

Ending Meghalaya's "Deadly Occupation": India's National Green Tribunal's Ban on Rat-Hole Mining

By Baniateilang Majaw*

Abstract: *The North-Eastern Indian state of Meghalaya seems to have operated like an independent country when it comes to coal mining. Reckless, unscientific and deeply harmful coal mining has recently caused havoc to the local environment, ruining the scenic beauty and habitats of Meghalaya. Addressing those problems, the National Green Tribunal (NGT) temporarily banned rat-hole mining in an order dated 17 April 2014. The local responses to the NGT verdict indicate that Meghalaya is run by coal barons, bourgeois politicians and self-serving public officials who have been raising loud protests against the NGT order, refusing to acknowledge the lasting damage caused to the natural environment of Meghalaya and the intolerable infringements of people's and workers' rights. The article examines and critiques the responses to the NGT Order to ban rat-hole mining in Meghalaya in the wider context of the effectiveness of public interest litigation, India's ongoing debates about environment and development and the potentially dangerous local fallout for centre-state relations in India's volatile Northeast.*

A. Introduction

In Meghalaya, 'rat-hole mining' is the term used for a primitive style of coal mining, carried out manually in unsophisticated and unscientific ways, making those who work in this industry vulnerable to accidents and ruining the local environment. This method involves felling trees and digging pits in hilly areas, then making small holes sideways into the local hills, so that people working inside those holes can extract earth and, later on, coal. This digging process continues until a coal seam is found. Extraction of coal from this primitive pit is finally done by wheel-barrow (*ka kali dieng*) and/or a cone/basket (*ka khoh*). Research indicates that this mining activity in Meghalaya results in the loss of fertile top soil and leads to water and air pollution.¹ Loss of fertile soil and vegetation has already turned

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1 T. Lyngdoh et al., Vegetation dynamics on coal mine spoils of Jaintia Hills in Meghalaya (north-east India) undergoing natural recovery, *Acta Oecologia*, 13 (1992), pp. 767-775.

many areas of the state into wasteland. There can be no doubt that such rat-hole mining is hazardous to the environment as well as dangerous for the labourers involved.²

Until recently the people of Meghalaya were not engaged by either Government or District Councils to be sensitised to the precarious consequences of mining.³ However, the verdict of India's National Green Tribunal (NGT), temporarily banning rat-hole mining in Meghalaya from 17 April 2014 onwards, not only slowed down that noxious activity but has also caused much scepticism and debate among those involved in and concerned about the coal business and environmental protection in Meghalaya. The order came soon after the All Dimasa Students' Union approached the NGT on 2 April 2014 through an urgent public interest litigation (PIL) petition with the claim that illegal rat-hole mining in the Jaintia Hills of Meghalaya had polluted the Kopili River and had turned its water acidic. India's method of using PIL techniques to bring significant violations of basic fundamental rights to the Courts' attention has been well-established since the 1980s.⁴ The present case shows that the Indian courts may indeed act on the basis of such PIL petitions but risk then, as shown here, direct involvement in local power structures, with potentially treacherous impact on centre-state relations within the Indian Federal Republic.

In fact, prior to this urgent action of the All Dimasa Students' Union, local environmentalists had been expressing strong concerns about the rapidly degrading environment in the state. The Impulse NGO Network from Meghalaya collected much writing on the menace of coal mining, particularly also the prevalence of child trafficking in these coal mines, where young people work under extremely hazardous, inhumane and life-threatening conditions.⁵ This NGO itself had filed a PIL petition under Article 32 of the Constitution of India, addressed directly to the Chief Justice of India in 2010.⁶ The timeline confirms that PIL petitions, too, may get caught up in the familiar backlog problems of the Indian judicial

- 2 Questionnaire responded to by Nicholas Jonathan Kharnami, President of a local NGO named Ka Pla Iew. This was sent on 6 October 2015 and received on 17 October. Another questionnaire, sent on the same day, was responded to by Poipynhun Majaw, President of Jaintia Youth Federation, an NGO from the rat-hole mining districts on 20 October 2015.
- 3 Questionnaire responded to by John F. Kharshiing, Chairman of the Grand Council of Chiefs of Meghalaya (GCOC). Sent on 23 October 2015 and received on 8 November.
- 4 There is a huge literature on public interest litigation in India. Despite many negative voices, this technique to resist and redress the infringement of basic fundamental rights on behalf of those who are unrepresented, provided the petition is *bona fide*, is by now well-established. For earlier literature on PIL, see *Sangeeta Ahuja*, *People, law and justice. Casebook on public interest litigation*. Volumes I-II, London, Sangam Books (1997). For specific legal writing on PIL and environmental law in India see chapter 9 in Ahuja's Volume II and numerous more recent references in *Amirante*, note 8.
- 5 Interview with Ms. Hasina Kharbhii, the team leader and founder of the Impulse NGO Network Shillong, on 13 October 2015.
- 6 Article 32 (1) of the Indian Constitution of 1950 offers a remedy for the enforcement of fundamental rights as guaranteed in Part III (Fundamental Rights) of the Constitution, providing that '(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed'. The explicit reference to 'appropriate proceedings' means today

system at all levels.⁷ Yet it also confirms that concerted local action can, ultimately, lead to judicial intervention, particularly in manifest cases of infringements of basic fundamental rights.

In the present case, delegated by the Supreme Court to the new National Green Tribunal of India,⁸ it is alleged that in issuing this ban, the courts took their time to respond. The NGT ultimately relied on the expert report of Professor O.P. Singh from the Department of Environment, North-Eastern Hill University in Shillong, who was commissioned to undertake a specialist study on water pollution in the state. This demonstrates how senior judicial authorities in India may commission scientific expert reports in PIL cases to aid and propel the judicial decision-making process.

Since the proclamation of the NGT on the prohibition of rat-hole mining in Meghalaya, lots of voices have been heard locally against and in favour of this order. The chorus of opposition was led by Shillong Member of Parliament (MP) Vincent H. Pala and a prominent Member of the Legislative Assembly (MLA), Ardent Miller Basaiawmoit. It also included the former Chief Executive Member of the Khasi Hills Autonomous District Council (KHADC), the Meghalaya state government, as well as John F. Kharshiing, who presents the voice of the Grand Council of Chiefs (GCOC). Significantly, also opposing this order we find the banned insurgent group Hynniewtrep National Liberation Council (HNLC), several legal experts and of course the local coal barons. They argue against the verdict, claiming *inter alia* that the NGT Order should be suitably amended by recognition of the unique customary laws and social customs in Meghalaya, which include peculiar community and private land holding systems.⁹ In fact, the poor coal workers also voiced their own reservations about the NGT decision and, to some extent reluctantly, expressed disapproval of it.

Those in favour of the verdict are mainly environmentalists. Additionally, groups of people whose lands had been directly or indirectly affected by rat-hole mining have spoken up, but are less heard. The mainly voiceless majority, however, are those numerous mi-

that even a letter or telegram to the Supreme Court or High Court will be sufficient, but there has to be (i) evidence of actual violation of a fundamental right and (ii) that the petition is *bona fide*.

7 See Jayanth K. Krishnan, Shirish N. Kavadi, Azima Girach, Dhanaji Khupkar, Kalindi Kokal, Satyajet Mazumdar, Nupur, Gayatri Pandey, Aatreyee Sen, Aqseer Sodhi and Bharati Takale Shukla, 'Grappling at the grassroots: Access to justice in India's lower tier', *Harvard Human Rights Journal*, 27 (2014), pp. 151-189.

8 On this Tribunal, which has been in existence since 2010, see Domenico Amirante, 'Environmental courts in comparative perspective: Preliminary reflections on the National Green Tribunal of India', 29 *Pace Envtl. L. Rev.* 441 (2012), pp. 441-469. Also at <http://digitalcommons.pace.edu/pehr/vol29/i1ss2/3>.

9 Conversation with Erwin K. Syiem Sutnga on 17 October 2015. He is a legal expert and Vice-Chairman of Movement for Indigenous Peoples' Rights and Livelihood-Meghalaya (MIPRL). MIPRL is a pro rat-hole mining movement formed just after the National Green Tribunal ban on rat-hole mining in Meghalaya; it demands the implementation of Para 12 A Sub Para (b) of the Sixth Schedule to the Constitution of India to protect the Khasi, Jaintia and Garo Peoples' inalienable and absolute rights over tribal land. Questionnaire responded to by John F. Kharshiing, note 3.

grants, both Indian nationals and illegal foreigners, whose presence the existing powers and rules in Meghalaya would rather not talk about. This 'local' industry, it seems, could not be run without the labour input of severely disadvantaged groups of migrants in the state.

Until October 2015, even the interim ban on rat-hole mining by the NGT witnessed the loss of three further human lives, a series of violations of the order and subsequent arrests of truck drivers, coupled with huge loss to the state's exchequer to the extent of Rs. 600 crore.¹⁰ Royalty from coal is a major source of revenue for the state government. A year after the NGT's ban on rat-hole mining, a press report showed that the total tonnage of coal transported within the grace period after the NGT ban was still 11,56,743 metric tonnes.¹¹ The same source reported that the total royalty collected by the government was over Rs. 132.25 crore, while the total quantum of coal extracted was assessed as 87,13,103,221 metric tonnes. Coal assessed and lying in various depots was another 75,56,360.221 metric tonnes. The money realised through fines from illegal coal trucks was Rs. 6,97,50,050.

There are, thus, many indications that this legal ban is locally contested, undermined and not as effective as one might hope or expect. The present article, charting the various reactions to the ban on rat-hole mining, examines the wider legal and political fallout of this verdict, which risks leading to a new Indian crisis in centre-state relations in the wider context of struggles over the right balance between development and environmental protection. However, this article is also an insider account of the local rape of nature that a vigilant legal system protected by a strong constitution certainly needs to curtail to protect the long-term welfare of local inhabitants.

B. Legitimacy of India's mining rules and regulations in Meghalaya

In India, all mining operations fell under a plethora of government rules and regulations. The Mines and Minerals (Regulation and Development) Act of 1957 laid down the legal framework for the regulation of mines and development of all minerals other than petroleum and gas. Other relevant legal provisions in force under the same Act were the Mineral Concession Rules of 1960 and the Mineral Conservation and Development Rules of 1988. The health and safety of workers, governed by the Mine Rules of 1955 and the Coal Mines Regulation of 1957, was at first brought under the jurisdiction of the Mines Act 1952.¹² The Coal Mines (Nationalisation) Act, 1973 had strictly curtailed private parties from exploiting coal reserves. The 1957 Act and other mining development regulations and plans were subsequently guided by the overall National Mineral Policy (NMP), first outlined by the Government of India in 1993 and then revised in 2002.¹³ The objectives of the

10 A crore is ten million Indian Rupees.

11 *The Shillong Times* (17 April 2015), 'Loss of Three Lives, Rs 600 Crore'.

12 For details see *Sairam Bhat*, *Natural Resources Conservation Law*, New Delhi, Sage (2010), p. 299.

13 *Kuntala Lahiri-Dutt*, *Illegal coal mining in Eastern India: Rethinking legitimacy and limits of justice*, *Economic and Political Weekly*, 42(49) (2007), pp. 57-66.

NMP were primarily ‘mineral development’ through exploration of ‘mineral wealth’ to develop the nation’s wealth, taking into account wider strategic considerations, and to ensure their adequate supply and best use. The NMP meant to promote the mineral industry as well as research, training and development in minerals, keeping in view present needs and future requirements. Trying to minimise adverse effects on forests, the environment and ecology, this policy sought to ensure safety and health of all concerned.¹⁴ In consultation with state governments, the central government replaced the NMP of 1993 with a new policy in March 2008, which also provided for changes in the roles of the central government and the state governments, basically to attract more private sector investment towards exploration and mining. However, it also stressed the need for promotion of scientific mining within a sustainable development framework, so as to protect the interests of local populations in mining areas. This necessitated harmonisation of legislation with the new National Mineral Policy.¹⁵ These existing central laws are not really known to local people, however.

C. The mysterious legality of Meghalaya

For many years, rat-hole mining in Meghalaya was not regulated by any laws and extraction of coal by a few rich people developed in a most unscientific manner. Such practices soon resulted in serious air, water and soil pollution and damaged the local ecology. The Meghalaya government, it appears, never considered the rat-hole mining in the state as unscientific and illegitimate. Instead it encouraged mine owners to use illogical arguments and pretexts in the name of tribal customs, as we shall see, to challenge the validity of the recent ban. In fact, it had to be made clear to all concerned that the NGT Order was not exactly a complete ban on coal mining in Meghalaya, nor was it against tribal rights. Rather it was directed against rat-hole mining due to its deleterious effects on the environment and the workers.

To understand better how this systematic rape of the local countryside in Meghalaya could happen over such a long time, it is useful to examine the basic legal structures of Meghalaya within the context of the Indian Republic. The federal make-up of the Constitution of India differs from a typical federal system elsewhere in the world, as the states of India are never completely sovereign in any sense.¹⁶ During British rule, some districts of Northeast India were ‘partially excluded’ from the Provisional Autonomy introduced by the Government of India Act of 1935. The paternalistic reason advanced was, even under colonial rule, that provincial legislatures dominated by politicians from the plains of India would not sufficiently address the concerns of the hill tribals and of these remote tribal ar-

14 For details see *Lahiri-Dutt*, note 13 and *National Mineral Policy*. Report of the High Level Committee, Planning Commission. New Delhi, Government of India (2006).

15 Relevant details are found in the Thirty-Ninth Report of the Standing Committee on Coal and Steel (2008-2009), New Delhi: Ministry of Mines and Minerals (Development and Regulation).

16 *Durga Das Basu*, Introduction to the Constitution of India, Nagpur: LexisNexis Butterworths (2009), pp. 53-54.

eas.¹⁷ Around the time of India's Independence in 1947, the Instrument of Accession was a last minute solution through which the British under Lord Mountbatten tried to handle the problem of how to deal with the princely Khasi states. These Khasi states of the hills were of little significance compared to the large and powerful princely states in India's mainland.¹⁸ The Khasi states were eager to maintain or strengthen their independent status after the end of British rule and did not formally accede. After Independence, the Constitution of India retained special provisions for the administration of so-called 'Scheduled Areas'.¹⁹ Under the Constitution of India (1950), the Sixth Schedule was created to ensure specifically the rights of tribals who were minorities within a state or geographical area populated by a dominant non-tribal population. The Sixth Schedule also aimed at providing autonomy to minority tribal groups in the north-eastern states, so that they could decide their own models of development and also safeguard their customary practices and traditions which give them a unique identity within India. At the time of drafting the Constitution, the Khasi-Jaintia and Garos were minorities in the state of Assam. One of the fundamental provisions of the Sixth Schedule was that state governors play a special protective role within these areas. They were empowered to make regulations prohibiting or restricting the transfer of land from tribals to non-tribals and to prevent exploitation of tribal communities.²⁰ Since these Scheduled Areas were supposed to enjoy autonomy protected by the Constitution, the laws passed by the parliament in New Delhi and the state legislatures would not automatically apply to them. Under the Sixth Schedule there were Autonomous District Councils (ADCs), to which the central government gave varying degrees of autonomy to establish and develop local self-government within the state legislature.²¹

Meghalaya, a new state for the tribal people (Khasi-Jaintia and Garo) was carved out of Assam in 1972, but its area remains covered under the provisions of the Sixth Schedule. Currently, given the presence of a state government dominated by tribals, the existence of the District Council itself is disputable,²² although the Sixth Schedule was amended in 1972 with the addition of paragraph 12-A (a) to account for local changes in governance. This constitutional provision seems to say that the ADCs are supposed not to have any further role within a state which is ruled by a tribal majority. Yet this rule is subject to disagree-

- 17 Ministry of Panchayat Raj (MoPR), Planning for the Sixth Schedule Areas and those areas not covered by Parts IX and IX-A of the Constitution. New Delhi: Report of the Expert Committee, Government of India (2006), p. 49.
- 18 *Ian Copland*, The princes of India in the endgame of Empire, 1917-1947. Cambridge, Cambridge University Press (1999), cited in *Bengt G. Karlsson*, Unruly Hills: Nature and Nation in India's Northeast, New Delhi, Social Science Press (2011).
- 19 *Basu*, note 16, p. 293.
- 20 *J. M. Phira*, The Autonomous District Councils of Meghalaya under the Sixth Schedule of the Constitution of India, Shillong: Ri Khasi Book Agency (2014), pp. 32-116.
- 21 Details are found in the Sixth Schedule of the Constitution of India of 1950.
- 22 *National Commission for Scheduled Tribes (NCST)*, Special Report on Good Governance for Tribal Development and Administration, New Delhi (May 2012), p. 16; *Bengt G. Karlsson*, Unruly Hills - Nature and Nation in India's Northeast, New Delhi, Social Science Press (2011), p. 258.

ment and confusion. Since these Scheduled Areas are expected to enjoy autonomy protected by the Constitution, any laws passed by the parliament in New Delhi and the state legislature would still not automatically apply to these localities. The tribes, then, so the dominant local argument, will be governed not by the general provisions of the constitution relating to the States and Union Territories of India, but by the provisions of the Sixth Schedule.²³

A key issue here is ownership and control of land. In Meghalaya, the tribes own land on the ground of being local citizens. Two types of lands exist in the Khasi-Jaintia Hills, called *Ri Raid* and *Ri Kynti*. The former is commonly owned by the community, whereas the latter is privately owned. Individuals who own *Ri Kynti* have exclusive rights to this land through sale or inheritance. Not long ago there were no *Ri Kynti* lands in Meghalaya, particularly in the Khasi-Jaintia Hills. Instead traditional institutions were commonly found there, known as *Hima*, a territorial and political unit of several villages. Under the *Hima* system there are villages (*shnong*) which function as autonomous units. These *shnong* as traditional institutions manage and control their own territory according to local customs and traditions.²⁴ According to customary practices, the inhabitants of every village (*Trai-shnong*) are the only permitted users of the community lands, because they are permanent residents of the constituent village of a *Hima*. Therefore, it seems that land was primarily not supposed to be private property, but deemed to be property of the community.

However, over time, as the prevailing custom allowed anyone to work on the community land, a few selfish *Trai-shnong* converted parts of this community land into private property, reasoning that they were working on their own land. Once land was thus commoditised, a tendency developed for some *Trai-shnong* to occupy and claim as much *Ri Raid* land as they could. Under customary practice, the *Trai-shnong* do have every right to cultivate, sell trees from this property and then grow new trees again as in *Ri Kynti*.²⁵ In this way, however, *Ri Raid* was gradually converted into private possession similar to *Ri Kynti*. Because such right was and is still allowed to be usurped by greedy individuals, large pieces of *Ri Raid* were gradually captured by a few rich people and certain headmen of the *Shnong* who had the means to encircle *Ri Raid* lands and converted them into *Ri Kynti*. Hence, vast expanses of land, which was originally *Ri Raid*, became concentrated in the hands of a few in the name of *Ri Kynti*. This is the main reason for the emergence of big landlords in Khasi-Jaintia. Many other tribals became landless, consequently, working as tenants or hired labourers of these few rich people.

Thus we realise that in the name of custom and tradition, supported by the influential powers of ministers and bureaucrats under the cover of the Sixth Schedule, the plight of miners in recent times in Meghalaya rests at the mercy of local coal barons, whose interest

23 J. M. Phira, note 20, p. 49.

24 A. K. Nongkynrih, Ka Shnong: The Microcosm of Hynniewtrep Society, Indian Horizons, 48 (3) (2001), pp. 121-151.

25 Keith Cantlie, Notes on Khasi Law, Shillong, Chapala Publishing House (2009), pp. 123-127.

now is to mine as much coal as possible, at the cost of labourers' lives, destruction of the environment and pollution of the water bodies. Because there is no rule and regulation to govern the use of *Ri Kynti*, the general mindset of these rich tribal landlords is that as they own *Ri Kynti*, they can do whatever they like with it. In the Garo Hills, on the other hand, land is subjected to the ordinary laws of inheritance and it belongs to the wife of the *nokma* or traditional village chief or headman of a *Garo* village. By custom, all the inhabitants of a village are permitted to cultivate whatever land they require, and may cultivate wherever they choose within the village boundary. Even a stranger who comes into the village to settle is also permitted to take up land, but he should give a small present or quit-rent called *hawil* to the *nokma*.²⁶

D. The extension of this questionable legality

As in Meghalaya itself, the jurisdiction of all national rules and regulations was considered potentially limited, the coal mafias could argue in 2014 that the NGT ban had no applicability in this state. Their argument simply became that the NGT possessed no authority to intrude into the realm of tribal custom and take away their land rights. In their view, the NGT order of 2014 was completely unethical and illegal in terms of protecting the best interests of the tribal areas. Following this perspective, Meghalaya's mines had also never been licensed or subjected to India's laws restricting child labour, environmental discharges or workers' safety.²⁷ However, if the centre's rights were indeed so restricted locally, there would then be a corresponding obligation on those running the affairs of Meghalaya to make sure that a proper balance of development and environment and of the best interests of tribal people is maintained. After all, the Constitution of India as a whole, with its strong fundamental rights guarantees, does extend to Meghalaya.

In blatant disregard of this basic position, rampant rat-hole mining has meanwhile led to serious environmental damage, affected rivers and streams, which provide regular supply of drinking water to the people. Income and wealth disparities have widened over the years, with no signs that rat-hole mining brought significant development to the state. A balancing exercise had not been undertaken in the public interest of all people, because the benefits were reaped by a few individuals. This could be seen in mining areas like Lad Rymbai, Bapung and Khliehriat, which had been mined for decades, yet had not seen much economic and social progress. The living standards of the vast majority remained pitiful. Accessibility of electricity, the conditions of roads, institutions like schools and health centres remained

26 *A. Playfair*, *The Garos*, London, William Clowes and Sons Limited, (1909). *Deigracia Nongkynrih*, Land Relations in the Tribal Societies of Meghalaya: Changing Patterns of Land Use and Ownership, Social Change and Development, Vol. XI No. 2, 2014, p. 5.

27 *Indian Law Institute*, Customary law and justice in the tribal areas of Meghalaya, New Delhi, ILI (1982). *Impulse NGO Network and Human Rights Now*, Report on Child Labour in the Mines of Meghalaya- Fact Finding Mission of Human Rights Now to India, Shillong, (July 2011).

deplorable.²⁸ Positive development arising from rat-hole mining is also not foreseeable in the near future.

It seemed thus that Meghalaya operated like an independent country when it comes to rat-hole mining. In light of Indian constitutional rights guaranteed for all citizens of the country, however, several major violations of fundamental rights through the coal mining operations in Meghalaya could be identified. These were firstly that the Coal Mines Nationalisation Act of 1973 made mining of coal the monopoly of the central government, and it is unclear how this relates to the Sixth Schedule of the Constitution. Secondly, the Mines Act of 1952 contained provisions for measures relating to the health, safety and welfare of workers in coal mines. It is difficult to understand that its protective provisions would not apply in Meghalaya. Thirdly, the Forest Conservation Act of 1980, which was an act intending to provide for the conservation of forests and for matters connected with protection of trees from illegal felling and destruction, would appear to apply also in states like Meghalaya. Fourthly, the Water (Prevention and Control of Pollution) Act of 1974, which is a central act, aimed to prevent and control water pollution and to maintain and restore the wholesomeness of water everywhere in India. It was designed to function by establishing central and state pollution control boards to monitor and enforce the relevant regulations; and cannot realistically be exempt from application in the numerous tribal areas that the Sixth Schedule appears to cover. Fifthly, a key provision in Article 39 (e) of the Constitution of 1950, an important Directive Principle of State Policy, puts the state under an obligation to aim towards securing ‘(e) that the health and strength of workers, men and women, and the tender age of children, are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength’, a provision which would appear to be violated with impunity in Meghalaya. Sixthly, Article 23 of the Constitution of India as a fundamental right prohibited traffic in human beings and forced labour, and Article 24 directs that ‘[n]o child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment’. All these articles seemed to be defunct in Meghalaya.

In addition, recently the Meghalaya ADC was contemplating to urge all the leaders of the ADCs in North East India to come together to form a consensus on proposed draft amendments to the Sixth Schedule of the Indian Constitution. One of the suggestions made by the KHADC was the demand for ‘exemption’ in the article of the Sixth Schedule which talks about issues related to land and customs.²⁹ Earlier, the Meghalaya Assembly unanimously approved a resolution tabled by Chief Minister Mukul Sangma, which argued that the NGT Order was an illicit interference of the centre in Meghalaya. As a result, the Meghalaya government submitted a proposal to the centre at Delhi to issue a presidential notification in the exercise of power conferred under paragraph 12-A (b) of the Sixth Sche-

28 *Gideon L. Kharkongor and Rajesh Dutta*, *The status of Adivasis/Indigenous Peoples Mining Series - 3 Meghalaya*, New Delhi, Aakar Books, (2014), p. 63.

29 *The Shillong Times*, KHADC mulling to seek consensus of NE ADCs (19 June 2015).

dule to the Constitution, withdrawing the application of the Mines & Minerals (Development & Regulation) Act, 1957 and the Coal Mines (Nationalisation) Act, 1973 from Meghalaya.³⁰ It also argued that the Meghalaya Mines & Minerals Policy of 2012 had proposed to promote safe, scientific and sustainable development of mineral resources in the State.³¹ While implementing this policy, it was found that the central provisions of the Mines & Minerals Act of 1957 and the Coal Mines Act of 1973 come into conflict with customary practices and rights of the state's people.

According to Erwin K. Syiem Sutnga, rat-hole mining is actually a scientific system of taking out coal conducted by the indigenous people of Meghalaya. If the NGT was unhappy with this system, it should not have imposed its authority in a hurry without giving any alternatives to the indigenous people. He also said that before banning mining operations in Meghalaya, the NGT should have provided a holistic approach taking economic development and environmental preservation into consideration.³² In a memorandum,³³ sent to the Prime Minister of India, the MIPRL states:

(i) The NGT ban on mining of coal in Meghalaya was imposed without any ground survey, assessment of its economic impact and the resultant widespread economic deprivation of the people.

(ii) The Order of the NGT itself suffers from many discrepancies, legal inaccuracies and lack of knowledge about the ground realities and the unique position of the people of Khasi-Jaintia and Garo Hills under the scheme of the Constitution of India.

(iii) The Report of Prof O. P. Singh lacks proper assessment of the level of pollution in areas where mining has been stopped and where the pollution level is negligible.

(iv) The NGT has cast defamation on the whole Khasi-Jaintia and Garo tribes by terming those involved in the coal sector as 'coal mafia'.

This voiced a general assumption and claim that the NGT must not hinder rat-hole mining activities of Meghalaya. Any rules and regulations of India dealt with mines, as well as the initiative taken by the NGT to green Meghalaya, was considered as a sign of intention by the centre to deny local tribals their basic rights and to cause them hardship. It is seen here that the struggle to resolve the conflict between central statutes and local customary laws would be complicated, as that tussle was not merely between the NGT and common tribal people, but between the NGT and the lawmakers of Meghalaya, the rich coal barons and the GCCM Chairman, all hiding behind paragraph 12-A (b) of the Sixth Schedule to the Constitution of India. Since the Khasi States never signed the Instrument of Merger with India

30 *The Times of India*, 'Keep Us out of Mines Act: Meghalaya' (14 March 2015).

31 The Meghalaya Mineral Policy of 2012 is found in The Gazette of Meghalaya, No. 96 (5 November 2012) in Shillong.

32 See note 9.

33 Memorandum sent by the MIPRL to the Prime Minister of India, Ref. No MIPRL/Memo/CM/14/1, dated 10 July 2014.

as it was done by most Indian States, the NGT's ban on rat-hole mining was formally considered 'unconstitutional and illegal' by those who are financially and politically strong in Meghalaya, stressing the NGT's violation of the Treaty of Accession.

Local groups of insurgents have also derived good income from the coal belt areas of Meghalaya. The proscribed major local outfit HNLC called a 24-hour shutdown on 10 June 2014 to oppose the NGT ban on rat-hole mining.³⁴ Another banned insurgency group, the Garo National Liberation Army (GNLA), often slapped extortion demands on coal dealers in some parts of Meghalaya. Flush with such extorted funds, the GNLA went on a rampage and killed Josbina Sangma, a 35-year old mother of four children, in front of her husband and children by using a Kalashnikov rifle.³⁵ Unproven further reports suggest that some Garo MLAs in the coal belt areas were elected due to GNLA support. The nexus between insurgency and coal mining appears to be beyond doubt.

It seems that the police were also helping coal barons in violating the NGT ban. For example, one heard and read at the time about trucks, truck drivers and handymen seized, sometimes even truck owners, for transporting coal illegally after the NGT ban. But nobody has ever heard of any coal mine owner arrested for the same reason, though it is known that rat-hole mining continued after the NGT ban. This indicates that the Meghalaya Police were paid off by coal mine owners. An alternative explanation could be that the policemen are afraid to take serious action against coal barons, as their own careers and even their life would be at risk. The illegal transportation of coal has resulted to the unnatural death of the Sub-Inspector and officer-in-charge of the Patharkmah police outpost. Coal lobby's hand was suspected since he died after he had detained around 32 illegal coal-laden trucks within the jurisdiction of his police outpost.³⁶ The state government's interference with the NGT's Order offered strategic advantages to coal barons and those with enough money still had further chances to bypass the NGT's Order and exploit their ability to lobby ministers. Indeed, some of the mine owners are legislators and ministers.

E. The *raison d'être* for the NGT to ban rat-hole mining

While rat-hole mining activities have been exempted for long from any central directive out of evident respect for tribal customary land rights, we already saw how easy it became for local coal mine owners and privileged groups to seize control of more and more land. Simi-

34 The HNLC frequently stresses the Treaty of Accession and professes to launch a struggle against the colonial domination of outsiders and of India. It aims for a completely sovereign *Hynniewtrep State*.

35 *The Times of India*, In Meghalaya, militants blow off woman's head for resisting rape (5 June 2014).

36 *The Shillong Times*, Cop's death: Coal lobby's hand suspected (3 February 2015). *The Telegraph*, Cold Body Exhumed after foul play whiff (14 February 2015).

larly, since rat-hole mining has been carried out in the name of customary rights,³⁷ a related presumption is that it is not covered by any acts, rules or legislation of India.³⁸ It is considered a cottage industry in Meghalaya and none of this was authorised or licensed by the state. Notably, the process had also never been subjected to India's laws restricting child labour, environmental discharges or workers' safety. The Meghalaya Mines and Minerals Policy of 2012 was devised and passed with the aim to facilitate scientific and planned utilisation of mineral resources, claiming to keep in view protection of the environment and land rights, health and safety of the people in and around the mining areas.³⁹ But due to the intention of the Meghalaya government not to ban rat-hole mining, the fate of the environment and common people clearly took a back seat. Anyone who has the necessary capital can carry out rat-hole mining, as long as that person is a native of a *Hima* or *Shnong*. Out of greed for money many *Ri Kynti* holders have been selling off their land to the rich. Consequently, agricultural land became an active business asset and many forest lands were used for mining purposes. The landless, on the other hand, had to labour inside these rat-holes. Their only consolation was survival, with no hope for a better future. Even their children were found toiling in the mines and quarries alongside their parents. Children working and wearing torn clothes were a common sight across the coalmining region.

Taking ruthless advantage of their legal freedoms, coal mine owners made the coal belt areas ecologically fragile and the scramble for coal reached an appalling and completely unsustainable extent. As coal labourers benefitted directly through employment opportunities, they had their own reasons to support this development. Indirectly, too, as shopkeepers and tea sellers, many other local tribals earned their living from the coal workers and depended on them for their regular trade. The availability of such economic incentives, in the beginning, meant that many common people did not realise the dangers arising from rat-hole mining. However, it took not too long to recognise the deteriorating physical symptoms of their surroundings and its diverse negative implications. From 2007 onwards, there were annual incidents of dead fish floating in the river Lukha, near a mining region of the Jaintia Hills, especially when the water turned blue in the beginning of every autumn.⁴⁰ Nobody could offer conclusive answers as to why the Lukha had turned blue, but it was an uncontested fact that the rivers below those coal-rich areas had become deadly poisonous. Tonnes of coal waste were thrown away in open spaces. Such highly acidic substances

37 *Directorate of Mineral Resource (DoMR)*, Cottage coal mining in the state of Meghalaya and its impacts on the environment, in *A. Gupta and D.C. Dhar* (eds.), *Environment conservation and wasteland development in Meghalaya*, Shillong, Meghalaya Science Society, 1992. *NCST*, note 22, p. 48; *Kiranmay Sarma*, *Impact of coal mining on vegetation: A case study in Jaintia Hills District of Meghalaya, India*. Thesis submitted to the International Institute for Geo-information Science and Earth Observation (ITC) the Netherlands, (February 2005).

38 See interview, note 9 and questionnaire, note 3.

39 *The Meghalaya Mines and Minerals Policy of 2012*, *The Gazette of Meghalaya*. Shillong (5 November 2012), p. 837.

40 *Eastern Panorama*, Lukha river discolouration an annual affair, (December 2011), At <<http://www.easternpanorama.in>>, accessed on 22 January 2014.

reached those rivers after rainfalls and slowly killed all living organisms, including fish. One study found that after extensive coal mining the rivers in Jaintia Hills produced several colours, from brown to green, and then to blue, before its transition to death, so that Jaintia Hills became known as the ‘land of dead rivers’.⁴¹ Yet the government of Meghalaya stubbornly refused to take any concrete steps. This became obvious when Bindo M. Lanong, the former Mining Minister of Meghalaya, said that there was no question of rat-hole mining being discontinued in the near future.⁴² Too much was at stake for those who profited. The table below shows the annual production of coal during five years in the whole state and confirms that these are indeed massive operations, not some small-scale enterprise:

Table of Metric tonnes per year⁴³

Year	Jaintia Hills	Garo Hills	Khasi Hills	TOTAL (Col.2+3+4)
1	2	3	4	5
2003-2004	39,18,037	10,58,440	4,62,791	54,39,268
2004-2005	36,10,603	11,01,088	6,33,499	53,45,190
2005-2006	38,79,738	11,20,525	5,65,451	55,65,714
2006-2007	40,45,710	11,74,635	5,66,307	57,86,652
2007-2008	43,59,878	13,70,263	8,11,004	65,41,145
2008-2009	28,90,865	15,94,170	10,03,613	54,88,648
2009-2010	37,22,211	15,62,008	4,82,798	57,67,017

As coal mines were not officially registered in Meghalaya, the actual amount of coal exported from the state might have been much higher than the amounts shown in the above table. Rat-hole mining undoubtedly proved beneficial for the coal barons and the government of Meghalaya received huge amounts of royalties, while coal was mined aggressively for years, ignoring the safety of the environment. In this way, the once scenic hills of Meghalaya, especially those in Jaintia Hills and Laitryngew (Cherrapunjee) were reduced to rubble. Many parts of the Garo Hills, the western parts of Meghalaya, were not spared either. Predominantly in the Jaintia Hills, rat-holes became increasingly frequent and were deeper and deeper. Abandoned tunnels began to multiply when they could no longer produce to the owners’ expectation. Many places became amazingly barren.

- 41 *Rajkamal Goswami and Jesudasan Allwin*, Mined to death: An elegy for the rivers of Meghalaya, *Down To Earth* (30 July 2012).
- 42 *Esha Roy*, Inside Meghalaya’s black hole, *Indian Express* (4 November 2012).
- 43 Government of Meghalaya, Department of Mining and Geology, Directorate of Mineral Resources, available at <http://megdmg.gov.in/mineral_production.html> (Accessed 28 February 2015).

F. Labour law issues

Infringements of labour laws became another serious issue. Child trafficking in coal mines could not be separated from child labour in the rat-holes because the rat holes are often so small that only children can work in them and many adults cannot even enter them.⁴⁴ It is reported that 80 per cent of child labourers in the coal belt came from different places in India. A large majority (77.6 per cent) were from Assam, which might explain the activism of the Dimas Students' Union in bringing their PIL case to the NGT. Only 6.2 per cent of the labourers originated from Meghalaya. About 28 per cent were from Karimganj District in Assam, but it could not be decisively determined whether they were indeed from Karimganj or had come there after crossing the national borders in the region.⁴⁵ Another report detailed that a large number of workers were trafficked from Nepal and Bangladesh.⁴⁶ In each coal mine many children were employed underground and also over ground, and over 70,000 children and under-age youths were found working in these rat-hole mines.⁴⁷ These children had to face death traps inside those rat-holes. For example, 16 year old Amirul said that 'inside the coal mine life is like hell'.⁴⁸ Due to this rampant child labour, rat-holes mining had attracted widespread press coverage both within and outside India.⁴⁹

Bangladeshi nationals were eminently in demand as cheap labour in coal mining areas across Meghalaya, while locals hardly dared to enter the rat-holes.⁵⁰ A police official said that nearly 19,000 Bangladeshis were detected in Meghalaya in less than six years.⁵¹ Fatalities and catastrophes were a regular phenomenon inside those rat-holes.⁵² Migrants and for-

- 44 *Yogesh Dube, Sh. Vinod Kumar Tikoo and Ramanath Nayak*, National Commission for Protection of Child Rights (NCPCR), *Child labour situation in coal mines, pits & rat holes of Jaintia Hills, Meghalaya*. New Delhi, National Commission for Protection of Child Rights (2013), p. 19.
- 45 *Asian Human Rights Commission*, An exploratory study of children engaged in rat hole mining in the coal mines of Jaintia Hills District. Shillong: Meghalaya Impulse NGO Network (2010), pp. 9-14; *Rachael Kilsby*, Impulse NGO Network Final Report. Investigation of child trafficking in the coal mines of Jaintia Hills District, Meghalaya. Shillong, Impulse NGO Network (2010), pp. 47-48.
- 46 *Human Rights Now*, Report on child labour in the mines of Meghalaya. Fact Finding Mission of Human Rights Now to India (July 2011), p. 20. At <http://hrn.or.jp/activity/20110804IndiaReport.pdf> (Accessed 8 September 2014).
- 47 *Impulse NGO Network Final Report* (2010), note 44.
- 48 *Anjuman Ara Begum*, Coal mining in Meghalaya: Child labourers in the 'rat-holes', *TwoCircle.net* (14 October 2010).
- 49 *Aljazeera*, The child miners of Meghalaya (2014). At <http://www.aljazeera.com>. (consulted 10 June 2014). *The New York Times*, Children toil in India's mines, despite legal ban (25 February 2013).
- 50 *Baniateilang Majaw*, Meghalaya - small but not so beautiful: A point of view, *World Affairs, Journal of International Issues*, 18 (4) (October-December 2014), pp. 133-136.
- 51 *Eastern Mirror*, Bangladeshi immigrants increasing in Meghalaya (18 October 2013).
- 52 *Keith Schneider*, note 26; *E.M. Jose*, Meghalaya coal mines are death traps for ill-equipped labourers, *The Telegraph* (30 August 2011); *Sushanta Talukdar*, For days on end, 15 workers trapped in Meghalaya rat-hole coalmine, *The Hindu* (13 July 2012).

eign nationals had no option but to crawl inside these rat-holes,⁵³ facing such death traps for the sake of earning their livelihood. They did not dare to voice protest, as they knew they would be threatened from all quarters. The owners would deny them work. Local organisations would not assist them because as illegal migrants they had no right to be in Meghalaya. Banned insurgent groups like the HNLC threatened them with dire consequences, for them being non-indigenous. In one way or another their fundamental problem was that they were rendered completely vulnerable through constant fear of losing their jobs, or even their life.

As noted, many individuals owning the coal mines are part of the government and even state ministers. They needed neither authorisation nor environmental clearance to be involved in the rat-hole business. Rat-holes brought them wealth, while this ‘industry’ dangerously depleted everyone’s environment. Thus, more and more people, particularly from the Jaintia Hills, including the coal barons, uprooted themselves to settle elsewhere. They knew that they left behind a legacy of woes and a poisonous environment in which they never wanted their children to grow up. There were many powerful stakeholders in the coal mining business in Meghalaya.⁵⁴ Coal had enriched not just the mine owners but also many others, especially politicians who had learned to tap into this black diamond, as every election, whether for Lok Sabha, State Legislature or ADCs, was now funded largely by coal barons. Coal barons like the incumbent Congress MLA Ngaitlang Dhar are in the ruling government. He emerged as the richest winner in the 2013 elections, possessing 137 vehicles worth Rs. 23 crores alone as well as other properties, including agricultural land worth over Rs. 200 crores.⁵⁵ Such rich people could easily finance candidates in any election. With people like him as lawmakers, it is unsurprising that the Meghalaya government would definitely support rat-hole mining at any cost and could act with autonomy and impunity. However, the end result was not only exploitation of the earth, but even greater rates of illegal migration including rising crime rates in the coal field.⁵⁶ Economic freedom now meant not only individual choice but required protection of persons and their property from aggression by others.⁵⁷

G. The current position of the NGT ban on rat-hole mining

Officially, the NGT Order of 17 April 2014 temporarily stopped rat-hole mining in Meghalaya, given that it directed the government of Meghalaya to implement its verdict more or

53 *New Age*, Nearly 19,000 Bangladeshi ‘infiltrators’ in Meghalaya (18 October 2013).

54 *Patricia Mukhim*, Powerful voices for coal mining: Environment be damned, *The Shillong Times* (30 May 2014).

55 *The Shillong Times*, Ngaitlang richest candidate, owns 137 vehicles (5 February 2013).

56 *New Age*, note 52; *E.M. Jose*, Influx robs hills of jobs, homes and hearts, *The Telegraph* (6 September 2011).

57 *James Gwartney, Robert Lawson, & Joshua Hall*, Economic freedom of the world: 2012 Annual Report. Vancouver, B.C, Fraser Institute (2012).

less instantly. Yet while this temporary ban has now been in place for over two years, there is currently no prospect for a permanent stop. The immediate result of the verdict was a strong, negative reaction by many powerful stakeholders led by the owners of the coal mining businesses. They were subsequently backed by the banned insurgent group HNLC and an organisation called Movement for Indigenous Peoples' Rights and Livelihood-Meghalaya (MIPRL).⁵⁸ Another group, known as the Jaintia Hills Coal Miners' and Dealers' Association, led by the coal barons and incumbent Jaintia Hills MLA Sniawbhalang Dhar, involved their followers in efforts to overturn the NGT's order. Others from the rat-hole mining region of the Jaintia Hills who went against the NGT's verdict were a former legislator, Shitlang Pale, and several current ministers and legislators, including Sniawbhalang Dhar, Comingone Ymbon, Justine Dkhar, Hopeful Bamon and Ngaitlang Dhar. All these were and are directly or indirectly involved in the rat-hole business.⁵⁹ The sitting Chief Minister of Meghalaya, Mukul Sangma, also opposed the ban because coal trade is his wife's business. She is a legislator, too. Ignoring and denying the existence of so many unscientific coal mining ventures, the Chief Secretary of Meghalaya, Barkos Warjri, has reiterated that there are no rat-hole mines in Jaintia Hills and coal is extracted scientifically by the people.⁶⁰ As noted earlier, John F. Kharshiing, the Head of the Grand Council of Chiefs, went to the extent of expressing his opinion on the constitutional validity of the NGT ban in Meghalaya, stressing the protective role of the Sixth Schedule of the Constitution. According to him, the recent ban by the NGT was unconstitutional and illegal, violating the treaty rights agreed upon between the Indian Government and the Federation of Khasi States.⁶¹ In Meghalaya, thus, the NGT should respect provisions recognising the customary laws and social customs such as *Ri Kynti* and *Ri Raid*, including the treaty terms of the Instrument of Accession and Annexed Agreement of 1948. He also stated that the NGT is in conflict with the treaty rights under Section 7 of the Indian Independence Act of 1947 and the Standstill Arrangement of 1947 between the Federation of Khasi States and the Government of India.⁶² This aggressive standpoint in defence of the interests of tribals has emboldened the rich coal owners to seek shelter behind the constitutional protection of the Sixth Schedule and the Instrument of Accession. Notably, this viewpoint blatantly ignores the fact that the NGT itself was expressly created under the constitutional provision of Article 21, which assures all citizens of India the basic right to life, including nowadays a clean

58 The MIPRL was formed just after the NGT ban on rat-hole mining; it demands the implementation of Paragraph 12-A(b) of the Sixth Schedule to the Constitution of India to protect the Khasi, Jaintia and Garo Peoples' inalienable and absolute rights over tribal land.

59 *The Northeast Today*, M'laya Tribal Chief Dub Coal Ban Illegal (28 May 2014).

60 *The Shillong Times*, No rat-hole mining in JH: Govt (3rd July 2014).

61 Note 58.

62 Questionnaire responded to by John F. Kharshiing, Chairman of the Grand Council of Chiefs of Meghalaya (GCOC), note 3.

environment. In fact, the preamble of the act declared explicitly that the NGT had been set up to carry out the constitutional obligations under Article 21.⁶³

The Sixth Schedule, regarded as a protective mechanism when the Constitution made special provisions in paragraph 12-A (b) for the administration in Meghalaya in relation to being a ‘Scheduled Area’ thus appears to be a defective mechanism after the insertion of paragraph 12-A (a) in 1972. This insertion in a sense weakened the power of the ADCs as it gives supremacy to the laws passed by the parliament or by the state legislature over those passed by the ADCs, which were created by the Sixth Schedule specifically to govern tribal or scheduled areas.⁶⁴ In brief, this seems to mean that if the local rules are repugnant to the overarching constitutional provisions, such as Article 21, they would and could not be effective.⁶⁵ On the other hand, all those who were and are against the NGT Order put their money on paragraph 12-A (b) in the Sixth Schedule, which appears to say that an act of the Parliament of India shall not apply in the autonomous region of Meghalaya.

Exploiting such legal insecurity, Vincent H. Pala, a Member of Parliament and native of the coal-rich belt area, introduced a private bill in the Lok Sabha in July 2014 which sought to limit the jurisdiction of the NGT in Meghalaya. He argued that the NGT ban on rat-hole mining had jeopardised the livelihood of the tribal people,⁶⁶ basically claiming that the ban infringed their right to life. Ardent Miller Basaiawmoit, a legislator who claims to propound ‘clean politics in Meghalaya’, also spoke against the NGT verdict and said that he was in the process of filing an appeal. Similarly, the Forest and Environment Minister of Meghalaya, Prestone Tynsong, stated that the state government of Meghalaya would appeal the ban. Encouraged by such support from leading politicians, the coal mine owners argued disingenuously that coal offered job opportunities that could lift the poor out of poverty. They desperately try not to tell the truth behind coal mining regarding the horrific working conditions of labourers, illegal cross-border migration and fatalities inside the rat-holes. The labour department and various other offices of Meghalaya are never keen to give clear information about the persisting situation in the coal belts. Neither the departments nor the legislators have ever expressed any concern about the presence of illegal Bangladeshis in the coal mining areas. Nobody has ever admitted that rat-holes are death traps and that many miners have died. Even the existing youth and student organisations, which are tooth and nail against non-tribals, are silent on the matter.

63 The Preamble of the National Green Tribunal Act, 2010 (No. 19 of 2010) provides: ‘AND WHEREAS in the judicial pronouncement in India, the right to healthy environment has been construed as a part of the right to life under Article 21 of the Constitution’.

64 *Patricia Mukhim*, Sixth Schedule and tribal autonomy, *The Statesman*, Kolkata (13 July 2013).

65 This transpires from *National Commission for Scheduled Tribes (NCST)*, 2012, p. 370, note 22.

66 *Kumar Sambhav Shrivastava*, note 39.

H. Conclusions

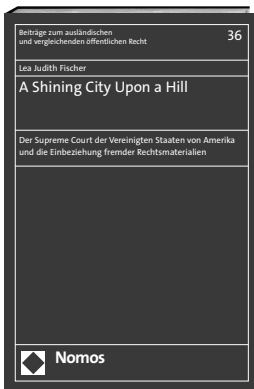
All of this hectic legal activity to protect the abusers of rights reflects a sorry state of affairs in Meghalaya, especially as far as controlling environmental deterioration and abuses of labour rights are concerned. The current move by the state government to challenge the NGT Order reveals the tyranny of the government ministers, coal barons and bureaucrats. The present Government of Meghalaya, comprised of and dominated by coal barons, in addition to self-serving politicians and public officials are now creating a serious new problem by seriously challenging the central powers of the NGT. These rich people who merely want the illicit flows of money to continue, saw and seized a chance to declare the NGT's verdict on rat-hole mining in Meghalaya as a misuse of federal powers over their local rights by Delhi.

It is apparent that the present government of Meghalaya is neither concerned about the environment, the livelihood and future of its people, nor the position of legal and illegal migrants. Rather, it fights to preserve the income of the coal barons, even if this means degradation of the natural splendour of Meghalaya. These men in power, bureaucrats and coal corporate manifestly do not care about the welfare of the poor. Common people never claimed that the NGT Order contradicts paragraph 12-A (b) of the Sixth Schedule of the Constitution and probably they did not even know of its existence. Only those who could amass huge wealth from coal mines expressed such self-serving views. Thus, after more than six decades of independence, India is witnessing a new set of challenge from Meghalaya. This may be a small state, but if all the Scheduled Areas of Northeast India come together, such a challenge will become much more problematic and relations between the central government and the Scheduled Areas, which are anyway tense, will become even worse.

In conclusion, there is nothing good to say about rat-hole mining in Meghalaya. It has been destroying the land, polluting surface waters and ground water, and even the air. It slowly brought intolerable damage to plants, animals and humans through the destruction of habitats, introducing serious environmental contamination. Working conditions at the coal mines are extremely hazardous and inhumane. Child labour, including many persons from Nepal and Bangladesh, constitutes a significant proportion of the labour force. These rat-hole mines have never been subjected to India's laws restricting child labour, illegal migrant workers and protecting workers' safety. The resulting abuses have become completely intolerable and reflect a serious lack of balance between concerns over local development and protection of the environment. The NGT ban has provided the common people of Meghalaya an opportunity to claim a constitutional remedy for the situation which has destroyed the basic structures of life in Meghalaya.

It is now the need of the hour for the Central Government in New Delhi to intervene and create further rules and regulations to curb the present irregularities in the mining areas in Meghalaya. On the other hand, doing so would most probably create new tensions. As this article showed, the existing NGT ban on rat-hole mining in Meghalaya is already being

treated by coal barons and their supporters as an unwarranted intervention in the state's affairs. India's constitutional guarantees about basic justice, the right to life and environmental protection measures cannot be simply disregarded, however. The common people of Meghalaya have a right to be protected by the provisions of the Indian Constitution, just as any other citizens. Their peripheral status should not lead to precariousness. While a complete ban on mining may not be the right decision, the recent excesses of environmental destruction clearly violate even the most basic constitutional guarantees for local residents. Thus, central and local laws must be scrutinised and, if necessary, amended, aiming to keep in mind the customary land laws of the Khasi, Jaintia and Garo People in Meghalaya, but also controlling the abuses of such laws that have led to the present disaster scenario.



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Die Autorin bemerkt, dass sich die amerikanische Rechtswissenschaft die Frage nach der Legitimität von konstitutionellen Transfers zunutze macht, um altbekannte Debatten neu zu entfachen. Es zeigt sich, dass die antagonistischen Lager dasselbe Ziel verfolgen: die Herstellung rationaler Entscheidungen.



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