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# **IS INCONSISTENCY IN LAWS CAUSING OBSTRUCTIONS IN WILDLIFE AND BIODIVERSITY PROTECTION IN INDIA?**

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**Abstract:** India has different legal frameworks for the protection of forests, wild life, and biodiversity of the nation respectively. Indian Forest Act, 1927 has a colonial structure for a scientific management of forestry. The Wild Life (Protection) Act, 1972 is a specific framework for the protection of wild life. The Biological Diversity Act, 2002 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 have a strong inclination towards anthropocentric approach. Out of the five federal Acts including Forest (Conservation) Act, 1980, only Wild Life (Protection) Act 1927 was providing complete protection to wild life and biological diversity. These five Acts have overlapping jurisdictions over designated forest lands, protected areas, ecologically important areas, wild life and biological diversity of India. Overlaps and inconsistency of the provisions in these Acts are creating contradictions and confusions in the implementation of the Acts for the protection of wild life and biodiversity habitats. This is one of the prominent reasons for increased loss of India's biodiversity and wild life. This paper advocates the urgent need to review these laws in the light of the changed scenario for better protection of the rich wild life and biological diversity of the nation.

**Keywords:** Inconsistent Laws, Forest, Protected Area, Protection of Biological Diversity, Wild Life.

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**Introduction:** India is a unique combination of high population density, rapidly growing economy, widespread poverty, the majority of the rural population directly or indirectly depending on forests, and a status as one of the 17 mega-biodiverse countries (Karanth et al., 2008).

The degree of exploitation of resources tremendously increased in British India. Some measures were taken by the British Government for the conservation of forests, to ensure a continuous supply of resources by enacting different laws. British forest administration was carried out by increasing state control over resources and excluding forest dependent communities from the decision-making process (Guha, 1983). Game reserves of the erstwhile princely states became the foundation of present day protected areas (PAs) which allowed wild life, to survive in its natural habitat areas (Karanth et al., 2008).

The Indian Forest Act, 1927 (IFA) was enacted to consolidate all the laws relating to forests, the transit of forest produce and duty leviable on timber and forest produce<sup>1</sup>. This colonial Act is in force even after independence. The Act has provisions for declaration of different types of forests, scientific forest management and regulation of forest produce.

In 1972 a strong instrument, the Wild Life (Protection) Act (WLPA), for the protection of wild life listed in schedules of the Act was passed, initially banning hunting without a permit and later on banning it completely in 1991. With the enactment of WLPA, the next two decades witnessed the gradual growth in the notification of special and inviolate areas, which increased designated protected areas (PAs) for wild life at least on paper. Such areas reserved for wild life protection increased from 1% to almost 5% of India's landscape (Karanth et al., 2008). Presently there are 764 PAs of a different type.

With the 42<sup>nd</sup> Amendment Act of 1976 the subjects of 'forest' and 'protection of wild animals and bird' were shifted from State List to the Concurrent List (Entry no. 17A and 17B), giving higher authority to the Central

Government over management of forest wealth and wild life. Forest (Conservation) Act, 1980 (FCA) was enacted subsequent to this amendment, to restrict the States from diverting forest lands for non-forest use without prior permission from the Central Government (Ravindranath et al., 2008).

In 2002, India enacted the Biological Diversity Act (BDA) for conservation and protection of biological diversity in general. The Act adopted the principle of ‘sustainable use with fair and equitable sharing of benefits’, which is the core principle of the Convention on Biological Diversity, 1992. The BDA primarily deals with the subject of access to ‘genetic resources and traditional-knowledge’ by foreign individuals, institutions or companies, and equitable sharing of benefits, with the provider country, which would be arising out of the use of biological resource and traditional knowledge. The BDA exempts local people for non-commercial use of bio-resources and *vaids* and *hakims* for traditional uses.

In 2006 the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, typically known as Forest Rights Act (FRA) was enacted. FRA for the first time recognized that there are Scheduled Tribes and other traditional forest dwellers who have been residing in forests but their rights have not been recorded. So the FRA framework was established to recognize and record the forest rights of such eligible communities which are already vesting in them and to establish the nature of evidence required for such recognition.

Many authors and experts have done work on protected area (PA) management, assessment of effectiveness of management in such areas and also on the overall problems associated with wild life conservation and biodiversity protection in India (Rangarajan, 2005, Barve et al., 2005, Karanth et al., 2008, Singh and Kushwaha, 2008, Bhat, 2010). Ample writing is also available in the famous debate over creation of inviolate areas versus developmental and livelihood rights of the local communities living within such included areas (Terborgh, 1999, 2000; Schwartzman et al., 2000; Brockington, 2002; Sanderson and Redford, 2003; Roe and Elliot, 2004; Adams and Hutton, 2007; Dowie, 2009). In spite of the creation of numerous PAs supposedly ‘inviolate’, figures state that four million people are residing in these protected areas, whereas 200 million are residing on the forest lands (Blaikie and Baginski, 2007, Springate-Baginski and Blaikie, 2013, Lasgorceix and Kothari, 2009). A substantial literature is there to understand the use of WLPA to punish Wild Life criminals and on the pendency of wild life-related cases in India. However, there is a lack of a published study, on interlinks, overlaps and inconsistencies, between different Acts, which are directly or indirectly related to protection of wild life and biodiversity. This paper is bridging this gap and is bringing out the interrelation between these acts while emphasizing the need to revise the WLPA for better protection of wild life and biodiversity of India.

**Aim and Methodology:** In this paper, analysis of different legal provisions of selected Acts and relevant verdicts given by the Supreme Court of India are used to understand the inconsistencies in laws. This paper aims at analysing different legal provisions of IFA, WLPA, FCA, BDA, and FRA especially to understand their collective effect on the protection of wild life and biodiversity.

Comparative law is most commonly used to compare similar legislations of different countries to understand benefits and drawbacks in the system of a particular country (Kahn-Freund, 1974, Frankenberg, 1985, Reimann, 2002). Sequential text analysis method is helpful to understand the relevance of a legal framework in the historical context and also to know the nature of superseding jurisdictions of different laws (Miles and Huberman, 1994, Graesser et al., 2004). A combination of both these methods is used, to arrive at conclusion. Five legislations which have been compared were selected on the basis of their expressed relevance to wild life and biodiversity protection and due to the common jurisdiction of these Acts.

**Key Findings:**

Laws Compared	IFA	WLPA	FCA	BDA	FRA	Inconsistencies
Criteria for comparison						
Earlier enactments	Forest Act, 1878	The Wild Birds and Animals Protection	None	None	None	None

Year of enactment	1927	Act, 1912 1972	1980	2002	2006	--
Title of the Act	Indian Forest Act	Wild Life (Protection) Act	Forest (Conservation) Act	Biological Diversity Act	Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Right) Act (FRA)	IFA and WLPA work for creating areas without human settlements whereas FRA works for recognition of rights of human settlements inside such areas.
International reference	None	None	None	Convention on Biological Diversity, 1992	None	None
Nature of legislation on the basis of Objects and Reasons	Regulatory	Prohibitory	Regulatory	Regulatory	Declaratory and Regulatory	All the Acts, have overlapping jurisdictions and have drastically different objectives to achieve. WLPA is protection oriented, whereas all the other legislations are utilization oriented.
Areas Notified	Reserved Forest, Protected Forests, Village Forests	Sanctuaries, National Parks, Community Reserves, Conservation Reserves, (collectively PAs) and Tiger Reserves	(Law to establish procedure for diversion of forest land for non-forest use)	Biodiversity Heritage Sites (voluntary declaration valid for three years)	Recognition of rights in all the designated areas declared under IFA, WLPA or BDA	Each type of area has its own objectives and rules for governance. Overlaps in these areas create contradictions in provisions applicable to the areas
Superseding Power	None	Supersedes all the previous Acts or provisions repugnant to any provision of the Act	None	The provisions of this Act are in addition to, and not in derogation of, the provisions of any other law relating to forests or wild life	Supersedes all the previous Acts or provisions repugnant to any provision of the Act	(1) Forest land gets upgraded to the inviolate area when notified as a PA. Though WLPA supersedes all the previous acts, forest land inside PA is diverted using FCA. (2) If the FRA supersedes all the previous Acts, who would be the decision maker for management, conservation, and regulation of PAs and Tiger Reserves?

Authorities created	Hierarchy of forest department	Wild life officers, National Board for Wildlife, State Board for Wildlife, National Tiger Conservation Authority, Central Zoo Authority	Central Government	National Biodiversity Authority, State Biodiversity Board, Biodiversity Management Committees	Gram Sabha, Sub-Divisional Committee, District Level Committee, State Level Monitoring Committee	At least 5 different authorities/committees work at a time. This may create different power centres within the local population, dividing them against each other.
Jurisdictional Overlap	Forest land	Forest Land included in PAs and Tiger Reserves	Forest Land	Forest Land (Due to the definition of <b>forest land</b> done by Supreme Court on 12.12.96.	Recognition of rights over forest land	Inconsistency becomes evident with the collective application of these Acts.
Variety of terms	Reserved Forests, Protected Forests, Village Forests	Tiger Reserves, Protected Areas, Critical Tiger Habitat, Core – Buffer	None	None	Critical Wild Life Habitat, Forest Villages	A variety of terms used with inconsistent norms associated with these terms.

**Discussion:** In spite of having a stringent legislation like WLPA, incidences of poaching of wild life are increasing for satisfying cross-boundary demands of animal articles and medicines, which is an increasing area of concern (Rangarajan, 2005). The number of species in India in the IUCN red list (list of threatened species) is increasing day by day from 973 species in 2014 to 988 species in 2016 and 1,052 in May 2017<sup>2</sup>. Depletion of forest area and loss of biodiversity has become a continuous phenomenon. Apart from other reasons one of the prominent reasons is inconsistencies in the present laws which become a major problem for decision makers to choose the law in context. Details of these inconsistencies in laws are discussed in the following sections.

**The Inconsistency in Objectives of the Acts:** A comparison of the statement of objects and reasons of the five selected Acts i.e. IFA, WLPA, FCA, BDA, and FRA, shows that

- The IFA has no objective of conservation or preservation of forest resource, rather the object of the Act is just to consolidate the previous Acts related to forest management and to facilitate the better transit of forest produce. This makes the legislation regulatory in nature.
- The WLPA has a focused objective to protect diminishing wild life and to improve the degree of protection of Sanctuaries and National Parks (Protection of the biodiversity source areas). Therefore this legislation is prohibitory in nature.
- BDA and FRA both have the stated objective of conservation, recognition of rights of local communities, and sustainable utilization of genetic resources within the forest lands and PAs. Wherever FRA is applicable in notified PAs, BDA is also applicable. These laws are regulatory in nature whereas FRA is also a declaratory in nature, as its primary objective is declaration and recognition of rights of particular persons on forest land.
- Above points clearly show that the very purpose of the enactment of WLPA is getting hampered with the enactment of FCA, FRA and BDA as WLPA is creating inviolate areas for protection of wild life whereas other enactments are recognizing and processing rights of different stakeholders inside these PAs.

**The Title of the Acts and Its Context:** Scholars have differentiated between the terms 'conservation' and 'protection/preservation' (Norton, 1986). The Conservation concept includes protection for future utilization, whereas protection or preservation does not have utilization as an objective but includes safeguarding wilderness as an aesthetically and recreationally essential land patch, devoid of anthropocentric use. The terms used in the titles of the forest and wild life laws seem to be supporting this interpretation. WLPA uses the term 'protection' in its title, whereas the term 'conservation' is used in the title of FCA for use of forest resource. However, none of the subsequent legislations supporting protection of wild life and biodiversity has used these terms in the title of the enactment. This distinction is assuming forest and biodiversity for conservation means to be utilized in future whereas WLPA is preservation oriented. Applicability of all these laws on same landscape created availability of multiple norms to select when it comes to regulation of resources.

**Inconsistencies with Respect to Notified Areas under Different Acts:** The subjects 'forests' (entry 17 A) and 'protection of wild animals and birds' (entry 17B) (Schedule VII of the Constitution of India)<sup>3</sup> have independent entries in the Concurrent List (List III) of the Constitution of India, each one has an independent legal framework for its governance. The subject of 'biodiversity' is not listed in any of the lists and thereby presumed to be listed in Union List (List I) having regulatory powers to Central Government.

**Areas Notified Under IFA:** The IFA notifies three areas Reserved Forests, Village Forests and Protected forests under Sec 3 read with Sec 20, Sec 28 and Sec 29 respectively. The land-title claims in the areas notified as Reserved Forests stand acquired and so the land vests with the Government. Reserved Forest areas assigned to the village by the Government are called as Village forests. The Forest-lands or the wastelands over which the Government has superior rights can be converted into Protected Forests.

The State Government has all the powers to govern and manage these areas so as to procure timber and other forest produce from these areas, except for diversion of these areas.

**Areas Notified Under WLPA:** The WLPA notifies five different types of areas Sanctuary, National Park, Community Reserve, Conservation Reserve and Tiger Reserve. Last amended definition of 'protected area' Sec 2 (24) does not include Tiger Reserve within its purview. This may either be a deliberate Action on part of legislature, not to call 'Tiger Reserves' as a PA or one may interpret that Sec 38 V 'preparation of tiger conservation plan' has been added in the WLPA in 2006 and so by virtue of amendment the 'Tiger Reserve' is also covered under the definition of PA (Ed. Wani, 2012). But WLPA expressly does not mention it anywhere.

- a) The notification of a Sanctuary is done under Sec. 18 and the process of the declaration is complete after notifying the area under Sec 26A (as per amendment in 1991).
- b) The notification of National Parks can be published directly under Sec. 35 and/or Sec 38. The prohibitory sections applicable to Sanctuary and National Parks are the same with one distinction and that is under Sec 24 (2) (c) Chief Wildlife Warden can allow continuance of any right inside the Sanctuary but such allowance cannot be given in the National Parks.
- c) The concept of Conservation Reserve and the Community Reserve were inserted in WLPA with an Amendment Act of 2002 having Sec 36 A and 36 C respectively. Apparently, both the types of PAs are following the decentralized process of management by having Conservation Reserve Management Committee and Community Reserve Management Committee at the local level. The difference between these two types of reserves is that Conservation Reserve is declared on the government-owned lands, particular areas around Sanctuaries and National Parks and those areas linking one PA with other. However, the Community Reserve is notified in the area where the community or an individual has volunteered to conserve Wild Life and its habitat. Another difference is in the case of declaration of Community Reserve; there is a restriction under sub-clause (3) of Sec. 36 C that there shall be no change in land use pattern once the area is notified as the Community Reserve, except with resolution from the Management Committee. But no such restriction on change of land use is there when it comes to Conservation Reserve.
- d) The WLP Amendment Act of 2006 added another type of notified area called as 'Tiger Reserves' with Sec 38V. The concept of having areas as core and buffer based on scientific criteria is one of the basic requirements of Tiger Reserve. Tiger reserve promotes co-habitation and recommends for relocation only if it has been established on the scientific and objective criteria that the option of coexistence is not available.

**Areas Notified Under BDA:** Under Sec 37 of the BDA, the State Government is empowered to declare Biodiversity Heritage Site and also can make rules for the management of such sites in consultation with local communities. The Act further holds State Governments responsible to frame rules for management and conservation of such notified areas, along with schemes for compensation and rehabilitation of economically affected people due to the area declaration notifications.

**Areas Notified Under FRA:** The FRA under Sec 4 of FRA concept of Critical Wildlife Habitat is mentioned. The section clarifies that subject to certain terms and conditions, the rights of the Scheduled Tribes or Other Traditional Forest Dwellers from such Critical Wildlife Habitat can be modified or resettled. The Act says that such areas have to be established by the forest department under WLPA.

#### **Inconsistencies in the Areas Notified Under Different Acts:**

- 1) Areas declared under IFA are reserved to implement scientific forestry and to generate revenue by harvesting timber and forest produce which is done by the department of 'Revenue and Forest'. Existence of the Reserved Forest inside the PAs or even in the peripheral area of PA is detrimental to the protection of wild life and biodiversity and also at many instances violates prohibitory sections of WLPA. Example: As per the WLPA destruction of habitats, removal of their bird nests and eggs and removal of eggs of reptiles has been considered as an offence whereas forest management plans used for maintenance and harvesting of forests do not give any consideration to such components. Unfortunately, crimes happening due to contradictions in laws are going unnoticed.
- 2) A review of the Sec 36-A (IUCN category VI) and Sec 36-C (IUCN category V) shows that these amendments are making no difference on the ground, other than notifying certain additional areas on paper and increasing the control of forest and wild life department over these land patches. No process for acquisition of rights or settlement of rights has been established for creation of these areas under the WLPA. No incentive for the communities to come forward to conserve the areas. Those who have been conserving the habitats in absence of any designated area, why would they like to get the area notified which is imposing restrictions on them without benefits is unclear (Kanagavel, Pandya, Sinclair, Prithvi & Raghavan, 2013).
- 3) Two or more PAs are included in one Tiger Reserve. Which prohibitory sections would be made applicable in such a reserve becomes a major question as every PA has a different degree of protection under WLPA. It is not clear, whether Conservation Reserves and Community Reserves can be added to the Tiger Reserve or not. It is also not clear that who would be regulating such notified areas, Local Committee formed for regulation of individual PA or Local Advisory Committee formed under the provisions of Tiger Reserves or *Gram Sabhas*?
- 4) The concept of Critical Tiger Habitat (established on the basis of scientific and objective criteria) is given under sub-Sec. (4) (i) of Sec 38 V of WLPA and the concept of critical Wild Life Habitat is mentioned in sub-Sec (2) of Sec 4 of the FRA. WLPA under sub-clause (4) (i) of Sec 38 V defines critical tiger habitat area as the core or critical tiger habitat areas of National Parks and Sanctuaries. On the basis of scientific and objective criteria, such inviolate areas are required to be notified for the purpose of tiger conservation. The FRA under Sec 2 (b) and 4 (f) states about creating 'Critical Wild Life habitat'<sup>4</sup>. The Act has given the process to be followed while declaring such areas under WLPA but WLPA does not have provision of Critical Wildlife Habitat identification in National Parks and Sanctuaries. So it is unclear how authorities under WLPA can declare Critical Wildlife Areas and further who would be regulating these areas. The Act clearly mentions that no rehabilitation from critical Wild Life habitat shall be done unless rehabilitation is the only option available for the avoiding the considerable impact of human habitation on wild life.
- 5) The overarching guidelines for identification and management of biodiversity heritage sites have been issued by the Central Government under BDA. These guidelines give a list of factors to be considered while designating a site along with biodiversity management plan. Nowhere do these guidelines clarify what would be the limit on the use of natural resources in such areas and how to monitor and prevent violations by the local community. Further, there is no prohibition on the declaration of such biodiversity heritage sites inside already declared PAs.
- 6) Provision of notifying Biodiversity Heritage Sites is mostly used to bring 'sacred grooves' within the purview of the law, as presently there is no law which gives recognition to sacred grooves. Traditionally most of the sacred grooves are considered as an area from where nothing can be used. The intention of BDA is conservation and sustainable use, which means by declaring the sacred grooves under BDA, the

biodiversity having complete protection is made available for sustainable use! It is contrary to the traditions and intentions of creating a sacred groove.

**Inconsistencies Due to Superseding Nature of the Acts:** Every enactment has its objectives and declares its association with other laws or its power to overrule earlier laws with reference to the particular subject matter. In certain cases, the provisions in the selected Acts have inherent inconsistencies whereas in certain other cases the interpretation of the provisions is done which are contravening the objectives of the enactments.

1) Sec. 66 (1), (2) of the WLPA is a repeal and savings clause. It specifically notes that after the commencement of WLPA, repugnant provisions in any other law, to the provisions of or to the objectives of WLPA, shall stand repealed. This Sec. comes with a proviso giving exemption to all the Activities which have been done under earlier laws and which are not supportive of the provisions of WLPA. The proviso of the Act thereby saves all the decisions taken for the protection and improvement of Wild Life in the country. The Sec. also safeguards all the National Parks, Sanctuaries and also protects punitive Actions taken for the protection of wild life, under earlier laws.<sup>5</sup>

As per the plain interpretation of this provision, it also means that even the IFA shall stand repealed if provision is inconsistent with the objectives of WLPA. In spite of such an expressed provision, the forest land included inside the PAs is regulated as per forest working plans and thereby harvesting of timber and other produce, which may be detrimental to the protection of wild life and biodiversity, is being continued.

2) BDA claims to be an additional legislation under Sec. 59<sup>6</sup>. This means that the system for forest management and Wild Life protection established by earlier laws will remain unchanged. But in addition to the earlier enactments, this Act also will be made applicable as per its jurisdiction. While accepting this provision, neither BDA nor WLPA clarifies the position of sustainable use inside inviolate areas created under WLPA. Especially after amendment in Sec. 24 (c) of WLPA, if the settlements can be allowed inside Sanctuaries, What about the right of these settlements to use the resources sustainably?

3) BDA asserts permission for commercial utilization of resources with due consent of the local communities. BDA being an additional legislation, this must be an additional permission apart from the permission to be taken from the respective Wild Life divisions for plucking or uprooting specified plants under WLPA. BDA nowhere expressly mentions about the exemption of Schedule VI species (of WLPA) from 'sustainable use' without prior permission under WLPA. The WLPA permits the use of specified plants by scheduled tribes for their own bonafide use, but enactment of FRA permits the sustainable use of biodiversity even by the traditional forest dwellers. In such a case right created under FRA is actually a crime under WLPA.

4) The FRA under Sec 4 supersedes all the previous legislations and making the Central Government responsible for recognizing and vesting of forest rights in the schedule tribes and traditional forest dwellers as per the procedure established by law. The provisions of FRA, except for the Critical Wild Life Habitat areas to be notified, are almost nullifying the possibility of having inviolate areas after 2006. This development creates numerous questions about the applicability of WLPA in Sanctuaries and National Parks. Further, wherever FRA is recognizing forest rights of the settlements, *Gram Sabha* is the authority to govern the processes and to regulate the area under their jurisdiction which earlier was the jurisdiction of the forest department. Apart from hunting of wild animals, which is prohibited in all the Acts i.e. IFA, WLPA, BDA and FRA, it is not clear as to who has the authority to solve the problems with respect to resource consumption and use and habitat loss due to such a use?

**Inconsistencies in Laws Regulating Forest land and Pas:** It is pertinent to note that Sec 18 (1) of WLPA expects that entire identified area except for 'reserved forest or territorial waters' should be notified. Reserved forest and/or territorial waters to be included in the Sanctuary are considered as 'deemed Sanctuaries' under Sec 66 (4) of WLPA. So after the amendment of Sec 66 (4) of WLPA, the process only for private areas needs to be completed for a declaration of a Sanctuary under Sec. 26 A of WLPA. This further supports the argument that intention of the legislator is to distinguish between notified forest land and PA.

Case initiated by WWF, India in 1995 reveals that in a majority of the areas called Sanctuary or National Park, the process notifying the area given under the WLPA has not been completed. Technically these areas exist only with an intention notification, and cannot be called as PAs if notification process is initiated after 1991 (Upadhyay S., 2009, Singh, 1999). With an order of the Supreme Court, initiative to complete the process of creation of inviolate areas was taken by the State Governments. But still many PAs are waiting for their final notifications, thereby creating confusions about the exact boundaries of the PA (Badola, 1999, Singh, 1999, Upadhyay S., 2009). Chronological decisions are given by the Hon. Supreme Court of India in T N Godavarma case of 1995<sup>7</sup> clearly shows differential treatment given to 'forest lands' and 'Sanctuaries and National Parks'

- 12.12.1996: 'forest' means land designated as a forest on any government record or as per the dictionary meaning;**
- 14.02.2000: Prohibited removal of dead, diseased trees and grasses from National Parks or Sanctuary or forest;**
- 28.02.2000: The word 'forest' was removed from the earlier order on request by States' because the very objective of the 'forest' is to generate revenue in accordance with the forest working plans;**
- 10.05.2001: Removal of forest produce allowed, but in this order also National Parks and Sanctuary were kept as an exception for even removal of forest produce;**
- 18.02.2002: Bamboo and cane may be removed from order given on 14.02.2000, except for National Parks and Sanctuary;**
- 16.12.2002: No Mining in the National Parks or Wild Life Sanctuaries even after prior approval under the Forest (Conservation) Act, 1980**

In the light of words used in Sec 18, Sec. 61 of WLPA, along with above judgments of the Hon. Supreme Court, it is clear that once the area is declared as a 'Sanctuary or National Park', it no more remains 'designated forest land'. Using Sec 2 of FCA or even Sec 29 or 35 (6) of WLPA for diversion of forest land inside PA is completely beyond the stated jurisdictions of administration, legislation or judiciary. In spite of clear interpretations of forest land and PAs, vast ecologically important areas from PAs are getting diverted for various business and public purpose activities under the name of striking balance between protection and development<sup>8</sup>.

- 1) One interpretation of the Supreme Court's judgment has also been done that forests included in the Sanctuary or National Parks can be diverted for 'non-wild life/forest' purpose like mines, roads, thermal power plants etc. with prior permission from National Board for Wild life, honorable Supreme Court of India and the Central Government under Sec. 2 of Forest (Conservation) Act, 1980 (Mehra, 2010). When there is no statutory provision under WLPA, to divert the land, the Supreme Court's decision to take permission from National Board for Wild Life or State Board for Wild life for diversion of forest land is contrary to the provisions of WLPA.
- 2) The Supreme Court of India has made a distinction between 'forest' and 'protected areas' in T N Godavarman case<sup>10</sup>. This judgment supports the argument that using provision of FCA for diversion of forest land in protected areas by claiming it to be a 'designated forest land, is an erroneous interpretation of sec. 29, 35 (5) & (6) of WLPA.<sup>11</sup> All the other powers are given to NBWL in Sec 5C are of recommendatory in nature for the protection and promotion of conservation of Wild Life of India.<sup>12</sup>
- 3) After enactment of FRA, Sec. 4 (f) of FRA makes it clear that 'once the area is declared as 'critical Wild Life habitat and the right-holders are relocated; the same area can't be used by the State for any other purpose'<sup>13</sup>. At the same time, FRA admits the rights of these communities to reside inside the PAs<sup>14</sup> and can practice sustainable use of resources. No prohibition on the use of resources either in PAs or in critical Wild Life habitat has been mentioned in any of the provisions of WLPA. In such a situation how to use WLPA for PAs having settlements inside their boundaries has become a major question of jurisdiction.

**Multiplicity of Authorities, Agencies, and Inconsistencies in Implementation of Laws:** Edith Weiss an eminent writer on international environmental laws, once noted while evaluating the multiplicity of international conventions on similar subjects, that every new governing body wishes to prove itself by bringing in the new framework instead of properly upgrading or maintaining an old one (Weiss, 1998). This is equally true when it comes to domestic laws in India for the protection of Wild Life and biodiversity. Every enactment has developed separate administrative authority to regulate the implementation of that law. While doing this, the fact, that the laws may have overlapping jurisdictions has been ignored. Such ignorance has created situations wherein more than one authority has the power to deal with the situation under any Act mentioned in this paper.

- 1) IFA has created an entire hierarchy of forest department with an objective to do scientific forestry to gain revenue from timber and other forest produce. Officers trained in the Wild Life protection were given the responsibility of PA management after enactment of WLPA. Though a separate wing for wild life protection has been created, due to the shortage of trained people in wild life, many times officers trained in scientific forestry get the responsibility to manage PAs. When the objective of both these Acts is drastically different, shuffling of officers to regulate both the acts gives a comparatively casual approach for protection activities and a higher emphasis on revenue generation.
- 2) In the year 1990, as per the provisions of National Forest Policy 1988, the Central Government, vide letter NO.6.21/89-PP, outlined and conveyed to State Governments a framework for creating massive people's movement through the involvement of village committees for the protection, regeneration, and



development of degraded forest lands. The prominent Activity undertaken in this program was afforestation. More than 62890 Joint forest management committees (JFMCs) were formed by 2001<sup>15</sup>. In spite of such a vast movement, a considerable change in poverty alleviation of participants of the programme didn't take place (Vemuri, 2008). It has also been observed that majority of such committees are in existence where funding assistance has been provided by the external agencies (Vemuri, 2008). These committees are still in existence in peripheral areas of PAs and forest areas. As this project received huge appreciation plantation became primary agenda rather than ecological restoration and wild life or biodiversity protection even in the peripheral areas of PAs.

- 3) In the year 1996 Eco-development Project financed by the World Bank and the Indian government was initiated. The objectives defined by the World Bank through the Global Environment Facility mentions that the program is for '*preserving biodiversity by working on the impact of local communities on protected areas and on the impact of the protected area on local people*' (World Bank, 1996). Under this project, many Eco-Development Committees (EDCs) have been formed for reducing the dependency of local communities on forest produce and to increase economic sustainability.
- 4) With the development of a three-tier hierarchy of authorities under the BDA, one more local committee has been added for the administration of bio-resources and that is Biodiversity Management Committee (BMC), to be formed by every local-self government. As mentioned earlier, BDA being an additional legislation, it is not replacing earlier set-up of laws. Contrary to the objective of EDCs, BMCs have right to use biological resources in their jurisdiction in a sustainable way.
- 5) The year 2006 witnessed the addition of FRA in the group of legislations related to the protection of Wild Life and biodiversity. This legislation made *Gram Sabhas* absolutely liable for management and administration of the areas under their jurisdiction. The forest right holders under FRA are responsible for the protection of wild life, forest, and biodiversity through *Gram Sabha*<sup>16</sup>.

This shows, that for any type of problem associated with wild life and biodiversity, there are multiple authorities having jurisdiction to deal with the situation. In such a circumstance, conflict on power or presuming that other authority should take cognizance can be a reaction. The multiplicity of authorities, agencies and overlapping jurisdictions of them are creating a lot of confusion regarding implementation of the provisions of the Acts.

**Conclusion:** Presently only WLPA is working on preservationists principles. But subsequent developments of new legislations and creation of new authorities have changed the structure of WLPA creating many inconsistencies, overlaps, and ambiguities. The interpretation that status of 'designated forest land' remains the same even after its inclusion in the PAs, primarily allow eviction of people living on subsistence needs and thereafter allow the Government to use the land patch for economic gains through execution of projects detrimental to the wild life and biodiversity protection.

Protection of wild life and biodiversity are on the frontline of every report, government policy, and decision connected to the natural resources but importance is given to the laws which are allowing utilization of these natural components by either bringing them under 'designated forest land' or by making these components available for 'sustainable use'. Pursuant to the pressures of meeting the developmental needs, international commitments, and aim of becoming a super economic power, legislations are created without properly integrating them with earlier laws. This may be one of the prominent reasons why in spite of spending huge money on the creation of PAs, India is unable to do considerable progress in arresting the loss of wild life and biodiversity.

Taking into consideration the increasing pressures on wild life areas, biodiversity use and ecologically rich areas, there is an urgent need to relook at WLPA, especially in the light of recognition of rights of stakeholders under BDA and FRA. Revision of WLPA to increase the degree of protection given to wild life and biodiversity by removing inconsistencies is highly essential.

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#### References:

1. Statement of objects and reasons of the Indian Forest Act, 1927

2. <http://www.iucnredlist.org/>
3. Subject entry in the Concurrent list means both Central and State Governments can take the decision over the subjects but in case of conflict, the central government would have superior authority to proceed over the State's decision.
4. "Critical Wild Life Habitat [CWH]" means such areas of National Parks and Sanctuaries where it has been specifically and clearly established, case by case, on the basis of scientific and objective criteria, that such areas are required to be kept as inviolate for the purposes of Wild Life conservation as may be determined and notified by the Ministry of Environment and Forests after open process of consultation by an expert committee, which includes experts from the locality appointed by that Government, wherein a representative of the Ministry of Tribal Affairs shall also be included, in determining such areas according to the procedural requirements arising from Sub-Sec. (1) and (2) of Sec. 4
5. Sec 66. Repeal and savings. [of WLPA] (1) As from the commencement of this Act, every other Act relating to any matter contained in this Act and in force in a State shall, to the extent to which that Act or any provision contained therein corresponds, or is repugnant, to this Act or any provision contained in this Act, stand repealed :  
 Provided that such repeal shall not (i) affect previous operation of the Act so repealed, or anything duly done or suffered thereunder; (ii) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under the Act so repealed; (iii) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the Act so repealed; or (iv) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid; and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, and punishment may be imposed, as if the aforesaid Act had not been repealed.
6. (2) Notwithstanding such repeal, (a) anything done or any Action taken under the Act so repealed (including any notification, order, certificate, notice, or receipt issued, application made, or permit granted) which is not inconsistent with the provisions of this Act be deemed to have been done or taken under the corresponding provisions of this Act as if this Act were in force at the time such thing was done or Action taken under this Act; (b) every licence granted under any Act so repealed and in force immediately before the commencement of this Act shall be deemed to have been granted under the corresponding provisions of this Act and shall, subject to the provisions of this Act, continue to be in force for the unexpired portion of the period for which such licence had been granted.
7. Sec. 59 [of BDA] Act to have effect in addition to the other Acts: The provisions of this Act shall be in addition to, and not in derogation of, the provisions in any other law, for the time being in force, relating to forests or wild life.
8. WP (C) No 202 of 1995
9. Rule no. 7 (4) (e) (i) whether the forests land proposed to be used for non-forest purpose forms part of a nature reserve, National Park, Wild Life Sanctuary, biosphere reserve or forms part of the habitat of any endangered or threatened species of flora and fauna or of an area lying severely eroded catchment; F No. 6-10/2011 WL dated December 2011 Guideline document taking up non-forestry Activities in Wild Life habitat; Government Resolution (Ministry of Environment and Forest) No. 11-30/96-FC (Pt.) dated 26.02.99; (<http://www.moefrolko.org/Actrules-clarifications.htm>)
10. Government published Handbook Part - C, Chapter 1. Application of Forest (Conservation) Act, 1980 1.8 (iv), Supreme Court decision on 16.09.2005 in IA no 1000 in WP (C) No. 202/1995.
11. Specifically orders in T N Godavarman Vs UoI dated 12.12.1996, 14.02.2000, 28.02.2000, 10.05.2001 and 18.02.2002.; Government Resolution (Ministry of Environment and Forest) No. 11-30/96-FC (Pt.) dated 26.02.99; (<http://www.moefrolko.org/Actrules-clarifications.htm>)
12. F. No. 6-10/2011 WL dated December 2012 Guideline document for taking up non-forestry Activities in the Wild Life habitat. Forest (Conservation) Amendment Rules, 2014 Rule 7 (4) (e) (i);
13. Sec 5C [of WLPA] (1) It shall be the duty of the National Board to promote the conservation and development of wild life and forests by such measures as it thinks fit.: (2) Without prejudice to the generality of the foregoing provision, the measures referred to therein may provide for- (a) framing policies and advising the Central Government and the State Governments on the ways and means of promoting wild life conservation and effectively controlling poaching and illegal trade of wild life and its products; (b) making recommendations on the setting up of and management of National Parks, Sanctuaries and other protected areas and on matters relating to restriction of Activities in those areas; (c) carrying out or causing to be carried but impact assessment of various projects and Activities on wild life

or its habitat; (d) reviewing from time to time, the progress in the field of wild life conservation in the country and suggesting measures for improvement thereto; and (e) preparing and publishing a status report at least once in two years on wild life in the country."

14. Sec 4 [of FRA] Recognition of, and vesting of, forest rights in forest dwelling Scheduled Tribes and other Traditional forest dwellers:- (1)....., (2) (f) no resettlement shall take place until facilities and land allocation at the resettlement location are complete as per the promised package:- Provided that the critical Wild Life habitat from which right holders are thus relocated for the purpose of Wild Life conservation shall not be subsequently diverted by the State Government or the Central Government or any other entity for other uses.  
office memorandum No/3011/33/2010 FRA dated 08.11.2015, sr. no 5 in the table P 5.
15. <http://www.moef.nic.in/sites/default/files/jfm/jfm/html/strength.htm>
16. Sec. 5 [of FRA] Duties of Holders of Forest Rights: The holders of any forest right, Gram Sabha and village level institutions in areas where there are holders of any forest right under this Act are empowered to- (a) protect the wild life, forest and biodiversity; (b) ensure that adjoining catchments area, water sources and other ecological sensitive areas are adequately protected; (c) ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage; (d) ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any Activity which adversely affects the wild animals, forest and the biodiversity are complied with.
17. Badola, R., 1999. People and protected areas in India. UNASYLVA-FAO- 12-14.
18. Barbier, E.B., 1990. Alternative approaches to economic-environmental interactions. *Ecol. Econ.* 2, 7-26.
19. Barve, N., Kiran, M.C., Vanaraj, G., Aravind, N.A., Rao, D., Shaanker, R., Ganeshiah, K.N., Poulsen, J.G., 2005. Measuring and mapping threats to a Wild Life sanctuary in southern India. *Conserv. Biol.* 19, 122-130.
20. Berkes, F., Folke, C., Gadgil, M., 1995. Traditional ecological knowledge, biodiversity, resilience, and sustainability, in *Biodiversity Conservation*. Springer, pp. 281-299.
21. Bhat, S., 2010. *Natural Resources Conservation Law*. Sage Law.
22. Blaikie, P., Baginski, O.S., 2007. Understanding the policy process. *For. People Power Polit. Ecol. Reform South Asia* 61-91.
23. Brockington, D., Igoe, J., SCHMIDT-SOLTAU, K., 2006. Conservation, human rights, and poverty reduction. *Conserv. Biol.* 20, 250-252.
24. Cimoli, M., Dosi, G., Nelson, R., Stiglitz, J., others, 2006. Institutions and policies shaping industrial development: an introductory note. *LEM Pap. Ser.* 2, 2006-02.
25. Ed. Wani, M., 2012. *Legislation Brief: Applicability of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Also called) The Forest Rights Act (FRA) To Protected Areas (PAs)*.
26. Frankenberg, G., 1985. Critical comparisons: Re-thinking comparative law. *Harv Intl LJ* 26, 411.
27. Graesser, A.C., McNamara, D.S., Louwerse, M.M., Cai, Z., 2004. Cohn-Metrix: Analysis of text on cohesion and language. *Behav. Res. Methods* 36, 193-202.
28. Guha, R., 1983. Forestry in British and post-British India: A historical analysis. *Econ. Polit. Wkly.* 1882-1896.
29. Johnson, C., Forsyth, T., 2002. In the eyes of the state: Negotiating a "rights-based approach" to forest conservation in Thailand. *World Dev.* 30, 1591-1605.
30. Kahn-Freund, O., 1974. On uses and misuses of comparative law. *Mod. Law Rev.* 37, 1-27.
31. Karanth, K.K., Kramer, R.A., Qian, S.S., Christensen, N.L., 2008. Examining conservation attitudes, perspectives, and challenges in India. *Biol. Conserv.* 141, 2357-2367.
32. Kashwan, P., 2013. The politics of rights-based approaches in conservation. *Land Use Policy* 31, 613-626.
33. Krishnaswamy, M., 2005. One step forward, two steps back. *Econ. Polit. Wkly.* 4899-4901.
34. Lasgorceix, A., Kothari, A., 2009. Displacement and relocation of protected areas: a synthesis and analysis of case studies. *Econ. Polit. Wkly.* 37-47.
35. Miles, M.B., Huberman, A.M., 1994. *Qualitative data analysis: An expanded sourcebook*. sage.
36. Negi, S.S., 2002. *Handbook of National Parks, Wild Life Sanctuaries, and Biosphere Reserves in India*. Indus Publishing.
37. Packard, F.M., Elliott, H.F.I., 1971. IUCN eleventh technical meeting: New Delhi, India, 25-28 November 1969: papers and proceedings= IUCN on meme reunion technique: Rapports et process-verbaux. IUCN Publ. New Ser.
38. Rangarajan, M., 2005. *India's Wild Life history: an introduction*. Orient Blackswan.

39. Ravindranath, N.H., Chaturvedi, R.K., Murthy, I.K., 2008. Forest conservation, afforestation, and reforestation in India: implications for forest carbon stocks. *Curr. Sci.* 95, 216–222.
40. Reimann, M., 2002. The progress and failure of comparative law in the second half of the twentieth century. *Am. J. Comp. Law* 50, 671–700.
41. Robinson, J., 2004. Squaring the circle? Some thoughts on the idea of sustainable development. *Ecol. Econ.* 48, 369–384.
42. Singh, S., 1999. Assessing management effectiveness of Wild Life protected in India. *Parks* 9, 34–49. areas
43. Springate-Baginski, O., Blaikie, P., 2013. *Forests People and Power: The Political Ecology of Reform in South Asia*. Routledge.
44. Upadhyay S., S.A., 2009. *Conserving Protected Areas and Wild Life A Judicial Journey*. WWF and ELDF.
45. Vemuri, A., 2008. Joint Forest Management in India: An unavoidable and conflicting common property regime in natural resource management. *J. Dev. Soc. Transform.* 5, 81–90.
46. Walston, J., Robinson, J.G., Bennett, E.L., Breitenmoser, U., da Fonseca, G.A., Goodrich, J., Gumal, M., Hunter, L., Johnson, A., Karanth, K.U., others, 2010. Bringing the tiger back from the brink—the six percent solution. *PLoS Biol* 8, e1000485.
47. Weiss, E.B., 1998. Understanding Compliance with International Environmental Agreements: The Baker's Dozen Myths. *U Rich Rev* 32, 1555.

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