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Sovereigns, Subjects and 'Law' in Northeast India: Select Reading from the Colonial Archive

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Abstract

Dwelling on the colonial archive, the paper traces the process of legal formation during the passage of colonization in Northeast India. 'Law' in this paper refers to both imperial regulations and customary law of the native/tribal communities. The paper is a part of the larger study that interrogates the nature of colonial state formation in Northeast India and the subsequent impact on the socio-cultural life of the indigenous communities. The study is situated in the context of the fragmented accomplishment of the policies and measures of the postcolonial state in the Northeast—formerly Look East and now Act East Policy. 'Law' or customary law was an important component of the cultural expressions of the indigenous people in the Northeast. As is evident in the contemporary documents, customary law became a fierce site of contestation between the British sovereign and the tribal subjects while the former sought to introduce their command and control over the land and the people. The contemporary legal governance in the Northeast is a direct legacy of the contestation between the sovereign and tribal subjects and the confusion that had been produced in the process.

Keywords: Law, Colonial, Contestation, Legal formation, Imperial regulations, Customary law

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Globally, the historical process of colonization fundamentally affected the structures of a given society. Colonization process led to the transfiguration of the notion of community, cultural expression, world view of the people and most importantly the existing political structures of which law is an essential component.

The experiences of colonialism are vast and varied in India in different layers of society and / categories of native subjects. There are myriad studies focusing on the impact of colonization of India in the sphere of society, culture, communities and the evolution of new political structures and law. In this larger canvas, this paper traces the historical process of legal formation through the passage of colonization in Northeast India.

This paper is a part of the author's larger study to explore the process of legal formation in Northeast India under the British rule in a historical framework. The colonial legal governance set the enduring spirit and paradigm of 'Law'. The postcolonial legal governance in the Northeast was founded on the colonial governance of 'custom' and 'law'. It seeks to locate the aspects of continuity/departure colonial structures of society and polity in the Northeast that provided the basis of the fundamental structures of legal governance in postcolonial India.

Social scientists and policy research analysts draw from a vast array of themes under discussion including development policies, neighbourhood policy, regional cooperation, ethnic politics, militancy, insurgency, identity movements, human development, land and agriculture and ecology/environment. Within a larger socio-political background, Sanjib Baruah and Samir Kumar Das, among others, have offered significant insights that aid our holistic understanding of the various factors behind persistent ethnic conflict, violence and confrontation in view of the incongruity between the ethnic homeland model and the actually

existing political economy of the region. Despite the merits of their work, however, the scholars do not analyse the workings of 'law' within the context of ethno-political studies.

Customary law is the site of identity of the ethnic communities. At the same time, it has turned out to be the instrument of interest groups in a given community for the purpose of land-grabbing and gender discrimination. In the process, the customary law of a given community is subjected to varied and contradictory accounts and conflicting interpretations. In view of such mala fide appropriation of customary law, the study traces the origin of the conflicting interpretation in the British period—in other words, how customary law of the native subjects had been drawn within the imperial agenda of command and control over native subjects and became an instrument for expropriation of resources.

Walter Fernandes and Melvil Pereira—both eminent scholars from Northeast India ─ have made significant contributions by looking at customary law from the standpoint of the uneasy interface and contestation between state law and customary law, inter-ethnic dynamics and the subversion of class and gender in the practicing 'custom'. This area of study is primarily concerned with political, sociological and moral perspectives on 'law' in the context of identity conflict and tribal autonomy. The scholars have initiated dialogues addressing bureaucrats and policymakers in order to explore the feasibility of codifying 'uniform customary law' or the 'statutory recognition of customary law' as a likely solution to the current imbroglio. A recent publication *Legal Pluralism and Indian Democracy: Tribal Conflict Resolution Systems in Northeast India*,[1] Melvil Pereira, Bitopi Dutta and Binita Kakati eds., Routledge, 2018, however, analysed the functioning of constitutionally recognized dual conflict resolution systems—legal courts and Autonomous District Councils—which is defined in the Northeast as 'legal pluralism'. The book addresses the debates over the Uniform Civil Code while analysing multifaceted aspects relating to the conflict resolution system in the Northeastern region. This book is a valuable addition in

terms of understanding the interface between 'state' law and 'customary' law, the theoretical context of 'legal pluralism' and its implications, customary and human rights issues and customary law as a shield or instrument, either to protect or subvert women's rights. The study, however, has been undertaken largely in light of the role of current 'law' as a conflict resolution system. Thus, it only sketchily analyses 'law' as a source of conflict which has its origin in the colonial era. The present study intends to fill the vital gap.

In a short article published in 1995[2], B.K. Roy Burman—eminent anthropologist and ideologue in policy research on the tribal population in India—pointed out that the 'starting point of authentic democracy' should be an 'outright rejection of Austinian legal epistemology which informs the judiciary and land resource-based policy planning'. Roy Burman however argued that, despite political will, the policy did not take any new turns due to the 'dubious' attitude of bureaucracy. Interestingly, Roy Burman defined the Sixth Schedule of Indian Constitution in a different vein, contending that the 'rhetoric of self-management of the tribals has proved to be nothing but a political toy'. What Roy Burman indirectly referred to is the inadequacy of the lopsided developmental approach and the inexorable link between the current legal structure and continuous ethno-political turmoil. The present study traces the passage of the current development in the colonial past.

The Historical Background

The British colonisers started taking active interest in Northeast India around the beginning of the 19th century. The English East India Company (EEIC) however kept a watchful eye since the arrival in Bengal in the 18th century first as a trader and then the sovereign ruler in 1772. For them, Northeast India was a region comprising the lengthiest stretch of border with Burma (now Myanmar), Nepal, Bhutan, Tibet and China with further scope for the expansion

of territory and trade. It was also rich with natural and mineral resources such as oil, coal, timber, water and various other resources. The British found an opportunity to be engaged with the political affairs in the Northeast in 1762 on invitation of the King of Manipur to extend support in the war with Burma. The EEIC extended support as an external ally without being much ambitious for securing political control. Manipur was annexed much later, in 1861. In the early phase, the British cherished territorial and trading interests in Burma and assisted the King of Manipur against Burma to expand its own the interests. This paper does not engage in narrating the history of British conquest of Northeast India, and the story is long. Briefly, the British acquired control over the entire region through a series of military conquests in stages: Assam, the Naga Hills, the Lushai Hills, Garo Hills, Khasi and Jayantia Hills, the Mikir Hills, the Frontier Tracts and the North Cachar Hills by the middle of the 19th century.

For the colonial administrators in the Northeast, there were three lucrative concerns that interested them most. In the first place, the entire region is situated alongside a vast stretch of the 'frontier'. The EEIC cherished defending the frontier and expanding further. Secondly, the entire region was endowed with rich natural resources such as land, water, oil, natural gas, minerals, timber, plantation crops, horticultural products, medicinal plants etc. The 'frontier' was however inhabited by 'numerous savage races' (as described by Alexander Mackenzie—a distinguished civil servant of the British Raj who wrote *The North East Frontier of India*[3] (earlier published as *History of the Relations of the Government with the Hill Tribes of the North-East Frontier of Bengal* in 1884).

Following the conquests, the administration of the entire Northeast region became a difficult engagement for the British officials on account of the nature of the terrain and the cultural diversity of the inhabitants. A major part of Northeast India was surrounded by hills and forests while a part of the terrain belonged to the plains. The ethnic composition was equally

diverse with not less than 300 communities inhabiting the region, each community with its distinct socio-cultural traits, religion, tradition and customs. Therefore, consolidation of authority was a far more difficult task than conquest of the territory. As it is evident in the extant documents, 'law' was the most crucial instrument in enforcing governance and control over the indigenous subjects.

'Law' evolved in colonial India through complex civilizational encounter. The colonial rulers tried to formulate pragmatic structures for different social groups to implement legal administration. On the acquisition of direct administration of Bengal in the year 1772, the EEIC had to structure legal governance for the Hindu and the Muslim Subjects. It was proclaimed that the new government would retain traditional law for the native subjects in the civil and personal matters. The early officials did not apparently intervene in the matters of Muslim 'law'. The impact of colonial intervention on Muslim law is however beyond the purview of the author's studies. The British found the classical tradition of the *Dharmasastras* to be the authentic laws for the Hindus. Eminent orientalist administrators and juridical ideologues, such as William Jones, H. T. Colebrooke, et al constructed/invented 'Hindu law' on the basis of selective appropriation of the vast corpus of the *sastric* literature. The author has already analysed in her earlier work that s*astras* were not the authentic laws of the Hindus.[4] The sastras were essentially prescriptive, normative and moralistic traditions of the Hindu community. Hindu law was invented on the basis of selective appropriation of the *sastric* texts, compilation of Codes—first in Sanskrit and then translated into English. The abovementioned book has analysed in detail the textual passage of metamorphosis of select prescriptive *sastric* verses into legal code. Without elaborating the complex mechanism behind the transformation, it would be relevant to mention here dominant features of the colonial codes on Hindu law. In the first place, the entire genre of *sastric* texts did not contain a word synonymous to 'law'. The codes were first compiled in Sanskrit and then translated

into English. It had been analysed in the book that the translated versions of the Sanskrit compilations (*Vivadarnavasetu* had been translated by N. B. Halhed in 1776 and *Vivadabhangarnava* by H. T. Colebrooke in 1800) had been virtually endowed with the essence and spirit of an English Code, especially when the texts elaborated issues such as property, inheritance, women's rights etc. The metamorphosis was accomplished through use of certain key legal terms from English legal tradition, such as 'alienation', 'transfer', 'caveat' and several others.

Other than Hindus and Muslims, the British rulers had to frame a different set of 'law' for the 'savage', 'barbaric', 'tribal' subjects of the British Empire leading to the formation of 'tribal law'. Behind the formulation of 'tribal law' there had been no orientalist ideologues such as Jones, Colebrooke *etal* with a previous training in the subject. They were mostly held (stet) from military background, hardly any training in law. Bradley-Birt—one of the leading administrators and ideologues of the British Raj in the 19th and 20th century delineated the passage of the formation of colonial tribal law in India, as follows:

> The first pioneers of British rule were men of whom the Empire may well be proud. These records reveal them strong, quick to grapple with sudden and unforeseen events, fair and impartial in the administration of justice, and combining in themselves the multifarious of judge, soldier, lawgiver, and collector of the revenue. They were many-sided men who responded ably to the call to evolve order out of chaos, and to inspire a people who had hitherto known no restraint, save as such their own crude tribal customs and primitive institutions had taught them, with a respect for the first principles of law and justice.[5]

The law-formulators law-givers (stet) in the Northeast region belonged to the same genre of 'many-sided men' in Bradley-Birt's definition. The British administrators encountered and dealt with mixed ethnic groups in terms of culture, custom, socio-religious traits and livelihood patterns. They responded to varied sets of circumstances and to uphold the pragmatic interests of the Empire. The making of 'tribal law' in colonial India thus cannot be segregated from the cultural contour which determined its legal framework.

Northeast India posed critical challenges to the British sovereigns on account of the disparity in geography, economy, polity, society, culture and most importantly the ethnic composition. While Hinduism was the dominant faith of the people in mainland Assam, there were numerous tribal communities in Assam as well. The elite and non-tribal population in Manipur followed Vaishnavism which was considered as Hinduism. Rest of the Northeast was primarily inhabited by tribal population which was a great source of concern for the imperial agents, especially because those people enjoyed traditional/customary rights over vast expanse of land and forests. Colonial activities that brought enterprises such as plantation (especially tea plantation), mining, and expropriation of natural resources like oil, timber and other forest products were practically impossible without bringing those communities under absolute control. In addition, most of those communities were the 'frontier tribesmen' (as defined by Mackenzie and several other British administrators). These officials expressed grave concern to keep them subservient to the sovereign authority to secure and extend the borders. The officials knew quite well that power of the gun was not enough to draw the tribal communities under sovereign authority. 'Law' was deployed to ensure command and control over these diverse groups of people.

Legal formation in Northeast India had been accomplished primarily through culturization of the ethnic space. The 'cultural space' called Northeast India had been discursively created in the colonial texts that have endured even in the postcolonial imagination. There are myriad discourses produced during the colonial times to unfold the creation of the Northeast as an artificial cultural entity, primarily to fulfil the pragmatic agenda of the state. Thereby, the notion of Northeast India historically emerged in the global imagination primarily as a strategic notion and a cultural category—not a geographical location. India's North Eastern border was projected as a troubled region inhabited by half-naked 'savage' and head hunter

tribes—a contra flow against the progress of civilization. The policy of 'culture handbook' of tribal law had been followed since the earliest days of the British rule in the region.

Against this larger background, this paper analyses how land and land revenue had been the vantage point in the process of legal formation in Northeast India. The making of colonial law occurred in the Northeast that was centered around vested interests over land and land revenue. The following section focuses on the engagement of the colonial administrators with: (a) maximisation of land revenue, and (b) demolish the power of existing landed aristocrats through the instrument of 'law' who had the potential to challenge the colonial authority.

Land and Legal Governance in Assam

Following the Anglo-Burmese War, the Burmese Army ceded to the EEIC in 1826 by the Treaty of Yandaboo. David Scott, the Commissioner of North-East Rangpur became the first Commissioner of Assam and it became the administrative headquarter of the colonial administration in the Northeast. In 1827 Captain White was appointed Assistant Commissioner of Lower Assam and Captain Neufville of upper Assam.

For David Scott, the early but formidable architect of British Empire in Northeast India, the initial task was to lay down the foundation of the administrative, military and judicial structure for effective control over the people. At the initial stage Scott did not alter the judicial structure for Assam proper. The alterations were introduced in stages with extension of territories over time. Initially, civil and criminal cases were dealt by a group of Assamese gentry called 'Panchayat' (2 or 3 in each district). Later on, Captain White and Captain Neufville became both Magistrate and Judge although apparently they tried all the cases with the 'assistance of Panchayats'.[6] The Magistrate and Judge however referred 'heinous' cases

to Scott, the Commissioner for final judgment.[7] Two things may be noticed in this context. In the first place, the early administrators maintained a facade of involving native elites in the judicial procedure although the real power remained in the hands of the British officials and the Commissioner of Assam was the ultimate authority. Secondly, as is evident in the contemporary colonial documents, the term 'heinous crime' had been often used, especially against the tribal subjects to bring them under control through severe punishment.

As is well known, the East India Company came as a trading company in Bengal. Gradually the Company developed a vested interest in land revenue to invest in territorial acquisition in other parts of India and also to invest in the China trade. Therefore, collection of land revenue became a critical engagement for Scott and his team. Another pressing concern for Scott was to employ and maintain a large military force to defend the newly acquired territory. Scott asked the authority for an extensive survey of the area under the Company's control. Lieutenant Bedingfield undertook a provisional survey (mainly of the lands in the plain of Lower Assam) in 1825-26.[8] Scott derived approximate ideas about taxable and rent free lands under their control as he was keen to enhance the volume of revenue. Scott started levying tax on each category of land that had never been taxed by the Mughal rulers or the Ahom kings, although, as he claimed, he made the assessments lower than his predecessors.[9] Scott adopted the policy of levying taxes on rent free lands such as *lakheraj* and *nishkerraj*. Land and land revenue drew the rulers and subjects to an unequal encounter with the extension of territories.

The vested interest of British officials to revise the existing revenue structure in order to maximise the volume becomes evident in the settlement of land revenue with Durrang Rajah in Assam. Contemporary colonial archive contains lengthy and detailed account in relation to settlement of revenue with the Rajah of Durrang, with special emphasis on the restructuring

of the rights over land between the colonial state and the native landlords. The document is significant because it summarises: (a) colonial attitude towards hereditary landlords, (b) investment in land revenue, (c) aggressive designs to expropriate rights over land, and, (d) 'law' as an instrument to accomplish the expropriation in favour of the colonial state.

The Rajah of Durrang was a hereditary landowner who exercised control over a large estate. There had been six vassal chiefs under the Ahom King—Durrang, Dimarua, Rani, Barduar, Nauduar and Beltola. Those vassal chiefs enjoyed complete autonomy in the internal administration in the territories, most importantly, revenue collection and administration of justice.[10] As it is evident from the extant documents, the Rajah had sizeable portion of land and a large number of rent payers under his control. At the same time, the Rajahs made land endowments to different groups of his subjects on varied terms with regard to payment of rent. The endowments included *lakheraj*, *Nishksarraj*, *Brahmottar*, *Debottar*and various other categories. Different categories of land had been brought under divergent assessment pattern. The documents clearly indicate that colonial rulers perceived the existence of such large estates which have loyal subjects under their control as threat to the newly established colonial foundation over the region. Equally important for them was to acquire control over major portion of Rajah's land and its resources primarily through 'legal' means.

The settlement of the land with the Rajah was made in 1837 by the Commissioner of Assam in direct communication with the Government in Fort William.[11] The File contains lengthy official correspondence on the right of the Rajah to alienate him from his own property. It was stated:

> The Commissioner, it will be observed recommended that certain lands should be surveyed and settled for a term of 20 years at half rates with the Rajah and members of the family, and that at expiration of that period the land should be again surveyed to ascertain the increased quantity of land under cultivation, and that the rent should be again fixed for the like term at the half of the then prevailing rates, and so on in perpetuity.[12]

The above passage is significant to understand how the colonial rulers imposed the sovereign law, amounting to gross violation on the existing custom of land holding. The following passage however reveals how the British officials imported western legal concepts that transformed the existing rights of the landholders:

> A second question arises namely how should the **alienations** from these lands be treated. It appears that these alienations have been considerable through public sales both for arrears of Revenue and in satisfaction of **decrees of Court**. The Collector of Durrang considers that the land **alienated** should now be settled at full rates, as the settlement at half rates was with the Rajahs of Durrang only. The Commissioner on the other hand considers that the half rental arrangement should extend to the lands which have been **alienated** as well as to those in the possession of the Rajah.[13] (emphasis mine)

The above passages show the displacement of the existing customary rights of the hereditary Rajahs and landlords. The customary hereditary rights had been reduced to 20 years occupancy rights against the payment of a fixed sum. Significantly, such radical transformations occurred through establishment of colonial institutions (that may also refer to Collector's/Magistrate's order as well as formal courts of judicature) and importation and application of the terminologies, such as 'alienation', 'decrees of the Court' and so on.

Right to 'alienation' is the elemental condition of private property right that evolved in the 17th/ 18th century England/Europe by the political philosophers such as John Locke, Thomas Hobbes, David Hume *et al*. John Locke proposed his theory of property in *The Second Treatise of Government*.[14] Locke's theory is rooted in his concept of 'law of nature' that permit an individual to appropriate, exercise rights over 'things' in the world, such as land and other immoveable material resources. In other words, Locke propounded the theory of private property of which 'alienation' is the essential quality. The intrinsic meaning of 'alienation' is the right to 'sale, gift and transfer' of one's own property. Locke's theory

provided rationale to *Laissez faire* theory to industrial capitalism and welfare state to socialism.

I should mention here briefly that the categories such as 'alienation' were not part of the discursive genre on 'property' on the Indian soil. In the classical *Dharmasatra* tradition, the terms such as 'property' and 'alienation' may be approximately close to terms such as *svatva* and *svamitva*. But the concepts that emerged in India by no means synonymous to the Western concepts and qualified by the term 'alienation'. The author has discussed the introduction of the concept of 'alienation' as an intrinsic quality of 'property' in the book on Hindu law. The Indian concepts evolved over millennia in a different civilizational background while the Western concepts are also products of a particular time, political structure, economy and socio-economic urges of a given class of people. Therefore, the intrinsic qualities of the Indian categories are foundationally different from the Western categories. The British sovereigns deployed those concepts to ensure control over resources and mastery over the native subjects.

The British officials in Assam were anxious to secure a greater share in the revenue/rent which is evident in the correspondence between the Durrang Rajahs and other landed families. In order to escalate the volume of revenue the British officials adopted the following strategy. They were trying to establish that there were huge amounts of revenue arrears by the Durrang Rajah and proceeded to sell a large portion of their property to realise revenue at a higher rate.[15] Colonel Jenkins' anxiety was quoted that in majority instances:

> ...at the time of sale it was expressly declared that the lands were to be **transferred** to the purchasers with all the rights held in them by the Rajah viz: an assessment at half rates adjustable every twenty years. Had these provisions not been held out to purchasers (continued Jenjind) it is clear that the lands would have been unsaleable or have been only for a trifle as other Khiraji lands liable to full assessment.[16] (emphasis mine).

Jenkins further added that the case of purchasers at sales for arrears of revenue would require "further explanation from the Commissioner should his Honour agree with the Board in opinion that full rates are to be imposed upon the **alienated** land. Jenkins anticipated that 'some arrangements may have to be made with these purchasers but this does not affect the **principle now under discussion** which is accordingly submitted for the orders of the Lieutenant Governor'.[17] (emphasis mine). The official further pleaded:

> ... this indulgence granted as it was on purely personal grounds to the Rajah and members of his family. Can not be pleaded now by third parties in bar of an assessment at the full rates of the District. Those who have purchased these lands at sales for decrees can of course urge nothing against such a cause. **The doctrine of "Caveat emptor"** applies to them in its very widest sense.[18] (emphasis mine).

It seems clear from the above passages that the British officials were introduced certain **principles** relating to land laws and those laws had to be transplanted from the Western legal concepts categories and deployed those through colonial courts of justice. Interestingly, **Caveat emptor** is a purely British legal term which means 'the principle that the buyer alone is responsible for checking the quality and suitability of goods before a purchase is made'. The application of this term had fundamental implication on the extant notions of 'property' and existing practices relating to transaction of land. Contextually, the official tried to facilitate 'alienation' or 'transfer' of land and the liberty to impose rent according to their demand through the application of **Caveat emptor**. The buyers were not left with any choice but to accept the legal terms in order to legitimise their claim over acquired property. The modality of legitimisation invariably meant increased rent. It is thus evident that the British officials tried to create a land market to acquire flexibility for increasing rent and maximising the revenue. 'Alienation' had been the prime instrument to create fluidity in existing land holding pattern.

Throughout their rule the British administrators adopted the strategy of labelling the pre-colonial regime as incompetent, worthless and tyrannical. Similar strategy was adopted to expropriate Durrang Rajah's lands assigned to different groups of people on various terms. A letter was sent to the Chief Secretary, stating that the Durrang Rajah 'befell the whole district' into 'extortion and misrule'.[19] Captain Bugle wrote a statement justifying claims made by the British rulers over the resources of the land. The officials made the pretence that they did 'respect the rights' of the existing land holders in the soil.[20] In practice, they took the liberty to change the extant practices as it was also pointed out that the British "did not conquer Assam from its inhabitants or the native government but from foreign invaders" (the Burmese) from whom the protection had been "solicited".[21] To elaborate it further, the Ahom King 'solicited' military help from the British to free Assam from Burmese occupation. Bugle made the stand of the British quite clear in the following passage:

> After driving out these foreigners, the natives residing with us from the first commencement of military operations we continued to occupy Assam, in my belief solely because it was impracticable for us to abandon the country in justice to ourselves and in mercy to a helpless people.[22]

Captain Bugle further stated:

> The imbecility and factions of the princes and nobles, and the divided debased and defenceless state of the people in general, made it imperatively incumbent upon us to retain military occupancy of the country for the peace and security of our frontier districts connected with it. And being obliged to provide for the protection of the country by our troops. We were necessarily compelled to take upon ourselves the management of its resources.[23]

The last line in the above passage is quiet significant. The statement was made in the context of the Durrang Rajah although, condemnation of the pre-colonial regime provided the most convenient justification for the British towards establishing absolute hegemony over the land and its people.There was another very important reason which emanates from the narratives

of the authors. They traced the historical genealogy of the region. The discursive literature wanted to create a 'fiction'[24] that the British entered into a vacuum and chaos. This argument had been drawn to justify the conquest and rule of the British in India. As has been pointed out by Nicholas Dirks, the early agents of the British Empire sought to prove that:

> India had been unable to rule itself because its political system was commanded by grand but quarreling kings who would shamelessly exploit their subjects in order to accumulate unlimited wealth and prestige, and had neither attended to basic principles of justice nor concerned themselves with the formation of organized administration, and stable, centralized power.[25]

In this specific context, the imperial agents put forward a double edged argument to justify 'military occupancy' and expropriation of resources from the land. In the first place, they argued that they had to assume the role of the 'protector' to ensure 'peace' and 'security' of the land and well being of the people on account of the 'imbecility' and 'factions' of the precolonial rulers. At the same time, the same regime had been claiming a 'price' for deploying army to protect the land. And this price that the officials claimed was quite high in the sense that they wanted the right of the new government to make and break the extant structure—including 'law'—in order to establish absolute 'claims' over resources.

The colonial rulers explored diverese methods to withdraw the privileges of the existing Rajah and his family to hold the rights to endow rent free lands. It had been clearly stated:

> If the individuals of the family are to be allowed to hold any lands they should hold the portion that may be assigned to them rent free, but I am greatly at a loss what portions to be recommend, for any measure applied to these *Lakheraj* lands will be expected to be extended not only to all *Lakheraj* lands but to all *Burmootoor* and *Durmattar* lands which are now equally assessed.[26]

It is evident that within seven years of occupation, the British Agent drew up their law to bring rent free land under assessment. The officials also considered 'money pension' in lieu of land. It was stated: "granting money pensions in lieu of land to the individuals now in question".[27] The proposal however required sizeable amount of money and thereby the proposal remained under consideration and further discussion in 1833. The officials

apprehended resistance from the grant holders in case they would introduce the system of pension in lieu of land. It had been stated:

> I fear this would be very unacceptable to them and as a general policy very objectionable any sum the Govt would consent to give could only just support the familyin the lapse of a very short time a degree above absolute poverty in barren indolence deprived of all influence and a useless burden upon finances.[28]

The officials observed that the population in Lower Assam essentially consisted of 'rent payers and rent collectors' which left them uneasy due to 'loss' in Company's treasury as well as loss of power and influence enjoyed by this group over the rent payers. The colonial officials also expressed anxiety about "perpetual changes of Chowdries[29] and the number of estates that have been sold in satisfaction of the arrears of their collection".[30] At the same time, they realised (presumably with comfort):

> All the Chowdries and Rajahs who undergo this operation [of sale on account of arrear] must if deprived of their rent free lands be soon reduced to the level of the Ryots, for the Govt. assessments would leave them insufficient incomes to maintain the struggle to support their former mode of life.[31]

The above passage provides an idea about the impact of the operation of colonial law of 'alienation' (sale and transfer) on the existing social groups in the initial years of British rule in Assam. It led to a thorough reshuffling of the power structure with the restructuring of ownership in land. As regards the *Lakheraj* lands, the officials pronounced that the:

> Right to levy this assessment may be considered to belong to the Govt. as long its finances labour under difficulties, and **so might under pretences be continued forever, but the inhabitants understand that it was merely a war tax**.[32] (emphasis author's).

It is clear from the above passage that the British agents deployed 'law' with the hidden agenda of concealing their design to perpetuate their authority over the lands of dispossessed landlords under the garb of 'war tax'. Use of the word 'pretence' is quite significant in the larger context. It indicates how law became the instrument to legitimize 'pretence' to fulfil the imperial agenda.

The 'pretence' of law had varied manifestations. The British Agents decided on curtailing land holdings of the Durrang Rajah and make a settlement favourable to the rulers. They decided unilaterally:

> The Durrang Rajah are not altogether devoid of rights nor the Govt. should recommend that instead of continuing light impact upon all the lands we should surrender one half of all now held by the family, the same to be held by them and their heirs, but not entailed under sunnuds rent free.[33]

The above passage suggests certain important aspects in the British policy towards the native subjects. In the first place, the arrangement between the British and Rajah was neither a contract nor a bilateral arrangement arrived in consensus. The lands were owned by the Rajah and the assessment had been imposed by the British at their free will deviating from the prevalent practices. The decision to 'allow' the Rajah certain portion of his holding subject to assessment of the rulers seems arbitrary. Such practices did not match with celebrated notions of 'rule of law' and 'equity' which the British claimed to have introduced in the Indian soil. What is more significant is that the British wanted that the land acquired through *sunnud* (land grant endowed by the previous rulers) be brought under full assessment. They found that the arrangement (as proposed/introduced by the British) would 'solve many difficulties' as it would 'make the production, examination of original documents and taking the evidence unnecessary'.[34] This decision glaringly violates the British legal tradition and as such the juridical tradition in India as well. Production, examination of original documents and witness/evidence had been essential prerequisites to establish or dismiss one's claim over property. But the British Agents put forward 'pragmatic' explanation to vindicate their act. They explained that for "the anarchy that prevailed for many years in the country might be expected to cause a very tedious and unprofitable investigation".[35] The official file contains euphoric expression with the clearing of the obstacles in justifying their action, which recorded:

> This measure would also enable us to consolidate the estates, now much divided and scattered greatly to public and private convenience, and it would be attended with an increase to our present revenue.[36]

It is even more significant that with this arrangement, the officials exclaimed that "half of the waste would become the property of the **state**"[37] (emphasis author's). It had been stated further that: "of the half lands **resumed** by the **state** and placed under full rate of assessment" the Collectors would be able to realise the arrears[38] (emphasis author's). Here we find that within a decade of occupation of Assam, the Imperial agents had been using the word 'state' to define and defend their authority as well as 'resume' their control over soil. 'State' is founded upon three branches of governance—executive, legislative and juridical. After the military conquest, their claims of founding the 'state' in Northeast India had been emphasized over and again even in the early years. The next section briefly analyses the nature of extension of colonial 'law' in the tribal domain, primarily through a critical review of Mackenzie's narrative.

The 'Ethnographic Handbook' of Tribal 'Law': Excerpts from Mackenzie's Chronicle

The British officials announced that they would not intervene in the 'custom' of the tribal subjects although they defined and referred to the tradition and custom of the indigenous subjects as 'customary law'. They made the same pretence while they dealt with the tribal subjects in the Northeast. The proclamation raises critical questions: could custom be made law without those having been made so? And that leads to the second question: how the 'custom' of the tribal population emerged as 'customary law' through the passage of colonisation? The archive—the colonial archive—does not provide a direct answer. The colonial archive is a repository of the expression of their anxiety regarding how to deal with those 'savage' and 'warlike' tribal subjects in the Northeast; how to extend authority and control over the land in which they inhabit and enjoy resources for time immemorial; how to intimidate those people through arms; how to draw them under the paradigms of civilization

so that they are able to understand the governing principles of the colonial masters, especially the 'law' by which they can perceive, modify and regulate their demands and rights over resources. The indigenous archive—as counterfactual—is not available to the researchers who would try to understand the history of anxiety and belonging of the tribal people. The indigenous perceptions and reactions are visible only in the recent time, not in the nineteenth century. A researcher may derive the trend only from the violent encounters between the colonial sovereigns and the ethnic communities that ensued following the advent of the British.

In sum, the introduction of colonial law in the Northeast hills is violent and complex. It is difficult to narrate the process from the vast archive. Therefore, the present paper focuses on Mackenzie's book. Mackenzie chronicled the British conquest of Northeast India. It was through his narrative that the Northeast entered the global map as a **strategic 'frontier'**, a 'savage' space and a 'wild tract'. Mackenzie's narrative is closer to a discourse on ethno-history if the definition of ethno-history is to dissolve from its rigid definition. He recommended to formulate a 'frontier policy' to deal with "numerous savage and warlike tribes whom the decaying authority of the Assam dynasty failed of late years to control, and whom the disturbed condition of the province has incited to encroachment".[39]

The word 'encroachment' is contextually poignant as it symbolised two things: (a) the urge to restrict or deter the indigenous ethnic groups to claim their 'primaeval rights' over land which they enjoyed before the British arrived,[40] (b) to delineate a 'definite policy on this frontier to dissolve the 'indefinite nature of connexion subsisting between the Assam sovereigns and their savage neighbours'.[41] By 'indefinite nature of connexion', he meant rights and privileges endowed by the earlier rulers on the 'savage neighbours' in land revenue matters. Mackenzie however stated that the British have explored the "peculiar land system' of the

'Native Governments' with an enlightened policy.[42] He further claimed that when the British "did arrive in any ease at a definite understanding as to the rights of any tribe, we were ready, as a rule, to treat them fairly and liberally".[43]

Mackenzie cited examples of the 'success' of 'fair and liberal' policy of the British towards the tribal subjects. Those might as well be glaring examples of how the tribes had been forcibly drawn within the British legal system. As mentioned by Mackenzie, the British had demarcated the 'frontier line' for each tribe in 1872-73.[44] The Deputy Commissioner of Durrang was in charge of keeping watch on the activities of 'hillmen' who come down to the plains to trade and graze cattle. Sir G. Campbell recommended that the right to the tribal subjects to use land –over which they enjoyed unrestricted rights- should be given to them not 'as a right' but 'as a privilege' as a 'valuable means of securing their good behaviour.[45] The term 'good behaviour' implied complete subjection to the British government. The agreements signed between the tribal chiefs and the British sovereigns are however more obvious. A few examples are cited here.

An agreement had been signed between the Taghi Raja of Aka Purbat and the British wherein the Chief was promised a pension of Rs. 20 against the following undertaking:

> 1st.- Myself, with my tribe, will confine our trade exclusively to the markets of Lahabaree, Baleepara, and Tezpur. We will not, heretofore, deal with the ryots in their private houses.
>
> 2nd.- I will be careful that none of my tribe commit any act of oppression in the British territories.
>
> 3rd.- We will apply to British Courts for redress in our grievances, and never take law in our hands.[46]

The third clause is the most crucial to understand the modus operandi of bringing tribal subjects under the British legal system and thereby the process of legal formation in Northeast India. Also, the clauses do not indicate that the British allowed their tribal subjects

to retain their traditional rights as per their proclaimed policy. This was not just agreement signed between the tribal chiefs and the British sovereigns.

Mackenzie also recorded several instances of resistance from the tribal subjects. For example, in 1882, forest guards reported that a large body of Aka and Duphla tribes came down and set up boundary marks declaring that they would not allow anyone to cross the boundary and enter the British territory.[47] This is one of the myriad examples of how the indigenous tribes tried to offer resistance against the colonization process leading to loss of their land, traditional livelihood, custom and cultural memory. Strikingly, Mackenzie cited from the Administrative Report of 1872-73 and quoted the views of G. Campbell which stated: "Many Duphlas have settled as colonists in our territories and a few occasionally work on tea gardens".[48]

Thus was the irony of history that the British colonisers in the Northeast were describing the original inhabitants as 'colonists'—who had owned the land.

Administration of law and justice for the tribals of Northeast had been a persistent source of concern for the British sovereigns. Mackenzie cited an extract from G. Campbell regarding the nature of law to be administered to those people:

> There may be, no doubt are, difficulties about the application of ordinary law in Assam and other districts peculiarly situated; but the Lieutenant-Governor considers that district officers should not raise and suggest difficulties. It is not for them to pick legal holes and find flaws, and to affect a pedantic legality. They should make the best of situation.[49]

The colonial archive clearly suggests that the British officers in the Northeast were by no means inclined to 'pedantic legality'. On the contrary, the legal formation in Northeast India was essentially based on fluidity and arbitrariness and 'customary law' was a product of this set of random rules.

The next section briefly analyses the role of missionaries in the process of subversion of custom and its gradual replacement by the sovereign 'law'.

Religion as 'Law' in Proxy: Conversion and the Missionaries in Manipur

This section will briefly discuss how Missionaries became formidable agents in the process of transformation of the indigenous custom. The story of the missionaries, enterprises in the Northeast is rather complex as is evident from the archival records of Manipur. These documents contain reports on rival Missionary activities in Manipur in the upland and tribal territories that detail on the encounter between the missionaries and tribal people. As is well known, Manipur was not directly administered by the British. The Political Agent in Manipur as the representative of the colonial state exercised the real authority while the king of Manipur was retained as titular head. Secondly, though the Missionaries (all over Northeast) were not acknowledged as the direct 'agents' of the state they were actively indulged to forge the link between the state and millions of tribal subjects. The following analysis based on letters written by the Governor of Assam to Mr. Watson, the Political Secretary, Government of India will describe the growing influence of the missionaries and also the friction that existed between themselves. The letter narrates the rivalry between two Missionary institutions and its impact on the indigenous tribes. It also unfolds the *modus operandi* of the colonial state: (a) to forge link with the tribal population via religion and English education and bring them under colonial authority, (b) to induct them into the ruler's creed in order to secure submission to the colonial state.

The king of Manipur expressed his disapproval in allowing missionary activities in the plains of Manipur. However, the British authority allowed the American Baptist Mission run by Reverend Pettigrew and Dr. Crozier—'with the permission of the Maharaja'—to start their activity in 1893 "strictly to the semi-civilized tribes on the Hills".[50] It had been recorded that:

"His Highness prefers (or I should say dislike less) the American Baptist Mission on account of its practical medical and educational work".[51] Interestingly, a rival mission also entered the scene with similar objectives to 'educate' (and convert) the tribes much to the displeasure of Reverend Pettigrew. Pettigrew protested against the restrictions imposed upon the Baptist Mission to work in the entire Hill. He claimed that Major Maxwell had granted them permission in 1894, on behalf of the Maharaja, to introduce education among the Tongkhuls.[52] Reverend Pettigrew further mentioned that the restriction had been imposed on:

> One isolated instance in which an evangelist of the Mission was recently fined for insisting an animist [of] Tongkhul village in defiance of the wishes of village elders and the villagers.[53]

Pettigrew further claimed in the letter of 19 December 1927 that the influence of American Baptist Mission existed over "unbroken chains of tribes from the Abors and Miris down to Chin Hills in Burma".[54] Reverend Pettigrew's petitions unfold the story of widespread Missionary activities in Northeast India and their efforts to bring the indigenous inhabitants closer to the rulers.

Another rival Mission—The North-East Indian General Mission (formerly known as Thado-Kuki Pioneer Mission)—generated controversy over their mode of operation in the Hills.[55] This Mission again had been consistently engaged in rivalry with American Baptist Mission over areas of operation. The representative of North-East Indian Mission complained against the "attitudes and policies of His Highness and the Darbar" against the Christian missionaries. The Rajah and his Darbar, in turn, asserted that the "Manipuris are ardent Hindus" and strongly objected for "introducing Christianity to Manipur".[56]

The Missionary activities in Northeast India comprise a long story which is not a direct concern of this study. The documents refer to significant developments through Missionary activities that are directly linked to the passage of colonial state formation in the

Hills. For example, the Governor of Assam wrote to the Secretary of State, Government of India:

> To obviate friction between Animists who retain their aboriginal custom and Christians who perhaps may display resentment or be tempted to dispute the authority of a local Chief, the American Baptist Mission deliberately endeavours to arrange for a series of Christian villages, where the Christians live together apart from the Nagas and Kukis.[57]

The above passage is extremely significant in understanding how the Missions acted as direct agents of the state by creating a loyalist group through the device of 'divide and rule' policy. Apparently, they segregated the 'aboriginal' and 'Christian' population in a village 'to obviate friction'. But one may question the underlying motive behind this arrangement. Significantly, a petition was handed over to the Manipur State Darbar that by a small group of Christian villagers from Mao village (who had been living apart over past few years). They expressed their desire to live with 'aboriginal' brethren in the same village.[58]

Reverend Pettigrew expressed his discomfort over the petition. He stated that:

> The Heathen chief and elders of the village are wishing that that these Christians remain with them, and that a pastor may come and visit them.[59]

Reverend Pettigrew however found invisible hands of the king and the Darbar behind this petition. He expressed: "it sounds as if the Darbar has given the orders that no one is allowed to be a Christian". He made the following statement in defiance:

> The Missionaries of the American Baptist Mission would respectfully ask if the liberty of the individual and his convenience is considered the same thing in British territory.[60]

Reverend Pettigrew's statements in the above passage upheld the notion of 'liberty' and 'individual' which are exclusively western concepts. More than that, he assumed the authority to defy the king and his Darbar, being empowered by British 'law' living in the 'British territory', i. e., Manipur. Next chapter will analyse how the 'tradition' and 'custom'

of the tribal subjects in Northeast India had been endowed with a new *avtar* as 'customary law'.

The paper has analysed the encounter between the British sovereign and native subjects in the arena of 'law' dwelling on three sites—land, custom and religion. Law is analysed from two perspectives: (a) 'law' as an instrument to appropriate economic control over the land, and (b) law as a device to ensure socio-political control over the native subjects. As is evident from the above discussion, the early imperialists did not consider 'law' that entails the notion of moral rule and social justice.

Researches in recent times investigate a vast array of themes, such as history of military encounters, insurgency, peace and conflict before and after independence, ecology, economic backwardness, ethno-state relationship in view of after independence, 'sub-nationalism' and territorial movements, folklore among others. 'Customary law' constitutes an important area of research as an integral part of ethnographic study and identity politics. It is also a part of necessary exercise to streamline 'customary law' to be dispensed under Autonomous District Councils in Fifth/Sixth Schedule areas and this has become a site of ethnic discord. The academics and social activists have situated 'law' within the framework of contested hierarchy between 'code' and 'custom'. 'Custom' is treated not as 'law' *per se* or a discrete field of inquiry to understand the historic passage of social transformation; instead as a site of identity and part of total cultural system.

This is a historical/'time' research of which this paper is an integral part to trace how the notion of 'law' emerged in the region and subsequently contributed to ethnic, economic and political strife. It helps in understanding how 'law' reflects the imperatives of changing economic, social and political needs of the communities in the Northeast as well as the Indian state. After all, successful implementation of the strategic and economic policies such as

Look East and Act East Policy would largely depend on rational legal governance in the region.

To sum up, the legal formation in Northeast India had been accomplished primarily through culturization of the ethnic space. The policy of 'culture handbook' of tribal law had been followed since the earliest days of the British rule in the region. The edifice called customary law created through the passage of colonization formed the foundation of postcolonial legal system in Northeast India. Contemporary legal governance in the Northeast is a direct legacy of the contestation between the sovereign and tribal subjects and the confusion that had been produced in the process. Confusion and contestation over 'Law' still persists in Northeast India in different layers as a direct legacy of the colonial legal governance. This paper points out that the policies and measures of the postcolonial state in the Northeast (formerly Look East and now Act East Policy): (a) to improve the trade, commerce and overall economy of the region, and (b) to open the commercial and diplomatic corridor towards South and Southeast Asia, is primarily contingent upon a situating 'Law' in an unambiguous domain and introduction of legal transparency.

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