

Colonial Law and its Unfolding Paradoxes: Community Formation in India's North East

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It is now increasingly being realized that multicultural politics is 'as much about acknowledging working from the multiplicity of our communities in national politics as it is about multiplicity within communities'¹ Communities being internally differentiated along such lines as class, ethnicity, gender and so forth get themselves formed insofar as these internal differences are transcended and each of them is marked by a certain consciousness-of-kind so much so that members within the community become 'equivalent' to each other in a way that they together form a body. While formation is a historical process, a community – Wendy Brown warns us – does not have a 'metaphysical referent'². This paper seeks to find out how colonial law contributed to the formation of communities in India's Northeast. Although colonial law and legal reforms brought into existence a vast repertoire of and a classificatory scheme for the communities in the Northeast, the repertoire was by no means exhausted by it. Correspondingly little attempt has so far been made in the existing literature at reflecting on the role of law in the formation of communities of the region. The existing literature rather views law as a mode of governing the communities that supposedly pre-

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¹ MARLA BRETTSCHEIDER, *DEMOCRATIC THEORIZING FROM THE MARGINS*. (Philadelphia: Temple University Press 2002)

² WENDY BROWN, *STATES OF INJURY: POWER AND FREEDOM OF LATE MODERNITY* (Princeton, N.J. Princeton University 1995)

exist the advent of legal reforms initiated by the colonial authorities. It hardly tells us how law played a role in constituting the communities, in constantly configuring and reconfiguring them, in helping create the vast repertoire of communities that would either be rendered governable in the long run or could successfully be kept outside the colonial rule in a way that eventually benefited the perpetuation of that rule. The paper also cites examples from the post-Independence experiments with law and legal reforms in the region on the assumption that the postcolonial does not mark a paradigmatic break with the colonial in this region.

For purposes of convenience, the paper reflects on three moments while appreciating the role of law in the formation of communities. The three-moment scheme obviously runs the risk of oversimplification. The purpose of this paper is to initiate the debate in this regard rather than to put an end to it. We use the term ‘moment’ in the Hegelian sense to refer to a certain configuration of forces rather than any chronologically sequenced determinate stage. The argument draws on some of our ethnographies conducted in the region at different points of time.

The first moment is marked by one in which law is viewed as an instrument for upholding and, wherever necessary, creating the community boundaries and keeping them bounded within the boundaries. It, at one level prevents the people from outside to immigrate. At another level, it also discourages people from inside to go out and settle outside. No wonder, the people from the region are considered as ‘the least mobile’ of all population groups living in India. Their low visibility outside the region might be one of the reasons why they have been the targets of hate attacks and xenophobic reactions from outside. The tradition of viewing law as a means of protecting one’s community identity – although set in motion in colonial times – continues well into postcolonial times. While colonial law was keen on drawing a line to keep the ‘colonial subjects’ from the dreaded tribes – ‘the savages’ and the ‘primitives’ living across it and inhabiting what they would describe as ‘eastern frontier’, line in postcolonial times has changed its meaning

in a way that it is now meant for doing the opposite of preserving and protecting the tribes across it. Second, in the recent controversy in Nagaland, community is invoked in order to reinforce its patriarchal underpinnings. This neo-traditionalist reconstruction of communities is by no means peculiar to Nagaland, but is more or less true of other communities of the Northeast. Third, the paper also shows why the transition from ‘status’ to ‘contract’ that Sir Henry Maine was referring to while describing the transition in societies including in the Indian society was certainly problematic in the context of this region insofar as it presupposed the very presence of the community (embodied, according to him, in the principle of status) that the transition otherwise was expected to do away with. Colonial law held the community as the collateral in case the colonial laws built on the principle of contract are flouted and contractual obligations are not fulfilled by the inhabitants of the region. Community is seen as some form of insurance – a guarantee that ironically enables the contract to withstand the vagaries and vicissitudes in the society passing through a transition initiated by the colonial rule. In order that contracts can work out, one requires ironically the strong and sturdy communities that can withstand the ebb and flow of contracts.

Lining the Communities

Administering the region by way of drawing lines that set the communities living in it apart was central to the colonial rule. The cartography of the region was thus marked by such forms of exclusion as Excluded Areas, Partially Excluded Areas, Inner Line, interstate and international borders and so forth. While line remains one of the exceptionally persistent instruments of rule in both colonial and post-Independence times, the shift in emphasis should not escape our notice. In colonial times, the idea was to protect the ‘subjects’ who had submitted to the colonial authorities from the ‘marauding raids’ of the ‘primitives’ and ‘savages’ living in the frontier. In postcolonial times, the

objective is more to protect these tribes and communities from the encroachment, incursion and settlement by the outsiders. The Line is drawn in order ‘to prohibit all British subjects from going beyond the notified line without a pass under the hand and seal of the competent authority’. Needless to say, State³ in post-Independent India lay claim to represent these communities as integral parts of the Indian nation and to protect them from the alarming immigration from outside.

That these were honored more in their breach is an altogether different story. For instance, Kar argues that the Line was ‘in fact a revisable, mobile, and pliant boundary’ and shows how ‘well until the second decade of the twentieth century, the Line was repeatedly redrawn in order to variously accommodate the expansive compulsions of plantation capital, the recognition of imperfection in survey maps, the security anxiety of the state, and the adaptive practices of internally differentiated local communities’⁴ . While Kar shows how the line travelled in accordance with the imperatives of colonial rule and the capitalist accumulation associated therewith⁵, Baruah points out how a variety of informal mechanisms was evolved to transgress the line while responding to the requirements of ruling the frontier in a post-Independent era ‘But the transgressions and breaches could not eventually lead either of the two authorities to do away with the line for reasons to be described below. The importance of making line into law - in spite of its transgressions and breaches in practice – is recognized in official circles. In many cases, the zealous enthusiasts walk the extra mile

³ We use the term ‘State’ with ‘S’ in upper case to refer to the Indian State while the term ‘state’ with ‘s’ in lower case is used to refer to a state within the Indian Union, unless otherwise indicated.

⁴ Bodhisattva Kar, ‘*When was the Postcolonial? A History of Policing the Impossible Lines*’ in BEYOND COUNTER-INSURGENCY: BREAKING THE IMPASSE IN NORTHEAST INDIA, 49-80 (Sanjib Baruah ed., 2009)

⁵ *Id.*

⁶SANJIB BARUAH, POST FRONTIER BLUES: TOWARDS A NEW POLITY FRAMEWORK IN NORTHEAST INDIA (East-West Center, Washington 2007)

without waiting for any legislation from the competent authorities by directly persecuting and exterminating the outsiders from their land. The line reinforces itself by igniting the desire within the inhabitants. Law is the trigger of community formation.

Which Side of the Line?

One of the important legislations in this context was the Bengal Eastern Frontier Regulation, 1873 which was enforced in the erstwhile districts of Kamrup, Darrang, Nowgong and Sibsagar, Lakhimpur (Garo Hills), Khasi and Jaintia Hills, Naga Hills and Cachar “to prohibit all [citizens of India or any class of such citizens] or any persons residing in or passing through such districts from going beyond such line without a pass under the hand and seal” of a competent authority. Today it is known as Inner Line Permit which is indeed a simple travel document.

Colonial governance passed through several stages. Initially the colonial authorities deployed the threefold strategy of (1) setting up ‘colonies’ of particular tribes and ethnic groups and arrogating to themselves the role of ‘buffers’, (2) following the ‘stipendiary policy’ by paying the loyal tribal chiefs ‘stipends’ and thus buying peace and (3) opening advanced border posts to the extent they turned out to be cost-effective. While payment of stipends was made contingent on what Mackenzie calls ‘good behaviour’⁷, at a later stage, these border posts were discarded on the ground that they turned out to be costly to the colonial exchequer compared to the gains that were derived from them. Thus a distinction is made between ‘good’ tribals and ‘bad’ tribals by the colonial authorities. The overall British policy towards the ‘good’ tribals was conciliatory, although Mackenzie did realize that the policy of civilizing them was likely take time and be met with ‘occasional

⁷ ALEXANDAR MACKENZIE, THE NORTHEAST FRONTIER OF INDIA 1884-2004 (Mittal Publication 2016)

disappointment'⁸. According to Misra, by 1866 there occurred a shift in the strategy. The shift in colonial strategy of governing the tribes of the Northeast is noticed in the introduction of what is popularly known as the 'Line System' in 1873. Mackenzie explains the twofold rationale of keeping the 'bad' tribals at arm's length in a bid to secure the 'colonial subjects' from their frequent raids and extortions and making the administration cost-effective by way of under-administering the areas inhabited by them. Mackenzie explains the twofold rationale of keeping the 'bad' tribals at arm's length in a bid to secure the 'colonial subjects' from their frequent raids and extortions and making the administration cost-effective by way of under-administering the areas inhabited by them:

It is not open to us on the Abor frontier to have recourse to the policy of permanent occupation and direct management, which we shall find successfully carried out in the Naga, Garrow, Cossyah, Jynteeah, and Chittagong Hill Tracts. To annex the Abor Hills would only bring us into direct contact with tribes still wilder and less known, nor should we find a resting place for the foot of annexation till we planted it on the plateau of High Asia; perhaps not even then... Our immediate border we might do much to secure by running the road along the river lines into the interior, but the cost would be enormous, and while there is such a demand for communications within our settled districts, we should not be warranted in carrying even one such *cul-de-sac* into the Abor or Mishmi Hills⁹.

By early twentieth century, the purpose and nature of line changed completely. From being a way of protecting the colonial subjects living within the inner line from the marauding tribals of the hills, the

⁸ *Id.*

⁹ *Id.*

purpose by then became one of containing the incessant immigration and the incursion from the plains while protecting the tribals living across the line. The incessant inflow of land-hungry peasants from already overpopulated East Bengal into Assam prepared the ground for what Guha describes as ‘an open clash of interests’ between the natives and the migrants since the beginning of the twentieth century. Some form of administrative measures was called for in order to ‘contain the conflict’: “The Line system ... was such a device. Under this system, line was drawn in the districts under pressure in order to settle immigrants in segregated areas, specified for their exclusive settlement”¹⁰ The Sub-Committee headed by Gopinath Bardoloi recommended administration of these areas through the instrumentality of Autonomous District Councils in the following terms:

Having been excluded totally from ministerial jurisdiction and secluded also from the Province by the Inner Line System, a parallel to which is not to be found in any other part of India, the excluded areas have been mostly anthropological specimens; and these circumstances together with the policy of officials who have hitherto been in charge of the tracts have produced an atmosphere which is not to be found elsewhere. It is in these conditions that proposals have been made for the establishment of special local councils which in their separate hills domains will carry on the administration of tribal law and control the utilization of village land and forest.¹¹

Line therefore is now viewed as an instrument for protecting the once dreaded tribal communities of the hills. In response to a question raised by Sabir Ali, a member of the Rajya Sabha, the upper house of

¹⁰ AMALENDU GUHA, *PLANTER RAJ TO SWARAJ: FREEDOM STRUGGLE AND ELECTORAL POLITICS IN ASSAM 1826-1947* (People’s Publishing House 1977)

¹¹ Constituent Assembly Debates, Vol. VII, New Delhi (1948)

Parliament of India, the Minister of State in the Ministry of Home Affairs, explained the 'main aim' of the prevailing Inner Line system: "The main aim of the ILP system is to prevent settlement of other Indian nationals in the States where ILP regime is prevalent, in order to protect and indigenous/tribal population."¹² Crucial to the demand for introduction of the Line System lies the land question. According to Mahanta¹³, 70 percent of tribal households in Manipur do not have any access to land, the corresponding figures are 80 percent in Mizoram, 70 percent in Meghalaya and 57 percent in Assam. The administrative demarcation of convenience has today turned into a weapon of keeping the outsiders out and a desire triggering many a social movement in the region. The line today is looked upon as a way of consolidating a community's control over land it claims to be its own. The territorial desire not only sedentarized the communities, but inculcated in the minds of others the longing for homeland that must become pure by way of cleansing the land of what they consider as the other.

The ILP Demand in Manipur and the Direct Action

The states of Assam, Meghalaya, Mizoram and Manipur have been standing witnesses to the Inner Line Permit (ILP) movement in the Northeast in the first decade of the new millennium. The Asom Jatiyatabadi Yuva Chhatra Parishad (AJYCP) has for long been asking for introduction of Inner Line Permit in Assam. When the Government of Mizoram sent back about 90 non-Mizos from the state on the ground that they were not in possession of the ILP, the North Eastern Plains peoples Traders and Youth Federation filed a case (public interest litigation or PIL) against this in Guwahati High Court and the Court passed an interim

¹² Ministry of Home Affairs, Government of India, Rajya Sabha, unstarred question no. 393 for 27 February 2013.

¹³ Nani Gopal Mahanta, *The Political Angle* (mimeo), Symposium on Inner Line Permit as an Instrument of Safeguarding Ethnic Identity at Gauhati University Institute of North East Studies on 12 February 2016 at Guwahati.

order asking the Government to abstain from carrying out their deportation during the pendency of the case. Mizoram witnessed a popular movement in response to the Court order and a total bandh (shutdown) was organized in Mizoram on 3 July in 2008. The same interim order was challenged in the same Court by the Government of Mizoram. Finally the Court set aside the plea of the PIL against the ILP.

The hills of Manipur had had this provision for ILP during the colonial times. On 18 November, 1950 – a year after the merger of Manipur – Himmat Singh, the Indian Dewan in Manipur, issued a notification to the effect of abolishing the system. By all accounts, the demand for ILP was made for the first time in 2002 when United Committee Manipur (UCM) submitted a memorandum in which it pointed out: “Inner Line Permit System be reintroduced for protection of our peculiar identity from the hands of the over flooded influx population on non-Manipuris as first” (sic) (United Committee Manipur 2005). The Joint Committee on Inner Line Permit System (JCILPS) spearheads the series of agitations for the implementation of ILP. The key demands are as follows: (i) issuing passes to migrant workers arriving from outside the state, (ii) making 1951 the cutoff year for the implementation of the Act, (iii) denying landownership to the migrants entering Manipur after 1951, (iv) reinforcing the Department of Labour for the registration and regulation of interstate movement of labourers, and (v) detection and deportation of illegal migrants. As a result, the Legislative Assembly in March 2015 moved a Bill supposedly to register all visitors, tenants and migrant workers in the state. The Bill was subsequently withdrawn due to the opposition by JCILPS, which wanted stronger legislation. In October 2012, JCILPS convened a National Convention on ILPS in Manipur. The Convention abandoned the path of appealing to the Government and resolved to the implementation of the ILPS by “the people’ in their own ways from 18 November. On 10 November, it warned that the outsiders who had not taken ILP issued from it would be expelled from the state.

The issue rose up again in May 2013 after a comparative lull. On 10 May 2013, JCILPS served an ultimatum asking the Government to extend ILPS by May 31. On May 30, JCILPS imposed a ‘ban’ on the entry of the outsiders and their free movements on the streets and in the neighbourhoods. ILP movement took to the streets and pro-ILPS protesters protested against the enlistment of the outsiders in the electoral rolls. In August 2014 JCILPS was dissolved and a new organization called Indigenous Peoples’ Association of Kangleipak was formed. The following months bear a standing witness to often violent confrontation between the pro-ILP activists and the Government forces: pro-ILP activists carrying out ‘verification’ drive in the suspected outsiders, pulling up ‘illegal’ migrants, women shop owners imposing ‘restrictions’ on the Mayang traders in Khwairamband bazaar, closure of educational institutions, calling of general strike and imposition of ‘public curfew’ in Manipur, forcing shutdown of the outsiders’ shops, sheltering the violence-affected outsiders in government-run relief camps, deployment of ‘flying squads’ to monitor the activities of the outsiders, formation of a Joint Committee for surveying the non-Manipuris in certain areas, imposing ILP card on the outsiders and so forth.

What is it that triggered the ILPS movement in Manipur? The Manipur Students’ Association provides the answer:

The apprehension about subordination and displacement of indigenous peoples by the immigrants in the course of the ongoing Look East Policy, extension of railways, construction of dams and projects, oil drilling and infrastructural construction is deeply rooted.”¹⁴.

¹⁴ *Memorandum on “Demand for Implementation of Inner Line Permit in Manipur”* The Manipur Students’ Association, Delhi (2014). <http://kanglaonline.com/wp-content/uploads/2014/08/20140801-Malem-draft-memo-ILP-to-MSAD.pdf>

The Meghalaya Story

The ILP movement in Meghalaya was spearheaded by 14 voluntary groups comprising such groups as the Khasi Students' Union (KSU) Federation of Khasi, Jaintia and Garo people (FKJGP), Hynniewtrep National Youth Front (HNYF), Garo Students' Union (GSU) in 2013. These groups were also supported by the Khun Hynniewtrep National Awakening Movement (KHNAM), United Democratic Party (UDP), Hill State Peoples' Democratic Party (HSPDP), and National Peoples' Party with their strong tribal base. The movement took a violent turn when many such communities as the Marwaris, Sindhis and Biharis and the Chinese settlers were branded as 'outsiders' and were subjected to threats, extortion with the effect that many of them were forced to leave. In 2012-13, the movement started when the Central Government proceeded to implement the National Population Registration (NPR) Scheme in July 2013. KSU opposed the Scheme on the ground that the registration exercise would eventually legitimize many of these illegal migrants. The KSU felt that the state Government lacked the capability of verifying for registration and urged on the Government to empower the local traditional institutions in the registration process.

Neo-Traditional Community

India's Northeast has been the theater of the earliest and longest lasting insurgency in the country - in the Naga Hills – then a district of Assam, where violence centering on independentist demand commenced in 1952, followed by other rebellions in the region. As 'the conflict over sovereignty' subsided in the late 1990s with the signature of two consecutive ceasefire agreements with the two dominant rebel groups and a framework agreement with one of them signed as late as in August 2015, the earlier conflict is replaced by what a commentator calls

'contests over governing'¹⁵, most of the Naga women's organizations have been clamouring for 33 percent reservation for the women in village representative bodies as per the 72nd and 73rd Amendments to the Constitution of India.

The call by various women's organizations like the Naga Mothers' Association (NMA) in March 2012 for the implementation of reservation in the Municipal Councils and the various debates that followed it is a case in point. Those who criticize them, on the other hand, invoke Article 371 (A) (I) of the Constitution of India which grants customary rights to the Nagas and lays down that:

Notwithstanding anything in this Constitution,—

(a) No Act of Parliament in respect of —

(i) Religious or social practices of the Nagas,

(ii) Naga customary law and procedure,

(iii) Administration of civil and criminal justice involving decisions according to Naga customary law,

(iv) Ownership and transfer of land and its resources,

shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides ...

During the Mokokchung district municipal election of 2008, the provisions of the act could not be enforced as women filing nomination papers were stopped by some people in 16 wards of the town on the ground that reservation of seats for women was against the customary law of the Aos (Sub-tribe of Nagas) Fierce opposition from various sections including four villages in the by-elections for the Mokokchung Council prevented women from campaigning and filing nominations.

¹⁵ Ishita Dey, *Women, Conflict and Governance in Nagaland*, (2018) www.mcrg.ac.in/pp51.pdf

Surprisingly, both ruling and opposition legislators joined forces against the demand for women's reservation.

The women organized themselves into the Joint Action Committee for Women's Reservation (JACWR) and decided to take recourse to law courts. The women petitioners, including Rosemary Dzuwichu and Aboiu Meru, representing NMA, won this case; paragraph 35 of the court order stated that elections had to be undertaken by 20 January 2012 honouring the 33 per cent stipulation for women. While trouble continued, JACWR approached the higher court – the Guwahati High Court - hoping that judicial prodding would force the government to live up to its constitutional duties. The higher Court ruled:

Though these consultative meetings provided a common platform to all and sundry interested in the issue of reservation for women, having regard to the felt sensitivity thereof, in our estimate, the emphatic opinion opposing reservation did have resonating undertones of strong disapproval and resentment in some prominent quarters. One of the resounding observation[s] of the detractors of reservation was that the same if enforced in the Aao (sic) area, it would distort the very fabric of Aao culture and custom. That the concept of reservation does not comport to the Naga society was also underlined. It was urged further that it would signify discrimination of the women folk who, it was emphasized, as per the Naga culture was treated to be at par with men since the time immemorial. That there should be an overwhelming consensus on the issue of reservation was also stressed upon to obviate the possibility of disharmony and mistrust in the Naga society.¹⁶

¹⁶ State Of Nagaland & Anr vs Smti Rosemary Dzuwichu & Anr W.A. No. 116/2012

The court also referred to the strong opposition expressed by the wider sections of Naga society as one of the reasons that could not be 'lightly disregarded'.

The matter came to a head again when the Supreme Court directed the Government of Nagaland on 20 April 2016 to immediately hold the elections for urban local bodies. When the Government fixed elections for 1 February 2017 and initiated the electoral process, leading Naga tribal bodies vehemently opposed the move and intimidated prospective candidates not to contest elections. The opposition to elections reached a climax on 1 February 2017 when two protesters were killed allegedly by police firing in Dimapur and the headquarters of the Municipal Council in Kohima was razed to the ground.

Thus, what is imagined as 'tradition' by such bodies as Naga Hoho, Ao Senden and Eastern Naga Peoples' Association (ENPO) and so forth does not stand apart, but overwhelms and seeps through the modern State institutions like the legislative assemblies, law courts, urban local governments and so forth and seeks to 'foreground the unwritten patriarchal cultural code'¹⁷. As a result, these institutions are stamped by the scars and bruises of the gender inequality and sharpen – if not cut afresh - the gender divide in the Naga society. The more these inequalities become intense, the greater becomes the need for reviving what Sanyal calls the 'illusion of a community', for, it is the community with the kind of homogeneity built into it that is frequently invoked to lend legitimacy to the effects of these inequalities¹⁸.

¹⁷K.K.S *Hausing, Equality as Tradition' and Women's Reservation in Nagaland*, LII in *ECONOMIC AND POLITICAL WEEKLY*, 45 (2017).

¹⁸ KALYAN SANYAL, *RETHINKING CAPITALIST DEVELOPMENT: PRIMITIVE ACCUMULATION, GOVERNMENTALITY AND THE POST-COLONIAL CAPITALISM* 104-188 (London Routledge 2007)

Community as the Collateral

The presence of a contract society is usually regarded as the site where market forces are supposed to be nested in the sense that everyone living within it enjoys the right to make and break a contract with another as long as it serves their respective interests. The State with its repertoire of laws that ensure and guarantee the fulfillment of contractual obligations and the punishments that follow upon any violation only attest to the production of a contract society. In this Section, I rather propose to shift the focus away by arguing that the evolution of a contract society in the countryside historically depends - not so much on its capacity of destroying the bases of the preexisting society or what Sir Henry Maine would have called 'status society' – but precisely on its contribution to the evolution of a contractual society and making it possible in the sense of wielding the capacity of absorbing the vicissitudes and shocks, the failures and fluctuations of a contractual society in general and of market in particular. For Sir Henry Maine, the transition from the one to the other implies the destruction of the foundations of what he calls the preexisting status society:

Not many of us are as unobservant as not to perceive that in innumerable cases where old law fixed man's social position irreversibly at his birth, modern law allows him to create for himself by convention... [T]he science of Political Economy, the only department of moral inquiry which has made any considerable progress in our day will fail to correspond with facts of life if it were not true that Imperative Law had abandoned the largest part of the field which it once occupied and left men to settle rules of conduct for themselves with a liberty never allowed to them till recently. The bias indeed of most persons trained in Political Economy is to consider the general truth on which their science reposes as entitled to become universal, and when they apply it as an art, their efforts

are ordinarily directed to enlarging the province of contract, and to curtailing that of Imperative Law, except so far as law is necessary to enforce the performance of contracts¹⁹.

As we argue, we need to unearth - not the history of the evolution of a contract society, but the history of the society that makes possible not only such endless series of contracts and market exchanges to take place and be executed in the society, but absorbing and withstanding their collapse, failures and shutdowns. Is it the continuing series of contracts that holds the society together or the society itself that makes it possible for the otherwise conflicting parties to come together through the instrumentality of contract? The society, in other words, is prior to the contract and we seek to trace the history of the society that per se is not a contract society, but that may facilitate the formation of a contract society. Bugra writing on the occasion of the hundredth anniversary of the publication of Polanyi's magnum opus shows how 'along with community engagement to improve the provisioning of public services, we also witness the increasing importance of certain networks that challenge the market system through the values and alternative lifestyles that characterize their daily existence²⁰. In simple terms, the success of a contract society lies not so much in the clarity and legibility of laws, but in the resilience of the society to withstand and absorb the ebb and flow of contracts. It calls for the presence of a community that can act as a guarantee against the vagaries of contract, collateral in the evolution of a contractual society. The social is not the contractual – it is what can survive the highs and lows, ebb and flow of market forces and the market

¹⁹ SIR HENRY SUMMER MAINE, ANCIENT LAW, IT'S CONNECTION WITH THE EARLY HISTORY OF SOCIETY, AND IT'S RELATION TO MODERN IDEAS (John Murray London 1861)

²⁰A Bugra 'Polanyi's Concept of Double Movement in the Contemporary Market Society' in READING KARL POLYNI FOR THE TWENTY-FIRST CENTURY 173-89 (New York: Palgrave McMillan 2007)

society that it entails. Market in our instance serves as the prototype of contract.

Life in Darjeeling hills came to a grinding halt for about 104 days reportedly with the complete shutdown of its markets in 2017. The shutdown was part of the movement – third in recent years beginning since the early 1980s) - for a separate Gorkhaland state consisting of the Darjeeling hills and parts of North Bengal that secured a new lease of life as the Government of West Bengal was considering the proposal for making 'Bengali' mandatory as the third language (besides the mother tongue and English) at the school level across the state. How would people have survived for over 100 days when the strike, by all accounts, was successful, I wonder? While food is mostly perishable and no amount of stocking could survive them for this long period, there would be few in the hills who would have the means of stocking up the provisions. It certainly calls for some serious ethnographic work in future. While the state Government tried to enforce one law or the other while asking the shop owners, businessmen, suppliers, vehicle operators and go-down and warehouse owners, stockists to resume economic activities as part of fulfilling their respective contractual obligations, the long strike, as our ethnographies suggest, could not strike at the foundations of the society in the hills²¹.

The prolonged market shutdown seems to have elicited basically two kinds of responses or any combination of them: The first - and indeed the much talked about response - was that the shutdown led to an anarchy of sorts in which there was 'a war of all against all' in the sense that the unscrupulous traders and businessmen made their fortunes by way of clandestinely stocking up and selling their commodities at a premium price which only the few and the very rich could afford to buy. There were stories of striking leaders swooping on the trucks ferrying

²¹Samir Kumar Das '*The Postcolonial Market*' in DEVELOPMENTALISM AS STRATEGY: INTERROGATING POST-COLONIAL NARRATIVES ON INDIA'S NORTH EAST (Sage Publication 2019)

public distribution materials, looting them before they could reach those who might have been in acute need of them.

The second response was that the people would secretly buy the necessary commodities whether across the adjoining areas of Sikkim or even from Siliguri in the darkness of night hiring vehicles from the hills against exorbitantly high fares. The vehicle owners would thus make money by unfairly hiking the fare. Most of the common people also depended on army canteens of Sukna and Jalapahar and these canteens had reportedly been generous towards the needy villagers who were visibly in distress. Little ethnographic work has so far been conducted on how people could thrive on limited rations, how people helped each other on the basis of trust and neighbourliness accumulated over the decades instead of fighting amongst themselves, how they would distribute the vegetables grown in the backyard of their huts in a gesture of goodwill towards the members of their community. Sometimes, social service organizations chipped in and distributed cauliflowers and other vegetables collected from the Manebhanjang side and distributed them to the city dwellers. Another report, for example, points out how subscriptions are raised from the rich, essential items are purchased with the money thus collected and then redistributed amongst the neediest in the society. E. P. Thompson argues that people's responses and practices in times of acute crisis such as markets failures, shutdowns and complete collapse are informed by what he describes as "the belief that they were defending traditional rights or customs; and, in general, that they were supported by the wider consensus of the community"²². Such practices of mutual help, as have been underlined above, would certainly go a long way in riveting the bonds of unity at a time when the disappearance of the market threatens to sweep away the community by way of indulging in looting and plunder, setting one off against another and by unleashing the war of all against all for sheer survival. Darjeeling also seems to have

²² E.P Thompson, *The Moral Economy of the English Crowd in the Eighteenth Century* in 50(1) PAST AND PRESENT 76-136 (Oxford University Press 1971)

shown the 'resilience' for more than 100 days and not a single hunger death was reported during this period.²³

Conclusion

Maine's linear and albeit flat modernist narrative of the evolution of law and legal reforms – in our case through colonial mediation - does not sensitize us to the rather complicated relationship between law and community in the Northeast. The evolution of law does not rule out the presence of the communities. This paper shows how the two are mutually implicated in the sense that the presence of the community makes the legal reforms possible as much as the legal reforms initiated by the colonial authorities make its formation and existence possible. Both are complementary to each other. Law also creates the desire of surgically precise enumeration of communities in the minds of its potential members. It is through law that the communities are imagined into existence. It is through community's imaginings that law sustains itself.

²³ *Supra* note 21