

**CONSTRUCTING LEGAL STRUCTURE
FOR MAINSTREAMING ENVIRONMENTAL CONSERVATION
VIS-À-VIS COMMUNITY RIGHTS**

Mohammad Haroon Rashid

Anu Mishra

Community rights are the rights which deal with the rights of the people who are basically living in a particular local area. The effect of globalization has brought a devastating effect on the fact that certain people have been deprived of their basic rights whereby their existence on the earth has become a threat due the very policies and the act of the government. Tribals are considered to be the aborigines of the land and are therefore indigenous people, and account to 7.5% of the total population of the country. This very fact itself is explanatory that they are a significant part of the society. The present article throws light on the contemporary issues related to the tribal rights, with certain provisions mentioned in the constitution such as Article.14, 21,244, Vth Schedule and much more. The authors try to draw the attention towards certain groups among the Tribals which are facing problems in the present scenario owing to the fact that they are deprived of their right to participation when the policies are framed relating to the usage of resources. The paper explains the significance of the land when it comes in relation with that of tribal people. The paper further lays significance on various laws as well as committee reports made by the government, such as national association of local councils, local planning authorities etc.

Introduction

Tribals are a group of people that very much come under the citizenship of our country and are also said to be a significant part of the country. One needs to be in trepidation as being a responsible citizen of the country because the constitution of the country which itself thrives to achieve socio economic justice, is itself making things more complicated and difficult for its very own people by making such laws which are coercive in nature, and thus this amounts to distress in the society. Tribal are the indigenous people who have such sense of affection to their place and land on which they have been brought up that, they are not willing to leave it. The economy of scheduled tribes is mainly based on agriculture and the forests area in which they live in. The main problems of tribals being exploited are poverty and illiteracy. Since Independence, various planned efforts have been made for development of these people, thereby bringing more uniformity in the administrative units like tribal blocks, integrated tribal projects etc. in various states having tribal population and formulation of tribal sub-plans and quantification of funds for tribal areas can be counted as important step taken by the government, but a lot has to be done in this area.

Attachment towards the Property¹

“Every Man has a property in his own Person: This no Body has any Right to but himself. The Labour of his Body, and the Work of his Hands, we may say, are property of his.” ~John Locke

This term property in its particular application means “*that dominion which one man claims and exercises over the external things of the world, in exclusion of every other individual*”. The dominion which the man owns has the materialistic value, in which the hidden interests of a man is vested and due to this hidden interest he makes himself more attached to the property and therefore has an attachment to its life. The restatement (First) of Property² defines ‘Property’ “*as anything, tangible or intangible whereby a legal relationship between persons and the State enforces a possessory interest or legal title in that thing*”. This reconciling relationship between an individual, property and the State is referred to as property regimes, whereby this gives rise to the issue of rights related to property.

The reason for affection and the struggle for survival³

Man is said to be affectionate of certain things especially to what they possess and the area in which they live in, and the same is applicable to tribals. Their attachment to the land is something that cannot be explained in those easy words, but can be stated that the main reason of these people having affection towards their land is due to the fact that they don’t have any other material kit to possess other than the land, whereby the land in which they live in has the value and emotional attachment for them. Land also seems to be security to them for coming generation. The main stay of the tribal is that more than 90 percent of them are dependent on the agriculture and allied activities, and their economy is primarily agro based, whereby land is only the tangible asset.

The right to property pursuant to Article 300A⁴ of the constitution of India speaks about the right to property and thus has particular significance for indigenous and tribal peoples, because such guarantee of the right to territorial property is a fundamental root for the advancement of indigenous communities’ spiritual life, integrity, culture and economic survival.

¹ Ian Harris, *The Mind of John Locke: A Study of Political Theory in Its Intellectual Setting* 227 (Cambridge University 1st ed., 2004)

²Pellissery, Sony (2012) *Emerging Property Regimes in India: What It Holds for the Future of Socio-Economic Rights?* IRMA Working Paper 234

³RC Verma, *Indian Tribes Through the Ages* (Ministry of Information & Broadcasting Indian tribes throughout the ages 2nd ed., 1995)

⁴Article 300 A of the Indian Constitution 1950: “*No person shall be deprived of his property save by authority of law.*”

It is a right to territory that covers the use as well as enjoyment of its natural resources. It is directly related, even a pre-requisite, to enjoyment of the rights to an existence under conditions of right to food, water, health, life & dignity. It is also vital to understand that the cultural identity of indigenous and tribal peoples which is shared by their members, but it is inevitable that some members of each group will live with less attachment to the corresponding cultural traditions than others.⁵

2. State Obligations towards Indigenous and Tribal People

India and welfare of tribal peoples⁶

India has been successfully experimenting with federalism during the last half a century. And it should be said to the credit of the system that India has succeeded in affording protection of human rights of its citizens including the members of the tribal communities.⁷

The Constitution of India, it may be noted, does not define the term “Scheduled Tribes”. Instead, Article 366(25)⁸ refers to Scheduled Tribes as those communities who are listed in accordance with Article 342 of the Constitution. According to Article 342⁹ of the Constitution, the Scheduled Tribes are the tribal communities or tribes or; part of or groups within these tribal communities and tribes that have been declared as such by the President of India through a public notification. The Constitution of India provides for a comprehensive framework for the socio-economic development of Scheduled Tribes and for preventing their exploitation by other groups of society. It provides the necessary safeguards for the rights of tribal peoples in Articles 15¹⁰, 16¹¹, 17¹² and 23¹³ of the constitution. Article 46¹⁴ of the Part IV of the Indian Constitution known popularly as the directive principles of state policy which are “*fundamental in the governance of the country*” states that the State has the duty to take care for the educational and economic interests of the poor people.

⁵ See, <http://www.cidh.org/countryrep/Indigenous-Lands09/Chap.III-IV.htm>, last viewed on 08/06/2015

⁶AjitMenon, Engaging with the Law on Adivasi Rights, <http://www.jstor.org/stable/4419702>, last viewed on 01/08/2015.

⁷See, Ministry of Tribal Affairs, Government of India at <http://tribal.nic.in/index1.html>., last viewed on 28/08/2015.

⁸ARTICLE 366(25) A OF THE INDIAN CONSTITUTION 1950: ““Scheduled Tribes” means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 342 to be Scheduled Tribes for the purposes of this Constitution;”

⁹ARTICLE 342 A OF THE INDIAN CONSTITUTION 1950

¹⁰ARTICLE 15 OF THE INDIAN CONSTITUTION 1950

¹¹ARTICLE 16 OF THE INDIAN CONSTITUTION 1950

¹²ARTICLE 17 OF THE INDIAN CONSTITUTION 1950

¹³ARTICLE 23 OF THE INDIAN CONSTITUTION 1950

¹⁴ARTICLE 46 OF THE INDIAN CONSTITUTION 1950

Further Article 330¹⁵ of the Constitution of India makes reservation of seats for Scheduled Tribes in the House of People. Article 335¹⁶ requires the government to consider the claims of Scheduled Tribes in appointments to services and posts in connections with the affairs of the Union or of a State.

Introduction and background: Forest, conservation and protected area laws in India

The government of India has found that its traditional methods of forestry and biodiversity conservation approach in the country have not had a very positive impact on the regeneration and protection of forests.¹⁷ Over the decades it has given way to certain shifts in the policy and programme designs towards forestry where regeneration of forest cover is now being conceived by making local communities inclusive partners of protection and sharing of the benefits of forests around them, but has not been implemented properly. The other important aspect is the recognition of the diversity of biological resources in the country and communities' traditional livelihood and social practices of management and protection as significant not only in the cultural sense, but also in administrative, management as well as economic definitions.¹⁸

In India, the majority of the population depends on land and forests for their survival and livelihood, ownership and utilization of forest resources were vested with local communities or traditional governance structures until the advent of the British. The administration of the natural resources and its forest wealth in India started in 1864 by the British followed by the Indian Forest Act of 1865, which was the first attempt at legislation.¹⁹ With this began the shift in ownership of forests from people to the State thereby leading to the beginning of the conflict between State and communities over protection and utilization of forests. The Indian Forest Act which came into being in 1927 brought in three significations legal entities into the forest policy – the specific interpretation and legal mechanisms in defining Reserved Forests, Village Forests and Protected Forests.²⁰ The concept of protected forests takes roots in this Act, giving the State government the right to declare any forest lands or waste lands not declare as reserved in the country and have corresponding state laws to protect the tribal people as enshrined in the Fifth

¹⁵ARTICLE 330 OF THE INDIAN CONSTITUTION 1950

¹⁶ARTICLE 335 OF THE INDIAN CONSTITUTION 1950

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See,

<http://www.forestpeoples.org/sites/fpp/files/publication/2010/08/gefecodevindiamay05eng.pdf>, last viewed on 26/08/2015.

¹⁸See,

http://www.academia.edu/2118965/Indigenous_and_tribal_communities_biodiversity_conservation_and_the_Global_Environment_Facility_in_India, last viewed on 12/02/2015.

¹⁹K.K. MISRA, PEOPLES AND ENVIRONMENT IN INDIA 11 (DISCOVERY PUBLISHING HOUSE 1ST ED., 2001)

²⁰*Id.*

Schedule.²¹ Though the Fifth schedule speaks of, for the protection of tribals, the method of implementing the adequate measures have not been fruitful.

Ethics of Socialism and the core of social contract theory²²

The connotation 'socialism' is common ownership. This means that the resources of the world are being owned by all the entire global population. Those people 'owning' certain personal possessions do not contradict the principle of a society based upon common ownership. In practice, common ownership will denote one and all having the right to partake in decisions on how global resources shall be used. It means that nobody can take personal control of resources as they are beyond their own personal possessions.

Social Contract Theory²³

The idea of the social contract is basically based on the, believe that the state only exists to serve the will of the people, and they are the source of all political power enjoyed by the state. They can choose to give or withhold this power, thus it has to be understood in the light of the general will²⁴ whereby people want to be governed in a manner according to their will. Social Contract; from this Social Contract the general will can be devolved. The general will be the result of people forming an association for a common goal. Their goal is "the protection of the person and the property of each constituent member. By joining together, the people retain those rights that they submit to each other but also acquire the right of protection. Those rights that they protect are the core values of the general will. Then further John Locke's property theory²⁵ has to be also brought into the focus whereby it speaks about the fact that the land gets the value only when the labourer's effort is included in that, "*The real price of everything, what everything really costs to the man who wants to acquire it, is the toil and trouble of acquiring it. What everything is really worth to the man who has acquired it, and who wants to dispose of it or exchange it for something else, is the toil and trouble which it can save to himself, and which it can impose upon other people.*" Thus the state cannot take away the basic rights of the tribals were by the taking away of rights become a threat to their very existence.

State approach towards Local Communities with regard to Forests and Tribal People

²¹ MAHENDRA MOHAN VERMA, TRIBAL DEVELOPMENT IN INDIA: PROGRAMMES AND PERSPECTIVES 516 (MITTAL PUBLICATIONS 1ST ED., 1996)

²² *Supra* note 1.

²³ CHRISTOPHER W. MORRIS, THE SOCIAL CONTRACT THEORISTS: CRITICAL ESSAYS ON HOBBS, LOCKE, AND ROUSSEAU 205 (ROWMAN AND LITTLEFIELD PUBLISHING CO. 1ST ED., 1999)

²⁴ URMILA SHARMA & S. K. SHARMA, WESTERN POLITICAL THOUGHT 473 (ATLANTIC PUBLISHERS AND DISTRIBUTORS VOL 1 1ST ED., 2006)

²⁵ *Supra* note 1.

The policing attitude ruled the system of governance which considered local forest dwelling communities as 'encroachers' and 'exploiters' of the forests. In many of the states which have tribal populations, there are revolts and resistance against these highhanded State laws. Tribal uprisings which were reckoned as part of the freedom movement in India, are in reality, struggles against the oppressive forest regulations of the British and its exploitation of local communities in order to plunder these forest resources. This oppressive attitude has continued Post Independence where the State was considered the supreme authority over the forests and the local communities were regarded as exploiters of the forests. Besides, the nature of development pursued by the State led to large-scale displacement of forest dwelling.

Communities and also led to submergence of vast areas of forests for big development projects. Industries have been given priority of access to forest resources or of destruction of forest cover, at highly subsidized costs whereas the same was denied to local villages. Notification of forests took place without proper consultation with the people and without recognition of their customary habitations and resource use within the forest areas.

Settlement of rights of forest dwelling communities has been conducted in a highly lackadaisical manner leading to harassment of people by the forest officials. With the increase in paper, timber, mining and other industries in the forest areas bringing in new populations, the pressure on the local communities and on the natural resources multiplied spreading a vicious web of exploitation of the resources and of innocent tribal communities traditionally living in these regions. The realization of the need for dialoguing with the local communities began when government failed to stop the large-scale deforestation which was caused both by people, large development projects and by industries. The alarming rate at which thousands of hectares of forests and biodiversity have become extinct, has led to the administration's focus on re strategizing its intervention in forest conservation.

Social forestry programmes that have been initiated which in the 90's took the shape of joint forest management programmes under the influence of both internal rethinking and external financial institutions. Quasi legal institutions and programmes like the Joint/Community Forest Management (J/CFM) programmes for forestry are being created currently in various states for conserving forests with huge external aid, also bringing in policy changes. At the national level there are contradictory processes happening in the forestry management approaches. On the one hand, there is a great impetus to participatory models of forest governance like the JFM programmes and on the other, there is an increasing pressure on local forest dwelling communities by the State by terming them as 'encroachers'. And 'illegal' inhabitants of the forest regions the greater pressure being on the tribal people whose existence in these regions for centuries is not being recognized.

Contribution of Tribals in preserving environment and how they are deprived of their rights

Tribals are thought to be devotees of nature and also very close to wildlife. The reason behind it is the fact; these people are living in forest since prehistoric time. Therefore, their understanding of forest is superior to the said authorities of the government. In several cases the eco- friendly and empathetic nature of these tribals is noticeable. For example, before scientist could interpret the threat of tsunami it was found that the tribal of Andaman and Nicobar were fully aware of it. It has been said that the tribals can “smell the wind, they can gauge the depth of the sea with the sound of their oars. They have a sixth sense which we don't possess”.²⁶ Though these people are mostly illiterate and less civilized but their understanding of nature is far more reliable and accurate than highly educated scientists. Which saved many tribal lives in case of tsunami? Scientist were late in understanding the threat caused by nature but had there been proper communication between these people and government many lives of fishermen and others could have been saved.

The connection of the tribal and Mother Nature does not end with their skill of analysing the threats of nature. Their interest in nature spreads to the extent of loving and caring for the flora and fauna. In various tribal groups they consider certain wild animals as a symbol of god; this forbids them from killing those animals. In all the tribes some or the other animal is worshipped. This means less killing of such animals. For example, The Gonds in India worship a horse-god, the warali tribe of Maharashtra worship Waghia the lord of tiger. This way certain endangered species like tiger get protection from being hunted.

Furthermore, the concept of sacred grooves is fundamentally associated with Tribals. Sacred grooves are a traditional way of biodiversity conservation. Forest dwellers believe in conservation of natural resources so they created sacred grooves, which is usually dedicated to some local deity or to treat as the home of dead ancestors, for example, Scrub forest in Thar Desert, of Rajasthan is also a sacred groove which is maintained by the Bishnois.²⁷ Cutting trees or hunting in such areas is totally restricted by tribals. In early 1970s Chipko movement was started, Bishnois took active part in order to save forest from getting deforested. Few precious tribal lives were also lost. This shows how Government in disguise of development is not only compromising the life of tribals but also destroying biodiversity. These were earlier protected by the tribals. But now unfortunately with the decline in the number of tribals, along with the urbanization there is also decline in the activities that are been carried on by the government, eventually it is the biodiversity getting endangered. This also leads to ecological imbalance. Earlier whatever was protected by the

²⁶ See, <http://www.nbcnews.com/id/6786476/#.UTNKFJKJHLk>, last viewed on 17/02/2015.

²⁷ See, http://en.wikipedia.org/wiki/Sacred_groves_of_India#Threats, last viewed on 18/02/2015.

tribals using traditional method is now getting obsolete due to the new techniques applied by the government.

Tribals have just not restricted their contribution till protection and preservation of environment but they have also contributed in other social things as well, like other Indians, tribals also participated in Indian struggle for independence. Forest dwellers rebellions also protested against British government. For example The Kuki Uprising in Manipur,^{1st} Rampa Rebellion²⁸. These all fought for India against British government. But the ironically even after Independence, these people were deprived of their rights Tribals are still the victim. Government in the name of National Interest has taken away everything possible from them. Under the disguise of forest reservation, their Mother Land was taken away. They were deprived from their means of survival. Whenever it was possible these tribals adjusted and left the forest area required by the government. They shifted themselves in other interior parts of the forest. In post-independent India due to the growing population and urbanization these forest dwellers were asked to vacate the forests.

After, suffering from all the possible miseries when at certain instances government of India did made some regulations in support of these tribals, it was found in several surveys that these regulations were never implemented properly. In many circumstances it was found that forest officers were corrupted and inefficient which made implementation of such polices more difficult, for example Land Regulation Act, 1959²⁹ was enacted. Later in the year 1970 and 1971 various amendments were also made in this act in order to stop land alienation from tribals to non tribals. But because of lack of proper surveillance such enactments and amendments never helped the tribals. “Similarly in Utnur Taluk in South India “final patta” was regularly issued by the Utnur tahsildar but Forest department never recognized it. On top of all such atrocities it was also establish that forest authorities started a campaign to evict tribals from such allotted land. They started collecting fines irrespective of whether there was any yield and also irrespective of the economic position of the tribals.”³⁰

After suffering from all such misfortunes whenever tribal have asked for their rights or rebelled against the independent government, all have gone in vain. In these situation tribals fight for their rights but unfortunately the voice of these people does not reaches government executives of Democratic India ended this by inhumanly killing such innocent, spirited people. There are many such happenings where instead of understanding tribals and fulfilling their simple demands. Government officials took ruthless steps. These

²⁸SAROJINI REGANI, WHO'S WHO OF FREEDOM STRUGGLE IN ANDHRA PRADESH?

²⁹A.K. PANDEY, TRIBAL SOCIETY IN INDIA (MANNAK PUBLICATION 1997).

³⁰BAIDYANATH SARASWATI, TRIBAL THOUGHT AND CULTURE (CONCEPT PUBLISHING COMPANY, 1ST ED., 1991)

discussed facts bring in lime light the sufferings and how the Forest Dwellers are deprived of their rights.³¹

Conclusion

From the facts already discussed in this paper it seems that framers of our constitution gave importance to the tribal community. For example, presence of Article 366(25), 342, 15, 16, 17, 23; basically all these articles safeguard some or the other tribal rights for the upliftment and development of tribal. Therefore, With the general standpoint one can find that government is doing its best for the tribal.

Government relationship with the tribal looks unpretentious and protective. However, in everyday life reality is different. Tribal are the most suffering people in India. After independence whole nation out of government polices benefited but still there were some who remained untouched and tribal being one of them were being deprived of their rights. Instead of returning back tribal's lands which were taken away from them during British time, in the name of "Nations Interest" more tribal's lands were taken away from tribal's. Moreover, whenever government has made some policies in favour of Tribal's, the objective of such polices were never fulfilled. The very basic problem was in ineffective implementation of polices. For this also government bodies were responsible who failed in following proper surveillance techniques in order to make sure that tribal get benefited out of such polices. To some extends for such conditions of tribal our society was also responsible. In many incidents it was found that non-tribal people either forcefully or illegally took tribal land. This also shows government's casual behaviour towards such illegal atrocities because of which even society openly benefited itself. But it was duty of the state to ensure protection against any such activities. In most of the cases where injustice was done to tribal the main reason was absence of government's interest towards such tribal.

Altogether looking after all related aspects, in conclusion authors try to suggest that government should become more active towards tribal so that whatever benefits our framers and lawmakers want to give to tribal, should reach them in full. Along with government our society also needs to show caring nature towards deprived and blameless tribal.

³¹ Rahul, 'Tribals and 'Development'', <http://www.jstor.org/stable/4397405>., last viewed on 01/08/2015.