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**Micro Level Factors in the Pursuit of Social Justice: A Study
of Power Relations in the Santal Village¹**

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Abstract

This paper argues that if we can gain a better understanding of the possibilities (and limitations) of the individual's strategies of renegotiating inequalities in societies, communities and households we will be better equipped to address complex factors affecting social justice outcomes. There is no quick fix to inequality and the pursuit of social justice is an ongoing process that demands structural, institutional, political, economic and social change. However, the daily process of renegotiations of power relations by marginalised groups and individuals has a vital role to play in the success or failure of social justice initiatives. In this paper I use the concepts of legal pluralism and power relations to discuss the ways in which the individual is constantly negotiating power. In understanding this process we can better facilitate the inherent struggle by the underprivileged to reduce inequality.

Keywords:

Santal communities; social justice; individual strategies; modes of power; modes of resistance; legal pluralism; marginalisation;

1. Introduction

Why do the most underprivileged consistently find themselves in positions of subordination despite the efforts of law and policy to ameliorate their situation? This question provides an underlying frustration for academics and activists working in the fields of human rights and social justice. These frustrations can be read by some as indicators that the subjugated are failing to help themselves, are beyond help or inert with no inherent capacity for resistance. Studies of subaltern resistance such as the Subaltern Studies Series² and James Scott's (1985) work in Malaysia have helped to promote a different picture of a fighting, conscious subordinate.³ But this leaves us back at the start: why, when there are laws in place to assist and an inherent will to resist, do poverty, inequality and injustice persist?

In this paper I discuss the ways in which inequality is maintained through power relations in multiple legal orders and how, within each legal order individuals engage in strategies of struggle to resist disadvantages in a number of ways. In order to understand how, when and why individuals resist we need to understand how the inequalities are formed. My research has led to the conclusion that we can distinguish three forms of relations of inequality. I call these relations of domination. But power relations do not only encompass forces of domination, they have at their core a free subject and with that the possibility of resistance. I identify three forms of resistance that correspond loosely to different relations of domination. I show how these relations of domination and modes of resistance function at the normative levels of the family, village, and state, and give examples of the different forms of resistance used.

The arguments put forward in this paper were developed as part of ethnographic research carried out on the Santal, an *adivasi*/tribal people in Jharkhand, India and Rajshahi, Bangladesh. The research involved five fieldwork trips between 2002-2004 using sociological and anthropological methodologies to collect qualitative and quantitative data from Santal villagers, judiciary, academics and activists, and primary materials from government departments and national libraries. The longest field trip involved five months living in four villages, two in each country, carrying out structured interviews in Santali and using participant observation and focus groups to collect additional data.⁴

I will begin by introducing the Santal and the three concepts on which my findings are based (power, resistance and legal pluralism) before discussing the forms that relations of inequality and resistance takes in the context of Santal village life.

2. The Santal

The Santal are an *adivasi* (indigenous, tribal)⁵ people living predominantly in India, Bangladesh and Nepal. They constitute the largest *Scheduled Tribe*⁶ in East India (inhabiting West Bengal, Tripura, northern Orissa, Bihar, Jharkhand and Assam) numbering just under five million,⁷ and one of the largest in India.⁸ They are the second largest tribe in Bangladesh – numbering over 200,000 – predominantly living in the north-west near the Indian border.⁹ They are one of the most illiterate tribes¹⁰ in both countries. The majority of Santal still live in rural areas where they earn their living as cultivators, sometimes with small land holdings (although usually not

enough to live off) and mostly dependant on day labour work or sharecropping on others' land. In India where the land is less fertile, many migrate seasonally to get work.

The Santal live in patriarchal communities with village based governance structures. A village headman, *Manjhi*, is supported by other village officers including a *Paranik* (deputy), *Godet* (assistant), *Naike* (religious leader) and *Jog Manjhi* (upholder of morals of the youth). These officers oversee ceremonies, give guidance and support to villagers and administer the Santal laws on trespass, marriage, divorce, theft etc. A group of villages (known as a *bungalow*) is overseen by a *Parganait*. The posts are traditionally hereditary (descendents of the original founders of the village),¹¹ with an opportunity for villagers to replace a post holder if an existing officer becomes ill or unfit for the post at the annual *Mag* festival - in the villages where I stayed democracy was replacing the traditional system and the *Manjhi* and others had been voted in as the best people for the posts due to their knowledge of customs, maturity and fairness in dealing with disputes, without reference to their heritage.

There is a three tier structure of customary courts beginning with the village court (a gathering of all male head of households, presided over by the *Manjhi*), the *more hor* (meeting of five *Manjhi*'s of the area, presided over by a *Parganait*), and the *lo bir* (traditionally held during the annual hunt and comprising all male heads of households of a large number of villages). In each court the outcome is said to be a collective decision of all those present – the *Manjhi* or *Parganait* listens to the discussion and summarises the major consensus by way of conclusion. Outcomes generally aim to correct the wrong that has occurred through compensation or to punish the perpetrator with a fine (this may be a meal or drink given to those present at the gathering).

Santal law governs not only disputes, but also important social aspects of life – marriage, birth, death, illness. Adherence to the law is not simply a matter of avoiding punishment; it is a sign of commitment to the village community and to the hierarchy of the village officers and elders. Within the Santal village each household has a duty to foster this sense of community. However, despite this, the household unit remains largely autonomous of the community. Privacy is respected and the village will not intervene in a household dispute unless they are called to intervene by a family member.¹² The household has its own structure and codes of behaviour, which are semi-autonomous of the village legal order.

State law forms another level of semi-autonomous legal order to which the Santal are subject. Although in both countries the Santal are exempt from some aspects of state law where their own laws take priority (family law: marriage, divorce, inheritance), they are subject to criminal law and most civil law. While for some the state law is an unknown entity and is only engaged when a crime has been committed – the law forcing itself upon them – for others, as we will see, it is an additional tool for getting a desired outcome, especially in land dispute cases.

Below I discuss further the dynamics of inequality and resistance within the family, village and state. First I want to introduce the concepts of power, resistance and legal pluralism, which are key to my argument.

3. Power, resistance and legal pluralism

3.1 Power and the formation of inequality

Power or rather power relations, are relations of inequality which exist at all levels of society and which direct and govern our actions. They work through cultures and customs and disciplinary technologies (Foucault, M, 1977) that shape the way we think, perceive, act and react.

We tend to think of our actions as being governed by written laws but Gramsci (Gramsci, A, 1971b, p 242) tells us law, as a concept, includes things we consider 'legally neutral' and belonging to the domain of civil society.¹³ Civil society operates 'without 'sanction' or compulsory 'obligations', but nevertheless exerts a collective pressure and obtains objective results in the form of an evolution of customs, ways of thinking and acting, morality, etc'.

Foucault's work on disciplinary power helps us to understand how individuals become the subjects and objects of this collective pressure. In *Discipline and Punish*, Foucault examines the process of change in social control from visible violent public floggings and executions by the monarch in the middle-ages to the more invisible disciplinary mechanisms used in the eighteenth and nineteenth century. Disciplinary power depended not on direct imposition of control from above, but collective control at the most basic level of society, between individuals. Normalisation of behaviour took place in schools, hospitals and workplaces through surveillance, subtle forms of punishment and examination. Surveillance facilitated coercion through observation of the individual and was enforced by individuals on each other. The layout of urban development, construction of working-class housing estates, hospitals, asylums, prisons and schools was based on the layout of military camps where tents were arranged so that there was a 'network of gazes that supervised one another' (Foucault, M, 1977, p 171). In these spaces the combination of the individual being potentially visible and the viewer potentially invisible lead the individual to control his/her behaviour as well as surveying others: '[h]e who is subjected to a field of visibility, and who knows it, assumes responsibility for the constraints of power; he makes them play spontaneously upon himself; he inscribes in himself the power relation in which he simultaneously plays both roles...' (Foucault, M, 1977, pp 202-3).

Subtle forms of punishment and examination reinforced this control. Punishment took the form of subtle forms of humiliation, corporal punishment and deprivation. These micro-penalties focused on regulating timing (lateness, absences), activity (inattention, negligence, lack of zeal), behaviour (impoliteness, disobedience), speech (idle chatter, insolence), the body (cleanliness, attitudes, irregular gestures), sexuality etc (Foucault, 1977, M, p 177). Examinations in schools, hospitals and workplaces allowed for the documentation of individuals through which they could be assessed, compared and judged. Disciplinary power is described by Foucault as a force that 'compares, differentiates, hierarchizes, homogenizes, excludes. In short, it normalizes' (Foucault, M, 1977, p 183). It controls people's behaviour in comparison to others and in relation to what are shown as natural rules to be followed.

Through these mechanisms, Foucault tells us, individuals are ‘in a position of simultaneously undergoing and exercising this power’ (Foucault, M, 1980, p 98). This power is constantly in flux – and this is important for resistance. It necessarily creates inequalities between individuals and groups (those setting the rules and those obeying them, those succeeding in the system and those failing), which allow some groups and individuals to take a dominant position, while others become subordinated.

But power relations are not merely oppressive, they do not only constitute individuals as subordinates, and others as dominators, they are also productive. Inherent in all relations of inequality is the struggle of resistance, which is a productive force. The struggle for resistance is a consequence of the fact that the individual, while functioning in a collectivity with the pressures of normalisation described above, is essentially a free subject. Foucault (Foucault, M, 1980, p 98) identifies two elements indispensable to power relations: the acting subject¹⁴ and a field of possible actions. Within the power relationship ‘a whole field of responses, reactions, results, and possible inventions may open up’ (Foucault, M, 1994b, p 340). There is a complicated interplay between power and freedom, ‘not a face-to-face confrontation of power and freedom as mutually exclusive facts (freedom disappearing everywhere power is exercised)...’ (Foucault, 1994b, p 342). The two exist simultaneously, renegotiating boundaries of power in the relationship.

3.2 Negotiation of power relations through resistance

Resistance is often associated with collective, popular movements for liberation from a particular form of time and space specific oppression. Studies of resistance focus on elite or mass movement in a moment of ‘crisis’. The subaltern studies series made an initial important shift away from this narrow focus by exposing the site of struggles for resistance not only on the battlefields and boardrooms but also in villages and houses of ordinary people often dismissed in historical texts. These studies challenged the myth that ‘rebels’, ‘insurgents’ and ‘bandits’, who were cast as spontaneous actors without real leadership or consciousness, were unorganised, indiscriminate and unprovoked (Guha, R, 1983, p 4) and put the subaltern at the heart of historical text. But they still interpreted resistance as a rupturing event – a rare moment when the harshness of domination breaches the limits of what is otherwise accepted. Other historians have now begun to challenge the assumption that there is no real resistance between these moments of upheaval (Haynes, D, and Prakash, G, 1991, Scott, J, 1985). This shift allows us to understand resistance other than at the level of collective revolt – to acknowledge resistance at the level of the individual and in the space/time of everyday life.

The term ‘everyday resistance’ coined by James Scott in 1980s has been heavily critiqued, especially by feminist writers eager to focus on the vulnerability of the subordinate and preoccupied with avoiding a reading of everyday resistance that imagines individuals of disadvantaged groups as powerful. Lila Abu-Lughod’s paper entitled ‘The Romance of Resistance’ is a good example of this. She finds that writers of resistance neglect power and allow conclusions that can be read as perceiving resistance as a weakness of power. Foucault himself sees resistance primarily as a tool for analysing power.¹⁵ But we have to be careful not to oversimplify the power-resistance relationship. As Abu-Lughod (1990) is keen to stress, any theory of resistance that conceives such acts as a pure triumph over power/domination is

misleading, but the same can be said of an analysis that abandons resistance and conceives power as unchallenged or unchallengeable or the subordinate as incapable or unwilling to resist.

Unlike collective resistance, which takes place outside the individual power relations, individual resistance acts within the power relation, directly challenging it, demanding something from it, or controlling it. Although these challenges 'rarely mark pure forms of escape from domination' (Haynes, D, and Prakash, G, 1991, p 3) they act as a constant pressure to renegotiate the power relation. In this way individual resistance departs from traditional conceptions of collective resistance (as liberation or a tool for hegemonic change). Individual resistance – as we will see below – can, nevertheless, challenge power relationships. Although this challenge occurs initially at the micro level there is a potential for repeated acts of resistance to create new norms, according to which individuals set their expectations and the dominant check their behaviour. On the other hand, collective resistance even if it is successful in bringing about a change in leadership or norms, may not reduce inequalities in the longer-term. For example, after the Santal revolt of 1855 – an uprising of the Santal in the Santal Parganas in protest at exploitation by moneylenders and traders – the British put in place checks to limit money-lender rates, control rents and stop exploitation, but these gestures were not adequately enforced and failed to address underlying power imbalances.¹⁶

Even where collective revolt leads to hegemonic change, it may create no more than a paradigm shift, which leaves many inequalities essentially untouched – as illustrated in Orwell's *Animal Farm*. Gramsci (Gramsci, A, 1971c, p 333) sees resistance as a 'struggle of political 'hegemonies...' through which an 'embryonic' ideology of the people seeks to overthrow an elite ideology. Despite this belief in ideological change through change in leadership, Gramsci (Gramsci, A, 1971a, pp 60-1) admits that 'intellectuals of the historically...progressive class...exercise such a power of attraction that, in the last analysis, they end up by subjugating the intellectuals of the other social groups: they thereby create a system of solidarity between all the intellectuals, with bonds of psychological nature (vanity, etc) and often of a caste character (techno-juridical, corporate, etc)'.¹⁷ This attraction means that the new hegemony will maintain many of the attributes of its predecessor. I do not mean here to claim that collective resistance has no role in challenging inequality or to suggest individual resistance is an alternative. Both have a role to play. I only mean to illustrate that collective resistance may not end inequality - it has its limitations - and to introduce individual resistance as an important factor in the success of social change movements and law.

There is another reason to focus on individual resistance. Power is by its very nature, an individualising force. Gramsci (Gramsci, A, 1971b, p 242) explains in the context of the capitalist drive of state power that while the individual is made to feel s/he is only useful as a part of the *collectivity* or productive masses, s/he is ultimately accountable as an *individual* for his/her part in the functioning of the collectivity. Foucault notes that power works on the individual so that s/he becomes both the subject and object of its exercise. Individualisation helps to control 'the inefficiency of the mass phenomena' (Foucault, M, 1977, p 219) and weaken the collectivity. While collective resistance has to first overcome this challenge – to make the individual see the collectivity's potential power to resist and put their trust in it –

individual resistance works through the individualising nature of power. This is not to say that there are no barriers to individual resistance. A significant challenge for individual resistance, which results from the nature of power relations, is the pressure placed on him/her to contribute to the collectivity by conforming. But, as stated above, individuals are essentially free subjects, and increasingly individuals are exposed to a variety of ideologies and identities. Legal pluralism is one part of this, which makes individual resistance a feasible reality.

3.3 Legal Pluralism as a Context for Resistance

The relations of power and struggles of resistance described above take place not just at the level of the relationship between the state and its subjects, but also in the whole network of legal orders in society. Griffiths (Griffiths, J, 1986, p 27) tells us '[s]ociety is neither the homogenous whole supposed by legal centralism nor the neat federative structure of segmentary associations supposed by institutionalist theory and by writers such as Pospisil and Smith. It is rather a chaotic mess of competing, overlapping, constantly fluid groups more or less inclusive, with entirely heterogeneous principles of membership, social functions, etc and is a baffling variety of structural relationships to each other and to the state.' The existence of these overlapping fluid groups was captured by Sally Falk Moore (Moore, S, 1978, p 57) who discovered, in her work on legal anthropology, what she described as the 'semi-autonomous field' – social fields to which individuals belonged and which have 'their own customs and rules and the means of coercing or inducing compliance...they have what Weber called a 'legal order'.

Although the concept of legal pluralism has been developed over some decades, it is not undisputed, and legal monists see state law as the only true source of 'law'. Their interest lies in the strict application of a finite definition of what is 'law' rather than a discussion of the various norms and codes that affect people's interactions with one another. I have chosen for this paper to use the term legal order for what some call codes of conduct, rule-systems or norms because I want to emphasise that apart from state law these orders play an essential and equally important role in formulating notions of right and wrong which direct people's behaviour and their expectations of others' behaviour. This understanding of legal pluralism is at the core of how power and resistance work and is central to my argument about the possibility of individual resistance.

The existence of legal pluralism plays a crucial role in aiding resistance to inequality in two ways: firstly exposure to other legal orders with slightly different norms and codes gives the individual some perspective on their position in their dominant legal order. Secondly one legal order can intervene to address inequalities in another legal order. I elaborate upon this below. For the purposes of this paper I want to consider three legal orders which the Santal inhabit: the family, the village and the state.¹⁸ Within each of these some individuals are privileged over others and inequalities created and perpetuated. I discuss three ways in which these inequalities are formulated and perpetuated in each of these legal orders below.

4. Formation of Inequality - Modes of Domination

I have used Foucault's work to explain how power functions at the level of individual relations and implicit in his work is the idea that an individual can have a position of advantage – a position of dominance – within a relationship over another at any given moment. The degree of advantage is fluid and even reversible. In my research, I wanted to take this further, to analyse in the context of the Santal, if it was possible to identify types of unequal relationships. My data indicated a variety of unequal relationships, between husband and wife, day labourer and employer, Manjhi and villager etc, which seemed to have important differences. This led me to investigate whether it was possible to distinguish between different types of unequal power relations, or ways in which domination develops.

Writers looking at how resistance to power takes place often make a distinction between domination over the physical body of the individual through coercion, and domination over their mind through persuasion. James Scott (Scott, J, 1985, p 317-8) adopts this distinction in *Weapons of the Weak*. He shows that the poor villagers of Sadeka (the name given to the area where he carried out his research) while being coerced into acting in conformity with the wishes of the local elite, maintain an internal consciousness or rationality about their situation which is not controlled by the elite. Their conformity is physical but not mental. But this forces us to see power as an external process working on the body (Mitchell, T, 1990, p 545) and creates a problematic distinction between action and thought.

In fact the way domination works on individuals is likely to be more varied and complex, and to differ according to the relationship of power being assessed. In her analysis of the coir workers in Sri Lanka, Risseuw (Risseuw, C, 1988, p 266-7) shows that the domination over women as workers exercised by traders is different from the domination over women by husbands and in-laws in the household. While the women are brought up to realise the exploitative nature of the relationship between themselves and the traders, they misrecognise their exploitation in the household as natural. This suggests a distinction can be made between different forms of domination. In my fieldwork I identified three possible modes of domination that seem to characterise, not whole relationships but moments in relationships. I call these relations of *force*, relations of *dependence* and relations of *nature*.

Relations of force are relations where the domination is imposed and maintained through fear or force (eg slavery, force or bonded labour, other violent imposition of control). These are only power relations if the subjugated individual has some chance of freeing him/herself: Foucault tells us 'slavery is not a power relationship when a man is in chains, only when he has some possible mobility, even a chance of escape' (Foucault, M, 1994b, p 342). *Relations of dependence* exist where the inequality is recognised and accepted in a situation where the subjugated acknowledges his/her dependence on the relationship. S/he accepts his/her position because of the broader benefits that the relationship provides. *Relations of nature* exist where the inequality is internalised as natural through a process of socialisation or education which allocates roles seen as naturally ordered and necessary. These modes of domination are not mutually exclusive as in Risseuw's example and may co-exist in one relationship constituting different aspects or moments of a relationship. The women in Risseuw's example may inhabit a relationship of inequality with her husband which she perceives as natural, but may nevertheless on occasions perceive aspects of their subordination as imposed –there may be instances where a woman may feel she is

being forced to cooperate or obliged to cooperate because she depends on the family for food and shelter. Furthermore, for most power relationships you cannot completely distinguish inequality which is purely imposed and that which is completely internalised.

4.1 Inequality in the Family Legal Order

For the Santal inequality in the family, village and state is formed in many ways, and inequality formed by nature is particularly prevalent. In the family women are in a position of subordination to men and throughout their lives are thought to belong to either their father, husband or son. From childhood girls and boys learn to play different roles in the household: from puberty boys spend most of their time with their fathers learning agricultural work while girls are more likely to work in the house with the mother learning household maintenance and chores (Das, A, 1967, pp 6-7). The mother becomes the main disciplinarian for her daughters teaching her her role in the family and preparing her for married life, and the father the main disciplinarian for his sons, preparing him for his future role as head of the household (Saha, N, 1969, p 98).

Women's subordinated position is reaffirmed through the marriage system, which is patriarchal (the woman moving to live with the man's family).¹⁹ Most marriages are arranged and determine a woman's survival and status as well as being a means for the family to build connections. There are laws relating to division of labour in Santal society that designate jobs in the household principally to women and jobs outside the house and interactions with people in positions of power (village headman, money-lenders) to men.²⁰ Women's subordination is further internalised through devaluing of their work, de-prioritising of their needs, and a combination of greater prohibitions (not permitted to plough, shoot arrows, fish, use an axe or razor, sacrifice animals or enter private shrines to spirits etc, Archer, W, 1984, p 129) and fewer ownership rights (especially to land). Through these structures and institutions women internalise their subordination to men as natural. There may also be occasions when they recognise and accept a subordinate position due to dependence on the male (asking a brother to intervene in a marital dispute where she depends on him to put across her view) or are forced into a position of subordination though they see his actions as wrong (domestic violence).

4.2 Inequality in the Village Legal Order

In the village, inequalities are internalised through different privileges accorded to villagers based on gender, knowledge and experience (both of tribal law and the state law), recognised positions of responsibility (villager officers, Manjhi, Paranik etc), access to kinship groups and friendships, and poverty and wealth. Men hold a position of privilege over women in the village and although there is no law against women taking the role of Manjhi (headman), this is very rare and village officers, and other elite members of the village, tend to be male. Village officers have considerable power in the village and their appointment to the post is thought to be in accordance with the wishes of the spirits of the ancestors, thus allowing them to act in a quasi-sacred capacity (Chaudhuri, A, 1987, p 45). This privileged position of the male village officers is also associated with knowledge and experience which are key assets.

Those with knowledge and experience of Santal law and customs and of state law (whether village officers or not) are often respected and take part in decision-making that involves the village. While holding a position of authority or having this special knowledge singles out a small selection in the village for privilege, kinship and friendship ties play a wider role in giving some villagers greater access to power and privilege. The extended family unit ('*gharong*') is a 'highly significant political unit in the Santal village' (Somers, G, 1977, p 80) and the size of the family and breadth of its assets and influence in the village can have a significant impact on status and wellbeing. Long established friendships can also play a role in strengthening status and wellbeing – if those friends will share their assets and privilege. The poorest in the villages tend to have fewer assets and smaller families (poverty and poor nutrition making them less able to cope with natural shocks such as floods or droughts, and make them more vulnerable to disease). Their vulnerability makes them relatively subordinate in the village.

4.3 Inequality in the State Legal Order

In the state, privilege takes place as a result of monopolies of power over distribution of resources and representation in decision-making. As a minority (representing 0.6 percent of the population of India and 0.2 percent in Bangladesh) the Santal have little representation in central or local government, with the exception of state level government in Jharkhand.²¹ In rural areas lack of education, self-confidence and finances dissuades many potential Santal candidates from putting themselves forward. Santal votes often go to the candidate most able to persuade them that they will benefit financially from choosing the candidate – sometimes they are paid by candidates, or voting papers are 'bought' from them. Santal who work as day labourers or share-croppers are often influenced by employers or landlords into voting for a candidate of the latter's choice. The underprivileged position of village Santal financially, socially and politically combine to reinforce their vulnerability and facilitate their domination by non-Santal through nature (they have simply failed to compete in the open market system), dependence (in relations with employers and landlords) and sometimes force (for example through bonded labour).

While these inequalities in each of the legal orders discussed above are entrenched, they are not entirely accepted by those in underprivileged positions. The underprivileged may at times feel their subordination is imposed on them (*forced*), or that they have no choice but to accept them against their wishes (they *depend* of the relationship). Even where the underprivileged mis-recognise their subordinate position as *natural*, they still may work to limit the extent of the dominator's power over them.

5. Modes of Resistance

While the discussion above suggests that power relations have a predominantly negative force, creating disadvantage and the privileging of some over others, they also encompass free subjects and the possibility of negotiating inequality. The way in which this negotiation occurs differs from one relationship to another or even different moments in a relationship. However, it is possible to distinguish three broad

forms of resistance, or negotiation, which differ in the way they impact on the relationship: use of Alternative Legal Orders (ALOs), use of the counter-power of rights and non-compliance. Use of ALOs is the most potentially rupturing of the three because it involves the individual moving outside of the relationship and the legal order and directly challenging the inequality. Use of counter-power of rights works within the relationship to gain extra benefits for the subordinated individual and depends on a strong inter-dependence between the dominant and subordinate individuals. Non-compliance is the least rupturing of the modes of resistance and again works within the relationship renegotiating boundaries of dominance.

Each form of resistance is also loosely associated with one of the modes of domination described above: use of ALOs is associated with relations of *force*; using the *counter-power* of rights with relations of *dependence*; and *non-compliance* with relations of *nature*. Where the mode of domination is imposed, such as through a *relation of force*, then the subjugated is more aware of his/her subjugation and more assertive in his/her struggle for resistance, albeit within limits. S/he will be more likely to use forms of resistance that can alter the relationship the most (such as use of ALOs) even though these could rupture the relationship. Where the individual is *dependent* on the relationship s/he may act more cautiously and use the counter-power of rights, providing they are in a strong enough position to negotiate rights from the dominant party (who depends on them to some extent also). Conversely where the inequality is internalised, such as through a *relation of nature*, the individual may not think of radically changing the relationship, but only of warning the dominant party against abuse of power. The struggle for resistance used in these relations is less likely to contemplate ending the relationship, and more subtle forms of resistance, such as non-compliance, may be used. In all cases the individual will assess the extent to which resistance can be exercised without bringing about a worsening of his/her position. Each relation of dominance will differ to some degree and it is possible to conceive of a relations of dependence in which the dominant depends so much on the subordinate that the subordinate can use ALOs to improve their position without rupturing the relationship, or conversely a relation of dependence where the subordinate is so disempowered that the counter-power of rights is too risky (they lack the bargaining power), and non-compliance is used.

5.1 Alternative Legal Orders

An alternative legal order is a legal order which the individual is concurrently governed by, for example a village Santal is concurrently governed by the legal orders of the family, of the Santal village, and of the state. Where one of these ALOs recognises and corrects an inequality in another legal order, the subordinated individual may access this ALO to gain an advantage not available to him/her within another legal order. This is based on a prerequisite that the different legal orders do not share the same power structure or at least that one identifies and offers a remedy for the inequality which occurs in the other. For the use of ALOs to work, both parties to the dispute should either adhere to the ALO being used to correct the wrong, or the ALO must hold a position of superiority over the legal order where the wrong occurs. In fact legal orders are not as distinct or their use as hierarchical in practice as this suggests, and the interlinking of legal orders, their development in the context of other legal orders, and the complexity of their interrelationships makes using ALOs a

difficult process. Nevertheless I saw numerous examples of individuals using ALOs to escape a disadvantage.

In Santal society a woman who suffers domestic violence within the legal order of the family, where the husband is in a position of domination, may turn to the village legal order for assistance. Although the village legal order shares a patriarchal power structure the dominant individuals within that legal order will look to protect the woman from excessive use of power by the husband. Because they hold their positions of authority on the basis of consent by the villagers they must be seen to judge fairly in all matters and although chastisement is tacitly condoned by men in some circumstances (where the wife is thought to be not fulfilling her duty or paying due respect to her husband), acts of indiscriminate violence, especially associated with drunkenness, are treated with disdain. I talked to women about this in focus groups in each of the villages where I carried out my fieldwork and I was told that once the village council had been asked to intervene, men, faced with a severe fine by the village council if they carried on with the abuse, would often change their behaviour.

State law was also used for other types of family and village disputes. Inheritance disputes are a good example of this. Women have few inheritance rights under Santal law. But even where a woman does have an exceptional right to inherit, she may find that in the family legal order male relatives who stand to gain by stopping her from obtaining what she is due may refuse her her inheritance. In this situation she can appeal to the village or directly to the state court (which will apply Santal or Hindu laws of inheritance).²² Ironically she is likely to get a more favourable decision from a state court interpreting Santal or Hindu laws broadly, than from a village council.

Another situation where state law may provide a more equitable solution for the woman is witchcraft. When a woman is accused of witchcraft she may be threatened with expulsion or death under the village legal order. In India, there is legislation at the state level that recognises some actions taken against women accused of witchcraft (witch-hunting), as a criminal offence.²³ The chief judicial magistrate in Dumka district (Jharkhand) received one or two such cases a month and during my tenure I identified five ongoing cases. In Deoghar district (Jharkhand) witchcraft related cases represented 30-40 percent of all criminal cases. However, perhaps because these cases involve Santal families using the state courts against other families or even their village officials, these cases were often terminated when witnesses refused to attend or the person bringing the case withdrew. Out of 50 cases of witchcraft related violence in the Santal villages studied by Bhattacharya (c1991),²⁴ only three were brought to court, none resulted in prosecution at the time of his study; (of these three, one was terminated due to a lack of witnesses and other evidence, while two were ongoing). In some cases a settlement was reached within the village. Villagers may have refused to support the family in their application to the state courts, the village legal order taking precedence over ending the case.²⁵ This does not mean that ALOs will always fail, but there are many factors that limit their success.

Much has been written on the difficulties of access to justice for the poorest. My argument here is that in assessing what is needed to improve access to justice, broader factors about the interrelationships between different legal orders need to be taken into account.²⁶ The use of an ALO involves a complex negotiation of power within the legal order where the inequality originates. It is also complicated by the fact that

different legal orders have historical ties and are constantly interrelating. They are also often distinguished by conceptual differences. All these factors tell us more about when and why an individual will or will not use an ALO than a fictional hierarchy of legal orders, which presumes that state law will always override customary law.

Interrelationships between legal orders result not only from jurisdictional overlap, but also from the historical interlinking and evolution of legal orders. This impacts on how the ALO is viewed by individuals, whether it is seen as associated with the legal order in which they were principally constituted as an individual or completely detached from it. This in turn affects the importance for the individual in obeying each legal order, which has repercussions for recourse to an ALO. In Bangladesh, for example, the state legal order was seen as detached and distinct from Santal law, but greater importance was given to avoiding a breach of state law because it was feared as an unknown. This fear of inviting state law in simultaneously created a barrier to using the state legal order as an ALO. In India, however, the state law and Santal law were seen as similar. While for respondents in the villages greater importance was put on obeying Santal law than state law, individuals were more prepared to use state law in disputes as an ALO. Despite this, in both countries, conceptual differences meant that recourse to the state legal order was seen as exposing the village to disunity and, for many, would only be contemplated if the Manjhi had given his consent.

5.2 Counter-Power of Rights

The second technology of resistance is the counter-power of rights. There exists, within any relationship of inequality, certain positive products, benefits for the subjugated, which take the form of duties on the part of the dominator. As Foucault (Foucault, M, 1994a, p 120) puts it 'if power were never anything but repressive, if it never did anything but to say no, do you really think one would be brought to obey it?'. There must be something in the relationship that acts *for* the subjugated, which creates opportunities for them and benefits. These may be ethical provisions within the power relationship that can be used by the subordinate to their advantage. For example Genovese and Lazarus-Black demonstrate how slaves used ethical provisions in the law to push back the forces of subjugation in the master-slave relationship. Amongst the Santal, rights exist for women at the level of the family: to be clothed, provided with food and shelter by their husbands, and to have their welfare and interests looked after by their brothers and fathers. The interplay of responsibilities between the various men who act as the women's guardians, creates opportunities for women to augment the nature of these rights. If for example other women in the village are given charge over family monies (possession or spending decisions) or get gifts or clothes more often, or have husbands who share in some domestic chores, she can demand better treatment through the authority of her male relatives. The father and brothers will put pressure on the husband to carry out his duties to his wife - perhaps because they do not want the burden of having to support her if the husband fails to do so. The outcome may be more benefits or responsibilities for her than she would otherwise have the right to.

At the level of the state, the Santal in India, as Scheduled Tribes, have certain rights aimed at improving opportunities and recognising their disadvantaged position. In the Santal Parganas, where I carried out my research, there are also specific provisions

aimed at protecting adivasi land holdings. The Santal Parganas Tenancy Act, 1949 restricts sale of tribal land to non-tribals, requiring any such sale to be administered through a special administrative procedure aimed at preventing unfair transfers. In the past non-tribals have nevertheless availed themselves of unscrupulous means to acquire adivasi land or appropriated land to repay a debt (often a small debt unfairly augmented with excessive interest rates) or to resolve a dispute. Some may have also bought/sold the land outside the administrative procedure because of the time and (mostly unofficial) cost involved in the official process – this was still happening when I carried out my fieldwork. Now the courts in Dumka and Deoghar are receiving cases from Santal reclaiming ownership over land originally belonging to their ancestors which was sold to or appropriated by non-tribals. Under the Santal Parganas Tenancy Act any land transfer that did not go through the special court procedure is void.

Without valid legal documentation to prove the transfer of ownership through the appropriate procedure, the non-tribals cannot prove the land was legitimately transferred to them, and are ordered to return the land to the descendants of the original owners. No compensation is made to non-tribals whose ancestors paid monies for, or wrote off debts for, the land. In most cases the land was transferred to the ownership of the non-tribals under circumstances in which the Santal had little or no choice and the monies paid may have been much lower than the true value of the property. So the law is aiming to correct a past wrong. Nevertheless the Santal are able to use the law to gain a benefit (return of lands not sold through the official administrative process) in a way that was probably not initially foreseen by the drafters of the legislation.

Although the counter-power of rights is used in relations of force and nature, it is most closely allied to relations of dependence where the dominator and subjugated are linked by a degree of acknowledged interdependence. Unlike the use of ALOs, which is likely to rupture the relationship, and non-compliance, which aims initially at merely inconveniencing the relationship, counter-power works within the relationship using the dominator's power against him/her. But there is an optimal point beyond which the use of this resistance by the subjugated fails to produce benefits – ultimately the subjugated wishes to remain in the relationship and the dominator will use his/her power to limit their demands. The subjugated may also be limited in their use of the counter-power of rights by fear of retaliations by the dominant if they push their demands too far. Using corrective forums within the legal order – dispute resolution councils, courts – to take advantage of or extend rights owed can also be problematic due to lack of knowledge of or contacts in the system, prohibitive costs and limitations posed by language and literacy. These obstacles, which are inherent in the power relation or a product of that relation, can limit use of this mode of resistance.

5.3 Non-Compliance

The third mode of resistance is non-compliance. This term is associated with the work of James Scott who investigated everyday forms of resistance such as foot-dragging, false compliance, dissimulation, feigning ignorance, slander and so on. I want to use the term in a much broader sense: non-compliance is the strategy used by the subordinate to push back excesses of domination and set a limit to the disabling forces

of domination. It takes place as part of a balancing act between conforming to and resisting (while remaining within) the power relationship. At the level of the Santal family this strategy of struggle is at its most intense because it takes place at the most intimate level of relations and the most acute site of survival.

The acts of non-conformity through which limits to the husband's domination are established may seem small but they have a significant impact because they strike at the man's dominance in his most private space, and the most sensitive site of his survival. At its most basic level survival means food and shelter. Although men are primarily responsible for ensuring the family has food and for building a house, the woman is responsible for the final delivery of these necessities. She is the one who keeps the house in daily repair, sweeping, reinforcing the ground and walls with mud and dung, and who delivers the meals.

One of the Santal folk tales tells the story of a husband who comes home from working in the fields to find that his wife has not prepared his meal. He angrily enquires why she has not got his meal ready, and she tells him she has been too busy and goes on to prove to him that although his work produces visible results (a quantity of paddy cut for example) hers is consumed and is invisible (preparing meals which are eaten, collecting water which she uses etc). She shows him that in fact she does more work than him and he is forced to concede that he cannot demand meals according to *his* timescale. The story ends with the analogy that the man is like the woman's dog: he will only get his food when *she* calls him to eat (Bodding, P, 1997, Vol. III, p 259).

But the concept of women's resistance in the home is disputed. Christine White says that small acts of resistance are counter-productive because they make individuals *feel* they are resisting but in fact blind them to the reality of the extent of their powerlessness (cited in Mitchell, T, 1990, p 555). In his discussion of conjugal relations in the eighteenth and nineteenth century Foucault (Foucault, M, 1988, p 12) says 'we cannot say that there was only male power; the woman herself could do a lot of things: be unfaithful to him, extract money from him, and refuse him sexually. She was, however, subject to a state of domination, in the measure where all that was finally no more than a certain number of tricks which never brought about a reversal of the situation'. The ineffectiveness of the woman's denials here is associated with a failure to '*reverse* the situation' of domination and Christine White's dismissal of everyday resistance relates to an assumption that despite this resistance, women remain ignorant of their disadvantage.

While these two arguments are at first sight persuasive, they are based on a presumption that true resistance only comes in the form of a drastic alternation in the relationship and that smaller acts of resistance have no effect on the foundations of the inequality. It is difficult to quantify the impact of non-compliance. The extent to which such acts impact on a relationship will depend on the depth of the inequality and ruthlessness of the dominator. In some cases, in particular relations of force and of dependence, non-compliance will not work – here the other avenues of resistance may be more productive. But non-compliance remains an important act of resistance for relations of nature.

In one of the villages where I stayed there was a low caste Hindu landlord, who was owed some money by a chronically poor landless Santal. Because the Santal man was unable to repay the debt the landowner asked him to carry out work in his house to repay the debt. Whereas day labour work would have earned the Santal 50-100 rupees per day, his work in the landlord's house only counted for 25 rupees towards his debt for each day he worked. There was clearly no negotiation about what rate he would get working in the landlord's house or how much of it would go towards his debt. This was a relation of dependence (the Santal needed to maintain the relationship in case he needed to borrow again in the future and the landlord benefited from the debt bond) but the Santal man had very little bargaining power. The Santal was not happy about having to pay back the debt through cheap day labour but he was not in a position to use the counter-power of rights – his failure to repay the debt had made the landlord cautious about lending to him again and he was not in a position to push for further credit or time to repay. However, he seemed to have no compulsion to do the work or pay back the debt. He could not refuse to carry out the work, but made every attempt to frustrate the landlord and reduce his control over the quality and timing of the work done. If he came to the house to work he would work so slowly that very little would be done in a day. He would make deliberate mistakes so that work had to be redone, or do a poor job. He would take long breaks, and complain of his family problems. On many occasions he simply did not turn up, telling the landlord later that he had had some other urgent business. Frustrated as the landlord was, he could do nothing about it.

As Scott (Scott, J, 1986, p 30) illustrates, although 'persistent attempts to 'nibble away' may backfire, [acts of everyday resistance] may marginally alleviate exploitation, they may amount to a re-negotiation of limits of appropriation, they may change the course of subsequent development, and they may more rarely help bring the system down'. They are a strategy for the subjugated to work through and test possibilities of resisting domination to narrow the divide between them and the dominator. Furthermore non-compliance at the level of the individual may affect limitations more generally: acts of non-compliance that are successful or tolerated can become accepted by others as limits of domination. But they are most likely only in relations of nature and depend on access to alternative perspectives, which allow the subordinate to conceive of challenging the dominator. They also, like counter-power, take place within an ongoing relationship and as such are subject to an 'optimum point' beyond which the subordinate stops benefiting and the dominator sees his advantage as being diminished.

6. Conclusion

There are few areas of social policy or third sector work where social justice outcomes are not on the agenda. Yet very little time is spent on understanding the dynamics of power relationships and non-state norms that play such an important role in the scope and nature of interactions between groups and individuals. Foucault's description of power relations, constantly in flux, with a free subject at its core, engaged in strategies of struggles, allows us to begin to understand the complexity of factors affecting the individual's engagement with law and normative orders. In my research I identified three normative or legal orders of significance for the Santal villager. Each legal order, the family, village and state, encompasses inequalities in power, and while they overlap, each exists as a separate, semi-autonomous, socio-

normative field. Within each legal order I have explained how relations of domination occur to privilege some individuals and groups. These relations of domination or inequality take many forms, but I have identified three types of relations of domination that help us understand the different ways in which individuals are subordinated within power relations. Relations of *force*, relations of *dependence* and relations of *nature* may characterise moments in a relationship and may predominate in some types of relationships. For example relations of nature are predominant in Santal relationships between husband and wife, relations of dependence are predominant in relationships between Santal landless agricultural workers and employer/landowners.

The free subject that Foucault writes about at the heart of these power relations means that while individuals inhabit these power relations they are involved in strategies of struggles aimed at negotiating unequal relationships or moments in relationships. I examined three types of resistance that I found examples of during my fieldwork: use of ALOs, use of the counter-power of rights, and non-compliance. These each relate to ways in which individuals can negotiate power relations, but they have limitations and they tend to be associated with different modes of domination. In this discussion of resistance I do not intend to suggest that these individual acts of resistance are sufficient for social justice outcomes. That would be a misreading. I want to show that these complex negotiations are taking place at the level of everyday individual interactions and they act to both enable and restrain the negotiation of power relations at the micro level. Policy initiatives, academic discourses and third sector campaigns which do not engage with these existing struggles in their conceptualisation, will nevertheless have to engage with them in the moment of impact. These struggles are factors in choices, boundaries, opportunities and obstacles that political, academic and activist debates and actions aim to affect. The true nature of these struggles is beyond the scope of a single paper but I have tried here to set a possible direction for further research in this area.

Endnotes

¹ The arguments in this paper are taken from research carried out as part of my doctoral studies under the supervision of Prof. Abdul Paliwala and Prof. Upendra Baxi. The research was funded by the Economic and Social Research Council (UK), the Ford Foundation (India) and the University of Warwick.

² Guha, Ranajit (ed) (1982 -) *Subaltern Studies: Writings on South Asian History and Society* (Delhi: Oxford University Press)

³ I use the noun 'subordinate', but this should be read to mean 'one who has been constructed as subordinate' – i.e. one who is 'subordinated'.

⁴ Whereas a traditional anthropological or ethnographic study would have involved a long period of stay in one village with greater emphasis on studying Santal society and customs, this is a rapid ethnographic study based on shorter periods in several villages. This allowed me to investigate how different contexts (India/Bangladesh; mixed/Santal majority villages) affected my outputs.

⁵ The term adivasi literally translated means 'indigenous' or original inhabitant. There are no accurate records of when the Santal first inhabited India and Bangladesh, and they are not thought to be the original inhabitants of the areas where they now live. According to Risley (1891) they may have migrated eastwards over several centuries (see Kochuchira 2000 for a review of other authors on migration origins of Santal). They are now predominantly living in east India and north west Bangladesh where they settled during the 18th and 19th century (Datta 1940, Hunter 1868, O'Malley 1910). They have some attributes of a tribal people – having existed as a group for centuries and over this time maintained a spiritual connection with the land and area they inhabit, a language exclusive to them, an origin myth, life cycle ceremonies and religion which is unique to them, clans and sub-clans which play a role in social organisation, and their own governance structure and laws. Although the term 'ethnic group' is gaining increased currency in India and Bangladesh in place of tribe, for the purpose of this paper I will refer to the Santal as an 'adivasi' or 'tribe'.

⁶ Certain tribes have been designated 'Scheduled' under the India Constitution and benefit from certain welfare and other provisions which I discuss later.

⁷ 1991 Census recorded in Mandal, et al. 2002, pp 105-6 – figure excludes Santal in Assam.

⁸ They are the largest Scheduled Tribe in West Bengal, Jharkhand and Bihar and the third largest in Orissa (Mandal, et al. 2002).

⁹ Bangladesh Population Census 1991, Vol. 1, Analytical Report, September 1994, p 196.

¹⁰ Current figures on literacy of the Santal as a tribe in either country are difficult to find. The literacy rate amongst adivasis in Rajshahi, Bangladesh in 1986 was approx. 7 percent, compared with the national average of approx. 22 percent (Timm, 1991, p 16). The literacy rate for Santal's in the districts of Godda and Deoghar where I carried out my work in India were approximately 20 and 21 percent respectively (1991 census) compared to an average literacy rate of over 38 percent in the state of Bihar at that time (Census of India 1991, pp 116 and 130).

¹¹ In the 18th and 19th century when the Santal settled in the areas they now inhabit a village would be founded by group of men who would locate a place in the forest where they found indications of good soil for cultivation, water sources and prospering wildlife. Once the area was found they would build a house for the leader of the group who would become Manjhi. He would then appoint village officers from the group and allocate land (Bodding, 1942, pp 100-104).

¹² The only exception to this is if there has been a violation of the rule against tribal exogamy (marrying outside the tribe) or clan endogamy (marrying someone of the same clan) or if there is evidence of the practice of witchcraft. These actions all become village affairs because the village community is affected by the action.

¹³ By civil society Gramsci means the church, trade unions, political parties, community and charitable organisations etc. He calls them the 'fortresses and earth works' standing behind the state (1971b, p 238).

¹⁴ In 'The Subject of Power' Foucault (1994b, p 327) looks back on his work on power as a study of 'modes of objectification that transform human beings into subjects' and states that 'it is not power, but the subject, that is the general theme of my research'.

¹⁵ Foucault says power relations can be analysed empirically by taking as a starting point the forms of resistance against different forms of power, for example using an investigation of illegality to understand legality (1994, p 329).

¹⁶ On the revolt see Sinha S P (1990) *Santal Hul (Insurrection of Santal) 1855-56*, Ranchi: Bihar Tribal Welfare Research Institute for the Government of Bihar Welfare Department. On events following the revolt see Diwakar, K, (no date) 'Ruthless Exploitation of Santhals, Bihar through the Ages', In *Triosi's collection of materials on the Santal*, New Delhi: Indian Social Institute; Chaudhury, Roy, (1962) 'The Creation of Santal Parganas', in *Bengal Past and Present*, Vol. LXXXI Jan-June 50; and 'Santal Parganas Tenancy Manual', Patna: Malhotra Bros., 4th edition, 2000.

¹⁷ For Gramsci this situation occurs spontaneously during the historical period when the social group is progressive, attempting to increase its domains of conquest to new areas of economic and productive activity.

¹⁸ Other authors have suggested other types of legal orders (see Merry 1988, Black 1976, Santos 1995 and 2002, Hooker 1975, Tamanaha 2000)

¹⁹ There are two important exceptions to this: Ghar Jawaee and Ghardi Jawaee.

²⁰ See Bodding, 1942, pp 89-92

²¹ The Santal have some representation in Jharkhand, India where there are two Santali MPs, two Ministers, eleven MLAs (Official website of the State of Jharkhand <<http://jharkhand.nic.in>> accessed 11.11.03)

²² In India they tend to apply Santal law unless a woman can show that she practices enough of the Hindu rituals to be considered under more favourable Hindu inheritance law – Santal have their own animist faith but often worship Hindu Gods and Goddesses, although they do not consider themselves Hindus. In Bangladesh the courts tend to misinterpret Santal inheritance laws as equivalent to Hindu law and apply this to all Santal cases.

²³ See Prevention of Witch (Daain) Practices Act 1999.

²⁴ His study was carried out in West Bengal but raises issues of importance for other states where the Santal live in rural areas.

²⁵ For more detail on witchcraft see Chaudhuri 1987, Archer, 1984, p 488 and 491, and Bodding, 1942.

²⁶ I say more about access to justice in my discussion of counter-power of rights below.

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