

Committee: Special Committee

Topic: Protection of Tribal Land



Definitions

Sovereignty - Tribal sovereignty generally refers to the inherent right to self-govern, which has never been relinquished.

Civil regulation – Refers to the concept of civil law, which regulate private matters as opposed to regulating political, criminal or military matters.

Tribal customary law – Widely accepted principles by tribes without the need for treaties. Tribal law is often seen as harsh and brutal, but it ensures order and discipline.

Indigenous people - Indigenous peoples are ethnic groups who are the original or earliest known inhabitants of an area, in contrast to groups that may have settled, occupied or colonised the area more recently.

Introduction

The ability of a tribe to be able to exercise control over its territory is one of the most fundamental preconditions necessary for effective tribal planning and prosperity. The status of tribal sovereignty and civil regularity authority that tribes are understood to possess over their territorial resources is one that raises a great deal of dispute. Of concern to the issues surrounding tribal planning are the limitations that arise as a result of a tribe's ability to regulate land use and economic activities whilst restricting the conduct of private activities of those within the tribal land.

For many states, the issue regarding the protection of tribal lands and tribal lands themselves is one that has been in existence for many years with little amicable solutions found. Although there are tribal land territories that have been ceded seemingly without protest, it is important to consider that this was often done with the understanding that there is the undisputed existence of general trust between the state and the tribal people. When examining the history of many member states' federal policy, the continuous failure to the trust commitments to tribes is made apparent.

Key Points

Tribal governments cannot be compared to local governments as they do not derive their authority directly from state. For a municipality to enact regulations, it must be demonstrated the state has conferred and communicated such power to the municipality, as the state is the sovereign body that possesses such power. A tribe is unique, however, in that it retains its own sources of governing power.

A key distinction must be considered in understanding how to effectively protect tribal lands is through understanding tribal authority and whether a limitation exists that could or would prevent a tribe from acting or whether any authority exists that would permit a tribe to act. Tribal sovereignty, conversely, has been used to prevent the intrusion of state jurisdiction, exemplified within the United States of America and the Indian tribal land. There are a variety of restrictions to that which must be considered, such as sovereign immunity, which has provided tribal states with immunity in some (but not all) cases and cannot be taken as immunity for the tribal lands.

Many states, such as Yemen, have relied upon indigenous tribal traditions to help aid the regulation of conflict and establish justice for a significant period of time. Tribal law has aided handling conflicts between various tribes, between tribes and companies and (most notably) between tribes and governments. Tribal mediators can play an incredibly important role in promoting political dialogue and aiding consensus building between political factions. Where there are examples of where a government may withdraw, tribes have taken responsibility and managed to provide an acceptable level of security within their territories.

Unlike the formal system, the tribal system is based on consensus building and maintaining relationships. Key to tribal traditions are transparency, accountability, solidarity, collective responsibility, the protection of public interests and the weak, prioritizing community interests over those of the individual, empathy, and forgiveness. Dialogue and the culture of apology are embedded in the practice and rituals of tribal Customary Law. The system is sophisticated and highly structured, and tribal conflict management processes involve a great deal of deliberate negotiation and dialogue to ensure conflict parties are content with the resolution.

Key Issues

Some western observers of tribal lands are of the belief that tribes and the tribal systems are an impediment to state building and mitigate development. And, indeed, whilst there have been tribal leaders who traded the needs of their people in order to maximise their personal political influence and who were part of the corrupt patronage network that undermined the state, there is also a significant basis for how tribal lands can be protected and fortified. This could ultimately be achieved through tribal mechanisms for conflict resolution that integrate with the formal system for conflict resolution. This would ensure that they work in conjunction with and complement formal institutions where issues facing the tribal system must be addressed within that framework.

Tribal governance and conflict resolution traditions will again significant role in aiding the easing and eventual cessation of tensions to mitigate conflicts as a result of political transitions. Tribes are also anti-ideological and fear the appeal of radical groups, such as al-Qaeda, that seek to replace tribal culture and social structure with new leaders and agendas. Arguably, tribes play a significant role in holding states together in the face of increasing political adversity and harsh economic conditions. The political and socioeconomic changes that tribal lands have experienced have introduced new challenges to the tribal system that

have undermined its effectiveness and ability to handle conflicts. This has led to an increase in tribal conflicts and sometimes contributed to the deterioration of security in tribal area

There is also the importance of conservation that must be considered which is demonstrated by the Xingu indigenous park (outlined in pink) which is home to several tribes. It provides a vital barrier to deforestation (in red) in the Brazilian Amazon (pictured below):

There is growing evidence, such as from Amazonia, that when indigenous territories are legally recognised and managed by indigenous people, the rainforests are better protected. There is mounting evidence that support the creation of protected areas and an increased police presence leads to the eviction and abuse of vast numbers of people, including tribal peoples, and fails to consider the deepening environmental crisis. A new approach is urgently required, and conservation should focus on protecting the land rights of the peoples to whom these important areas are what they refer to as 'home'.

Bibliography

Ansson, Richard J. "Protecting Tribal Sovereignty: Why States Should Not Be Able to Tax Contractors Hired by the BIA to Construct Reservation Projects for Tribes: *Blaze Construction Co. v. New Mexico Taxation and Revenue Department: A Case Study.*" *American Indian Law Review*, vol. 20, no. 2, 1995, p. 459.

International, Survival. "Decolonize Conservation." *Decolonize Conservation - Survival International*, 2015, www.survivalinternational.org/conservation.

McSloy, Steven. "Because the Bible Tells Me So': Manifest Destiny and American Indians." Vol. 9, 1996.

Rupavath, Ramdas. "The Persistence of Land Alienation: The Experience of Tribal People of Andhra Pradesh." *Journal of Asian and African Studies*, vol. 50, no. 3, 2014, pp. 259–275.

"Tribal Land Alienation." *Human Bondage: Tracing Its Roots in India*, pp. 180–196.