





Tracing Footprints of Eco-feminism in the Development of Environmental Jurisprudence in India

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Abstract. Eco-feminism combines ecological concerns with feminist ones, arguing that both emerge from the patriarchal nature of society. Vandana Shiva contends that the eradication of biodiversity and the marginalization of women are mutually exclusive. This paper attempts to conduct a postmodern legal analysis of the impact of “Eco-feminism” on the judicial process in India. It is “postmodern” in the sense that it considers the intersection of gender, caste, poverty, and geographical location. It also studies the interplay between law, society, gender, and environment and not merely the positivist approach which usually considers only law and legal decision-making. We will study a few notable environmental movements, which also included litigation in India to showcase the role of women in these movements and their impact on the judicial process. We examine landmark cases to trace the footprints of this ideology in environmental litigation and jurisprudence.

Keywords: Eco-feminism, Environmental Jurisprudence, Environmental Movements, eco-feminist Legal Theory.

1 Introduction

Francoise d'Eaubonne is credited with coining the phrase "Eco-feminism" in 1974. Ynestra King improved and expanded it further, and it quickly evolved into a movement unto itself. The connections that eco-feminism makes between gender and the environment are among its most exquisite themes. It presents a feminist analysis of how gender affects how people view the natural world. It also explores the issue of how women and the natural world are oppressed, with both groups seen as property that should be controlled and valued more when cared for and developed by males. This demonstrates how the foundation of eco-feminist theory is the idea that the exploitation of nature and the desire to control it are comparable to the exploitation of women in our society. It also explores the issue of nature's and women's subjugation, as both are viewed as property that should be ruled and are enhanced by the care and

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cultivation of males. This demonstrates how the exploitation of nature and the desire to control it are equated to the exploitation of women in our society, which is the foundation of eco-feminist theory. (Mies and Shiva 1993)

The capitalists' development drive and eco-feminist theories have never agreed on anything. They contend that capitalists constantly want to exploit others—whether it is the environment or people. The expansion of the power relations between men and women to the environment and society is what eco-feminism is all about. According to Mack. Canty (2004), racism, the environment, and the exploitation of women are all directly related to Western colonialism. This colonial concept of development, which is pushed down the throats of underdeveloped nations, is criticized by eco-feminism. In the nature vs culture debate, Lahar (1991) notes that the "Western man" is portrayed as the pinnacle of civilization and should be emulated by everyone else. It is intended to persuade people that it is impossible to live in the developed world if one does not adhere to the Western model. This leads to the establishment of capitalism, which is centred on maximizing profits—achievable only via cruel exploitation. Natural resource and human resource exploitation coexist when there is little investment made in recovery and replacement.

The developmental agenda, which emphasizes nuclear energy, militarization, poisoning waterways, deforestation, altering river courses through the construction of dams, etc., is criticized by eco-feminism. The first to suffer from and respond to the devastation caused by environmental deterioration are women. Due to their intimate relationship with natural resources and consumption of natural resources, they are the first to experience the effects of depletion. eco-feminists criticize capitalists for rejecting indigenous knowledge and support granting women and indigenous people greater authority over natural resources so they can assure sustainability and conservation.

Schild (2019) investigates the Latin American Women's movement, which challenges capitalist modernity and its effects on women's and indigenous people's lives. She claims that by collaborating with ecological and socio-environmental movements, eco-feminism has strengthened the positions of women in these movements. Feminists and environmentalists now acknowledge how environmental degradation also contributes to the violation of women's and vulnerable populations' rights, creating a form of synergistic relationship. According to the World Commission on Dams, one of the main reasons why rates of drunkenness and violence against women are rising is displacement. (Passantino, 2016).

2 Eco-feminism in India

Additionally, the term "eco-feminism" has various meanings in India and the West. The historical fights in India against environmental degradation, damage, loss of livelihood, and ultimately human rights violations can be understood in the

framework of eco-feminism. It also includes the problems of patriarchy, caste, class, power disparity, and dominance in the Indian setting (Rao, 2012). A notable example of how women from isolated Himalayan communities stood up against the exploitation of the trees that provided them with life and met their spiritual needs is the Chipko movement in India during the 1970s. Therefore, the Chipko movement can be seen as a precursor to the numerous future protests that pitted the strong state corporations against the locals, the indigenous people, and the women.

Interestingly, in India various environmental movements like the Chipko Movement, Narmada Bachao Andolan, Silent Valley Movement, Aapiko Movement, and Bishnoi Movement have been led by women, strengthening the interconnections between women and nature. These movements have exposed the parallels between the exploitation of the environment by patriarchal systems and the subjugation of women by patriarchy. eco-feminism is nothing but a social movement that analyses the links between androcentrism and the exploitation of the environment. It establishes that men and the male-dominated systems have exploitative attitudes toward women, tribals, marginalized, and nature (Birkeland, 1999).

This paper attempts to conduct a postmodern legal analysis of the impact of “eco-feminism” on the judicial process in India. It is “postmodern” in the sense that it considers the intersection of gender, caste, poverty, and geographical location. It also studies the interplay between law, society, gender, and environment and not merely the positivist approach which usually considers only law and legal decision-making. We will study a few notable environmental movements, which also included litigation in India to showcase the role of women in these movements and their impact on the judicial process. We explore the scope of eco-feminist legal theory in the judicial process making. To determine the connections between eco-feminism and environmental jurisprudence, we will undertake case studies of court cases resulting from environmental movements such as the Navdanya Movement, the Niyamgiri Movement, the Narmada Bachao Andolan, and the Silent Valley Case.

3 Gender and Judicial Decision Making

Carol Gilligan (1992) emphasized that the rubrics of moral development are inherently masculine. Women seek solutions to their moral dilemmas by emphasizing community, responsibility, and obligations whereas men look towards autonomy and rights. Women perceive the law differently. The law adopts the masculine moral framework and ignores the female moral framework, and the law ends up being “male”. This is known as the different voice theory. There are several other theories of judicial decision-making regarding gender like representational theory, informational theory, and panel effects. The representational theory believes that women will promote their cause when they are in an institutional position like that of being in a judicial position. The informational theory highlights the impact of women’s unique experiences and knowledge on decision-making. Women tend to

vote differently than their male counterparts. The Panel Effect theory studies how women can affect the decisions of their male counterparts when they are together in a panel (Picado, 2020). In the Indian context, it is the different voice theory that seems to be the most relevant because of the low number of women in judicial positions.

4 Narmada Bachao Andolan

One of the biggest dams built on the Narmada River is the Sardar Sarovar Dam. In addition to providing water for domestic and industrial uses, the project includes over thirty thousand harvesting protection systems, thirty big dams, one hundred and thirty medium dams, and three thousand small dams. Together, these structures irrigate about five million hectares and generate 2700 MW of hydropower 146.

The protestors rejected this ambitious project due to the significant financial expenditures, ecological harm, and mass displacement it would cause. It was estimated that over a million people would lose their jobs and about 2,50,000 people would be displaced. Rauttem and Baud, 2004). According to Berger (1993), the construction of a dam will drown 245 communities, displacing some 1,40,000 families, the majority of them farmers, fishermen, and Adivasis. The project's effects on gender are blatantly disregarded by the policymakers. Lyla and Shrinivasan (2000) discussed how big dams affect other dams. They note: "[...] large dams have far-reaching consequences on the economic, social and cultural contexts within which men and women live their lives." Largely, the spread of pains and gains has not been equal. To some extent, this is because of gender biases, ignorance and reductionist modes of operating in dam-building activities"

Medha Patkar emerged as the front-runner in the opposition to the project among all the activists. She is a founding member of the Narmada Bachao Andolan (NBA), which has established a reputation as one of the most genuine voices of the voiceless over time. It was up to her to bring all movements within the NBA's purview. NBA was in charge of providing a voice to the project's impacted women. NBA also provides support to other eco-feminist movements across the nation.

Ultimately, the NBA filed a petition against the Indian government in 1994, demanding that the Sardar Sarovar Dam Project be stopped and contesting several of the government's positions. NBA stated that the Government of India has not taken into account all pertinent concerns that have arisen from the projects, including those about the impacted people's rehabilitation and compensation. Due to egregious misjudgments, the social and environmental aspects of the project required a review or complete cessation. The Supreme Court limited the purview to restitution and rehabilitation alone. The Court ruled that the project could not be halted at this later time because it received the necessary approval in 1987. The Court denied the petition, noting further that dams have historically improved people's well-being. (Narmada Bachao Andolan V UOI, 2005).

Despite the NBA's loss in the lawsuit, its importance cannot be discounted. It played a key role in elevating indigenous people's struggle to the forefront of both domestic and global affairs. The struggle was a success which witnessed massive participation of women and exposed the delirious impact of developmental projects on the environment. It brought national and international attention to the need to include people to be affected by any project in the decision-making process (Parmeswaran, 2022). The movement was rooted in the spirit of fighting back against the patriarchal decision-making process which is exploitative and inconsiderate. Although the Court refused to stall the project at a belated stage, the compensatory approach of the Supreme Court recognizes the harm caused by the project and the rights of people to be rehabilitated.

5 Silent Valley Movement

One of the Western Ghats' largest tropical evergreen forests is the Silent Valley. There is a wide range of vegetation and wildlife in the valley. Numerous plants and animals are in danger of extinction. The Kerala government planned the hydroelectric project's construction. The government's case for the project was that it would create jobs, extend the irrigation network in Mallapuram and Palgat district by 100 km, and produce power for the state by adding four 60MW units.

A task group was established by the National Committee on Environment Planning and Coordination to investigate potential ecological issues resulting from the project. Due to the task force study, the project was put on hold. The task force suggested giving up on the project. If giving up on the project was not an option, then some rules were released to protect the valley. The state administration carried forward with the project by putting the safeguard regulations into effect. Though it was useless, some NGOs objected to the choice and requested that the experiment be discontinued.

NV Krishna Warriar of Prakriti Samrakshana Samiti, Prof. Joseph John, and Adv. Gopalakrishnan Nair filed a petition before the High Court in 1979. Following that, Samrakshana Samiti and Silent Valley Kerala Sastra Sahitya Parishad launched an awareness camp and staged protests and rallies in opposition to the project. Prominent writers from Kerala and newspapers also participated in the movement. Morarji Desai was replaced as prime minister by Charan Singh, who also formed a central committee to look into the matter again.

Malayalam poetess Sugathakumari rose to prominence as the spokesperson for the Silent Valley Movement. She was the powerful force behind the campaigns to safeguard the rights of women and indigenous people as well as the environment. The movement adopted her well-known poem "Marathinu Sthuti (Hymn to a Tree)" as its anthem. "I fell into it like a bird," it was claimed that she stated. After realizing that

her only tools were "a pen and a firm spine," she took the lead in several environmental initiatives to preserve Kerala's wildlife and floral heritage. (Krishna Kumar, 2000)

Over time, the landscape and the agitations of the Silent Valley movement found frequent appearances in her poems. In the meantime, a writ petition was filed in the High Court in 1980. The Court declined to become involved, stating that it was not their place to weigh scientific arguments. (Society for Protection of Silent Valley V UOI & Others, 1980).

Then-Indian Prime Minister Mrs. Indira Gandhi said in 1981 that Silent Valley would be safeguarded in response to popular outcry. The Silent Valley Project was cancelled in November of 1983. Silent Valley became a national park in 1986 as a result of the migration of people there. It is important to remember that the Silent Valley was spared from destruction by the social movement rather than by legislation.

6 Niyamgiri Movement

The Dongria Kondh tribe has lived in the Niyamgiri Mountains in Orrisa for millennia. This is a small community of roughly 8,000 people who follow traditional family ties and sustainable farming methods while living in perfect harmony with the environment. But when the Odisha government signed a Memorandum of Understanding with Vedanta Aluminium Limited to mine bauxite in the Niyamgiri Mountains, this mutually beneficial partnership was put in jeopardy. It was viewed as a potentially fruitful endeavour for the State's economic growth and prosperity. Nevertheless, it resulted in an unparalleled loss of habitat and means of subsistence for the Dongria Kondha tribe. All that was going on here was the Western developmental agenda being forced down the throats of the indigenous people, with the assumption that the tribe had to be "civilized" and developed at all costs. The Niyamgiri mountains are revered by Dongria Kondha as the home of their master, Niyam Raja.

The tribe of Dongria Kondha rebelled against the government. A gram sabha was held in Khambesi hamlet on August 13, 2013, during which several women spoke out against the mining agreement. A tribal woman named Kutruka Kunjhi snatched the microphone away from the head of state and bellowed, "Neither the government nor the company has any right to our forest." 50-year-old widow Sikaka Kunji represented the community at the Lakhapadar gram sabha, using her native tongue to express her anguish and despair through the swing of an axe. "We are not educated, but we have the knowledge needed to live wholesome lives, and we are not fools," or "We will shoot down with our arrows those who force us to give up our forest." The MOU was rejected by a unanimous vote of the locals. These Gram Sabhas were among the numerous Gram Sabhas that the Odisha government hosted between July 18 and August 19, 2013. The MOU was voted down by every Gram Sabha.

The Ministry of Environment and Forest granted Sterlite Industrial Company temporary environmental clearance to build a bauxite ore mine, pending a review of the project's potential effects on the Dongria Kondh village. The authorities then carried out an impact study, concluding that the project should be shelved since the rights of the Dongria community would be impacted by the mine's construction. However, the refinery at the base of the Niyamgiri Hills was already constructed by Vedanta.

The environmental clearance was subsequently denied by the Ministry of Environment and Forests, citing concerns that it would violate the Forest Rights Act and impair the rights of the indigenous population. The company's argument in *Orissa Mining Corporation v. Ministry of Environment & Forest & others* (2013) was to reverse the Ministry's clearance rejection.

The Court maintained the denial because certain sections or regions of the forest need to be off-limits to mining operations. The tribe's rights over the company-owned land were taken into consideration by the court. The State Government is the custodian of natural resources on behalf of the people, the Court further declared. The court further stated that for the tribal people impacted by the project, agriculture was their sole source of income.

Women were consistently at the forefront of the campaign, as chronicled by several newspapers and journalists covering the Niyamgiri movement. They actively engaged in every Gram Sabha and ensured that the relevant authorities heard them. It shows that women are the first to experience environmental deterioration as victims and, hence, the first to recognize its risks. The intersection of feminist and environmental movements serves as the fertile ground for the development of eco-feminism. The Niyamgiri Movement is a good example of how gender, ethnicity, environmental protection, and the law all worked together perfectly. The initiative ultimately had an impact on the legal system, and the Court made a decision supporting forest protection—something it had not done in the previous two cases. This was one of the rare occasions when a government-sponsored developmental initiative was terminated by the Court.

7 Navdanya Movement

One of the world's most important eco-feminist movement pioneers is Vandana Shiva. Not only did she prove that women ought to be in charge of natural resources, but she also challenged the colonial concept of development, which completely changed the eco-feminist movement. She calls it "maldevelopment," which she defines as the widespread impoverishment of women in Southern countries and the unsustainable exploitation of the natural resource base.

Dr. Vandana Shiva founded the Research Foundation for Science, Technology, and Ecology (RFSTE), which is home to the Navdanya program. An entire paradigm change in farming operations occurred in 1984. Navdanya has been closely monitoring the progress of genetically modified crops in India since 1997. The organization exposes the lies and deceit of corporate and governmental assertions by conducting a yearly study on the effectiveness of Bt cotton during field trials and after commercialization. Additionally, it brought legal action against MONSANTO and Indian officials for allegedly breaking environmental regulations and bringing genetically modified seeds into the country. By misrepresenting the existence of its patent on the seed, MONSANTO brought the seed to India. After that, the Supreme Court declared in 2019 that MONSANTO lacked both legal and patent rights over the seed. (*Monsanto Technology Llc V Nuziveedu Seeds Ltd.*, 2019). The Supreme Court upheld Section 3 (j) of the Indian Patent Law which excludes seeds from patentability.

8 Concluding Remarks

The judiciary understood the essence of eco-feminism, if not in so many words as to acknowledge that various development projects have profound effects on marginalized groups and that, in its capacity as guarantors of human rights, the judiciary must stop the powerful from violating the rights of the weaker sections of society. As Catherine Mackinnon (1991) once said "A feminist theory of the state has barely been imagined, systematically, it has never been tried." Similarly, environmental jurisprudence can also be reimagined by including inputs from eco-feminism. Judiciary in countries like New Zealand and Australia, by personifying natural resources like rivers have in a way reimagined environmental jurisprudence. The personification of natural resources helps in establishing the vulnerability of the environment. One can trace the footprints of eco-feminism in humanizing the natural resources. In India also the Uttarakhand High Court treated rivers Ganga and Yamuna as legal persons and banned sand mining in Ganga (*Mohd. Salim V State of Uttarakhand*, 2017). Marriage between eco-feminism and feminist legal theory is an exciting idea. We have discussed environmental movements that were led by women and how probably the judiciary was also affected by their advocacy. A high point of the environmental movements led by women and rooted in eco-feminism is, that they are non-violent. Non-violent movements are nearly twice as successful as violent ones in achieving their objectives (Principe, 2017).

Feminist legal theory builds its foundation on the premise of masculine norms of legal process and judicial decision-making. It believes that the law has been instrumental in the subordination of women. Feminist legal theory opposes traditional legal theory which tends to observe law as a process for interpreting and perpetuating a universal gender-neutral public morality (Minda, 1995). As discussed, earlier eco-feminism also draws parallels between the exploitation of women by men and the exploitation of nature by the masculine system. An eco-feminist legal theory

framework can mandate the inclusion of women judges in the benches hearing environmental cases. It can also deliberate upon the mandatory public consultation by the committee appointed by the judiciary to include the voices of the marginalized who are affected by environmental degradation. Such a committee should mandatorily comprise a qualified women member. The relationship between women, the environment, and patriarchy is well established, and it is high time that the eco-feminist legal theory does not remain an enigma but becomes a well-established theory in the judicial process.

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