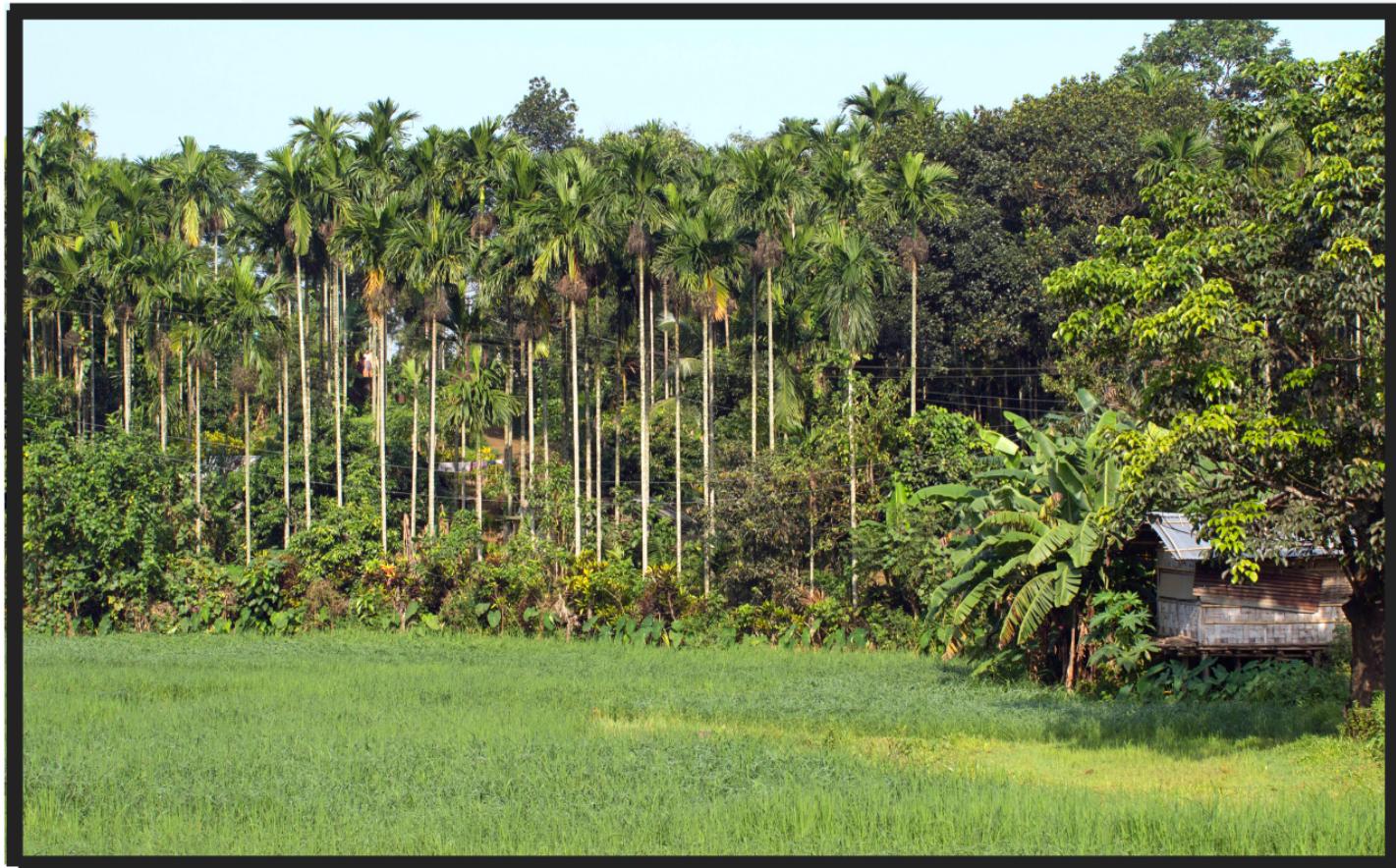




## LITERATURE REVIEW

# LAND TENURE SYSTEM & LANDLESSNESS IN MEGHALAYA



# **LAND TENURE SYSTEM AND LANDLESSNESS IN MEGHALAYA**

## **A Literature Review**

Jakrimre Momin

and

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## **LAND TENURE SYSTEM AND LANDLESSNESS IN MEGHALAYA**

### **1. Introduction**

Land and land tenure systems are a vast area of study and many scholars have contributed towards understanding these traditional systems in Meghalaya. This work is a compilation of secondary literature. NESFAS is working towards understanding these systems to work with communities to uphold traditional customs and practices so that communities at large continue to have access to land for their homestead as well as for cultivation.

The basic concept of land ownership and land tenure deal 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). Land tenure in Meghalaya is based around a traditional system of communal ownership and traditional institutions (Jamir & Nongkynrih, 2003; Saxena, 2002). Community/communal land is a land that is owned by a community, rather than an individual. A community head or village headman manages such land. People in communal areas can exercise land rights in such lands.

Meghalaya has a majority (86%) tribal population and is governed under a special constitutional provision, the *Sixth Schedule*, which recognizes the tribal communities' rights of ownership control over land, forests, and natural resources. The Scheduled Tribes have remained on the fringes of economic growth in India's developmental state. However, the North East Indian tribal communities, governed under the *Sixth Schedule* have on most indicators fared better than those governed under the *Fifth Schedule*, where the State has a stronger say in deciding over and acquiring land and natural resources (Xaxa, 2013). The present literature review covers the *Khasi*, *Jaintia* and *Garo* Hills in Meghalaya, all of whom fall under the *Sixth Schedule*.

## **2. Land tenure system in Meghalaya**

### **2.1. Khasi Hills**

In the *Khasi* Hills, landed property is classified under two main heads --- *Ri Raid* and *Ri Kynti*. The *Ri Raid* (*Ri* meaning land and *Raid* meaning community) is generally community-owned land or ‘public’ land wherein no individual has proprietary right/s over it. The *Ri Raid* lands have no boundary stones. They are lands that are available to the people of the village or villages for productive use, and they are taken care by the Village council and the *Syiem* who has the authority to allot the land for use and occupancy to individuals. The clans, on the other hand, also have heritable and transferable rights as well as proprietary right over the lands. This is because most of the *Ri Raid* is owned by the clans who have then ‘gifted’ the lands to the community. *Ri Raid* lands are set apart for the community over which no persons have proprietary, heritable or transferable rights except the right to use and occupy as long as one occupies and uses the land for purposes such as the construction of houses or cultivation. For an ordinary house, including its *kper* (garden) not much land is required; for cultivation, purposes land not more than can be cultivated is taken. An individual occupant, who has been given a portion of the *Ri Raid* and has developed it, has the right to sell or reclaim the expenditure incurred for any improvements made on the land when it passes on or is transferred to another person. The individual may sell the produce from the land but cannot sell the land as such. The occupant has the right to sell the house and the site and garden or paddy field or grove attached to the land. However, the sale does not extend to anything more than his/her right of occupancy. In the event of the *Ri Raid* land being unutilized by the owner, its ownership rights revert to the community (Roy, 2012).

In Ri Bhoi district in the *Khasi* Hills, the land is communally owned in almost the entire district; and it is controlled and managed by the village headman representing a cluster of villages. In the district, there are many traditional political clusters of villages, each of them with a council of elders who function along with the chief. Any member residing in a cluster can use the land for residential purposes and cultivation with the permission of the cluster council or the village council. Such plots can be handed down over generations in the domestic group. In case cultivation is discontinued for more than three years, the plot reverts to the village (Jamir and Nongkynrih, 2002).

Similarly, in Sohbar (a village located in the southern part of East Khasi Hills) the village has its own regulations regarding the use of agricultural community land which is given by the village authorities to its permanent residents for three years. They must use the land and at the end of the third year have to inform the village council if they want to continue using the plots allocated to them. At the request of the users, the village council issues a land document to state that they can use the land in their lifetime and that it is inheritable by his or her offspring or kin. However, such individuals or families cannot sell or lease the land. The village council has the authority to take the allotted plots back from the users if they do not comply with the rules and regulations (Nongkynrih, 2008).

Generally in Khasi Hills, the *Ri-Raid* can be categorized into the following land categories-

1. *Ri Shnong*: It is a land which is a part of the village (*Shnong*) where villages are situated. The villagers can use these lands for cultivation but possess only occupancy rights and cannot transfer them.
2. *Ri Lyngdoh*: It is a land that has been set aside for the support of the *Lyngdohs* or priests of the State who perform religious rites or ceremonies.
3. *Bam Syiem*: It is a land set apart for the clans of the ruling chiefs/*Syiem*.
4. *Ri Bamlang*: It is a community land set aside for use by the community.
5. *Ri Leh Mukotduma*: It is land acquired through litigation (*Mukotduma*).
6. *Ri Aiti Mon Sngewbha* or *Ri Nongmei-Nongpa*: It is a land that has been donated or gifted willingly (*Aiti Mon Sngewbha*) by the owners for use by the public.
7. *Ri Raphlang-Ri Bamduh*: It is a barren land that any citizen has the right to use.
8. *Ri Diengsai-diengjin*: It is a forest area that is covered with vegetation between the uplands and low lying areas of the lands.
9. *Ri Samla*: It is a land acquired by an unmarried person (*Samla*) who has the right to dispose of it as he/she likes.
10. *Ri Umsnam*: It is land acquired through wars (Nongkynrih, 2014).

### **The forests in *Khasi* Hills are classified as-**

*Law Raid*: These forests are looked after by the heads of the *Raid* (traditional institutions comprising a cluster of villages) and are under the management of the local administrative heads.

*Law Lyngdoh, Law Kyntang and Law Niam* are forests set apart for religious purposes (*Niam*) and are managed by the *Lyngdoh* (priest), or any other person who is responsible for the religious ceremonies in the particular village, by following customary practices. They are also termed as Sacred (*Kyntang*) groves. Sacred groves/forests are mostly primary forests and are well preserved, often in their pristine state, and are rich in biodiversity.

*Law Adong* and *Law Shnong* are the forest lands set apart as catchment areas for use by the community or village (*Shnong*) that may be decided by the *Dorbar*. These forests are either under the control of a particular village or under the control of a *Raid*. They are usually small and are reserved particularly for the families in the village and on occasions for the village as a whole. There is no restriction on the collection and extraction of fruits and vegetables from these forests, but they must be done without harming the wellbeing of the forest. The ‘*Sordar*’ or headman with the help of the village *Dorbar* manages and protects these forests.

*Law Balang* are church (*Balang*) forests. The main purpose of these forests is for cremation and burial of dead bodies. These forests are usually gifted by private individuals or clans to the church or at times bought by the Church. The church manages and regulates the use and access to the forest resources (Nongkynrih, 2014; Nongbri, 2001; Kumar, 2008; Meghalaya State Development Report, 2008-09; Sarma, 2010).

In contrast to *Ri Raid*, *Ri Kynti* (*Ri* meaning land and *Kynti* meaning possession) are private lands that are in ‘absolute possession’ by the owners. The owners can sell, mortgage, lease, and dispose of their lands in any manner they deem fit. They are heritable and transferable at will. These lands are demarcated by boundary stones and landmarks (locally termed as ‘*Mawpud*’). In certain cases, the *Syiem*, *Sordar*, or Village Councils have no right over these lands. In case they decide to sell, mortgage, or transfer such lands, they must do so

with the consent of the owners, *shnong* (locality), or *rajd* (community) who have the authority and powers vested in them according to the customary laws and practices (Cantlie, 2008-09).

The different classes of *Ri Kynti* lands are –

1. *Ri Nongtymmen*: It is a land that has been inherited from generation to generation. It is a land of ancestry.
2. *Ri Maw*: It is a land that has been acquired through purchase or by the right of apportionment.
3. *Ri Seng and Ri Khai* (ñ): It is an undivided family-owned land.
4. *Ri Khurid*: It is also a land that has been purchased or bought (*Khurid* coming from the Hindi word), over which the purchaser has the proprietary, heritable and transferable right over the land.
5. *Ri Bitor*: It is a land that has been acquired on receipt of a ceremonial bottle of liquor.
6. *Ri Dakhol*: It is a land that has been obtained by the right of occupation.
7. *Ri Shyieng*: It is a portion of land that has been given to the *khadduh* (youngest daughter) of a clan or family for meeting the expenses on the performance of religious rites and ceremonies.
8. *Ri Phniang*: It is a part of the land of *Ri Kur* or *Ri Nongtymmen* that has been given to a female member who acts as custodian and assists in the preparation of religious ceremonies or for looking after them in times of trouble.
9. *Ri Lapduh*: It is a land of a family or clan that has become extinct which is kept as *Ri Raid* or *Ri Bam Syiem*.
10. *Ri Lyngdoh*: It is a land that belongs to the *Lyngdoh* or the priestly clan.
11. *Ri Syiem*: It is a land set apart for the maintenance of the *Syiem*'s clan.
12. *Ri Shiak*: It is a land that has been acquired by the husband and the wife which is given to the *Kur* (clan).
13. *Law Ri Kynti*: These forests belong to private individuals or a particular clan or a group of clans. These forests are raised or inherited by them. Some individuals and clans may own forests located outside their village. Private forests are generally small in size and are owned and managed by individuals. These forests are used according to the requirement and wishes of the owner (Nongkynrih, 2014).

Another class of private land is termed as the *Ri Kur* (*Kur* meaning clan). The *Ri Kur* or the clan lands were originally owned by families when the population was sparse. As the members of the family increased and clans emerged, the lands became the inherited property of the clans. Such clan lands are properly demarcated by stone boundary marks (locally termed as ‘*Mawbri*’). The caretaker/manager of the clan lands is the *kñi* who is the maternal uncle of the *khadduh* who is the youngest daughter of the main family or the main branch of the clan. All members of the clan are entitled to a portion of the agricultural produce in any of the clan's land – either in cash or kind. However, land that is held by the clan that cannot be divided or alienated without the consent of the *dorbar* of the whole clan is commonly termed as clan gathering (Cantlie, 2008; Gurdon, 2010 Roy, 2012). Within the *Ri Kur*, there are again two distinct categories.

1. *Law Kur*: These are forest lands which are owned and managed by clans, wherein all members of the clan are entitled to a share of the benefits which are derived from the forests. However, access to the clan forest and collection of forest products are permitted only for households belonging to the particular clan. Clans, just like individuals, may own forests located outside their village.
2. *Law Ri Sumar* are forests belonging to an individual, a clan, or a joint clan, which are either grown or inherited by the individual, the clan, or by the joint clan (Nongkynrih, 2014; Nongbri, 2001; Kumar, 2008; Meghalaya State Development Report, 2008-09; Sarma, 2010).

## **2.2. Changes in land tenure system of *Khasi Hills***

At present, the situation in the Ri Bhoi district concerning the practice of using communal land has changed the form of gradual conversion of communally-held land into private ownership. Nongkynrih (2005) identified the factors that are driving this change as:

1. The entry of cash crops led to the permanent use and de facto privatization of communal land. It should be noted that cash crops were accepted voluntarily by farmers who were encouraged by the benefits derived from the government schemes.
2. Occupants of communal lands have also had their land registered with the Land Revenue Department of the Government of Meghalaya.

3. Due to the lack of political will and foresight of some of the *Sordars* or the Headmen and other elders of the village and the cluster council of villages, the communal land has been sold to various agencies such as the government, military, organizations, and individuals with the consent of some of the chiefs and elders.
4. Private sector initiatives in product/s or services creation and trade have further stimulated the process of privatization.

For instance, in *Laitkroh* village (East Khasi Hills district), clan ownership of land is no more prevalent now. Earlier, the land was owned by a clan, it was distributed to the individuals who in turn had the right to claim ownership over the land and register it with the authorities. However, with time, the village *dorbar* purchased such land from the clan and converted it into community land. The village *dorbar* has the power and authority to keep a check on the land and distribute it among the people. At present, the nature of such ownership is the community as well as the individual. It was also observed that land titles are in the name of the individuals with no registration and the nature of ownership is of a permanent type in *Mawkyrnrong* village (Ri Bhoi district) where the *Lyngdoh* of ‘*Raid Bhoi Lasa*’ would provide the necessary document and *patta* at a minimal amount to the people who are purchasing land for residing in the village. It was also found that individuals who purchased land would then get it registered at the Khasi Hills Autonomous District Council (Nongkynrih, 2014).

Rymbai (1985) noted that changes concerning the communal land in the *Khasi-Jaintia* Hills started in the first two decades of the 20th century. A section of people who seem to be more enlightened, educated, and well-off and who had no respect for their traditional customs, grabbed large wastelands of *Ri Raid*. This prevented the actual tillers of the soil, the members of the *Raid*, from the use of such lands in the future. This scenario has been seen since the beginning of the Five Year Plans when the Government began acquiring lands for various projects paying compensation for it. This compensation method often does not provide benefits to the *Raid* for the benefit of those deprived of their dependence on the land. Such processes have converted large areas of community land into private land (Nongkynrih, 2008).

## 2. 3 Jain̄tia Hills

Unlike the Khasi Hills which enjoyed semi-independent status under the British, the British administration took control over the communal lands of *Jain̄tia* Hills and divided the land into the following categories:

1. *Hali* lands or irrigated paddy lands.
2. *High* lands or private lands like *Hali* private lands. The *High* lands 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 (Karna, 1987; Sharma, 2004; Cantlie, 2008; Meghalaya State Development Report, 2008-09; Tiwari, 2012).
3. Unclaimed lands or Government wasteland.

The *Hali* land again is subdivided into:

- a. *Raj* land: The *Raj* land was under the control and management of the former *Syiem* of Jain̄tia Hills. After abolishing the office of the *Syiem*, the British regime took over the control of such lands and gave them on lease for ten years and levied taxes on the users.
- b. Service lands: Service lands are those given rent-free to the heads of traditional institutions such as the *Doloi*, the *Pator*, and other village officials for the services rendered to the administration of the area. Such practices continue until today under the control of the Jain̄tia Hills Autonomous District Council (JHADC).
- c. Village *Puja* lands: Village *Puja* land is held by the *Lyngdohs* (religious head who performs rituals) and the *Raid*. These lands are set apart for religious purposes and are retained as per customary practices.
- d. Private lands: Private lands are held by individuals or clans. The owners can dispose of or lease the land (Gassah 2001)

## **2. 4. Changes in land tenure system of *Jaintia* Hills**

The British Government took away the power and control of the *Syiem* (the chief and the representative head of the traditional state) and *Doloi* (the chief and the representative head of the cluster of more than one village) of *Jaintia* Hills and converted all the *Raj hali* (private lands of the erstwhile *Syiem* of *Jaintia*) into Government land. The users of the land were made to pay taxes. The British Government gave *pattas* (individual ownership documents) to the users for a limited period of ten years. In the process, the community lands in *Jaintia* hills were changed into government lands and subjected to land revenue. It also imposed house tax and other kinds of taxation (Phira, 1991).

After Indian independence, the management and control of *Hali* lands were transferred to the JHADC, which initiated some changes. Gassah (2001) summarizes the changes as:

“The *Jaintia* Hills Autonomous District Council has replaced the old periodic lease of *Raj Hali* lands by a new form of lease... The lease is made applicable to all *Hali* lands. The period of the lease is not mentioned in the *patta* but it said that the land is settled with the lessee’. He remarks that ‘the lease *patta* granted by the District Council (JHADC) is a lease in perpetuity; a landholder has a permanent, heritable and transferable right of use and occupancy in his land.’ The other important feature of the newly adopted regulation is that the *patta* given to the lessee is free from taxes”.

The change in the pattern of land ownership is evident. Lands that were earlier owned by communities have now been transferred to individuals. This was also the same for forests, though in some cases they have continued to remain under the control of the communities (for example in *Tyrshang* village, West *Jaintia* Hills district) (Nongkynrih, 2014).

## **2.5. Garo Hills**

The land in *Garo* hills has been broadly separated into two parts: The hilly lands are controlled and managed by customary beliefs and practices; the plain lands are governed by the provisions of the Assam Land and Revenue Regulation Act of 1886 and adopted by the *Garo* Hills Autonomous District Council since its inception in 1952. The former comprises almost 95 percent of the total land and the rest is of the latter type. The hilly land is known as the *A'khing* (clan) land. The concept of the *A'khing* tenure is based on the inalienable and complete right of the *A'khing Nokma* (chief) with the members of the *Chra* (made up of only adult male members of the clan residing in the village) and *Mahari* (a group of families from the same clan and traceable by the rule of matrilineal descent) to act as custodians and guardians of the land. The traditional land tenure system provides land to all members of the community and this has knit them together. The sale of community land is not allowed and individual households would use the land according to their need or as per the *jhum* cycle. A distinctive feature of the traditional communal land tenure system is the role of the community in controlling and managing land, particularly for shifting cultivation. The community as a whole decides on the area to cultivate, the time to slash and burn the forests, etc (Sangma, 1987, Majumdar, 1987; Kar, 1987). The management of *A'khing* land is by the *Nokma*. He is the leader of the clan and acts as the manager. The *Nokma* does not enjoy the right of ownership and cannot inherit property since the *Garo* society is matrilineal. The members of the clan can use the *A'khing* land without paying any rent. A *Garo* from another *A'khing* does not enjoy the same right. It is an *A'khing* specific right of land use where a stranger or a resident of another *A'khing* land was not allowed to cultivate or to settle down except on payment of a small present or rent to the *Nokma* known as *wil* or *Hakimil*. The right to use the *A'khing* lands depended on the *A'khing* membership of a person (Sangma, 1985).

The forests in *Garo* Hills are classified as:-

1. *Champe*: These forests are managed by the *Nokma* and the felling of trees is not allowed from such forests.
2. *Wa Grin* are bamboo reserves found in *Garo* Hills and are managed by the *Nokma*. The villagers have full access to the bamboo reserve and collect the

bamboos for genuine needs such as the construction of houses or temporary sheds (Nongkynrih, 2014; Nongbri, 2001; Kumar, 2008; Meghalaya State Development Report, 2008-09; Sarma, 2010).

## **2.6. Changes in the land tenure system of Garo Hills**

The *A'khing* lands were traditionally used for *jhum* cultivation, but after Indian independence, the GHADC introduced The Garo Hills District (Awil Fees) Act, 1960 for regulating and assessing the collection of *A'khing* land fees. Timber extraction and all other forest produce are regulated by this Act. According to this arrangement, the *Nokma* collects 25 percent, and the remaining 75 percent is credited to the Council fund (Nongkynrih, 2008).

Kar (1987) remarked that the fissioning of communal ownership has developed several new socio-economic features such as the commercialization of land-based activities mal-distribution of landed possessions, the institution of paid labour, mal-distribution of income among the fellow villagers, and the negation of reciprocity in socio-economic relations. The changes in the control, management, and use of *A'khing* land have accentuated and contributed to conflicts among members of the traditional institutions of the *Garo* tribe. One such example was found in the district headquarters of Tura in the *Garo* Hills. According to Majumdar (1987), due to the acquisition of land in and around Tura for government and semi-government purposes, the *Nokma* has been given big sums of money as compensation for land. The tradition does not define as to how [land compensation] is to be appropriated. The new situation in and around Tura has also created confusion about the rights and duties of the elders of the owner-lineage and also about the powers and functions of the *Nokma*. Now many disputes have arisen between the *Nokma* and the elders of the owner-lineage about the appropriation of the compensation amounts. Further, disputes have also arisen as to whose consent the *Nokma* should take to dispose of land. Meanwhile, more and more land is being acquired by migrant families and also by the government, and a sizeable portion of the territorial possession of the lineage has now gone out of its possession. The factors are causing a change in the concept of landholding among the *Garos* and the deviations from the traditional pattern (Nongkynrih, 2008).

## **6. Customary law in the land tenure system**

Meghalaya is chiefly a matrilineal society where the system of inheritance is through the female member of the household – either through the youngest daughter or a female relation. As such, landed property and its ownership are mostly vested with the female members of the household. The pattern of land ownership among the tribes of Meghalaya is traditionally very similar. Among the *Khasi* as well as the *Garo* and *Jaintia*, the land belongs to clans, communities, and individuals. Traditionally, land ownership in the tribal societies of Meghalaya is primarily governed by the customary laws and practices of the people. Over the years, many changes have occurred concerning the pattern of landholding. However, the principle of transmission of rights of ownership has not undergone much change and has largely remained the same (Nongbri, 2001). To the question of land ownership, it could be ascertained that people still prefer the customary laws over that of and traditional institutions. They do not want to undermine the role of the Village Headman through the implementation of other laws. The villagers prefer customary ownership of land because according to them this type of ownership provides them better and easy governance. Further, people argue that with the continual existence of customary laws their traditions would be protected. It was also stated that the prevalence of strong customary laws would protect tribal land from any form of interference – government or otherwise (Nongkynrih, 2014).

According to the *Khasi* customary law, community land is the collective property and the residents of the village are users of the land. To understand the practice of community land a few examples are discussed and such examples provide the ‘field-view’. One of the examples is from the study conducted in two villages of Kynrang and Lumdiengngan in East Khasi Hills district. The land in both the villages belongs to the community and is controlled and managed by the village councils. The community land is divided into two parts: residential land where houses and other common public facilities are built, and land for economic purposes which is used mainly for agricultural activities. Permanent residents of the village are the users. According to the practice in these villages, when a household or family or individual makes permanent improvements on the land, the succeeding generations can inherit these improvements. Such users cannot sell or dispose of the land. Annually such users have to renew their permission from the village council. When users do not renew the permit, the land reverts to the village and the village council re-allotches it to others. When

users inform the village council that they would not renew the permission they hand over the plot to the village and the village council takes it over (Jamir and Nongkynrih, 2002)

The traditional *Khasi* institutions have a three-tier structure – at the highest level is the *Hima* (State) headed by a central authority – known by different names in different parts of the *Khasi* hills (such as *Syiem*, *Lyngdoh*, *Sordar* or *Wahadar*). The central authority looks after the administration and welfare within the territorial limits and bounds of the *Khasi* Hills. 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. Ordinarily, they consist of the *Bakhraws* (aristocratic clans) including the *Lyngdoh* (priestly class), *Basan* (“Superintendent of Village marts” or elder), *Myntre* (ministers) and *Lyngskor* (Gurdon, 2010). The rights, duties, and role of these functionaries are, however, not clearly defined. The *Dorbar Raid* takes care of disputes between the villages (Giri, 1998). At the lowest tier, which is the primary unit of a traditional organization, is the *Dorbar Shnong* (Village or local council, which is the smallest council of people at the village level). 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.

*Jaintia* Hills was originally known as ‘*Ka Ri ki Khadar Doloi*’ (Land of the Twelve Chiefs). In ancient days, *Jaintia* Hills was ruled by the twelve *Dolois* (Chiefs) who had their own *Elaka* (Province) with administrative powers to govern their province. 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). As stated earlier, the *Doloi* who were 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 the 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 discussions indicate that the traditional institutions and authorities comprising the Village Councils and Chiefs or *Syiem*s operate based on the customary laws and practices of the people since time immemorial. However, these traditional authorities have no constitutional power whatsoever and are functioning on customary laws, practices, and traditions based on the goodwill of the people. Therefore, any judgment passed by them on issues – related to land or otherwise – is technically not binding in a Court of law (Nongkynrih, 2014).

### **3.1 Changes in Customary law**

*Khasi* practice in the past was to allocate community land to every member of the village and give jhum land for cultivation. As long as a family resided on that land and cultivated it, it continued to be its rightful occupier. If it abandoned the allotted land or it remained uncultivated and unused for three consecutive years then that land reverted to the *Raid* (community). However, the customary laws also have their loopholes. If a holder of community land makes improvements on it and makes a permanent structure then that person becomes a permanent holder. This is as good as ownership. Men alone are chieftains who are called *Syiem*. In what can be called a surreptitious stratagem, the *Syiem*s, *Sordar*, and *Rangbah Shnong* have in collaboration with other members of their council converted large areas of land in their jurisdiction into privately owned land in their names. In such cases, the titleholders are male members. This phenomenon can become the basis for a complete overhaul of *Khasi* society. Men as heads of the *Dorbars* and Chieftainships are increasingly becoming not just owners of land but have also appropriated the right to exercise complete control over it. What women will ultimately be left with is the lineage bit. These reversals are happening at a very rapid pace. The above instances of re-appropriation of roles are possible because the *Khasi* customary laws have not been codified. The argument that

custom is flexible and, therefore, laws emanating from that custom cannot be set in stone is a valid one. One factor that has tended to reduce women's power is their exclusion from traditional institutions involved in local governance. At one time these institutions discussed issues of public welfare and governance. Thus, these traditional institutions were to an extent involved civic administration and also adjudicated on matters relating to land disputes and other non-compoundable offences. Today these bodies have evolved into power centres, which are vested with the authority over land and its distribution. While in the past, these institutions could be trusted to carry out their responsibilities with honour and dignity, always keeping the interests of the community at heart, today those cherished tribal values have been diluted. Greed and the desire for accumulation threaten to destroy the fabric of *Khasi* society (Mukhim, 2008).

In the past, each clan of the *Garo* tribe occupied tracts of land separately. Such tracts were called *A'king*. *A'king* land was administered by a chief, called *Nokma*. Given the fact that *Garos* are matrilineal, the *Nokma* were women. However, she was only the nominal chief and her husband exercised all administrative power of the *A'king* (Sangma, 1993). Today, the government invites almost exclusively men for the meetings it conducts. Women are conspicuous by their absence among the participants of most of these meetings. With this practice becoming more rampant, women's control over land and say in its management is being lost at an alarming rate. Even though the *Garo* people in India had their district of *Garo Hills* in the state of Assam, the ownership rights and privileges of their land were diluted due to the amalgamation of certain administrative rules of Assam which govern all the subjects of the state. Undoubtedly the *Garos* enjoy the privileges of the Sixth Schedule of the Constitution of India, yet their right to rule their own people with their own customary laws as in the past had been abrogated (Sangma, 2008).

The changes in the customary practices of *A'khing* land are because of various other processes that operate concurrently. A study of seven villages in East and West *Garo Hills* showed:

1. A sharp rise in the shift from *jhum* cultivation to permanent cultivation;
2. Lands are acquired by way reclamation from the jungle or by transfer from the previous owner in the form of inheritance;

3. The *Garo Hills Autonomous District Council* is issuing annual *pattas* through which the patta holders are becoming owners of that land. This is a shift from the traditional practice of land control and management;
4. There are some cases where migrant non-tribals are occupying lands with a legitimate *patta* issued by the District Council. This gives them the right of ownership of the land; and
5. Families and individuals are transferring land by selling it off. In some cases land is gifted. Also mortgaging of *A'khing* land was noticed (Law Research Institute, 1984).

The Constituent Assembly of India created a special committee known as the North-East Frontier (Assam) Tribal and Excluded Areas Sub-committee to discuss outstanding issues for the Indian North Eastern region which, after much deliberation drafted a special constitutional provision known as the *Sixth Schedule* (Datta, 1996). It was unique in attempting to reconcile the contrary concerns of assimilation and integration (David Stuligross, 1999) and engaged with the conventional models of governance and land management in tribal communities. The *Sixth Schedule* created ADCs for some of the tribal majority areas in the region of North Eastern Himalayas to help the tribal people to govern themselves according to their traditions. The state of Meghalaya has its entire territory under the *Sixth Schedule*. To discuss land management, land in Meghalaya was traditionally managed under a tribal land management system where tribal individuals and communities owned most of the land. To constitutionally protect/support this order of ownership, the *Sixth Schedule* restricted state ownership of land including forests so that the state-owned only about 5%. This was of substantial importance as the region of eastern Himalayas is very rich in mineral and other natural resources and any extractive or development activity directly involves the use or acquisition of tribal land (Navlani, 2017).

While the practice of tribal ownership of land was constitutionally protected, the tribal institutions managing those lands were not (Hansaria, 2011). The hierarchical tribal institutions continued to evoke strong clan and tribal allegiances but faced local challenges through the operation of the new formal institutions i.e., Autonomous District Councils (ADC) to govern local affairs. The Autonomous District Councils (ADC) was established under the *Sixth Schedule* of the Constitution of India (Articles 244 (2) and 275 (1)). It has been argued that the *Sixth Schedule* helped give rise to new tribal elites changing

the relations between the formal and the traditional institutions around the land. These changes and challenges have weakened the social protective nature of tribal communities through increasing monetization and privatization of community land. The interaction between the formal and the traditional institutions has been heightened by private extractive industry requiring control over tribal land, as well as through development interventions by the state, ranging from public developments that require land acquisition to ‘welfare’ programs like bank loans requiring individually registered land holdings as collaterals. The land disputes amongst individuals and communities have also led to enhanced juridification as traditional officers as well as individuals increasingly take land disputes to formal courts of law. The courts adjudicate in part based on existing tribal norms, reinforcing and re-inventing the social norms and practices over tribal land (Navlani, 2017).

While the traditional institutions (by 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 Autonomous District Councils (ADCs) and are under their regulation. The ADCs also have 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, to date it has not been done (Nongkynrih, 2014).

There are, at present, three ADCs in the state of Meghalaya, viz., *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). The ADC has the right to constitute village councils or courts for the trial of suits and cases between the parties all of whom belong to Scheduled Tribes within their own jurisdiction and may appoint suitable persons to be members of such village councils or presiding officers of such courts, and may also appoint such officers as may be necessary for the administration of the laws made under paragraph 3 of the Schedule and act as courts of appeal from the decisions made by village councils. As per paragraph 8 of the Schedule, the ADC also 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, by 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 (Nongkynrih, 2014).

Notwithstanding the power and authority extended to the ADCs by the Constitution, in the matters mentioned earlier, they are, however, bound 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 former's will be void and the State law will prevail (Nongkynrih, 2014).

After the attainment of statehood, the Government of Meghalaya enacted several 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 have not been surveyed, hence, no records-of-rights exist. 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 because it was an attempt by the government to impinge on the rights of the people in matters related to land (Lyngdoh, 1997).

Now the transfer of land in Meghalaya is subjected to “The Meghalaya Transfer of Land (Regulation) Act, 1971”. The Act states that no *land* (includes immovable property of every description and any rights in or over such property) in Meghalaya can be transferred (means the conveyance of land of one person to another and includes gift, sale, exchange mortgage, lease, surrender or any other mode of transfer) by a *tribal* [a person belonging to any of the Scheduled Tribe of Meghalaya and as specified in the Constitution (Scheduled Tribes) Order 1950, as amended from time to time and, for this Act which also includes the *Rabhas, Kacharis and Koches* resident of Meghalaya] to a non-tribal or by a nontribal to another non-tribal except with the previous sanction of the *competent authority* [an authority appointed by the Government of Meghalaya through official notification in the Official Gazette of Meghalaya, Section 3 sub-section (1) of the Act]. Any transfer of land that is made

against the provisions of the Act, shall be void and cannot be enforceable in any Court of law (Section 3 sub-section (3) of the Act). Further, Section 8 clause (A) of the Act, states that land belonging to a tribal cannot be sold in execution of any decree or Court order or any other order passed by a Court/any other authority to any non-tribal except with the prior authority and permission of a competent authority. In cases where the 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 (Section 4 clause A).

Transfer of land from a tribal to a non-tribal or by a non-tribal to another non-tribal can be regarded as valid provided that has been done before the passing of the Act and after the commencement of the Constitution. Nonetheless, for the transfer to be complete, the land must have been registered within two (2) years from the commencement of the Act, or as stated otherwise by the Government of Meghalaya. The transfer of land to a non-tribal does not impinge to the provisions of the Act in a case where land is required for a religious purpose such as a place of worship or as burial or cremation ground or is meant for promoting the interests of the tribal in the field of education or industry (clause (e) or clause (f) of sub-section (I) of Section 4). If a person is found to possess land other than following the provisions of the Act, the competent authority has the authority to evict such person from that land and restore it to the original transferor or successor on refund of the actual consideration to the transferee of any person claiming through him; in case the original transferor or successor refuses or fails to refund the actual consideration to the transferee or any person claiming through him, the land shall be disposed of in a manner prescribed by the competent authority (Section 8 sub-section 2 and 3). Exemption from this Act is also made under section 11 for the following: (a) Any transfer of land as security for any loan granted by such Banking Company, Cooperative Society or other credit institution as the Government of Meghalaya may, by notification, specify provided that such transfer does not occur towards a non-tribal except with the previous sanction of the competent authority; (b) the letting out on rent of any building standing on land; (c) any transfer of land to, or in favour of, Government or District Council; (d) any transfer of land to, or in favour of, (i) any company, corporation, society (including co-operative society), autonomous body or

association, wholly or substantially owned and controlled or managed by the Government and which the Government of Meghalaya may, by notification, specify in this behalf; (ii) a Municipal corporation, municipality or, town committee constituted under any law. Non-traditional institutions in the state of Meghalaya point to the fact that most of them are in place with the sole objective of protecting the land rights and ownership of the tribal people in the state, and whose powers and functions do appear to overlap. Notwithstanding the provisioning, some changes have taken place in the tribal society in the issues related to land (Nongkynrih, 2014).

#### **4. Landlessness**

Tribal people in Northeastern India are increasingly becoming landless and poor as their traditional farming practices (*jhum*) are abandoned in favor of commercial plantations. Much of the land has traditionally been owned and managed by tribal communities and clans without formal tenure or titles. As reported by Fabian Lyngdoh, a former tribal councilor in Shillong, in recent years some states have introduced tenure that has led to communities abandoning *jhum* to establish plantations. About 76% of rural households are landless in Meghalaya according to the 2011 Socio-Economic and Caste Census (Chandran, 2020).

Causes of landlessness are:

1. Transfer of land
2. Privatization of communal land
3. Land alienation
4. Developmental projects

##### **4.1 Transfer of Land**

In Garo Hills, the husband of the *Nokma* is being invited by the government for the meetings it conducts. With all the power vested in him, the husband of the *Nokma* can sell or give away any portion of the *A'king* land at will. According to the customary law, decisions to transfer land have to be taken in consultation with members of the clan. In reality, this stipulation is overlooked and unscrupulous *Nokmas* now sell off land for a pittance. This transition is at times justified in the name of the role men have played in the past. It is

believed that male members of the clan fiercely defended *A'king* land and heroic battles were supposed to have been fought in its defence, in a pre-matrilineal past. These mythical battles are part of *Garo* folklore. Then, the commercial transfer of land was unheard of since land was abundant. Even then, it was and still is the prerogative of the *Nokma* to allocate certain tracts of land every year for *jhum* (shifting) cultivation to the members of the clan and other villagers in the *A'king*. They never acquired permanent ownership and the *A'king* land continued to belong to the clan. Today, however, the recently created Autonomous District Councils are empowered to issue land ownership documents. Members in the *A'king* are beginning to own plots of land permanently through this process. This has resulted in the alienation of the land from the clan because most of those who clamor for permanent titles are from the other clans residing in the *A'king* (Sangma, 2008).

#### **4.2 Privatization of communal land**

The privatization of land started after the British entered these hills and began to create an infrastructure. The British entered into hundred-year leases with some prominent clans and paid them annual revenue. Wherever viable, they made outright purchases. This introduced the concept of land valuation. Once the *Khasis* realized the value of land there was a scramble to buy and sell land. *Ri Raid* land was converted by subterfuge into *Ri-Kynti* or individually owned land. Among the early *Khasis*, free land not owned by anyone could be claimed by any clan through the process of *skut* which means claiming as much land as a person could lay his eyes on, taking the hills and rivers as natural boundaries. Hence, clans who became the early residents of Shillong appropriated almost the entire 10 sq km spanning the city (Mukhim, 2000)

In theory, tribal practices do not permit the conversion of community land into private. In practice plots allocated for residential purposes or economic activities get converted over generations into the private property of families or individuals that make permanent improvements on them. Families enjoy the right to sell off the improvement made on the land. They can also transfer to another owner the land on which improvements have been made. The control over communal land is with the village councils or tribal political bodies. However, many such bodies and their leaders are weak and do not exercise their authority as they should. Because of this, the rate of conversion of community land into

private ownership has been rapid. The internal arrangements and practices seem to weaken the control of the community over the community lands. The process of privatization of community lands is also due to national policies. The Constitutional Provisions provide special protection to the tribes of the region but other laws and policies introduced through various political bodies such as the state governments or autonomous district councils have taken away the rights of the tribes to administer themselves according to their tradition. In *Jaintia* Hills, the lands are under complete control of modern political bodies. These bodies have the authority to allocate plots of land and issue temporary or permanent land certificates to individuals. In such areas, traditional political bodies are irrelevant when it comes to controlling over land. The autonomous district council of *Jaintia* hills is the new de jure landowners (Nongkynrih, 2008).

The issue of legitimacy is another causal factor accelerating the process of privatization. This is more so in the context of the state of Meghalaya where two types of legitimacy exist side by side, namely, the traditional political bodies and the modern bureaucratic organizations of the nation-state and the Autonomous District Councils. The existence of two types of legitimate political bodies has made matters more complex and conflicting in decision-making over communal lands (Nongkynrih, 2008).

There are cases where traditional political institutions are issuing the No Objection Certificate (NOC) to parties or individuals to register the land with the government. The main reason that has led to their issuing NOC is the legal framework introduced by the nation-state. For the tribals of the state to avail of some development programs such as housing loans, cash crop plantation, and investment in trade and services, the applicants have to fulfill the criterion of having land registration documents as proof of ownership. This has encouraged more people to register land as private property (Nongkynrih, 2005). The Department of Land Revenue at the office of the Deputy Commissioner of the District registers such lands without verifying whether it is a community or private land (Nongkynrih, 2008).

It was informed in a study conducted in two villages of Kynrang and Lumdiengangan of East Khasi Hills that some rich persons of the village have acquired large plots of community land that was originally given to them by the village council since they are

permanent residents of the village. The rich families have more resources than others and have no problem in utilizing the land. Informants feared that such practices would gradually convert the village communal land into privately owned plots (Jamir and Nongkynrih, 2002).

In Sohbar village, there was a loss of a portion of the communal land in the 1960s when the village leaders of that period allowed many residents to register the allocated plots with the land revenue department of the Government of Assam. This led to the privatization of communal lands. Allocated plots that have been registered with the government cannot revert to the village. There was resentment in the village. That anger led to the change of village leadership, and the registering of land with the government was stopped. On the issue of giving lands to organizations from outside the village, the leaders said that government departments and organizations such as the Rama Krishna Mission, the Presbyterian Mission, and the Catholic Mission got plots of community residential plots by buying them from the permanent residents of the village who had registered their land with the State in the 1960s (Nongkynrih, 2008).

The report, Understanding Land Ownership and Management Systems of the *Khasi*, *Jainità* and *Garo* Societies of Meghalaya (Jamir and Nongkynrih, 2002) highlights a few examples of the process of privatization of *A'khing* land in *Garo Hills*. According to this report, the factors of cash or market economy have impacted on *A'khing* land and the institution of Nokmaship. In Resubelpara and Bekonggre villages, where the land area is large and the pressure of a growing population and external market forces is high, the *Nokma* faces greater problems. In a real sense, many *Nokmas* have never physically verified the *A'khing* lands and hence the administration over large areas has been difficult. Customary practices are not enforced in the true sense of the term. The *A'khing Nokma* interviewed at that time stated that there are more than 700 encroachers or violators within his *A'khing* but he could not do anything as if he goes to the District Council, they might grant the encroachers a land *patta*, and the community would lose that portion of the land. The report also narrated the situation in the village of Mindikgre of South *Garo Hills*. Residents of the village are taking over the *A'khing* land and developing permanent orchards and other plantations without seeking the *Nokma's* permission. When asked about such actions, residents argued that the *Nokma* is not pro-development and that they have no other option except for taking control of the matter. Some of the residents have already

obtained *pattas* for their land (Jamir and Nongkynrih, 2002: 37-38). The report also observed that with the support of government schemes even more people are shifting from the traditional seasonal jhum cultivation to permanent and private plantations or wet rice cultivation. This has resulted in the fragmentation and privatization of *A'khing* lands. This is seen more in the West *Garo* Hills district where tea and coffee plantations have become large-scale commercial ventures (*ibid*). It seems that in those cases where the *jhumi*as have adopted permanent cultivation the right of ownership is gradually shifting from the clan to the individual. The district council is issuing *pattas* to such individuals (Nongkynrih, 2008).

#### **4.3 Land Alienation**

Land alienation was the major reason for unrest among the *Garos* during the British colonial period. Sonaram Sangma, who is now considered as the hero among the *Garo*, championed the cause of the *Garos* in many court cases to regain alienated land during the colonial period. However, despite his zealous efforts, *Garos* lost their land to the British and through encroachment by neighboring kings. Two such cases are Habraghat and Nazarana and the restoration of reserved forests and the alienated lands the *Garos* continued to lose in the subsequent years to the complete colonisation of the British. It continued after the withdrawal of the British rule. When the Indian peninsula was partitioned into the Republic of India and East and West Pakistan, the entire land of the *Garos* was annexed either to the state of Assam in India in the northern and western parts of East Pakistan which was in the south. Even those parts, which were under the Nazarana and Lakheraj system of administration during the British occupation, were brought under the state of Assam. The *Garo* inhabitants became a minority hill tribe under the control of other tribes or by non-tribal communities (Sangma, 2008).

Abrogation of the right to rule their people with their customary laws as in the past resulted in dispensing of land disputes which became a lengthy and cumbersome process. Land disputes for *A'king* land between *Maharis* and even among the *Maharis* increased and many clans had to forego the use of their *A'king* land for cultivation in this way. Perhaps with the indomitable spirit of the tribe and due to disgruntlement stemming from the misrule of the Assam government, the *Garos* began to agitate against the state government. The agitation got intensified with the Official Languages Act 1960 that declared Assamese the sole official

language for the whole state. Other languages could be used only in regions where they were spoken (Sangma, 2008). Williamson A. Sangma led the agitation. In the beginning, he started as a social worker after returning from World War II, but later on, he became the undisputed political leader, spearheading the fight for an autonomous State for the *Garos* and other hill people through the All Party Hill Leaders' Conference. The federal unit of Meghalaya for *Khasi*, *Jaintia*, and *Garo* people was carved out of Assam in 1972 (Sangma, 2008: 211). A hasty and ad hoc demarcation of the borders was accepted and in the process, many *A'king* villages of the *Garos* in the north of *Garo Hills District* were left in the state of Assam. This was the second incident of major land alienation caused by political demarcations (Nongkynrih, 2008).

With the coming of the new state of Meghalaya, the problem of land alienation continued unabated for the *Garos*. The autonomous district council (DAC), which was introduced to protect the tribal lands while under Assam, continued to prevail even after Meghalaya came into being. Although its objective was to prevent the alienation of the land of the ethnic people, the DAC became just the lower rung political set up to accommodate more political aspirants who more often than not, used it as a political springboard to reach to state-level political rung. As a result, through many loopholes in the functioning of the council, permanent titles or ownership rights have been issued to settlers, especially those who came unnoticed during the floods, taking advantage of the fact that low lying areas bordering Assam and Bangladesh in the southwest of the state are hardly occupied by ethnic people. This has changed the demographic set-up in these areas (Sangma, 2008).

#### **4.4 Government developmental projects**

Communal land practices of the tribes are being undermined also by development projects. More and more communal lands are being acquired and occupied by state governments or central governments. The setting up of district or civil subdivisions or military stations has led to large-scale loss of communal lands. Development projects have long-term impacts on communal lands because of the gradual change of ownership (Nongkynrih, 2008).

In a study done by Navlani (2017) in Mowtari Mowlang village, some vulnerable families reportedly became landless and homeless due to the inability to establish or prove their ownership over the land. According to the study, it was found that Mrs. Thyrit Lyngdoh is a resident of Mowland Mowtari village in 1983, with her late husband Mr. Lyngdoh, who had registered their plot of land in the village with the State Revenue Department to raise collateral for a loan from a cooperative society. Mrs. Thyrit Lyngdoh claims that the loan was paid down and family ownership regained over this *kynti* land. Under the New Shillong Township Project, the survey by the administration team showed the family Lyngdoh's land as a part of a bigger land plot owned by one Mrs. Kharkongor, resident of the Laitamukhrah *Dorbar* area in Shillong, miles away from the village. The land was subsequently bought by the state administration from Mrs. Kharkongor. By the time this fieldwork was done, Mrs. Lyngdoh and her family (a young unmarried daughter, a son, and his wife with a little child) had been declared squatters and their houses bulldozed twice by the MUDA (Meghalaya Urban Development Authority).

According to the Constitution of India, the tribes of the Northeast are provided special safeguards concerning their customary beliefs and practices. By imposing the modern type of statistical terminologies, the nation-state fails in its constitutional duty to protect the traditional classification of lands. There is a wide gap between the Constitutional safeguards and how they are carried out in practice (Nongkynrih, 2008).

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