

Tribes of Nilgiris (India) and Environmental Laws

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1. Introduction

The total environment is included the controlled and uncontrolled environment. The man has control over a part of environment is controlled environment and which is not amenable to his control is uncontrolled environment. The uncontrolled environment is otherwise known as geographical environment to which man tries to adapt and adjust himself. The controlled environment is otherwise known as the social environment. Both type of environments directly or indirectly influences over characters, customs, conventions, beliefs, taboos and other livelihood strategies of human society especially of tribes. “It is believed that environment determines the culture (Semple 1911) and on the other hand it is expected that environment limits the culture (Krober 1969, Toynbee 1947 and Forde 1934). Nobody can ignore the impact of environment on life, culture and the interrelation and interdependence between man and his environment”¹ (Das Gupta, 1944). Forest is one of the major elements of the environment. “Forest has been associated with the early life of humankind where they used forest resources for a living, where they domesticated plants and innovated early forms of agriculture and gradually moved away from gathering and hunting to advanced and primary modes of subsistence.”² So, making laws is necessary to preserve the environment and humankind.

While framing National laws and constitutional law, Tribal customs and conventions must be included into the part of the laws as the tribes are more integrating with nature for their livelihood strategies. Some of the world countries have legal and statutory provisions for preserving the tribal rights. The environmental acts are though cautiously framed, there are some practical complexities arise during execution. Sometimes, the forest laws framed by the government are against the forest dwellers and the tribes. As they numerically very small their antagonisms over these acts will not be strongly echoed. As the tribes are not only *not the destroyer* of the nature but also *protector* of the nature and *good conductor* of classical customs and conventions inherited from the past and generation to generation.

2. Statement of the Problem

“Most of the right in favour of tribals are customary and traditional. Those rules and principles which have been observed in a particular community in actual practice for a long time. To them who observe these rules they are law. They come into existence due to a number of reasons. There is a strong opinion that customary law is a valid law.”³

“The tribes protected the forest and forest protected them. Forest was bountiful; tribals were faithful. No wonder they were described as the eyes and ears of the forest. Primitive man lived in harmony with forest and other living being in the forest. His life was in accordance with the laws of nature that maintained an eco-balance. In the strict sense of nomenclature it is very difficult to make a forest policy, because there is conflict between traditional rights and legal and constitutional rights.”⁴ Many world countries took efforts to frame laws to save environment.

India has also played an active and major role at international forum with regards to global environmental protection and signatory of the key multilateral international agreements, and considers the trans-boundary problem of several environmental issues. “The Constitution of India has given due recognition to forest and wildlife and the tribal communities dependent of forests. Part IV of the Constitution of India contains Directive Principles of State Policy.

Article 48A of the Constitution falling under Part IV reads as under: “Protection and improvement of environment and safeguarding of forests and wildlife: The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country.”⁵

Similarly, Part IVA of the Constitution, inserted by the Constitution (Forty second amendment) Act, 1976, contains Fundamental Duties of every citizen of India. Article 51A (g) of the Constitution falling under Part IVA states: Till 1976, forestry as a subject was in List II (State List) of the Seventh Schedules of the Constitution of India. Hence, State Governments were responsible for the conservation and development of forests. Being a State subject, Government of India had no statutory power to intervene. In 1976, the Central Government first issued guidelines to all the states to consult Government of India before diverting more than 10 hectares of forest land to non-forest use. “However, the guidelines, being non-statutory in nature, were ignored by the States, and diversion of forest lands continued at almost the same rate as before. At the Central Government level, the Ministry of Environment and Forests (MoEF) is responsible for all matters dealing with policy on these subjects. At the level of State Governments, the Forest Departments under their control implement the national policies. When executing the environmental laws, some of the tribal settlements in India are being disturbed and so, the unexpected issues are emerged.”⁶

To understand tribes and their life styles it would be of interest to know that they prefer to live in a closed society and maintain the stability of the norms of their culture. They have a specific group identity and a cultural self-image and give a great weightage to their tradition and mythology. They lead a natural way of life, free from prescribed social taboos of the outer society. These tribals lay emphasis on group self sufficiency and would like to make best use of available resources as an integral part of the whole ecosystem. Tribals or the Forest dwellers form an essential component of the whole Forest-eco-system where trees, shrubs, climbers, grasses, herbs, wildlife including macro and micro organism exist in a symbiotic relationship. There should be a clear vision while framing laws pertaining to environmental preservation, because, the welfare measures and life sources of the tribal people are integrated with nature.

3. Delimitations

The tribes are scattered all over India. In Tamilnadu, 36 tribal groups are found in various types of topography. Six primitive tribal groups (Todas, Kurumbas, Kotas, Kattunackens, Paniyas and Irulas) are living in Nilgiris. Nilgiris is announced as the reserved area by UNESCO. Government of India framed many environmental laws and enforced. The topic is related to laws preserving the environment as well as customs and conventions of the tribal people. So, there are no proper limitations of chronology to know about the tribes. However, in environmental laws concern, the chronology starts from 1950, but, the customs and conventions of the tribes cover with no limitations.

4. Objectives

The study aims to bring forth the following objectives.

- 4.1 To assess customs and conventions of the tribes.
- 4.2 To know about the environmental and forest laws.
- 4.3 To bring forth laws favour, unfavour to the Tribal customs and conventions.
- 4.4 To analyze the emerging issues while enforcing the environmental laws.

5. Sources

The book ‘*Ethno ecology of Indian Tribes*’ by Amitabha Sarkar and Samire Dass Gupta deals about the cultural diversity and its adaptation of the tribes. ‘*The Tribal development*’ by Helina Mantaw is book for poverty alleviation programmes, planning implementation and implication. ‘*Environmental laws*’ by Vidya Bhagat Negi explains how customs and conventions related to environment. Nagendar Singh’s ‘*Right to environment and sustainable development*’, Thomas Forgarty’s ‘*Constitutional dimensions of environment*’. Stewardship and Nomani’s Z.M. and Abdulla’s M. ‘*Constitutional complexities of environmentalism*’ gives a vivid account about constitutional background for framing environmental laws. ‘*Environmental status and policy in India*’ by V.S.Ganesamoorthy, “*Are the judiciary environmentally myopic?*” by Woolf . H., and Michael Van Hauff’s ‘*The contribution of environmental management system to sustainable development*’ deals about the law making should be bound with environmental care. Hemant Sahai’s ‘*Asian Pacific Environmental Law Conference Report*’ and report by R.Annamalai, interface forestry system in Tamilnadu give much more information for this study.

6. Background for Constitutional Laws - A Panoramic View

“International environmental problems can be classified under three broad groups. First, physical environmental interaction arise when pollution from one country crosses its borders or/and when countries share global environmental resources such as the atmosphere and oceans. Second, there are some ecological resources which physically belong to certain countries, for example, tropical rain forests and endangered species but they provide non-use values to persons in other countries. Third, domestic environmental policies can affect the costs of products and services and therefore the competitiveness of exportables. Hence, variations in environmental standards and their enforcement among countries have implications for trade policy.”⁷

The convention is defined as a set of agreed, stipulated or generally accepted standards, social norms or criteria, often taking the form of a custom and rules framed for the benefit of the society. Out of these customs, certain types of customs or rules may become law and regulatory legislation which may be introduced to formalize or enforce the convention. A convention mostly retains the character of an unwritten law of custom in accordance with the social context for the mass benefit of the society. Therefore, the conventional environmental law is based on the practices, precedents and conventional behavior with regard to the environment problems, preservation of natural resources and solution based on the historical backgrounds and culture. These conventional laws are within the envelope of the law of nature on the subject of which its creator obligates this universe in any of the cases for the nature conservation. They form the basis of any man-made laws to the cycle with a result in chaos confusion and unequilibrium in the natural process, which in turn results in calamities and tragedies for human race. There are the reasons for classifying the conventional environmental law based on the customs and connections existing in the society for the safeguard of the society and nature. All the ancient efforts for the safeguard of nature are based on the ethos and customs throughout the world.

The world today has many environmental challenges such as climate change, the depletion of the ozone layer, trans-boundary pollution and depletion of natural resources by its over exploitation for development activities, growth of industrialization adding the pollution problems etc. The international law is addressing these national or domestic environmental problems of global significance, through the conservation of biological diversity, protection of natural heritage areas, or promotion of sustainable development by developing multi-lateral environmental agreements such as the United Nations Framework Convention on Climate Change (UNFCCC), the Convention on the Protection of the Ozone Layer (Vienna Convention) and their respective protocols, etc. Nature conservation by various international efforts such as, global regulatory regimes and NGOs seeks to provide an appropriate global response for its preservation. The Convention of the Conservation of European Wildlife and Natural Habitats 1979, in its Preamble paragraph 3 “recognizes that wild flora and fauna constitute a natural heritage of aesthetic, scientific, cultural, recreational, economic and intrinsic value that needs to be preserved and handed on to future generations. The World Charter for environmental protection declares a need for a moral code of action, but it appears intended that the moral obligations are to be owed to other humans rather than to nature itself. There are over 500 international treaties and other agreements related to the environments, of which a substantial percentage is multilateral. Over 300 of these agreements have been negotiated since 1972.

7. Background for Constitutional Laws – Indian View

“The Indian ancient texts explain that our society has paid more attention to protection the environment than we can imagine. According to these texts, that it was the dharma of each individual in society to protect nature, so much so that people worshipped the objects of nature”⁸. “Trees, water, land and animals had considerable importance in our ancient texts; and the ‘Manusmriti’ prescribed different punishments for causing injury to plants. “Kautilya said to have gone a step further and determined punishments on the basis of the importance of a particular part of a tree. Some important trees were even elevated to a divine position. Therefore, the conventional environmental law is based on the different convention, customs and ethos of the society from the ancient time to modern era within the whole universe and it is considered an important branch for the development of environmental law”⁹.

“The environmental law in the Indian concept has always been rather broad since ancient civilization. It includes the concept of sustainable development with provisions of air and water pollution, preservation of our forests and wildlife, avoiding noise pollution and even the protection of our ancient monument, which are undergoing severe stress due to urbanization and consequent environmental pollution.

Community resources such as tanks, ponds, etc., have now been articulated by the Supreme Court of India in *Hinch Lal Tiwari vs. Kamala Devi* by including the concept of environment, considering they all affect the quality and enjoyment of our life”¹⁰.

“The environment and matters relating to pollution have been reborn, as to say, such that it is difficult to imagine that our modern environmental jurisprudence is a little over three decades old. In these decades, however, the march of the law has been so rapid and sure that one is tempted to repeat the statement of Lord Woolf that “while environmental law is now clearly a permanent feature of the legal scene, it still lacks clear boundaries”¹¹.

“Indian environmental jurisprudence made a beginning in the mid-seventies when Parliament enacted the laws relating to the environment. Indian Constitution provides the provisions with the constitutional amendment and has a comprehensive environmental framework with an extensive set of environmental laws and environment legal system with the statutory provisions, regulatory instruments and institutional frameworks to implement and enforce the environmental policies and objectives. The Indian Constitution through its forty second amendment in 1976 introduced the provisions of environment protection and with this amendment a modest beginning was made by the Parliament. As Professor Michael Von Hauff states, “it is remarkable that India was the first country in the world to enshrine environmental protection as a state goal in its Constitution”¹².

“The Indian Judiciary in the recent period has been continuously found engaged in creating the environmental jurisprudence full of values for the conservation of total environment of the Country and trans-boundary pollution also. The backdrop of the environmental philosophy which the Indian environmental jurisprudence has nurtured is the Stockholm Conference on Human Environment 1972 and since then, India has witnessed a series of legislative measures, polycyclic decisions amendments of the Constitution and also a new interpretation of Article 21 in the Indian Constitution. Therefore, the Indian efforts for the protection of environment law are commendable in accordance with the environmental prudence and principles”¹³.

7.1. Customs and Conventions of the Tribes

“You must not tear the breasts of your mother earth with a plough like the Gond and the Hindus. You will cut down trees and burn them and sow your seed in the ashes. But you will never become rich, for if you did, you would forsake the earth and then there would be no one to guard it.”¹⁴

“This indeed sounds like a caution to the tribal people to beware of the effect of intensive plough cultivation which caused extensive deforestation and erosion of soil wherever it was practiced. And even today it is the traditional food gathering and shifting cultivator tribal groups who have been guarding these natural forests for hundreds of years and are incongruously considered by the policy makers as the enemies of the forests and wild life.”¹⁵

The tribes throughout India have the most distinguished customs and conventions which are parallel to the preserving the nature. In Tamilandu, the Nilgiris is the protected biosphere area where is the abode of the six primitive tribes namely, Kurumbas, Kattunaickens, Irulas, Todas, Paniyas, Kotas. They lead nature based peculiar life. The Todas life focus on fire making, trees and plant sacredness (Tudr tree), sun worship, moon veneration, reverence of light, stone cult and worship for rain. As the Kattunaicken which means *king of the jungle*, their economy is based on forest resources. The traditional honey harvesting and ethno-medical practices are the major role for their economy leading their daily life. The other tribes Irulas, Paniyas, Kotas, Kurumbas are also depend upon the forest and its resources for their life system.

It is not only in the case of these tribes, but also applicable to throughout India. Hence, the Tribal society is nature based one. The economy for their daily life is determined by forest resources. The forest environment limits and determines their culture. Sometimes, the laws framed by the Government as constitutional laws and other environmental laws disturbing and degrading the tribal life system.

7.2 Environmental Laws

- “Parliament of India pass a law and pass it under Schedule IX of the Constitution, to give a firm legal frame to the rights and entitlements covered in MoEF (Ministry of Environment and Forest) Guidelines of 18th September 1990, namely, The Regularization of encroachments. The resolution of disputed claims resulting from defective Forest Settlements, Regularization of leases and pattas conferred by state government and Conversion of forest villages and other old habitations into revenue villages.

The law includes in its ambit the rights and entitlements of persons and communities in all forest areas including protected areas, sanctuaries, parks and reserves under the IFA (Interface Forestry Act) and the WLPA (Wild Life Preservation Act)¹⁶.

- No subsistence cultivators and occupants of un-surveyed, disputed forest lands or ‘deemed’ forests, should be treated as ‘encroachers’ and evicted, till their rights have been inquired into through an open and transparent process and final notifications under sections 20 or 29 of the IFA have been issued.
- No forest dwellers who have filed their claims for consideration by the authorities under the Guidelines of MoEF dated 18th September 1990 or the MoEF’s order dated 5th February 2004 should be evicted unless their claims have been inquired into and all relevant evidence has been examined through an open, unbiased and transparent process in the gram sabha within a fixed but realistic timeframe.
- “Post 1980 tribal and other poor forest land occupiers be rehabilitated in site by granting them heritable but inalienable conditional pattas through a Community Managed Forest Conservation Program by gram sabhas and permitting them to practice agro-silvi operations pursuant to their protecting mutually demarcated forest areas¹⁷.”
- India has an elaborate legal framework of national laws to protect environment. The following acts were legislated by Government of India to preserve forest and wildlife.
 - Environmental Protection Act, 1986.
 - Forest Conservation Act, 1980.
 - Wildlife (Protection) Act, 1972.
 - National Environmental Tribunal Act, 1995.
 - National Environment Appellate Authority Act, 1997.
 - National Green Tribunal (NGT) Act, 2010.

7.3 Issues and Suggestions

The ultimate goal of both government and forest dwellers / the tribes is unanimously preserving the forest and natural resources. The law makers are hypothetically framing the laws neglecting the welfare measure of the tribes. When the laws are enforced there are some unexpected issues arisen which are complicated to be dealt. There are some suggestions to bring forth to preserve the tribal rights while framing the environmental laws for conservation.

- All criminal cases filed against the victims are immediately withdrawn.
- The role of women, both in conservation and livelihood protection is recognized and protected.
- “A new Conservation Law and Forest Law be drafted, with provisions for protecting the indigenous knowledge and rights of indigenous / forest dwelling communities in accordance with the Convention of Biodiversity Conservation, other International Standards and the Constitution of India in consultation with People’s Representatives, and Peoples Movements¹⁸.”
- The President of India and State Governors should be asked to exercise their powers for withholding the application of forestry laws in scheduled areas with due modification to suit the specific conditions of the areas and the communities living therein.
- The laws related to protected areas and forests will not however, harm the forest dwellers / the tribes.
- When the laws executed, the victims should be properly subsistence.
- There should be effective mechanism for illegal evictions of the tribes from the particular area.
- The proper claim should be arranged by the government when the tribes losing their life by enforcing the environmental laws.
- The confiscated lands should be given back to the tribes as it is the main resource of their daily life.
- The punitive action must be taken against the officers and authorities those who are violating the environmental laws and tribal laws.
- The laws alienated tribal land should be withdrawn.

Some of the programmes are to develop land use planning for forest area to cultivable area to conserve soil, water and increase productivity of land, economic upliftment of the tribes in an isolated settlements and also ensure people participation in all developmental activities. The following components have been suggested to enhance eco restoration, eco development, eco preservation while taking care of socio-economic and developmental needs of the Nilgiri district of Tamilnadu.

- “To preserve and conserve shoals and other grasslands of Nilgiris.
- Conserve soil and water to increase productivity of the land by using vegetative methods and changing the cropping pattern.
- Promote non-land based economic activities to uplift the tribal people and to ensure environment protection.
- Economic up-liftment of tribals in isolated locations, settlements.
- To evolve a comprehensive human settlement policy and discourage migration.
- “Area based Approach” adopted and integrated plans to be prepared for all watersheds and high priority watershed shall be chosen for treatment.
- Use of scientific interventions will be encouraged.
- Promotion of Non-Conventional Energy sources i.e. Solar, Hydro, Bio-gas, etc”¹⁹.,

8. Conclusion

The certain type of customs and conventions have major role in designing the constitutional laws. The convention and customs retain mostly the character of unwritten law of customs in accordance with the social context for the mass benefit of the society. Therefore, the conventional environmental law is based on the practices, precedents and conventional behavior with regard to the environment problems, preservation of natural resources and solution based on the historical background and culture. These conventional laws are within the envelope of law of nature on the subject to which its creator obligates this universe in any of the cases for the nature conservation. They form the basis of any man made laws to the cycle with a result in chaos, confusion, unequilibrium in the natural process. In which turn results in calamities and regarding for human race.

The tribal people in the Nilgiri biosphere of Tamilnadu, South India has strong conventions and customs. Their customs, conventions and livelihood strategies are strongly knitted with environmental elements. The dependence with nature of their culture is unavoidable according to topographical dogmas. Each and every activities of their life system is nature based. The social set up, economy and culture are inseparable from the natural elements. Keeping these in the mind the law makers should not break their relation with nature. The laws framed by the authority should be protogonising and preserving the life of the tribes and the environment.

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