



STATE MAKING AND INTER-STATE BORDER DISPUTES IN INDIA'S NORTHEAST: COLONIAL LEGACIES AND POST- COLONIAL RESOLUTIONS

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Abstract: The state-making process is often blamed for the ongoing inter-state border disputes in India's northeast. The colonial demarcation and re-demarcation of borders left persisting legacies of border plurality and inconsistencies in the region. Post-colonial reorganisation of states was followed by border disagreements between Assam and its four adjoining states of Arunachal Pradesh, Nagaland, Mizoram, and Meghalaya. The territorial claims of these states beyond their constitutional borders apparently have historical roots, particularly in the state-making exercise in the region. Since the outset of these disputes, the post-colonial federal constitution has attempted to address the problem by applying different settlement mechanisms. This study thus makes a retrospective analysis to understand how state-making practices since colonial rule have contributed to the current border discord and also attempts to understand available constitutional mechanisms for resolving the issue.

Keyword – State-making, Border dispute, Federal, Demarcation, Hill-plain, Boundary Commission, Inter-state

I. Introduction

Internal demarcation of borders is an innate feature of a modern state. States subdivide their territories into different jurisdictions, administrative units, economic zones, and protected areas (Vandergeest & Peluso, 1995, p. 387). In India, such internal divisions exist at various levels. At the federal level, India is territorially and functionally divided into different federal units or states, each having its own constitutionally defined territorial jurisdiction delineated through sub-national borders. However, despite these constitutionally demarcated borders, many states in India have disputes with each other over borders, and India's Northeast is a hotspot of such disputes.

Historically, India's Northeast has been internally territorialised and re-territorialised, and the implications are still felt today. The colonial strategy of dividing spaces to consolidate rule was subsequently maintained and reinforced by the post-colonial state. When the states were carved out from Assam during the 1960s, 70s, and 80s, these colonial markers became the basis for assimilating ethno-territorial demands and delineating territories for these new states. Although the demand and need for separate states were met, historically shaped overlapping territorialities in the region brought these states into disagreements over the position of the border. Arunachal Pradesh, Nagaland, Mizoram, and Meghalaya lay competing claims over many areas along their respective borders with Assam, arguing that these lands originally belonged to them and were arbitrarily taken away in the process of state-making. Union and competing states since the inception have attempted to resolve these disputes adopting different constitutional and political mechanisms, but disputes are yet to resolve. This study, thus, by taking a historical approach, attempted to study how state-making exercises in the form of demarcation and re-demarcation of borders in colonial and post-colonial India have led to perennial inter-state border disputes in the Northeast. It further attempts to understand overlapping territorial claims by the competing states and answer how far these claims and disputes are adjusted and addressed in post-colonial federalism.

II. Post-colonial state-making and interstate border disputes in India's Northeast.

Post-colonial search for the 'right size,' 'right people' and 'right shape' in the Northeast was primarily dominated by the need for tribal assimilation (Sammadar, 2011, p. 48; Dhar, 2011, p. 285). The task of assimilation of hills to Assam or India's mainland was not merely territorial but also psychological (Dhar, 2011, p. 285; SRC, 1955). The whimsical administrative divisions during colonial rule according to M. C. Behra (1996) have resulted in strengthening the superficial sense of independence among the tribes (p. 233). To keep this independence intact and uphold tribal aspirations, the Indian state adopted certain policies affirming colonial legacies.

After independence, the national leaders felt the need for the readjustment of internal borders. The historical promise of linguistic reorganisation by the Indian National Congress was accentuated in the formation of three committees on the internal reorganisation of states (Sarangi & Pai, 2011). State Reorganisation Committee (1955) put certain pragmatic rationales to the state-making process and conditioned linguistic romanticism with principles of administrative convenience, economic viability, financial consideration, unity and security, and welfare of the people (SRC, 1955). The trend of internal reorganisation was also felt in Northeast India, but the region was not so favorable in putting the linguistic principle into operation. The socio-cultural and linguistic heterogeneity in every next kilometer led Assamese leaders to vehemently oppose the mainland's obsession with linguistic reorganisation. Chief Minister Bishnu Ram Medhi, highlighting the disjunctive and disintegrative effects of the principle, said, 'If linguistic basis were pursued to its logical conclusion, every range of hills would have to be framed into a separate state' (Dhar, 2011, p. 287). SRC echoed the voice of Assamese leadership in its report and concluded that the status quo in the Northeast should be maintained (SRC, 1955, pp. 695-697).

Initially, the demand for a new hill state was confined to Garo, Khasi, and Jaintia Hills, but the reorganisation experience of other parts of the country opened the 'pandora box' by activating dormant ethnic identities and assertions of hill tribes (Dhar, 2011, p. 281). By 1960, ethno-territorial demands in the region reached their zenith; insurgencies demanding statehood and autonomy movement pushed the Indian state to reconsider its earlier plan of 'intact Assam.' Nagaland was first to be carved out from Assam in 1963, followed by Meghalaya in 1972, Mizoram, and Arunachal Pradesh in 1987 as fully fledged states. The creation of these new states brought a significant change in the imagination and political map of Northeast India. In the map, although these states look finely crafted with defined boundaries with Assam under the act of State Reorganisation Act 1971 (for Arunachal Pradesh, Meghalaya, and Mizoram) and Assam Government notification no. 3102-R dated 25 November 1925 (for Nagaland), but in the ground, boundaries are yet to be verified (Survey of India, 2021). Ground verification of the maps has been fiercely opposed and halted by these states, claiming 'ancestral' lands beyond the constitutional boundary. Due to these claims, Assam has disputes with all these four states regarding the position of the borders.

The dispute between Assam and Nagaland is perhaps the most violent among all border disputes in the region, witnessed in the two bloodshed incidents that occurred in the years 1979 and 1985 in Doyeng Reserve Forest and Merapani, respectively. In these two disputes, around 95 people lost their lives, and 23500 people fled to relief camps (Das, 2021). The major issue pertaining to border dispute between these states is Nagaland's disagreement with the 1925 notification as the basis of border demarcation with Assam. Nagaland asserts the notification of 1867 (which was later rectified in 1875) as the real border between the two states (Konyak, 2016, p. 54). The state claims over 12488 square kilometers of Assamese territory as a part of their 'ancestral lands.' Assam, on the other hand, validates the present border with Nagaland as 'constitutional' and alleged Nagaland to be encroached upon 80% of reserved forest lands covering approx 60000 hectares in Sivasagar, Jorhat, Golaghat, and Karbi Anglong Districts (Buragohain, 2019, p. 1578). The state of Arunachal Pradesh made similar territorial claims to Assam and asserted its customary rights over 1119.279 sq Km of lands presently under the control of Assam. The main contention of Arunachal Pradesh in the dispute is that the claimed lands were historically belonged to them. It was only in 1951 that the lands were arbitrarily and unilaterally transferred to the regular administration of Assam by a notification. Assam rejected these claims, and maintained that the present boundary is constitutional and lawful (Tayeng, 2020, pp. 107-108). This disagreement over border halted the fixation of border pillars and led to many ugly incidents of border skirmishes. In 2014, ten civilians were killed in a border dispute flared in Behali Reserve Forest in the Chauldhuia area of Sonitpur district along the Assam-Arunachal Pradesh border. Just like Arunachal Pradesh, the state of Meghalaya has disagreement with Assam over the 1951 Notification. The notification excluded certain areas of Jaintia and Garo Hills and transferred them to Karbi Anglong (erstwhile Mikir Hills) and Goalpara districts of Assam. When Meghalaya became a full-fledged state in 1972, these two blocks were kept with Assam. Meghalaya refused to accept the present border demarcation under the Assam Reorganisation (Meghalaya) Act of 1969 and claimed 2765.14 sq. Km. of area at 12 points along the border. There have been multiple past border face-offs, but the most violent incidents occurred in 2010 and 2022, which killed ten people. The dispute between Assam and Mizoram is mainly related to disagreement over the basis of border demarcation. The present boundary between these two States is based on notification no. 2106 AP of 1933. Mizoram refuses to accept this border and argues that it is British imposed the demarcation against their consent. It gives reference to the 1875 notification as the basis for delineating borders between the two states, and claims over 819.15 square km of borderlands, which presently belong to Assam. There have been several border skirmishes between the two states. Some of the major disputes broke out in 2006, 2018, and 2020, and the most recent was in 2021, in which six police personnel and one civilian died and over 60 people were injured (Das, 2021).

III. State Making and Cartographic Hodgepodge in Northeast India

The current impasse over borders in the Northeast has its roots in state-making exercises in the region. Demarcation and re-demarcation of borders have created spaces of overlapping territorialities and borders. The colonial imaginaries reinforced after independence eventually shaped the political map of Northeast India. Since the British assumed charge of the region following the Treaty of Yandabo (1826), the region went through a number of changes. Areas were reshuffled, and borders were drawn and redrawn as part of state making process to meet military, administrative, and commercial needs. These changes in borders over the years have shaped the present discord in the region in two different ways.

First, these borders had challenged and superimposed pre-existing traditional borders in the region. The nature of pre-colonial borders was very different from modern ones. Unlike modern borders, these boundaries were not fixed or linear but rather fluid, often marked with natural geophysical markers like rivers, foothills, etc. The liminal nature of these border, used to serve as space for cultural and commercial contacts and also as a buffer zone (Sharma, 2017, p. 2; Esse, 2017). Ahom's frontier policies of the 'posa' and 'khat' system endorsed this nature of boundaries with the hill tribes. However, the introduction of modern borders during colonial rule drastically affected the existing boundary system. The borders were linear, fixed, and superimposed, seldom considering the socio-cultural liminality of traditional borders (Banerjee, 2021; Esse, 2017, p. 72; Gohain, 2007, p. 3281). Inner line demarcation in 1875 in upper undivided Assam, for example, was a political, geographic strategy of Britishers to protect their political and economic interests in the region (Agrawal & Kumar, 2017). The line cordoned off the hills from Brahmaputra valley, thus dividing into two geographical terrains, i.e., hills and plains. The division almost put all spatial movement and interactions

between these two spaces to a standstill. This not only impacted their daily life but also psychologically they started developing a new sense of linear borders with segregated territorial binaries of 'outsiders' and 'insiders' (Kar, 2009, p. 52; SRC, 1955, p. 186). As a result, when people started adapting to the new reality of rigid linear borders, the foothills, which were liminal zones, became the overlapping spaces of two territorialities with conflicting claims by hill tribes and people from the plains. Even after independence, this superficial sense of hill-plain differences and exclusion was kept intact. Inner lines were continued with some modifications. Excluded and partially excluded areas found their place in the form of sixth and fifth schedules in the constitution. Later, inter-state borders in the region were demarcated on the basis of colonial border notifications. Assam Nagaland border, for example, was demarcated on the basis of the 1925 notification; likewise, Assam Mizoram border was demarcated over colonial notification no. 2106A of 1933.

Second, demarcation and re-demarcation of borders in the region have resulted in border continuity and discontinuity. This continuity and discontinuity has occurred at two levels: first, border inconsistency on maps and ground, and second, border plurality.

State-making in Northeast India during colonial rule was accompanied by the introduction of modern cartography. Maps and modern cartographic templates were used to communicate territorial control and border demarcation. Regions were annexed, demarcated, and re-demarcated to protect imperial and colonial interests in the region (Agrawal & Kumar, 2017). However, this reshuffling of spaces was done on maps rather than on the ground. Borders for example, were mapped on the scale of 1cm:1km; as a result, when maps were attempted to be physically inscribed onto the ground, real difficulty occurred because they needed to clarify whether the hill slopes or forest through which borderline passes was Assam's or its neighboring states (Banerjee, 2021). Moreover, borders were marked on the ground based on river streams, trees, agricultural fields, etc. As a result, when the river stream changed its course, or the tree fell for some reason, the boundaries became disputed sites (Sharma, 2017, p. 9). This difficulty is evident in the fact that in northeast India, although interstate borders are clearly demarcated on the maps, they are yet to be verified on the ground. Any attempt of verification or boundary pillaring is being opposed by one state or another. Assam and Arunachal border, for example, is 804.1 km, but due to disagreement and opposition, only 396 Km have been demarcated to date.

Making and remaking of borders has also led to a plurality of borders in the region; each side claims different border demarcation as the basis of the present border position. During colonial rule, the regions were annexed and transferred from one administrative unit to another, and borders were re-demarcated on maps to meet the purpose. Inner lines drawn under the Bengal Eastern Frontier Regulation of 1873 subsequently brought many changes to meet colonial interests. The border demarcated between Lushai Hills (present Mizoram) and Assam in 1875 was re-demarcated in 1933 by a notification 2106A to divide Lushai Hills, Cachar Hills, and present-day Manipur. This 1933 demarcation later became the basis for the present constitutional border between Assam and Mizoram. Mizoram and Mizo National Front rejected this demarcation, claiming the demarcation of 1873 as the real border with Assam (Wahlang, 2021). Likewise, Nagas asserts the notification of 1867 (which was later rectified in 1875) as the basis of border demarcation with Assam; on the other hand, Assam regards the 1925 notification as the legal and constitutional basis of the border (Konyak, 2016, p. 54). Naga Hill District was first created in 1867, encompassing Regma Hills and parts of Mikir Hills, North Cachar Hills, Angami, and Zeliang areas. In 1875, boundaries of the North Hill district were rectified by merging some parts of Regma Hills (which were left in the 1867 Notification) within the territorial jurisdiction of Naga Hills. This demarcation was later rearranged in 1898, 1901, 1903, and 1925; accordingly, large portions of Naga Hill District were transferred to the adjoining districts- Nowgong, Lakhimpur, and Sibsagar of Assam. This reshuffling of borders and transfer of lands continued even after independence. Large portions of hill plains of Northeast Frontier Tracts (present Arunachal Pradesh) and Khasi and Jaintia Hills (present Meghalaya) were transferred to the regular administration of Assam in 1951. These transfers led to the re-demarcation of borders in the region, which later became the constitutional boundaries for these two states with Assam when they got full statehood. Both the states reject transfers done under the 1951 notification, which is based on the Bordoloi Commission report, and assert the pre-1951 boundary as the real boundary with Assam.

IV. Post-colonial federalism and settlement of interstate border dispute

India, as a cooperative federalism, provides for vertical as well as horizontal cooperation. Part XI and Seventh schedule of the Indian constitution maintain a detailed account of the vertical federal relationship, i.e., between the union and its states. On the other hand, Part XIII and Articles 261, 262, and 263 of the Constitution provide provisions related to horizontal federal relations between the states. Part XIII comprises provisions related to inter-state trade and commerce relations. Article 261 maintains the spirit of federalism by providing reciprocity in terms of giving full faith and credit to each other's public acts, records, and judicial proceedings. Articles 262 and 263 provide for dispute resolution mechanisms to manage, resolve, and adjudicate differences and discord between states.

As per the constitution, states in India do not possess any territorial sovereignty in relation to the union due to their destructible nature under articles 3 and 4 of the Indian constitution. However, the pertaining question is, what about horizontally? Are they territorially sovereign or independent in relation to other states in the union? The Constitution of India may not directly provide answer to the question, but it provides equality to every state in terms of legislative and administrative power. Each state enjoys the same relationship with the union irrespective of its size, date of formation, population, location, and so on. Because of this de jure symmetries and equal relation with union, states share relative sovereignty with each other. It means except for union, no state has the right to encroach upon any other's territory or constitutionally defined territorial jurisdiction. The law made by one state on subject matters listed in the state list is provided with jurisdictional sovereignty in terms of the territorial extent of applicability of the law. The state is also provided with the power to make administrative divisions like districts, sub-divisions, etc., and empowered to carry out administrative functions and governance within its constitutional boundary. However, in India, as discussed earlier, all borders within the union are not agreed upon; some states have disagreement over the position of the border. So, what does the constitution say when there is a disagreement between two states over the border or a piece of territory?

Article 263 of the constitution made a provision for an Inter-state Council for 'inquiring into and advising upon disputes' that occurred between states. The provision, however, was primarily aimed at restoring inter-state cooperation and coordination between states rather than resolving border disputes. This may be the reason why the article has not been used to resolve border disputes to date. No such council is constituted exclusively for the purpose of inquiring or advising upon inter-state border disputes.

However, experiences with existing interstate border discords, especially in Northeast India, hints some settlement mechanisms adopted by both the union government and the respective states. Article 131 is perhaps the most used article among other options for resolving border disputes. The article gives the Supreme Court of India original jurisdiction to decide on or adjudicate any inter-state disputes involving a question of law or fact on which the existence of a legal right depends. Assam for example filed original suits under Article 131 in relation to border disputes against Nagaland and Arunachal Pradesh in 1988 and 1989, respectively, accusing these two states of land encroachments. Supreme Court, in turn, adjudicates such matters by court trial or may constitute certain committees to meditate or recommend solutions. In 2006, for instance, the honorable Supreme Court set up a three-member committee, popularly known as Local Boundary Commission to recommend a resolution to the Assam-Arunachal Pradesh border dispute. In 2014, the commission submitted a 110-page report to the court, but the resolution proposal has yet to find any significant steps in the implementation. Similarly, in August 2010, the court appointed a two-member mediating body comprising senior advocates to settle disagreement between Assam and Nagaland. In the mediation of these two advocates, on August 3, 2013, a meeting was held between the Chief Ministers of Nagaland and Assam, but the meeting remained fruitless due to difference of view. The Assam CM favored settling the dispute inside the court; on the contrary, the Nagaland CM wanted an out-of-court settlement.

Along with the judiciary, in a federal country like India, the role of the central or federal government becomes very significant in bringing resolution to the disputes. India, a 'holding together federalism' empowers union with an absolute power to make changes in the federation by forming new states, increasing or diminishing area, or altering boundaries or names of any existing states. Such use of power was evident in the Bihar-Uttar Pradesh (alteration of Boundaries) Act of 1968 and the Haryana-Uttar Pradesh (Alteration of Boundaries) Act of 1979. Despite having this absolute power, the parliament or government has failed to settle the dispute once and for all, especially in Northeast India. Nevertheless, the central government has adopted a number of other non-judicial and political mechanisms to bring consensus between the competing parties on the issue. For example, the central government set Sundaram Commission (1971) and Shastri Commission (1985) for Assam-Nagaland, and Chandrachud Commission (1985) for the Assam-Meghalaya dispute. These commissions were assigned the task of inquiring, studying, and evaluating border demarcation and disputes and suggesting solutions. The central government also provides the role of mediator between the competing parties. In 2018, for example, a dialogue process for resolving border disputes was initiated by former Home Minister Rajnath Singh in the wake of a situation that occurred in the aftermath of a clash between Assam police and Mizo Students in the Kolasib district. Similarly, more recently, in the year 2022, under the mediation of the present government, the states involved in border disputes with Assam have agreed to come to the table to settle the dispute peacefully through dialogues. In this process, Assam and Arunachal Pradesh signed an agreement and an MoU, Assam and Meghalaya signed a draft resolution, and Assam and Mizoram set a regional panel for joint verifications (Parashar & Lalhlimum, 2022).

V. Conclusion

State-making process in India's Northeast has led to a border hodgepodge in the region. It has created an array of borders having inconsistency and plurality in terms of histories, locations, meanings, positions, representations, and functions. Nagaland, Meghalaya, Mizoram, and Arunachal Pradesh, although agree on border demarcation with Assam, but do not agree on the position of the border on the map and on the ground. Each competing state essentially refers to its history to justify its territorial claims. These history-based territorial assertions indicate colonial and post-colonial problematic boundary systems behind inter-state border disputes in the region. For these historical and other contemporary reasons, inter-state borders in the region intermittently culminate in border clashes.

The post colonial state has adopted different mechanisms to resolve these border disputes, which include judicial adjudication, federal settlements, non-judicial arbitration, mediation, inquiry, conciliation, and negotiations. However, to date, resolution has yet to reach any conclusive stage.

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