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# FOREST RIGHTS AND ENVIRONMENTAL PROTECTION IN ECOLOGICALLY SENSITIVE REGIONS: A DOCTRINAL STUDY OF NORTHEAST INDIA

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## ABSTRACT

The ecologically vulnerable areas of Northeast India represent a unique convergence of abundant biodiversity and enduring indigenous and forest-dependent populations. The legal management of forests in this region exhibits a fundamental conflict between the acknowledgment of forest rights as stipulated in the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, and the conservation-focused aims of environmental protection laws, including the Forest (Conservation) Act, 1980, and the Environment (Protection) Act, 1986. This doctrinal study analyses the degree to which Indian forest and environmental legislation harmonize, or does not harmonize, community-based forest rights with conservation objectives in environmentally fragile regions of Northeast India. This study examines constitutional provisions, statutory frameworks, judicial rulings, and recent legislative changes, including amendments to forest conservation laws, to underscore ongoing conflicts stemming from overlapping legal regimes, implementation deficiencies, and region-specific governance issues. The report contends that forest-dwelling cultures are not intrinsically opposed to environmental conservation and that traditional ecological knowledge is vital for sustainable forest management. It promotes a unified interpretive framework that combines rights-based forest governance with environmental protection principles, namely via participatory decision-making, empowerment of Gram Sabhas, and co-management methods. The study indicates that attaining ecological sustainability in Northeast India requires a balanced doctrinal framework that acknowledges indigenous rights as complementary to, rather than conflicting with, environmental conservation goals.

**Keywords:** Forest Rights Act, Environmental Protection Laws, Northeast India, Indigenous Communities, Ecologically Sensitive Areas, Sustainable Forest Governance.

## 1. INTRODUCTION

*'One touch of nature makes the whole world Kin.'*

**-William Shakespeare**

Northeast India signifies one of the most ecologically important regions throughout the world. The region spreads from the parts of the Eastern Himalayas and Indo-Burma biodiversity hotspots, both known for unexpected levels of indigenesness and species richness.<sup>1</sup> Northeast India holds a significant position in India's environmental governance framework because of its intricate river networks, montane ecosystems, indigenous-managed landscapes, and more than 65–70% forest cover in a number of states.

However, the area is also home to several Scheduled Tribes and other people who live in forests, whose socioeconomic and cultural well-being is inextricably connected to forest resources and land. An important turning point in Indian forest law was the legal acknowledgment of these rights by the Scheduled Tribes and Other Traditional Forest Dwellers (acknowledgment of Forest Rights) Act, 2006 (henceforth referred to as the "FRA").<sup>2</sup> But this change has caused conflict with India's conservation-focused environmental laws, such as the Environment (Protection) Act of 1986 and the Forest (Conservation) Act of 1980.<sup>3</sup>

In environmentally sensitive areas (ESRs), where traditional land tenure and community governance structures collide with goals for animal protection, climate management, and biodiversity preservation, the conflict is especially severe. The Forest (Conservation) Amendment Act, 2023, which has sparked political resistance from a number of Northeastern states and rekindled theological discussions on federalism, consent requirements, and forest classification, has further complicated the issue.<sup>4</sup>

The relationship between forest rights and environmental protection systems in Northeast India is examined doctrinally in this research. Its objectives are to: (1) assess the normative underpinnings of the FRA and conservation legislation; (2) look at places where they overlap

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<sup>1</sup> Norman Myers et al., "Biodiversity Hotspots for Conservation Priorities," 403 Nature 853 (2000).

<sup>2</sup> Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

<sup>3</sup> The Forest (Conservation) Act, 1980; The Environment (Protection) Act, 1986.

<sup>4</sup> The Forest (Conservation) Amendment Act, 2023.

and conflict; and (3) provide doctrinal harmonization solutions based on sustainable development, environmental justice, and constitutional principles.

## **2. Legal and Constitutional Framework**

### **2.1 Environmental Protection Law**

To slow down the rate of deforestation, the Forest (Conservation) Act, 1980 (FCA) was passed. Prior to forest land being diverted for non-forest uses, central government consent is required. The FCA severely reduced state autonomy by centralizing forest decision-making authority.<sup>5</sup>

The establishment of national parks, animal sanctuaries, and conservation reserves is made possible under the animal (Protection) Act, 1972 (WLPA).<sup>6</sup> Human activity is severely limited in protected areas, which frequently sparks discussions about relocation. Industrial activity regulation and the designation of Ecologically Sensitive Zones (ESZs) are made possible by the Environment (Protection) Act, 1986 (EPA).<sup>7</sup>

In addition to introducing exclusions for property within 100 kilometres of international boundaries for specific vital projects, the 2023 amendment to the FCA redefined "forest."<sup>8</sup> Critics contend that because so much of Northeast India is located inside this belt, large areas may essentially escape close examination. Concerns have been raised about the amendment's conformity with Article 21 jurisprudence and FRA consent requirements.

### **2.2 The Forest Rights Act, 2006**

The FRA was enacted in order to address the "historical injustice" that colonial forest regulations had caused to Scheduled Tribes and other traditional forest inhabitants who were either evicted or criminalized<sup>9</sup>. The Indian Forest Acts of 1865, 1878, and 1927, among other British-era laws, reduced customary rights to revocable licenses and solidified governmental control over forests.<sup>10</sup>

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<sup>5</sup> The Forest (Conservation) Act, 1980, Section 2.

<sup>6</sup> The Wildlife (Protection) Act, 1972.

<sup>7</sup> The Environment (Protection) Act, 1986, Section 3.

<sup>8</sup> The Forest (Conservation) Amendment Act, 2023, Section 1A.

<sup>9</sup> Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Preamble.

<sup>10</sup> The Indian Forest Act, 1927

The FRA challenges this colonial paradigm by acknowledging:

- Individual rights in forests;
- Rights to community forest resources (CFR);
- The right to small-scale forest products;
- Rights of habitat;
- Authority over contested territory; and
- Pastoral and nomadic communities' rights<sup>11</sup>

One of the FRA's most important new ideas is the Gram Sabha's importance. Section 6 takes away bureaucratic authority from the top down by providing the Gram Sabha the right to make and decide claims<sup>12</sup>. This decentralisation shows how tribal self-governance frameworks and the 73rd Amendment's constitutional duties function together.

Crucially, the FRA does not present rights as being incompatible with conservation. Forest inhabitants are empowered under Section 5 to safeguard biodiversity, forests, and animals.<sup>13</sup> As a result, the Act views forest communities as collaborators in conservation rather than ecological dangers. Nonetheless, existing conservation laws that give priority to state-led ecological preservation coexist alongside the FRA. Doctrinal uncertainty results from this dichotomy: is forest governance essentially integrative, rights-based, or conservation-based?

### **2.3 Constitutional Framework: Environmental Protection, Forest Governance and Tribal Autonomy**

The complex relationship between federalism, sustainable development, environmental preservation, and tribal self-determination is reflected in India's constitutional aspect of forest governance. This interaction is particularly complex in Northeast India because of the region's many legal traditions and uneven constitutional safeguards.

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<sup>11</sup> Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Sections 3–4.

<sup>12</sup> Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Section 6.

<sup>13</sup> Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Section 5.

### 2.3.1 Article 21 and Environmental Right to life

Environmental law has undergone a significant transformation as a result of the extension of Article 21 of the Indian Constitution. Beginning in the 1980s, Article 21 was substantively construed to encompass environmental rights after initially being limited to the procedural protection of life and personal liberty. The Supreme Court ruled in *Subhash Kumar v. State of Bihar* that the right to enjoy clean air and water is part of the right to life.<sup>14</sup> With this, environmental protection under Part III became formally constitutional. The Court subsequently established the concept of absolute accountability for hazardous industries in *M.C. Mehta v. Union of India*, reaffirming that Article 21 is implicated in environmental harm.<sup>15</sup>

The Court stressed in *Virender Gaur v. State of Haryana* that the right to life has an unbreakable connection to the rights to the environment, ecology, and sanitation.<sup>16</sup> Deforestation, biodiversity loss, and habitat fragmentation are examples of ecological degradation in Northeast India that might be contested as breaches of Article 21. This has conceptual relevance for forest administration. Nonetheless, the rights of forest inhabitants whose livelihoods rely on forest access must also be taken into account under Article 21 jurisprudence.

### 2.3.2. Sustainable Development and the Precautionary Principle

In *Vellore Citizens' Welfare Forum v. Union of India*, the Supreme Court added sustainable development to Indian constitutional law<sup>17</sup>. The Court said that the precautionary concept and the "polluter pays" principle are both parts of domestic environmental law.

To be sustainable, we need to find a balance between protecting the environment and meeting social and developmental needs. Sustainable development serves as a normative link between conservation laws and community rights within the framework of the Forest Rights Act (FRA).

In *Narmada Bachao Andolan v. Union of India*, the Court also saw sustainable development as a way to balance things out, not as a complete ban on development.<sup>18</sup> The case was about

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<sup>14</sup> *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598.

<sup>15</sup> *M.C. Mehta v. Union of India (Oleum Gas Leak)*, (1987) 1 SCC 395.

<sup>16</sup> *Virender Gaur v. State of Haryana*, (1995) 2 SCC 577.

<sup>17</sup> *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647.

<sup>18</sup> *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664.

building a dam, but its legal rationale affects judgements about moving forests under the Forest (Conservation) Act.

### **2.3.3 Public Trust Doctrine**

The public trust doctrine was clearly accepted in *M.C. Mehta v. Kamal Nath*<sup>19</sup>. The Court said that the State holds natural resources like woods, rivers, and air in trust for the public and can't give them to private owners if it hurts the environment. This approach is also important in Northeast India, where the Forest (Conservation) Amendment Act, 2023 may allow border exclusions for significant infrastructural or vital projects. Even if there are legal exclusions, constitutional public trust requirements still apply.

The notion was bolstered in *Fomento Resorts and Hotels Ltd. v. Minguel Martins*, when the Court elucidated that public trust responsibilities are subject to judicial enforcement.<sup>20</sup>

### **2.3.4 The T.N Godavarman Jurisprudence**

*T.N. Godavarman Thirumulpad v. Union of India* is probably the most important environmental case in India.<sup>21</sup> The Supreme Court broadened the concept of "forest" through ongoing mandamus to incorporate both legal and dictionary definitions. This interpretation made sure that the Forest (Conservation) Act protected unclassified forests, which are abundant in Northeast India. The 2023 Amendment's new definition of "forest" raises constitutional problems about whether laws that are stricter than those set by courts can be used to change environmental requirements. The Godavarman lawsuits set up central oversight and made forest conservation systems much stronger all over India.

### **2.3.5 The Sixth Schedule and Tribal Autonomy**

The Constitution's Sixth Schedule gives states like Assam, Meghalaya, Tripura, and Mizoram their own district councils. These councils have the power to make laws and run things like land, forest management (save for designated forests), and customary law.

This approach sets up a layered system of governance:

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<sup>19</sup> *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388.

<sup>20</sup> *Fomento Resorts and Hotels Ltd. v. Minguel Martins*, (2009) 3 SCC 571.

<sup>21</sup> *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267

- Central legislation about the environment;
- Departments of state forests;
- District councils that are independent;
- Tribal institutions that are common.

Article 371A gives Nagaland unique protection under the Constitution. It says that no Act of Parliament about religion or social traditions, customary law, or land and resource ownership can apply unless the State Legislative Assembly agrees<sup>22</sup>. This clause makes it harder to apply the FRA and other central forest rules in the same way all the time. The constitutional issue stems from the need to balance national environmental obligations with regional autonomy.

### **2.3.6 Indigenous Consent and Gram Sabha Authority:**

The Orissa Mining Corporation v. Ministry of Environment & Forests (Niyamgiri case) strongly confirmed that Gram Sabha consent methods are constitutional.<sup>23</sup> The Supreme Court said that Gram Sabhas must decide if mining ventures would violate the religious and cultural rights of Scheduled Tribes. The ruling put the FRA into action within the limits of the Constitution and confirmed the power of communities to make decisions. The Niyamgiri verdict shows that environmental clearances can't get around constitutional rights of tribal independence.

### **2.3.7 Intergenerational Equity & Environmental Rule of Law and Proportionality**

The Court in State of Himachal Pradesh v. Ganesh Wood Products stressed the importance of protecting the environment for future generations.<sup>24</sup> Intergenerational equity bolsters conservation arguments in ecologically fragile areas. However, the idea must be reconciled with distributive justice: current forest inhabitants cannot be wholly excluded under the pretext of future environmental preservation.

Recent jurisprudence reflects movement toward environmental rule of law. In Hanuman Laxman Aroskar v. Union of India, the Supreme Court underscored procedural fairness in

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<sup>22</sup> Constitution of India, Article 371A.

<sup>23</sup> Orissa Mining Corporation v. Ministry of Environment & Forests, (2013) 6 SCC 476.

<sup>24</sup> State of Himachal Pradesh v. Ganesh Wood Products, (1995) 6 SCC 363

environmental clearances.<sup>25</sup> 66 Similarly, courts increasingly apply proportionality — ensuring that state action restricting forest rights must be necessary, suitable, and least restrictive. This constitutional methodology is crucial when evaluating strategic infrastructure exemptions in border states of Northeast India.

The structure of the Constitution shows five principles that work together:

1. Article 21: Right to Environment
2. Development that lasts
3. The Doctrine of Public Trust
4. Self-Governance of Tribes (Article 371A and Sixth Schedule)
5. Fairness between generations

These ideas necessitate a cohesive interpretation rather than functioning in isolation. The Constitution does not give conservation more importance than rights or the other way around; instead, it requires that they work together. The problem in Northeast India is not a lack of a constitution, but a lack of a simple one. Courts and politicians must adopt contextualised interpretation that acknowledges ecological fragility while honouring indigenous authority.

### **3. Doctrinal Contention: Conservation vs. Rights**

People who care about conservation say that strong community land claims might make it harder to develop safe places for endangered species. This issue came up a lot in *Wildlife First v. Union of India*, when petitioners said that the FRA was unconstitutional since it allowed for large-scale unlawful encroachments.

In February 2019, the Supreme Court first ordered the eviction of claimants who had been denied, but later put that decision on hold while it reviewed the case. The episode showed that there are fundamental contradictions between environmentalist and rights-based ideas in institutions.

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<sup>25</sup> *Hanuman Laxman Aroskar v. Union of India*, (2019) 15 SCC 401

The theological disagreement arises from divergent assumptions:

- Conservation laws put ecological integrity and state trusteeship first.
- The FRA puts community sovereignty and restorative justice first.

Yet actual studies demonstrate that indigenous stewardship frequently coincides with reduced deforestation rates. The zero-sum framing may, therefore, be conceptually deficient.

#### **4. Northeast India: Specificities and Legal Context**

The FRA has not been put into place evenly in the Northeast states. Article 371A protections make it hard to apply the Act in Nagaland.<sup>26</sup> There are a lot of forests in the area that are called "unclassified forests." These forests are maintained by community groups instead of official forest departments.<sup>27</sup> This multiple legal system makes it harder for laws to be recognised. Mizoram and Tripura are two states that have said they are worried about central forest modifications that could weaken ways for communities to talk to each other.<sup>28</sup>

The border exemption clause could have an impact on landscapes in Arunachal Pradesh, Nagaland, Mizoram, and Sikkim that are home to a lot of different plants and animals.<sup>29</sup> Critics say that changing the definition of forest could leave out forests that aren't recorded, which would make the protections weaker under the landmark case *T.N. Godavarman Thirumulpad v. Union of India*, which broadened the definition of forest to include dictionary meaning.<sup>30</sup>

#### **5. Ecological Sensitivity and Human Rights**

There are rainforests, alpine meadows, wetlands, and wildlife corridors in northeast India that are home to animals like the one-horned rhinoceros and the clouded leopard.<sup>31</sup> Kaziranga National Park and Namdapha National Park are two examples of protected areas that show how important the region is to the environment. But in the past, conservation that excluded people has forced forest dwellers who live in forests to move.<sup>32</sup> International law is progressively

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<sup>26</sup> Constitution of India, Article 371A

<sup>27</sup> Ministry of Environment & Forests, Reports on Unclassed Forests (2011).

<sup>28</sup> Parliamentary Debates on The Forest (Conservation) Amendment Bill, 2023.

<sup>29</sup> *Ibid.*

<sup>30</sup> *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267.

<sup>31</sup> Wildlife Institute of India, Biodiversity Assessment Reports (2018).

<sup>32</sup> Madhav Gadgil & Ramachandra Guha, *Ecology and Equity* (Oxford University Press, 1995).

acknowledging indigenous land rights as aligned with biodiversity conservation, as evidenced by the Convention on Biological Diversity (CBD).<sup>33</sup> The difficulty does not reside in choose between rights and ecology, but in amalgamating both within a sustainable development paradigm.

## 6. Doctrinal Reconciliation Strategies

### 6.1 Harmonization Through Interpretation:

Courts can use purposive interpretation to make sure that the implementation of the FRA comes before approvals for forest diversion. The public trust doctrine, as defined in *M.C. Mehta v. Kamal Nath*, designates the State as the trustee of natural resources.<sup>34</sup>

This philosophy can coexist with models of community trusteeship. Judicial review should not dismiss community claims; instead, it should guarantee adherence to procedures and environmental protections.

### 6.2 Integrative Governance Mechanism

Co-management arrangements between forest departments and Gram Sabhas help harmonise statutory and customary authority. Environmental Impact Assessments (EIAs) ought to include an evaluation of community forest resource rights. In some parts of India, Community Forest Resource (CFR) governance has led to good results for conservation.<sup>35</sup> To apply similar frameworks to Northeast India, one must be aware of traditional institutions.

### 6.3 Policy Reforms

Policy needs to be clearer to make sure that:

- The FRA's consent rules still apply before the forest is moved;
- The 2023 Amendment's border exemptions are read very carefully;
- Unclassed woods are nonetheless protected for their ecological value.

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<sup>33</sup> Convention on Biological Diversity, 1992.

<sup>34</sup> *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388.

<sup>35</sup> Rights and Resources Initiative, *Community Forest Governance Report* (2019).

The Sixth Schedule says that independent councils should be part of federal consultation processes.

## **7. Conclusion**

The perceived discord between forest rights and environmental conservation in Northeast India signifies more profound structural problems within Indian environmental legislation. The FRA is an example of restorative constitutionalism because it fixes the wrongs done by colonisation. Conservation laws are a form of ecological constitutionalism that protects biodiversity for the present and future generations.

A doctrinal reconciliation is both feasible and essential. To have sustainable governance in areas that are sensitive to the environment, you need to combine community rights, constitutional requirements, biodiversity research, and federal pluralism.

The future of forest governance in Northeast India will depend on how well people can grasp the rules, how well institutions work together, and how strong the political will is. If done well, the region can become a global example of rights-based conservation, showing that protecting the environment and giving indigenous people more freedom can go hand in hand.

### **Suggestions:**

To effectively reconcile forest rights and environmental protection in ecologically sensitive regions of Northeast India, the following measures are recommended:

First, strict sequencing of legal procedures must be ensured. Recognition and settlement of rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 should be completed before granting diversion approvals under the Forest (Conservation) Act, 1980. This prevents procedural violations and protects constitutional due process.

Second, Gram Sabha consent mechanisms must be strengthened. The decision in *Orissa Mining Corporation v Ministry of Environment & Forests* shows that community participation is central to constitutional forest governance. Consent procedures should be transparent, recorded, and free from coercion.

Third, co-management models should be institutionalised. Forest departments and community forest resource (CFR) holders should jointly manage forests, combining scientific forestry with traditional ecological knowledge. This reduces the false dichotomy between conservation and community rights.

Fourth, border exemptions under the Forest (Conservation) Amendment Act, 2023 should be narrowly interpreted, especially in biodiversity-rich states of Northeast India. Strategic concerns should not lead to blanket dilution of environmental safeguards.

Fifth, Environmental Impact Assessments (EIAs) must mandatorily include FRA compliance verification, mapping of community forest resource areas, and social impact assessments to ensure distributive justice.

Sixth, unclassed forests common in Northeast India must continue to receive protection, consistent with the principles laid down in *T N Godavarman Thirumulpad v Union of India*. Seventh, cooperative federalism should guide reforms, involving autonomous district councils under the Sixth Schedule and respecting Article 371A protections for Nagaland. Finally, policy must adopt a rights-based conservation approach, recognizing forest dwellers as ecological stewards rather than ecological threats.