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## **ANTHROPOLOGY SNIPPET-337**



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## Tribal hunting rights vs wildlife protection laws: Is there a middle ground?



Forest rights in India reflect correlative duties of tribal communities to preserve wildlife and it is in consonance to the fundamental duty under Article 51 A(g)

### Cases and judgements

However, the question remains whether such customary practices associated with wildlife capital can be exercised without any affiliation of law. Some of the foreign judgments are of great relevance in this context.

In *The United States v Winans* [198 US. 371 (1905)], the tribal access to fishing sites was under question. Native

Americans in the US have several treaty rights. There is an enduring principle that treaties are reservations of rights by Native Americans and not grant of rights by the US federal government [*198 US. 371 (1905), at p. 381*].

In this case, the court found that there existed an easement to the traditional fishing sites and such easement operates as a servitude on the ceded property and private property owners may not interfere with the Indian use and enjoyment of it [*198 US. 371 (1905), at p. 381-82*].

Subsequently, in the United States, another landmark judgment on treaty rights held that the federal government may regulate treaty fishing rights in the interest of conservation, so long as the said regulation is reasonable and necessary as well as non-discriminatory against Native Americans [*Puyallup Tribe v Washington Department of Fish and Game 391. US. 392 (1968)*].

Furthermore, many such judgments (such as *Sohappy v Smith, Washington v Washington State Commercial Passenger Fishing Vessel Association*, etc) contributed to the evolution of treaty rights in the United States due to interpretation by the courts.

In India, we are yet to witness such magnitude of judicial interpretations in a matter pertaining to customary rights to hunt wildlife. But one cannot rule out the role of tribal trusteeship in wildlife, even its existence and relevance in the deep remote dense forests of India.

This is because they are an essential attribute of sovereignty as it deals with such species to which several such indigenous communities have property and usufructuary rights. From the face of our national legislation on wildlife protection and forest conservation, it is quite clear that such communities may not assert this trusteeship over wildlife capital.

But in a way, they retain certain significant aspects of their trusteeship towards forests and wildlife that are well-matched and compatible with their rights recognised by the law (such as the FRA).

However, one question looms: Is the State's public trusteeship over such wildlife and forest resources subservient to such customary tribal rights which, although not codified, exists since time immemorial?

From several judgments on forest rights in India, we can establish that forest rights reflect correlative duties of such communities to preserve wildlife and it is in consonance to the fundamental duty under Article 51 A(g).

We have instances to show how some tribes have given up their customary hunting rights for the conservation of wildlife and environment, at large. The Angami tribe of Nagaland gave up their hunting rights, which was connected to their right to livelihood. The Nyishi tribe in Arunachal Pradesh, who once hunted hornbills and used

their beaks to make headgears, are today successfully running a hornbill conservation movement.

It is a matter of time when we truly realise the essence of intra and inter-generational equity from its core and realise the value of wild species even over our folklore and avaricious desires.

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