

# The Politics of Coal Mining in Meghalaya: Land, Ownership and Local Autonomy

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In the Northeast region of India, the state of Meghalaya is endowed with rich mineral resources like coal and limestones. Protected under the special status of the Sixth Schedule, land and its resources belong to the people. But over the last few decades, mining of these resources has changed not only the physical environment but also the tenet of indigenous land governance. While this transformation can be attributed to the change in land governance during the colonial and the post-colonial period, the extensive resource extraction from the mid-1990s onwards exposed the shortcomings of decentralisation of power and its effect on land governance in Meghalaya. Today the existence of multi-layer institutions of land governance that are inconsistent in powers and functions shapes the dynamics of coal politics and land governance in the state.

**Keywords:** Meghalaya, Sixth Schedule, Land Governance, Ownership, Local Autonomy, Coal Politics

## Introduction

Coal is one of the most important mineral resources of the state of Meghalaya. In recent years there has been a general interest both at the policy and academic level on coal mining in Meghalaya and its impact on the environment and society. Existing literature on coal mining and resource extraction in Meghalaya and the northeast region can be divided into two categories. The first category focuses on coal mining and its impact on the physical environment and its flora and fauna (Chabukdhara and Singh, 2016; Mukhopadhyay, 2013; Swer and Singh, 2004; Sarma, 2005; Sarma and Barik, 2011; National Green Tribunal, 2019). The second, and more recent, have expanded beyond the impact on the physical environment to focus on areas of governance particularly its intersection with indigenous rights over land and its resources (Duncan, 2007; Vakkayil and Canato, 2015; McDuie and Kikon, 2016; Das, 2014; Lahiri-Dutt, 2016; Lahiri-Dutt, 2017; Kikon, 2019; Vakkayil, 2021;

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Vakkayil, 2023; Wouters, 2023).

In India, linking indigenous rights to land and its resources is not new but gained much attention in the post-liberalisation era. With the liberalization of the Indian economy, the region which for 50 years was a non-entity space in the Indian imagination suddenly become central to India's energy security framework. With the estimated untapped potential of 1,739.37 million tonnes of coal reserves (Press Information Bureau, 2022), 58,356 MW of hydropower (North Eastern Electric Power Corporation Limited, 2022), 198.86 billion cubics of natural gas (North Eastern Electric Power Corporation Limited, 2022), and 159.14 million tonnes of crude oil (Ministry of Statistics and Programme Implementation, 2022), the region's vast resources were in the spotlight. However, unlike in other part of India where the State have the right over mineral resources, in northeast India, the rights to the land and its resources belong to the indigenous people. This right is protected by the constitution under Article 371A in the case of Nagaland, and the Sixth Schedule under Article 244(2) and 275(1) for the indigenous areas of Assam, Meghalaya, Tripura and Mizoram.

Central to this special status is the decentralisation of power and governance at the local level that will not only protect but also empower the indigenous communities with a right over their land and resources. In Meghalaya, this decentralisation of power is operated through the existence of traditional and modern state institutions creating multi layers of governance. In short, there are three layers of governance in Meghalaya that deal with land and resources- the top is the state government, the Autonomous District Council (ADCs) in the middle, and traditional institutions at the bottom. While this matrix of governance worked well in the past, the onslaught of the extractive resource economy of the mid-1990s onwards presents an institutional challenge to land governance. Coal mining is one example that changes not only the physical characteristic of the land but also challenge the traditional foundation of land governance in Meghalaya. Decentralisation of power that is operated through the three hierarchical layers of governance has created a gap in land and resources governance. It has also failed to protect clan and community land from being transferred into private ownership for resource extraction. According to Kunta Lahiri Dutt (2016, 2017), the recognition of customary norms and their extension as a special status in the constitutional framework has created a grey area of non-legality, a complexity that denies a straightforward distinction between legal and illegal (Lahiri-Dutt, 2016; Lahiri-Dutt, 2017: 806). This is more so in the realm of the coal mining economy where, as Lahiri-Dutt argues, "this 'non-legal' coal mining economy is located at the intersection between, on the one hand, the state's political expediency in territory building and, on the other, the practicality of attributing sovereign rights over resources to local people" (Lahiri-Dutt, 2016: 3). For a long time, this legal ambiguity was the fulcrum that Meghalaya managed to exempt itself from the national mining laws. However, it was only in 2019 with the Supreme Court judgement in the case against illegal coal mining in the state that this legal ambiguity was addressed.

This legal ambiguity over resource governance is also dealt with by Vakkavil and Canto (2015), Vakkayil (2021, 2023), and McDuie Ra and Kikon (2016) who

highlighted the intersection of state and indigenous institutions and the impact on indigenous rights. This tension between the state and the indigenous rights is characterised by the cultural politics of resource use which is a colonial legacy (Das, 2014) and woven into the present political power structure that includes state and non-state actors (McDuie Ra & Kikon, 2016) through the interplay of ethnic identity, development and human insecurity (McDuie-Ra, 2007). Therefore, what dominates the region today is the complex politics of resource extraction and the relationship of the people with the state and other external actors that are influenced by the 'capitalist desire' (Wouters, 2023) leading to the intensification of politics of exclusive ethnoterritorial belonging and rights (Wouters, 2023; Kikon, 2019).

It is in this context that this paper draws out the entanglement between state institutions and indigenous governance, aspirations for development and local politics in the rich coal mining state of Meghalaya and the impact on land governance. In exploring this intersection, this paper employs the theme of decentralisation of power to understand land governance in Meghalaya. The main point of the argument is to show that as the extractive resource economy expanded, decentralisation of power to the local community through state agencies has failed to protect local self-governance's mandate of empowering the people's rights to land and resources. To drive this point of argument, Vakayil's (2021) governance settlement approach will be useful to untangle the dichotomy between the decentralisation of power and local governance in Meghalaya. According to Vakayil (2021: 1644), the notion of 'governance settlement' is used to:

...signify comparatively stable institutional conditions involving particular configurations of field structures, institutional logic, and actor agency. While a settlement might be stable for some time, various forces might lead to its eventual change and the establishment of a new settlement. These transitions can produce governance settlements characterized by certain combinations of state and nonstate elements. These transitions can produce governance settlements characterized by certain combinations of state and nonstate elements.

Governance settlement seeks to answer three institutional factors -field structures, institutional logic, and actor agency- to analyse the stabilization and disruption of governance settlements (Vakkayil, 2021). In Meghalaya, he argues, since governance settlement is dominated by state-oriented elements, local and traditional governance settlement which is based on simple institutional logic is being progressively delegitimized (Vakkayil, 2021:1663). Furthermore, he argues, state consolidation has been advanced by progressively combining state-oriented values such as nation-building, economic development, and entrepreneurialism with selected tribal values to form hybrid institutional logics that resulted in the complexity of governance (Vakkayil, 2021:1663). Vakkayil also noted that over time a process of diversification of actor agency across various phases of governance settlements. Besides actors that were associated with the local communities, new actors such as external traders, migrant workers, NGO functionaries, employees of allied industries such as cement companies, and so on with varied interests and scope for agency in the field emerged

resulting in deeper state penetration in the sector by providing impetus and legitimacy for specific state interventions (Vakkayil, 2021: 1664). Thus decentralisation of power has rendered traditional institutions incapacitated. While traditional institutions are still agencies of traditional polity that govern social relations and function, in actuality, their powers and functions are dictated by the state agencies leaving them with limited powers and vulnerable to external pressure. In the end, the mark left by these institutional transformations is the change in social connection to the land that is integral to the indigenous community. It is this precarious condition that led to the creation of a new form of elitism that is built on natural resource extraction which can change the traditional land governance system from community to private individual ownership.

To understand the connection between decentralisation and land governance in the coal mining areas of Meghalaya, this paper argues that in Meghalaya, the politics of coal mining is influenced by the change in the traditional governance of land and ownership. The first part of the paper explores the history of coal mining in the state. The second addresses the land ownership and control and explore the various traditional institutions of land ownership and control and changes brought to these institution. The third section deals with the decentralisation, local governance and the politics of coal mining. Here the decentralisation of power through state agencies like the ADC fails to empower local self-governance or protect land and its resources. The fourth part discusses the Supreme Court judgment to clear the legal ambiguity of ownership of land and resources and its challenge to the future of decentralisation of power.

### **Coal Mining in Meghalaya**

Mining activities in the hills of Meghalaya dated back before the arrival of the colonial power when the Khasi principalities and Jaintia kingdom did a brisk trade in limestone and iron ore with the plain of Shylet where limestone quarrying became the major economic enterprise in the region (Cederlof, 2013: 164). The arrival of the East India Company and their hold over the *Diwani* of Bengal after the Battle of Buxar in 1764 highlighted the importance of the Khasi-Jaintia hills' mineral resources to the revenue of the East India Company. Before Robert Lindsay, the East India Company's first resident collector, established monopoly control over the limestone trade, trade on mineral and other resources that originated in the Khasi-Jaintia hills was operated by European traders and merchants such as the English, Armenian, Greeks, Dutch, Danish, Ostend, French, and Portuguese (Cederlof, 2013: 46). The rich mineral resources of the hills, especially limestone, were, therefore, the main commercial interest of the British during the early years of its engagement with the hills.

This enterprise expanded once the British colonial power occupied the Khasi hills in 1829. Besides limestone and iron ore mining that were indigenous to the hills, coal mining was also introduced. The *Report of the Administration of Bengal* of 1873 pointed to the opportunity of exploiting the rich mineral resources and utilizing the expertise of the Khasis who have already developed an indigenous iron ore industry. The report remarked:

The Khasi and Jynteah Hills especially excel perhaps any part of India in respect of minerals...it is probable that the combination of the best coal, iron, and lime in one place, together with an iron-working population, might make these hills the best manufacturing district in India (Report of the Administration of Bengal 1873:37)

The 1873 report was not the only official communication that confirms the existence of mining history in present-day Meghalaya. As early as 1853, A J M Mills, the officiating judge of the Sudder Court of Calcutta, in his report on the Khasi and Jaintia Hills noted that coal deposits in the Khasi and Jaintia Hills were abundant and that the extraction of coal at Cherra (Sohra in local language) is 'almost worked out. (Mills Report 1853: 4). While the mining of iron ore gradually declined over the years, the mining of coal and limestone increased exponentially during the later period of the 20<sup>th</sup> century and after. From the late 1980s onwards coal and limestone began to operate on a larger scale, and from the 1990s onwards commercial mining of coal and limestone in Meghalaya became rampant and without any regulation.

Today, Meghalaya is one of the rich mineral-endowed states in India. It has the biggest estimated coal reserve of 576.48 million tonnes (Press Information Bureau, 2022) which is valued between Rs 2,01,600 crore to Rs 4,60,800 crore-an estimation that is worth 10 times the state's GDP( Srivastava, 2022) and an estimated reserve of 15,100 million tonnes of limestone (Department of Mining and Geology, 2022). It is also among the top coal-producing state in India and emerged as an important coal producer of the country ( Ministry of Mines, 2012:11) According to the official estimate, since 2000, Meghalaya has produced about 89.179 million tonnes of coal (See Table 1). Next to coal, limestone is another important mineral found abundantly and extensively exploited in Meghalaya. It is estimated that the state with about 15100 million tonnes of limestone reserve, possesses about 12 per cent of the country's total limestone reserve (Directorate of Mineral Resources, 2022; Lamare and Singh, 2016:89; see Table 2 ). In the case of coal, the Directorate of Mineral Resources (DMR), under the Department of Mining and Geology, issues Mineral Transport *Challans* (Receipt) (MTCs) and No Objections Certificates (NOCs) (MTCs for coal exported in the country and a NOCs for coal exported outside the country, particularly Bangladesh) on advance payment of royalty for transport of coal outside the state. In the case of limestone, royalty is collected by the Forest Department along with the M&G Department. The Forest Department collects a royalty on limestone from forest areas whereas the M&G Department collects a royalty on limestone from non-forest areas with no mineral that can be removed without payment of royalty.

It is this matrix of extractive resources that binds the daily lives of the people of Meghalaya. Coal as one of the extractive resources remains in the spotlight in the debate on the environment, land governance, traditional institutions, coal elite, and electoral politics. This is because coal mining in Meghalaya is unique for it is operated outside the purview of national mining law (until 2019) and under the special status of a holding system recognised under the Indian constitution.

**Table 1: Coal Production in Meghalaya (Share, Growth and Value)**

Year	Quantity (in Million Tonnes)	Share (%)	Growth (%)	Value (in Million Rs)
2004-05	5.345	1.4	-1.8	7830.4
2005-06	5.566	1.4	4.0	7347.1
2006-07	5.787	1.3	3.8	7638.8
2007-08	6.541	1.4	11.5	5292.4
2008-09	5.489	1.1	-19.2	12514.9
2009-10	5.767	1.1	4.8	20545.6
2010-11	6.974	1.3	17.3	25796.8
2011-12	7.206	1.3	3.2	47739.8
2012-13	5.640	1.0	-27.8	37365.0
2013-14	5.732	1.0	1.6	37974.5
2014-15	2.524	0.4	-127.1	12670.480
2015-16	3.712	0.6	32.0	18634.2
2016-17	2.308	0.4	-60.8	8585.4
2017-18	1.529	0.2	-50.9	5687.7
2018-19	0.00	0.00	0.00	0.00
2019-20	0.00	0.00	0.00	0.00
2020-21	0.00	0.00	0.00	0.00
Total	89.179			275432.7

Source: Compiled from various Coal Directory of India : Coal Statistics, Ministry of Coal, Government of India (2001-2002 to 2020-21)

**Table 2: Limestone Production in Meghalaya**

Year	Quantity (in '000)	Value (in Rs'000)
2009-10	3249	757175
2010-11	1738	374170
2011-12	3606	1427008
2012-13	3893	1962575
2013-14	3616	2344472
2014-15	3691	2399582
2015-16	3834	2622258
2016-17	5095	2540552

2017-18	6599	2859654
2018-19	7195	2794348
2019-20	7259	2966314

Source: Compiled from Various Indian Mineral Yearbook, Government of India, Ministry of Mines, India Bureau of Mines, 2009-10 to 2019-20

### Land Governance and Change

In Meghalaya, land ownership is largely under community and private ownership. According to the Indian State Report of 2019, out of 22,429 sq km of forest, only 1,113 sq km of forests (Reserved Forests, Protected Forests, National Parks and Sanctuaries) are under state control (Forest Survey of India, 2019). The rest is under the ownership of the community and private individuals. To understand land ownership and control in Meghalaya, the traditional institution of governance is the foundation of control and ownership. The traditional institutions in the form of *Syiemships*, *Wadadarships*, *Dolloiships*, *Lyngdohships* and *Nokmaships* were the head of political administration and the main centre of governance in the Khasi, Jaintia and Garo Hills respectively. While these heads form the top of the structure of governance, in matters of land governance, none of them has the authority to make decisions on the land and its use or selling without the permission of the community or the clan. Therefore, traditional land governance in Meghalaya is based on the bottom-up approach where the clan clans form an important nucleus of the governance structure. In most cases, the clan of a family is headed by the elder member chosen from among the male members of the family who looks after the affairs of the clan's land and who at times can also be a member of the village council or a headman of the village and member of the chief's council respectively. Effectively, the head of the clan acting as its head or as a headman of the village holds an important position, responsibility and authority in protecting clan and community land.

However, with the advent of the British colonial power in the hills, a change in land holding system was effected to suit the colonial administration. A hierarchal structure of governance that is subservient to the colonial power was implemented and this drastically altered governance in the hills. For example, in the case of the Garo Hills, the *A'king* *Nokma* were recognized as independent of each other and stripped of their political, administrative and judicial power. Instead, the Deputy Commissioner appointed *Laskers* and *Sardars* who were given the third class magisterial powers to try cases of civil and criminal cases committed under the customary laws and practices with the *Nokma* acting merely as a titular head of their clan (Sangma, 2019:277). Similarly, in the case of Jaintia Hills, in 1854, Jaintia Hills were incorporated into the newly established Khasi and Jaintia Hills districts that are comprised of the annexed territories of the Jaintia Hills and thirty-two villages of the Khasi Hills. By 1861, the district was put directly under the administrative charge of the Deputy Commissioner. Under this new administrative system, the *Syiemship* was abolished and royal lands were converted into extensive revenue lands. The *Doloi* who in the pre-colonial time was elected from amongst the senior members of a clan

for a lifetime and exercised complete administrative control over a province that is composed of many villages known as *Elakas* is now 'nominated' for a three-year term and his appointment is confirmed by the Deputy Commissioner. These changes that the colonial power effected in the hills effectively stripped the power of the traditional institutions and reduced it to cultural symbols only while transforming the heads of these traditional institutions into bureaucrats rather than political leaders answerable to their people. (Chaturvedi, 2020).

Changes in these traditional institutions were also incorporated after 1947. Legitimized in the Sixth Schedule, state agencies in the form of the Autonomous District Council have replaced the traditional heads in matters of land governance. Acting as a nodal agency to protect indigenous land and resources from exploitation by non-indigenous, the ADC is mandated with the power to protect, conserve and promote traditional and customary practices. Therefore, management of land and its resources, and in relations with traditional institutions, the ADCs have the power to make laws over-allotment, occupation or use, or the setting apart, of land; management of any forest; inheritance of property; assess and collect land revenue and to impose taxes (North Eastern Council, 2022). Responsible for protecting indigenous land and resources from exploitation by outsiders, the Sixth Schedule mandated the ADCs with the power to protect, conserve and promote traditional and customary practices. Thus with the advent of the ADCs, traditional institutions as grassroots governance are relegated to the background and their power stripped away with no statutory recognition. Grassroot governance such as the village headmen and their council (*dorbar shnong*) which are central and symbiotic to indigenous land governance are pushed down the hierarchy where they cannot function independently without the supervision of the ADC.

Change in land governance is also effected through the misuse of a law on land transfer. According to the *Meghalaya Transfer of Land (Regulation) Act of 1971* sale and transfer of land from indigenous to non-indigenous individuals or firms is prohibited. However, this prohibition is violated by making use of the loophole within the Act that allows such transfer from indigenous to non-indigenous firms or individuals except in circumstances where such transfer is "likely to promote the economic interest of the scheduled tribe ... and promote the interest of the tribals in the field of education or industry" (Article 3 (d) & (f) of the *Government of Meghalaya Transfer of Land (Regulation) Act of 1971*). The misuse of this law was particularly rampant after the launching of the North East Industrial and Investment Promotion (NEIIPP) by the central government in 2007. The (NEIIPP) which offered 10-year tax holidays and other incentives to industries investing in the northeast to speed up the process of economic progress in the northeast opened the door to dilution of the pattern of traditional land holding. Taking advantage of central policy, investors from outside set up industries by appointing an indigenous person as a stakeholder of the company to secure land ownership by appointing an indigenous businessman, politician or relative of bureaucrats as director of a company or multiple companies (Meghalaya's 'Cement Tycoon' is Director, 2020). More often such transfers are in collusion with the district council's officials who are responsible for the issuing of NOC as was in the case of the village of Sutnga Elaka. Through the Right to



Information (RTI) and a complaint to the NGT filed by the Sutnga Elaka and the Environment Coordination Committee (ECC), it was revealed that despite the strong opposition from the people, 42 no-objection certificates (NOCs) have been cleared by the ADC for the setting up of coke plants in East Jaintia Hills (Win for Sutnga People, 2022; NGT 2021). The result of these dubious transactions is the mushrooming of illegal polluting industries that thrive on illegal coal and limestone which resulted in the destruction of the environment and its eco system, loss of revenue to the state and landlessness (Mohrmen, 2016)

Thus, new institutional arrangements instead of transforming land governance in the hills, stifle age-old indigenous land governance and create dissonance in the functioning of these institutions. To highlight one such instance of multiple layers of governance is the opaque mechanism of issuing of ‘no objection certificate’ (NOC) by the ADCs and the village council for land use and transfer. While the traditional institutions have no legal authority to collect tax or issue NOC, however, the lack of human and financial resources on the part of the ADCs forces it to rely on these traditional institutions like the chief or the village council to collect tax and issue no objection certificate (World Bank (undated). While the state government has an overriding power to solve these anomalies, in the absence of policies such as the state mining policy, land use policy, or the misuse of the Land Transfer Act, such arrangement blurs the space between the formal and non-formal space of institutional governance.

On closer examination, this anomaly in land governance is the result of the shortcomings of decentralisation of power. The operation of modern institutions such as the ADCs as agencies that interpret, consolidate and codify traditional laws instead relegate traditional institutions further down the bottom of administration. This non-linear arrangement of governance where ownership and control over the land are governed by traditional customary law and practices but the power to make law on its use and management is held by the ADC exposes traditional institutions to misgovernance. Moreover, this paradox between development and governance also means that land that changed hands from community to private ownership also changed the character of the land where the numbers, as well as the quality of the well-conserved forest patches that are found scattered throughout the state and managed by the self-governing traditional institutions, are fast depleting (Tiwari and Barik, 2019:1).

### **Decentralisation of power and politics of resource extraction**

The traditional institution of local governance in Meghalaya is well developed and existed much before the advent of the colonial power. In most cases, these traditions are alive and in function today. The changes that the colonial power effected did not wither away after 1947 but rather served as a template for the Sixth Schedule of the Indian constitution for administrative control and political integration. With the introduction of the Sixth Schedule, a third layer in the administrative hierarchy was added through the introduction of the Autonomous District Councils (ADCs) which are now entrusted with the power to appoint the traditional heads of the *Syiems*, *Dollois*, *Wadadars*, *Lyngdoh* that were earlier elected by the people (Marak, 2022). Despite limiting the power of the traditional institutions, the Sixth Schedule protected

the right of the community to mine minerals like coal and limestones with the ADC in a supervisory role. The rationale for this change is based on the belief that the power of the ADCs to make laws will preserve, protect and strengthen indigenous institutions. Therefore, decentralisation and local autonomy are central to this constitutional arrangement. It is assumed that decentralisation of power to the local community through agencies like the state government and ADCs would serve the mandate of the constitution to empower local self-governance and provide hope for the locals to improve their welfare and secure their rights to land and resources.

In theory, decentralisation and greater autonomy at the local level can reduce corruption, cut down bureaucratic obstacles, and promote economic growth (Bardhan and Mookherjee, 2005). On the contrary, decentralisation failed when local democracy malfunctions, asymmetries in local literacy, wealth, social status, and patterns of political participation (Bardhan and Mookherjee, 2005). Therefore, decentralisation, to a large extent shapes the way governance behaves but the outcome of governance also depends on how institutional structures are framed. Originally structured to integrate the indigenous communities into the Indian political system rather than economic development (Stuligross, 1999), the Sixth Schedule as the fountain of decentralisation instead delegitimise traditional institutions by subsuming their power within modern political institutions such as the ADCs whose power itself depend on the State legislature. For example, with the Northeastern Areas (Re-organisation) Act of 1971, a provision was amended in the Sixth Schedule where the power of the State Legislature of Meghalaya will override that of the ADCs. To elucidate this, Paragraph 12A (a) of the Sixth Schedule states that:

If any provision of a law made by a District or Regional Council in the State of Meghalaya with respect to any matter specified in sub-paragraph (1) of paragraph 3 of this Schedule or if any provision of any regulation made by a District Council or a Regional Council in that State under paragraph 8 or paragraph 10 of this Schedule, is repugnant to any provision of a law made by the Legislature of the State of Meghalaya with respect to that matter, then, the law or regulation made by the District Council or, as the case may be, the Regional Council whether made before or after the law made by the Legislature of the State of Meghalaya, shall, to the extent of repugnancy, be void and the law made by the Legislature of the State of Meghalaya shall prevail.

And that if any exemption is to be made that Central law should not be applied to the State of Meghalaya, the:

The President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to an autonomous district or an autonomous region in the State of Meghalaya, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification and any such direction may be given so as to have retrospective effect (Para12A(b)).

On paper, the power of the ADCs appears credible to protect indigenous land and resources, however, in actuality, the ADCs inherited a limited legislative and financial

power. Its role and functions are constrained and dictated by the state legislature, the state government and the office of the governor. The fallout from this institutional arrangement is that the ADCs which is an interface between the local traditional institution and the state are at the mercy of the state government and left with limited power to operate, while traditional institutions as the primary foundation of indigenous polity are incapacitated and replaced with modern institutions of governance like the ADCs. Left at the bottom level of administration, traditional institutions and their heads are mere administrative officers whose power is stripped away and relegated to the background with no statutory recognition and who now owe their authority and benefaction to the state and its agencies such as the ADCs and the government. Grassroot governance such as the village headmen and their council (*dorbar shnong*) which are central and symbiotic to indigenous governance are pushed down the hierarchy where they cannot function independently but with the supervision of the ADC. Financially, they are left powerless and depend on the largesse of the local Member of Legislative Assembly (MLA) who represents them in the state legislature or they receive commissions through sales of private, clan or community property. This skewed and paradoxical idea of self-governance and economic development stifled the mandate of decentralisation of power to local autonomy and resulted in both the ADCs and traditional institutions not only being powerless but also sites of mismanagement and misgovernance.

It is in this institutional complexity of decentralisation of power that agencies that are traditional and modern are often operated parallel to each other and at times overlapping their jurisdiction with or without power. Due to this overlapping of jurisdiction the three institutions—the state government, the ADC, and traditional institutions are competing for power over the control and allocation of resources. The result is they operate in a vacuum between tradition and modernity and are operationally confused between power and responsibility, and at times in limbo between safeguarding traditional institutions and recognition as modern political institutions. This situation forms the crux in the misuse of the landholding system, and it is more visible in the coal and limestone deposit area where settlement and title disputes over land are common. While the intricacies of colonial rule legacies and its influence on traditional institutions and modern institutions cannot be ignored in such settlement (Chaturvedi, 2020), the institutional inability of modern institutions such as the ADCs to protect indigenous land and resources often raised a question of the effectiveness of decentralisation of power (Mohrmen, 2016).

**Table 3: Organisational Arrangements in ADCs in Meghalaya**

Date of constitution	KHADC	GHADC	JHADC
	1952	1952	1964
Details of the Council	30 members (20 elected, 1 nominated)	30 members (26 elected, 4 nominated)	19 members (16 elected, 3 nominated)
	Only tribals and non-tribals who are permanent residents (12 years +) are eligible to vote		
	The Chairman and Deputy Chairman are elected by the Council		
	Five years tenure		

Details of the Executive Committee	Six executive members
	Council elects CEM
	Other EC members appointed with the CEM's advice
	Performs all executive functions
Administrative Structure	A secretariat headed by a chief executive officer and staff, including line departments
Village Councils	Elected village councils do not exist as legislation for this has not yet been brought into force

**Source:** Report of the Expert Committee on Planning for the Sixth Schedule Areas, Ministry of Panchayati Raj, Govt. of India, Sept. 2006, New Delhi. pp. 48-49.

**Table 4: Powers of ADCs in Meghalaya**

Legislative	Power to make laws related to allotment and use of land, management of forests, establishment and management of villages and towns, regulation of shifting cultivation, inheritance of property, and social customs, with the Governor's assent
Judicial	Powers to constitute village courts, with appellate powers with the Council
	Appeals from council courts lie with the High Court
	Village chiefs/headmen appointed chairmen of village courts
	Subordinate/additional district courts —EC appoints, with the Governor's approval
	District council courts —one or more judicial officer(s) is designated; judges are appointed by the EC, with Governor's approval
	In Garo Hills, village courts consist of the Lasker of the village + two members elected by the village council
	In Jaintia Hills, village courts are headed by the traditionally elected village chief/headman and have 2–6 members
Executive	Appointment and succession of chiefs/headmen
	Establish and manage primary schools, dispensaries, markets, cattle pounds, fisheries, roads, waterways and road transport, and forests (excluding reserve forests)
Financial	Prepare and pass budgets, assess and collect revenue, impose taxes on trades and markets, collect tolls, manage licenses, and lease/share in royalties collected by the state government

**Source:** Report of the Expert Committee on Planning for the Sixth Schedule Areas, Ministry of Panchayati Raj, Govt. of India, September 2006, New Delhi. PP. 48-49.

In Meghalaya, decentralisation and local autonomy has encouraged local leaders to build networks of conspiracy, corruption, mining mafia through policy regulations, such as granting of no objection certificate, trading licenses, and environmental clearance while some also dabble as legislators and political brokers who facilitate the transfer of land from community to private individuals and firms. The case of Umkyrpong village in Jaintia Hills is one such story. In 2009 the inhabitants of the Umkyrpong in the Jaintia Hills discovered that their village lands had been sold to a coal baron. When the village council filed the Right to Information (RTI) with the Jaintia Hills Autonomous District Council, it was revealed that land was sold without the knowledge of the headman of the village but the sale was approved by the ADC by issuing the Land Holding Certificate to the coal baron (High Court of Meghalaya 2014). It is in this close proximity between the elite and the control over the land that oligopoly control over the coal industries has enabled these elites to dictate the daily functioning of the government turning it into an oligarchic structure and rent-seeking.

Rent-seeking operates within the corridors of power where the state is embedded in the day-to-day struggles over mining ownership and trade in minerals, controlled by a powerful coal lobby constituent that often includes members of the Legislative Assembly members who lobby and scuttle any attempt to address the issue of unplanned mining and its impact (Das, 2014). Most of the community lands where the coal mines are located are owned by powerful elite members of the community who adopt multiple identities of a coal baron, a government-registered contractor, a church, a community leader and a legislator (Das, 2014). Therefore, from aspiring politicians to sitting members of the legislature and District Council the underground coal economy is important towards electoral success. Such is the influence of the coal economy on political culture in Meghalaya that in the last few elections, the penetration of political and economic interest into the operation of the coal business is seen by the bargaining between elites who are either contesting the elections or are major donors to the candidates (Mukhim, 2014).

The interaction between coal and electoral politics goes beyond influencing policy agenda but extends to the allocation of resources that often results in corruption, loss of state's revenue and societal conflict (Kikon, 2019; Berman et.al, 2017; Asher and Novosad, 2020; Carreri and Dube, 2017; Herman and Uhaib As'ad, 2019; Ordonez et.al, 2021). In India, this connection, particularly election funding, is well documented in India (Bhattacharjee, 2017; Lahiri-Dutt, 2014; Janwalkar, 2021; Rajeshkar, 2012; Nitin, 2019; Roy, 2013). Similarly, in Meghalaya, in the 2013 election, of the 29 candidates contesting in East Jaintia Hills, at least 13 are well known coal mine owners and two owned limestone mines (Roy, 2013). In the same district, Khliehriat constituency which is a major coal mining area, all five candidates are coal barons (Roy, 2013). Similarly. In 2019, the report by a group of activist, entitled Citizen's Report submitted its finding to the Supreme Court to exposed the patronage of illegal coal mining by politicians. The report indicated that about 30 per cent of the 374 candidates who contested the polls were either owners of mines or have stakes in the coal mining and transportation industry" (Illegal Coal Mining in Meghalaya 2018; Citizen's Report, 2019). The Citizen Report listed the name of 12 legislators (four ministers of the ruling NPP Government, seven non-NPP legislators, and one sitting

member of parliament) who are either coal barons or their families engaged in the business of coal mining (Citizen's Report 2019). The list indicated that cutting across party lines, coal business is deeply embedded within Meghalaya electoral politics and it is no surprise that the campaign to the 2018 election was dominated by the promise of lifting of the ban on coal mining that was in place since April 2014 (Coal Mining Ban Turns Up The Heat, 2018). Instead of empowering the local communities and generating economic development, there emerged a class of elites who profited from coal mining business leading to fragmentation of land holding with clan and community land falling into private individual ownership leading to landlessness and land alienation.

The failure of decentralisation to live up to the hope of the community can be seen in the misuse of the Sixth Schedule. The Sixth Schedule which protects indigenous rights to the land and resources from exploitation by an outsider is facing a challenge from powerful and affluent tribals who could exploit their fellow tribals (Misuse of Sixth Schedule, 2018). To elucidate this point, H.H Mohrmen (2016), a social activist and columnist, evocatively observed:

Very often when we speak of land grabbing we tend to think that it is a story of outsiders who grab the land of the indigenous people for their selfish interests and the case in point is the cement industries... But land grabbing in Meghalaya also happened in subtle ways and some cases by manipulating the traditional land holding system which enables the clan which are supposed to be mere custodians of the land, to claim ownership of the same (Mohrmen, 2016).

Furthermore:

Ownership of land changes hands from the poor and the marginalized section of the society to the elite of the society happens in cases where rich coal miners bought the land belonging to poor people and in some cases when the community forest is sold for a song. It is also a case where industrialists in the name of development and creating jobs for the local populace circumvent the rules to enable the company to own land in what is a tribal area where land transfer from a native owner to a non-indigenous owner is against the law (Mohrmen, 2016).

Therefore, as a result of the loopholes in the Sixth Schedule, the land transfer act, the temptation of market forces, the lack of codification of customary law, and the emergence of new elite, landlessness is a common sight in Meghalaya. Strikingly, in Meghalaya, despite the majority of the land being under private control, the national census of 2011 indicated that 76 per cent of the indigenous people in the rural areas are landless (Ministry of Home Affairs, 2011). Community land co-ownership which is the hallmark of traditional customary law is pushed into the hands of private individual and commercial ownership leaving the majority of the population deprived of land ownership. To understand the puzzle between decentralisation, local autonomy and governance, and their relations to land and resources, the 2019 Supreme Court judgement on coal mining in Meghalaya can throw a light on the entanglement between state institutions and indigenous governance, aspirations for development and local

politics.

### **The Supreme Court judgement: Clearing the legal ambiguity?**

The idea of decentralisation of power at the local level that flows from the Sixth Schedule meant that exploitation of minerals and other resources was left in the hand of the community. Therefore mining of coal and limestones is done without interference or application of the various national mining laws such as *The Mines Act, of 1952*, *The Mines and Minerals (Development and Regulation) Act, 1957*, *the Mineral Concession Rules of 1960*, and *The Coal Mines Nationalisation Act, 1973*. This is because it was assumed that the Sixth Schedule has invested enough power to the community to extract the resources according to their own will, with state agencies such as the ADC, the Department of Geology and Mines and its Directorate of Mineral Resources having limited jurisdiction to regulate how mining is operated except for the collection of royalty. Thus, in Meghalaya, the desire for control over land and the right to continue mining coal is subject to a different legal framework wherein the state can claim minerals beneath the soil, while communities use the argument about control of the land to continue mining (McDuaie-Ra and Kikon, 2016: 6). According to Kuntala Lahiri Dutt (2016), this special status and legal ambiguity that Meghalaya inherited has created a grey area of non-legality, a complexity that denies a straightforward distinction between legal and illegal and is located within confusion over political expediency of territory-building by the State, practicality that needed to give sovereign rights over resources to the local people unlike anywhere else in India (Lahiri-Dutt, 2016:3). The coal produced in Meghalaya, she argued, is best described as ‘statecraft coal’ where coal mining is outside the legal framework and defy the governance of resources (Lahiri-Dutt, 2016:3).

It is in this legal conundrum between local autonomy over rights and resources and the interplay of changing dynamic of market forces for coal resources in combination with a change in methods of mining from artisanal small mining (ASM) of “rat hole” method to “box cutting” method, and the emergence of local coal entrepreneur, and the absence of a local mining policy at the state level that resulted in large scale unregulated mining in the hills. The effect of such unregulated mining is in the loss of lives, loss of vegetation, and contamination of water bodies (Swier and Singh, 2004; Sarma and Barik 2011; Sarma, 2005) was brought to the notice of India’s Green Court, the National Green Tribunal (NGT) in the form of a Public Interest Litigation (PIL) filed by the All Dimasa Students Union Dima Hasao District Committee highlighting before the court the hazard of ‘rat hole’ mining to human as well the environment. Based on this petition, the Tribunal, on 17 April 2014, ruled that mining and transport of coal in an unregulated, indiscriminate and unscientific manner is illegal and poses a danger to human health. Therefore, the court ordered a ban on the mining and transport of coal from Meghalaya. The court however allowed the transportation of the already mined coal that is lying in the open which will be assessed by the committee appointed by the court with April 2016 as the deadline for transportation of already mined coal. As the deadline of April 2016 approaches, land owners and the coal traders association appealed to the Supreme Court to extend this deadline as they were unable to complete the transportation before 2016. Based on

this appeal, the Supreme Court permitted the transportation of already extracted coal with royalty to be paid to the state on both the assessed and over-declared but at the same time upheld the ban on fresh mining.

The intervention of the Supreme Court raised considerable debate about the need to protect the environment and the fear of losing indigenous autonomy. Thus, throughout the ban period, appeals against the ban were filed by the state government and various stakeholders such as the Meghalaya Commercial Truck Owners and Operators Association, Meghalaya Mine Owners and Exporter Association, The State Coordination Committee of Coal Owners, Miners and Dealers Forum, Garo Hills Autonomous District Council, The Khasi Hills Autonomous District Council, Movement for Indigenous Peoples' Rights and Livelihood-Meghalaya (MIPRL) who all invoked issues of livelihood and most importantly the Sixth Schedule provision as justification for lifting of the ban (CM seeks PM's intervention, 2014). Based on such demand, the Meghalaya State Assembly, cutting across party lines, unanimously passed a Resolution in 2015 urging the Central Government to consider invoking a section of Para 12 A (b) of the Sixth Schedule to the Constitution to ensure that Central Mineral and Mining Laws that deal with auction, disposal and granting of lease do not apply in scheduled areas of the state (Meghalaya seeks exemption, 2015; Coal minister examines exemption demand, 2016). Based on this Resolution, the State government submitted a proposal to the Central government to issue a Presidential notification in exercise of the powers conferred under Paragraph 12A (b) of the Sixth Schedule to the Constitution of India for exemption to the State of Meghalaya from the *Mines and Minerals (Development and Regulation) Act, 1957*, *Coal Mines (Nationalization) Act, 1973* and *Coal Bearing Areas (Acquisition and Development) Act, 1957* (Coal minister examines exemption, 2016). However, this demand was left pending with the Central government with no Presidential notification forthcoming but for the Supreme Court to decide.

This legal ambiguity between indigenous rights, their autonomy and responsibility was addressed by the Supreme Court in its judgement in July 2019. In its judgement, the Court did not rely upon the provisions of the Sixth Schedule, or any previous judgments when it observed the unique land tenure system in the Hills of Meghalaya and recognised that most of the land is either privately or community-owned (Chhakchhuak, 2019). This uniqueness that the land, forest and minerals belong to the indigenous people was therefore never contested at all by the Court when it ruled that it is the indigenous people and community that have the legal rights of ownership over the land and its subsoil with the State having no right to claim ownership (Chhakchhuak, 2019). However, what is contested is the applicability of law on whether such rights to land and its minerals entail the people to dangerously mine without the need to confirm to mining law thereby endangering the safety and health of humans and the environment. Thus the Court ruled that in no way does the Sixth Schedule restrain the State of Meghalaya to apply its power and jurisdiction under the *Mines and Minerals (Development and Regulation)(MMDR) Act, 1957*, and *Mineral Concession Rules of 1960*, *Mine Act of 1952*, *Coal Mines Regulations, 2017* and *Environment (Protection)Act, 1986* to check, control and prohibit private



or community coal mining operations in Meghalaya (Supreme Court of India, 2019:198). The court therefore ruled that while implementing a statutory regime for carrying out any mining operations, irrespective of size, the State of Meghalaya has to ensure compliance and enforcement of the *MMDR Act, 1957*, *Mines Act, 1952*, *Coal Mines Regulations, 2017* as well as *Environment (Protection) Act, 1986*. Since the enforcement of the ban on coal mining in 2014, successive governments in Meghalaya have been lobbying with the central government to get the state exempted from the MMDR Act as it has overriding powers irrespective of the Sixth Schedule. With this ruling, the court effectively confirmed the importance of the application of national mining laws and thus stripped the power of the State Government and the ADCs to frame any mining laws that are incompatible with the national laws. Importantly, the Court ruled that the existence of the Sixth Schedule will not affect the applicability of the above national mining and environmental laws.

With this ruling, it is clear that decentralisation of power and local autonomy of self-governance that derive from state agencies such as the ADCs is contrary to traditional customary rights of land governance. The court therefore ruled that the ADCs have no power to make any law concerning mining lease, nor legislate on the subject of mining for such laws are already under the jurisdiction of MMDRA. Furthermore, the court also stripped away the power of the ADCs in granting mining licences by ruling that:

District Council does not have any power to make any law with regard to grant of mining lease. The mining leases for winning the major minerals has to be granted in accordance with 1957 Act and *Mineral Concession Rules, 1960* (Supreme Court of India, 2019: 148).

This, the court argued that Para 9 of the Sixth Schedule which deals with licences or leases of minerals granted by the government of the State only deals with share of the royalties to District Councils as agreed upon between the Government of the State and the District Councils. Consequently, the ADCs on its own does not have such power of granting licenses or leases because Paragraph 12(A)(a) of the Sixth Schedule itself contemplates that any law made by the District Council which is incompatible or in conflict with any law of the State shall be void. The Court opines that since the land does not belong to the State, it is the person or community that has the right to lease their land for a mining operation to any entity by obtaining a mining lease from the government of Meghalaya as per the 1957 Act and Mineral Concessions Rule, 1960. In other words, the Court opined that the status of law made by the Autonomous District Council has to give way to the law made by the State and that the Autonomous District Council cannot make any law which may be repugnant to the provisions of the Parliamentary Act. (Supreme Court of India, 2019: 148).

The court clears the ambiguity of decentralisation of power and the local autonomy over land and resources as per the Sixth Schedule. However, this right is not absolute. The court sought to balance between indigenous rights to land and its resources and their duties towards public health, labour safety, and the environment. The court therefore reaffirmed the NGT order of 2014 that no unregulated and unscientific mining should be carried out. The Mining Policy of the

State should be consistent with the national mining and environmental laws with environmental clearance as a prerequisite before any mining activities.

However, despite the ban on unregulated and unscientific mining by the Supreme Court, illegal coal mining and transport is still rampant. Brought to the notice of the Meghalaya High Court on the rampant illegal coal mining is a complaint filed by the Nokma of Nengchigen, a village in West Khasi Hills (WKH) that borders South Garo Hills, against coal barons as well as the police over illegal mining of coal within their clan lands without permission (Mask of Rat-hole Mining, 2022). The High Court in its observation categorically stated that:

It, thus, appears that despite the several orders of this Court issued as a consequence of the ban imposed by the NGT as upheld by the Supreme Court, illegal mining of coal continues in the State with, possible, State participation and even encouragement (High Court of Meghalaya, 2022a).

This observation of the court was also based on the report of the High Court-appointed enquiry committee under Justice B.P. Katakey in 2022 to ascertain whether the Meghalaya government has complied with the directives of the SC and the NGT for cracking down on illegal coal mining. Before his appointment by the High Court, Justice Katakey headed the NGT Committee from 2018-2019 to look into the impact of unregulated mining on the health and environment in Meghalaya. On both occasions, Justice Katakey's Committee indicted the State of Meghalaya for failing to stop illegal coal mining and transport in the state and noted that environmental pollution from coal mining continues (Justice Katakey's Interim Report Belies, 2023). Since his appointment by the High Court in 2022, Justice Katakey has submitted 18 interim reports to the High Court. The preliminary findings of the Committee indicated that except for notifying *The Meghalaya Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2022*, none of the directions issued by the Supreme Court and the NGT have been complied with by the authorities (High Court of Meghalaya, 2022b). The reports observed that contrary to the government's claim that there is no illegal mining of coal and its illegal transportation in the state, unregulated and illegal coal mining and transport in the state is thriving (Justice Katakey's Interim Report Belies, 2023). The report attributed this failure to the state machinery like the police in facilitating illegal coal mining (Show Cause Issued to OC, 2023); the presence of inter-state illegal activities on coal mining transportation (High Court Directs M'laya, 2023) and discrepancies and overestimation of coal inventories (Extracted coal cannot be over, 2023; Mystery Shrouds 'Missing' Coal, 2023).

It is therefore clear that coal mining in Meghalaya is a complex issue that intersects between the land-holding system, indigenous rights to the land and its minerals, traditional institutions of governance, and the role of the state. While the legitimization of indigenous rights to land and resources was affirmed, and the anomaly of decentralisation of power through state agencies was struck down by the court, however, the failure of the ban on illegal mining and transportation reflects the

complexity of governance settlement. While the ADCs no longer have the power, land owners, despite their right to the land and minerals, are tied to national mining laws and this makes small artisan mining traditionally done by small mine owners difficult and unsustainable to operate. But as the demand for coal increases, new players with bigger capital investment will continue to enter the scene leading to further fragmentation of community land and dilution of indigenous land governance. It is in such conditions, as highlighted in the case of Elaka Sutnga, Umkyrpong and Nengchigen village that traditional institutions of governance headed by the clan's head, chief, headman or the village council (who are traditionally elected to office without monetary benefit) are increasingly under pressure between preservation of land and personal gratification.

### **Conclusion**

In Meghalaya, land as an alienable right of the indigenous people is under constant threat by unregulated mining activities. Technically, unlike other parts of the country, the majority of land in Meghalaya still belongs to the clan and community, but over the last few decades, there has been an increasing fragmentation and land alienation. This phenomenon is more acute in areas that are affected by rapid urbanisation as in the case of the outskirts of Shillong, or the coal and limestone mining areas. In the case of the coal mining areas, despite the Supreme Court Judgment, coal mining continues without pause with the State government's machinery unable to stop or in collusion. Part of this problem lies in the way power is distributed in matters of land governance where multiple layers of administrations in land governance lead to mismanagement, unaccountability and rent-seeking that weakens local autonomy.

While the mandate of local autonomy over land and resources are crucial to indigenous right, over the past decades, and until the Supreme Court judgement, institutions that are responsible for protecting local autonomy have come into criticism. The ADCs as institutions that are invested with the responsibility to protect indigenous land and resources are often targeted for their failure to fulfil the constitutional duties of safeguarding the land rights of the indigenous community. It is true that the ADCs as institutions of governance have failed in their mandate, however, this failure of the ADCs stems from the institutional structure and its origin. The ADCs as an agency of modern democracy was from the beginning a political project that was conceived to integrate the indigenous communities into the Indian political system. In the scheme of devolution of power to the local level, the preference of the ADCs over traditional institutions was necessary for the success of the political project of State building. Though conceived as a bridge between the state and traditional institutions, the ADCs' legislative and financial power was limited and mostly controlled by the state legislative assembly and the state government making it institutionally limited. So dependent are the ADCs on the state government that it is impossible for other parties than the ruling party of the state to run the ADCs. Therefore, without much power at its disposal, the ADCs often serve as a platform for politicians with bigger aspirations to enter the state legislative assembly.

Another impact of decentralisation of power is the relegation of traditional institutions to the background. While the 73<sup>rd</sup> Amendment of the Constitution

legitimised the Panchayati Raj Institutions that filter governance at the grassroots level, traditional institutions that are the bedrock of land governance are left powerless and unrecognised by the Sixth Schedule. Despite this, indigenous traditional institutions continue to act as stewards of customary law over land and its resources. However, in the absence of legal recognition, and financial resources, these institutions are under pressure from circumstances of market forces, political aspiration and personal gratification. Therefore to survive, these institutions have to operate between the domain of formal and informal of within and outside the state jurisdiction, and tax collection and NOCs issued by the chief or the village council and in tandem with the ADCs is a common practice.

While the Supreme Court judgement in 2019 on the status of coal mining in Meghalaya did clear the legal ambiguity of issues of rights and duties, at the same time, the judgement did not strengthen local autonomy but rather weakened indigenous people's autonomy. The ADCs an instrument of decentralisation was institutionally weak since the beginning and is now powerless. Even its power to independent revenue generation through the grant of license is now taken away. Concurrently, with the power of the ADCs diluted, the question remains will traditional institutions also face the same dilemma or continue to operate informally outside the statutory legal framework? For example, the Court's judgment that if land and its resources belong to private or community, the onus of granting a mining lease is on the owner of the land, of which a license to lease is to be issued by the state government. In such a scenario, the question remains to what extent will the ADCs' power to make laws related to allotment and use and management of land and forests be impacted by the judgement? More importantly, as land is increasingly transferred from community to private ownership, will the ADCs, the chief, or the village council continue with the ad hoc power to issue NOCs? With these questions, the court judgement has opened up the institutional challenge in land governance in Meghalaya which is historical but for long kept in the shadow of decentralisation.

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