



## Human Rights and Degradation of Common Property Resources (CPRs) for Indigenous People: A Dilemma

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### ABSTRACT

*The basic human rights are decreased in the form of living rights of the indigenous people who are the main beneficiaries of Common Property resources (CPRs) for their daily livelihood sustenance because of degradation of CPRs day by day and as they have no ownership rights. No planners or policy makers cannot think about the CPRs, management as well as violation of Human Rights etc for the indigenous people, who are the main bearer of culture, thoughts, features etc. This paper try to analyse that there is genuine degradation of CPLRs in almost all the areas of West Bengal.*

**Keywords : Property Rights, Convention, Human Rights, Benefits.**

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#### Introduction:

Indigenous people are displaced due to development, conservation, disasters or conflict, often leads to tremendous alienation from common property resources (CPRs) such as forests, land, fodder or water. CPRs are owned by a limited group of people sharing use rights to those resources by convention for the lack of legal titles (patta) to these resources which are often communally owned or managed indicating that when one person utilizes the resource, less is left for everyone else.

Human rights are commonly understood to be those rights that are inherent to the human being. The concept of human rights acknowledges that every single human being is entitled to enjoy his or her human rights without distinction as to race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth or other status. Human rights are legally guaranteed by human rights law, which protect individuals and groups against actions that interfere with fundamental freedoms and human dignity.

#### Discussion:

This paper deals with the existence of CPRs from the viewpoint of property in ownership right concept over an area (it may be land or forest or water bodies or any other resources). The property in ownership right concept means an area, which is under legal control of an individual or a group of people or any organization or institution or local authorities or a state or country.

'Property' means a "Bundle of Rights and Obligations". It is usually thought in terms of a bundle of rights and obligations as defined and protected by the local sovereignty.

The right means the members of each group have a reasonably secured expectation or assurance that members from another group will behave in another way. So the property right is a social relationship between a resource user and other potential users, with respect to particular object, place or features of the assets (lands). So owner of the property has the right to use the property, draw the benefits and earn from their particular resources, to exclude others and restrict to draw the benefits from the said resources, cultivate it and to manage or conserve or protect against transformation of these resources, and to sell or lease these particular resource.

#### Right to land and Natural Resources:

The crucial issue for all indigenous peoples is the question of land rights- that is whether or not external political entities do or not recognise their right to the use and ownership of their traditional lands. Land in India as well as world is a scarce resource, added to which right to property is not a fundamental right in our constitution. Indigenous people lose much of their bargaining power due to non conferment of this right. Land rights legislation in the country remains very weak and varies from State to State. The only piece of international legislation which deals explicitly with the land rights of indigenous peoples is the International Labour Organization's Convention 107 on indigenous populations. This legislation explicitly recognizes the right of indigenous peoples to the collective ownership of their traditional lands. The use of the word 'occupy' is also legally significant. Recognizing that many indigenous peoples have extensive landuse practices such as shifting cultivation, fishing, gathering and hunting, the convention does not seek to limit indigenous peoples' right of ownership merely to land that they are cultivating but recognises their right to own all the land that they traditionally occupy.

#### Right to manage the environment and Natural Resources:

It is as a part of their exclusive right to self determination. It is now a well accepted principle that resources are best managed by the local community and Indigenous people are knows to conserve and protect the resources and also their knowledge.

Joint Forest Management (JFM) though not a success in many parts of the country was a novel idea to involve communities in forest development. The role of Indigenous not properly taped was one of the main reasons for its failure.

42nd Amendment, 1976, brought both 'Forest' and 'Wild Life' into the concurrent list and without the permission of the central Government, forest land, or land in relation to protected area cannot be altered or used for non forest purposes.

The Land Acquisition Act, 1894 has helped State to acquire land for 'public purpose' but has failed to regularize encroachment without rehabilitation and resettlement policy formulated by the center.

The 73rd and 74th Amendment insertion into the constitution gave power of local self Government to villagers, but this in no way has helped the cause of better resources management by the local communities.

Bio diversity Bill 2000 acknowledges traditional wisdom and provisions to nurture, protect and promote traditional knowledge.

The Panchayat [Extension to the Scheduled Areas] Act, 1996: will strengthen the indigenous people's struggles on issues of natural resources, mega projects, displacement and self-governance. Technically it is meant to provide for the extension of the provisions of part IX of the constitution, relating to the panchayats to the scheduled areas.

But according to property right characteristics, CPRs have all the above rights excluding the alienation right, whereas in state or private property, they contain all the features of property right. It has management right, where the assets transform into some improvements by applying regulations of internal use patterns.

The National Sample Survey Organization disclosed the estimate of availability of Common Property Land Resources (CPLRs) in India and in West Bengal in 1998.

**Table 1 Distribution of Common Property Land Resources in India and West Bengal, 1998**

Sl. No.	Item	Estimate
1.	Percentage of CPLR in total geographical area in India	15
2.	Percentage of CPLR in total geographical area in West Bengal	2
3.	CPLR per household in India (acres)	0.744
4.	CPLR per household in West Bengal (acres)	0.072
5.	Average household size in India (Number of persons)	5.04
6.	Per capita CPLR in India (acres)	0.144
7.	Area owned per household in India (acres)	2.016
8.	Area owned per household in West Bengal (acres)	0.792

Source: NSSO Report 1998 (54 th Round)

Table 1 show that the CPLRs in India were 15 percent of the total geographical area in 1998, whereas in West Bengal this is only 2%. The area is owned per household in India is 2.016 acres whereas the CPLRs per households in India are 0.744 acres and in West Bengal it is only 0.792 acres and 0.072 acres respectively.

The dwellers of any village cannot use or manage CPRs like own resources. They can draw benefits only from these resources until the owner if any, resist using such resources. In that cases the rights of use are customary and in that property they can't construct fence, grow vegetables & grass, plant any tree or something, construct any building, drain, small houses etc.

They cannot participate in acquisition, protection, transformation, and protection against deterioration etc. of CPRs. If this is not possible for the villagers, so how these resources will preserve for the dwellers of any village as well as next generation? How the indigenous people maintain their livelihood if they are being displaced due to development and or degraded the common property resources? One area is being used as CPRs for a long time by the indigenous people,

then the actual owner who belong the property rights; they can encroach for their need anytime. Then the use rights of indigenous people are to be violated. So there is a dilemma about the property rights, human rights and the CPRs.

**All these above resources were degraded and depleted due to the following reason:**

o Land Reforms: It occurs particularly when land is distributed to landless as a measure of Land Reforms or in the case of distribution government owned land to the landless people.

**o Land acquisition:**

Land is being g taken according to Land Acquisition Act 1894 for any development project or any purpose for the welfare of the society and or human beings. So development through extension physical social infrastructure has a serious negative impact on the preservation of CPR of any form.

**o Privatization of the resources:**

Repossession of landed and other property hitherto remained unacquired by the original owner. This is one of the important causes of depletion of resources. People of the surrounding areas extract some benefits from such property as a matter of their conventional right, which cease to exist after repossession by the original owner.

**o Demographic Pressure:**

The population pressure on land has led to decrease per capita land holdings as well as per capita CPL holdings. It also decreases the land-man as well as land-animal ratios.

**o Overexploitation of CPRs:**

As there is no ownership right and proper management for the use of these resources, the resources are exploited.

**o Bad irrigation practices:**

It is recognized that 24% of all irrigated land worldwide suffers from Stalinization due to bad irrigation practices. This is a serious reason behind degradation of CPR. Deep-water irrigation is being carried on in place of surface water irrigation, which ultimately increases minerals and salts on upper soil degrading fertility.

**o Deforestation:**

Deforestation is taking place currently at a rate exceeding 0.9% a year in Tropical areas. Forest areas decrease due to agriculture, construction and other uses. In India it has increased to 0.15 million hectares annually. Permanent Pastures have declined at a rate of 0.8% between 1965-1989.

**Conclusion:**

Indigenous people enjoy the conventional right to draw benefits from the government property or private property, they do not have any right of management or conservation or protection against transformation of these types of property or anything like this.

For this nonparticipation and due to development and other purpose, CPRs are degraded day by day in all areas. So the income and employment generation from CPRs is being decreased and the dwellers or indigenous people cannot manage their food and fodder from the CPRs.

And in this respect the protection of human right is not maintained for the soil of the sun and the indigenous people who are the main sufferer of any development project.

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