

ECOLOGICAL JUSTICE: PROGRESSIVE LAWS AND THEIR IMPACT ON TRIBAL WOMEN IN INDIA

(A Case study of Sonbhadra District, Uttar Pradesh)

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CONCLUSION

A New phase of Environmental Movements of India: Feminist Struggle for their Rights

Following all five chapters of the study this part is a theoretical and analytical conclusion. Therefore, in this part I have tried to present feminist understanding as a claimant in tribal forest rights which directly questions gender differences in the process of ecology and justice will focus upon all arguments very briefly. The right to justice and equality has always been an issue for the life of tribals' and their rights of livelihood since the beginning. The traditional, cultural and economic underpinnings of tribal communities can be seen even today on forests and forest wealth. For example, the Forest Rights Act 2006 can be considered as consequence of long tribal movement in India. The beginning of forest management was made a tax source by the colonial government through categorizing the forests as economical, and later the eviction of tribal rights from the forests can also be seen as the outcome of state interpretation of traditional and cultural rights of tribal communities in independent India. This intervention on rights and unfair eviction of tribal communities from forest land. The economic and industrial need based management of forest resources. State was responsible to blow fire between tribal communities against itself. Hence this results as conflictual relationship between state and local communities. The conflict between state and communities are also visible in the form of social movements in the nineteenth century. All forest policies passed by Indian state had a profound effect on women, which led to the promotion of feminist ideas in ecological and environmental movement. It has ensured the participation of women in social movements.

The effects on the life of tribals' due to interaction with various aspects of modernity have been underlined by various intellectuals and social scientists from time to time. As a result, education, various parts of the government, mainly the judiciary and the law, have become special parts of their lives. People still living in the forest or around the forest, they are still maintaining their economic reliance on

the forest. Other aspects of their life such as cultural, social, traditional, regional and religious aspects are also associated with these forest resources and land. An understanding the historical dependence of tribal communities on forest resources and the relevance of forests in their lives, I have broadly discussed in first chapter of study. Here I have argued that from the beginning the state uses 'law' and legal institutions to trump social beliefs. For example, during my fieldwork and on the basis of available documents, I have found that the tribal is not ignorant of the rights and the rights are given by law. They are clearly aware of their relations with forests as well as the relationship of forests to national interests. Thus, if historians are to be believed, they believe that in the colonial period, the British expanded administrative institutions to strengthen the governance requirements of colonial power by not keeping local requirements in mind.¹ For instance, other historians and environmentalists like Ramachandra Guha and Mahesh Rangarajan, argue that from colonial time the government has used laws as a tool for the eviction of tribal communities from forests. For example, the creation of Forest Department in 1864² and implemented in All India Act, 1865 besides the Indian Forest Act of 1927.³ Broadly, Forests management was divided into three main levels: 'reserved forest', 'protected forests' and 'village forests'. The aim of this division was to established complete state control via eviction of community rights over forests. Similar arguments are given by Archana Prasad and Vardhan in their books.⁴ Following the definite arguments I observed that the main obstacle in not being able to ensure the rightful access to constitutional rights is actually the result of disturbances at the local level. I have also found that the claim of tribals in to the forests are mainly due to unorganized development policies and rehabilitation laws, which could not be implemented owing to this local disturbance.

During the field study of Poonaravas Mahuria and Dalla Village, I came to know that due to local disturbances of the welfare policies of the state during

¹ N. Sunder (2009)

² See chapter one

³ For detailed explanation of Indian Forest Act, 1927 see chapter one.

⁴ Archana Prasad (2004). *Environmentalism and the Left: Contemporary Debates and Future Agendas in Tribal Areas*, New Delhi, Left Words, pp. 12-31, and also see P. Bardhan (1984). *The Political Economy of Development in India*, Oxford pp. 10-14.

rehabilitation after development, not by the local tribal 'development' processes, yet have to extent. Further, I have also seen here that the policies adopted by the present government to connect the tribals' with the mainstream cannot be fully ensured at the local level, such as the Ujjwala scheme, Van Dhan Yojana, not even the Kissan Vikas Yojana. Everybody knows about the empowerment scheme or any other scheme, but till now there are no strong programs to monitor these policies. This is a major obstacle in the way of empowerment of these tribal communities. I also found the native corruption is too high. I also noticed here that a person appointed from the tribal community of the society, who is politically competent, has more assets than necessary. This unethical conditions of empowerment schemes just deprived them of the benefits of welfare and structural schemes like Prime Minister Housing Scheme.

The second chapter of the study is concerned with the post-colonial policies and there impacts on forest management, with the close study of the Forest Rights Act, which has introduced various aspects related to the entitlement rights of local communities on forest land and resources. Under this, for the constitutional protection in the thread of tribal laws, various laws given in the constitution, including the various constitutional protections given under Scheduled five, Scheduled six, Article 244 (1), as well as management of forest, forest wealth at the local level and in its transfer. Special laws have been attempted to ensure local autonomy and freedom in ecological issues. "The provisions to the Panchayats (Extension to Scheduled Areas) Act 1996, popularly known as PESA Act, 1996 and The Scheduled tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, known as FRA – 2006" are included. The main objectives of these two laws are to ensure the participation of local groups in the decision-making process at the local level by ensuring legal right to forest estates, concerning the creation of tribal councils in the states coming into Scheduled V and similarly Scheduled VI. The division of power along with local participation has been given importance by the District and Regional Councils.

These Councils ensures democracy in ecological issues. Apart from this, the main objective of these laws can be considered furthering other objectives of converting tribal identity into legal identity. In the past all the laws giving importance

to tribal and indigenous rights by which the forest rights of the tribals were taken away and they were repeated. The concept of ecological justice was termed as '*historical injustice*' when the state had evicted from their traditional property. Which makes these laws progressive laws, mainly due to the decline of gender differences in many ways. These laws have ensured participation in the decision-making process of women in different forms such as the Gram Sabhas, Tribal Action Councils (TACs), to the District and Regional Councils, as well as it ensures the women's right in the forest property through the FRA, 2006. The most admiring point of this act was that it just not only recognized men, but women were equally recognized as the head of the house. This law also included women in the race for property rights and tribal rights, who were never accepted as an independent group in all the previous laws. Moreover, these laws can be considered inclusive in many ways, but some limitations have also been imposed on them that has a far-reaching impact on forest-dependent categories as property laws have been defined with new heads in these new laws? Other traditional forest dwellers and provisions such as 'Critical Wildlife habitats' and joint nomination in the name of husband and wife have been included. For example, in the context of property rights, this law has gone beyond the traditional framework. Under this it has been decided that the legal occupancy of land has been made available to the forest (every nuclear) family that owns their property, so that the occupation based on the forest land can be recognized and in pure form. Hence total four hectares of land was decided to allot for each nuclear family by government under the FRA 2006.⁵

Talking about this law's limitations this law is raising questions about its progressiveness. According to given limits, all such nuclear families who have legally proved the status of their three generations living in the claimed place for almost 75 years, giving legal title to the allotted four hectares of land. This law giving them private property rights over the land, but this is not an absolute property right. Such type of land can neither be sold nor can the loan be raised on account of it. Likewise it can't be used for any commercial benefit nor can be worked on due to the threat to biodiversity. Apart from this, other limitation is that there is no provision for people

⁵ Kamal Nayan Choubey (2016). *The State, Tribals and Law: The Politics behind the Enactment of PESA and FRA*, Social Change Publication.

with disabilities, a provision has also been made in this law that all the tribals living in the forests and dependent on the forests have the right to collect small produces from the forest. At the same time, they have also been empowered to make decisions for the conservation and development of forests, rights given by PESA 1996. But this does not mean that no decision will be taken by the states or by the Centre regarding the forests. For example, this provision has been made so that tribal communities can also help in the conservation of forests and can also maintain their beliefs but with this in 2013, in relation to forests, a provision has been taken that states can use forests for some significant welfare works such as to build railways, for road tracks, to build school, hospitals and most importantly for the fulfilment of national interest.

Well if we look at women's participation and women's entitlement rights on land the issue has become complicated due to the patriarchal construction of society. I have discussed about this in chapter four and five in detail that highlighted some policies such as Joint Forest Management, women's participation in the conservation of forests, women have had equal participation in the context of forests, which was first accepted in the PESA and FRA Act.⁶In chapter four, I have examined the relevance of the arguments related to my study and the forest rights standing on marginal margins in the tribal communities, currently standing on marginal societies and marginal areas in which I have chosen the tribal-dominated areas of Uttar Pradesh, Survey of villages coming to Duddhi Tehsil in Sonbhadra district located so that the present-day legalism and constitutionalism could be described as instrumental in establishing the ethnic identity of aboriginal women and self-tribal communities. For example, I found here that at the grassroots level, the Adivasis are fully aware of their rights and they have been continuously demanding the establishment of forest laws at the local level because these groups are aware about the law and its importance. As a result, many times these demands not only establish laws but also take the form of social movements in the context of the creation of better laws. The reason for this is that these communities have their own concept of '*a better life*' on the basis of which they use laws or constitutionalism many times against the state itself. For instance, this chapter of the study highlights the importance of law and

⁶ See chapter three.

constitutionalism as well as the role of women in social movements. In this context, women's participation in social movements mainly in Ecological Movements by focusing on two environmental movements: Chipko Movement and Kanhar Bachao Movement. So, an understanding about ecological justice can be positioned in Indian women's lives. Here I argued that among the tribal communities, in the villages mainly in Duddhi tehsil, due to its geographical structure almost all the tribal communities are found here which found in Bihar, Jharkhand, Madhya Pradesh, Chhattisgarh, and Uttar Pradesh. But even in 21st century, due to the dominance of patriarchy in these societies and being connected with their own traditional ideas, women are still being deprived of property rights.

So in many villages, I have found that due to the non-implementation of the Forest Rights Act itself, men are completely deprived of the recognition of traditional rights on land. Due to this, marginal society has not been included in development process and mainstream of societal life. Further, I also found that women are demanding 'Ecological justice' in these villages but this justice is not related to equality in any form, but in no way it is connected with justice and equality, hence the provision which ensures joint rights in the name of husband and wife in the Forest Rights Act 2006 on allotted forest land. In the context of occupancies, its plea is limited to the male head of the family on property rights. This can be considered as an example of the depth and cultural clouts of patriarchy in tribal communities.

I have also argued that the core reason for women not to form an independent group in the India's environmental movements is the low participation of women in the decision-making process. For example, the beginning of ecological or environmental movements started by women, as did Gaura Devi in the Chipko movement standing in opposition to deforestation and the same can be seen in Kanhar Bachao Andolan. While the participation of women in the environmental movement has been there from the beginning, but still their access is controlled by the patriarchy system of society.

Apart from this, I observed in Kanhar Bachao movement that the current phase of Indian environmental movements is highly influenced by women. For example,

Chipko movement has emerged under the leadership of Goura Devi and other local women after that it was led by Sundarlal Bahuguna. I observed that the main reason as to why any social movement emerged under the leadership of women's was not furthered by them, because the patriarchal system of decision making always hold by the male community in Indian society as happened during Chipko. I argued that the Kanhar Bachao Movement not only encompassing the voice of women began during 1973's environmental movement but also giving women a chance to participate in decision-making process through various legal institutions like Panchayats. That includes 33 per cent of seats reservation for women in local governance.

In the fifth chapter of the study, I have tried to prove the legal validity of my arguments, including the role of the judiciary in the field of forest rights and in establishing ecological justice and *social justice* in the environmental field. My argument is related to the concept of '*legalism from below*' which seeks to connect the marginalized society with the mainstream. Another distinct aspect of legalism can be seen at grassroots level, where marginalized societies⁷ are using law to stop extra Governmentality⁸ by state in there matters. So the objective of this chapter is to highlight that the subject of law and legislature is determined by the two organs of government i.e. the law-making organ that is judiciary and legislature establishing the laws as constitutional validity. Where the 'Marginal Society' mainly values the laws implemented by the tribal community legislature. I have argued here that the Indian constitution is a constitution that has been trying to constitutionally establish issues of ecological justice. This is due to the responsibility of the legislature in relation to the protection of cultural and traditional rights enshrined in Part Three related to the Fundamental Rights of the Indian Constitution, Article 32 for the protection of other fundamental rights, which gives rights in the hands of judiciary to check and balance the legislature and anti-constitutional right to enforce the laws. Fifth chapter of study is an attempt to examine the role of the legislature to ensuring forest rights at the local level on the basis of decisions given by it.

⁷ I am using term marginalized societies mainly for tribal communities.

⁸ Extra Governmentality here I mean is the extra interference of state in individual's personal matters.

To conclude my work I have focused is on three key aspects: First, what is the role of legislature in providing protection to tribal communities cultural and traditional believes particularly in fundamental right's context. The first rights received as Fundamental Rights, including the Article 21 (Right to Life) Article 29 and Article 30 which provide cultural rights to every citizen are involved, the judiciary is obliged to enforce these laws if they are violated. But on the other hand, the right is given for the promotion and development of forests, which is Article 48 (a) of Part Four of the Directive Principles of the Constitution, according to which there is a provision for the safeguard and promotion of ecology and wildlife. This part of the constitution depends on the will of the state and on the legislature's influence in the area of enforcing these laws limits on the in the field of ecological justice. However, the constitutional protection are provided to both tribal communities who are dependent on forests and who are not dependent on forest but still having less population through accepting the notion of positive discrimination. I recent times it has been argued about the original inhabitants that for human life it is necessary that they have the right to own their traditional and cultural land resources because Article 21 of the Indian Constitution gives every person the right to life as a fundamental right. So in the 1980s, Indian courts interpreted it as the right to livelihood of the resource less,⁹ but the nature of the courts has also changed in the 1990s. For example, in 2000, the Supreme Court ruled in the case of *Almitra v. Union of India*, that "if the government resettles people living in slums if it arranges, then it would be like rewarding the pocket readers."¹⁰ Another case that is *Godavarman* case is important in the context of tribals rights. There are many instructions sensitive to the Supreme Court's Ecology that have negatively compressed the rights of tribals¹¹, for example the concept of Encroacher.

However, the second important thing that I have noticed is the recognition of women's property rights in the Forest Rights Act 2006 as a positive role in the law. The effect of which is that other parts of the country in which the recent shoot out a

⁹ Krishna Swami (2007). *Women's Livelihood Rights: Recasting Citizenship for Development*, New Delhi, Sage Publications.

¹⁰ Usha Ramanathan (2004). 'Illegality and Exclusion in the Lives of Slum Dweller's', *IELRC Working paper*.

¹¹ *Godaverman v. Union of India*, Case, 1995.

case of Sonbhadra district can be taken. In which the issue of Ubha Village under the Ghorwal Block was the main one wherein the land registered in the name of the Gond farmer was sold to another non-tribal community and the Pitpah related to Chwepjapavad in which this law of the tribals for not enforcing the forest rights laws in Sonbhadra district Under the case, it was considered a matter related to the neglect of the right given to the traditional land¹². Where the local people demanded to implement the Forest Rights Act 2006. For example, I have argued here that the tribals are constantly trying to get their rights through this law. The other side is also that such examples as Posco, Niyamgiri, etc. that tell the story of multinational companies exploiting and capturing forest wealth from the state, whose local communities resorted to this law to divert water from their dreams.

Third, the social movement by tribal and non-tribal communities towards ecological harm. They have accepted that the provisions of this law cater exclusively to the interests of women. It has been accepted that because deforested women often spend most of their time in the forest to get firewood or forest cover, so community rights are more related to their rights. Apparently, all these groups are using the law in a positive way in order to recognize their community rights and to achieve the concept of justice. Therefore, it can be said clearly that in the structure of Ecological justice and progressive laws, as well as the legislature, have played a significant part to bring women into the stream of forest rights. On part of this, it can be said that this law not only recognizes tribal forest rights, but it is also an attempt to eliminate Naxalism, which is working to monitor forest wealth through the law. Which has a positive impact on the economic livelihood of women, but also gives them equal property rights as men have. It gives individual rights over their forests and surroundings. Although the implementation of this law is not as good as it should be due to the ground level corruption and illiteracy about law between tribal communities. However the process of enactment and implementation of this law has given rise to a kind of legal and political sensitivity in the communities dependent on forests. It is clearly an influential attempt to inaugurate democracy and legalism at the grassroots level. This has not only challenged the arbitrariness of the forest department. Rather,

¹² The Hindu, Shoot in Sonbhadra, 19. July, 2019.

it has given consciousness to the struggling movements for the recognition of traditional rights over resources, as a result of which the awareness of their community rights in local communities and between women as an independent group in a patriarchal society can be considered as positive response of legality at ground level.

However, we should not rush about any definite outcome in this regard because the condition of social justice in its actual manner has not been implemented so we need to advance our informative channels, try to make less complicated and more adaptive the language of laws for people so that they can understand and adapt quickly what are their rights and how they can attain them. For that governmental check and balance including continuous realization about rights must be encouraged by civil societies and NGO's.