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FOREST RIGHTS VS. PROTECTED AREAS: LEGAL TENSIONS BETWEEN COMMUNITY RIGHTS AND CONSERVATION

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ABSTRACT

The legal framework governing India's forests presents a fundamental tension between two competing paradigms: the rights-based approach embodied in the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA), and the conservation-centric regime established by the Wildlife (Protection) Act, 1972 (WLPA) and the Forest (Conservation) Act, 1980. This article examines the legal tensions arising from the intersection of these frameworks, focusing on the conflict between community forest rights and the creation of protected areas, particularly tiger reserves and wildlife sanctuaries. It analyses the legislative architecture of the FRA, which vests forest rights in forest-dwelling communities while subjecting such rights to modification or resettlement in critical wildlife habitats under specified conditions. The article examines the Saranda Wildlife Sanctuary judgment of the Supreme Court, which clarified that sanctuary declaration does not extinguish FRA rights, and analyses ongoing conflicts in Nagarhole Tiger Reserve where Adivasi communities assert ancestral rights against exclusionary conservation models. Drawing upon judicial pronouncements, empirical data on claim rejection rates, and constitutional principles under Articles 48A and 51A(g), the article argues that the legal tension is not inherent but arises from institutional resistance to FRA implementation and the persistence of colonial-era conservation mindsets. It concludes by proposing a framework for harmonisation grounded in co-existence and recognition of forest-dwelling communities as conservation partners rather than obstacles.

Keywords: Forest Rights Act 2006, Wildlife Protection Act 1972, protected areas, community rights, tiger reserves, legal tension, conservation, tribal rights, fortress conservation, constitutional duties.

1. INTRODUCTION

The governance of India's forests has long been characterised by a fundamental tension: the imperative of biodiversity conservation, pursued through the creation of protected areas, and the recognition of the historical and cultural rights of forest-dwelling communities to their ancestral lands. This tension, embedded in the legislative architecture of independent India, has intensified in recent decades as conservation policies have adopted increasingly exclusionary approaches under the Wildlife (Protection) Act, 1972, while simultaneously, the Forest Rights Act, 2006, has sought to undo historical injustices by recognising the rights of Scheduled Tribes and Other Traditional Forest Dwellers over forest lands.

The conflict is not merely legal but existential, affecting millions of forest-dwelling communities across India. In Nagarahole Tiger Reserve in Karnataka, Adivasi communities of the Jenu Kuruba, Betta Kuruba, and other tribes have asserted their ancestral rights over forest lands from which their elders were evicted decades ago, contending that the Forest Rights Act, as a conservation law, "supersedes all inconsistent provisions in other laws," including the Wildlife (Protection) Act. Their assertion—rooted in the claim that "We have safeguarded the tiger as our sacred being long before there was a 'Project Tiger'"—challenges the foundational premise of exclusionary conservation: that people-free forests are necessary for effective wildlife protection.

The legal stakes are high. A key case challenging the FRA's legal validity, *Wildlife First v. Union of India*, is pending before the Supreme Court and holds the key for forest governance and the rights of forest-dwelling communities. The verdict is expected to address whether the FRA stands in conflict with or complements other regulatory legislations like the Wildlife (Protection) Act and the Forest (Conservation) Act. Meanwhile, the Supreme Court's 2025 judgment in *In Re: Saranda Wildlife Sanctuary* has clarified that sanctuary declaration does not automatically extinguish FRA rights, representing a significant jurisprudential advance.

This article examines the legal tensions between forest rights and protected areas through a multi-dimensional lens. It analyses the legislative framework of the FRA, particularly its non-obstante provision and the conditions under which rights may be modified or resettled in critical wildlife habitats. It examines the conflict between the FRA and the WLPA, drawing upon empirical evidence of implementation failures and judicial pronouncements. It evaluates the Saranda judgment as a model of harmonisation and analyses the Nagarahole conflict as a case study of institutional resistance. The article concludes by proposing a framework for legal and institutional reform grounded in co-existence and recognition of forest-dwelling communities as conservation partners.

2. LEGISLATIVE ARCHITECTURE: COMPETING LEGAL FRAMEWORKS

2.1 The Forest Rights Act, 2006: A Corrective Statute

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, represents a paradigm shift in forest governance. Enacted to address the "historical injustice" suffered by forest-dwelling communities, the FRA recognises and vests forest rights in Scheduled Tribes and Other Traditional Forest Dwellers who have been occupying forest land for generations.

Section 4(1) of the FRA provides that, "[n]otwithstanding anything contained in any other law for the time being in force," the Central Government recognises and vests forest rights in forest-dwelling Scheduled Tribes and other traditional forest dwellers. This non-obstante provision establishes the FRA's supremacy over inconsistent provisions in other laws, including the WLPA and the Forest (Conservation) Act. Adivasi communities in Nagarahole have invoked this provision to argue that their rights under the FRA cannot be defeated by wildlife legislation.

Section 4(7) further provides that forest rights shall be conferred "free of all encumbrances and procedural requirements, including clearance under the Forest (Conservation) Act, 1980, requirement of paying the 'net present value' and 'compensatory afforestation' for diversion of forest land". This provision eliminates bureaucratic hurdles that had historically impeded the recognition of forest rights.

However, Section 4(2) introduces a crucial qualification: forest rights recognised under the Act in "critical wildlife habitats of National Parks and Sanctuaries may subsequently be modified or resettled" under specified conditions. These conditions include: completion of the rights recognition process; establishment by state agencies that rights-holders' activities cause "irreversible damage" threatening species and habitat; conclusion that co-existence is not available; preparation of a resettlement package; free informed consent of Gram Sabhas; and completion of facilities and land allocation before resettlement. The provision further states that "no forest rights holders shall be resettled or have their rights in any manner affected for the purposes of creating inviolate areas for wildlife conservation" except upon satisfaction of all these conditions.

2.2 The Wildlife (Protection) Act, 1972: The Conservation Framework

The Wildlife (Protection) Act, 1972, establishes the overall regime for identifying and notifying areas as sanctuaries and national parks. Section 18 empowers state governments to declare sanctuaries, while Section 35 provides for the declaration of national parks.

The procedure for declaring a sanctuary involves notification of intent, investigation and determination of claims, and extinguishment of rights. The Collector may allow, in consultation with the Chief Wildlife Warden, the continuance of any right of any person within the sanctuary limits. For national parks, all rights in respect of lands proposed to be included must vest with the state government.

Section 35(8) imports the application of certain sanctuary provisions to national parks but excludes subsection (d) of Section 33, which permits regulated grazing or movement of livestock—activities permitted in sanctuaries are not permissible in national parks. This stricter regime creates greater tension with community rights in national parks.

2.3 Constitutional Framework: Articles 48A and 51A(g)

The constitutional basis for environmental protection lies in Articles 48A and 51A(g), inserted by the Constitution (Forty-second Amendment) Act, 1976. Article 48A directs the State to "protect and improve the environment and to safeguard the forests and wildlife of the country." Article 51A(g) imposes a fundamental duty on every citizen to "protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living

creatures" .

In the Saranda judgment, the Supreme Court made a significant jurisprudential advance by establishing that Article 48A imposes a positive duty on the state to identify and provide legal protections to areas of ecological significance. The Court held that "after a scientifically established determination of ecological significance, the state may not continue to delay providing statutory protections ad infinitum". This ruling transforms environmental protection from a matter of governmental policy choice into a constitutional commitment binding successive governments.

3. LEGAL TENSIONS: FRA VS. WLPA

3.1 The Non-Obstante Clause and Its Limitations

The FRA's non-obstante provision, "notwithstanding anything contained in any other law," appears to establish its supremacy over the WLPA. However, Section 4(2) qualifies this supremacy by permitting modification or resettlement of rights in critical wildlife habitats under specified conditions. This creates a structural tension: while the FRA recognises rights, it simultaneously authorises their curtailment in the name of conservation.

The conflict between the FRA and the WLPA is not merely theoretical. The Nagarahole Adivasi Jamma Paale Hakku Sthapana Samiti's 2026 Declaration asserts that "the FRA is also a conservation law, and 'it supersedes all inconsistent provisions in other laws', including the Wildlife (Protection) Act, 1972 and the Forest (Conservation) Act, 1980". This assertion is grounded in the FRA's non-obstante provision and in the view that the FRA "promotes a view of conservation that rejects the colonial fortress model in favour of the recognition of the historical, cultural and embodied relationship of forest dwelling communities with forests and forest resources".

The case of *Wildlife First v. Union of India*, pending before the Supreme Court, is expected to adjudicate this very question: whether the FRA stands in conflict with or complements other regulatory legislations. Until the Supreme Court pronounces judgment, the legal tension remains unresolved.

3.2 The "Vermin" Declaration and Species Protection

The Wildlife (Protection) Act's Section 62, which empowers the Central Government to declare species as "vermin," represents a structural weakness undermining species protection. The provision "requires no scientific evidence, population data, expert consultation, limit on scope or duration, culling protocol, and no obligation to record how many animals are killed or whether non-target species are harmed". The 2022 amendment, which reduced the WPA's six schedules to four, expanded the pool of species that can be declared vermin, "widening the killing power while making it look restrained".

This provision has implications for community rights. When species are declared vermin, statutory protection is stripped, and anyone may kill them. This can affect forest-dwelling communities who rely on wildlife for subsistence or cultural practices, creating further tension between conservation and community rights.

3.3 Erosion of Statutory Oversight

The erosion of statutory oversight mechanisms represents another dimension of the legal tension. Section 38-O (1)(g) of the WLPA empowers the National Tiger Conservation Authority (NTCA) to ensure that "tiger reserves and areas linking one protected area or tiger reserve with another protected area or tiger reserve are not diverted for ecologically unsustainable uses, except in the public interest, and with the approval of the National Board for Wildlife and on the advice of the National Tiger Conservation Authority" .

Despite this unambiguous mandate, recent cases demonstrate systematic bypass of NTCA's statutory role. The Sharavathi Pumped Storage Project, overlapping a tiger corridor linking Kali Tiger Reserve and Sharavathi Valley Sanctuary, received wildlife clearance without NTCA's advice. This pattern reveals "a systemic effort to bypass NTCA precisely where its scrutiny matters most—rendering its statutory role hollow". Similarly, a PIL before the Delhi High Court alleges that the National Board for Wildlife and its Standing Committee have become a "clearing house" that routinely diverts protected areas to non-conservation projects, approving "more than 97% of proposals for diverting, reducing or de-notifying protected land".

4. INSTITUTIONAL RESISTANCE: IMPLEMENTATION FAILURES

4.1 High Rejection Rates of FRA Claims

The most significant challenge to the FRA's implementation is the resistance from forest departments and revenue authorities. Karnataka, the site of the Nagarahole conflict, has a rejection rate of 89.23% with regard to individual claims under the FRA . As on July 30, 2025, the percentage of rejected individual forest rights claims was 43.48% in Kodagu district and 73.55% in Mysuru district .

Nationally, data show that almost 50% of claims have not been accepted. About 30% of overall claims were rejected, and 20% are still pending as of December 31, 2025 . The most common reasons for rejection are "inadequate verification, excessive demands for documentation, the government's failure to recognise traditional forms of evidence, limited opportunities for appeal, and systemic corruption".

The institutional resistance is particularly acute in protected areas. Pravin Mote, a veteran activist working on tribal forest rights, stated that "often, forest and revenue officers deliberately create hurdles to deny the tribal people their rights". States like Gujarat, Rajasthan, Bihar, and Jharkhand are reportedly worse than Maharashtra in this regard . In Chhindwara district of Madhya Pradesh, Yavatmal and Chandrapur districts of Maharashtra, and South Goa, "local forest and conservation authorities routinely delay clearing the claims of the local tribal communities on forest lands" due to pressure from higher-ranking officials .

4.2 The Nagarahole Conflict: A Case Study

The Nagarahole conflict exemplifies the tension between community rights and protected area management. In May 2025, 52 families of the Jenu Kuruba community entered the Nagarahole forests to reclaim their ancestral rights over Karadikallu Attur Kolli . Their elders had been evicted nearly four decades ago when the area was first sealed off for conservation and later notified as a

tiger reserve.

The families built makeshift huts, set up shrines, and publicly declared that they were asserting rights guaranteed under the FRA. They had filed applications since 2009-11, attended multiple rounds of surveys and committee hearings, and waited through years of bureaucratic delay. Yet, as they attempted to re-establish their settlement, they were repeatedly warned to leave. The forest department maintained that the rights claims filed by the families were rejected. However, the Adivasis contended that the FRA supersedes inconsistent provisions in other laws.

Over 250 forest guards, tiger force personnel, and police eventually raided the settlement, dismantling shelters despite the presence of women, children, and elderly people. The confrontation has become one of the most visible Adivasi assertions of land rights in a flagship tiger reserve.

The Nagarahole Declarations 2026, released by 34 hamlets, included 11 assertions, starting with the supremacy of the FRA in the field of conservation. The declaration states:

"Our deities are trees, stones and animal spirits. Our clans have deep spiritual interconnections across the forests. Our songs name every hill, every sacred area, every burial ground. We have safeguarded the tiger as our sacred being long before there was a 'Project Tiger'".

Shivu J, leader of the Samiti, articulated the community's position:

"The ancestral land of Jenu Kurubas has been declared by others without their consent. First it was declared a reserved forest, then as a tiger reserve. But it is us who have a right to declare this land. We have the right to govern our lands in which we have lived for generations. The law (FRA) also recognises it. So, we are not requesting the state to give us our rights. We are reclaiming them".

4.3 The "Fortress Conservation" Mindset

The institutional resistance to FRA implementation is rooted in what scholars describe as the "fortress conservation" model—an exclusionary approach that views forests as "people-free" zones necessary for effective conservation. As Radhika Chitkara, Assistant Professor of Law at the National Law School of India University, observed:

"FRA promotes a view of conservation that rejects the colonial fortress model in favour of the recognition of the historical, cultural and embodied relationship of forest dwelling communities with forests and forest resources".

A senior official in the Karnataka Forest Department, while calling the self-assertion in Nagarahole "illegal," suggested the Adivasis were "instigated". The National Tiger Conservation Authority, in its 2024 report, identified Soliga Adivasi villages inside the BRT Tiger Reserve as a "threat," citing population growth and demands for infrastructure. This assessment sits uneasily with both history and evidence—the Soliga have lived in these forests for centuries, and their coexistence with wildlife is well documented.

The portrayal of Adivasis as "innocent people being instigated" allows the State to simultaneously infantilise and criminalise them, delegitimising democratic assertion. The myth obscures the reality that such movements emerge from within communities that have exhausted every official route.

5. JUDICIAL INTERVENTION: THE SARANDA WILDLIFE SANCTUARY JUDGMENT

5.1 Factual Background

The Saranda forest area in Jharkhand, a biodiversity hotspot and crucial wildlife corridor, was originally declared as the Saranda Game Sanctuary in 1968 . The area faced threats from mining activities and deforestation. The National Green Tribunal had directed the State to consider declaring the area as an Eco-Sensitive Zone, but the State's inaction led to further legal proceedings.

The State of Jharkhand repeatedly shifted its position on the sanctuary's extent, citing the protection of forest rights of tribal communities under the FRA . The State acknowledged that virtually all 126 original compartments had no active mining operations but claimed that mining operations would be negatively impacted if the sanctuary area were maintained at its current size . The Chief Justice described Jharkhand's behavior as "wholly unfair," cautioning that the Chief Secretary could be found in contempt of court.

5.2 The Court's Reasoning

The Supreme Court, led by Chief Justice B.R. Gavai, examined the ecological significance of the Saranda forest area and the legal framework governing wildlife protection . The Court emphasised that the area is home to various endangered species and serves as a crucial wildlife corridor, and that the State has a duty to protect such areas under the Wildlife (Protection) Act and the Constitution.

The Court directed the declaration of Saranda Wildlife Sanctuary, ordering the designation of 31,468.25 hectares of Saranda forest area. Crucially, the Court ruled that designation as a wildlife sanctuary "will not take away scheduled tribe members' rights to their land under the Forest Rights Act of 2006" . The Court clarified that the declaration would not infringe upon tribal and forest-dwelling communities' rights, as the WLPA and the FRA provide safeguards for these rights .

The Court emphasised that "the State must educate these communities about their rights and ensure their participation in conservation efforts". This represents a significant departure from the exclusionary conservation paradigm, recognising forest-dwelling communities as partners in conservation rather than obstacles.

5.3 The Court's Constitutional Interpretation

The Court drew upon the constitutional mandates under Articles 48A and 51A(g), reiterating that the State's commitment to conservation must align with its constitutional obligations . The Court established the principle that Article 48A imposes a positive duty on the state to identify and provide legal protections to areas of ecological significance . The Court ruled that "after a scientifically established determination of ecological significance, the state may not continue to delay providing statutory protections ad infinitum" .

This ruling has significant implications for the legal tension between FRA and WLPA. By affirming that sanctuary declaration does not extinguish FRA rights, the Court has provided a framework for harmonisation that recognises the co-existence of conservation and community rights. However, as the International Journal of Law Management and Humanities noted, the Court

left several important issues unaddressed, including "tribal representation in the administration of wildlife sanctuaries, regulations for mining activities in areas adjacent to wildlife sanctuaries, and balancing the need for environmental conservation with the security of livelihoods of residents living within or near the protected area".

6. ANALYSIS: THE CONTOURS OF LEGAL TENSION

6.1 The FRA as a Conservation Law

A central argument emerging from the Nagarahole conflict and the Saranda judgment is that the FRA itself is a conservation law. As Radhika Chitkara observed, "the FRA answers the larger question of who is the custodian of the forests". The FRA promotes a view of conservation that recognises the historical, cultural, and embodied relationship of forest-dwelling communities with forests.

This perspective challenges the foundational premise of fortress conservation that people-free forests are necessary for effective conservation. Empirical evidence demonstrates that tribal sovereignty and biodiversity conservation are deeply intertwined, with the cultural and economic practices of forest-dwelling communities acting as custodians rather than vectors of ecological degradation.

The Nagarahole Adivasis' assertion that "We have safeguarded the tiger as our sacred being long before there was a 'Project Tiger'" is not merely rhetorical. It reflects a historical reality that forest-dwelling communities have been conservation partners for generations, their practices shaped by cultural and spiritual connections to the forest that predate modern conservation laws. The "fortress conservation" model, by displacing these communities, has disrupted the very relationships that sustained forest ecosystems.

6.2 Institutional Resistance as the Primary Barrier

The legal tension between the FRA and the WLPA is not inherent but is created and sustained by institutional resistance to FRA implementation. The high rejection rates of FRA claims—89.23% in Karnataka, 50% nationally—reflect a systematic effort to deny forest-dwelling communities their statutory rights. The excessive demands for documentation, the failure to recognise traditional forms of evidence, the limited opportunities for appeal, and the systemic corruption at the local level all point to institutional resistance, not legislative incompatibility.

The forest department's characterisation of Adivasi land assertions as "illegal occupation" is legally dubious. As the community members stressed, they are "not encroachers but rights-holders denied due process". The FRA's Section 4(5) explicitly provides that "no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete". The eviction of Adivasis from Nagarahole, even as their claims remained pending, violated this statutory protection.

6.3 The Saranda Model of Harmonisation

The Saranda judgment provides a model for harmonising the FRA and the WLPA. By affirming

that sanctuary declaration does not extinguish FRA rights, the Court has established that conservation and community rights are not mutually exclusive. The Court's emphasis on the State's duty to educate communities about their rights and ensure their participation in conservation efforts represents a shift from exclusion to inclusion.

However, the Saranda judgment leaves important questions unanswered. The absence of tribal representation in the administration of wildlife sanctuaries, the lack of regulations for mining activities in adjacent areas, and the unresolved issue of livelihood security for residents within protected areas all point to the need for further legal and institutional reform.

7. CONCLUSION

The legal tension between forest rights and protected areas in India reflects a deeper conflict between two competing paradigms: the exclusionary "fortress conservation" model that views people as obstacles to conservation, and the inclusive rights-based approach that recognises forest-dwelling communities as conservation partners. This tension is not inherent in the legislative framework but is created and sustained by institutional resistance to the implementation of the Forest Rights Act, 2006.

The Supreme Court's Saranda judgment represents a significant jurisprudential advance, establishing that sanctuary declaration does not extinguish FRA rights and that the State has a positive constitutional duty to provide legal protections to ecologically significant areas. However, the ongoing conflict in Nagarahole, where Adivasi communities continue to face eviction despite their statutory rights, demonstrates that judicial pronouncements alone are insufficient to resolve the legal tension.

The path to harmonisation requires institutional transformation: the settlement of pending FRA claims, the recognition of traditional forms of evidence, the provision of meaningful tribal representation in protected area governance, and the adoption of conservation models that recognise forest-dwelling communities as partners rather than obstacles. As the Nagarahole Adivasis have asserted, "We are not requesting the state to give us our rights. We are reclaiming them". The law, properly implemented, is on their side.

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