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Tribal marginalization in India: Social exclusion and protective law

Limestone mining in Meghalaya. Photo: Kavita Navlani Søreide

At the time of independence, India used protective law to address fears that its tribal majority regions would be marginalized vis-a-vis the larger, more developed states of the new nation. The 'Sixth Schedule' was written into the Indian Constitution to ensure rights of self-government for the tribal majorities in North Eastern Himalayas. This brief explores the context of the Sixth Schedule and highlights the challenges to its effectiveness in the North Eastern state of Meghalaya. The aim is to discuss the complexity of the situation where a modern state tries to engage traditional tribal societies in the process of nation building.

Kavita Navlani Søreide

Postdoctoral Reseacher

CMI CHR. MICHELSEN INSTITUTE

The Sixth Schedule of the Indian Constitution is a set of legal provisions designed especially for tribal majority regions of the North Eastern hills of India. The Schedule provides for the constitution of the Autonomous District Councils (ADCs) under which all the tribal chiefs and headmen were placed. The idea was to provide a democratic voice to the tribal structures witin the modern state. The government introduced the provisions to preserve and uphold the tribal order of things and to protect the poor and the marginalized against the forces of socio economic exclusion. However, the state of Meghalaya, one of the seven sisters of North East India, has now, according to some estimates the highest number of landless tribals in the country. This is a queer situation as the Sixth Schedule was specifically meant to keep the customary rights intact in this tribal society based on community land ownership. As the trend towards the sale and purchase of (communal) land continues, landlessness and tenancy – hitherto unknown in these hills - have come to plague the weakest and poorest amongst the tribal population. Today, Meghalaya is increasingly becoming an economically differentiated society set in a tribal value system which was once known and thus upheld constitutionally for its egalitarian principles.

MEGHALAYA STATE

Capital	Shillong
Date of Attaining Statehood	21 January 1972
Population (Census 2011)	29,64,001
Area	22,429 Sq. Km
Districts	7
Official Language	Khasi, Puar and Garo with English
Forest Cover	42.34% of the total area out of which the state ownes approximately 12% of the forests.
Seats in Legislative Assembly	60
Seats in Lok Sabha	2 (1 Shillong, 2 Tura)
Seats in Rajya Sabha	1
Total No. of Autonomous District Councils.	(i) Khasi Hills Autonomous District Council. (ii) Jaintia Hills Autonomous District Council. (iii) Garo Hill Autonomous District Council.

SOURCE : MINISTRY OF DEVELOPMENT OF NORTH EAST REGION, INDIA.

One of the objectives of the Sixth Schedule at the time of Constitution making was to ensure that the tribal structures and order of things could continue to play their protective role towards the poor and the marginalized segments within them. Over time the structures and functions under the sixth schedule have been tested and it seems increasingly clear that the presence of these preventive laws have not been sufficient to prevent socio economic exclusion. Calls for the review is now made from many quarters (ref. Governor M.M. Jacob, Meghalaya, October, 1995).

Social change is arguably most acutely felt in the changing nature of land relations in Meghalaya. Since most of the land was traditionally owned by tribal communities, land relations were clan based. In order to preserve this order of ownership, the Sixth Schedule restricted state ownership of land including forests at a meager 12 % (State Environment Report, 2005). This was of substantial importance as the region of eastern Himalayas is very rich in mineral and other natural resources. Today, according to a growing number of callers, land in Meghalaya has increasingly been commodified largely due to mineral excavation activities. This has influenced the community based land relations, which were the foundation of tribal existence. Instances are quoted where clan elites, with or without the knowledge of clan members, have sold off large chunks of community land to private (albeit tribal) individual owners. Rough (yet contested) estimates suggest that today, almost 60% of what was community land is owned by private individuals. This rapid individualization of land has been linked to the rise of a new tribal educated elite. Many have argued that the 'tribal creamy layer' has been greatly successful in utilising the socio-economic and political opportunities from the special Constitutional provisions of the Sixth Schedule as against their less educated and poorer counterparts.

In the context of growing national and international concerns for a development path that is both inclusive and sustainable, this is a situation that warrants attention. In order to understand the situation better we need to place the provision in its historical context.

HISTORICAL CONTEXT

The father of the Indian Constitution, Bheem Rao Ambedkar: "*With regards to the tribals of Assam…their roots are still in their own civilization and culture. They have not adopted mainly or in large part, either the modes or the manners of the Hindus who surrounded them…I think this is the main distinction that influenced us to have a different sort of scheme for Assam from the one we have provided for other territories*." (Meghalaya was part of Assam in 1947.)

The uniqueness of the culture and traditions of these fringe areas was also recognized during the time of British India. Some of the regions were titled by the British as the 'Excluded or Partially Excluded Areas' (Govt. of India Act

1935) thus signaling a desire not to interfere with the sovereignty of the fringe areas in this inhospitable terrain. Yet the hill regions were not left untouched by the forces of change that the presence of the British brought along. The tribes were exposed to Christianity, to modern western ideas of administration and thinking, and were influenced by British administrative practices, in which the tribal regions were given a special status.[1]

At the time of the framing of the Constitution, the need for a special status of these regions was mandated by the security concerns in the region of the time (a hostile East Pakistan, insurgency in Burma and the Chinese takeover of Tibet.) India's first Prime Minister Jawahar Lal Nehru while addressing the Schedule Castes and Schedule Tribes conference in Delhi in 1952, noted, "Nevertheless, the unifying, awareness-building influence of the freedom movement by-passed the tribal North East…The result is that ...Those frontier areas were not (so) psychologically prepared (for various changes in India)."

It was therefore vital to ensure that the voices of tribal people were taken into account while framing the Constitution for the new nation. Although, the decision to join the Indian union was not unilateral amongst all of the North eastern territories, the Bordoloi committee (headed by the chief minister of Assam Gopinath Bordoloi) gave a legitimate voice to the people of the North Eastern region. The Sixth Schedule was thus written into the Constitution to ensure a special status for the tribal areas of the region.

Besides being a special arrangement for the traditional practices of these fringe hilly areas, the Sixth Schedule was also an act of appeasement to preserve the territorial integrity of the Indian state. Since the task of writing the Indian Constitution was undertaken at a moment of great historical unrest; there was an overwhelming focus on the solidarity and integrity of the new Indian state. The major concern was to balance the aspirations of the tribal people to safeguard their traditional customary ways while persuading them to accede to the Indian union.

The Sixth Schedule was a constitutional attempt at accommodating the diversities in the federation through an institutionally asymmetric model. The tribal chiefs and headmen were placed under the jurisdiction of the Autonomous District Councils (ADCs) within the state of Greater Assam. These bodies were empowered to make laws and regulations on a range of subjects including customs and traditions, land, water and forests issues and other matters of local administration in the hill regions. Over the years the demand for statehood grew as the mechanisms of the ADCs failed to sufficiently address these regional aspirations. As a result the state of Meghalaya came into being in 1972 as a unit within the Indian federal structure. But the ADCs continued to exist in parallel to the new state structures. This has given rise to a complicated set of overlapping laws and institutions and severe problems of questionable jurisdictions and evasive accountabilities.

In the decades since Meghalaya was established the needs and dilemmas of this hill state have undergone changes creating complicated overlaps and tensions at the interface between the modern (state law) and the traditional forces and tribal structures.

CALLS FOR REASSESSMENT OF THE SIXTH SCHEDULE

The need to review the Sixth Schedule or at least some of its provisions has been voiced from many corners. The limitations of this Constitutional provision are felt at at-least the following three levels:

BOX 1: DORBAR SHNONG

- The protective discrimination under the Sixth Schedule allowed for self-governing tribal institutions at various levels.
- At the lowest level of governance in Meghalaya is the traditional Dorbar Shnong. It is a village level assembly of all adult Khasi (tribe) men around which the community life is organized.
- It is headed by a Rangbah Shnong (Headman) who is elected by voice vote of the villagers. Other members are elected in a similar manner. Election is endorsed under the guidelines of the tribe. Term of office vary from Dorbar to Dorbar.
- This body has considerable authority over common people's day to day interactions but enjoys no legal or constitutional status.
- The Dorbar Shnongs are responsible for looking after law and order, maintaining the common properties of the village and ensuring the delivery of urban services which is done in cooperation with the local state administration and district councils.
- In many urban areas, Dorbar Shnong works with the Governmental agencies and NGOs' in providing services like water supply, electricity, roads and foot paths schools and dealing with anti - social elements.
- In some cases, such as in the area of Laitumkhrah, "…there are innumerable instances that show that these Dorbars are now acting as an arm of the Government and they are becoming formalized. They are fast losing their traditional, non-formal tribal character and are acquiring an authority of unprecedented formal nature through de facto jurisdiction."
- However, the composition of the Dorbars are exclusivist and ethnocentric. The politics of these tribal institutions raises serious doubts about the possibilities of 'traditional' institutions spilling over into Constitutional politics' especially given the high number of non-Khasi residents in the region of Laitumkhrah, making up 50 % or more of the population in some urban areas. This raises severe doubts about the accountability of both modern and traditional authorities.

BOX 2: PRIVATISATION VS COMMUNITY LAND

The terms 'privatisation and 'community' or 'communal land' need special explanation in case of changing land relations in Meghalaya. Usually privatisation of land is understood as the transfer of property rights from the state to private individuals but in the case of Meghalaya, privatisation means transfer of community land to private individuals.

Community land is the land set apart by a tribe for the use of its members without specific rights of private ownership and represents a safety net for its members by ensuring equal rights to the access and use of the land. Privatisation here means transfer of community land to private individuals.

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Author: Kavita Navlani Søreide. Editor: Ingvild Hestad. Copy editor: Lisa Arnestad.

Firstly, the co-existence of traditional and state government structures, both representing Constitutional wings of authority, creates a significant lack of accountability due to a haze of overlapping jurisdictions. As Autonomous District Councils and Dorbars, tribal structures commanding considerable de facto authority at the village and municipality levels are competing with state structures for influence, this creates law evasions, confusion and waters down the overall legal- administrative efficacy in the region.

From the Indian Constitution...

Sixth Schedule according to the Indian Constitution "...The district council shall have power for their respective jurisdiction to make laws regulating; a) the allotment, occupation or use, or the setting apart of land, other than any land, which is reserved forest for the purpose of agriculture or grazing or residential or other non -agricultural purposes or for any purpose likely to promote the interests of the inhabitants of any village or town. Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied, for public purposes by the government of the state concerned in accordance with the law for time being in force authorizing such acquisitions..."

Secondly, it has been argued that the district councils have endemically failed to serve their purpose of securing the continuation of a tribal way of life in harmony with the greater Indian union, and hence constitute a 'superfluous burden on the state'. That the existence and working of ADCs could not prevent the emergence and fulfillment of the demand for statehood, has been seen as an indication of their failure meet the aspirations of the tribal people. The ADCs have also been blamed for being stuck in inertia, and for lacking creative thinking and development urge.

Thirdly, questions are raised as to the ability of the Sixth Schedule mechanisms to respond to the changing needs of a society in transformation. Due to various factors such as increasing urbanism, Christianity, changing nature of tribal land relations and hierarchies, the very 'tribalness' of the society has undergone a certain change which cannot be ignored.

The Sixth Schedule was created to conserve and preserve in order to protect tribal people and their vital interests and ways of life, but the experiences in Meghalaya show the compex dynamics set in motion by these laws, and how new challenges emerge as a the society changes.

NOTES

1. In 1930, the Simon Commission noted: "The principle duty of the administration is to educate these people to stand on their own feet. It is too large to be left to the single-handed efforts of missionary societies or of individual officials."

CMI (Chr. Michelsen Institute)
Phone: +47 47 93 80 00
Fax: +47 55 31 03 13
E-mail: cmi@cmi.no

P.O.Box 6033,
N-5892 Bergen, Norway
Visiting address:
Jekteviksbakken 31, Bergen
Web: www.cmi.no

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