

ARIZONA JOURNAL OF ENVIRONMENTAL LAW & POLICY

VOLUME 14

SPRING 2024

SPECIAL ISSUE

PROTECTED AREAS: THESE “STATES WITHIN A STATE” REQUIRE SEPARATE OVERSIGHT HUMAN RIGHTS MECHANISMS

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INTRODUCTION

I. THE CONTEXT

Indigenous Peoples have been bearing the brunt of saving the world’s biodiversity and ecosystem. Their relations with nature—which preserved mother earth in its natural pristineness—have made them a disproportionate target. Their role for conservation of nature is at times acknowledged, but seldom legally codified. The colonial legacy of creating protected areas, in the words of the UN Special Rapporteur on Indigenous Peoples Mr. José Francisco Calí Tzay, “as recreational opportunities, hunting grounds for Western colonial elites” displaced millions of indigenous peoples.² The displacement has now gathered pace because of the increased focus on climate change.

In India, the first protected areas were created in the form of the ‘reserved forests’ under the Forest Act of 1927. The Act, inter alia, empowered the State to declare “reserve forests” and defined “forest offence”, making the inhabitants—mainly indigenous peoples—criminals in their own lands for carrying out their traditional lifestyles and livelihoods.³ On February 21, 2024, Chief Minister of Odisha, India ordered withdrawal of over 48,000 cases against tribal community members related to excise (making country liquor), forest, and land encroachment.⁴ These 48,000 cases expose the extent of the criminalization of traditional food habits, livelihood practices and habitation of Indigenous Peoples with the nature. If 48,000 cases are pending in one State i.e. Odisha alone, one can conjure up the number of cases pending against Indigenous Peoples in India. Faced with criminalization of their lifestyles and livelihoods, Indigenous Peoples often asked: is it the forest department officials or the Indigenous Peoples who had come first in the areas designated as reserved forest? Indigenous Peoples have lived in these areas from time immemorial, but their continued presence is criminalized under the Forest Act.

After establishing the reserved forests, India established its first national park, currently known as the Jim Corbett National Park, in 1936, followed by Kanha National Park and Tadoba National Park in 1955 and Madhav National Park in 1959, without any legal framework. India enacted the Wildlife Protection Act of 1972 and the remaining 102 national parks were established by 2023. Therefore, the national parks in India were established after the 1970s.⁵

²Statement of José Francisco Calí Tzay, the UN Special Rapporteur on the rights of Indigenous Peoples is available at <https://www.facebook.com/Pause30by30/videos/7066091473443968/>.

³The Forest Act of 1927 is available at

https://www.indiacode.nic.in/bitstream/123456789/19313/1/the_indian_forest_act%2C_1927.pdf.

⁴. *Odisha to withdraw 48000 minor cases against tribals*, *The Hindustan Times*, Feb 21, 2024

<https://www.hindustantimes.com/india-news/odisha-to-withdraw-48000-minor-cases-against-tribals-101708528998681.html>.

⁵Please see List of National Parks published by ENVIS Centre on Wildlife & Protected Areas, Government of India, https://wiienvis.nic.in/Database/npa_8231.aspx.

This historical background is necessary to understand that prior to the issuance of notification of these areas as “protected areas,” Indigenous Peoples have been living in these territories. They faced massive human rights violations once the process of establishing the protected areas started, as the right to free, prior, and informed consent (FPIC) was recognized only in 1996 under Section 4(i) of Panchayats (Extension to the Scheduled Areas) Act of 1996.⁶ Once an area was notified as a “protected area,” Indigenous Peoples became offenders in their own lands at the hands of the authorities. They faced massive human rights violations when they pressed for their rights vis-à-vis these protected areas. Even if their right to stay inside the protected areas was recognized, they literally survived in the face of constant human rights violations. If they were relocated, the world has not yet seen a good case of rehabilitation and resettlement. Even if the power was shared by the authorities through joint management of the protected areas in exceptional cases, Indigenous Peoples survived at the mercy of the authorities. It is a case of *déjà vu*: the practices of the colonial times being replicated.

II. THE ISSUE OF RACISM AND RACIAL DISCRIMINATION

One of the moot questions is whether there are acts of racial discrimination with respect to conservation and human rights violations of Indigenous Peoples.

That racism has many manifestations has been stressed by many legal scholars. Institutional racism need not manifest like individual acts of racism and racial discrimination that people are usually familiar with. It can be subtle and indirect.

Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, CERD) defines “racial discrimination” as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”⁷ Across the world, States have enacted conservation laws which have “the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life” of the Indigenous Peoples.

The ‘origin’ or ‘descent’ of the Indigenous Peoples from their territories that are selected/targeted for conservation is a critical element to understand the racial discrimination against them. Descent is not only about ‘inherited occupation’ but also about ‘analogous systems of inherited status which nullify or impair their equal enjoyment of human rights’ as held by the

⁶Section 4 (i) states, “the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level”. It can be viewed at <https://www.indiacode.nic.in/bitstream/123456789/1973/1/A1996-40.pdf>.

⁷The International Convention on the Elimination of All Forms of Racial Discrimination is available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racia> l.

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CERD Committee in its General Comment No.29 on descent.⁸ Indigenous Peoples face institutional racial discrimination in protected areas because of their origin or descent from particular territories. This is akin to 'national' origin provider under Article 1 of the ICERD.

This institutional racial discrimination is further reflected by the disproportionate targeting of indigenous peoples for conservation initiatives.

In Asia, India's experience shows the extent of disproportionate targeting of Indigenous Peoples and other forest dwellers in conservation efforts. As of July 2023, India had a total of 106 notified national parks. This author's preliminary research shows that 89 out of 106 notified national parks, i.e. about 84%, were established in the areas in which Scheduled Tribes (STs) inhabited and therefore, were impacted.⁹

In the remaining seventeen national parks not inhabited by the STs in India, two national parks (South Button Island National Park and Rani Jhansi Marine National Park under Andaman and Nicobar Islands) are marine areas and do not have any human habitation; four are zoos (Van Vihar, Kasu Brahmananda Reddy, Mahaveer Harina Vanasthali and Salim Ali); in four national parks (Col. Sherjung Simbalbara, Neora Valley, Singalila and Fossil) information about the inhabitation of the STs could not be verified and in the remaining seven national parks, general category people were impacted.¹⁰

The fact that indigenous peoples — who constitute about 8.6% of the total population of India—also inhabit the areas in which about 84% of the national parks were established, shows their disproportionate targeting that can be termed as institutional discrimination. The most populous States like Uttar Pradesh and Bihar only have one national park each, i.e. Dudhwa National Park in Uttar Pradesh, inhabited by indigenous Taru people, and Valmiki National Park in Bihar, inhabited by indigenous Tharu, Oraon, Munda, Lohra, Bhuiya, and more.¹¹ The designation of the protected areas depends on a number of factors including vote bank politics and expected protests of the people that indicate the State's biased actions to target Indigenous Peoples.

Most national parks in Malaysia, Indonesia and Cambodia were established in the areas inhabited by Indigenous Peoples.¹²

⁸The CERD's General General Comment No.29 on descent is available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/DownloadDraft.aspx?key=wUwh7d2h6SmcUxSca+321ooyj33jV1eU2/nJKEd+a3FAQ2V2bkpe+zA32i0OJgXoZoW8e/Z28KpDeYlqA7urnA==.

⁹ Please see "List of National Parks in India & Indigenous Peoples" at 84% Of The India's National Parks Are In Tribal Inhabited Areas, Kunming-Montreal Global Biodiversity Framework Will Destroy Indigenous Peoples Worldwide, Warns Suhas Chakma", Rights & Risks Analysis Group, 22 March 2024 for the list of LIST OF NATIONAL PARKS IN INDIA & HABITATION OF INDIGENOUS PEOPLES <https://www.rightsrisks.org/press-release/press-release-84-of-the-indias-national-parks-are-in-tribal-inhabited-areas/>.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

III. PAST AS THE FUTURE: TARGET 3 OF THE KUNMING-MONTREAL GLOBAL BIODIVERSITY FRAMEWORK TO DOUBLE GLOBAL PROTECTED AREAS

The disproportionate targeting of Indigenous Peoples to date foretells the impending further destruction of Indigenous Peoples under Target 3 of the Kunming-Montreal Global Biodiversity Framework of the Conference of the Parties to the UN Convention on Biological Diversity.¹³ Target 3 seeks to increase terrestrial, inland water, coastal, and marine areas, especially areas of particular importance for biodiversity and ecosystem functions and services, at least to 30%.¹⁴ As of 2023, protected areas covered roughly about 16% of the world's terrestrial area.¹⁵ About 84% of India's national parks were established on the territories inhabited by Indigenous Peoples.¹⁶ If the "30x30" target is to be met, it will cause devastating destruction to the Indigenous Peoples.

It is already visible. India's current initiatives to increase protected areas are mainly in the areas inhabited by Indigenous Peoples, as given below:

A. Case 1: Turning Kumbhalgarh Wildlife Sanctuary, Rajasthan into a Tiger Reserve

In August 2023, in-principal approval was given to declare the Kumbhalgarh Wildlife Sanctuary (KWS), located on the fringes of the Aravalli mountain range in Rajsamand District of Rajasthan, as a tiger reserve.¹⁷ Indigenous Peoples like the Bhil, Garasia and the nomadic Raika pastoralists who have been living in about 162 villages located inside and outside the KWS have opposed the initiative as it will cause displacement and loss of the community's livelihood.¹⁸ There are about twenty tribal villages located inside the KWS, who face direct threat of

¹³ The Kunming-Montreal Global Biodiversity Framework of the Conference of the Parties to the UN Convention on Biological Diversity can be accessed <https://www.cbd.int/doc/decisions/cop-15/cop-15-dec-04-en.pdf>.

¹⁴ *Id.*

¹⁵ Study finds land availability limited to achieve biodiversity targets and apply climate mitigation strategy, By Rohini Krishnamurthy, Down To Earth, 27 December 2023, <https://www.downtoearth.org.in/news/climate-change/study-finds-land-availability-limited-to-achieve-biodiversity-targets-and-apply-climate-mitigation-strategy-93590#:~:text=As%20of%202023%2C%20protected%20areas,policies%20depend%20on%20land%20use>.

¹⁶ "List of National Parks in India & Indigenous Peoples" at 84% Of The India's National Parks Are In Tribal Inhabited Areas, Kunming-Montreal Global Biodiversity Framework Will Destroy Indigenous Peoples Worldwide, Warns Suhas Chakma", Rights & Risks Analysis Group, 22 March 2024 for the list of LIST OF NATIONAL PARKS IN INDIA & HABITATION OF INDIGENOUS PEOPLES

<https://www.rightsrisks.org/press-release/press-release-84-of-the-indias-national-parks-are-in-tribal-inhabited-areas/>

¹⁷ 'New Kumbhalgarh tiger reserve in Rajasthan to displace indigenous tribes', The New Indian Express, 25 August 2023,

<https://www.newindianexpress.com/nation/2023/Aug/25/new-kumbhalgarh-tiger-reserve-in-rajasthan-to-displace-indigenous-tribes-2608556.html>.

¹⁸ *Id.*

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displacement.¹⁹ In 2022, a village council resolution was passed against declaring the forest as a tiger reserve and a memorandum was submitted to the Chief Minister of Rajasthan, the Environment and Forest Minister and the District Collector.²⁰

B. Case 2: Expansion of the Nauradehi Sanctuary area, Madhya Pradesh

On December 20, 2023, protestors, predominantly Indigenous Peoples and other forest dwellers under the banner of the Nauradehi Displacement Sangharsh Committee, staged a sit-in strike in front of the District Collector's office against imminent displacement by the expansion of the Nauradehi Sanctuary area in Madhya Pradesh.²¹ Their ancestors have lived in these villages for generations.²² About 22 out of the targeted 90 villages have already been displaced.²³ About six villages in the core zone of the sanctuary, i.e. Patna Mohali, Ghana, and Malkuti in Narsinghpur district; Khapra Kheda in Sagar district; and Sarrabarai and Munali Kheda villages in Damoh district, face imminent displacement.²⁴

C. Case 3: Barak Bhuban Wildlife Sanctuary, Assam

On 19 June 2022, the Assam Government notified the Barak Bhuban Wildlife Sanctuary, spread over an area of 320 sq km between the Barak river and the Sonai river in three districts of Cachar, Hailakandi and Karimganj. The notification of the government of Assam, *inter alia*, states, “C. Rights and concessions: The area is free from encroachment as per record, there are no rights and concessions of any person in the area.”²⁵

During a field visit to the area on February 2-3, 2024 by this author, the Indigenous Khasi Peoples stated they had been living there for generations and presented records of villages including Kachukhal Part-2 Khasi Punjee village being established in 1914 as per the governmental records. Furthermore, the State government had already established schools, primary health centers, solar electrification facilities, and Public Health Engineering water supply schemes for these villages. The Indigenous Peoples in these villages had further been issued rations cards and voter cards and evidence that they have been paying revenue taxes for the lands. Ignoring these records, the official gazette, dated June 19, 2022 went on to deny the existence of the indigenous peoples themselves.²⁶ On February 2, 2024, a memorandum was

¹⁹“New Kumbhalgarh tiger reserve in Rajasthan to displace indigenous tribes”, The New Indian Express, 25 August 2023,

<https://www.newindianexpress.com/nation/2023/Aug/25/new-kumbhalgarh-tiger-reserve-in-rajasthan-to-displace-indigenous-tribes-2608556.html>.

²⁰*Id.*

²¹Protests Escalate as Tribal Villages Face Displacement from Nauradehi Sanctuary in Madhya Pradesh, 20 December 2023,

<https://en.themooknayak.com/tribal-news/protests-escalate-as-tribal-villages-face-displacement-from-nauradehi-sanctuary-in-madhya-pradesh>.

²²*Id.*

²³ *Id.*

²⁴*Id.*

²⁵The notification dated 19 June 2022 is available with the author.

²⁶ *Id.*

submitted to the Deputy Commissioner of Kachar, Assam by the Barak Valley Indigenous Headmen Coordination Committee seeking modification of the notification of the Barak Bhuban Wildlife Sanctuary to delete the impugned text i.e. “the area is free from encroachment as per record, there are no rights and concessions of any person in the area.”²⁷

IV. PATTERNS OF HUMAN RIGHTS VIOLATIONS IN PROTECTED AREAS IN ASIA

Indigenous Peoples face systematic and massive human rights violations in the process of as well as after the establishment of the protected areas, as summarized below:

First, non-recognition of the existence of Indigenous Peoples is the first attempt to deny the rights over lands and territories. As the Barak Bhuban Wildlife Sanctuary in Assam shows, the official notification went on to state that “there are no rights and concessions of any person in the area” against the government records.²⁸ This is an attempt to deny any rights or claims to Indigenous Peoples.

Second, in most countries in Asia, the right to free, prior and informed consent (FPIC) is not recognized under law. In India, FPIC was recognized under Section 4(i) of Panchayats (Extension to the Scheduled Areas) Act of 1996(PESA) and Section 3(2)(ii) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006 to grant approval or consent before any project/activity can start in tribal/forest areas.²⁹ Violation of the right to FPIC is the rule and respect for the same is the exception. It is a continuous struggle against manufacturing of consent notwithstanding excellent judgments of the Supreme Court ensuring the mandatory consent of the Gram Sabhas, as in the case of Orissa Mining Corporation Versus Ministry of Environment & Forest & Others.³⁰

Third, once an area is designated as a protected area, Indigenous Peoples find themselves in a situation where they are “damned if you do and damned if you don't.” Once an area is designated as a protected area, the State withdraws from undertaking any development programs as the people will be displaced and it may take decades for the State actually to act. The situation is made absolutely untenable, forcing affected persons to leave the areas.

²⁷Copy of the memorandum dated 13.02.2024 and other documents relating to their habitation in the area are available with the author.

²⁸ The notification dated 19 June 2022 is available with the author.

²⁹ Section 4 (i) states, “the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level”. It can be viewed at <https://www.indiacode.nic.in/bitstream/123456789/1973/1/A1996-40.pdf>.

Section 3(2)(ii) of the Forest Rights Act allows diversion of forest land for the following facilities managed by the Government which involve felling of trees not exceeding seventy-five trees per hectare for certain defined provided that “the clearance of such developmental projects shall be subject to the condition that the same is recommended by the Gram Sabha” while Section 4(e) of the Act requires “the free informed consent of the Gram Sabhas in the areas concerned to the proposed resettlement and to the package has been obtained in writing.”

³⁰The judgment of the Supreme Court of India in Orissa Mining Corporation Versus Ministry of Environment & Forest & Others is available at https://main.sci.gov.in/pdf/SupremeCourtReport/2013_v6_piv.pdf.

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A. Damned if you do:

If Indigenous Peoples win the right to stay inside the protected areas exercising the right to FPIC, they face the challenges for survival inside the national parks. There are severe restrictions from the state authorities and agents (such as contractors, private security agencies, eco-tourism promoters) on right to freedom of movement (including security at the gates; requirement of permission for entry or exists; security checks of the bags; monitoring the visits of the relatives), violations of the right to privacy (including through excessive surveillance), conducting searches without notice and prior information, including at late night where women and girls are sexually abused by the forest and wildlife officials, control over cultural practices, and limited access to development and welfare programs such as road, electricity, drinking water facilities, right to education, right to housing.³¹ Even for health emergencies, Indigenous Peoples living inside the protected areas are required to seek approval from the authorities for movement, and pregnant women and ill persons suffer a lot including casualties.³² When the Indigenous communities raise these issues, they are targeted by the authorities.³³ Most often than not, inhabitants face charges of making country-liquor (excise) cases, forest offences, or wildlife offences.³⁴ There are cases of extrajudicial executions too.³⁵

In 2023, there were reports that in the Ujungkulon National Park area of Indonesia, indigenous peoples had difficulty in obtaining access to basic rights such as the right to proper housing, health, education, and electricity.³⁶

In June 2022, in the Beng Per Wildlife Sanctuary of Cambodia, Ms Chan Lay Phiek, daughter of the community's second deputy chief, Heng Saphen of the indigenous Kuy people, was arrested and convicted for three months imprisonment in a Kangaroo court trial for cultivating on her own land.³⁷ This conviction came with a three year prison sentence.³⁸

In Botum Sakor National Park, in Cambodia, the largest national park and one of Cambodia's biodiversity hotspots, Indigenous tribes have long lived in harmony with the forest and its wildlife.³⁹ However, more than half of the park was sold off to private developers, mostly

³¹These violations were compiled by the author from various cases studies on protected areas.

³² *Id.*

³³ *Id.*

³⁴*Odisha to withdraw 48000 minor cases against tribals*, The Hindustan Times, Feb 21, 2024

<https://www.hindustantimes.com/india-news/odisha-to-withdraw-48000-minor-cases-against-tribals-101708528998681.html>.

³⁵ Firing in Bandipur Tiger reserve; hunter shot dead by forest guards, Kaumudi Online, Sunday 05 November, 2023, <https://keralakaumudi.com/en/news/news.php?id=1183098>.

³⁶Indigenous World 2023: Indonesia, International Work Group for Indigenous Affairs

https://www.iwgia.org/en/indonesia/5120-iw-2023-indonesia.html#_edn10.

³⁷No justice for Indigenous community taking on a Cambodian rubber baron by Gerald Flynn, Vutha Srey on 7 December 2022, Mongabay,

<https://news.mongabay.com/2022/12/no-justice-for-indigenous-community-taking-on-a-cambodian-rubber-baron/>.

³⁸*Id.*

³⁹ Cambodia: local people risk everything to defend national park sold off to highest bidders

to investors with ties to the ruling Cambodian People's Party.⁴⁰ In 2021, a massive swath of the park, including its densest expanse of forest, was handed over to the Royal Group.⁴¹ By July 2023, just about 18% of the national park remained protected.⁴² The companies developing the park promised jobs, homes, access to schools, and health centers, but none of these promises were kept.⁴³ From 2008 to 2021, about 1,333 families struggled for fair compensation.⁴⁴

B. Damned if you don't

If Indigenous Peoples do not win the right to reside inside the park, they face forced eviction, which is euphemistically called “voluntary relocation”. The process starts with corrupt rehabilitation and resettlement schemes coupled with little or no employment opportunities for the evicted persons.⁴⁵ This results in conflict with other communities on sharing local resources. With the loss of traditional livelihood means, mere survival becomes impossible! The world simply has not seen a single case/model case for rehabilitation and resettlement.

V. THE CHALLENGE OF INCREASING PRIVATIZATION OF THE PROTECTED AREAS

The initial purpose of creating protected areas “as recreational opportunities, hunting grounds for Western colonial elites” not only remains intact, but intensified to cover the elites of the world, beyond the Western hemisphere.⁴⁶

Eco-tourism and sustainable eco-tourism have become the currencies to create recreational opportunities for the elites of the world. The current trend of conservation is the increasing privatization of protected areas in the name of eco-tourism and sustainable eco-tourism, especially in countries where the governments face resource crunches to manage the protected areas. Consequently, the protected areas are increasingly becoming more about tourism and less about the protection of species. Expensive safaris offered by state and private conservators have become synonymous with conservation. Conservation has become a part of the tourism industry. India, which has considerable resources, enacted the Forest (Conservation) Amendment Act, 2023, with effect December 1, 2023, to broaden the ambit of forests and

Rod Harbinson | 24th March 2015, The Ecologist,
<https://theecologist.org/2015/mar/24/cambodia-local-people-risk-everything-defend-national-park-sold-highest-bidders>.

⁴⁰Cambodian conglomerate sparks conflict in Botum Sakor National Park by Gerald Flynn & Meng Kroypunlok on 20 July 2023, Mongabay,

<https://news.mongabay.com/2023/07/cambodian-conglomerate-sparks-conflict-in-botum-sakor-national-park>.

⁴¹*Id.*

⁴²*Id.*

⁴³*Id.*

⁴⁴*Id.*

⁴⁵ Observed by the author in a number of schemes in protected areas.

⁴⁶Statement of José Francisco Calí Tzay, the UN Special Rapporteur on the rights of Indigenous Peoples is available at <https://www.facebook.com/Pause30by30/videos/7066091473443968/>.

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wildlife conservation activities to include establishment of zoos, safaris, and eco-tourism facilities.⁴⁷

The participation of Indigenous Peoples in the eco-tourism or sustainable eco-tourism activities has been a case of inhumane and degrading treatment. In many ecotourism or sustainable eco-tourism project areas, one sees that Indigenous Peoples—especially women, girls, and elderly people—are made to sit in the model houses (made as traditional replicas of their houses) dressed up with traditional dresses ornaments, and musical instruments. Sometimes these Indigenous Peoples are also asked to perform traditional music and dances for the tourists. They are held captive for hours until the tourists depart.⁴⁸ More often than not, the participation of Indigenous Peoples in tourism activities is like animals in a zoo.

The situation is much more precarious for endangered communities or Indigenous Peoples on the verge of extinction if they are affected by the protected areas. They simply face extinction, unable to take any measure in the alien legal system.

VI. THE CASE FOR ESTABLISHING SEPARATE OVERSIGHT HUMAN RIGHTS MECHANISMS

Protected areas are not only about protecting biodiversity and ecosystems, but also about the people on whose lands these areas are established. If there are human beings, respect for international human rights standards at every step cannot be compromised. Yet, language of human rights has mostly been absent from the conservation authorities, whether governmental or private, or their funders. They have managed to restrict the debate to protecting the plant and animal species from the inhabitants of the land, framing them as criminals and poachers.

The protected areas are legally demarcated geographical areas to be governed by separate administration and law enforcement personnel.⁴⁹ They are not colonies, but are run like colonies. They are not prisons, but have all the features of open prisons where persons who are not convicted of any offense have to live under constant surveillance or suspicion. The administrators of the protected areas are often designated as “Wardens,” just like in prisons and other detention facilities.⁵⁰ Just like prisons too, no one enters the protected areas without the permission of the wardens or their subordinates.⁵¹ The wardens further have separate law enforcement personnel under their command, whether forest guards or private rangers with the

⁴⁷The Forest Conservation Amendment Act, 2023 is available at <https://egazette.gov.in/WriteReadData/2023/247866.pdf>.

⁴⁸ As told to researchers of the Rights & Risks Analysis Group during field visits to various parks.

⁴⁹ The observation is drawn by the author from the processes of declaration of protected areas under the Wildlife (Protection) Act of 1972.

⁵⁰ *Id.*

⁵¹ The Wildlife (Protection) Act of 1972 uses the terms such as Wardens.

power to arrest, use force and fire-arms, and even shoot to kill, all without any regard for the UN Code of Conduct for Law Enforcement Officials.⁵²

In India, the protected areas are notified and administered under the Wildlife (Protection) Act of 1972. Under Section 4 of the Act, the State Government can appoint a Chief Wild Life Warden, Wild Life Wardens and other such officers and employees as may be necessary for each protected area. These officers have been given a range of powers to control the protected areas under Section 33 of the Act and further can exercise powers of search, arrest and detention (section 50). The Act further provides for imposing penalties including imprisonment (Section 51) and actually overturns the presumption of innocence against a person who had been previously convicted of an offence under the Act while seeking bail if arrested (Section 51A), etc.⁵³

The power of the authorities of the protected areas to impose restrictions on entry is of particular importance. Section 27 of the Wildlife Protection Act states that “(1) No person other than, (a) a public servant on duty, (b) a person who has been permitted by the Chief Wild Life Warden or the authorised officer to reside within the limits of the sanctuary, (c) a person who has any right over immovable property within the limits of the sanctuary, (d) a person passing through the sanctuary along a public highway, and (e) the dependents of the person referred to in clause (a), clause (b) or clause (c), shall enter or reside in the sanctuary, except under and in accordance with the conditions of a permit granted under section 28.”⁵⁴ Permission for entry can be given only for (a) investigation or study of wildlife and purposes ancillary or incidental thereto; (b) photography; (c) scientific research; (d) tourism; (e) transaction of lawful business with any person residing in the sanctuary as per Section 28 of the Act.⁵⁵

These provisions of the Wildlife Protection Act, 1972 have effectively come to mean that national human rights institutions cannot visit the reserved areas without prior permission of the authorities under the Act and therefore, the protected areas essentially operate as States within a State.

This is the standard practice across the world and India is not an exception. A number of private conservators, however, have been setting up grievance mechanisms to facilitate “Caesar Judges Caesar”! The role of the private conservators remains concerning in the countries where the States require financial resources while they act as the poodles of the authorities in powerful States.

Since protected areas presently cover 16% of the world’s terrestrial area in which millions of people, mainly indigenous peoples, are affected, these areas cannot be left alone to be governed by the government or private conservators with self-regulating mechanisms. These

⁵²UN Code of Conduct for Law Enforcement Officials is available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/code-conduct-law-enforcement-officials#:~:text=No%20law%20enforcement%20official%20may,threat%20to%20national%20security%2C%20internal>.

⁵³The Wildlife Protection Act is available at <https://tribal.nic.in/downloads/FRA/Concerned%20Laws%20and%20Policies/Wildlife%20Protection%20Act,%201972.pdf>.

⁵⁴ *Id*

⁵⁵ *Id*.

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“States within States” with separate administrative arrangements and law enforcement personnel require monitoring by specific external oversight human rights mechanisms. It is time for the National Human Rights Institutions, national judiciary, regional human rights mechanisms, and UN human rights procedures to establish separate monitoring mechanisms to address human rights violations in these Gitmos of the world.

ANNEX I: LIST OF NATIONAL PARKS IN INDIA & INHABITANCE OF INDIGENOUS PEOPLES

Name of State/ UT	SL No	Name of Protected Area	Year of Creation	Area (in km ²)	Whether STs & Other Forest Dwellers are impacted	Name of the STs & Other Forest Dwellers
Andhra Pradesh	1	Papikonda	2008	1012.8588	Yes	Koya
Andhra Pradesh	2	Rajiv Gandhi (Rameswaram)	2005	2.3952	Yes	Yanadi and other STs
Andhra Pradesh	3	Sri Venkateswara	1989	353.62	Yes	Yanadi
Arunachal Pradesh	4	Mouling	1986	483.00	Yes	Adi
Arunachal Pradesh	5	Namdapha	1983	1807.82	Yes	Lishu
Assam	6	Dibru-Saikhowa	1999	340.00	Yes	Mising
Assam	7	DihingPatkai	2021	234.26	Yes	Singhpho, Tai Phake, Tai Khyamang, Tai Ahom, Khamti, Moran, Chutia, tea tribe
Assam	8	Kaziranga	1974	889.51	Yes	Mising
Assam	9	Manas	1990	500.00	Yes	Bodo
Assam	10	Nameri	1998	200.00	Yes	Nyishi, Adi

Assam	11	Rajiv Gandhi (Orang)	1999	78.81	Yes	Adivasi, Tea Tribe
Assam	12	Raimona	2021	422.00	Yes	Bodo
Bihar	13	Valmiki	1989	335.65	Yes	Tharu, Oraon, Munda, Lohra, Bhuiya
Chhattisgarh	14	Guru Ghasidas (Sanjay)	1981	1440.71	Yes	Gond
Chhattisgarh	15	Indravati (Kutru)	1982	1258.37	Yes	Gond, Bhunjia, Muria, Halba, Kamar, Munda
Chhattisgarh	16	Kanger Valley	1982	200.00	Yes	Gond
Goa	17	Mollem	1992	107.00	Yes	Dhangar, Velips
Gujarat	18	Blackbuck (Velavadar)	1976	34.53	Yes	Kathi
Gujarat	19	Gir	1975	258.71	Yes	Maldhari
Gujarat	20	Marine (Gulf of Kachchh)	1982	162.89	No	Marine
Gujarat	21	Vansda	1979	23.99	Yes	Bhils, Kunbi, Warli, Chowdry, Gamit, Bhoi, and Kukna
Haryana	22	Kalesar	2003	46.82	No	No tribals
Haryana	23	Sultanpur	1989	1.43	No	No tribals
Himachal Pradesh	24	Great Himalayan	1984	754.40	Yes	Gaddi
Himachal Pradesh	25	Inderkilla	2010	94.00	No	No tribals
Himachal Pradesh	26	Khirganga	2010	705.00	Yes	Gaddi, Kinnauri
Himachal Pradesh	27	Pin Valley	1987	675.00	Yes	Bhotia

Himachal Pradesh	28	Col. Sherjung Simbalbar	2010	27.88	Info unavailable	N/A
Jharkhand	29	Betla	1986	226.33	Yes	Oraon, Munda, Santhal
Karnataka	30	Anshi	1987	417.34	Yes	Scheduled Tribes
Karnataka	31	Bandipur	1974	872.24	Yes	Soliga, Kuruba, Jenu and Betta Kuruba
Karnataka	32	Bannerghatta	1974	260.51	Yes	Hakki Pakki
Karnataka	33	Kudremukh	1987	600.57	Yes	Malekudiya
Karnataka	34	Nagarahole (Rajiv Gandhi)	1988	643.39	Yes	Jenu Kuruba, Betta Kuruba and Yerava
Kerala	35	Anamudi Shola	2003	7.50	Yes	Muthuvan
Kerala	36	Eravikulam	1978	97.00	Yes	Muduvan
Kerala	37	Mathikettan Shola	2003	12.82	Yes	Muthuvan
Kerala	38	Pambadum Shola	2003	1.32	Yes	Muthuvan, Hill Pulaya
Kerala	39	Periyar	1982	350.00	Yes	Mannan, Palian
Kerala	40	Silent Valley	1984	89.52	Yes	Kurumba, Muduga, Irula, Kattu Naiken
Madhya Pradesh	41	Bandhavgarh	1968	448.842	Yes	Baiga, Gond
Madhya Pradesh	42	Dinosaur Fossils	2011	0.897	Yes	Bhils
Madhya Pradesh	43	Fossil	1983	0.27	Info unavailable	N/A

Madhya Pradesh	44	Pench	1975	292.857	Yes	Gond
Madhya Pradesh	45	Kanha	1955	941.793	Yes	Baiga, Gond
Madhya Pradesh	46	Kuno	2018	748.761	Yes	Saharia PVTG
Madhya Pradesh	47	Madhav	1959	375.23	Yes	Saharia PVTG
Madhya Pradesh	48	Panna	1981	542.66	Yes	Rajgond, Saura Gond
Madhya Pradesh	49	Sanjay	1981	464.643	Yes	Gond
Madhya Pradesh	50	Satpura	1981	528.729	Yes	Korku, Bharia, Gond
Madhya Pradesh	51	Van Vihar	1979	4.452	No	Zoo
Maharashtra	52	Chandoli	2004	317.67	Yes	Dhangar (Pastoral community)
Maharashtra	53	Gugamal	1975	361.28	Yes	Bori, Koha and Kund
Maharashtra	54	Nawegaon	1975	133.88	Yes	Scheduled Tribes
Maharashtra	55	Pench (Jawaharlal Nehru)	1975	257.26	Yes	Scheduled Tribes
Maharashtra	56	Sanjay Gandhi (Borivilli)	1983	86.96	Yes	Scheduled Tribes
Maharashtra	57	Tadoba	1955	116.55	Yes	Madia Gond
Manipur	58	Keibul-Lamjao	1977	40.00	Yes	Meities and other forest dwellers
Manipur	59	Shiroi	1982	100.00	Yes	Scheduled Tribes
Meghalaya	60	Balphakram	1986	220.00	Yes	Garo
Meghalaya	61	Nokrek Ridge	1997	47.48	Yes	Garo
Mizoram	62	Murlen	2003	100.00	Yes	Mizo

PROTECTED AREAS:

THESE "STATES WITHIN A STATE" REQUIRE SEPARATE OVERSIGHT HUMAN RIGHTS MECHANISMS

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Mizoram	63	Phawngpui (Blue Mountain)	1997	50.00	Yes	Mizo
Nagaland	64	Intanki	1993	202.02	Yes	Zeliangrong
Odisha	65	Bhitarkanika	1988	145.00	Yes	Scheduled Tribes
Odisha	66	Simlipal	1980	845.70	Yes	Khadia
Rajasthan	67	Desert	1992	3162.00	No	N/A
Rajasthan	68	Keoladeo Ghana	1981	28.73	Yes	Banjara (Pastoral community)
Rajasthan	69	Mukundra Hills	2006	200.54	Yes	Gurjar (Pastoral community)
Rajasthan	70	Ranthambhore	1980	282.00	Yes	Hunter-gatherers and other forest dwellers
Rajasthan	71	Sariska	1992	273.80	Yes	Meena
Sikkim	72	Khangchendzonga	1977	1784.00	Yes	Bhutia, Lepcha
Tamil Nadu	73	Guindy	1976	2.7057	Yes	Irula
Tamil Nadu	74	Gulf of Mannar Marine	1980	526.02	No	Marakeyars (Non-tribals)
Tamil Nadu	75	Indira Gandhi (Annamalai)	1989	117.10	Yes	Kadar, Muthuvar, MalaiMalasar, Pulaiyar, Eravalar
Tamil Nadu	76	Mudumalai	1990	103.23	Yes	Kattunayakar
Tamil Nadu	77	Mukurthi	1990	78.46	Yes	Toda
Telangana	78	Kasu Brahmananda Reddy	1994	1.425	No	Zoo
Telangana	79	Mahaveer Harina Vanasthali	1994	14.59	No	Zoo
Telangana	80	Mrugavani	1994	3.60	Yes	Tribals

Tripura	81	Clouded Leopard	2007	5.08	Yes	Tripuris
Tripura	82	Bison (Rajbari)	2007	31.63	Yes	Tripuris
Uttar Pradesh	83	Dudhwa	1977	490.00	Yes	Tharu
Uttarakhand	84	Corbett	1936	520.82	Yes	Van Gujjar (Nomadic tribe)
Uttarakhand	85	Gangotri	1989	2390.02	Yes	Van Gujjar (Nomadic tribe)
Uttarakhand	86	Govind	1990	472.08	Yes	Van Gujjar (Nomadic tribe)
Uttarakhand	87	Nanda Devi	1982	624.60	Yes	Bhotiya
Uttarakhand	88	Rajaji	1983	820.00	Yes	Van Gujjar (Nomadic tribe)
Uttarakhand	89	Valley of Flowers	1982	87.50	Yes	Bhotiya
West Bengal	90	Buxa	1992	117.10	Yes	Bhutias
West Bengal	91	Gorumara	1992	79.45	Yes	Santhals and Oraon stay nearby
West Bengal	92	Jaldapara	2014	216.34	Yes	Toto, Mech, Bodo
West Bengal	93	Neora Valley	1986	159.8917	Info unavailable	N/A
West Bengal	94	Singalila	1986	78.60	Info unavailable	N/A
West Bengal	95	Sunderban	1984	1330.10	Yes	Munda, Santhal, Bhumij, Oraon
Andaman & Nicobar Islands	96	Campbell Bay	1992	426.23	Yes	Shompen and the Nicobaris

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Andaman & Nicobar Islands	97	Galathea Bay	1992	110.00	Yes	Shompen
Andaman & Nicobar Islands	98	Mahatama Gandhi Marine (Wandoor)	1983	281.50	No	Marine
Andaman & Nicobar Islands	99	Mount Harriett	1987	46.62	Yes	Negrito
Andaman & Nicobar Islands	100	Rani Jhansi Marine	1996	320.06	No	Marine
Andaman & Nicobar Islands	101	Saddle Peak	1987	32.54	No	Marine
Jammu & Kashmir	102	City Forest (Salim Ali)	1992	9.07	No	Zoo
Jammu & Kashmir	103	Dachigam	1981	141.00	Yes	Gujjar, Bakkarwals
Jammu & Kashmir	104	Kazinag	2000	90.88	Yes	Gujjars and Bakkarwals
Jammu & Kashmir	105	Kishtwar High Altitude	1981	2191.50	Yes	Gujjars and Bakkarwals
Ladakh	106	Hemis	1981	3350.00	Yes	Ladhakis