

**CONSTITUTIONAL POSITION OF LAND AND
MINERAL OWNERSHIP IN THE KHASI
HILLS OF MEGHALAYA**

ABSTRACT

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CONSTITUTIONAL POSITION OF LAND AND MINERAL OWNERSHIP IN THE
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[ABSTRACT]

To a Khasi, land has both a religious and secular meaning. This is manifested in his deep attachment to land since it belongs to him and has always fought for it. It was rightly remarked that any act of their displacement would amount to exterminating the community as a whole. This attachment that the Khasis and other tribal people have about their land was well understood even by Jawaharlal Nehru when in his Panshila said that, "Tribal rights in land and forests should be respected". It has been the sentiment of the people that the Khasis are what they are because land belongs to the people and they are its owners. According to the Report on the Administration of North East India (1921-22), "No quarrels have been more enduring or more bitter among these people than those relating to land". However, the concept of land has undergone a number of interpretations due to lack of codification of land laws, the accuracy to define ownership and its traditional significance.

It was in this line that the Constituent Assembly thought it proper that the treatment of land and minerals of

the tribal people living in these hills should be given a special attention by incorporating the Sixth Schedule to the Constitution of India. However, though the Constitution has provided enough safeguards for land and minerals in the Khasi Hills, yet the District Council and the State Government found it important to articulate various measures by enacting several legislations. Further, in the previous years, there had been a lot of controversies with regard to the Cess on Minerals. This matter was brought to the floor of the Meghalaya Legislative Assembly which was ultimately passed.

Land and minerals in the Khasi Hills have been an important subject and it has come up not only in the State Legislature but also in the Court of law. The most important court case being the legal Notice under section 80 C.P.C. filed by the Nongkhlaw Rngi clan against the Union of India and the Government of Meghalaya, seeking their vacation from pillars 11 to 21 in Shillong, since the lease of the areas have expired.

OBJECTIVE

The study proposes to examine the Constitutional position as well as the concepts of land and mineral ownership in the Khasi Hills of Meghalaya. By a proper understanding of these concepts many of the controversies related

to the above can be solved. This study also proposes to take into account besides the traditional view on the Subject, the approaches and interpretations of the Court and also the Constitutional remedies provided by it.

It further proposes to study the evolution of the subject from the traditional to the modern time with a view of getting a proper understanding of the problem. It will also examine the problems and perspectives and arrive at findings on the subject.

METHODOLOGY

The methodology for data collection was divided into primary and secondary sources. The primary source was drawn from Government Acts, Rules, Regulations and Documents, Assembly debates, Press releases and hand-outs brought out by various organisations besides interviews conducted with persons well versed on the subject.

The secondary source was drawn from published and unpublished works, newspapers, magazines, journals and other printed materials.

An analysis of the subject was made taking into account the historical importance of the Constitutional position of land and mineral ownership in the area.

REVIEW OF LITERATURE

Literature on land and mineral ownership in the Khasi Hills have been very scanty. Some references to the subject were made by British authors in their reports and monographs on the Khasis. These references can be found in the books of C.U. Aitchison, A.J.M. Mills, B.C. Allen, P.R.T. Gardon and Keith Cantlie. Other books written on the subject include Rights of ownership of minerals in the Autonomous District by J.J.M. Nichols-Roy, Ka Riti ba la Buh da u Longshuwa-Manshuwa jong ka Ri Bhoi (Traditional land tenure system in the Bhoi areas) by Sngi Lyngdoh, Ka Ain U Khasi (Khasi Law) by T. Cajee, Land Relations in North-East India by B.B. Dutta and M.N. Karna (eds.), Ka Ain Sorkar bad ka Hok u Khasi halor ka Khyndew (Government Laws and the right of the Khasis over land) by S.E. Syiemlieh and R. Singh Syiemlieh, Ka Ain Jurib Khyndew (Land Survey Act) by Morning Star Sumer besides the Report of the Land Reforms Commission for Khasi Hills and the report of the symposium of the Hynniewtrep Endeavour Society (HES) on Ka Rukom bat khyndew ha ka bri u Hynniewtrep (land tenure system in the Khasi Hills). References to the subject are also found in a number of books and articles. However, all these works have been found to fall short of a comprehensive treatment on the subject.

CHAPTER - I: CONCEPTUAL FRAMEWORK

In this chapter, an attempt has been made to define the three important concepts of land, minerals and ownership, to state the problem, review literature written on the subject and also find out the dimension of the concept of land and mineral ownership in the Khasi Hills.

After going through the various Acts and Regulations passed by the Government from time to time and the judgments of the Court on the subject, it was found that:

Land includes any ground, soil or earth, such as, meadows, pastures, woods, waters, marshes and heath, houses and other buildings upon it; the air space above it and all mines and minerals beneath it. It includes anything fixed to the land; and growing trees and crops, except those which, broadly speaking, are produced by the labour of the year (Halsbury).

2. Minerals include all substances obtained or obtainable from the soil by underground working or surface working (Atomic Energy Act, 1962).

3. Ownership is a right over a determinate thing indefinite in point of user, unrestricted in point of disposition and unlimited in point of duration. Ownership consists of innumerable rights over property, of destruction, alteration and alienation, and of such rights

as conceived not as separately existing, but as merged in one general right of ownership (Halsbury).

Statement of the problem: The inability to clearly define the system of ownership has given rise to a number of problems such as codification of land laws in the Khasi Hills, industrialisation, alienation of land to the non-tribal people, the changing trend in land ownership, alienation of land to the Government and other agencies and the mining of minerals like the uranium.

CHAPTER -II : THE TRADITIONAL CONCEPT OF LAND AND MINERAL OWNERSHIP

In this chapter, an attempt has been made to study about the traditional system of land and mineral ownership in the Khasi Hills of Meghalaya. On investigation it was found that the concepts of land and mineral ownership, according to the Khasi tradition, is vested with the community and the individual. Hence, there are two main types of lands: Ka Ri Raid or community owned lands and Ka Ri Kynti or private owned land.

The Ri Raid lands are owned by the Hima (Syiemship), the Shnong(village) and the Kur(clan). There are different types of Raid lands. This type of land does

not belong to the Syiems as it was asserted by the British but to the people. No Syiems can alienate such lands, since the Syiem is not a territorial ruler but has the power to rule over the people in his Hima. However, the Syiem along with his Durbar, or the village Durbar or clan Durbar alone can administer such lands. In this Ri Raid land, people belonging to the Raid can occupy but with no heritable and transferable power.

Ri Kynti lands on the other hand, are private owned lands and the owners are in absolute possession of the land. They can sell, mortgage, lease or dispose of it in any manner that the owner deems fit and proper.

With regards to minerals, it may be pointed out that some of the important minerals such as coal, sillimanite, limestone, gold, silver and copper were extracted from times immemorial by the people in primitive ways. These minerals were used for trade purposes especially with the people of Sylhet. Minerals are situated either in the Ri Kynti or Ri Raid lands. This was an acknowledged fact even by the British in Political case No. 17 of 1925 and in the dispute between Gibson and Inglis. In these two cases we find that ownership of minerals in the Khasi Hills rests with the Raid if these minerals are found in the Raid lands and with the Ri Kynti owners if they are found in the Ri Kynti lands.

CHAPTER - III: THE ADVENT OF THE BRITISH AND ITS IMPACT ON LAND AND MINERAL RESOURCES

The British first came to the Khasi hills in 1826, when David Scott negotiated with Tirot Sing for the construction of a road from Assam to Sylhet through his territory. Later on, in 1829, Dewan Sing Syiem of Sohra Syiemship ceded land in Sohra in exchange for an equivalent in Sylhet. This treaty was entered by Dewan Sing with the British in his own capacity by-passing the durbar of the Hima. The Syiem of Sohra was the first in line to be won over by the British who conferred on him with a royal status, a concept which was alien to the people of the Khasi Hills. Later on, they took on lease the coal fields at Sohra in 1840 in lieu of the taxes from the British. It was during this time that the word patta first came to be used in matters related to land transactions in the Khasi Hills. Earlier, the concept of patta system was unknown and any act of sale, transfer, mortgage or lease was done verbally. This was one of the contributions that the British had on land and mineral ownership in the Khasi Hills. However, though the British acquired lands and mines, yet the ownership right vested with the owners of the land.

By the General Form of Agreement of 1867, the Syiems became alienated from their Durbar and their people when they claimed unoccupied lands which are Ri Raid lands

as their own. This again is contrary to the Khasi custom that a Syiem is not a territorial ruler.

However, the British also tried to prevent the alienation of land in the Khasi Hills by passing the Regulation V of 1873, popularly known as the Inner Line Regulation and earlier excluded the Khasi Hills from the purview of the Assam Land and Revenue Regulation of 1886. Prior to that in 1841, the Political Officer of the Khasi States was directed by the Government that "untill further instructions are issued, no land in Mylliem Syiemship outside the Shillong municipality and cantonements shall be transferred to the non-Khasis by sale or lease".

CHAPTER - IV: POST INDEPEDENT CONSTITUTIONAL POSITION RELATING TO LAND AND MINERAL RESOURCES

With the news that the British were to quit and that the Khasi Hills would form part of India, the leaders of the Khasi States and the British areas thought it fit that strategies should be worked out to preserve the traditional institutions in these hills. This resulted in the formation of the Khasi National Durbar and one of the greatest achievements of this durbar was the passing of Ka Ain Bri Khyndew ki Hima Khasi (Land laws in the Khasi States) in 1929. It was from this durbar that the Federation

of Khasi States emerged later on. The Federation of Khasi States signed the Standstill Agreement in 1947. In this agreement the subjects of excise, forests and lands were left under the exclusive control of the federation. Later on, the Instrument of Accession was signed by different States at different time. Here again the three subjects remained, as stated, in the Standstill Agreement.

The Khasi States Constitution Making Durbar which was inaugurated in 1949, in its resolution touched on the vital issues of land and minerals and emphatically stated that these should be preserved according to the traditions of the Khasis.

In the Constituent Assembly, during the discussion on the Sixth Schedule, the question of land ownership also figured prominently. It was incorporated in Paragraph 3(1)(a) of the Sixth Schedule.

The District Council in pursuance of paragraph 11 of the Sixth Schedule passed the United Khasi-Jaintia Hills District (Transfer of land) Act, 1953, which was declared ultra vires by the Supreme Court in the Sitimon Sawian vrs. The United Khasi-Jaintia Hills District. It also passed the United Khasi-Jaintia Hills District (land Revenue) Regulation, 1953, and the United Khasi-Jaintia Hills Autonomous District (management and Control of Forests) Act, 1958.

When the Autonomous State of Meghalaya came into being in 1970, legislation over land was provided to the Autonomous State under entry 17 of Part A and regulation of mines under Entry 22 in the Assam Re-organisation Act, 1969.

As a full fledged State, Meghalaya passed many important laws relating to land and minerals. These include the Meghalaya Transfer of Land (Regulation) Act, 1971; The Meghalaya Urban Areas Rent Control Act, 1972; The Urban Land (Ceiling and Regulation) Act, 1976; the Meghalaya Land and Revenue Act, 1972; The Meghalaya Land Survey and Records Preparation Act, 1980; the Meghalaya Removal of Restrictions on Use and Enjoyment of Land Act, 1980, and the Meghalaya Minerals Cess Act, 1988.

CHAPTER - V: PROBLEMS AND PERSPECTIVES

In the light of the above discussion, some problems have been identified to have come up from time to time. In this chapter, an attempt has been made to critically examine these problems and the perspective as well. These include codification of land laws, the patta system, influx and alienation of land, industrialisation and land ownership and the status of the Government lands.

CHAPTER VI : CONCLUSION

This chapter sums up the findings on the subject which include the following:

(1) Land, which includes minerals, is a much cherished subject, not only among the Khasis but the entire tribal people. The concept is connected with the traditional religious beliefs of the Khasis.

(2) The concept of Ri Raid land developed first and the concept of Ri Kynti land is a much later development.

(3) There is some kind of uniformity and universality in the entire Khasi Hills in matters related to land, though there are some local variations like the existence of Ri Seng in the war areas.

(4) With the advent of the British, the Syiems acquired a royal status and they were recognised as territorial rulers. In some cases, the Durbar Hima was completely side-lined by the Syiems in matters connected with the alienation of land.

(5) The patta system which was introduced by the British in 1840 became, later on, an official instrument for the lease, sale and mortgage of property. With this, a feudalistic element was introduced in the Khasi Hills and a number of organisations have demanded for its abolition.

(6) The Land Reforms Commission for Khasi Hills, in its recommendation has suggested the taking up of survey of the entire land and cadastral survey maps be prepared thereof. On the basis of this, it was suggested that a record of rights be prepared. This was protested by the people since it may affect the rights of the owners over land.

(7) After the post independent period, the Government has not brought out any comprehensive land laws in the Khasi Hills. Most of the laws relating to land and revenue collected are adopted from those made by the Assam Government. Hence, there is an urgent need to re-examine these Acts and to bring its own Acts in the proper or modified form.

(8) The codification of land laws in the Khasi Hills is also found to be quite an urgent necessity, where the traditional Durbars could have their rightful place. Moreover, the changing trend in society like the demand for equal distribution of property could be taken into account.

(9) There has been growing opposition to the acquisition of land by the Government, as this will lead to further alienation of tribal lands besides inviting more influx into the State. Moreover, the Government has deprived the owners of land of their rightful amount of compensation.

(10) The emerging elite has played an important part in matters relating to land and mineral ownership and also in undoing the plans of the feudalistic elements that started to crop up in the society especially with the introduction of the patta system. The Khasi National Durbar, other organisations like the Khasi Students Union (KSU), the Khasi-Jaintia Environment Protection Council (KJEPC), the Federation of Khasi Jaintia and Garo People (FKJGP) besides the various Durbar Shnongs have contributed much to highlight the various issues connected with land and mineral ownership. However, the emerging elite did not really manage to affect the constitutional position of land and mineral ownership in the Khasi Hills.