
TRIBAL RIGHTS IN INDIA'S CRIMINAL LAW LANDSCAPE: DISCORD AND HARMONY

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ABSTRACT

India is home to one of the largest tribal populations in the world, with over 500 notified tribal communities following their own diverse traditions and cultures. Despite several constitutional safeguards and welfare legislations in place for their protection, these communities continue to be victims of suffering, oppression and exploitation. In addition to being poverty-stricken and facing violence of all kinds, members of tribal communities often find it difficult to exercise their constitutional, traditional and community rights owing to various factors. This paper argues that there exists a discord between major tribal welfare legislations and India's criminal laws which renders the former largely ineffective and obsolete thus raising significant concerns for the protection, welfare and development of tribal communities in India.

By analysing various case precedents and documented instances of tribal communities falling prey to the legal discord between the two sets of laws in the various states of India, this paper examines how the imbalance of interests between various stakeholders under the laws adversely impacts tribals. In addition to discussing key implications of this legal dissonance, the paper highlights how India's new criminal laws still do not provide viable solutions, leaving tribals vulnerable to exploitation. Finally, the paper seeks to provide suggestions to bridge the gap between the legislations and ensure a harmonious balance between tribal rights and State and private interests.

Keywords: Tribal Rights, Forest Rights Act, Criminal Laws, Forest Conservation, Exploitation, Welfare.

I. Introduction

India has long been renowned as a land of rich cultural, socio-economic, religious and linguistic diversity where individuals belonging to various communities and backgrounds co-exist, each integral to the country's democratic fabric. The nation is home to the second largest tribal population in the world¹, with tribals comprising nearly 8.6% of the population according to the 2011 Population Census². Further, under Article 342³ of the Indian Constitution, there are more than 500 notified tribal communities residing in the various States and Union Territories of India⁴, with each tribe having its own traditions and customs.

Despite this diversity in the overall population and the tribal population itself, the nation collectively obeys and stands united under the Constitution of India, which strives to ensure equitable distribution of resources and opportunities while protecting vulnerable sections of the society. Under the ideal of a welfare state⁵, the goal is to promote the interests and well-being of all citizens, especially those who are disadvantaged. In *D.S. Nakara v. Union of India*⁶, it was held that the Constitution envisages the establishment of a welfare state to reduce inequalities while promoting equality of status, facilities and opportunities and in *Samatha v. State of Andhra Pradesh*⁷, it was held that the responsibility of a welfare state is to uplift Scheduled Tribes (STs), formulate policies to ensure equal opportunities and protect them from exploitation. However, while the egalitarian approach towards freedoms, rights, opportunities and resources is constitutionally guaranteed in principle and theory, its practice is often neglected, particularly with regards to tribal communities in India.

II. Plight of Tribals under the Welfare State

From the country's colonial past till the present era of independent India, tribal communities

¹ Ministry of Tribal Affairs, *Honouring and Empowering the Adivasis of India*, PIB GOV (Dec. 2, 2022, 10:54 AM), <https://pib.gov.in/FeaturesDeatils.aspx?NoteId=151222&ModuleId+=+2®=3&lang=1>

² MINISTRY OF HEALTH AND FAMILY WELFARE AND MINISTRY OF TRIBAL AFFAIRS, IMMUNIZATION AMONG TRIBAL POPULATION IN INDIA: A NEED ASSESSMENT REPORT pg. xix (2021).

³ INDIA CONST. art. 342.

⁴ National Commission for Scheduled Tribes, *Annual Report*, NCST (Feb. 13, 2025, 9:12 AM), https://ncst.nic.in/sites/default/files/documents/central_government/File415.pdf

⁵ Dr. Tulika Sharma, *The Welfare State in India: A Comprehensive Analysis*, SMKVB (Feb. 13, 2025, 00:54 AM), https://smkvbastar.ac.in/Admin/Files/StudyMaterial/05182023033526_The%20Welfare%20State%20in%20India.pdf

⁶ *D.S. Nakara v. Union of India*, (1983) 1 SCC 305.

⁷ *Samatha v. State of A.P.*, (1997) 8 SCC 191.

have historically been victims of suffering, oppression and exploitation at the hands of public and private entities⁸. Tribals have long faced physical violence, estimated to have grown by 111.2% between 1991 and 2021⁹ and 14.3% between 2021 and 2022 according to the National Crime Records Bureau's 2022 Crime in India Report¹⁰. Further, nearly 9.8% of undertrial prisoners in India are STs, which is disproportionate to their total population¹¹. Tribal communities also face a constant struggle to exercise their constitutional and legal rights and often suffer from poverty, unemployment, inadequate healthcare and lack of shelter. Their right to land and other traditional and community rights¹² such as the right to access natural resources are frequently infringed upon by State authorities and private entities alike¹³. In *Union of India v. State of Maharashtra*¹⁴, it was noted that despite reservations and development efforts, STs continue to face discrimination, inequality and social exclusion and form a vulnerable section of Indian society.

III. Tribal Rights, Constitutional Safeguards and Welfare Legislations

Since the enactment of the Constitution, several provisions have been inserted to protect the rights and interests of STs in India. In *Indra Sawhney v. Union of India*¹⁵, the Court observed that the makers of our Constitution recognized the plight of STs for whom equality remained a distant ideal and thus inserted constitutional provisions to uplift them. The Preamble¹⁶ lays out guiding principles of democracy such as justice, liberty, equality and fraternity which are guaranteed to all citizens regardless of their backgrounds. Part III of the Constitution contains broad encompassing fundamental rights such as Articles 14¹⁷ (right to equality), 19¹⁸ (right to

⁸ Shubham Singh Rajput, *Indian Tribes: Historical Oppression And Ongoing Struggle For Justice*, YOUTH KI AWAAZ (Mar. 6, 2023, 00:56 AM), <https://www.youthkiawaaz.com/2023/03/indians-tribes-historical-oppression-and-ongoing-struggle-for-justice/>

⁹ *India: Data Shows Rise in Atrocities against Dalits, Tribal People*, GFOD (Aug. 11, 2023, 00:32 AM), <https://globalforumcdwd.org/india-data-shows-rise-in-atrocities-against-dalits-tribal-people/>

¹⁰ TNM Staff, *NCRB data shows increase in crimes against SCs and STs, UP and Rajasthan on top*, THE NEWS MINUTE (Dec. 7, 2023, 5:57 PM), <https://www.thenewsminute.com/news/ncrb-data-shows-increase-in-crimes-against-scs-and-sts-up-and-rajasthan-on-top>

¹¹ *Human Rights Day: IRAC demands release of tribal undertrial prisoners in India*, IRAC (Dec. 10, 2022, 00:35 AM), <https://irac.in/human-rights-day-irac-demands-release-of-tribal-undertrial-prisoners-in-india/>

¹² *Tribal Rights And Issues*, UNA ACADEMY (Feb. 13, 2025, 00:36 AM), <https://unacademy.com/content/upsc/study-material/polity/tribal-rights-and-issues/>

¹³ Sumbl Ahmad Khanday, *Challenges Encountered by Tribal Population in the Era of Globalization*, 10 (3) JHSS 757, 757-764 (2019).

¹⁴ *Union of India v. State of Maharashtra*, (2020) 4 SCC 761.

¹⁵ *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217.

¹⁶ INDIA CONST. Pream.

¹⁷ INDIA CONST. art. 14.

¹⁸ INDIA CONST. art. 19.

freedom) and 21¹⁹ (right to life), along with other fundamental educational, economic, social and cultural rights such as Articles 15(4)²⁰ (Special provisions for the advancement of STs), 16(4)²¹ and 16(4A)²² (Equality of opportunities), 23²³ (Prohibition of Trafficking and Bonded Labour), 24²⁴ (Prohibition of child employment in factories), 25²⁵ and 26²⁶ (Freedom of religion and managing religious affairs). Part IV of the Constitution lays out directive principles for the State to follow with regards to STs; the relevant provisions include Articles 39²⁷ (welfare policy of State towards STs) and 46²⁸ (educational and economic interests of STs). Article 244(1)²⁹ read with the Fifth³⁰ and Sixth Schedules³¹ contains provisions for administration and control of scheduled tribal areas and Article 275³² deals with providing grants-in-aid to these areas. Other constitutional provisions pertaining to reservations in political appointments include Articles 243D³³, 243T³⁴, 330³⁵, 332³⁶ and 334³⁷.

Despite the plethora of constitutional safeguards, oppression and marginalisation of tribal communities persist prompting the Parliament and the Ministry of Tribal Affairs to formulate several legislations and schemes for the protection of tribals and their rights³⁸. For the purpose of this essay, two important legislations which will be scrutinised are The Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989³⁹ (hereafter, SC/ST Atrocities Act) and The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights)

¹⁹ INDIA CONST. art. 21.

²⁰ INDIA CONST. art. 15(4).

²¹ INDIA CONST. art. 16(4).

²² INDIA CONST. art. 16(4A).

²³ INDIA CONST. art. 23.

²⁴ INDIA CONST. art. 24.

²⁵ INDIA CONST. art. 25.

²⁶ INDIA CONST. art. 26.

²⁷ INDIA CONST. art. 39.

²⁸ INDIA CONST. art. 46.

²⁹ INDIA CONST. art. 244(1).

³⁰ INDIA CONST. sch. 5.

³¹ INDIA CONST. sch. 6.

³² INDIA CONST. art. 275.

³³ INDIA CONST. art. 243D.

³⁴ INDIA CONST. art. 243T.

³⁵ INDIA CONST. art. 330.

³⁶ INDIA CONST. art. 332.

³⁷ INDIA CONST. art. 334.

³⁸ Ministry of Tribal Affairs, *Legal Safeguards for Scheduled Tribes*, PIB GOV (Jan. 2, 2018, 4:43 PM), <https://pib.gov.in/pressreleaseiframepage.aspx?prid=1514996>.

³⁹ The Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, No. 33, Acts of Parliament, 1989 {hereafter, SC/ST Atrocities Act}.

Act, 2006⁴⁰ (hereafter, Forest Rights Act).

IV. Examining the Need for the SC/ST Atrocities Act and the Forest Rights Act

The SC/ST Atrocities Act and the Forest Rights Act were enacted by the Parliament in addition to existing legislations as the latter were found to be inadequate and ineffective in addressing the historic oppression faced by members of disadvantaged communities such as STs. This can be witnessed in precedents such as *Ramawatar v. State of Madhya Pradesh*⁴¹, where the Court elaborated upon the preamble of the SC/ST Atrocities Act⁴² to hold that it was enacted to specifically deter acts of indignity, humiliation and harassment against SCs and STs. Further, in *Hariram Bhambhi v. Satyanarayan*⁴³, it was observed that existing laws like the Civil Rights Act, 1955⁴⁴ and the provisions of the Indian Penal Code, 1860⁴⁵ (hereafter, IPC) were found to be inadequate, thus underlining the need for the Act.

On the other hand, the Forest Rights Act was enacted post existing legislations such as the Indian Forest Act, 1927⁴⁶, the Wildlife Protection Act, 1972⁴⁷ and the Forest Conservation Act, 1980⁴⁸ and supersedes the latter laws with regards to tribal rights⁴⁹. In *Orissa Mining Corporation Ltd v. Ministry of Environment & Forest & Ors.*⁵⁰, the Court held that the object of the Act was to protect the various customary, community and traditional rights of forest dwellers while preserving the “traditional practices of forest dwellers”. The Supreme Court in *Wildlife First v. Ministry of Forest and Environment*⁵¹ held that the existing Indian Forest Act which also dealt with the settlement rights of tribals was not well implemented, leading to tribal communities continuing to live in “a precarious state of tenurial insecurity⁵²”, thus reinforcing

⁴⁰ The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, No. 2, Acts of Parliament, 2007 {hereafter, Forest Rights Act}.

⁴¹ *Ramawatar v. State of Madhya Pradesh*, 2021 SCC OnLine SC 966.

⁴² SC/ST Atrocities Act Pream.

⁴³ *Hariram Bhambhi v. Satyanarayan*, 2021 SCC OnLine SC 1010.

⁴⁴ The Protection of Civil Rights Act, 1955, No. 22, Acts of Parliament, 1955.

⁴⁵ The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 {hereafter, IPC}.

⁴⁶ The Indian Forest Act, 1927, No. 16, Acts of Parliament, 1927.

⁴⁷ The Wild Life (Protection) Act, 1972, No. 53, Acts of Parliament, 1972.

⁴⁸ The Forest (Conservation) Act, 1980, No. 69, Acts of Parliament, 1980.

⁴⁹ Madhu Sarin with Oliver Springate-Baginski, *India's Forest Rights Act -The anatomy of a necessary but not sufficient institutional reform*, 45 IPPG 4, 14 (2010) {see <https://assets.publishing.service.gov.uk/media/57a08b0be5274a27b2000909/dp45.pdf>}

⁵⁰ *Orissa Mining Corporation v. Ministry of Environment & Forest & Others*, W.P. (Civil) No. 180 of 2011.

⁵¹ *Wildlife First & Ors. v Ministry of Environment and Forest & Ors.*, W.P. (Civil) No. 109 of 2008 (see also <https://lawfoyer.in/wildlife-first-v-ministry-of-environment-and-forest/>).

⁵² Shruti Sinha, Case Analysis - *Wildlife First v Ministry of Environment and Forest*, LAWFOYER (Jul. 31, 2022, 10:45 AM), <https://lawfoyer.in/wildlife-first-v-ministry-of-environment-and-forest/>

the need for the Forest Rights Act.

Given the inadequacy of previous legislations in protecting the rights and interests of tribal communities, the enactment of the SC/ST Atrocities Act and the Forest Rights Act became necessary. However, the conflict between the provisions of the SC/ST Atrocities Act and the Forest Rights Act with other existing legislations such as the Indian Penal Code raises significant concerns which will be addressed in the subsequent sections.

V. Discord between Tribal Welfare Legislations and Existing Criminal Legislations

While the SC/ST Atrocities Act and the Forest Rights Act have been heralded as “an indispensable instrument⁵³” and a landmark⁵⁴ legislation respectively, they are not bereft of complications as they often conflict with provisions of general legislations such as the IPC. While tribal communities attempt to exercise their rights under the provisions of the Forest Rights Act along with protection extended under the SC/ST Atrocities Act, they are confronted by State/Executive authorities acting under provisions of the IPC and CrPC⁵⁵.

For example, Sections 3⁵⁶ and 4⁵⁷ of the Forest Rights Act provide and recognise a broad encompassing number of rights, some of which briefly include the right to reside and cultivate forest land, right to fish, grazing and seasonal resource ownership, collection rights over forest produce and right to protect and manage the forest. Further, under Chapter II of the SC/ST Atrocities Act, offences prescribed under Sections 1(iv)⁵⁸(Illegal occupation or transfer of SC/ST land), 1(v)⁵⁹(Unlawful dispossession or interference with SC/ST land rights), 1(xiv)⁶⁰(Denial of SC/ST access to public places) and 1(xv)⁶¹(Forced eviction of SC/ST members) empower forest tribals to exercise their rights without any hindrance or obstruction.

However, despite the existence of the above legal statutes, State authorities such as the forest

⁵³ Md Muneeb Hussain, *The SC/ST (Prevention of Atrocities) Act: Ensuring Justice And Equality For Marginalized Communities*, LIVELAW (Jul. 2, 2024, 1:39 PM), <https://www.livelaw.in/articles/scst-prevention-of-atrocities-act-ensuring-justice-equality-marginalized-communities-262017?fromIpLogin=61302.45628553408>

⁵⁴ Harsha S, *Forest Rights Act and the Role of Judiciary in North East India*, Spl. Iss. 2023 ILILR 204, 207 (2023).

⁵⁵ The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 {hereafter, CrPC}.

⁵⁶ Forest Rights Act s. 3.

⁵⁷ Forest Rights Act s. 4.

⁵⁸ SC/ST Atrocities Act s. 1(iv).

⁵⁹ SC/ST Atrocities Act s. 1(v).

⁶⁰ SC/ST Atrocities Act s. 1(xiv).

⁶¹ SC/ST Atrocities Act s. 1(xv).

department and police can rely on Sections 441⁶² and 447⁶³ (Criminal Trespass and its Punishment) or 428⁶⁴ and 429⁶⁵ (Killing or maiming animals) of the IPC to forcefully obstruct the exercise of tribal rights under the Forest Rights Act. Moreover, any resistance or means of protest by tribal communities can result in charges under Section 145⁶⁶ (Unlawful assembly), Sections 147⁶⁷ (Punishment for rioting), Section 148⁶⁸ (Rioting with deadly weapon), Section 188⁶⁹ (Disobedience of public servant's order), Section 307⁷⁰ (Attempt to murder), Section 322⁷¹ (Voluntarily causing grievous hurt), Section 332⁷² (Causing hurt to deter a public servant), Section 333⁷³ (Causing grievous hurt to deter a public servant), Section 337⁷⁴ (Causing hurt by endangering life or safety), Section 338⁷⁵ (Causing grievous hurt by endangering life or safety), Section 340⁷⁶ (Wrongful confinement), Section 353⁷⁷ (Assault/criminal force to deter a public servant) and Section 427⁷⁸ (Mischief causing damage over ₹50) of the IPC.

VI. Instances of Tribal Oppression and Marginalisation

In recent years, there have been several incidents from States across India wherein tribals, their leaders and activists have fallen prey to the incompatibility between the tribal welfare legislations such as the Forest Rights Act and criminal laws such as the IPC and CrPC.

- **Adivasis of Bihar**

In the Kaimur region of Bihar, Adivasi tribals and activists protesting the poor implementation of the Forest Rights Act and defending their ancestral land under the Act were victims of a

⁶² IPC s. 441.

⁶³ IPC s. 447.

⁶⁴ IPC s. 428.

⁶⁵ IPC s. 429.

⁶⁶ IPC s. 145.

⁶⁷ IPC s. 147.

⁶⁸ IPC s. 148.

⁶⁹ IPC s. 188.

⁷⁰ IPC s. 307.

⁷¹ IPC s. 322.

⁷² IPC s. 332.

⁷³ IPC s. 333.

⁷⁴ IPC s. 337.

⁷⁵ IPC s. 338.

⁷⁶ IPC s. 340.

⁷⁷ IPC s. 353.

⁷⁸ IPC s. 427.

brutal lathi charge⁷⁹. Further, police officials lodged cases against the activists under several Sections⁸⁰ of the IPC, arresting many while allegedly misusing their powers under Section 165⁸¹ (power to carry out search) of the CrPC.

- **Jenu Kurubas of Karnataka**

In the southern Karnataka region of Nagarhole, the Jenu Kuruba tribe reported constantly being subjected to threats and forced evictions by Divisional Forest Range and forest guards in violation of the Forest Rights Act. Several resisting leaders of the tribe were charged with serious criminal offences under the IPC⁸² and accused of “assaulting and using criminal force” against State officials⁸³.

- **Adivasis of Jharkhand**

A group of Adivasis living in the Piri Forest of Jharkhand faced charges under the Arms Act, 1959⁸⁴ and sections of the IPC after they survived their ‘encounter’ with the CRPF and CoBRA security forces. The members were branded as ‘Maoists’ and national security concerns⁸⁵ when they were allegedly carrying hand-made weapons to prepare for the generational “Nem Sarhul” festival. In addition to a large number of undertrials belonging to the Adivasi tribe of Jharkhand⁸⁶, demonstrations against forced land acquisitions citing the Forest Rights Act face the risk of being charged under Section 353 of the IPC⁸⁷.

- **Adivasi women and Gonds of Uttar Pradesh**

In Uttar Pradesh’s Sonbhadra, Adivasi women and Gond tribals have been the victims of illegal

⁷⁹ ALL INDIA UNION OF FOREST WORKING PEOPLE (AIUFWP), FACT-FINDING REPORT – POLICE FIRING ON ADIVASIS IN ADHAURA, KAIMUR, BIHAR (2020).

⁸⁰ CJP, *CJP Petition to NHRC Bihar Police firing at the Adivasi Kaimur*, CJP Org (Feb. 14, 2025, 01:14 AM).

⁸¹ CrPC s. 165.

⁸² *Forest guards harass “Kings of the Forest” tribe, risking Covid outbreak*, SURVIVAL (May 13, 2021, 00:57 AM), <https://www.survivalinternational.org/news/12584>

⁸³ Sumedha Pal, *Karnataka: Amid Pandemic, Jenu Kuruba Tribal Leaders Threatened with Violence by Forest Officials*, NEWSCLICK (May 15, 2021, 00:55 AM), <https://www.newsclick.in/karnataka-pandemic-jenu-kuruba-tribal-leaders-threatened-violence-forest-officials>

⁸⁴ The Arms Act, 1959, No. 54, Acts of Parliament, 1959.

⁸⁵ Riddhi Dastidar, *In Jharkhand, Scheduled Tribes Still Battle Flimsy Criminal Cases Filed With Little Evidence*, INDIASPEND (Oct. 27, 2021, 00:58 AM), <https://www.indiaspend.com/investigations/in-jharkhand-scheduled-tribes-still-battle-flimsy-criminal-cases-filed-with-little-evidence-783651>

⁸⁶ BAGAICHA RESEARCH TEAM, DEPRIVED OF RIGHTS OVER NATURAL RESOURCES, IMPOVERISHED ADIVASIS GET PRISON A STUDY OF UNDERTRIALS IN JHARKHAND 2-4 (2016).

⁸⁷ *ibid* 85.

detention at the hands of the local police and forest department officials⁸⁸. Moreover, a member of the Gond tribal community noted that claiming community forest rights under the Forest Rights Act led to him facing charges of rioting and attempt to murder under the IPC⁸⁹, while also raising concerns on the misuse of Section 151⁹⁰ (arrest without a warrant for cognizable offences) of the CrPC by the police.

- **Bhils, Bhilalas and Tribal Activists of Madhya Pradesh**

Lastly, in Madhya Pradesh's Nepanagar forest, home to the Bhils and Bhilala tribes, a tribal activist was arrested for protesting the cutting down of trees under the Forest Rights Act and faced charges under the IPC for rioting, deterring a public servant from discharging his duty and staging an attempt to murder⁹¹. Other tribal activists have also noted that the consequences of peaceful protests may be criminal charges such as rioting and criminal intimidation.

VII. Key Implications

- **Imbalance between Tribal Rights and Forest Conservation**

The dissonance between the two sets of legislations leads to an imbalance of rights and interests. On the one hand, members of tribal communities exercise their guaranteed legal and community rights under the Forest Rights Act, while on the other, various State authorities exercise their powers and functions under provisions of the IPC and CrPC citing forest conservation, national security and national interest. This imbalance between tribal rights and forest conservation defeats the very purpose of the Forest Rights Act. In *Kashinath v. State of Maharashtra*⁹², the Court held that the object of the Act was to balance forest conservation with the rights of traditional tribal inhabitants and in *Madu v. State of Madhya Pradesh*⁹³, it was held that balancing forest conservation with biodiversity, ecological stability and the

⁸⁸ CJP Team, *Adivasi women forest workers allegedly assaulted by UP Police*, CJP (Jan. 11, 2021, 01:03 AM), <https://cjp.org.in/adivasi-women-forest-workers-allegedly-assaulted-by-up-police/>

⁸⁹ *ibid.*

⁹⁰ CrPC s. 151.

⁹¹ Kashif Kakvi, *MP High Court Strikes Down Externment Order Against Tribal Activist, 3 Fold Jump In Cases Shows Misuse Of Law By The State*, ARTICLE14 (Feb. 10, 2025, 01:05 AM), <https://article-14.com/post/mp-high-court-strikes-down-externment-order-against-tribal-activist-3-fold-jump-in-cases-shows-misuse-of-law-by-the-state-67a9720e54784>

⁹² *Kashinath v. State of Maharashtra*, 2016 SCC OnLine Bom 1127

⁹³ *Madu v. State of Madhya Pradesh*, High Court of Madhya Pradesh at Jabalpur Bench M.A. No. 1966 of 2010.

livelihood and food security of tribal communities is “required to be seen”.

- **Special Laws prevail over General Laws**

It is a well settled position of law that special laws prevail over general laws⁹⁴. In the current legal landscape, the Forest Rights Act is a Special Act whereas the IPC is a General Act, and hence the former must prevail over the latter. In *R. Kizhavan v. The Secretary*⁹⁵, it was held that the Forest Rights Act is “unquestionably” a special enactment and hence must prevail over earlier statutes. Further, per the non-obstante clause provided in Section 4(1)⁹⁶ of the Forest Rights Act, the provisions of General Acts such as the IPC stand overridden with regards to extraction of ‘minor forest produce’ from reserve forests⁹⁷.

- **Legislative Intent prioritizes Tribal Rights**

The Parliament envisaged the Forest Rights Act to be a social welfare legislation primarily to protect the rights and interests of STs and forest dwellers. Thus, upholding tribal rights under the Act should be the top priority of the State taking precedence over other claims. The Gujarat High Court in *Action Research in Community Health & Development v. State of Gujarat*⁹⁸ held that a constructive approach must be adopted to meet the Act’s object, and any interpretation that undermines it is legally impermissible. Further, in *In Re: T.N. Godavarman Thirumulpad v. Union of India & Ors.*⁹⁹, the Supreme Court held that the Act “explicitly acknowledges community rights over customary forest resources and mandates their conservation.”

VIII. Do the New Criminal Laws eliminate the Legal Conundrum?

The enactment of India’s new criminal laws replacing the IPC and CrPC, i.e., the Bharatiya Nyaya Sanhita (BNS), 2023¹⁰⁰ and the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023¹⁰¹ do not directly address or solve the discord between tribal welfare legislations and the previous

⁹⁴ Shruti Sinha, Special Laws Prevail Over General Laws, 1(4) JLRJS 77, 77-79 (2022).

⁹⁵ *R. Kizhavan v. The Secretary*, High Court of Madras at Madurai Bench WP(MD) No. 4033 of 2013.

⁹⁶ Forest Rights Act s. 4(1).

⁹⁷ GOVERNMENT OF INDIA AND MINISTRY OF TRIBAL AFFAIRS, FREQUENTLY ASKED QUESTIONS ON THE FOREST RIGHTS ACT 27 (2015).

⁹⁸ *Action Research in Community Health & Development and Ors. v. State of Gujarat*, C WP(PIL) No. 100 of 2011; Neutral Citation: 2013:GUJHC:3361-DB.

⁹⁹ *In Re: T.N. Godavarman Thirumulpad v. Union of India*, I.A. No(s). 41723 of 2022, WP (Civil) No. 202 of 1995 (see <https://www.advocatekhoj.com/library/judgments/announcement.php?WID=18221>).

¹⁰⁰ The Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023 {hereafter, BNS}.

¹⁰¹ Bharatiya Nagarik Suraksha Sanhita, 2023, No. 122, Acts of Parliament, 2023 {hereafter, BNSS}.

criminal laws. While most provisions of the IPC discussed in this essay remain the same in the BNS, with some increase in fine or imprisonment, amendments in certain Sections can have a significant impact on tribal communities. Section 325¹⁰² of the BNS has increased the ambit and scope of Sections 428 and 429 of the IPC to include harming or killing “any animal” as a crime punishable with fine or imprisonment of 5 years. Since most tribal communities participate in hunting and animal sacrifices for various purposes¹⁰³, this provision may meet with implications at the hands of the authorities. However, Section 185¹⁰⁴ of the BNSS (previously Section 165 CrPC) dealing with police search and seizure mandates audio-visual recording to be undertaken. This can ensure accountability for tribal communities who allege police brutality and other procedural violations. Although the criminal justice system has been revamped, the criminal legal framework in India continues to inadvertently contribute to the systemic oppression of tribal communities.

IX. Suggestions

• Awareness and Training

State authorities such as the police and forest department must be made aware of key provisions of tribal welfare legislations via workshops and seminars. They must also be trained and sensitized to act in accordance with provisions of criminal law when dealing with credible and realistic threats to the environment and State.

• Need for Reforms

The IPC and BNS can be suitably amended to exempt recognised forest rights holders under Section 6¹⁰⁵ of the Forest Rights Act from criminal liability. However, while bestowing such rights, the State machinery in place i.e., Gram Panchayats must expeditiously examine documents and resolve claims in accordance with law. Further, vested rights of forest dwellers may be cancelled if they fail to fulfil their duties under Section 5¹⁰⁶ or misuse their rights under

¹⁰² BNS s. 325.

¹⁰³ Tapas Kumar Dutta and Rajendra Prasad Mondal, *Wildlife Hunting by Indigenous Tribes: a Case Analysis from Susunia Hills, West Bengal, India*, 13(3) BBRC 1581, 1581-1586 (2020). (See also Ambika Aiyadurai, Navinder J. Singh and E. J. Milner-Gulland, *Wildlife hunting by indigenous tribes: a case study from Arunachal Pradesh, north-east India*, 44(4) IJC-Oryx 564, 564-572 (2010).)

¹⁰⁴ BNSS s. 185.

¹⁰⁵ Forest Rights Act s. 6.

¹⁰⁶ Forest Rights Act s. 5.

the Act.

- **Establishing Committees**

The State can set up autonomous committees to carry out surveys, interviews and publish reports based on findings obtained from various stakeholders to better understand the interests and requirements and strike a balance between forest conservation and tribal rights. These committees must be allowed to exercise necessary action to limit activities of forest right holders which cause disproportionate and grave harm to the wildlife and environment in contravention of other environmental legislations.

X. Conclusion

By formulating critical policies and landmark legislations for tribal welfare such as the SC/ST Atrocities Act and the Forest Rights Act, India has made significant progress in raising awareness and making an attempt to protect tribal rights. However, in addition to poor implementation, the friction between tribal welfare legislations and various existing criminal legislations such as the IPC, CrPC, BNS and BNSS renders the former largely ineffective and obsolete. This imbalance of interests also has harmful implications for the already historically disadvantaged members of the tribal communities. Under the criminal laws, tribals face forced evictions, physical violence, false cases, illegal detention and arrests while exercising their guaranteed rights under the tribal welfare laws and the Constitution. Finally, as Prime Minister Modi said, “India will prosper when our tribal communities prosper¹⁰⁷” and therefore, it is essential to bridge the gap between legislations to ensure a harmonious balance between tribal rights and forest conservation.

¹⁰⁷ Ministry of Tribal Affairs, *Empowering Tribals, Transforming India*, PIB GOV(Nov. 14, 2023, 1:29 PM), <https://pib.gov.in/FeaturesDeatils.aspx?NoteId=151692®=3&lang=1>