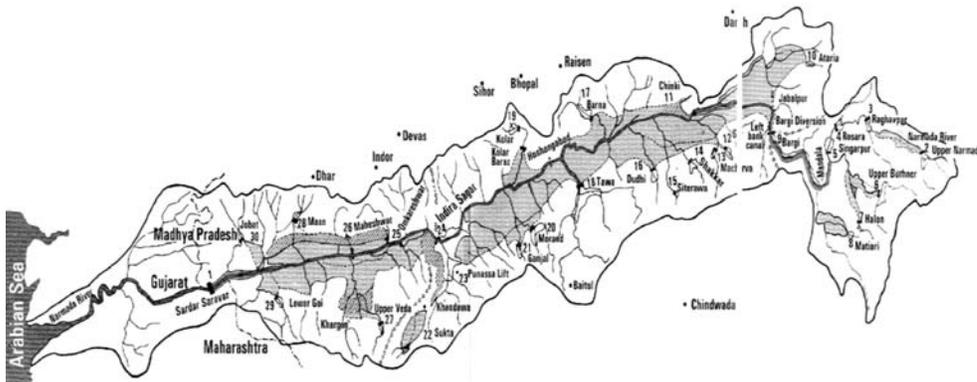


“...Bolti Band (SILENCED)!”

CLIFTON D' ROZARIO



Luharia Shankaria is probably one of the most articulate and even well-informed people I have met in the Narmada valley. Living in Jalsindhi village, in the forests of the Vindhyas right on the banks of the river Narmada, he can articulate the struggle and rights of the *adivasis*, provide a grounded critique of large dams, reel off herb names and where they can be found, and what ailments their potions would cure. With the same ease he can sing the *gayana*,¹ the song of creation and evolution that has been passed down orally from generation to generation of Bhilalas.²

However, like thousands of other *adivasis* in the Narmada Valley, Luharia has been in the midst of a serious crisis for some time now. He is a declared 'PAP', i.e., 'project-affected person'. From 1994 onwards, the rising waters of the Sardar Sarovar reservoir submerged his fields each year during the monsoon. Post-2000, the increasing level of the reservoir has permanently inundated his house and most of his flat and fertile lands. Though this project has been hailed for its model rehabilitation policy by policy makers and the Supreme Court of India, Luharia still awaits rehabilitation in Jalsindhi.

But this is not Luharia's entire story. Like other *adivasis* in that region, from the early 1980s onwards he was part of organisations that have tried to press for *adivasi* rights.

Initially it was the *Khedat Mazdoor Chetna Sangath* that organised *adivasis* to demand access to forest resources denied to them, to protest against and prevent exploitation of *adivasis* by the Forest Department, etc. Thereafter, the Sardar Sarovar project emerged from the dusty papers of developmental projects, and suddenly there was another adversary. *Adivasis* like Luharia and other farmers from the plains upstream organised themselves under the banner of the *Narmada Bachao Andolan* (NBA) to raise fundamental questions about the efficacy of large dams, rights of project-affected people, the state's rehabilitation policy, and so on. Also raised were the issues of *adivasis'* natural rights to their ancestral lands, and the cultural losses that would be an inevitable consequence of dam-induced displacement.

After years of *dharnas* (sit-in protests), deliberations with the state, *satyagrahas* and so on, the NBA, in a move to augment its other strategies, decided to approach the Supreme Court – the ultimate (at least officially) national arbitrator of justice – with the Writ Petition No. 319 of 1994, filed in May 1994. The court stayed the construction of the dam for almost five years. The matter was finally disposed on 18 October 2000, with the construction of the dam being permitted subject, to fulfilment rehabilitation preconditions, amongst others. Despite this – at least in the opinion of Luharia and others similarly affected due to the judgment – rehabilitation is still awaited.

Continuing to hope that the Supreme Court would provide justice, the NBA filed Writ Petition No. 328 of 2002, in which the court passed an order stating that every individual oustee was free to approach the court with their grievance after they had exhausted the other official avenues. Today, in early 2005, Luharia still awaits rehabilitation.

This essay is not an attempt to critique of the efficacy of the Sardar Sarovar dam, nor is it in any way an attempt to valorise the NBA or its strategies. There has been so much written on these that, at this point in time, one would have little to contribute. In fact, this account does not even aim to critique the court for what it did not do for people like Luharia. Indeed, much has been written on this as well. Instead, this article seeks to focus on the fact that the court in particular and the legal discourse in general did not think it necessary to hear him out, or rather, to let him speak. And yet found itself capable of talking about him, and talking on his behalf.

“...Humru Othro e Kohnu Se (That is all I have to say)!”

In spite of running the real risk of reducing the serious implications of more than two decades of organised resistance, let me try and provide a sense of what an articulation of rights and entitlements by Luharia includes. More often than not, this description would inevitably begin with the claim that *adivasis* were the original inhabitants of forests. The narrative would then focus on the nature of the *adivasi* relationship to land, forest and water from time immemorial, the struggles against the British for control of the forests during the colonial period, stories of Khajya, Chitu, Bhima Naik and others³ that are historically recorded and also are part of local legend and folklore. The account declares that India's Independence has not meant much to *adivasis* since they still face the same problems that they always did. State presence is registered only in the repressive and exploitative form of the forest department, and the overall lack of any development (no schools, roads, health

service, public distribution system or any social welfare scheme). The account then moves on to the need felt by *adivasis* to organise themselves: *dharnas*, *satyagrahas*, attempts to get themselves rehabilitated, attempts to stop dam construction, the increased apathy of the state, arrests, violent *lathi* charges, unfulfilled promises of rehabilitation, police firings, continued mobilisation and the ongoing struggle.

There appears to be a curious mix of both the traditional and the modern, in the sense that the *adivasi* understanding of entitlements stems from both customary rights of an indigenous population, and citizenship rights synonymous with the modern Indian state. The context of dam construction brought another source of legal rights to the equation, in the form of entitlements flowing from the rehabilitation policy. However, the centrality of traditional rights around which other rights accrue is clearly maintained. In this context, the *gayana* can be seen to be the epitome of these traditional rights, passing from generation to generation of *adivasis*, constantly reminding them of their history and simultaneously defining their future.

“...All Rise!”

There is a definite method of approaching the courts. First through the intermediary, in the form of the lawyer; and then the arbitrator, in the form of the judge.

In the case of NBA, it was decided that public interest litigation would be filed before the Supreme Court in New Delhi; and since one of ‘your lordships’ on the bench was the Chief Justice of India, Court No. 1 it was. What is to be said to the court must “respectfully showeth” only in a particular format, in English, substantiating “submissions” “before your lordships” by referring to the Constitution, various parliamentary laws, rehabilitation policy, international covenants and precedent judgments. The relief that is “respectfully sought” from “this Hon’ble Court” is in the form of “prayers” which the court “may be pleased to”



sanction. There are also dress codes, not only for the active participants in this floorshow, but apparently, also for those attending court proceedings. Black gowns with different modes of capes are a must, to distinguish the senior counsels from the junior advocates.

This is a far cry from the systems of dispute resolution that have evolved in *adivasi* communities. These processes are designed to deal with disputes revolving around various



issues, which, to use common legal parlance, are civil, criminal and torts. The *panch*, or group of *dais* (wise old men), whose closest parallel in the justice system is the jury, sits to arbitrate over these matters and resolve them. Disputes are settled through a complex web of negotiation and argumentation, and the sitting on a single dispute will go on till some form of a resolution is reached. There is a general consensus about the maintenance of decorum in these proceedings and the inevitability of acceptance of the decision of the *panch*. Filing complaints in the police station is also a practice, though *adivasis* are wary of this because the police see this as an opportunity to extract money from all sides.

There was no shift from prescribed judicial form and content in the writ petitions filed by the NBA. There was an attempt to produce a document that best captures the spirit and ideology of the movement within the restrictive framework of constitutional law. Needless to say it was in English, and top-notch senior advocates of the Supreme Court fought the case on behalf of the NBA. It is my belief that this is not a comment on the NBA; it is more a comment on the rigidity of the legal discourse and legal institutions that the movement chose to

approach. It is also a comment on the fact that in a democracy, there is pervasive belief that the judiciary will deliver justice when all other avenues fail.

Senior activists of the NBA who possessed the necessary knowledge of English, the writing skills and the ability to interpret the law produced the writ petition. The document was produced following intense discussions on what should go into it; activists and village representatives participated. It was then approved by the advocates for the NBA. The petition was then filed. The respondents (in this case the Union of India, the state

governments of Maharashtra, Madhya Pradesh, Gujarat and Rajasthan, and the authorities placed with the responsibility of completing the project and rehabilitating the project-affected people) then filed their responses to the writ. The petitioners, i.e., the NBA, then responded to these through affidavits and counter-affidavits. Thus the cycle of written submissions was set in motion. During hearings, the advocates decided which sections of the legal documents needed to be emphasised and read out to the “lordships”, on the assumption that the “lordships” would read the rest.

In such a process, the appropriation of the voice takes place at multiple levels to ensure the effective silencing of the individual: from Luharia, to the person who represented the case in the letter of the court documents, to what the advocates accepted as valid arguments, and then, finally, to what the judges chose to listen to. The activists wrote the legal documents, more often than not, raising crucial issues about the efficacy of the dam, environmental impacts and rehabilitation, but also in reaction to the respondents’ legal documents. The “lordships” of the Supreme Court heard the arguments of the senior advocates appearing on behalf of people like Luharia, and read “writ petitions”, “affidavits” and “written submissions” by the NBA activists.

The *adivasi* is thus effectively silenced not just through established institutional methods but also through institutional discourse and form. The legal platform on which rehabilitation issues were being contested was not the *panch* that he is accustomed to, where he could argue his own case in his own language while articulating his rights using a familiar framework. This is merely one example of the way in which law constitutes its own authority in the most indiscriminate fashion, with language operating on behalf of power; it reinforces hierarchy and subjugates litigants, who become spectators in their own drama.

In order for the court to even begin to understand why the *adivasis* do not want to leave their lands, many other stories will have to be narrated and heard. One such is that the word ‘Jalsindhi’ actually means a ‘well of water’, and that the personified Narmada, on her journey to the Arabian Sea from Amarkant, halted at villages during the night and listened to what people had to say. However, to enable herself to stay still while she heard them, she flowed into the earth, creating a well. Jalsindhi was one such village associated with the river. The *adivasi*’s relationship with his village and the Narmada is sacred, and central to his existence. Other stories relate to sacred spots that are central to *adivasi* spiritual beliefs, and whose relevance lies precisely in their location. For instance, the mountain of Rani Kajal is the most important goddess of the Bhilalas.

There is a sacredness in the immediate geography that interweaves the *adivasi* past with the present and the future, their spirituality and everyday life with their politics. This is best communicated by the *adivasi* song of resistance that goes: “*Rani Kajala suroo amu inu kaha beeje humu juwanya/e to hamari paala kootri inu kaha beeje humu juwanya/baaji kaye mota hoye inu kaha beeje humu juwanya* (We are the children of Rani Kajal, why must we fear these people [police, governments, etc.]/they are the dogs that we look after, why must we fear these people/we have eaten what we cultivate, why must we fear these people)”.

These and similar articulations were denied entry into the official legal discourse. The denial was at the level of representation on the official documents, i.e., petition, written

submissions and affidavits; and at the level of oral testimony before the judges. Thus people like Luharia have been denied opportunity to speak with their own voice.

However, the denial was not just of voice but also of presence. The sheer physical distance between the *adivasi* areas and Delhi, the insurmountable financial implications of the journey to the capital and the complications of city lodging curtailed the presence of *adivasis* at the hearings of their petition. The *adivasis* in general do not move far from their villages. Prior to getting involved in NBA activity and its *dharnas* in political centres such as Bhopal, Bombay and Delhi, people like Luharia found no reason to travel to these places.

The censorship of *adivasi* presence continued on other levels. In one instance, certain *adivasis* were told to take off their *pagdis* (turbans) before entering the hall of the court hall, since such headgear would be disrespectful to the “lordships”. (Apparently, only Gandhi *topis* and Sikh turbans are allowed into the rooms of the Supreme Court). After much heated discussion, the *adivasis* were led off to the room of the head of court security, who finally relented to their wearing their turbans in court after they convinced him that their *pagdis* were as integral to them as a Gandhi cap to a Gandhian and a turban to a Sikh.

Once inside, the mechanisms of silencing were most evident. It was immediately assumed that *adivasis* were vague spectators without the intelligence to understand the arguments being presented. To the NBA’s credit, it ensured that in all dam-related hearings there were people like Luharia present, with activists or supporters constantly translating the proceedings of the court. However, participation and inclusion was limited to this gesture. The *adivasis* present were aware that a drama was unfolding before them, aware of its repercussions, aware that they had little power to intercede on their own behalf. Ranya *dai*, a senior *adivasi* activist from a village called Mukhadi in Maharashtra, once remarked on this, and was appalled that the “lordships” chose to listen to “men in black coats” instead of to him, considering that he could narrate his woes best.

Courtspeak...

To quote from the judgment: “The majority of the project affected families are involved in rain-fed agricultural activities for their own sustenance. There is partial employment in forestry sector. Since the area is hilly with difficult terrain, they are wholly dependent on vagaries of monsoon and normally only a single crop is raised by them”.

Contrast this with one of *gayana* verses: “Now God had a garden with all kinds of plants in it. Part of his garden was for us humans – this was the garden of *jowar*. Then God gave breasts to the *jowar*. Men fed from the breasts and blood flowed into their veins. That is why if we do not eat *jowar* our blood dries up. For livestock there was a garden of *jinjvi* grass and God gave it breasts. Livestock also came to have blood”.

Clearly, the relationship shared with land, food produce, livestock and fodder is more than just a functional one. In *adivasi* lore, there are gods and goddesses for trees, grass, mountains and animals, thus providing a concrete frame to understand the relationship between nature and humans. To understand the *adivasi* relationship to land, one must first comprehend this. One must also take note of the societal changes that have taken place in *adivasi* communities, affecting prior harmonious and symbiotic relationships. Market economy has clearly entered the lives of the *adivasis*, and their once-subsistence farming

has now taken a commercial turn. As it happens, some semblance of their earlier philosophy has been preserved through the tradition of the *gayana*. The courts, however, were not interested in this. Their resistance is symptomatic of legal discourse's inability to accommodate any worldview other than its own; the skewed and arrogant power relations at work enable it to dismiss alternative conceptualisations of life, dismiss the possibility of 'other' modes of interlocution, dismiss the potential for consensus within hierarchical parameters.

The court judgement went on to add that displacement was actually to the benefit of the illiterate *adivasis* since they would be rehabilitated to new locations where they would definitely be better off than they were at present; at their new locations they would have more, and better, amenities than those available in their villages.

"...the tribals who are affected are in indigent circumstances and who have been deprived of modern fruits of development such as tap water, education, road, electricity, convenient medical facilities, etc..." This, the court believes, would lead to their "gradual assimilation in the mainstream of the society" and "will lead to (their) betterment and progress".

The court did however note that "displacement of these people would undoubtedly disconnect them from their past, culture, custom and traditions", but added that this becomes necessary for the greater common good. The court most emphatically states that "a nature river is not only meant for the people close by but it should be for the benefit of those who can make use of it, being away from it or near by". Further, "realizing the fact that displacement of these people would disconnect them from their past, culture, custom and traditions, the moment any village is earmarked for take over for dam or any other developmental activity, the project implementing authorities have to implement R&R programmes".

And here is the most audacious part of the judgment: "It is not fair that tribals and the people in un-developed villages should continue in the same condition without ever enjoying the fruits of science and technology for better health and have a higher quality of life style. Should they not be encouraged to seek greener pastures elsewhere, if they can have access to it..."

What is forgotten here is that people like Luharia want development but not through displacement. In fact, the struggles that he embarked on from the beginning were for other vital issues such as schools, roads and health services, along with the issue of control over forests, etc.

"...kan closeion"⁴

The tenor of legal discourse in general gives the impression that it is not a direct method of keeping people out, which would appear unjust and brutal. Rather, it is a sophisticated exclusionary process, an oblique way of deciding who has something worthwhile to offer, and who is qualified enough to speak.

Legal discourse as moderated by the Supreme Court does not provide a site for self-representation by the *adivasis* of the Narmada valley; nor is there any accommodation of their language or their claims to entitlement and justice. Further, this mode of legal rhetoric

is also marked by an entrenched denial of the *adivasi* cultural knowledge base. There is a physical, social and ideological impenetrability of the legal system; a continual regulation of those who are compelled to negotiate this maze; a pompous assertion of omniscience, from the approved dress code to the inflexibility of discursive strategies; an unshakeable belief that it is logical and rational to the extent of accommodating all people; an arrogant lack of any self-doubt regarding its capacities: such characteristics can only be attached to the narrative of legal reason.

With regard to what he terms 'legal deafness', Peter Goodrich writes that "it exemplifies an habitual logic of law, one which throughout its history has systematically obliterated difference in all its manifestations...the logic of the common law has been one of a comparable lack of alternatives, of a refusal to recognise that vast host of the other: the outsider, the stranger, the vagrant, the marginal...What is their place in the law, what is their voice, whose language do they use?"⁵

Bolti Band?

Yet this silencing does not go unchallenged; and at the forefront of this challenge are people like Luharia. After the judgement, thousands of protesting *adivasis* and farmers from the Narmada valley descended on the Supreme Court. For an entire day they blockaded the gates, shouting slogans and giving fiery speeches critiquing the fallacy of legal reasoning. Reportedly, never has such a picketing taken place in the history of the Supreme Court.

NOTES

1. The *gayana* is a narrative of the creation of the world and its living beings and is sung by the village *baduvas* during the *Indaldev pooja*. The manner in which *adivasis* understand their natural rights over the natural resources can be clearly understood from the *gayana*.
2. The *Bhilalas* are an *adivasi* community in Central India.
3. *Khajya Naik*, *Bhima Naik* and *Chitu*, known as *thuggees* in official records, fought against the British in attempting to retain the sovereignty of *adivasis* and their control over the forests. Local *adivasi* songs and folklore contain renditions of their heroic deeds.
4. *Kan* in Tamil means 'eyes'. This phrase means the conscious closing of eyes. Few of us play around mixing two languages. This is one such example.
5. Goodrich, Peter. *Languages of Law: From Logics of Memory to Nomadic Masks* (Weidenfield & Nicholson, 1990, London).