman and Nicobar Islands often uphold traditional councils and customary laws that govern their everyday lives. Nevertheless, these indigenous institutions are rarely: <sup>67</sup>

- Consulted in the policymaking or implementation processes,
- Formally recognized within the governance system,

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<sup>67</sup> [https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm\\_source=chatgpt.com](https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm_source=chatgpt.com)  
[https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm\\_source=chatgpt.com](https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm_source=chatgpt.com)

- Given opportunities to influence land rights or development initiatives under the FRA.

Consequently, tribal values and knowledge systems are often dismissed, leading to feelings of alienation from policies and non-compliance with state-led efforts.

#### 7.4.3 Impact of Infrastructure Projects on Tribal Lands

##### 1. Development-Induced Displacement and Ecological Threats

In recent times, the push for infrastructure growth—motivated by tourism, national security interests, and economic goals—has resulted in:

- The development of highways, ports, and airstrips that encroach upon tribal lands and protected habitats,
- The growth of eco-tourism initiatives that contravene tribal isolation policies,
- The disruption of wildlife corridors and forest biodiversity, which are essential for tribal livelihoods.

Even with constitutional and legal protections in place, many of these initiatives continue without:

- The free, prior, and informed consent (FPIC) of the impacted tribal communities,
- Environmental Impact Assessments (EIA) adapted to the delicate island ecology,
- A thorough assessment of the cumulative social and cultural repercussions.

This leads to not only risks of displacement but also mental distress, degradation of cultural heritage, and violations of Articles 19(5) and 21 of the Constitution, which safeguard tribal interests and the right to live with dignity.

##### 2. Disregarding Legal Protections

Numerous projects either circumvent or breach significant provisions of:

- The Forest Rights Act (2006) – especially concerning community forest rights (CFRs),
- The Environment (Protection) Act, 1986,
- The Andaman and Nicobar Islands (Protection of Aboriginal Tribes) Regulation, 1956 (ANPATR).

Meaningful consultations with Gram Sabhas are frequently lacking, despite explicit requirements under Section 5 of the FRA that call for community participation in decisions regarding forest management and development.

#### 7.4.4 Insufficient Protection for Isolated Tribes

##### 1. Vulnerability of Particularly Vulnerable Tribal Groups (PVTGs)

The Sentinelese and <sup>68</sup>Jarawa, identified as PVTGs, are among the last remaining tribes with little to no contact with the outside world. They are:

- Extremely vulnerable to illnesses introduced by outsiders,
- Threatened by cultural assimilation and exploitation,
- Completely reliant on forests and marine ecosystems for their survival.

Despite an official policy of isolation and non-interference, encroachments persist due to:

- Illegal tourism and poaching,
- Unregulated influx of settlers and goods into buffer zones,
- A lack of enforcement of buffer area restrictions and tribal reserve boundaries.

## 2. Governance Deficiencies in Legal Enforcement

Current laws such as the ANPATR, 1956, which restrict interaction with specific tribal groups and entry into reserved regions without a permit, are often:

- Poorly enforced,
- Compromised by political or commercial interests,
- Deficient in the administrative mechanisms needed for effective monitoring and patrolling.

The lack of strong governance capacity enables ongoing encroachment, health threats, and socio-cultural disruption, all of which pose existential risks to these isolated communities.

### Conclusion: Tackling the Challenges

To bridge the governance gaps and safeguard the tribal rights and delicate ecology of the Andaman and Nicobar Islands, the following policy measures are essential:

#### 1. Empowering Local Institutions

- Providing training for local administrators, forest officials, and revenue officers on the Forest Rights Act (FRA), environmental legislation, and tribal rights.
- Establishing specialized Tribal Affairs Units within the island governance structure.

#### 2. Culturally-Informed and Inclusive Policy Development

- Ensuring that policy frameworks honor customary law, traditional governance, and tribal knowledge systems.
- Advocating for governance models based on consultation, involving Gram Sabha and tribal councils in all decision-making activities.

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<sup>68</sup> [https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm\\_source=chatgpt.com](https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm_source=chatgpt.com)  
[https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm\\_source=chatgpt.com](https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm_source=chatgpt.com)

### 3. Legal Reforms and Protective Measures <sup>69</sup>

- Enhancing the enforcement of the Andaman and Nicobar Protected Area Regulations (ANPATR) and buffer zone protocols.
- Making the Environmental Impact Assessment (EIA) and Free, Prior, and Informed Consent (FPIC) procedures compulsory for all development initiatives in tribal regions.

### 4. Tailored Governance Models for the Islands

- Implementing governance structures that are decentralized, contextually relevant, and attentive to the ecological and cultural distinctiveness of the islands.
- Promoting community-driven conservation efforts, where tribal groups serve as guardians of biodiversity.

By adopting a more nuanced, rights-focused, and inclusive governance framework, the objectives of the FRA can be accomplished in the Andaman and Nicobar Islands while ensuring ecological sustainability, cultural preservation, and the empowerment of tribal communities.

## Chapter 8: Recommendations and Conclusion

- This chapter consolidates the findings from earlier discussions and presents practical strategies to tackle the issues in environmental governance and the safeguarding of tribal rights, especially in ecologically vulnerable areas such as the Andaman and Nicobar Islands. The proposals are designed to establish a unified framework that harmonizes conservation initiatives with the rights and requirements of indigenous populations.

### 8.1 Alignment of Forest and Environmental Legislation

- Challenge: Conflicting Legal Authorities and Implementation Challenges
- India's governance of environmental and forest matters is influenced by a variety of legislative frameworks, including the Forest Conservation Act (FCA) of 1980, the

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<sup>69</sup> [https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm\\_source=chatgpt.com](https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm_source=chatgpt.com)  
[https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm\\_source=chatgpt.com](https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm_source=chatgpt.com)

Forest Rights Act (FRA) of 2006, the Wildlife Protection Act of 1972, and the Environment (Protection) Act of 1986. While every law has important ecological and social goals, the lack of integration among them has often resulted in overlapping jurisdictions, administrative disputes, and i<sup>70</sup>nconsistent policy execution.

A significant area of discord exists between the FCA and FRA:

- The FCA emphasizes forest conservation, often by restricting changes in land use, including infrastructure development and human settlement.
- The FRA aims to recognize and grant rights to forest lands for Scheduled Tribes and Other Traditional Forest Dwellers (OTFDs), giving them authority to manage and conserve their forests.

This conflict of aims frequently leads to:

- Holdups in the approval of forest rights claims, especially regarding community forest resource (CFR) rights,
- Rejection of valid rights claims under the FRA due to overly strict conservation interpretations, Uncertainty among local officials regarding which legal authority should take precedence. Thus, there is an immediate need for a cohesive and consolidated legal strategy that harmonizes both environmental conservation goals and tribal justice.

Suggestion: Creation of a Unified Legal Framework

- To rectify these discrepancies, it is crucial to develop a cohesive legal structure that aligns forest and environmental goals with social equity and tribal empowerment, consistent with constitutional and international human rights standards.
  1. Legal Assessment and Reconciliation of Legislative Provisions
    - Perform a thorough legal evaluation of forest and environmental laws, including the FCA, FRA, Wildlife Protection Act, Environment Protection Act, and associated regulations.
    - Identify areas of conflict, redundancy, and repetitive procedures.
    - Clarify the hierarchical precedence of laws, particularly underscoring the primacy of the FRA in issues concerning tribal land and community rights.

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<sup>70</sup> [https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm\\_source=chatgpt.com](https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm_source=chatgpt.com)  
[https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm\\_source=chatgpt.com](https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm_source=chatgpt.com)

- Integrate legal advancements, such as the Niyamgiri ruling (Orissa Mining Corporation v. Ministry of Environment & Forests, 2013), where the Supreme Court upheld the role of Gram Sabhas in defending tribal interests and their spiritual ties to the forest.

## 2. Creation of Unified Guidelines

- Draft and distribute national guidelines that clearly instruct forest, tribal, and environmental authorities on:

- o Incorporating tribal rights into conservation strategies,
- o Securing prior consent and Gram Sabha endorsement prior to launching forest diversion initiatives,
- o Recognizing Community Forest Resource (CFR) rights as vital for sustainable conservation.

- These guidelines should ensure that environmental approvals under the FCA or Environmental Impact Assessment (EIA) processes do not overlook FRA compliance, specifically regarding the settlement of rights under Section 3(1) of the FRA and the necessary consultation with Gram Sabhas as mandated by Section 5.

## 3. Coordination Between Institutions and Departments

- Set up a central coordination entity, such as an inter-ministerial task force that includes representatives from:

- o The Ministry of Tribal Affairs (MoTA),
- o The Ministry of Environment, Forest and Climate Change (MoEFCC),
- o State Forest Departments, and Local self-governing bodies.

- Encourage joint training sessions, shared databases, and standardized operating procedures (SOPs) to facilitate integrated implementation on the ground.

- Foster collaborative field assessments, shared management of forestry resources, and coordinated planning among the relevant departments..

## Expected Outcomes

The establishment of a unified legal and administrative framework is anticipated to provide the following advantages:

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<sup>71</sup> [https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm\\_source=chatgpt.com](https://india.mongabay.com/2024/04/more-than-15-years-on-implementation-of-forest-right-act-is-lagging-new-report-finds/?utm_source=chatgpt.com)  
[https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm\\_source=chatgpt.com](https://www.downtoearth.org.in/forests/new-fca-rules-not-in-compliance-with-fra-endanger-rights-of-tribals-and-forest-dwellers-84052?utm_source=chatgpt.com)

#### 1. Decrease in Bureaucratic Disputes

- A clearly articulated understanding of legal responsibilities and operational protocols will help avoid conflicts between agencies and reduce occurrences of policy inaction.

#### 2. Improved Processes

- The acknowledgment of forest rights, environmental permits, and conservation authorizations can be managed through integrated, transparent, and accelerated methods.

#### 3. Empowerment of Indigenous<sup>72</sup> Populations

- An equitable legal structure will recognize tribal and forest-dwelling communities as partners in conservation efforts, instead of obstacles.

- This will promote enhanced community stewardship, strengthen biodiversity protection, and facilitate decentralized forest governance.

#### 4. Better Compliance with Constitutional and International Standards

- Alignment will connect India's internal legal framework with:

- o Article 21 (Right to Life with Dignity) and Article 19(5) (Protection of Tribal Interests),

- o UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples) and other international commitments regarding tribal sovereignty and environmental justice.

### 8.2 Implementing Tribal Consultation in Conservation Planning

Issue: Conservation initiatives frequently advance without sufficient engagement from tribal communities, resulting in the marginalization of indigenous viewpoints and potential disputes.

Recommendation: Create official protocols for tribal consultation at every phase of conservation planning by:

- **Compulsory Consultations:** Legally require the involvement of tribal communities before launching conservation initiatives that impact their territories.

- **Inclusion in Decision-Making Bodies:** Guarantee that tribal representatives are part of environmental and conservation decision-making bodies.

- **Capacity Enhancement:** Provide training and support to tribal communities to enable effective participation in consultations.

Expected Outcome: The active engagement of tribal communities will result in more inclusive and sustainable conservation strategies that honor indigenous knowledge and rights.

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<sup>72</sup> [https://obamawhitehouse.archives.gov/blog/2010/07/29/tribal-law-and-order-act-2010-a-step-forward-native-women?utm\\_source=chatgpt.com](https://obamawhitehouse.archives.gov/blog/2010/07/29/tribal-law-and-order-act-2010-a-step-forward-native-women?utm_source=chatgpt.com).  
[https://www.epa.gov/system/files/documents/2025-03/eoy2022.pdf?utm\\_source=chatgpt.com](https://www.epa.gov/system/files/documents/2025-03/eoy2022.pdf?utm_source=chatgpt.com)

## 8.2 Implementing Tribal Consultation in Conservation Planning

Issue: Exclusion of Tribal Communities from Conservation Decision-Making

In India, many conservation projects—including the establishment of protected areas, eco-sensitive zones, and large-scale afforestation or wildlife relocation efforts—are often implemented without meaningful<sup>73</sup> engagement with the tribal and forest-dwelling populations directly impacted. This lack of communication contradicts the principles of participatory governance, undermines tribal rights enshrined in the Forest Rights Act (FRA), 2006, and often leads to resistance, social unrest, and legal disputes.

Key issues include:

- Forced displacement without consent, especially in regions designated as tiger reserves or national parks.
- Erosion of traditional livelihoods, as restrictions are placed on grazing, foraging, or shifting cultivation.
- Overlooking indigenous knowledge, as conservation measures are developed through top-down scientific approaches that disregard community-led ecological management.

This disconnection between conservation objectives and tribal involvement not only marginalizes vulnerable populations but frequently produces ineffective environmental outcomes due to the absence of local support and indigenous cooperation.

**Recommendation: Create Legally Binding and Practical Mechanisms for Tribal Consultation**

To address this systemic exclusion, it is crucial for the government to establish tribal consultation as a standard procedure throughout all stages of conservation planning, from policy formulation and site selection to execution and oversight. This consultation should be meaningful, legally enforceable, inclusive, and well-informed.

### 1. Mandatory Legal Requirement for Prior Consultation

- Implement statutory changes<sup>74</sup> or establish new regulations that require Free, Prior, and Informed Consent (FPIC) from indigenous communities before initiating any conservation

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<sup>73</sup> [https://obamawhitehouse.archives.gov/blog/2010/07/29/tribal-law-and-order-act-2010-a-step-forward-native-women?utm\\_source=chatgpt.com](https://obamawhitehouse.archives.gov/blog/2010/07/29/tribal-law-and-order-act-2010-a-step-forward-native-women?utm_source=chatgpt.com).  
[https://www.epa.gov/system/files/documents/2025-03/eoy2022.pdf?utm\\_source=chatgpt.com](https://www.epa.gov/system/files/documents/2025-03/eoy2022.pdf?utm_source=chatgpt.com)

<sup>74</sup> [https://obamawhitehouse.archives.gov/blog/2010/07/29/tribal-law-and-order-act-2010-a-step-forward-native-women?utm\\_source=chatgpt.com](https://obamawhitehouse.archives.gov/blog/2010/07/29/tribal-law-and-order-act-2010-a-step-forward-native-women?utm_source=chatgpt.com).  
[https://www.epa.gov/system/files/documents/2025-03/eoy2022.pdf?utm\\_source=chatgpt.com](https://www.epa.gov/system/files/documents/2025-03/eoy2022.pdf?utm_source=chatgpt.com)

initiatives on forest lands they traditionally inhabit or utilize.

- Require mandatory consultations with the Gram Sabha in accordance with relevant forest and wildlife laws, akin to the provisions found in Section 4(5) and Section 5 of the FRA, which empower communities to manage and safeguard their forest resources.
- Oblige conservation organizations to conduct a Social Impact Assessment (SIA) that entails comprehensive documentation of consultations, community input, and mutually agreed-upon terms.

## 2. Representation of Tribal Voices in Decision-Making Institutions

- Enforce the inclusion of tribal representatives, particularly women and traditional leaders, in:
  - o State Wildlife Boards and Forest Advisory Committees,
  - o National and State Biodiversity Authorities,
  - o Joint Forest Management (JFM) Committees and other local conservation entities.
- These representatives should be elected or appointed by their communities, ensuring authenticity and responsibility.
- Representation ought to come with voting rights rather than merely observer status.

## 3. Capacity Building and Resource Support for Effective Participation

- Acknowledging the historical disadvantages and educational obstacles faced by tribal communities, focused initiatives should be undertaken to:
  - o Provide training for tribal members regarding laws, policies, and negotiation techniques related to conservation.
  - o Offer financial and logistical assistance to enable participation in consultations, public hearings, and official meetings.
  - o Create toolkits and materials in local languages, employing culturally relevant formats (visual aids, storytelling, etc.) to improve comprehension and engagement.

## Expected Outcomes <sup>75</sup>

Integrating tribal consultation is anticipated to bring a range of benefits for both conservation authorities and the indigenous communities involved:

### 1. Inclusive and Equitable Conservation Strategies

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<sup>75</sup> [https://obamawhitehouse.archives.gov/blog/2010/07/29/tribal-law-and-order-act-2010-a-step-forward-native-women?utm\\_source=chatgpt.com](https://obamawhitehouse.archives.gov/blog/2010/07/29/tribal-law-and-order-act-2010-a-step-forward-native-women?utm_source=chatgpt.com).  
[https://www.epa.gov/system/files/documents/2025-03/eoy2022.pdf?utm\\_source=chatgpt.com](https://www.epa.gov/system/files/documents/2025-03/eoy2022.pdf?utm_source=chatgpt.com)

- Incorporating indigenous voices in the planning process will lead to conservation strategies that are more suitable to the local context, culturally aware, and socially just.

## 2. Strengthening of Indigenous Rights and Autonomy

- The acknowledgment of tribal consent and involvement reinforces their constitutional and legal standing, upholding Articles 244, 275, and the provisions of the FRA related to community forest rights.

## 3. Conflict Prevention and Legal Certainty

- Proactive and sincere consultation can mitigate land disputes, forced evictions, and legal challenges, conserving time, resources, and maintaining the reputation of conservation organizations.

## 4. Integration of Traditional Ecological Knowledge

- Indigenous communities hold extensive ecological knowledge that can improve conservation outcomes through methods such as sustainable resource use, biodiversity tracking, and indigenous approaches to fire or pest management.

## 8.3 Capacity Building for Island Administrations

### Issue: Weak Institutional Capacity in Island Governance

Island territories such as the Andaman and Nicobar Islands encounter distinct governance issues due to their geographical seclusion, inadequate infrastructure, and delicate socio-ecological environment. These islands host vulnerable tribal populations and diverse ecosystems, which make them both ecologically significant and socially sensitive areas.

Nonetheless, local governments<sup>76</sup> frequently lack sufficient resources and proper training to enforce and implement intricate legal frameworks concerning environmental protection and tribal rights, specifically related to the Forest Conservation Act (FCA), 1980, and the Forest Rights Act (FRA), 2006.

Major challenges include:

- Insufficient trained staff to navigate the complexities of legal and policy matters;
- Poor collaboration between local authorities and central government bodies;
- Weak institutional approaches to addressing environmental deterioration or tribal issues;

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<sup>76</sup> [https://obamawhitehouse.archives.gov/blog/2010/07/29/tribal-law-and-order-act-2010-a-step-forward-native-women?utm\\_source=chatgpt.com](https://obamawhitehouse.archives.gov/blog/2010/07/29/tribal-law-and-order-act-2010-a-step-forward-native-women?utm_source=chatgpt.com).  
[https://www.epa.gov/system/files/documents/2025-03/eoy2022.pdf?utm\\_source=chatgpt.com](https://www.epa.gov/system/files/documents/2025-03/eoy2022.pdf?utm_source=chatgpt.com)

- Limited capacity for conducting field surveys, consultations, or rights verification processes.

These challenges culminate in ineffective policy enforcement, bureaucratic delays, and lost chances for inclusive and sustainable growth.

#### Recommendation: Strengthen the Capabilities of Island Administrations

To address these challenges, a comprehensive capacity-building strategy is necessary. This approach combines training, resource distribution, and technical support specifically designed for the unique requirements of island administrations.

#### 1. Training Programs: Enhancing Legal and Cultural Expertise

- Aim: To provide administrators with the knowledge and cultural sensitivity needed to effectively implement laws related to environmental conservation and tribal welfare.
- Focus Areas:
  - o Understanding provisions and processes under FRA, FCA, Wildlife Protection Act, Environmental Impact Assessment (EIA) guidelines, etc.;
  - o Cultural competency training to aid officials in grasping tribal customs, languages, and governance mechanisms;
  - o Conflict resolution and participatory governance strategies to manage disagreements between conservation aims and community rights.
- Method of Delivery:
  - o Partnerships with institutions such as National Tribal Research Institutes, Indian Forest Service Training Academies, and organizations like the Ford Foundation;
  - o Utilization of digital learning platforms to circumvent geographical challenges;
  - o Regular practical workshops and field-based training sessions.

#### 2. Resource Distribution: Infrastructure and Personnel

Aim: To bolster institutional frameworks and ensure adequate personnel are allocated at the grassroots level.

#### Key Actions:

- o Increase personnel in tribal welfare departments, forest divisions, and environmental monitoring units;
- o Provide office facilities, field equipment, transportation, and IT tools to aid field

surveys and enforcement activities;

- o Establish specialist task forces for tribal rights and biodiversity management within critical areas.
- Impact:
  - o Quicker response to policy needs;
  - o Enhanced record-keeping and case management systems;
  - o Improved physical access to remote tribal regions.

### 3. Technical Assistance: Instruments <sup>77</sup>for Monitoring and Governance

- Aim: To furnish scientific and technological resources that enhance administrative effectiveness and facilitate data-informed decision-making.
- Support Components:
  - o GIS-based mapping tools for monitoring forest coverage and delineating traditional tribal lands;
  - o Mobile data collection applications to streamline the documentation of forest rights claims;
  - o Real-time dashboards for monitoring projects and addressing grievances;
  - o Access to legal databases and advisory resources to resolve jurisdictional conflicts. •

Potential Collaborators:

Ministry of Environment, Forest and Climate Change (MoEFCC);

Ministry of Tribal Affairs;

International entities with technical knowledge such as UNDP, FAO, or IUCN.

Expected Outcomes

The effective implementation of this capacity-building strategy will lead to significant improvements in the governance of island territories.

#### 1. Enhanced Law Enforcement

- Trained personnel and better-equipped institutions will ensure adherence to environmental and tribal welfare regulations, lessening violations and misunderstandings.

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<sup>77</sup> [https://obamawhitehouse.archives.gov/blog/2010/07/29/tribal-law-and-order-act-2010-a-step-forward-native-women?utm\\_source=chatgpt.com](https://obamawhitehouse.archives.gov/blog/2010/07/29/tribal-law-and-order-act-2010-a-step-forward-native-women?utm_source=chatgpt.com).  
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## 2. Responsive and Inclusive Governance

- Administrators will be more conscious of local needs, fostering meaningful interactions with tribal communities and lessening conflicts between development and conservation objectives.

## 3. Improved Environmental and Tribal Protection

- With enhanced monitoring tools and processes, ecological threats will be identified more quickly, and tribal concerns will be addressed promptly, safeguarding both biodiversity and indigenous rights.

## 4. Greater Trust in Institutions

- Noticeable advancements in governance will help restore trust between the state and tribal communities.

### 8.4 Embedding Sunset Clauses and Monitoring Frameworks

#### Issue: Lack of Accountability and Adaptability in Long-Term Policies

One of the persistent problems in the implementation of environmental protection and tribal welfare policies in India is the absence of time-bound evaluation mechanisms. Policies are often enacted without clear performance review protocols or expiry timelines, resulting in:

- Outdated projects continuing indefinitely, even when they are no longer effective or relevant;
- Poor use of public<sup>78</sup> funds on schemes that are not meeting their objectives;
- Policy stagnation, where the same approaches are replicated despite changing social, environmental, or legal contexts.

This problem is especially acute in areas involving tribal land rights, forest conservation, and infrastructure development in ecologically sensitive regions, such as the Andaman and Nicobar Islands, where context-specific responsiveness is essential.

Without built-in mechanisms for review and termination, ineffective strategies remain in force, while successful ones lack the institutional support for scaling or continuation.

**Recommendation: Incorporate Sunset Clauses and Strong Monitoring Frameworks**

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<sup>78</sup> [https://obamawhitehouse.archives.gov/blog/2010/07/29/tribal-law-and-order-act-2010-a-step-forward-native-women?utm\\_source=chatgpt.com](https://obamawhitehouse.archives.gov/blog/2010/07/29/tribal-law-and-order-act-2010-a-step-forward-native-women?utm_source=chatgpt.com).  
[https://www.epa.gov/system/files/documents/2025-03/eoy2022.pdf?utm\\_source=chatgpt.com](https://www.epa.gov/system/files/documents/2025-03/eoy2022.pdf?utm_source=chatgpt.com)

To address this challenge, the inclusion of sunset clauses and structured monitoring systems should become a standard feature in environmental, conservation, and tribal development policies. These tools help institutionalize accountability, flexibility, and data-driven decision-making.

### 1. Sunset Clauses: Time-Limited Policy Provisions

- A sunset clause is a legal provision that stipulates a predefined expiration date for a policy, law, or project unless it is actively renewed after a performance review.
- Embedding sunset clauses ensures that temporary measures do not become permanent by default, especially in sensitive zones affecting tribal lands and conservation.
- Examples:
  - An eco-tourism policy in tribal regions might be set to expire in 3 years unless it shows measurable benefits for both conservation and local livelihoods.
  - A development project in a protected forest area may require reauthorization every 5 years, contingent on its compliance with environmental and social safeguards.
- Sunset clauses also empower legislatures and local communities to assess whether a policy still serves its intended purpose or has unintended negative consequences.

### 2. Monitoring Frameworks: Clear Indicators and Benchmarks

- Effective policy implementation requires robust monitoring systems to track performance using qualitative and quantitative indicators.
- These frameworks should be designed to:
  - Measure outcomes (e.g., forest regeneration, income generation, rights recognition);
  - Track compliance (e.g., consultation processes, biodiversity impact mitigation);
  - Identify gaps and failures in real-time, allowing for mid-course corrections.
- In the context of tribal and environmental policy, indicators could include:
  - Rate of forest rights claims approved or denied;
  - Level of tribal participation in Gram Sabha processes;
  - Biodiversity metrics, such as wildlife sightings, forest cover changes, or soil health;<sup>79</sup>

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<sup>79</sup> [https://obamawhitehouse.archives.gov/blog/2010/07/29/tribal-law-and-order-act-2010-a-step-forward-native-women?utm\\_source=chatgpt.com](https://obamawhitehouse.archives.gov/blog/2010/07/29/tribal-law-and-order-act-2010-a-step-forward-native-women?utm_source=chatgpt.com).  
[https://www.epa.gov/system/files/documents/2025-03/eoy2022.pdf?utm\\_source=chatgpt.com](https://www.epa.gov/system/files/documents/2025-03/eoy2022.pdf?utm_source=chatgpt.com)

- Community feedback through participatory rural appraisals.
- Data collected through monitoring must be transparent, publicly accessible, and periodically reviewed by an independent oversight body.

### 3. Regular Reviews and Feedback Loops

- Regular reviews (every 2-3 years) should be made mandatory for all large-scale environmental and tribal welfare policies. These reviews must be:
  - Participatory, including tribal communities, civil society, and independent experts;
  - Evidence-based, relying on data collected through monitoring frameworks;
  - Outcome-oriented, focused on whether the original goals have been met.
- Based on these assessments, authorities can:
  - Renew, modify, or terminate the policy or project;
  - Introduce corrective measures or course adjustments;
  - Scale up successful models and phase out those that underperform.
- Importantly, review reports should be submitted to Parliament or State Assemblies and made available to the public, ensuring accountability and transparency.

### Expected Outcomes

Implementing sunset clauses and monitoring frameworks is likely to create a more responsive, transparent, and effective policy environment, especially in the complex domains of environmental protection and tribal rights.

#### 1. Enhanced Accountability

- Time-bound and performance-dependent policy design creates institutional pressure to deliver tangible results, reducing complacency in implementation.

#### 2. Policy Innovation and<sup>80</sup> Improvement

- Regular reviews encourage course correction, adoption of best practices, and discontinuation of outdated strategies, fostering continuous innovation.

#### 3. Protection of Tribal Rights and Environmental Integrity

- Monitoring ensures that policies do not silently undermine community rights or ecological balance and that negative impacts are addressed early.

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<sup>80</sup> [https://obamawhitehouse.archives.gov/blog/2010/07/29/tribal-law-and-order-act-2010-a-step-forward-native-women?utm\\_source=chatgpt.com](https://obamawhitehouse.archives.gov/blog/2010/07/29/tribal-law-and-order-act-2010-a-step-forward-native-women?utm_source=chatgpt.com).  
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#### 4. Efficient Use of Resources

- Public funds are directed towards working strategies, while ineffective or harmful ones are discontinued, ensuring value-for-money governance.

#### 8.5 Role of CIVICUS Global Alliance

Issue: Need for Civil Society Involvement in Environmental and Tribal Governance

One of the major gaps in India's environmental and tribal welfare governance lies in the limited involvement of civil society organizations (CSOs) and tribal communities in policy formulation, implementation, and oversight. The lack of structured civic participation often leads to top-down decisions that may ignore ground realities, traditional knowledge systems, or rights-based approaches.

In this context, the CIVICUS Global Alliance, a prominent international civil society network working in over 175 countries, plays a crucial role in promoting democratic engagement, accountability, and inclusive governance.

Their global experience and advocacy for citizen participation, freedom of expression, and transparent governance provide valuable frameworks and support for integrating tribal rights and environmental protection into cohesive and just policy systems.

Recommendation: Leverage CIVICUS's Frameworks to Support Reforms

To ensure that reforms in India's forest governance and tribal rights systems are inclusive, rights-based, and transparent, policymakers and institutions should engage with and draw upon CIVICUS's expertise and advocacy platforms.

##### 1. Promoting Civic Engagement: Enabling Grassroots Participation

- Objective: Ensure that tribal and civil society voices are integrated into all stages of environmental and<sup>81</sup> tribal policy processes.
- Key Strategies:
  - Support the creation and recognition of community-based organizations (CBOs) and tribal self-governance institutions;
  - Facilitate public consultations and Gram Sabha strengthening with guidance from civic engagement models promoted by CIVICUS;

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<sup>81</sup> [https://obamawhitehouse.archives.gov/blog/2010/07/29/tribal-law-and-order-act-2010-a-step-forward-native-women?utm\\_source=chatgpt.com](https://obamawhitehouse.archives.gov/blog/2010/07/29/tribal-law-and-order-act-2010-a-step-forward-native-women?utm_source=chatgpt.com).  
[https://www.epa.gov/system/files/documents/2025-03/eoy2022.pdf?utm\\_source=chatgpt.com](https://www.epa.gov/system/files/documents/2025-03/eoy2022.pdf?utm_source=chatgpt.com)

- Promote legal literacy campaigns on environmental and forest rights laws to empower marginalized communities.
  - Impact: Empowers tribal communities to actively participate in governance, increases public accountability, and reduces policy alienation.
2. Advocating for Policy Reforms: Aligning Laws with Rights-Based Principles
- Objective: Use CIVICUS's global policy networks to advocate for laws and practices that align with human rights standards, environmental justice, and indigenous sovereignty.
  - Key Areas for Advocacy:
    - Harmonization of FRA, FCA, and other laws to reflect both conservation and community rights;
    - Institutionalization of Free, Prior, and Informed Consent (FPIC) in projects impacting tribal lands;
    - Promotion of anti-displacement and livelihood-protection laws that uphold social equity.
  - Approach:
    - Support from legal experts, human rights defenders, and international policy advocates in shaping more inclusive and sustainable legal reforms;
    - Use of CIVICUS's global visibility to amplify indigenous and environmental justice issues on international platforms.
3. Monitoring and Reporting: Enhancing Transparency and Accountability
- Objective: Create systems for independent monitoring, impact assessments, and community-led audits of conservation and development projects.
  - Tools and Mechanisms:
    - Digital platforms supported by CIVICUS for community reporting, grievance redressal, and tracking policy compliance;
    - Shadow reports and alternative<sup>82</sup> assessments by NGOs and tribal groups to supplement official reports;
    - Use of international pressure and benchmarking to improve domestic accountability.

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<sup>82</sup> [https://obamawhitehouse.archives.gov/blog/2010/07/29/tribal-law-and-order-act-2010-a-step-forward-native-women?utm\\_source=chatgpt.com](https://obamawhitehouse.archives.gov/blog/2010/07/29/tribal-law-and-order-act-2010-a-step-forward-native-women?utm_source=chatgpt.com).  
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- Outcome: Enhances transparency, curbs corruption or bureaucratic inertia, and provides data-driven inputs for course correction.

### Expected Outcomes

Engaging with the CIVICUS Global Alliance and embedding its core principles in governance will yield several positive outcomes:

#### 1. Strengthened Democratic Governance

- Broader participation of civil society and indigenous peoples enhances democratic legitimacy and local ownership of environmental decisions.

#### 2. Rights-Based Policy Implementation

- Laws and projects will be better aligned with international human rights obligations, minimizing violations and promoting social justice.

#### 3. Global-Local Synergy

- India can benefit from the best practices and case studies emerging from other parts of the world through CIVICUS's global network.

#### 4. Improved Monitoring and Advocacy

- Civil society can act as a watchdog, ensuring timely interventions, redressal of rights violations, and policy course correction when necessary.

### Conclusion

Achieving durable environmental stewardship and the protection of indigenous rights in India demands an integrated, rights-based governance paradigm. This entails harmonizing forest and environmental statutes to eliminate conflicting mandates; embedding genuine tribal consultation at every phase of conservation planning; strengthening the administrative and technical capacity of local and island authorities; and instituting dynamic accountability measures—such as sunset clauses, robust monitoring frameworks, and third-party oversight by civil society networks like CIVICUS.

By deploying these reforms in concert, India can transform its development trajectory into one that is both equitable and sustainable—one that fulfills constitutional obligations to tribal communities, preserves irreplaceable ecosystems, and harnesses indigenous ecological knowledge. Such a model not only honors the country's rich cultural and biological heritage but also establishes India as a global exemplar of inclusive, adaptive, and just environmental governance

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