

## BOOK REVIEW

LEGAL GROUNDS: NATURAL RESOURCES, IDENTITY AND THE LAW IN JHARKHAND *1<sup>st</sup> Edition*, Editor: Nandini Sundar. Oxford University Press, New Delhi, 2009. Pages 304. Price: Rs. 650.

The unusual, yet perceptive interface between law and love connection sets the tone of the journey through Jharkhand. This is a journey not just of the formation of the state but a contested terrain of contestation, struggles and transformations that is what is stated in the introductory chapter by Nandini Sundar *Laws, Policies and Practices in Jharkhand*. Discussing the creation and modification of *adivasi* identity and its' direct connection to law, Sundar metaphorically and convincingly links the legal system normatively and relationally with love—both connected with power and hegemony, both being spaces of protection and also repression. The sociological approach in this book reminds us of similar interdisciplinary approaches used by Vasudha Dhagamwar (*Role and Image of Law in India: A Tribal Experience*, 2006), Nivedita Menon (*Recovering Subversion: Feminist Politics Beyond the Law*, 2004) or Radhika Singha, (*A Despotism of Law: Crime and Justice in Early Colonial India*, 1998). The book is a case study of Jharkhand, a place historically rich in natural resources, a newly formed state with a vision for industrial development, a dwelling for Mundas, Santhals among many other tribal communities negotiating through resistances, betrayals and expectations from the colonial and the postcolonial state. The book can be divided into discussions on land, forest, water, mining and self governance. The *adivasi* slogan of *jal-jangal-aur jameen* seems to be reflected in the way in which the chapters are arranged.

There are three chapters on land discourse in Jharkhand. The first one by Carol Upadhya, *Law, Custom and Adivasi Identity: Politics of Land Rights in Chotanagpur*; traces the history and complexities of land tenure laws, *adivasi* resistance, state exploitation and control using the Chotanagpur Tenancy Act (CNTA) 1908. This law represents the site which adapted the kinship-based system of control over land and resources reinterpreted by the colonial state through the language of rights. The law emerged as a history of struggle against the colonial state. The most important provision of this Act is the one establishing *khunkatti* rights (restrictions on the transfer of tribal lands to non-tribals)—an issue which comes back in some of the other chapters also. The author also goes on to give a description of how the postcolonial state has made amendments to the CNTA which has lead to the weakening of the protection given to *adivasi* land rights (E.g. redefinition of public purpose). The author does a case study of Singhbhum district between 1958 and 1965 to show how community lands have been appropriated by the state. The chapter becomes more interesting as it analyzes the complex relationship that the *adivasis* have with the CNTA—the law which colonizes them also provides them with their identity. Moreover, people's understanding of the land tenure laws and land records is quite strong. This chapter best explains what was theoretically discussed in the introduction about how people's movements invoke legal arguments along with moral and customary claims to land.

The chapter by Nitya Rao, *Conflicts and Contradictions: Land Laws in the Santhal Parganas* discusses the tensions around land and its alienation by examining the Pachwara coal mining project and the connection to Santhal Parganas Tenancy Act, (SPTA) 1949. Questions have been raised as to whether at all the state acquired land through dialogue with the gram sabha as is mandated in the Panchayat (Extension to Scheduled Areas) Act, 1996 or as the People's Union of Civil Liberties report suggests, through the use of CRPF threat and support. S 20 of SPTA, ensuring non-transferability, has been the main source of conflict in recent times according to the author who did fieldwork in Dumka and Deogarh of Santhal Parganas. Although Babulal Marandi, the Chief Minister of Jharkhand was an *adivasi*, yet according to a Santhal headman, '[h]e has the head and mind of a Marwari. He does not care about our land, but is trying to give it to big industries'. (pp 63) It is realized that the priorities of the state and the *adivasis* regarding land are diverging. While to the former, land is merely a productive, material resource to be capitalized upon; to the latter it is also a part of their social and cultural capital. The chapter goes on to discuss S 20 of SPTA, which ensures non-transferability of land. However, the author points out fraudulent transfers, problems of indebtedness among *adivasis* resulting in land alienation, villagers losing land to quarry contractors; all showing violation of the above section. While cases have been filed under S 20 for restoration, the time and expenses of legal proceedings have proved futile for people to recover lands. The author's suggestion is to strengthen agricultural development and social security in these areas.

Ramesh Saran in his chapter *Alienation and Restoration of Tribal Land in Jharkhand* first of all very significantly clarifies what is the meaning of alienation. In a narrow sense, it is alienation of individual landholdings, whereas in a broader sense it is the loss of rights and access to common property. He traces a historical trajectory of the processes of land alienation in Chotanagpur in the pre and post independent times. The major forms of alienation pre-1947 were illegal sales, surrender and settlement and illegal mortgages. Pre-1969 one of the methods of alienation was *chaparbandi* (homestead) transactions. Since the CNTA did not apply to non-agricultural holdings; raiyats would apply to get their agricultural land converted into homestead on the grounds that it had become unfit for cultivation, residential buildings had been constructed near the land and no cultivation was being carried out since the land was being used for dumping garbage, and playground. Conversion into homestead made the land eligible to be for sale. The assessment showed that in the urban areas alienation was demand induced, whereas in the rural areas it was supply induced. In the Santhal Parganas on the other hand, alienation took place due to *badlanama*—land in urban areas exchanged for land in rural areas, *kurfanama*—a document showing that the occupation is as an undertenant among others. The paper then discusses the functioning of the SAR courts, the limitations with it, reasons why cases are rejected in these courts especially when there are non-*adivasi* officers. The fact that tribal land alienation for 'public' (read industrial) purposes has been happening since the establishment of TISCO in 1909-12, and continued post-independence with the Nehruvian vision of building the 'temples' of modern India. Like the previous chapter, this also ends with a set of

recommendations made by the author on the need for amending both CNTA and SPTA, need for a wider dialogue on women's rights on land, need to take in board the consent of the community before any acquisition and not just use the concept of eminent domain, and the need to generate social consciousness among the *adivasis* so that the non-*adivasis* do not capitalize on the weakness of the former by getting involved in gambling and alcoholism and alienating land in the process. These three chapters on land laws, alienation, distribution and resettlement in Jharkhand at times are overlapping, although capturing the politics and struggles surrounding *zameen* effectively.

After the chapters on land, the fifth chapter is on *Forest, Law, Ideology and Practice* by Sudha Vasani. It discusses the Indian Forest Act, 1927 and how it made forests legitimate legal property of the state. Moreover, the Private Protected Forests Act, 1947 allowed the state to unilaterally take over management of *zamindari* forests although it recognized the proprietary rights of the *zamindars* and all existing user rights. The Supreme Court Interim Order in the Godavaram judgment, 1996 paved the way for state encroachment where collective tenurial systems are destroyed and customary rights of inhabitants are brought under the restrictive control of the forest department. Ironically, the legal machinery has been successful in labelling the forest dwellers as 'encroachers' in their own land. The recently enacted Scheduled Tribes (Recognition of Forest Rights Act), 2006 although generated a lot of hope, barely six-months after the passing of the act, eviction of *adivasis* from the forests had begun and in 2007 thousands of forest dwellers were protesting. The law makes legal the practices that already enjoy legitimacy at the local level; however it restricts substantial changes in social relations to happen over forests. This chapter is couched in the theoretical argument of Bourdieu according to whom law is a realization of symbolic violence that is exercised in formal terms. The chapter also discusses how it also plays a role in normalization, objectification, formalization and reification of practices, which are all critical elements of the establishment of state hegemony. One could look both at the Indian Forest Act in the colonial times and the ST (Recognition of Forest Rights) Act within the above-mentioned ideology. This chapter seems to be comparatively less analytical given that there is a detailed socio-historical discussion of the Indian Forest Act in Ramchandra Guha's *How Much Should a Person Consume: Thinking through the Environment* (2006). Moreover, the critical discussions on the Recognition of the Forest Rights Act done by Archana Prasad (2007) seem to be more holistic than the sketchy discussion here. *Jangal* being so much of a conflicting discourse, expectations were more.

Vidish Upadhyay critically discusses the question, can India's water regime respond to those living on the edge of survival in the chapter *Water Law and the Poor*. The chapter first traces the national law and water policy in India and then specifically discusses Jharkhand. It is important to remember that water is a state subject, and state legislatures can legislate on water supplies, irrigation, canals, drainage, embankments, water storage and water power. The Allahabad High Court since 1998 has ruled on right to water being a part of right to life and in 2003 Andhra Pradesh High Court has extended the meaning by stating that

right to safe drinking water is a fundamental right and cannot be denied to citizens even on the ground of paucity of funds. What Videsh Upadhyay very intelligently draws our attention to is that this fundamental right of access to clean water should lead to certain changes in various legislations on canals, irrigation supplies and water management. A bit of detailing here would not have been irrelevant because one of the issues that is usually missed out is that guaranteeing a specific right is connected with changes in related laws. Moreover, another significant issue mentioned here has been the individual right to water and not a group right. It is being advocated that the water rights regime need to recognize a group entity as the rights bearer like the legally constituted village water supply committee or water users associations. There is an emerging global agenda for the interest in water resource restructuring projects or water resources consolidation projects. Despite being demand-driven, these projects are top-down not engaged with the lived experiences of ordinary people. The Jharkhand Vision 2010 commits an increase in the irrigated area of the state from 8% to 25%. The Water Resources Department of the State plans the Gram Bhagirathi Yojana programme for the development of the minor surface irrigation system in the entire state. In this background, the author goes on to discuss the Jharkhand Panchayati Raj Act 2001, Jharkhand Irrigation Act 1997, Jharkhand Emergency Cultivation and Irrigation Act 1955, Santhal Parganas Tenancy Act 1949—most of the provisions of which suggest Santhal socialism where the village is the public owner of water. The last section enumerates the dismal condition of access to water by the urban poor and the accompanied undemocratic condition of municipal bodies in Jharkhand. The author expresses the need for implementation of national rural water supply programme *Swajaldhara* and *Haryali* for watershed management in Jharkhand, the need to review irrigation acts and the need to cull out processes of linking water user societies with village, block and district level panchayats.

The last of the issues impacting tribal life in the mineral rich state of Jharkhand is obviously mining. Ajitha Susan George provides a brilliant analysis of how mining is central to the development debate in the state—the politics of subverting the protective laws on mining. The chapter titled *The Paradox of Mining and Development*; this reviewer considers is the best in meeting all the requirements that was laid down in the introductory chapter. It starts with a brief history of mining in Jharkhand starting from 1774 when it was not a state activity but done by private individuals and companies. The Mining Rules passed in 1899 encouraged private capital to engage in mining whereas the subsequent enactment of the Mining Act in 1901 dealt with the health and safety of mine workers. The 1970s witnessed the mechanization in the mines and in 1994 the focus has shifted from regulation to development allowing foreign direct investment in the mining sector. This gold rush, mainly due to the demand for iron ore from Korea and China has tremendously affected the lives of people in this area. Three laws are being used to acquire land for mining—Land Acquisition Act 1894, Coal Bearing Areas (Acquisition and Development) Act 1957, and Atomic Energy Act 1964. What is striking is that in most occasions affected parties are not given sufficient notice period to object the acquisition. Another example of subversion is the violation of the *Samatha* judgment of the Supreme Court while interpreting the

provisions of Fifth Schedule in the context of mining stated that even the government shall be considered a non-tribal person when it comes to the question of transfer of land in tribal areas. Another instance of subversion cited has been the mechanism through which Environment Public Hearing is carried out and how Tata Steel got lands for mining inspite of protests from the villagers. The author brings out the power dynamics very well through these examples. She then problematizes the concept of compensation raising technical questions about how it is calculated and more fundamental questions about how rehabilitation packages can never compensate for the social and cultural losses experienced. How kinship bonds get scattered through displacement, destroying common spaces in the village. She also mentions the specific impact of displacement on women with increased vulnerability of violence. Another last example of subversion that is traced in this article is the violations of labour rights through the Mines Act, 1952. Absence of health facilities, crèche facilities, no weekly holiday, discrimination between men's wages and women's wages, use of child labour, and engaging women in night shifts. The final example of misuse of law that is given is with respect to closure of mines. A stipulated procedure of closure involves reclamation of land, environmental rehabilitation and employment alternatives. The phenomenon of 'illegal' coal miners is common and the presence of a 'contractor' mafia as a result of closure is discussed. The author concludes by saying how the voice of the civil society is completely absent in Jharkhand in any dialogue with the government and the mining industry.

The final chapter by Nandini Sundar *Framing the Political Imagination: Custom, Democracy, and Citizenship* discusses the struggles over citizenship and democracy in Jharkhand. This theoretical issue is addressed highlighting the contradiction that exists between the Indian constitution guaranteeing distinctive identities to scheduled areas and communities on the one hand, and the continuance of the Land Acquisition Act, the Indian Penal Code and the Indian Forest Act which apparently being 'neutral' actually create disadvantages for the *adivasis*, on the other. Although there are decentralization measures, yet the state of Jharkhand retains sweeping powers. This chapter looks at decentralization and local governance through which people and the state raise their democratic and citizenship voices. Both the Munda and the Oraons had a supra-village organization—the *parha*. There are 22 *parhas* and almost all these assemblies are male. Among the Hos, the head of a village was called the *munda* and several villages together was headed by a *manki*. The Santhal villages were headed by *manjhis* and they reported to the *parganait*, the head of a *pargana*. The different tenurial acts used the headmen to deliver local justice, redistribute land. In the process of codification, the language of recognition was appointment which made them dependent on the administration. Individual headmen exploited their positions to make personal fortunes. If one looks into the Constitutional route of decentralization then it is the fifth schedule which becomes significant provision to be looked at, although highly paternalistic and the Tribes Advisory Council hardly wielding authority. Another effort towards decentralized governance has been the 73<sup>rd</sup> Amendment Act to the constitution. In 1996, a law called Panchayats (Extension of Scheduled Areas) Act was enacted understanding

the *adivasi* society as static, one that has survived colonialism, capitalism and retaining strong community ties at the hamlet level. PESA gives the gram sabhas a number of specific powers like the ownership of minor forest produce, the power to prevent land alienation, and to control money lending. In 2001, the Jharkhand government enacted the Panchayati Raj Act which lacks many of the empowering features of PESA and it is not build on the indigenous legal tradition of 'recognition'. What appears to be of particular significance in contemporary times is the differential interpretation of PESA from the perspective of the government and from that of NGOs and people's movements. The greatest challenge however of the local autonomy is the involvement of women in the panchayat system. This chapter also brings to light the presence of Naxalites in Jharkhand raising armed conflict against the state and how the state uses POTA against Naxalite sympathizers or anyone who organizes the village to ensure their rights. Jharkhand with its natural resources and a state resulting from people's movement now is caught between two extremes—the Hindu right with its agenda of mainstreaming *adivasis*, and the CPI (Maoist) wanting to overturn traditional 'feudal' structures by establishing own village assemblies and forms of justice. Jharkhand has still not held panchayat elections, but the debate over this issue has been instructive on how people envisage politics, citizenship and democracy.

This is an important book for students and researchers interested in legal anthropology, environmental law, and sociology of law. By focusing on custom, legal pluralism, process of codified law making, people's movement and the subversions of a post colonial state this is a book that is definitely recommended for anybody interested in understanding how interdisciplinary pedagogy can be operated in reading legal texts.

-Rukmini Sen\*

---

\* Senior Lecturer, Centre for Women's Development Studies, New Delhi; Assistant Professor, WB National University of Juridical Sciences (on leave). All communications to the author may be mailed to senrukmini18@gmail.com