



**COMMUNITY FORESTRY AND POLICY
IN NORTH-EAST INDIA:
AN HISTORICAL LEGAL ANALYSIS**

Community Forestry International
2004



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Front Cover: With some of the highest annual rainfall in the world, the watersheds of Northeast India provide important hydrological services, while the forests possess an immense range of biological and cultural diversity.

Back Cover: A three-generation Khasi family in Meghalaya relax in their forest garden that provides the household with a wide range of subsistence goods including food, medicinal herbs, fibers, and timber for house construction and agricultural tools.

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by

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&
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Supported by Community Forestry International

with funding provided by the

John D. and Catherine T. MacArthur Foundation

Executive Summary

This paper examines the legal acts and past policies that have contributed to the current forest management context in Northeastern India. The analysis proceeds to review recent experience with Joint Forest Management policies, transplanted from Peninsular India, and the possibilities for new community forest management policies that are designed specifically for the Northeast. Rich in biological and cultural diversity, the Northeast is facing mounting demographic and economic pressure that threaten its natural and social landscape. Isolated from the rest of India for decades, culturally, politically, and logistically, the region is increasingly influenced by the massive nation of which it represents a small, outlying part. While the process of nation-building inevitably emphasizes uniformity, the Northeast is unique in many ways and has required special policy treatment in the past.

In peninsular India, the vast majority of forests are under the direct control of state forest departments. As a result, many indigenous forest management practices have gradually eroded, as traditional institutions and practices were displaced and ancestral usufruct rights ignored by government. By contrast, for over a century, district councils in many parts of the Northeast have been vested with management authority for forest lands, while community institutions and their members act as forest stewards. Hence, community forest management has been practiced in an uninterrupted continuum and been legally empowered. These indigenous systems of management are a valuable institutional resource, providing stable custodianship in a period when in-migration and commercial exploitation are mounting.

A forest policy environment that supports indigenous systems of management can help sustain these endangered ecosystems in the Northeast. Policies can function as social visions for the future and represent a statement of intent by government to shape an outcome. In India, national policies support sustainable management to conserve forest ecosystems and respond to the needs of rural populations. The question of who is empowered to make management decisions and benefit from them is often at the crux of the operational content of these policies and where they often succeed or fail. Policies also fail when they are not suited for the contexts in which they are implemented. Policy failure can be costly when environmental, social-equity, and livelihood goals go unmet. The implementation of poorly designed policies can also exacerbate social conflict. For this reasons, establishing an effective community forestry legal and policy framework in Northeast India is critically important. This review of the past and current laws and policies affecting the forests of the Northeast provides a basis to explore additional actions that would reduce resource conflicts and strengthen existing and emerging community forest protection efforts.

The program that supported this study is part of a broader collaboration between Community Forestry International, the region's forest communities, and the seven state forest departments, the Enviro-Legal Defense Firm, the Northeast Hill University, and Northeast Regional Branch of the National Afforestation and Ecodevelopment Board. The Community Forestry Working Group for Northeastern India guides the program. In addition to policy analysis, the program supports field research in seven community forestry sites, and is establishing a data base on CF systems in the region.

-Mark Poffenberger, Executive Director
Community Forestry International

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Chapter I: Introduction

Community forest management (CFM) in India is often equated with the joint forest management (JFM) movement that began transforming the national forestry sector in the early 1990's.¹ CFM in the context of the Northeast Indian states (Arunachal, Assam, Manipur, Meghalaya, Mizoram, Nagaland, and Tripura), however, must be viewed quite differently (see Figure 1). In many parts of the Northeast, due to its unique legal history, community forestry reflects community ownership and direct control of forests. In peninsular India, more particularly in the tribal dominated areas that are conserved under moral sanctions including sacred groves, community forests qualify only as “community controlled areas.”³ Due to legal impediment such traditional systems lack formal legal recognition. State dominance over natural resources still pervades and overrides the spirit of democratic decentralized governance. In fact the most significant forest law, i.e. the *Indian Forest Act of 1927*, makes it clear that the entire reserve forest category under it, which forms the major part of forests including protected areas in India, are under the proprietary regime of the government. The only exception to this general trend is the unique position that the Northeast states enjoy under the Sixth Schedule of the Constitution.

Forestry administration in the Northeast is unique, not only because there are vast amounts of forests that are under “community control,” but also due to its unique geographical position and its socio-political milieu. Four of the seven traditionally known Northeastern States are “scheduled states” listed in the *Sixth Schedule of the Indian Constitution* (hereinafter the Constitution). Article 244 (2) of the Constitution states that provisions of the Sixth Schedule apply to the States of Assam, Meghalaya, Tripura and Mizoram. This means that they enjoy a unique status under the Constitution. For the other three states, the Constitution has provided special provisions for administration, which are described later. These states are Arunachal Pradesh, Manipur, Nagaland and Sikkim.

Although it is believed that most of the forests are community owned and controlled by formal law, folk law, and traditional systems, the actual status of forests in the Northeast is as questionable as that in any other part of India. In the ongoing case, *T.N. Godavarman vs Union Of India and Others* (the largest case ever on forests), the Indian Supreme Court has passed several strictures to the various state governments of the Northeast for large-scale destruction and deforestation.⁴ In short, even the most popular examples given by supporters of CFM do not consistently exhibit the best forest management practices. It is in this light that the present paper seeks to assess the historical evolution of forestry laws in the Northeast. A historical inquiry of this nature will provide indicators of the role of the

¹ The title of this paper, “Community Forestry Policy” should be understood broadly to include both law and policy. Our research is based only on secondary literature available, including primary legal documents.

³ For example *Dev Aranya- God's Forest Abode in Rajasthan*

⁴ AIR 1998 SC 769

community in the prevalent legal regime, at both the formal and informal level. The paper will indicate where the role of the community has resulted in effective forest control, where there are conflicts with the state practice, and where there is a conflict within the community system of control.

Chapter II examines the legal history of forestry in the northeast region of India. Chapter III presents an historical analysis of forestry in the Scheduled States, while Chapter IV reviews the evolution of forest management in the Non-Scheduled States. The states have been dealt with separately in each of these categories as each state has evolved in different context and their legal histories vary, thus, a general presentation of the Northeast and its historical evolution has been avoided. Chapter V discusses some of the current practices and developments that affect or influence CFM, especially exploring the national JFM policies and programs and other recent enactments. Chapter VI provides a summary of the findings and raises some pertinent questions relating to some of the misconceptions that are prevalent or that need to be addressed if CFM in the Northeast is strengthened and the strategy widely implemented.

Chapter II: Legal History of the Northeast- Implications for Forestry

Early History

In his classic work on forestry, E. P. Stebbing reports that in the early nineteenth century the great forest tracts of the central provinces and in Assam were unexplored.⁵ “Even till the 1850’s, no steps had been taken towards the conservation of forests in Assam...those accessible beings still worked in the wasteful fashion which had been in force for centuries.” Prior to 1863, Bengal and Assam, or the “Lower Provinces” as they were then called, paid scant attention to the conservancy of their forests. In fact, the timber in Calcutta was imported from the forests of the North and from Burma. As per Stebbing, Deitrich Brandis, who visited Bengal in consultation with Dr. T. Anderson, the then superintendent of the botanic gardens in Calcutta, was entrusted to carry out the preliminary inquiries and investigation into the forests of the Eastern Himalayas including Sikkim.⁶ It is important to note that the British account of the forestry situation in the Northeast is confined to forest production plans, and even conservancy was primarily aimed at securing a permanent supply of timber through a state monopoly. This is obvious by the extent of involvement by the British sawmill companies and the tea companies. It is reported that even the forests that were under the traditional chief and most of the forests on the southern slope of Jayantia Hills were leased to the government and the privilege of felling timber in Jeerang Forest was sold to the government for three years.⁷

The government at that time also expressed their helplessness and inability to interfere in the management of the private forests. The unchecked fellings in the 1850’s also led to tax levies. However, this system was abolished in 1852 in favor of farming out certain tracts of forest to the highest bidder and thus introducing the contractor system. In 1868, a new revenue system was introduced under which a small *Tehsildar* who were called *Mouzadars* were appointed, and the forest and their protection were given over to their charge with the rest of their land. Even this system was considered inadequate in terms of revenue generation. It is in this situation that the *First Annual Forest Report* mentioned that the Conservator of Forest in Bengal, who was also responsible for the Assam Forest, had proposed a transfer several thousand of square miles in Assam to the forest department (FD) without any previous demarcation or definition of the boundaries. The government of Bengal then ordered the early selection and demarcation of better forest, and also ordered that the Deputy Commissioner to manage the remaining forest tracts. Even in this period, there were extensive forest tracts in which numerous hill tribes carried on *jhum* cultivation (swidden or slash & burn). It was recorded that they “they must be permitted in doing so.”⁸

⁵ Stebbing E.P.; Reprinted 1983; *The Forests of India Volume I to IV*: Periodical Expert Book Agency

⁶ Forest Operation In Bengal and Assam, 1858-1864 in Supra 5

⁷ A good example is Jeerang Forest of the Khasi and Jayantiya Hills that was sold to the government for three years from April 1868 to April 1871 on a fixed annual rent of Rs. 150.

⁸ It is noted that “the people lived by *jhuming*, a stoppage of which would mean starvation to the people if it were attempted and is not advisable for political reasons either.”

To appreciate the forestry administration of the Northeast in British India, it is also necessary to understand the general administrative organization for the area. In this regard, two of the most significant administrative classifications made by the British were the demarcation of the frontier districts from other districts of the Northeast by what was known as the “inner line” and the declaration of certain areas as “Scheduled Areas.”

The concept of the inner line was introduced in the 1870's when commercial activities by British subjects in conjunction with the frontier tribes were found to be adversely affecting not only the revenue derived by the government from the forests, but also threatening disturbance with the hill tribes. Thus, to protect the British interest in trading in rubber forests in the plains beyond the *mehals* or settlements, the *Bengal Eastern Frontier Regulation Act* was enacted in 1873. This act made it lawful for the state government to prescribe the inner line in the districts of Kamrup, Darrang, Nowgong, Sibsagar, Lakhimpur (Garo Hills), Khasi and Jaintia Hills, Naga Hills, and Cachar. No Indian citizen could venture beyond this prescribed “line” without a pass under the hand and seal of the Chief Executive Officer of the district. Further, the act also made it illegal for any persons, not being native to the districts, to acquire any interest in the land beyond the said inner line without the sanction of the state government or such officers as the state government might appoint on their behalf.

Pre-Independence

The history of the special system of administration for the tribal areas in the Northeast can be traced back to 1874 with the *Schedule Districts Act*, which was possibly the first measure adopted to deal with these areas as a class. The act enabled the executive to extend or exclude “Scheduled District” areas from the normal operation of any ordinary law. In the Northeast, the act declared the province of Assam and the ‘Paragana of Manipur,’ a “Scheduled Tract.” The *Montague-Chelmsford Report of 1918* also referred to these areas. This report suggested that the political reforms contemplated for the rest of India should not apply to these areas as they were too “primitive,” “backward,” and “there was no material on which to found a political institution.” The scheduled tracts were thus excluded from the purview of the reforms and were administered by the heads of the provinces.

The *Government of India Act of 1919* further delineated the scheduled tracts into two classifications of 1) total exclusion or 2) modified exclusion. These were defined as: 1) those that were considered to be so backward that they were totally excluded from the scope of the reforms with the effect that neither the central nor the provincial legislature had power to make laws applicable to these areas, all powers thereof being vested with the governor; and, 2) those which were not so backward, with the result that a system of modified exclusion was proposed. Under this act, the following northeastern districts were declared “backward” or as scheduled tracts: the Garo Hills Lakhimpur Frontier Tracts. These tracts

were represented in the legislature only through nomination. Further, in respect to these areas, the legislature had the power to pass laws, which could be enforced only under the direction of the Governor General. Despite this, Assam was administered under the provincial government and not the Governor in Council; the transferred subjects were to be administered by the ministers.

In Assam, under the power conferred upon the governor in the *Instrument of Instructions*, rules were framed which confined the powers of ministers in dealing with backward tracts within very narrow limits. A clear shift from the prior position of government was visible in the *Simon Commission Report of 1930*. The report suggested that the highly autonomous nature of the scheduled tracts, under the loose control of the governor, would not be a satisfactory long-term solution and that it would be necessary to educate people in tribal regions to enable them to become self-reliant. To achieve this goal, the commission recommended that the responsibility for these tracts should be vested with the center, with the governor of the province playing a central role. This proposal was, however, not adopted in the *Constitutional Reforms of 1935*.

The *Government of India Act of 1935* classified these areas into excluded and partially excluded areas with the excluded areas being directly under the personal rule of the governor and the partially excluded areas being within the ministerial responsibility with the governor having the power to overrule the ministers. Further, no central or state law was to apply to the partially excluded areas unless with the authority of governor. Apart from these areas, the *India Act of 1935* also designated certain areas along the frontiers of India as “tribal areas” which, though technically not a part of territory of British India, were part of the executive authority of the central government by way of treaty, grant, usage, sufferance or otherwise. In these areas also, the ministry had no role and they were under the Governor General acting in his discretion. Under the *Government of India Act of 1935*, the areas were declared as “excluded” or as “partially excluded.”⁹

Part I of the schedule, dealing with the excluded areas included the Frontier Tracts comprising Sadiya, Balipara and Lakhimpur (Arunachal), the Naga Hills District, (Nagaland), the Northern Cachar Hills sub-division of the Cachar District (Assam) and the Lushai Hills District (Mizoram) while Part II contained partially excluded areas (which in case of Assam were), the Garo Hills District, (Meghalaya), the Mikir Hills (Assam) and the British Portion of the Khasi and Jaintia Hills District (Meghalaya) other than Shillong Municipality and Cantonment. Comparing the policy trends from the *Government of India Act of 1919*, until the *India Act of 1935*, it is apparent that the autonomy of the scheduled tracts was not only maintained, but possibly strengthened, extending a legal mandate for communities and indigenous governance structures of the tribes to continue to function and manage

⁹ Done under a schedule known as the Sixth Schedule under section 91 of the Act.

forests and other resources. The central government, however, had not given up in its efforts to gain increased control over the scheduled tracts.

The cabinet mission's statement of May 16, 1946 iterated that a special scheme was required for the tribal and excluded areas. The constituent assembly accordingly asked the advisory committee on the rights of citizens, minorities, and tribal and excluded areas, to formulate a scheme for the administration of these areas. The advisory committee thus set up a sub-committee on the Northeast Frontier (Assam) tribal and excluded areas under the chairmanship of Shri G.N. Bardoloi. By the time this report was presented before the constituent assembly, the drafting of the constitution was already under way. As a result, the recommendations of the sub-committee were not considered by the constituent assembly since, as explained by Dr. Babasaheb Ambedkar, they were received too late. However, on the suggestion of the advisory committee, certain provisions of the report were included in the draft *Constitution of February 1948* subject to two "comparatively minor changes."¹⁰

Post-Independence

The Bardoloi Committee made detailed recommendations for the overall administration of the tribal areas of the erstwhile province of Assam. One of the aspects on which the committee gave fairly detailed suggestions, and which is of immediate relevance for the purpose of the present paper, is the administration of forests in the region, including customary practices such as *jhum* cultivation. Broadly, the committee was of the view that the general proposal for the administration of these areas should be based upon the following considerations:

- The distinct social customs and tribal organizations of the different people as well as their religious belief.
- The fear of exploitation by the people of the plains on account of their superior organization and experience of business.
- In making suitable financial provisions, it was feared that unless suitable financial provisions are made or powers conferred upon the local councils themselves, the provincial government may not, due to the pressure of the plains people, set apart adequate funds for the development of the tribal areas.

Based on these general premises, the committee recommended that the hill districts should have powers of legislation over occupation or use of land other than land comprising reserved forest under the *Assam Forest Regulation of 1891* or other applicable law. The rationale for such a policy was the emphatic unanimity of opinion among the hill people that there should be control of immigration and allocation of land to outsiders, and that such control should be vested in the hands of the hill people themselves.

¹⁰ The Framing of India's Constitution-A Study B. Shiva Rao, vol. 3 pg 682, IIPA

While accepting the need for centralized management of the forests, the committee recommended that for actual management of forests, including the appointment of forest staff and the granting of contract and leases, the susceptibilities and the legitimate desires and needs of the hill people should be taken into account by the provincial government. With regard to *jhum* cultivation, the committee recommended that the tribes should have the right of deciding for themselves whether to permit *jhum* cultivation or not. They were of the view that though the practice of *jhum* should be discouraged and stopped wherever possible, no general legislative bar can be laid down without taking local circumstances into account. Besides, the feeling among the tribes that *jhum* is a part of their way of life makes it necessary that the right to control the practice should be left to the local councils who in turn should be guided by expert advice. In light of this, the committee suggested that the local customary laws should be minimally interfered with and that the hill people should have full powers of administering their own social laws, codifying them and modifying them. The committee also proposed to entrust the local councils with power of legislation and administration over land, village forest, administration of tribal or local law etc. In addition, a system of modified exclusion was applied to the rest of the scheduled areas.

The scheme suggested by the sub-committee on the tribal and excluded areas of Assam was more detailed and conferred a considerable extent of autonomy on the tribal population through its tribal representatives. The distinguishing feature of the Assam Hills and the frontier tracts is that they are divided into fairly large districts inhabited by single tribes or fairly homogenous groups of tribes with highly democratic and mutually exclusive tribal organizations. Accordingly, it was suggested that special local councils be established that in would carry on the administration of tribal law and control the utilization of village land and forests in their hill domains.

For the purpose of administration, the sub-committee divided these areas into two categories. The first category included the scheduled tribal districts that form the main part of Assam. The second comprised the tribal areas that were being administered through the agency of the governor of Assam through the central government. In the first category, the unit of administration was to be the autonomous tribal district. For each tribal district, the governor was to set up a district council and if there were different tribes inhabiting distinct areas within a district, then each area or groups of areas could be divided into autonomous tribal regions with regional councils within the same district. The administration of the district was to be vested in the district council and of a region in a regional council.¹¹ The district and regional councils were empowered to legislate upon nine subjects which interalia included the allotment, occupation and use of land; the management of forests other than

¹¹ There were six such autonomous tribal districts namely, The Khasi And Jaintya Hills, The Garo Hills, The Lushai Hills, The Naga Hills, and The North Cachar Sub Division Of The Cachar District and The Mikir Hills

reserve forests; and, the use of canals and watercourses for agriculture and regulation of the practice of *jhum* or other forms of shifting cultivation.

Further, the sub-committee proposed that substantive powers should be conferred on the district and regional councils in respect of the application of provincial laws to these districts. The suggestion was that provincial legislation on the subjects entrusted to the councils should not apply to an autonomous district or region except through an order of the council itself, which was further empowered to make such modifications in such laws, as it might consider necessary. Based on the recommendations of the Bordoloi Committee, certain tribal areas in the Northeast were designated as Sixth Schedule Areas and a special system of administration for these areas was incorporated in the Constitution.

Article 244 (2) of the Constitution provides that the provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram.¹² The schedule provides for the designation of the tribal areas of North Cachar Hills District, the Karbi Anglong District, Khasi Hills District, Jaintia Hills District, Garo Hills District, Tripura Tribal Areas District, Chakma District, Mara District and Lai District as “autonomous districts.”¹³ Further, the schedule vests the governor with the discretion to further divide the area or areas into “autonomous regions” if there are “different Scheduled Tribes in an autonomous district.”¹⁴

In each autonomous district, the schedule provides for setting up of a “district council” (comprising of members “elected on the basis of adult suffrage” and a few persons nominated by the governor)¹⁵ and a “regional council” for each autonomous region.¹⁶ The district council is responsible for the administration of the district council while the regional council is in charge of the administration of autonomous regions.¹⁷ In a district that has a regional council, apart from the powers conferred upon the district council under the schedule, the district council is dependent upon the regional council for powers delegated to it. The schedule vests the district councils and the regional councils with certain powers (see Box).

All the laws made by the district council become enforceable only after the governor gives his approval. What is more important in the above discussion is to understand that if community control is understood only in terms of the vesting of power with the Autonomous District Council (ADC), then in the districts mentioned in the Sixth Schedule, it can possibly be said that the community does have

¹² At the time of framing of Constitution, the administrative boundaries of the North East were different from the present day boundaries. In 1954 readjustment of administrative units of certain areas specified in the Sixth Schedule was done through the North-East Frontier Tract (Administration) Regulation, 1954

¹³ para 1(1)

¹⁴ para 1(2)

¹⁵ para 2(1)

¹⁶ para 2(2)

¹⁷ para 2(4)

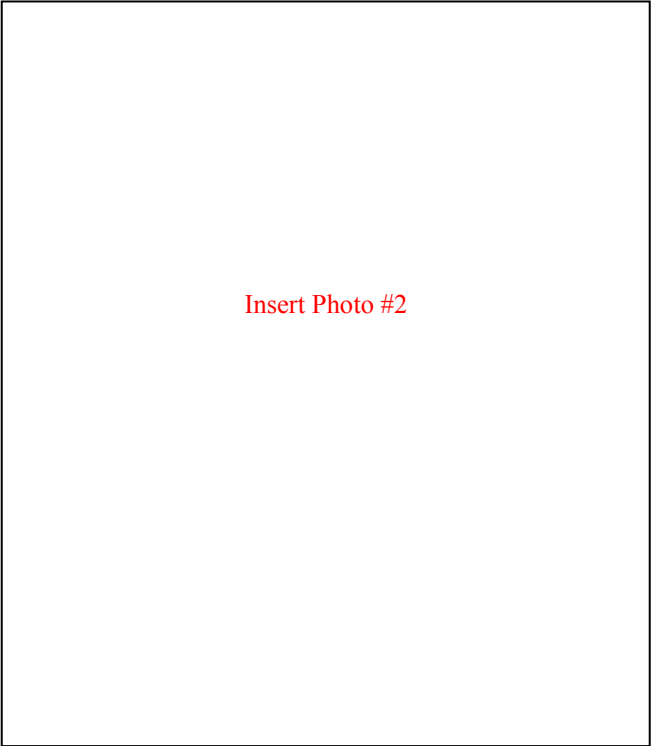
control in the scheduled areas. Whether the control of the ADC can be said to be controlled by the community, considering the composition of the ADC, is itself debatable and worth exploring further.

LAWMAKING POWER OF DISTRICT AND REGIONAL COUNCILS

1. The allotment, occupation or use, or the setting apart of land, other than any land which is a reserved forest for the purpose of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town.
2. The management of any forest not being a reserved forest
3. The use of any canal or watercourse for the purpose of agriculture
4. The regulation of the practice of *jhum* or other practices of shifting agriculture
5. The establishment of village or town committees or councils and their powers
6. Any other matter relating to village or town administration, including village or town police and public health and sanitation]
7. The appointment or succession of chiefs or headmen
8. The inheritance of property
9. Marriage and Divorce
10. Social Customs

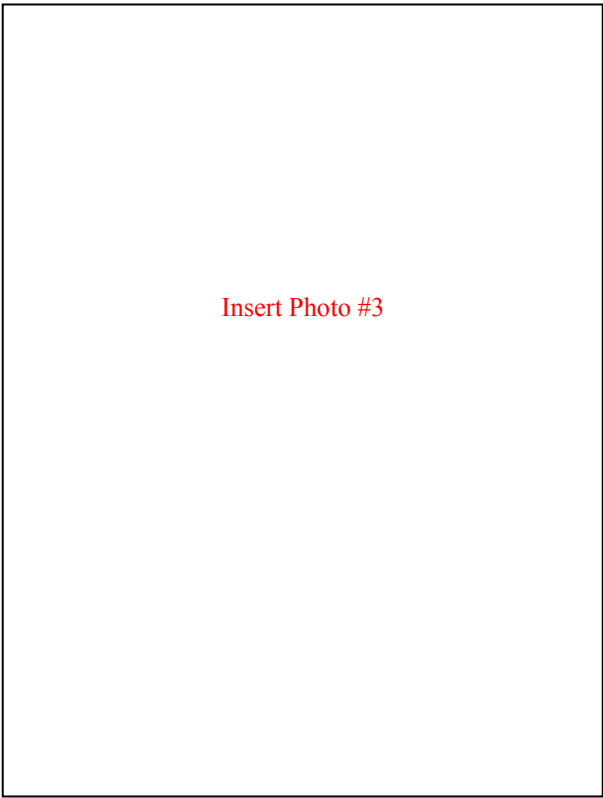
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Chapter III: Evolution of Forestry in the Scheduled States -Assam, Meghalaya, Mizoram and Tripura

Early History

The history of forestry in scheduled areas has to be seen in light of the evolution of the scheduled areas themselves (see Chapter II). Further, interesting insights on the forests in the region and the government policies and their development can be drawn from certain official, pre-independence reports on administration of this region and which, in the context of general administration of the region, also make reference to the administration of forests.

As early as 1835, R. B Pemberton reports that forests by which southern Cachar is bounded on its eastern and southern sides have always proved to be a valuable acquisition to the inhabitants.¹⁸ As per the *Gazetteer of Bengal and North East India*, the area of forest in the Brahmaputra Valley and the Assam Range was very large. The government forests were divided into two classes: "Reserve" and "Unclassed State Forest." In the latter, a very large portion is bare of timber. The gazetteer also mentions that apart from these two categories, a lot of land termed as "government waste" existed in the Khasi and Jaintia, Lushai, and Naga Hills.

Different types of management systems existed in portions of the then province of Assam. Even the types of forests vary in different districts. It was said, for example, that the Goalpara Forest in Assam was overworked under a wasteful system of levying royalty on the number of axes employed. Thereafter, a permit system was introduced. The prime motivation was to look at forests and work them at a profit on a commercial scale. The *sal* forest of the Garo Hills was considered as valuable, but inaccessible. In other districts, only those trees were considered that could be used for export and/or boat building, such as *sal*, *sam*, and *aghar*. It is reported that although the village organization was never very strong, some authority was exercised by rural councils known as *mel* or *panchayat*, although it was not recognized by the courts.

Under British rule, the Chief Commissioner was empowered to propose to the Governor General in Council the draft of any regulation that may seem to him to be required for the province. He also had the power to extend to the province any measures passed by other local legislature which appeared suited to its requirement. The Assam Forest Regulation, the Sylhet Jhum Regulation of 1891, and the Assam Land and Revenue Regulation of 1886 were some of the important acts of the Governor General in Council, which came into force in Assam by 1880. The ordinary land tenure varies considerably in different parts of the province with different systems in force in Sylhet and Goalpara, two districts where large proportion of the area is permanently settled. Varied systems prevailed in

¹⁸ Pemberton R. B. *The Eastern Frontier of India*. First published in 1835.

Cachar, Assam Proper and the Hills Districts. In the Sylhet District it was reported that the plains portion of the district has been denuded of timber.

As per the *Report on Administration of North-East India, 1921-1922*, Reserve Forests were constituted for permanent sources of forest produce or for other economic reasons, while Unclassed State Forests were set up to protect all unoccupied government wasteland. The report further observed that the Unclassed State Forests, especially in the plains, occupied a very large area though very small portions of them were wooded. Cultivation was allowed in such forests, though steps were introduced in 1921 to reserve suitable tracts as village forests. These forests were not managed by the Forest Department but by the civil authorities, the local *mauzadar* being nominally in charge. However, following reports by deputy commissioners that were skeptical about the use of village forests, these forests were no longer listed as forest in 1932 and the land reverted to government waste.

In the hills, the prime concern was the subject of shifting cultivation. *Jhum* cycles were considered inadequate and were seen as increasing runoff and flooding. Another interesting dimension was the economic implication of terraced versus *jhum* cultivation. For example, a man in the Khasi and Jaintia Hills who created an irrigated terrace, thereby reducing the area under shifting cultivation, not only paid a house tax but was also taxed for the terrace whereas someone who only practiced *jhum*, paid only a house tax. With this background, let us look into the legal framework that existed in the scheduled states of the Northeast. It is important to bear in mind that only certain areas in the scheduled states are designated as scheduled areas.¹⁹ In the case of Assam, out of twenty-three districts only two districts are scheduled areas.²⁰ What follows is a description of the legal framework that exists in both scheduled and non-scheduled areas of Assam.

Assam

Assam Forest Regulation of 1891

The *Assam Forest Regulation of 1891* (AFR) is the most important legislation on forests in the scheduled states of the Northeast. The AFR is applicable in the entire state of Assam except the scheduled areas of the North Cachar Hills District and the Karbi Anglong District. However, the provisions of the Reserve Forests of the AFR are applicable to the Reserve Forests in the Scheduled Districts, too. Under the AFR, forests may exist in at least four categories of land. These are:

¹⁹ It is pertinent to note that the entire Province of Assam was declared as a Scheduled District under the Scheduled Districts Act, 1874.

²⁰ Note that some of the rules made under the AFR were applicable to what now form a scheduled district and to areas that are presently not scheduled. The status of enforceability of these rules is something that needs to be delved into further

1) reserved forests, 2) village forests, 3) unsettled forests, and 4) other forests and wasteland that are not the property of the government.²¹ Interestingly, the first three categories of land may be constituted out of only those lands, which are “at the disposal of the government.” Such lands, that are at the disposal of the government, have also been defined under the AFR to include only such land in respect of which no person has acquired “a permanent heritable and transferable right of use/occupancy under any law for the time being in force;” or, those lands which are vested with the central government on behalf of the state government.²²

The term “unsettled tracts” has also been used in the regulation and the state government has been empowered to reserve trees in such unsettled tracts. The act, however, does not define unsettled tracts but leaves the power to the state to reserve trees standing on “*any land at the disposal of the government.*” There are about 55 such reserved trees. From the wordings of the sub-titled heads of the provisions under AFR, there are ambiguities that need to be clarified here. Words such as “unsettled tracts” (section 32) and “unsettled forests” (section 33) seem to have been used interchangeably. At the same time, the manner in which unsettled forests have been explained is exactly same as the term unclassed forests as defined in the rule making power of the AFR.²³ The term “unclassed state forest,” though used extensively in the other rules under the AFR, has been defined only under the “Rules relating to the Unclassed State Forests in Plain districts of Assam and North Cachar Hills.”

Settlement of Rights under AFR

Apart from the classifications of forests, it is important to understand the role of the state vis-a-vis community rights in the settlement of rights process and the manner in which it is carried out under the AFR.²⁴ One of the most striking features of the settlement process under the AFR is that after a proclamation notification there is a bar on the accrual of new rights. Section 7 specifically allows the exercise of rights already enjoyed and in existence at the time of issue of proclamation. This is particularly applicable for any clearings, which may be lawfully made for *jhum* cultivation by a person in the habit of practicing such cultivation within the specified area. The Forest Settlement Officer (FSO) has also been clearly instructed that the entire responsibility of inquiry and for the orders passed rest with him alone and not by the Forest Officer (FO) who may be appointed to assist him. The FSO

²¹ Wasteland has been defined by the rules under AFR to mean land at the disposal of the Government, which the Government has not disposed of by lease, grant or otherwise, and which is not included in a forest reserve or in a forest proposed to be reserved under Section 5 of the Assam Forest Regulation, VII of 1891, or in a protected forest constituted under the rules made under the said Regulation and has not been allotted as a grazing ground under rules framed under Section 18 of the Assam Land and Revenue Regulation.

²² Section 3(8) of the Regulations defines “land at governments disposal” as “land in respect of which no person has acquired: (a) a permanent heritable and transferable right of use/occupancy under any law for the time being in force; or (b) any right created by grant or lease made or continued by or on behalf of the Government for the purpose of Central Government.”

²³ See Rules Relating to Unclassed State Forests in Plains Districts of Assam and North Cachar District

²⁴ Detailed instruction for forest settlement officers in Assam found in the Provincial Govt. circular No.14-R dated the 20th March, 1897.

is expected to inspect as much as possible and provide full opportunity to people who are affected by such reservation to put forward their claims on the spot.

Apart from the categorization of land and the settlement process, the practice of *jhum* cultivation is perhaps the most significant and contentious issue in forestry management in the Northeast. A few points regarding *jhum* cultivation including claims of *jhum* cultivation in the settlement process would be instructive here. First, in the settlement process under AFR, the FSO is specifically mandated to inquire into any claims relating to the practice of *jhum* cultivation, thus signifying the uniqueness and dominance of such a practice in the Northeast. In fact, the instructions to FSO clearly provide that one is bound by law to take down in writing any settlement of claim in respect to *jhum* cultivation.

The AFR provides that the claims relating to the practice of *jhum* cultivation may be allowed or regulated by the FSO. The duty of the FSO with respect to *jhum* cultivation is not only to inquire into any claims put forward by the people, but also to inquire into the existence of any right of practice where no formal claim may have been presented. The FSO may deal with the claims of the *jhum* cultivation in two distinct ways. He may: 1) either alter the limits of the proposed reserve so as to exclude from it the land for *jhum* cultivation or, 2) permit *jhum* cultivation in certain parts of the reserve subject to rules and conditions. It is important to note, however, that the practice of *jhum* cultivation “in all cases be deemed to be a privilege subject to control, restriction and abolition by the state government and not to be a right.”²⁵

Further, three unique rights of claimants are recognized under the AFR similar to the Indian Forest Act. They include: 1) the right of way, 2) the right to a watercourse or to use of water and, 3) the right to pasture or to forest produce. A much more detailed description of how these unique rights may be exercised have been provided under the AFR especially relating to the rights of pasture and the forest produce. As per the instructions to the FSO it has been stated, “it is not frequently desirable to allow the villagers to enjoy the use of *phats*, or pasturage, of minor forest produce and other easements to which they have been accustomed.” It is only where such rights may be legally established where such grants are to be designated as “rights.” In all other cases, they should be designated as “concession.” The right of way, a right to pasture, use of minor forest produce, or other easements can only be established as legal rights through a grant of covenant or by uninterrupted use for a period of 60 years.²⁶

Under the AFR, numerous privileges have been granted in various parts of the erstwhile province of Assam Concessions for a grant of *khaira* trees in the unclassed forests of Chacharis on payment of nominal fees, permission for felling *urea* trees free of royalty in North Lakhimpur, cutting of bamboo

²⁵ See Section 10 (4) of the AFR of 1891.

free of royalty in Sylhet, firewood for sale in Mikirs of Guwahati, flowers without royalty to the members of hill tribes of the North Cachar Hills, shooting rights in reserve forest areas to the Rawats of Barpathar of the Naga Hills District, and numerous such concessions to the tribesmen and *patadars*, were granted for their sustenance. It would be worthwhile to empirically assess these privileges and concessions granted at that time in the modern context. It seems obvious several of these concessions and privileges have either been revoked or not granted to the present forest dependent communities in the Northeast.

As mentioned earlier, the AFR also provides for reserving and protecting trees in unsettled tracts (read unclassified state forest).²⁷ Several rules have been enacted under the AFR that include those for unsettled forests (read unclassified state forest). These include rules for unclassified state forests in the plains of Assam and North Cachar hills, the quarrying of stones or the collection of stones, gravel, shingle or sands from unclassified state forests, removal of orchids from the unclassified state forests, grazing rules, the regulating of import of forest produce, the salvage, collection, and disposal of drift and other timber, and the establishment and control of forest villages, among others.

For any forest or wasteland which are not the property of the government and which may come under private ownership, the AFR provides for their protection for “special purposes.” The justification for powers for lands other than the government lands is that such regulation or prohibition is for public interest and certain ecological reasons such protection against storms, preservation of soil, maintenance of water supply etc. In fact, the state is also empowered to expropriate the forest in certain cases and also assume the management of forest either by itself or at the request of the owner.

Rules Relating to Unclassed State Forests in the Plain District of Assam and the North Cachar Hills

According to AFR rules, “unclassified state forest” means any land at the disposal of the state that is not included in a reserved or village forest. These rules apply only to unclassified state forests taken for “ordinary or special cultivation” as per the *Assam Land and Revenue Regulation of 1886*. In such areas, extraction of all forest produce is suspended. However, as a special concession right of certain persons such as persons holding land temporarily settled for ordinary cultivation at full *khiraj* rates in the plains districts of Assam valley, *raiya*s holding land, and hillmen holding land in the Mikir Hills among others, are allowed extraction forest produce for domestic use.

Another significant point to note is that under the lawmaking power vested in the ADC for management of any forests other than reserved forests, it was unclear whether the unclassified state forests in the North Cachar Hills were administered by the ADC or by the state government through its

²⁶ Vide section 26 of Act IX of 1908.

²⁷ See Section 32 and 33 of AFR.

forest department under the AFR between the period wherein the district council was set up and until recently when the state government has vested control of all governments departments, including the forest department with the ADCs in the two scheduled districts of Assam.²⁸

The rules under the AFR also provide for the establishment and the control of forest villages. It is pertinent to mention here that such forest villages connote a different institutional setup than a village forest constituted under the AFR. Under these rules, the forest villages mandated to be established within the limits of reserve forests are designed for the purposes of providing a source of suitable local labor and for forming and maintaining plantations. The Conservator of Forests and District Forest Officer (DFO) are the executive authorities to whom the entrants in forest villages are accountable to. The DFO, in fact, has been empowered to evict summarily from a forest village, without payment of compensation, anyone who does not comply with his rules or orders as per the rules.

In such forest villages, the adult forest villager is required to render 20 days of labor and in lieu of which the forest villager who is given an annual *patta* is allowed free grazing and may remove sufficient building material free of royalty.²⁹ The general principal that was adopted in the forest villages was that a forest villager should be employed as often as possible in the vicinity of his villages and the FD and its contractor would have the first claim to the labor of the forest villager. Interestingly, the rules provide for admitting persons in forest villages whose services may be needed for the welfare of the forest villages for example, a schoolmaster, a shopkeeper or a barber etc.

Under the AFR, Section 72 (c) was introduced in 1973, which empowers the DFO to evict any person from the land in a reserve forest area except a forest villager.³⁰ The DFO has been given sweeping power to sell, confiscate, or destroy any crop raised or any building erected without authority. In fact, such an act of the DFO is outside the purview of the civil court. The trend of securing control and vesting of police-like power as described above through the DFO has continued in the lawmaking process in Assam.

The *Assam Forest Protection Act 1986* is one case in point. This act provides for the creation of a government force, the Assam Forest Protection Force (AFR), for the better protection and security of the forests, forest produce, and wildlife of Assam. It is important to bear in mind that forests in this act include the Reserve Forest, Protected Forest, Village Forest, Proposed Reserve Forest, Unclassed State Forest under the AFR, and, more importantly, any area recorded as forest in government records as

²⁸ See Assam government notification M.O.U.No. :HAD. 57/95/309 dated 31-12-1996

²⁹ For the purposes of grazing, the definition of “unclassified state forests” has been modified under the Rules to regulate Grazing in Unclassed State Forests in Assam to exclude the village grazing ground in addition to the reserve forest and village forest.

³⁰ Those admitted in accordance with the Rules published in Notification No.4631 – R dated 6th Dec. 1930 or any rules issued in substitution thereof.

well as areas under various social forestry plantations. The superintendence and general administration of the AFR is vested with the government through the Chief Conservator of Forests. The members of the AFR, especially the supervisory officers have been equated as police officers and wide ranging powers under the Cr.P.C have been vested in them. This clearly indicates the growing tendency of the State to assume management of power with respect to forest in the state.

Autonomous Councils

Assam has also created autonomous councils that operate with the maximum autonomy within the framework of the Constitution. The *Mising Autonomous Council Act of 1995* and the *Rabha Hasong Autonomous Council Act of 1995* are two such cases in point. The *Mising Autonomous Council Act of 1995* pertains to the satellite village areas of village councils that are formed out of blocks of contiguous revenue villages. The general council as well as the village council under this act has been vested with several powers including those for forest other than reserve forest. The *Rabha Hasong Autonomous Council Act of 1995* is almost identical similar to the Mising Act. It also vests powers to the general council and the village council to manage forest other than Reserve Forest. Apart from the above, there were other rules and orders that were in force in certain districts of the erstwhile province of Assam, which are described hereinafter. It is pertinent to mention here that such districts are now part of different states of the Northeast.

Forestry in Scheduled Districts of Assam

The two scheduled districts, United Mikir and the North Cachar Hills District, came into existence in 1951. Historically, this area was administered by the British a bit differently, in the sense that the *Government of India Act of 1919* classified these areas as backward tracts and then *Government of India Act of 1935* classified them as excluded and partially excluded areas. After independence, the Constitution also maintained the special status by way of provisions contained in the Sixth Schedule.

Karbi Anglong District

The Karbi Anglong District council, using its lawmaking power, passed an act to manage all forests, not being reserved forests in the district. The then Mikir Hills District Council using its lawmaking powers under Para 3 of the Sixth Schedule to the Constitution, framed a law to manage the forests in the district in 1957. The *Mikir Hills District (Forest) Act of 1957* empowers the district council to constitute any forestland at the disposal of the district council to be a reserved forest in a manner similar to the Constitution of Reserve Forest under the Assam Forest Regulation. Further, the district council also has the discretion to constitute any land at the disposal of the district council to be a village forest “for the collective benefit of any village community.” Even for this class of forest, the district council has the power to make rules for regulation, prescribing the conditions under which the community may be provided with forest produce or with pasture. Apart from these, all the other

provisions of the Assam Forest Regulation are applicable to the Mikir District. It is interesting to note here that while the district council can constitute reserve forest out of only the forestland at its disposal, it can constitute a village forest out of any land at its disposal.

The striking similarity between the AFR and the *Mikir Hills District Forest Act* clearly blurs the distinguishing characteristics of state control and community control of forests. Another statute relevant to the Karbi Anglong District, which has implications for forestry, is the *Mikir Hills District (Transfer of Land) Act of 1959*.³¹ This act provides for the regulation and control of transfer of land in the Mikir Hills District with a view to promote the interest of the inhabitants. The act bars sale, mortgage, lease, barter, gift, or any other transfer of land under the district by a tribal to a non-tribal, or by a non-tribal to another non-tribal except with the previous permission of the executive committee of the Mikir Hill District Council and vests wide powers with the officers of district council to restore possession of tribal land in hands of a non-tribal by way of eviction. Further, the act provides that sale, mortgage, lease, gift or any other form of transfer from a tribal to a non-tribal, or from a non-tribal to another non-tribal, can be made only after an application for the same is submitted to the secretary, district council. Such protective legislations (at least on paper) ensure a continuity of title within the tribal community. The above act can provide a good policy environment to promote community forestry in the lands, which have forests and are owned privately by tribals.

Since June 1, 1970 almost all the development departments of Assam functioning in the Karbi Anglong District have been placed under the administrative control of the Karbi Anglong District Council. A Memorandum of Understanding was reached between the government of Assam and the district council in 1995 in pursuance of which the government of Assam entrusted thirty more departments, including that of forests, to the Karbi Anglong District Council.³²

Cachar District

In the Cachar District of Assam, a special legislation dealing with *jhum* cultivation was enacted in the same year as the Assam Forest Regulation. This act, known as the *Sylhet Jhumland Act of 1891* provides for the commutation of rights corresponding to *jhum*, *tippera*, *gurkati* and *pani-sikka* assets of permanently settled estates in the district of Sylhet. The rationale for the enactment of this law was that the officers who effected the permanent settlements of certain estates in the districts of Sylhet included, for the purpose of assessment the areas under *jhum*, *tippera*, and *gurkati*. As the cultivation over such lands shifted from year to year, it became impossible for any person to obtain a safe and clear title to land in those areas and this adversely affected the extension of cultivation. In this context, the government felt that such rights should be commuted and thus enacted this law.

³¹ passed under Notification No.TAD/R/84/56dated the 15th June ,1959,in pursuance of Paragraph II of the Sixth Schedule to the Constitution of India.

³² Vide its Notification No.HAD.57/95/63-64, dtd.29.06.1995

Meghalaya

The present state of Meghalaya, comprising the United Khasi-Jaintia Hill District³³ and the Garo Hill District was originally a part of the erstwhile province of Assam.³⁴ Thus, all the state laws of Assam, including those regulating the forests (namely the *Assam Forest Regulation of 1891*) were applicable to these districts as well, though for certain district specific rules were also framed. These rules, known as “Rules and Orders in Force in Certain Districts,” include a chapter called the *Garo Hills Regulation of 1882* and one on the Khasi and Jaintia Hills.³⁵ This provides the historical bases of how laws on forestry developed in the state of Meghalaya.

Garo Hills Regulation of 1882

The *Garo Hills Regulation of 1882*, which replaced the regulation of 1876 extends to the Garo Hills District of the modern state of Meghalaya.³⁶ The regulation vests wide powers with the Chief Commissioner who is empowered to not only prohibit non-natives of the Garo Hills, who do not possess a license to cut wood, hunt animals, collect wax, ivory, rubber or other jungle products but, also, to prescribe the conditions and restriction of such licenses for any act(s) that may be granted. Further, no non-native, including any British subject, can acquire any interest in land or product of land within the limits of the district without the sanction of the Chief Commissioner or any officer authorized on his behalf.

The regulation also proscribes rules for the use of forest produce in the *zamindari* lands in the Garo Hills that are under the management of the state. Two kinds of permits may be issued by the DFO for the use of forest produce: 1) trade permits and 2) *gurkati* permits. Trade permits are ordinarily issued for removal of such timber and other forest produce as may be specified for a period of 12 months. Gurkati permits are ordinarily issued for the removal of thatching grass, bamboos, canes and leaves etc. The trade permits and the *gurkati* permits are not transferable except with the written permission of the DFO.

Further, there are rules relating to the use of forest produce on the lands at the disposal of the government, which are not included in a reserve forest or village forest (i.e. the unclassified state forests). A similar type of permit system as described above prevailed in such unclassified state forests. However, the privileges of *jhum* practice and the permission to use and utilize free of royalty timber or forest

³³ The Governor of Assam split the United Khasi-Jaintia District into two separate districts in 1967.

³⁴ Meghalaya became an autonomous state within the State of Assam by virtue of the Assam Reorganisation (Meghalaya) Act, 1969. This Autonomous State attained the status of a new State in India by the North- East Areas (Reorganization) Act of 1971.

³⁵ This regulation was passed to “re-enact certain provisions of the Garo Hills Regulation of 1876”

³⁶ In 1969, Meghalaya became an autonomous state within the State of Assam by virtue of the Assam Reorganisation (Meghalaya) Act, 1969. This Autonomous State attained the status of a new State in India by the North- East Areas (Reorganization) Act of 1971

produce to the house tax paying natives of the Garo Hills were outside this permit system. The Garos and other aboriginal tribes residing in the hills are also permitted under the regulation to take free of charge from forest reserves bamboos, firewood, thatching grass and unreserved trees that they may require for their own use.

Forestry in the Khasi and Jaintia Hills

In the Khasi and Jaintia Hills, similar rules relating to use of forest produce on land at the disposal of the state in Jaintia Hills and British villages of the Khasi Hills and not included in a reserve forest or village forest, prevailed. Here again, the natives were allowed to remove and utilize timber and other forest produce except orchids free of royalty as well as practice *jhum* cultivation. A similar permit system as in the Garo Hills prevailed. A system of *mahals* existed in the Khasi Hills where the elephants were treated in the same way as the produce of quarries and wasteland. Similar executive rules prevailed in Lushai Hills, which is now a part of Mizoram and described later.

Garo Hills District (Forest) Act of 1958

Post-independence, the *Garo Hills District (Forest) Act of 1958* was enacted which provides for the management of *any* forest that is not a reserve forest in the autonomous district of the Garo Hills. The act empowers the district council to constitute two types of forest category: 1) Council Reserve Forests and 2) Village Forests. The district council is also empowered to manage any forest other than the government reserve forest. The formation of the reserve forest areas however, is limited to *forest land which is at the disposal of the Garo Hills of the district council*. It is pertinent to mention here that most of the chapters of the AFR are applicable to the Garo Hills. However, Chapter IV-A, relating to forest and wasteland which are not the property of the government and Chapter V, relating to duty on imported forest produce, has not been made applicable to the Garo Hills District. This is partly explained by the fact that any forest (which may include private forest) is vested in the DC.³⁷

The constitution of village forest is limited to the land, which is at the disposal of the village council for the collective benefit of the village community. Interestingly, a procedure of settlement of rights similar to those of constituting a reserve forest is to be followed under this act. This is logical because when compared to most of the Peninsular Indian states, the village forest is constituted out of reserve forest where a process of settlement of rights is deemed to be complete, whereas, village forest in the Northeast is constituted out of *any* land at the disposal of the district council.

Another unique feature of this act relates to the treatment of *jhum* cultivation. Unlike the AFR where the forest settlement officer has to settle claims relating to *jhum* cultivation by either altering the boundaries of the proposed reserve forest or permit such cultivation subject to certain conditions, under

³⁷ See section 3 of the Garo Hills District Forest Act, 1958

the *Garó Hills District Forest Act*, it is clearly stated that the practice of *jhum* that is “permitted by law” will not be prohibited in a council reserve forest. It needs to be mentioned here that in addition to some chapters of the AFR, all the rules passed under the AFR and the provisions of the 1882 Garó Hills Regulation relating to council forests have been adapted *mutatis mutandis* by the district council. Thus, the rules for management of *jhum* cultivation, the use of forest produce, etc., as provided under the 1882 Regulation and the AFR, continue to apply with the result that a plethora of complicated rules and procedures are in force. It is unclear which of these numerous rules would prevail in case of any overlaps or contradictions among the three legislations. One example could be that the rules of management of wasteland become its own category, as it is not a separate category under the present *Garó Hills Forest Act*.

United Khasi Jaintia Hills Autonomous District Act of 1958

The *United Khasi Jaintia Hills Autonomous District Act of 1958* is, perhaps, the most unique act in the Northeast. The applicability of it is, however, limited to the United Khasi Jaintia Hills District.³⁸ This act has several unique features that merit mention. Foremost among these is the definition of the term “forest.”³⁹ This is possibly the only statute that actually defines what constitutes a forest. Further, unlike all other laws, this act recognizes eight categories of forests. These are:

1) *Ri Kynti* and *Law-Ri-Sumar*

In this category, there are two sub-categories of forests, which are primarily divided on the basis of the type of land on which such forest exists.

a. *Ri Kynti* (Private Forests)

Forests that belong to an individual or clan or joint clan that are grown or inherited by him or them as *recognized private land*.

b. *Law-Ri-Sumar*

Forests that belong to an individual clan or joint clan, which are grown or inherited by him or them in a *village or common raj land*. The rules under this act provide for registration of such forest by the Chief Forest Officer or by any other officer empowered by the district council. There are detailed provisions for *mutatis mutandis* inquiry, objections etc. in the process of such registration.

2) *Law Lyngdoh*, *Law Kyntang*, *Law Niam*

Forests that are set apart on religious purpose and are managed or controlled by the religious heads such as the Lyngdoh.

³⁸ Initially, Khasi and Jaintia Hills formed one single district. It was only in 1973 that the United Khasi Jaintia Hill District was split up into Khasi Hills District and the Jaintia Hills District.

³⁹ “Forest” means and shall be deemed to be a forest, if in the area, there are reasonable number of trees, say, not less than twenty-five trees per acre, reserved or unreserved or any other forest produce, growing on such area, which have been or are capable of being exploited for purposes of business or trade”

- 3) *Law Adong and Law Shnong*
Village forests reserved by villagers primarily for the conservation of water and other uses. Such forests are managed by the village headmen such as sirdar with the help of the village durbar. This may be similar to the *mukhiya* or the Village Headman and the *Gram Sabha* respectively in the Peninsular Indian states. The above two categories of forests including Law Lyngdoh, Law Kyntang, Law Niam, Law Adong and Law Shnong are also to be registered in a similar manner by the Chief Forest Officer of the district council.
- 4) *Protected Forests*
Areas that are so declared for the growth of trees primarily for the benefit of the local inhabitants.
- 5) *Green Blocks*
Forests that belong to an individual family, or clan, which are so declared by the government for aesthetic beauty or water supply in the town of Shillong or its suburbs. The rules governing this forest also provide for declaring more areas of the above category. The manner of registration of protected forests and the green blocks are provided under the rules and specifically mandates that these two categories should not be part of the other categories mentioned above. A detailed survey, demarcation etc. is required to be done under the said rules.
- 6) *Raid Forest*
These forests are looked after by the heads of the raid under the management of the local administrative head. This category is quite unique as it is a composite unit where such a category is composed of one or more villages that come under different traditional management systems such as *Syeimeinship, Dolloiship, Sirdarship, Lyngdohship or Wahadadarship*. The Chief Forest Officer under the rules is also empowered to register such raid forest.
- 7) *District Council Reserve Forest*
These forests are declared by the Executive Committee under the act.
- 8) *Unclassed Forest*
These forests were called Unclassed State Forests before the commencement of the Constitution and include forests that are not in any of the above categories of forests. There are detailed provisions for the management and control of the above nine categories of forests where the Chief Forest officer is the highest authority under whose control and supervision the forests are ultimately managed.

Even though the act gives recognition to the customary patterns of land holding, the management and control of all these forests is subject to the rules made in this regard by the district council. Further, in

(Section 2 (f) of the Act.

case of dispute on right of ownership or territorial dispute, the district council can take over the management of such forest until the matter is finally decided. The act also bars the removal of timber and forest produce for sale trade or business from Protected Forest, Green Block, Reserve Forest, Unclassed State Forest and Reserved forest without order of Chief Forest Officer or authorized officer. The wordings of this provision seem to imply that removal of timber and forest produce for personal consumption may not require any clearance.

Moreover, the act empowers the district council to reserve certain trees. However, it is not clear as to whether such reserved trees are restricted to certain categories of forest. The executive committee has been empowered to declare trees as reserved irrespective of the nature of forests. The felling of trees in all eight categories of forests is banned without previous sanction of the forest officers. The district council also has the power to control-ferrying, transit of forest produce and regulate felling of trees etc. -in all categories of forests in the state. Effectively, the district council has monopolized control over all the categories of forests, irrespective of ownership.

Meghalaya Forest Regulation (Application and Amendment) Act of 1973

In 1973, the AFR was extended to Meghalaya through the *Meghalaya Forest Regulation (Application and Amendment) Act of 1973*. The *Meghalaya Forest (Ejection of Unauthorised Persons from Reserve Forest) Rules of 1979* further authorized the DFO to eject any person who has entered into unauthorized occupation of land in a reserve forest. To regulate and control the removal of timber outside the state, the *Meghalaya Forest (Removal of Timber Regulation) Act of 1981* was passed to prevent indiscriminate destruction of forests and for their preservation. Any removal of timber can only be through a license, which may be granted by a competent authority, which is created by the state government. By the passing of this act it may be concluded that the trade in timber from any forest in the state of Meghalaya to outside the state would be governed by this act.

This act has not clarified whether the transit rules created under earlier acts such as those under the AFR or the *United Khasi Jaintia Hills Autonomous District Act of 1958* are repealed or are in effect, as far as removal of timber outside the state is concerned. In fact, in 1991 the state of Meghalaya, through the concurrence of the chief executive members of the DC enacted the *Meghalaya Forest Authority Act of 1991*. This act provides for an authority for the unified control of forests in the state to “prevent indiscriminate felling of trees in the state” to the Constitution. The authority constituted under this act comprises the Chief Minister of the state, the minister in charge of forest and environment, and representatives from the district council. The authority’s chief function is to advise the state government and district council in proper coordination and implementation of state and district council forest laws and the preparation of forest plans and schemes and on other matters for preservation of forests in the state.

The above description of the manner in which laws relating to forests have been made applicable in the state of Meghalaya clearly points towards increasing control of the state over its forest resources while the management and control of the different categories of forest even under the traditional system of forest seem to be vested in the district council. The state has progressively augmented its power either through the license system or through the creation of a competent authority or a forest authority to control the fate of forestry management in the state. Thus, it is safe to assume that no forestry activity in Meghalaya-traditional or otherwise can be in violation of the prescriptions of these superior authorities on forestry management in the state

Similar to Assam, the *Meghalaya Transfer of Land (Regulation) Act of 1971* along with the *Meghalaya Transfer Of Land Rules of 1974* regulates the transfer of land in Meghalaya for the interest of the scheduled tribes therein. In fact, no land in Meghalaya can be transferred from a tribal to a non-tribal or from a non-tribal to another non-tribal except with the previous sanction of the competent authority. It is further provided that the government of Meghalaya may by notification prohibit such transfer of land within such specified areas and, thereafter, even the competent authority shall not sanction any transfer of land within the provisions of the act.

Mizoram

Until recently Mizoram was known as the Lushai Hills District in Assam, Lushai being the name of a clan. The whole structure of the administration of the Lushai Hills was very different from that of the plains districts in the British period. The superintendent of the Lushai Hills was the head of the district and he had extra-judicial power to settle disputes. However, he did not interfere with the administration of the district on his own except in exceptional cases. The superintendent selected certain Lushai “chiefs,” and vested them with certain powers, thus, keeping with the social and political traditions of the Lushai. It is said that the influence of this experience was so profound that it bears its mark on the Constitution.

Mizoram Forest Act of 1955

The Mizoram Forest Act is the most important legislation that governs forestry in Mizoram at the formal level. Although this act provides for management of “any forest not being a Reserve Forest” subsequent amendments have included detailed provisions on how to constitute and regulate the government reserve forest. This act excludes the areas under the jurisdiction of the Lai, Mara and Chakma Districts (formerly known as Pawi-Lakher Regional Council), which are Scheduled Districts. To understand forestry management in Mizoram, it is important to see how the state itself evolved until its present form.

Mizoram was originally a part of the province of Assam. The Lushai Hills form the major portion of the present Mizoram and the administration of forests during the British period were vested in the superintendent of the Lushai Hills, subject to the general superintendence of the Conservator of Forests of Assam. During the British regime, there was no planned management of forests except the declaration of the then Lushai Hills as excluded area and the Constitution of Inner Line Reserve Forest along the inter-district boundary of Cachar and Mizoram. A notification was issued in 1933, the Inner Line of the Lushai Hills district. Beyond this line, there was no interference on the control of inhabitation except political influence. With enforcement of inner line regulation, entry of outsiders into Lushai Hills without obtaining prior permission was prohibited. In 1952, the Mizo District Council was inaugurated and management of all the unclassed forests, other than the Inner Line Reserved Forest, was handed to the district council.

In 1971, Mizoram attained the status of a union territory and the Mizo District Council was dissolved. It attained the status of a state in 1987. Under the *Mizoram Forest Act*, the administration of forest other than government reserve forest is vested in the district of the state. An interesting category under the *Mizoram Forest Act* is the Town Forest Reserve, which may be constituted out of any forest, which is not a government reserve forest. Two other village forest types of categories are envisioned under the Act, including: Village Forest Reserve and Protected Forest Reserve(s) for the benefit of the village community(s). A further delineation is that the Village Forest Reserves can be of three types: Village Safety Reserves, Village Supply Reserves and Protected Forest Reserves. Village Safety Reserves are constituted for the protection from fire and in the interest of the health and water supply. Village Supply Reserves are for the supply needs of the people of the village, especially for the household supplies of the village. Protected Forest Reserve is for the protection of valuable forest from destruction in the interest of the village community.

The act further provides for the constitution of the government Reserve Forest. Under the act, “*jhumming*” has been “conceded” only in Unclassed State Forests. The distribution of land for *jhum* is vested with the Village Council, which can allocate land for the practice from the Village Safety Reserves. Further, the act also provides for establishment of Forest Villages similar to the Assam Forest Regulation, as described above. The *Mizoram Forest Act* amended in 1985 has now replaced the term “village supply reserve” with the word “village council reserve.”

The Mizoram Forest (Amendment) Bill of 1996

This bill seeks to equate the *Mizoram Forest Act* with the *Indian Forest Act of 1927*. A new provision relating to the management of private forests, a detailed procedure for settlement of rights in the government forest among other things, have been proposed through this amendment. The scheduled districts of the Lai, Mara and Chakma Districts (formerly known as Pawi-Lakher Regional Council is

under a different system of forestry management.⁴⁰ As regards *jhum* cultivation, the practice is governed under the *The Pawi Autonomous District (Jhum Regulation) Act of 1983*. This act repealed the *Pawi Lakher Region (Jhum) Regulation of 1956*.

Further, trading by non-tribals in Mizoram is regulated by the *Mizoram (Trading by Non-Tribals Regulation Act of 1974*, with a view to promote economic growth in the public interest. (This was to remain in force for ten years, therefore we need to check its present validity). This act will become significant in the trade related to forest products, especially by the communities in the subject matter of our present study.

Tripura

Tripura, a princely state, was first conquered by the British in 1761. However, no political agent was appointed until 1871, so the Maharaja ruled the hill territory "Hill Tipperah " almost independently. At the time of independence, the state acceded to the Indian union. Tripura, initially a one-district state, was trifurcated into three districts in 1970.

The *Indian Forest Act of 1927* is applicable in Tripura. However, there are minor additions in its applicability in the state. Most notable, is the manner in which forest produce has been defined. Certain forest produce such as gum seeds, *sal* seeds, *tendu* leaves, wild animal skins, etc., have been included in the first category of forest produce where such produce whether found in *or not* in a forest would constitute forest produce. This definitely expands the definitions of forest produce for greater control by the state on economically viable forest products. In fact, the state amendment provides rules to regulate manufacture and preparation of articles based on forest produce. The scheduled district and its administration on forestry will be updated in the next phase of the study for want of legislation on the subject.

⁴⁰ No specific act has been found as yet by the researchers but, logically speaking, there should be a special act for this Region and this section would be updated later.

Insert Photo #4

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Chapter IV: Evolution of Forestry in the Non-Scheduled States- Arunachal Pradesh, Manipur and Nagaland

Arunachal Pradesh

Arunachal Pradesh primarily comprises the erstwhile tracts of Balipara, Sadiya and Tirap, and was also known as the Northern East Frontier Agency. The *Assam Forest Regulation* was extended to the state of Arunachal Pradesh in 1916 through the *Scheduled District Act of 1874*. The *Arunachal Pradesh Anchal Forest Reserve (Constitution and Maintenance) Act of 1975* was enacted for a new category of forest named the Anchal Reserve Forest. It is pertinent to mention that the Anchal Forest Reserve may have been constituted out of any land at the disposal of the government apart from the reserve forest in a manner similar to constituting a reserve forest under the AFR. In fact, the Anchal Forest Reserve is on land where forest plantations can be raised. It is the sharing of the revenue with the *Anchal Samiti* in such forests that distinguishes it from the reserve forest under the AFR. The *Anchal Samiti* is a body constituted under the *NEFA Panchayat Raj Regulation of 1967*. Some of the villages of the *Anchal Samiti* desired that the net revenue earned from the Anchal Forest Reserve should be shared among the villages concerned only through the concept of Village Forest Reserve. In this light, the act was retitled as the *Arunachal Pradesh Anchal and Village Forest Reserve (Constitution and Maintenance) Amendment Act of 1984*.

In 1983, the *Arunachal Pradesh Forest (Removal of Timber) Regulation Act* was enacted similar to the one in Meghalaya in the same year where any removal of timber outside Arunachal Pradesh could only be transported under an order of the competent authority. Another interesting Bill was introduced in 1994 namely the *Arunachal Pradesh Protection of Customary Laws Bill of 1994*. This bill seeks to provide for the protection of customary rights and laws, and social-cultural practices followed by the Tribal Communities of Arunachal Pradesh. The bill further provides protection of customary rights including ownership and transfer of land with its resources and the properties thereon enjoyed by the indigenous people of Arunachal Pradesh. The *jhum* cultivation in the Balipara Tirap and Sadiya Frontier Tract is regulated by the *Balipara/Tirap/Sadiya Frontier Tract Jhum Land Regulation, 1947*.

Manipur

The *Indian Forest Act* has been extended to Manipur. Detailed rules were enacted vide the *Manipur Forest Rules of 1971*. Very detailed provision regarding protection of reserve and protected forest from fire, pasturing of cattle and reserve protected forest, reserving of trees, fishing rights, and establishment of forest village have been made under the said rules. The Rules also grant certain privileges to the bonafide villagers, which include grazing rights, wood rights, hunting rights, cultivation rights, etc.⁴¹

⁴¹ The hunting rights are subject to the Wild Life protection Act, 1972.

The *Manipur (Village Authorities in Hill Areas) Act of 1956* is another act that is relevant for the present study. However, its role in forest related offences is restricted to the “Cattle Trespass Act.” This act provides for the constitution of village authorities, where the ex-officio chairman is ordinarily the Chief or *Khulakpa* in a village. The village authority is constituted by a declaration by the Chief Commissioner by a notification in the official gazette. The administration of justice in such village authorities is done through village courts which function both as a criminal and civil court but without the technicalities of such formal courts. The relevance and potential of such courts in forest related offences can only be maximized if the mandate is broadened. The practical functioning of such village courts could be a good indicator of how a community level authority with a mechanism of administration of justice can be functional at a local level.

Another significant Act that merits mention here is the *Manipur Hill Areas (Acquisition of Chiefs’ Rights) Act of 1966*. The act provides for the acquisition of certain rights, title, and interest of the village chief in or over land in the hill areas of Manipur. With regard to *jhum* cultivation, the act provides that the government can reserve and allot land under *jhum* cultivation for settled cultivation. Further, the government is empowered to make rules for the allotment of land for *jhum* cultivation on subjects like the eligible persons for allotment, the ceiling of area of land to be allotted persons to whom preference may be given etc.

Nagaland

The central statute regulating forests in Nagaland is the *Nagaland Forest Act of 1968*. This act is identical to the Assam Forest Regulation. Even the rules framed are similar to those under the AFR. One unique law in the state is the *Nagaland Jhumland Act of 1950*. This is the only piece of legislation that talks of giving recognition to the customary laws and rights of the people. However, even under this law, certain powers have been vested with the Deputy Commissioner/Additional Deputy Commissioner.

Nagaland is not a scheduled state under the Constitution. However, special provisions for the administration of the state are provided in Article 371A of the Constitution of India. The article bars the application of all acts of parliament dealing with “religious or social practices of the Nagas; Naga customary law and procedure; administration of civil and criminal justice involving decisions according to Naga customary law; ownership and transfer of land and its resources unless approved by the state legislature to the entire state of Nagaland.” Besides, the article provides certain special provisions for the Teunsang District. It provides for the constitution of a regional council for the Teunsang District and also empowers the governor to assume the administration of the Teunsang District, initially for a period of 10 years and extend such period on recommendations of the regional council. This power of administration includes discretion with the government on recommendation of

the regional council to decide which state laws can apply to the Teunsang District and which should not. The governor can also make regulations for the peace, progress and good governance of the Teunsang District and, in this capacity, can repeal any act of the parliament or any other law in force for the time being. In effect, the governor of Nagaland has functions similar to those vested with the governor under the *Fifth Schedule to the Constitution*.

The corresponding state law dealing with the administration of the Teunsang District is the *Naga Hills-Teunsang Area (Administration) Regulation of 1957*. It divides the area into Kohima, Mokochung and Teunsang districts and provides that the administration of the area is to be carried out by the governor of Assam as the agent of the president, with assistance from the Commissioner and Deputy Commissioner. One of the most significant things to note in this act, from the point of view of forest laws, is that it provides for the continuance of all existing laws, taxes, cess or fee levied in Naga-Hills Teunsang Area or Teunsang Frontier Division of the North East Frontier Agency.

The Nagaland Forest Act of 1968

The provisions of this act are a mixture of the *Assam Forest Regulation of 1891* and the *Indian Forest Act of 1927*. To illustrate, while the provisions for the constitution of Reserve Forest and Village Forest are similar to those under the AFR, the Cattle Trespass Act of 1871 has been extended to the state as in the Indian Forest Act.

As in other states the regulations relating to *jhum* were enacted in the late 1940s. *The Nagaland Jhum Land Regulation of 1946* was framed to safeguard the rights of Nagas to *jhum* land in the Naga Hills. However, the government was empowered to acquire any *jhum* land for “public purposes.” It is pertinent to point out here that the right to *jhum* is a customary right that may accrue to any village or a community where such village or community has enjoyed the right to cultivate or utilize such *jhum* land for not less than 30 years.

The Nagaland Jhum Land Regulation and The Balipara/Tirap/Sadiya Frontier Tract Jhum Land Regulation of 1947 was repealed by the *Nagaland Jhum Land Act of 1970*. This act provided detailed provision for accrual of customary rights for *jhum* cultivation, among other things. A number of rules similar to those under Assam Forest Regulation under the *Nagaland Forest Act of 1968* have also been enacted. These include:

- *Nagaland Rules to Regulate Export of Forest Produce of 1969*
- *Nagaland Rules for Establish and Control of Forest Villages of 1969*
- *Nagaland Rules for Preservation of WL in Reserve Forest of 1969*
- *Nagaland Rules for Protection of Forests from Fire of 1969*

- *Nagaland Rules to Regulate Transport of Forest Produce by and Air and Water within or outside Nagaland*
- *1969, Nagaland Rules to Regulate Removal of Orchids From Forest in Nagaland, 1969*
- *Rules to Regulate Removal of Orchids from the Unclassed State Forest in the Naga Hills, etc.*

The Nagaland Village, Area and Regional Council Act of 1970, which is applicable in the districts of Kohima and Mokokchung, is another important legislation that describes the system of administration in the above said districts. This act provides for the constitution of a village council, which is established according to the usage, and customary practice of the area. It is important to note that one of the foremost powers and duties of the village council for the development and welfare of the village is to formulate schemes for the village forests, village roads and water supply among others. The administration of justice in such village councils or village authority is in accordance with the customary law and usages as accepted by the canons of justice established in Nagaland.

An area council that consists of members elected by the village councils is also provided for in the act, which is the next higher level of administration. The area council examines the developmental scheme formulated by various village councils within its jurisdiction and after coordinating and consolidating all such schemes into one for an area submits it to the appropriate authority with its own recommendations and priorities. The area council also has the power to impose and collect cess, tax on bazaar, village roads etc.

The next higher level is the regional council for each of the Kohima and Mokokchung districts, which is an elected body by the members of the area council. The regional council is the prime authority, which actively assists the state government in developmental work by exerting its influence on village and area councils. It also has the mandate to discuss matters relating to the general welfare of the district as a whole and exerts its influence over the area and village councils for achieving balanced development in all spheres of activities. (Under the rule-making power, the state government is authorized to make rules which provide for procedure for conduct of business for village, area, regional councils. This act also repealed the *Tribal, Area, Range and Village Councils Act of 1966*.

Chapter V: Joint Forestry Management in the Northeast

JFM in the Scheduled States

Assam

The rationale behind issuance of the joint forest management (JFM) order of Assam revolves around boundary disputes, jhumming and constant degradation of its forest areas. The order provides for the constitution of a forest protection and regeneration committee for the purposes of JFM in the state. The site selected for JFM includes all areas outside Reserve Forest Sites⁴² and only peripheral areas of Reserve Forest Sites are required to be worked in accordance with the working scheme prepared in consultation with the beneficiaries and duly approved by the concerned circle of Conservator of Forests.

The DFO is required to select the beneficiaries for the constitution of the committees in consultation with the local *panchayats*. The beneficiaries are to be identified from among the economically backward group of homogenous groups living in the vicinity of the forests concerned. It is made clear that no ownership or lease right over the forest land will be given to beneficiaries or to the NGOs or Voluntary Agencies (VAs) which may be associated as an interface between forest officer and village committees. The concerned *gram panchayats* are required to extend necessary support to such committees. The committees are required to ensure protection of forests and plantations, prevent trespass, encroachment, grazing, agricultural use, etc., and to insure the smooth harvesting of forest produce by the forest department and that usufruct rights allowed by the government are not misused. Further, the committees are to prevent any activity in contravention of the *Indian Forest Act 1927* and the *Assam Forest Regulation of 1891* and any acts and rules made thereunder. As in all other resolutions, failure to comply with the conditions of the resolution and contravention of the relevant clause may entail cancellation of individual membership and dissolution of the executives/forest protection regeneration committee without paying compensation for any work that might have been done and by the concerned DFO.

The JFM order does not specifically talk about those districts that are scheduled and their relevance to the special status under the Constitution. Although the linkage to the *panchayat* is mentioned, the role of the district council and the JFM committees is unclear under the order. The JFM order further ignores the recognition of any customary practices and its accommodation in the areas under JFM.

⁴² The JFM order mentions only the acronym, which logically should mean Reserve Forest Sites!

Mizoram

The Mizoram state government introduced the JFM scheme in September 1998 and required it to be implemented jointly by the state government, Forest Department and the Village Forest Development Committee (VFDC) to be constituted by the Government. The JFM scheme is applicable to all the forest areas of the state, although it is envisaged that initially it will operate only in selected degraded forest lands. Only such forest areas are to be selected where the villagers (local people) show interest in trying the JFM concept. Under the JFM scheme, forest areas less than 50 hectares per village will not be allowed to be managed.

A number of functions are vested with the village forest committee (VFC) connected with the protection and regeneration of forests and the regulation of the extraction of forest products. Besides powers to check contravention of the *Mizoram (Forest) Act of 1955/Wildlife (Protection) Act, 1972/Forest Conservation Act of 1980* are also bestowed on the VFC. Further, the managing committee shall have powers to seize wood illegally cut inside the forest area and the committee will levy a fine for unauthorized felling and grazing as per instructions issued by the government from time to time. As in all other cases, the range officer is empowered to disqualify any member of the committee permanently or for a specified period, if it is found necessary to do so in the interest of proper maintenance of the forest or for the proper functioning of the committee. Further, if the committee fails to function properly, or if there are instances of financial irregularities, the committee can be superseded without paying any compensation for any work that might have been done prior to such supersession. The JFM Order of Mizoram too suffers from the inadequacies mentioned for the Assam JFM Order. There is no linkage established with its unique Scheduled Areas and its special status under the Constitution.

Tripura

The *Tripura Resolution of December 1991* on JFM stipulates that the forest protection and regeneration committee shall be constituted for the regeneration, maintenance and protection of degraded forests in the state. The site for JFM is required to be selected in accordance with the working scheme prepared in consultation with members of such committees and duly approved by the concerned circle of Conservator of Forests. The beneficiaries of the scheme are to be selected from the rural poor people of homogenous groups living in the vicinity of the forests concerned. The functions of such committees are worded distinctly similar terms when they are compared with functions vested with such committees in Arunachal Pradesh. The only difference is that the committees are to prevent activity in contravention of the provisions of the *Indian Forest Act 1927* and any other relevant acts and rules made thereunder. The functions are worded in omnibus terms and the extent of empowerment of these committees would be a direct function of how liberally the provisions are construed by the Forest Department in particular. Again, the right of cancellation of individual

membership and dissolution of the Protection and Regeneration Committees is vested with the officers of the forest department.

JFM in the Non-Scheduled States

Arunachal Pradesh

Arunachal Pradesh came up with its JFM resolution in October 1997, “concerned about the continued degradation of unclassified forests along the villages and other inhabited areas due to excessive biotic pressure especially grazing and removal of fire wood and timber, *jhuming* etc.” Accordingly, the resolution sought to usher in a massive programme for the regeneration and protection of unclassified forest areas in the state jointly with the local villages and inhabitants under the JFM scheme. The scheme, however, does not apply to private forests or forest under private ownership. It is made clear by the resolution that the selection areas will be done by the Department of Environment and Forests in consultation with the local administration and consent of the local people. The management of the selected forest areas is vested with the Village Forest Management Committee (Village Forests), which has to be constituted for each of the JFM area. Notably, one adult member from each family of all the villages located within or adjacent to the selected JFM area has to be part of such a Village Forest.

The Village Forests are vested with a variety of functions and responsibilities. These include some specific functions like preventing trespass and encroachment in Protected Forest areas with the power to cede illegal timber and any other forest produce and informing forest personnel about possible malicious damaging of said forests. However, there are some very general and even omnibus functions like preventing any activity “in contravention of the provisions of the Assam Forest Regulation or any other Acts and Rules made thereunder.” The Village Forests are also required to “to regulate *jhuming*, grazing, and collection of non-timber forest products.” Note here that these general words notwithstanding, the Village Forests are only required to “to insure smooth harvesting of forest produce by the forest department.” Significantly, the DFO has the power to qualify and remove any member of the Village Forest and to dissolve the entire Village Forest, “if it is found necessary to do so in the interest of the proper management of the forest area.” The Village Forests can also be superseded by the DFO if it fails to function properly.

Nagaland

The *Nagaland JFM Resolution of March 1997* begins with a compelling note. While pointing out the need to involve people in forest management, the resolution says that it has taken into the fact that the “execution of any development activity is virtually impossible” in Nagaland without the prior consent and active cooperation of the land owners concerned. Accordingly, under the resolution, “the government has accepted JFM with the land owners, the government shall bear the financial burden, creation, and technical management with the active participation of land owning communities.” It is

also pointed out that villagers own 85.3% of forest in Nagaland and that the government has no control over the felling of trees in these areas. The areas to be covered under the scheme include: 1) non-government lands that can be put into use for forestry; 2) non-government virgin forests; and, 3) any other land for the state, which may be managed under JFM. To implement the scheme, a village level “community forest committee” (CFC), the government official concerned, and representatives of the members of the land owning community whose appointment constitute nomination, shall be made with the consent of the village council concerned. The duties and responsibilities of the CFCs are cryptically worded and include protection of JFM forests, keeping activities of CFC in record and ensuring the fulfillment of the objectives of the JFM. Here again if the DFO is satisfied that the CFC is not working satisfactorily the DFO in consultation with the village council may dissolve and reconstitute it.

Chapter VI: Conclusion

At the outset, community forestry in the Northeast and the *role* of communities in forestry in the Northeast needs to be distinguished. The overview of laws presented in this report give certain indicators to this slight variance to this understanding of what would constitute community forestry in the Northeast. While there is a clear distinction of areas in the form of scheduled and non-scheduled states, there are divergences in the categorization within each of these two broad categories. Out of twenty-three districts in Assam, only two districts are scheduled areas where management powers are vested in the district council. All other districts continue to be governed by the state through the AFR.

The manner in which law and policy has been developed from the 1840's reveals several assumptions of how the areas and the administration of the areas should be managed. Areas which were originally sought to be autonomous districts, such as Sadiya Baliya Para and Lakhimpur, are not part of the scheduled districts but part of Nagaland, which is not a scheduled state. It would be prudent to inquire into these variants and rationale for such transfer of land from scheduled districts to non-scheduled districts under the Constitution. The myriad of laws, rules and practices in the Northeast are a reflection of the geographical inaccessibility, presence of strong tribal community, difficult terrain, and heterogeneous cultural practices.

There are other significant reasons that have contributed to such a unique position in the entire Northeastern region. Foremost among these is the manner in which land is controlled and its obvious implications as to forestry. Although this report does not delve into the land tenure system amongst various states, the manner in which forestry is practiced in different forest categories reflects the varied land tenure of the states. Forestry in reserved forest land is different from forestry in unclassed state forests, say in Assam and Meghalaya. Forestry in village forests is different from forestry on private lands, for example in Meghalaya. Forestry in village forests and its sub-categories such as supply reserve, safety reserve (as in Mizoram) has to be seen differently when compared with forest villages, which were established in Assam and Nagaland. Forests controlled by religious heads such as *Law Lyngdoh*, *Law Kyntang*, *Law Niam* in Meghalaya have to be seen differently than forests controlled by village councils or the district or regional councils.

Forestry in scheduled states has a different complexion than forestry in non-scheduled states as stated earlier. This problem is compounded by the complexity of forestry in scheduled districts of scheduled states vis-a-vis forestry in non-scheduled states. In addition to this, the tradition of forestry in the hill districts, (for example Mikir Hills District and the United Khasi and Jaintia Hills) has to be seen differently than the Forestry in Plains Districts (of Assam for example), in both the scheduled and the non-scheduled states. Then there are regions within the autonomous district, which have been

classified on the basis of predominance of specific tribes, which have a special system of administration. The *Mising Autonomous Council Act of 1995* and the *Rabha Hasong Autonomous Council Act of 1995* are two such cases in point. This has obvious implications on the forestry management of Northeast regions.

The recent JFM orders lack linkage with the complex legal history of forestry of the region, and may conflict with past laws and indigenous practices. It is not surprising, then, that the Nagaland government finds itself helpless in the “execution of any development activity” without consent of the land owners. Another trend that is clearly visible is the increasing role of the state to regulate forestry irrespective of the ownership and land pattern in the states. The act regulating removal of timber in the scheduled state of Meghalaya and in the non-scheduled state of Arunachal through the *Meghalaya Forest (Removal of Timber) (Regulation) Act, 1981* and *Arunachal Pradesh Forest (Removal of Timber) Regulation Act 1983* respectively in non-scheduled states which restricts the removal of timber from the states without permission from the competent authority, are two good examples. The recent constitution of forest authority such as those under the *Assam Forest Authority Act of 1991*, where the forest authority is represented by no less than the Chief Minister, is a clear indicator of the intention to assume the power to control forestry irrespective of traditional practices, land tenure, and ownership patterns in the forest. The creation of forest protection forces such as those under the *Assam Forest Protection Act of 1986*, where supervisory officers of the forest department have been equated as police officers, is an extension of the trend of centralizing forestry management in the state.

In our preliminary analysis, the uniqueness of forestry practice in certain scheduled districts such as North Cachar Hill District, Lai, Chakma the Mara District of Mizoram, and the scheduled districts of Tripura are not yet clear. These aspects will be dealt with more in detail in the next phase of the study as information availability is concentrated in the districts themselves. The *Panchayat* Acts of the state and its relevance to forestry would also form part of the second phase analysis. Further, not only the laws on forestry that have been framed by the district councils, but also the rules, are based on the model of the *Indian Forest Act of 1927* with similar categorization of forests. Has the ADC not, by following the same restrictive model as is followed by the state, actually become a manifestation of the state government? The sole reason why a separate system of administration was envisaged was to protect the traditional customary practices of the people living in these areas. However, under the present scheme, the body that was created to protect the practices has adapted the same model that it was going to replace!

In summary, the following are important points of the report:

- ⌘ Apart from the categorization of land and the settlement process, the practice of *jhum* cultivation is perhaps the most significant and contentious issue in forestry management in the Northeast. It is important to note, however, that the practice of *jhum* cultivation “in all cases be deemed to be a privilege subject to control, restriction, and abolition by the state government and not to be a right.”

- ⌘ The wording of the law, especially in the context of Village Forests, distinguishes between rights, privileges, and concessions. The villagers right to enjoy the use of *Phats*, of pasturage, of minor forest produce, and other easements “to which they have been accustomed,” were not desirable under the British. It was felt that it is only where such rights may be legally established, where such grants are to be shown as rights. In all other cases, they should be shown as concessions. The right of way, a right to pasture, use of minor forest produce, or other easements, can only be established as legal rights through a grant of covenant or by uninterrupted use for a period of 60 years. Such strict regulations of what constitutes a right have to be reassessed in the modern context.

- ⌘ It would be worthwhile to empirically assess the privileges and concessions granted during the pre-British era and the British period, and compare it in the modern context. It seems obvious that several of these concessions and privileges have either been revoked or have not been granted to the present forest dependent communities in the Northeast.

- ⌘ Forest Villages connote a different institutional setup than a Village Forest constituted under the AFR. Under these rules, Forest Villages are mandated to be established within the limits of Reserve Forests and are designed for the purposes of providing a source of suitable local labor and for forming and maintaining plantations. The distinctions within Village Forests themselves, Village forests constituted in forest land, and those Village Forests created on non-forest land, are yet another subcategory that needs to be studied.

- ⌘ Some of the rules made under the AFR such as the “Rules Relating to Unclassed State Forests in the Plains of Assam and the North Cachar Hills,” relating to unclassified state forests in the plains of Assam and the North Cachar Hills, were applicable to what now form a scheduled district such as that which are presently not scheduled. The status of enforceability of these rules is something that needs to be delved into further.

- ⌘ One of the most significant part of the analysis which has not been covered in the present paper and which requires a special focus, is the manner in which the courts of law- both the

High Courts and the Supreme Court - have dealt with the issue of forestry management in the Northeast. The on-going *Godavarman Case* (perhaps the biggest case on forestry in India) and thousands of interventions by various stakeholders in forestry requires a separate analysis of the orders by the courts as well as its impact at the field level in the context of the Northeast.

Glossary & Acronyms

ADC	Autonomous District Council
AFR	Assam Forest Regulation
CFC	Community Forestry Committee
CFM	Community Forest Management
DFO	District Forest Officer
FD	Forest Department
FO	Forest Officer
FSO	Forest Settlement Officer
Gram Panchayat	village council
JFM	Joint Forest Management
jhum	Cultivation practice known as swidden or slash and burn
mel	rural councils
mehals	settlements
NGO	Non-governmental Organization
panchayat	rural council at the village level?
Sal	<i>Shorea robusta</i>
VFDC	Village Forest Development Committee
VO	Voluntary Organization

Appendix I: List of Forest Laws of the Northeast

NAGALAND

Acts/Regulations

1. The Naga Hills Jhumland Regulation, 1946
2. Nagaland Jhumland Act, 1950
3. Nagaland Forest Act, 1968
4. Nagaland Forest Products (Acquisition of Shares) Act 1982
5. Nagaland Village, Area and Regional Council Act, 1970
6. Assam Tribals Areas (Administration of Town Committees) Regulation 1950
7. The Naga Hills Teunsang Area Administration Regulation, 1957

Rules

1. Nagaland Rules to Regulate Export of Forest Produce 1969
2. Nagaland Rules for Establish and Control of Forest Villages 1969
3. Nagaland Rules for Preservation of Wild Life in Reserved Forest, 1969
4. Nagaland Rules for Protection of Forests from Fire 1969
5. Nagaland Rules to Regulate Transport of Forest Produce by and air and water within or outside Nagaland, 1969
6. Nagaland Rules to Regulate Removal of Orchids From Forest in Nagaland
7. Rules to regulate removal of orchids from the unclassified state forest in the Naga Hills under the General rules under the Assam Forest Regulation
8. Nagaland Rules to Regulate Salvage, Collection and Disposal of Drift and other Timber, 1969
9. Nagaland Settlement of Forest Coupes And Mahals by Auction Sale System Rules 1969
10. Nagaland Settlement of Forest Coupes and Mahals By Tender System Rules 1969
11. Nagaland Rules for quarrying Stones Collection or collection of stones, Gravel, Sludge or Sand from all Forests in Nagaland 1969

Notification under Nagaland Forest Act of 1968

1. Nagaland Powers of Forest Officers under sections 68 (1) & 72, 1969

ASSAM

Act/Regulations

1. Assam Forest Regulation of 1891
2. Assam Mikir Hills District (Forest) Act, 1957
3. Assam Forest Protection Act 1986
4. Assam Panchayat Act 1994
5. Assam Alienation of Land (Regulation) Act 1980
6. Rabha Hasong Autonomous Council Act, 1995
7. Land Acquisition Registration Act, 1951 (Autonomous Districts)
8. Land Acquisition (Mines) Regulation, 1951 (Autonomous Districts)
9. Mising Autonomous Council Act, 1995
10. Administration of Justice act 1956
11. Administration of Justice (Miscellaneous Provisions) Act 1957
12. Administration of justice in North Cachar Sub-Division Act
13. Mikir Hills District (Transfer of Land) Act, 1959
14. Sylhet Jhumland Regulation, 1891

Rules

1. General rules framed under under Assam Forest Regulation having force of law
 - i. Powers of forest officers under section 68 (1) and 72
 - ii. Rules regarding unclassified state forests
2. Rules relating to unclassified state forests in plains of Assam and North Cachar hills under sections 33, 34 (2) (c), (e), (g), (h) and 35 (2)
3. Rules for Quarrying of stones or the collection of stones, gravel, shingle or sands from unclassified state forest in Assam
4. Rules to regulate the removal of orchids from the unclassified state forests in the North Cachar Hills, Sub Division of the North Cachar District
5. Rules to regulate removal of orchids from the unclassified state forest in the Naga Hills
6. Grazing Rules under sections 34(2) (E), 35(2) and 72(D) of the AFR, 1891 and under section 12 of the Assam (1 of 1886)
7. Rules to Regulate Grazing in the unclassified state forest in Assam
 - i. Rules to regulate the grazing of cattle in the unclassified state forest in the Hakaluki Haor in the District of Sylhet
 - ii. Rules to regulate import of forest produce under section 37 (1) and 40 (2) (a), (g)
 - iii. Transit Rules under sections 40 and 41
 - iv. Rules to regulate transport of forest produce by land and water

8. Rules under section 40 (1) and 41 (1) of the AFR for the better control of raft logs and bamboos on the Barak, Kasiara, and Surma Rivers in the Surma Valley
 - i. Rules to regulate the salvage, collection and disposal of drift and other timber
 - ii. Rules for the establishment and control of forest villages
 - iii. Preservation of wildlife in Reserved Forests under sections 25 (g) and 72
 - iv. Rules for Protection of forest from fire under section 25(b) and (c)
 - v. Rules for Eviction from Reserve Forest under section 72(c)
9. Rules having force of law and executive orders relating to forest
 - i. Control, Duties, Responsibilities of Forest Officers
 - ii. Orders regarding forest settlements and notification of boundaries

Chapter III

 - General Provisions
 - Special Provisions relating to applications for special cultivation
 - iv. Privileges and Concessions
 - v. Elephant Hunting Rules under section 6 of the Elephant Preservation Act of 1879
 - Executive orders regarding elephant hunting rules
 - vi. Miscellaneous Rules
 - Royalties form quarries
 - Construction of roads
 - Encroachment in forests
 - Rewards
 - Duties of mauzdars in unclassified state forests
 - Sale of forest mahals and coupes
 - Appointment of honorary forest officers
10. Assam Settlement of Forest Coupes and Mahals by Tender System Rules 1967
11. Assam Sale of Forest Produce Coupes and Mahals Auction Rules, 1977
12. Assam Alienation of land (Regulation) Rules 1980

Notification

1. Assam Notification under Assam Forest Regulation (Amendment) Act of 1995

MEGHALAYA

Acts/Regulations

1. Meghalaya Forest Authority Act 1991
2. Meghalaya Forest Regulation (Application and Amendment) Act, 1973
3. Garo Hills Regulation 1882
4. Garo Hills District (Forest) Act 1958
5. United Khasi Jaintia Hills Autonomous District Act, 1958
6. Meghalaya Forest (Removal of Timber) (Regulation) Act, 1981
7. Meghalaya Tree Preservation Act 1976
8. Meghalaya Transfer of Land (Regulation) Act, 1973

Rules

1. Meghalaya Rules for Grant in Aid to District Council for implementation of Forest Scheme
2. Meghalaya Forest (Ejection of Unauthorized Persons from Reserve Forest) Rules 1979
3. Khasi Hills Autonomous District (Management and Control of Forest, revised rates of royalty) Rules, 1984
4. Meghalaya Forest (Removal of Timber) (Regulation) Act 1981
5. Meghalaya Transfer of Land (Regulation) Rules, 1974

Rules under the Garo Hills Regulation of 1882

1. Rules having the force of law- rules relating to the use of forest produce in the zamindari lands in the Garo Hills District that are under the management of state under section 2 (a) (b)
2. Rules relating to the use of forest produce of land at the disposal of government not included in a Reserve Forest or Village Forest in the Garo Hills District
3. Executive orders relating to the Garo Hills

Rules of the Khasi and Jaintia Hills

1. Section I- Rules relating to the use of forest produce on land at the disposal of the state in the Jaintia Hills and the British villages of Khasi Hills and not included in a reserved or village forest
2. Section II- Executive orders relating to Khasi and Jaintia Hills
3. Rules for the removal of orchids from the Jaintia Hills and such portions of the Khasi Hills as constitute British territory and for their sale at Shillong

TRIPURA

Acts/Regulations

1. Indian Forest Act
2. Tripura Panchayat Act, 1993
3. Tripura United Provinces Panchayat Raj Act, 1947

Rules

1. Tripura Forest Timber Marketing Rules

MIZORAM

Acts/Regulations

1. Mizo District Forest Act, 1955
2. Pawi Autonomous District Agricultural Land Act
3. Pawi Autonomous District. (Jhum Regulation) Act 1983
4. Pawi District Council Forest Act, 1957
5. Pawi Autonomous District Council (Village Council) Act, 1974
6. Administration of Justice Rules- Lakher District
7. Mizoram Trading by Non-Tribals (Regulation), Act, 1974

Rules

1. Mizo Constitution etc. of Business of DL Rules 74,
2. Executive rules relating to the Lushai Hills
3. Rules for the management of the forests in the Lushai Hills/ Mizo District

ARUNACHAL PRADESH

Acts/Regulations

1. Arunachal Pradesh Anchal Forest Reserve (Constitution and Management) Act, 1975
2. Arunachal Pradesh Forest (Removal of Timber) Regulation Act 1983

Rules

1. Assam North East Frontier Agency (Royalty on Forest Produce) rules 1958

MANIPUR

Acts/Regulations

1. Indian Forest Act applicable
2. Manipur Panchayat Act, 1975
3. Manipur (Village Authorities in Hill Areas) Act, 1956

Rules

1. Manipur Forest rules, 1971
 - Protection of reserved or protected forests from fire
 - Hunting and shooting etc. in reserved and protected forests
 - Pasturing of cattle in reserved and protected forests
 - Reserving trees in protected forests
 - Cutting of trees, cultivation etc. in protected forests
 - Transit of forest produce
 - Drift and stranded timber
 - Powers and duties of forest officer and revenue officer
 - Contracts
 - Preservation of wildlife in reserved forest and other parts of Manipur
 - Eviction
 - Rules for the establishment and control of forest villages
 - Penalties and rewards
2. Manipur Hill Areas (Acquisition of Chiefs' Rights) Act, 1966

Other Laws

1. North Eastern (Reorganization.) Act 1971
2. Bengal Eastern Frontier Regulation, 1873
3. North East Frontier Tract (Administration) Regulation, 1954

Appendix II: Territories under the Seven Northeastern States

ASSAM

- Territories in the province of Assam
- Territories in the Khasi States
- Territories in the Assam Tribal Areas
- Excluding territories specified in schedule to Assam (Alteration of Boundaries) Act, 1951 (position in 1950)
- Excluding territories specified in section 3 (1) of the State of Nagaland Act, 1962 (1963)
- Excluding territories specified in section 5, 6 and 7 of NE areas (Reorganisation) Act, 1971 (1972)

NAGALAND

- Territories specified in section 3 (1) of the State of Nagaland Act, 1962 (1963)

MANIPUR

- Territory being administered by the Chief Commissioner's Province of Manipur just before the Constitution (1973)

TRIPURA

- Territory being administered by the Chief Commissioner's Province of Tipura (1973)

MEGHALAYA

- Territories specified in section 5 of NERA (1972)

SIKKIM

- Territories comprising Sikkim prior to commencement of the Constitution (1975)

MIZORAM

- Territories specified in section 6 of NERA through state of Mizoram Act, 1986 (1987)

ARUNACHAL PRADESH

- Territories specified in section 7 of NERA through state of A.P act, 1986 (1987)