

# Land System of Arunachal Pradesh



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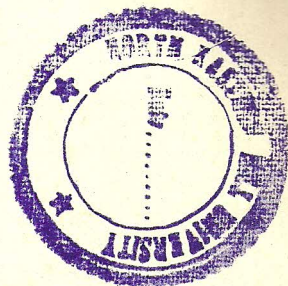
# Land System of Arunachal Pradesh

by  
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Gauhati High Court, Guwahati

and

The Indian Law Institute, New Delhi



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## Foreword

There is no written law on the land systems of Arunachal Pradesh, except the three Frontier Tracts Jhumland Regulations of 1947.<sup>1</sup> But the provisions of these Regulations, it is understood, are not generally in use. Yet, there are established customs and traditions on certain important aspects of rights over land among all the tribes. The Law Research Institute carried out a study of these customs and traditions.

The customs and traditions differ from tribe to tribe and from locality to locality. Yet there are general uniformities in most of the important matters throughout the entire Union Territory. The objective of the present study was first to study the customs and the facts in detail and then discover the uniformities which have the force of customary laws.

The research officers of the Law Research Institute, Gauhati, studied on the spot the land-rights prevalent among eleven major tribes. Methodology of study has been narrated in the introductory chapter of the report by the Director. In spite of many difficulties, however, a mass of valuable data has been collected, and presented as lucidly as possible in the body of the report.

It will be seen from these data that the usual rights over land are clear and well-established among most of the tribes. The elementary right over any land is the right of use and occupation.

If this right is enjoyed by any person undisturbed and continuously over a reasonably long period, the society regards his right as permanent ; and permanent right naturally becomes heritable. As the social commerce develops, this permanent and heritable right ripens into a property and it becomes an object of transfer too.

Now, in Arunachal Pradesh, there are tribes which practice only jhum (shifting) cultivation and nothing else, There the individual right over land is confined to the right of use and occupation only. But there are several important and forward-looking tribes, who practise sedentary cultivation on a massive scale. The Apa Tanis and the Khantis do only permanent cultivation and the Adis and the Mishmis, while practising jhum cultivation have evolved, in the course of centuries, a method of doing jhum cultivation in permanent, well-defined and well-demarcated plots, whereby they return exactly to the same plot at the end of each jhum cycle. Here the rights even over jhum land have become permanent, heritable and transferable.

There are, of course, some traditional restrictions on transfer to a non-tribal and an outsider. These restrictions have, through the ages, served as

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1. Balipara Frontier Tract Jhumland Regulation 1947; Sadiya Frontier Tract Jhumland Regulation, 1947; and Tirap Frontier Tract Jhumland Regulation, 1947.

valuable safeguards against disintegration of the traditional unity of particular tribes inhabiting particular localities.

Customary laws of inheritance of each tribe govern the passing of land at the death of the last owner. Throughout the entire Arunachal Pradesh, the system of inheritance is found to be patrilineal. The rules of primogeniture also prevail among two important tribes. It is interesting to find in the report how the rigours of primogeniture and the patrilineal system are being softened among some tribes by adoption of circuitous methods of disposition of landed property.

As far as is known to us, this study is the first of its kind where customary rights over land in Arunachal Pradesh have been gone into in details after visiting typical fields plot by plot, and it is our earnest hope that it will receive due attention from the elite and the public alike.

D. Pathak

Chief Justice, Gauhati High Court

&

Chairman of the Law Research Institute,  
Eastern Region, Gauhati High Court,  
Gauhati.

Dated Gauhati,  
the 11th July, 1983.

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The effective date of information of this book is July 1983. This, however, does not affect the main contents of the book.

—Editors

## Preface

This deceptively slender monograph marks a significant contribution to our understanding of India's rich juristic-traditions. The hegemonic Indian legal mind thinks of legal pluralism in India to be exhausted by the *shastras* and the *sharia'h*; this study should help us interrogate this facile assumption. The monograph should also help the liberation of Indian legal consciousness from the constricted belief that what makes Indian law interesting is its interaction with the dominant traditions of the Western jurisprudence. Indeed, in so many ways the land system of Arunachal Pradesh, depicted here so richly, suggests that our legal heritage transcends the Anglo-American traditions. In many ways, this work should enable us to launch a new disciplinary undertaking : namely, a comparative jurisprudence of the Indian law itself.

The system of rights in land among the various ethnic groups in Arunachal is fascinatingly complex. Preeminently, land is not a commodity in the market overt, though transfer of interests, mostly by way of gift, within the group is not unknown. In a sense, the jhum cultivation system would seem not to encourage customary property rights in the cultivable plots of land. But the study demonstrates an extraordinary diversity. While the Nishis and the Hill Miris do not recognize a right in the first cultivator to cultivate the same plot of land at the end of a shifting cultivation cycle, the Adi system reserves such rights; ".....in its orbits of plots, the family moves on generation after generation." Among the Adis "the cultivation shifts, but not the plots."

Considerable diversity of jural relations also characterize the homestead rights. In the Hill Miri villages, for example, abandonment of a homesite allows another occupant full rights; in the Adi system the rights are not extinguished, but only put in abeyance, by abandonment. Heritability, not transferability, is the key feature of homestead rights; and for most groups, the village chiefs and councils retain power to allocate and re-allocate rights.

The complexity of jural relations is further augmented when we find that these rights, both in plots and homestead, are eminently recordable (being well demarcated and otherwise easily identifiable) and yet no formal record of rights exists. The study recommends the preparation of record of rights and suggests, contrary to common assumption, that the Arunachal tribal groups will be cooperative in such a venture. The deeper question, of course, concerns the very need and rationale for a record of rights, which carries the potential for bureaucratizing a system of jural and social relations which has, over millenia, survived and prospered without such devices.

The expansion of credit by the nationalized banks seems to support the plea for record of rights. But the problem here seems deeper because customary law does not allow mortgage of lands or homesteads and the banks do not seem to accept as "high class security" the word of the village or the clan or the chief as to the ownership of land; nor does the pledging of moveables quite satisfy the bank's notion of security. Surely, if a choice is to be made between changes in banking procedures and a process whereby the customary law of the people is to be extinguished, one would expect the more versatile "modern" banking systems to find more imaginative ways of solving their problem. To allow sale of lands by way of recovery of bank credit would most certainly destroy the fine and complex customary regimes, besides (as the study alerts us) abrogating a custom which "would result in exploitation" by non-tribals of the tribals.

Although the important domain of rights over forests is not the central focus of this study, it does indicate the need not to disturb the existing customary regimes under which all forest, and forest produce, belong to the people. The Apa Tanis, for example, through their "All Forest Preservation Committee" claim royalty on all forest produce removed even by the license-holders from the forest department. The relevant regulations do not, of course, recognize any such right in the people and insofar as they recognize the jhum land cultivators having rights to access to forest produce it is a limited recognition, not extending to its sale or transfer.

The British, naturally, extinguished in theory all rights of the people in forests but as a practical policy posed not to intervene in the existence and assertion of customary rights. The successor independent India's administration maintains virtually the same policy. However, the question must be raised whether the Indian State is at all justified in claiming absolute sovereign rights over forests or lands, a gesture which only benefited the colonial power. The Anchal Forest Reserve (Constitution and Maintenance) Act, 1975, which fosters people's participation in forest management (pp. 164-165) provides a salutary model of, what might be called, condominium rights of people and government over forests, and suggests on a model of how respect for tribal culture can be fostered throughout India.

Authoritative exposition of customary law is a daunting task, even for well-trained anthropologists. There is always a danger of stabilizing in verbal formulae highly complex, fluid and dynamic pattern of belief-behaviour nexus; or, the danger of facile positivation of the norms. What then becomes projected as customary law, very often tends to deprive the very people whose 'law' it is, of the richness of their own tradition and makes possible its cultural invasion by the "mainstream" law. This monograph, on the whole, avoids these dangers. It remains important that it be also so read.

## **Acknowledgements**

The Institute is grateful to the Law Research Institute, Eastern Region, Gauhati High Court, for the preparation of this study. The authors of this painstaking study were patient beyond measure as the publication of this monograph took more than usual time for processing.

Professor Roy Burman was generous with his time and sage counsel on the manuscript. He made a number of valuable suggestions which the authors found useful.

Associate Professor Kusum, willingly shouldered editorial responsibilities for the final text of this work and she ensured fairly expeditious publication. Professor P.M. Bakshi was kind enough to assist us in the editing of the earlier version of the text.

## Introduction

This study was undertaken in pursuance of a scheme sanctioned by the North Eastern Council vide No. NEPF/74/81-82/16 dated 5-5-81. There is no written law on the land systems of Arunachal Pradesh except three Jhumland Regulations of 1947, and the entire system is based on customary laws of the tribes. The customs differ from tribe to tribe and from locality to locality. There are about 110 tribes in Arunachal Pradesh and it is not possible to study the customs in respect of all of them. There are about 19 major tribes whose customs about rights over land are considered to be representative of the major part of Arunachal Pradesh territories. Out of these major tribes we selected 11 in order of their population and importance after consultation with high officials and public men of Arunachal Pradesh. These eleven tribes are (1) the Nishis, (2) the Apa Tanis, (3) the Hill Miris, (4) the Idu Mishmis, (8) the Miju Mishmis, (9) the Digaru Mishmis, (10) the Khamtis and (11) the Noctes. The villages inhabited by them were listed from the census reports of 1971 and at least one cluster of villages was selected for each tribe.\* A list of the selected tribes, their population and the respective village clusters is given in Appendix I.

Of the eleven tribes selected for field studies, some were found, in the course of our studies, to have almost identical customs on land system with minor variations on unimportant items. Such tribes were grouped together for the purpose of our studies. There were two such groups—(1) the Adi group—consisting of Gallongs, Minyongs and Padams, and (2) the Mishmi group—consisting of Idu, Miju and Digaru Mishmis. The remaining tribes were taken individually.

The chapters are arranged in the following order in conformity with the geographical sequence from west to east. (1) The Nishis, (2) The Apa Tanis, (3) The Hill Miris, (4) The Adis, (5) The Mishmis, (6) The Khamtis and (7) The Noctes.

We regret that, in spite of our earnest desire to visit the Monpa areas, we could not do so due to limitation of time and other constraints.

The actual methods followed in collecting primary data were (1) plot-to-plot visit in selected fields, (2) interviews with key-persons and (3) group-discussions with different categories of persons including officials.

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\* Method of study of cluster of villages was adopted in Arunachal Pradesh in the Credit Plan Study of State Bank of India. Prof. Lionel Caplan adopted the cluster-study method when he was investigating the land-system of East Nepal. (Vide his "Land and Social Change in East Nepal").

Plot to lot visits in selected fields were carried on by Director and Research Officers. Standing on a plot of land, along with the villagers, we traced its genesis and history which helped to throw light on the mode of acquisition of initial right, its transmission by inheritance or transfer, restrictions on alienation, and so on. We recorded : (a) the name of the occupant and the area occupied as far as possible, (b) how he came to occupy it (i.e. whether by jungle clearing, inheritance or transfer), (c) if by jungle clearing then, whether permission from anybody was taken, (d) if by right of inheritance, then from whom, and what was the customary law of inheritance, and if there was any deviation from that law, then what was the justification, (e) if by transfer, then from whom, and at what price, whether any transfer document was executed, and whether there was any restriction on transfer, (f) if it was jhum plot, then what was the period of consecutive cultivation and period of rest, and whether the jhumia returned exactly to the same plot after the jhum cycle, (g) whether the plots were demarcated and identifiable, and if so whether they could be surveyed and mapped, and so on.

In addition to the direct plot-study as mentioned above, key-persons of the village, such as village headmen, members of Anchal Samitis and Gaon Panchayats, were interviewed. Then, further group-discussions were held with the leaders of the village and officials wherever available.

Land dispute case records, wherever available were examined with a view to ascertaining the rights over land, in confirmation of the findings of the plot-studies. Loan documents in banks were also looked into to determine the nature of right or of property mortgaged. Other documents consulted include various government reports, proceedings, regulations, circulars, statements, etc.

We hope that the results of the study presented in the following chapters will give a correct and fairly representative picture of the land-system prevailing in the Union Territory. They cover findings on "ownership tenure, alienation, succession, use, survey and settlement, and preparation of land records" which were mentioned as the object of this study in the N.E.C's note attached to the letter sanctioning the scheme. In the two concluding chapters, we have pointed out the general uniformities of the various features of the land systems prevailing among the different tribes studied.

We take this opportunity to express our sincere thanks to all those who helped us in collecting the various data. We are particularly grateful to the officers of all ranks belonging to the Government of Arunachal Pradesh, without whose collaboration and assistance in all forms (transport, accommodation and interpretation, to mention only a few) it would have been absolutely impossible for us to carry on this study. We also convey our respect to Chief Minister Sri Gegong Apong, and Ex-Chief Secretary, Sri R.K. Patir whose guidance at the very beginning of the field-study was of invaluable help. We find no adequate words to express

our gratitude also to the local leaders at each place who not only clarified numerous knotty points faced during the investigations but helped us solidily in establishing an easy rapport with the villagers. For want of space it is not possible to name them all, but certain names such as those of Sarvashri Gora Parten, Ite, Pulu, Tomo Riba, Tumpak Ete, Doken Ete, Kuru Hasang, Padi Yube, Lod Koji, C.K. Gohain, C.K. Manpung, Nokma Nemati, Rajkumar Wangmai, Wankop Lowang, late Oken Lego and host of others cannot be disassociated from this report. Lastly, but not the least, our thanks go to the countless villagers who replied to our queries ungrudgingly and arranged for our comforts in difficult journeys, and whose open hearted hospitality cannot be described in words.

J.N. Das  
Director

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