

The New Land Settlement Act in Arunachal Pradesh

CHANDAN KUMAR SHARMA, BHASWATI BORGHAIN

The social systems of the north-eastern hill tribal communities have remained deeply embedded in their unique land relations. The emerging political economy in the region—as manifested in the various infrastructure projects, urbanisation, cash crop plantations, etc—has, however, accentuated an onslaught on these customary land relations. The new Arunachal Pradesh (Land Settlement and Records) (Amendment) Act, 2018 has generated fresh apprehensions about further dispossession of the hill tribes.

North East India's specificity as a region remains much discussed. This specificity is emphasised by the distinctive sociocultural practices of the region's numerous tribal communities, which hinge on their unique ways of use and ownership of land. Traditionally, many of these tribal communities, both in the plains and the hills, practised shifting cultivation and enjoyed communal ownership of land. While colonial rule changed much of this in the plains, these practices have continued in the hill areas in different forms till today. This remained possible despite many challenges, due to the various protective measures that the Constitution provides for the hill states in the region.

However, in recent times, the traditional landownership pattern in the tribal societies of the region is undergoing rapid transformation. At the centre of this is the onslaught of massive encroachment of the tribal community land (Sarap 2017). Various development projects as well as the process of urbanisation in the region are contributing to this process of change, leading to an increasing privatisation and commercialisation of tribal community land. The state has been the main perpetrator of this process (Sharma 2001). Simultaneously, the emerging tribal elites, including politicians, bureaucrats, contractors, businessmen, etc, are also engaged in large-scale usurpation of the community land for various purposes, especially for cash crop plantations (D'Costa and Chakraborty 2017).

While this process has been going on for a few decades now, in recent years the emerging political economy in the region has accentuated it to a considerable extent, threatening the very foundation of the tribal societies in the region being torn asunder. Changes in tribal societies are an inevitable continuous process; however, the tenor of the contemporary changes in these societies raises serious questions

about the desirability and sustainability of such changes. It is in this context that the new land law in Arunachal Pradesh, namely the Arunachal Pradesh (Land Settlement and Records) (Amendment) (APLS&RA) Act, 2018 needs to be examined. This act recognises private ownership of land in the state for the first time. Prior to this, the state provided "land possession certificate" to acknowledge individual land and differentiate it from community/clan land.

Traditional Landownership

The present-day territory of Arunachal Pradesh was marked as "fully excluded area" during the British rule, which implied that the area was excluded from the direct administrative control of the colonial regime. After independence, Arunachal Pradesh became a centrally administered area known as the North East Frontier Agency (NEFA) with its headquarters in Shillong, the then capital of Assam. The NEFA acquired the name Arunachal Pradesh when it became a union territory in 1972, with Naharlagun as the functional capital and the adjacent Itanagar as the proposed permanent capital. It attained statehood in 1987.

Due to its unique history of protective isolation, the ownership and management of much of the land in the state belongs to the community as a whole rather than the individual. Each single strip of land, starting from rivers to riverbanks or even small river islands, forests, hills and streams belong to one clan or the other. Land is reserved for *jhum* (shifting) cultivation by each community, and communities have a mutual understanding about the boundaries of their own *jhum* land. But this traditional landownership and management system is changing drastically for various reasons in recent times.

First, big infrastructure projects such as road construction, military enclaves, dams, etc, require huge tracts of land, which has put considerable pressure on the *jhum* lands of the communities. The *jhum* cultivation covers a large tract of land and the taking over of the land for such projects shorten the *jhum* cycle and enhance the pressure on the surrounding areas, adversely affecting not only the livelihoods of *jhum*-dependent

Chandan Kumar Sharma (*kumarsharma.chandan@gmail.com*) teaches sociology and Bhaswati Borgohain (*borbhaswati89@gmail.com*) is a research scholar at the Department of Sociology, Tezpur University, Assam.

communities but also the environment. It has been established that while these state-initiated development projects have always been a major factor in tribal land alienation in the region (Sharma 2001), in recent times they pose to become the single most important threat to the traditional landownership pattern among tribal societies.

Second, there is an increase in cash crop cultivation such as tea, timber, rubber, coffee, etc, for which large plots of community lands are being converted into privately controlled property. As a result, in every tribal state in the region one witnesses a concentration of hundreds of acres of clan or community land in the hands of a few tribal elites, which is not permissible as per the customary law. The ordinary members of the community—the equal shareholders of the community land—are now becoming wage labourers, and in some cases even bonded labourers on these plantations.

Explaining this phenomenon in the context of the Khasi society of Meghalaya, journalist Patricia Mukhim states that the community land in the Khasi society is administered by village councils (Dorbar Shnong/Dorbar Raid) or chieftainships (Dorbar Hima) that are always headed by men. These chiefs in collaboration with other members of their councils are involved in the surreptitious conversion of a large amount of community land, especially the forestland under their jurisdiction into their own names, leading to a rapid shrinkage of community land (Mukhim 2009: 50). The chiefs and headmen are also involved in issuing land deeds to the Khasis as well as the non-Khasis, charging a fixed rent and cash payment (Karna 1990: 35).

It is well known that the government and various government agencies are engaged in a concerted campaign against jhumming and in favour of cash crop cultivation for some time now. Although the government's refrain has been that jhum is environmentally unsustainable, evidently overlooking its own dismal record of environmental protection, this campaign focuses mainly at promoting individual ownership rights in the traditional tribal community land (Choudhury 2012). It is also interesting to note that

even public sector financial institutions, including banks, offer loans to tribal entrepreneurs who are engaged in cash crop cultivation, against mortgage of the community land. If such entrepreneurs fail to return the loan, the land is taken over by the bank. This is totally at variance with the constitutional mandate of protecting tribal land. It may be mentioned that the Nagaland Land and Revenue Regulation (Amendment) Act, 2002, prohibits mortgage of land to any nationalised bank.

Third, although in many cases the tribal community land formally remains with the community, in practice, the control of such land has been transferred to non-tribal people. Sanjib Baruah makes a distinction between *de facto* and *de jure* property rights of such land (Baruah 2005: 194). He argues that although there is no formal transfer of tribal land to non-tribals, the cases of non-tribals using tribal land for agriculture or other purposes abound. This is seen more extensively in the hill areas of the region and in the tribal belts in the plains of Assam, and has been a major factor in some of the recent ethnic conflicts in the state (Sharma 2016: 103–04).

Significantly, in recent years, a new trend has been witnessed where the tribal political leadership in the hills, especially those in power, is engaged in articulating that all land, including the traditional community land, belongs to the state. It is evident that the colonial regime in India also used the same logic for bringing in all land, including the traditional commons such as forests, wetlands, etc, under its control. It makes it much easier to transfer land for the purpose of various development activities, when the ownership of land is vested in the state rather than the community.

Further, as Arunachal Pradesh is becoming one of the fastest urbanising states of the country, the question of land assumes critical importance. Urbanisation in the state is a recent phenomenon that is associated with the setting up of administrative centres as well as the state-building exercise of the Indian government. It may also be noted that the presence of the Indian nation state in Arunachal Pradesh is driven by the

imperatives of a security frontier vis-à-vis China, which also informs much of Indian policy in the region (Gokhale 2017; Parashar 2016), including that of the process of urbanisation.

It comes with massive state-led infrastructure development, investment of private capital and in-migration of outsiders. Further, in January 2018, Itanagar was chosen as one of nine new smart cities by the central government (*Economic Times* 2018). All these would necessitate the use of a huge amount of land that would inevitably put serious strain on the traditional land relations. It is in the background of this emerging scenario that the coming of the APLS&RA Act, 2018 assumes significance.

A Path-breaking Act?

This act was introduced in the Arunachal Pradesh legislative assembly as a two-page bill on 6 March 2018 and was passed by the house through a voice vote within a week's time on 12 March. The media reports mentioned that the bill was drafted by a high-level committee constituted by the chief minister, and consisting of four cabinet ministers and other senior officers of the government. Reports also mention that a state-level conclave was held at Itanagar where experts on land and land laws from within and outside the state were invited and discussions were held with various stakeholders. However, interestingly, no consultation at the community level was conducted before the bill was introduced in the state assembly. The conclave also seemed to have over-emphasised the role of the experts, undermining the experience and concerns of the people.

The act recognises ownership rights of the citizens, particularly indigenous people of the state, providing them the right to give their land on a long-term lease up to 33 years, which is extendable to another 33 years, making it to 66 years in total. Besides, as per the provisions of the act, the land can now be mortgaged for obtaining loans from banks as the formal channels of credit have been opened (Parashar 2018). Further, the act also reduces the stamp duty on mortgage from 3% to 1% giving "huge relief to the

indigenous people who avails loan from the banks” (Lepcha 2018).

It may be noted here that the erstwhile Arunachal Pradesh (Land Settlement and Records) Act of 2000 did not provide land titles to the citizens of the state. Instead, the deputy commissioner of a district, subject to approval of the forest department and the village council, used to issue “land possession certificates” (LPCs) to the members of the indigenous population for staking a claim to a piece of land. Actual ownership, however, continued to rest with the state. The new amendment confers ownership rights to people with valid LPCs, enabling them to lease their land for up to a total of 66 years (Saikia 2018).

The immediate media reports on the law, both in the state and national dailies, were uniformly celebratory with most reports claiming it as “historic” and “path-breaking.” Evidently, this stemmed from the fact that these newspapers reproduced the same statement issued by the state government. The statement said,

Even after 70 years of Independence the land in Arunachal Pradesh was held under customary laws and no document conferring the title of the land was ever given to the people. In the absence of ownership document, the land could not be mortgaged for loans by banks and other financial institutions. Further, it was not possible for farmers to give their land on long term lease besides facing hurdles during payment of land compensations which made them land owning poor as they couldn't unleash the true potential of the land they owned. (*Hill Times* 2018)

Interestingly, the official statement acknowledges the fact that the local communities face “hurdles during payment of land compensations” by development agencies. Thereby, it indirectly underscores the aim of the act to facilitate the process of land acquisition for development projects, even though the state witnessed vehement protests against such aggressive mode of development in recent times (Sharma 2018). The official press note further stated that it would go a long way in bringing development to the hill state, which is largely dependent on union government developmental funds. It said,

With this legislation, huge investments from outside is expected, which will augment

the economy of the state. Besides, the land can now be mortgaged for obtaining loans from banks as the formal channels of credit has been opened. This move will also help in containing rampant unregulated money lending system presently prevalent in the state which rendered people vulnerable at the hands of money lenders. (*Hill Times* 2018)

The government thus claims that the act will go a long way in fulfilling the genuine aspirations of the people as well as in bringing desired capital to the state for holistic and inclusive development (*Northeast Today* 2018). The celebration for the ability to mortgage tribal land that has been constitutionally protected, to banks and other financial institutions to receive loans is a puzzling phenomenon, for it is not clear why and for what purpose the local communities need such loans. The proposed reason for such need to monetise land is that it will help unemployed, educated indigenous youths to venture as entrepreneurs. This again betrays another failure of the state, that is, to provide employment to its educated youths. It is unclear as to why tribal youths from Arunachal Pradesh are pushed to mortgage their lands to become entrepreneurs.

This act reminds one of a similar land amendment bill in Manipur—the Manipur Land Revenue and Land Reforms (Seventh Amendment Bill), 2015. But unlike the celebratory tone as witnessed in the case of the APLS&RA Act, this bill along with two other bills, the Protection of Manipur Peoples Bill, 2015, and the Manipur Shops and Establishments (Second Amendment) Bill, 2015, created massive uproar and opposition in the hill districts of Manipur (*Morung Express* 2015). Those who protested against the bill saw it as a means to facilitate transfer of tribal land in the hill areas to the predominantly non-tribal inhabitants of the Imphal valley. These three bills that the Manipur legislative assembly passed in a similar quiet manner are still in a limbo, as the opposition against them in the hill areas continues.

However, gradually there seems to be an awakening about the act in Arunachal Pradesh. On 1 September 2018, a one-day state-level workshop-cum-awareness programme on land laws of Arunachal Pradesh and indigenous tribal rights was

organised in Itanagar.¹ The programme witnessed participation from various civil society organisations, government officials, activists and scholars, among others. While some participants were buoyant about the act, by and large, others expressed serious concerns about the provision in the act that facilitates long-term lease of the land for big and small ventures.

Jarjum Ete, the former chairperson of Arunachal Pradesh State Commission for Women, criticised the act and pointed out that while in the state women are not allowed to inherit land according to customary practices, now the act poses to hand over tribal land to outsiders for decades. Walter Fernandes, a well-known expert on the region, explained that in Arunachal Pradesh the situation of de facto community ownership of land has created difficulties in its acquisition by the government for various infrastructure projects. The state has failed to take cognisance of the demand by the communities for recognising their customary rights. Sunil Mow, an advocate, alleged that the various land regulation acts in Arunachal Pradesh, on the one hand, promise protective isolation and, on the other, make the indigenous communities practically landless.

Close on the heels of the workshop, the Arunachal Pradesh Congress Committee opposed the act as “oppressive and anti-people,” months after it was passed in the legislative assembly. The Congress urged the people of the state to not comply with the act and “refrain from paying revenue till the rate of land revenue decreases to payable amount.” It claimed that the public were “not kept in light” before passing the amendment bill in the assembly, and condemned the state’s Bharatiya Janata Party government for “conspiring against the common mass and poor people of the state in the pretext of APLS&RA Act 2018” (*Arunachal Times* 2018a).

The People’s Party of Arunachal also expressed serious concern over the act saying it would have a detrimental effect on the people of the state. In its statement, it says that because of the provision of long-term lease of land, “rich outsiders can become indirect owners of

our state. It is harmful for our future generations as we Arunachalis are innocent and can be duped by the misuse of this Act.” The party also argued that “the public should have been kept in light before passing this amendment bill in the assembly.” It described the secrecy and quietness under which this amendment had been passed as “intriguing” (*Arunachal Times* 2018b).

Fissures in Public Opinion

Strikingly, civil society groups in Arunachal Pradesh are not in union about the intent and possible outcome of the said act. For example, the Forum for Siang Dialogue, which has been protesting against big dams in the Siang valley, is of the opinion that this act would help people economically and empower them to negotiate better with potential land acquirers. However, the Siang People’s Forum opposed the legislation arguing that it would lead to more dispossession of the tribal people. Importantly, it raises the point that everyone will not be able to pay for the registration of land for individual ownership. The land without registration, it argues, will be declared as unclassified forests that the government will take over and then transfer such land for the construction of big dams (Saikia 2018).

The new act apparently gives a sense of empowerment to the tribal people by giving them individual ownership rights, but accessing of these rights by the common people will be extremely difficult. The act then might become an instrument to turn the community land into state property, facilitating the handing over of such land for various predatory developmental projects.

The provision for allowing mortgaging of land for bank loan also does not bode well, looking at the experience of other tribal societies. Finally, the 66 years of lease of land to outsiders might prove to be a death blow to the existing traditional land relations of Arunachal Pradesh. At a time when there has been rapid transformation in the traditional social systems of the tribal communities in the region leading to their dispossession from the traditional resources and livelihoods, the recent land amendment act only poses to further accentuate this process.

NOTE

- 1 It was organised by the Arunachal Pradesh State Legal Services Authority, in collaboration with the Association for the Welfare of the Scheduled Tribes of Arunachal Pradesh and the Athu-Popo Social Foundation, a non-governmental organisation, to discuss this new law. (One of the authors of this article attended the workshop and was a witness to the deliberations.)

REFERENCES

- Arunachal Times* (2018a): “APCC Terms New Land Act Oppressive and Anti-People,” 21 September, <https://arunachaltimes.in/index.php/2018/09/21/apcc-terms-new-land-act-oppressive-and-anti-people/>.
- (2018b): “New Land Act Will Be Detrimental-PPA,” 26 May, <https://arunachaltimes.in/index.php/2018/05/26/new-land-act-will-be-detrimental-ppa>.
- Baruah, Sanjib (2005): *Durable Disorder: Understanding the Politics of Northeast India*, New Delhi: Oxford University Press.
- Choudhury, Dhrupad (2012): “Why Do Jhumias Jhum? Managing Changes in Shifting Cultivation Areas in the Uplands of Northeastern India,” *Agriculture and a Changing Environment in Northeast India*, Sumi Krishna (ed), New Delhi: Routledge, pp 78–100.
- D’Costa, Anthony P and Achin Chakraborty (2017): *The Land Question in India: State, Dispossession, Capitalist Transition*, Oxford: Oxford University Press.
- Economic Times* (2018): “Government Names Nine New Smart Cities,” 18 January, <https://economictimes.indiatimes.com/news/economy/infrastructure/government-announces-names-of-nine-new-smart-cities-check-list-here/article-show/62569505.cms>.
- Gokhale, N A (2017): “India’s Uncompromising Stand Against China in the Himalayas Is Backed Up with Hard Power,” *Diplomat*, 31 July, <https://thediplomat.com/2017/07/indias-uncompromising-stand-against-china-in-the-himalayas-is-backed-up-with-hard-power/>.
- Hills Times* (2018): “Arunachal House Passes Historic Land Bill,” 13 March, <https://www.thehillstimes.in/regional/arunachal-house-passes-historic-land-bill-2018/>.
- Karna, M N (1990): *Peasant and Peasant Protests in India*, New Delhi: South Asian Books.
- Lepcha, Damien (2018): “Land Bill Hope for Progress,” *Telegraph*, 14 March, <https://www.telegraphindia.com/states/north-east/land-bill-hope-for-progress/cid/1444272>.

[telegraphindia.com/states/north-east/land-bill-hope-for-progress/cid/1444272](https://www.telegraphindia.com/states/north-east/land-bill-hope-for-progress/cid/1444272).

- Morning Express* (2015): “Manipur Assembly Passes Three Bills,” 31 August, <http://morningexpress.com/manipur-assembly-passes-three-bills/>.
- Mukhim, Patricia (2009): “Land Ownership among the Khasis of Meghalaya: A Gender Perspective,” *Land, People and Politics: Contest over Tribal Land in Northeast India*, Walter Fernandes and Sanjay Barbora (eds), Assam: North Eastern Social Research Centre and Copenhagen: International Work Group for Indigenous Affairs, pp 38–52.
- Northeast Today* (2018): “Arunachal Land Settlement and Records Amendment Bill Passed in Assembly,” 14 March, <https://www.northeast-today.in/arunachal-land-settlement-and-records-amendment-bill-passed-in-assembly/>.
- Parashar, Utpal (2016): “Arunachal Seeks More Security Personnel to Strengthen International Borders,” *Hindustan Times*, 12 October, <https://www.hindustantimes.com/india-news/arunachal-seeks-more-security-personnel-to-strengthen-international-borders/story-j7fWH-30dQImTnLQ7tVtUjJ.html>.
- (2018): “Arunachal Pradesh Confers Land Ownership Rights for the First Time to Indigenous People,” *Hindustan Times*, 14 March, <https://www.hindustantimes.com/india-news/arunachal-pradesh-confers-land-ownership-rights-for-the-first-time-to-indigenous-people/story-g9DztGjtGf18BO8O6SRCL.html>.
- Saikia, Arunabh (2018): “Arunachal Pradesh Gives Individuals Ownership of Land But Will They Really Benefit From It,” *Scroll*, 23 March, <https://scroll.in/article/872474/arunachal-pradesh-gives-individuals-ownership-of-land-but-will-they-really-benefit-from-it>.
- Sarap, Kailash (2017): “Erosion of Access to Resource, Poverty and Public Action in the Tribal Belt of Central India,” *Sociological Bulletin*, Vol 66, No 1, pp 22–41.
- Sharma, Chandan K (2001): “Assam: Tribal Land Alienation: Government’s Role,” *Economic & Political Weekly*, Vol 36, No 52, pp 4791–95.
- (2016): “Immigration, Indigeneity and Identity: Bangladeshi Immigration Question in Assam,” *Unheeded Hinterland: Identity and Sovereignty in Northeast India*, Dilip Gogoi, New Delhi: Routledge, pp 91–113.
- (2018): “Dam, ‘Development’ and Popular Resistance in Northeast India,” *Sociological Bulletin*, Vol 67, No 3, pp 317–33.

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