

**POLITICAL ECONOMY OF LAND GOVERNANCE AND WOMEN’S RIGHTS – THE  
CASE OF MEGHALAYA**

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### **Abstract**

This paper delves into the complex dynamics between traditional and formal institutions affecting land rights in the tribal state of Meghalaya and its repercussions on gender equity. The state is unique in its long established matrilineal background where traditional customs defines property rights. In terms of inheritance tradition, it is the daughter of the family who is responsible for “management” of family land for productive purpose. She, however, has no decision making rights over the same. With the state government bringing in modern instruments of land governance, significant social changes are being felt in the changing nature of land relations. The modern instruments are enabling increased commodification of community land with increased incidences of sale of community land to private individuals. Moreover, since women are traditionally excluded from any representation in local governance – this absence of decision making power is increasingly being reinforced at the wake of the changing land dynamics. This is leading to more women not just not owning land any more, but also becoming bereft of any power to have custodial power over the same. This paper looks into the evolution of the nature of land ownership and governance and its implication on women’s status, in the state.

***Key Words:*** Land Rights, Customs, Formal Institutions, Gender Equity, Sustainable Development

## **Section 1: Introduction**

Insecurity over land rights is often cited as a significant cause for poverty and inequality through the dampening of livelihoods, fueling conflict, creating unequal economic systems, discouraging conservation and undermining principles of effective and democratic governance. This causal relation between land rights and development prospects is particularly pertinent for women. Extant literature shows how land ownership empowers women by enhancing their agency in decision making, bargaining power, freedom of mobility and market access. These factors empower women with stronger voice and greater awareness of their rights and freedom. In this in this context that we look at the particular case of the north-eastern state of Meghalaya, in India.

This paper delves into the complex dynamics between traditional and formal institutions affecting land rights in Meghalaya and examines its repercussions on issues of equity in general and women's rights in particular. Scheduled tribes constitute 86% of Meghalaya's population and there are three tribes – Khasi, Jyantia and Garo. The state is unique in its long established matrilineal background where traditional customs defines property rights, particularly land. The traditional institutions function on the basis of local customs and conventions that are not codified and has been practiced by the people from time immemorial. The system of inheritance is through a female member of the family – either through the youngest daughter or a female relation (in the absence of a daughter in the family). It is traditionally the daughter of the family (the youngest daughter for Khasi and Jyantia tribes while the Garos choose any of their daughters for the role) who is responsible for “management” of land for productive purpose. She, however, has no decision making rights to participate in land markets to sell and purchase the land. This renders land ownership as a new concept to the traditional tribes. Moreover, covering an area of only 3000 sq. ft., land has traditionally been treated as a common resource rather than a commodity in the tribal state of Meghalaya.

With the advent of development and with the state government bringing in modern instruments of land governance (in particular The Meghalaya Transfer of Land (Regulation) Act of 1971 and The Cadastral Survey and Preparation of Records of Rights Act, 1980), significant social changes are being felt in the changing nature of land relations in the state. These changes seem to affect the state's overall development path and have crucial repercussions on poverty and gender dynamics.

The modern land governance instruments have enabled increased commodification and privatization of community land with increased incidences of sale of community land to private individuals. Moreover, though a matrilineal society with women being custodians of family land, they are traditionally excluded from any representation in local governance – such that village councils (or dorbars) where property related decisions or disputes are addressed, are attended by the male members of families. This absence of decision making power in the traditional societies of Meghalaya are increasingly being reinforced at the wake of the

changing land dynamics. This is leading to increasing number of women not just not owning land any more, but also becoming completely bereft of any power to have control over the same. Apart from women, it is also the poorest of the tribal population who are being affected by this new trend of sale and purchase of community land – a trend that is typically plagued with “elite capture”.

In the context of ensuring that the path to development is inclusive and sustainable and at the wake of changing needs of a society in transformation, it is important to cautiously study this apparent conflict of the traditional versus modern land governance instruments. The conflict if not attended to with nuance can lead to increased landlessness, impoverishment (of an already poor state) and paradoxically deteriorate the gender balance of a matrilineal society. The importance of women’s rights to land is also embedded in the linkage between asset ownership and women’s overall vulnerability. Extant literature shows that women’s vulnerability to violence is related to their general vulnerability in socio-economic systems. Land ownership results in decreasing gender-based violence largely because of women’s economic empowerment and their increased agency in decision-making over land and its produce, as well as increase in women’s confidence, self-esteem, freedom of mobility and market access. These factors result in enabling women to have a stronger voice and claims-making to rights and freedom, which in-turn act as deterrents to violence against women.

Recent years have seen some changes to this system, such as the shifting of primacy to paternal lineage, increased privatization of community land, exclusion of women from traditional institutions of local governance – with men as heads or chiefs of dorbars (village councils) who increasingly not just own land but also appropriate the right to exercise complete control over it (Mukhim, 2009). These factors of social and economic change have introduced a “swift reversal of women’s status from owners of land to mere inheritors of ancestral property” with “the rapid erosion of women’s status from that of landowners to that of powerless” (Mukhim, 2009).

## **Section 2: Objective**

The objective of the research is to analyze the nature of land ownership and community control pattern in Meghalaya, both within the contexts of traditional and formal institutional arrangements. It analyzes the implications of the simultaneous existence of the two land governance systems on the rights and socio-economic position of women. The analysis is essential in the context of the importance of ownership and control over physical resources (here, land) for empowerment and how even a customary matrilineal society is allegedly failing to provide women that platform. Through this analysis, the paper attempts to inform the direction of policy dialogues that will help bring in symmetry between the formal and informal institutions on land governance in Meghalaya so as to support engagements on women’s access to land rights.

### **Section 3: Land Rights and Women's Empowerment – Literature Review**

Across developing countries, though women represent a significant share of the agricultural labor force, they rarely have ownership rights, tenure security or decision making power over the land they are working on. The right to land is regulated either by the formal legal system or through customary laws and there are many examples of how the two systems can both prevent and promote women's right to land. The formal legal systems in many countries have constitutions or land laws that grant gender equality in access to land, and at the same time laws for marriage, divorce and inheritance that contradict these laws by discriminating against women and daughters. Extant literature has shown a direct relationship between women's rights to land and economic empowerment. Not only is land a source of production and income generation, it is also a social asset that grants women bargaining power in their socio-economic and political context in terms of enhancing their ability to counter vulnerability. It also often serves as a critical factor of social protection against gender based violence and for human rights issues.

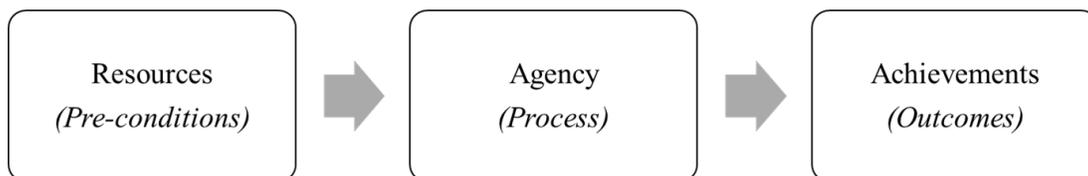
As noted by Pallas (2011), land rights are intrinsically linked to the identity, dignity and social inclusion of the poorest and most vulnerable groups, whose property rights are very often informal and unprotected by the rule of law. This is particularly true for women who have to face additional hurdles to empowerment, ranging from their status within the household and community to their status under customary and/or statutory law. Even where poor women and men enjoy formally recognized tenure rights, other factors may effectively exclude them from formal administrative and legal services by other factors. The ability to access land and to claim, use, and defend land and other natural resource tenure rights – of individuals and groups – is contingent on processes of empowerment. While many countries make reference to gender equality in their constitutions, laws relating to property rights often do not give equal status to women, or, where they do, women's property rights may not be respected in practice. Even when women have de jure property rights, their de facto control of land is questionable. Research also shows that women's lack of voice in political governance and access to economic resources (like land, finance, housing etc.) is seen to be directly proportional to their vulnerability to violence (Panda and Agarwal, 2005; Duvvury et al., 2013; True, 2012; Heilman et al., 2014; Karpowitz and Mendelberg, 2014; Deere and Doss, 2006; Kelkar, 2013; WHO, 2013; Landesa-UN Women, 2012; Solotaroff and Pande, 2014).

In India, customary law is part of the tribal traditional customs and practices and is intrinsic to their identity and culture (Fernandes and Bharali, 2009). The customary laws act as a powerful tool to define the roles of men and women and dictate acceptable standards of behavior in the tribal societies (Agarwal, 1994; Krishna, 2005). In the hilly and tribal North East region of India, almost all the customary laws are not always conducive to the interests of women and the customary laws relating to property and marriage are often oppressive (Nongbri, 1998). The customary laws deny them equal rights to property and inheritance

which is one of the important factors affecting their empowerment (Agarwal, 1994). Women were never allowed to represent the family or the kin group at the community level. Moreover, they are neither being given any authority at the social level. Thus, even though women have property rights in the matrilineal society, but when it comes to decision making whether it is in matrilineal or patrilineal societies, it is regarded as the domain of men (Gneezy et al, 2009; Krishna, 2005).

### Section 3: Analytical Framework

To understand whether introduction of formal institutions pertaining to land rights have empowered women in the traditional society of Meghalaya, the Resources – Agency – Achievements framework, as propounded by Kabeer (1999), has been used. Kabeer points out that the ability to exercise strategic life choices can be thought of in terms of three dimensions or different ‘moments’ in the process of social change:



Resources refer to factors that enhance the ability to exercise choice. The resources acquired within various institutional domains take the form of not only actual allocations, but also of future claims and expectations, where access to both will reflect the rules and norms by which distribution and exchange occur within different institutional contexts. These rules and norms give certain institutional actors authority over others in determining the principles of distribution and exchange – what Giddens (1979) refer to as ‘authoritative resources’. Heads of households, chiefs of tribes, directors of firms, managers of organizations, elites within a community are all endowed with decision-making authority in particular institutional contexts by virtue of their positioning within that context. *In our context, the traditional and formal institutional arrangements introduced for land rights is considered as the Resource that is potentially impacting women’s rights in the state.*

Agency refers to the method by which power is transformed in to action. Kabeer (1999) observes that agency is about more than observable action. It encompasses the meaning, motivation and purpose that individuals bring to their activity. Agency can take the form of bargaining and negotiation, as also refer to the cognitive processes of reflection and analysis. According to Sen (1985), *resources* and *agency* together constitute capabilities. *In our context, the interplay between the informal and the formal land related institutions is the agency as that is expected to impact the women’s capabilities and bargaining power*

*when it comes to resource ownership whereby affecting their ability to translate their resources in to outcomes.*

The third element of empowerment is achievements or outcomes. While this aspect relies heavily on access to ‘resources’, this access however does not ensure desired ‘outcomes’. For example, access to micro credit or jobs can be viewed as empowering factors for women, but access to these factors does not necessarily lead to positive outcomes, such as participation in decision making (Kabeer, 1999). *In our context, the desired outcome would be in terms of women gaining increasing rights to resources (here, land).*

In the context of the Resources – Agency – Achievements framework, we analyze the interplay of the informal and formal land rights environment in the state and see how that is affecting the prospects of existing and future conditions of women’s standing in the matrilineal society of Meghalaya. This paper will analyze each aspect of the framework as stated below. This analysis will rely on extant secondary literature review.

Resources	The study will analyze the traditional and formal institutions governing land rights in Meghalaya.
Agency	An analysis of the “agency” will reflect how the traditional and formal land related institutions interact and what are the overall implication of this interplay on women’s land rights.
Achievements	Analysis of “achievements” will involve deliberation of how the aforementioned interplay is to impact women’s access and ownership of land resources.

#### **Section 4: Resources – Systems and Institutions for Land in Meghalaya**

The pattern of land ownership plays an important role in land use and agricultural development and planning. The basic concept of land ownership and tenure deals with the interrelated network of rights, duties, privileges, immunities and capacity to have and hold land for certain uses by individuals and groups within a society (Hoebel and Frost, 1976; Devis,1978). Traditionally, land ownership in the tribal societies of Meghalaya is primarily governed in accordance with the customary laws and practices of the people. Over the years, many changes have occurred with respect to the pattern of land holding. However, the principle of transmission of rights of ownership has not undergone much change and has largely remained the same (Nongbri, 2001). As noted by Karna (2009), the customary system of inheritance found in the

tribal communities of Meghalaya are associated with the institution of matriliney. All the three major tribal communities – the Khasi, Garo and the Jaintia – reckon their descent through the female line.

### ***Traditional Systems of Land Ownership***

Based on publications over a long period of time highlighting the various dimensions of land system in the state, two main classes of land in the **Khasi hills** – the *Ri-Raid* lands and *Ri-Kyanti* lands. *Ri-Raid* lands are community lands over which no person have proprietary, inheritable or transferable rights, except the right to use and occupancy. Such rights revert to the community when a person ceases to occupy or use the land for a period of three years, consecutively. Heritable and transferable rights over *Ri-Raid* lands accrue when the occupant has made permanent improvements on the land. But even these rights lapse if the person completely abandons the land over such a period as the Raid council deems long enough. *Ri-Kyanti* are lands that are set apart from the time of the founding of the ‘*elaka*’ for certain clans upon whom were bestowed the proprietary, heritable and transferable rights of these lands. *Ri-Kyanti* lands are of two categories – ancestral and self-acquired. The former are customarily under the control of the kinship and cannot be brought to the market for sale or purchase, the latter are under the complete ownership of persons who have acquired them through their own earnings. However, there is no uniformity among the various clans about the nature of management and control of the *Ri-Kyanti* of the clans, though the basic principles are similar under which the control is in the hands of the male adults of the clan, the uncles and the adult brothers.

In the **Garo Hills**, land is subject to the ordinary laws of inheritance, and really belongs to the wife of the *Nokma* or traditional village chief or headman of a Garo village. Traditionally, a *Nokma* is always looked upon as the owner of the lands of his village, who derived his rights through his wife, even though she is never considered unless it is found convenient that her name should be mentioned in litigation. A woman is merely the vehicle by which property descends from one generation to another. Hence, matriarchy in the strict sense of the word does not exist among the Garos. He, however, is always thought of and spoken of as the proprietor. Land may be, and frequently is, sold by a *Nokma*, but can only be so disposed of with the permission of his wife and her *machong* or motherhood (Playfair, 1909; Sangma, 2012).

Land in the **Jaintia Hills** is classified into two types, namely, *Hali* land and *High* land. The *Hali* lands are the permanently cultivated terraced wet rice land and were of two kinds: the difference being in the method of irrigation; one where water was brought from the streams and the other which depended on rainfall for water. The *Hali* lands comprise of the Raj land, Service land, Village Puja land, Private land and Patta land. The *High* lands, on the other hand, are all lands not under *Hali* or permanent terraced cultivation. *High* lands were divided into two: private lands held like *Hali* private lands and unclaimed lands or government

wastelands. The *High* lands, being in private possession, can be bought, sold, mortgaged and inherited at the will of the owners (See for instance: Karna, 1987; Sharma, 2004; Cantlie, 2008; Meghalaya State Development Report, 2008-09; Tiwari, 2012).

The Raj land comprised of the property of the erstwhile Syiems/Rajas (meaning Kings) of Jaintia Hills (formerly Jaintiapur) and with the abolition of the institution of Syiemship by the British they became the property of the Government which were then leased to private individuals in accordance with the customary practices of the Jaintias. However, the occupancy rights of such lands would cease after three years if they remained unattended (Roy, 2012). Service land included lands that was given rent free to the Dolois, Pators, Chiefs and other officials as remuneration for the 'services' provided by them to the British who carry on the administration of the area. They were not paid but allowed to hold this piece of land in recognition of their services. Village Puja land consists of the lands held by the Lyngdohs or the Dolois who performs the pujas (worship) of the doloiship. These lands were set apart entirely in each village for the purpose of worship. These lands are revenue free lands and the Lyngdohs or the Dolois can lease these lands and use the revenue from these lands for their own upkeep. The occupants of the Village Puja land had to annually either present sacrificial animals or objects or make payment in cash. Private land comprises of lands held by private individuals and can be transferred, mortgaged and sold or otherwise, at the will of the owners. Patta land or lease land encompass lands that were allotted or transferred to individuals or institutions by the British during their administration, whose power has now been substituted by the Autonomous District Councils. With respect to Patta land or lease land, the Autonomous District Councils' power has been limited to only paddy fields as the settlement of building sites has been discontinued by them.

The customary land system in Meghalaya is not codified and no cadastral survey has been conducted till date to prepare records-of-rights on land. Such lack of formal documentation complicates and distorts land rights related issues and in many instances leads to depriving the common people from maintaining control over natural resources.

### ***Traditional Institutions for Land Governance***

The issues related to land ownership, management and transfer involve different layers of authority, making it a complex subject of discussion. The issues can be broadly classified and looked from two institutional perspectives – the traditional and nontraditional institutions of authority. All the three major tribes of Meghalaya continue to have their own customary laws, traditions and practices to govern their land resources.

The traditional **Khasi institutions** have a three-tier structure – at the highest level is the *Hima* (State) headed by a central authority<sup>2</sup>. The central authority looks after the administration and welfare within the territorial limits and bounds of the State as a whole. The *Syiem* is assisted in matters of governance by the *Dorbar Raid* (commune council) comprising a group of villages – the composition of the *Dorbar Raid* varies from state to state. The *Dorbar Raid* takes care of disputes between the villages (Giri, 1998). At the lowest tier, which is the primary unit of traditional organization, is the *Dorbar Shnong* (village or local council). The administration of the village council is under the direction and supervision of a *Rangbah Shnong* (Village Headman). The *Dorbar Shnong* looks after the welfare of the villagers and supervises customary practices at the village level.

Like the Khasis, the **Jaintias** also have a three-tier system of administration and governance. The chief of the Jaintia Syiemship is known as *Raja* or *Pator* (King). The *Doloi* who was assigned their own *elaka* formed the middle tier. The *elaka* was administered by the Elaka Dorbar. The Doloi is assisted by the Basan (elder) who, like the Doloi, is elected for life term. At the lowest rung of the hierarchy is the *Chnong* (village) headed by the Waheh Chnong (village headman), the powers and functions of which are similar to the Rangbah Shnong in the Khasi set up (Karna, 1987; Gassah, 1998; Sharma, 2004; Gurdon, 2010).

In the **Garo Hills**, the institution of *Nokma* and the *Village Council* are the two traditional institutions. However, of four Nokmas – Gamni Nokma, Gana Nokma, Kamal Nokma, A'King Nokma – only the A'King Nokma enjoys political power and authority to govern. The A'King Nokma is the head of the clan and the custodian of the A'King land. Traditionally, the institution of Nokma is the pivot of the village organization around which the basic network of the entire society was interwoven. The Nokma does not enjoy autocratic power as all the decisions are taken at a joint assembly of the village elders constituting the Village Council (Karna, 1987; Sangma, 2012).

The above discussion shows that the traditional institutions and authorities comprising of the Village Councils and Chiefs or Syiems operates on the basis of the customary laws and practices of the people since time immemorial. However, these traditional authorities have no constitutional power and are functioning on customary laws, practices and traditions based on the goodwill of the people. Therefore, any judgement passed by them on issues – related to land or otherwise – is technically not binding in a Court of law.

### ***Formal Institutions for Land Governance***

The **Autonomous District Councils** (ADCs) are a major stakeholder when it comes to formal land governance institution in Meghalaya. ADCs were established under the Sixth Schedule of the Constitution of India (Articles 244(2) and 275(1)). There are, at present, three ADCs in the state of Meghalaya, viz.,

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<sup>2</sup> Known by different names in different parts of the Khasi hills (such as Syiem, Lyngdoh, Sordar or Wahadar).

Khasi, Jaintia and Garo Hills Autonomous District Councils. The ADCs are constitutional bodies having the power and authority whereby all laws, rules and regulations made by them shall “have the force of law” (paragraph 11 of the Schedule). As per paragraph 8 of the Schedule, the ADC has the power to assess and collect revenue in respect of all lands within the district except those lands which are in the areas under the authority of regional councils, if any, in accordance with the standard followed by the state government. It also has the power to levy and collect taxes on lands and buildings, and tolls from persons, falling within their jurisdiction.

The ADCs also has the power to make laws on matters such as inheritance of property, marriage and divorce as well as on social custom. It may be noted here that while there are provisions under the Schedule for the codification of customary laws, till date it has not been done.

While the traditional institutions (customary practices and conventions), have the authority to preside over land ownership/disputes or such related matters, their decisions are however, not fully binding as per law as they are non-constitutional authorities and are accountable to the ADCs and are under their regulation.

Notwithstanding the power and authority extended to the ADCs by the Constitution, in the matters as mentioned earlier, they are however, bounded by paragraph 12(A) of the Schedule. This paragraph gives onus to the State laws over that of the laws made by the ADC. It states that if any law made by the ADC is repugnant to any provision of a law made by the State Legislature, then the formers’ will be void and the State law will prevail.

After the attainment of statehood, the Government of Meghalaya enacted a number of Acts related to land laws. The most important among these are **The Meghalaya Transfer of Land (Regulation) Act, 1971** and **The Cadastral Survey and Preparation of Records of Rights Act, 1980**. The Revenue and Disaster Management Department oversees the land in the state and maintains the land records. However, it is important to note that lands in the state of Meghalaya has not been surveyed, hence, no records-of-rights exists. The Meghalaya Land Survey and Records Preparation Act, 1980 provides for a cadastral survey of lands and the preparation of land records in the state. The Act was amended in 1991 to enable the ADCs to undertake the cadastral survey with the financial and technical assistance of the State government. This Act was severely criticized on the grounds that it was an attempt by the government to impinge on the rights of the people in matters related to land (Lyngdoh, 1997).

The transfer of land in Meghalaya is mainly subjected to “**The Meghalaya Transfer of Land (Regulation) Act, 1971**”. The Act states that no land (including immovable property of every descriptions and any rights in or over such property) in Meghalaya can be transferred (including gift, sale, exchange mortgage, lease, surrender or any other mode of transfer) by a tribal to a non-tribal or by a nontribal to another non-tribal

except with the previous sanction of the competent authority<sup>3</sup>. In cases where transfer of land cannot be made due to reasons such as: “no tribal is willing to purchase the land on the terms offered by the seller or that the market value”, then the jurisdiction shall apply to the Deputy Commissioner of the District concerned. In such a situation, the Deputy Commissioner can, by order, take over the land on payment of compensation and the land shall thereupon vest in the State Government free from all encumbrances (Deigracia, 2014).

### **Section 5: Agency – Interaction of Traditional and Formal Land Governance Systems and Implications on Women’s Land Rights**

The above discussion on the traditional and formal institutions pertaining to land governance in Meghalaya points to the fact that most of the institutions are in place with the overall objective of protecting the land rights and ownership of the tribal people in the state, and whose powers and functions do appear to overlap. It becomes interesting however, when one looks at the implications of this overlap on women’s land rights in the state. Being matrilineal communities, the general principle of inheritance across the tribes in Meghalaya prescribes devolution of property on female lines. Although there are some differences among the main tribal groups (Khasis, Jyantia and Garo), the salient rules of inheritance and succession are similar. In the Khasi society, in case of ancestral property, it is only the youngest daughter who is eligible to inherit. In case she dies without any daughter surviving her, her next elder sister inherits the property, and after that the youngest daughter of that sister (Nongbri, 1988). Regarding self-acquired property<sup>4</sup> the rules vary between males and females. A woman can give her self-acquired property to either her son or daughter during her lifetime. If, however she dies without giving any proper directive, the property goes to her youngest daughter. For a man, property earned before marriage is called the ‘earning of the clan’ and would go to his mother and sister. If he earns the property after marriage, it is called ‘earning of the children’ and would go to his wife and children. It is however important to note that the youngest daughter who inherits the ancestral property is the custodian of the family property and not the full heir. Her rights are circumscribed by several controls (like actual management control lies in the hands of her brothers and uncles and her father is to be consulted) making it fruitless for all practical purposes. She cannot sell the land without consent from the family.

In the wake of rapid socio-economic changes, the character of agriculture and nature of ownership and control over land has undergone major changes in the state. The transition from shifting to settled cultivation

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<sup>3</sup> An authority appointed by the Government of Meghalaya through an official notification in the Official Gazette of Meghalaya

<sup>4</sup> Self-acquired property is defined as personal property acquired by labor.

has led to considerable changes in every aspect of the agrarian economy – be it resources, activities or relationships. As examined by Karna (1990), the shift to settled cultivation (that requires less land than *jhumming*) has been making surplus land available, which have increasingly been bought by the rich and powerful within the community. This shift has been exacerbated by the recent process of privatization, whereby land coming under permanent cultivation is passing on to the complete control of individual families. For example, as indicated by Karna (2010), in the Khasi hills the fast transition from Ri-Raid (community land) to Ri-Kynti (private land) has exhibited numerous changes in customary practices and the chiefs has been issuing pattas (leases) to non-Khasis by charging a fixed rent and Saiami. Several of such practices has also been recorded by the Land Reforms Commission, 1974.

The rapid shift from community to individual ownership of land has been eroding women's status with regards to land ownership in the state – further exacerbated by their exclusion from traditional institutions involved in local governance. For example, as noted by Karna (2010), the Meghalaya Succession to Self-Acquired Property (Khasi and Jaintia Special Provision) Act of 1984 challenges the institution of matriliney with regards to issues of nomenclature, property and authority distribution. The Act confers on any “Khasi and Jaintia of sound mind, not being a minor, the right to dispose of his property by will” (Nongbri, 1988). This Act symbolizes the urge amongst the Khasi men to free themselves from traditional restrictions and by-pass some of the restrictions imposed by matriliney culture. It simultaneously also weakens women's position as the wife has no claim over her husband's self-acquired property and is rendered economically insecure if the husband chooses to neglect or divorce her. Further, the emergence of timber industry has enabled men as husbands to take control of the family's economy. Women's ownership of land is no longer an important feature of the Khasi property system, but has been reduced to a token right, which is still better than being completely property-less.

Besides privatization, the state intervention too has contributed to marginalization of women and thus indigenes forms of management, as it has led to formalization of external relations and an increase in dealing with the bureaucracy for disadvantaged women. As Nongbri (2001) points out, in the context of India's Apex Court's order on logging – “*The concept of the working plan mooted by the Supreme Court, according to which forests can be used only in accordance with centrally approved plans by the state government, ignores women's role in resource generation and intensifies men's control over them.*” Since “*experience shows that whenever women had to interact with the state machinery, they invariably fall back upon their brother, husband or son in executing their affairs.*” Alienation of tribal lands on account of economic pressures as well as the demands of development are altering the traditional balance of land use. While there are numerous legal barriers to prevent alienation of tribal lands to non-tribals, in Meghalaya, for instance, Forest lands which used to belong to the community and clan have been surreptitiously

converted to private land. Using a loophole in the Land Transfer Act, which debars sale of tribal lands to non-tribals, the elite are increasingly alienating such lands. Land is also being alienated towards coal and limestone mining in Meghalaya. This is reducing the biodiversity of the region and depriving women of their traditional land-dependent livelihoods. Severe economic pressures on many women-headed households are pushing women towards small businesses, which are not sufficient to make ends meet and forcing many to mortgage or sell whatever little land they own. Among the matrilineal Khasis, economic strains on land are also reflecting in the situation that not all Khasis own enough property to distribute to all the daughters with the desirable practice of leaving the biggest share for the youngest daughter. Wealthy families owning landed property are becoming fewer as more people in rural areas are being dispossessed on account of poverty. This has the effect of depriving women of their hold over ancestral lands as well (Mukhim, 2003).

## **Section 6: Achievements – Synergizing the Traditional and Formal Land Institutions to Ensure Women’s Rights over Land**

Customary laws in India, and in Meghalaya, as mentioned before are undocumented and uncodified, and for a complex and scarce resource such as land, it often leads to confusions over legalities of ownership claims and are often subject to misinterpretations. Over time various steps had been taken to address the issue. A Land Reforms Commission for Khasi Hills, was appointed in 1973 by the Government of Meghalaya recommending codification of the laws on land tenure and inheritance. Codification of customary laws among tribals has also been recommended by the working group of the Seventh Five-year plan on tribal development (Planning Commission Documents, 2008). Various civil society organizations, including Consult for Women and Land Rights (CWLR) and Gender Livelihoods and Resource Forum (GLRF) have also been raising the demand for codification and redefinition of customary laws on issues of land and inheritance based on the principle of gender equality. In light of these initiatives, it is important to understand some of the implications of codification based on the predominant academic and policy opinion on the same – particularly in the context of gender equality.

Land is the primary means of livelihood for tribal communities and is central to their socio-cultural as well as economic identity. As discussed in the previous sections, ownership and inheritance systems of tribal lands are intrinsically linked to their kinship systems. With the advent of formal land governance systems, rising trends of privatization and myriad other macroeconomic changes, the tribal communities’ relation with land has been changing. Such changes are also reflecting in the land rights of women in the traditional matrilineal society of Meghalaya. Considering that land rights in the tribal societies, and particularly for

women, follow traditions that do not have any legal standing in a formal court of law, recognition of the customary laws is essential to ensure legal recognition of land rights. This is particularly essential for tribal customs such as communal ownership of land that is not recognized by the formal land governance systems. To that extent, recognition of customs is important, not only to preserve their traditional way of life, but also to allow tribals to negotiate their relationship with the mainstream on more equal terms. Additionally, from a gender perspective, the question of granting land rights to women is often seen as a matter that would affect the integrity of tribal society, as it would involve a redefinition of the community to include women, not only as custodians but also as owners and decision makers.

In terms of understanding the necessity of codification of customary laws and addressing the issue of women's land rights, it is important to consider India's international obligations regarding the same. India has ratified the UN Convention on the Elimination of all Discrimination against Women (CEDAW, 1979) in the year 1993. CEDAW lays down that state parties shall take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women (Act 2(f)). The provision reads, "*State Policies shall modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudice and customary and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women*". As noted by Bahadur (2016), in order to meet its obligations under CEDAW, the Indian state should move towards a uniform civil code. This addresses the governance challenge whereby plural legal orders (particularly pertaining to physical assets such as land) are generally advantageous to the powerful and disadvantageous to those who may fall in between the cracks of parallel family laws.

Despite the above mentioned obligation, India is yet to have comprehensive codification of customary laws and equally far from a uniform civil code. A strand of thought in this regard emphasizes that while codification of customs is necessary, it is important to understand that it is important for customs to be dynamic and malleable with changing times. As noted by Kelkar and Nathan (1991), "*customs themselves are not immutable and are the products of long periods of historical change*". This view was raised in a memorandum submitted by one M.S. Jahrin against the appointment of the Land Reforms Commission for Khasi Hills in Meghalaya. His contention was that the Khasi customary land system had become outdated and codification would simply legalize an outdated feudal system. Instead, he advocated nationalization or assurance of economic inalienable holdings for each and every family by the government (Karna, 2009). However, it has been argued that where customary laws, in the face of modernization, are changing in a manner which disturbs the traditional equilibrium and leads to a re-appropriation of roles, there is a need

for intervention in favor of women (Mukhim, 2013). Tribal social structure is such that the agenda for land reforms has to evolve from within the community as they are strongly shaped by issues of identity, tradition, self-help and community sentiment (Karna, 2009).

### **Section 7: Conclusion**

The above sections attempt to explain the precarious status of women's right to land in Meghalaya in the change of the changing complexities of land relations, with the divide between customary practices and formal land management systems becoming prominent by the day. Women's land ownership in the state is embedded in social, political and ideological realities that need to be understood and systematized through appropriate land reform measures. Women's customary rights over land though mainly remains in the realm of being a custodian (with actual management controls residing with the male members of the family), still gives them certain amount of bargaining power. With the changing nature of agriculture social structure, women are increasingly losing out on even their limited rights as custodians of family land. Any land reform initiative in Meghalaya would therefore need to be strategized keeping in mind the need to promote and protect the interest of people in general and women in particular. A balance needs to be struck between the traditional land holding systems and the modern mechanisms whereby traditions like community land holdings, joint patta, female member's rights over ancestral lands are formally recognized. It is also important to note that while codification may give greater legitimacy to tribal customary laws, a simple documentation of tribal customs might end up validating and perpetuating many inequitable gender practices. The process of codification, if undertaken, would therefore, need to be consultative whereby embedding it in cultural and historical context as well as tending to the tenets of equal rights for women.

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