

Land in the Hills of North-east India: Factor Immobility Vs. Market-led Growth

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Introduction

Unlike the other factors, land-markets are subject to various degrees of imperfections. Besides the codified land laws promulgated by the law making bodies that govern the transfer of land from one individual to another, customary laws, which vary from community to community, also exerts significant influences in matters of ownership and transfer of land. Moreover, the customs that govern the rights of the individuals over land in a community also keep on changing with the internal dynamics of change in a particular society. Further, these changes in customary practices do not take place in a uniform pattern. They are not readily recognized and accepted by all sections of a society. These changes, on becoming pronouncedly dominant, are codified and made a part of the legal framework. The complete conversion of the customary practices into codified legal system takes ages. Until the two converge, the land-market suffers from various degrees of imperfections.

Much of these imperfections arise out of the complex attributes that are associated with the notion of land. Land is not only viewed as a means of production, as an asset, as a source of livelihood, but also as a "living space".

Land as a Means of Production: The Commodity View

As a means of production, land is considered to be an asset that generates income. The possession of a plot of land enhances the economic empowerment of the possessor. However, the value of a plot of land depends upon its location, fertility as well as the nature of individual rights upon it. While the theories of location and theories of production elaborately analyse the importance of the first two factors respectively in determining the value of land, our concern here is the third factor, i.e., the nature of individual rights over land.

Besides using the land directly for cultivation, it can also be used as a collateral security. In fact, land is the only immovable property that the people of rural areas possess. If need arises, an individual may mortgage the property and mobilize resources. If he is not in a position to use the land optimally, he may lease it out and earn rent. The land owner may choose the option of giving his land to others and thereby get back a share of the produce of his land. He may go for outright sale of either a part or whole of his land. An individual can enjoy all these options to his benefit only when his right over land is duly recorded and fully recognized by law. In fact, clearly demarcated, legally recognized and well-spelt-out individual rights over land add more value to the landed property.

The individual right over land is said to be fully mature when besides (?)usufructuary rights; he also enjoys heritable and transferable rights. Like any other commodity, when land is also sold and purchased freely without any hindrances, land-market is considered as perfect. Thus, fully mature individual rights over land can only guarantee the existence of a perfect land-market. The perfect land-market, in turn, ensures the optimal use of land as a means of production. It also maximizes the asset value of land.

Land as Homeland: The Living Space View

The commodity approach towards land, however, does not take into consideration the human passions associated with land. People look at land as their holy birthplace, the place that carries the memories of their ancestors, the place which will shelter their descendants. In short, the individuals, as part of the collectivity,

identify themselves with a place and consider the place as their homeland. Unless the right of others over the land of a community is denied, the community cannot ensure its monopoly rights and its identity will remain exposed to external threats.

As land is listed under state subjects, there are instances of legal provisions which restrict the transfer of land from one community to another. These restrictions are further strengthened by the prevailing customary practices which even debar inter-clan transfer of land. Thus, the living space approach towards land severely reduces the size of the land market. However, besides outright sale, transfer of land may also take place through lease. A well-spelt-out land lease market can ensure the optimum use of land as a factor of production as well as can maximize the asset value of land on the one hand and accommodate the living space concerns of the community on the other.

Land as a Scarce Good: The "Social Justice" View

It is needless to mention that the supply of land is fixed globally. Historically emerged national as well as communitarian homeland boundaries are also well demarcated and one may assume these territorial boundaries as given, unless the process of nation and community formations integrate/assimilate other socio-cultural spaces. Given the fixed territorial spaces, it is realized that the operation of perfect land-market may not ensure social justice in the sense that land may get concentrated in the hands of a few, depriving vast majority of the people in a society. If purchasing power is allowed to operate freely in the land-market, then the well-to-do section will grab the precious land depriving the under privileged. It is this concern for social justice that has led to the introduction of land ceiling almost in all the countries. The same concern has also worked behind the abolition of intermediaries in land.

Thus, the land-market is subject to these social constraints. While these social concerns are, no doubt, important, the existence of a rule governed land-market is also equally important for the material well being of the members of a society. Fully mature individual rights over land and well structured land-markets not only widen the options to the land owner, they facilitate the flow of credit in agriculture and hence agricultural growth as well.

Besides agriculture, land is also critically important for industrial and infrastructure growth. In fact, the existence of a rule governed land-market is a sine qua non for overall economic growth.

Keeping these general observations in mind, we shall take stock of the status of individual rights over land and emerging land-markets in the hills of north-east India.

II

Property Rights and Land Market in Mizoram

Following the enactment of "The Assam Lushai Hills District (Acquisition of Chief's Rights) Act, 1954", the state has acquired all rights over land in Mizoram. The P S of allotment of the state's land has, however, been vested in the District Councils. District Councils allot lands to individuals groups. Without such allotment-by the District Councils, no individual has any right to occupy any land.

Land in Mizoram is classified into two categories, viz., farm land and non-farm land. Let us first consider the non-farm land which constitutes of house-sites and trade-sites. Allotment of this category of land is done in two ways, either by issuing pass or by issuing land settlement certificate. A pass holder has no right beyond the right of use for the period for which the pass is given. A settlement holder has heritable and transferable rights including the right to sublet his land.

The farm land may be divided into two categories depending on the mode of farming, i.e., land under permanent cultivation and jhum land. Land under permanent cultivation is regulated by the agricultural land acts, for instance, The Mizo District (Land Revenue) Act, 1956; The Mizo District (Agricultural Land) Act, 1963; The Mizoram (Land and Revenue) Rules, 1967; The Mizo District (Agricultural Land) Ruies,1971. Before the enactment of "The Mizo District (Agricultural Land) Act, 1963, farm land used to be allotted through either Pass or Permit. The 1963 Act provides for the issue of Patta and the arrangement for the conversion of all previously issued Passes or Permits into Pattas. All Patta holders enjoy heritable and transferable rights over land.

The Mizo District (Agricultural Land) Rules, 1971, provides "periodic patta" for 5 years which is renewable at the end of the

period. However, the periodic patta holders do not enjoy the rights that are enjoyed by the patta holders.

For understanding the size of the land market in Mizoram, it is important to have data on areas under land settlement certificates as well as under patta as these two categories of land holders enjoy the complete rights over their land. However, the collection of such data from the concerned government departments requires a separate effort. The data collected by The Law Research Institute way back in 1986¹ relate to the period 1972–85 and that also only for the Mizo Autonomous District which includes both Aizwal and Lunglei administrative districts revealed that the number of the pass holders far outweigh the number of settlement holders who were holding land under permanent cultivation. This exhibits that inspite of legal provisions, the size of the land market is rather narrow as far as agricultural land is concerned. However, the study² observed a completely different situation in case of house and trade sites where settlement holders far outweigh the pass holders, indicating a fast growth of urban land market.

Although the settlement holders and patta holders enjoy heritable and transferable rights, the right to transfer is subject to "The Mizo District (Transfer of Land) Act 1963", which does not generally allow any transfer to non-tribals.

While about 55 per cent of total crop land is under permanent cultivation, another 45 per cent is under jhum cultivation. The method of selection of jhum plots in Mizorain does not allow a jhumia to come back to the original plot at the end of the jhum cycle. The jhumblock is divided into a number of plots, and each plot carries a number for its identification. By the method of casting lots, every jhumia gets the plot corresponding to the number he has drawn. In some villages, the number drawn only corresponds preferences. That is to say, if a man happens to draw the No. 1, he acquires the first preference to select any plot which he considers the best, the man who draws number two will get the next preference and so on. Since a jhumia does not return to the original plot that he had cultivated earlier, at the end of the jhum cycle no heritable and transferable rights could emerge.

Thus, the marketable land in Mizoram consists of house sites and trade sites allocated under land settlement certificates and land under permanent cultivation allocated under patta. As it has

already been pointed out that not many pattas have been issued, marketable land is basically concentrated in urban areas where a considerable number of land settlement certificates have, been issued. Further, the land market is limited to the sphere of inter tribal exchange.

Property Rights and the Land-Market in Meghalaya

Unlike Mizoram, Meghalaya does not have any comprehensive legislation in relation to the basic rights over land. Individual rights over land are regulated by customary laws. Although the customary practices among the Khasis and Jaintias bear much resemblance, the same among the Garos are totally different. Let us first consider the case of the Garos.

Customary Practices among the Garos

Land under the Garo Hills districts may conveniently be divided into two categories, viz., hill lands which approximately cover an area of 7697 sq. km., and plain lands that cover an area of 469 sq. km. While Garo customary laws are applicable in case of the hill lands, the plain lands are regulated as per the spirit of "The Assam Land and Revenue Regulation, 1886," although the said regulation is not directly applicable. However, we shall only consider the Hill lands here.

Hill lands may again be divided into two categories: farm and non-farm lands. In case of the non-farm lands that include both the house and trade sites, individuals generally enjoy the heritable right but customs do not allow them to transfer their lands. Farm lands may be categorized as land under permanent cultivation and land under jhum cultivation. In case of land under permanent cultivation including wet rice cultivation, orchard, plantation and horticulture, individuals enjoy permanent rights. District Council issues patta to this kind of land holders which is subject to the assessment of land revenue. The patta holders enjoy heritable and transferable rights over land.

However, the basic land system among the Garos revolves around the clan. All lands in the Hills are divided into A'kning land (clan land). The boundary of each A'kning land is distinctly demarcated, surveyed and registered. A'kning lands are gener-

ally devoted to jhum cultivation. The ultimate ownership of A'khing land lies with the clan and the Nokma (village headman) manages it on behalf of the clan. In Garo system of jhuming, a jhumia comes back to his original plot at the end of the jhum cycle. As a result, some sort of occupancy right has emerged. But the jhumia has no right to transfer the land. Transferable right emerges only when an individual brings the jhum land under permanent cultivation and acquires patta for the plot from the District Council. In such cases, the land goes out of A'khing land.

Law Research Institute (1990b) study observed that out of 7697 sq. km., of hill lands, 1322 plots of A'khing land cover an area of 7383 sq. km. It appears that the difference, i.e., 314 sq. km., may at best be under permanent cultivation. Thus, the size of the marketable land is not very significant.

Customary Practices among the Khasis

Lands in the Khasi hills are customarily divided into two categories, viz., Ri-Kynti land and Ri-Raid land. Ri-Kynti land is the clan land. With the passage of time, this land is divided among different sub-clans and then to different families. The process of conversion of Ri-Kynti land into family land appears to have already completed among the Khasis, leaving very little land under the control of the clans. Individual rights over such land that has come down the family from the clan have fully matured. Individuals enjoy heritable and transferable rights over such land which is as good as private property. Ri-Kynti land which is not yet divided, as in case of Ri-Kur, is controlled and managed by Durbar Kur (clan). The Durbar Kur has the authority to partition the Ri-Kynti land among the sub-clans or families. It is also competent to sell, lease out or otherwise transfer Ri-Kynti land to meet any emergent need of the clan.³ Although customary practices require that in case of partition or transfer, an individual needs to seek the consent of the Durbar Kur, this custom is increasingly falling into disuse.

Ri-Raid lands are community lands. Individuals can acquire land from Raid. Generally only usufructuary right is recognized over such lands. If the Raid land allocated to any individual is kept fallow for 3 or more years, then it reverts back to the community and some other person may occupy it. However,

permanent individual right on such land is established if an individual makes investment on it by either constructing houses or raising permanent crops or digging fish ponds. In such cases, individuals acquire permanent, heritable and transferable rights over such land. Ri-Raid lands get converted into Ri-Kynti lands after the change of three hands.

While Ri-Kynti lands are mostly owned individually irrespective of the mode of cultivation, i.e., jhum or permanent cultivation, where individual rights have matured fully, jhumias of Ri-Raid land usually enjoy only usufructuary rights as he returns to his own previous plot at the end of the jhum cycle. Law Research Institute (1990b) study observed that although the right of sale or mortgage of jhum land is not recognized by custom, transfer does take right place in a round about way. On payment of what is known as development cost of a plot of land, an individual can occupy the jhum plots originally cleared and cultivated by some other person.

Thus, both the Ri-Kynti and Ri-Raid lands are heritable and transferable, although right of transfer of Ri-Raid jhum lands is not yet firmly established. However, the transfer of land is subject to "The Meghalaya Transfer of Lands (Regulation) Act, 1971", which debar transfer of land to non-tribals. The living space approach of this Act has been strengthened further by customary practices. For example, clans like Kharkylla and Kharpran do not allow transfer of their land to persons belonging to other clans. Similarly, in the War area transfer is restricted to Khasis only.

In spite of these local restrictions, the size of land-market appears to be large enough compared to other hill states in the north-east. The Law Research Institute (1990b) study as well as other studies like Dutta (1981) has found large-scale land-lease market in Khasi hills. Both Ri-Kynti and Ri-Raid lands are given on lease. As the lease-market does not impinge upon the ownership rights of the sons of the soil, it is far larger in Meghalaya than the land-market per se. The world Agricultural Census, 1976-77, estimated the total leased area in Meghalaya at 22,930 hectare consisting of 13080 hectare of wholly leased and 9850 hectare of partly leased holdings. In spite of widespread practice of tenancy, there is no tenancy law in Meghalaya. Conditions of tenancy are governed by customary practices which vary from clan to clan and village to village. Except a few cases where the rights of the

tenants are protected by customs, there is no security for the tenants. They can be ejected at any time by the owners.

Thus, the customary practices have led to the growth of fully mature individual rights over land in Meghalaya. Unlike the Mizos where a ceiling has been set at 30 bighas, absence of any such ceiling in Meghalaya has led to the growth of intermediaries in land and a proliferated lease market. The growth of this land-market has added more value to land and positively impacted upon the state's agriculture which may be discerned from the existence of marketable surplus of agricultural produce. However, the emerging land-market needs to be disciplined for its smooth functioning. Hence, a legal framework needs to be put in place in order to structure the land market in Meghalaya.

Property Rights and the Land Market in Arunachal Pradesh

Like in Meghalaya, there is also no comprehensive land Act in Arunachal Pradesh. Customary practices that vary from tribe to tribe, clan to clan, and village to village, govern the land ownership and the individual rights over land. There are about 110 tribes and sub-tribes in Arunachal Pradesh. In fact, the tribal identity in Arunachal is still in a state of their integration with and differentiation from a common axial identity.⁴ The nature of individual rights over land here largely depends on the mode and organization of cultivation. However, we have chosen three representative tribal communities depending upon their different agricultural practices and land ownership rights for consideration here. The practices of other tribal groups more or less resemble either one or the other of these three representative groups.

Customary Practices among the Nishis

Land of the Nishis may conveniently be divided into two broad categories, viz., farm land and non-farm land. The farm land may again be divided into two categories depending on the practice of cultivation, i.e., jhum and permanent cultivation land. The Nishi system of jhuming is not like the circular system of the Khasis. The jhumia does not come back to his original plot at the end of the jhum cycle. Moreover, there is no village authority to allot lands to the jhumias. Once a jhumia leaves one plot of land and moves

to another, he loses his claim to the previous plot. Any other person may take up that plot when a new jhum cycle begins.⁵ Because of this practice, a jhumia only enjoys usufructuary rights for a particular jhum season. The jhum land can be inherited only during the season. Thus, neither the jhum lands are heritable (beyond the season), nor are they transferable. Lands under permanent cultivation are, of course, heritable and transferable. However, Nishis are primarily jhumias and the area under permanent cultivation is not significant. The right to transfer the permanent cultivation land is subject to the customary practice that does not allow any transfer of land to individuals other than the Nishis. The non-farm land consists of house-sites, trade-sites and common village/clan land. Homesteads are permanent and heritable but generally not transferable. However, leasing of homesteads and trade-sites in town land is common. Common village/clan lands consist of burial ground, hunting ground, fisheries, etc., and these are not transferable.⁶ Thus, the marketable land is very insignificant among the Nishis. The land market is localized by the customary practices.

Customary Practices among the Apa Tanis

The Apa Tanis of Lower Subansiri practice only permanent cultivation. Individual ownership in cultivable land is full and complete in all respects. Like the farmland, non-farm land, i.e., house and trade sites are also heritable and transferable. However, customs do not permit transfer of land to other communities. Thus, within the community, land-market is perfect.

Customary Practices among the Adis

The Adis practice both jhum and permanent cultivation. The practice of jhumming among the Adis allows a jhumia to come back to his original plot at the end of the jhum cycle. This circular system of jhumming⁷ enables the individuals to enjoy permanent, heritable and transferable rights over their jhum plots. Individuals practicing permanent cultivation also enjoy heritable and transferable rights. However, Adi customs only allow transfer of land within the same tribe and same village. As a result, the land-market essentially reduces to village level market. In

relation to house-sites, individuals enjoy permanent and heritable rights. However, house-sites are not transferable.

III

Observations for Policy Action

1. Permanent cultivation leads to the emergence of permanent, heritable and transferable rights over land. Fully mature individual right widens the options of use of land and adds to the asset value of land. This enhances the economic empowerment of the landowner. Hence, policy actions may be thought of in favour of conversion of either jhum lands into permanent cultivation or "ready and rough type" of jhumming into "circular type" of jhumming.
2. As agricultural growth requires institutional support which cannot be smoothly provided unless land records are done through cadastral survey, policy actions are needed in this direction. Wherever land rights have emerged fully, there is no reason as to why land records cannot be prepared.
3. It has been observed that customary practices do not allow land market to grow. For instance, among the Adis, the land market is confined within the village. The clan level social prejudices need to be removed so that the size of the land market becomes at least coterminous with the ethnic boundary of a community. This enlargement will no way impinge upon the living space concern of a group.
4. Wherever lease market has emerged, the efficiency of production will increase if the market is rule governed. Legally enforceable protective measures in favour of the tenants will ensure their security. Hence, policy actions are needed in this direction.
5. The customary practices do not set any land ceiling limit. As a result, social justice concern cannot be met. Already a class of intermediary land owners have emerged among the Khasis and Apa Tanis. Policy actions setting the land ceiling limit are needed.
6. A rule governed factor market is a precondition not only for agricultural growth along, but also for overall economic

growth and material well being of the people in a society. Policy actions are needed for the adoption of a comprehensive land act wherever such law is absent.

NOTES

1. B.B. Dutta, *A Study of the Land System of Mizoram* (Guwahati: LRI).
2. Ibid.
3. Eugene D. Thomas, *Poverty and Rural Development in Meghalaya* (New Delhi: Akansha Publishing House, 2004).
4. Gurudas Das, *Tribe of Arunachal Pradesh in Transition* (New Delhi: Vikas, 1995).
5. Ibid.
6. B.B. Dutta, *A Study of the Land System of Mizoram* (Guwahati: LRI).
7. Gurudas Das, *Tribe of Arunachal Pradesh in Transition*.