

REPORT ON

International Conference and Workshop on “Legal Pluralism in Natural Resource Management”

March 30 and 31, 2012

Organized By

Amrita School of Business, Amrita University, Coimbatore, India and
Asian Initiative on Legal Pluralism

Supported by

Commission on Legal Pluralism, The Netherlands

Overview of the conference and workshop

There is widespread recognition that property rights play a fundamental role in shaping how people manage natural resources. But many conceptions of property rights have focused only on static definitions, usually as defined in statutory law. The legal anthropological perspective highlights the coexistence and interaction between multiple legal orders such as state, customary, religious, project and local laws, all of which provide bases for claiming property rights. These multiple legal frameworks also facilitate considerable flexibility for people to maneuver in their use of natural resources, thus helping to cope with uncertainty. In many parts of the world, usage of natural resources including forest, water, fisheries, mining and other natural resources, rights are dynamic, flexible and subject to frequent negotiations because of uncertainty due to depletion as well as due to social, economic and political changes. In this context, legal Pluralism in natural resource management” explored the role of multiple institutions in managing conflict and shaping negotiations, policies and adapting to changes.

The two days international conference and workshop on Legal Pluralism in Natural Resource Management was organized by Amrita School of Business (ASB) and Asian Initiative on Legal Pluralism (AILP) supported by the international Commission on Legal Pluralism (www.commission-on-legal-pluralism.nl), held at Amrita School of Business, Amrita University, Ettimadai, Coimbatore India during March 30-31, 2012. The conference brings out interesting perspective to various issues on legal pluralism relating to natural resources across various regions of India and a few other regions of South and South-East Asian Countries.

On behalf of the ASB and conference coordinator, Dr. V.S. Somanath, Dean ASB extended hearty welcome to the gathering and introduced the theme and scope of the AILP workshop.

In his introductory remarks on the workshop, Dr. Somanath, traced the relevance of the concept and issues of Legal Pluralism in not only in the areas of natural resource management but also in the field of business law, finance, taxation etc. His brief introduction also traced that, legal pluralism encompasses so many issues and reasonable questions in an integrated manner.

The workshop was led by four key resource persons during four technical sessions. The first session on “Theories and Concepts of Legal Pluralism: An Historical Perspective” was led by Dr. Sulistyowatri Irianto, Law University of Indonesia, Indonesia. The second session on “Theories and Concepts of Legal Pluralism: Contemporary Issues” was led by Dr. D. Parthasarthy, IIT Bombay, India. The third session on “Application of Legal Pluralism in Natural Resource Management” was led by Dr. Maarten Bavinck, University of Amsterdam, The Netherland. The final session on “Application of Legal Pluralism in Natural Resource Management” was led by Dr. Svein Jentoft, University of Tromso, Norway.

The conference brought out various shades and application of legal pluralism concepts in natural resource management. The issues covered resources including forest, water, fisheries, agriculture etc. Similarly, the cases are from various regions of India as well as a few other regions of South and South-East Asia.

Dr. Sudarsana Natchiappan, Member of Parliament (Rajya Sabha) and Senior Advocate, Supreme Court of India inaugurated the conference on ‘Legal Pluralism in Natural Resource Management’ in the presence of Pro Chancellor Abhyamrita Chaitanya, Maarten Bavinck, President of Commission on Legal Pluralism, and an Associate Professor at the Department of Human Geography, Planning and International Development Studies of the University of Amsterdam, The Netherlands and many others. Dr. Natchiappan told that the scope of legal pluralism in the realm of international study is enlarging since every country is bound by legal compulsions of various institutions created in domestic and international governance. He also said that the topic on ‘Legal Pluralism in Natural Resource Management’ became much more enhanced to resolve conflicts and disputes with various stake-holders. He argued that “In earlier times, the natural resources of a country were not attractive to another country. This was because the use of such natural resources depended on the national need and was based on the technology and know-how of that country”. Further he argued that “In the 18th and 19th centuries, expansion of colonial rule by various countries in search of natural resources for value addition and market, through the industrial revolution created the explosion of laws, regulation and multiplication of legal pluralism”.

Dr. Natchiappan released the conference proceeding entitled “*Legal Pluralism in Natural Resource Management: South and South-East Asian Perspectives*” edited by Dr. Amalendu Jyotishi, Dr. Sushanta Mahapatra, Dr. Maarten Bavinck.

All the papers presented had been divided into six broader categories, presented in six technical sessions, apart from inaugural and concluding session. Of these, the first three categories are specific to three different and important resources namely forest, water and fisheries. Remaining three categories included set of papers on rights of indigenous communities in resource management, historical understanding of conflict and natural resource appropriation and its evolution, and perspective thinking on recognition of legal pluralism on the onset of various conflicts and negotiation in environment and natural resource management as well as larger governance issues in environment and resource management.

Session 1-Theme: Decentralization and Protected Area Issues

The theme of the first session was on “Decentralization and Protected Area Issues” chaired by Dr. Pampa Mukherjee, Panjab University, Chandigarh. There were three papers, presented by, Ms. Revathi Pandya, Mr. Tomouki Kanamaru and Dr. Pampa Mukherjee. All of them micro level study of a natural resource-Kumbalgarh Wildlife sanctuary from Rajasthan, Coffee forests of Timor Leste, Japan and the Vanpanchayats of Uttarakhand.

On forest issues, the three papers by Mr. Kanamaru, Dr. Mukherjee, and Ms. Pandya bring out the role of specific institutions in forest management. Decentralized governance as an option is discussed in the respective papers of Mr. Kanamaru and Dr. Mukherjee in the context of Timore-Leste in Japan and Uttarakhand in India respectively. Similarly, Ms. Pandya’s paper discusses the institutions in management of protected areas considering the cases of Kumbhalgarh Wildlife Sanctuary, Rajasthan.

The problems presented in all three areas were either implementation or design issues, or both. Implementation issue, as the cases outline the fact that when co-management does not evolve as a matter of practice, the process gets too complicated for the people to understand and more likely, too difficult for them to accept and comply with. Design issue, as the cases bring out the lack of clarity in defining the roles and responsibilities in the various components of the co-managing institutions and the vagueness surrounding the way in which each component relates with the other.

Session 2-Theme: Legal Pluralism in Fisheries Management

Fisheries issues, especially the marine capture resources have multiplicity of institutions playing important role in management of resources, conflict and negotiations. The issues here are different from the other two resources largely due to its end use. The theme of session-2 was on “Legal Pluralism in Fisheries Management” had two very useful presentations and was chaired by Dr. Svein Jentoft. The first was on the “Effectiveness of Non-State legal systems in the management of marine fisheries in South India” by Dr. K T Thomson, Mr. Baiju and Ms. Greena. The paper documented how religious bodies influenced fishing dynamics in a South Kerala fishing village.

The second paper by Dr. Svein Jentoft discussed “Legal Pluralism and the Governability of fisheries and coastal management. The governance of fisheries and coastal systems cannot be well understood without understanding legal pluralism. The paper discusses how interactive governance theory and legal pluralism can mutually benefit.

Session 3-Theme: Water Resource and Conflict Management

The theme of session-3 was on “Water Resource and Conflict Management” had three very useful presentations and was chaired by Dr. P K Viswanathan. All the three papers are dealing with the water conflict management and governance issue. The session mainly focused on issues related to proper utilization of water resources and the legalities associated.

Dr. Phanindra Goyari discussed that, though water was in abundance in Assam, very few steps have been taken to irrigate this water. He pointed out that systematic irrigation is lacking in several parts of Assam where the rainfall is heavy. Though the irrigation potential created is increasing every year, the actual utilization seems to be very low.

Dr. P. Sakthivel presented on the regulating part of water conflict jurisdiction in Indian context. Dr. Sakthivel’s presentation focused on conflict of jurisdiction where parallel judiciary institutions exist and conflicts arise as a result. There seems to be more than one factor that impacts the availability of water to the common people.

The session concluded with the presentation of Dr. P. K Viswanathan. Dr. Viswanathan in his paper through an extensive review discuss about the governance crisis in water sector in India. He mentioned that though different Indian state have come up with water policies of their own, the governance crisis still remain in the absence of a robust resource development and management strategy.

Session 4-Theme: Indigenous Community Rights in Resource Management

Dependence of indigenous community on natural resources especially on forest for livelihood is well known. However, their property right on these resources often has been ill-recognized and undermined by statutory law. In this context, five papers attempt to understand the issues of indigenous community rights on resources. This session was on specific cases of natural resources and issues in their management and the chairperson was Dr. Yonariza.

Four out of the 5 papers discussed a specific case of natural resource and brought out issues of people- their equity and the disruption of their harmony brought about the state mechanism of managing the resources that these people were dependent on.

Of the 2 papers on Odisha, one discussed the land and forest sustaining efforts that brings about cycles of exploitation of tribal rights explaining the ways in which the loss of livelihood through land alienation caused poverty and illiteracy among the people. Sarangi’s paper looks at the tribal rights over land and forest resources in Odisha and develops a critique of Statuary law that overlooked the customary norms of the indigenous communities. The second paper by Dr. Satyapriya Rout discussed the specific case of Vedanta conflict in Odisha where the tribals resisted the mining of their natural resource. It brought out the

effects of policies and acts, both rights reinforcing and rights-impeding and how the alternative and contested legal orders are made by contradictory social forces.

The third paper by Mr. Sahoo and Dr. Panigrahi's analyzes the unscientific use of Balimela Reservoir in Odisha that pollutes the water and in turn affects the indigenous community dependent on this water for their livelihood.

The paper by Dr. Yonariza asked if there is a need for a Legal Pluralism movement in Malaysia, which was cited as the least documented country. It brought out issues like how state laws were used to exploit the resources without any concern for the small tribe that lives around the lake and draw their livelihood from the resource. Yonariza's paper analyzes the rights of Jakun community over natural resources in Tasik Chini region of Pahang State of Malaysia and seeks to understand if there is a need for legal pluralism movement in the region.

The fifth paper by Ms. Pant was the case of protection of CIP outlined the design of a legal framework to ensure access and equitable benefit sharing among the holders of the traditional knowledge in ethno-medicine, discussing whether such framework could be based both on the existing state laws and the customary law/ practices. As the term 'protection' is understood differently by the state, NGO and the people, it emphasized the need to recognize the customary practices by the state.

The session leaves one wondering if it is the haphazard 'protection' acts that lead to the rapid deterioration of the natural resources disturbing the livelihood of the people rendering them jobless and get them migrate to the cities and towns as refugees or worse.

Session 5-Theme: Historical Understanding of Conflicts in Natural Resource Management

The theme for the fifth session was "Historical understanding of conflicts in natural resource management" had three well researched papers and was chaired by Dr. Sulistyowati Irianto. These three papers broadly discussed on the issues of conflicts in natural resource management from a historical perspective. The first paper was "Iron Smelting and the state in pre and early colonial India: Unearthing the roots of statutory forest law" by Dr. Sashi Sivaramakrishnan and Dr. Amalendu Jyotishi. The authors have done a very insightful study into how vast stretches of forest areas had been destroyed due to the large consumption of trees for iron smelting. The paper brought out the argument that India being a war economy during pre and early colonial period which necessitated a large consumption of iron which in turn caused forests to disappear.

The session's second paper was "Issue in the land management system of Tripura" by Mr. Dibesh Deb Barma. The paper attempted to study the evolution and land management system of the north Indian state of Tripura and also the several ways in which land alienation of the indigenous people took place. Lack of comprehensive legislation has deprived the tribal population of their rightful ownership of the land they were occupying for generations.

The last paper presented during this session was “Historical and Contemporary perspective of conflict in Chilika Lagoon Fisheries, Odisha, India” by Dr. Satyasiba Bedamatta. The paper discussed about the breakdown of institutionalized mode of fishing in the Chilika lagoon and how it triggered conflict among the various communities. The changes in fishing practices including unrestrained usage of technology have now resulted in traditional fishing areas being snatched away, extension of prawn culture into fishing zones and ecological problems.

Session 6-Theme: Perspective Thinking of Legal pluralism in Environment and Natural Resource Management

Understanding of the concepts and issues of legal pluralism are not only important in micro environment but also critical while dealing with issues of macro perspective. The theme for the sixth session “Perspective Thinking of Legal pluralism in Environment and Natural Resource Management” had four well researched papers and was chaired by Dr. Maarten Bavinck. The four interesting papers on legal pluralism provide interesting perspective to understand and contextualize legal pluralism in new and evolving context of environment and natural resource management. Dr. Ajit Menon, in his paper considering the Godavarman judgment argues how statutory law has failed to recognize the plurality of norms in land use. Dr. Menon, by historicizing the Godavarman verdict of the Supreme Court, presented how statutory law had ignored the history of land usage in the region. He urged for a redefinition of the terms forest and non-forest which play an important role in forest conservation in the above mentioned case study.

Dr. S. Puttaswamaiah’s paper attempts to identify the gaps between various environmental acts and their enforcement in Indian context. He brings in economic perspective to analyze and understand this gap. Dr. Puttaswamaiah presented his work on environment and economy and how they are closely related. He highlighted the importance of having a balance between production and consumption activities as a way of saving the environment.

Dr. P. Balasubramaniam attempts look at emergence and settlement of disputes through non-statutory law in the aftermath of Tsunami destruction in Naggapathanam region of Tamil Nadu, India. Dr. Balasubramaniam’s presented his experiences with the Pattinavar caste of Nagapatinam district where indigenous law prevails over state law. He explained three cases where local law had won over state law and how people preferred to be tried in the panchayat. He threw light on the economic aspects the cases in terms of cost-benefit analysis, fairness and loss aversion.

The session concluded with the presentation of Dr. D.Parthasarathy. Dr. D. Parthasarathy in his paper discusses about emergence of critical legal pluralism in Indian context. He explains this in the emergence of environmentalism considering the normativity, governmentality and capitalist commodification. Dr. Parthasarathy argued that the failure of activist, policy makers and scholars to make a significant difference in India in terms of resources is largely an outcome of colonial and post-colonial instrumentalist approach to resources.

Concluding Session:

The Concluding Session was designed to overview the workshop and conference in retrospect, to do a perspective planning on legal pluralism, listen to the comments of the participants and thank all of those involved in organizing this workshop and conference. The session had Dr. Marrten Bavinck, President Commission on Legal Pluralism; Dr. Yonariza, Coordinator, Asian Initiative on Legal pluralism; and Dr. Amalendu Jyotishi, one of the organizers of the conference on the dais. Dr. Maarten on his personal behalf and on behalf of Commission thanked Amrita School of Business for organizing this workshop and conference and identified individuals and gave them mementos as a token of gratitude. He thanked the coordinators of the conference in bringing out the conference proceeding on the day of conference.

Dr. Yonariza on his behalf and on behalf of AILP thanked the organizer and suggested to have such activities periodically. Dr. Jyotishi, spoke about the panning and process of organizing the conference and thanked all including the organisations, individuals, participants, staff and faculty of ASB and volunteers for their support. Followed by the concluding session official meeting of AILP was organized. Dr. Yonariza chaired the session and gave the overview and perspective plan of AILP activities. He urged to elect a new group of office bearer. Followed by this a new set of office bearer of AILP were unanimously elected for the period 2012-15. They include Dr. Amalendu Jyotishi, Co-ordinator and Dr. Pampa Mukehrjee, Secretary. Besides, various country representatives from Indonesia, Japan, India were also elected and team led by Dr. Sushanta and Dr. Thomson was designated to look into the membership and website related issues.

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Participants, AILP conference on Legal Pluralism in Natural Resource

Participant's feedback

1. Ms. Revati Pandya, Aga Khan Rural Support Program, Ahmadabad, Gujrat, India

Thank you again for giving me the opportunity to be a part of the conference and workshop. As I had mentioned, it was a great learning experience and has left definitely broadened my understanding of the subject. It was also very enriching to interact with you, the resource persons and participants as well as the student volunteers. My participation in this event was a part of my first step ahead, so to speak, from being a student to the academic and professional world. I look forward to being in touch.

Best regards,

Revati

2. Dr. Svein Jentoft, University of Tromso, Norway.

This conference was a wonderful experience for me, a memory forever. Thanks to Amal and Sushanta for organizing it and to the rest of you who made it such a great event both intellectually and socially.

Best wishes,

Svein Jentoft

3. Dr. S. Puttaswamaiah, Bangalore University, Bangalore, Karnataka, India

It was nicely organised conference, which bring many new people together. It was totally a new academic experience for me in Legal Pluralism. I enjoyed academically as well as other activities.

Thanks to you all!

with

puttaswamy

4. Dr R G Priyadarshini, Amrita Vishwa Vidya Peetham University, Coimbatore, India

Congratulations on the meticulous planning and brilliant efforts!!! The conference is a landmark in the history of ASB and has made all of us very proud. I am sure it would serve as a great motivation for all of us...

Best wishes for more good work.

Best regards

Priyadarshini

5. Dr. D.Parthasarathy, Indian Institute of Technology, Bombay, Maharashtra, India

Thanks for a very exciting event. I hope we can carry this forward with regular meetings and exchanges.

best

Partha

6. Dr. K.T. Thomson, Cochin University of Science and Technology, Cochin, Kerala, India

Thanks for all the efforts and pains taken wonderfully organised. Great experience. Best wishes for AILP activities.

Thomson

7. Tapas Kumar Sarangi, Centre for Economic and Social Studies (CESS), Hyderabad, Andhra Pradesh, India

Heartly thanks for the wonderful hospitality and a successful Workshop & Conference. I will always remember the event. Looking forward to see you again and again through such conferences.

Best Wishes & Regards

Tapas

8. Pampa Mukherjee, Punjab University, Chandigarh, India

Thank you for organising the workshop and conference so efficiently. I would also like to extend my warm appreciation and thanks to students- Sanjay, Prasad and others. As far as Amrita University's environment is concerned- it was absolutely marvelous! In fact we need to learn few tips from you as how to organise an event so efficiently with a personal touch. It is an excellent idea to start thinking about the book at the earliest because we all tend to put things behind and eventually lose interest.

With warm personal regards

Pampa

9. Dr. P. K. Viswanathan, Gujarat Institute of Development Research, Ahmadabad, Gujarat, India

I sincerely thank you for the great efforts you all have put in, for holding the event and making it a great success. Thanking you once again for inviting me for the same.

Regards

Viswanathan

10. Dr. Phanindra Goyari, Central University of Hyderabad, Hyderabad, Andhra Pradesh, India

Congratulations for the successful conference-cum-workshop. Thanks for giving an opportunity to learn a new area of legal pluralism. I enjoyed the stay on the beautiful Amrita University campus.

With warm regards,

Phanindra

11. Dr. Maarten Bavinck, University of Amsterdam, The Netherland

Looking back, I again want to congratulate you with organizing the legal pluralism workshop and conference in Amrita. It was a very successful event, meticulously organized, gracefully facilitated, and academically rewarding. Your 'staff' was enthusiastic and helpful and the

campus a pleasure to explore. On behalf also of the Commission, I want to thank all of you again.

With warm regards,

Maarten Bavinck