

The Idea of Development and the Rights of the Forest People

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In today's globalised world propelled by technology, the usual line of development adopted by the various governments in the developing countries is to exploit the local resources with the use of advanced technology with a view to accelerate the development process of the country and also to fillip the local economy. It is observed that rarely, the benefits accruing from such development projects are meant for local consumption whereas the cost of ill effects is directly borne by the local population. The voices of dissent of the local people do not find just reflection in the decision making process and the Govt counters such local resistance by insisting that developmental activity is as per the provisions of the law of the land and for the betterment of the people. The article explores scene and develops an understanding about development projects and the impacts on the local population.

[Key Words: *Development, tribal people, diversity]*

Background

Post-independence, free from the shackles of foreign rule, the democratically elected Government of the land was high on both passions and expectations. The general sentiment was to showcase a modern and confident country to the world and to retrieve its superior position in the world order, which had been drastically damaged because of the foreign rule. In order to achieve this objective a number of formal structures were created to develop the country in a planned manner, both at the Centre and State level. The development initiatives taken up by the Centre/State Govt. can be broadly classified into two categories - one where the development initiative is implemented for the sake of direct local consumption, i.e. the local population is the immediate beneficiary of the project. The benefits may accrue in the form of services, employment, infrastructure development et el. The second type of development initiatives is wherein the local population is not the immediate beneficiary of the project per se. The site is chosen for the project due to other considerations like availability of raw material, strategic location of the place etc. The intended objective of the project is macro development of the country and is assumed that locals would benefit in the long run.

It is observed, especially in the recent past, that the local people are enthusiastic about the first type of interventions, even if it amounts to parting with their assets (mainly land) or some local displacement of home or employment as the general sentiment shared by the population is that the initiative is intended for their benefit. At the same time it has been observed that the local people do not take very kindly to such development projects which subscribe to the second idea of development. The paper aims to explore the concerns which lead to strong opposition from the locals, especially in the context of the forest/tribal areas, regarding the development initiatives. The judicial provisions available to the citizens and the interventions of the judiciary in the matter are also explored.

The People

India is a country of great diversity with cultural traditions that span million of years. The country takes great pride in its cultural heritage and the bounties of nature bestowed upon its land and people. The specificities of Nature and cultural practices have given the country a unique identity. The geo spatial distribution of the population can roughly be classified as follows:

1. Urban areas
2. Semi Urban areas
3. Rural Areas
4. People living in the Forest areas/wilderness

Based on above classification, there are visible behavioral differences among the people settled in the various geo spatial regions of the country. Each of the above categories of areas subscribe to specific cultural traditions, beliefs and way of life, which have been carefully crafted and carried forward over a period of time.

In India nearly 200,000 villages rely on forests and forest products for their livelihood. The supply of forest products and consequently, the livelihoods of forest-dependent communities, change in biodiversity and associated implications on ecological balance are all interconnected. (PEF Report, 21 (2009-2010))¹ It is said that forest economy is tribal economy and vice versa. Apart from this, animism i.e. worship of flora and fauna has been an integrated part of the forest culture and known to be the earliest form of religion. Therefore, a symbiotic and complementary relationship is witnessed between the tribal communities and forest.

In terms of attachment to cultural traditions, people in the urban areas are flexible and adapt to material and nonmaterial cultural changes very fast whereas people living in isolated hamlets are quite rigid about following their own cultural practices and do not take very kindly to any changes, especially the ones imposed from the outside. Forests and Tribal people share an intimate relationship and have been living in harmony since their very existence. Forests have been the source of social and economic development of the inhabitants. *'Tribal people and their communities have historical relationship with their lands and are generally descendants of the original inhabitants of such lands. They have developed over many generations a holistic traditional knowledge of their lands, natural resources and environment. The entire tribal life process is*

*centred and built upon two major means of production, that is, the forest and the land, which are described as twin pillars of tribal economy(J. Ambagudia: 2010).*²

They are content with the subsistence life style handed down to them over the ages. Nevertheless the contribution of the forest people in the development of mainstream India cannot be ignored. Their rich cultural practices have added greatly to the diversity of the country, the mineral wealth of which the country is so proud, has been painstakingly guarded by the forest people.

The Sources of Resentment

Today it is not an uncommon sight to find locals putting up resistance to development projects approved by the Government. The independence of the country and the Constitution based on modern principles of equality and democracy propelled new thought process at all levels... governance as well at the public level. As the independent country matured and the people of the land overcame the initial excitement and idealism attached to the idea of independence, communities started questioning the development initiatives of the Government, the acceptability with regard to some of the development initiatives of the Government has not been as smooth as it was in the initial years of independence. To some extent, such resentment can be taken as a healthy sign of democracy. This can be indicative of the rising awareness levels of the population. The Government attends to such a situation with prompt advocacy.

As fallout of colonial legacy and also as a strategic arrangement of the newly independent India, the principles of development rely a great deal on exogenous ideas. Ideas of development imported from other lands are being emulated on the land and the people. Not all knowledge and knowhow can be indigenously created, especially in today's technology driven, globalised world which to a great extent is propelled by the forces of capitalism and an economy which endorses consumerism. In sync with the global trends, India too is aspiring to achieve a status wherein it is relieved of its "Third World country" tag. The rich mineral areas, so far carefully guarded by the people of the land are now being made available to global forces for exploitation in the name of development. This is one main cause of resentment. Locals have united against the agencies which plan to exploit the local wealth, not with an aim to develop (better) the local area but to sell the exploits in the global market for economic gains. This commodification of the Nature is the source of problem, which the locals see as an infringement on their rights. "Numerous state efforts at "development" have amounted to the transformation of free cultivators with a local religion into Hindu untouchables in slums."(Georg Pfeiffer, 2014)²

CASE I: "The Niyamgiri Hills form a mountain range in the Eastern Indian state of Orissa and is home to the 8,000 of the Dongria Kondh people, whose lifestyle and religion have helped in nurturing the area's dense forests and unusually rich wildlife. Niyamgiri is an area of densely forested hills, deep

gorges and cascading streams. To be a Dongria Kondh is to farm the hills' fertile slopes, harvest their produce, and worship the mountain God Niyam Raja and the hills he presides over, including the 4,000 metre Mountain of the Law, Niyam Dongar. The Dongria live in villages scattered throughout the hills. They believe that their right to cultivate Niyamgiri's slopes has been conferred on them by Niyam Raja, and that they are his royal descendants. They have expert knowledge of their forests and the plants and wildlife they hold. From the forests they gather wild foods such as wild mango, pineapple, jackfruit, and honey. Rare medicinal herbs are also found in abundance, which the Dongria use to treat a range of ailments including arthritis, dysentery, bone fractures, malaria and snake bites. The Dongria also cultivate orchards in the forest, producing crops such as oranges, bananas, ginger, sweet papaya and the aromatic resin jhunu, all of which are sold at local markets. A recent study found that the Dongria gather almost 200 different foods from their forests and harvest over a hundred crops from their fields. This amazing diversity sustains them year-round, with little need for food or goods from beyond their hills. The tribe also keeps chicken, pigs, goats and buffalo. Dongria men gather juice from the forest's giant sago palm trees, a drink that provides energy for the long hikes they make throughout the Niyamgiri Hills. The bauxite-capped Niyamgiri hills soak up the monsoon's rain, giving rise to more than a hundred perennial streams and rivers, including the Vamshadhara river. These streams provide the water that is vital for the communities who live in the hills, and provide critical drinking and irrigation water for those in the plains, where drought and starvation have made national news. The Vamshadhara provides drinking and irrigation water to millions of people in the states of Odisha and Andhra Pradesh. Over centuries, the Dongria have helped to maintain the rich biodiversity of their forests, where tigers, leopards, giant squirrels and sloth bears roam. At the centre of the struggle was the Dongria's sacred mountain, the 'mountain of law'. Vedanta Resources wanted to mine the bauxite from the top of the same mountain to extract the estimated \$2billion-worth of bauxite that lies under the surface of the hills. The company planned to create an open-cast mine that would have violated Niyam Dongar, disrupted its rivers and spelt the end of the Dongria Kondh as a distinct people. The Dongria Kondh would lose their livelihood, their identity and the sanctity of their most religious site. In common with other displaced tribal peoples worldwide, they would also lose their present good health, their self-sufficiency and their expert knowledge of the hills, forests and farming systems that they have nurtured."

Case II (*FrankyVarah, 2014*): The government of India granted mining leases and licenses to private companies during 2007-2012 in the ophiolite belt of Ukhrul and Chandel districts of Manipur. The provisions of the Memorandum of Understanding (MoU) signed between the government of Manipur and the lessees include transfer of huge amount of land, raw materials, water and the right to mine. However, the agreement between the Manipur government and

the lessees was reportedly signed without informing the people of the land. No proper environmental impact assessment (EIA) was conducted either.

Case III; The UCIL¹ which has been mining for uranium in Bihar for the past 40 years has not been able to win the support of the villagers for its expansion programme. The major reason for this is not meeting the prerequisites for instance, no development has taken place in the leasehold area and it lacks even the basic amenities. The company has plans to exploit the uranium deposits at various other places like in Bagjata and Mahuldih (Jharkhand); Lambapur-Paddaguttu (Andhra Pradesh); Meghalaya and so on. At all these places, however, there have been protests from the local residents and they have the following demands:-

- a. They do not want any new uranium mine.
- b. They want the existing mines to be under the international safety guidelines.
- c. The tribals are demanding their land back which was acquired earlier, but has never been used for mining.
- d. The displaced people are demanding livelihood and rehabilitation.
- e. They want basic clean of the contamination and demand monitoring of the water bodies to ensure that the radio nuclides do not seep into the aquifer used by more than 1,00,000 people.
- f. Appeal has been made to the government to make an independent study of the environmental and health impact of the UCIL's operations. (Moushumi Basu: 2009)

The Safeguards

The Constitution of the country recognizes the special position of the forest people and has conferred special rights on them in order to safeguard their interests. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, empowers the tribal and forest dwelling communities to protect their habitat, which can mainly be summarized as follows:

- (a) Tenure Rights: which secure individual or community tenure or both, right to hold and live in the forest.
- (b) Ownership Rights: access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village, other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or trans human) and traditional seasonal resource access of nomadic or pastoralist communities;
- (c) Access Right: rights to access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity.
- (d) The holders of any forest right as well as the Gram Sabah's and village level institutions which are constituted in the areas where there are any forest rights holders under this Act are under a duty and as a consequence are empowered to:

- (a) provide protection to the wild life, forest and biodiversity present in that area;
- (b) ensure protection of the adjoining catchments area, water sources and other ecologically sensitive areas;
- (c) preserve the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers and protect it from any form of destructive practices which damage their cultural and natural heritage;
- (d) stop any activity which adversely affects the wild animals, forest and the biodiversity and to ensure that the decisions taken in the Gram Sabah to regulate access to community forest resources are complied with.

A person is eligible to claim the status of forest dweller if he primarily resides in forest or he is dependent on forest land for bona fide livelihood needs which may include sale of crops cultivated or of minor forest produce or income from grazing etc.

The laws like The Forest Conservation Act 1980 as well as the aforesaid Act have provided for enough safeguards to prevent the forest land being put to unplanned use. Whenever any development activity is to be initiated in the area, a system of approval from the central government and strict procedural compliances has been put at place. Moreover, due care has been taken to check the unreasonable eviction of the tribes and at the same time preserving their culture. Prerequisites have been laid down which need to be fulfilled in case environmental clearance is given.

Judicial Decisions

Time and again the courts of the land have unequivocally upheld the need to conserve their special status. There are several judgments by the Supreme Court which have ruled against indiscretion of the state. In the recent case of *State of Kerala vs Jenmis (Land owners of Kerala) 2013*, the Supreme Court ruled that the ownership of minerals should be vested with the owner of the land and not with the government. The three-judge bench headed by Justice R M Lodha noted that “there is no law in the country which declares that state is the owner of sub-soil or mineral wealth”. Referring to various acts regulating extraction of underground natural resources, the bench said that nowhere do the laws declare the proprietary right of the state. It ruled that the assertion of government to collect duty or tax is in the realm of its sovereign authority, but that does not extend it a proprietary right. The court rejected the argument that individual owners cannot claim any proprietary right on the sub-soil resources as section 425 of the Mines and Minerals (Development and Regulation) Act, 1957 prohibits carrying out of any mining activity in this country except in accordance with a permit, license or mining lease.

As very beautifully laid down in the *N.D.Jayal case (Jayal and Anr, 2004)*: “*The Government can utilize the natural resources for common good but cannot be allowed to exploit or virtually plunder it in a manner to deprive those presently sustaining their lives on those natural resources and deprive the coming generations who have also a right of living on those resources. On these*

fundamental issues, there is a cleavage between technological experts, environmentalists and human rights activists. The Court is faced with an issue not easy to decide as to which section of experts and environmentalists is right in their approach.” The Apex Court further says: ‘...to remove him and rehabilitate him in the plains is like taking a fish from the river and putting it into a artificial reservoir or an aquarium where it might survive but can never be happy’.

The Analysis

The way of life opted by the Forest Dwellers is a matter of choice. They have little expectations from the mainstream except that there should be no interference from the outside world in their cultural practices which they guard in a passionate way. As a result of this arrangement they have almost remained outside the mainstream development frame. They have shown no interest in acquiring the skills to participate in the mainstream culture and as such are poorly equipped to participate in the mainstream activities. They have little idea about the ways of the working of the world beyond forests. This leads to a peculiar situation for them – being isolated from the mainstream results in poor awareness of protective instruments available to them. These forest people have negligible representation in governance machinery.

Taking advantage of the limited capacities of the forest dwellers to participate in the mainstream activities, the developer agencies usually circumvent the provisions of law and violate the local habitat. Multinational companies proclaim one thing on paper and execute a different reality. Profit generation from any project is their announced aim. Usually the rehabilitation work carried out by the companies is shabby and the damage to the environment is enormous and irreversible. The locals pay the cost with their health, loss of livelihood, culture without accruing any immediate benefits. The idea of sustainable development has to be strongly endorsed by the Governments and supported by the populations. The mindless exploitation of nature for mere economic gains should totally be discouraged and development initiatives must take into account the concerns of the local population keeping in view the true spirit of equality and equity as enshrined in the constitution. Involvement of the local community in law and policy making process for any development initiative and the active engagement of government agencies to safeguard the interests of the local populations. That is the only way forward for truly inclusive idea of development.

Notes:

¹The Uranium Corporation of India Limited (UCIL) which started mining operations in Jaduguda in Bihar's (now Jharkhand) East Singhbhum district in 1967 has often been accused of harming the health of the tribals and other residents in the vicinity of its uranium ore mining and processing operations.

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[The final revised version of this paper was received on 13 November 2016]