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Legal limits to tribal governance: coal mining in Meghalaya, India

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Land in Meghalaya, India, was traditionally agricultural land, owned by the community. With increasing privatization and rising commercial value of land for non-agricultural use, many owners have sold the land for mining operations. So-called rat-hole coal mining has resulted in environmental degradation as well as in the loss of lives of miners, most of whom are from outside the state. The National Green Tribunal has banned coal mining until safer, more environmentally sound policies and practices are in place. Critics in Meghalaya claim that the ban encroaches on the tribal way of life and point to constitutional provisions exempting Meghalaya from the purview of national mining laws. However, the courts are clear: Meghalaya's exemptions do not allow them to violate the constitutional right to life of all Indian citizens. The traditional institutions are not strong enough to mitigate the rising inequality among citizens following from mining and other commercial operations.

From agriculture to mining

Land in Meghalaya is predominantly a communal productive resource, at least on paper. The State owns very little and what it owns is basically reserved forests for environmental protection. In the Khasi-Jaintia Hills, covering a large part of Meghalaya, a distinction was made between Ri Raid (communal) and Ri Kynti (private clan land). Under the traditional system, village residents had access to communal land and could cultivate and reap the benefits of their work. In brief, the land was supposed to be the property of the community. However, due to the fact that cultivators could profit from the fruits of the land, a process was set in motion whereby community land was gradually converted into private land. For private land, there are considerable fewer restrictions on use than for communal land.

"The ban on coal mining will kill us"

– banner from rally to protest ban, organized by Mine Owners Association

Evidence points to a decline in communal land due to ongoing privatization, and since there are fewer restrictions on private land use, private land is frequently sold for non-agricultural use. In other parts of Meghalaya, communal land institutions have survived, but in Khasi-Jaintia Hills, the potentially higher profits from non-agricultural land use has led to land being set aside for mining, in particular coal mining. Further, it appears to be a correlation between the extent of landlessness and mining in certain parts of the State. This trend of privatization of land has focused attention on the negative effects of mining on agriculture, but also on the environment and the health of the local population. As noted by O.P. Singh, "coal mining in Meghalaya has benefited the people and the state and has been a means of wealth generation for some people of the coal mining area. However, it also (is) a bare fact that the benefit of coal mining is going to a small group of people, whereas a majority are excluded to share the benefit due to various reasons. Thus the gap between rich and poor is increasing rapidly. The livelihood of a large population is at stake due to degradation of water and soil quality and reduction in agricultural productivity. Traditional crafts and artisanal skills

are also fast disappearing. Very little concern for future is visible in society." Despite the formulation of a state-wide mining policy, he observed that these dynamics are not well understood and under the present circumstances, there was hardly any activity for restricting environmental degradation.

Court interventions

O.P. Singh's paper is significant because it provided an important background for court interventions in mining practices in Meghalaya. The courts intervened not only because of environmental degradation, but also due to the loss of lives in mining accidents. A case was brought before the National Green Tribunal in Meghalaya regarding lethal accidents in a coal mine in the State. Counsel for the mine owner argued that the mining activity was carried out under the orders of the Headman of the village under whose jurisdiction the mine falls and that there was no formal protection and regulatory mechanism adopted by the State for carrying on mining activity. Counsel for the Ministry of Environment and Forestry held that "the entire mining activity was being carried on without obtaining consent to establish and/or consent to operate from the State Pollution Court Board. The Court observed that it appeared the mining activity was going on in a most unregulated, illegal and in a manner opposed to the statutory provisions. At a later session, the Court found it astounding that no charge sheet had been filed, despite the fact that two years had lapsed since the accident and that the case concerned matters under the Indian Penal Code.

Concurrently with this case, the National Green Tribunal Principal Bench in New Delhi investigated the mining activity in the State of Meghalaya, drawing on the evidence presented above. The Tribunal directed the Chief Secretary, Government of Meghalaya and the Director General of Police, State of Meghalaya to ensure that rat-hole mining/illegal mining is stopped forthwith throughout the State of Meghalaya and any illegal transport of coal shall not take place until further orders passed by this Tribunal.

While the original application concerned the mining accidents, the Court added two other applications, one from the environmentalist organisation Impulse NGO Network and one from the *The All Dimasa Students Union*, a student association based in the neighbouring state of Assam. Both dealt with environmental effects of coal mining, in particular the adverse downstream effects of the polluted waters affecting districts in Assam. The majority of mine workers came from Assam and the deceased in the mining accidents had all Muslim names, indicating that they were most likely labourers from Bangladesh. The Court had set



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up a Committee as per its earlier injunction to look into coal mining practices with a particular view towards environmental and safety considerations, but found the work of the Committee, mainly Meghalaya officials, to be highly unsatisfactory and discharged the Committee.

Damage to whom?

The Court considered the economic hardships to enterprises resulting from the ban, but held to the contrary: “Now let us examine the merit of the contentions raised on behalf of some of the applicants and even the State that there are economic interests which need to be protected and a further ban on carrying on of mining activities may adversely affect the economic interest of the State and the individuals who are involved in this activity. We find this argument without substance, both legally and practically. Firstly, Article 21 of the Constitution of India, gives prominence to the right to life, than any other interest including economic interest of the State or the individuals. (...) Repeatedly, the Supreme Court of India has held that even a State cannot be permitted to take shelter of the economic limitations where it comes to protection of life and liberty of the citizens of the country.”

Thus, the Court upheld its prohibition; “we continue the interim prohibitory order (...) and direct

that no unscientific, unregulated, illegal mining without seeking Environmental Clearance or the consent of the concerned Board, particularly the rat-hole mining would be permitted to be carried on in any part of the State of Meghalaya.”

At the next session, the Court complimented the work of the Committee, particularly on its documentation of negative environmental effects, but also on its reports of malpractices regarding the reporting of extracted coal stock and illegal check posts interrupting transportation of coal. It made a series of directives to the State concerning weighting of coal freight, establishment of checkpoints and royalties to be paid to the State. Finally, it concluded with a request to the Committee to map the entire coal reserve of the State and superimpose the existing coal mines irrespective of their individual areas on a map in order to identify the clusters and suggest measures needed for preparing an appropriate environmental friendly mining plan.

The Court also expressed the perhaps pious hope that “the State Government shall take all such measures including those which have been stated in the recommendations of the Committee and direct the mine owners to provide for all such measures and conditions of service to the mine workers as are required under the prevalent laws.” Although it could be argued to be outside the scope of the Green Tribunal, the Court nevertheless found it relevant

to the case as it clearly touched on service conditions with resultant fear of recurrence of fatal incidents and its injurious effect on human health. However, many workers in these coal mines, including those individuals suffocating in the mining accident mentioned above, were illegal immigrants from Bangladesh and thus subject to hardly any protection at all. Large contingents, including many children, also came from Assam. As migrants and outsiders, their residence status was very precarious. Reportedly, only a small fraction originated from Meghalaya.

Hiding behind the Sixth Schedule

As of present, there seems to be a struggle between the Green Tribunal and the State Government whereby the Tribunal awaits a mining plan from the Government before lifting the prohibition and the Government extends the time for transportation of extracted coal in order to buy further time for submitting a mining plan to the Tribunal. Another tactic of the State Government is to refer to the special status of Meghalaya. According to the Shillong Times on 12 April 2016, "The argument the State government wants to make is that since coal mining in the State is part of customary tribal rights, the existing central laws will come into conflict with the current practice. Hence, according to the State government, a Presidential notification (...) can exempt Sixth Schedule areas in the State from the purview of central mining laws." Defenders of coal mining have claimed that the ban had jeopardized the livelihood of the tribal people, suggesting that the ban had infringed their right to life. Others have pointed to the potential for mining to lift people out of poverty. However, the big legal question is whether this Sixth Schedule can overrule Art. 21 of the Indian Constitution, which guarantees the right to life. The courts have been crystal-clear on that question: this Sixth Schedule cannot overrule the constitutional right to life.

It should be kept in mind that the ban is not against mining as such, but against how it has been practiced in Meghalaya. A related question is whether mining is in conformity with the tribal way of life. In a study of the artisanal coal mining industry in Meghalaya, Vakkyil and Canato examined key factors such as ownership, operations, control and impact justification. In terms of ownership, the study found that benami mining rights and absentee landlordism have led to a situation of rights alienation. A benami transaction is one where a property is held by one person and the amount for it is paid by another. The transaction is done to benefit the person who pays for the

property either directly or indirectly. This is a way for non-tribals to hold property in a tribal state such as Meghalaya. In operations, low-volume, low technology extraction is giving way to higher volume, mechanized production involving the use of explosives. With regard to control, mining has led to ineffective tribal institutions and community norms being ignored.

Finally, with regard to impact justification, high environmental and social impact is justified through economic advancement of individuals, raising the question of whether rat-hole mining is in the public interest and whether private interest can take precedence over public interest. The study finds that class is replacing tribal affinities as the main differential in urban Meghalaya. In a backward economy dominated by small-scale farming and forestry, mining offers much higher returns than other livelihood alternatives. To assume that the traditional institutions would be untouched by the process of rapid economic development, is unrealistic. But with the decline of communal land and the institutions that came with it, the big question is what alternatives there are to ensure a better intra-ethnic redistribution of the benefits of development.

Further reading

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