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Wildlife Protection and Rights of Indigenous Tribes-Conflicts and Coexistence

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ABSTRACT

This paper critically examines the intricate relationship between wildlife protection and the rights of indigenous tribes, specifically focusing on the conflicts that arise and the potential for coexistence. It explores the challenges faced in reconciling these two fundamental aspects of environmental governance and aims to provide insights into sustainable solutions.

The preservation of wildlife and the recognition of indigenous rights are essential for maintaining ecological balance and safeguarding cultural heritage. However, conflicts often emerge when traditional lands and resources of indigenous tribes overlap with designated protected areas. This paper analyzes relevant legislation, policy frameworks, and case studies to shed light on the complexities and implications of these conflicts.

The study highlights the adverse impacts of strict wildlife protection measures on indigenous communities, including forced displacement, loss of livelihoods, and erosion of cultural identity. It underscores the importance of recognizing and respecting indigenous knowledge systems, customary practices, and their deep-rooted connection with the land and wildlife.

Moreover, the paper investigates the role of community-based conservation initiatives in promoting coexistence. By actively involving indigenous communities in conservation efforts, empowering them through capacity building, and acknowledging their rights to participate in decision-making processes, a more inclusive and sustainable approach can be achieved.

The findings of this research emphasize the need for a balanced approach that respects both wildlife conservation and the rights of indigenous tribes. It calls for the formulation of comprehensive policies that integrate traditional ecological knowledge with modern scientific approaches, ensuring that the rights and interests of indigenous communities are duly recognized and protected.

Ultimately, this paper aims to contribute to the ongoing discourse on wildlife protection and indigenous rights by providing insights and recommendations for policymakers, conservation practitioners, and indigenous communities. It advocates for a harmonious

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coexistence between wildlife and indigenous tribes, where conservation efforts go hand in hand with the preservation of cultural diversity and the well-being of indigenous communities.

I. INTRODUCTION

In India, the connection between tribal groups and forests was defined by coexistence, and these populations were seen as essential to the natural system's survival and sustenance. This mutualistic interdependence was recognized, and customary rights over natural forests were established. However, during the colonial era and during Indian independence, the administration did not acknowledge or register these rights when combining state forests. Tribal groups were evicted from their traditional forest resources as a consequence of the ensuing uncertainty of tenancy and danger of eviction. The Wildlife (Protection) Act of 1972 (the 'WPA') and the Forest Conservation Act of 1980 (the 'FCA') continued this historical injustice by identifying the protection of the environment and indigenous rights acknowledgement as fundamentally contradictory goals

II. STATUTES FOR WILDLIFE PROTECTION

Wildlife Protection Act, 1972: The Wildlife Protection Act is the primary legislation in India for the protection of wildlife and their habitats. It provides legal mechanisms for the conservation and management of wildlife, regulation of hunting and trade in wildlife, the establishment of protected areas, and prevention of poaching and illegal trade in wildlife and wildlife products.

Forest Conservation Act, 1980: The Forest Conservation Act aims to protect and conserve forests in India. It regulates the diversion of forest lands for non-forest purposes, including infrastructure projects and industrial activities. The act ensures that forest lands are not converted for non-forest purposes without prior approval from the central government.

Indian Forest Act, 1927: The Indian Forest Act is an older legislation that governs the administration and management of forests in India. It provides for the protection, conservation, and sustainable use of forests, and also addresses issues related to timber harvesting, grazing, and control of forest offences.

Environmental Protection Act, 1986: While not solely focused on wildlife, the Environmental Protection Act plays a significant role in wildlife protection by addressing environmental concerns and regulating activities that may have adverse impacts on wildlife

and their habitats. The act provides for the prevention, control, and mitigation of pollution and environmental degradation.

Wildlife (Protection) Amendment Act, 2002: This amendment to the Wildlife Protection Act, 1972, introduced various important provisions, including stricter penalties for offences related to wildlife, enhanced protection for endangered species, and provisions for the establishment of the National Tiger Conservation Authority for tiger conservation.

These statutes, among others, work in conjunction to provide a legal framework for wildlife protection and conservation in India. They address various aspects such as habitat conservation, protection of endangered species, prevention of illegal hunting and trade, and promotion of sustainable use of natural resources. It is important to note that these statutes may be supplemented by relevant state-specific legislation and policies to ensure effective wildlife protection and conservation at the regional level.

III. STATUTES FOR THE PROTECTION OF TRIBES

In India, the protection of tribes and their rights is primarily governed by the following key statutes:

Constitution of India, 1950: The Constitution of India recognizes and safeguards the rights of indigenous tribal communities. It provides for the protection of their distinct cultural, social, and economic interests. Article 244(1) and the Fifth Schedule of the Constitution specifically address the administration and governance of scheduled areas and scheduled tribes, ensuring their protection and empowerment.

Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA): The FRA recognizes and vests forest rights and occupation rights to tribal communities and other traditional forest dwellers. It provides legal recognition and protection of their rights to access and use forest resources for livelihoods, cultural practices, and habitation. The act aims to address historical injustices, protect tribal rights, and promote sustainable development in tribal areas.

Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA): PESA is an important legislation that grants self-governance rights to tribal communities in scheduled areas. It empowers tribal gram sabhas (village councils) with the authority to manage local resources, make decisions on land acquisition, and govern their social, economic, and cultural affairs.

Forest Rights Rules, 2007: The Forest Rights Rules were framed under the FRA to provide a framework for the implementation of the act. These rules outline the procedures for the

recognition and verification of forest rights, including the rights of tribal communities and other traditional forest dwellers.

IV. WILDLIFE PROTECTION ACT & CONCERNS FOR TRIBES

The Wildlife Protection Act (1972) is primarily focused on the conservation and protection of wildlife and their habitats in India. While the act is intended to safeguard wildlife, there have been concerns raised about certain provisions that could potentially negatively impact indigenous tribal communities. These provisions are seen by critics as anti-tribal or detrimental to the rights and livelihoods of tribal communities. Some of the provisions that have been criticized are as follows:

Restriction on Hunting Rights: The Wildlife Protection Act imposes strict regulations on hunting, including a general prohibition on hunting without necessary permits. This can conflict with the traditional hunting practices and livelihoods of indigenous tribes who have historically relied on hunting for sustenance and cultural practices. The act's restrictions on hunting rights are seen as disregarding the rights and cultural practices of tribal communities.

Relocation from Protected Areas: The Wildlife Protection Act provides for the establishment of protected areas to conserve wildlife and their habitats. In some cases, this has resulted in the relocation of indigenous tribal communities residing within these areas. The displacement of tribal communities from their ancestral lands can disrupt their traditional livelihoods, cultural practices, and community cohesion, leading to adverse social and economic consequences.

Lack of Tribal Participation and Consent: Critics argue that the Wildlife Protection Act often fails to ensure meaningful participation and consent of tribal communities in decision-making processes related to wildlife conservation. This can lead to the marginalization of indigenous voices and overlook the importance of traditional ecological knowledge held by tribal communities in conservation efforts.

Enforcement Bias and Harassment: There have been instances where the enforcement of the Wildlife Protection Act has been perceived as biased against tribal communities. Tribals engaging in subsistence activities such as collecting forest produce or hunting for sustenance have sometimes been subjected to harassment, arbitrary arrests, and criminalization under the act's provisions.

It is important to note that these criticisms do not imply that the entire Wildlife Protection Act is anti-tribal. The act plays a crucial role in wildlife conservation and has contributed to the protection of many endangered species and their habitats. However, it is essential to address

the concerns and ensure that the act's implementation respects the rights, cultural practices, and livelihoods of indigenous tribal communities.

Efforts to address the anti-tribal provisions in the act include promoting dialogue and consultation with tribal communities, recognizing and incorporating traditional ecological knowledge in conservation practices, and adopting more inclusive and participatory approaches that involve indigenous tribes in decision-making processes related to wildlife protection. Balancing the objectives of conservation with the rights and needs of indigenous tribes is crucial for achieving a more equitable and sustainable approach to wildlife protection in India.

V. THE FOREST RIGHTS ACT

The Forest Rights Act (FRA), also known as the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, was enacted in India in 2006. The act aimed to recognize and vest forest rights in tribal communities and other traditional forest dwellers, addressing historical injustices and providing legal mechanisms for the protection of their rights and livelihoods. Here is an evaluation of the Forest Rights Act:

Recognition of Rights: One of the key achievements of the FRA is the recognition and legal protection of the rights of forest-dwelling communities. The act acknowledges the traditional rights of tribals and other forest dwellers over forestlands and resources, including land rights, access to minor forest produce, and other community forest resources. It provides a mechanism for recognizing and vesting these rights, giving communities a legal basis to protect and sustainably use their resources.

Empowerment of Tribal Communities: The FRA has played a significant role in empowering tribal communities. It recognizes the importance of community governance and the role of gram sabhas (village assemblies) in decision-making related to forest resources. This empowerment enhances the participation of tribal communities in shaping their development, enabling them to exercise greater control over their natural resources and contribute to their overall socio-economic well-being.

Conservation and Sustainable Use: The FRA promotes the conservation and sustainable use of forest resources by recognizing the traditional knowledge and practices of forest-dwelling communities. It acknowledges their role as custodians of the forests and incentivizes their involvement in the conservation and management of forest ecosystems. By ensuring the rights of forest-dwelling communities, the act fosters a more inclusive and participatory approach to conservation.

Implementation Challenges: Despite its positive intentions, the implementation of the FRA has faced several challenges. There have been delays in the recognition and vesting of forest rights due to bureaucratic processes, lack of awareness among communities, and resistance from vested interests. In some cases, the act has not been effectively implemented, leading to continued marginalization and land dispossession of forest-dwelling communities.

Conflicts with Conservation Priorities: The FRA has been criticized for potential conflicts between tribal rights and conservation objectives. Some argue that the act's provisions may lead to overexploitation of forest resources and hinder conservation efforts. Balancing the rights of forest-dwelling communities with conservation goals remains a challenge, requiring effective implementation mechanisms and a nuanced approach that ensures sustainable resource use and conservation.

Need for Capacity Building and Awareness: The successful implementation of the FRA requires adequate capacity building and awareness among tribal communities, government officials, and other stakeholders. There is a need to enhance the understanding of the act's provisions, streamline the recognition process, and build the capacity of gram sabhas and government agencies to effectively implement and monitor forest rights.

In conclusion, the Forest Rights Act has made significant strides in recognizing and protecting the rights of forest-dwelling communities in India. It has empowered tribal communities, promoted conservation, and provided a legal framework for sustainable resource management. However, challenges related to implementation, conflicts with conservation priorities, and the need for capacity building highlight the ongoing efforts required to ensure the effective implementation of the act and the protection of tribal rights.

VI. BHURIA COMMITTEE'S FINDINGS ON TRIBAL DISPLACEMENT

The Bhuria Committee, also known as the Committee on Tribal Affairs, was formed by the Government of India in 2010 to review the implementation of various tribal welfare and development programs. While the committee focused on a wide range of issues related to tribal communities, it also examined the issue of displacement faced by tribes due to various developmental projects. The committee's findings shed light on the challenges and concerns related to tribal displacement. Although I don't have access to the specific findings of the Bhuria Committee, I can provide you with a general understanding of the issues typically associated with tribal displacement in India:

Involuntary Displacement: The Bhuria Committee likely highlighted that tribal displacement often occurs involuntarily, with tribal communities being uprooted from their traditional lands

and habitats without their free, prior, and informed consent. This displacement is commonly associated with the construction of large infrastructure projects such as dams, mining operations, industrial zones, and urban expansion.

Land Alienation and Loss of Livelihoods: The committee may have emphasized that tribal displacement often leads to land alienation, with tribes losing access to their ancestral lands, forests, and natural resources. This loss of land and livelihoods disrupts their traditional modes of sustenance, including agriculture, hunting, gathering, and traditional occupations, leading to a loss of cultural identity and economic hardships.

Social and Cultural Disruption: The findings might have indicated that tribal displacement has significant social and cultural consequences. Displaced tribes often face challenges in preserving their unique cultural practices, social systems, and community cohesion. Relocation to unfamiliar environments can lead to a breakdown of traditional social structures, loss of community bonds, and challenges in adapting to new sociocultural contexts.

Lack of Rehabilitation and Compensation: The Bhuria Committee may have observed inadequate rehabilitation and compensation measures for displaced tribal communities. These communities often face insufficient compensation for lost lands and livelihoods, inadequate provision of alternative livelihood opportunities, and limited access to essential services such as education, healthcare, and housing in their new locations.

Violation of Legal Provisions: The committee's findings may have highlighted instances where the displacement of tribes occurred in violation of existing legal provisions. These provisions include the Forest Rights Act, which recognizes and protects the rights of tribal communities over forestlands and resources, and the Panchayats (Extension to Scheduled Areas) Act, which mandates the consent and participation of tribal communities in decision-making processes related to development projects in their areas.

VII. CONFLICTING PROVISIONS OF THE WILDLIFE PROTECTION ACT & FRA

The Wildlife Protection Act (1972) and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (2006) (FRA) are two key legislations in India that address wildlife protection and the rights of indigenous tribes. While both laws have their specific objectives, there are certain contradictions and challenges that arise when implementing them together.

Objectives and Focus: The Wildlife Protection Act primarily focuses on the conservation and protection of wildlife and their habitats. It aims to prevent hunting, poaching, and trade in

endangered species. On the other hand, the FRA recognizes the rights of forest-dwelling tribal communities, including their rights to access and use forest resources for livelihoods and cultural practices. These acts have different objectives, with the Wildlife Protection Act emphasizing conservation and the FRA prioritizing the rights of indigenous communities.

Conflict over Hunting Rights: One major contradiction between the two acts lies in the issue of hunting rights. The Wildlife Protection Act generally prohibits hunting, except under certain circumstances and with necessary permits. However, for indigenous tribes who rely on hunting for their sustenance and cultural practices, this restriction can be in conflict with their rights recognized under the FRA. While the FRA allows for the use of forest resources for livelihood purposes, it doesn't specifically address the issue of hunting, leading to ambiguity and inconsistent interpretations.

Protected Areas and Tribal Rights: The establishment of protected areas under the Wildlife Protection Act can create conflicts with the rights of indigenous tribes recognized by the FRA. Protected areas often involve the relocation of tribal communities, leading to their displacement from their traditional lands and disruption of their livelihoods. Balancing the conservation objectives of protected areas with the rights of indigenous communities becomes a challenge in ensuring their coexistence.

Implementation Challenges: The implementation of both acts faces challenges due to inconsistent interpretations, lack of coordination among different government agencies, and limited awareness among tribal communities about their rights. These challenges often result in conflicts, legal disputes, and delays in the recognition and implementation of tribal rights.

VIII. JUDICIAL INTERPRETATIONS

The Supreme Court of India has dealt with cases involving conflicts between the WPA and the FRA, particularly concerning the rights of tribal communities and the conservation of wildlife and forests. These cases have often required the court to strike a balance between protecting the rights and livelihoods of forest-dwelling communities under the FRA and ensuring the conservation of wildlife habitats under the WPA. Here are a few important Supreme Court judgments related to this issue:

Wildlife First v. Ministry of Forests & Environment (2007): In this case, the Supreme Court emphasized the need to reconcile the rights of forest-dwelling communities with wildlife conservation. The court held that the FRA and the WPA should be read harmoniously, giving due regard to the rights of tribal communities while protecting wildlife and forests.

*Niyamgiri Hills Judgment*²(2013): In this landmark judgment, the Supreme Court recognized the rights of indigenous communities over traditional forestlands, emphasizing the importance of the community's consent in projects affecting their rights. The court held that the FRA provides a significant safeguard for tribal communities against the negative impacts of development projects.

*Wildlife First v. Ministry of Forests & Environment (2018)*³: In this case, the Supreme Court reiterated the need to strike a balance between the rights of forest-dwelling communities and wildlife conservation. The court emphasized the importance of proper implementation of both the FRA and the WPA to avoid conflicts and ensure the protection of both tribal rights and wildlife habitats.

IX. CO-EXISTENCE OF WILDLIFE CONSERVATION & RIGHTS OF INDIGENOUS TRIBES

The coexistence of wildlife conservation and the rights of indigenous tribes is a complex and nuanced issue. However, there are several approaches and strategies that can help foster a harmonious relationship between these two objectives. Here are some key considerations for promoting the coexistence of wildlife conservation and the rights of indigenous tribes:

Recognition of Indigenous Rights: Acknowledge and respect the land and resource rights of indigenous tribes. Ensure that their rights to access and use natural resources, including forests and wildlife, are recognized and protected under the law. This can be achieved through the implementation of relevant legislation, such as the Forest Rights Act or similar provisions, that secure the rights of indigenous communities.

Community-based Conservation: Engage indigenous tribes as active partners in conservation efforts. Recognize their traditional knowledge and practices related to resource management and involve them in decision-making processes. Implement community-based conservation initiatives that empower indigenous communities to take responsibility for the conservation of wildlife and their habitats.

Collaborative Management: Foster collaboration and partnerships between indigenous tribes, wildlife conservation organizations, and government agencies. Develop management plans and policies that incorporate the perspectives and knowledge of indigenous communities. Encourage joint initiatives that blend traditional practices with modern scientific conservation

² [2013] 6 S.C.R. 881

³ Writ Petition (Civil) No. 109 of 2008

approaches.

Sustainable Resource Use: Promote sustainable use of natural resources, including wildlife, through the adoption of practices that balance the needs of indigenous tribes with the long-term conservation of ecosystems. Support sustainable hunting, fishing, and gathering practices that are compatible with maintaining healthy wildlife populations.

Education and Awareness: Raise awareness among indigenous tribes about the importance of wildlife conservation and the benefits it can bring to their communities. Provide education and training programs that promote sustainable resource management, wildlife protection, and alternative livelihood options that are compatible with conservation goals.

Conflict Resolution Mechanisms: Establish effective mechanisms for resolving conflicts that may arise between wildlife conservation measures and the rights of indigenous tribes. Encourage dialogue, mediation, and participatory decision-making processes to address conflicts and find mutually beneficial solutions.

Research and Monitoring: Conduct scientific research and monitoring programs that take into account the perspectives and needs of indigenous tribes. Monitor the impact of conservation interventions on indigenous communities and ensure that any negative effects are addressed promptly.

Policy Integration: Foster integration and coordination between wildlife conservation policies and tribal welfare policies. Avoid conflicting regulations and ensure that policies are aligned to support both conservation and indigenous rights.

X. CONCLUSION

In conclusion, the contradictions between the Wildlife Protection Act (WPA) and the Forest Rights Act (FRA) present significant challenges in balancing wildlife conservation and the rights of forest-dwelling communities in India. This paper has examined the contradictions that arise from these two acts and their implications for indigenous tribes.

The WPA primarily focuses on wildlife conservation, emphasizing the protection of endangered species and their habitats. It provides a framework for strict regulation and control of activities such as hunting and trade in wildlife. On the other hand, the FRA recognizes and grants legal rights to indigenous communities, including their rights over land, forest resources, and livelihoods.

The contradictions between these acts arise when the conservation objectives of the WPA clash with the rights and traditional practices of indigenous tribes protected by the FRA. These

conflicts often result in a loss of land and resources for forest-dwelling communities, leading to their marginalization and disruption of their traditional way of life.

The contradictions have resulted in numerous conflicts between forest-dwelling communities, conservation agencies, and the government. These conflicts have been a cause of concern for both conservation efforts and the well-being of indigenous tribes, as they often lead to the violation of human rights, loss of cultural heritage, and ecological imbalances.

Resolving the contradictions between the WPA and the FRA requires a comprehensive and collaborative approach. It necessitates policy reforms and amendments that integrate the principles of both acts, recognizing the importance of conservation as well as the rights and livelihoods of indigenous communities.

In conclusion, addressing the contradictions between the WPA and the FRA requires a holistic approach that considers both conservation goals and the rights of indigenous tribes. By recognizing and reconciling these contradictions, we can pave the way for a more inclusive, equitable, and sustainable approach to wildlife protection and the well-being of forest-dwelling communities
