CUSTOM, LAW AND THE BRITISH EMPIRE IN NORTHEAST INDIA: SELECT READING OF THE COLONIAL ARCHIVE

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Abstract

Globally, the historic 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 the most crucial component. Likewise, the experiences of colonialism are vast and varied in India in different layers of society and categories of native subjects as have been recorded in extant documents. In this larger canvas, this paper traces how 'law' became the prime apparatus in the process of colonial state formation in North-East India.

***Keywords*:** East India Company, colonialism, Hindu law, Muhammedan law, Tribal law, jurisprudence, custom, law.

"Law" evolved in colonial India through complex civilizational encounter. On the acquisition of direct administration of Bengal in the year 1772, the East India Company had to structure legal governance for the Hindu, Muslim and tribal/indigenous subjects. The early sovereigns proclaimed that the new government would retain traditional law for the native subjects in the civil and personal matters. The extant documents, however, unravel that the pre-colonial structures encountered serious challenges with the advent of the new rulers along with their ideology, motivations, vested interests and above all the imperatives towards formation of a colonial state. The proclamation of retaining traditional law for the native subjects was essentially a gesture to show that the new rulers had the intention to adopt moral rule for the native subjects.

"Law" was a prime instrument for the British rulers during the Empire building process in India. For the British, law or legal

governance was the more powerful instrument, no less than military operations, which solemnized the symbol of British sovereignty in the Indian soil. The formation of colonial law was driven by three imperatives: (a) control over resources – land, revenue, water, mineral, and others, (b) legitimate subordination of the native subjects, and (c) establish civilizational supremacy over the subject people. Thus, legal governance remained the most pressing engagement of the colonial officials since the foundational phase of the British Empire in India.

Indeed, law-making was not an easy task for the British rulers in India given the heterogeneous and pluralistic nature of the subject people in terms of ethnic composition, religion, culture and language. The imperial agents claimed that they retained the "traditional" law for the Hindus, Muslims and the tribal population in India in a systematic and coherent structure. The legal governance of the British Empire produced broadly three sets of "law": (a) Hindu law, (b) Muhammedan law and (c) tribal law. Those sets of law were subsequently termed as Anglo-Hindu Jurisprudence, Anglo-Muhammedan law and tribal customary law and became integral components of colonial governance in India. As is well known, the laws as structured and administered by the British formed the foundation of the postcolonial legal system in India. To elaborate it further, those sets of law were subsequently termed as Anglo-Hindu Jurisprudence, Anglo-Muhammedan law and tribal customary law and became integral components of colonial governance in India. The 'laws' as administered by the British formed the foundation of the postcolonial legal structure in India. However, the most significant aspect of legal formation is that colonial law was designed and constructed: (a) to facilitate the land revenue administration and to ensure maximum accrual of land revenue, (b) to ensure 'legitimate' subjugation of the native subjects. The motives, imperatives and considerations arising from the functional requirements as well as the ideological framework of the empire designed and shaped the colonial legal 'modernity'.

I have argued in my earlier work (Nandini Bhattacharya-Panda 2008) that Hindu law was a British colonial invention. Hindu law was constructed or invented by the orientalist administrators/juridical ideologues on the basis of selective appropriation and manoeuvring of the millennium old classical tradition of the *Dharmaśāstras*. I reserve my comment on Muslim law as I am not an expert on the subject. In this paper, I will briefly focus on customary law on the basis of my current research on Northeast India.

North-East India in the Colonial Imagination

North-East India posed diverse critical challenges to the British sovereigns on account of disparity in geography, economy, polity, society, culture and most importantly the ethnic composition. Hinduism was the dominant faith of the people in mainland Assam while there had been numerous tribal communities in Assam as well. The elite and non-tribal population in Manipur followed Vaisnavism which had been counted as Hinduism. Rest of the North-East was primarily inhabited by the tribal population that had been great a source of concern for the imperial agents, especially because those people enjoyed traditional/customary rights over vast expanse of land and forests. The colonial enterprises such as plantation (especially tea plantation), mining, expropriation of natural resources like oil, timber and other forest products was practically impossible without bringing those communities under absolute control. Colonisation of North-East India since the middle of the 19th century started a new epoch in the cultural and material life of the people of the region.

For the colonial administrators in the North-East, they had two formidable concerns. In the first place, the entire region is situated alongside vast stretch of 'frontier' – to defend or expand. Secondly, the 'frontier' was inhabited by 'numerous savage races' as described by Alexander Mackenzie – a distinguished civil servant of the British Raj and the author of *The North East Frontier of India,* earlier published as *History of the Relations of the Government with the Hill Tribes of the North-East Frontier of Bengal* in 1884 (Mackenzie 1999). The early officials knew quite well that power of the gun was not enough to draw the tribal communities under sovereign authority who resisted the British sovereigns through the British rule on account of their displacement from land, forest as well as tradition and cultural memory – in sum, the "custom". The legal formation in North-East India was situated in this background. "Law" became an important component of the "frontier policy" (as defined by Mackenzie) of the colonial masters in the North-East.

It should be noted in this context that legal formation in the North-East or the entire tribal belt in British India had not been accomplished by juridical administrators such as William Jones, H. T. Colebrooke *et al* in Bengal or W. H. Macnaughten and J. H. Nelson in Madras. The law-givers in the tribal regions, more so in the North-East mostly held from the military background. Bradley-Birt, one of the leading administrators and ideologues of the British Raj in the 19th and 20th century who 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 (Bradley-Birt 1905: 15).

Other than the multi-tasking-valorous aspects of tribal law, its culture contour becomes clearly evident in the above passage. The legal formation in the North-East provides a classic example of how culture remained the prime instrument for the British rulers in dealing with the tradition and custom of the indigenous communities. In other words, tribal law was largely a byproduct of colonial anthropology.

The early administrators-cum-authors such as Pemberton, Mackenzie *et al* demarcated the region as a cultural and strategic space through repeated use of the terms such as "savage", "warlike" and "frontier" (Pemberton1835). There are myriad discourses produced during the colonial times to unfold the creation of the North-East "frontier" as an artificial cultural entity, primarily to fulfil the pragmatic agenda of the state. For example, Pemberton's discourse, produced in as early as 1835, was full of mountain passes, unnavigable rivers, dense forests and the indigenous inhabitants who were 'fierce and unconquered tribes'. (Pemberton, R. Boileau: 3) Mackenzie who produced his discourse in 1884 was more informed and articulate. It is not feasible to discuss in detail about the imperial interventions as portrayed in his discourse towards the socio-economic legal changes following the colonisation of Northeast. But this book sums up the vast colonial archive regarding the engagement of the imperial agents in North-East India. The next section will focus on sovereign, subjects, 'law' and the empire to briefly analyse how 'law' had been configured in North-East India. This section tries to locate the colonial imperatives behind the formation of 'law' in this region.

Sovereign, Subjects, 'Law' and the Empire

The British colonizers started taking active interest in North-East India around the beginning of the 19th century. The English East India Company, however, kept a watchful eye since the arrival in Bengal in the 18th century first as trader and then the sovereign ruler in 1772. For them, North-East India was a region comprising

lengthiest stretch of border with Burma (Myanmar), Nepal, Bhutan, Tibet and China with further scope for the expansion of territory and trade. It was also a land of rich natural and mineral resources with oil, coal, timber, water, minerals and other resources. The British found opportunity to be engaged with the political affairs in the North-East in the 18th century on invitation of the King of Manipur to extend support in the war with Burma. The East India Company 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 the interests.

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

For David Scott, the early but prime architect of British Empire in North-East India, the initial task was to lay down the foundation of the administrative, military and judicial structure for effective control over the people and the territory. In the initial stage, the Scott did not alter the judicial structure for Assam proper. The alterations had been introduced in stages with extension of territories over time. Initially, civil and criminal cases were dealt by a group of Assamese gentry called 'Panchayat' (two or three in each district). Later on, Captain White and Captain Neufville became both Magistrates and Judges although apparently they tried all the cases with the "assistance of Panchayats" (Report on the Administration of North-East 1921-22: 84). The Magistrates and Judges, however, referred 'heinous' cases to Scott, the Commissioner for final judgment (ibid). 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 had been 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.

The extant archive and Mackenzie also suggest that the East

India Company made similar experiment in Upper Assam because the authority in Fort William was "strongly averse to taking absolute possession of the province" (Mackenzie: 1999: 5) retaining "strong military control of this part of the frontier" (ibid). According to Mackenzie, the strong military control was necessary because "the Assamese princes were, however, mere worthless debauches" (ibid). The EIC, however, made an experiment in Upper Assam by placing Purandar Singh in the position of a "protected prince" whom they believed to be "morally and otherwise, the most eligible representative of the royal stock" (ibid). Purandar Singh was "guaranteed against invasion, and entrusted with uncontrolled civil power, on condition of his paying a tribute of Rs. 50,000 annually to the government" (Mackenzie 1999: 5-6). Mackenzie mentioned that this experiment "proved to be a failure, both generally and financially" (Mackenzie 1999: 6).

The experiments with the protégé native administration were bound to fail. The colonial masters cherished far-reaching investments in the North-East. Their designs were manifold: (a) establish direct control over all categories of land – rent-free, agricultural, fallow, waste etc, for extraction of maximum amount of land revenue and introduce plantation economy, especially tea and rubber as well; (b) bring the hills and forests under direct authority for expropriation of resources – water, mines, timber etc, and (c) bring the hill subjects under direct hegemony and build infrastructure such as roads, building, bridges etc for colonization of the region. Mackenzie mentioned that in October 1838, entire Upper Assam that included the vast expanse of hills and forests – the habitation of the tribal subjects "were placed under the direct management of the British officers, and Assam as a whole became a Non-Regulation Province of the Indian Empire" (ibid). Two points should be noted here. In the first place, colonial Assam in 1838 comprised the Naga Hills, the Lushai Hills, Garo Hills, Khasi and Jayantia Hills, the Mikir Hills, the Frontier Tracts and North Cachar Hills – later on extended up to Manipur and Tripura by the middle of the 19th century. Secondly, and more importantly, Assam was made a Non-Regulatory Zone which implies that the Constitutional law which had been enacted for rest of India was not applicable for Assam. The inhabitants of this region had been left under the arbitrary jurisdiction of the military officials.

In the very beginning, Scott and his team asked the authority for an extensive survey of the area under Company's control. Lieutenant Bedingfield undertook a provisional survey (mainly of the lands in

the plain in Lower Assam) in 1825-26. (Barooah 1970: 97-98). 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 which had ever been taxed by the Mughal rulers and Ahom kings although, as he claimed, made the assessment lighter than his predecessors (Barooah 1970: 98). 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, especially in the legal arena.

Two sets of examples will be presented here to analyse the process through which 'law' was constructed and implemented in the North-East. The first example relates to the settlement of land revenue with Durrang Rajah in Assam. The 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 summarizes: (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 Durrang Raja was a hereditary landowner who exercised control over a large estate. As it is evident from the extant documents, the Raja had sizeable portion of land and large number of revenue payers under his control. At the same time, the Rajah made endowment of land over time to different groups of his subjects under varied term with regard to payment of rent. The categories of endowment included *Lakheraj*, *Nishksarraj*, *Brahmottar*, *Debottar,* etc. Different categories of land had been brought under divergent assessment pattern. The documents clearly indicate that colonial rulers perceived the existence such large estates which have loyal subjects under their control as a threat to the newly established colonial foundation in North-East India. Equally important for them was to acquire control over major portion of Raja's land and its resources primarily through legal means.

The settlement of the land with the Raja was made in 1837 by the Commissioner of Assam in direct communication with the Government in Fort William (Assam Secretariat, Commissioner's Office, Revenue Department, 1859, file no. 30). The file contains lengthy correspondence on the right of the Raja to alienate his own property. It had been 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 (Assam Secretariat, Commissioner's Office, Letter No. 19, January 1839).

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 Rajas 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 (ibid, *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-year occupancy rights against the payment of a fixed sum. Significantly, such radical transformations occurred through establishment of colonial institutions[1] 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 rights evolved in 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* (John Locke, 1690). Locke's theory is rooted in his concept of 'law of nature' that permit individual to appropriate, exercise rights over, "things" in the world, such as land and other immoveable material resources to the extent that one's labour can utilize them. 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 briefly that the categories such as 'alienation' were not part of the discursive genre on 'property' in the Indian soil. In the classical *Dharmaśāstra* tradition, the terms such as 'property' and 'alienation' may be approximately close to terms such as *svatva* and *svāmitva*. But the Indian terms are by no means synonymous to the Western concepts. 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 (Bhattacharya-Panda 2008).

The British officials in Assam were anxious to secure greater share in the revenue/rent which is evident in the correspondence on Durrang Rajas and other landed families. The officials were keen to establish the huge arrears of revenue of the Durrang Raja and to sell a large portion of their property to realise revenue at higher rate (ibid; Assam Secretariat Commissioner's Office, file No. 02, 1833; Assam Secretariat Commissioner's office, File No. 01, Revenue Department, 1846). 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 Jenkins) 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 (Assam Secretariat, Commissioner's Office, File No. 30, 1859 (*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" (ibid, *emphasis mine*) The official further pleaded:

> ... this indulgence granted as it was on purely personal grounds to the Rajah and members of his family. Cannot 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 (ibid, *emphasis mine*).

It seems clear from the above passages that the British officials were ready to introduce certain *principle*s relating to land laws and those laws had to be transplanted from the Western categories and deployed 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 buyer was not left with any choice but to accept the legal terms in order to legitimize their claim over acquired property. The modality of legitimization 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 maximizing the revenue. "Alienation" had been the prime instrument to create fluidity in existing land holding pattern.

The British administrators throughout their rule adopted the strategy of labelling the precolonial regime as incompetent, worthless and tyrant. Similar strategy had been adopted to expropriate Durrang Raja's lands assigned to different groups of people on varied terms. A letter was sent to the Chief Secretary, stating that the Durrang Raja "befel the whole district" into "extortion and misrule" (Assam Secretariat, Commissioner's Office, Revenue Department, file no. 02, 1833). Captain Bugle wrote a statement justifying claim of the British rulers over the resources of the land. It had been stated that the British did "respect the rights" of the land holders in the soil (ibid). It was also pointed out that the British "did not conquer Assam from its inhabitants or native Govt. but from foreign invaders" (the Burmese) from whom the protection had been solicited" (ibid). He continued:

> 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 (ibid).

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 (ibid).

The last line in the above passage is quite significant. Contextually, the statement was in the context of Durrang Raja 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" (Dirks 2001: 11) 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 Dirks, the British sought to prove that:

> India had been unable to rule itself because its political system was commanded by grand but quarrelling 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 (Dirks 2001: 11).

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 pre-colonial rulers. This was an argument to establish their claim of a moral rule over the native subject. At the same time, the same regime had been claiming a 'price' for deploying army to protect the land. And the price the officials claimed was quite high in the sense that they wanted the right to make and break the extant structure – including "law" – in order to establish absolute "claims" over resources.

The colonial rulers explored varied methods to withdraw the privileges of the existing Raja 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 recommended, for any measure applied to these *Lakheraj* lands will be expected to be extended not only to these *Lakheraj* lands but to all *Burmootoor* and *Durmattar* lands which are now equally assessed (Assam Secretariat, Commissioner's Office, file no. 01, 1833).

It is evident that within seven years of occupation, the British agent drew their law to bring rent-free land under assessment. The officials also considered "money pension" in lieu of land as it was stated: "granting money pensions in lieu of land to the individuals now in question" (ibid). The proposal, however, required sizeable amount of money and thereby still under consideration in 1833 and also the officials apprehended resistance from the grant holders. 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 family in 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 (ibid).

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 the power and influence enjoyed by this group over the rent payers. The colonial officials also expressed anxiety about "perpetual changes of Chowdries and the number of estates that have been sold in satisfaction of the arrears of their collection" (ibid). At the same time, they realized (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 (ibid).

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 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* (ibid, *emphasis mine*).

It is clear from the above passage that British agent deployed "law" with 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 Durrang Raja and make a settlement favourable to the rulers. The British had 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. (Assam Secretariat, Commissioner's Office, File No. 01, 1833)

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 the Raja 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 to be 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) to 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" (ibid). 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 prerequisite to establish or dismiss one's claim over property. 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" (ibid). The official file contains euphoric expression with the clearing of the obstacles to maximise the volume of revenue and consolidation of the power, 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 (ibid).

It is even more significant that with this arrangement, as the officials exclaimed that "half of the waste would become the property of the *state*". (*ibid, Emphasis mine*). 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 realize the arrears (ibid, *emphasis mine*) 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. The "state" is founded upon three branches of governance – executive, legislative and juridical. After the military conquest, their claims of founding the "state" in North-East India had been emphasized over and again even in the early years.

In the next section I will briefly talk about how the colonial masters in Northeast India dispensed 'fair and impartial administration of justice' to the 'inferior' 'warlike' and 'savage' tribal subjects.

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

The British officials in the North-East 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". This proclamation thus raises a critical question: could custom be made law without those having been made so? It leads to the second question: what was the passage of transformation from "custom" to "customary law"? 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 North-East; 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 ensued following the advent of the British.

In sum, the passage of introduction of colonial law in the hilly North-East is violent and complex. It is difficult to narrate the process from the vast archive. Therefore, the paper focuses on Mackenzie's book. Mackenzie chronicled the British conquest of Northeast India. It was though his narrative North-East entered into 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 dissolved 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" (Mackenzie 1999: 7).

The word "encroachment" is contextually poignant as it symbolized 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, (*ibid*) and (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" (Mackenzie 1999: 8). 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" (Mackenzie 1999: 7). 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" (ibid).

Mackenzie cited examples of the "success" of "fair and liberal" policy of the British towards the tribal subjects. Those examples may as well be glaring instances 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. (Mackenzie 1999: 24) The Deputy Commissioner of Durrung was in charge of watching the activities of "hillmen" come down in plains to trade and graze cattle. Sir G. Campbell recommended that this right should be given to them not "as a right" but "as a privilege" as a "valuable means of securing their good behaviour" (Mackenzie 1999: 24-25). 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. (ibid: 24, Cited from *Political Proceedings*, 25th June 1857, Nos. 305-7; 19th May, 1859, Nos. 6-7; June 1860, Nos. 55-56)

The third clause in that agreement is most important to understand the modus operandi of drawing the tribal subjects under the British legal system and thereby the process of legal formation in North-East India. Also, the clauses do not indicate that the British allowed their tribal subjects to retain their traditional practice 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, the 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 (Mackenzie 1999: 25). 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 the views of G. Campbell which stated: "Many Duphlas have settled as colonists in our territories and a few occasionally work on tea gardens" (Mackenzie 1999: 31). Thus was the irony of history that the colonisers of North-East – the land of the indigenous inhabitants – describing the original inhabitants as "colonists".

Administration of law and justice for the tribal subjects had been a persistent source of concern for the British sovereigns in the North-East. 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 (ibid, cited from *Political Proceedings*: June 1871: No. 28: 30).

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 North-East India was essentially based on fluidity and arbitrariness and "customary law" was product of this fluidity and arbitrariness.

To sum up, the legal formation in North-East India had been accomplished primarily through culturisation 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 colonisation formed the foundation of postcolonial legal system in North-East India. Contemporary legal governance in the North-East 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 North-East India in different layers as a direct legacy of the colonial legal governance. I would argue that the policies and measures of the postcolonial state in the North-East (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.

Note

1. These institutions may also refer to Collector's/Magistrate's order as well as formal courts of judicature.

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