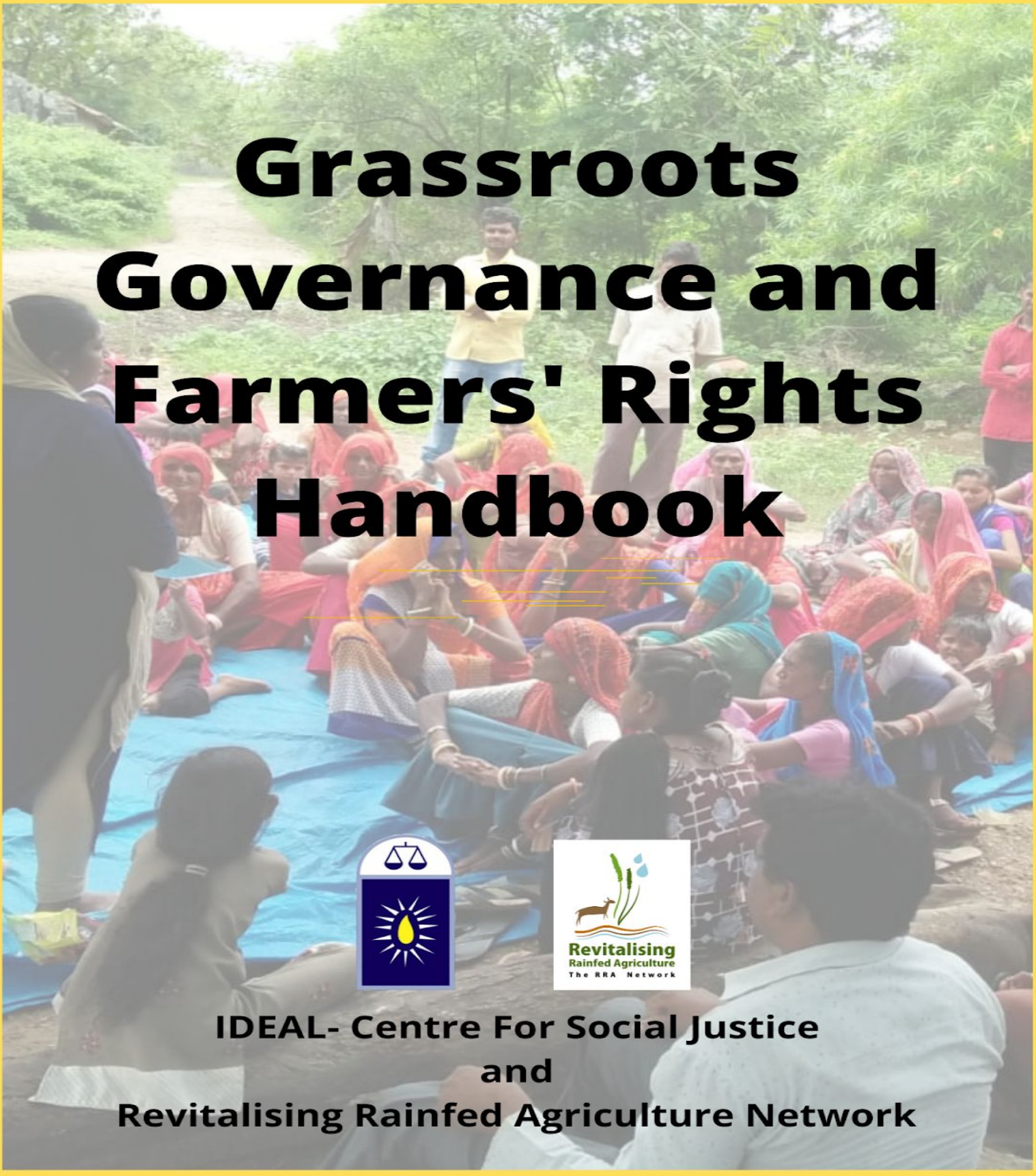

Grassroots Governance and Farmers' Rights Handbook

Revitalising Rainfed Agriculture
The RRA Network

IDEAL- Centre For Social Justice
and
Revitalising Rainfed Agriculture Network

CONTENTS

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INTRODUCTION

Due to the exclusionary nature of legal language, crucial elements of law remain out of the domain of those who need most access to it. Knowledge of law is a necessity if one has to be a social justice advocate. Civil Society and Grassroots Organisations need ready access to important judgments so as to solidify their arguments while fighting for any cause. This book is an endeavour towards that.

This book covers a plethora of topics which have a direct impact on grassroots governance and farmers' rights. The judgments included in this book have been curated for grassroots organisations to use them for various purposes outside of the Court of law. While contacting government departments or writing applications to officials, these judicial pronouncements can be used to back one's claim, along with provisions of law. If the rule of law is used as the basis for any intervention, it will make the case of the applicant stronger.

Part I covers the jurisprudence of Schedule V regions of India, Panchayat (Extension to Scheduled Areas) Act, 1996, ('**PESA**') Forest Rights Act ('**FRA**'), interpretations of the powers of the Gram Sabha and Gram Panchayats by the Courts, and the word "consultation" with respect to the Gram Sabha and Gram Panchayat which find its way in innumerable statutes. Relevant sections of the Indian Forest Act and their inconsistency with FRA has also been highlighted.

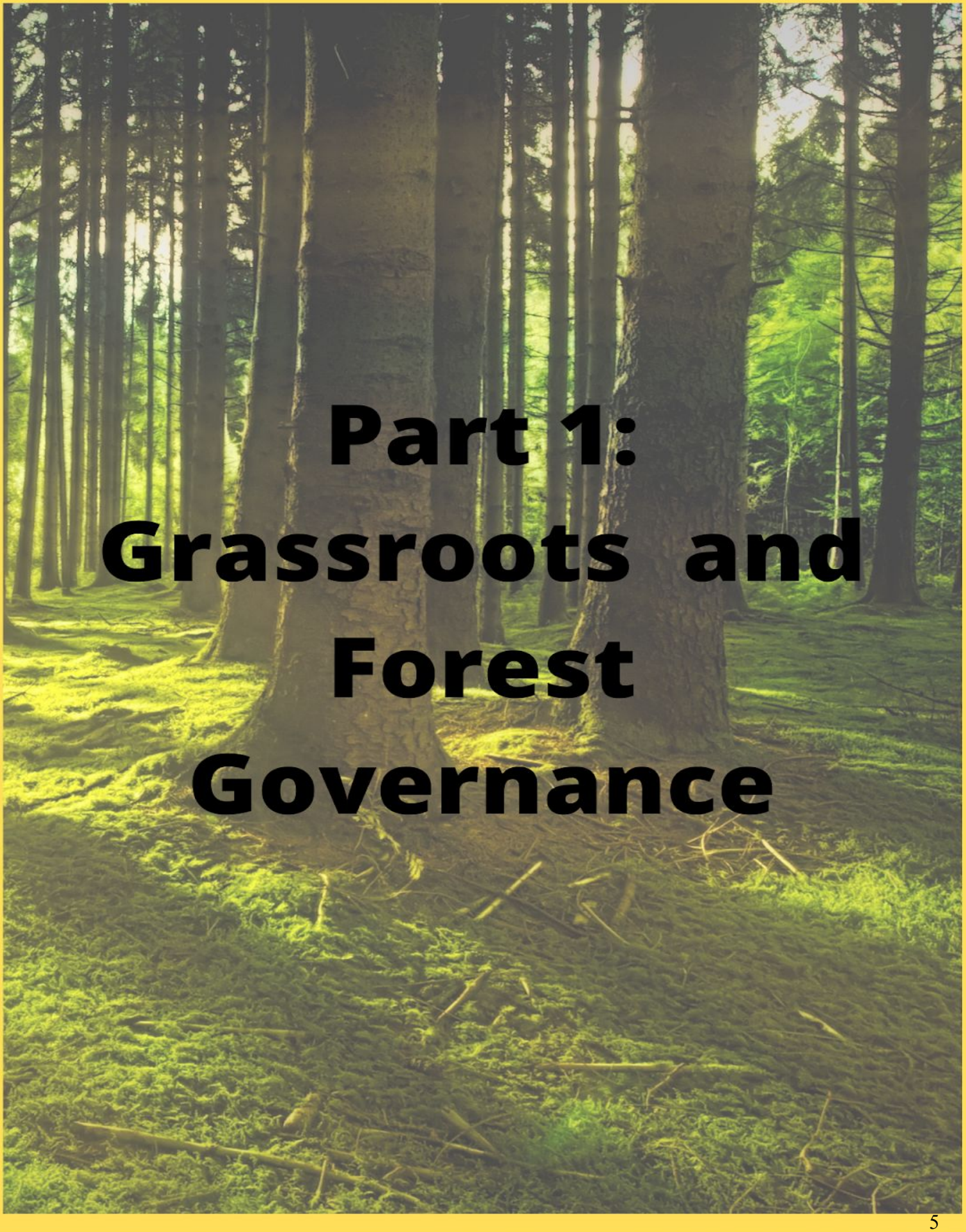
The Biological Diversity Act ('**BDA**') was enacted in 2002 to protect biodiversity by establishing local biodiversity management committees and paving the way for access to the benefit sharing regime. This act has great relevance when it comes to corporations usurping resources from biodiversity-rich areas at the local communities' expense. Thus, knowledge about this act and access to benefit sharing agreement ('**ABS**') becomes necessary.

The Disaster Management Act, 2005 ('**DMA**') has also been included in this compilation because of its implications on the ground for setting up a disaster

mitigation mechanism. Floods, droughts, cyclones, are the most common disasters striking every year, and engagement with authorities and stakeholders vis-a-vis the DMA becomes absolutely crucial. The cases have been included here to give some perspective with respect to the functioning of the Act and how practitioners can use this compilation while writing to authorities or approaching Courts.

Part II of the book is regarding Farmers' Rights. This covers the topics of the Essential Commodities Act, 1955 ('**ECA**') (including the amendment), the Seeds Act, 1996, the Plant Protection Varieties and Farmers' Rights Act, 2001 ('**PPVFRA**'). To simplify PPVFRA, a complicated legislation in itself, a short article has also been written explaining the law in detail and the current position of law.

A crucial redressal mechanism for farmers can be seen in the consumer law regime in India. In 2012, the Supreme Court settled the position that an agriculturist/farmer is a consumer under the Act and can file complaints and receive compensation under the Act. This forum becomes even more relevant with the passage of the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 ('**FPTCA**') and the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020 ('**Contract Farming Act**'). Since plenty of material is already out there critiquing the acts, for the sake of brevity, we have not included the critique but have included a separate note laying out how the jurisdiction of the consumer courts can be invoked despite there being a bar on civil Courts' jurisdiction under both these legislations.



Part 1: Grassroots and Forest Governance

Schedule V

The Fifth Schedule of the Constitution of India was included in the body of the Constitution by the Constituent Assembly in September 1949, after elaborate discussion and deliberation in the Assembly. The inclusionary, justiciable, and democratic motives of the Constitution concerned its makers with the welfare of the tribal communities and the need to preserve their best interests through the Fifth (and Sixth) Schedules.

The Fifth Schedule consists of Article 244(1) and is divided into four parts and relates to the 'Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes.' The first part exempts the Schedule from being applied to the states of Assam, Meghalaya, Tripura, and Mizoram and provides executionary powers to State Governments concerning Scheduled Areas. The next part concerns the administration and control of Scheduled Areas and Scheduled Tribes and confers powers upon the governor to make rules concerning such areas to restrict the transfer of land in the area and regulate its allotment while monitoring the business carried on within it. The establishment of Tribal Advisory Councils (TACs) is also provided for areas that have a substantial tribal population but do not have Scheduled Areas. It is only in the third part where the crucial phrase 'Scheduled Areas' is defined as "such areas as the President may by order declare to be Scheduled Areas."

While absent from the Schedule, the criteria for the demarcation of such areas have been established in governance as comprising four primary factors: preponderance of tribal population, compactness and reasonable size of the area, a viable administrative entity such as a district, block or taluka, and economic backwardness of the area as compared to the neighbouring areas.[1] The last part of the Schedule concerns its amendment by the Parliament.

The Fifth Schedule is most often read in conjunction with the Sixth, which covers the North-Eastern regions of the country. It has been observed that these remain the

[1] Ministry of Tribal Affairs. GOI. *Declaration of Fifth Schedule.* Retrieved 11 October, 2020, from https://tribal.nic.in/declarationof5thSchedule.aspx

most enigmatic Schedules in the Constitution and receive little bureaucratic attention.[2] The Fifth Schedule has been specifically criticized for failing to provide the autonomy of self-governance to the tribal communities in the areas it governs, owing to its drive to centralize authority and power. Structural barriers put up by provisions within the Schedule include the creation of TACs without any specified powers, the lack of clarity on the composition of such bodies, the reduction of the Office of Governor to a mere annual report-writing institution and the ambiguity of the discretionary role of Governor.[3] The State has been chastised for its non-implementation of the Schedule as the TACs have been rendered toothless bodies, instead of the advisory functionaries they were intended to form.

[2] Manish, B.K. (2017). Very little is understood about the Fifth and Sixth schedules of Indian constitution. *Down to Earth.* Retrieved 11 October, 2020, from https://www.downtoearth.org.in/news/governance/very-little-is-understood-about-fifth-and-sixth-schedules-of-indian-constitution-58603

[3] Veeresha, Nayakara. (2018). Fifth Schedule: A Critique. *Deccan Herald*. Retrieved 11 October, 2020, from https://www.deccanherald.com/content/651307/fifth-schedule-critique.html

1. *Samatha v. State of Andhra Pradesh* (AIR 1997 SC 3297)

Facts:

In this case, the Supreme Court was approached regarding the leasing of tribal lands for mining and industrial purposes to non-tribal persons. Social action group appealed a high Court ruling in favour of the State of Andhra Pradesh on behalf of the affected tribal persons and argued that the leasing of tribal lands for mining purposes violated the Fifth Schedule of the Indian Constitution.

Procedural history:

The petition was dismissed by the High Court and Samatha subsequently appealed to the Supreme Court of India.

Issue:

Whether the granting of leases to tribal lands to non-tribal persons for mining purposes violate the Andhra Pradesh Scheduled Areas Land Transfer Regulation (1959) and the Forest Conservation Act, 1980.

Rules:

- Forest Conservation Act, 1980
- Paragraph 5(2) of Fifth Schedule of the Constitution: protects the transfer of land in the scheduled area and regulates other such related businesses.

Analysis:

- The Supreme Court of India reversed the judgment of the High Court and held that government, tribal, and forested lands in the scheduled areas cannot be leased to non-tribal persons or private companies for mining purposes. The Supreme Court reasoned that all land in the scheduled areas, regardless of title, cannot be leased out because of the importance of agriculture as the source of livelihood for tribal persons. Paragraph 5(2) of the Fifth Schedule of the Indian Constitution preserved these lands to protect tribal persons' economic empowerment, economic justice,

social status, and dignity. The transfer of lands in the scheduled areas can be allowed only for peace and good governance of the land.

- Additionally, the Supreme Court held that mining activity in scheduled areas can only be operated by the State Mineral Development Corporation or by a cooperative of tribal persons with at least 20% of profits from these activities going towards infrastructure and other social services such as schools, hospitals, and sanitation. All other leases granted to non-tribal persons were cancelled and void for violation of the Fifth Schedule of the Indian Constitution
- All mining leases that had been granted by the State of Andhra Pradesh were considered null and void. The State was also enjoined from granting further leases. The State of Andhra Pradesh's subsequent appeals were dismissed by the Supreme Court.

Conclusion:

This case is important for acting as a check and restraint to state power from the exploitation of resources on tribal lands for commercial purposes.

2. B K Manish v. State of Chhattisgarh (AIR 2013 Chh 159)

Facts:

In this case, 13 districts of Chhattisgarh were declared Schedule Areas through Scheduled Areas (States of Chhattisgarh, Jharkhand and Madhya Pradesh) Order, 2003. Afterwards, Chhattisgarh Tribes Advisory Council Rules, 2006 were brought in force. The petitioner challenged Rule 12 and 15 on the ground that they were ultra vires of the Constitution.

Procedural history:

The High Court dismissed the petition, upholding the Constitutionality of the Rules.

Issue:

Whether the Governor ought to have framed the Chhattisgarh Tribes Advisory Council Rules, 2006 in his discretion or the rules framed by the State of Chhattisgarh and authenticated on his behalf are sufficient compliance of the law.

Rules:

- Article 163: It talks about the Council of Ministers to aid and advise the Governor.
- Paragraph 4(3) of the Fifth Schedule, Indian Constitution: Governor to make rules, prescribing or regulating Tribes Advisory Council.
- The Chhattisgarh Tribes Advisory Council Rules, 2006

Analysis:

- The Court first considered the issue of entertaining a PIL questioning the constitutionality or validity of a statute or a Statutory Rule. As per Supreme Court judgment in *Guruvayoor Devaswom Managing Committee and Anr. v. CK Rajan and Ors*, High Courts should not entertain such petitions ordinarily. It depends on the facts and circumstances, as well as the nature of the PIL. In the present case, the Scheduled Tribes are the most backward class of society in our country. If a PIL is filed

on the premise that the welfare and the interest of the scheduled tribes are at stake, the same can be entertained.

- The Court held that Article 163 of the Constitution provides that the Governor is to act on the advice of Council of Ministers (with the Chief Minister as its head) except the functions that he is required to do in his discretion under the Constitution. The Governor is the constitutional or formal head of the State. His satisfaction is not personal satisfaction but satisfaction in the constitutional sense. Unless a particular Article expressly provides an obligation to be performed by the Governor to act in his discretion, it cannot be inferred by implication. Paragraph 4(3) of the Fifth Schedule does not require the Governor to frame the Rules in his discretion but the same has to be done with the advice of the cabinet of ministers. Accordingly, the Rules framed by the State and authenticated in the name of the Governor are sufficient compliance of the Constitution.

- Regarding the validity of Rule 12 and Rule 15, the Court held that they can be declared ultra vires only if it is beyond the rulemaking power, or if it contravenes any provisions of the Constitution. Rules framed by the State Government and authenticated in the name of the Governor are within the rule framing power of the Fifth Schedule.

- Tribes Advisory Council is bound to advise the Governor, in the matters referred to the council by the Governor, for the welfare and advancement of the ST in the State as per Para 4(2) of the Rules. Rule 12 merely provides that the Council can also discuss any matter relating to the welfare of ST by the State, even though it might not be referred to it by the Governor provided the Chairperson considers it to be for the welfare of the ST. There is no prohibition in the Constitution from doing it. **<u>However, the Court made note of a point that advice of the Council is not binding on the Governor as per the wording of Fifth Schedule.</u>**

- Rule 15 provides that no member shall raise any objection in the proceedings of the meeting concerning any seat of the Council being vacant, or any flaws or malpractice in the nomination of members. The Council is the creation of the Constitution and its

composition is also basically provided therein; though finer details are provided in the Rules. The seats in the Council are filled-up by the Governor. Under the general law, the constitution of the Council cannot be challenged in its meeting. It can only be challenged separately by taking appropriate legal proceedings. This is also so provided in rule 15 and is merely a clarification of the general law. There is no illegality in the same.

Conclusion:

The following were the conclusions arrived at by the Court,

(a) The PIL has been filed for the benefit of the Schedule Tribes and for protection of the scheduled area;

(b) The Court should not decline to entertain validity of the Chhattisgarh Tribes Advisory Council Rules, 2006 framed under paragraph 4(3) of Fifth Schedule of the Constitution of India merely on the ground that it is a PIL;

(c) The Governor while framing the rules under paragraph 4(3) of the Fifth schedule does not act in his discretion. The Chhattisgarh Tribes Advisory Council Rules, 2006 framed by the state government and authenticated in the name of Governor are sufficient compliance of law;

(d) The Rules do not violate any provision of the Constitution and are intra vires.

3. Seepuri Nagabhushanam and Ors. v. Government Of Andhra Pradesh (AIR 1965 AP 332)

Facts:

The petitioner challenged the validity of a notice made by the Governor of Andhra Pradesh through which he added sub-section 1 to section 7 of the Andhra Pradesh Panchayat Samithi and Zila Parishads Act to confine the elections of the Presidents and Vice Presidents of every Panchayat Samithi in the Scheduled Area to the members of the Panchayat Samithi belonging to the Scheduled Tribes.

Procedural history:

A notice was made by the Governor of Andhra Pradesh under para 5 of Schedule V of the Constitution of India. This was now being challenged in the High Court of Andhra Pradesh.

Issue:

Whether the notice made by the Governor is ultra vires of the constitution?

Rules:

- Para 5 (1) of Schedule V of the Constitution of India: Gives power to the Governor to make laws applicable to the Scheduled Areas.
- Article 371 of the Constitution of India: Talks about special provisions with respect to Maharashtra and Gujarat.

Analysis:

- The Court observed that Para 5 (1) of Schedule V of the constitution empowers the Governor to apply the law made by Parliament or by a Legislature of the State with such exceptions or modifications in its application or non-application to the Scheduled area as he may direct and if need be to give retrospective effect to the

same. This power contains within it the power of amendment of the law as intended to be applied to the scheduled area.

- The Court held that the application of the law can confine itself to a certain class of persons in the area. The power is granted mainly to protect the interests of the scheduled area or the persons residing in the scheduled area in which no doubt the majority of the persons are Scheduled Tribes.

- The Court observed that Article 371 constituting Regional Committees for some states and also the conferment of the special responsibility on the Governor for the establishment of a separate development board for Vidarbha, Marathwada, the rest of Maharashtra, Saurashtra, Kutch and in respect of Gujarat is analogous to provisions of Schedule v. The recommendations of the Regional Committee of reservation of seats only on a regional basis was already held to be valid and within their power. This consequence flows from the non-obstante clause of Article 371. The reservation for multi-purpose candidates cannot be brought in issue either as being without competence or as being in contravention of Article 14 of the Constitution. Para 5(1) of Schedule V also has a similar non-obstante clause.

Conclusion:

The Court held that the modifications of sub-clause 1 of section 7 by adding a proviso providing that the Presidents and Vice-Presidents of every Panchayat Samithi in Scheduled areas shall be elected from among the members of the Panchayat Samithi belonging to the Scheduled Tribes, is not ultra vires the powers of the Governor.

4. Ganesh Ram Koshare v. State Of Chhattisgarh & Ors (2004(2)CGLJ327)

Facts:

The petitioner challenged the legality, propriety and correctness of the notifications in pursuance of the formation of villages as per the population census. The Governor authorized the Collectors to constitute new Panchayats as per Sections 3, 8, 125, 126 and 129B, and Section 93 of the Madhya Pradesh (Panchayat Raj Avam Gram Swaraj) Adhiniyam, 1993. Preliminary notifications simply depict the existing villages and not the proposed changes, which forms part of the existing Panchayat and the population as per Census 2001. Without any proposals in all these matters, the respective Collectors either created the Panchayats or shifted the villages from one Panchayat area to another Panchayat area. The same was challenged before the High Court.

Procedural history:

Various writ petitions were filed in the Chhattisgarh High Court.

Issue:

Whether the Governor has the authority to direct collectors of respective revenue districts to form new panchayats as per the scheme of the Constitution?

Rules:

- Madhya Pradesh (Panchayat Raj Avam Gram Swaraj) Adhiniyam, 1993:
    - Section 3: Notification of a village
    - Section 8: Constitution of panchayats
    - Section 125: Change of Alteration of Gram Panchayat and alteration of the panchayat area.
- Article 154: Executive power of the State.
- Article 163:Council of Ministers to aid and Advice the Governor
- Article 166: Conduct of Business of the Government of State.

Analysis:

- The Court looked into the constitutional provisions such as Article 154 and Article 163 read with Article 166 to establish that the Governor except where he is required under the Constitution to exercise the functions in his discretion, is to exercise his powers on the aid and advice of the Council of Ministers. Whether it is a notification issued by the Government or a general or special order issued by the State Government, constitutionally, both are the acts of the Governor. The above notification authorizing the Collectors to function on behalf of the Government has been issued under Sections 3, 125, 126 and 129B of the Act. Therefore, it cannot be said that the powers were not exercised by the Governor of the State.
- The Court held that the Parliament has passed the Panchayat (Extension to Scheduled Areas) Act, 1996 in the exercise of the powers under Article 243M of the Constitution. Thereafter, by an amendment in the M.P. Panchayat Raj Adhiniyam, 1993 Chapter XIV-A has been added. This chapter has been given an overriding effect in respect to the provisions of the Act. Therefore, the definition of "village" in this chapter overrides the definition of the village given in Section 3 of the Act. Thereafter, the M.P. Scheduled Areas Gram Sabha (Constitution, Procedure of Meeting and Conduct of Business) Rules, 1998 have been framed. This exercise of power is legislative in character and the Courts cannot interfere in the exercise of such powers.

Conclusion:

The act of constituting Panchayat for a village was necessitated on account of the general Census 2001. It was legislative in nature, and no right to the Petitioners arise for hearing, and principles of natural justice do not apply. A bare reading of Sections 3, 125, 126, and 129B of the Act and Rules 3 and 4 of the Rules do not contemplate hearing of objectors or the persons who gave their suggestions in response to preliminary notifications.

The Panchayats (Extension to the Scheduled Areas) Act, 1996

The PESA was enacted in December 1996, following the release of the Mungekar Committee Report which recommended that greater power be devolved to tribal communities to foster self-governance systems and initiatives. The Act aims to provide for the expansion of the provisions of Part IX of the Constitution relating to Panchayats by extending them to the Scheduled Areas. Recognizing the village as the fundamental unit of governance, the Act provides a crucial role to the Gram Sabha and confers a range of powers to it.

The Act's central tenets are contained in Section 4, which lays down the exceptions and modifications made to Part IX of the Constitution. It bars the State Legislature from making laws against specific features, implying enabling provisions to be instated in their place. Sections 4(a) and 4(d) of the Act mandate the incorporation of only that legislation, which aligns with the customary law and practices of tribal communities. Defining the bounds of a 'village,' iterates that a Gram Sabha is constituted in every village. It confers the power to approve financial decisions and initiatives prior to their implementation by the Panchayat and select the beneficiaries of state schemes and programmes. Keeping in mind the vitality of representation, Sections 4(g) and 4(h) of the Act direct that reservations for Scheduled Tribes be put in place, and the State Government appoint members from underrepresented tribes. It mandates that the Gram Sabhas or Panchayats be consulted before making decisions concerning land acquisition, development projects, or mining licences and leases. Lastly, to render the Gram Sabha and Panchayat as a fully-functioning unit of governance, Sections 4(j) and 4(m) confer authority upon them in matters regarding the use of water bodies, ownership of forest produce, village markets, and social and financial institutions. Section 5 of the Act clarifies that existing legislations inconsistent with Part IX and its extension shall remain in force until amended, repealed, or expired.

The legislation's implementation was entrusted with the Ministry of Rural Development and has not devolved to the Ministry of Tribal Affairs. Additionally, the Ministry of Panchayat Raj also plays an active role in this process. Although the Act was enacted in 1996, there has not been an active response from the State and Central Governments. Many states are yet to frame the rules for the implementation of PESA provisions.[4] Moreover, the authority of the legislation has been undermined in certain states wherein the PESA Rules were deemed ultra vires of the Act.[5] States such as Jharkhand and Telangana have also proposed bills that contravene the tenets of the Act.[6]

[4] Id.
[5] Gujarathi, Aditya. (2020). *Mythical promise? Gujarat PESA rules ultra vires of parent Act, 'violate' tribal rights.* Retrieved 01 October, 2020, from https://www.counterview.net/2020/05/mythical-promise-gujarat-pesa-rules.html
[6] Alam, Mahtab. (2020). Why Is the Jharkhand Land Mutation Bill Being Opposed?. Retrieved 01 October, 2020, from https://thewire.in/rights/jharkhand-land-mutation-bill-protest-adivasi-rights-hemant-soren; Rao, P.T. (2020). How Telangana's new Revenue Bill may violate the land rights of tribals. Retrieved 01 October, 2020, from https://www.thenewsminute.com/article/how-telanganas-new-revenue-bill-may-violate-land-rights-tribals-132954.

1. Union Of India v. Rakesh Kumar ((2010) 4 SCC 50)

Facts:

The present petition was filed against the Jharkhand High Court Order in a petition challenging the constitutional validity of Section 4 of PESA Act 1996. Sub-section (g) of Section 4 contained provision for the reservation of seats in the Scheduled Areas at every Panchayat. It provided for reservation proportional to the population of the communities in that Panchayat for whom the reservation is sought to be given under Part IX of the Constitution. At least half of the seats and post of Chairpersons of Panchayats was reserved for Scheduled Tribes.

To give effect to the provisions of PESA Act, the State Legislature of Jharkhand incorporated provisions in furtherance of PESA in the Jharkhand Panchayat Raj Act, 2001. This Act contained provisions for reservation of seats in Gram Panchayat (Section 17(B)), Panchayat Samiti (Section 36(B)) and Zila Parishad (Section 51(B)); reservation for Posts of Mukhiya & Up-Mukhiya in Gram Panchayat (Section 21(B)), Pramukh & Up-Pramukh in Panchayat Samiti (Section 40(B)) and Adhyaksha and Upadhakshya in Zila Parishad (Section 55(B)) in a Scheduled Area.

Procedural history:

The petitioners, before the High Court, contended that since every eligible individual has a right to vote and the right to contest elections for the seats and Chairperson positions in panchayats, the cent per cent reservation of Chairperson positions in favour of STs would curtail the rights of candidates other than those belonging to the ST category. Also, the cent per cent reservation of Chairperson positions was excessive and hence violative of Article 14 of the Constitution.

The High Court agreed with the contentions and held that the second proviso to Section 4(g) of the PESA Act as well as 2nd proviso to Section 4(g) of PESA Act, 1996, Section 21 (B), Section 40(B) and Section 55(B) of Jharkhand Panchayat Raj Act reserving all the seats of Chairpersons of Panchayats in favour of Scheduled Tribes were unconstitutional. They were being held as excessive, unreasonable and against the principles of equality i.e. violative of Article 14 of the Constitution of India.

Aggrieved by the decision of the High Court, the petitioner approached the Supreme Court of India.

Issue:

Whether the second proviso to section 4(g) of PESA Act, 1996, Section 21(b), Section 40(b) and Section 55(b) of Jharkhand Panchayat Raj Act is unconstitutional.

Rules:

- Section 4(g) of PESA Act, 1996: Reservation in seats of Panchayats should be in proportion to the population of communities seeking it.
- Section 21(b) of Jharkhand Panchayat Raj Act, 2001: The position of Mukhia in scheduled areas shall be reserved for scheduled tribes. 1/3rd of these posts of Mukhia shall be reserved for women belonging to scheduled tribes.
- Section 40(b) of Jharkhand Panchayat Raj Act, 2001: The post of Pramukh in the Panchayat Samitis of scheduled areas shall be reserved for members of the scheduled tribes, with one-third seats reserved for women from the scheduled tribes.
- Section 55(b) of Jharkhand Panchayat Raj Act, 2001: Posts of Adhyaksha and Up-Adhyaksha in scheduled areas shall be reserved for members of the scheduled tribes, with one-third posts being reserved for women from scheduled tribes.

Analysis:

- The Court looked into the recommendations of Dileep Singh Bhuria Committee which were accepted by Union Government and the PESA Act, 1996 was enacted to give effect to the same. Bhuria Committee recommended that the Chairman and Vice-Chairman of Panchayats should belong to Scheduled Tribes because it was felt that if the Chairperson positions are occupied by non-tribal persons, there is no guarantee that such persons will account for the special interests of the Scheduled Tribes. Accordingly, the Parliament has conferred such special reservation on account of the pivotal role of the Chairperson.
- The Court did not agree on Petitioner's reliance on *Indra Sawhney v. Union of India* & *M.R. Balaji v. The State of Mysore* to argue that the maximum reservation which is

legally permissible is only up to 50 per cent. Both of these decisions were given in respect of reservation measures enabled by Article 16(4) of the Constitution and were applicable for public employment and admission to educational institutions cannot be readily applied on a reservation policy to protect the interests of the Scheduled Tribes.

- The Court observed that a comparable reservation policy contained in the Madhya Pradesh Panchayati Raj Act was challenged in *Ashok Kumar Tripathi* v. *Union of India* and the MP High Court upheld the provision by stating that it is supportable even on the touchstone of Article 14 of the Constitution. It is protective discrimination permissible on a reasonable classification of different sections of the society into more oppressed-backwards and the forwards. Accordingly, it was held by the Supreme Court that Jharkhand had erred in striking down the provisions of PESA Act and JPR Act.

- In Panchayats located in Scheduled Areas, the exclusive representation of Scheduled Tribes in the Chairperson positions of the same bodies is constitutionally permissible. This is so because Article 243M(4)(b) expressly empowers Parliament to provide for 'exceptions and modifications' in the application of Part IX to Scheduled Areas.

- The Court also held that providing reservations in favour of Scheduled Castes (SC), Scheduled Tribes (ST) and Other Backward Classes (OBC) that together amount to eighty percent of the seats in the Panchayati Raj Institutions located in Scheduled Areas of the State of Jharkhand is also permissible. It ensures 'substantive equality' and 'distributive justice' which are at the heart of our understanding of the guarantee of 'equal protection before the law'.

- When examining the validity of affirmative action measures, the enquiry should be governed by the standard of proportionality rather than the standard of 'strict scrutiny'. There can be compensatory discrimination' which goes beyond the ordinary standards of 'adequate representation'. It was necessary here it was found that even in the areas where Scheduled Tribes are in a relative majority, they are

under-represented in the government machinery and hence vulnerable to exploitation.

Conclusion:

Section 4(g) of PESA Act and Sections 21(B), 40(B) and 55(B) of Jharkhand Panchayat Raj Act, 2001 were held to be constitutionally valid.

2. Orissa Mining Corporation Ltd. v. Ministry of Environment & Forest & Others ((2013) 6 SCC 476)

Facts:

The case is related to an Alumina Refinery Project (ARP) in Lanjigarh Tehsil of District Kalahandi. The Ministry of Environment and Forest ('**MoEF**') granted environmental clearances to Sterlite and Vedanta. The state of Orissa mentioned that there was an involvement of forest land. The case went to the Supreme Court where it was held that the State will float a Special Purpose Vehicle and the Court put down a list of conditions keeping in mind the interest of all stakeholders. This included compensatory afforestation and rehabilitation of project-affected families.

Later, Sterlite filed an interim application stating that the State of Orissa has unconditionally accepted the terms and conditions and modalities suggested by the Supreme Court under the caption Rehabilitation Package. Also, the Court dismissed the review petition for its previous order. The Court then passed final order granting clearance to the forest diversion proposal for diversion of 660.749 ha of forest land to undertake bauxite mining on Niyamgiri Hills in Lanjigarh. Later, MoEF also granted the clearance subject to forest clearance.

A committee under the chairmanship of Naresh Saxena was formed to study and assess the impacts of various rights and to make a detailed investigation. The committee submitted some recommendations highlighting the violation of Forest Rights Act 2006 and the Environmental Protection Act. The state of Orissa raised some objection to the recommendation. MoEF rejected the Stage-II forest clearance for diversion of forest land for mining of bauxite ore.

Procedural history:

The present petition was filed by the State of Orissa, before the Supreme Court to seek a writ of certiorari to quash the orders passed by the Ministry of Environment and Forest under which, it rejected the Stage II forest clearance for diversion of 660.749 hectares of forest land for mining of bauxite ore in Lanjigarh Bauxite

Mines in Kalahandi and Rayagada Districts of Orissa and also for other consequential reliefs.

Issues:

a. Whether the rejection of Stage-II forest clearance by MoEF was valid?

b. Whether the PESA Act and Forest Rights Act, 2006 were violated?

Rules:

- Section 4 of the PESA Act, 1996: State legislation on panchayats shall be made in consonance with the customary laws and traditions and social and religious practices.
- Section 4(5) of Forest Rights Act, 2006: Until otherwise provided, no traditional forest dweller shall be evicted or removed from forest land under his occupation.
- National Forest Policy 1988, EIA Notification 2006.

Analysis:

- The Court observed that while customary rights of the Primitive Tribal Groups are not recognized in the National Forest Policy, 1988 they are an integral part of the Forest Rights Act, 2006. An Act passed by Parliament has greater sanctity than a Policy Statement. This is apart from the fact that the Forest Rights Act came into force eighteen years after the National Forest Policy.
- Section 4 of the PESA Act stipulates that the State legislation on Panchayats shall be made in consonance with the customary law, social and religious practices, and community resources' traditional management practices. Clause (d) of Section states that every Gram Sabha shall be competent to safeguard and preserve the people's traditions and customs, their cultural identity, community resources, and the customary mode of dispute resolution. Further, it also states in clause (i) of Section 4 that 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 and that the actual planning and implementation of the projects in the Scheduled Areas, shall be coordinated at the State level. Sub-clause (k) of

Section 4 states that the recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory before grant of prospective licence or mining lease for minor minerals in the Scheduled Areas.

- The Forest Rights Act has been enacted, conferring powers on the Gram Sabha to protect the community resources, individual rights, cultural and religious rights. The Ministry of Tribal Affairs has noticed several problems impeding the implementation of the Act in its letter and spirit. For proper and effective implementation of the Act, the Ministry has issued certain guidelines and communicated to all the States and UTs.

- The Court agreed with the contention of the State of Orissa that the State has the ownership over the mines and minerals deposits beneath the forest land and that the STs and other TFDs cannot raise any claim or rights over them, nor the Gram Sabha has any right to adjudicate such claims as held in *Amritlal Athubhai Shah and Ors. v. Union Government of India and Another*. However, the Court stated that The Forest Rights Act has neither expressly nor impliedly taken away or interfered with the State's right over mines or minerals lying underneath the forest land, which stand vested in the State. The State holds the natural resources as a trustee for the people.

- Gram Sabha functioning under the Forest Rights Act read with Section 4(d) of PESA Act has an obligation to safeguard and preserve the traditions and customs of the STs and other forest dwellers, their cultural identity, community resources, etc., which they have to discharge following the guidelines issued by the Ministry of Tribal Affairs vide its letter dated 12.7.2012.

Conclusion:

Accordingly, the Court gave direction to Gram Sabha to look into the claims related to the religious and cultural rights of the people residing near the site. On the conclusion of the proceeding before the Gram Sabha determining the claims submitted before it, the MoEF shall take a final decision on the grant of Stage II

clearance for the Bauxite Mining Project in the light of the decisions of the Gram Sabha.

Powers of the Gram Sabha and Panchayat

The Constitution (Seventy-Third Amendment) Act, 1992

The Constitution (Seventy-Third Amendment) Act, colloquially known as the Panchayati Raj Institutions Act, was enacted in 1992, with the objective of enshrining democratic governance at the grassroots. The Act recognized the shortcomings of the existing Panchayat framework and aimed to impart certainty, continuity and strength to them. Article 40 of the Indian Constitution containing the Directive Principles of State Policy encouraged states to organize and empower village Panchayats and Act initiated the inclusion of Part IX, governing the setting up and functioning of these local governing bodies.

The Part, consisting of Articles 243, first provides for the constitution of a Gram Sabha as a decision-making body at the village level and subsequently establishes a three-tier structure comprising Panchayats at the village, intermediate and district levels. The State Legislature is encouraged to provide for equitable representation within the Panchayats by making provisions for its composition proportionate with the population of the area and to ensure the reservation of seats for women and for members of the Scheduled Castes and Scheduled Tribes. Every Panchayat is mandated to continue for five years and representatives are to be directly elected at regular intervals accordingly. The Article also contains provisions for the devolution of powers and responsibilities to the Panchayats concerning the development of plans for economic and social justice and the implementation of such schemes as may be entrusted upon them.

The Act has played a key role in strengthening local governance and emboldening the Gandhian vision of Gram Swaraj. However, the lacunae in the legislation hinder the growth of a complete comprehensive governing mechanism. State Governments have frequently failed to prepare electoral rolls and conduct regular elections to these bodies. The State Government in Andhra Pradesh delayed conducting the

elections until 2014, once the High Court intervened.[7] Additionally, it has also been observed that a majority of the grievance brought before the Courts concern a failure on the part of the State with regard to maintaining the mandated reserved seats for marginalised groups. This paves the way for 'proxy rule' instead of adequate diverse representation and democratic decision-making.[8] Moreover, the financial regulation of the Panchayats is also encumbered by the negligence of the States in appointing the State Finance Commissions, which are to review and make recommendations on the financial position of the Panchayats, and tabling their reports on a timely basis.[9]

Most cases presented hereunder, are about the powers of the Gram Sabha and Gram Panchayat and their battle for autonomy. Panchayati Raj provisions of all states are similar in nature and hence these cases can be used as a reference in all States, backed by the legal provision in the Act.

[7] Brahmanandam, T. (2018). Review of the 73rd Constitutional Amendment: Issues and Challenges. Indian Journal of Public Administration, 64(1), 103–121. https://doi.org/10.1177/0019556117735461
[8] Id.
[9] Lahiri, Ashok. (2020). Panchayats: At the cusp of a new phase of governance. Retrieved 03 October, 2020, from https://economictimes.indiatimes.com/news/politics-and-nation/panchayats-at-the-cusp-of-new-phase-of-governance/articleshow/75342318.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

1. Velpur Gram Panchayat and Ors. v. Asst. Director of Marketing, Guntur and Ors. (1998 (1) ALD 625)

Facts:

In the present case, the petitioners pleaded that Velpur Gram Panchayat had been running cattle shandy within the Gram Panchayat area for the last 20 years or more by holding public auctions. It was contended by the petitioners that, under Section 104 of A.P. Panchayat Raj Act all the public markets vest in the Gram Panchayat and the Gram Panchayat must provide places for use as public markets and further-more the Panchayat is entitled to collect fees on animals brought for sale and sold in such markets under Section 104(2)(d) of the Act. It is also contended that all the income accruing from such above-mentioned sources of Gram Panchayat revenue form part of Gram Panchayat funds.

Selling the right to have public markets by public auction by granting licences for a period of one year has been a practice that has prevailed for a long time. Accordingly, the same was done in this case, from 1st April to 31st March, in favour of the 2nd petitioner i.e. the successful bidder.

The respondents contended that under the provisions of the A.P. (Agricultural Produce and Livestock) Markets Act and the specific provision of Section 7(6), unless all the steps are gone into, no market can be held within a particular area of the Gram Panchayat and therefore given the rights of the 2nd petitioner i.e. the successful bidder to hold cattle shandy as per the public auction and the resolution of the Panchayat, such proceedings were illegal, arbitrary and cannot be enforced.

The petitioners also contended that the impugned proceedings were an outcome of the malice in law. They also contended that such proceedings were issued without notice or opportunity to the petitioners and therefore violative of the principles of natural justice. The respondents finally contended that the impugned proceedings are violative of Articles 14, 19(1)(G) and 300(A) of the Constitution of India. Therefore, the petitioners have sought for appropriate directions in the nature of

mandamus or any other order to declare the impugned proceedings dated 27-3-1997 as null and void and to set aside the same.

Procedural history:

The respondent no.3, i.e., member of the Zila Parishad Territorial Constituency, made a representation to the Hon'ble Minister for Panchayat Raj and Rural Division regarding public auction for cattle shandy. His representation was sent to Respondents no. 1, Assistant Director of Marketing, Guntur, who in turn forwarded it to Respondent No. 2, i.e., person-in-charge of Agricultural Market Committee, directing the petitioner-Gram Panchayat not to conduct an auction for the period from 31-3-1997. Thus, Respondent 2 served an order to the petitioner not to conduct the auction.

Issue:

Whether the Gram Panchayat has got powers under the act to establish, control and regulate a market within its area.

Rules:

- Section 104 of Andhra Pradesh Panchayat Raj Act, 1994: empowers the Gram Panchayat to provide places for use as public markets and, with the sanction of the Commissioner, close any such market.
- Article 243 (d) of the Constitution of India: “Panchayat” means an institution of self-government constituted under article 243B, for the rural areas.
- Section 45 of the Andhra Pradesh Panchayat Raj Act, 1994: duties of gram panchayat to provide for certain matters including that of construction, cleaning and maintenance.
- Section 46 of the Andhra Pradesh Panchayat Raj Act, 1994: Empowers Gram Panchayats in matters of fairs, jatras and festivals.

- Section 104(1) of the Andhra Pradesh Panchayat Raj Act, 1994: Empowers gram panchayats in matters of providing space and closure of places for use as public markets.
- Section 104(2)(d) of the Andhra Pradesh Panchayat Raj Act, 1994: Empowers the Gram Panchayat to collect the fee on animals brought for sale into or sold in such markets

Analysis:

- Section 46 of the Andhra Pradesh Panchayat Raj Act, 1994 is an enabling provision which empowers the Gram Panchayat to provide for and control of fairs, jatras and festivals. Section 45 of that act provides general powers and functions of the Panchayat and at item No. 22, markets and fairs are one of such items within the general powers of the Gram Panchayat. Section 104(1) empowers the Gram Panchayat to provide places for use as public markets and, with the sanction of the Commissioner, close any such market or part thereof (The permission of the Commissioner is needed only to close the market and not to establish a market). Section 104(2)(d) empowers the Gram Panchayat to collect the fee on animals brought for sale into or sold in such markets.
- Section 112 allows the government to classify the markets as public or private markets situated in a village as Mandal Parishad Markets, Gram Panchayat Markets etc. The Gram Panchayat has got control over private markets also about the collection of fees and license fee under Sections 105 and 108 of the Panchayat Raj Act.
- These provisions read together in addition to Chapter IX of the Constitution of India and Schedule XI Item No. 22, makes the Gram Panchayat self-government having the power to establish markets, control them and regulate them, including the power to impose fine on any sale or exposure of public or private animal or article without permission, and the fine prescribed is Rs. 107-for such a violation under item 110 of Schedule IV, which is part of Section 207 of the Panchayat Raj Act. Thus, a Panchayat,

as self-government is a sovereign body not only to regulate but also to punish in case of violation.

- The Court held that these provisions under the Panchayat Raj Act run alongside the intendment of the Constitution that a Gram Panchayat should be self-government. Neither in Chapter IX of the Constitution nor the provisions of the Panchayat Raj Act, it was found that a Gram Panchayat is a local government.

- Local Government is defined under Section 2(viii) of the Agricultural Markets Act to mean that municipality is governed by the law relating to municipalities for the time being in force in the State and it includes the Municipal Corporation of Hyderabad. The Panchayat Raj Act is made not applicable to the areas governed by municipalities etc. Therefore, the Gram Panchayat area is quite independent and distinctive of such areas enumerated under Section l(2)(a) to (e) of the Panchayat Raj Act. The Agricultural Markets Act extends to the whole of Andhra Pradesh, however, but the applicability of the act is subject to the areas covered under Sections 3 and 4 of the Act.

- On reading the above mentioned two enactments and provisions together, the area of the Market Committee is restrictive whereas the area of the Gram Panchayat is beyond for various activities, including markets or marketing. It may be possible that in a Gram Panchayat area there may be a market of the Market Committee established under Sections 3 and 4 of the Agricultural Markets Act, however, subject to the control and power of the Gram Panchayat, not only for establishment but also for regulation and control.

- The local authority is defined under Section 3(17) of the General Clauses Act as restricted and exclusive of the meaning of self-government. Local authority and local self-government are different in form, intent and the governments. A local authority like the municipality or as in the present case Agricultural Market Committee will be statutory authorities, whereas a Gram Panchayat as in the present case under Article 243(d) would be self-government or maybe local self-government, but not a local authority.

- Applying the above mentioned sections, the Supreme Court stated that a Gram Panchayat as self-government is a sovereign body having both constitutional and statutory status, to not only govern itself but to govern its subjects within its territory. Therefore, it is difficult to think that a market committee constituted under the Agricultural Markets Act has any jurisdiction over the Gram Panchayat or to have the markets as in the present case.

Conclusion:

The High Court held that it was obvious that to hold the markets or cattle markets or weekly bazaar-like shandy for sale and purchase of cattle was within the exclusive jurisdiction of the Gram Panchayat and not that of assistant director of marketing. The Gram Panchayat had rightly entrusted the marketing of the weekly shandy in favour of the successful bidder. The Court allowed the writ petition.

2. *Village Panchayat Calangute v. The Additional Director of Panchayat (AIR 12 SC 2697)*

Facts:

The appellant, in this case, is the Village Panchayat Calangute. The appellant had granted rights to M/s. Kay Jay Constructions Company Pvt. Ltd. ('The Company') for constructing certain property in the village. The company was subsequently alleged to have overreached its permissible limits and had erected a wall which blocked the villager's access to a water well. The Additional Director of Panchayat passed an interim order on 3.8.2009 in favour of the company. The appellant also contended that the Block Development Officer did not have the jurisdiction to dispose of the complaints filed by the village residents.

Procedural history:

The matter was heard in the High Court of Bombay Goa Bench and the judges dismissed the appeal by the appellants. The High Court relied on the decision of the case Village Panchayat of *Velim v. Shri Valentine S.K.F. Rebello and Anr. 1990(1) Goa LT 70* to dismiss the appeal. The case was finally decided by the Supreme Court of India on the 02.07.2012.

Issue:

Whether a village panchayat established under Goa Panchayat Act has a standing to file a petition under Article 226 of the constitution to set aside an order made by an officer of the Appellate Authority against the village Panchayats.

Rules:

- Sec. 64 of Goa Panchayat Raj Act, 1994: it talks about powers and duties of Sarpanch and Up-Sarpanch.
- Sec. 66 of Goa Panchayat Raj Act, 1994: it talks about requirement of Panchayat's permission for erection or alteration of a building.

- Sec. 178(1) of Goa Panchayat Raj Act, 1994: it talks about suspension of the order of panchayat or Zila panchayat in case the order is unjust, unlawful or breaches peace.

Goa Panchayat Raj Act, 1994 is referred to as 'the Act'.

Analysis:

- The Court looked into the guiding principles of local self-government. They reiterated the position of Constituent Assembly members and stressed that Panchayats need to be autonomous for their proper functioning. Even though the contention was regarding the Goan law relating to Panchayats, the Court said that the constitution needs to guide the understanding of Panchayati Raj institutions.
- The Panchayats have been provided autonomy under part IX of the constitution. The Court said that Panchayats should not merely be institutions to enforce the legislations and schemes of the state and centre, but they should be empowered to formulate and implement their own programs.
- The Court looked into the competency of the Additional Director of Panchayat to pass the interim order to allow the construction by the company. The Court concluded that there was no such authority under sec. 201 or 201-A of the Act. He had exercised power under sec. 178(1) of the act. However, instead of sending the 'confirmation' of the matter to the state government, he annulled the resolution.

The Court has thus taken a liberal and originalist interpretation to assess the powers of the Panchayats.

Conclusion:

Reiterating that the Panchayats are not subordinate to the Additional Director, the Court held that the Panchayat was representing the will of the people and thus had the locus. They held that the High Court erred in holding that the writ petition was not maintainable. The appeals were allowed in this case and various cases were cited to provide authority for their decision. The impugned orders by the respondent were set aside and the writ petitions filed by the appellant were restored. The Supreme

Court directed the High Court to decide the matter on its merits. Hence, standing was allowed.

Consultation with the Gram Sabha

1. Nathabhai M. Patel v. State of Gujarat And Ors (1993 Glh (2) 91)

Facts:

Development Commissioner, through the powers granted to him via Section 9(2) of Gujarat Panchayats Act, 1961, declared that the local area comprising of Rairinagar would be separated from the local area comprising of Bavala Nagar Panchayat. After division, there would be two areas, Bavala Nagar Panchayat covering Bavala Revenue Village and Ramnagar Gram Panchayat covering Ramnagar New Vasahat. The case is filed by President of Bavala Nagar Panchayat on the premise that the Gram Panchayat was not consulted despite being a requirement under Section 9 of Act.

Procedural history:

The petition was first filed before a single bench in the Gujarat High Court which was summarily dismissed, the appellant then filed this petition before the division bench.

Issue:

Whether the consultation is required under Section 9 of Act before separating the areas?

Rule:

Section 9(2) of the Gujarat Panchayats Act 1961: While reconstruction of the village, Panchayat should be consulted so that their limits are not altered.

Analysis:

- Bavala Nagar Panchayat was consulted but the government decided not to go with their decision. Then, a new proposal came into place because of which Bavala Nagar Panchayat was not consulted.
- In *Kalubhai v. State of Gujarat*, the Court held that Section 9(2) is directory in nature and not mandatory. Since section 9 (2) talks about reconstruction of the village, it

says that Panchayat should be consulted so that their limits are not altered. However, the opposite counsel refuted the above case by citing *Bhalod Gram Panchayat v. State of Gujarat* wherein the Court held that when there is a failure concerning consultation with Gram Panchayat, the exercise of the power granted to the government under 9(2) would be rendered ineffective.

- In the case of Shankalchand *Himatlal Sheth and Anr*, the issue revolves around the importance of consultation of the Chief Justice against arbitrary transfers. Court says that consultation is not a mere formality; it must be real, substantive and effective. It means "full and effective and not formal or unproductive consultation".

- There is no consultation possible without presenting all facts and evidence before the Gram Panchayat. People whose lives are affected should be notified and consulted before making a decision. If proper consultation does not take place, their lives will be affected and they would have to face serious consequences such as higher incidences of taxes, loss of office in Gram Panchayat.

- In the present case, they were not given material for the second proposal and it proceeded without their consultation which was required. Consultation should not be merely a formal exercise, rather all relevant data should be presented to the Gram Panchayat to make decisions. In the present case, fresh data was provided to the Government which wasn't given to Gram Panchayat. Thus, the action of the Development Commissioner will be regarded as arbitrary, and deemed invalid.

Conclusion:

For making consultation effective and clear, the Government ought to have disclosed a new material to the Panchayats and ascertained its view thereon, and thereafter held that as no result has been pointed out for not doing so, and because it does not point out that if the action of the Government is regarded invalid, it would be prejudicial to the public interest. The action of the Government was arbitrary and liable to be declared as invalid.

2. Pruthvisinh Amarsinh Chauhan v. K.D. Rawat (AIR 2004 GUJ 243)

Facts: State government separated the local area of Govindpura from Veda Gram Panchayat. Challenge is made to the aforesaid notification because there was no fresh consultation with the Taluka Panchayats and Gram Panchayats as required by Section 9 of the Gujarat Panchayat Act 1993.

Procedural history:

These petitions were filed under Articles 226 and 227 of the Constitution of India in the Gujarat High Court for a Writ of mandamus or direction for quashing and setting aside Notification dated 3rd April 2001, issued by the State of Gujarat under Section 7 of the Gujarat Panchayat Act, 1993.

Issue:

Whether the government, after deciding with due consultation, can again take a decision based on old consultation and not hold fresh consultation.

Rules:

- Section 7 of the Gujarat Panchayat Act,1993: After proper inquiry, competent authority can recommend any local areas to be specified as a village under clause (g) of article 243 of the Constitution if the population of such local area does not exceed 25,000.
- Section 9 of the Gujarat Panchayat Act,1993: This section talks about the constitution of the village panchayats.

Analysis:

- Fresh consultation is necessary before making any new decision. “Consultation is not mandatory, and every departure there from may not render it void or ineffective, but, the provisions of the law have to be saluted in its spirit and exercise of consultation should be undertaken.”
- In the case of *Sakalchand*, the Supreme Court held that consent is a different concept from consultation, thus, these two words should not be used interchangeably. Also,

the term consultation means full and effective and not formal or unproductive consultation.

- In the case of *Nathabhai,* the Court held "for making consultation effective and clear, the Government ought to have disclosed a new material to the Panchayats and ascertained its views thereon, and thereafter held that as no result has been pointed out for not doing so, and because it does not point out that if the action of the Government is regarded invalid, it would be prejudicial to the public interest.
- Consultation is not mandatory but directory though it cannot be avoided. Since the legislature has incorporated it in the statute, it's done to fulfil a purpose. It has to be given due importance. The object behind the statute should be given proper salutation.
- After consulting, when the Gram panchayat arrives at a decision, the chapter is closed. If there is a fresh decision to make, it amounts to a new chapter.

Conclusion:

When the statute requires an Authority to consult before taking action, the consultation should not be a mere formality, but must be genuine and meaningful, then only the object of incorporation of this cause in the statute by the makers of law would be fulfilled. It is particularly important in the case before us, where the consultation would enable the authority to understand and evaluate the implications of the proposed stage on a section of society which is likely to be affected. The authority would know their point of view which would assist it in evaluating or judging the situation and take a decision in the best interest of the society.

3. Indian Administrative Service (S.C.S) Association, U.P. And Ors v. Union Of India (UOI) And Ors (1992 (3) SCALE 126)

Facts:

In this case, the fact that the Central Government did not consult the State Government before revising the rules was challenged in the Court. The case is relevant in the context of the interpretation of the word “consultation”.

Procedural history:

This writ petition was filed in the Supreme Court of India under Article 32 of the Constitution of India.

Issue:

Whether the Indian Administrative Service (Regulation Of Seniority) Rules, 1954 formulated by the Central Government were not legal due to the absence of prior consultation with State Governments.

Rule:

Section 3(1) of the All India Services Act 1951:

- The Central Government may, after consultation with the Governments of the States concerned, make rules for the regulation of recruitment, and the conditions of service of persons appointed to an All-India Service.

Analysis:

- The Court analysed the meaning of “consultation” before arriving at the decision. The Court discussed many precedents to arrive at a set of principles for what consultation means. In *UOI v. Sankalchand Himatlal Sheth and Anr.*, Supreme Court held that the word "consult" implies a conference of two or more persons or an impact of two or more minds in respect of a topic to enable them to evolve a correct or at least a satisfactory solution. So that the two minds may be able to confer and produce a mutual impact each must have for its consideration full and identical facts which can at once constitute both the source and foundation of the final decision.

- In The State *of U.P. v. Manmohan Lal Srivastava*, Court held that consultation does not *ipso facto* mean that it is mandatory, however, ignoring the existence of the word consultation would undermine the authority of the legislature.
- In *Chandramouleshwar Prasad v. Patna High Court and Ors*., Court held that consultation is not complete unless both the parties put their point of views before each other and discuss and examine the merits of each other's views. If one party puts a proposal and the second party has a counter-proposal in mind but has not communicated, the consultation is not effective.
- Court established six principles as to what "consultation" means:
    - There should be a meeting of minds between the proposer and the persons to be consulted on the subject of consultation. There must be definite facts which constitute foundation and source for a final decision.
    - When the offending action affects fundamental rights or to effectuate built-in insulation, as a fair procedure, consultation is mandatory and non-consultation renders the action ultra vires or void.
    - When the opinion or advice binds the proposer, consultation is mandatory and its infraction renders the action or orders illegal.
    - When the opinion or advice or view does not bind the person or authority, any action or decision taken contrary to the advice is not illegal, nor becomes void.
    - When the object of the consultation is only to apprise of the proposed action and when the opinion or advice is not binding on the authorities or person and is not bound to be accepted, the prior consultation is the only directory. The authority proposing to take action should make known the general scheme or outlines of the actions proposed to be taken, be put to notice of the authority or the persons to be consulted, have the views or objections, considering them, and thereafter, the authority or person would be entitled or has/have authority to pass

appropriate orders or take a decision thereon. In such circumstances, it would amount to "after consultation".

- The court here said that no hard and fast rule could be laid as no useful purpose would be served by formulating words or definitions nor would it be appropriate to lay down how consultation must take place. It is for the Courts to determine in each case in the light of its facts and circumstances whether the action is "after consultation"; "was consulted" or was it a "sufficient consultation".
- Where any action is legislative in character, the consultation envisages like one under Section 3(1) of the Act, that the Central Govt. is to intimate to the State Governments concerned of the proposed action in general outlines and on receiving the objections or suggestions, the Central Govt or Legislature is free to evolve its policy decision, make appropriate legislation with necessary additions or modification or omit the proposed one in draft bill or rules. The revised draft bill or rules, amendments or additions in the altered or modified form need not again be communicated to all the concerned State Governments nor have prior fresh consultation.
- Rules or Regulations being in legislative in character would tacitly receive the approval of the State Governments through the people's representatives when laid on the floor of each House of Parliament. The Act or the Rule made at the final shape is not rendered void or ultra vires or invalid for non- consultation.
- It was held that there was no need for consulting the State Government again because there was a general consultation done. Also, it wasn't necessary to have prior consultation to bring proviso into force.

Conclusion:

Consultation is a process which requires a meeting of minds between the parties involved in the process of consultation on the material facts and points involved to evolve a correct or at least a satisfactory solution. There should be a meeting of minds between the proposer and the persons to be consulted on the subject of consultation. There must be definite facts which constitute foundation and source for

a final decision. The object of the consultation is to render consultation meaningful to serve the intended purpose. Prior consultation on that behalf is mandatory. **When the offending action affects fundamental rights or to effectuate built-in insulation, as a fair procedure, consultation is mandatory and non-consultation renders the action ultra vires or invalid or void.**

The Biological Diversity Act, 2002

The Biological Diversity Act was enacted in 2002 in an attempt to uphold the objectives put forth by numerous ecological and environmental conventions that India had become a signatory to, particularly the United Nations Convention on Biological Diversity (1992). The Act aims to provide for the conservation of biological diversity and the fair, equitable and sustainable use of its components. The Act contains 12 chapters concerning access to biological resources and the setting up and functioning of various State authorities to regulate such access and maintain a balance between utilization and preservation.

Attempting to prevent corporate and foreign exploitation of national resources, the second chapter regulates access by mandating that corporations, foreign nationals and non-residents must seek approval prior to undertaking any biological activity or obtaining the results of biological research, except in specific circumstances. The Act provides for its implementation through the establishment of a three-tier structure with authorities at the national, state, and local levels. Chapters III, IV and V concern the National Biodiversity Authority, which is to be established by the Central Government and is bestowed with the duty of regulating the access to biological resources, and advising the Central and State Governments on matters concerning biodiversity preservation, sustainable and equitable use and selection of heritage sites. The next few chapters concern the setting up and functioning of the State Biodiversity Board as an advisory body assisting the State Government.

Additional comprehensive duties and powers are entrusted upon the Central and State Governments through Chapter IX, to encourage and enable them to effect strategic plans or programmes for the preservation of diversity and proliferation of information and awareness concerning biodiversity. A vital aspect of the legislation is its provision of local bodies, the Biodiversity Management Committees (BMCs), for propagating its objective and conserving indigenous knowledge and cultures through the maintenance of People's Biodiversity Registers (PBRs). The Committees constituted will also hold responsibility for the management of a Local Biodiversity Fund to be utilized for the purposes of this Act. The final chapter of the legislation

deals with miscellaneous matters concerning offences, penalties, settlement of disputes and authorial jurisdiction.

For 15 years post its enactment, the Act was only marginally effective and tepid action was undertaken. This pace was quickened through increased action following a petition filed before the National Green Tribunal (NGT) in mid-2016.[10] The NGT passed various orders directing the Ministry of Environment, Forest and Climate Change, the National Biodiversity Authority and the State Biodiversity Boards to implement the Act and ensure the creation and maintenance of the BMCs and their PBRs. This catalysed rapid changes and January 31, 2020, witnessed the complete formation of 95 percent of BMCs. However, the creation of the BMCs is subject to regional disparities, and many of the Committees only exist on paper with no active engagement.[11]

[10] Tandon, Mridhu. (2020). India's Biological Diversity Act finally shows progress due to NGT. Retrieved 02 October, 2020, from https://india.mongabay.com/2020/06/commentary-indias-biological-diversity-act-finally-shows-progress-due-to-ngt/

[11] TNN. (2019). Uttarakhand awaits Biodiversity Management Committees. Retrieve on 02 October,2020, from http://timesofindia.indiatimes.com/articleshow/71483328.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

1. Divya Pharmacy v. Union of India (2018 SCC ONLINE UTT 1035)

Facts:

Divya Pharmacy, the appellant is an Indian company involved in the manufacturing of Ayurvedic medicines, in Haridwar, Uttarakhand in India. The State Biodiversity Board raised a demand for royalties under the head 'Fair and Equitable Benefit Sharing' ('**FEBS**') as provided under the Biological Diversity Act and the Regulations framed in 2014. The demand was challenged by the petitioner contending that the regulations apply only to foreign entities under Section 3 of the Biological Diversity Act. The appellant aggrieved by the demand of the Uttarakhand Biodiversity Board (UBB) filed a Writ Petition before the High Court of Uttarakhand.

Procedural history:

The petitioner approached the High Court of Uttarakhand against the Order of the UBB for demand for Royalties.

Issue:

Whether the State Biodiversity Board could impose 'fair and equitable benefit sharing' as one of its regulatory functions on Indian entities who were using biological resources?

Rules:

- The Biodiversity Act, 2002
    - Section 2(g): defines 'fair and equitable benefit sharing'.
    - Section 3: Mentions persons requiring approval of National Biodiversity Authority before undertaking biodiversity related exercises.
    - Section 7: Condition of prior intimation of Biodiversity Board for obtaining biological resources for certain purposes.

    - Section 23(b): State Biodiversity Board function related to granting approval for commercial utilization or bio-survey and bio-utilization of any biological resource by Indians.

- Convention on Biological Diversity & Nagoya Protocol.

Analysis:

- The Court held that the Fair and Equitable Sharing provision applied to both Indian and Foreign entities. To reach this conclusion, the Court relied upon "purposive interpretation" in light of the Convention on Biological Diversity and Nagoya Protocol. It held that the provisions on Access and Benefit Sharing would apply not only to the entities which have to apply for Prior Approval of State Biodiversity Boards but also to entities which have to give Prior Intimation to the State Biodiversity Board under Section 7 of the Act.

- One observation was the opening phrase of Section 2 which read as "Unless the context otherwise requires..." The Court emphasised that the said phrase is often inserted in legislations so that the Judges may be able to mould the definition of a particular word as per the context. This is done because the literal interpretation of a word may not always serve the purpose for which the law was passed. In this context, the Court referred to G.P.Singh's "Principles of Statutory Interpretations" which stated that where the context makes the definition given in the interpretation clause inapplicable, a defined word used in the body of the statute may have to be given a meaning different from what has been contained in the interpretation clause.

- The Court interpreted the power under S. 23(b) [regulation by granting of approvals or otherwise requests for commercial utilization or bio-survey and bio-utilization of any biological resource by Indians] expansively. It held that the State Biodiversity Board will also have the power to make a monetary demand for Access and Benefit-sharing to an Indian entity.

- The Court relied on the purposive interpretation which calls for looking at the context in which the law was enacted to determine the intention of the legislature. The Court

first went into the reasons for which the Act was enacted, that is, to implement the Convention on Biological Diversity. It then looked at the Convention on Biological Diversity and Nagoya Protocol to the Convention and held that the Convention and the Protocol do not differentiate between national and foreign entities and domestic entities for Access and Benefit-Sharing. Thus, the legislature could not have intended to make such a distinction in Indian law.

- The Hon'ble High Court also emphasised, that when the interpretation of provisions of socially beneficial legislation like the one in the present case, is in question, then a purposive interpretation is required. It held that the SBB has got powers to demand Fair and Equitable Benefit Sharing from the petitioner, given its statutory function given under Section 7 read with Section 23 of the Act and the NBA has got powers to frame necessary regulations (in the instant case, the ABS Guidelines of 2014) given Section 64 of the Act which provides for the power to make regulations by the NBA, read with Section 18(1) which contains the powers and functions of the NBA, and Section 21(2) (4) which allow the NBA to frame guidelines for access and benefit-sharing.

Conclusion:

The Court considering India's international commitments took a broad and purposive interpretation by interpreting the FEBS definition broadly so that both Indian and foreign entities were obligated to share benefits with the local and indigenous communities when a biological resource was exploited. Accordingly, the petitioner was bound to comply with the SBB's direction to share profits with the local and indigenous communities and consequently, the petition was dismissed.

2. *Biodiversity Management Committee v. Union of India and Ors. (MANU GT 0051 2016)*

Facts:

The petitioner, Keoti Biodiversity Management Committee ('**BMC**') filed an original application under Section 14 read with Section 15 of the National Green Tribunal Act, 2010 ('**NGT Act**') alleging that the State Government of Madhya Pradesh caused colossal environmental damage in Keoti Village forests by constructing biodiversity parks, engaging in illegal mining and "Tendu leaves", a biological resource was collected without giving the petitioner the right to levy charges on them.

Section 41 of the Biological Diversity Act, 2002 ('**BD Act**') allows for the BMCs to levy fees against the access to bio-resources and knowledge in the area of their jurisdiction. The petitioners sought the following reliefs:

- Restrain any construction activity and commercial usage of bio-resources in the village.
- Declare Keoti village as a Biodiversity Heritage Site under the BD Act, 2002.
- Notify Samavalli/Somlata (Sarcostemma Acidum), Morshikha & Patthar Chatha as threatened species and prohibit their collection.
- Payment of revenue to the BMC by all the commercial users of the bio-resources in the area.

Procedural history:

The Original Application was filed in the National Green Tribunal, Central Zone Bench Bhopal.

Issue:

The question was regarding the construction activity and commercial usage of bio-resources in the village of Keoti, in violation of the BD Act.

Rule:

Biodiversity Act, 2002

- Section 37: Identification, conservation and management of biodiversity heritage sites.
- Section 41: Constitution of Biodiversity Management Committee

Analysis:

- The Court held that no mining of any sort, construction or alteration of habitat in any manner will be allowed in the area.
- The Members Secretary, MP State Biodiversity Board submitted on 30.03.2016 that the process of identification and the framing of the guidelines which would facilitate the working of the BD Act is under process (which would include the criteria for declaration of an area as Biodiversity Heritage Site).
- Section 37 of the BD Act provides for notification of Biological Heritage sites, while establishment and management of Biological Heritage sites are provided under Rule 22 of MP Biological Rules, 2004. An expert committee under Section 37 of the BD Act and Rule 22 of the MP Biodiversity Rules, 2004 has also been constituted to frame the draft guidelines for Biological Diversity sites in the state of Madhya Pradesh.
- The NGT directed that the State Government of Madhya Pradesh *"to expeditiously formulate guidelines and strategies in consultation with communities and experts to identify and document resources and knowledge associate with them and to protect and conserve such resources not only in Keoti village but throughout the State and come out with the proper method of sharing of benefits and flow of compensation to people and communities"*.
- It was further stated that said BMC shall facilitate the preparation of people's Biodiversity register which shall contain comprehensive information on availability and knowledge of local biological resources and traditional knowledge associated with them.

Conclusion:

The Court stopped all mining activities in the Keoti area. Court also directed the State to expeditiously formulate guidelines and strategies to protect and conserve resources not only in Keoti Village but throughout the State and come out with a proper method of sharing of benefits and flow of compensation to people and communities.

3. *M/S Chembra Peak Estates Limited v. State Of Kerala & Others (WP CIVIL NO. 3022 OF 2008*)

Facts:

The Petitioner is the owner of a coffee estate (392 Acres), Wariyat Estate and has challenged the acquisition of the estate to establish a Mega Agro Food Park set up by the Kerala Industrial Infrastructure Development Corporation (KINFRA) and funded by the Union Government. The Petitioner contended that there was malafide intention, non-application of mind, procedural lapses in the inquiry under Section 5A of the Land Acquisition Act as well as disregard for the ecological imbalance the project will create.

Procedural history:

This was a writ petition filed in the Kerala High Court.

Issue:

Whether the objections to the acquisition were taken into consideration and whether the acquisition by the government is justified.

Rules:

- Section 5A of the Land Acquisition Act: Hearing of objections.
- The Biological Diversity Act
    - Section 23: Functions of State Biodiversity Boards.
    - Section 27: Constitution of National Biodiversity Fund.
    - Section 37: State Government's power to declare an area as a biodiversity site.

Analysis:

- The Court held that the Petitioner has failed to prove that there was any malafide intention on the part of the Kerala Industrial Infrastructure Development Corporation (KINFRA). The Court also held that there were no procedural lapses in the inquiry under Section 5A of the Land Acquisition Act and also that this was not a case of non-application of mind.
- The Kerala High Court directed the Revenue authorities to seek the opinion of the State Biodiversity Board regarding the ecological balance of a private coffee estate at Muttil in Wayanad before proceeding with the acquisition of the estate for setting up a mega food park. It was ordered that this should be completed within two months.
- The park was being set up by the KINFRA with funds from the Union Government. The government pleader argued that the state government has got power under Section 37 of the Biological Diversity Act to declare an area as a 'biodiversity heritage site'. Since they had chosen not to do so, there can be no objection to any land acquisition of the area.
- According to the Court, Section 23 Biological Diversity Act makes it clear that it is within the functions of the SBB to advise the State Government on matters related to biodiversity conservation. As per Section 24, an SBB has the power to restrict certain activities in the state that might be going against the objectives of conservation. In the context, the Court hinted that if the Government were to consider the inputs of the SBB on concerns of biodiversity conservation, the authorities may be compelled to reconsider the land acquisition of a biodiversity-rich area for commercial activities.

Conclusion:

The Court held that the petitioner failed to establish the grounds for interfering with the public purpose for the acquisition as well as violation of any of the provisions of Section 5A of the Land Acquisition Act. Beside this, the Court also said that though the writs were filed by the leaders of two trade Unions, their rights were very limited under section 5(A) of the said Act. Thus, it would not help

them in advancing their objections with regard to the acquisition proceedings. Based on these two grounds, the courts dismissed the writ petitions.

4. *Chandra Bhal Singh v. Union of India & Others (2019 SCC OnLine NGT 1722)*

Facts:

The Petitioner questioned the poor implementation of the BD Act. The non-compliance of the provisions of the Act and its Rules has frustrated the whole efforts of enacting such legislation owing to India's international obligations.

The Petitioner sought constitution of Biodiversity Management Committees (BMC) at the local level in every state under Section 41 of the BD Act. The petition claimed that several State Biodiversity Boards have not constituted BMC at the local level "to promote conservation, sustainable use and documentation of biological diversity". Further, the Peoples Biodiversity Register, a document which records diversity of flora and fauna, has not been prepared and maintained by the Biodiversity Management Committee by some of the states.

Procedural history:

The Application was filed in the Principal Bench of the National Green Tribunal.

Issue:

Non-compliance of provisions of the BD Act and BD Rules, 2004 - BMCs have not been constituted as per Section 41 of the BD Act and people's diversity registers have not been maintained, as required.

Rules:

- Section 41 of the Biological Diversity Act, 2002: Constitution of Biodiversity Management bodies
- Biological Diversity Rules, 2004

Analysis:

- Through the order dated 08.08.2018, the National Green Tribunal noticed gaps in the requirement of law and the action taken. Accordingly, the Tribunal directed further monitoring by a Monitoring Committee comprising the Ministry of Environment, Forest and Climate Change (MoEF & CC) and National Biodiversity Authority (NBA) which was to furnish a report to the Tribunal.

- Accordingly, a Report was received dated 12.03.2019 indicating as follows:

  "So far 144 BMCs at District level, 2299 at the Intermediate Panchayat level (Block/ Taluk/ Mandal/ Municipalities/ Municipal Corporations) and 141928 BMCs at Village Panchayat level were constituted throughout the country making a total 144371 BMCs as on 28th February 2019. Concerning People Biodiversity Registers, 6834 have been documented so far and another 1814 are in progress."

- The Court held that it was clear from the report that as against 2,52,709 Panchayats where BMCs were to be constituted, a total of only 1,44,371 BMCs had been constituted which shows a gap of more than one lakh. The Court asked for steps be taken to fill the gap within three months and send a further report filed by the MoEF & CC.

- The Court directed the States which have not complied with the mandate of law may do so expeditiously. The States which have complied need not appear before this Tribunal. The States which remain non-compliant may furnish their explanation for non-compliance by way of an affidavit.

Conclusion:

Given serious non-compliance for the last 16 years, the Tribunal directed the Chief Secretaries of all the States to evolve a mechanism for a monthly meeting to be attended by the Chairman and Member Secretary of State Biodiversity Boards, Secretary of Panchayats Environment and Forest starting from September 2019. States were ordered to be held accountable for default and were required to deposit a sum of rupees 10 lakhs per month each from 01.01.2020. The Ministry of

Environment, Forest and Climate Change was directed to file a compliance report after collecting necessary data from all the states.

5. ***Asim Sarode & Others v. The State Of Maharashtra & Others. (CASTOR OIL CASE) [THE NGT WESTERN ZONE (WZ) BENCH (NO. 25 OF 2015)]***

Facts:

Member-secretary of Maharashtra State Biodiversity Board, Dr Dilip Singh had issued notices to defaulting traders and manufacturers of castor oil in response to non-payment of ABS to MSBB as commercial utilisation of castor oil is tantamount to violation of Section 2(c) (f) and Section 7 of Biological Diversity Act, 2002. This Public Interest Litigation was filed challenging the notices.

Procedural history:

The case was filed before the National Green Tribunal.

Issue:

Is there a requirement to pay Access and Benefit-Sharing payments to the State Biodiversity Boards on commercial utilization of castor oil?

Rule:

Biological Diversity Act, 2002

- Section 2(c): defines “biological resources”
- Section2(f): denies “commercial utilisation”
- Section 7: talks about prior intimation to the State Biodiversity Board for obtaining biological resources for certain purposes by Indians.

Analysis:

- On 3 November 2015 the NGT Western Zone (WZ) Bench passed an order for Access and Benefit Sharing payments by companies engaged in commercial utilisation of

castor plant and other bio-resources for drugs and cosmetics. Castor oil is extracted from the castor plant, which is an agricultural produce.

- ABS is applicable to bio-resources from agriculture or forest areas as well. If castor oil is utilised for general commodities, then no ABS is applicable. However, when utilised for commercial purposes, including the use in drugs and cosmetic products, ABS is applicable on it. ABS is also applicable for access to biological resources, bio survey and bio-utilisation for commercial utilisation. The Court delivered a brief Order making this. Thus, the Maharashtra State Biodiversity Board has the mandate to collect ABS payment under the provisions of BD Act.
- The NGT gave instructions to Maharashtra SBB to take appropriate action against the defaulting parties and in case of no response their names are published in newspapers; immediately thereafter prosecution is filed against them as per the law.
- It was further directed that violation of Sections 7 and 24 (2) of Biological Diversity Act, 2002 by not giving prior intimation to State Biodiversity Board (SBB) in case of access to biological resources for commercial purposes, companies shall be held liable and punishable with imprisonment for a term which may extend to 3 years or with fine which may extend to Rs.5 lakhs or with both under Section 55 (2) of the BD Act.

Conclusion:

The NGT, therefore, gave instructions to MSBB to take appropriate action against defaulting parties and in case the parties do not respond, their names to be published in newspapers and thereafter prosecution to be filed against them as per the law. It was further directed that violation of BD Act by not giving prior intimation to State Biodiversity Board (SBB) in case of access to biological resources for commercial purposes shall be punishable under Section 55 (2) of the BD Act.

6. PAPER INDUSTRY MATTER, 2016:

Facts:

In the year 2016, a string of cases emerged in the state of Uttarakhand, India on the issue of Access and Benefit-Sharing. The payments for benefit sharing for the use of bioresources was being asked in the case of paper and pulp industry in the state, particularly from those units that were manufacturing different types of paper by State Biodiversity Boards (SBB). The SBB had issued notices to the industries under Section 7 read with Section 24(1) of the BD Act, which require Indian bio-users to give prior intimation to SBBs for obtaining bioresources for certain purposes including commercial utilisation.

Procedural history:

The petitioner approached the High Court under Article 226 of the Indian Constitution.

Issue:

Whether ABS applies to the paper industry?

Rule:

The Biodiversity Act, 2002

- Section 2(f): defines “commercial utilization”
- Section 22: establishment of State Biodiversity Board
- Section 24(2): State Biodiversity Board’s power to prohibit or restrict activity which are detrimental or contrary to the objectives of conservation and sustainable use of biodiversity.
- Section 52(A): Appeal to National Green Tribunal.

Analysis:

- The Court clarified that the writ petitions are the only remedy available to the petitioners against the impugned notices of the Uttarakhand State Biodiversity Board.
- The Court laid down its decision regarding the territorial jurisdiction of State Biodiversity Boards. As per Section 22 of the BD Act, each State Government is to mandatorily set up an SBB for this Act. The Court held that the petitioners are bound to give information to the Respondent in respect of the raw materials that they obtain from within the territorial boundary of Uttarakhand. However, they are not bound to give information regarding biological resources obtained from outside the territorial boundary of Uttarakhand.
- Even though the Government of Uttarakhand had not made the form for payment of Access & Benefit Sharing, upon the reading of the legal obligation under Section 7, the Court concluded that the petitioners are bound to give information to Uttarakhand Biodiversity Board. The absence of a prescribed form by the State Government does not absolve from the BS obligations. The petition was disposed of.
- However, the Court remained silent on several contentions including the issue of whether Indian entities come under the purview of ABS obligations, whether waste paper comes under the meaning of bioresources, and whether an industry comes under the definition of commercial utilisation under Section 2(f) of BD Act.

Conclusion:

It was held that the petitioner companies are bound to give the desired information to the Uttarakhand Biological Diversity Board in respect of new raw material obtained from within the territorial boundary of the state.

Forest Rights Act, 2006 and Other Forest Legislations

The Scheduled Tribes and Other Forest Traditional Forest Dwellers (Recognition of Forest Rights Act), 2006

The Scheduled Tribes and Other Forest Traditional Forest Dwellers (Recognition of Forest Rights Act), also known as the Forest Rights Act (FRA), was enacted in 2007 by the Ministry of Tribal Affairs to overturn the historical injustice done to forest-dwelling communities. The Act aims to recognize and vest forest rights and occupation in such communities and to provide for a framework for recording of these rights.

The Act delineates 14 rights of dwelling communities which include Individual Forest Rights for habitation and cultivation of livelihoods, and Community Rights to utilize forest produce and resources. Additionally, customary rights and Community Forest Resource Rights, to use, manage, and govern forests are also recognized in the legislation. The granting of these rights is subject to the condition that such communities had occupied the land since 1980. However, a crucial aspect of the Act, stated in Section 4(5), is that forest-dwellers cannot be evicted from the forest land till the recognition and verification procedure is complete. Attempting to empower local governance bodies, the Act places importance on the Gram Sabha in the endeavour to conserve and protect forests and biodiversity. The Gram Sabha has the authority to initiate the process of determining individual or community forest rights within its jurisdiction. The Act also provides for sub-division, district and state level committees to monitor the process. Finally, it lays down punitive measures to be taken against entities who contravene the provisions of the Act.

While the Act purports an overhaul of the injustices meted out to forest dwellers in the colonial and early Independence years, reports indicate that its implementation, especially in Protected Areas, has been negligible and tardy and several key hurdles obstructing effective implementation have been identified.[12] Institutional and

[12] CFR-LA, 2016. Promise and Performance: Ten Years of the Forest Rights Act in India. Citizens' Report on Promise and Performance of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, after 10 years of its Enactment. December 2016. Produced as

structural challenges, such as the weakness of the central nodal agency which is under-staffed and under-resourced, incapacity of state nodal agencies, lack of bureaucratic cooperation and the absence of adequate support for the Gram Sabhas have been the primary causes of this failure. Moreover, procedural hurdles and lethargy also plague the application of the Act. Since the enactment, Courts have witnessed multiple challenges to the legislation.

In 2008, the Wildlife Trust of India and other environmentalists approached the Supreme Court to assess the constitutional validity of the Forest Rights Act. They argued that the legislation, contrary to its objective, had led to deforestation and encroachment of forest land and sought the recovery of encroached land. In February 2019, the Court ordered the States to evict 1.89 million forest dwellers whose claims had been rejected under the Act. However, this order was stayed by the Court two weeks later and States were directed to submit whether due process had been followed when assessing and rejecting the claims.[13] In September of that year, up to eight States admitted that their officers had not abided by the due process in rejecting the claims, thereby putting lakhs of tribals at risk of eviction from their forest lands.[14]

In addition to ineffective compliance with the provisions, the Act is also often bypassed by other legislations in acquiring land for compensatory afforestation and by allowing plantations to replace biodiverse forests as a part of this afforestation.[15] Two laws; the Forest Conservation Act, 1980 and the Compensatory Afforestation Fund Act, 2016, have watered down the Gram Sabha's authority and weakened environmental safeguards. The Act has also been circumvented in states such as Himachal Pradesh, through the illegitimate exemptions obtained by Gram Sabhas,

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part of Community Forest Rights-Learning and Advocacy Process (CFRLA), India, 2016 (www.cfrla.org.in).

[13] Wildlife First v. Ministry of Forest and Environment, WP (C) 109 / 2008.

[14] Roy, Debayan. (2019). *Eight states tell Supreme Court they wrongly rejected claims of tribals over forest land.* The Print. Retrieved 03 October, 2020, from https://theprint.in/judiciary/eight-states-tell-supreme-Court-they-wrongly-rejected-claims-of-tribals-over-forest-land/291041/

[15] Bijoy, C.R. (2020). *Laws meant to protect the environment are threatening forests and those dependent on them*. Scroll. Retrieved 03 October, 2020, from https://scroll.in/article/974087/laws-meant-to-protect-the-environment-are-threatening-forests-and-those-dependent-on-them

enabling the co-option of forest land for construction of roads, canals and pipelines.[16] This undermining of the Act is representative of the contradictions between the Ministry of Tribal Affairs and the environment ministry concerning the control of forest areas, and the eventual defeat of the weak nodal ministry.

[16] Id.

1. Wildlife First v. Ministry Of Forest and Environment, 2019 SCC ONLINE SC 238 (WP (C) 109 / 2008)

Facts:

In 2008, Wildlife First, the Wildlife Trust of India and other conservationists moved the Supreme Court to assess the constitutional validity of the The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 ('**FRA**'). The petitioners argue that the Act has led to deforestation and encroachment upon forest land. Individuals seeking to be granted rights under the Act must be able to demonstrate that they have been and continue to either (i) reside on forests or forestland, or, (ii) dependent on forest produce for their livelihood. The petitioners requested the evictions of illegal forest dwellers and sought recovery of the forest land encroached upon by them.

Procedural history:

On 13 February 2019, the Supreme Court ordered States to evict all individuals who had their claims rejected under the Act by 24 July 2019. Further, it directed the Forest Survey of India to conduct a satellite survey and place on record encroachment positions before and after evictions. Finally, it directed the Chief Secretaries of various States to submit affidavits explaining why they had up until now failed to evict individuals, who had had their claims rejected. On 28 February, the Court placed a stay on its own order.

Issues:

a. Have states followed due process in rejecting the claims of forest dwellers?
b. Is the process for filing claims under the FRA, 2006 valid?
c. Is the FRA constitutional?

Rule:

Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

Analysis:

- On 28 February, the Court placed a stay on its order, directing States to submit whether due process was followed by Gram Sabhas and States' authorities under the FRA before the claims for forest rights of Forest-Dwelling Scheduled Tribes (FDSTs) and other traditional forest dwellers (OTFD) were finally rejected. There was a possible abuse of power by the forest officials.
- The Court also asked the states to report on whether the Tribals were given an opportunity to adduce evidence and, if yes, to what extent and whether reasoned orders have been passed regarding the rejection of the claims.
- The Court made several observations such as the fact that it was not placed on record as to who had rejected the claims and under which provision of law the eviction had been made and who was the competent authority to pass such orders.
- It was also noted that in most of the matters, Tribals have not been served with the orders of rejection, orders of their claims and it is also not clear whether the three-tier Monitoring Committee constituted under the FRA and the FRA Rules, 2008 have supervised all these aspects.

Conclusion:

As noted above, the Supreme Court observed several levels at which the due process of law was not followed before rejecting the claims.

2. Gulab And Anr v. State Of UP & Ors (2013 SCC OnLine All 10525)

Facts:

The Petitioners, two brothers Gulab and Ramjiyawan, have claimed that there is a patta executed in their forefathers' names of land in Sonbhadra. There was no mutation in their names, however, they were in possession of the land. The land, in question, was declared a forest land under section 4 of Indian Forest Act, 1927. No objections were raised to this by the Petitioners. Also during two consolidation operations carried on by the District Magistrate, no rights were raised by the Petitioner. The Petitioners then challenged the validity of the order dated 17th June 2013 passed by the District Magistrate of Sonbhadra, which rejected the representation filed by them.

Procedural history:

The petitioners had approached the District Magistrate of Sonbhadra claiming rights over the land after which the DM rejected the claim vide order dated 17th June.

Issue:

Whether the Petitioners have a right over the land that has been declared as forest land under Section 4 of the Indian Forest Act 1927?

Rule:

Indian Forest Act, 1927

- Section 4: Issuance of notification by the State Government to constitute any land a reserved forest
- Section 6: Proclamation by Forest Settlement-officer regarding notification issued under section 4.
- Section 7: Inquiry by Forest Settlement-officer about rights and claims made and under section 6.
- Section 9: Extinction of rights of which no claim is made under section 6 and no enquiry is made in section 7, unless sufficient cause exists.
- Section 20: Notification by State Government declaring forest reserves.

Analysis:

- The Court raised a question as to why the Petitioners had not objected to the notification issued under Section 4 of the Indian Forest Act, 1927 (issued in the year 1966 and published in the year 1967) if the land belonged to them. The Court also pointed out that no claim was raised in front of either the Forest Settlement Officer or during the consolidation proceedings and the mutation proceedings.
- However, the Court held that any relief that can be extended to the Petitioner can be only done on the premise that the said land is forest land. The Court pointed towards Section 9 of FRA which states that the rights in respect of which no claim has been preferred under Section 6, and of the existence of which no knowledge has been acquired by inquiry under Section 7, shall be extinguished unless before the notification under Section 20 is published, the person claiming them satisfies the Forest Settlement Officer that he had sufficient cause for not preferring such claim within the period fixed under Section 6.
- The Court ordered that as the notification under Section 20 has not been issued, the Petitioner can approach the Forest Settlement Officer who would have to deal with the matter within the next 3 months from the date of this order.
- The Court held that no relief or reprieve could be given to Petitioners but accepting that the land in question was forest land, and accordingly, whatever rights or benefits Petitioners could claim, the same would be considered and dealt with on the premises that it is a forest land. Petitioners in the present writ petition had come up with the case that till date notification under Section 20 of Indian Forest Act has not been made and even the order passed by the District Magistrate does not reflect of any notification having been made under Section 20.
- Section 9 of Indian Forest Act deals with extinction of rights, wherein no claim has been preferred and same also provides that before notification is made under Section 20, the person claiming such right can approach Forest Settlement Officer giving therein reason for not approaching within the time frame provided for in respect of a claim in question.
- Given till today, notification under Section 20 of Indian Forest Act has not been made, then in that event petitioners are free to move an application under Section 9

of Indian Forest Act, and the said application be considered and dealt with by Forest Settlement Officer, preferably within next three months from the date of receipt of the certified copy of this order, following the law.

- Coupled with this, Petitioners had also claimed that they are from the weakest strata of the society and the so-called forest land has been their sole source of sustenance and now taking into account the provisions of FRA, their claim has to be examined by Forest Settlement Officer.

Conclusion:

The Court held that the Forest Settlement Officer should decide the claim based on evidence and record available and strictly as per law within three months of representation by the petitioner.

3. JV Sharma & ORS v. Union of India (WP (C) NO. 21479 OF 2007)

Facts:

Retired Officers from the State Forest Department filed a writ of mandamus seeking a declaration that the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is illegal and unconstitutional. They sought a stay issuance of the certificate of title until the case is heard. On the other hand, the respondents, several tribals and forest dwellers urged the Court to permit the unhindered implementation of the FRA.

Procedural history:

Counter-affidavit sent to the Assistant Solicitor General, High Court of Andhra Pradesh for filing in the Court. A Transfer Petition (Civil) Nos. 414-417 of 2008 filed in the Supreme Court of India for transferring this Writ Petition, along with other writ petitions in various High Courts, to Supreme Court for combined hearing by the Apex Court. The case was finally decided by the High Court of Andhra Pradesh.

Issue:

Whether the FRA is unconstitutional?

Rule:

Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

Analysis:

- The Court decided that it would not decide on the merit of the case (constitutionality of the Act) as the issue was pending in various High Courts.
- It also pointed that to verify the correctness of the grant of certificate of title it would not go into verifying every individual claim as it would be against its jurisdiction under Section 226 of the Constitution of India.
- The Court did not accept the argument that the procedure for grant of Certificate of Title is a farce as the petitioner had failed to submit any document to corroborate such claims. It said that doing so would deny the eligible persons from taking the

benefits they deserve under the Act. It advised the petitioner to collect data on the claims made by filing applications as well as RTIs and if anything is found it can be submitted to the Court.

- The Court permitted the issuance of Certificate of Title to eligible people under the Forest Dwellers and Scheduled Tribes & Other Traditional Forest Dwellers Act. It also pointed out that these certificates would be subject to the result in the main writ proceeding, challenging the legislation.

Conclusion:

The Court pointed out that in the event of the petitioner not submitting any evidence in support of his/her contention that the procedure for grant of Certificate of Title is a farce, the process would have to be continued. The Court, however, asked the petitioner to approach the Court again if he/she is able to find data supporting this contention. The Court also permitted the issuance of Certificate of Title to eligible people.

4. Ishwar Chandra Gupta v. The State Of U.P (AIR 2011 ALL 88)

Facts:

Several writ petitions challenged the order of evictions passed by authorities at Dudhwa Tiger Reserve under Section 61B (2) of Indian Forest Act, 1927. The rent of the land was deposited by the petitioners, however, after 1985, the authorities refused to take rent.

An organization known as Katarniya Ghat Foundation had argued that the land in question was a forest area that was declared as a Critical Tiger Habitat for Dudhwa Tiger Reserve. The petitioners have claimed that they remain protected under the FRA which overrides the 1927 Act. They contended that the evictions were illegal and violative of principles of natural justice.

Procedural history:

The Petitioner had approached the Allahabad High Court Court under Article 226 of the Constitution and later approached the division bench of the High Court against the order of the authorities at Dudhwa Tiger Reserve and the appellate authorities.

Issue:

Whether Petitioners were rightly evicted from forest land for their non-forest activities?

Rules:

- Section 61-B of the Indian Forest Act, 1927: Issue of show cause notice before confiscation under section 61-A.
- Forest Rights Act, 2006

Analysis:

- The findings of the Court state that the Petitioners could not establish their status as forest-dwelling STs or OTFDS. Thus, the Petitioners do not fall within the purview of the Forest Rights Act, 2006 to begin with. The Court's further observations hold that

the provisions of Forest Rights Act, 2006 complement the 1927 Act and are not in derogation. Thus, the question of repugnancy does not arise.

- It was finally held that the Petitioners have no right to continue their possession over the forest land as their business is of non-forest activities. Therefore, no presence of community forest resources.
- The Court held that the party shall not have possession over the property if they don't have the legal title for that. In absence of any lease granted to Petitioners, no right was formed upon them either to live or run business in forest area and they were purely unauthorized occupants over land in question, which was reserve forest land.

Conclusion:

The Court observed that once it was proved that Petitioner was not covered under Act, 2006, they could not hit provisions of Section 61-B of the Act, 1927 even being repugnant to provisions of the Act, 2006. Since Petitioner was not able to produce any document of title before Civil Court nor before the High Court. Thus, Petitioner had no right to continue their possession over forest land with their non-forest activities like doing business. Writ Petition was dismissed.

5. Wasay's Sons And Ors. v. Chhattisgarh State Minor Forest Produce Federation (2018 MANU CG 0684)

Facts:

The issue involved in the present bunch of writ petitions is whether tendu leaves can be brought within the ambit of notification issued by the State Government in the exercise of its powers under section 15(B) of the Chhattisgarh Value Added Tax Act, 2005 whereby tax on minor forest produce has been reduced to five per cent.

Procedural history:

6 writs were filed in the High Court of Chhattisgarh and were clubbed by the Court to form a common judgment as the facts in each of them were identical in nature.

Issue:

Whether tendu leaves can be brought within the ambit of notification issued by the state government in the exercise of its powers under section 15(b) of the Chhattisgarh Value-Added Tax Act, 2005?

Rule:

Section 15(b) of the Chhattisgarh value-added Tax Act, 2005: Goods on which no tax is paid subject to conditions and exceptions.

Analysis:

- The Court observed that vide notifications issued under section 15B of the VAT Act, the State Government from time to time have granted an exemption to a generic term known as minor forest produce which includes tendu leaves as there is no clarification or exclusion in any of these notifications. Since minor forest produce has not been separately entered in the Schedule, it would be inclusive of all those items which are shown as taxable products under Schedule II. Unless a product is eligible for tax, there can be no exemption or reduction in the rate of tax.
- It was held that the petitioners are liable to pay tax only at the rate as specified in the notification issued under section 15B of the CG VAT Act, 2005 reducing the rate of tax to five per cent.

Conclusion:

It was held that the Petitioners were liable to pay tax only at the rate as specified in the notification issued under section 15B of the CG VAT Act, 2005 reducing the rate of tax to five per cent. In case of any excess payment made by the Petitioners, as a consequence, shall have either to be refunded or adjusted with the tax to be paid for the subsequent period. As a consequence, the impugned notices and orders under challenge in each of the petitions were quashed and the authorities were directed to recalculate the VAT payable by each of the petitioners at the rate prescribed as per the notifications under section 15B of the CG VAT Act, 2005 issued from time to time.

6. Vijoy Tachang And Ors. v. The State Of Arunachal Pradesh And Ors. (2010 SCC Online Gau 381)

Facts:

The Petitioners, members of indigenous Nyishi tribe of Arunachal Pradesh have their cultivable land in and around the Seijusa Reserved Forest, which they have been enjoying since the days of their forefathers. The Petitioners, under the provisions of the FRA, applied to the Government of Arunachal Pradesh for recognition of their rights over the forest land. They also applied for issuance of Land Possession Certificate (LPC) furnishing all supporting documents but the respondent authorities kept the matter pending. The petitioners along with other villagers filed representation on 24.10.2008 before the State Chief Secretary seeking cancellation of the LPC issued in favour of the respondent No. 7 but to no effect. The tourism department forcibly dispossessed the petitioners from their lands and started the construction work of tourist lodges.

Procedural history:

The petitioners have filed the present writ petition in the Gauhati High Court for setting aside and quashing the LPCs issued in favour of the respondents in as much as the same have been issued in complete violation of the 2006 Act and also for handing over the possession of the said forest land to the petitioners.

Issue:

Whether the Land Possession Certificates were issued in violation of FRA and should they be quashed?

Rules:

- Section 3 of NEFA (North-East Frontier Agency) Regulations, 1965
- Section 17 of the Assam Forest Regulations, 1891: Notification by the State Government for declaring forest reserves.
- Section 2 of Forest Conservation Act, 1980: Restriction on the dereservation of forests or use of forest land for non-forest purpose by State Government without prior permission of the Central Government.

Analysis:

- The Court first rejected the contention that the present writ petition is premature, hit by the principle of *res judicata* or without any *locus standi*.
- Regarding the lands in question, it was accepted that they are within the aforesaid notified Reserved Forest and the respondent, were well aware of the same. They were also well aware of the requirement of "NOC" from the Forest Department. The respondent did not have a NOC issued in her favour which is a requirement for the issuance of LPCs. Despite not having NOCs, the respondent was able to get 10 LPCs in her favour covering an area of 36.88 hectares.
- It was also observed that neither the State Government nor any other authority could permit deforestation of a reserved forest for “non-forest” purposes (setting up a tourist lodge was not forest purpose).

Conclusion:

The Court held that it had become clear that the Respondent No. 7 used her official power and influence backed by her husband, who was at times, a powerful cabinet minister in the State, in getting the LPCs issued in her favour expeditiously without any NOC from the Forest Department in violation of the provisions under the Forest Act/Regulation and also in violation of the existing procedures prescribed by the Govt. Therefore, the Court directed the respondent authorities, particularly respondent No. 3, Deputy Commissioner, East Kameng District, to pass necessary orders cancelling all LPCs in question issued in favour of the respondent No. 7 forthwith within 30 days from the date of receipt of this order.

7. Jay Pal Gupta v. State Of U.P. And Ors. (2011 MANU UP 4703)

Facts:

The petitioners have challenged the Order passed by the Prescribed Authority/Deputy Director, Dudhwa Tiger Reserve Division, Pallia, Kheri, whereby they have been evicted from the forest land and also the Order passed by the Appellate Authority i.e. the Chief Conservator of Forest and Field Director, Dudhwa Tiger Reserve, Lakhimpur Kheri upholding the Order passed by the Prescribed Authority.

The petitioners claim protection under FRA, which according to them has an overriding effect over the Indian Forest Act, 1927. Besides it, they claim that their evictions are violative of Article 19(1)(g) of the Constitution of India.

Procedural history:

Orders were first passed by the Prescribed Authority/Deputy Director, Dudhwa Tiger Reserve Division, Pallia, Kheri evicting the petitioners from the forest land.

The petitioners then appealed the decision to the Appellate Authority who was the Chief Conservator of Forest, who upheld the order passed by the Prescribed Authority.

Issue:

Whether the eviction order passed by the Respondent violated FRA?

Rule:

The Forest Rights Act, 2006

- Section 2 (c): defines forest dwelling scheduled tribes.
- Section 2(o): defines other traditional forest dwellers
- Section 13: the Act being in addition to and not in derogation of the other laws, saving this Act and the Panchayats Act, 1996.

Analysis:

- The Court opined that it is evident from the statement of objects and reasons of the U.P. Amendment that keeping in view the fact that the incidents of forest offences have increased considerably, which are committed by organized and influential gangs with money and muscle power as well as keeping in view a large number of cases of encroachment on forest land, it was considered necessary to provide for summary eviction of unauthorised occupants and disposal of properties left on hand by such unauthorised occupants.
- The Court observed that the term "Forest Dwelling Scheduled Tribes" has been defined under Section 2(c) of the FRA as the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities;
- The Court observed that the term "Other Traditional Forest Dweller" has been defined in Section 2(o) of the Forest Rights Act, 2006 as any member or community who has for at least three generations before the 13th of December, 2005 primarily resided in and who depends on the forest or forest land for bona fide livelihood needs. Through the pleadings on record, the petitioners were not able to establish their identity either as 'forest-dwelling scheduled tribes' or as the 'other traditional forest dwellers'.
- Though the petitioners have pleaded their right as is saved under Chapter II titled as FOREST RIGHTS under the FRA, since they were not able to establish themselves either as the FDST or OTFD, it is needless to discuss the forest rights in their context as is provided under the FRA.
- In light of the aforesaid observations once it was established that they are not covered under the FRA, they cannot hit the provisions of Section 61-B even being repugnant to the provisions of the FRA, yet after reading Section 13 of the FRA, the Court found that the provisions of the FRA are in addition to and not in derogation of the provisions of the Indian Forest Act, 1927.
- The Court observed that so far as their right to keep the possession over the land in dispute to continue is concerned, it found that they have neither been able to

produce any document of title before the Civil Court nor before this Court. Only based on possession the civil Court had permitted them to deposit the rent. There is no lease deed between the parties, rather he is just mentioned as leaseholder only on the lease rent slips. Thus, they had not been able to establish any title over there.

- It was an admitted case of the petitioners that they run the shop, which is not related in any manner to the forest activities nor are they dependent on any relative activity of forest, therefore, on the count of possession also they have no right to continue their shops over there.
- The Court observed that some of the petitioners have claimed the protection of their right under FRA, on the ground of longevity of their activities standing in the forest areas, whereas they have not been able to establish that they belong to the particular community, whose rights have been protected under the FRA and activities related to the forest activities.

Conclusion:

It was held that the petitioners have no right to continue their possession over the forest land with their non-forest activities like conducting commercial operations. The writ petitions were dismissed.

8. R. Kizhavan v. The Secretary To The Government Of Tamil Nadu, Department Of Environment And Forest And Ors. (2019 MANU TN 4945)

Facts:

The petitioner claims to be a traditional forest dweller, dependent entirely on pastoralism for his livelihood. According to him, there are several individuals and families of forest herdsmen like him following traditional grazing methods, guided and facilitated by Sustainable Agriculture and Environmental Voluntary Action (SEVA), numbering about 500 families. This nomadic existence is being carried on by the community and he relies in this regard upon a will executed by the Zamindar of Sethur dated 29.12.1895, which grants grazing rights to traditional forest dwellers.

The present writ petition challenges the imposition of a total ban on grazing activities along the slopes of the Western Ghats that have been earmarked as Reserved forests. This, according to the petitioner, infringes upon the rights of traditional pastoral communities and has affected the community very adversely.

Procedural history:

A total ban was imposed on grazing activities along the slopes of the Western Ghats. Challenging the ban, a Writ of Mandamus had been filed in the Madras High Court.

Issue:

Whether the Respondents i.e., the State and Principal Chief Conservator of forests should frame a procedure to vest forest rights that include grazing rights upon those entitled to the same and a direction to permit traditional forest dwellers to exercise their rights in the forest range of Srivilliputtur and Watrap in Virudhunagar district?

Rule:

The Forest Rights Act, 2006

- Section 3: Forest rights of forest dwelling scheduled tribes and other traditional forest dwellers.

- Section 4: Recognition of and vesting of forest rights in forest dwelling scheduled tribes and other traditional forest dwellers.
- Section 5: Duties of holders of forest rights.

Analysis:

- The Court held the FRA cannot be said to have overridden or prioritized the interest of traditional forest dwellers and Scheduled Tribes over that of the environment.
- Further, while the writ petition was dismissed, the Court granted liberty to the Petitioner to approach the concerned authorities for grazing rights in areas permitted in the light of the provisions of the 2006 Act read with Sections 3, 4 and 5 of the Forests Act 1972.
- Such request, if and when made, shall be considered and disposed of expeditiously by the authority after first, and as a preliminary issue, ascertaining the entitlement of the persons to make such request in the first place. In considering the representations made, if any, the authority shall ensure proper and equitable consideration as well as a balance of all the special enactments mentioned hereinbefore.
- Respondents rely on circular pointing out that grazing activities have been banned specifically in protected areas like National Parks, Tiger Reserves and Sanctuaries. Barring said, grazing permits were to be issued for permitting cattle to browse in forest areas. The Circular also states that field officers may consider the request of Association for permission to graze in permitted areas.
- In the Court's considered view, Forests Act 1972 could not be said to have overridden or prioritized interest of traditional forest dwellers and scheduled forest tribes over that of the environment (Grazing Rights- Sections 3, 4 and 5 of the Forests Act 1972).
- However, definitions of 'forest resource', 'forest land' and 'habitat' include a reference to 'reserved forest' as well. Thus, while there was no question that protection of the environment was paramount and could not be compromised in any way whatsoever meaning had to be given to provisions of Act as well. Direction in circular to effect that no grazing be permitted in protected areas, Tiger Reserves and

sanctuaries stands to reason bearing in mind compulsions of preservation of the environment as well as wildlife.

Conclusion:

Thus, while the Court dismissed the petition, the Court granted the liberty to Petitioner to approach concerned authorities for grazing rights in areas permitted in light of provisions of Act read with sections 3, 4 and 5 of Forests Act.

9. Karma Bhutia v. The State Of Sikkim And Ors. (2010 MANU SI 0028)

Facts:

The Petitioner belongs to the Scheduled Tribe Community. He seeks the benefit of Section 3 of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007), based on his long possession and enjoyment of forest land of an extent of 24' x 13' and 22' x 13' bounded in the East by North Sikkim Highway. The structure, according to the Petitioner, was constructed by his grandfather in 1965. The Petitioner claims that he made repeated representations to the Respondents seeking the benefit of Section 3 of the said Act; but his request was turned down by the Range Officer, Gangtok Range by proceedings dated 11-01-2007, which is being impugned by the writ petition.

Procedural history:

Writ of Mandamus has been filed in the Sikkim High Court after the Range Officer, Gangtok Range rejected the claim of the petitioner under section 3 of the Forest Rights Act.

Issue:

Whether the Petitioner would be granted title over the land and be vested with the right over it under Section 3 of FRA?

Rule:

Section 3 of FRA, 2006: Forest Rights of Forest Dwelling scheduled tribes and other traditional forest dweller which vests various rights over forests on the Scheduled Tribes and Other Traditional Forest Dwellers.

Analysis:

- The Court held that the Act and the Rules framed thereunder define the forest rights of the Scheduled Tribes and other traditional forest dwellers, residing in the forest and the procedure to be followed in determining such rights.

- The Petitioner's representations made as early as in 1991 claiming his legitimate rights under the FRA ought to have been considered by the competent authorities in the manner provided under the FRA and Rules, 2007. But without following such due process of law, the Range Officer, by proceeding dated 11-01-2007 which is impugned in the writ petition, has directed the Petitioner to remove the unauthorised construction.
- The authorities constituted under the Act and Rules framed thereunder, are expected to consider the rights of the Scheduled Tribes and forest dwellers following the procedure and, in the manner, known to law. Failure to follow such procedure not only violates the principles of natural justice but also is contrary to the provisions of the FRA and the provisions of the FRA Rules.

Conclusion:

The Court without expressing any opinion as to the rights claimed by the Petitioner, permitted the Petitioner to make a representation to the competent authority within 2 weeks from the date of this order, seeking his entitlement under the provisions of the FRA and Rules, 2007 and directed the Respondents to consider the said representation of the Petitioner and pass appropriate orders following the procedure prescribed within 12 weeks from the date of receipt of the representation of the Petitioner.

10. Themrei Tuithung And Ors. v. Union Of India And Ors. (2016 MANU GT 0029)

Facts:

This is a review of the judgment sought for on as many as six grounds. Applicants challenge the Forest Clearance (FC) under Section 2 of the Forest (Conservation) Act, 1980 granted by the State of Manipur vide letter dated 15.01.2014 to the Thoubal Multipurpose Project for diversion of 595.00 ha of forest land because it violated the National Forest Policy, 1988; it was bad due to non-application of mind; the Forest Advisory Committee (FAC) in 2009 had bypassed the important aspects of forest clearance process prescribed by the earlier FAC in 1993; it amounted to condoning the violation of the Forest (Conservation) Act, 1980; acquisition of forest land before the grant of forest clearance defeated the purpose of scrutiny of the FAC; FAC while dealing with the matter had taken a casual and lackadaisical approach in dealing with the crucial issue of FRA, 2006; it violated the judgements of the Hon'ble Supreme Court in *Orissa Mining Corporation v. Ministry of Environment and Forest* and also in *Lattarng Uranium Mining Private Ltd. v. UOI & Ors.*

Procedural History:

A review petition was filed in the principal bench of the National Green Tribunal, Delhi challenging a Forest Clearance under Section 2 of the Forest (Conservation) Act, 1980.

Issue:

Whether the Forest Conservation Act, 1980 was violated in this case?

Rule:

Section 2 of the Forest (Conservation) Act, 1980: Restriction on the de-reservation of forests or use of forest land for non-forest purpose by the State Government without prior permission of the Central Government.

Analysis:

- The Court accepted the review application and observed that the Forest Rights Act was applicable and therefore its compliance, a statutory requirement had to be ensured during the Thoubal Multipurpose Project.
- The Court observed that acquisition of land in question had been made in the year 1993 onwards under agreed terms and conditions of a contract. While there was no reason to not accept the stand of the State respondents that all rehabilitative measures had been provided and compensation duly paid to the persons whose lands were acquired, the question that arose was whether this would be sufficient to fulfil the statutory requirements prescribed under the FRA 2006 when admittedly the Act had come into force with effect from 1.1.2008 and condition No.18 of the Stage-I Clearance granted on 11.01.2010 had specifically stipulated the necessity to comply with the Act.
- That apart, compliance of the Environment Clearance was also a mandate prescribed under Clause (xxii) in the final Forest Clearance granted 15.1.2014. The answer to these questions would certainly be in the negative for the reason that FRA deals with wider aspects as would appear from Section 3 thereof.
- The stated case is that due clearance had been obtained for the transfer of forest land from the village authorities of the affected villages but, the Court was not certain as to whether it was a willing clearance and as to whether the compensation and the rehabilitative measures provided were to the satisfaction of the displaced persons.

Conclusion:

The Court issued the following directions,

1. While desisting itself from prohibiting continuance of the ongoing works of the project, which is also not the case of the Applicant, the Court directed the State respondents No. 1 & 3 i.e., the State of Manipur and the Irrigation and Flood Control Department, Government of Manipur, to ensure that the FRA, 2006 is duly complied within the light of the averments contained in paragraph 9 of the

Memorandum of Appeal (i.e., Appeal No.04 of 2014) and subparagraphs thereunder, so far as it may be practicable.

2. All efforts shall be made to bring the actions taken thus far while carrying out the project proponent, in accord with the provisions of FRA 2006.

3. The State respondents shall ensure that the Gram Sabha of the area or its equivalent is consulted as required under the Act.

4. The entire exercise in respect to the directions in 1, 2 & 3 above shall be completed within three months.

11. Action Research In Community Health & Development v. State Of Gujarat & Ors. (PIL NO. 100 OF 2010, GUJARAT HIGH COURT)

Facts:

This Writ Petition had been preferred by Action Research in Community Health & Development (ARCHD), praying for quashing and setting aside all the orders of rejection of claims of tribals and other forest dwellers who have preferred the claims under the [Forest Rights Act] and the Rules, by Sub-Divisional Level Committees and District Level Committees in 12 districts, namely: Narmada, Dangs, Vadodara, Sabarkantha, Banaskantha, Valsad, Navsari, Tapi, Surat, Bharuch, Panchmahal, Dahod; and to direct them to consider and decide all these claims afresh. It was stated by the petitioners that the Sub-divisional Level Committees were seeking specific evidence in violation of the rules which stated that any two evidences could be furnished and it is beyond the authority of the SDLC to seek additional or specific evidence.

Procedural history:

The writ petition in the nature of a Public Interest Litigation was filed in the Gujarat High Court.

Issue:

Whether orders of rejection of claims of Scheduled Tribes and Forest Dwellers' should be set aside?

Rules:

- Forest Rights Act and Forest Rights Rules
- Rule 12-A : Process of recognition of rights
- Rule 13: Evidence for determination of forest rights

Analysis:

- Both the petitions were dismissed after issuing the following directions to protect the interest of the claimants as well as the State.
- The Respondents were directed to strictly comply with Rule 13 and the amended Rule 12-A while disposing of a fresh claim application or a review application, which were already disposed of.
- According to the Respondents, there were 1,28,866 pending claims as on 7th February 2013. The Court directed that all such claims be decided by strictly complying with Rule 13 and the amended Rule 12-A. The respondents were directed to take into consideration the following pieces of evidence while deciding the pending 1,28,866 claims:
    (a) Field verification punchnama along with photographs describing the physical attributes of the land indicating occupation prior to 2005 and 2007.
    (b) Records of Civil and Criminal Court cases.
    (c) Receipts or purchase agreement from the erstwhile Princely States.
    (d) Government records like above receipts issued by the Forest Department.
    (e) Revenue Department receipts.
    (f) Satellite imageries and/or maps prepared from imageries other than BISAG and/or maps prepared from other authorized imageries.
    (g) The applications made in the past i.e. before 2005 for regularization of the claimed lands.

- The Respondents were asked to assign cogent reasons for rejection or modification of the claim, according to the Government guidelines dated 12th July 2012 and the amended Rule 12-A. The respondents were directed to communicate the decision of rejection or modification of the claim, according to Government guidelines dated 12th July 2012 and the amended Rule 12-A, to enable the claimants to approach the higher forum following the law.
- The High Court stated that the SDLC cannot insist on any specific evidence and any of the two evidences stated in Rule 12-A should be accepted.

Conclusion:

The respondents were directed to expedite the process of deciding the pending 1,28,866 claims as well as the process of recognition of community rights over forest resources and also expedite the process of conversion of forest settlement villages into revenue villages along with the fact that the SDLC cannot insist on any particular evidence and has to accept any of the two evidences furnished by the applicant in accordance with Rule 12-A.

Rights of Fisherfolk

The fisheries sector contributes 1.03 percent to India's GDP and accounts for 6.58 percent of the country's agricultural GDP, with an export value of more than 450 billion rupees. It provides livelihood to about 16 million people in the country. While not many legislations governing rights of fisherfolk exist protecting their traditional rights, customary laws of communities have played a pivotal role in fish governance at the local level. These customary laws have been given due weightage by various courts while protecting rights of fishers in private disputes as well as disputes with the state. Most of the issues relating to fisheries include, usage of purse-seine nets by huge trawlers leading to depleting fish resources negatively affecting local communities pushing them into poverty, while also violating traditional and customary laws of the communities.

Under Article 19(1)(g) of the Indian Constitution a citizen has a right to carry on any profession or trade, albeit with reasonable restrictions imposed by the State. Eviction of fishers for development purposes or after declaration of a region as a Wildlife Sanctuary or a National Park has also been observed over the years violating basic fundamental rights of fisherfolk. Cases dealing with this aspect have been included as well.

1. Kholamuhana Primary Fishermen v. State Of Orissa And Ors.

(AIR 1994 ORI 191)

Facts:

The Orissa High Court was approached by 36 primary fishermen co-operative societies stating that the new Chilka Fishery Lease Policy which was allegedly unintelligible, arbitrary and conferred unguided powers on the Collector and some other officers would adversely affect the livelihood of about a lakh of fishermen who in the past were being given settlement of fisheries in Chilka. It was the contention of the petitioner that the new policy tilted in favour of non-fishermen and would end up encouraging a mafia raj.

Procedural history:

The fisherfolk filed a writ petition in the Orissa High Court.

Issues:

a. Do the fisherfolk have traditional rights to the fishery sources? What is the nature of their right?
b. Has the policy sacrificed the traditional rights of fisherfolk in favour of the non-fishermen?
c. Extent of cultivating prawn in Chilka and its effect on the ecosystem.
d. What is the scope of judicial review in this context?

Rules:

- Article 14: Right to equality
- Article 21: Right to a safe environment.
- Article 37: Directive principles not enforceable but fundamental in the governance of the country.
- Article 46: Promotion of economic interests of weaker sections.
- Article 48-A: Protection and improvement of environment.

Analysis:

- The Court held that the fishing community did have traditional rights over the fishing resources. The Court also clarified that the non-fishing community (people belonging to the upper caste who later took up fishing) did not have a traditional right over the fishing sources but they have been engaging with it.
- The Court noted that the distinction between capture fishing and culture fishing made in the policy was not unintelligible but was vague and arbitrary along with being ambiguous.
- Regarding whether or not the policy sacrifices the traditional rights of fishermen in favour of the non-fishermen, the Court did not support the arguments advanced by the petitioner. The Court noted that poverty had broken all caste barriers & that the Court cannot stop the poor high caste people from not using fishing as a means of livelihood.
- The Court also noted that the extent of culturing of prawn in Chilka is harming the ecosystem and it has to be regulated to uphold the right of the citizens under Article 21 of the Constitution, which includes the right to a safe environment.
- The Court in the context of judicial review held that the test of any policy was on the touchstone of reasonableness and public interest. Promotion of economic interests of weaker sections of the people is a part of the directive principles contained in Article 46 of the constitution, and any law that does otherwise would be unreasonable.

Conclusion:

The impugned policy was asked to be amended to reflect the observations made by the Court.

2. Niyamavedi v. Government Of India (2016 SCC OnLine Ker 5335)

Facts:

This present petition is a public interest litigation filed against the new policy permitting deep sea fishing. There were several complaints regarding deep sea fishing vessels conducting fishing operations near the shore waters and often within territorial waters causing damage to the resources as also the livelihood of small fishermen. It is the contention of the Petitioner that the guidelines for deep sea fishing vessels have been amended regularly to the detriment of the environment and small fishermen. According to the report of the committee constituted by the Ministry of Food Processing Industry in February 1995, 908 deep sea fishing vessels were operating & further 270 deep sea fishing vessels were to be deployed. Petitioner contented that if such further vessels are deployed, it would amount to marine exploitation as the existing operators themselves were not reporting the daily position of the vessels to the Coast guard or the Mercantile Marine Department for renewal of permit.

Procedural history:

This writ was filed as a Public Interest Litigation in the Kerala High Court.

Issue:

Whether the policy of deep-sea fishing violates the fundamental right of fishermen under Article 19(1)(g) of the Constitution of India.

Rules:

- Article 19(1)(g): Right of citizen to practise any profession, or to carry on any occupation, trade or business.
- Article 36: State has the same meaning as in part III of the constitution.

Analysis:

- The Courts said that the Central Government shall ensure that the operators of deep sea fishing vessels shall conduct the fishing operations strictly in accordance with the guidelines, and for that, appropriate measures shall be taken and it shall also be

ensured that proper accounting measures shall be implemented to ensure that the guidelines are strictly followed.

- It has also to be ensured that no type of deep-sea fishing shall be conducted within the territorial waters.
- The Court held that the Union of India has the powers under entry 57 of the List I to frame laws with respect to fishing and fisheries beyond territorial waters. The Court noted that the state is enjoined under Article 36 of the constitution of India to protect the poor fishermen.
- As against this, the fishermen were not prohibited from operating in territorial waters (they were only prohibited from using certain types of nets). It was therefore held that there was no restriction on their fundamental right under Article 19(1)(g) of the Constitution of India.

Conclusion:

The Court dismissed the writ petition, however making it clear that the Central Government shall make all necessary measures to ensure that the guidelines are followed by all deep sea fishing vessel operators.

3. Animal and Environmental Legal Defence Fund V. Union Of India And Ors. (AIR 1997 SC 1071)

Facts:

The Pench National Park was declared as a Reserved Forest under colonial forest laws. After the enactment of the Wild Life (Protection) Act in 1972, in 1983, the Government of Madhya Pradesh issued a notification declaring its intention to constitute specific areas as this National Park. As required under Section 19 and Section 21 of the Act, it issued a proclamation inviting claims of rights in or to the specified areas. This was later reciprocated by three applications from villagers residing in 8 villages, claiming that they had a traditional right of fishing for their livelihood in the Pench river. The Forest Department issued an order dated 30.5.1996 granting 305 permits to the Tribals to fish in Totladoh river, an offset of the Pench river.

Procedural history:

The petitioner, an association of lawyers and other persons concerned about the environment, filed a writ petition in public interest in the Supreme Court challenging the order of the Chief Wildlife Warden, Forest Department, Government of Madhya Pradesh (second respondent) granting fishing permits to tribals.

Issue:

Whether the Order dated 30.5.1996 passed by the government of Madhya Pradesh granting fishing permits to tribals within the National Park area is legally valid?

Rule:

The Wild Life (Protection) Act, 1972

- Section 19: Collector to determine rights of any person in or over the land comprising within the limits of the sanctuary.
- Section 21: Proclamation by Collector for the declaration of the Sanctuary.
- Section 35: Declaration of National Parks.

Analysis:

- The Petitioner argues that under Section 5 of the Indian Forest Act of 1927, once a notification is issued declaring any land as a reserved forest, no right shall be acquired in or over such land. Hence, the ancestors of present tribals could not have acquired such rights and the current permits issued in lieu of these traditional rights are unwarranted and must be set aside.
- The Petitioner also argues that the bio-diversity and ecology of the area will be seriously affected if fishing is permitted and as many as 305 permits are granted, which will be difficult for the Department to monitor and regulate.
- The Respondents state that the villagers, who were tribals, resided in villages that fell within the reserved area. Fishing was their main source of livelihood and they hold traditional fishing rights in the Pench river. After they were displaced, no rehabilitation had been carried out and no work was made available to them, leaving them with no other livelihood except catching fish which is their traditional occupation.
- The Court observed that the petitioner was justified in expressing apprehensions about the environmental impact of fishing on the water-body. However, the Court also observed that the right of tribals living in the areas must also be preserved so that they are in a position to earn their livelihood. Additionally, the Court found the orders to be compliant with the provisions of S.35 of the Wild Life (Protection) Act, which concerns the constitution of the National Park and the determination and resolving of claims on such land.

Conclusion:

The Court held that the order granting the permits was valid and in consonance with the law. Taking cognizance of the petitioner's concerns, the Court also issued additional directions for the implementation and regulation of the permits to minimize ecological damage.

4. Negai Sea Foods Catching Association V. Secretary to Government (2016 SCC OnLine Mad 3117)

Facts:

The petitioners constitute an association of fishermen from the coastal areas of Tamil Nadu and were aggrieved by the Government's ban on the fishing of sea cucumbers (holothurians), implemented in the year 2000. The Government had not undertaken any scientific study before or immediately after placing the ban and had not implemented any other measures to conserve the sea cucumber population. The ban had taken away their source of income and the petitioners had made representations to the respondents for the same.

Procedural history:

The petitioners made representations to the respondents dated 30.09.2015 and 30.10.2015 which were not considered, leading them to file a writ of mandamus under Article 226 of the Constitution of India before the Court.

Issue:

Whether the ban on the fishing of sea cucumber ought to be reconsidered?

Rule:

Part IV C – II of the Wild Life (Protection) Act, 1972: Include Echinodermata or marine species.

Analysis:

- The Court highlighted that Part IV C – II of the Wild Life (Protection) Act, 1972 had been amended in 2001 to include Echinodermata or marine species, after which the ban was extended to 14 years. It recognized that this ban had resulted in the loss of livelihood for a large section of the fishing community and referenced other fishermen's identical demands for its withdrawal.
- The Court recognized the commercial nature of sea cucumbers and that it was an important source of livelihood for fishing communities in the Southern coast, who had been carrying it out for generations and were thus put in grave hardship.

- The Court acknowledged the arbitrariness of the ban on the fishing of sea cucumbers due to the lack of scientific research and the undertaking of additional measures to achieve the purpose intended. It also recognized the regulatory measures and scientific practices adopted by Governments of other countries to conserve the species, instead of an outright ban.

Conclusion:

The Court hesitated to dwell deep into the merits of the claims made by the petitioner and allowed their prayer, in lieu of its limited scope. The respondents were directed to consider the representation made by the petitioner and dispose of them in accordance with the law, based on the merits of the claim by affording an opportunity of a personal hearing to the petitioners.

5. State Of U.P v. District Judge, Bijnor And Ors. (AIR 1981 All 205)

Facts:

Abdul Latif (third respondent), claiming to be the secretary of the Union of Fishermen, on behalf of the fishermen of the village, made an application to the Forest Settlement Officer for the grant of fishing rights free of charge in the river Ramganga which was within their village area and flowed through a reserved forest. The respondent claimed that their community had been fishing since time immemorial and produced witnesses to attest for their customary right. The Forest Settlement Officer accepted and granted them permission to carry on fishing.

Procedural history:

The State of Uttar Pradesh appealed against the order of the Forest Settlement Department permitting the right of local villagers to fish. The District Judge of Bijnor rejected this appeal, leading the State to file a petition of certiorari under Article 226 of the Constitution of India.

Issue:

Whether the Order dated 27.02.1969 passed by the Forest Settlement Officer is legally valid?

Rule:

The Indian Forest Act, 1927

- Section 2(4): defines forest produce.
- Section 20: Notification declaring forest reserves.
- Section 26: Acts prohibited in reserved forests.

Analysis:

- The petitioner, State denied the customary rights asserted but did not present oral evidence in the earlier Court proceedings. They also argued that the Forest Settlement Officer did not have jurisdiction to issue the grant to fishermen to fish in the river Ramganga, as fish did not fall under the definition of ‘forest produce’ under Section 2(4) of the Act which the Officer could regulate.

- The respondent Judge had taken cognizance of the evidence presented by the third respondent and upheld the order, reinforcing the customary rights of the fishermen to fishing in the river, which was their traditional source of livelihood.
- The Court delineated the process a Forest Settlement Officer is expected to follow and reinforced the rule under Section 20 that no person is entitled to acquire any right in the reserved forest except through a contract made on behalf of the Government.
- **The Court took a closer look at S.2 (4) which defines produce and held that it contained an inclusive definition which encompasses anything ordinarily found or produced in a forest and includes fish, which are produced in the forest through a process of nature.**
- The Court criticized the inconsistencies in the petitioner's arguments and did not find any error in the order, recognizing customary rights of fishermen.

Conclusion:

The Court found that fish fell within the ambit of 'produce' under S.2, and the Forest Settlement Officer had appropriate jurisdiction to grant fishermen a permit to what was their customary right. The petition failed and was thus dismissed.

6. Tuticorin New Shore Slum Dwellers v. The Chairman, Port Trust and Ors.

(1991) 95 MLJ 1

Facts:

126 families belonging to a backward community of fishermen, including the Vice President of the Petitioner Association, had been living on the land in question for 20 to 25 years which was allotted to them by the Fisheries Department. They had been residing and fishing in the area and had developed a school and a Church. When the Port Trust took over the lands, the Department allotted new land to them. They were assured this was permanent but were given a notice by the Port Trust to remove their huts and vacate.

Procedural history:

The petition was filed by Tuticorin New Shore Slum Dwellers Welfare Association challenging the notice of the Chief Engineer, Port Trust, asking the fishermen to remove their houses and vacate their land.

Issue:

a. Whether the notice of the port trust asking fishermen to vacate their land is legally valid?
b. What is the status of fishermen families living upon the land?

Rules:

- The Transfer of Property Act, 1882,
    - Section 111: Determination of lease of immovable property.
- Right of Easement

Analysis:

- The petitioners argued that they had been residing on the lands with faith in the Fisheries Department and were assured that they had permanent rights. They claimed that they were poor and illiterate farmers and relied on their fishing activity as their traditional occupation and source of livelihood.

- The respondents argued that the land in question was not owned by the Fisheries Department, and that the fishermen did not possess any rights to the land and had only polluted the environment through their activities.
- The Court relied on the case of *Abbas v. Andi Chettiar*, which held that no one can claim the seashore as his property against the state and that fishermen were entitled to exercise their customary rights with regard drying fish, keeping boats and fishnets as a kind of easement on account of long enjoyment of rights.
- The Court concurred with this decision and observed that the community of fishermen had such enjoyment of the land in question, had developed their colony and may have the rights of easement. The Court found that the Trust had previously acknowledged this possession which made some of its claims inconsistent.

Conclusion:

The Court allowed the petition and quashed the contested notice. It held that the Port Trust could not evict the fishermen from the lands in their possession or prevent them from enjoying their respective rights upon the land without taking recourse to the due process of law.

7. Deepar Beel Pachpara Samabai Samity LTD. and Another v. Union of India and Ors. (WRIT PETITION (C) DIARY NO. 4113 OF 2009)

Facts:

The petitioners are part of a registered society constituted by fishermen who reside in villages in the vicinity of Deepar Beel and claim traditional fishing rights in the area. The Government had earlier rescinded its notification recognizing the Deepar Beel in lieu of these rights, but a recent notification overturning the same is contrary to the interest of the petitioners and would rid them of their land and livelihood.

Procedural history:

The writ petition was filed by the petitioners to challenge the notification passed by the Government declaring the Deepar Beel area as a Wildlife Sanctuary.

Issue:

Whether the notification dated 21.02.2009 passed by the government to notify an area of the water body as a sanctuary is legally valid?

Rule:

The Wild Life (Protection) Act 1972

- Section 18: Declaration of a Sanctuary.
- Section 19: Collector to determine rights of any person in or over the land comprising within the limits of the sanctuary.
- Section 21: Proclamation by Collector for the declaration of the Sanctuary.

Analysis:

- The petitioners claim traditional fishing rights in Deepar Beel and argue that the Government is obliged to protect their economic interests and arrange for their rehabilitation, since their livelihood will be gravely impacted. They also argued that since the earlier notification under Section 18 was rescinded, the area cannot be declared as a sanctuary on the basis of the old notification. Finally, the motives for

the rescinding were pointed out and it was argued that the State must balance between the protection of the area and the interests of the local fishermen.

- The respondents argue that the petitioners never held any traditional fishing rights in the area. They also argued that the orders and notifications allowed the petitioners ample time to raise their objections which they had not done so. Lastly, it was observed that provisions of the Act must be interpreted to advance the objectives of the statute and cannot be applied in contradictory fashion. Deepar Beel is part of the RAMSAR sites and is thus an area of international importance and fishing rights cannot be granted on account of Wetland Rules.
- The Court observed that the initial declaration was published in 1989, but was later rescinded in 2002 and the area was restored to its original status on the petitioners' objections that it would adversely affect their rights and livelihood. However, another notification was issued in 2009 to uphold the initial intention, after carrying out the process of calling for claims, which was met with no response.
- The Court noted that in the latter case, the objections that had been made by the petitioners earlier on were not taken note of and was not a valid assertion on part of the Collector. Additionally, S.21 of the Act was not complied with while making the notification. The Court upheld the traditional fishing rights of the petitioners in the area. It also found that the Wetland Rules will not apply to Deepar Beel as it was already a reserved area and would be governed by the 1972 Act. Furthermore, the State Government had made no arrangements to rehabilitate and compensate the fishermen for their loss of land and livelihood.
- However, the Court also acknowledged the biodiversity and ecological significance of Deepar Beel and its need to be preserved.

Conclusion:

The Court held that the current notification was not legally valid and recognized the traditional fishing rights of the community. It permitted the Government to arrange for a declaration of sanctuary status for Deepar Beel, but through the initiation of a new process in compliance with the rules and guidelines.

8. State Of Kerala And Another v. Joseph Antony 1994 SCC (1) 301

Facts:

The case concerns a dispute between fishermen in the State of Kerala who use traditional fishing methods and those who use mechanized crafts which mechanically operate nets such as the purse seine. The purse seine is used for pelagic (surface) fishing, and mainly obtains the oil sardine and mackerel. The introduction of the purse seine in the waters has caused a decrease in the population of fish, and has significantly affected the traditional fishermen's livelihood.

Procedural history:

The Government issued two notifications dated 29.11.1980, the first of which defined a specified area as the territorial waters of the State and, the second, which fishing by mechanized vessels was prohibited in the territorial waters except for small specified zones, use of gears like purse seine was prohibited along the coastline and traditional methods were permitted in the prohibited areas. These were challenged by the purse seine operators in the High Court and were struck down. The State Government put out two more notifications which allowed mechanized vessels to operate only beyond 10kms from the shore but upheld the previous decision to prohibit the use of purse seine. These were challenged again in the High Court which allowed the petition and deemed the notifications invalid. Two appeals were filed against this order by the State of Kerala and a fishermen's federation respectively, which have been clubbed in the present judgement.

Issue:

Whether the use of purse seine nets beyond 10 kms of the territorial waters can be validly prohibited by the state government?

Rules:

- Section 4, The Kerala Marine Fishing Regulation Act, 1980: Power to regulate, restrict or prohibit certain matters within specified areas.
- Articles 19(6): Reasonable restrictions on freedom to practise any profession, or to carry on any occupation, trade or business.

- Article 46: Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.

Analysis:

- The Court scrutinized 4 reports from various authorities with regard to the matter of purse seine fishing. It observed that the pelagic fish showed little scope for increase in production in the area concerned. Furthermore, purse seine nets are also equipped to catch the shoals, preventing additional fish breeding. This may lead to the gradual extinction of the pelagic fish stock.
- The State took into account that the population of fishermen had increased in recent decades but the population of fish had not, leading to 98.5 percent of the fishermen being below the poverty-line.
- The Court looked into the socio-economic position of the parties in dispute, observing that those operating mechanized machinery were mostly rich private entrepreneurs who had invested in fishing as a business, unlike the fishermen who possessed traditional rights and were dependent on it as their only source of income. The purse seine technology, borrowed from the West, was ill-suited to Kerala, which had a large population of fishermen.
- The Court held that the protection of the interests of the weaker sections of the society is warranted as per Article 46 of the Constitution and the protection is also in the interest of the general public. Hence, the restriction imposed by the impugned notifications on the use of the gears in question is a reasonable restriction within the meaning of Article 19(6) of the Constitution and also compliant with Section 2 and Section 4 of the Kerala Marine Fishing Regulation Act.

Conclusion:

The Court allowed the appeal and held that the High Court was not justified in restricting the scope of the prohibition in the notifications. The two impugned notifications were declared valid and operative throughout the territorial waters of the State.

9. Ramdas Janardan Koli v. Secretary, Ministry of Environment and Forests (2015 SCC OnLine NGT 4)

Facts:

The application was brought before the National Green Tribunal (NGT) by traditional fishermen, part of the Koli community in Maharashtra, to seek compensation for the loss of livelihood and implementation of rehabilitation for their families. This as a traditional right to fish in the sea area was being abolished by the reclamation of land by the respondents, the Jawaharlal Nehru Port Trust (JNPT).

Procedural history:

The application was brought before the NGT by the applicants, traditional fishermen, against 10 respondents, mainly the JNPT (8^{th} respondent) and the ONGC (9^{th} respondent) in 2013.

Issues:

a. Whether the applicants can claim customary rights for navigation and to fish from the water body?
b. Whether reclamation, cutting of mangroves and other activities undertaken by the respondents did or would cause environmental degradation, resulting in loss of ecology?
c. Whether the applicants should be granted compensation and be rehabilitated in lieu of their claim for the loss of livelihood, land and traditional rights?

Rules:

- Article 21: Right to life and personal liberty
- S.15 Environment (Protection) Act, 1986: Penalty for contravention of the provisions of the Act.
- S.18 of Indian Easement Act, 1882: Customary easement.

Analysis:

- The applicants alleged that the reclamation processes undertaken by JNPT would narrow down the mouth of the creek, restrict the movement of traditional boats in

seawater and hence cause a loss to their daily livelihood. They depend on their customary rights to fish, acquired from tribals living in the areas previously and confirmed by the Mahul Creek (Extinguishment of Rights) Act, 1922, The Indian Fishery Act, 1897 and the Human Rights Act, 1993. They also argued that since the flow of seawater in the creek would be affected, it would lead to the destruction of mangroves, causing loss of spawning.

- The respondents denied the allegations and claimed that the applicants did not engage in fishing in the said creek, but 10 kms away from their villages. They argued that the applicants did not possess any customary rights and that the Mahul Act would not apply to them because it no longer concerned 'tidal waters'. They also argued that the concerned area is neither a breeding ground for fishes, nor is a spawning area from which fish stock is available.
- The Court first clarified that there was no dispute in recognizing the applicants were residents of villages/hamlets where almost all residents were traditional fishermen, whose community must be recognized as a separate social-class. The Court found that the Mahul Act would not award the disputed rights to the applicants. However, since the Committee of Fisheries Department had recognized the right of traditional fishermen to fish in and around the area. Hence, this recognition, as well as the immemorial fishing activities of the applicants gave them not only customary rights to use the seawater for fishing, but also to continue the right to life and liberty as conferred by Article 21 of the Constitution.
- Based on the affidavit submitted by the respondents and a report, the Court observed that the mangroves at the bank had already been cut and destroyed, in violation of the conditions stipulated by the MOEF&CC. The report also contemplated an effect on tidal exchanges and obstruction in natural water navigation routes available to the traditional fishermen. Additionally, the respondents had not arranged adequate rehabilitation mechanisms for the displaced populations.
- The Court recognized the clear duty of the State to protect people within their jurisdiction from having their human rights breached by non-state actors, including corporations.

Conclusion:

The Tribunal allowed the application and directed Respondents No.8, 9, and 10 to compensate the applicants according to its direction and the proportion decided with regard to their contribution to loss of mangroves, loss of spawning grounds and loss of livelihood. The Tribunal also imposed various monetary fines and instructions against the other respondents in the case and ordered that a compliance report be submitted to it in 4 months' time.

10. Kerala Swanthanthra Malaya v. Kerala Trawlnet Boat Operators

(1994) 5 SCC 28

Facts:

The case concerns a conflict of interest between traditional fishermen and mechanized fishing boat operators in the territorial waters of Kerala and the attempts of the government to balance their contending demands. The Government of Kerala claimed that the boats of the operators were capable of bottom-trawling only within the territorial waters but the operators disagree. In light of this, the Government issued two orders. The first order, dated 25.06.1990, prescribed certain prerequisites to trawl boats going to fish beyond territorial waters to ensure that bottom-trawl fishing is not conducted in the prohibited area. The second order, dated 20.06.1992, banned bottom-trawling in the entire coastline of the State during the monsoon period.

Procedural history:

The operators of the mechanized boats approached the Kerala High Court challenging the validity of the orders after they were issued. The Court upheld the petition and declared the contentious notifications invalid, leading the Government of Kerala and the association of traditional fishermen, Kerala Swathanthra Malaya Thozhilali Federation, to file the appeals concerned in the judgement.

Issue:

Whether the two orders dated 25.06.1990 and 20.06.1992 issued by the government of Kerala are legally valid.

Rules:

- S.4 of the Kerala Marine Fishing Regulation Act, 1980: Government's power to create laws to regulate fishing activity.
- Article 19(1)(d): right to move freely within the territory of India

Analysis:

- The operators argued that the Parliament or the Central Government alone are competent to regulate the fishing beyond territorial waters and have not imposed any sort of restriction on bottom trawling. They claimed their boats were capable of bottom-trawling beyond the territorial waters and should be allowed to go beyond the territorial waters for this. They submitted that their right to go beyond the territorial waters (right of 'innocent passage') and their right to move freely within the territory of India under Article 19(1)(d) of the Constitution cannot be completely taken away even for the limited period of 44 days in the year.
- The appellants argued that the restrictions were in the interest of maintenance of law and order within the territorial waters and to protect and preserve the fish in the larger interest of all the fishermen and the consuming public.
- The Court stated that under Section 4 of the Kerala Marine Fishing Regulation Act, the Government was empowered to create laws to regulate fishing activity. The Court also observed the motivations behind the two orders which were based on the need to preserve the traditional rights to fishing, the environmental balance and the safety and property of the operating fishermen themselves.
- The Court agreed that the order imposed restrictions under Article 19 of the Constitution, however, these restrictions answered the test of reasonableness in clauses (5) and (6) of the Article and were issued in public interest. It relied heavily on *State of Kerala v. Joseph Antony* in recognizing that the interests of traditional fishermen must be preserved and their rights to livelihood could not be curbed. It held that public interest could not be determined solely through the basis of production and must also ensure the development of the human being.

Conclusion:

The Court allowed the appeals and held that the impugned orders issued under S.4 of the Kerala Act were legal and valid. The orders of the Kerala High Court under appeal were set aside.

Disaster Management Act, 2005

The Disaster Management Act was enacted in 2005, following the recommendations of multiple committees post the Indian Ocean Tsunami of 2004. The Act aims to provide for the effective management of disasters and related occurrences. The Act consists of 11 chapters concerning the establishment of a systematic structure of institutions at the national, state and district level to achieve its objectives.

The constitution of the National Disaster Management Authority (NDMA) is discussed in the second chapter of the Act, which also includes the setting up of a National Executive Committee (NEC) to assist in the process. The chapter delineates the composition and functioning of these bodies and mandates that a country-wide disaster management plan, the National Plan, be created under the leadership of the NEC and the NDMA. The two subsequent chapters provide for State Disaster Management Authorities and District Disaster Management Authorities and lay down the composition, powers and functions of these bodies. Both these institutions are also required to formulate State Plans and District Plans respectively. Consequently, the fifth, sixth and seventh chapters provide a detailed expansion of the powers and responsibilities of each institutional structure to take greater measures for the prevention, mitigation and preparedness.

In addition to the three-tiered structure, the Act also provides for the setting up of two additional national bodies, the National Institute of Disaster Management and National Disaster Response Force which are both involved in training and capacity-building to create specialized response units. Finally, the Act devotes the last two chapters to lay out the penalties that a violation of the Act may incur and the miscellaneous aspects of the legislation that concern the carrying out of its objectives.

The initial 21-day lockdown period imposed in the country during the pandemic was the first time that provisions of the National Disaster Management Act, 2005, were

invoked by an order issued by the NDMA.[17] The pandemic also highlighted the necessity of the NEC which was instrumental in the implementation, coordination and monitoring of lockdown guidelines. This prompted the speculation that the NEC may be retained in the proposed amendment to the Act, as opposed to recommendations provided in 2013 by a task force.[18] The pandemic has laid bare the weaknesses in the country's disaster management mechanism and the inconsistencies and contradictions within the primary legislation governing this sphere.[19]

[17] Chaturvedi, Sumit. (2020). Pandemic Exposes Weaknesses in India's Disaster Management Response. Retrieved 02 October, 2020 from https://www.thehinducentre.com/the-arena/current-issues/article32502100.ece

[18] Tripathi, Rahul. (2020). Amendments to Disaster Management Act may retain NEC led by Union Home Secy. Retrieved 02 October, 2020 from https://economictimes.indiatimes.com/news/politics-and-nation/amendments-to-disaster-management-dm-act-may-retain-nec-led-by-union-home-secy/articleshow/77966572.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

[19] See note 1.

1. Bipinchandra J. Divan And Ors. v. State Of Gujarat And Ors.

(AIR 2002 Guj 99)

Facts:

The case relates to the earthquake which occurred on the morning of 26th January 2001 in Gujarat that caused massive destruction and loss of lives. Since the Government infrastructure and machinery was inadequate to meet such unforeseen natural calamity, petitioners filed the case seeking the intervention of the Court to ensure speedy and effective relief to the victims. They also made a prayer to form an independent committee of experts to ensure proper utilisation of the large quantities of relief material and money received as a contribution and to avoid their diversion, misappropriation and loss. The Government denied all the allegations of inefficiency in providing relief made by the petitioners. They submitted that neither the Constitution nor any law permits the Judiciary to take over or hand over the work of the Executive.

Procedural history:

This was filed as a Public Interest Litigation in the Gujarat High Court under Article 226 of the Constitution of India.

Issue:

Whether the High Court should issue directions to the government to set up an independent committee or commission for overseeing the relief and rehabilitation operations?

Rules:

- Article 21 of the Constitution of India which guarantees to every citizen protection of his life and personal liberty.
- Legal Services Authorities Act - The appointment of District Judges as ombudsmen in every district.
- Art. 283 & 129 of the Constitution - Contributions and donations the Government are subjected to statutory audit through the Comptroller and Auditor General of India.

Analysis:

- The Court observed that the duties of the Government or the Court on the occurrence of a disaster or natural calamity of this magnitude are not statutorily regulated. The Supreme Court has deduced an affirmative obligation of the State to preserve human life from Article 21 of the Constitution. It also applied the doctrine of *parens patriae* for the rehabilitation of disaster victims. The Supreme Court pointed out that it has held in its previous judgments that the Preamble of the Constitution read with Directive Principles in Arts. 38, 39 and 39A enjoin the State to take up this responsibility.
- The Court acknowledged its limitations as a Constitutional Court. It observed that it would not be in the public interest to take over the work of the Government machinery and hand it over to a committee set up by the Court. The Court granted time to the Government to constitute a high-power Disaster Management Committee to ensure the best possible help and relief to the victims in rehabilitation.
- The Court ordered that the District Judge in each district, who is ex-officio Chairman of the District Legal Services Authority constituted under the Legal Services Authorities Act, will act as the Ombudsman in their district. The role of Ombudsman will not be to supervise or oversee the relief and rehabilitation operations of the Governmental agencies, but they would receive complaints and grievances of the quake victims, and after necessary investigation bring them to the notice of the government officials and agencies in charge of relief and rehabilitation programmes.
- The Court agreed with Government's contention that donations it receives go either to the Consolidated or Contingency Fund of India following Art. 283 of the Constitution and is subject to statutory audit through the Comptroller and Auditor General (CAG) of India under Art. 129 of the Constitution. However, given the nature of relief and rehabilitation operations, a periodical check by the audit is necessary (cannot be left to a post-audit procedure).
- **Therefore, a separate Fund was directed to be opened by the Authority specially constituted for Disaster Management Operations. The account of the receipt and expenditure of the relief material in cash and kind shall be duly maintained by the**

Authority and shall be subjected to periodical inspection and audit by a nominee of the CAG. The account so maintained and duly audited will be open to inspection by the public.

Conclusion:

The Court directed the government to appoint the judge in each district, who is ex-officio Chairman of District Legal Services Authority constituted under the Legal Services Authorities Act, as the Ombudsman in their district for overseeing the complaints and grievances arising from the relief and rehabilitation operations. It also held that a separate Fund had to be opened which would be subject to periodical inspection and audit.

2. State of Kerala v. Biju Ramesh (2016 SCC OnLine Ker 15755)

Facts:

There were multiple petitions before the High Court filed by the petitioners who owned land of 75 cents (with certain buildings) around Thekkinikara Canal which was constructed in the year 1901 for drainage. Kerala Government prepared State Disaster Management Policy under the National Disaster Management Act 2005 following which the District Management Plan of Thiruvananthapuram was prepared on 19.06.2010.

The city was witnessing floods, water logs, disruption of traffic on account of incessant rains. 'Operation Anantha' was initiated for mitigating the floods under which water drains and canals were inspected to identify and remove encroachments before desilting and repairing the canal. Multiple notices were issued by the Government to the owners to vacate the land occupied by them so that the depth of drains can be increased and water can flow freely in the canal. The canal was in an extremely precarious condition since the mortar and plastering were disintegrated in major parts of the canal. In this case, all the petitions are against the notice issued by the Disaster Management Authority to vacate the land.

Procedural history:

A series of writs were filed in the Kerala High Court by people who had received notices to vacate their land by the Authorities under the 2005 Act.

Issue:

Whether by the exercise of the powers under section 34 of the Disaster Management Act, 2005, the district management authority can direct for the demolition of the construction belonging to a private individual?

Rules:

- Section 34 of the National Disaster Management Act: District Disaster Management Authority's power to take any measure in implementing the statutory disaster management plan or to take any measure towards Disaster Management

- Section 72 of the National Disaster Management Act: The Act to have an overriding effect.

Analysis:

- The Court (Division Bench) held that the canal was constructed for public purpose i.e for drainage. The canal is a Government canal which now vests in the State of Kerala and is maintained by the Irrigation Department of the State. However, the petitioner is recorded as owner of the buildings situated on the superjacent (lying over/above) area of the canal.
- The Court held that under Section 34, District Disaster Management Authority has the power to take any measure in implementing the statutory disaster management plan or to take any measure towards Disaster Management. Also, District Administration can act under Section 65 and a reading of Section 65 does not indicate that the said power is to be exercised by the authorities only when an actual disaster has happened.
- The measures which were to be taken with regards to Thekkinikara Canal such as the renovation and repair of the canal, removal of the encroachments etc. were necessary and there were sufficient grounds to exercise the power by the District Disaster Management Authority under the Act. There is no lack of jurisdiction in District authorities to direct for the demolition of structures in the exercise of power under Section 34(k) of the Act.
- The single Judge took the view that before directing the petitioners to vacate from the aforesaid area of the canal, they were required to acquire the land following the Land Acquisition Act. However, this Court held that if this view is accepted, it will defeat the entire purpose of the Disaster Management Act 2005 which was enacted with a definite objective. The Court noted that the single judge had mistaken and not taken into consideration Section 72 of the Act which gives overriding effect to the provisions of the 2005 Act.
- The Court observed that neither is the District Authority asking the petitioners to demolish the entire building nor is the District Authority intending to take possession of the entire building or area of the petitioners. The State only intends to clear the

area above the canal so that repair and renovation work in the canal may be undertaken.

Conclusion:

The Court held that **for undertaking repair work for prevention of any disaster, the concerned authorities did not have to resort to the provisions of the Land Acquisition Act, 2013 or the Land Conservancy Act, 1957 as Section 72 of the Disaster Management Act, 2005 has an overriding effect over them.**

3. Swaraj Abhiyan (I) v. Union Of India And Ors. (2016 SCC OnLine SC 485)

Facts:

Petition was filed in the backdrop of declaration of drought (disaster) in some districts or parts thereof in nine States. All these States were Respondents in this petition along with the Union of India. According to the petitioner, drought ought to be declared in most parts of three Respondent States (States of Bihar, Gujarat and Haryana). It had, therefore, sought a direction to these three States to declare a drought and provide essential relief and compensation to people affected by the drought.

Procedural history:

A Public Interest Petition was filed by Swaraj Abhiyan under Article 32 of the Constitution.

Issue:

Whether the Disaster Management Act is applicable in the current situation ?

Rules:

- Article 21: Right to life and personal liberty.
- S. 11 and S. 44, Disaster Management Act, 2005: An Act to manage disasters, including preparation of mitigation strategies, capacity-building and more.

Analysis:

The Court, after discussing the whole Disaster Management Act and identifying the duties and liabilities of states in disaster management, found the following:

- That a National Plan had not been drawn up under Section 11 of the DM Act for disaster management. Evidently, anticipating a disaster such as a drought is not yet in the 'things to do' list of the Union of India and *ad hoc* measures and knee jerk reactions are the order of the day and will continue to be so until the provisions of the Disaster Management Act are faithfully implemented.
- Also, quite surprisingly, the National Disaster Mitigation Fund has not yet been set up even after 10 years of the enforcement of the DM Act. Risk assessment

and risk management also appear to have little or no priority as far as the Union of India and the State Governments are concerned.

- On the basis of the Manual for drought Management (Manual), published by the Union of India, rainfall is the most important indicator of drought. A departure in rainfall from its long term average should be taken as the basis for drought declaration.
- However, the Court found that from a reading of the manual, it is clear that drought declaration today is to be viewed quite differently from the past practices. The emphasis now is on four factors: rainfall deficiency, extent of area sown, normalization difference vegetation index and moisture adequacy index.

Directions issued:

- As mandated by section 44 of the Disaster Management Act, 2005 (Act) a National Disaster Response Force with its own regular specialist cadre is required to be constituted within 6 months from today with appropriate strength.
- As per section 47 of the Act a National Disaster Mitigation Fund was ordered to be established within 3 months from the date of the order.
- Section 11 of the Disaster Management Act, 2005 requires the formulation of a National Plan relating to risk assessment, risk management and crisis management in respect of a disaster at the very earliest and with immediate concern.
- The Revision of the Drought Management Manual should be conducted and the following factors were ordered to be considered:
    - Weightage to be given to each of the four key indicators should be determined to the extent possible.
    - The time limit for declaring a drought should be mandated in the manual.
    - The revised and updated manual should liberally delineate the possible factors to be taken into consideration for declaration of a drought and their respective weightage.

- The nomenclature should be standardized and the methodology to be taken into consideration for declaring a drought.
- In the proposed revised and updated manual as well as in the National Plan, the Union of India must provide for the future in terms of prevention, preparedness and mitigation.
- The Government of India must insist on the use of modern technology to make an early determination of a drought or a drought-like situation.

Conclusion:

The Supreme Court invoked the Disaster Management Act, 2005 for effective planning and management of Disasters, including droughts and directed the Central Government to chalk up a National Plan and establish a National Disaster Mitigation Fund.

4. Jai Prakash Bisht & Ors. v. Union Of India & Ors. (SCC OnLine Utt 2453)

Facts:

In the massive floods that took place in Kedar Valley in June 2013, many people were killed, went missing or got disabled or injured. The relief was granted to disaster-affected families and landowners for the loss of crops/damage to agricultural land. A sum of Rs. 5 lakhs each was disbursed to the next of kin of 972 persons of Uttarakhand who died in the tragedy, a sum of Rs. 2 lakhs to the persons, who had suffered disability of more than 80%, a sum of Rs. 1.5 lakhs to disabled persons who had suffered a disability between 40% to 80% and a sum of Rs. 30,000/- to the persons who have sustained life-threatening injuries. There was also a policy made for providing houses to the homeless families.

Procedural history:

These writ petitions were filed in the High Court of Uttarakhand.

Issue:

Whether the compensation paid to the victims of the Kedar Valley tragedy which occurred in June 2013 is inadequate and needs to be enhanced?

Rules

- Article 21: Right of rehabilitation under right to life.
- Article 47: State's duty to raise standard of living and improve public health.
- The preamble to the Constitution, read with directive principles, under Articles 38, 39 and 39- A

Analysis:

- The Court found that the amount of compensation, paid for the rehabilitation of the victims/affected families, is inadequate. New houses cannot be constructed with an amount of Rs. 5 lakhs. Also, the compensation provided for death or

disablement/injury was on the meagre side. These persons constitute a special class and have a right of rehabilitation under Article 21 of the Constitution of India.

- The Court acknowledged that rehabilitation policy falls with the realm of public policy and accordingly, the scope of judicial view is limited. However, the Court felt that the amount of compensation should, at least, be increased by fifty per cent to mitigate the hardships faced by the victims/affected/aggrieved persons.
- The Court pointed out that the rescue operations were delayed, which further compounded the miseries of the helpless people trapped in the area. It further opined that the State Government was negligent even after the tragedy occurred by not salvaging the situation and taking all the measures to protect life and property. There was apathy, insensitivity and callousness in the attitude of the State. The State has also not enforced the provisions of Disaster Management Act, 2005 in letter and spirit.
- **Respondent-State Government was directed to pay additional 50% compensation to the victims/affected/aggrieved persons of Kedarnath Valley Tragedy of 2013 under all the categories provided for, in the rehabilitation schemes as well as the Policy for Reconstruction of Housing and Public Buildings, framed for these people, within three months from the date of order.**
- The State Government was further directed to trace and find out the children who were rendered orphans due to Kedarnath Tragedy and to take all necessary steps for their rehabilitation including their boarding and lodging, free education up to post-graduation. **The State Government was also directed to provide a stipend of Rs.7,500/- per month to the Orphans, till they attain the age of majority, to be deposited in their bank accounts through District Welfare Officers of the concerned district.**

Conclusion:

It is an important judgement as it not only highlighted the role of the government in protecting its citizens but also directed it to do a better job at it. The direction to the

state to provide additional compensation would act as a positive motivator to the state to provide compensation at a better rate in future cases.

5. M C Mehta v. Union of India (Shriram Industries Case) (AIR 1987 SC 965)

Facts:

M.C Mehta filed a Public Interest Litigation under Articles 21 and 32 of the Constitution and sought closure and relocation of the Shriram Caustic Chlorine and Sulphuric Acid Plant which was located in a thickly populated area of Delhi.

Procedural history:

The petitioner MC Mehta, an Advocate, Supreme Court filed a public interest litigation petition in the Supreme Court under Article 32 of the Constitution.

Issues:

a. Whether such hazardous industries can be allowed to operate in such areas?

b. If they are allowed to work in such areas, whether any regulating mechanism is to be evolved?

c. Liability and amount of compensation; how they were determined.

Rule:

Rule of Absolute Liability (Tort law)

Analysis:

- Chief Justice Bhagwati showed his deep concern for the safety of the people of Delhi from the leakage of hazardous substances like the one here – oleum gas. He was of the opinion that we cannot adopt the policy to do away with chemical or hazardous industries as they also help to improve the quality of life, as seen in this case this factory, was supplying chlorine to Delhi Water Supply Undertaking which is used to maintain the wholesomeness of drinking water. Thus industries even if hazardous have to be set up since they are essential for economic development and advancement of well being of the people.
- "We can only hope to reduce the element of hazard or risk to the community by taking all necessary steps for locating such industries in a matter which would pose the least risk of danger to the community and maximizing safety requirements in

such industries." Thus the Supreme Court was of the opinion that total ban on the above industry of public utility will impede the developmental activities.

- It was also observed that permanent closure of the factory would result in the unemployment of 4000 workers, caustic soda factory and add to the social problem of poverty. Therefore, the Court made an order to open the factory temporarily subject to eleven conditions and appointed an expert committee to monitor the working of the industry.
- The Court also suggested that national policy will have to be evolved by the Government for the location of toxic or hazardous industries and a decision will have to be taken in regard to the relocation of such industries to eliminate risk to the community.
- Some of the conditions formulated by the government were -:
    - The Central Pollution Control Board to appoint an inspector to inspect and see those pollution standards set under the Water Act and Air Act to be followed.
    - To constitute a Worker's Safety Committee.
    - Industry to publicise the effects of chlorine and its appropriate treatment.
    - Instruct and train its workers in plant safety through the audiovisual programme, install loudspeaker to alert neighbours in the event of leakage of gas.
    - Workers to use safety devices like masks and belts.
    - And that the workers of Shriram to furnish undertaking from Chairman of DCM Limited, that in case of escape of gas resulting in death or injury to workmen or people living in the vicinity they will be "personally responsible " for payment of compensation of such death or injury.
- The Court also directed that Shriram industries would deposit Rs 20 lakhs and to furnish a bank guarantee for Rs. 15 lakhs for payment of compensation claims of the victims of oleum gas if there was any escape of chlorine gas within three years from the date of the order resulting in death or injury to any workmen or the living public in the vicinity. The quantum of compensation was determinable by the District Judge,

Delhi. It also shows that the Court made the industry "absolutely liable" and compensation to be paid as and when the injury was proved without requiring the industry to be present in the case.

- The above-mentioned conditions were formulated to ensure continuous compliance with the safety standards and procedures laid by the committees (Manmohan Singh Committee and Nilay Choudhary Committee) so that the possibility of hazard or risk to workmen could be reduced to nil.
- This all indicates that the Supreme Court in its judgement emphasized that certain standard qualities to be laid down by the government and further it should also make law on the management and handling of hazardous substances including the procedure to set up and to run industry with minimal risk to humans, animals etc.
- Further, the industries cannot absolve themselves of the responsibility by showing either that they were not negligent in dealing with the hazardous substance or they took all the necessary and reasonable precautions while dealing with it. Thus, the Court applied the principle of no-fault liability in this case.

Conclusion:

The Court was of the view that an enterprise engaging in a hazardous or inherently dangerous industry, which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous activity in which it is engaged. Work must be conducted with the highest standards of safety and if any harm is done on account of such activity, the enterprise must absolutely be held liable to compensate for such harm and there should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part.

6. Ficus Pax Private Ltd. And Ors. v. Union Of India (UOI) And Ors. (WRIT PETITION (C) DIARY NO. 10983 OF 2020)

Facts:

A nationwide lockdown was imposed in India amidst the spread of COVID-19 pandemic. Petitioner challenged the orders (dated 20.03.20 and 29.03.20) issued by Central Government under Disaster Management Act 2005 and other consequential orders issued by different States directing all the employers to make payment of wages of their workers and on the due date, without any deduction. It was contended that it was done based on wrongful interpretation of the Disaster Management Act conferring such power to Government. Petitioner contended that these orders were violative of Article 14, Article 19(1)(g) of the Constitution of India.

Procedural history:

Various petitions were filed in the Hon'ble Supreme Court of India challenging the *vires* of the MHA Circular and Labour Circular, claiming that the same violated employers' rights under Articles 14 and 19(1)(g) of the Constitution of India. Various intervention applications filed by employees' unions in support of the MHA Circular were allowed, and the petitions were clubbed with the lead case*, Ficus Pax Private Limited v. Union of India & others.*

Issue:

Whether the orders dated 20.03.2020 and 29.03.2020 passed by the government of India are *ultra vires* article 14, 19(1)(g) of the Constitution of India.

Rules:

- Article 14: Right to equality.
- Article 19(1)(g): Freedom to practice any profession or to carry on any occupation, trade or business.

Analysis:

- The Court observed that the orders dated 29.03.2020 which cast an obligation on the employer to make payment of wages of their workers at their workplace, without any reduction, for the period of their establishments were under closure (during the lockdown), was withdrawn by subsequent order dated 17.05.2020 w.e.f. 18.05.2020 and was no longer in operation. However, the issue regarding its effect when it remained in force is still to be answered.
- The Court directed the Central Government to file a detailed counter-affidavit against the contentions of the petitioners within four weeks, rejoinder to which was to be filed within one week after filing of such affidavit. The Court also ordered for continuation of its order dated 04.06.2020 for not taking any coercive action against the employer under notification dated 29.03.2020.
- The Court observed that not all industries/establishments will be able to bear the entire burden of the obligation. A balance has to be struck between these two competing claims for the smooth running of industries after the lockdown. The employers may initiate a process of negotiation with their employees and enter into a settlement with them. If they are unable to settle by themselves,they can submit a request to concerned labour authorities who are entrusted with the obligation under the different statute and can attempt to conciliate the dispute. In case a settlement is arrived at, that may be acted upon by the employers and workers irrespective of the order dated 29.03.2020.
- It was directed that private establishments, industries, factories shall, after the lockdown, permit those workers/employees who are willing to work in their establishment without prejudice to rights of the workers/employees regarding unpaid wages of above 50 days.

Conclusion:

In the context of the pandemic, the Court cleared that there would be no state mandate to pay full wages to workers in case of an order of lockdown by the government. While this does provide relief to medium and small-scale industries who

would have gone bankrupt if they were made to pay wages when their business was not operational, it would lead it to an unimaginable hardship for daily wage workers.

7. Russell Joy v. Union of India ((2018) 18 SCC 173)

Facts:

Mullaperiyar Dam was constructed under a lease agreement executed in the year 1886. Petitioner asserted that the Chief Engineer of the dam project envisaged the lifetime of the dam for 50 years. Petitioner contended that because 121 years have expired from the date of the construction of the dam, there was the need for assessment of the lifespan and subsequent decommissioning of the dam for the safety of the citizens especially the persons residing downstream of the river. Petitioner also requested that a High-Powered Committee should be constituted to declare a date/period for decommissioning. Also, a direction should be given to the State of Tamil Nadu which owns the dam to make financial provisions for damages to life and restoration of the environment in the event of a dam burst before it is decommissioned.

Procedural history:

This writ petition was preferred under Article 32 of the Constitution of India praying for issuance of a Writ of Mandamus

Issue:

Whether a writ of mandamus should be issued directing the Government of India to appoint an international agency with the technical expertise to study and to adjudge the lifespan of Mullaperiyar dam and ascertain the date/period on which the said dam must be de-commissioned.

Rule:

The Disaster Management Act 2005

- Section 11: National Plan for disaster management
- Section 23: State Plan for disaster management
- Section 31: District Plan for disaster management

Analysis:

- The Supreme Court referred to its judgment in *State of Tamil Nadu v. State of Kerala and Anr. (2014) 12 SCC 696* where the Court appointed a Supervisory Committee to take measures about the Mullaperiyar dam in emergent situations.
- The Court perused the scheme of the Disaster Management Act 2005 and held that there has to be an appropriate disaster management plan at different levels as per Section 11, 23 and 31 of the Act which contains a provision for National Plan, State Plan and District Plans respectively.

Conclusion:

The Court directed the Central Government under Section 9 of the Act and State of Tamil Nadu & Kerala to constitute a separate Sub-Committees under Section 21 of the Act, to exclusively monitor the measures for ensuring a high level of preparedness to face any disaster, which is unpredictable concerning the Dam. The State must provide for a separate dispensation under the State plan. All the States should work in harmony with the Central Sub-Committee so that life and property are not damaged.

8. Kishen Pattnayak & Ors. v. State Of Orissa (AIR 1989 SC 677)

Facts:

The petitioners addressed a letter to the Hon'ble Chief Justice of India highlighting the miserable condition of the inhabitants of the district of Kalahandi in the State of Orissa on account of extreme poverty. It is alleged that the people of Kalahandi, to save themselves from starvation deaths, are compelled to subject themselves to distress sale of labour on a large scale, resulting in exploitation of landless labourers by the well-to-do landlords. It is alleged that because of distress sale of labour and paddy, the small peasants are deprived of the legitimate price of paddy and they somehow eke out their daily existence. Further, their case is that being victims of 'chill penury', the people of Kalahandi are sometimes forced to sell their children. The letter was treated and registered as a Writ petition. Another petition on the same issue was filed focusing on the district of Koraput along with Kalahandi.

Procedural history:

In a letter written by Shri Kishen Pattnayak and Shri Kapil Narayan Tiwari two social and political workers addressed to the Hon'ble Chief Justice of India to bring to their notice, the miserable condition of the inhabitants of the district of Kalahandi in the State of Orissa on account of extreme poverty.

Issue:

Whether the State government should be directed to form a committee to take immediate steps to ameliorate the misery of the people of the district of Kalahandi and Koraput.

Rule:

Orissa Agricultural Produce Marketing Act:

- Measures under this Act were taken to ensure that poor cultivators are not coerced to sell the surplus paddy at a lower rate.

Analysis:

- The Court discussed the report of the District Judge of Kalahandi which was submitted in 1987 on the order of the Supreme Court. Although the learned District Judge's report was against the alleged starvation deaths, the Court observed that the happening of one or two cases of starvation deaths cannot altogether be ruled out. Reports of implementation of Social Welfare Schemes were also submitted by the State of Orissa.
- The Court observed that a district-level Natural Calamities Committee, consisting of the Collector, other officials and the popular representatives like MPs and MLAs of the district, are required to review the progress of relief work and the measures taken to meet the drought conditions from time to time.
- Instead of constituting a separate Committee, at least five non-official and non-political members belonging to well-known organisations of social work, such as Sarvodaya Gandhi Peace Foundation, Ramakrishna Mission, Bharat Sewa Sangha and registered voluntary agencies should be added as members of the said Natural Calamities Committees of Kalahandi and Koraput.
- The Committee shall hold at least one meeting every two months. The function of the Committee will not be confined only to the cases of starvation deaths, but it shall be responsible for looking after the welfare of the people of the district.

Conclusion:

This was the first case specifically taking up the issue of starvation and lack of food. In this judgement, the Supreme Court took a very pro-government approach and gave directions to take macro-level measures to address the starvation problem such as implementing irrigation projects in the state to reduce the drought in the region, measures to ensure fair selling price of paddy and appointing of a Natural Calamities Committee. None of these measures directly affected the immediate needs of the petitioner, i.e. to prevent people from dying of hunger.

Part 2: Farmers' Rights

The Protection of Plant Varieties and Farmers' Rights Act, 2001 (PPVFR Act)

The objective of the Act is to stimulate investment in research and to provide fairness with benefit-sharing and protecting the traditional rights of the farmers. Some of the important features of the Act include Benefit Sharing, Community Compensation, Immunity from prosecution for innocent infringement and Creation of a Gene Fund to accumulate breeders annual fees.

Another important right that the act provides is the right to re-sow. Farmers are permitted to save, sow, use, re-sow, exchange, share or even sell their produce including non-branded seeds even if it is a protected variety. The only restriction is that farmers cannot use the breeders brand name while reselling his harvest to anybody else (as also noted in the PEPSICO potato case).

The Act allows registration of Novel Varieties, Extant Varieties, Farmers' Varieties and Essentially derived Varieties. These varieties have to meet the following criteria for getting registered,

- Novelty
- Distinctness
- Uniformity
- Stability

It is often contended that the NUDS (Novelty, Distinctiveness, Uniformity & Stability) or DUS (for extant variety) is not suitable for farmers variety because these criteria are more suited for modern scientific methods of breeding and lab-based research which majority of survival farmers in a country like India cannot undertake.

Adoption of the Act

The PPVFRA is often considered as an upshot of the pressures from India's membership in the WTO by developed countries as well as the entry of overseas corporations into the Indian Market. However, India has not adopted the UPOV

Convention or the UPAV model. India has a *sui generis* model i.e. the model protects the plant varieties intending to balance the interests of both breeders rights and farmers rights. India is also a member of the ITPGRFA (International Treaty on Plant Genetic Resources for Food & Agriculture) which contains substantial provisions on Farmers Rights.

Different varieties under the Act

NEW VARIETY: These are varieties not sold or otherwise disposed of in India more than a year (or for 4 to 6 years outside India depending on the type of plant) before filing as a new variety. Unfortunately, in the line of the Novelty criteria, the descriptions of distinctiveness, uniformity and stability under the PPVFRA follow the UPOV 1991 definition.

EXTANT VARIETY: To safeguard traditional knowledge and indigenous rights, a register is maintained for extant varieties to serve as a collection of matters known and existing in the public domain. Under the Act, the extant variety encompasses the farmer's variety or a variety about which there is common knowledge or a variety in the public domain as well as a variety included under Section 5 of the Seeds Act. Considering it is a record of materials available in the public domain, the registration requirements are not very thorough. One of the most significant benefits of registration or compilation of extant varieties is that it creates an advanced standard for distinctiveness for registering “New” varieties under the Act.

Other prominent features

BENEFIT SHARING - A system where a fraction of the benefits accruing to a breeder of a new variety has to be shared with qualifying pretenders who could be indigenous groups, individuals, farmers or communities. PPVFRA provides that before registering any new variety, the plant authority should call claims for benefit sharing. However, very often farmers don’t know when such applications are filed, adding to it,

breeders are also not required to show prior informed consent from the community or groups from which they obtain the traditional knowledge.

PROTECTION AGAINST INNOCENT INFRINGEMENT - Provided under the Act where evidence of lack of knowledge or awareness of the protected nature of the varieties at the time of infringement is produced.

COMPENSATION IN LIGHT OF SPURIOUS SEEDS - Provided to defend farmers from overly hopeful (or deceptive) breeders. Breeders are expected to reveal their expected performance and if they don't meet them, compensation can be claimed. It forces breeders to obey minimum quality specifications and lessens the natural tendencies of big breeders to over publicise. However here the discretion to decide upon claims is on the plant authorities.

COMPULSORY LICENSING - Another essential provision of the Act (Section 47), by way of which at the end of 3 years, any protected variety can be subject to compulsory licensing if the "reasonable requirements of the public for the seed or other propagating material of the variety have not been satisfied or that the seeds or other propagating material of the material are not available at a reasonable price".

1. Maharashtra Hybrid Seeds Co Pvt Ltd v. Union Of India [2019 SCC ONLINE DEL 6387]

Facts:

The petitioner registered two wheat varieties under the PPVFR Act and later the Central Government issued a notification regarding an annual fee to be paid for registered varieties which were duly paid. After the completion of an initial period of six years, petitioner applied for renewal of the registrations and remitted a renewal fee of ₹18,000/- for each of the two registered varieties which were computed as per Rule 39(3)(a) of PPVFR Rules 2003.

PPVFR Authority sent a letter calling upon the petitioner to pay the renewal fee for the extended period of registration at a flat rate of Rs 80,000/- per year for each variety for renewal of the registration as per Entry 5 of the Second Schedule of the Rules.

Procedural History:

The petitioner contested the letter sent by the Authority and was given an opportunity to be heard by the Registrar following which an order was passed rejecting the petitioner's contention. The petitioner aggrieved by the order approached the Delhi High Court.

This is an appeal filed in the Delhi High Court against the order passed by the Registrar of PPVFR Authorities.

Issue:

Whether the levy of the renewal fee in respect of registration of plant varieties should be done as per rule 39 of PPVFR Rules 2003 or as per Entry 5 of the Second Schedule of the Rules.

Rules:

- Section 35, The Protection of Plant Varieties and Farmers' Rights Act, 2001: Payment of annual fees by every breeder and forfeiture of registration in default thereof.
- Rule 39(3)(a) of PPV & FR Rules 2003: The fee payable for such extended period of registration beyond nine years in the case of trees and vines and six years in the case of other crop varieties, as the case may be, shall be based on average annual fee levied during the last two years of the said initial period of registration.
- Entry 5 of the second schedule of the PPV & FR Rules 2003: Renewable fee details.

Analysis:

- The Registrar had proceeded on the basis that there was no repugnancy between Section 35 of the Act and Rule 39 of the Rules which is premised on an erroneous understanding that the petitioner had claimed that it was not liable to pay an annual fee as required under Section 35 of the Act, on account of payment of the renewal fee under Rule 39 of the said Rules. The question was regarding the quantum of the renewal fees.
- Rule 39(1)(a) provides for renewal and revision of registration under Section 24 of the Act. Rule 39 is a special provision relating to the renewal of registration and by applying the maxim of *generalia specialibus non derogant*, that is, a special shall override the general, Rule 39 of the said Rules would override the Second Schedule. Also, the Second Schedule is an adjunct to Rule 8 and provides the Schedule of fees as payable under said Rule. However, Rule 8 does not specifically mention payment of renewal fee. Also, Rule 39 is an exhaustive provision.
- The respondents also contended that there was an inherent difficulty in implementing Rule 39 because the renewal application was required to be made 12-18 months before the expiry of the initial period. It is because the annual fee is based on the turnover in respect of variety and it would be impossible to compute the same at the time when the renewal application is made. The Court did not agree to this because Rule 39(1)(c) of the said Rules expressly provides that every

application would be accompanied by fee at the rate fixed for the year preceding the year of application.

- As Rule 39 was a special Rule and Rule 8 did not specifically mention Renewal Fees, the impugned order was set aside. The respondent Authority were directed to accept the renewal fee as computed under Rule 39(1)(a) of the said Rules for renewing the registration of the plant varieties in question.

Conclusion:

Resolving the repugnancy between Rule 39 of the Protection of Plant Varieties and Farmers Rights Rules, 2003 and Entry 5 of the Second Schedule to the said Rules, it was held that the quantum of the renewal fee to be paid is to be computed as per the provisions of Rule 39, i.e. based on the average annual fee levied during the last two years of the initial period of registration of the registered plant variety. The Court in this regard observed that insofar as the renewal of registration is concerned, Rule 39 is an exhaustive provision and would override the Second Schedule.

2. In the Matter of Maharashtra Hybrid Seeds Company Limited (Before The Plant Varieties Registry, Order Dt. 08.05.18)

Facts:

The Applicant applied for registration of a parental line. The Plant Varieties Registry instructed the applicant to submit the name and date of the first sale of the first/ earliest hybrid developed out of parental lines as per section 15(3)(a) of PPV&FR Act, 2001. The applicant refused to submit the name of the hybrid but was willing to give the other details. The applicant also refused to submit the invoice showing the first sale of the first hybrid and was willing to submit the invoice only when it is allowed to redact the name of hybrid in the invoice.

Procedural history:

The applicant has approached the Plant Varieties Registry.

Issue:

Whether the commercial name of the first hybrid of a given candidate parental line along with a copy of the invoice of the first sale of said first hybrid is mandatory under the Act and Rules?

Rule:

Section 15 (3)(a) of PPV&FR Act, 2001: Defines when a new variety is considered novel for registration.

Analysis:

- The exploitation of parental lines for the development of a hybrid may affect the novelty of parental lines if the hybrid has been commercialised for more than a year as on the date of filing of an application for registration of its parental line. Hence, it is important to know the date of the first sale.
- The Registry rejected the applicant's contention that there is no provision for prescribing the requirement of the commercial name of the first hybrid or proof of

the first sale by invoice. As per Section 20(1) of PPVFR Act 2001, the Registrar can seek any document which he feels necessary to substantiate any claim of the applicant. The words "as he thinks fit" is mentioned in Section 123(1) of Indian Evidence Act and Hon'ble Supreme Court in *State of UP v. Raj Narain AIR 1975 SC 865* has held that the words "as he thinks fit" confer an absolute discretion on the head of the department to give or withhold such permission.

- There is no confidentiality in the process of registration of plant varieties and there can be no protection from divulging the name of hybrid or parental line in case of an application for registration of parental line or hybrid as per Delhi High Court's judgment in *Maharashtra Hybrid Seeds Co. Ltd. v. Union of India WP (C) No. 8431 of 2011*.
- The Registry also rejected the applicants' contention that there will be no benefit or harm caused by their request as proof of the first sale is merely for categorisation between new and extant varieties without affecting the period of protection as well. Such categorisation is done on substantial provisions of law and has different consequences.

Conclusion:

The claim of the applicant that under the law they are not bound to furnish the name of the hybrid in the application for registration of its parental line was rejected. It was concluded that for determining the novelty of the parental line the applicants are bound to furnish the name of the first/earliest hybrid supported by a copy of invoice without redacting the name of the hybrid.

3. Suo Moto Order by the Plant Varieties Registry (ORDER DATED 14.02.2011)

Facts:

The Central Government notified registration of 18 crops (vide two orders dt. 01.11.05 for 12 crops and 31.12.07 for 6 crops) as new varieties because it was done under section 29(2) of PPVFR Act, 2001. Later, the Plant Varieties Registry returned several applications for registration of extant varieties of those 18 crops species on the ground that the time limit of three years (calculated from the date of passing the notification) had expired. However, it was challenged on the ground that the time limit should be calculated from the date when the Criteria of Distinctiveness, Uniformity and Stability for registration of extant varieties was notified which in the above case was 29.06.09 and it came into force on 30.06.09.

Procedural history:

The case was taken suo motto by the Plant Varieties Registry, New Delhi.

Issue:

Whether the time limit for registration of extant varieties should be calculated from the date of notification of genera and species or the date of notification of Criteria of Distinctiveness, Uniformity and Stability for extant varieties and farmers' variety in the Official Gazette by the Authority as per section 15(2) read with section 95(2)(c).

Rules:

The Protection of Plant Varieties and Farmers' Rights Act, 2001

- Section 15(2): an extant variety shall be registered under this Act within a specified period if it conforms to such criteria of distinctiveness, uniformity and stability as shall be specified under the regulations.
- Section 95(2)(c): to remove difficulties by providing criteria of distinctiveness, uniformity and stability for registration of extant variety under sub-section (2) of section 15.

Analysis:

- The period within which extant variety has to be registered has been prescribed in Rule 24 of PPVFR Rules, 2003 framed under Section 15. A combined reading of Section 29 (2) and Rule 24 makes it clear that a notification under Section 29 (2) is applicable only for new varieties and not for farmers' and extant varieties.
- It was held that the period of registration of extant varieties and farmers varieties has to be computed from the date of notification of criteria for Distinctiveness, Uniformity and Stability. It is because these criteria are a touchstone and benchmark to determine the DUS character and the metes and bounds of plant breeders right (which is an intellectual property right).
- The Registry relied on *South India (P) Ltd. v. Secretary, Board of Revenue, Trivandrum, AIR 1964 SC 207, 215* where the Supreme Court held that the expression `subject to' conveys the idea of a provision yielding place to another provision or other provision to which it is made subject. The use of the words "subject to" in Rule 24 makes it clear that notification of criteria and notification for registration both must be in existence at a particular point of time for computing the time limit.
- It was directed to the registry that the period of registration of extant varieties about which there is common knowledge and farmers' varieties of twelve crops species notified on 01.11.2006 and six crop species notified on 31.12.2007 have to be computed from 30.06.2009 (Date of notification of Criteria of Distinctiveness, Uniformity and stability in the Regulations).

Conclusion:

The Court clarified that a notification under Section 29 (2) is applicable only for new varieties and not for farmers' and extant varieties. The time limit for registration of extant varieties about which there is common knowledge and farmers' variety was extended for a further period of three years and five years respectively from 30th June, 2009.

4. Prabhat Agri Biotech v. Plant Varieties' Authority And Ors (2016 SCC Online DEL 6236)

Facts:

Two cotton hybrids of the petitioner companies' varieties were notified by the Central Government under the Seeds Act, 1966. It is claimed that these two hybrids could corner an unprecedented one-third of market share and these non-Bt hybrids were found to be even superior and better than the first three Bt hybrids of Maharashtra Seeds (the third respondent) though both products were released and marketed around the same time. Nuziveedu outsources its premium proprietary products to other seed companies including its sister company Prabhat. In tune with this policy, it outsourced one of its proprietary cotton hybrids for evaluation and demonstration trials under their marketing code number 883 to Prabhat. Maharashtra Hybrids challenged this in its application under Section 24(5) of the Act. The petitioners say that this is a blatant attempt on its part to get protection for the hybrid, developed illegally using the petitioner's parent lines and by exploiting and subverting the due process of law. This application is an attempt to defeat the petitioners' right to secure their legitimate legal protections under the Act.

Procedural history

A writ petition was filed challenging the vires of section 24(5) of The Protection of Plant Varieties and Farmers' Rights Act, 2001.

Issue:

Does sec. 24(5) provide overarching powers to the registrar?

Rule:

The Protection of Plant Varieties and Farmers' Rights Act, 2001.

- Sec. 24(5): The Registrar may amend the Register or a certificate of registration for the purpose of correcting a clerical error or an obvious mistake

Analysis:

- The Court held that the main provision leaves it to the Registrar to issue "such directions" – a wide term for the protection of interests of the breeders against an abusive act committed by a third party during the period between the filing of application for registration and decision taken by the Authority on such application.
- The term "abusive act" is not defined; likewise, the question of decision taken by the authority on such application.
- More importantly the decision - final - taken upon an application for registration according to the provision is "by the Authority". The Authority obviously is a reference to the protection of plant varieties and farmers' rights authority. The decision on an application for registration - after the completion of the process outlined in Sections 20 and 21 is by the Registrar and not the Authority.
- The corollary is that the constitutional archetype of Courts as the prime dispensers of justice can only be departed from if there is an equally efficacious mechanism that delivers justice, manned by judicially trained personnel or those with legal experience.
- Its justification cannot be by resort to legislative intent, as that term is usually employed, but by a different kind of legislative intent, namely the presumed grant of power to the Courts to decide, whether it more nearly accords with Congress' wishes to eliminate its policy altogether or extend it in order to render what Congress plainly did intend, constitutional."

Conclusion:

Section 24(5) of the Protection of Plant Varieties and Farmers' Rights Act, 2001, is declared void.

NOTE: The Supreme Court of India issued stay on the decision of the Delhi High Court Order declaring S. 24(5) as void.

The Consumer Protection Act, 2019

The Consumer Protection Act was passed by the Parliament in August 2019, intending to replace the Consumer Protection Act 1986. The Act aims to provide for the protection of the interests of consumers and to establish authorities for timely and effective administration and settlement of consumers' disputes. It focuses on conferring greater power to the consumer and creating a more transparent mechanism for redressal of complaints.

The Act begins by setting forth the crucial definition of a ‘consumer’ as a person who purchases a good or avails a service for some consideration. The definition covers a multitude of transactions including online or tele-shopping purchases. The Act also delineates the ambit of consumer rights, which includes six rights such as the right to be protected against the marketing of hazardous goods, the right to be informed about the specifications of the goods, and the right to seek redressal.

Subsequently, it provides for the establishment of an advisory body, the Central Consumer Protection Council at the National level, and sub-bodies at the State and District levels. The Central Government is also directed to set up a Central Consumer Protection Authority (CCPA) to regulate matters concerning the violation of consumer rights and unfair trade practices.

In its third chapter, the Act also confers duties and responsibilities to the CCPA to further its objectives. The third, most important bureaucratic authority that the Act provides for is the Consumer Disputes Redressal Commission (CDRC), to be set up at district, state and national levels. A consumer may file a complaint with CDRCs in relation to unfair or restrictive trade practices, defective goods or services, overcharging or deceptive charging, and the offering of hazardous goods or services for sale.

The jurisdiction of the CDRCs at various levels is laid out in relation to the value of goods and services concerned. Consumers are also awarded the rights to initiate a product liability action and claim their rightful compensation. This has allowed the Act to expand its purview in light of changing market dynamics.

The Act has been lauded for its comprehensive framework which awards greater rights to consumers and also establishes a better regulation mechanism through the establishment of various authorities and the addition of class action lawsuits.[20] Its timely enactment has also been appreciated as the platform economy sees rapid growth and transactions become increasingly digital. However, certain provisions of the legislation have also been contended such as the silence on the inclusion of a judicial member in the CDRCs, the absence of which may leave matters solely to the Executive, violating the principle of separation of powers. It has been observed that the Act empowers the central government to appoint, remove and prescribe conditions of service for members of the CDRC and to determine its composition. This could affect the independence of these quasi-judicial bodies.[21]

The Act has also elicited concerns regarding effective implementation as the Consumer Courts hold a heavy pendency at present, which is bound to increase through the new measures, and has not been addressed.[22]

[20] Parashar, S. (2020). Consumer Protection Act Fills Gaping Need But The Test Will Be Implementation. *Newsclick.* Retrieved 09 October, 2020, from https://www.newsclick.in/Consumer-Protection-Act-Fills-Gaping-Need-Test-Implementation
[21] PRS Legislative Research. (2019). *Legislative Brief: The Consumer Protection Bill, 2019*. Retrieved 09 October, 2020, from https://www.prsindia.org/billtrack/consumer-protection-bill-2019
[22] Id.

1. National Seeds Corporation Ltd. v. M. Madhusudhan Reddy and Ors.

(AIR 2012 SC 1160)

Facts:

The appellant is a government corporation whose main function is to arrange for quality seeds of different varieties in the farms of registered growers and supply the same to farmers. Complaint for defective seeds was filed against the appellant by respondents with allegation that they had suffered loss due to failure of crops/less yield because the seeds sold by the appellant were defective. The District Forum allowed complaints and awarded compensation to respondents.

Procedural history:

The appellants filed Appeals and revisions against the order of the District forum which was dismissed by the State Commission and National Commission respectively. The appellants have challenged the orders of the National Commission (which also implies its challenge to the orders of the State Commission and the District Forums) in the present petition before the Supreme Court.

Issues:

a. Whether a farmer is a consumer under the act?
b. Whether the farmer can approach the Consumer Court when an alternate remedy under the Seeds Act is available?
c. Whether the Consumer Court can be approached when there is a pre-existing arbitration clause between the farmer and the company?

Rules:

- Section 2 (d) (i) of the Consumer Protection Act, 1986: defines consumer as someone who buys any good for a consideration.
- Rule 13 (3) of the Seeds Rules. 1968: Record keeping for 3 years by person selling seeds notified under section 7.

Analysis:

- The Seeds Act is a special legislation insofar as the provisions contained therein ensure that those engaged in agriculture and horticulture get quality seeds and any

person who violates the provisions of the Act and/or the Rules is brought before the law and punished.

- However, there is no provision in that Act and the Rules framed thereunder for compensating the farmers etc. who may suffer adversely due to loss of crop or deficient yield on account of defective seeds supplied by a person authorised to sell the seeds. That apart, there is nothing in the Seeds Act and the Rules which may give an indication that the provisions of the Consumer Act are not available to the farmers who are otherwise covered by the wide definition of 'consumer' under Section 2 of the Consumer Act. As a matter of fact, any attempt to exclude the farmers from the ambit of the Consumer Act by implication will make that Act vulnerable to an attack of unconstitutionality on the ground of discrimination and there is no reason why the provisions of the Consumer Act should be so interpreted.
- Since the farmers/growers purchased seeds by paying a price to the appellant, they would certainly fall within the ambit of Section 2 (d) (i) of the Consumer Act and there is no reason to deny them the remedies which are available to other consumers of goods and services.
- The remedy of arbitration is not the only remedy available to a grower. Rather, it is an optional remedy. He can either seek reference to an arbitrator or file a complaint under the Consumer Act. If the grower opts for the remedy of arbitration, then it may be possible to say that he cannot, subsequently, file a complaint under the Consumer Act. However, if he chooses to file a complaint in the first instance before the competent Consumer Forum, then he cannot be denied relief by invoking Section 8 of the Arbitration and Conciliation Act, 1996 Act.
- There was abject failure on the appellant's part to assist the District Forum by providing samples of the varieties of seeds sold to the respondents. Rule 13 (3) of the Seeds Rules casts a duty on every person selling, keeping for sale, offering to sell, bartering or otherwise supplying any seed of notified kind or variety to keep over a period of three years a complete record of each lot of seeds sold except that any seed sample may be discarded one year after the entire lot represented by such sample has been disposed of.

Conclusion:

It was held that Respondents are consumers within wide definition under Section 2(1)(d)(i) and Seeds Act does not indicate that provisions of Consumer Act are not available to farmers. No merits were found in appeals. The appeals were dismissed with a cost of 5,000 to be paid by appellant to each of respondents.

2. Nandan Biomatrix v. S Ambika Devi (2020 MANU SC 0291)

Facts:

The complainant was a small landholder who responded to the advertisements issued by the Appellant, a seed company, regarding buyback of *safed musli*, a medicinal crop, at attractive prices. She entered into a tripartite agreement with the Appellant and its franchisee. As per the agreement, the Respondent purchased wet musli for sowing from the Appellant, and cultivated the same in her land. The Appellant was to buy back the produce at a minimum price from the Respondent. The Respondent lodged a complaint in the Consumer Court alleging negligence and breach of contract on the part of the Appellant on the ground that the Appellant failed to buy back her produce, leading to the destruction of the greater part of the crop.

Procedural history:

The District Forum dismissed the complaint, and held that the same was not maintainable since the Respondent was not a consumer within the meaning of the Consumer Protection Act, 1986. On appeal by the Respondent, the State Commission set aside the order passed by the District Forum, holding that the Respondent was a consumer under the 1986 Act, and remanded the matter to the District Forum for disposal on merits.

The National Commission upheld the finding of the State Commission, holding that the covenants entered into between the parties were in the nature of both sale of product and rendering of service, since the Appellant had agreed to provide wet musli for growing to the Respondent, supplemented by technical support and guidance from its franchisee, and had further agreed to insure the crop at additional cost. Additionally, noting that the Respondent was a small landholder, who had started cultivation of musli for eking out a livelihood for herself, the National Commission held that it could not be said that the agreement was entered into for the commercial purpose of the Respondent. The instant appeal has been filed against the above order of the National Commission.

Issue:

Whether the Respondent was excluded from the purview of the definition of 'consumer' under Section 2 (1)(d) of the 1986 Act on account of the subject transaction amounting to resale or for being for a commercial purpose?

Rule:

Consumer Protection Act 1986

- S. 2(1) (d): Definition of Consumer
- S. 2 (1) (f): Definition of deficiency of services

Analysis:

- The Respondent was a housewife who had undertaken agricultural activity on land for the purpose of increasing her household income, and would perhaps not have undertaken the growing of musli if the Appellant had not assured a profitable price for buyback of the crop. At the same time, the fact that such profitable price was guaranteed by the Appellant could not now be relied upon to argue that the activity was undertaken by the Respondent for a commercial purpose, so as to exclude the same from the purview of the 1986 Act.
- It was amply evident that an agreement for buyback by the seed company of the crop grown by a farmer could not be regarded as a resale transaction, and he could not be brought out of the scope of being a consumer under the 1986 Act only on such ground. Thus, even in the instant case, **the fact that there was a buyback agreement for the musli crop would not bring the Respondent outside the purview of the definition of consumer by rendering the buyback arrangement a resale transaction or being for a commercial purpose.**
- This Court hastened to emphasise that the fact situation diverges from *Madhusudan (National Seeds Corporation Ltd. v. M. Madhusudhan Reddy and Anr Civil application NO. 7543 of 2004)* to the extent that in the instant case, the Respondent had the freedom to sell her produce on the open market if she was able to obtain a better price.

- However, as has already been mentioned, this aspect would not take away from the conclusion that the Respondent had entered into an agreement for growing the musli crop for the purpose of earning a livelihood, since an agriculturist would always have to sell his produce in order to earn his livelihood.
- **In cases where the farmer has purchased goods or availed of services in order to grow produce in order to eke out a livelihood, the fact that the said produce was being sold back to the seller or service provider or to a third party could not stand in the way of the farmer amounting to a consumer.**
- Thus, there was no reason to interfere with the order passed by the National Commission affirming that the Respondent was consumer within the meaning of the 1986 Act.

Conclusion:

The Supreme Court upheld the decision of the National Commission and imposed cost on the appellants for dragging litigation on the question of maintainability till the highest Court in the land.

3. Canara Bank v. United India Insurance Co.Ltd. And Others (2020 MANU SC 0131)

Facts:

The farmers had stored their agricultural produce in a cold store run by a partnership firm. These farmers also obtained loans from Canara Bank. The loan was advanced by the Bank to each one of the farmers on security of the agricultural produce stored in the cold store. The cold store was insured with the United India Insurance Company. A fire took place in the cold store. The entire building of the cold store and the entire stock of agricultural produce was destroyed. After the fire, the cold store raised a claim with the insurance company but the claim of the cold store was repudiated by the insurance company mainly on the ground that the fire was not an accidental fire. The farmers had also issued notice to the insurance company in respect of the plant, machinery and building but this claim was repudiated by the insurance company on the additional ground that the farmers had no locus standi to make the claim as the insured was the cold store and not the farmers.

Procedural history:

Complaints were made by the farmers against the cold store, the Bank and the insurance company in the State Commission which held that the farmers had proved that the fire took place on account of electrical short circuit and no element of human intervention or use of kerosene was found. The Bank was also held to be deficient in service. The cold store and the insurance company were held jointly and severely liable and were directed to pay the value of the agricultural produce hypothecated with the Bank to the farmers/claimants as on the date of tripartite agreement together with the interest. Aggrieved by the said judgment of the State Commission, an appeal was filed before the National Commission. By the impugned judgment, the National Commission concurred with the findings of the State Commission and held that the farmers were consumers. It was also held that there was no deficiency of service on behalf of the Bank and the costs imposed on the Bank in some of the cases were set aside.

Issues:

a. Whether the fire was an accident?
b. Whether the farmers are consumers under the Consumer Protection Act, 1986?
c. Whether there was privity of contract between Farmers and insurance company?
d. Whether there was a deficiency in service on the part of the Bank?

Rule:

Section 2(1)(d) of Consumer Protection Act 1986: defines consumer.

Analysis:

- In no reports by the insurance company is there anything to show that the insured had set the cold store on fire. Whether the fire took place by a short circuit or any other reason, as long as the insured is not the person who caused the fire, the insurance company cannot escape its liability in terms of the insurance policy. Thus, reject the contention of the insurance company that the fire was ignited by the use of kerosene and hence it was not liable.
- The insurance company itself could have also taken some initiative in the matter. To make a contract void the non-disclosure should be of some very material fact. No doubt, it would have been better if the Bank and the insured had given at least tripartite agreement to the insurance company but, in the peculiar facts of this case, not disclosing the tripartite agreement or the names of the owners could not be said to be such a material fact as to make the policy void or voidable. There was no fraudulent claim made. There was no false declaration made and neither was the loss and damage occasioned by any wilful act or connivance of the insured.
- The State Commission had held that there was deficiency on behalf of the Bank in rendering services but the National Commission held otherwise. The Bank was remiss to a limited extent. When the Bank issues loans against the hypothecation of goods, as in the present case, and insists that the goods should be insured to safeguard its outstandings then a duty lies upon the Bank to inform the insurance company of the policy.
- If both the Bank and the insurance company had done what would be expected of good financial institutions, there would have been no needless litigation. The matter

has dragged to this stage only because the names of the farmers were not mentioned in the policy or because the tripartite agreement was not handed over to the insurance company.

- The Bank, as a prudent financial institution, should have insisted that the tripartite agreement should also be handed over to the insurance company. Therefore, there was some level of deficiency on behalf of the Bank.
- In terms of the Clause, the insurance company was liable to pay the value of the goods as on the date of the fire, the National Commission was right when it came to the conclusion that it was not possible to award an amount based on the variety-wise periodic report of the market. This was the only evidence produced by the farmers and brought to our notice to support their contention. The National Commission was right that the difference between minimum price for which this product was sold and the maximum price for the same agricultural produce during this period was so high that without exactly knowing what the quality of agricultural produce was, it would not be possible to ascertain what the price on the date of fire.
- Therefore, affirming the decision of the National Commission that the value of the goods as reflected in the warehouse receipts should be taken to be the value on the date of fire. This value was not very different from the median value for most of the products. This Court relying upon the value given in the warehouse receipts because that was the value which was given by the farmers, not knowing that their product was going to be burnt, and was accepted by the cold store, which must have known the value of the product in the local market and accepted by the Bank, which on the basis of such surety advanced the loan.

Conclusion:

The insurance company was ordered to pay to each one of the farmers the value of their goods to be assessed as per the rate mentioned on the warehouse receipts when the goods were stored in the Cold Store along with interest at the rate of 12% per annum from the date of fire till payment or deposit thereof.

Essential Commodities Act

The Essential Commodities Act enacted in 1955, taking inspiration from its former colonial versions, due to the urgent need to regulate and protect essential commodities in public interest in the post-Independence economy. The Act aims to provide for the control of the production, supply and distribution of, and trade and commerce, in certain commodities.

S.2A of the Act defines an 'essential commodity' as one that is specified in the Schedule. This encompasses fertilisers, foodstuffs including oil and oilseeds, crop seeds, fruits and vegetables, and recently, face masks and hand sanitizers. Under S.3 of the Act, the Central Government may issue orders to regulate, or prohibit the production, supply and distribution of certain commodities as it deems necessary, in order to maintain or increase supplies of any essential commodity or to secure their equitable distribution and availability at fair prices. The order may provide for the regulating of commodities through licenses or permits, for controlling its price and prohibiting its sale. It may fix the quantity to be sold, even on a graded basis, of commodities such as foodgrains, edible oils and oilseeds. The order may confer powers and impose duties upon the Central or State Governments to comply with in furtherance of its objectives. The Act confers powers upon the Collector to inspect and confiscate essential commodities which have been seized under S.3 for non-compliance. The Collector may also order that the commodity be sold at a 'controlled' fixed price or through a public auction or fair price shops. The Act allows aggrieved parties to appeal to a judicial authority appointed by the State and provides for penalties against violations of the legislation.

Since its inception, the legislation has been applied numerous times to ensure adequate supplies, crackdown on hoarders and black-marketeers of such commodities and protect public consumer interests from opportunistic tendencies. However, contentions have also been raised regarding the difficulty in differentiating between hoarding and stock build-up since the supply of seasonal crops requires it to be stocked in larger quantities. Additionally, excessive limits on price and stock may

restrict the farmers and traders from continuing their activities due to the lack of incentive on their parts.[23]

In June 2020, amidst the pandemic, the Central Government issued the Essential Commodities (Amendment) Ordinance, 2020, which was later repealed and passed as an Act of Parliament seeking to increase competition in the agriculture sector and enhance farmers' income. It aims to liberalise the regulatory system while also preserving the interests of consumers.[24] It allows the Centre to regulate the supply of certain essential food items only in extraordinary circumstances, restricts the application of the stock limit and also exempts these from being applied to the Public Distribution System. The Amendment essentially de-controls production, storage and sale of goods, effectively legalizing hoarding which may lead to price inflation and artificial scarcity.[25] It subordinates the interests of farmers to those of powerful, large corporations and has been met with a lot of flak.

[23] Madhu, Maulik. (2016). All you wanted to know about Essential Commodities Act. The Hindu Business Line. Retrieved 11 October, 2020, from https://www.thehindubusinessline.com/opinion/columns/all-you-wanted-to-know-about-essential-commodities-act/article21689980.ece1

[24] PRS Legislative Research. (2020). *The Essential Commodities (Amendment) Ordinance, 2020*. Retrieved 11 October, 2020, from https://www.prsindia.org/billtrack/essential-commodities-amendment-ordinance-2020

[25] All India IT & ITeS Employees' Union (AIITEU). (2020). *What's Wrong With The Farm Bills?*. Tech People Issue 3: Decode. Retrieved 11 October, 2020, from https://www.aiiteu.org/publications/in-issue-3-of-tech-people-we-decode/

1. The State Of Bombay v. Virkumar Gulabchand Shah (AIR 1952 SC 335)

Facts:

Virkumar Gulabchand Shah (respondent) entered into a forward contract in turmeric which contravened clause 3 of the Spices (Forward Contract Prohibition) Order of 1944. He was convicted for the same and sentenced to imprisonment of 3 months. Clause 3 prohibited forward contracts in any of the spices that are listed in the schedule of the Order. The Schedule of the Order included turmeric. The State of Bombay made it clear here that they were not bringing up this case to punish the respondent. However, their only intention is to make the law clear with regards to the definition of "foodstuff" in Essential Supplies (Temporary Powers) Act 1946. According to the aforementioned Act, foodstuff included edible oilseeds and oils. No spices were mentioned specifically.

Procedural history:

The case was first registered in Sessions Court Sangli, Maharashtra and then moved to the Bombay High Court and then eventually reached the Supreme Court in Appeal.

Issue:

Whether turmeric, being a spice, comes within the purview of the definition of "foodstuff" in the essential supplies act 1946 read with clause 3 of spices (forward contracts prohibition) order 1944.

Rules:

- Essential Commodities Act, 1955
    - Section 2(a): defines collector
    - Section 3: Central Government's powers to control production, supply, distribution, etc., of essential commodities
    - Section 5: Delegation of powers by the Central Government.

Analysis:

- The term “foodstuff” is vague. One can think of it as a term used for items that are consumed for nutrition and would exclude all spices including salt, yeast, baking powder, etc. Others can think of it as something that includes all items that are used for the preparation of food items.
- There is a special definition of foodstuffs that are used for legal purposes: “Food is generally held to mean any article used as food or drink by man, whether simple, mixed or compound.” In a narrow sense, when people ask “have you had your food”, they usually mean cooked meals. However, it’s the small elements that constitute the meal and make it palatable.
- In the case of *San Jose*, Cometa and Salemo, sausage skin which is used to envelop the sausage was considered a foodstuff. If sausage skin, baking powder and tea are considered to be foodstuff then spices like turmeric fall into the wider meaning of foodstuff as well.
- **Thus, turmeric comes within the purview of the definition of foodstuff.**

Conclusion:

It was established that the foodstuff includes raw material, things used in the process and things used in the preparation of food. Therefore, turmeric has been included in the scope of foodstuff.

2. Satpal Gupta and Ors. V. State of Haryana And Ors. (AIR 1982 SC 798)

Facts:

The Central Government, with the exercise of Section 3 of the Essential Commodities Act 1955, granted powers to the State of Haryana to issue orders related to supply, production and distribution of essential commodities. The State of Haryana promulgated Haryana Rice bran (Distribution and Price) Control Order 1967. Clause 3 of the Order says that no dealer shall offer to sell or sell rice bran unless they have a permit by the Director of food and supplies or the District Magistrate.

Satpal Gupta filed a case against this order on the premise that rice bran is not an essential commodity.

Procedural history:

The Punjab and Haryana High Court held that rice bran would be an essential commodity under the Act.

Issue:

Whether rice bran is an essential commodity within the purview of the Essential Commodities Act 1955?

Rules:

- Essential Commodities Act, 1955
    - Section 2(a): defines collector
    - Section 3: Central Government's powers to control production, supply, distribution, etc., of essential commodities.
    - Section 5: Delegation of powers by the Central Government.

Analysis:

- Rice bran is used as poultry and cattle feed. Foodstuff is not limited to the food items that are consumed by human beings, it includes stuff that is consumed by

living beings. Cattle and poultry are living beings and their food is not excluded from the purview of the definition of "foodstuff".

- Foodstuff should be attributed to a meaning which relates to day to day affairs of life.
- The animal kingdom is as important in this ecosystem as human beings are. What an animal consumes to grow and nourish should be considered a "foodstuff". Rice bran is as much food as cooked meals for human beings. It would be illogical to exclude rice bran from foodstuff on the premise that it is not consumed by homo sapiens.
- Thus, rice bran is an essential commodity within the purview of the Essential Commodities Act 1955.

Conclusion:

It was established that cattle and poultry foods are included within the meaning of the 'foodstuff. Therefore, it concludes that the foodstuff is related to both humans and animals.

3. Nathulal v. State Of Madhya Pradesh (AIR 1966 SC 43)

Facts:

Section 3 (2) of the Essential Commodities Act states that any person who stores foodgrains in the quantity of more than one hundred maunds or more shall keep it for sale. Nathulal (appellant) kept 885 maunds of wheat for purposes of sale without a license. On September 30, 1960, he made an application for the license and deposited fees for the license. With the assumption that he would get the license, he started storing the wheat for sale but never sold any grains. The State filed a case against them because Nathulal had 885 maunds of wheat with no license.

Procedural history:

The case was first heard at the Additional District Magistrate, Dhar and an appeal to its order was then preferred to the Division bench of the Madhya Pradesh High Court, Indore Bench. The appellant then approached the Supreme Court.

Issues:

a. Whether *mens rea* is an essential ingredient to hold someone liable under Section 7 of the Act.
b. Whether appellant had intentionally contravened the order, thus, being liable under Section 7 of the Act.

Rule:

The Essential Commodities Act, 1955 (Act X of 1955)

- Section 3: Central Government's powers to control production, supply, distribution, etc., of essential commodities.
- Section 7: Penalties for person contravening orders under section 3.

Analysis:

- Counsel for the appellant contends that this act is made in the interests of the general public. In control of production, sale, etc,. *mens rea* is not an essential ingredient to hold a person liable for the offence.

- However, the Court on this issue makes it clear that this topic is settled wherein *mens rea* is an essential ingredient of every criminal offence. State of mind has been accepted to be a valid consideration.
- Some statutes may explicitly exclude mens rea as a consideration. It is settled law that if a statute doesn't say otherwise, *mens rea* remains to be an essential ingredient.
- *Mens rea* is usually excluded from statutes wherein the legislators believe that including mens rea would disrupt the implementation of the purpose of the statute.
- For the second issue, the Court looked at the law in hand and stated that the legislators have made it clear that under Section 3 of the Order, no person shall carry a business except under the licensing authority.
- Appellant knew that he had not been granted the license yet. However, he continued to store wheat. He had 885 maunds and 21/4 seers of wheat for sale. He did not sell any wheat. Had he been granted a license; this storage would have been valid.
- He was under a bona fide belief that he would be granted a license but the state acted negligently.
- Thus, the appellant did not intentionally contravene the order. It was wrong on the State's part to not grant a license without any hearing.

Conclusion:

This case established the importance of the concept of *mens rea* under the Essential Commodities Act. Here, it was held that the mere fact that the nature of the statute is to promote welfare Activity and eradicate the social evil itself does not exclude *mens rea* from its ambit.

The elements of *mens rea are excluded* from any statute only if it defeats the object to such a statute. Thus, when we read the object of the Essential Commodities Act which is "to control trade in certain commodities for the interest of the general public" we cannot say that this would be defeated if the mens rea is read like an ingredient of offences committed under it. Therefore, offence under Section 7 would

be committed only if a person intentionally contravenes the provision of Section 3 of the Act.

The Women Farmers Entitlements Bill, 2011

The Women Farmers Entitlements Bill was introduced in the Rajya Sabha in May, 2012 by agricultural scientist M.S. Swaminathan. He had observed the increasing feminization of agriculture in lieu of the tendency among rural men belonging to poor families who migrate to towns and cities in search for work and income generating opportunities. Taking cognizance of the obstacles that women farmers were confronted with such as title to land, and access to credit, input and markets, the Bill was drafted. It aimed to provide for the gender specific needs of women farmers, to protect their interests and entitlements and to empower them with rights over agricultural land, water resources and other related rights.

At the outset, the bill delineated the definition of a woman farmer as a woman involved in agricultural activity, shifting cultivation or collection of forest produce, irrespective of marital status and land ownership. It provided for the issuing of a woman farmer certificate to provide women with an evidentiary document through which they may prove their status in administrative and judicial proceedings and mandates that this process be carried out by the Gram Panchayat.

The bill proposed to confer three crucial rights on women farmers which were included in the third, fourth and fifth chapters. The primary one was concerned with land rights and stated that women should have had equal ownership and inheritance rights over their husbands' land. The second benefit conferred was the equal right to all water resources connected with the agricultural land of which she is the owner, shareholder, possessor or uses for farming activity. Lastly, under this bill, women farmers would have attained legal access to credit and other agricultural inputs as they would have been entitled to a Kisan Credit Card.

The bill also imposed an obligation on the Central Government to set up a Central Agricultural Development Fund for Women Farmers (CADFWF) which would have operated at Central, State and District levels and would be used to empower women farmers through incentives for development of technologies, training and capacity

building, creation of market facilities, organization of creches and day care centres, and social security for women farmers. These provisions of the bill would have been implemented by a Women Farmers' Entitlement Board at the state level and a District Vigilance Committee at the district level.

The bill has been criticized for its restriction on land assets, hence rendering it inapplicable to other livelihood-generating resources of women farmers such as fish, ducks, ruminants. It also disregarded women's decision-making power with regard to resources, which is influenced by informal factors and stays largely in male hands.[26] Due to the lack of political will, the bill lapsed in 2013, two years after its introduction. However, despite its shortcomings, it had been appreciated by many who called for its reintroduction.

[26] Yadav, Hema. (2013). Waiting for Women Farmers' Bill. *The Hindu.* Retrieved 09 October, 2020, from https://www.thehindubusinessline.com/opinion/columns/waiting-for-women-farmers-bill/article22992105.ece

The Pesticide Management Bill, 2020

The Pesticide Management Bill was introduced in the Rajya Sabha in March, 2020, by the Minister of Agriculture and Farmers Welfare, Narendra Singh Tomar. It seeks to replace the Insecticides Act, 1968, citing the need for stricter penalties to safeguard the interest of farmers, which is jeopardised by the availability of dubious and deceptive pesticide products. It aims to regulate the manufacture, import, sale, storage, distribution, use, and disposal of pesticides, in order to promote safe pesticides and minimise the risk to humans, animals, and environment.

The Bill initially defines the crucial term, 'pesticide', as a substance of chemical or biological origin intended for preventing or destroying any pest in agriculture, industry, public health or ordinary use. In order to further the objectives of the legislation, the Bill provides for the constitution of the Central Pesticides Board to advise the Central and State governments on scientific and technical matters arising under the Bill. The establishment of a Registration Committee is also mandated, which would be responsible for specifying conditions, reviewing and making decisions regarding the registration of pesticides. The Committee will base this decision on factors such as safety, efficiency, necessity, risk involved and availability of safer products in the market.

The State Government is also entrusted with the duty of appointing a licensing officer, from whom a person seeking to manufacture, distribute, exhibit for sale, sell, or stock pesticides, or undertake pest control operations must obtain a license. In the interest of public welfare, provisions have been included in the legislation which empower governments to appoint pesticide inspectors for certain areas, who can take action against suspicious products, and with official approval, stop the sale, use, distribution, or disposal of pesticides for a period of up to 60 days or until the receipt of the sample test reports. Additional punishments for other related offences are also provided for in the concluding portions of the bill.

While the bill is yet to be passed in the Parliament, it has garnered condemnation from various quarters who have called for a review, alleging that it would harm

farmers' interests. One such criticism has been that under the Bill, farmers would also have to obtain the prescription before buying certain pesticides, which would pose a huge obstacle in the timely procurement of pesticides.[27] The provision conferring decision-making powers upon the Registration Committees was also debated as experts claimed that such decisions may be taken without any scientific considerations. Hence, they called for wider consultations of the Bill and to put it before a select committee.[28]

[27] Sharma, Samrat. (2020). How 'Pesticide Management bill 2020' may hurt sales, profits of pesticide manufacturers. *Financial Express*. Retrieved 10 October, 2020, from https://www.financialexpress.com/industry/how-pesticide-management-bill-2020-may-hurt-sales-profits-of-pesticide-manufacturers-interview/2089898/

[28] DTE. (2020). Pesticides Management bill, 2020 will hurt farmers' livelihood, say experts. *Down to Earth*. Retrieved 10 October, 2020, from https://www.downtoearth.org.in/news/agriculture/pesticides-management-ll-2020-will-hurt-farmers-livelihood-say-experts-73338

Seeds Bill, 2019

The Seeds Bill, 2019, is yet to be introduced in the Parliament and has been revamped since the Seeds Bill, 2004 which has been pending since then. The Bill seeks to replace the Seeds Act, 1966, and address the changes that the sector has witnessed, including the introduction of new technologies and the increased corporatisation of the market. It aims to regulate the quality of seeds for sale, import and export and to facilitate production and supply of seeds of quality.

The Bill provides for the constitution of the Central Seed Committee (CSC) by the Central Government, which would be responsible for advising the governments on matters concerning seed programming, planning, production, export, import and registration, and can specify minimum limits for germination, purity and seed health. The CSC may establish Registration Sub-Committees to perform functions such as the verification of claims or applications and the subsequent registration of different types and varieties of seeds.

The Bill also mandates the establishment of State Seed Committees by the State Government to carry out the registration functions and perform an advisory role. The maintenance of a National Register of Seeds to be kept by the Registration Sub-Committees is also prescribed by the Bill and is a crucial component of it. All varieties of seeds are to be registered in this manner and such registration would be valid for ten, or twelve years depending on the specific type. The registration of transgenic seeds requires a clearance under the provisions of Environment (Protection) Act, 1986. State Seed Certification Agencies are to be set up for the certification of seeds for sellers. Provisions for the scientific testing of seeds have also been made, to maintain quality and further the objectives of the Bill.

The Bill has not been received well by the country's farming communities who condemn its skewed approach in favour of corporate interests over those of farmers. One of the primary contentions against the Bill is its conflict with the Protection of Plant Variety and Farmers Rights Act, 2001. While the Act preserved farmers' rights over the industrialised and commercial seeds, the draft Seed Bill, 2019 can undo the

same by promoting distinctness, uniformity and stability. It neglects considerations such as the differences between commercial seeds and farmers' varieties which may not abide by the same standards of minimum germination, uniformity and stability and hence exposes the farmers to unfair competition with corporate players.[29] Clause 21 of the Bill, which provides for compensation for the farmer in case they suffer a loss due to poor quality of seeds, has also been contended since it places an undue burden on the farmer to approach the Court under the Consumer Protection Act, 1986, and forces them to get entangled in legal affairs.[30] The absence of provisions for price control and the silence of the Bill on crop diversification has also been criticized.[31]

[29] Mandal, Monika. (2020). A Vajpayee-era law that successfully preserved farmers' rights may be undone by a new bill. *Scroll*. Retrieved 10 October, 2020, from https://scroll.in/article/974998/a-vajpayee-era-law-that-successfully-preserved-farmers-rights-may-be-undone-by-a-new-bill

[30] Kumar, Akanksha. (2019). Why Modi Govt's New Seed Bill Might Be Unfair to Farmers. *The Quint*. Retrieved 10 October, 2020, from https://www.thequint.com/news/india/crop-loss-compensation

[31] Id.

Unshackling the Farmers from the Bar on Civil Jurisdiction and Compulsory Conciliation Process under the Contract farming Act

The three Farm (Reform) Acts enacted by the government have faced criticisms from several quarters. Plethora of issues which range from allowing private market systems to be established outside the Mandis, flawed system of determination of the price delivery mechanism, no guarantee of Minimum Support Price, have already been discussed in public domain and critically reviewed. Writ Petitions have also been filed in the Supreme Court stating that the Union has legislated upon a State Subject and hence it is ultra vires of the Constitution. As a lot has been written about these aspects already, this article will not be delving into the same but will only be discussing provisions of legal recourse available to the farmers.

One of the most important red flags in both, the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 ('**APMC Bypass Act**') as well as the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020 **('Contract Farming Act')** is the bar on jurisdiction on Civil Courts. This means that the farmers will not be able to file a civil suit for violation of contract in the Civil Courts. Instead, an alternate mechanism for legal recourse has been set up in both the acts. Both legislations provide for a conciliation board for dispute resolution, albeit with a different mode of setting up. In this article, the Conciliation mechanism in both the legislations will be discussed and most importantly, what will be discussed is the right of the farmers to seek recourse through the Consumer Protection regime in India. Despite the bar on civil Courts from entertaining suits filed by farmers, complaints can be filed before the Consumer Forums for violation of contractual obligations under the Contract Farming Act where there has been deficiency of service and the agri-business company fails to pay their side of the bargain.

The Conciliation Mechanism in the Two Acts

Section 8 of the APMC Bypass Act states that in case of any dispute between the farmer and the trader, the Sub-divisional magistrate is supposed to set up a Conciliation Board with a Chairperson who will be subordinate to the SDM and 2-4 other members to represent the parties to the dispute, upon the recommendation of the parties to the dispute.

If any party fails to recommend, the SDM shall by themselves appoint a party they deem fit for representing that party. The appellate authority in the case would be the SDM and the dispute would be referred to them if there is no settlement agreement between the farmers and the traders. The SDM (Sub-divisional Authority) would then hear both the sides and make an appropriate order which can entail, passing an order for recovery of the amount under dispute, or imposition of penalty of more than Rs 25,000 extending up to Rs 5,00,000 per each day of contravention since the day of the order or, pass an order for restraining the trader in dispute from undertaking any trade and commerce of scheduled farmers' produce, directly or indirectly. The appeal from this order would lie to the Appellate Authority who would either be the Collector or Deputy Collector nominated by the Collector. This is the process under the APMC Bypass Act in short.

Now, moving on to the Contract Farming Act, a slightly different procedure is observed. Section 13 of the Act states that, every farming agreement shall explicitly provide for a conciliation process and formation of a conciliation board consisting of representatives of parties to the agreement. A sedentary proviso is added which states that representation in the board shall be "fair and balanced".

In the case of the farming agreement not providing for a conciliation process, the Sub-divisional Authority (Sub-divisional Magistrate) has been granted the power to set up a conciliation board for the same or decide the matter summarily without setting up a board. The appeal from the Conciliation Board would lie to the SDM, and from the SDM to the Appellate Authority who would be the Collector or any authority appointed by them. This mechanism is replete with myriad problems. One

important aspect that cannot be ignored is that the Farmers' Agreement on Price Assurance and Farm Services (Dispute Resolution) Rules, 2020 state clearly that the either party shall not be represented by a legal practitioner during conciliation proceedings, although an "authorized" person (by the SDM) can represent them.

Agri-business companies are equipped with firebrand lawyers from Corporate Law firms who have the human resources and skills to draft clever contracts in complicated legal jargon making it difficult for a quasi-judicial body like the SDM or the Collector to interpret, let alone the farmer. Furthermore, the farmer is not going to have resources at hand, or lawyers to represent them before the conciliation board, SDM or the Appellate Authority. There is no provision for the contract to be drafted in the local language as well and it cannot be presumed that the Agri-businesses will be kind enough to do it. There is an explicit and definite power dynamics in play which is prima-facie exploitative in nature.

What then, are the remedies for the farmer apart from being shackled by this process? The answer lies in another legislation, the Consumer Protection Act, 2019, which is more cumbersome, but also more dependable.

Farmers, Agri-Business and the Consumer Protection Act

Contract farming existed in India even before the Contract Farming Act. There is ample evidence to show the exploitative tendencies of the Agri-business from a mere perusal of media reports and judgments from various Courts. The Supreme Court, in March itself stated that the tendency of the huge corporations to drag on litigation for years together was condemnable.

In 2012, in *National Seeds Corporation v. Madhusudan Reddy*[32], the Supreme Court had declared that farmers entering into a contract with an entity providing any form of service to them would be deemed consumers under the act. The question that begs an answer now is that with the enactment of the Contract Farming Act, the bar on Courts of civil jurisdiction, and an alternate dispute resolution mechanism laid out, does the jurisdiction of the consumer forum stand ousted?

Under the Consumer Protection Act, the Consumer Courts are Special Forums and not just Civil Courts. Hence, bar on the jurisdiction of civil Courts would not apply to the Consumer Protection Act. Furthermore, the remedy espoused under section 100 in the legislation is in addition to any other remedy under any other Act.

The Contract Farming Act states that the agreement is supposed to contain a conciliation mechanism with representation from both parties. This can be argued to state that the cognizance under the Consumer Protection Act is barred as there is a conciliation process in place. *National Seeds Corporation v. Madhusudan Reddy* answers this question as well. In this case the parties had an arbitration agreement in place. The appellants argued that as there was already an arbitration agreement in place, the Consumer Court ought not to have taken cognizance of the matter. The Supreme Court has, through a catena of judgments, cleared this position of law stating that the remedy under CPA is in addition to any other remedy. In *Skypay Couriers Limited v. Tata Chemicals Limited*[33], the Supreme Court stated that,

[32] (2012) 2 SCC 506
[33] (2000) 5 SCC 294

> *"Even if there exists an arbitration clause in an agreement and a complaint is made by the consumer, in relation to a certain deficiency of service, then the existence of an arbitration clause will not be a bar to the entertainment of the complaint by the Redressal Agency, constituted under the Consumer Protection Act, since the remedy provided under the Act is in addition to the provisions of any other law for the time being in force."*

This makes it amply clear that even if Section 13 provides for a conciliation process, the farmers can approach the Consumer Forum.

Despite the clarity in law through various judgments, huge corporations leave no stone unturned to harass the farmers. In *Nandan Biomatrix v. Ambika Devi*[34], the position of already settled law that farmers would be deemed consumers under the act even in cases where buy-back agreements are made was restated. Further, the Court also chastised the corporations for frivolous litigation and in the present case the appellants were ordered to pay costs of Rs 25,000 per appeal. The Supreme Court unequivocally stated how Seeds Companies exploit the farmers (especially those who are marginalized with small landholdings) and that the Consumer Protection Act can go a long way in helping the farmers for quick redressal.

To sum up, the Consumer Protection Act, 2019, in case of deficiency of service, presents farmers with a better and fairer opportunity than which is outlined in the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020. The Bar on Civil Jurisdiction and the compulsory conciliation process won't act as an impediment to the farmers invoking the redressal mechanism of the Consumer Courts.

[34] 2020 **SCC** OnLine SC 309