

RESURRECTING THE OTHER OF 'MODERN' LAW: INVESTIGATING NIYAMGIRI JUDGMENT & LEGAL EPISTEMOLOGY

—AMIT BINDAL*

The article attempts to decode how the cosmology of the world of myth and legends is evaluated in the epistemic framework of rights guided by the discourse of liberalism. It investigates the Indian Supreme Court judgment in the Niyamgiri case to analyze the encounter of 'modern' law with the tribal worldview informed by the mythic tradition. The article, on the one hand, celebrates the approach of the Court in its move to diversify the notion of justice by its sensitive treatment towards the languages and the logics of tribal worldview. On the other hand, however, the article points out the limits of modern liberal framework, within which the modern legal system is situated, in adjudicating the claims which are couched in the language of 'sacred', unknown to the institution of modern law.

I. INTRODUCTION

Dongria Kondh, Kutia Kandha and others constitute several tribes which inhabit an existence in the state of Orissa and are isolated from the discreet charms and cacophony of modern urban life. They occupy a space in the midst of a hill surrounded by dense forests. Their worldview radiates a sharp contrast to the strictly 'rationalist' worldview as it is conceived of notions of myths, legends and stories, all of which play an important part in their lifestyle. For instance, the summit of these Niyamgiri Hills is conceived by the inhabitants to be the abode of 'Niyam-Raja' (Niyam King). This language of the tribals is a language of 'myth', unknown to the modern-nation state as it is opposed to

* Assistant Professor at Jindal Global Law School, O.P. Jindal Global University, Sonapat & PhD Candidate at Centre for Studies in Social Science (CSSS), Calcutta. The author acknowledges Dr. Shiv Vishavanathan for his support and encouragement in evaluating "myth" from a legal standpoint. He further thanks Dr. Ashley Tellis for his incisive comments on an earlier version of this paper. He is also grateful to the anonymous editor and peer reviewer for their insights.

the script of modernity—the predominant language of the contemporary times.¹ Habermas situates the roots of the modernity and the modern legal system, in general, on the denial of the primordial ‘myth’.² He points out that one of the prominent aspects in the birth of modernity in the west is the erasure of the mythical. The thrust of this essay is not a fuller exposition of the tribal world-view with that of modernity. Rather, it considers and evaluates the limits of liberal democratic imagination when the mythical world confronts the logics of the ‘modern’³ conception of world in the legal courtroom. The essay is a brief comment on what is popularly known as the Niyamgiri case where the mythical vocabulary of tribals came in conflict with the logics of the modern nation state and the confrontation was sought to be adjudicated by the modern legal system. Let us begin with a preliminary account of the genesis of the conflict that came up before the Supreme Court of India.

Vedanta group of companies along with Orissa Mining Corporation wanted to start an alumina refinery project in the hills inhabited by the tribals. They sought permission for diversion of forest land for land mining of Bauxite ore, and this led to the initial conflict as the move was opposed by local inhabitants. The clearing of the project led to multiple litigations culminating in the case wherein the Supreme Court sought a report to be prepared delineating clearly the impact of the project on the wildlife and biodiversity of the tribal areas.⁴ The Court suggested a “rehabilitation package” to be agreed upon by the concerned companies in order to clear the mining project. The companies unconditionally agreed and received Stage-I forest clearance.

The present case⁵ arose when the Orissa Mining Corporation Ltd. filed a petition before the Supreme Court of India challenging the denial of final forest clearance, for the purposes of mining, by the Ministry of Environment and Forests (MOEF). The MOEF had rejected the Stage II forest clearance due to the adverse findings on the social impact of the project on tribal settlement. The MOEF relied on the Saxena Committee Report which raised various objections against the clearance of the mining project. There were

¹ For the modern enlightenment thought these tribes were apt to be conceptualized, somewhat violently, as the “non/pre-modern” untouched by the waves of modernity. See, LEO STRAUSS, *THE THREE WAVES OF MODERNITY*, POLITICAL PHILOSOPHY 81-98 (1975).

² J. HABERMAS, *THE PHILOSOPHICAL DISCOURSE OF MODERNITY: TWELVE LECTURES* 107 (1987). (He argues that “enlightened thinking has been understood as an opposition and counterforce to myth”).

³ For an excellent and authoritative account of the historical emergence of secularisation in European thought, see, CHARLES TAYLOR, *A SECULAR AGE* (2007). (The expression “modern” throughout this essay is to be understood in relation to the historical notion of European enlightenment thought which predominantly foregrounded “reason” and “rationality” as the foundation of development of any society).

⁴ The two cases which preceded this decision were *T.N. Godavarman Thirumulpad (104) v. Union of India*, (2008) 2 SCC 222 and *T.N. Godavarman Thirumulpad (106) v. Union of India*, (2008) 9 SCC 711.

⁵ *Orissa Mining Corpn. Ltd. v. Ministry of Environment & Forests*, (2013) 6 SCC 476.

alleged lapses on the part of petitioners that were shown by the Report of the Committee. The lapses included lack of consultation with the native tribal groups and the possibility of adverse impact on the existing biodiversity and ecology of Niyamgiri Hills on which the lives and the habitat of the tribal population depended. Further, the report pointed out violations of the provisions of environmental protection legislations such as the Forest Rights Act, 2006, the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986. The petition before the Court opposed this order of the MOEF, which in turn had halted the mining of bauxite in the area. The opposition to this petition was not only by the Ministry but also by the tribal inhabitants. For the natives it was a direct affront of the modern state on their sacred lives. Such an instrumentalist conception of land was not merely interfering with their lifestyle but was also an unacceptable trespass into the sacred abode of Niyam King. It is the fate of the latter argument, *apparently* irrational or unscientific, in the modern legal system that is the central point of scrutiny in this case. We may ask whether the claim is really irrational. Or, is it possible to decipher sense in the 'unreason' of the tribals? Goodrich argues that "lawyers have always been indecently zealous to reduce behaviour to rules and, in constructing the abstract world of the doctrines and science of law, have tended to be forgetful ... of the irrationality ... embedded in social life."⁶ In what follows we attempt to study the script of the encounter between the seemingly irrational tribal worldview and the logics of the modern nation state.

II. CONTESTING MYTHOLOGIES AND EPISTEMOLOGIES

The case involved and evoked issues relating to the rationality of modernity and indigenous sensibility, the logics of progress and development, and the right to collective cultural existence of the tribes. Moreover, the issue was one of language- of translating the language of the mythic on the legal register of rationality. At the heart of the conflict was the core issue of diversity of a distinct cosmology, language and existence different from the 'modern' ways of understanding the world. The importance of this conflict on the juridical register lay in elaborating on the way the law, in its modern avatar, dealt with and would deal with the claims of its other (here, the tribal population). What would the frame of reference be to adjudicate upon the claims of those whose existence and language styled them as aliens, outsiders and strangers to the modern law? What was communicated and what was lost in translation when the language of myth is translated into the language of modern legal rationality? In attempting to answer such questions, the issue of diversity became more prominent as it itself involved some radical questions which inquired into the very foundations of the modern legal systems.

⁶ PETER GOODRICH, *LAW AND MODERNITY IN NIETZSCHE AND LAW* 275 [Francis J. Mootz III & Peter Goodrich (Eds.), 2008].

The argument of the tribal populace was couched in terms of a non-Eurocentric perspective and the conceptualization of nature and its relationship with the social. The claim of non-interference with the 'abode of Niyam Raja' treated nature as an organic and inseparable part of social existence where nature itself became a living organism and 'Niyam Raja' a personification of such a social outlook. This was deeply in contradiction with the modern Cartesian notion of understanding nature as a *res extensa* (corporeal substance), or what is somewhat cruelly styled as *terra nullius*, and as a resource which is to be tamed by human intervention.⁷

The Supreme Court's decision needs closer scrutiny to appreciate the conceptual aspects of the judgment. The initial question was that of ownership of resources underneath the forest, in this case bauxite. For the tribals this was an issue of a sacred relationship but for the state it was merely an issue of ownership in technical and legal sense. The Orissa Mining Corporation argued that since the ownership was vested in the State Government, the Schedule Tribes or Traditional Forest Dwellers (STs & TFDs) had no claim over it.⁸ The claim of ownership over natural resources by the state itself reflected the colonial incarnation of the modern-state which considers forests as 'property' which is to be owned by the state as opposed to the idea of forest as 'commons'.⁹ The Court accepted the claim of ownership as an acceptable proposition approvingly citing other case law.¹⁰ However, the Court emphasized the obvious by stating that the ownership of the state was in the nature of 'trustee' of the people and it had to discharge its functions in accordance with law.¹¹

To understand this move of the Court we have to contextualize the hermeneutical exercise of law in socio-political terms. The Court here, unknowingly, confronted the schizophrenic self of the Indian state. One part of this self (the petitioners) sought permission to move further with the mining project on the legal grounds of ownership and with the larger political claim of development and progress. The other part sought the putting of ecological,

⁷ BOAVENTURA DE SOUSA SANTOS, *EPISTEMOLOGIES OF THE SOUTH: JUSTICE AGAINST EPISTEMICIDE* 23 (2014). (Santos insightfully points out that "[f]rom a Cartesian point of view, the fact that Ecuadorian Constitution includes a whole section devoted to rights of nature is juridically and ontologically absurd, a true *aberratio entis*").

⁸ *Supra* note 5, at para 50.

⁹ In the pre-colonial India even the kings never considered themselves as owners of forests though they acquired revenue. Conceptualising forests as private property was a colonial notion which violently remains a part of the modern Indian nation-State. *See*, CHATRAPATI SINGH, *COMMON PROPERTY AND COMMON POVERTY: INDIA'S FORESTS, FOREST DWELLERS, AND THE LAW* (1986); For a contextualisation of the idea of commons within Indian constitutional framework, *see*, SHIV VISHVANATHAN & CHANDRIKA PARMAR, *LIFE, LIFE WORLD, AND LIFE CHANCES: VULNERABILITY AND SURVIVAL IN INDIAN CONSTITUTIONAL LAW IN LAW AND GLOBALISATION FROM BELOW: TOWARDS A COSMOPOLITAN LEGALITY* 339-362 [Boaventura de Sousa Santos & César A. Rodríguez-Garavito (Eds.), 2005].

¹⁰ *Amritlal Nathubhai Shah v. Union Govt. of India*, (1976) 4 SCC 108.

¹¹ *Supra* note 5, at para 50.

cultural and ethical restraints on that ownership claim and the construction of a framework of inclusive and humanist development. The task of the judicial interpreters was to adjudicate these conflicting claims or conflicting selves of the modern state. The schizophrenia was apparent in the very title of the case as the Mining Corporation of the state which claimed the ownership for development was pitted against another wing of the state, the MOEF, which emphasized on the restrictions put on the ownership rights for inclusive and equitable development.

The exposure of the state's split self, as witnessed in the case, forms the core of the paradox and dilemma of the modern nation state which simultaneously seeks to promote capitalist neo-liberal industrialization along with the welfare of people at large. The Saxena Committee Report, relied upon by MOEF, was one instance provided by this case which pointed out the impossibility in achieving these two aspirations together, thereby resulting in gross violations, as pointed out by the committee, of laws protecting diversity and environment on the part of petitioners.

The larger point which became apparent by a closer look at the split personality of the modern state was whether the response of the modern state and the western liberal imagination to cultural and environmental demands, reflected in their formulation of environmental policies for sustainable development, was adequate, particularly in light of the realization by both schools that the 'extractivist' view of nature was untenable? Santos argued that it was impossible to attain the contradictory demands as he found such responses of environmentally friendly policies as 'weak answers' to the 'strong questions' of whether "the conception of nature as separate from society, so entrenched in Western thinking (is) tenable in long run?" He found the answer weak as it remained within the paradigm of the Cartesian epistemological model. He added, "No matter how many qualifiers are added to the concept of development, development keeps intact the idea of infinite growth and unstoppable development of productive forces."¹²

Further, the Supreme Court emphasized the framework of rights and the claims of indigenous people. The Court spelled out the constitutional protection as well as the protective canvas of International conventions.¹³ Further support was drawn from the purpose of protection provided in various enactments to the indigenous people including the Forest Act and other legislations.¹⁴ Additionally, the Court emphasized the provision under Panchayat (Extension to Scheduled Areas) Act, 1996 (PESA Act) which empowers the

¹² SANTOS, *supra* note 7, at 23.

¹³ *Id.*, at ¶¶ 33-38.

¹⁴ The court elaborately discussed the objective and reasons of Panchayat (Extension to Scheduled Areas) Act, 1996 (for short "PESA Act") accentuating the importance of decentralization, cultural identity community resources in the Act.

Gram Sabha and encourages the customary form of dispute resolution.¹⁵ Here, we need to once again conceptualize the mapping of the framework of protection of the indigenous rights of the tribal people and the traditional forest dwellers. The Court in this juridical exercise of reason was attempting to underscore the relevance and importance of preservation of traditional and customary rights of the people, “their cultural identity, community resources and the customary mode of dispute resolution.”¹⁶

A brief but instructive moment of the judgment provided the reason for the emphasis on this framework of indigenous rights while deciding upon the governmental and corporate claims for developmentalism.¹⁷ The Court insightfully pointed out the uneven plane of the parties involved in disputes such as the present one. An inherent imbalance was found in the fact that the tribal people and traditional forest dwellers were “totally unaware of their rights”. Further, the Court also discussed their “difficulties in obtaining effective access to justice because of their distinct culture and their limited contact with mainstream society”.¹⁸ The importance of traditional knowledge was recognized as not only having a “vital role to play in environmental management” but also it was acknowledged that “they (TFDs) did not have the financial resources to engage in any legal action against development projects undertaken in their abodes or the forests in which they stayed.”¹⁹ One may find this attitude of the Court to be paternalistic but at times paternalistic protection is *necessary* within the liberal democratic paradigm. However, this is not to say that this is *sufficient* for those on the receiving end of the spectrum. While, it is necessary as it appreciates that there is no level playing field in this contest and such recognition is important, however, the question of what would be a sufficient response remains open, along with the question of whether such a response can at all be provided within the modern liberal framework. Would a sufficient response require an epistemic shift altogether by not expecting “legal awareness” of tribals but by acknowledging the sacred worldview or giving it recognition? These questions still require further elaboration.

There is no doubt that it is important to applaud this attempt of the Court since previously the Supreme Court of India had abstained from even the recognition of the non-level playing field for the tribals. For instance, consider the purely exclusionary and modernity driven discourse of the Supreme Court in *Narmada Bachao Andolan v. Union of India*²⁰ where the Court justified the construction of the dam over the Narmada river leading to the displacement of tribal people as in the Court’s view, their “gradual assimilation in

¹⁵ Section 4(d) of PESA Act.

¹⁶ *Supra* note 3, at ¶ 36.

¹⁷ *Id.*, at ¶ 39.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ (2000) 10 SCC 664.

the mainstream of the society will lead to betterment and progress".²¹ This was done despite the acknowledgment that "displacement of these people would undoubtedly disconnect them from their past, culture, custom and traditions, but then it becomes necessary to harvest a river for the larger good."²² Thus, in the light of such precedents where the Court blinded itself to the alternative tribal worldview, such acknowledgement needs to be applauded. It reflects a sincere attempt on the part of the Court to understand the inherent imbalances of the liberal framework of rights and also serves as a sensitive step towards diverse notions of justice itself.²³

The Court, appreciating the importance of tribals in environmental management, delegated the decision to the Gram Sabha in the final pages of the judgment. The Court urged the Gram Sabha to decide whether "their (the tribals'/ TFDs') right to worship their deity, known as Niyam Raja, in the hills top of the Niyamgiri range of hills ... has to be preserved and protected."²⁴ Clearly, the language of the Court displayed sensitivity towards the cosmology of its other, and in this sense, the judgment serves to set an important precedent for adjudicating conflicts confronting unique worldviews.

III. THE (IM)-POSSIBILITY OF TRANSLATING THE SACRED

In the final analysis of the Supreme Court's judgment, a closer scrutiny of the constitutional logic employed by the Court is required. This is important as the somewhat impossible attempt of assimilating the sacred into the framework of liberal rights discourse reflects the limits of this frame itself. In other words, a closer look at the Court's reasoning in translating the sacred on the constitutional register raises certain deeper questions about the liberal construction of the Court's own self. Let us illustrate this point more clearly by referring to a passage from the judgment where under the rubric of *sacred* rights the Court discussed the customary and religious rights of the tribals in constitutional terms:²⁵

Religious freedom guaranteed to STs and the TFDs under Articles 25 and 26 of the Constitution is intended to be a guide to a community of life and social demands. The above mentioned Articles guarantee

²¹ *Id.*, at 703.

²² *Id.*, at 765.

²³ For a critique of the modernist script of court's judgment in *Narmada case*, see, Balakrishnan Rajagopal, "Limits of Law in Counter-Hegemonic Globalisation: The Indian Supreme Court & the Narmada Valley Struggle" in LAW AND GLOBALISATION FROM BELOW: TOWARDS A COSMOPOLITAN LEGALITY 339-362 [Boaventura de Sousa Santos & Ce'sar A. Rodríguez-Garavito (Eds.), 2005].

²⁴ *Supra* note 3, at ¶ 58, the court also quite uncharacteristically of a modern court reiterated that the Gram Sabha should also consider and decide if the bauxite mining project "would in any way affect the abode of Niyam-Raja". *Id.*

²⁵ *Id.*, at ¶ 55.

them the right to practice and propagate not only matters of faith or belief, but all those rituals and observations which are regarded as integral part of their religion. Their right to worship the deity Niyam-Raja has, therefore, to be protected and preserved.

In order to situate the comment in its proper context we need to closely scrutinize the argument in the passage. The Court understood the sacred relationship of the tribals with their deity (the hill-top, which is the abode of Niyam Raja) in terms of the constitutional right to freedom of religion. Can an alternative cosmological conception wherein the relationship between nature, society and the sacred is visualized only be understood as religion? Is this a religious claim at all or an argument for an alternative cosmological existence? Is the only way to imagine a world alien to modern sensibility one by designating it as religious? The expression 'religion' has certain specific connotations in modern political theory and in its constitutional encoding which carries baggage with itself. Do we require the spectacles of religion to be able to make sense of a world whose logics and meta-logics do not fit within the modern secularized framework? Perhaps, this is the only available, though painfully inadequate, register on which 'myth', 'rituals' and the 'sacred' can be translated in the modern liberal framework. However, the passage reflects both the unease and the limits of the logic employed by the Court in arriving at this conclusion.

The unease lies in the broader sweep of religious freedom under which the Court locates and situates the sacred rights. That is to say that the Court merely read the rights of the Schedule Tribes (STs) and Traditional Forest Dwellers (TFDs) under both Articles 25 and 26 while the two Articles inhabit very distinct spaces within their constitution. More importantly, the deeply problematic aspect of this act of translation lies in fact that the "*worship of the deity Niyam-Raja*" is protected and preserved under the Constitution only if it is "*regarded as integral part of their religion*".

The logic which unfolds here is that the Court implicitly read the ritual or practice of worship of the deity as an *integral part* of the tribals and thereby protected it under the broad rubric of freedom of religion. Why is it that the only way to appreciate diversity is to translate it on a religious register? This brings in an entirely new problem that, in turn, has limited the potential of the claim of diversity by straightjacketing it into essential or non-essential practices. The broad right of freedom of religion has been interpreted by the Indian courts as protecting only those rituals and practices which form the integral or essential part of the religion.²⁶ Styled as the essential-practices test under Indian constitutional law jurisprudence, the test empowers the courts to

²⁶ For the historical evolution of the doctrine, see, AMIT BINDAL & LATIKA VASHIST, *SECULARISM IN THE PREAMBLE 80-96* [Deepa Kansra (Ed.), 2013] and the literature cited therein.

determine, purely on the basis of affidavits submitted before it, what constitutes an essential or integral part and is thus worthy of constitutional protection. This self-appointed role of the courts as determinants of core or integral aspects of religion has major flaws and has elicited scathing criticism from both the Bar as well as the academia.²⁷ Further, the courts have been inconsistently selective in their determination of what is an integral or essential part of religion.²⁸ Thus, it seems that conceptualization of the sacred relationship with the land or the hills, within the rigid framework of essential practices, is both undesirable and illustrative of the limits of the liberal constitutional logic while interpreting the sacred. Even though the Court delegated the decision to the Gram Sabha for the final determination of the case, the claim is still understood on the register of modern liberal rationality. The Court failed to realize that they were dealing with a different cosmology. A world which considers the hills as the abode of Niyam Kings and personifies nature in way that it becomes integrally entrenched with the social is not practicing any religion. But to the modern legal system, with its secular foundations, anything that does not fit the epistemology of Cartesian rationality can only be translated in terms of a religious claim. We understand that there is hardly anything that the modern courts can do but does this not point to the limitations of modern liberal rationality in dealing with the sacred? In this context Derrida's formulation of justice becomes apposite as he remarks "I must speak in a language that is not my own because that will be more just...it is more just to speak language of the majority, especially when, through hospitality, it grants a foreigner the right to speak. It's hard to say if the law we are referring to here is ... the law of the strongest, or the equitable law of democracy."²⁹

IV. CONCLUSION

Throughout the essay we have maintained a sharp binary between a 'modern' worldview, based on Eurocentric Cartesian rationality and its mythic counterpart. Before the concluding remarks, something must be said about maintaining this modern-mythic binary. Fitzpatrick in his classic work *Mythology of Modern Law* deconstructs such a binary.³⁰ He maintains that the mythic and the modern cannot be understood in strict opposition. He points out that the difference in the two conceptions lies in the former's ideal of

²⁷ See, RAJEEV DHAVAN & FALI NARIMAN, "The Supreme Court and Group Life: Religious Freedom, Minority Groups and Disadvantaged Communities" in SUPREME BUT NOT INFALLIBLE 260 [B.N. Kirpal et al. (Eds.), 2000]; RONOJOY SEN, ARTICLES OF FAITH (2010).

²⁸ See, *M. Ismail Faruqui v. Union of India*, (1994) 6 SCC 360, para 82. (The most infamous and controversial aspect of such eclecticism was displayed when the Supreme Court held that offering prayers in a mosque is not an essential part of Islam and "namaz (prayers) by Muslims can be offered anywhere, even in the open").

²⁹ Jacques Derrida, *The Force of Law: the "Mystical Foundation of Authority"*, 11 CARDOZO L. REV. 924-25 (1990).

³⁰ PETER FITZPATRICK, *THE MYTHOLOGY OF MODERN LAW* (1992).

'locating the origins in the sacred'³¹ and the latter's view of situating antiquity in future modern social imagination. That is to say that the mythic world-view relies on sacred origins whereas the modern secular rationality inverts this and positions the unknowable and sacred in the future. Fitzpatrick argues that the narrative of 'progress' in the modern western and Eurocentric discourses is itself a manifestation of the sacred in the future.³² Thus, the modern law or rationality itself becomes a mythical category which does not necessarily deny the sacred but reverts its positioning to some unknown and unknowable future. In this context it is important to note that such conception can redraw the boundaries of the conflicts outlined above. On this register, the conflict becomes a tussle between two mythical life-worlds, one represented by modern industrial capitalism and the other reflected by the tribal mythological sensibility. This is of course a possible way to reimagine the entire controversy. However, this paper deliberately maintains this binary because although this binary is a false one, as ably illustrated by the work of Fitzpatrick, it exists in the contemporary political discourse. The capitalist developmentalism is taken for granted and is understood as the only reality. This is not just true for the regime sponsored discourse of eternal developmental progress. It is equally true for contemporary juridical imagination. How else do we understand the fact that the entire judgment of the Supreme Court takes for granted and never questions the discourse of 'development' through mining the forests? It is only ready to question or consider the ill effects of the capitalist industrialization and not its inherent logic. This is not the appropriate space to go into the issue of whether this is due to the doctrine of separation of powers or the ideology of hegemonic globalization. However, the paper merely points out why it is necessary to maintain the distinction between the modern and the mythic for a better understanding of the issue.

In conclusion, we must reiterate that the importance of the Niyamgiri case lies on multiple levels. However, two distinct readings of the case are foregrounded in this essay. At one level, the Court's attempt to go beyond its 'modern' self to understand the claims of the nomad, the tribal and the forest dweller is worth celebrating. This is because the judgment expands the contours of judicial interpretation to include various forms of diversities- *bio-diversity* in understanding the relationship of these people with their ecology, *cosmological diversity* by allowing the claims of different worldviews in their own terms and *epistemological diversities* by being sensitive to the language and logic of the tribals though they may not fit well within the validation of the logic of modern law.

At another level, it remains a fact that the 'sacred' dimension or the human-nature relationship of the tribals could only be formulated by the

³¹ *Id.*, at 35.

³² *Id.*, at 40-41.

Court in the limited and controversial paradigm of religious freedom and essential practices. It is perhaps the only spectacle available for the Court, rooted in the liberal framework of modern law, to visualize the mythic worldview of the tribals. In this sense the judgment as a precedent remains woefully inadequate and radiates the limits of the liberal frame of reference. This is not to say that the decision becomes any less important due to its inherent limitations. But it is only to suggest that any attempt to go beyond the logics of modern legal rationality must be self-conscious of the liberal paradigm within which the modern law operates. An inclusive theory of justice embracing diverse epistemologies needs to question its own frame of reference in order to avoid 'legal deafness'³³ towards the mythic or the seemingly irrational modern sensibilities. The judgment takes the first step towards that path of justice but it needs to reflect on its limitations for marching ahead towards diverse conceptions of justice.

³³ I borrow the phrase from Peter Goodrich for its appropriateness in this context. See, PETER GOODRICH, *LANGUAGES OF LAW : FROM LOGICS OF MEMORY TO NOMADIC MASKS* 179-186 (1990).