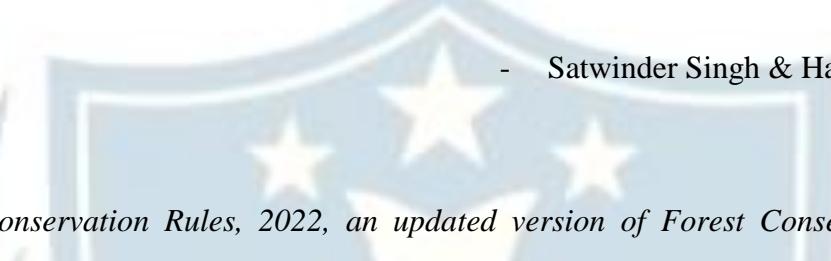


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**THE FOREST CONSERVATION RULES 2022 EXPLAINED: A  
TURNING POINT OR SUBTERFUGE?**

- Satwinder Singh & Harsimran Kaur<sup>1</sup>

**ABSTRACT**

*The Forest Conservation Rules, 2022, an updated version of Forest Conservation Rules notified by the Ministry of Environment, Forest and Climate Change on June 28, 2022. The rules are notified with an intent to “streamline” the process of approvals. Further, the rules empower the user agency to divert forest land for commercial purposes without taking the consent of forest dwellers under the Forest Rights Act, 2006. A move to replace quaint forest conservation rules is welcome step, but only if the changes contemplate a discernible shift away from draconian measures. These changes have once again brought into the question the future of India’s forest. Highlighting the importance of forests, the Supreme Court of India in 2013, recognised that the State Government could not permit ‘non-forest activities’ without forest dwellers prior approval. The stark contrast between the Court’s firm stands and the directions of ruling regime in many ways to work at cross purposes sums up the state of affairs. There are concerns that many loopholes disable many forest dwellers from claiming their rights. The vision of the Forest Conservation Act, 1980 and the Forest Right Act, 1980 have been compromised. An inclusive not exclusive approach towards forest dwellers is thus indispensable to replenish forests and thereby, the larger economy. The present paper charts the evolution of forest conservation legislative measures, rules and policies. The authors seek to critically analyse the Forest Conservation Rules 2022. The paper highlights the changes brought about by Forest Conservation Rules, 2022 and how these rules pose a threat to the rights of forest-dwelling Adivasi Communities.*

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**Keywords:** Development, Forest, Forest Conservation, Forest Dwellers, Gram Sabha Consent, Compensatory Afforestation.

## INTRODUCTION

The term “Development” has become fascinating word in central India. The development of society has an indispensable relationship with ecosystem. The erosion of the forest dwellers by way of greater exploitation of natural resources through development projects led to the forced displacement. The United Nation (UN) Declaration on the right to development in 1986 enunciated that “development is a right that belongs to everyone, which means everyone is entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised.”<sup>2</sup> In this multi-dimensional concept, state plays an important role. Due to development projects, thousands of forest dwellers, have been dispossessed. This process involves the dispossession of forest dwellers. The threats of dispossession by development projects have become common in the last 40-50 years. Interestingly, this tortuous transition took place under the famous term ‘development induced displacement’, a new ideological construction of the state to plunder the land from the poor.<sup>3</sup> Therefore, issue of land as a social justice for forest dwellers has a long historical precedent in rebellions and struggles India. They have continued to suffer despite formal support in the Constitution of India and various statutory laws, to these rights. These laws suffered from many lacunas. Recently, the Union Ministry of Environment, Forests and Climate Change notified new rules called the “Forest Conservation Rules 2022” and deleted the clause of participation of forest dwellers in the process of diverting land.<sup>4</sup> The paper analyses the existing forest conservation policy of India with a specific focus on Forest Conservation Rules, 2022. The paper provides the challenges and rationale of the Government of India behind these policies along with a deep consideration of Judicial attitude in the conservation of forestry policy of India.

<sup>2</sup>The United Nation Declaration on the right to development, 1986, art. 1, available at: <https://www.un.org/en/events/righttodevelopment/declaration/declaration.shtml> (last visited on Aug. 25, 2022).

<sup>3</sup> John Kujur, “Development, Dispossession and Democracy: A Case Study on the Dispossessed Population of Rourkela” (Jawaharlal Nehru University, 2017) available at: <https://repository.tribal.gov.in/handle/123456789/74192?viewItem=browse>(last visited on Aug. 25, 2022).

<sup>4</sup> Government of India, “Forest Conservation Rules, 2022” (Ministry of Environment, Forest & Climate Change, 2022) available at: <https://pib.gov.in/PressReleasePage.aspx?PRID=1845824>(last visited on Aug. 25, 2022).

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## EVOLUTION OF FOREST CONSERVATION LEGISLATIVE MEASURES

**The Hindu Period:** During the Vedic period, people worshipped nature and which ultimately had led to its conservation. Atharva Veda speaks on conservation of forests.<sup>5</sup> In the post Vedic period, forests became way of life. According to Manusmriti, religious rites played a substantial role in the conservation of forest.<sup>6</sup> Interestingly, forest protection became a serious concern in the Mauryan reign. Kautilya's Arthashastra reflects the intention of rulers to conserve the forests.<sup>7</sup> In Gupta reign, felling of trees were subject to communal regulations.<sup>8</sup> Since the 2500 B.C., forests in India have been viewed as sources of limitless products that require few special regulatory and management measures.<sup>9</sup>

**The Muslim Period:** During the Mughal period, stress was laid on building monuments and Mosques.<sup>10</sup> Forests were considered as major source of revenue. There were no restrictions on felling of trees except royal trees. The Mughals struck a balance between deforestation for not only strategic reasons and for the protection and conservation of environment.<sup>11</sup>

**The British Period (1858 -1947):** The first codification with respect to administration of forest in India, came up in the year of 1865.<sup>12</sup> The Act gave no recognition gave no recognition to forest dwellers, instead established the monopoly of State over forests. The customary rights of tribal peoples were left untouched. This statute was replaced by a new statute, The Indian Forest Act, 1878, which clearly resolved the issue in favour of an 'annexationists' position.<sup>13</sup> The forests were classified into three categories namely (I) Village Forests<sup>14</sup>; (ii) Protected Forests<sup>15</sup>; (iii) Reserve Forests<sup>16</sup>. To Further Consolidate the

<sup>5</sup> M. M. Sulpey and M. M. Safee, *Introduction to Environment Management* 392 (PHI Learning Pvt. Ltd., Delhi, 2014).

<sup>6</sup> Wendy Doniger and Brian K. Smith (translated), *The Laws of Manu* 75-98 (Penguin Books, Gurgaon, Haryana, 2014).

<sup>7</sup> L.N. Ranarajan (ed., translated), *Kautilya – The Arthashastra* 26-67 (Penguin Books, New Delhi, 1992), Available at:<https://ncjindalps.com/pdf/HUMANITIES/The%20kautilya%20Arthashastra%20-%20Chanakya.pdf>(last visited on Aug. 27, 2022)

<sup>8</sup> Down to Earth, "In Depth Relevance of History" available at: <https://www.downtoearth.org.in/indepth/relevance-of-history-23594>

<sup>9</sup> Bruce G. Marcot, *Conservation of Forests of India: An Ecologist's Tour* (Oregon Miscellaneous Publication, 1993).

<sup>10</sup> David Arnold & Ramachandra Guha (ed.), *Nature, Culture, Imperialism: Essays on the Environmental History of South Asia* (Oxford University Press, Delhi, 1995).

<sup>11</sup> *Supra* note 7.

<sup>12</sup> The Government Forest Act, 1865 (Act VII of 1865), available at: <https://www.indiacode.nic.in/repealedactdocuments/A1865-7.pdf>(last visited on Aug. 26, 2022)

<sup>13</sup> The Indian Forest Act, 1878 (Act VII of 1868), available at: <https://www.indiacode.nic.in/repealed-act/repealed act documents/A1878-7.pdf>(last visited on Aug. 26, 2022).

<sup>14</sup> *Ibid.* at CHAPTER III "Of Village-Forests".

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forestry laws, the Indian Forest Right Act, 1927 was enacted.<sup>17</sup> The Act aimed to regulate the transit of forest produce to levy duty on timber and other forest produce.<sup>18</sup> The Act of 1927 was clearly one step to considering the importance of ecology and environmental balance.<sup>19</sup> The Act was enacted with twin object firstly to regulate the cutting of tree and secondly to generate revenue from the forest produce. Historical relationship of forest dwellers and their communities with their lands were ignored. Rather the forests were declared to be property of government.

**Post-Independence Period (1947-2022):** This period can be studied in three phases: (I) In first phase forests were considered as commercial revenue generating entity; (ii) In second phase, protection of forests became a priority for the government; (iii) In third phase, forests became the agenda for subsequent legislations. The Constitution (Forty-second Amendment) Act, 1976 has introduced Article 48-A and Article 51(A)(g) in the Constitution of India for the protection and improvement of environment. These provisions cast a duty on both ‘State’ and the ‘citizens’ to protect and improve the natural environment.<sup>20</sup> In 1980, the Government of India, in an attempt to slow down the rapid deforestation and depletion of forest cover and in line with constitutional obligation under Article 48-A of the Constitution of India, enacted the Forest (Conservation) Act, 1980.<sup>21</sup> In 1996, the Government of India passed “Panchayat Extensions to Scheduled Areas Act, 1996”.<sup>22</sup> This Act is an extension of Part IX of the Constitution of India and it facilitates Gram Sabha’s to govern their natural resources themselves.<sup>23</sup> Forest dwellers and their traditional dwellers have historical and inanimate relationship since their very existence. The entire life process is centred and built upon two major means of production, that is the forest and the land, which are described as twin pillars

<sup>15</sup>Ibid. at CHAPTER IV “Of Protected Forest”.

<sup>16</sup>Ibid. at CHAPTER V “Forests under Conservancy-Administration When this Act come into Force”.

<sup>17</sup> The Indian Forest Act, 1927 (Act 16 of 1927), available at: [https://www.indiacode.nic.in/bitstream/123456789/15385/1/the\\_indian\\_forest\\_act%2C\\_1927.pdf](https://www.indiacode.nic.in/bitstream/123456789/15385/1/the_indian_forest_act%2C_1927.pdf) (last visited on Aug. 26, 2022).

<sup>18</sup>Ibid. at 5, See Preamble.

<sup>19</sup> Paramjit S. Jaswal, Nishtha Jaswal, et.al., *Environmental Law* 381 (Allahabad Law Agency, Faridabad, 5<sup>th</sup> edn., 2022).

<sup>20</sup> The Constitution of India, art. 48A and 51(A)(g).

<sup>21</sup>The Forest (Conservation) Act, 1980, available at [https://legislative.gov.in/sites/default/files/AI1980-69\\_0.pdf](https://legislative.gov.in/sites/default/files/AI1980-69_0.pdf)

<sup>22</sup>The Panchayats Extension to Scheduled Areas (PESA) Act, 1996, available at: [https://www.mha.gov.in/sites/default/files/PESAAct1996\\_0.pdf](https://www.mha.gov.in/sites/default/files/PESAAct1996_0.pdf)(last visited on Aug. 27, 2022).

<sup>23</sup> The Constitution of India, Part IX “The Panchayats” inserted vide The Constitution (72<sup>nd</sup> Amendment) Act, 1992 (w.e.f 24<sup>th</sup> April, 1993) available at: [https://www.indiacode.nic.in/bitstream/123456789/15240/1/Constitution\\_of\\_India.pdf](https://www.indiacode.nic.in/bitstream/123456789/15240/1/Constitution_of_India.pdf) (last visited on Aug. 27, 2022).

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of tribal economy.<sup>24</sup> To undo historical injustice and to recognise their role in the protection of forest, The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 was passed in the parliament.<sup>25</sup> Most of the laws are outcome of the conventions of the United Nations.<sup>26</sup> In 2016, the Compensatory Afforestation Fund Act came into force.<sup>27</sup> This Act is an outcome of the Godavarman case.<sup>28</sup>

## THE FOREST POLICIES AND RULES IN INDIA

Forests policies are drafted with intent to provide directions to legislative actions. In the year 1854, the first Forest Policy was framed in India. It emphasised on maximum revenue generation and converted their long informal rights into privileges.<sup>29</sup> After Independence, it was replaced by another policy in 1952. This policy also did not accord the proper recognition to the relationship of forest and forest dwellers. After 42<sup>nd</sup> Amendment of the Constitution of India, the Government of India amended the Forest Conservation Act in 1988 and adopted the National Forest Policy, 1988.<sup>30</sup> In 2003, in exercise of power under Section 4 of the Forest Act, the central government notified the Forest Conservation Rules, 2003.<sup>31</sup> The rules gave new directions with regard to use of forest land for non-forest purposes. These rules were amended in 2004, 2014 and 2017.<sup>32</sup> The National Forest Policy, 2018 is yet to be implemented and focus on giving strength to the ecological security and sustainable forest

<sup>24</sup> Jagannath Amagudia, "Tribal Rights, Dispossession and the State in Orissa" 45*Economic and Political Weekly* (2010) available at: <https://www.epw.in/journal/2010/33/special-articles/tribal-rights-dispossession-and-state-orissa.html> (last visited on Aug. 27, 2022).

<sup>25</sup> The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, available at: <https://www.indiacode.nic.in/bitstream/123456789/8311/1/a2007-02.pdf> (last visited on Aug. 27, 2022).

<sup>26</sup> See also Stockholm Declaration on Human Environment; Our Common Future-The World Commission on Environment and Development (Brundtland Report), 1987; United Nations Conference on Environment and Development (Earth Summit), 1992; United Nations Framework Convention on Climate Change, 1992; Kyoto Conference and Pact on Global Warming (Green House Conference), 1997; World Summit on Sustainable Development, 2002.

<sup>27</sup> The Compensatory Afforestation Fund Act, 2016.

<sup>28</sup> T.N. Godavaram Thirumulpad v. Union of India (2002) 10 SCC 606.

<sup>29</sup> Government of India, "76<sup>th</sup> Report on Ministry of Food, Agriculture, Community Development & Cooperation" 161 (April, 1969).

<sup>30</sup> Shyam Divan and Armin Rosencranz, *Environmental Law and Policy in India* 291(Oxford University Press, New Delhi, 2<sup>nd</sup> edn., 2002).

<sup>31</sup> Forest Conservation Rules, 2003, available at: <https://forestclearance.nic.in/Rules.aspx> (last visited on Sept. 01, 2022)

<sup>32</sup>*Ibid.*

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management.<sup>33</sup> Now a set of producers under Forest (Conservation) Rules, 2022, notified by the Ministry of Environment, Forest and Climate Change.<sup>34</sup>

## FOREST AND FOREST DWELLERS

Despite tremendous efforts to increase forest cover through various regulations, India's forests are in devastated condition, with less than 25 per cent of India under Forest cover in 2021.<sup>35</sup> To ensure ecological stability, 30 per cent of the nation should be under adequate forest cover.<sup>36</sup> In remote forest fringe villages around 300 million poor people in India, especially tribal and other local peoples directly or indirectly depend on forests for their subsistence and livelihood. It is not only imperative to meet basic needs but also meet social and cultural needs. Nearly around 60 million forest dwellers are entirely dependent on forest for food requirements.<sup>37</sup> Let's understand the meaning of the term 'forest' and 'forest dwellers.' The term 'forest' has been derived from *Latin* word '*foris*' which means 'outside'. The Statutory enactments shrouded with ambiguities as they do not provide exhaustive definition of the term.<sup>38</sup> In 1996, the SC defined 'forest' as irrespective of the status of the land it stands on.<sup>39</sup> The ministry of Environment, Forest and Climate Change has made an attempt in 2014, however, the draft have never been made public.<sup>40</sup> The freedom to define

<sup>33</sup>Draft National Forest Policy, 2018, available at: <http://moef.gov.in/wp-content/uploads/2019/05/Inviting-comments-forms-concerned-Ministries-on-Draft-National-Forest-Policy-2018.pdf> (last visited on Aug. 27, 2022).

<sup>34</sup>Forest Conservation Rules, 2022, available at: <https://parivesh.nic.in/writereaddata/FCRule2022Notificationdated28062022.pdf>(last visited on Sept. 03, 2022)

<sup>35</sup> Government of India, "Forest Survey of India 2021" (Ministry of Environment, Forest & Climate Change, 2022) available at: <https://fsi.nic.in/forest-report-2021-details> (last visited on Aug. 25, 2022).

<sup>36</sup> Shyam Divan and Armin Rosencranz, *Environmental Law and Policy in India* (Oxford University Press, New Delhi, 2<sup>nd</sup> edn., 2002).

<sup>37</sup> Subhashree Banerjee & Syed Ajmal Pasha, "Livelihoods, Conservation and Forest Rights Act in a National Park: An Oxymoron?" Working Papers 389, *Institute for Social and Economic Change, Bangalore*, available at:<http://www.iseec.ac.in/WP%20389%20-%20Subhashree%20Banerjee%20and%20Syed%20Ajmal%20Pasha%20-%20Final.pdf> (last visited on Aug. 31, 2022).

<sup>38</sup> Smriti Das, "The Strange Valuation of Forest in India" 9 *Economic and Political Weekly* (2010), available at:<https://www.epw.in/journal/2010/09/commentary/strange-valuation-forests-india.html> (last visited on Aug. 31, 2022)

<sup>39</sup>T.N. Godavaraman Thirumulpad v. Union of India 1996 SC; See also Narinder Singh v. Divesh Bhutani 2022 Live Law (SC) 620, wherein, the court referred to the dictionary meaning of forest and said: "Forest means a large or extensive tract of land having a dense growth of trees, thickets, mangroves etc. A small isolated plot of land will not come within the ambit...."

<sup>40</sup>Jacob Koshy, "Centre clarifies on definition of land as forest" *The Hindu*, Oct. 09, 2019, available at: <https://www.thehindu.com/news/national/centre-clarifies-on-definition-of-land-as-forest/article29745691.ece> (last visited on Aug. 31, 2022).

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land as forest has been prerogative of State since 1996.<sup>41</sup> The ‘forest dweller’ has not been defined in the any statutory enactment. The Indian Constitution lists the term Schedule Tribe but does not define in exhaustively. Various interpretation of the term ‘forest dweller’ have been given. For this, we may refer to The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. A person is entitled to claim the status of ‘forest dweller’ if he primarily resides in and depend on forests for bona fide livelihood needs<sup>42</sup> or if any member or community primarily resided in for at least last three generations prior to the Dec 13, 2005.<sup>43</sup>

## FOREST CONSERVATION RULES, 2022

The Forest Conservation Rules, 2022 notified by the Ministry of Environment, Forest and Climate Change (MOEFCC), exercise of power under sub-section (1) of Section 4 of the Forest Conservation Act, 1980, to replace the earlier rules.<sup>44</sup> The rules deal with the implementation of Forest Conservation Act, 2022. The rules prescribe the procedure to be followed for forest land for non-forestry uses such as infrastructural projects, mining projects, construction of dams, road and transport projects.

**Prior to Forest Conservation Rules, 2022:** The Forest Conservation Act is enacted with an intent to serve a laudable purpose.<sup>45</sup> The broad aim of the Act is conservation of forest and to prevent depletion thereof.<sup>46</sup> The Act applies to all kind of forests. The process was: For forest land beyond five hectares<sup>47</sup>, every user agency<sup>48</sup> must be applied to the state government for diverting land. After that the state send this proposal with its recommendation to central government.<sup>49</sup> This can be done through the Forest Advisory Committee (FAC) constituted by

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<sup>41</sup> DTE Staff, “Dictionary-defined ‘forests’ will be out of forest laws?” *Down to Earth*, Oct. 05, 2021, available at: <https://www.downtoearth.org.in/blog/forests/dictionary-defined-will-be-out-of-forest-laws--79527> (last visited on Aug. 31, 2022).

<sup>42</sup>Supra note at 24.

<sup>43</sup>*Ibid* at s. 2(o).

<sup>44</sup>*Id.* at 33.

<sup>45</sup> State of Bihar v. Banshi Rami Modi, AIR 1985 SC

<sup>46</sup> The Quaide Milleth Educational and Social Trust v. The Principal Secretary to Government Environment& ors. 2019 6 MLJ 203

<sup>47</sup>Supra note at 30, rule 6.

<sup>48</sup>*Ibid.* See rule 2(h): ‘user agency’ means any person, organisation or Company or Department of the Central or State Government making a request for diversion or de-notification of forest land for non-forest purpose or using land for non-forest purpose in accordance with the permission granted by the Central Government under the Act or the rules.

<sup>49</sup>*Id.* rule 6.

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central government.<sup>50</sup> The committee shall examinees whether the user agency meets the condition attached thereto, such as Net Present Value. Once the committee is satisfied, it is forwarded to concerned state government. Here, approval by committee means that user agency must provide the compensatory land for afforestation as well as Net Present Value.<sup>51</sup> The state government then has to ensure that the rights of forest dwellers and tribals over their land under Forest Rights Act, 2006, are complied with.<sup>52</sup> It also requires that free consent of the Gram Sabha's in the area concerned has to be obtained in writing before diverting of land.<sup>53</sup> In 2009, the Environment Ministry issued an order mandated the completion of all requirements under the Forest Right Act. The Ministry, further, in its order stated that proposals wouldn't be entertained by the Forest Advisory Committee unless there was a letter from the State specifying that the forests rights in the place had been settled.<sup>54</sup> In 2013, the Supreme Court recognised the authority of Grama Sabha's.<sup>55</sup>

**What are the new rules?** The new rules are notified by the Government of India with intent to "streamline" the process of approvals.<sup>56</sup> The rules have done away with the earlier procedure. The rules shift the responsibility on State Governments to ensure that the rights of forest dwellers to their traditional forest's lands are recognized and secured only after the 'Final' approval of Central Government.<sup>57</sup> In accordance with the rules, the Regional Empowered Committee can be constituted by Central Government in each State or Union Territory to examine proposals and grant approval or rejection.<sup>58</sup> It also says that the Committee shall consist of the following members:

<sup>50</sup>*Id.* rule 3.

<sup>51</sup> T.N. Godavarman Thirumulpad (87) v. Union of India (2006) 1 SCC 1; *See also* T.N. Godavarman Thirumulpad (86) v. Union of India (2006) 5 SCC 25.

<sup>52</sup>*Supra* note 24, s. 3, 4, 5, 6.

<sup>53</sup>*Id.* s. 4(1)(e).

<sup>54</sup> Jacob Koshy, "The Debate around the Forest Conservation Rules" *The Hindu*, July 15, 2022 available at: <https://www.thehindu.com/sci-tech/energy-and-environment/the-debate-around-the-forest-conservation-rules/article65639750.ece/amp/> (last visited on Sept. 02, 2022).

<sup>55</sup> Orissa Mining Corp. Ltd. v. Ministry of Environment & Forests (2013) 6 SCC 476.

<sup>56</sup>In written reply to Rajya Sabha by the Minister of State for Environment, Forest and Climate Change. Shri Ashwini Kumar Choubey on "New Forest Conservation Rules, 2022" July 28, 2022 available at: <https://pib.gov.in/PressReleasePage.aspx?PRID=1845824> (last visited on Sept. 02, 2022).

<sup>57</sup>*Supra* note 33 at Rule 9(6)(b) (ii) The State Government or Union Territory, as the case may be, after receiving the 'Final' approval of the Central Government under Section 2 of the Act, and after fulfilment and compliance of the provisions of all other Acts and rules made thereunder, as applicable including ensuring settlement of rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (No. of 2007), shall issue an order for diversion, assignment of lease or dereservation, as the case may be.

<sup>58</sup>*Id.* at rule 6(1).

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- i. Regional Officer – Chairman;
- ii. Three non-official members from amongst eminent persons who are experts in the field of forestry and allied disciplines – non-official members;
- iii. The senior-most officer amongst officers of the rank of Conservator of Forests and Deputy Conservator of Forests in the Intergraded Regional Office – Member-Secretary.<sup>59</sup>

The Committee must meet at least twice a month at the headquarters of the Integrated Regional Office.<sup>60</sup> After that the Committee shall examine the proposal without regard to its merits after receiving it from State Government or Union Territory.<sup>61</sup> The Committee shall consider whether to proposal is complete or not. The Committee may also call the user agency<sup>62</sup> for clarification or any additional documents. If the user agency fails to submit the accurate details, the proposal shall stand rejected. It also specifies the time period for examining the proposals for use of land for non-forest purpose. All proposals from 5 to 40 hectares except mining must be examined within 60 days and mining projects must be examined within 75 days.<sup>63</sup> All proposals involving linear projects, forest land up to 40 hectares, use of forest land having canopy density up to 0.7 irrespective of their extent for the purpose of survey must be examined in the Integrated Regional Office.<sup>64</sup> It also says that once proposal is approved by the Forest Advisory Committee, the Central Government may accord its ‘Final’ approval under Section 2 of the Act and communicate the same to State Government and User Agency.<sup>65</sup> After receiving the ‘Final’ approval state must ensure the fulfilment and compliance of all other Acts including Forest Right Act, 2006.<sup>66</sup>

**Concerns and Challenges Lies Ahead:** The Forest Conservation Rules 2022, notified by the government have triggered protest nationwide. The tribal rights activists, environmentalists and several Opposition parties have raised various concerns which were brought by these set of flawed rules. There are various loopholes created by these rules which are yet to be addressed.

<sup>59</sup>*Id.* at rule 6(2)

<sup>60</sup>*Id.* at rule 7.

<sup>61</sup>*Id.* at rule 9(4)(a).

<sup>62</sup>*Supra* note 47.

<sup>63</sup>*Id.* at Schedule-II.

<sup>64</sup>*Id.* at rule 9(5).

<sup>65</sup>*Id.* at rule 9(6).

<sup>66</sup>*Id.* at rule 9(6)(ii).

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i. **Role of Gram Sabha and consent of forest dwellers compromised:** The Forest Rights Act, 2006 provides various rights to the forest dwellers which are squirrel away by these new rules.<sup>67</sup> There is obscurity regarding the status of forest dwellers whose land would be taken away for developmental work which left the community in haphazard. Prior according to 2009 guidelines, the claims of the tribals over forest land were to be given prior importance and gram Sabha should settle their claims even before the in-clearance process. The Forest Conservation (Amendment) Rules of 2017 stated that no-objection certificates (NOC's) must be obtained from the gram Sabha as well as the district collector for a project to proceed.<sup>68</sup> The role of gram Sabha is completely vanished in these rules which don't mandates to take the consent of Gram Sabha in the clearance of developmental projects. Now the centre government can approve the projects from private developers even before the state government ensures consent of forest dwellers.

ii. **Ends 'ease of living' in shade of 'ease of doing business':**

The central government claims that the conservation rules are not inconsistent with provisions of the Forest Rights Act, 2006, rather it promotes the concept of development. As it is mentioned earlier that there are two stages through which the developmental project has to be passed for having access to forest land for non-forest purposes. Firstly, when 'In-Principle' approval has to be given and, secondly, where statutory as well as regulatory clearances have to be complied with by project proponent. As it is mentioned above, there is a time lag of around two to three years between both the stages i.e., stage I and II. To avoid any clashes between the Forest Rights Act, 2006 and the Forest Conservation Act, 1980, the Ministry of Tribal Affairs proposed Ministry of Environment, Forest and Climate Change to consider the compilation of provisions of Forest Rights Act, 2006.<sup>69</sup> The rules unequivocally also provides that compliance with the mandatory provisions of Forest Rights Act, 2006, is not indispensable requirement for final diversion of the forest.<sup>70</sup> This doesn't automatically imply the consent of forest dwellers. The Ministry of Environment,

<sup>67</sup>Supra note at 24, s. 3.

<sup>68</sup> Divya Trivedi, "Where would the proposed Forest Conservation Rules leave Forest Dwellers?" *The Hindu*, Aug 25, 2022 available at: <https://frontline.thehindu.com/environment/snatch-and-grab-proposed-forest-conservation-rules-2022-dilute-rights-of-forest-dwellers/article65661818.ece> (last visited on Sept. 05, 2022).

<sup>69</sup> Press Release, "Forest (Conservation) Rules, 2022 don't erode the provisions of Forest Rights Act, 2006" Ministry of Environment, Forest and Climate Change.

<sup>70</sup>Supra note at 56.

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Forest and Climate Change also maintained that clearance by Gram Sabha is only required at Stage II of the clearance process. Now, this would prove to be irreversible as by that time the project proposers would have made sufficient progress on forest land and later it would be hard to displace the forest dwellers, which ultimately leads to havoc. It has been done apparently for ‘ease of doing business’ but will result in end of ‘ease of living’ for many forest dwellers, everything else becomes a mere paperwork and almost inevitably, none of the claims will be recognised and settled. Hence, the process of clearance under these rules upends the basic purpose of law.

### iii. **Compensatory Afforestation - Not Fair Exchange of Deal**

Compensatory afforestation is an essential requirement under these rules and Forest Conservation Act, 1980 for any diversion of forestland for non-forest purposes such as for infrastructural projects, mining projects, construction of dams, road and transport communication.<sup>71</sup> An user agency has to bear all the cost of raising over such land.<sup>72</sup> The rules allow private individuals as well as companies to use their non-forest land/ plantation sites for serving the purpose, if it already bears vegetation.<sup>73</sup> In accordance with these rules, compensatory afforestation may be taken up in another State or Union Territory, in case the forest land to be diverted is in a hilly area with green cover of more than two thirds of its geographical area or in a State or Union Territory with the forest cover of over one-third of its geographical area, but subject to the consent of concerned State or Union Territory.<sup>74</sup> In earlier rules, there were no such provisions. Hence, it would be callous for the life of forest dwellers. The rules also provide an “Accredited Compensatory Afforestation” mechanism to be used for prior approval under Sec 2 of the Forest Conservation Act, 1980.<sup>75</sup> These rules allow private companies or individuals to cultivate plantation and sell it to private companies who need to meet the compensatory afforestation target. The provisions are silent of about rights of forest dwellers in this context. The absence strong provisions with regard to this, would debilitate the status of forest dwellers. The rules also permit the State Governments or Union Territories to create land banks for the

<sup>71</sup>*Supra* note at 33, rule 11.

<sup>72</sup>*Ibid.*

<sup>73</sup>*Supra* note at 70.

<sup>74</sup>*Ibid.*

<sup>75</sup>*Id.* at rule 2(a): “Accredited Compensatory Afforestation” means afforestation done in lieu of the diversion of forest land for non-forest purpose under the Act; *See also* rule 11(3).

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purpose of compensatory afforestation.<sup>76</sup> It may not be a fair exchange of deal. Ultimately, the sledgehammer will definitely hit on the heads forest dwellers.

### **Government Rationale Behind Rules**

The Ministry of Environment, Forest and Climate Change claimed that the rules are primarily formulated with motive to ‘streamline the approval process’ under the act of 1980. Following arguments are presented by the Government in favour of the new rules:<sup>77</sup>

- i. The approval by the central government, at Stage I, to the project proposers is a mere approval and does not imply diversion of forest land for non-forest purposes. The transfer of the land would be in hands of State or Union Territories respectively to authorise such transfer after complying with the mandatory provisions of Forest Conservation Act 1980 and Forest Rights Act, 2006.
- ii. The State or Union Territories are at liberty to ensure such compliance at initial or at any stage of the process which provides flexibility and keeps check on any odds, but it does not bar the authorities to do so in any case.
- iii. The provisions of Forest Right Act, 2006 provide that no forest dweller or tribal person should be evicted from the forest land concerned without the completion of proper verification and recognition procedure, which has to be done by State or Union Territories administration and Ministry of Tribal Affairs.<sup>78</sup>

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<sup>76</sup>*Id.* at rule 2(m): “Land Bank” means the lands identified or earmarked, as the case may be, by the State Governments and Union Territory Administration for raising Compensatory Afforestation in lieu of forest land proposed for diversion or diverted under the Act; *See also* rule 11(2) (a) A State Government or Union territory Administration as the case may be, may for the purpose of Compensatory Afforestation create a Land bank under the administrative control of the Department of Forest;

(b) The minimum size of the Land bank shall be a single block of twenty-five hectares: Provided that in case a Land bank is in continuity of a land declared or notified as forest under the Indian Forest Act, 1927 (16 of 1927) or under any other law for time being in force, Protected Area, Tiger Reserve or within a designated or identified tiger or wildlife corridor, there shall be no restriction on size of the land;

(c) The lands covered under Accredited Compensatory Afforestation earned under sub-rule (3) may be included in the Land bank.

<sup>77</sup>*Supra* note at 68.

<sup>78</sup>*Supra* note at 24, Sec 4(5): Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other forest traditional dweller shall be evicted or removed from the forest land under his occupation till the recognition and procedure is complete. *See also* Sec 11: The Ministry of Central Government dealing with the tribal affairs or any officer or authority authorised by the Central Government in this behalf shall be the nodal agency for the implementation of the provisions of the Act.

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- iv. The rules are not in any sense inconsistent with the statutory provisions of Forest Rights Act, 2006. It supports the compliance with its provisions by the nodal agencies recognised by the Act. It also reflects in the provisions of these rules.<sup>79</sup>
- v. Last but not least, it doesn't dilute or infringe the mandatory provisions of the Forest Rights Act, 2006. It rather streamlines to reduce the timelines of various projects for reaching at the final decision.

## JUDICIAL APPROACH

The United Conference on Human Environment met at Stockholm from 05 to 16 June 1972.<sup>80</sup> Principle 1 of the Stockholm declaration reflects in Article 14, 19 and 21 of the Indian Constitution, particularly dealing with right to equality, freedom & expression and life personal liberty respectively.<sup>81</sup> The role of Indian Judiciary needs special reference in developing the environmental jurisprudence. The contribution of judiciary in conservation of forest and protection of rights of forest dwellers can be seen in two ways – firstly, by way of Public Interest Litigation and secondly, by way of appeals or orders.

Public Interest Litigation suits seek to redress wrongs to public interest in interest of justice. Through the tool of Public Interest Litigation, the Supreme Court has recognized that the vulnerable sections of the society pay the heavy price due to environmental degradation, therefore, the rights need to be protected.<sup>82</sup> The Court treats the Fundamental Rights and the Directive Principles of State policies “like two wheels of a chariot, one no less important than the other.”<sup>83</sup>

The courts of India on other hand, to ensure the protection of the rights of the forest dwellers, have passed various admirable orders. In fragments of time the Hon'ble courts have tried to

<sup>79</sup>Supra note at 65.

<sup>80</sup> The Stockholm Declaration on the Human Environment, 1972, Introductory Note, available at: <https://legal.un.org/avl/ha/dunche/dunche.html> (last visited on Sept 06, 2022).

<sup>81</sup>Ibid., Principle 1: Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.

<sup>82</sup>R.L. & E. Kendra, Dehradun v. State of U.P., AIR 1985 SC 652 wherein the court held that tapping of resources have to be done with requisite attention so that ecology may not be affected. See also: R.L. & E. Kendra v. State of U.P., AIR 1987 SC 2426; Kinkri Devi v. State AIR H.P. 4; Tarun Bharat Sangh v. UOI 1993 SCR (3); Nature Lovers Movement v. State of Kerala AIR 2000 Ker. 131 wherein the court observed that the preservation of ecology, environment and forests is a function not only of the state but of every individual.

<sup>83</sup> Minerva Mills Ltd. v. Union of India., AIR 1980 SC 1789.

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stabilize economic development and rights of forest dwellers simultaneously<sup>84</sup>. To comply with various statutes provided by legislation, the understanding of the words used in the enactments is vital. It facilitates proper use of powers vested in the concerned authorities and the pronouncements by various judicial forums helps the better understanding of the enactments ultimately ensuring effective participation of authorities<sup>85</sup>. Prior the provisions of forest law were mere lip-service or a writing piece, but the judicial interpretations have given the oxygen to them. The myth created by black letter law tradition that judged don't make law but only interpret it is not apt. The judicial response tried to make a bridge between the statutory provisions and its implementation by interpretation of forestry laws in India.<sup>86</sup>

## CONCLUSION

The new Forest (Conservation) Rules, 2022 are basically formed to streamline the process of clearance of the projects which are initiated for the use of forest land for the non-forest purposes. Though formed with due diligence by the legislative body, it still marks number of loopholes which need to be addressed before the implementations of such rules. The claims raised by the environmentalists and the forest dwellers regarding the clearance of projects, displacement, rehabilitation and compensation are still not satisfied by the central government. On the other hand, the government claims that the rules emphasise to cut short the delays in clearance process of such projects. Here, even if the State or Union Territories are at the liberty to challenge the approval there is no assurance provided in regard to the proper rehabilitation of the tribals, hence directly exploiting their basic fundamental rights. For time and again Judiciary has played a vital role in widening the concept of locus standi and interpretation of environmental laws. The approach of judiciary is clear i.e., to maintain a balance between the development of country and to keep check on the exploitation of the rights of the citizens which is reflected through various precedents passed.

Now, the possible solution for the issues could be the revision of the said rules in a manner in which there is open representation of the claims of indigenous communities and environmentalists. India represents a democratic nation and it would be unjust if one benefits

<sup>84</sup>Supra note at 54.

<sup>85</sup>Prasad Sahu v. State of Orissa A.I.R 1963 Orissa 24; Madanlal Sethi and Others v. State of Madhya Pradesh 1997 (5) SCC 141; Sarup Singh & Co v. State of Bihar A.I.R 2001 Patna 36; Tej Bahadur Dubey v. Forest ranged officer (SW) Hyderabad (2003) 3 ILD 1281 (SC); Mahavir Timber Merchants v. Government of Andhra Pradesh, 2001 (5) ALD 198, 2006 (1) JCR 75 AP.

<sup>86</sup> T. N. Godavarman Thirumulpad v. Union of India A.I.R 1996 SC 1228; WWF- India v. Union of India., (2013) 8 SCC 234.

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by compromising other's rights. The democratization of the conservation process is of utmost important to the fight to replenish the environment.



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