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Indigenous People's Right over Forests vs. Forest Management: The Need for a Collaborative Relationship

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ABSTRACT

Indigenous people can be considered as a group that has been present for generations in a particular geographical area with cultural and historical links. They can be considered as first people and there is a relationship that exists between them and the area that they reside in. The people can also be considered as the guardians of the land they reside in. This paper focuses on the indigenous people residing in forests and can be considered as the best guardians of the forest. The rates of deforestation have also reduced specifically in areas of the forest they are located. The forest authorities and the government must ensure the areas of these people are unaffected for purely economic reasons. Once their lands are taken away, not only their place of residence is taken away, their identity and culture are affected too. To ensure these difficulties are not imposed upon them, forest management and indigenous people must come to a consensus regarding substantial measures taken. A collaborative relationship is required to maintain environmental stability and cultural preservation. This paper focuses on the legal provisions available for the protection of land rights and the possibility of collaborative planning between forest management and indigenous people.

I. INTERNATIONAL PROVISIONS THAT PROTECT THE LAND RIGHTS OF THE INDIGENOUS PEOPLE

The United Nations Declaration on the Rights of Indigenous people had been passed in 2007 by the general assembly. This instrument provides information regarding the rights of such indigenous people and the standards that must be maintained to protect the rights provided. The instrument also aids in providing standards that must be set to protect the indigenous people from discriminatory practices. There are 45 Articles present and they provide for land rights, educational rights, rights regarding employment, the right to provide consent for legislative measures involving their status and so on.³ International Labour Organisation had

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³ Declaration on the Rights of Indigenous People. Bibliography: The United Nations General Assembly. 2007.

passed an instrument for the protection of rights of Indigenous people which is convention 169. However, convention 107 had been passed earlier but certain amendments had been made. These provisions protect rights regarding employment, land rights, social security and so on. Part 2 of the convention, specifically from Articles 13 to 19 provides measures for the protection of land rights of the indigenous people.⁴

II. LEGAL PROVISIONS PRESENT IN INDIA

India had voted in favour of the United Nations Declaration on the Rights of Indigenous People and is a signatory to convention 107. Part 4 of the constitution ensures the treaties that India are part of is enforced. There is an obligation on India to act in accordance with the treaties which include providing protection of land rights to the indigenous people. In India, indigenous people can be considered as Scheduled tribes. Scheduled tribes and other traditional forest dwellers Act, (Recognition of forest rights Act) 2006 have provided certain provisions to protect the land rights of the said people. Chapter 2 and 3 specifically provides provisions regarding forest rights and recognition of such rights.⁵ The Act ensures these land rights are provided to the people who reside in a particular forest area in order to maintain their livelihood. This also includes the right to consumption of produce available in these forests. However, even though these provisions are available for the protection of land rights, the issue of alienation of their land needs to be addressed. There are several instances recorded regarding Adivasis being victims of forced displacement in the name of development.

In the case of *Wildlife Trust of India v. Ministry of Forest and Environment*, the government had ordered the eviction of nearly a million indigenous people from their residing area. Even though there had been a stay placed by the court on this decision, the case proves to be an indicator of how these indigenous people are forced to depart due to several claims being disposed of. The problem with the demands requested by the forest rights Act is that there is a lack of documentation. The people mostly do not have the required documents and in order to entitle land, evidence is required. The government must understand that it is ridiculous to demand such documentation considering the fact that they have been residents of a particular area for several decades.⁶ There are several claims that are being disposed of as according to data as of January 2020, nearly 38 lakh claims had been disposed of while the distribution is of a much lower number.⁷ The procedure of rejection and disposal is filled with grey areas as

⁴ Part 2 of the International Labour Organization Convention 169

⁵ The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

⁶ *Wildlife Trust of India v. Ministry of Forest and Environment* Writ Petition No(s).109/2008

⁷ Government of India Ministry of Tribal Affairs, Status report on implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2005

several claims are disposed of without providing the proper reasoning and there is no absolute guarantee that due process has been followed. Even UN Human rights experts had provided a statement regarding the disposal of several claims by the Government of India. They have urged the Government to improve the entire process of disposal and the claims that have been disposed of must be reviewed.⁸ When the claims are being disposed of, there is a lack of redressal methods or compensatory measures that are being taken. At the end of the day, they must be seen as people with limited resources and ensure they are not affected due to displacement. They must be seen from the perspective that they reside within the forest and rely upon the resources available in such areas for economic reasons and basic livelihood. Yes, economic reasons are there but the Government must understand the cultural background that exists too. In order to preserve such rights, the forest management must collaborate with the people located in such areas in order to provide an outcome that is beneficial to both the authorities and the forest dwellers.

III. CONFLICTS AND FAILURES IN FOREST MANAGEMENT

Commonly, the forest managers view the forests and the people in the forest community as separate entities. For us humans, forests are one of the sources of life. The forest management should be defined in a way to clearly understand how life and different cultures emerged from the forests. It is very important for the forest managers to recognize the cultures of the indigenous people living in the forest and the surrounding areas. For example, in the Philippines, the forest management resulted in the isolation of the local people from the forest, and this further led to outsiders using the resources and the control of eco-tourism in the hands of other organisations.

One of the major failures in forest management happened in the Philippines where the rights of indigenous communities to their ancestral lands were protected under the Philippines NIPAS Act. The World Bank provides support to these protected areas under their operative directories, but this policy was never implemented in the country even after the Philippines Indigenous Peoples Rights Act was passed. The area managers have suppressed and manipulated the ancestral domain issue to keep the local community as a mere subject and having total control to themselves because if the IPRA act is enforced and the ancestral domain rights are recognised the area managers will have lesser power.⁹ This is one of the reasons why there needs to be a collaboration between the forest managers and the local communities.

⁸ 'OHCHR | India Must Prevent The Eviction Of Millions Of Forest Dwellers' (*Ohchr.org*, 2019) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24786>>

⁹ Saway VL, "Indigenous Cultures and Forest Management" <<https://www.fao.org/3/xii/0841-a2.htm>>

IV. JOINT FOREST MANAGEMENT

Westoby in his book, *The purpose of forests* said “*After all, forestry is about people. It is about trees only in so far as the trees can serve the needs of the people.*”¹⁰ Forests and its policies should concern where the forests and its trees can contribute and help the sustenance of the humans.

The joint forest management was for the first time seen in 1972 in West Bengal when the village forest committees were formed and they were granted with full access to Non-Timber Forest Products (NTFP), preference for employments and other cash schemes which were sustainable to the environment. This was for the first time there was a collaboration between the Government and the indigenous people in the forest. In JFM, the local communities are given the responsibility to protect and manage the forest around them. The reasoning behind JFM is that the previous approaches of the government’s control over the forests had put the burden of protection and management on the forest management members and ignored indigenous communities. The guidelines and the policies are explained in the National Forest Policy of 1988 and the Joint Forest Management Guidelines of 1990. The Panchayati Raj Act, PESA Act and the Forest Rights Act give more rights to the local communities i.e., indigenous communities through the forests. The National Forest Policy of 1998 has main focus on conservation of flora and fauna diversity and it recognises that the life of tribals and other communities living within and near forest, revolves around the forests and the rights and concessions enjoyed by them should be full protected.¹¹ The indigenous tribal people in the forests are protected under section 4.6 of the NFP 1988 which states that the agencies who work for the management of the forest should associate closely with the tribal people to protect because of the symbiotic relations between the tribal people and the forests.¹² One of the main elements of JFM is that the indigenous communities have the power. JFM attempts to connect the strengths and the power of the local indigenous rural communities to protect and manage the forest through the committees and this helps to meet the need for livelihood and also generates local environmental services. As of March 2002, more than 1.40 lakh sq.km of forests in 27 states were covered under Joint Forest Management in India.¹³ In the last decade, JFM has made a positive impact on the environment. JFM has rehabilitated the degraded forests and led to an increase of almost 4000 sq.km. JFM has stopped illegal felling of trees, and this was

¹⁰ Jack Westoby; Basil Blackwell, “*The Purpose of Forests*”, , Oxford, 1987

¹¹ National Forest Policy 1988

¹² Ibid 9

¹³ Joint Forest Management: A Handbook (Ministry of Environment & Forests).

one of the main reasons behind the improvement of green cover in the country. Through JFM, there has been an increase in the livelihood opportunities for the indigenous people. This also reduced illegal encroachments and reduced the rate of fresh encroachments. Andhra Pradesh reduced almost twelve percent of encroached lands since Joint Forest Management program was started. There has also been a considerable amount of participation from various NGOs in the forest sector which has increased the interaction between the government and the various communities.¹⁴ The JFM was initially started in West Bengal and because of its success, the National Planning Commission encouraged other Indian states to take similar actions. International Agencies and Development institutes have also started experimenting this approach in different countries like Canada, USA, Sri Lanka, Thailand, and some parts of southern and western Africa.¹⁵

V. CONCLUSION

Collaboration is the key word that needs be highlighted. Several instances of forced displacement recorded and by doing so, the cultural identity and basic livelihood is being affected. Joint forest management is the way forward and a collaborative relationship is required in order to benefit both the sides. India needs to ensure there is Joint forest management in order to increase the efficiency of governance. There is a need for decentralisation of the governance which includes the active contributions by all stake holders for maximum beneficial output. There may be certain issues that need improvement in the Joint forest management system, but it is an evolving system. This concept is two decades old and from this we can understand that JFM in the future can encourage more participation. The National Forest Policy which contains the guidelines for JFM basically appeals for empowerment of people and the need to be supported with better laws. There is a desperate need for amendment of various laws to encourage participatory management in the forests. It is proved that the adaptation of this collaborative approach ensures the cultural relations are kept intact while improving the conditions of the forest areas.

¹⁴ Ibid 9

¹⁵ Haripriya Rangan, Marcus B. Lane (2001) Indigenous Peoples and Forest Management: Comparative Analysis of Institutional Approaches in Australia and India, *Society & Natural Resources*, 14:2, 145-160