

INDIAN FOREST, TRIBAL LIFE, AND INTRICATE LEGAL STRUCTURE: FROM SUBJECTHOOD TO QUEST FOR CITIZENSHIP RIGHTS¹

Kamal Nayan Choubey*

Abstract

Forest in India has been contested space due to many reasons. For state it has been a source of natural resources for the 'national development'; for conservationist, it has been a space for already extinguishing wild life; and for tribal population, it has been a source of livelihood and an integral part of their cultural ethos. The paper wishes to present an analytical study of the historical factors that turned forests into a contested space. It presents the experience of The Forest Rights Act (FRA), which gives some necessary rights to the STs (Scheduled Tribes) and OTFDs (Other Traditional Forest Dwelling Communities). In this context, the paper focuses on the community rights of forest-dwelling communities in the National Parks (NPs), particularly Dudhwa National Park situated in the Lakhimpur Khiri district of Uttar Pradesh. The paper also compares the role of the two tribal organizations: one Tharu Adivasi Mahila Mazdoor Kisan Manch (TAMMKM) and the second, a pan-Indian tribal organisation Akhil Bhartiya Vanvasi Kalyan Ashram (ABVKA). After all, it is crucial to question how far the ideology and strategy of different organisations impact the political understanding of subaltern groups like tribals? The paper argues that the existence of 'legal pluralism' has created a massive obstacle in the proper implementation of the FRA. However, due to their constant struggle for forest rights, the local communities have learned to use the law as a weapon for their rights, which could be termed legalism from below. The paper also asserts that the emergence of 'legalism form below' is dependent on the ideology and strategy of organisations working in tribal areas.

* Department of Political Science, Dayal Singh College, University of Delhi, Delhi.

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Forest and its resources have been an integral part of the forest-dwelling communities, and they have always played the role of commons for them. These communities are not only dependent on forests for their most of the daily needs, but forests are the cultural surroundings of their life, which are, in a sense, indispensable for their existence. Tribal men and women living in forest areas have a unique relationship with forests. In most tribal communities, both men and women, but especially women, collect many minor forest produce, including firewood, different fruits, etc., from forests. In this sense, their rights over forest resources are crucial for tribal and other forest-dwelling communities, dependent on forest land and its resources. However, from the colonial period onwards, there has been a continuous attempt to centralize the control/management of forests and deny forest-dwelling communities' rights, which resulted in the restriction and denial of their rights.

This paper seeks to present an analytical study of the struggle of Tharu tribal men and women for the rights over forest land and its resources in Dudhwa National Park (DNP) and their continuous struggle to move from the subjecthood of the FD and claim their citizenship rights. In this sense, it is pertinent to ask how far the FRA has resolved the complexities of local communities' rights and wildlife. How has the existence of 'legal pluralism' impacted the rights of local communities in forest commons, particularly in the NPs? The paper also compares the role of the two tribal organization: one working among Thaur women and the second, a pan-Indian tribal organization Akhil Bhartiya Vanvasi Kalyan Ashram (ABVKA). After all, it is crucial to question how far the ideology and strategy of different organizations impact the political understanding of subaltern groups like tribals?

The paper is divided into four sections: the first section focuses on the complex legal structure of forest governance and the emergence of the idea of a 'National Park' in colonial and post-colonial India, and in this context, it also evaluates the importance of *Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006* or *Forest Rights Act (FRA) 2006*. The second section presents a case study of Tharu tribal men and women's struggle in the DNP. They have questioned the dominance of the FD in the forest areas and encouraged tribal women to question the patriarchal mindset of

their society. The third section of the paper presents a comparative study between two kinds of tribal organisation, one is Tharu Adivasi Mahila Mazdoor Kisan Manch (TAMMKM), which is primarily working with Tharu Adivasi women in the DNP, and second is the ABVKA, the tribal wing of Rashtriya Swayamsevak Sangh (RSS), which is a pan Indian organization. The comparison between both the organization would give us an understanding of ideology and strategy in making tribal women conscious and assertive about their rights. The fourth section discusses the conception of 'Legalism from Below',² which proposes that in many tribal areas, tribal men and women activists struggle against the established institutional and complex legal structure and patriarchal mindset. They are using laws as a tool for their struggle. However, due to legal pluralism in the forest areas, the Forest Department has continuously undermined their legal rights given by the FRA. The fifth section presents the conclusion of the paper.

I

Forest Resources, Wildlife and Rights of Adivasis: Historical Exploration and Understanding the FRA

In the colonial period, two contradictory and parallel processes can be identified in tribal and forest areas. Since the colonial rulers wanted to establish their control over the country's precious forest resources to exploit them to serve their imperial interests at the global level, they enacted many laws for this purpose. The FD was established in 1864, and different Forest Acts were enacted in the years 1865, 1878, and 1927. The Indian Forest Act 1878 used the idea of 'eminent domain.' It made provision that if a forest-dwelling people did not produce any written document, his land would be declared as forest. Even in showing document, the State could declare it as forest/state property based on 'public interest and giving that person some 'compensation. Due to some changes in the 1878 Act 1927 Indian Forest Act emerged, which included all major provisions of the 1878 Act (Guha 1983a, 1983b, Singh 1986, and Guha 1992, Pathak 2002). However, due to revolts by the tribal communities in different areas of the country and to show their human face, the colonial rulers also made some laws to ensure the tribals' customary rights. The Scheduled Areas Act of 1874 and the Chhota Nagpur Tenancy Act of 1908 are two crucial examples of such laws. It also created Excluded and Partially Excluded Areas for the tribal areas of the Northeast

region and the rest of the country, respectively (Choubey 2014). Here, it is also important to note that the colonial officers also used forests for hunting. The basic idea behind creating a sacred space for wildlife was to prevent local communities from these areas so that British officers could enjoy hunting. Thus, they made many laws like the *Wild Birds and Animals Protection Act*, 1912, amended in 1935. This law led to the creation of many areas free from the intervention of local communities, which later led to the foundation of the idea of the National Parks (NPs) and Sanctuaries.³

The Indian Constitution also accepts the validity of the Forest Act of 1927. After Independence, the Indian State continuously exploited the forests under the name 'National Development' (Guha 1983a, Jha 1992, Gadgil and Guha 1995, Choubey 2015). This process led to the dispossession of tribal communities to form their forest land and its resources, and it also created an existential problem for the wildlife. Indian State also enhanced its control over the management of forests through legislations like the *Wild Life (Protection) Act*, (WLPA) 1972 and *Forest (Conservation) Act* (FCA) 1980 (Government of India 1972, 1980). Through 42nd Amendment of the Constitution, the 'Forest' transferred from 'State List' to Concurrent List. The WLPA has increased the FD's powers and diminished local communities' rights in NPs. Indeed it fully accepted the idea that there must be an inviolable space for wildlife. It proposed Protected Areas (PAs), which includes Sanctuaries, NPs, and some other categories like Tiger Reserves. According to its provisions, before declaring an area as NP, local communities' rights would be settled and relocated to some other places. The rights of communities living within NPs are minimal and dependent on the whims of the FD. It gives FD the power to register cases or impose fines over those who indulge in harmful activities for the wildlife or the NPs habitat. In India, creating an unfringeable space for wild life is impossible because, in almost all the NPs, the human population is residing, and relocating all of them has been proved an impractical and impossible aim (See, Choubey 2015, Chapter 3). There must be some balance between the rights of local communities and wild animals.

However, due to increasing democratization in tribal areas, the demand for the recognition of forest rights emerged in the late 1970s, which intensified in the 1980s and resulted in the enactment of the *Panchayat (Extension to Scheduled Areas) Act* (PESA) 1996 FRA 2006.⁴ The FRA resulted from the mobilization of tribal organizations for the rights of forest-dwelling communities over forest land and its resources. It gives Individual Forest Rights (IFRs) and Collective

Forest Rights (CFRs) to forest-dwelling Scheduled Tribes (STs) and Other Traditional Forest Dwellers (OTFDs). The OTFDs are those communities that are not part of the ST category, and to get forest rights according to the FRA, they must prove that they have been living on particular forest land for three generations and 75 years. The FRA recognizes that every nuclear ST and OTFD family would get 'patta' of a maximum of 4 hectares of 'encroached' forest land and make a provision for the 'joint patta' for both husband and wife. It also gives rights to single women. It gives these groups rights on Non-Timber Forest Produce (NTFP) and the right to protect forest land and its resources. It accepts the right to habitat and habitation for primitive tribal groups (See, Government of India 2007).

According to the provisions of FRA, the areas of PAs, which are sensitive for wildlife, could be declared as Critical Wildlife Habitat (CWH). The procedure of making the CWH is a participatory one, and a committee of experts can decide about it. Though before declaring an area as CWH, the rights of forest-dwelling communities must be settled. There must be a rehabilitation package, and people could settle at other places with their consent (Ibid). Interestingly, the provisions related to PAs have been the most contentious part of the FRA. Due to debates and controversies over these provisions, the FRA's enactment and notification were delayed for many months (Choubey 2015).

The FRA has added a significant element to the complex legal structure related to the Indian forest areas. This law's provisions have seriously challenged the FDs existing institutional sovereignty over forest management in all forest areas, including NPs. The FRA's implementation process has been less than satisfactory. In most cases, the Government's FD and other administrative organs have continuously worked to subvert the proper implementation of this law. Though many ST families received 'Patta' for their claims, the claims of the OTFDs have not been accepted in most cases. The community rights have been halfheartedly implemented in few areas. However, the key aspects of the community rights related to giving forest-dwelling community rights to protect and manage forest land and its resources have been overlooked. The FD officials have been creating many obstacles in implementing the FRA (See, Government of India 2010; 2014). For example, though private property rights have been given partially in many areas, community rights claims have been almost entirely rejected or awarded minimally. It is also interesting to note that the provision of the CTH has not been applied in any PAs, including NPs. Indeed, in many NPs the FD officials have

been continuously working to relocate the communities living in the area of NP. In this context, the Tharu Adivasis experiences of the DNP and their continuous struggle for forest rights are crucial to understanding the dynamics and issues of the interaction between local communities and the State (in the form of FD) local level.

II

Dudhwa National Park (DNP) and Struggle for Common Resources

This section discusses two crucial aspects of the case study from the DNP: one, the struggle of a tribal forest village for recognition as a revenue village; second, the mobilization of Tharu Adivasis, particularly women, for rights struggle over forest resources. The study of both these aspects underlines the struggle of Adivasi men and women for forest rights and dignity as citizens.

The DNP is situated near the Indo-Nepal border in the Lakhimpur Khiri district of Uttar Pradesh. It was notified in January 1977, and at that time, there were 46 villages in the Park, including Surma and Golbojhi. Out of these 46 villages, eight were at the periphery area, and the FD/Park administration convinced the other 36 villages to move from the dense forest to the fringe of the Park.⁵ The tribal people of these villages accepted the proposal. They moved to the side-line areas of the Park. Then the Government declared them as revenue villages and allotted all villagers' land according to their ownership in the earlier land records. Villagers accepted these proposals because it was not a massive shift for them. They were still in the forest areas. The Government offered them land and promised to continue their rights over minor forest products.⁶

a) The struggle of Surma for Land Rights

As mentioned above, most of the villages accepted the relocation proposal, but Surma and Golbojhi did not accept these proposals. The Surma is situated in a more dense forest, and though Golbojhi is not in a dense forest, its location is between dense forest and the periphery of the forest. In 1987 Dudhwa became part of the Project Tiger Scheme and in 2010, the DNP and two other sanctuaries, Kishanpur and Katarnighat, became declared a Critical Tiger Habitat (CTH) (Manjul 2010). It should be noted that according to WLPA 1972 (as amended in 2006), the 'core zone' is an area of tiger reserve with dense forests and which is crucial for the existence of wildlife.

'Buffer zone' is an area between the dense forest of the Park and the external world.⁷ Since Surma was in the dense forest, FD officials wanted to relocate it from the inception of DNP. However, most people from both the villages rejected the proposals of relocation.

In 1980 they went to the Allahabad High Court against eviction by the FD, and the Court stayed that order. The FD, however, continued to pressurize the people of Surma to accept the order of eviction and relocation. Since Surma did not accept the order, it faced many tribulations, courtesy the forest officials. The FD prohibited their entry into the forest and filed many cases against those who dared to enter the forest. Indeed, almost all villagers have cases against them under the IFA of 1927 and the WLPA 1972. However, since there was litigation in the High Court, the FD could not forcibly relinquish the tribals of Surma and Golbojhi. They mobilized themselves and fought against the day-to-day suffering of the FD. Many villagers claimed that the FD's local officials demanded bribes (in the form of a part of the crop from each family) to allow them for objects like firewood and other minor forest produces. Since villagers had no other options, they accepted that system.⁸

On the political level, they developed a relationship with the organisations like Vikalp in the mid-1990s. Some Tharu activists like Ramchandra Rana and others played an active role in forming the National Forum for Forest People and Forest Workers (NFFPFW). The relationship with this organization, which was an umbrella of many small organizations working in forest areas, played a crucial role in the political education of Surma and some other DNP villages.⁹

In 2003 Allahabad High Court delivered its judgment and ordered Adivasis of Surma and Golbojhi to evict the village and shift to the place suggested by the FD. However, people of Golbojhi were not ready to mobilize themselves against the FD. For the FD too, the main concern was the relocation of Surma, which was situated in the dense area of the DNP. That was a difficult time for the Adivasis of these villages. However, the people of Surma were part of the NFFPFW, and they got full support from many other organisations. So, it was tough for the FD to evict the village forcibly. It should also be noted that by this time, a movement was getting momentum against the eviction of forest-dwelling communities by the FD at the national level. Later it turned into a demand for concrete law to give forest rights to these communities (Choubey 2014; 2015; 2016). With some other villagers of the Dudhwa, Surma people participated in the movement for the FRA as active members of the NFFPFW.¹⁰

Since there was a situation of movement at the national level and the tribal people of Surma were mobilised, FD could not evict them.

Finally, when the FRA implementation started in January 2008, the tribals of Surma tried to form their Forest Rights Committee (FRC) according to the Act. The FD opposed this, but they built pressure through various measures like dharna, rallies, and strong arguments based on the FRA. In 2009, the tribals of Surma and the other ten villages formed a local organisation the TAMMKM, which is related to the NFFPFW. It helped them to organise people for their forest rights. After putting lots of pressure on the administration, they formed their FRC and submitted claims for the IFRs. The FD opposed their claims vehemently based on the village's location and the 2003 decision of the Allahabad High Court.¹¹ It also argued that since Dudhwa declared a CTH, the people of the Surma should be relocated.¹² However, as mentioned earlier, the CTH also accepts the existence of the FRA. However, the then Mayawati-led UP Government passed an order to implement the FRA that led to the distribution of 'titles' for the IFRs in the Surma. The District Magistrate of Lakhipur Khiri himself distributed the titles to the 289 families of Surma on 8 April 2011, and after few months, this village became a revenue village. Though Golbojhi had not participated in the movement for forest rights actively, 58 families of this village also got ownership right on the same date (Roma and Rajnish 2011a, 2011b, Singh 2011).

b) Struggle for Community Rights: Emergence of Women Leadership

Getting revenue status for the Surma was a historic victory for the Tharu tribals. The NFFPFW (which became All Indian Union of Forest Working People or AIUFWP in 2012) started mobilizing people of the other villages of Dudhwa National Park for the CFRs. The struggle of Surma village inspired the other tribal people too. Activists like Bharti Roy Choudhury, Roma and Rajnish, etc. motivated tribal women to organize themselves which resulted in the formation of an organization the TAMMKM in 2009. It is part of a national umbrella organization Akhil Bhartiya Van Jan Shramjivi Union (or AIUFWP). Both Tharu men and women are part of the TAMMKM, but the women activists have a primary role in this organization. They have tried to mobilize Tharu women of other villages for forest resources' rights, which posed a challenge for the FD dominance. Many young Tharu tribal women activists, like Phoolmati and Nevada and many others, informed that from their

childhood, they accepted that forest was the property of the FD. All activities of villagers were illegal, though necessary for livelihood needs (See, Rana 2019). However, when the movement to implement community forest rights of the FRA started and became part of The TAMMKM, they realized they had every right over forest resources.

One crucial fact is that earlier, the villagers of the DNP had to pay a good amount of their crop to the FD to get firewood, and other necessary minor forest produces. Generally, they had to pay one quintal of rice every year to forest produces for their daily use. Many villages still pay this to the FD to get forest produces. It has been a habit of even lower FD officials to charge villagers with different cases under the IFA of 1927 or WLPA of 1972. The success of Surma inspired many villages to oppose the monopoly and arbitrary behaviour of the FD. Adivasi women activists opposed the FD's arbitrary and illegal behaviour and refused to pay 'taxes' for forest produce. They started a new practice of visiting the forest in a large number. It was difficult for the FD officials to terrorize or punish the big group (like 100) of women. These women activists have successfully mobilized the 22 villages of the Dudhwa National Park.

The TAMMKM put pressure on the district administration to recognize the CFRs. After a fierce struggle, they formed the Forest Rights Committees (FRCs) at the Panchayat level and submitted their claims for CFRs in July 2013. From 2011 onwards, they also stopped paying for the FD officials' illegal demands for talking firewood or any other forest produces. The FD, however, has been thoroughly against giving CFRs to the villages of the DNP and claims that it would obliterate the basic assumption behind establishing PAs. The senior officials of the Park charged that the Adivasis not only cut and sell the trees to the adjacent Nepal markets but they also kill various precious animals for some monetary gains. After getting the CFRs, they would gain complete freedom to do these illegal and criminal activities. The villagers, however, argued that the Park administration worked for the extraction of maximum profit from the Park. They never tried to involve local communities in the conservation of wildlife. Indeed, the FD has tried to ensure that the local communities' intervention in the DNP should be prohibited. It banned the grazing of the livestock of the villagers in the area of the DNP. It also slapped many cases against those tribal women and men activists who have challenged its dominance to terrorize villagers. To control the TAMMKM's women activists, the FD has created a new force of the young Tharu men and women. Their job is contractual, and their main work is to stop the 'illegal' activities of tribal women

in the Park area. Through these, the FD has tried to divide the Tharu community.

There is a need to understand the multi-layered struggle of a new generation of tribal women. First, many activists had faced opposition from their husbands or other family members against their activism. Second, they resisted the male colleagues' guiding role within the organization and tried to focus on the issues related to tribal women. They had planned to set up 'Mahila Panchayat' in every village. Through this, they wanted to establish small-scale industries based on forest produces, with an aim to make tribal women self-reliant. Third, the FRA provided self-confidence to these women activists, who now claim that their struggle for livelihood and against the FD's arbitrary behavior is legal and legitimate because FRA also gives them these rights. Most of them are not aware of the minute details of the law, but they claim that *Vanadhikar Kanoon*, i.e., the FRA gives the rights over forest resources.

The women activists of the DNP are also members of the Women Forest Rights Action Committee (WFRAC) form by many Roma and other women activists. The purpose of this committee is to educate forest-dwelling women about individual and community forest rights, ensure the proper implementation of the FRA and create a common platform for all such activists who are working on these issues. The WFRAC has demanded the better implementation of the community forest rights given in the FRA. They primarily focused on the following demands: first, a Central Price Commission should be constituted to determine the price of the Minor Forest Produces; second, Forest Department should not intervene in the process of collection and marketing of the MFPs; third, a women co-operative should be formed to control and manage the process of the marketing of the MFPs. To attend this organization's meeting, many Tharu Adivasi women activists visited different places and met other women activists of the country, which increased their political consciousness. Now they are more active in ensuring women's community rights on forest resources and fighting against the patriarchal mindset of their society. As mentioned earlier, they want to create an autonomous economic system for tribal women. Even if the FD has not accepted the demands of the TAMMKM or WFRAC, the positive result of these initiatives, mobilisations, and struggles is that the tribal women, who have been participating in them, are now more active, conscious, and legally sound. They are not only vociferously demanding their rights but also educate others to do the same.

III

The ABVKA and 'Search' for Ideal Hindu Vanvasi Women

The ABVKA is the tribal wing of the Rashtriya Swayamsevak Sangh (RSS), which Ramakant Deshpande formed in 1952. The fundamental concern behind the formation of the ABVKA was the spread of Christian Missionaries in the tribal areas and the conversion of tribals into Christianity. The ABVKA has been claiming that tribals are Hindus, so it uses Vanvasi rather than Adivasi (original inhabitant) because it claims that all communities in India are its original inhabitants (See, Sapre 1999; Sundar 2016; Choubey 2018). There are many facets of the ABVKA's work, but this section aims to evaluate its works related to women and compare them with TAMMKM's works.

In the beginning, the work of the ABVKA was primarily limited to the Jashpur area of present-day Chhattisgarh. In 1960 it expanded its work in the few other districts of South Bihar (now Jharkhand) and Odisha, and after the late 1970s, it started expanding its work in other tribal areas, including North-East states. In the beginning, Deshpande focused on establishing schools and hostels for tribal students to challenge the works of Christian Missionaries. Later, the ABVKA expanded its chain of schools and hostels and focused on working for the different aspects of tribal life. In the 1980s, it separately started work for the tribal women and encouraged them to work to promote their traditional handicrafts systematically. However, it is also important to note that the most crucial feature of the ABVKA's work is faith awakening (or Shradha Jagran) among tribal people, creating awareness about Hindu religious values and mythical characters (Vaid 2011; Choubey 2019). It also supports the traditional family values and encourages tribal women to follow them and ensure the well-being of their husbands, children, and other family members. The ABVKA supports tribal girls' education and their empowerment with Hindu identity and consistently advocates the model of a woman who can sacrifice her happiness for the happiness of her family members. In this sense, the ABVKA is ready for some reform in traditional structure, but it always works to keep most traditional values intact.

The ABVKA started a separate Interest Protection Division (Hit Raksha Vibhag) in 1990, which primarily works for the protection of tribals rights over forest land and its resources. It has strongly supported the proper implementation of the Panchayat (Extension to Scheduled Areas) Act (PESA) 1996 and the FRA. It underlines

the ABVKA commitment for women's rights over forest land and forest produces because they are key provisions of the FRA (and PESA talks about rights over minor forest produces). It also opposes forced displacement of the tribal people (ABVKA 2015). However, the ABVKA has not resorted to the politics of mass mobilization to implement these laws. Instead, it focuses more on pressurizing governments through press releases, memorandum etc. Also, since spreading Hindu cultural values has been its key agenda, it has not taken an aggressive stand on implementing the PESA and the FRA.¹³

Few points can be mentioned regarding the differentiation between the organizations like TAMMKM and the ABVKA:

First, the concern for the TAMMKM is to ensure the rights of local communities, particularly women, on the forest resources, and it has also used the strategy of mobilization and litigation against the FD officials. The ABVKA, on the other hand, has been working primarily for the spread of Hindu values among tribal communities, and all other works, including the rights of tribal men/women, are just different facets of this larger aim. It has been focusing on dialogue, and it has never encouraged the politics of confrontation with the FD.

Second, both organizations have to work to create more opportunities for tribal women. The TAMMKM has been trying to make tribal women conscious about the values of education, and through its programmes the tribal women have learned about different laws affecting their lives. It has also created an understanding among Tharu tribal regarding the role of patriarchy and encouraged women to oppose the misbehavior of their husbands and traditional thinking of the family. Unlike the TAMMKM, the ABVKA has emphasized the value of families, and it never uses the term 'patriarchy' in its meeting or other published literature. Undoubtedly, it encourages tribal women to get an education, but rather than spreading critical thinking regarding different family tradition practices, it focuses on family relations.

Third, the TAMMKM has not focused on the religious identity of the tribals and underlined that they must have the liberty to live their life according to their traditions, and used this argument to assert their rights to forest resources. The key aspect of the ABVKA has been the spread of Hindu values among tribals and through its hostels and other programmes for *shradha jagran* (faith awakening).

Fourth, the TAMMKM often presents the FD and officials as 'others', who exclude tribals from forest produces and criminalize their activities. For the ABVKA, the Christian Missionaries and their

activities are the main danger for the tribal culture and' national integration'. They treat them as 'others' and try to mobilize tribals against them.

Though the ABVKA has been doing many works for the welfare of tribal women, including providing the education and promotion of their traditional handicraft, it does not give primacy to the development of autonomous self and promote the traditional values and structure of the family. Though it demands the proper implementation of the laws like the PESA and FRA, it rarely mobilizes tribal women on these issues, resulting in less awareness about forest rights among tribal women activists of the ABVKA. The TAMMKA's continuous engagement with forest rights and women's autonomy resulted in a deeper understanding of tribal activists about the forest issues and laws related to them and issues related to patriarchal behavior within and outside the family. The ideology, agenda, and work pattern of different tribal organisations significantly impact the understanding of tribals women actively working with those organizations or participating in their activities.

IV

Protected Areas (PAs), 'Legalism from Below' and Legal Plurality

It is evident from the above discussion that, on the one hand, tribal and other forest-dwelling communities are struggling for their forest rights given the FRA; on the other hand, the FD is opposing the claims of local communities by citing laws like the IPA and WLPA. In most PAs, particularly NPs, the FD has been working with the agenda of relocating local communities outside the boundaries of the PAs. It has termed local communities as 'suspect communities' by presenting them as the most crucial danger for wildlife and used arbitrary powers to harass local communities in these areas (See, Choubey 2017; 2020). Based on the account mentioned above, one can find a situation of 'legal pluralism' in India's forest areas. Many laws are simultaneously working, and their provisions are conflicting with each other, and there is no clarity on which law should be given primacy or supremacy over other laws. So, apart from the FRA, the IFA, 1927, and WLPA, 1972 are also valid in the NPs and other PAs. The FD in the DNP uses this situation to denounce the provisions of the FRA because it gives the FD power to reject the claims of Tharu tribals in the DNP. The Director of the DNP has argued that WLPA is the supreme law to manage the DNP's affairs and does not want to

follow the FRA.

It can be underlined that 'legalism from below' has emerged in the tribal areas, including the DNP (to understand this phenomenon, see Choubey 2014, 2015, 2016, 2017). It means marginal groups' tendency to use laws to assert their rights over forest land and its resources. Following are some of the key points related to the emergence of legalism from below in the DNP:

First, activists, who can be easily placed in civil society, play an essential role in mobilizing tribal and other forest-dwelling communities. It is true about the leader like Bharti Choudhary, Roma and many other activists who played a significant role in creating and enhancing political awareness in forest-dwelling tribal men and women. Through endless meetings and formal and informal discussions, they educated them about rights and different provisions of the various laws, including the FRA.

Second, like other tribal organisations, tribal men and women activists also participated in the movement to enact laws like FRA. After its enactment, they are using it as a tool to assert their rights over natural resources. They have not become the expert of all provisions of the FRA. However, they have developed an understanding of the FRA's significant provisions and use it to challenge the institutional structure that favored the status quo. In their struggle with forest officials, they reject the allegation that they have been doing illegal work by taking some minor forest produce from the forest. They assert that a law passed by the Parliament, i.e., the FRA, gives them rights over forest land and its resources.

Third, it is also crucial to note that in the case of tribal women activists, the understanding of constitutional rights has also led to questioning the 'patriarchal structure' at a different level, including family and organizations. They have started to oppose the 'misbehaviour' of the male members of their family and organizations.

Fourth, it has created a kind of 'insurgent citizenship' in many forest areas, where tribal men and women assert their rights over livelihood sources and attempt to create an autonomous space for themselves. Tharu women have attached this understanding of the law with their notion of 'good life, in which they want to create an autonomous space for themselves. In the context of tribal women, we can say that they are struggling to manage forests better and want to ensure the proper use of resources to give their next generations a good life.

Fifth, it is also evident from the study of the ABVKA that the

ideology and strategy of tribal organisations played a crucial role in the emergence of 'legalism from below'. Unlike the TAMMKA, the ABVKA does not favor the active mobilisation politics for forest rights, and it focuses on putting pressure on Government through some memorandum etc. Also, since the issue of forest rights is not the core agenda of the ABVKA, though it supports and demands the FRA and PESA implementation, it never follows confrontational politics. Since for the ABVKA, the spread of the Hindu values and opposition to the Christian Missionaries are the most important works, and it is unable to educate women about their forest rights so those tribal women can question the dominance of arbitrary behaviour of the FD. It is evident that the ABVKA is absent or less active in those areas where the issue of conversion is not prominent, for example, in the DNP or many other NPs the ABVKA has not formed its organization.

Sixth, from the study of the TAMMKA's, it is clear that the 'legalism from below' also creates consciousness about the other oppressive structures of the society, including patriarchy. Due to the work of organizations like the TAMMKA, the tribal women are not only vociferously opposing the FD, but they are also struggling against patriarchy in their society and family. Though the Tharu men and women could not recognize their community rights over forest resources, they have developed legal knowledge and consciousness about their rights on forest resources. Now, they are deifying all arbitrary dictates of the FD in the DNP.

The 'legalism from below' has enhanced the awareness of citizenship rights among tribal communities. Its extent and efficiency are also determined by the ideology and strategy of the different tribal organizations. However, there is no doubt that it has led to the democratization of forest governance in India.

V

Conclusion

The provisions related to the CFRs have not been appropriately implemented in most of the areas, particularly in the NPs and other PAs. Indeed, the OTFDs have not fully benefitted from the IFRs because in most cases, they could not prove that they lived on particular forest land from three generations and 75 years. Like many other places, the tribals of the DNP got mixed success in their struggle for the enactment of the FRA. The Surma village converted into revenue village and people received the title for

their land, but the people of Surma and other villages of the DNP could not receive CFRs. However, due to the local organization's work (TAMMKA), the women activists have strongly resisted the arbitrary behaviour of the FD officials. The continuous discussion and mobilization have created an awareness among them about their citizenship rights. They have also started to critically evaluate many patriarchal practices of their society and family members. It is clear from the example of the ABVKA, that not all organisations lead to the emergence of this kind of 'legalism from below'. The ABVKA emphasises the proper implementation of the FRA but generally desists any systematic mobilizational politics on this issue because the spread of Hindu values and opposition to the Christian Missionaries are its more important aims. It is also clear that 'legal pluralism' has helped the FD to overlook the demands for the recognition of CFRs by local communities. However, the change of Tharu Adivasis from the meek subject of the FD to a vocal citizen is the key achievement of the struggle for forest rights in the DNP.

Notes

1. The section related to the ABVKA is part of my ICSSR Major Research Project. The title of the Project is: 'Akhil Bhartiya Vanvasi Kalyan Ashram and Quest for Self-Dependent Tribal Communities: A Study with the Special Reference to the PESA and the FRA.'
2. This idea was presented by Julia Eckert. See, Eckert (2006).
3. For the History and debates related to the issue of wildlife protection in India, See, Rangarajan (1996)
4. To understand the process of enactment and debates and movement related to both the PESA and FRA, see Choubey (2015, 2016).
5. Personal Interaction with the Deputy Director of Duhwa National Park, Place: Office of Dudhwa National Park, Lakhimpur Khiri, Date: 11.08.2014.
6. During my field study many people told me that they accepted the proposal because they were told that a zoo would be created for their children. According to them they were not aware that FD would restrict their activities in forest in coming years. Source: Personal interaction with the many villagers in Suda village, Dudhwa National Park during my field study in September 2014.
7. It is important to note that MoEF in its press release on 14 February 2011, clarified that though 'Critical Tiger Habitat' (CTH) and 'Critical Wildlife Habitat' (CWH) are two different things, the process of the settlement of the rights of STs and OTFDs should be complete before declaring an area CTH. See, Government of India (2011).
8. Interviews with the villagers of Surma and Golbojhi during my field visit in these areas in the September 2014.
9. Personal interaction with Ramchandra Rana, Place: Lakhimpur Khiri. 8-9 September 2014.
10. Ramchandra Rana told me that in 2006 many Tharu people even went to

- attend many dharna at the Jantar Mantar in Delhi. Personal interaction with Ramchandra Rana., Place: Lakhimpur Khiri. Date: 8-9 September 2014.
11. Indeed, FD officials could take the course of establishing the CWH in this village, though there is all probability that Tharu people of Surma would never accept it. But no one in the FD mentioned this aspect; it only underlines their poor knowledge about the FRA.
 12. Personal Interaction with Rajnish Gambhir, Place: Delhi, 5 August 2014.
 13. One senior activist even told me that the ABVKA does not believe in the politics of confrontation with the Government and it has faith resolving problems through dialogue.

References

- Akhil Bhartiya Vanvasi Kalyan Ashram. *Bharat ki Janjatiyon Hetu Ek Neeti-Drishti Patra*. Ramabhau Mhalgi: Mumbai, 2015.
- Choubey, K. N. *Jangal ka Sangharsh, Pragtisheel Kanoon aur Rajya*. Samayik Prakashan, Samaj aur Itihas, Naveen Srinikha 3, Nehru Samrak Sangrahalya aur Pustkalya: New Delhi, 2013.
- _____. *The Forest Rights Act and the Politics of Marginal Society*. NMML Occasional Paper: Perspectives in Indian Development, New Series 31, Nehru Memorial Museum and Library: New Delhi, 2014.
- _____. 2015. *Jungal ki Haqdari: Rajneeti aur Sangharsh*. CSDS-Vani Prakashan: Delhi: 2015.
- _____. "The State, Tribals and Law: The Politics behind the Enactment of PESA and FRA". *Social Change*. Vol. 46, No. 3, 2016, pp. 355-370.
- _____. "Turning the Tide in Forest Rights". *Economic and Political Weekly*. Vol. 51, No. 1, 2017, pp. 20-22.
- _____. "Adivasi Jeevan Aur Vanvasi Kalyan Ashram", *Paratiman: Samaj, Samaj, Sanskriti*, Vol. 7, No. 14, 2019, pp. 75-95.
- _____. "Protected Areas, Forest Rights and the Pandemic". *Economic and Political Weekly*, Vol. 55, No. 51, 2020: 10-12
- Gadgil, M. and Guha, R. *This Fissured Land: An Ecological History of India*. Oxford University Press: Delhi, 1992.
- _____. *Ecology and Equity*, United Nations Research Institute for Social Development: London, 1995.
- Eckert, J. "From Subjects to Citizens: Legalism from Below and the Homogenization of Legal Sphere. *Journal of Legal Pluralism*, Vol. 53, No. 54, 2006, pp. 45-75.
- Government of India. *Wild Life (Protection) Act*, Ministry of Law and Justice. New Delhi, 1972
- _____. *Forest (Conservation) Act*. Ministry of Law and Justice, New Delhi, 1980.
- _____. *The Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996*, No. 40 of 1996, New Delhi, 1996.
- _____. *Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006*, Ministry of Law and Justice, New Delhi, 2007.

- _____. *Development Challenges in Extremist Affected Areas: Report of an Expert Group to Planning Commission (2008)*, New Delhi, 2008.
- _____. *Manthan: Report of National Committee on Forest Rights Act: December 2010*, A Joint Committee of Ministry of Environment and Forest and Ministry of Tribal Affairs, New Delhi, 2010.
- _____. “Clarification by Ministry of State for Environment and Forests on Tiger Reserves, Critical Wildlife Habitats and Forest Rights Act, 2006”, 14 February, Press Information Bureau, Government of India, Ministry of Environment and Forests, New Delhi: 2011.
- _____. *Report of the High Level Committee On Socio-Economic, Health and Educational Status of Tribal Communities in India*, Ministry of Tribal Affairs, New Delhi: 2014.
- Guha, R. “Forestry in British and Post-British India: A Historical Analysis”, *Economic and Political Weekly*, Vol. 18, No. 44. 1983a, pp. 1882-96.
- _____. “Forestry in British and Post-British India: A Historical Analysis”, *Economic and Political Weekly*, Vol. 18, No. 45, 1983b, pp. 1940-47.
- Jha, L. K. *India's forest policies*, New Delhi: Ashish, 1992.
- Manjul, T. “Dudhwa declared ‘Critical Tiger Habitat’”, *Express India*, 20 October 2010. Web Address: <http://www.expressindia.com/latest-news/dudhwa-declared-critical-tiger-habitat/6562631>, Date of Access: 20.10.2012.
- Pathak, A. *Law, Strategies and Ideologies: Legislating Forests in Colonial India*. Delhi: Oxford University Press, 2002.
- Rana, N. *Walks with the Sangathan*, Delhi: Women in Resistance, the Research Collective, 2019.
- Rangarajan, M. *Fencing the Forest: Conservation and Ecological Changes in India's Central Provinces 1860-1994*, New Delhi: Oxford University Press, 1996.
- Roma and Rajnish. “Surma ne Dikhai Raah”. *Amar Ujala*, p. 6, Delhi, 8 April, 2011a.
- _____. “Ab Bagh aur Inasan Saath-Saath Rahenge: Surma Desh ka Phela Van Gram Bana. Chauthi Dunila, Delhi, p.1, 2-8 May, 2011b.
- Sapre, K.D. *Shri Balasaheb Deshpande: Jeevan aur Unke Karya*. Jabalpur: Van Sahitya Akadami, 1999.
- Singh, A. “Aakhir Azad hua Jungal ke Beech Basa Ek Gaon”, *Jansatta*, Delhi, p.1, 9 August 2011.
- Singh, C. *Common property and common poverty: India's forests, forest dwellers and the law*, New Delhi: Oxford University Press, 1986.
- Sundar, N. “Adivasi Vs Vanvasi: The Politics of Conversion in Central India”. In Sundar N. (Ed.) *The Scheduled Tribes and Their India: Politics, Identities, Policies and Work*, New Delhi: Oxford University Press, 2016.
- The Constitution of India*. Bilingual edition, fourth edition. Central Law Publications: Allahabad, 2008.
- Vaid, S. *Vanvasi Kalyan Ashram: Karya Parichay*, Jashpur Nagar: Akhil Bhartiya Vanvasi Kalyan Ashram, 2011.

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