

Book Review

Legal Grounds: natural resources, identity, and the law in Jharkhand

Nandini Sundar (ed.), Oxford University Press, 2009

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At a time when innumerable incidences of land acquisitions in the name of industrialization and development are occurring in Jharkhand, Chhattisgarh, and Orissa, *Legal Grounds* is a valuable and timely contribution that looks at how different institutions like the state, the judiciary, and the local administration interpret and manipulate law.

Based on extensive field work and use of archival sources by the contributors, the book under review—a collection of eight essays on Jharkhand—is a rigorous, analytical, and insightful study of law and its engagement with everyday life of the local adivasis. The essays can be grouped under two broad categories, in the sense that chapters two, three, and four deal with land rights and laws; while three other essays are on law and policies associated with forests, water, and mining.

Even though a number of studies have been conducted on the state's adivasi culture, forest and land-use pattern, customary practices, tribal identity and rights, politics of development, and other concerns, what makes *Legal Grounds* interesting is its attempt to place these issues within the larger canvas of law; and how law itself—both local tenure laws and constitutional principles—is creatively interpreted and invoked by different agencies for their own gain.

In the opening chapter, Nandini Sundar, the editor, provides a detailed theoretical introduction, which forms the conceptual

background for the rest of the essays. The study locates itself within the larger debate on legal pluralism and argues that the coexistence of different legal orders—customary and statutory—defines the use and access to natural resources in the region, and creates complexity in the understanding of varied policies on land and forests.

In this context, Sundar elucidates that the tension arising in delineating the boundaries of legality is due to the indeterminacy that accompanies any kind of legal interpretation. She argues that even though law has become a powerful tool of control, it is still an instrument of resistance and site of many struggles around land rights and rights to other natural resources. Rather than eulogizing and romanticizing 'custom' and 'community', the chapter highlights the problems associated with the interpretation and conception of 'custom' by both state and the local community that tends to exclude people—particularly women—of their rights to land. In the process, it also denies them of other collaterals like credit and compensations when they are displaced.

The discussion on land and customs is carried forward by Carol Upadhyay. She mentions how customs got codified during the colonial period to become part of 'modern law', and the way in which the state exercises its power over local society and territory by resorting to surveys and mappings, classifying and ordering them so

that they are made legible for purposes of land revenue.

She argues that state power embedded in land records, and the concepts of rights and land tenure system conceived during the colonial period, continue to exist in an unchanged manner even in the postcolonial context. She discusses in detail the evolution of land tenure laws in Jharkhand like the Chhotanagpur Tenancy Act (CNTA), which has, historically, preserved the rights of communities over land and other resources. The essay discusses the process leading to gradual erosion of these land rights by the state with the enactment of the Zamindari Abolition Act, which converted large tracts of common land in the Chhotanagpur area into government land, and lists the various problems that emerged due to such transfers. In recent years, this process has gained further momentum and legitimacy owing to the amendments in the CNTA, by which raiyati lands were allowed to be transferred for mining purposes and setting up industries.

While Upadhyay talks of erosion of land rights in Chhotanagpur, the essay by Nitya Rao examines how land alienation has taken place in the Santhal Parganas due to internal contradictions in the Santhal Parganas Tenancy Act (SPTA), another important land tenurial system prevalent in Jharkhand. He highlights the loopholes in the Act and through a case study of Pachwara coal mining project in Pakur district examines the dynamics of land alienation as well as resistance by local communities against such activities. While the SPTA is believed to be a hindrance to industrial development in the region, Rao, however, upholds the Act arguing that since the Act prevents transfer of adivasi land to non-adivasis, it has succeeded in keeping the percentage of landless people relatively low. Through his study, Rao shows that it is indeed a paradox as to how the protective clause inbuilt in Sec 20 of SPTA, which makes all land non-transferable, has prevented people from using it as collateral in availing of bank loans and credit, thereby resulting in increased dependence on moneylenders and subsequent loss of land for the local adivasis.

What is apparent from the above discussions is that despite the existence of tenurial laws like the SPTA and the CNTA, which have substantive provisions of safeguarding the rights of the local people of Jharkhand, these laws, in turn, were subject to multiple interpretation and manipulation by the state and the local administration. The amendment to these Acts, which was met with severe resistance in the region, has further exacerbated the situation.

Ramesh Sharan's article not only addresses the process of land alienation in both Chhotanagpur and Santhal Parganas, but also points out the difference in these Acts. More importantly, it traces how the rise of educated and elite tribal leaders in recent times has increased the incidences of land alienation in both rural and urban areas. Sharan has meticulously collated the history of alienation of individual land in Chhotanagpur and Santhal Parganas. Through his research, he has identified different modes of alienation in the region, and has also conducted a detailed study of SAR courts, a state initiative to address land alienation.

Several political philosophers have argued that the state employs different methods and strategies to establish and legitimize its hegemony, and that law is considered one of the key instruments providing credence to state practices. Law, as an ideology, not only leads to hegemony, but is also a site of many struggles and resistance. It is in this context that Sudha Vasani explains how the forests in Jharkhand are looked upon as spaces for exercising state power and dominance. Forest laws are viewed as 'instruments of harassment', which have converted the forest dwelling communities—the traditional custodians of forests—into encroachers.

It is an unfortunate portrayal of how the state has systematically appropriated and brought different categories of community forests under the direct control of the forest department. Vasani points out that this is done by recording village commons as reserved forests. Moreover, non-inclusion of customary rights in official surveys has also resulted in gradual loss and alienation

of forests lands in the region. While participation has become a buzzword in development discourse, in actual practice—as is evident from this essay—it is a mere rhetoric as even the use of non-timber forest products (NTFP) is under the tight control of the bureaucracy.

While most writings on Jharkhand focuses on forests and land-related issues, in this volume, Videh Upadhyay has made an insightful contribution by analysing laws and policies on water—both at the national level, and for Jharkhand in particular. Theoretically, he locates the issue within a 'rights' discourse, right to life to be precise. He points out that there is a stark indifference in understanding law from the people's view point. The author suggests that in the Indian context there is a need for developing a matured water rights regime. While individual right to water has been recognized as a fundamental right, it is required to acknowledge 'groups' as right holders.

Since the nationalization of the coal industry in the 1970s, and with mining expansion increasingly opting for open-cast mining, thousands of square kilometers of tribal land have been taken over by the state. Mining is the largest cause for land alienation in Jharkhand. Between 1951 and 1991, over 34% of land acquired for development projects was used for mining. This resulted in the displacement of around 7% of Jharkhand's population, of which nearly half were tribals. Many of them were never rehabilitated or worse still, were left to the mercies of the steel and mining companies. All of this happened in the name of development and providing employment to the landless adivasi youths. In her essay, Ajitha Susan George remarks that it is indeed paradoxical that the very basis on which the Jharkhand movement was based, i.e. to undertake development programme which is pro-adivasi, has been completely flouted by the policies of the state government. Besides providing a detailed history of mining in Jharkhand and laws related to mining, she has explained through various examples how protective laws like CNTA, SPTA, and PESA have

been violated for mining purposes, and how the state is tacitly silent on the issue of rehabilitation.

In a state where in the name of electoral democracy, kidnapping, murder, and plunder are routine affairs it is no wonder that ordinary citizens hardly have any freedom to express their choice, particularly because any dissenting voice is silenced. As Nandini Sundar passionately articulates in her essay, the capacity of people to imagine gets lost while they are burdened by history, law, and identity. The marginalized lose their ideas of citizenship and rights despite being a rich repository of cultural history. Then, again, it is well known that it is the state that defines the notion of citizenship and democracy

In conclusion, the book is a product of excellent research on law and natural resources by individual scholars. Even though the volume draws much of its argument from struggles against, and resistance to, the state, its law and policies and it convincingly shows how law shapes identities and vice-versa, it, however, does not address the consequences of such identity formation in the region. On the whole, the book is a valuable contribution as it throws open to any scholar interested in the region numerous areas for further research, besides providing thought-provoking insights.

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