

INDIGENOUS RIGHTS AND NATURAL RESOURCE GOVERNANCE IN INDIA

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Abstract

Natural Resource depletion is a major concern the world is facing today. Anthropogenic activities in the form of industrialization, urbanization and modernization have threatened our environment and put human survival at risk. Violation of human rights, especially those of indigenous communities in the hands of external agencies, in natural resource governance is steadily taking place and is a systemic and recurring phenomenon that has grabbed the attention of the world with no immediate remedy in sight. In response to this threat, people have often mobilized themselves towards the protection and reclamation of their environment which has taken the shape of environmental movements the world over. This paper is an attempt to study the paradox between indigenous rights and natural resource governance with special reference to India's Forest Policies and the impact thereof on communities that still depend on forests for survival.

Keywords:

Human Rights;
Indigenous Rights;
Natural Resources;
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Introduction

Natural Resource depletion is a major concern the world is facing today. Anthropogenic activities in the form of industrialization, urbanization and modernization have threatened our environment and put human survival at risk. Violation of human rights, especially those of indigenous communities in the hands of external agencies, in natural resource governance is steadily taking place and is a systemic and recurring phenomenon that has grabbed the attention of the world with no immediate remedy in sight. In response to this threat, people have often mobilized themselves towards the protection and reclamation of their environment which has taken the shape of environmental movements the world over. This paper is an attempt to study the paradox between human rights and natural resource governance with special reference to India's Forest Policies and the impact thereof on communities that still depend on forests for survival. Since 1948 the United Nations (UN) has aspired to create a global community, based on human rights, "a common standard of achievement for all peoples and nations" (the UN Universal Declaration of Human Rights), the substance of which is continually evolving. "Anthropologists have contributed to these continuing efforts in two critical ways: first, by providing cross-cultural research on the questions of "What are rights?" and "Who is counted as a full 'person' or 'human being' eligible to enjoy them?" and second, by monitoring compliance with human rights standards and by criticizing human rights violations or abuses" (Messer, 1993, p. 221). According to her, "Human rights as a philosophical concept refers to the reasonable demands for personal security and basic well-being that all individuals can make on the rest of humanity by virtue of their being members of the species *Homo sapiens*...But what these rights are, and who is protected under them, has varied according to historical and social context and political interest" (p. 222).

The four generations of human rights are: "first generation" of political and civil rights, which protect basic security of persons; "second generation" of socioeconomic and cultural rights including rights to employment and fair working conditions; rights to a standard of living that ensures health and well-being; rights to social security, education, and participation in the cultural life of the community; and special rights of women and children. "Third generation" of solidarity or development rights to peace, a more equitable socioeconomic order, and a sustainable environment and the "fourth generation" of indigenous rights, which will protect

their rights to political self-determination and control over socioeconomic development- rights that are currently threatened within state frameworks. Messer (1993) further opines that "All four generations or categories are now harmonized under the international-statist legal framework's umbrella of human rights, under which they are subject to international, national, religious, and local interpretation and compliance. This ongoing effort to establish a global human community based on universal but evolving standards of human decency, morality, and dignity constitutes perhaps the greatest social transformation of this century" (p. 223).

Indigenous Rights

In order to comprehend what indigenous rights are we have to try and understand what constitutes an indigenous people. There have been an overwhelming array of scholars trying to delineate what constitutes an indigenous community and trying to define the term indigenous people, unfortunately with no consensus as to the exact meaning of the term. "Julian Berger, a long-time United Nations official and international political advocate, determined that: The notion of belonging to a separate culture with all its various elements –language, religion, social and political systems, moral values, scientific and philosophical knowledge, beliefs, legends, laws, economic systems, technology, art, clothing, music, dance, architecture, and so on – is central to indigenous peoples' own definition...He then continued to argue that - An indigenous people may contain all of the following elements or just some. Indigenous peoples:

- i) are the descendants of the original inhabitants of a territory which has been overcome by conquest;
- ii) are nomadic and semi-nomadic peoples, such as shifting cultivators, herders and hunters and gatherers, and practice a labour-intensive form of agriculture which produces little surplus and has low energy needs;
- iii) do not have centralized political institutions and organize at the level of the community and make decisions on a consensus basis;
- iv) have all the characteristics of a national minority: they share a common language, religion, culture, and other identifying characteristics and a relationship to a particular territory but are subjugated by a dominant culture and society;

v) have a different world view, consisting of a custodial and non-materialist attitude to land and natural resources, and want to pursue a separate development to that proffered by the dominant society;

vi) consist of individuals who subjectively consider themselves to be indigenous, and are accepted by the group as such" (as cited in Coates 2004: 5-6).

"According to the World Bank 'Indigenous peoples are commonly among the poorest and most vulnerable segments of society' (World Bank 2001). Confronted with these depressing economic statistics, many, but certainly not all, modern nation states have recognized the plight of Indigenous communities. As a result, throughout the middle decades of the 20th century, Indigenous people, along with other poor populations of the world, were the target of a wide range of initiatives, efforts and programmes to assist in economic development. In large part, these top-down, externally developed, modernization-based efforts failed to improve the economic circumstance of the world's poor including Indigenous people, while at the same time often damaging their traditional economies, leaving communities less self-reliant and therefore worse off than before" (p. 90). "Perhaps the most widely cited definition is that of José Martínez Cobo, an Ecuadorian diplomat, written when he was working for a United Nations subcommittee on the rights of indigenous peoples in the early 1970s.

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems" (as cited in Coates 2004: 6).

Coates (2004, p. 6) argues that "Martinez Cobo highlighted the importance of the continued occupation of traditional lands, a direct link with the original inhabitants of these lands, and a unique and identifiable culture and language". Anderson et al., (2008) in a paper submitted to the National Centre for First Nations Governance, West Vancouver, Canada opines that the central tenet that runs behind the concept of "Indigenous" is land ownership, land rights and land use

pattern. "For all, claims to their traditional lands and the right to use the resources of these lands are central to their drive to nationhood. Land is important in two respects. First, traditional lands are the 'place' of the nation and are inseparable from the people, their culture, and their identity as a nation. Second, land and resources, as well as traditional knowledge, are the foundations upon which Indigenous people intend to rebuild the economies of their nations and so improve the socio-economic circumstance of their people – individuals, families, communities and nations".

"For Indigenous peoples, secure and effective collective property rights are fundamental to their economic and social development, to their physical and cultural integrity, and to their livelihoods and sustenance. Secure land and resource rights are also essential for the maintenance of their worldviews and spirituality and, in short, to their very survival as viable territorial and distinct cultural collectivities...the close ties of Indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For Indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element that they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations" (MacKay, 2004, p. 16-17).

"Collective and indigenous rights are now part of the human rights framework; the challenge is to make individual and collective rights mutually reinforcing...Key trends operating synergistically to advance indigenous rights over 45 years have been the emergence of indigenous rights as legitimate demands within the international legal framework, the acceptance and advocacy of the human rights legal framework by anthropologists as an important means of protecting indigenous cultures and interests, especially through work within and outside of development agencies and the assumption by indigenous peoples of their own voices, through their own political leaders and organizations in the evolution of indigenous rights. In addition, with the emergence of development rights, especially to demands for a safe and sustainable environment, and to peace, food, and health, a critical strategy has been to link indigenous rights issues to those advocating these other rights and to draw strength from such alliances. Indigenous rights and abuses of these rights tend to be bound most prominently to demands for land and other subsistence resources, particularly in the face of changing property laws, large water

management projects, ecotourism and other attempts to take over "vacant" lands supporting indigenous peoples" (Messer, 1993, p. 236).

Natural Resource Governance

"Governance is a critical determinant of equity, justice and effectiveness in biodiversity conservation, and of the contribution that natural resources make to people's enjoyment of rights and development opportunities. Governance is at the root of many problems that people are experiencing today, including natural resource related conflicts and unsustainable expansion of agriculture industrialization and mineral mining, which are reducing already marginalized communities' access to land and natural resources, including wild and farmed foods"(IUCN, 2015).

"Natural resource governance refers to the norms, institutions and processes that determine how power and responsibilities over natural resources are exercised, how decisions are taken, and how citizens – women, men, indigenous peoples and local communities – participate in and benefit from the management of natural resources. The effectiveness and equity of governance processes critically determines both the extent to which ecosystems contribute to human well being and the long-term prospects for successful conservation of nature. Securing rights and sharing power and responsibilities through strengthened natural resource governance, including legal entitlements, benefits both people and biodiversity. Thus, governance is a necessary foundation for a just world that values and conserves nature"(IUCN, 2013).

"Natural resource governance involves interaction and decision-making regarding the resource use. The process is complicated because of the involvement of diverse stakeholders who are dependent on the resource in different capacities. Decision making in such a situation becomes very challenging, as it requires developing a solution that is equally acceptable by all...Elinor Ostrom who won Nobel Prize in 2009 in Economics for her work on the basis of analysis of several case studies from all over the world through her research was able to establish that, management of natural resources is complex and that privatization and public ownership weren't the only solution. She posited that apart from private or state regime, there were also cases where members of the community got together to manage resources they were dependent upon. She

referred to such an arrangement of self-organized management of resources as local institution, where individuals create their own rules, monitor its compliance in the community and subsequently sanction the rule breakers" (Gupta and Dasgupta, 2013).

Indian Context

"The history of natural resource management in India represents an interesting shift in management paradigms from strict agency control to collaborative management. However, this shift from centralized to more decentralized approach was very gradual" (Gupta and Dasgupta, 2013). "Before state intervention, forests were managed as communal property; the crucial role of forests in the economic subsistence of individuals, families and community was the basis for managing them as communal resources" (Yadama, 2003, p. 216). The British enacted the first Forest Policy in India in 1894 following the Volcker Commission Report in 1893 "which posited forests to be a biomass provider for the agricultural sector" (Damodaran and Engel, 2003, p. 5), whose main objective was the management of the forest as well as regulate the rights and usage of the forested area. "Traditional usufruct rights of resources were lost and traditional management systems were derecognized which not only led to great unrest among the people, especially for those whose livelihood depended on the forests, but eventually was the root of most revolts coupled with the new land tenure system introduced by the British at that point of time" (Dkhar, 2016, p. 11). The 1952 Forest Policy of the Government of India in spite of "subscribing to the philosophy of the 1894 policy, nevertheless highlighted the functional classification of forests" (Damodaran and Engel, 2003, p. 5). "The Forest Policy Resolution of May 12, 1952, suggests that 'India as a whole should aim at maintaining one-third of its total land area under forests'" (Planning Commission, 1951). The National Forest Policy of 1988 also reiterated that "the national goal should be to have a minimum of one-third of the total land area of the country under forest cover. In the hills and mountainous regions, the aim should be to maintain two-third of the area under such cover in order to prevent erosion and land degradation and to ensure the stability of fragile ecosystems" (Ministry of Environment and Forests, 1988). "Policy makers realized the institutional failure in the way forests were being managed and conserved, in not recognizing community control over natural resources and a shift from community owned forests to State owned which steadily undermined the rights of the tribes to use and extract forest resources, emergence of the concept of individual ownership of property

coupled with the felt need for coordination with local communities in order for a more comprehensive and successful forest management system was probably the basis in which Joint Forest Management in India originated" (Dkhar, 2016, p. 11). "The National Forest Policy of 1988 marked the first effort to set the pace for community participation in forest management. In June 1990, the Government of India issued a circular to give effect to the provisions of the National Forest Policy 1988 in this regard. Joint Forest Management was thus born in India" (Damodaran and Engel, 2003, p. 1).

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, or the Forest Rights Act is a key piece of forest legislation which received the assent of the President on the 29th December, 2006. "The law concerns the rights of forest-dwelling communities to land and other resources, denied to them over decades as a result of the continuance of colonial forest laws in India. Supporters of the Act claim that it will redress the "historical injustice" committed against forest dwellers, while including provisions for making conservation more effective and more transparent" (Anthony and Lal, 2013 p. 669). Eligibility criteria to get rights under the Act is confined to those who "primarily reside in forests" and who depend on forests and forest land for a livelihood. Further, either the claimant must be a member of the Scheduled Tribes scheduled in that area or must have been residing in the forest for 75 years with December 13, 2005 being the cut-off date.

For the purposes of this Act, the following rights, which secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands, namely:-

- (a) right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers;
- (b) community rights such as nistar, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes;
- (c) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;

- (d) other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;
- (e) rights including community tenures of habitat and habitation for primitive tribal groups and preagricultural communities;
- (f) rights in or over disputes lands under any nomenclature in any State where claims are disputed;
- (g) rights for conversion of Pattas or leases or grants issued by any local authority or any State Government on forest lands to titles;
- (h) rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests, whether recorded, notified or not into revenue villages;
- (i) rights to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;
- (j) rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribal under any traditional or customary law of the concerned tribes of any State;
- (k) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;
- (l) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in clauses (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal;
- (m) right to in situ rehabilitation including alternative land in cases where the Scheduled Tribes or other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement to rehabilitation prior to the 13th day of December, 2005.

(Ministry of Tribal Affairs, 2006, p. 3-4).

Thus, India has witnessed several policies and Acts since Independence that govern and manage natural resources, especially pertaining to the forest inhabitants. It's "Forest Policies have evolved through time from excluding local communities and infringing on their traditional rights

over the use and management of their forests (Forest Policy, 1894) to the inclusion and collaboration of local communities in the management of forests and the rights over the uses of the resources, in the form of social forestry (initiated by the Government in the late 1970's drawing from a few facets of the National Forest Policy of 1952) and Joint Forest Management (Forest Policy, 1988)" (Dkhar, 2016, p. 11) to The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 wherein traditional rights of indigenous communities are recognized and the mandatory requirement of securing consent from tribal gram sabhas (village assembly) to initiate any development project needing forest land.

Conclusion

In spite of India's many forest policies and acts, the rights of the tribes have not always been suitably accorded. The Dongria Khonds of Odisha who are fighting a mammoth battle against British-owned Vedanta, a mining cooperation. Despite having won a major legal battle in 2014 over bauxite mining in the Niyamgiri Hills, the sacred and protected hills of the Dongria Khonds, the State government tried to open up a referendum on all twelve villages (who fall within the mining zone) to vote over the matter once again. However, all 12 villages selected by the state government voted against the project, and a plea by Odisha Mining Corporation in 2016 to hold fresh gram sabhas was quashed by the Supreme Court (Seetharaman, 2018). The Baiga of Dindori district in Madhya Pradesh became among the earliest to receive habitat rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, commonly known as the Forest Rights Act (FRA). However, the recognition of the right extended to only seven villages constituting the Baiga Chak, as the tribe's habitat "although many local activists argue that the actual number of villages in Baiga Chak (loosely Baiga region) should be 52" (Narayanan, 2015), the specified reason given is that the extent of a tribe's habitat is difficult to determine especially if their contact with the outsiders is limited.

"Millions of forest dwellers in the country still do not have rights to conserve forests or access to forest resources. Ten years after the forest rights act 2006 was passed by parliament—a law that secures rights of forest dwellers and empowers them to protect forests, only about 3% of the potential forest area for community governance has been recognised" (Nandi, 2016). The Supreme Court of India has stayed its recent order on the eviction of lakhs of persons belonging

to the Scheduled Tribes and Other Forest Dwelling Communities across States whose claim under the FRA 2006 was summarily rejected and have asked for a detailed report from the respective State Governments on the basis on which their claims were decided and whether due process was followed, both by the gram sabhas and the concerned authorities, under the FRA before rejecting the claims. For millions of indigenous inhabitants this is a temporary relief in view of the fact that their status and rights under the FRA remain uncertain. From this perspective, The Forest Rights Act (2006) in its entirety may have several lacunae that needs to be addressed and loop holes that needs to be plugged and despite it's jagged implementation process, is probably one of the most effective instrument, at this juncture, to protect and reverse the erosion of rights of Tribes in India provided the implementation process is efficient, swift and effective. "There is a growing recognition of customary rights in statutory legislation and legal reforms to improve access to natural resources. However, despite important policy changes at international and national level, reforms have not kept up with commercial pressures on natural resources. Future efforts to address the increasing pressures on ecosystems and the threat to sustainable production and access to adequate food are still required. As such, the governance of natural resources remains one of the most important areas for food security" (FAO, 2014). Hence, it is imperative to understand that indigenous rights over their natural resources, their governance and management, need to be revisited and examined methodically and sensitively as it not only concerns indigenous livelihood patterns but also has a significant bearing on their identity and survival.

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