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# ABOUT CELAR

The fundamental aim of the **Centre for Environmental Law, Advocacy, and Research (CELAR)**, National Law University and Judicial Academy, Assam, is to participate in advocacy and research on public interest environmental concerns. It endeavours to do so by holding workshops and seminars to educate and improve skills, convening conferences to encourage an exchange of ideas, conducting training programmes for capacity building in environmental law issues, undertaking legal research, and publishing newsletters and journals regularly.

The main objectives of CELAR can be elucidated as follows:

- Providing students with hands-on advocacy experience and direct exposure to the issues to inspire and educate them.
- Strengthen access to justice by conducting high-quality multi-disciplinary research on current environmental legal issues.
- Advocate for reforms in environmental law through scientifically sound legislative proposals.
- Organize training programmes for civil servants, law enforcement agencies, non-governmental organisations, and media professionals to improve their legal capacity on environmental laws and policy.

- Publish environmental law publications and bulletins on a regular basis.

Thus, to meet the last objective, CELAR has undertaken the initiative '*Lex Terra*'. Through *Lex Terra*, we aim to give voice to various aspects of the environment in a quarterly publication, creating a community of environmentally conscious individuals from the legal and non-legal professions. Each issue of *Lex Terra* features important environmental news from across the world and from within the nation. This bulletin is meticulously compiled by CELAR members and is dedicated to enviro-legal enthusiasts around the country.

# EDITOR-IN-CHIEF'S NOTE

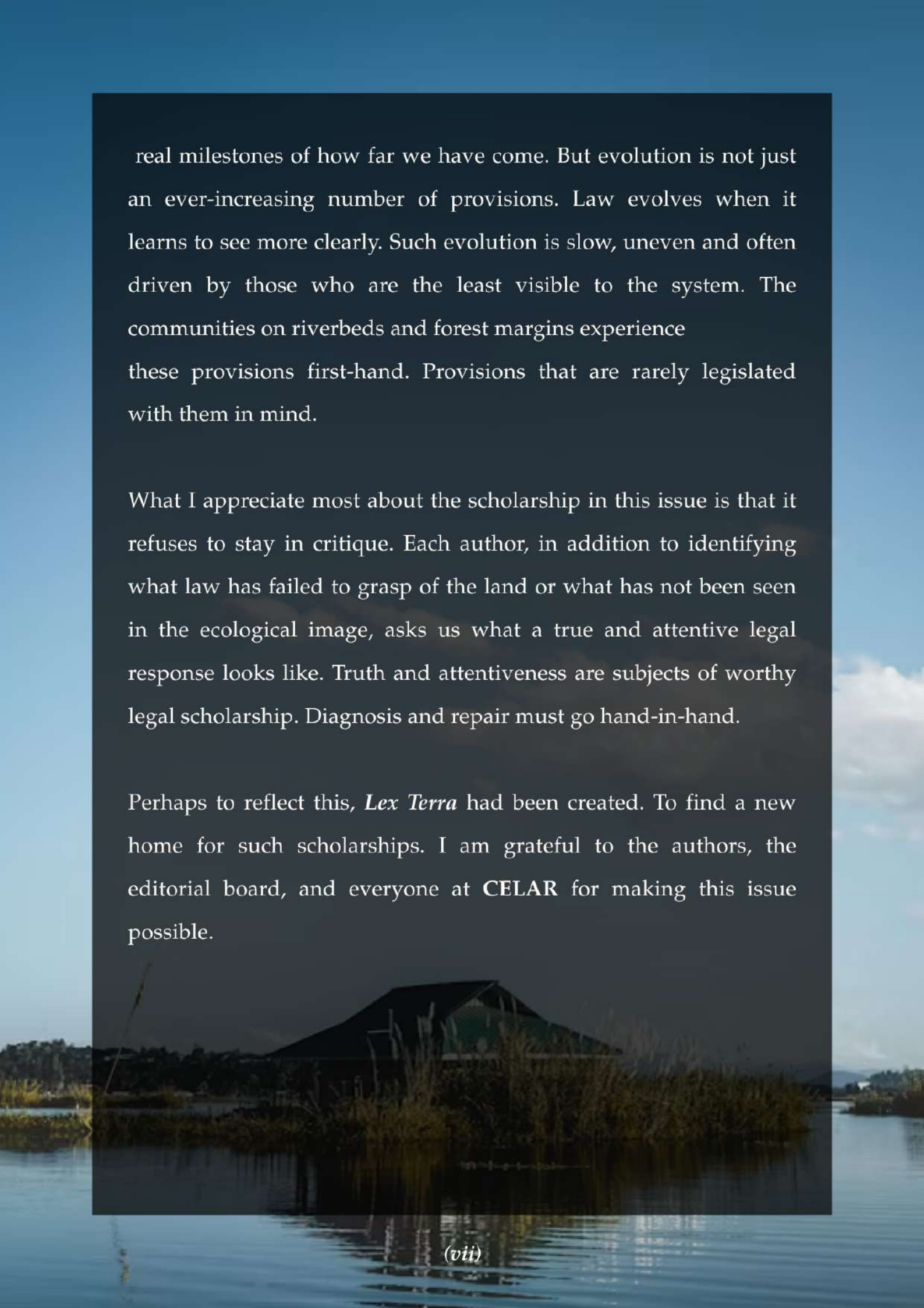
**Dr. Thangzakhup Tombing**

*Assistant Professor of Law, NLUJA, Assam*

Law is an art of attention. It guides the way the state and society look at some things and away from others. Those named, categorized, and recorded get regulated, whereas those that are not are often left vulnerable.

This issue explores the fundamental question of who makes the call on what gets to be seen. A river's sediment dynamics, a near-blind dolphin's migration, the traditional relationship of a tribal community and its forest, or the slow institutional learning of the court on ecological risk creation over ten years. None of these fit neatly into the categories that standard regulatory frameworks were designed to accommodate. And yet they are precisely what is at stake.

The legal regulation of the Indian environment has come a long way in the last four decades. The constitutional idea behind Articles 21, 48A and 51A (g); the course of judicial rulings and the establishment of the National Green Tribunal, the Forest Rights Act and the Wetlands Rules are a few amongst them. These are some of



real milestones of how far we have come. But evolution is not just an ever-increasing number of provisions. Law evolves when it learns to see more clearly. Such evolution is slow, uneven and often driven by those who are the least visible to the system. The communities on riverbeds and forest margins experience these provisions first-hand. Provisions that are rarely legislated with them in mind.

What I appreciate most about the scholarship in this issue is that it refuses to stay in critique. Each author, in addition to identifying what law has failed to grasp of the land or what has not been seen in the ecological image, asks us what a true and attentive legal response looks like. Truth and attentiveness are subjects of worthy legal scholarship. Diagnosis and repair must go hand-in-hand.

Perhaps to reflect this, *Lex Terra* had been created. To find a new home for such scholarships. I am grateful to the authors, the editorial board, and everyone at CELAR for making this issue possible.

# EDITORIAL NOTE

This issue contains four pieces on different subjects, but they keep running into the same dilemma. Rules designed for one situation are being applied to another. The damage caused is not always obvious. Sometimes it is a survey report that does not reflect how a river actually behaves, or an environmental clearance process that cannot answer the questions it should be asking. This issue is as much about those everyday failures as it is about the more dramatic ones.

*Kashvi Shrey* writes about sand mining in the Brahmaputra basin. Sand is legally classified as a minor mineral, meaning it is treated primarily as a resource to be extracted and sold. She argues that this framing does not work for a river like the Brahmaputra. Here, the sandbars are constantly shifting and entire communities live on them. When that sand is auctioned off, the consequences no longer remain technical; they fall on people whose homes and livelihoods depend on the riverbed staying intact. *Siddhi Suman* looks at two things that happened around the same time. The government announced plans to expand river cruise tourism and India released its first dolphin census, confirming the endangered nature of the Gangetic dolphin. Her concern is that the assessments done for the

cruise expansion do not tell us enough about what happens to the dolphins. There is not enough data, the studies are too short and large projects can be broken into smaller pieces to avoid scrutiny entirely.

*Sashmitha S* examines the 2023 amendments to the Forest Conservation Act and what they mean for tribal communities. The changes narrow what counts as a forest. This makes it easier to divert forest land for infrastructure and commercial projects and reduce the role of village assemblies in decisions about that land. She engages with the government's justifications but finds them unconvincing. The communities most affected by these changes are also the ones with the least power to resist them. *Yashasivi Mishra* writes about mining cases in Meghalaya, where courts have been dealing with coal and limestone extraction for over a decade. But in that region, the land is governed largely through customary rather than statutory arrangements. What she finds is not bold rulings but something quieter: committees, monitoring reports, disclosure requirements. In a place this legally complex, she argues, this kind of slow and incremental presence may be the only way courts can be effective.

None of these pieces pretends that things are fine. But none of them gives up either. What they share is an interest in what is actually

happening on the ground. We thank the authors for their work, and the editorial board for putting this issue together.

*Lex Terra Editorial Board*

2025 - 2026

# BEYOND “MINOR MINERAL”: RETHINKING LEGAL CONTROL OF SAND MINING IN THE BRAHMAPUTRA BASIN

– Kashvi Shrey\*

## I. INTRODUCTION

The Brahmaputra is not just another river to be slotted into generic water-resource categories. In-fact, it is a highly dynamic braided Himalayan system with one of the highest sediment loads in the world.<sup>1</sup> Its ever-shifting sandbars and banks shape the lives of millions in Assam and Arunachal Pradesh, especially the char (riverine island) communities whose homes, farms, and grazing lands rise and disappear with the river.

Over the last two decades, this already fragile equilibrium has come under additional strain from the intensive riverbed sand mining. Media and civil-society report from districts such as Kamrup, Barpeta, and Dibrugarh describe that excavators now work day and night along the stretches of the Brahmaputra and its tributaries, this has created deep pits close to embankments, lowered groundwater tables, caused habitat loss for fish and river dolphins, and accelerated bank erosion.<sup>2</sup> In the Kulsi river system, which feeds the ecologically sensitive Chandubi lake, unregulated sand mining has been directly linked to the shrinking of the lake and the degradation of its fishery.<sup>3</sup>

On paper, however, India’s sand-mining regulation appears elaborate. Yet despite dense web of laws and policies, recent NGT proceedings concerning illegal sand mining in the Kaldiya river in Assam reveal systemic enforcement failure and continuing environmental harm.<sup>4</sup> For communities along the Brahmaputra, these failures are experienced as more rapid erosion, collapsing embankments, declining fisheries, and deeper social insecurity.

This article asks whether a framework that treats Brahmaputra sand as a minor mineral commodity, regulated through generic guidelines, can be reconciled with India’s constitutional

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<sup>1</sup> See, e.g., M. Sarker et al., *Sustainable Stabilisation of the Brahmaputra–Jamuna River*, J. INDUS. ECOLOGY (2025).

<sup>2</sup> See *Illegal Sand Mining in Assam*, AJMAL IAS ACAD. (Oct. 16, 2025), <https://ajmaliasacademy.in/illegal-sand-mining-in-assam/>.

<sup>3</sup> See Sahana Ghosh, *Illegal Sand Mining a Threat to the Shrinking Chandubi Lake*, MONGABAY–INDIA (Nov. 3, 2024), <https://india.mongabay.com/2021/08/illegal-sand-mining-a-threat-to-the-shrinking-chandubi-lake/>.

<sup>4</sup> See *Kaldiya River Illegal Sand Mining Case: NGT Slams Assam Govt Over Illegal Sand Mining*, IASGYAN (Dec. 31, 2025), <https://www.iasgyan.in/daily-current-affairs/kaldiya-river-mining-case-ngt-slams-assam-govt-over-illegal-sand>.

environmental obligations and principles of sustainable development in this distinctive basin. It argues that there is a structural misfit between the legal design and the river's reality, and suggests basin-sensitive reforms to align sand-mining regulation with ecological integrity and justice for riparian communities.

## II. THE CURRENT LEGAL AND INSTITUTIONAL FRAMEWORK

### 2.1 Central legal regime

At the core of India's mineral regime lies the Mines and Minerals (Development and Regulation) Act, 1957 (MMDRA), which divides minerals into "major" and "minor" categories, with sand explicitly being classified as a minor mineral, thereby delegating primary control over concessions to the states.<sup>5</sup> The Union retains the power to frame general rules and to intervene where necessary, but day-to-day licensing, royalty collection, and on-ground administration are largely state-driven.

Environmental obligations arise primarily under the Environment (Protection) Act, 1986 (EPA) and the EIA Notification, 2006.<sup>6</sup> The Supreme Court in *Deepak Kumar v. State of Haryana* held that even small-scale mining projects below the conventional five-hectare threshold cannot be exempted from environmental scrutiny, especially in the case of sand and other riverbed materials.<sup>7</sup> The Court directed that environmental-clearance procedures and District Survey Reports (DSRs) should apply to minor mineral mining as well, to ensure that extraction remains within sustainable limits.

Building on this, the Ministry of Environment, Forest and Climate Change (MoEFCC) issued two key guidelines:

1. The Sustainable Sand Mining Management Guidelines, 2016 which seeks to regulate extraction of sand and gravel from riverbeds and other sources by mandating DSRs at district level based on geological and environmental data, requiring mining plans and identification of specific stretches for extraction, advising that in-stream mining be avoided near structures such as bridges and embankments, and recommending limits on depth and area of extraction.<sup>8</sup>

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<sup>5</sup> Mines and Minerals (Development and Regulation) Act, No. 67 of 1957, INDIA CODE § 3(e).

<sup>6</sup> Environment (Protection) Act, No. 29 of 1986, INDIA CODE; Ministry of Env't & Forests, Notification S.O. 1533(E) (Sept. 14, 2006).

<sup>7</sup> *Deepak Kumar v. State of Haryana*, (2012) 4 SCC 629 (India).

<sup>8</sup> Ministry of Env't, Forest & Climate Change, *Sustainable Sand Mining Management Guidelines 2016* (Jan. 2016).

2. The Enforcement & Monitoring Guidelines for Sand Mining, 2020 focus on plugging enforcement gaps by prescribing IT-based tools such as GPS-fitted trucks, bar-coded transit passes and satellite monitoring, standardising DSR preparation, and emphasising inter-agency coordination and model formats for monitoring and reporting.<sup>9</sup>

Together with the EPA and the EIA regime, these instruments are intended to ensure that states regulate sand extraction within ecologically sustainable limits.

### ***2.2 Assam's minor mineral rules and institutions***

Assam has framed detailed rules under the MMDRA. The Assam Minor Mineral Concession Rules, 1994, updated through the Assam Minor Mineral Concession Rules, 2013 and further amendments, regulate the grant of mining leases, settlement of quarry mahals, royalty and conditions for riverbed extraction.<sup>10</sup> These rules empower the Directorate of Geology and Mining and district authorities to identify sand-bearing areas and auction leases. They impose conditions on depth and method of extraction, often limiting digging to shallow depths unless special permission is obtained. They also require compliance with environmental laws and EC conditions as a pre-condition for operations and provide for penalties, seizure of vehicles and cancellation of leases in case of illegal extraction.

In theory, therefore, a multi-layered regulation exists: central environmental law and guidelines, state concession rules, district-level DSRs, and an enforcement network involving mining, revenue, police, forest and pollution-control authorities.

## **III. THE BRAHMAPUTRA: A UNIQUE RIVER AND A DISTINCTIVE RISK PROFILE**

A key weakness in the current regime is that it starts from the classification of sand as a generic minor mineral and then applies standardised guidelines. The Brahmaputra, however, is different from many peninsular rivers for which these models were designed.

Geomorphological studies describe the Brahmaputra-Jamuna system as a multi-channel, braided river with very high sediment load, wide seasonal variability in discharge, and strong lateral channel migration.<sup>11</sup> Sandbars (chars) and mid-channel islands are continuously formed

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<sup>9</sup> Ministry of Env't, Forest & Climate Change, *Enforcement & Monitoring Guidelines for Sand Mining 2020* (Jan. 2020).

<sup>10</sup> Assam Minor Mineral Concession Rules, 1994, Gazette of Assam, as amended by Assam Minor Mineral Concession Rules, 2013.

<sup>11</sup> See, e.g., M. Sarker et al., *Sustainable Stabilisation of the Brahmaputra–Jamuna River*, J. INDUS. ECOLOGY (2025).

and eroded. These features play critical ecological and social roles in Flood moderation and bank stability, Habitat functions, Livelihoods, and settlement.

Hydrological analysis emphasises that removing sand from riverbeds in braided rivers can alter flow patterns and increase shear stress on nearby banks, deepen channels in ways that increase flood velocities, and disrupt sediment budgets crucial for downstream wetlands and floodplains. In a river already facing increased variability due to climate change, such interventions add a layer of man-made instability.

#### **IV. JUDICIAL AND QUASI-JUDICIAL RESPONSES IN ASSAM**

Courts and tribunals have repeatedly recognised the dangers of unregulated sand mining.

At the national level, *Deepak Kumar and Others v. State of Haryana and Others* extended environmental-clearance obligations to small-scale minor mineral leases, including sand, and endorsed the need for scientific assessment and DSRs even for small plots.<sup>12</sup> Various NGT benches across India have ordered closure of illegal sand quarries, imposed compensation based on the polluter-pays principle and directed stricter monitoring.

In Assam, the NGT's Eastern Zone Bench has heard several matters concerning sand mining in tributaries of the Brahmaputra. In the Kaldiya river illegal sand-mining case, the Tribunal considered complaints that large-scale extraction was occurring without valid ECs or in violation of EC conditions, threatening riverbanks and nearby habitations.<sup>13</sup> After examining state affidavits and field reports, the NGT criticised the poor quality of DSRs and also noted inadequate coordination between the Mining Department, Pollution Control Board and local administration, and recorded instances where leases had been settled over stretches that were ecologically unsuitable. It directed the State to halt illegal mining, strengthen monitoring, and strictly implement the 2016 and 2020 MoEFCC guidelines. Despite this the persistence of the problem exists.

#### **V. WHERE DOES THE FRAMEWORK FAIL?**

##### ***5.1 Design misfit: sand as a “minor mineral” commodity***

Treating riverbed sand in the Brahmaputra as a minor mineral has two important consequences.

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<sup>12</sup> *Deepak Kumar v. State of Haryana*, (2012) 4 SCC 629 (India).

<sup>13</sup> See *Kaldiya River Illegal Sand Mining Case: NGT Slams Assam Govt Over Illegal Sand Mining*, IASGYAN (Dec. 31, 2025), <https://www.iasgyan.in/daily-current-affairs/kaldiya-river-mining-case-ngt-slams-assam-govt-over-illegal-sand>.

First, it frames sand primarily as an economic resource to be auctioned for revenue, with environmental constraints added as external conditions. This sits uneasily with the public trust doctrine and the Supreme Court's recognition that natural resources, particularly those integral to life and ecology, are held by the State in trust for the people and future generations. In a basin where sandbars and riverbed morphology directly mediate flood risk, embankment safety and habitat connectivity, this commodity-first framing is particularly problematic.

Secondly, central guidelines remain generic. The 2016 and 2020 sand-mining guidelines, while progressive in many respects, do not differentiate between relatively stable single-channel rivers and highly dynamic braided systems like the Brahmaputra.<sup>14</sup> They call for DSRs and replenishment studies, but do not require these to be integrated into basin-wide sediment-management or flood-risk plans. In practice, many DSRs have been prepared as desk exercises, with limited fieldwork and little engagement with geomorphological science or local knowledge.

The result is that lease decisions and EC conditions often fail to respect basic spatial and geomorphic constraints.

### ***5.2 Enforcement and institutional fragmentation***

Alongside design issues, enforcement has been persistently weak. NGT's observations in the *Kaldiya* case mirror a wider pattern: DSRs are frequently formulaic rather than robust scientific assessments; continuous-monitoring mechanisms like GPS-fitted trucks, online transit-pass systems and drone surveillance are either not implemented or applied unevenly; and multiple agencies share overlapping responsibilities, leading to diffused accountability. Local complaints about illegal mining near embankments or fish habitats often result in short-lived crackdowns, followed by a return to the status quo.

For char dwellers and small fishers, this does not appear as a set of discrete legal failures, but as a deeper justice gap: a sense that the law is mobilised more vigorously to secure revenue than to protect their lands, homes and livelihoods.

## **VI. TOWARDS A BASIN-SENSITIVE LEGAL RESPONSE**

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<sup>14</sup> Ministry of Env't, Forest & Climate Change, *Enforcement & Monitoring Guidelines for Sand Mining 2020* (Jan. 2020).

If the present regime is misaligned with the Brahmaputra's ecological and social realities, what would a more responsive legal framework look like?

### ***6.1 Re-conceptualising riverbed sand in Brahmaputra as a public trust resource***

The starting point must be a shift from viewing Brahmaputra sand merely as a minor mineral to recognising it as a critical ecological and disaster-management resource. This could be done through a specific notification under the EPA, 1986 declaring Brahmaputra riverbed materials in Assam and Arunachal Pradesh as resources subject to special environmental safeguards, grounded in Articles 21 and 48A of the Constitution, and corresponding amendments to the Assam Minor Mineral Concession Rules expressly subordinating lease decisions to basin-specific environmental and flood-risk considerations. Such a move would not outlaw sand mining, but would embed the public trust doctrine and inter-generational equity more concretely into concession and EC decisions.<sup>15</sup>

### ***6.2 Basin-specific regulation and cumulative assessment***

Secondly, MoEFCC, in consultation with the Brahmaputra Board, the Central Water Commission and relevant state agencies, should develop Brahmaputra-specific sand-mining regulations under the EPA. These should mandate reach-wise sediment budgets and replenishment rates based on hydrological and geomorphological studies, require that cumulative impacts at the level of river stretches and tributary systems (for example, the Kulsī–Chandubi system) be assessed before new leases are granted, prohibit mining within scientifically determined buffer zones near embankments, bridges and particularly unstable bends, and set explicit extraction caps linked to flood-risk and erosion-mapping exercises.<sup>16</sup> Environmental clearances in the basin should then be tested against these norms, rather than only against generic EIA criteria.

### ***6.3 Institutional strengthening and community participation***

Finally, regulation must move beyond paper conditions to institutional capacity and community-centred oversight. On the state's side, this could mean constituting a Brahmaputra Sand Mining Cell within Assam's environment or water-resources apparatus, bringing together mining, pollution-control, disaster-management and river-engineering expertise; making

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<sup>15</sup> Ministry of Env't, Forest & Climate Change, *Enforcement & Monitoring Guidelines for Sand Mining 2020* (Jan. 2020).

<sup>16</sup> Ministry of Env't, Forest & Climate Change, *Sustainable Sand Mining Management Guidelines 2016* (Jan. 2016).

IT-based monitoring tools (GPS, online passes, drone surveys) legally mandatory for all leases in specified stretches, with non-compliance triggering automatic suspension; and requiring annual public reports on sand-mining volumes, locations, enforcement actions and environmental indicators.<sup>17</sup>

## **VII. CONCLUSION**

Sand mining in the Brahmaputra basin illustrates a deeper pattern in Indian environmental law: detailed statutory and policy frameworks coexisting with persistent ecological degradation and community insecurity. In Assam and Arunachal Pradesh, this is not because the law is silent. But due to a regime built around the idea of sand as a minor mineral commodity, governed through generic guidelines, has been stretched over a river whose behaviour, ecological functions and social dependence are profoundly different from the norm.

Re-imagining Brahmaputra sand-mining law through the lenses of public trust, sustainable development and basin-specific science is not an academic luxury. It is a practical necessity if embankments are to hold, chars are to remain habitable, and riverine ecosystems are to support life in an era of accelerating climate risk. The reforms suggested here – reclassification within the public-trust framework, basin-specific regulations, institutional strengthening and meaningful community participation – offer concrete steps towards that goal. Whether they are taken will determine not just the regulatory fate of a “minor mineral”, but the futures of those whose lives are braided with the river’s sand.

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<sup>17</sup> See, e.g., M. Sarker et al., *Sustainable Stabilisation of the Brahmaputra–Jamuna River*, J. INDUS. ECOLOGY (2025).

# RIVER CRUISE TOURISM EXPANSION: CHALLENGES FOR GANGETIC DOLPHIN CONSERVATION

– Siddhi Suman\*

## I. INTRODUCTION

Earlier this year, there were two news reports, one talking about the government's plans to expand river cruises in India<sup>1</sup> and the second was the publication of India's first-ever census/estimate of riverine dolphins, which predicted a total of 6,237 dolphins in the Ganga and other rivers.<sup>2</sup> The two headlines create a paradox: on the one hand, there is a new developmental initiative that serves river tourism and inland water infrastructure; on the other hand, there is the riverine ecosystem, a fragile species with a low population, which requires conservation. This brief paper examines the two developments in relation to each other and seeks to establish the optimal balance between them.

Historically, evidence of Indian maritime routes has been found in Lothal, connecting India to internationally connected ports.<sup>3</sup> Writings show riverine routes in the *Ganga* through which trade and commerce were conducted.<sup>4</sup> The British continued to utilise the riverine systems, and trade ports were used to transport tea, timber, opium, and other products through the terrain.<sup>5</sup> Riverine routes existed across empires, and their abundance emphasises their importance for transport, trade, and commerce. There are several reasons for this: the abundance of rivers in India, the monsoons that washed away roads and rail lines, the depths of jungles, and the inaccessibility of the north-east.

## II. THE LEGISLATIVE BACKDROP OF THE RIVERINE CRUISES

Post-independence, riverine routes have remained important for cargo transport, but they have been unorganized; therefore, the first Ganga–Brahmaputra Water Transport Board was

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\* Siddhi Suman is an Assistant Professor of K.L.E Law College.

<sup>1</sup> Press Information Bureau, *Cruise Tourism on National Waterways Gains Momentum with Infrastructure Boost* (July 21, 2025), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2146451&reg=3&lang=2>.

<sup>2</sup> Inland Waterways Authority of India, *Dolphin Study: Final Report* (2018), [https://iwai.nic.in/sites/default/files/DOLPHIN%20Study%20FINAL%20REPORT\\_0.pdf](https://iwai.nic.in/sites/default/files/DOLPHIN%20Study%20FINAL%20REPORT_0.pdf).

<sup>3</sup> S. Dharmadhikary, *National Inland Waterways in India: A Strategic Status Report* (Sruti 2017), [https://www.sruti.org.in/wp-content/uploads/2022/06/Strategic-Status-Report-on-InlandWaterways\\_English.pdf](https://www.sruti.org.in/wp-content/uploads/2022/06/Strategic-Status-Report-on-InlandWaterways_English.pdf).

<sup>4</sup> Ministry of Shipping, *Inland Water Transport Policy 2008–09* (Gov't of India 2009), <https://shipmin.gov.in/sites/default/files/IWT%202008-09.pdf>.

<sup>5</sup> Mark Cartwright, *Trade Goods of the East India Company*, World History Encyclopedia (Aug. 11, 2023), <https://www.worldhistory.org/article/2078/trade-goods-of-the-east-india-company/>.

established as a joint venture between the Central government and state governments of Uttar Pradesh, Bihar and West Bengal<sup>6</sup> subsequently merged into the Inland Water Transport Directorate under the then Ministry of Shipping and Transport<sup>7</sup> which was later brought under the Inland Waterways Authority of India Act, 1985. This Act was developed for the management of inland waterways and waterways.<sup>8</sup> The Act reinforced the declaration of the previous act, within which a portion of the Ganga basin was declared as National Waterway 1.<sup>9</sup> Further, this Act gave the parliament the power to declare any other waterway as a national waterway (similar to a National Highway).<sup>10</sup> Four additional waterways were designated as national waterways.<sup>11</sup> In 2016, a watershed moment occurred when the National Waterway Act, 2016, was passed within the 'Sagarmala' policy, bringing 106 other waterways within the national waterway ambit<sup>12</sup> and dramatically increasing the focus on cargo transportation, passenger movement, and the utilisation of water bodies in India. This Act repealed earlier acts and extends its scope to all national waterways.<sup>13</sup> The Act coordinated the previously fragmented legislation and underscored the government's push for eco-friendly, cost-effective transportation. This was further propelled by the government's Maritime India Vision 2030, which has operationalisation of river cruises as one of the key focus areas.<sup>14</sup> These acts lay the groundwork for the government's 'Cruise Bharat Mission' to boost tourism through river cruises.<sup>15</sup> The framework establishes the Indian government's intent to significantly increase the number of ports and the operation of river cruises in areas designated as national waterways. River transport costs significantly less than road or air cargo which makes it a brilliant strategy. Cruises, both oceanic and riverine, are popular and require navigable waters. The Ganga-Indus-Brahmaputra basin spans the entire north and is therefore extremely relevant; it includes important historical and religious sites as well as tourist attractions (Sunderbans). Therefore,

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<sup>6</sup> Indira Gandhi National Open Univ., *Unit 5: Water Transport* 16–17 (n.d.), <https://egyankosh.ac.in/bitstream/123456789/79882/1/Unit-5.pdf>.

<sup>7</sup> Ministry of Ports, Shipping & Waterways, Gov't of India, *Inland Waterways Authority of India (IWAI)*, Sagar Vidya Kosh, <https://mopsw.nic.in/sagarvidyakosh/index.php?title=IWAI>.

<sup>8</sup>The Inland Waterways Auth. of India Act, 1985, No. 82 of 1985 (India), § 14 <https://www.indiacode.nic.in/bitstream/123456789/1856/3/A1985-82.pdf>.

<sup>9</sup>The National Waterway (Allahabad-Haldia Stretch of the Ganga – Bhagirathi – Hooghly River) Act, 1982, § 2.

<sup>10</sup> Inland Waterways Authority of India Act, 1985, § 2(h).

<sup>11</sup>National Waterways Act, No. 17 of 2016, *Gazette of India, Extra., Mar. 26, 2016*, [https://prsindia.org/files/bills\\_acts/acts\\_parliament/2016/the-national-waterways-act,-2016.pdf](https://prsindia.org/files/bills_acts/acts_parliament/2016/the-national-waterways-act,-2016.pdf).

<sup>12</sup> Sagarmala Programme, Gov't of India, <https://sagarmala.gov.in/> (last visited Jan. 3, 2026).

<sup>13</sup>National Waterways Act, 2016, No. 17 of 2016 (India), §5, <https://www.indiacode.nic.in/bitstream/123456789/2159/1/A2016-17.pdf>.

<sup>14</sup>Ministry of Ports, Shipping & Waterways, Gov't of India, *Maritime India Vision 2030* (2021), <https://sagarmala.gov.in/sites/default/files/MIV%202030%20Report.pdf>.

<sup>15</sup> Press Information Bureau, Gov't of India, *Cruise Tourism in India: A Voyage of New Possibilities* (Apr. 21, 2025), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2123171&reg=3&lang=2>.

the above legislative frameworks governing cruises must be read with a view to conserving the ecology of these rivers, including protecting wildlife.

### III. GANGETIC DOLPHIN CONSERVATION

The northern plains of India are a gift of the majestic *Ganga, Indus, and Brahmaputra* rivers, contributing to agriculture, tourism, and trade. These rivers are home to various species of animals, including soft-shell turtles and the Indian Gharial, and, most importantly for this paper, the Gangetic dolphin (the national aquatic animal), a near-blind, slow-reproducing species threatened by accelerated infrastructure development, an inevitable consequence of the riverine cruise plan. These animals were counted earlier this year at 6,237, placing them in the endangered category.<sup>16</sup> Gangetic dolphins are found in parts of the Ganga and Brahmaputra rivers, and the same species is found in the Indus River (Indus dolphin). These dolphins have one sanctuary in Bihar and another proposed sanctuary in Uttar Pradesh, but are also found in other stretches of the river system.<sup>17</sup> The core issue is that dolphins are endangered, as outlined in the Wildlife Protection Act of 1972,<sup>18</sup> and the development of these riverine cruises could significantly increase the threat to them. The threat to dolphins from accidental and intentional killing (using their oil/blubber as a lure for other fish) is already an issue and includes effluent discharge in rivers and dam and barrage construction, which also affects the migratory patterns of these animals.<sup>19</sup>

### IV. THE ISSUES

Regular river cruising will increase noise pollution, detrimental to dolphins.<sup>20</sup> Riverine cruises depend on navigable waters, and IWAI has the power to maintain them.<sup>21</sup> An important part of this maintenance is dredging, essential for navigation, but also destroying the habitats of these dolphins. The expansion of cruising will necessitate the construction of new ports, docks, traffic regulators, refueling spots, tourist rest stops, and other amenities, which will require significant

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<sup>16</sup> Devina Aggarwal & Venkatesh Dutta, *Impact of Construction of Waterways on the Gangetic Dolphins: An Overview*, 5 J. Rsch. Env't & Earth Sci. 45 (2019), <https://www.questjournals.org/jrees/papers/vol5-issue1/G05014555.pdf>.

<sup>17</sup> *Ibid.*

<sup>18</sup> Wildlife Protection Act, 1972, § 51.

<sup>19</sup> R.K. Sinha & K. Kannan, *Ganges River Dolphin: An Overview of Biology, Ecology, and Conservation Status in India*, 43 *Ambio* 1029 (2014). <https://doi.org/10.1007/s13280-014-0534-7>.

<sup>20</sup> World Bank, *Environmental Impact Assessment: Annexure 6.2–Dolphin Conservation Plan* (2019), <https://documents1.worldbank.org/curated/en/620961558935588552/pdf/Environmental-Impact-Assessment-Annexure-6-2-Dolphin-Conservation-Plan.pdf> (last visited Jan. 3, 2026).

<sup>21</sup> Manish Kumar et al., *Impacts of Inland Waterways on Riverine Ecology*, 5 *Quest J. Res. Evtl. & Earth Sci.* 45 (2019), <https://www.questjournals.org/jrees/papers/vol5-issue1/G05014555.pdf>.

changes to the riverbanks and surrounding areas, potentially affecting their habitats. The issue here is striking a balance between conserving these animals and developing river routes in India; this delicate balance hinges on environmental clearances. Environmental Clearances are required for infrastructure projects in this country, *vide* the 2006 notification.<sup>22</sup> The notification does not subject inland river projects to the category of projects requiring environmental clearance. Furthermore, a significant portion of the work is carried out through routine management rather than new construction, which requires no clearance. The EIA report on the development of NW 1 points out that the project could have an impact on dolphins, and states that there will be vessel movement through the protected areas, including the Vikramshila sanctuary, but the report also says that mitigation measures will also be taken, such as limited dredging and reduction in sound pollution.<sup>23</sup> The report can at best be described as an optimistic conjecture; the dredging and its impact on wildlife habitats depend on factors such as frequency, location, and others, and even gradual dredging will affect habitats. There is no publicly available long-term data to support the claim; further studies of animal migratory patterns are needed, and the study's short-term span is likely to have missed annual/long-term effects. Secondly, it is a consolidated report, meaning that any additional work may be carried out in the future, including repair or additional construction, which could have different effects and have not been considered in the report. There are other independent reports that suggest the effects of dredging and other maintenance work on dolphins in the Ganga-Brahmaputra River systems.<sup>24</sup> There is also the issue of circumventing the requirement for environmental clearance by breaking a larger construction project into smaller portions. Human activity pollutes the surrounding areas, which in turn affects animals. Cruises cause vehicle-animal collisions, endangering animals' lives. Several correlated issues, such as climate change, affect migratory patterns and disrupt their habitats. These habitats are undergoing changes and are expected to continue changing over the next few years due to increasing temperatures, altered

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<sup>22</sup> Ministry of Env't & Forests, *S.O. 1533(E): Notification on Environmental Impact Assessment*, Gazette of India (Extra.), pt. II, sec. 3(ii) (Sept. 14, 2006), [https://environmentclearance.nic.in/writereaddata/EIA\\_notifications/2006\\_09\\_14\\_EIA.pdf](https://environmentclearance.nic.in/writereaddata/EIA_notifications/2006_09_14_EIA.pdf) <https://perma.cc/XXXX-XXXX>.

<sup>23</sup> Inland Waterways Auth. of India, *Environmental Impact Assessment Reports for Capacity Augmentation of National Waterway-1 (Jal Marg Vikas Project): Volume I—Executive Summary* (May 2016) (rev. Sept. 2016; copy ed. Nov. 2016), <https://iwai.nic.in/sites/default/files/9650067112NW1%20EA%20Final%20Volume%201%20-%20Ex%20Summary%20ConEIA%20%20r02%20Sept%20Updated%20Nov%202016.pdf> <https://perma.cc/XX-XXXX>.

<sup>24</sup> Susanne Schulze et al., *Conservation Action Plan for the Ganges River Dolphin* (2010), [https://iucn-csg.org/wp-content/uploads/2010/03/DolphinCAP\\_27092010\\_editSS1.pdf](https://iucn-csg.org/wp-content/uploads/2010/03/DolphinCAP_27092010_editSS1.pdf).

river flow patterns, lower water levels, and food-foraging issues. Essentially, animals are already threatened by climate change, cruises add to it.

## **V. SUGGESTIONS**

These issues highlight the need for extensive studies on the impact of increased riverine cruises on dolphins. Some of the damage is inevitable, and only limited steps can be taken in advance, such as creating more dolphin sanctuaries, limiting cruises in those areas, and earmarking research centres for Gangetic dolphins.<sup>25</sup> Extended studies need to be commissioned for the protection of dolphins, and their patterns of reproduction, factors affecting them and their reproduction, migration patterns, by both government and independent agencies, recruiting experts in the field, conservationists, and ecologists to provide more policy guidelines both at theoretical and practical level, which would bring in about more sustainable growth as is the aim of the government.

## **VI. CONCLUSION**

There are several issues in the development of riverine cruises, including the correlation with dolphins' habitats, fragmented legislative frameworks, incomplete EIA, and limited public information, which might prove detrimental to India's national aquatic animal. At this stage, the threat remains manageable and minimal; timely intervention from both the scientific and legal communities may prevent it. Location-specific, chronic impacts must be studied, and the reports must be implemented in an ongoing effort to prevent detrimental effects on the critical habitats of these animals. The government must move from binary choices towards systems for cooperative justice.

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<sup>25</sup> Supriya Sharma, *After 8 Years and Rs 4,633 Crore, the Ganga Waterway Project's Environment Impact Is Still Unknown*, Scroll.in (Apr. 24, 2022), <https://scroll.in/article/1022589/after-8-years-and-rs-4633-crore-the-ganga-waterway-projects-environment-impact-is-still-unknown>.

# THE IMPACT OF THE FOREST CONSERVATION (AMENDMENT) ACT, 2023 ON TRIBAL RIGHTS

– Sashmitha S\*

## ABSTRACT

*The Forest Conservation (Amendment) Act, 2023 marks a significant transformation in India's environmental governance regime, particularly with respect to forest land regulation and approval processes for diversion. While the amendment has been justified on grounds of administrative efficiency, national security, and developmental necessity, it has generated widespread concern regarding its implications for tribal communities. This article critically examines the impact of the amendment on tribal rights within the broader constitutional and statutory framework governing forest-dependent populations, notably the Forest Rights Act, 2006. By narrowing the definition of "forest," expanding exemptions for commercial and infrastructural projects, and centralizing decision-making authority, the amendment risks weakening long-standing safeguards designed to protect tribal access, participation, and cultural relations with forests. The analysis highlights how these shifts may lead to dispossession, reduced Gram Sabha control, and increased vulnerability in Fifth and Sixth Schedule areas. The article concludes by underscoring the need for restoring participatory governance, strengthening socio-legal protections, and ensuring that environmental reforms do not further entrench historical injustices experienced by forest-dwelling tribal communities.*

## I. INTRODUCTION

The Forest Conservation (Amendment) Act, 2023 represents a significant shift in India's regulatory framework governing forest lands. While framed in the name of streamlining forest clearances and enabling economic activities, the amendment has raised serious concerns about its effects on tribal communities who historically depend on forest ecosystems for their livelihoods, cultural identity, and customary governance. This article critically examines how the 2023 amendment impacts tribal rights, particularly in light of established protections under the Forest Rights Act, 2006 (FRA) and the role of Gram Sabhas in decision-making.

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## II. LEGAL & POLICY BACKGROUND

### *2.1 The Original Forest Conservation Act, 1980*

The Forest Conservation Act (FCA), 1980 was introduced to restrict the de-reservation of forests or their conversion to non-forest uses without prior approval from the central government. It was a response to rampant forest degradation, deforestation, and unregulated diversion of forest lands. Under the FCA, any project seeking to divert forest land for non-forest use had to go through a strict clearance process involving central oversight.

### *2.2 The Forest Rights Act, 2006*

The **FRA, 2006** is pivotal for tribal rights. It legally recognizes:

- 1. Individual rights:** forest dwellers' rights to land that they have been cultivating.
- 2. Community forest rights (CFRs):** rights of communities to manage, use, and protect forests collectively.
- 3. Gram Sabha's role:** Crucially, before any forest land is diverted for non-forest use, consent of the Gram Sabha (village assembly) is required. The FRA was enacted precisely to correct historical injustices faced by Scheduled Tribes (STs) and other Traditional Forest Dwellers (OTFDs).

### *2.3 Key Changes Introduced in the 2023 Amendment*

The 2023 Amendment to the FCA introduces a few major changes, which include (but are not limited to):

- 1. Redefinition of “forest”:** The amendment narrows the definition of forests, excluding areas not classified as “recorded forest area” (RFA) on or after a certain date.
- 2. Exemptions for certain projects:** Activities related to national security, “linear infrastructure,” eco-tourism (e.g., zoos or safaris), and public utilities are exempted from the process of forest clearance.
- 3. Centralization of power:** More authority is concentrated in the central government to grant clearances, reducing the need for local-level consent in some cases.
- 4. Removal of Gram Sabha consent requirement for certain areas:** If land does not fall within the newly defined “forest” category, the requirement of obtaining Gram Sabha consent for diverting that land is effectively eliminated.

**5. Financial and land-use flexibility:** The amendment possibly allows more commercial exploitation, including eco-tourism, facilitating private companies' access to forest land.

### III. IMPACT ON TRIBAL RIGHTS

#### *3.1 Erosion of Gram Sabha Authority and Consent Mechanism*

One of the most alarming impacts of the amendment is the weakening of Gram Sabha authority. Under the FRA, Gram Sabhas are central to the decision-making process, particularly for granting consent for forest land diversion. The 2023 amendment, by redefining what counts as “forest,” effectively places many tribal lands outside the ambit of FCA protections, thereby negating the need for Gram Sabha consent.<sup>1</sup>

This undermines a foundational tribal right: participation in land-use decisions. Without the requirement for prior Gram Sabha approval, tribal communities risk being sidelined in projects that affect their ancestral lands.

#### *3.2 Increased Risk of Alienation and Displacement*

The amendment lowers the barriers for diversion of forest lands to non-forest uses, particularly for “development” projects like tourism, defense infrastructure, and public utilities.

For tribal communities, this poses serious risks:

- 1. Land alienation:** Forest lands could be transferred to private companies for eco-tourism or defense without robust protections, potentially leading to dispossession.
- 2. Displacement:** With reduced consultation, forest-dependent tribes could be relocated or lose access to lands that they have traditionally inhabited and used.<sup>2</sup>
- 3. Livelihood threats:** Diversion of forest land may disrupt traditional livelihoods such as gathering minor forest produce, grazing, and small-scale shifting cultivation.

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<sup>1</sup> Jayashree Nandi, *New Amendment Bill Will Endanger India's Most Ecologically Rich Forests: Experts to JPC*, Hindustan Times (May 24, 2023), <https://www.hindustantimes.com/india-news/new-delhi-forest-conservation-amendment-bill-2023-may-damage-ecologically-important-forests-exclude-unclassified-forests-risking-biodiversity-forest-dependent-communities-101684866152947.html>

<sup>2</sup> CJP Legal Team, *Adivasi Land Rights Erosion: The Effects of the 2023 Forest Conservation Amendment Act*, Sabrang India (Feb. 11, 2025), <https://sabrangindia.in/ativasi-land-rights-erosion-the-effects-of-the-2023-forest-conservation-amendment-act/>

**4. Cultural erosion:** Forests are not just economic assets for tribal communities they are deeply tied to their cultural and spiritual life. The commodification of these forests (for tourism, for example) risks diluting or destroying that relations.<sup>3</sup>

### ***3.3 Loss of Legal Safeguards & Institutional Shift***

The amendment's redefinition of "forest" excludes many lands from stringent FCA regulation. Areas not recorded as forests before a certain historical date are no longer automatically protected under the FCA.<sup>4</sup>

As a result:

- These lands could be diverted without going through the rigorous environmental impact assessments and clearance procedures previously mandated under FCA.
- This weakens the legal safeguard layer that protected tribal lands, thereby making them vulnerable to rapid development, exploitation, and privatization.
- The shift emboldens centralized decision-making at the cost of local (tribal) participation and oversight.

### ***3.4 Exemptions Favoring Commercial Interests***

By explicitly allowing exemptions for eco-tourism projects like safaris or zoos, the amendment opens up forest lands to private commercial exploitation.<sup>5</sup>

Historically, tribal communities have sustainable, symbiotic relationships with forests; commercialization threatens this balance.

The law could facilitate **land privatization**, as private players may gain access to forest lands that were once legally protected.

Such allocation could lead to **inequitable benefits**, where private corporations profit significantly while tribal communities bear the costs loss of land, access, and culture.

### ***3.5 Border Security & Infrastructure Projects A Special Concern***

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<sup>3</sup> *Forest (Conservation) Amendment Act, 2023: Benefits & Challenges*, IAS Express (Nov. 20, 2023), <https://www.iasexpress.net/forest-conservation-amendment-act-2023/>.

<sup>4</sup> Zaina Azhar Sayeda, *Amendment to Forest Conservation Act Leaves 28% of India's Forest Cover Vulnerable*, Scroll.in (Aug. 9, 2023), <https://scroll.in/article/1054010/amendment-to-forest-conservation-act-leaves-28-of-indias-forest-cover-vulnerable>

<sup>5</sup> *Key Issues with the Amendment*, DrishtiIAS (Dec. 9, 2024), <https://www.drishtiiias.com/loksabha-rajyasabha-discussions/in-depth-major-constitutional-amendments>

The amendment exempts certain projects, especially those related to **national security and border infrastructure**, from forest diversion scrutiny.

- Many tribal areas lie in **border regions**. This exemption can undermine tribal land rights by enabling the government to divert forest land for defense projects without thorough local consultation.
- This heightens the risk of **coercive land acquisition** and may bypass meaningful engagement with local tribal gram sabhas.
- The historical marginalization of tribal voices in border areas might worsen, with development projects justified on “national security” grounds.

### ***3.6 Threat to Constitutional Protections in Schedule V and VI Areas***

For tribes in **Fifth Schedule** (tribal areas in states like Madhya Pradesh, Odisha) and **Sixth Schedule** (autonomous tribal regions in the Northeast) areas, constitutional protections were designed to prevent alienation of tribal lands.

- By relaxing forest diversion norms, the amendment could erode the spirit of these protections.
- The powers of tribal self-governance (via Gram Sabhas, autonomous councils) may be undermined, as centralized approval can override local institutions.
- This raises a serious concern: historic injustices and displacement, which FRA sought to address, may be perpetuated under the guise of development.

### ***3.7 Environmental and Social Justice Implications***

From an environmental justice perspective:

- Tribal communities are often frontline stewards of biodiverse forests. Weakening their rights can lead to ecological degradation.<sup>6</sup>
- The amendment potentially violates procedural justice by reducing tribal participation in decision-making.
- The loss of safeguards may exacerbate social vulnerabilities: displaced or marginalized tribal groups can end up more impoverished and socially excluded.

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<sup>6</sup> CJP Team, *Forest Conservation Amendment Act, 2023: A Challenge to Adivasi Land Rights and Environmental Protections*, CJP (Feb. 10, 2025), <https://cjp.org.in/forest-conservation-amendment-act-2023-a-challenge-to-ativasi-land-rights-and-environmental-protections/>.

## IV. ARGUMENTS IN FAVOUR & COUNTERARGUMENTS

### 4.1 Government's Justifications

Proponents argue that the amendment is necessary for:

- 1. Streamlining development:** By exempting certain types of projects, the government claims it will reduce red tape and accelerate infrastructure growth.<sup>7</sup>
- 2. Balancing conservation and development:** The government suggests that eco-tourism and infrastructure are essential for economic growth and can coexist with sustainable forest management.<sup>8</sup>
- 3. Securing national interests:** Projects related to defense or border security are argued to be of strategic importance that sometimes require flexibility in land-use laws.
- 4. Clarifying the definition of forests:** The narrowing of “forest” to recorded forests is claimed to bring legal clarity and better governance.

### 4.2 Criticisms & Counterarguments

- 1. Dilution of FRA protections:** Critics argue that weakening Gram Sabha consent undermines the FRA's fundamental promise: empowering local forest dwellers.
- 2. Risk of large-scale dispossession:** Environmentalists warn of massive alienation of tribal lands, as forest diversion becomes easier.
- 3. Marginalization of marginalized communities:** The centralization of power may sideline remote tribal populations who lack political influence.<sup>9</sup>
- 4. Commercial exploitation threat:** Allowing private players into forest lands (for tourism, etc.) can commodify tribal lands, leading to cultural erosion.

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<sup>7</sup> Zaina Azhar Sayeda, *Forest Law Amendment Will Make It Easier to Divert 28% of India's Forest Cover*, IndiaSpend (Aug. 7, 2023), <https://www.indiaspend.com/earthcheckindia/forest-law-amendment-will-make-it-easier-to-divert-28-of-indias-forest-cover-872329>.

<sup>8</sup> *Forest Conservation Amendment Act of 2023: Balancing Economic Interests and Indigenous Rights*, DhyeyaIAS (Nov. 14, 2023) <https://www.dhyeyaias.com/daily-current-affairs/forest-conservation-amendment-act-of-2023>.

<sup>9</sup> Md Asghar Khan, *'Weakening' Of Forests Rights Act And Gram Sabha Has Jharkhand Tribals Worried*, OutlookIndia (Aug. 9, 2024) <https://www.outlookindia.com/national/-weakening-of-forests-rights-act-and-gram-sabha-has-jharkhand-tribals-worried-news-309298>.

**5. Ecological risk:** Exempting 28% of forests (as estimated) from stringent protection could lead to biodiversity loss.<sup>10</sup>

**6. Constitutional concerns:** For regions under Schedule V and VI, the amendment may undermine autonomous tribal governance and historical protections.

## **V. RECOMMENDATIONS & WAY FORWARD**

Given the serious risks posed to tribal rights, the following policy and legal reforms should be considered:

### **1. Reinforce Gram Sabha Consent**

- Restore and legally mandate Gram Sabha consent for any diversion of lands that have been subject to forest rights claims under the FRA.
- Ensure robust mechanisms for consultation, not just notification, by involving tribal communities in planning and decision-making.

### **2. Review the Definition of “Forest”**

- Reassess the narrowed definition of “forest” to include ecologically relevant and customary forest areas, even if not formally recorded.
- Include customary forests used by tribal communities in legal protection regimes.

### **3. Limit Exemptions for Commercial Projects**

- Reconsider exemptions for eco-tourism, safari projects, and private commercial ventures; require assessment of social and cultural impacts.
- Impose stricter conditions (e.g., benefit-sharing, community participation, safeguards for forest rights) before granting clearance.

### **4. Strengthen Institutional Safeguards**

- Create an independent oversight mechanism (e.g., a committee with tribal representation) to monitor diversion approvals.
- Ensure transparency of forest clearance decisions, including public disclosure and community access to information.

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<sup>10</sup> Tanvi Deshpande, *Weakened Forest, Biodiversity Laws Impact India's Environment In 2023*, IndiaSpend (Dec. 27, 2023) <https://www.indiaspend.com/explainers/weakened-forest-biodiversity-laws-impact-indias-environment-in-2023-887117>.

## **5. Compensation, Rehabilitation, and Safeguards**

- If diversion is unavoidable, ensure fair compensation, rehabilitation, and restoration for affected tribal communities.
- Recognize non-monetary values (cultural, spiritual) in assessing the cost of displacement.

## **6. Capacity Building & Legal Literacy**

- Invest in building the capacity of Gram Sabhas and tribal institutions to effectively negotiate, assess, and challenge forest land diversion.
- Provide legal aid and awareness support to tribal communities to understand their rights under both the FRA and amended FCA.

## **VI. CONCLUSION**

The Forest Conservation (Amendment) Act, 2023 marks a potentially transformative moment in India's forest governance for better or worse. While its proponents argue for streamlined development and national security, the cost paid by tribal communities, who have deep-seated connections to forest lands, is profound. By weakening consent mechanisms, narrowing the definition of forests, and opening up forest lands to corporate interests, the amendment risks eroding constitutional and moral obligations towards tribal forest dwellers.

To safeguard the rights of these communities, India must strike a careful balance that does not trade away centuries of customary forest stewardship for short-term developmental gains. Strengthening participatory governance, restoring institutional checks, and ensuring just compensation are essential steps to ensure that tribal rights are not sacrificed on the altar of progress.

# JUDICIAL STEWARDSHIP AND CUSTOMARY ENVIRONMENTAL GOVERNANCE IN MEGHALAYA

– Yashasivi Mishra\*

## I. INTRODUCTION AND METHODOLOGICAL FRAME

Environmental law in India has rarely operated as a self-contained statutory system. Much of its practical meaning has emerged through courts, often at moments when ecological harm becomes visible and administrative responses appear uncertain or incomplete. Judicial intervention, in this sense, has functioned less as an assertion of authority and more as a mechanism of attention, coordination, and institutional pause.

This dynamic becomes especially visible in regions marked by ecological sensitivity and non-standard land governance structures. Meghalaya presents one such context. The State is environmentally fragile, mineral-rich, and governed largely through customary land ownership systems. These features unsettle the assumptions on which Indian environmental regulation is ordinarily built, assumptions relating to formal title, standardised permitting, and centralised enforcement. Over the last decade, coal and limestone mining in Meghalaya has attracted sustained attention from the Supreme Court of India, the National Green Tribunal, and the Meghalaya High Court.<sup>1</sup>

What stands out in this body of case law is not the severity of judicial outcomes, but their structure. Courts have not confined themselves to one-time adjudication or categorical prohibition. Instead, they have relied on committees, monitoring directions, economic instruments, and transparency requirements. This article examines judicial practice with a deliberately limited objective. It does not ask whether mining should occur, nor does it assess the success or failure of regulatory outcomes. Instead, it asks what kind of judicial role is being performed when courts seek to manage environmental risk in a legally plural governance setting.

Methodologically, the article adopts a doctrinal and court-centred approach. It relies exclusively on reported judicial decisions, tribunal orders, High Court monitoring proceedings,

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<sup>1</sup> *State of Meghalaya v. All Dimasa Students Union*, (2019) 8 SCC 177; *Ranjit Chandra Goswami v. State of Meghalaya*, 2025 SCC OnLine Megh 830.

committee findings expressly recorded in court orders, and statutory human rights commission actions. No independent field studies, advocacy reports, or media narratives are relied upon. The analysis is informed by environmental constitutionalism, legal pluralism, responsive regulation theory, commons governance scholarship, and institutional theories of adjudication. Claims are advanced cautiously and remain closely tied to the judicial record.

## II. SUPREME COURT AND TRIBUNAL ENGAGEMENT WITH COAL MINING

### *2.1 Scope and Deliberate Limits of Supreme Court Intervention*

The Supreme Court's decision in *State of Meghalaya v. All Dimasa Students Union*<sup>2</sup> occupies a central place in legal discussions on mining in Meghalaya. It is frequently described as prohibitory. That description, while understandable, misses the more careful structure of the judgment. The Court did not treat coal mining as inherently unlawful. Nor did it impose a permanent ban. Instead, its intervention was directed towards the method of extraction, particularly rat-hole mining, and the absence of compliance with statutory environmental requirements.

The material placed before the Court included findings of the National Green Tribunal, reports of expert committees, and records of environmental degradation and human fatalities associated with unregulated mining. Groundwater contamination, land instability, and repeated accidents were accepted as established factual concerns. Crucially, these concerns were framed as consequences of unscientific and unregulated extraction, not of mining as an activity in itself.<sup>3</sup>

Equally significant is what the Court chose not to do. Despite repeated references to customary land ownership, the Court refrained from adjudicating questions of title or customary authority. Environmental compliance was treated as an obligation attached to the activity of mining, irrespective of ownership. This choice reflects a conscious form of judicial restraint. It allowed environmental law to operate without unsettling existing land governance arrangements, while still affirming constitutional environmental obligations.

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<sup>2</sup> *State of Meghalaya v. All Dimasa Students Union*, (2019) 8 SCC 177.

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

## ***2.2 National Green Tribunal and the Problem of Regulatory Visibility***

The National Green Tribunal's orders preceding the Supreme Court judgment form an integral part of the legal narrative. In proceedings relating to rat-hole mining, the Tribunal repeatedly recorded the absence of environmental clearance under the Environment (Protection) Act, 1986, the lack of pollution control mechanisms, and the absence of continuous regulatory supervision.<sup>4</sup>

What is notable is the way these findings are framed. The Tribunal's concern was not articulated in terms of illegality alone. Instead, it emphasised the inability of regulatory authorities to monitor mining activity in real time. Environmental harm was occurring in spaces beyond effective observation. The problem identified was regulatory invisibility rather than defiance.

Read together, the Supreme Court and Tribunal interventions suggest that judicial concern was directed less at punishment and more at creating conditions under which environmental regulation could meaningfully function.

### **III. ENVIRONMENTAL CONSTITUTIONALISM AND JUDICIAL SELF-RESTRAINT**

The constitutional grounding of judicial intervention in the Meghalaya mining cases remains orthodox. The Supreme Court anchored its reasoning in Article 21, read with Articles 48A and 51A(g).<sup>5</sup> Environmental protection was framed as a component of the right to life and as a constitutional obligation of the State.

Importantly, the Court did not seek to expand these provisions beyond settled precedent. This restraint aligns with *Vellore Citizens Welfare Forum v. Union of India*<sup>6</sup>, where sustainable development was articulated as a principle requiring reconciliation between environmental protection and economic activity, rather than absolute prioritisation. It also reflects the reasoning in *A.P. Pollution Control Board v. Prof. M.V. Nayud*<sup>7</sup>, where the Court emphasised scientific expertise and contextual sensitivity in environmental decision-making.

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<sup>4</sup> *All Dimasa Students Union v. State of Meghalaya*, Original Application No. 73 of 2014, National Green Tribunal, Order dated 17 Apr. 2014.

<sup>5</sup> INDIA CONST. arts. 21, 48A, 51A(g).

<sup>6</sup> *Vellore Citizens Welfare Forum v. Union of India*, (1996) 5 SCC 647.

<sup>7</sup> *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, (1999) 2 SCC 718.

Scholarly observations on Indian environmental adjudication are instructive here. Lavanya Rajamani has described the field as one characterised by incrementalism rather than dramatic transformation.<sup>8</sup> The Meghalaya litigation fits this pattern. Courts intervene to prevent irreversible harm, but remain wary of substituting themselves for administrative or political decision-making.

## **IV. CUSTOMARY LAND GOVERNANCE, COMMONS THEORY, AND SCALE MISMATCH**

### ***4.1 Functional Orientation of Customary Institutions***

Land and mineral governance in Meghalaya is predominantly shaped by customary institutions. These institutions regulate land allocation and community resource use through socially embedded norms, collective authority, and local accountability. Their legitimacy is historical and relational rather than statutory.

Judicially acknowledged committee reports indicate that these institutions evolved in contexts of subsistence use and community-level resource management. They were not designed to regulate industrial-scale extraction involving environmental impact assessment, technical safety standards, and complex logistics. This observation is descriptive. It does not suggest resistance to environmental regulation or indifference to ecological concerns.<sup>9</sup>

Elinor Ostrom's work on commons governance offers a useful lens here. Ostrom demonstrated that community-based governance systems can manage shared resources effectively when institutional design corresponds to the scale and nature of resource use. Difficulties arise not because such systems are inherently flawed, but because the scale of extraction changes while governance structures remain static.<sup>10</sup>

### ***4.2 Legal Pluralism as an Administrative Condition***

From a legal perspective, Meghalaya represents a plural governance environment. Statutory environmental law applies uniformly, but its operational assumptions presuppose clearly demarcated regulatory authority, formal permitting structures, and centralised enforcement.

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<sup>8</sup> Lavanya Rajamani, *Public Interest Environmental Litigation in India*, 19 J. Env'tl. L. 293 (2007).

<sup>9</sup> Meghalaya High Court, Interim Orders referring to Katakey Committee Reports (2024–2025).

<sup>10</sup> Elinor Ostrom, *Governing the Commons* (1990).

High Court monitoring orders repeatedly record coordination difficulties among departments and the absence of clearly defined local interlocutors for environmental compliance. These observations do not suggest defiance. They point instead to administrative complexity arising from the coexistence of statutory regulation and customary governance.<sup>11</sup>

Legal pluralism, in this context, functions as an explanatory condition. It helps explain why regulatory tools designed for standardised governance environments behave differently when applied to customary settings.

## **V. HIGH COURT MONITORING AND THE PRACTICE OF JUDICIAL STEWARDSHIP**

### ***5.1 Coal Mining Oversight, Committees, and Administrative Learning***

The Meghalaya High Court's role in coal mining matters is best understood as supervisory rather than adjudicatory. Through a continuing mandamus, the Court appointed a one-person committee headed by Justice B.P. Katakey to examine coal inventories, transportation practices, and compliance with judicial directions.<sup>12</sup>

Interim reports submitted between 2022 and 2025 recorded recurring concerns. These included incomplete documentation of coal stocks, ambiguity regarding transport routes, overlapping departmental responsibilities, and delays in field verification. Importantly, these findings did not lead to findings of culpability. Instead, they prompted further directions aimed at coordination and clarification.<sup>13</sup>

This pattern reflects what Upendra Baxi has described as courts functioning as governance stabilisers in post-colonial contexts. Rather than delivering final resolutions, courts hold administrative systems together, create information flows, and allow space for institutional learning.<sup>14</sup>

### ***5.2 Limestone Mining and Informational Regulation***

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<sup>11</sup> Meghalaya High Court, Public Interest Litigation on coal mining, Orders (2022–2025).

<sup>12</sup> Meghalaya High Court Order appointing Justice B.P. Katakey as One-Person Committee.

<sup>13</sup> Meghalaya High Court Orders recording Katakey Committee findings (2024–2025).

<sup>14</sup> Upendra Baxi, *The Avatars of Indian Judicial Activism*, 156 Comp. L. Rev. 1 (1985).

The Meghalaya High Court's 2025 decision concerning alleged illegal limestone mining illustrates a further evolution in judicial technique. Faced with disputed allegations and an inconclusive inquiry, the Court declined to record a finding of illegality. Instead, it directed quarterly monitoring, senior-level administrative review, and public disclosure of compliance status.<sup>15</sup>

The Court disposed of the public interest litigation while retaining a framework for transparency and vigilance. This choice is analytically significant. The Court selected information and disclosure over prohibition or sanction.

The logic underlying this move aligns closely with theories of responsive regulation articulated by Ayres and Braithwaite. In conditions of uncertainty, monitoring and transparency can encourage compliance without escalating conflict.<sup>16</sup>

### ***5.3 Economic Instruments and Environmental Restoration***

An often overlooked aspect of the Supreme Court's intervention is the creation of the Meghalaya Environment Protection and Restoration Fund. Contributions linked to coal value were directed towards environmental restoration. This mechanism reflects an attempt to internalise environmental cost rather than impose punitive confiscation.<sup>17</sup>

This approach resonates with Philippe Sands' emphasis on preventive and restorative environmental governance. It reinforces the view that courts were experimenting with regulatory instruments rather than relying solely on prohibitory commands.<sup>18</sup>

## **VI. EMERGING PATTERNS AND ANALYTICAL IMPLICATIONS**

Across the Supreme Court, Tribunal, and High Court proceedings, a consistent pattern emerges.

Courts avoid adjudicating land ownership or customary authority.

Environmental compliance is treated as activity-based.

Committees, monitoring, and periodic reporting are preferred to categorical prohibition.

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<sup>15</sup> *Ranjit Chandra Goswami v. State of Meghalaya*, 2025 SCC OnLine Megh 830.

<sup>16</sup> Ian Ayres & John Braithwaite, *Responsive Regulation* (1992).

<sup>17</sup> *State of Meghalaya v. All Dimasa Students Union*, (2019) 8 SCC 177.

<sup>18</sup> Philippe Sands, *Principles of International Environmental Law* (4th ed. 2018).

Transparency and disclosure function as regulatory tools.

Economic instruments are used to support environmental restoration.

Taken together, these features suggest an emerging model of judicial stewardship. Courts remain present, but deliberately avoid governing directly. They seek to stabilise regulatory space, manage risk, and enable administrative capacity to evolve.

This stewardship is neither weak nor overreaching. It reflects an awareness of institutional limits and a preference for incremental governance over decisive but potentially disruptive intervention.

## **VII. CONCLUSION**

The Meghalaya mining cases do not demonstrate judicial hostility to customary governance, nor do they reflect indifference to environmental harm. Instead, they reveal a judiciary attempting to navigate ecological risk, legal pluralism, and administrative limitation with care.

The contribution of this article is modest but precise. It suggests that in legally plural contexts, Indian courts are developing a form of judicial stewardship that prioritises regulatory visibility, administrative coordination, and transparency. This approach does not resolve all conflicts. It does, however, create conditions under which environmental governance can gradually stabilise without institutional rupture.

Seen in this light, judicial stewardship in Meghalaya does not resolve environmental conflict, nor does it seek to. Its value lies instead in the way it slows decision-making, compels institutional attention, and keeps regulatory questions open long enough for administrative capacity to emerge. In legally plural settings, such judicial patience may itself function as a modest but necessary form of environmental governance.