

## Avenging Champawat: Adivasis and Tigers in the Age of Extinction

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### Introduction

During the era of British colonization in India, a notorious “man-eating”<sup>1</sup> tiger once lurked about. From 1900 to 1907, an Indian<sup>2</sup> tigress named Champawat stalked and killed approximately 500 people.<sup>3</sup> Although tigers “are animals which generally change direction at the first sign of a human,” at the beginning of the twentieth century, “a change so profound and upsetting to the natural order was occurring in Nepal and India as to cause one such tiger to not only lose its inborn fear of humans altogether but to begin hunting them...”<sup>4</sup> Champawat was injured by a bullet which prevented her from hunting her natural prey. She was forced to survive in an environment that had been turned upside down by India’s colonial masters. In *No Beast So Fierce*, Dane Huckelbridge shares details about Champawat’s deadly reign and the powerful impact British colonialism specifically had on tigers, Adivasi<sup>5</sup> peoples and the environment. Huckelbridge asserts, “if rural Indian populations had become helpless in the face of apex predators, it was largely because colonial policy had rendered them such.”<sup>6</sup>

The tigress was eventually killed by Jim Corbett, a European settler born in India, who later devoted his life to tiger conservation.<sup>7</sup> However, other “man-eaters” -- injured by hunters, left without proper prey to hunt, and a shrinking habitat -- continued to plague the Indian landscape killing thousands of people.<sup>8</sup> Yet even today the “tiger – people conflict” has not stopped.<sup>9</sup> In the majority of cases, these interactions have led to rather unpleasant deaths.

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<sup>1</sup> At the end of 2019 the National Tiger Conservation Authority determined that it would eliminate the use of the word “man-eater,” and replace it with “dangerous tiger.” Balu Pulipaka, *NTCA Resolve to No Longer Hire Private Hunters or Use the Label ‘Man Eater’*, *The Wire*, (November 15, 2019), <https://thewire.in/environment/ntca-avni-tigress-man-eater-tranquiliser-gun>.

<sup>2</sup> The Indian Tiger’s name was “rechristened” to the Royal Bengal Tiger in honor of the Prince of Wales, Edward VII. This article will use the term Indian Tiger. Mukun Belliappa, *A Natural History of Colonialism*, *NEW ENGLAND REVIEW*, (2015), <http://www.nereview.com/vol-36-no-3-2015/mukund-belliappa/>.

<sup>3</sup> See Dane Huckelbridge, *NO BEAST SO FIERCE: THE TERRIFYING TRUE STORY OF THE CHAMPAWAT TIGER, THE DEADLIEST ANIMAL IN HISTORY* (2019).

<sup>4</sup> *Id* at 3.

<sup>5</sup> Adivasi means “original inhabitants” and India uses the legal term “scheduled tribes” and avoids use of the term “indigenous.”

<sup>6</sup> Huckelbridge, *supra* note 3, at 131.

<sup>7</sup> See Gadhvi, Gheerawo, Walti, Jordania, and Quevedo de Oliveira, *BEHIND JIM CORBETT’S STORIES: AN ANALYTICAL JOURNEY TO ‘CORBETT’S PLACES’ AND UNANSWERED QUESTIONS* (2016).

<sup>8</sup> Belliappa, *supra* note 2.

<sup>9</sup> See *The Guardian*, *More than 1,000 people killed in India as human and wildlife habitats collide*, (August 1, 2017), <https://www.theguardian.com/environment/2017/aug/01/over-1000-people-killed-india-humans-wildlife-territories-meet>. See also a recent study published regarding tiger people conflicts in Indonesia. Wulan Pusparini, et al., *Unraveling the complexity of human-tiger conflicts in the Leuser Ecosystem, Sumatra*, *ANIMAL CONSERVATION*, (March 2020).

Interestingly, public opinion in India is mixed on how to handle the offending tiger, with those who favor sparing the tiger's life and others who favor its death.

This article was inspired by Huckelbridge's book and invites the reader to reflect on the progress India has made since the departure of its colonial rulers and what more can be done to simultaneously protect both the rights of Adivasi people and to protect the Indian tigers.

## I. Extinction in Context

India's long held reverence for the tiger appeared lost once the British colonized India. The "divinity" and "necessity" of tigers has been a "tenet of faith" in India since ancient times.<sup>10</sup> In the *Mahabharata*, an ancient Indian Hindu epic, references are made to the tiger.<sup>11</sup> Within India there are many groups that pay homage to the tiger in various ways. "In Central India, the Baigas, or Tiger Clan, consider themselves the cat's descendants. North of Mumbai, the Warli tribe erects wooden tiger statues for use in fertility rites...and donate part of the year's harvest to the tiger as a symbol of life and regeneration."<sup>12</sup> A certain symbiosis existed between tigers and people. Indian people learned to live with the tiger and accommodate its behavior however they reasonably could. There are historical accounts of villages that adopted and fed tigers so that they would not harm people.<sup>13</sup>

The rulers of India also held an affinity for the tiger. Tigers were considered royal property<sup>14</sup> and were adopted as "powerful symbols" of Mughal rule.<sup>15</sup> In the 16<sup>th</sup> century, Mughal Emperor Jala-us-Din Muhammad Akbar began a royal tradition of *bagh shikar* (tiger hunting) until the dynasty fell in 1857.<sup>16</sup> However, the Mughal tradition had "minimal effect on tiger populations or the habitats in which tigers lived. Held at widely dispersed forests on a rotating schedule, and conducted primarily with bows and spears, these hunts were never intended to delete the tiger population or rid a region of predators."<sup>17</sup> The forests and tigers represented power for the rulers. Unfortunately, there would be a dramatic shift under British rule in India as the tiger became a "cliché of colonial life."<sup>18</sup>

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<sup>10</sup> Huckelbridge, *supra* note 3, at 93.

<sup>11</sup> *Id.* at 94.

<sup>12</sup> Sharon Guynup, *Why Have Tigers Been Feared and Revered Throughout History?*, National Geographic, (April 9, 2014), <https://blog.nationalgeographic.org/2014/04/09/why-have-tigers-been-feared-and-revered-throughout-history/>.

<sup>13</sup> Robert Marks, *Asian Tigers: The Real, the Symbolic, the Commodity*, NATURE AND CULTURE, 76 (Spring 2006).

<sup>14</sup> Huckelbridge, *supra* note 3, at 96.

<sup>15</sup> Joseph Sramek, "Face Him like a Briton": Tiger Hunting, Imperialism, and British Masculinity in Colonial India, 1800-1875, VICTORIAN STUDIES, 659 (Summer 2006).

<sup>16</sup> Sharon Guynup, *A Concise History of Tiger Hunting in India*, National Geographic Society, (March 10, 2014), <https://blog.nationalgeographic.org/2014/03/10/a-concise-history-of-tiger-hunting-in-india-2/>. The British crown would directly rule over India beginning in 1874, after the dissolution of the East India Company. Huckelbridge, *supra* note 3.

<sup>17</sup> Huckelbridge, *supra* note 3, at 96.

<sup>18</sup> Belliappa, *supra* note 2.

When The East India Trading Company<sup>19</sup> arrived in India, India had approximately a fifth of the world's total population and "was producing about a quarter of global manufacturing...in many ways it was the world's industrial powerhouse and the world's leader in manufactured textiles."<sup>20</sup> India's success changed in the hands of the British Empire, which "effectively turned the entirety of its foreign possessions into an engine of revenue, which meant exploitation of natural resources on a massive, multifaceted scale."<sup>21</sup> While this reflected the broader impact of colonialism, Britain's exploitative practices created enormous challenges for the continued existence of the Adivasis and tigers.

*a. Adivasis and Colonial Rule*

In medieval England, William the Conqueror introduced the "royal forest" model to "protect the deer for his own hunting" and these laws continued under Henry II.<sup>22</sup> As long as the deer were protected and a profit could be made for the royal treasury, "all sorts of clearing" was allowed.<sup>23</sup> Even during this time period the goal of protecting the royal forests was to "manage" the forest resources, as opposed to "total preservation."<sup>24</sup> England's appetite for using forest resources continued to grow through successive kings and queens and, as a result, forest resources from colonial territories became precious commodities that helped to bloat the British economy.<sup>25</sup>

The British sought control over Indian forests through a mix of physical ("fencing the forests"<sup>26</sup>) and legal barriers. Severe restrictions on forest use were placed on communities and those who once had "unrestricted" access.<sup>27</sup> The physical separation of Adivasi communities from their native areas was also a critical step in executing Britain's green imperialist agenda and bringing the populations "under control" of British bureaucracy.<sup>28</sup>

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<sup>19</sup> For a brief overview of the East India Trading Company see Erin Blakmore, *How the East India Company became the world's most powerful business*, National Geographic, (September 6, 2019), <https://www.nationalgeographic.com/culture/topics/reference/british-east-india-trading-company-most-powerful-business/>. See also UK Parliament, *East India Company and Raj 1785 -1858*, <https://www.parliament.uk/about/living-heritage/evolutionofparliament/legislativescrutiny/parliament-and-empire/parliament-and-the-american-colonies-before-1765/east-india-company-and-raj-1785-1858/> (accessed on January 4, 2020).

<sup>20</sup> William Dalrymple, *THE ANARCHY: THE RELENTLESS RISE OF THE EAST INDIA COMPANY* 14 (2019).

<sup>21</sup> Huckelbridge, *supra* note 3, at 112.

<sup>22</sup> Charles Young, *Conservation Policies in the Royal Forests of Medieval England*, *ALBION*, 96 (1978), [www.jstor.org/stable/4048336](http://www.jstor.org/stable/4048336).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Bibi van der Zee, *England's forests: a brief history of trees*, *The Guardian*, (July 26, 2013), <https://www.theguardian.com/travel/2013/jul/27/history-of-englands-forests>.

<sup>26</sup> Prasanta Das, *Jim Corbett's 'Green' Imperialism*, *ECONOMIC AND POLITICAL WEEKLY*, 20-22 (April 2009), <https://www.jstor.org/stable/40279127>.

<sup>27</sup> *Id.*

<sup>28</sup> Ajay Verghese, *British Rule and Tribal Revolts in India: The curious case of Bastar*, *MODERN ASIAN STUDIES*, (September 2016), <https://www.cambridge.org/core/journals/modern-asian-studies/article/british-rule-and-tribal-revolts-in-india-the-curious-case-of-bastar/D1F52864F0CBD6D37FFC2B7DE9CBA5A4/core-reader>.

The British created the Forest Department in India, which allowed for the complete use and regulation of the forest.<sup>29</sup> The Forest Department was given power through laws such as the Forest Act of 1865, later amended in 1878, to remove “ambiguities” about property rights.<sup>30</sup> The idea of conservation was integrated into these exclusions. For instance, the 1878 Act “aided in taking away all preexisting rights of communities and tribes living in those forests because the latter were believed to be leading lifestyles that were intrinsically hostile to the natural environment.”<sup>31</sup> False narratives were spread regarding forest dwellers and how they had unsustainable practices, thereby necessitating British intervention in saving the environment from havoc.<sup>32</sup> To counteract this, the British depicted themselves as a “generous state” by granting “concessions” to the communities.<sup>33</sup>

The British also utilized the criminal legal regime to control forest areas and Adivasis. There was a general law, the Criminal Tribes Act 1871, which allowed for a “tribe, gang, or class” to be labeled “criminal.”<sup>34</sup> This law took aim at those tribes who would be considered nomadic by modern standards. It also targeted people who were economically disadvantaged. Further, the Forest Acts penalized people in nearby villages who utilized the forests. “The most serious problem confronted by the state was how to reconcile the contradictory claims of forest conservation and management, on the one hand, and, on the other, the unchecked forest use for local needs that was causing problems of law and order and other disturbances.”<sup>35</sup>

The British limited the freedoms and culture of forest dwellers in other ways. Forced labor was used throughout the forests as an “administrative convenience.”<sup>36</sup> Additionally, poor tribes “were denied precious and scarce sources of protein and other foods - not to mention the interruption or extinction of cultural customs associated with the forest, such as ritual hunting, certain interpretations of the agricultural cycle, etc.”<sup>37</sup> There are historical examples of Adivasi people being forcibly removed throughout India from their lands which gave the British a complete monopoly over resources.<sup>38</sup> There are some instances where the direct consequence of such actions led to violent uprisings against British authorities.<sup>39</sup>

Forests “were integrated into the commercial circuit of timber production through improved transportation networks. More importantly, commercially valuable varieties of trees were cultivated at the expense of other forest resources that may have been more useful for the

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<sup>29</sup> Das, *supra* note 26.

<sup>30</sup> *Id.*

<sup>31</sup> Vandana Swami, *Environmental History and British Colonialism in India: A Prime Political Agenda*, THE NEW CENTENNIAL REVIEW, 124 (Fall 2003), <https://www.jstor.org/stable/41949868>.

<sup>32</sup> *Id.*

<sup>33</sup> A. K. Negi, et al, *The Effects of Colonialism on Forests and the Local People in the Garhwal Himalaya*, MOUNTAIN RESEARCH AND DEVELOPMENT, 167 (May 1997), <https://www.jstor.org/stable/3673830>

<sup>34</sup> Criminal Tribes Act 1871. See Bibek Debroy, *An unfortunate legacy*, The Indian Express, (January 5, 2017), <https://indianexpress.com/article/opinion/columns/crime-criminal-act-racial-discrimination-non-bailable-offence-criminal-tribes-act-an-unfortunate-legacy-4459258/>.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 163.

<sup>37</sup> Swami, *supra* note 31.

<sup>38</sup> Verghese, *supra* note 28.

<sup>39</sup> *Id.*

inhabitants of the forest.”<sup>40</sup> Through the Forest Act of 1865 “pressure” was put on environmental resources so that the railway could be fueled by “the natural jungles.”<sup>41</sup> Britain’s consumption of firewood and charcoal caused the forest cover to “shrink.”<sup>42</sup> Forest shrinkage had a direct negative impact on the tiger’s natural habitat.

*b. Colonial Rule and Tigers*

Dane Huckelbridge reflects it was a “[f]ull century of disastrous ecological management in the Indian subcontinent that drove [the tiger] out of the wild forests and grasslands it should have called home.”<sup>43</sup> This forced the tiger to search for food outside of its habitat and eventually created uncomfortable human tiger interactions. Tigers then turned into a problematic, but opportunistic, issue for the British. “The existence of tigers in the wild was viewed, both symbolically and literally, as a direct challenge to British hegemony. Overcoming that challenge was an act of conquest – of colonization – and it was very much encouraged by the colonial government.”<sup>44</sup> The solution to this problem was the creation of the elite industry of tiger hunting, in essence an expansion of *bagh shikar*. Tiger hunting enforced British paternalism. It became another way of “protecting” the Indian population, in this case from the dangers the tiger posed. This was depicted in British cultural magazines during that time period. Magazine contributors portrayed the tiger as “skulk[ing] in thick bushes or attacking lone individuals...” and sometimes the tiger was even portrayed as deceitful.<sup>45</sup>

Financial rewards were introduced to hunters – including Indians – who were successful at exterminating the species. Money was given for various parts of the tiger, but more money was paid out for tiger skins.<sup>46</sup> The formulation and execution of “vermin eradication” policies had a horrendous impact on the tiger population. “During 1879 – 88 alone, the colonial government’s bounty system had funded the killing of 16,573 tigers.”<sup>47</sup> Ironically, the British needed another system to prevent the rapid decimation of the tiger as they feared “there would be no game left for hunting.”<sup>48</sup> Therefore, a permit system was introduced and required for hunting. “Permits were rarely, if ever, granted to Indians and not even automatically to all Europeans; this system not only deepened racial divisions between Britons and Indians but also placed considerable power over hunting in India after 1878 in the hands of Forest Department officials.”<sup>49</sup> It is reasonable to conclude that British hunting policies and maybe

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<sup>40</sup> Swami, *supra* note 31, at 120.

<sup>41</sup> *Id* at 119.

<sup>42</sup> Marjolein 't Hart and Peter Boomgaard, *Globalization, Environmental Change, and Social History: An Introduction*, *International Review of Social History*, 21 (2010), <https://www.jstor.org/stable/26405416>.

<sup>43</sup> Huckelbridge, *supra* note 3, at 4 and 33.

<sup>44</sup> *Id* at 104.

<sup>45</sup> Sramek, *supra* note 15, at 666. *See also* Vijaya Ramadas Mandala, *SHOOTING A TIGER: THE BIG GAME HUNTING AND CONSERVATION IN COLONIAL INDIA*, (2019), (discussing British fixation on the decimation of tigers).

<sup>46</sup> *Id*.

<sup>47</sup> Mandala, *supra* note 45.

<sup>48</sup> Om Prakash, *Wildlife Destruction: A Legacy of the Colonial State in India*, *Proceedings of the Indian History Congress*, 698 (2006-2007), <https://www.jstor.org/stable/44147988>.

<sup>49</sup> Sramek, *supra* note 15.

even poaching<sup>50</sup> contributed to the rapid decline of the Indian tiger and creation of “man-eaters” in India. It was not until the leadership of Indira Gandhi that things would take a positive turn for the Indian tiger species.

## II. Recuperation and Repetition

Once the British departed, India began evaluating its laws. In a report issued by the Law Commission of India in 1957, the Commission noted that as the ties between India and the United Kingdom were removed, “...in the fitness of things, that the entire legal Code of India should be purely Indian...” and “after having attained fully sovereign status, India should have laws of her own...”<sup>51</sup> Throughout subsequent years India has continued to repeal laws that are considered to be colonial “legal relics.”<sup>52</sup> Yet critics argue that the national government’s actions merely “give the perception they are bringing change.”<sup>53</sup>

With specific regard to Adivasis and tigers, legal relics from the past still exist. India's two frameworks, one which purports to protect the rights of Adivasis and the other which protects the tigers, are distinct and separate.

### a. Forests and Forest Dwellers

Until 1935 Britain exercised control over tribal areas. After a series of successive acts, the British passed the 1935 Government of India Act which created an All India Federation. Control over tribal areas, however, was still under the realm of the King, who was able to exercise rights by “treaty, grant, usage, sufferance or otherwise in and in relation to tribal areas.”<sup>54</sup> After Indian independence, autonomy over these lands did not revert back to Adivasis. The 1952 National Forest Policy stated that “communities near forests should not override the national interests, that in no event can the forest dwellers use the forest wealth at the cost of wider national interests, and that relinquishment of forest land for agriculture should be permitted only in very exceptional and essential cases.”<sup>55</sup> This extension of British colonial policy translated to a basic formula: profit before people. Years later, the 1980 Forest Conservation Act made it mandatory for the Government of India to approve any state decision to divert land for “non-forestry” purpose.<sup>56</sup> In 1988 India launched the

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<sup>50</sup> Kamakshi Ayyar, *How India’s Conservationists Are Fighting to Save Half of the World’s Tigers*, TIME, (July 28, 2018), <https://time.com/5345610/global-tiger-day-tigers-india-conservation/>.

<sup>51</sup> Law Commission of India, *Fifth Report on British Statutes Applicable to India*, 5 (1957), <http://lawcommissionofindia.nic.in/1-50/Report5.pdf>.

<sup>52</sup> Anu Anand, *Indian government plans to repeal hundreds of pre-independence laws*, The Guardian, (October 29, 2014), <https://www.theguardian.com/world/2014/oct/29/indian-government-repeal-pre-independence-laws>.

<sup>53</sup> *Id.*

<sup>54</sup> Government of India Act, 1935, Section 8c. Other portions of the Act discussed the King’s reach over tribal affairs regarding “defence and ecclesiastical affairs” and “expenditures.” [http://www.legislation.gov.uk/ukpga/1935/2/pdfs/ukpga\\_19350002\\_en.pdf](http://www.legislation.gov.uk/ukpga/1935/2/pdfs/ukpga_19350002_en.pdf), (accessed on December 12, 2019).

<sup>55</sup> Joshi Gopa, *Forest Policy and Tribal Development*, Cultural Survival Quarterly Magazine, (June 1989), <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/forest-policy-and-tribal-development>.

<sup>56</sup> A.K. Mukerji, *Forest Policy Reforms in India – Evolution of the Joint Forest Management Approach*, Food and Agriculture Organization of the United Nations, <http://www.fao.org/3/XII/0729-C1.htm> (accessed January 12, 2020).

National Forest Policy (NFP). The objectives of this policy were to work with “local stakeholders” and to conserve “natural heritage and genetic resources.”<sup>57</sup> Some critics claim that the 1988 NFP is in need of an update. It does not have a clear definition of “forest” and it does not provide a central management structure of wild and uninhabited forest areas.<sup>58</sup>

In 2018 India attempted to create a new draft NFP, which addressed issues such as deforestation, climate change, and forest health.<sup>59</sup> The problem with the new draft was that it did not incorporate the voices of those who already lived in and depended on the forest. Further, the 2006 Forest Rights Act (FRA) was only mentioned as part of other laws that must be harmonized with the potential new policy.<sup>60</sup> In 2019 another draft NFP was prepared and withdrawn later that year.<sup>61</sup> Many have argued that the new versions of the NFP do away with the best parts of the 1988 NFP which balances the ecological interests of preserving the forest and the rights of forest dwellers.<sup>62</sup>

The 1988 NFP was the legislation that paved the way for the Forest Rights Act of 2006.<sup>63</sup> The FRA was passed in an effort to rectify colonial abuses but instead has caused more damage as a result of poor implementation and disagreements between stakeholders. The FRA “makes provisions for recognizing and giving the forest rights to forest-dwelling scheduled tribes and other traditional communities residing in such forests for generations but whose rights could not be recorded.”<sup>64</sup> The grant of rights is not automatic and each person who claims entitlement to these rights must prove so under the FRA.<sup>65</sup> Indian state governments have been slow to implement the FRA. Other laws and regulations passed by the national government have diluted any potential achievements the FRA could make.<sup>66</sup> One such law is the Wildlife Protection Act (WPA) of 1972.

The WPA allows for state governments to declare sanctuaries and wildlife habitats as they consider of “adequate” significance for the “purpose of protecting, propagating or developing wildlife or its environment.”<sup>67</sup> In order to declare an area a sanctuary there must be notice which shall have the geographical limits of the area and the “area shall be

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<sup>57</sup> *Id.* See also National Forest Policy 1988, Government of India Ministry of Environment and Forests New Delhi, (December 7, 1988), [https://mpforest.gov.in/img/files/Policy\\_NFP.pdf](https://mpforest.gov.in/img/files/Policy_NFP.pdf).

<sup>58</sup> Mayank Aggarwal, *India's missing a clear forest policy and its jungle dwellers are the worst off*, Quartz India, (January 13, 2020), <https://qz.com/india/1783965/indias-missing-forest-policy-is-hurting-tribals-the-most/>.

<sup>59</sup> S. Gopikrishna Warriar, *India's new forest policy draft draws criticism for emphasis on industrial timber*, Mongabay, (April 12, 2018), <https://news.mongabay.com/2018/04/indias-new-forest-policy-draft-draws-criticism-for-emphasis-on-industrial-timber/>.

<sup>60</sup> *Id.*

<sup>61</sup> Aggarwal, *supra* note 59.

<sup>62</sup> Warriar, *supra* note 60.

<sup>63</sup> *Id.*

<sup>64</sup> Mayank Aggarwal, *Forest Rights Act: A decade old but implementation remains incomplete*, Mongabay, (December 13, 2018), <https://india.mongabay.com/2018/12/forest-rights-act-a-decade-old-but-implementation-remains-incomplete/>.

<sup>65</sup> Asavari Sharma, *Why India's Forest Rights Act is discriminatory against non-tribals*, The Wire, (July 2, 2018), [https://www.business-standard.com/article/economy-policy/why-india-s-forest-rights-act-is-discriminatory-against-non-tribals-118070200116\\_1.html](https://www.business-standard.com/article/economy-policy/why-india-s-forest-rights-act-is-discriminatory-against-non-tribals-118070200116_1.html).

<sup>66</sup> Aggarwal, *supra* note 65.

<sup>67</sup> The Wildlife Protection Act 1972, Chapter IV, Section 18.

sanctuary on and from such date as may be specified in the notification.”<sup>68</sup> The FRA incorporates the WPA and appears to give deference to decisions made under the WPA to protect wildlife over the rights of Adivasi peoples.<sup>69</sup> This is a critical issue as the FRA creates a hierarchy between Adivasis and tigers. It is not clear whether this hierarchy was intended, but this deference to the WPA essentially has kept colonial frameworks over the forests in place, thereby violating the human rights of Adivasi’s and causing retribution against the tiger, as discussed below.

Implementation of the FRA has had a rocky start. Adivasis who lived in the forests report they were unofficially threatened and harassed with eviction and made to leave from demarcated areas.<sup>70</sup> In 2011, a Clarification was issued by the Ministry of the Environment which reiterated that notice must be given when such action is taken. Further, people must be given just compensation and must consent to relocation if they are moved from designated areas.<sup>71</sup> Sadly, this Clarification from the authorities has not made a difference. A study that was completed 10 years after the implementation of the FRA supports the claims made by the Adivasis. In Odisha, which claims to “be one of the most advanced states in implementing the FRA,”<sup>72</sup> villages within the tiger reserves that were awarded rights under FRA have been relocated without just compensation and in complete contradiction of the FRA.<sup>73</sup>

A report published by Reuters points out that in 2017 “...data collected by the advocacy group Housing and Land Rights Network showed the government destroyed at least six homes and forcibly evicted 30 people each hour in India.”<sup>74</sup> In Assam that same year a “posse of 1,500 policemen” evicted 700 families in Amchang Wildlife Sanctuary by “razing houses, demolishing schools and places of worship, and injuring women and children in the process.”<sup>75</sup>

In 2017 the National Tiger Conservation Authority (NTCA) notified 17 state governments “no rights shall be conferred in Critical Tiger Habitats.”<sup>76</sup> The following year, the National

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<sup>68</sup> *Id.*, Section 26A.

<sup>69</sup> See Ministry of Tribal Affairs *Government of India, Forest Rights Act, 2006 Act, Rules and Guidelines*, (2014), <https://tribal.nic.in/FRA/data/FRARulesBook.pdf>.

<sup>70</sup> Survival International, *Illegal evictions from India’s tiger reserves*, (December 10, 2019), <https://www.survivalinternational.org/news/12297>

<sup>71</sup> Ministry of Environment, Forest and Climate Change, *Clarification by Minister of State for Environment and Forests on Tiger Reserves, Critical Wildlife Habitats and Forest Rights Act (2006)*, (February 14, 2011), <https://pib.gov.in/newsite/PrintRelease.aspx?relid=69806>.

<sup>72</sup> Community Forest Rights, *Odisha: Promise and Performance of the Forest Rights Act, 2006: The Tenth Anniversary Report*, 7 (2016), <http://rightsandresources.org/wp-content/uploads/2017/05/Promise-Performance-FRA-Odisha.pdf>.

<sup>73</sup> *Id.* at 22.

<sup>74</sup> Anuradha Nagaraj, *Enslaved for decades, indigenous Indians freed by land titles*, Reuters, (May 29, 2019), <https://www.reuters.com/article/us-india-land-migration/enslaved-for-decades-indigenous-indians-freed-by-land-titles-idUSKCN1T000L>

<sup>75</sup> Souparna Lahiri, *Saving tigers, killing people*, Al Jazeera, (July 6, 2018), <https://www.aljazeera.com/indepth/opinion/saving-tigers-killing-people-180703110004941.html>.

<sup>76</sup> Mayank Aggarwal, *Don’t confer forest rights to tribals in critical tiger habitats: NTCA*, Live Mint, (April 12, 2017), <https://www.livemint.com/Politics/ZdGE6Jq1NtGwwcoWkI5LuK/Dont-confer-forest-rights-to-tribals-in-critical-tiger-habi.html>.

Commission for Scheduled Tribes asked the Ministry of the Environment to ensure that its policies on tiger conservation do not threaten the rights of Adivasi peoples.<sup>77</sup> In 2019 the Supreme Court of India waded into the brewing battle<sup>78</sup> and ordered states to fulfill their obligations and evict those who encroached on forest lands.<sup>79</sup> Some scholars suggest the activist role the Supreme Court of India has played in environmental conservation has created more problems, as this decision illustrates.<sup>80</sup> The FRA has exacerbated the abuses it was supposed to address<sup>81</sup> and has created “conservation refugees.”<sup>82</sup>

Forced evictions of this magnitude violate customary international human rights norms and international laws that India has ratified. Given the unique cultural ties that indigenous groups have to their lands, the United Nations Declaration on the Rights of Indigenous Peoples (UN DRIP) in Article 8 provides that redress must be provided for lands which are taken. Further, UN DRIP Article 10 prohibits forcible removal from lands and territories and any relocation must involve “free, prior, and informed consent” of those concerned.<sup>83</sup> These articles and similar ones are enshrined within the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5, 6); International Covenant on Civil and Political Rights (Article 1, 2, 12); International Covenant on Economic, Social, and Cultural Rights (Articles 11, 15); Convention on the Elimination of all Forms of Discrimination against Women (Article 14); and the Convention on the Rights of the Child (Articles 16, 29, 31).

Courts in India have reinforced international human rights law on forced evictions in their decisions. In 2019 a division of the High Court of Delhi ruled in *Ajay Maken & Ors. v. Union of India* that forced evictions of people who reside in city slums contravened the law. The Court noted that India was obliged under the 1993 Protection of Human Rights Act,

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<sup>77</sup> Rina Chandran, *Indian officials order stop to eviction of tribal people from tiger reserves*, Reuters, (February 27, 2018), <https://www.reuters.com/article/us-india-rights-wildlife/indian-officials-order-stop-to-eviction-of-tribal-people-from-tiger-reserves-idUSKCN1GB14Y>.

<sup>78</sup> Whether the decision is good or not remains to be seen. See Ramki Sreenivasan, *The Recent Supreme Court Order on Forest Rights Act (FRA) Does not Affect Genuine Claimants*, Conservation India, (August 5, 2019), <https://www.conservationindia.org/articles/fra-sc>.

<sup>79</sup> *Wildlife First & Ors v. Ministry of Forest and Environment & Ors.* Writ Petition Civil No. 109/2008, [http://www.indiaenvironmentportal.org.in/files/file/Forest-Rights-claims-SC-Order\\_13-Feb-2019.pdf](http://www.indiaenvironmentportal.org.in/files/file/Forest-Rights-claims-SC-Order_13-Feb-2019.pdf).

<sup>80</sup> “For example, in 2000 the Supreme Court of India restrained state governments from removing deadwood from PAs... The Supreme Court has continued to assume unprecedented powers and this has further complicated the already complex forestry laws in India.” Archi Rastogi, et al. *Saving the Superstar: A Review of social factors affecting tiger conservation in India*, JOURNAL OF ENVIRONMENTAL MANAGEMENT, 331-332, February 15, 2012).

<sup>81</sup> See Eleonora Fenari and Neema Pathak, *The Status of the Forest Rights Act (FRA) in Protected Areas of India*, (November 2017), <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2019/01/Summary-Final-Implementation-of-FRA-in-PAs.-Final-14.11.2017-as-printed.pdf>.

<sup>82</sup> Nitin Rai, *India’s efforts to save its tigers have turned some Adivasi communities into conservation refugees*, Scroll, (August 12, 2019), <https://scroll.in/article/933391/indias-efforts-to-save-its-tigers-have-turned-some-adviasi-communities-into-conservation-refugees>.

<sup>83</sup> The UN DRIP is not legally binding on state parties. During the 107<sup>th</sup> and 108<sup>th</sup> Meetings of the United Nations General Assembly of the UN DRIP, India’s representative stated his “country had consistently favored the promotion and protection of indigenous peoples’ rights.” UN News, *General Assembly Adopts Declaration on the Rights of Indigenous Peoples; ‘Major Step Forward’ Towards Human Rights for All, Says President*, (September 13, 2007), <https://www.un.org/press/en/2007/ga10612.doc.htm>.

which recognizes the International Covenant on Economic, Social, and Cultural Rights that India ratified in 1976,<sup>84</sup> to ensure legal safeguards for those who are evicted are consistent with the international covenant.<sup>85</sup>

It is important to emphasize that Adivasis have unique ties to their lands and therefore, state sponsored policies of forced evictions will inevitably lead to the destruction of these tribal groups. Father Ashok Kujur emphasizes the critical relationship for Adivasi people and their lands as follows:

“The totality of the Adivasis’ life and values is rooted in three life-giving entities: *Jal-Jangal- Jameen*, meaning water, forest and land. Without these essentials, there is no tribal identity. To save the identity of the Adivasis, all these elements need to be saved. The Adivasis of northern India say, *Jaan Denge Jamin Nahin Denge*, meaning, “we will give our life, but we will not give our land.”<sup>86</sup>

Adivasi communities within India represent a vulnerable group of people. It is evident from history and even today that they have been “sacrificed in the great nation-building project called India. These and other similar communities have been displaced, often brutally, from their ancestral forests, fields, and livelihoods to make way for one big project after another – for dams, mines, urban expansion, and infrastructure projects. When they have resisted, and there are innumerable cases of this, they have been physically assaulted and sometimes killed by forces of the state that are meant to protect them.”<sup>87</sup> While some counter that forced relocation of tribal communities has become harder to do, it is alleged that officials find other ways such as “putting a livelihood squeeze on the people who live within these reserves.”<sup>88</sup>

While the goals of protecting Adivasi communities need significant alignment between theory and practice, the situation concerning the tigers shows somewhat of a brighter side, yet the tigers also face dark challenges.

*b. Tigers: return of the cultural icon*

From 1947 to 1950, the new political autonomy of India did not change the attitude towards the tiger. “Shikar packages” were sold which allowed affluent people to continue to kill tigers for sport.<sup>89</sup> It was not until 1968 the government enacted a ban on tiger hunting, due to the continued decline of the tiger population.<sup>90</sup> In 1970 the national government created

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<sup>84</sup> *Ajay Maken & Ors. v. Union of India*, W.P.(C) 11616/2015, CM APPLs.31234/15, 3033/16 & 10640/17, Para 56, (March 18, 2019), [https://www.hlrn.org.in/documents/Judgment\\_Ajay\\_Maken.pdf](https://www.hlrn.org.in/documents/Judgment_Ajay_Maken.pdf).

<sup>85</sup> *Id* at para 63.

<sup>86</sup> Ashok Kujur, *The Uprooted People of the Land: An Ethical/Theological Reflection on the Protection of Adivasi Land and Human Dignity in the “New and Shining India”*, 3 (2017), [http://scholarcommons.scu.edu/jst\\_dissertations/3](http://scholarcommons.scu.edu/jst_dissertations/3).

<sup>87</sup> Pankaj Sekhsaria, *Conservation in India and the Need to Think Beyond ‘Tiger vs Tribunal*, *Biotropica*, 576 (2007), <https://doi.org/10.1111/j.1744-7429.2007.00333.x>

<sup>88</sup> Rai, *supra* note 83.

<sup>89</sup> Tobias Lanz, *THE LIFE AND FATE OF THE INDIAN TIGER*, 26 (2009).

<sup>90</sup> *Id*.

an absolute prohibition on tiger skins and products derived from tiger parts given the amount of international attention tiger extinction rates received.<sup>91</sup> Shikar outfitters and other sport hunters filed suit against the national government. In 1971, the Supreme Court of India ruled in favor of the national government, validating the prohibition.

The Supreme Court noted in its ruling that the 1969 International Union for Conservation of Nature and Natural Resources (IUCN) found the major cause of tiger disappearances was due to hunting. The Supreme Court highlighted that IUCN's papers "showed that prior to 1947 there was hardly any Shikar Company like the petitioners organizing tiger hunts, and that thereafter 27 such Companies came into existence all over the country."<sup>92</sup> Given India's colonial environmental history this claim by ICUN is extremely questionable. Further, the Supreme Court did not examine India's environmental history and the impact colonialism had on Indian tigers. Awareness of historical issues could have informed subsequent national action and legislation in order to create an appropriate balance between Adivasi rights and tigers.

Nevertheless, Prime Minister Indira Gandhi took advantage of the pro-tiger momentum and passed ambitious protection plans. In April 1973 "Project Tiger" was launched, which created tiger reserves and was the world's largest conservation project.<sup>93</sup> "Tiger reserves follow a core/buffer strategy, where the core areas have the legal status of a National Park or a sanctuary, whereas the buffer areas are managed as multiple use areas. Project Tiger aim[ed] to foster an exclusive tiger agenda in the core areas of tiger reserves, with an inclusive people oriented agenda in the buffer."<sup>94</sup> This strategy contains elements of rewilding theory which has failed to protect the Indian tiger, as illustrated later in this article.

The importance and return of the tiger to India's cultural heritage cannot be overstated. As the Morichjhapni incident in the late 1970's proves:

"In the late 1970s hundreds of Bengali refugees (who came from present-day Bangladesh) were given shelter in Morichjhanpi, a forested island in the Sundarbans. But when tigers started attacking and killing people, the government authorities later forcibly evicted the refugees, saying that they had violated forest laws that actually enshrined greater protection for Royal Bengal tigers. The Morichjhanpi experience aroused refugees' resentment at the ill-treatment they received from the government whom they perceived as according far more resources to the tiger."<sup>95</sup>

The current authority for Project Tiger is the NTCA.<sup>96</sup> The NTCA supervises, coordinates, and performs other functions as outlined in the WPA. In addition it promotes the survival of

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<sup>91</sup> Indian Shikar Outfitters ... vs Union of India and Ors. ILR 1971 Delhi 178, para 5, (February 9, 1971).

<sup>92</sup> *Id.* at para 23.

<sup>93</sup> Sudha Vasan, *Consuming the Tiger Experiencing Neoliberal Nature*, CONSERVATION AND SOCIETY, (2018), <https://www.jstor.org/stable/26500661>.

<sup>94</sup> *Id.*

<sup>95</sup> Mandala, *supra* note 45, at 20-21.

<sup>96</sup> National Tiger Conservation Authority/ Project Tiger, *Background*, [https://projecttiger.nic.in/content/107\\_1\\_Background.aspx](https://projecttiger.nic.in/content/107_1_Background.aspx) (accessed on November 20, 2019).

the Indian tiger and (supposedly) works with the tribal populations. As of 2019, the NTCA reported that there are 50 tiger reserves. In addition, the numbers of tigers in each area shows a steady increase in almost every area where a reserve exists.<sup>97</sup> Since 1973, India has been congratulated for its steady success in increasing the tiger population. While some of its success, such as that in Sariska Tiger Reserve,<sup>98</sup> has appeared to be short-lived, Prime Minister Modi has stated that India is “one of the biggest and most secure habitats of the tiger.”<sup>99</sup> As of 2019, India reported 2,967 wild tigers and estimated “over 75 percent of the world’s tiger population now resides in the country.”<sup>100</sup> There are some that question whether the data representing the increase is accurate.<sup>101</sup>

The single largest threat to the Indian tiger appears to be poaching. Recently, India’s Wildlife Crime Control Bureau reported that between 2008 and 2018, 384 tigers were killed by poachers and at the same time 961 people were arrested for poaching.<sup>102</sup> Worldwide, the tiger population has been dwindling due to wildlife crime. Tiger parts, including tiger blood,<sup>103</sup> have become a valuable commodity in the illegal market. Tiger parts are claimed to have medicinal value: “whiskers quell toothaches, meat cures malaria, fat stops vomiting, blood strengthens willpower, noses sooth children’s epilepsy, teeth purge sores from man’s penis, eyeballs and bile prevent convulsions, and penises banish impotence and promote longevity.”<sup>104</sup> India has attempted to stem the tide of tiger poaching, but more needs to be done.<sup>105</sup>

The WPA lays out what constitutes crimes against wildlife. One of the biggest goals of the WPA is to stop poaching.<sup>106</sup> However, there appear to be issues with the WPA that need to be addressed. In a recent study, researchers concluded that wildlife laws are not uniformly implemented throughout India.<sup>107</sup> Researchers also found prosecutorial and judicial leniency

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<sup>97</sup> National Tiger Conservation Authority/ Project Tiger, *Details of Tiger estimation for the year 2006, 2010, 2014, and 2018*, [https://projecttiger.nic.in/content/39\\_1\\_Reports.aspx](https://projecttiger.nic.in/content/39_1_Reports.aspx) (accessed on November 20, 2019).

<sup>98</sup> Rajat Ghai, *Sariska’s tiger reserve status needs reconsideration*, Down to Earth, (February 21, 2019), <https://www.downtoearth.org.in/news/wildlife-biodiversity/-sariska-s-tiger-reserve-status-needs-reconsideration--63303>.

<sup>99</sup> Niha Masih, *India’s tiger population doubles in a dozen years, despite growing human-animal conflict*, Washington Post, (July 29, 2019), [https://www.washingtonpost.com/world/indias-tiger-population-doubles-in-a-dozen-years-despite-growing-human-animal-conflict/2019/07/29/e64156be-b1d0-11e9-acc8-1d847bacca73\\_story.html](https://www.washingtonpost.com/world/indias-tiger-population-doubles-in-a-dozen-years-despite-growing-human-animal-conflict/2019/07/29/e64156be-b1d0-11e9-acc8-1d847bacca73_story.html).

<sup>100</sup> *Id.*

<sup>101</sup> See Gayathri Vaidyanathan, *India’s tigers seem to be a massive success story – many scientists aren’t sure*, Nature, (October 30, 2019), <https://www.nature.com/articles/d41586-019-03267-z>.

<sup>102</sup> The Economic Times, *385 tigers killed in India in last 10 years reveals RTI*, (December 7, 2018), <https://economictimes.indiatimes.com/news/politics-and-nation/384-tigers-killed-in-india-in-last-10-years-reveals-rti/articleshow/66984490.cms?from=mdr>.

<sup>103</sup> Tiger bone wine is considered a “cure all” tonic. Rachel Love Nuwer, POACHED 296 (2018).

<sup>104</sup> *Id.* at 295.

<sup>105</sup> “India – which currently holds about half of the world’s remaining tigers – began intercepting hundreds of pounds of tiger bones being smuggled into China” and other countries within Asia “raked in tiger bones by the tons in the 1990s.” *Id.* at 297.

<sup>106</sup> Kiran Rahalkar, *Wildlife Crime: Prosecution Hurdles*, (July 17, 2019), <https://www.wildlifeconservationtrust.org/wildlife-crime-prosecution-hurdles/>.

<sup>107</sup> Dr. Madhuker, et. al. *FINAL REPORT: Empirical Study on Implementation of Wildlife Protection Laws in India*, 185 – 187, [https://www.symlaw.edu.in/files/Empirical-Study-on-Implementation-of-Wildlife-Protection-Laws-FinalReport\\_Oct16.pdf](https://www.symlaw.edu.in/files/Empirical-Study-on-Implementation-of-Wildlife-Protection-Laws-FinalReport_Oct16.pdf) (accessed January 4, 2020).

towards those who commit wildlife crimes.<sup>108</sup> The lack of uniformity among states and prosecutorial challenges are not unique to India. The international community must also begin to consider the framework in which green crimes or environmental crimes can be prosecuted, given their transnational nature.<sup>109</sup> The framework can incorporate existing conventions such as the United Nations Convention against Corruption and the United Nations Convention against Transnational Organized Crime.

The Supreme Court of India emphasized the protection of wildlife within the Indian Constitution in the *T.N. Godavarman Thirumulpad vs Union of India & Ors* judgment:

“Natural resources are the assets of entire nation. It is the obligation of all concerned including Union Government and State Governments to conserve and not waste these resources. Article 48A of the Constitution of India requires the State shall endeavour to protect and improve the environment and to safeguard the forest and wild life of the country. Under Article 51A, it is the duty of every citizen to protect and improve the natural environment including forest, lakes, rivers and wild-life and to have compassion for living creatures.”<sup>110</sup>

Some of the WPA objectives include prohibiting hunting without a license, establishing protected areas, and protecting and managing wildlife habitats.<sup>111</sup> The WPA has gone through many cosmetic changes as it was amended in 1982, 1986, 1991, 1993, 2002, and 2006. There is an ongoing effort to revamp the WPA in order to bring it in line with other international treaties and increase further penalties in response to poaching. However, it is clear that the WPA needs to be brought in line with the NFP and FRA. These laws need to incorporate the role of tribal communities in wildlife protection and forestry management. In addition these laws need to also protect the cultural heritage of Adivasi people given their deep connection to the forests.

Despite these challenges, tiger protection continues to be elevated on a national level and the tiger remains a cultural heritage jewel of India.<sup>112</sup> As the final part of this article illustrates, even with all the laws and protections for tigers in India, without any sincere and monumental change to Adivasi rights the outlook for the tiger looks bleak.

### III. The Road to Holistic Solutions

Given the tiger’s importance in India, it is certain that the government and related authorities will continue their vigilance in protecting this species. However, the

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<sup>108</sup> *Id.*

<sup>109</sup> See Alessandra Mistura, *Is there Space for Environmental Crimes Under International Criminal Law? The Impact of the Office of the Prosecutor Policy Paper on Case Selection and Prioritization on the Current Legal Framework*, 43 Colum. J. Envtl L. 181 (2018).

<sup>110</sup> *T.N. Godavarman Thirumulpad vs Union Of India & Ors*, Writ Petition (civil) 202 of 1995, (September 26, 2005).

<sup>111</sup> Arup Poddar, *Effectiveness of Forest and Wildlife Laws in India*, IMPERIAL JOURNAL OF INTERDISCIPLINARY RESEARCH, 383 (2017), <http://www.onlinejournal.in/IJIRV314/058.pdf>

<sup>112</sup> Vasan, *supra* note 93.

government's plans have been fragmented and shortsighted. These plans lack an appropriate and unified framework. One scholar echoes these sentiments:

“The Indian society faces a dilemma in finding the appropriate balance between the divergent uses of its natural resources. The issue of tiger conservation is particularly intense ... how India meets the challenges of conserving its tigers will have valuable lessons for many other sustainable development challenges in various contexts.”<sup>113</sup>

What approach could potentially resolve the dilemmas that have been posed in the status quo? Not too long ago India attempted one contemporary response – rewilding.

*a. Rewilding*

Rewilding is largely defined as restoring the wilderness based on the regulatory roles of large predators. Three features, simplified as the three C's, characterize rewilding: carnivores, core, and connectivity.<sup>114</sup> This particular theory is premised on the idea that ecosystems are maintained by top predators which in turn require “large cores of protected landscapes for secure foraging, seasonal movement, and other needs; they justify bigness.”<sup>115</sup>

The first element, “carnivore”, emphasizes the necessity of protecting apex predators as they are “generally considered bellwethers of the overall health of the environment...”<sup>116</sup> The second element, “core”, is loosely defined as “continental in scale, preserving entire ecosystems” but they are to be “expanded and strictly protected, and their natural fire and flood regimes restored where possible.”<sup>117</sup> Under rewilding theory, India has 50 tiger reserves all of which would be considered core areas. However, the problem is that these core areas do not allow the tigers to disperse and there is a mix of human activity that takes place within the core areas. The final element, “connectivity,” bridges core areas to prevent and stop fragmentation. Fragmentation is best viewed as a patch of land, usually identified for a specific purpose. British forest management policies and now India's policies on tiger reserve management have continued fragmentation. As researchers stated:

“Being a solitary and long-ranging animal, factors impeding tiger movement will have long-term consequences on reproductive fitness and population survival. Tiger movement is highly affected by landscape features, and dispersing tigers likely move through rough terrain along forested ridges, avoiding non-forest areas with high human footprint, while tiger populations are largest in locations centered on large protected areas with extensive forest cover within and surrounding them. These results have

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<sup>113</sup> Rastogi, *supra* note 81, at 337.

<sup>114</sup> Michael Soule and Reed Noss, *Rewilding and Biodiversity: Complementary Goals for Continental Conservation*, WILD EARTH, 22, (Fall 1998), <https://rewilding.org/wp-content/uploads/2012/04/RewildingBiod.pdf>.

<sup>115</sup> *Id.*

<sup>116</sup> Huckelbridge, *supra* note 3, at 5.

<sup>117</sup> Caroline Fraser, *REWILDING THE WORLD* 9 (2009).

important implications for tiger conservation and management and can be used to develop empirically supported prioritization of core areas and corridors.”<sup>118</sup>

Tiger movement and connectivity between core areas allows for the “exchange of gene-flow” which is also “critical for increasing ecosystem resilience, their ability to mitigate environmental risks, e.g. by supporting ecosystem-based adaptation to climate change.”<sup>119</sup> Therefore creating corridors between the core areas for the tigers would allow for Indian tigers to pass through to other areas in India, creating an opportunity for it to increase in its kin and ending fragmentation. Finally, the connectivity of core areas using corridors may in fact cause a complete decline in the number of people-tiger conflicts since the tiger would have more access to diverse resources to survive.

Supposedly a rewilding model was applied in the Sariska Tiger Reserve and failed.<sup>120</sup> Sariska had numerous problems. First, appropriate studies were not conducted concerning tiger mobility and how much core area the tigers would need.<sup>121</sup> Second, the core area itself was not isolated from human interaction. Between 2003 and 2005, India calculated an increase in the number of pilgrims for religious festivals and cars that entered the reserve.<sup>122</sup> Additionally, eco-tourism in the reserves creates more human traffic. Third, the area itself was unable to repopulate, which caused it to be devoid of other animals (herbivores) the tiger would have depended on.

Other notable problems in Sariska, according to the Tiger Task Force (specifically set up as a result of the loss of tigers in Sariska), included poachers who allegedly worked with local villagers to kill the tigers for its parts.<sup>123</sup> In fact, the Tiger Task Force reported that “there is a deep hatred for the tiger among local people” due to the relocation plans that were announced. The pastoralists in the area “blame the sanctuary for everything – their lack of livelihood, inadequate development infrastructure in their villages, and most of all persistent harassment.”<sup>124</sup> Ironically, between 2003 and 2005 the Sariska Reserve earned estimated 28-53 lakh rupees per year which was “collected by park authorities and deposited with the state government.”<sup>125</sup> There is no indication that any of these profits were shared with local communities. Another problem that was identified by the Tiger Task Force was the inaccurate reporting of the number of tigers that may have actually been in the reserve.<sup>126</sup>

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<sup>118</sup> P. Anuradha Reddy, et al., *Tiger abundance and gene flow in Central India are driven by disparate combinations of topography and land cover*, DIVERSITY AND DISTRIBUTIONS, (July & August 2017), <https://www.jstor.org/stable/44897020>.

<sup>119</sup> Madhu Verma, et al, *Making the hidden visible: Economic valuation of tiger reserves in India*, Ecosystem Services, 243 (2017), <https://doi.org/10.1016/j.ecoser.2017.05.006>.

<sup>120</sup> Rajat Ghai, *Sariska's tiger reserve status needs reconsideration*, Down to Earth, (February 21, 2019), <https://www.downtoearth.org.in/news/wildlife-biodiversity/-sariska-s-tiger-reserve-status-needs-reconsideration--63303>.

<sup>121</sup> *Id.*

<sup>122</sup> Government of India Tiger Task Force, *Joining the Dots*, 14 (2005), <https://projecttiger.nic.in/WriteReadData/PublicationFile/Joining%20The%20Dots.pdf>

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* at 15.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 14.

India is rectifying where it went wrong in Sariska. At the end of 2019, the Indian government is considering conservation plans which “include mandatory inclusion of safe passages for tigers in all infrastructure projects.”<sup>127</sup> However, India has shown it can attempt different solutions but not in a holistic manner. As highlighted by the Legal Initiative for Forest and Environment, the impact of development projects are not considered on forests and wildlife, despite the alternatives.<sup>128</sup> Anecdotally, India recently gave permission to Bear Grylls to shoot two episodes for his Discovery Channel show in Bandipur Tiger Reserve in an area which is deemed strictly off limits to people.<sup>129</sup>

Rewilding is not going to work given the current priorities, legal regime, and development plans in India. Others do not like rewilding because of the historical and personal reasons it invokes.<sup>130</sup> A more integrated framework where tribal communities lead the strategy to save the tiger is necessary to reverse extinction trends.<sup>131</sup>

### *b. Integrating Adivasi Rights and Wildlife Protection*

The Soliga are forest dwellers who possess in-depth knowledge regarding the forests and tigers.<sup>132</sup> The Soliga also worship the tiger as a deity.<sup>133</sup> In 1974, the Soliga tribe was evicted from their native lands (BR Hills) in Karnataka state, in an effort by the state to protect wildlife. Their lands were declared a sanctuary. This action was done under the legal umbrella of the WPA. In 2006 under the FRA, forest officials restricted “access and collection of non-timber forest produce.”<sup>134</sup> Then, in 2011, the BR Hills were declared a tiger reserve. The Soliga challenged the decision through litigation. A court ruled in favor

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<sup>127</sup> Mirror Now, *Centre working on conservation plan to map safe corridors for tigers across India*, (December 6, 2019), <https://www.timesnownews.com/mirror-now/in-focus/article/centre-working-on-conservation-plan-to-include-safe-corridors-for-tigers-across-india/523918>.

<sup>128</sup> Mayank Aggarwal, *High rate of green clearances continue, put forests and wildlife at risk*, Mongabay, (December 11, 2019), <https://india.mongabay.com/2019/12/high-rate-of-green-clearances-continue-puts-forests-and-wildlife-at-risk/>.

<sup>129</sup> Rohini Swamy, *Why conservationists are upset with Rajinikanth, Akshay Kumar & Bear Grylls of Man vs. Wild*, The Print, (January 30, 2020), <https://theprint.in/india/why-conservationists-are-upset-with-rajinikanth-akshay-kumar-bear-grylls-of-man-vs-wild/356724/>.

<sup>130</sup> Kulbhushansingh Suryawanshi, *The last tiger of Ajanta*, Mongabay, (April 10, 2020), <https://india.mongabay.com/2020/04/commentary-the-last-tiger-of-ajanta/>.

<sup>131</sup> This article was published during the COVID 19 pandemic. In April 2020, the Indian government focused on how to prevent tigers from getting COVID 19, and many said this focus was misplaced because of other external factors that could jeopardize the tiger’s existence – which can be rectified through a holistic framework. Gloria Dickie, *India sees Coronavirus Threat to Fragile Population: Tigers*, New York Times, (April 24, 2020), <https://www.nytimes.com/2020/04/22/science/india-tigers-coronavirus.html>.

<sup>132</sup> See Aditi Patel, *Meet the Soliga Tribe, India’s Natural Botanists*, Youth Ki Awaaz, (September 6, 2019), <https://www.youthkiawaaz.com/2019/09/meet-the-soliga-tribe-indias-natural-botanists/>. See also Michael Benanav, *Can Tribes and Tigers Coexist in India’s Nature Reserves?*, SIERRA, (June 15, 2017), <https://www.sierraclub.org/sierra/2017-4-july-august/feature/can-tribes-and-tigers-coexist-indias-nature-reserves>.

<sup>133</sup> DTE, *Tiger population doubles after tribals allowed to coexist in tiger reserve*, (December 11, 2015), <https://www.downtoearth.org.in/news/wildlife-biodiversity/tiger-population-doubles-in-reserve-that-allowed-tribals-to-stay-52093>.

<sup>134</sup> Amoolya Rajappa, *How a tribe in Karnataka fought and won a legal battle to stay in a tiger reserve*, Scroll India, (October 5, 2018), <https://scroll.in/article/896580/how-a-tribe-in-karnataka-fought-and-won-a-legal-battle-to-stay-in-a-tiger-reserve>.

of the Soliga, securing their rights to their habitat and non-timber collection. After the 2011 decision, the BR Hills became the first tiger reserve where tribal people could come back home to stay.<sup>135</sup> Since the success of the Soliga litigation, the tiger population in the BR Hills has “increased rapidly.”<sup>136</sup>

The correlation between the presence of Adivasi groups and the increase in tiger populations is more than coincidence. Experts within the UN Office of the High Commissioner for Human Rights noted:

“[y]et again research shows that the presence of indigenous peoples actually improves tiger populations. For generations, India’s tribal peoples have lived in harmony with the country’s wildlife, protecting and managing vital natural resources. It is because of their sustainable stewardship that India still has forests worth conserving. To truly protect wildlife, recognising the rights of forest guardians would be a far more effective strategy than rendering them homeless...”<sup>137</sup>

Indigenous communities within India depend on forest areas where the tigers are present.<sup>138</sup> Therefore, a community-based approach appears to be an appropriate solution. One successful method is the conservancy model, which is used in the country of Namibia. A conservancy is a legal entity which grants ownership and responsibility for allowing limited farming or grazing on lands predominately managed for wildlife. Income from activities occurring in these particular areas are “pooled and the community collectively determines how it should be spent.”<sup>139</sup> The integration of tribal culture and rights in one unified national framework will assist in developing high levels of protection for wildlife – particularly the tiger. Protection for the tiger is not mutually exclusive with protection of tribal life and cultural heritage.

However, consideration also needs to be given to those tribal groups that do not want to stay in tiger reserve areas. In one village, monsoons and the people-tiger conflict led to the “collective decision” of 350 tribal families to ask for compensation to be relocated from a tiger reserve area, despite the fact that the villagers had been there for four generations.<sup>140</sup> Measures for relocation and compensation should follow the guidelines the Delhi High Court reiterated in cases such as *Ajay Maken & Ors. v. Union of India* which are consistent with international covenants.

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<sup>135</sup> DTE, *supra* note 135. See also Malini Shankar, *INDIA: Indigenous Rights Versus Wildlife Rights? – Part 2*, IPS News, (January 14, 2012), <http://www.ipsnews.net/2012/01/india-indigenous-rights-versus-wildlife-rights-ndash-part-2/>

<sup>136</sup> *Id.*

<sup>137</sup> UN Office of the High Commissioner for Human Rights, *India must prevent the eviction of millions of forest dwellers, says UN experts*, (July 4, 2019), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24786>.

<sup>138</sup> Sekhsaria, *supra* note 87. See also Rastogi, *supra* note 81, at 334.

<sup>139</sup> Fraser, *supra* note, at 204.

<sup>140</sup> P. Oppili, *Thengumarahada village ready to relocate*, The Hindu, (September 2, 2014), <https://www.thehindu.com/news/national/tamil-nadu/thengumarahada-village-ready-to-relocate/article6370554.ece>.

Wildlife trafficking also represents a huge challenge in protecting the remaining tiger population in India.<sup>141</sup> Corruption is one of the largest contributors allowing the illegal wildlife trade to succeed.<sup>142</sup> Given the national government's attitude towards the tribal peoples it places the tiger in a vulnerable position because it has fewer protectors. India's tigers are also vulnerable given their geographic location to China. Vanda Felbab Brown in her book *The Extinction Market* states, "China in particular has become like a great vacuum cleaner, sucking natural environments empty of wildlife – not only in China and its neighbors, but also in Africa and elsewhere..."<sup>143</sup> The creation of the "Belt Road Initiative" will undo the work that India has done to protect the tiger as the large infrastructure project could pose "a number of potential environmental impacts and could threaten biodiversity" notably in Southeast Asia.<sup>144</sup> The Belt Road Initiative and other projects will increase the demand for new roads to be built in regions that have unique ecological value. In a study conducted by three universities in North America, researchers found "the high density roads in those forests will jeopardize tiger recovery."<sup>145</sup> Researchers recommend safeguarding species through appropriate zoning, decommissioning of roads in critical areas, and implementing proper national laws.<sup>146</sup>

A community-based approach may also be the solution to stopping wildlife trafficking. The amount of monitoring and protection required for a territory and costs to stop this particular crime are enormous. India is familiar with these kinds of approaches as it has implemented a successful community based program in West Bengal to protect the rhino.<sup>147</sup> A community-based approach to respond to wildlife trafficking is also consistent with several policy developments within the international community. The London Declaration (2014) emphasized the need to work with local communities. The Kasane Statement (2015) emphasized strengthening legislative frameworks to incorporate the rights of local people in combatting the illegal wildlife trade. The Brazzaville Declaration (2015), the Hanoi Statement (2016), and even UN Sustainable Development Goal 15, echo these same sentiments.<sup>148</sup>

In addition to integrating tribal voices into wildlife protection and anti-trafficking initiatives, India must also make an effort to reduce and eliminate the stigma and falsehoods spread regarding forest dwellers. This includes dismantling the laws and attitudes which reinforce

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<sup>141</sup> Robin McKie, *Tigers, elephants and pangolins suffer as global wildlife trafficking soars*, The Guardian, (December 8, 2019), <https://www.theguardian.com/environment/2019/dec/08/wildlife-trafficking-science-technology-come-to-rescue-end-illegal-trade>.

<sup>142</sup> See Tanya Watt and Anh Ngoc Cao, *Corruption and Wildlife Trafficking*, U4 Issue, (May 2015), [https://www.researchgate.net/publication/280831904\\_Corruption\\_and\\_wildlife\\_trafficking](https://www.researchgate.net/publication/280831904_Corruption_and_wildlife_trafficking).

<sup>143</sup> Vanda Felbab-Brown, *THE EXTINCTION MARKET*, 7 (2017).

<sup>144</sup> Angela Tritto, et. al. *China's belt and road: an environmental disaster for Southeast Asia?*, South China Morning Post, (January 5, 2020), <https://www.scmp.com/week-asia/economics/article/3044579/chinas-belt-and-road-environmental-disaster-southeast-asia>.

<sup>145</sup> Neil Carter, *China's Belt and Road Project, along with Asian road boom is a new threat to tigers*, The Print, (May 2, 2020), <https://theprint.in/environment/chinas-belt-and-road-project-along-with-asian-road-boom-is-new-threat-to-tigers/413062/>.

<sup>146</sup> *Id.*

<sup>147</sup> Francesca Booker and Dilys Roe, *First line of defence?*, IIED, 52 (January 2017), <https://pubs.iied.org/pdfs/1759IIED.pdf>.

<sup>148</sup> *Id.* at 8.

past colonial attitudes. The tribes that were declared “criminal” by the British in 1871 and later became “denotified tribes” are a great example of how these vulnerabilities created by colonial legislation are still not rectified and can have adverse consequences to a greater goal. These tribal communities have been driven to a “destitute existence,” which leaves them vulnerable to aiding and abetting organized crime syndicates that make millions off of the trade of tiger parts.<sup>149</sup> Further, as FRA studies have shown, prejudice against Adivasis has denied them appropriate access to justice and participation in the processes assigned to them under law.<sup>150</sup> Eliminating the stigma is consistent with India’s obligations under the Convention on the Elimination of Racial Discrimination and the articles found in UN DRIP.

Finally, Britain’s role in India’s environmental history should not be forgotten or ignored. “In the South Asian context, therefore, environmental history needs to broaden its reach so that it may further advance our understanding of the way in which some social-historical inequalities in this region have been generated.”<sup>151</sup> The United Kingdom should make a strong effort to assist India in bringing back Indian tiger populations. Two ideal measures would be earmarking aid (already provided to India by the United Kingdom) to help end poaching in the region. The United Kingdom can also assist in building appropriate corridors within India for tigers to roam free as they once did for thousands of years.

## Conclusion

Injecting colonial environmental history into the context of wildlife preservation is an important and critical exercise in understanding what has gone wrong for the tigers in India. The British Empire depleted India of a significant amount of its environmental resources, criminalized the lifestyle of tribal peoples, and decimated the tiger population. India, while it has progressed in protecting the world’s largest remaining tiger population, has kept the chains of colonization on tribal people, specifically on those who have a close relationship with the forest areas where tigers reside.

India will need to revisit and change its entire framework of wildlife, land, and tribal policies to appropriately marry them to international human rights principles as codified in Indian law. One critical element to a successful policy will be incorporating the voices of tribal peoples. In addition, re-evaluating the role that Adivasis play in the protection of the environment and wildlife will be critical in addressing the biggest threat that now exists to tigers in India – poaching.

Adivasi people can lead (as they once did) in protecting this important cultural icon and species. They can also be comfortable knowing that they are also protecting their own homes. The Indian tiger is holding on to existence with its dear life. If the international

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<sup>149</sup> Kim Wall, *Hunting the Hunters*, Slate, (June 20, 2014), <https://slate.com/news-and-politics/2014/06/pardhis-help-hunt-indias-tiger-poachers-these-poor-indian-outcasts-may-save-the-countrys-rare-wildlife.html>. See also Aravindha Raj R, *Denotified Tribes and Their Rights*, Counter Currents, (August 2, 2019), <https://countercurrents.org/2019/08/denotified-tribes-and-their-rights>.

<sup>150</sup> Asavari Sharma, *Why India’s Forest Rights Act is discriminatory against non-tribals*, The Wire, (July 2, 2018), [https://www.business-standard.com/article/economy-policy/why-india-s-forest-rights-act-is-discriminatory-against-non-tribals-118070200116\\_1.html](https://www.business-standard.com/article/economy-policy/why-india-s-forest-rights-act-is-discriminatory-against-non-tribals-118070200116_1.html).

<sup>151</sup> Swami, *supra* note 31, at 128.

community, and India in particular, are truly committed to saving the species, it is time to shed old attitudes and usher in fresh attitudes about the heroic role that Adivasis can have in saving the Indian tigers. In the age of extinction, a duty to protect and assist is owed to both Adivasis and tigers.