



Navigating Legal Pluralism: The Dual Justice Systems and Conflicts Between the Traditional and Modern Courts in Meghalaya's Khasi Hills

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Abstract

*In the mist-laden hills of Meghalaya, the Khasi Hills embody a complex legal landscape where traditional justice systems coexist with modern legal frameworks. Each village hosts its own court, deeply rooted in the customs and traditions of the Khasi people, serving as a primary mechanism for conflict resolution and social governance. These traditional courts emphasize community participation, restorative justice, and the preservation of social harmony. Recognized under the Indian Constitution and empowered by the Khasi Hills Autonomous District Council (KHADC), they operate within the framework of the Sixth Schedule, allowing adjudication based on customary principles while highlighting the necessity of protecting tribal rights. Despite this legal recognition, tribal communities continue to face numerous challenges that necessitate enhanced legal protection. Historical precedents, such as *Kulendra Kumar Dey v. Union Territory of Arunachal Pradesh*¹ and *Rami Reddy v. State of A.P.*², emphasize the need for safeguarding tribals from social injustices and economic exploitation, reflected in constitutional provisions like Articles 15(4) and 46. The Khasi Hills illustrate the dichotomy between traditional justice, characterized by its community-oriented approach, and modern legal systems focused on codified laws and procedural justice. This paper examines the interplay between these distinct legal paradigms, with a focus on the disparities in their application between rural and urban contexts, thereby raising critical issues of access to justice, cultural integrity, and legal uniformity. Ultimately, the study seeks to address the conflicts and confusions arising from this coexistence, aiming to foster a more coherent and effective justice system within the Khasi Hills.*

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¹ 1983 (1) GLR 23.

² 1988 Supp SCC 626.

1. Introduction

In the mist-laden emerald hills of Meghalaya, where tradition and modernity dance in a delicate balance, the Khasi legal framework presents a unique conundrum. Here, each village boasts its own court, deeply rooted in centuries-old customs and traditions of the Khasi people. These traditional courts serve as the primary mechanism for conflict resolution and social governance,³ emphasizing community participation, restorative justice, and the preservation of social harmony.⁴ Recognized under the Indian Constitution and empowered by the Khasi Hills Autonomous District Council (KHADC), these courts operate under the umbrella of the Sixth Schedule, which allows them to adjudicate disputes according to customary principles, ostensibly guided by the Administration of Justice Rules, 1953.

However, despite this legal framework, tribals remain a vulnerable section of society, facing numerous challenges. This necessitates the legislation of special laws to safeguard their interests and rights. The backwardness of tribal areas was a principal reason for establishing special machinery to administer these areas, as held in *Kulendra Kumar Dey v. Union Territory of Arunachal Pradesh*.⁵ In *Rami Reddy v. State of A.P*.⁶, it was further emphasized that tribals must not only be protected in their economic and educational interests but also be shielded from social injustice and exploitation. The framers of the Indian Constitution, with their foresight, recognised the importance of safeguarding tribal rights, as reflected in provisions like Article 15(4)⁷

³ Animesh Roy, “Discord in Matrilineality: Insight into Khasi Society in Meghalaya” 4(2) Contemporary Voice of Dalit (2018), available at: <https://doi.org/10.1177/2393861718767238>.

⁴ Kavita Navlani Soreide, “Tribal Representation and Local Land Governance in India: A Case Study from the Khasi Hills of Meghalaya” (*Working Paper*), available at: <https://www.researchgate.net/publication/320584583> (last visited on June 5, 2025).

⁵ (1983) 1 Gau. LR 23.

⁶ 1988 Supp SCC 626.

⁷ The Constitution of India, art. 15(4). [Article 15(4) of the Indian Constitution provides that nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.]

and Article 46⁸, which protect the interests of tribals, especially concerning land. Despite the richness of their customs and traditions, which form the foundation of their governance, the necessity for a separate political and administrative structure for tribal areas was acknowledged by incorporating the Sixth Schedule into the Constitution, thus securing a balance between their traditional laws and the broader constitutional framework.⁹

Currently, the Khasi Hills region in Meghalaya offers a distinctive blend of traditional justice systems and modern legal frameworks, each operating within distinct socio-cultural and legal frameworks.¹⁰ Traditional justice systems, deeply rooted in the customs and traditions of the Khasi people, have long served as the primary mechanism for resolving conflicts and maintaining social governance.¹¹ These systems emphasize community participation, restorative justice, and the preservation of social harmony. On the other hand, the modern legal framework, established through formal legislative processes, aims to deliver justice through codified laws, standardized procedures, and state institutions, emphasizing uniformity, individual rights, and procedural justice.¹² Despite the coexistence of these systems, a significant gap remains in understanding how they integrate and interact, particularly in rural versus urban contexts within the Khasi Hills. Rural areas tend to rely more heavily on traditional justice mechanisms, while urban areas are more likely to engage with the formal legal system. This dichotomy raises several critical issues, including access to Justice, cultural integrity, and Legal Uniformity. Hence, this paper examines the

⁸ The Constitution of India, art. 46. [Article 46 of the Indian Constitution provides for the promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes, and other weaker sections. According to this article, the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.]

⁹ Vijay Hasaria, *Sixth Schedule to the Constitution 11* (Universal Publishing Co., New Delhi, 2nd edn., 2010).

¹⁰ E. Jyrwa, *Administration of Justice in the Khasi Hills 20-22* (Akansha Publication House, New Delhi, 1st edn., 2006).

¹¹ *Supra* note 3.

¹² *Supra* note 4.

intricate interplay of legal systems in the Khasi Hills, exploring the conflicts and confusions that arise from the co-existence of traditional village courts and modern legal institutions, and seeks to understand how these challenges can be addressed to foster a more coherent and effective justice system.

2. The Advent of Modernity and Foundations of Legal Pluralism in the Khasi Hills of Meghalaya

The traditional political structure in Meghalaya consists of a three-tier system. At the base are the Shnong (Villages), followed by the Raid (Elaka) at the regional or provincial level, and at the top are the Syiem (Chief). Each of these tiers operates through a Dorbar (Council) composed of the individuals traditionally selected based on their maturity and their roles in performing sacerdotal and religious functions.¹³

Essentially, at the local level, the Khasi traditional political structure was organized around the Kur (clan),¹⁴ which is the first social institution of the Khasi people, the entity around which all other institutions revolve.¹⁵ Family disputes are initially taken to the Dorbar Kur for resolution. This Dorbar consists of elders from the family (ka iing), a branch of the clan (ka Kpoh), or the entire clan (ka Kur), depending on whether the disagreement is between family members or members of different branches. These assemblies are referred to as Dorbar ling, Dorbar Kpoh, and Dorbar Kur, respectively. The effectiveness of these Dorbars lies in the fear that any party refusing to accept an amicable settlement may face isolation from the family. Taking a family dispute directly to the village Dorbar is considered a “sang” (Sin) against the party, although dissatisfied members still

¹³ Rajesh Dev, A.K. Baruah and Manorama Sharma, “Liberal Democracy, Traditional Institutions and Politics of Representation: Analysing the Nongkynrih Shnong Dorbar” (*North Eastern Institute of Development Studies (NEIDS), Shillong*), available at

https://assets.publishing.service.gov.uk/media/57a08c7f40f0b652dd001384/dev_baruah_sharma.pdf (last visited on June 5, 2025).

¹⁴ Helen Giri, *The Khasis Under British Rule (1824–1947)* 10–14 (Akashi Book Depot, Shillong, 1990).

¹⁵ Helen Giri, “Social Institution among the Khasi with Special Reference to Kingship, Marriage, Family and Divorce”, in S.K. Chattopadhyaya (ed.), *Tribal Institution of Meghalaya* (Spectrum Publication, Guwahati, 1985).

have the option to escalate the matter to the Village Dorbar.¹⁶ Thus, charged with the responsibility of upholding peace among clan members, the Dorbar Kur (Clan Council) played a pivotal role in Khasi governance.

However, over the centuries, these clan-based councils evolved into the state council (Ka Dorbar Hima), with authority vested in the offices of Syiem, Lyngdoh, Sirdar, and Wahadadar. These traditional office bearers carried out legislative, executive, judicial, and religious functions, all in accordance with local traditions, customary practices, and usage.¹⁷

The traditional institutions adjudicating justice in the Khasi Hills never had a written code of laws. Instead, the people themselves created the rules and procedures. According to these rules, the local Chief is not allowed to impose his own views and opinions. As the Presiding Officer of the Court, the Chief is only empowered to question and interrogate the cases brought before him, relying entirely on the people's opinions and comments for decision-making. For instance, during a case, the Chief might ask the people's opinion by saying, "Don't you think so?" or "Would it be proper?" Thus, the Chief's role as a Presiding Officer or Judge is to guide the discussion and encourage the council to reach a consensus.¹⁸

However, the arrival of the Britishers in India witnessed interference in the traditional governance of the Himas. What began as an agreement to allow British troops passage to the plains of Assam from Sylhet, ultimately resulted in the subjugation of the Khasi States/Himas.¹⁹

The British dominion over the Khasi Principalities was established around 1834, with the British making new political arrangements for the administration of the Khasi Hills. The region came under the

¹⁶ N.K. Dev, *Tradition and Modernity in Khasi Society* 53 (Spectrum Publications, 2004).

¹⁷ L.S.Gassah, "Introduction: Revisiting Traditional and Constitutional Institutions in the Khasi-Jaintia Hills: Interface of Continuity and Change", in Charles Reuben Lyngdoh (ed.), *Revisiting Traditional Institutions in the Khasi-Jaintia Hills* (Cambridge Scholars Publishing, Newcastle upon Tyne, 2016).

¹⁸ Kymphan Singh, "Syiem and Durbars in the Khasi Polity", in S.K. Chattopadhyaya (ed.), *Tribal Institution of Meghalaya* 18 (Spectrum Publications, Guwahati & Delhi, 2017).

¹⁹ *Ibid*

political supervision of the Agent to the Governor General, leading to the creation a distinct political agency headquartered at Cherrapunjee. This led to the consolidation of indirect rule in the Khasi Hills, solidified by a subsequent alliance between the two, and subsequently maintained through official documents, such as sanads and parwanas.²⁰

The British adopted the European colonising strategy of indirect rule. Brian Z. Tamanaha, in *Legal Pluralism Across the Global South: Colonial Origins and Contemporary Consequences*, demonstrates how the colonizers used the same basic templates across their colonies. They consolidated their power, established courts of law, upheld local laws on personal matters as customary laws, and used local intermediaries to maintain their dominion and indirectly rule over the colonized population.²¹

The British curtailed the power of the Khasi Chiefs in adjudication of Justice and restricted their authority to only petty criminal offences and civil cases, reserving the trial of serious offences like homicide, accidental death, and others for the Deputy Commissioner. The Chiefs were now also prohibited from trying any offence involving non-tribals.²²

The colonial policy of indirect rule promoted the gradual penetration of state laws into the non-state customary laws of the Khasi, thereby laying the foundation of legal pluralism. The segregation of crimes into heinous and non-heinous offences led to the creation of two parallel legal systems: state laws to try heinous crimes and non-state laws, or customary laws, to try non-heinous offences.²³

²⁰ Charles Reuben Lyngdoh, “The Khasi States and the British: Political Development on the Eve of Independence”, in Charles Reuben Lyngdoh (ed.), *Revisiting Traditional Institutions in the Khasi-Jaintia Hills 7* (Cambridge Scholars Publishing, Newcastle upon Tyne, 2016).

²¹ B.Z. Tamanaha, “Legal Pluralism Across the Global South: Colonial Origins and Contemporary Consequences” (*Working Paper*), available at: <https://ssrn.com/abstract=3866691> (last visited on June 5, 2025).

²² *Ibid.*

²³ N.K. Das, “Customary Law, State Law and Non-State Organisation: The Predicaments of Legal Pluralism and Growing Conflict in Nagaland”, in Melvil Pereira, Bitopi Dutta and Binita Kakati (eds.), *Legal Pluralism and Indian Democracy: Tribal Conflict Resolution Systems in Northeast India* (Routledge, 2018).

We postulate that the arrival of the British and their dominion over the Khasis was the advent of modernity in the Khasi Hills. The Khasis are an oral culture, with their folklore, stories, myths, customary practices, and traditions passed over to the younger generations orally from their elders. The adjudication of disputes in the Khasi Hills was based on the Khasi Principles of justice,²⁴ which were never codified. Through the introduction of colonial laws and adjudication systems, modernity was introduced in the Khasi Hills region. Modern, as the alien concepts of the rule of law, codified legal system, procedural justice, and individual rights were introduced to this region during British rule. This advent of modernity planted the seeds of legal pluralism in these emerald hills, which were rooted strongly when the Indian state, on gaining independence, adopted the Sixth Schedule to the Constitution.

3. The Tribal Question, Sixth Schedule and Modernisation of the Khasi Legal System

At the dawn of India's independence, the drafters of the Indian Constitution were left with the herculean task of unifying a vastly diverse and distinct population as one nation.²⁵ They aspired to unite clusters of communities, including the tribals, into one nation-state that, despite its diversities, shared an all-pervasive sense of cultural unity and symbols. The hill tribes were part of the Indian civilisation and, therefore, not alien.

The task of nation-building, however, was made arduous by the issue of tribalism. The Indian Tribes, then comprising 7.5% of the Indian Population, consisted of numerous tribal divisions, practised distinct religions, and spoke hundreds of languages.²⁶ The tribes of Assam had historically been excluded from the rest of India and were exempt from the jurisdiction of laws applicable to the rest of India under the Scheduled Districts Act, 1874.²⁷ Now the drafters of the Indian

²⁴ E. Jyrwa, *Administration of Justice in the Khasi Hills* 20–22 (Akansha Publication House, New Delhi, 1st edn., 2006).

²⁵ David Stuligross, "Autonomous Councils in Northeast India: Theory and Practice" 24(4) *Alternatives: Global, Local, Political* 497–525 (1999), available at: <http://www.jstor.org/stable/40644976> (last visited on June 5, 2025).

²⁶ *Supra* note 25.

²⁷ The Scheduled Districts Act, 1874.

Constitution were called upon to decide on the political set-up and administration of the formerly excluded areas and their relationship with the rest of the nation.

The tribal question, ongoing since the pre-independence era, was a tussle between the two vastly opposing political strategies—integration and assimilation of tribal areas with the rest of India, and the demand for the isolation of the tribes in continuity with the British exclusionist policy.²⁸

On one side of the debate were the anthropologists, who postulated the tribal question as mainly as an administrative issue and opined that the introduction of electoral democracy in the tribal areas would harm them and thereby, supported the continuation of the isolationist policy and the creation of the excluded and partially excluded area under the 1874 Act, that kept the tribal areas out of the purview of the elected assemblies and councils.²⁹ Such a policy was vehemently rejected by the nationalists, who considered such segregation of Indian territory to be another facet of the British divide-and-rule policy. They favoured a legislative solution and believed that the arbitrary designation of the tribal areas as excluded and partially excluded was the reason for the backwardness of these regions. They believed that the optimal way to uplift these communities was to grant them adequate representation in India's legislative bodies.³⁰

These opposing views are reflected in the debates of the Constituent Assembly. They echo these conflicting desires – policy of forceful assimilation, support for gradual integration of tribals with the Indian mainland, in contrast to the demand for greater autonomy for the Hill Tribes through creation of autonomous district councils.

During Constituent Assembly Debates, Mr. Rohini Kumar Choudhury criticized the creation of the Sixth Schedule and Autonomous Districts, arguing that the drafters lacked a deep understanding of tribal affairs and warned that such separation might alienate tribal areas

²⁸ Roluah Puia, “The ‘Tribal Question’ in India: Problem of Inclusion”, in *Nationalism in the Vernacular: State, Tribes, and Politics of Peace in Northeast India* 30–47 (Cambridge University Press, Cambridge, 2023).

²⁹ Saagar Tewari, “Framing the Fifth Schedule: Tribal Agency and the Making of the Indian Constitution (1937–1950)” 56 *Modern Asian Studies* 1556–1594 (2022), Available at <https://doi.org/10.1017/S0026749X21000779>.

³⁰ *Ibid.*

more with Burma or Tibet rather than India.³¹ Similarly, Mr. Kuladhar Chaliha and R.K. Chowdhury claimed the draft for the creation of the Sixth Schedule to the Indian Constitution reflected “British Mind” and “British Method,” perpetuating separatist tendencies.³² Mr. Lakshminarayan Sahu expressed concerns that autonomous councils could lead to tribal isolation, missing the chance for integration with the broader Indian community.³³

The others privileged the need to respect the unique cultural identity of the tribal people. They supported integration that preserved cultural distinctiveness. Such integration was envisioned through the Sixth Schedule, which allowed the hill tribes of Assam self-governance while keeping them connected with the state and central governments. Rev. J.J. M. Nichols Roy, considered a pioneer behind the Sixth Schedule, advocated for recognizing and respecting tribal culture, asserting that the Schedule allowed self-governance under the Governor of Assam’s supervision, promoting unity without forced assimilation. Gopinath Bordoloi, Chairman of the Advisory Sub-Committee, supported this by highlighting the historical exclusion of tribal areas under British rule and the necessity of self-governance as promised to tribal people during the war. It received the support of Mr. Jaipal Singh, who contended that the new setup provided an opportunity for a fresh start, accommodating tribal wishes and fostering unity. Ultimately, despite the opposition, the Constituent Assembly accepted the recommendations of the Bordoloi Committee, leading to the adoption of the Sixth Schedule.³⁴

Vijay Hasaria opines that, the drafters of the Indian Constitution were sensitive to the need for protection of tribal rights and their interest in their lands. They recognised the rich customs, traditions and traditional governance systems. They foresaw the need for a distinct political and administrative setup for the hill tribal areas of Assam.³⁵

N.K. Das, however, argues that the Indian state endorsed the colonial legacy of indirect rule by continuing the decentralised governance of

³¹ Constituent Assembly Debates on [date if mentioned in text], available at: <http://parliamentofindia.nic.in/ls/debates/vol9pm.htm> (last visited on April 10, 2024).

³² *Id*

³³ *Id.*

³⁴ *Id.*

³⁵ *Supra* note 9.

these tribal areas through specific Constitutional provisions.³⁶ This indirect rule was envisioned through the establishment of Autonomous District Councils (ADCs).

With the incorporation of the Sixth Schedule to the Indian Constitution and its adoption on 26th January 1950, modernity was institutionalised and entrenched. While the ADCs were constitutionally empowered to govern their jurisdiction in accordance with the traditions and customary practices, their establishment wrought shifts in the traditional legal system of the Khasi people.

Prof. Gassah posits that such a change in the Khasi society had not occurred even during the colonial era. The Constitution of India empowered the ADCs to supervise and control the traditional chiefs and institutions, thereby shaving down the role and responsibility of the traditional chiefs and their institutions³⁷. The passage of the Constitutionality of the United Khasi- Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 further diminished the powers of the traditional chiefs.³⁸ As the Act authorises the ADC to not only appoint the traditional chiefs and the headmen, but also empowers them to remove any incumbent who, in their opinion, has violated the terms and conditions of his office. This has caused a tense relationship between the two institutions.³⁹

Modernity in Khasi Hills has resulted in the establishment of a dual legal system, one state law system and other of non-state laws, that parallelly exist, at times in conflict with each other and other times as a confluence of traditional and modern. This legal pluralism has resulted in a new era for the Khasi polity, marked by jurisdictional overlaps, inconsistent legal principles and outcomes, and inequitable access to adjudication systems.

³⁶ *Supra* note 23.

³⁷ *Supra* note 17.

³⁸ *Id.*

³⁹ Dhiraj Borkotoky, "The Constitutional-Traditional Interface: The Autonomous District Council and Traditional Institutions in the Khasi Hills", in *Revisiting Traditional Institutions in the Khasi-Jaintia Hills*, available at: <https://www.cambridgescholars.com/resources/pdfs/978-1-4438-9969-7-sample.pdf> (last visited on June 5, 2025).

4. Legal Pluralism in Khasi Hills

Legal Pluralism is the existence of more than one legal system in a single social field.⁴⁰ It is a situation where all the laws obeyed and enforced in a social field are not state laws and have not been legislated by a singular set of state institutions⁴¹ and yet they enjoy state recognition. Citizens in these pluralistic societies have the option to take recourse to any of the many existing legal systems.⁴²

Ralf Michaels characterises three elements to suppose the existence of legal pluralism in a particular society. Firstly, that not all laws existing in that society ought to be state laws, and that some non-state laws should enjoy the same normative position as state laws. Secondly, there needs to be a plurality of laws, and lastly, these parallel legal systems should interact with each other, and the antecedent jurisdictional overlaps and conflicts are of a nature that cannot be resolved by taking refuge in hierarchical orderings or delimitation stratagems.⁴³

In the Khasi Hills of Meghalaya, there exists such plurality of laws, with non-state laws enjoying high social legitimacy and recognition as customary laws. Here, each village has its own customs and practices, recognised as customary law through the Sixth Schedule and the Administration of Justice Act. These Village Courts, hailed as the cornerstone of Khasi grassroots democracy, adjudicate disputes based on their own rules and regulations, which are deeply embedded in local customs, traditions, and practices. This unique system of justice operates under the umbrella of the Khasi Hills Autonomous

⁴⁰ Merry Sally Engle, “Legal Pluralism” 22(5) *Law & Society Review* 869–896 (1988), available at: <https://doi.org/10.2307/3053638>.

⁴¹ J. Griffith, “What is Legal Pluralism?” 18 *The Journal of Legal Pluralism and Unofficial Law* (1986).

⁴² Melvil Pereira, Bitopi Dutta and Binita Kakati, “Introduction”, in Melvil Pereira, Bitopi Dutta and Binita Kakati (eds.), *Legal Pluralism and Indian Democracy: Tribal Conflict Resolution Systems in Northeast India* (Routledge, 2018).

⁴³ R. Michaels, “Law and Recognition – Towards a Relational Concept of Law”, in N. Roughan and A. Halpin (eds.), *In Pursuit of Pluralist Jurisprudence* 90–115 (Cambridge University Press, 2017).

District Council, where multiple customary laws and adjudication systems co-exist.⁴⁴

Proponents of Legal Pluralism posit that the state doesn't enjoy a monopoly in law-making⁴⁵ and the existence of non-state law is an invariable truth. This claim has held true in the Khasi Hills, where the non-state laws, recognized as customary norms, and the KHADC legislated Administration of Justice Rules, 1953 (hereafter, 1953 rules) are not always harmonious. Each village court follows its own set of rules and customs, often diverging from the prescribed 1953 Rules. This divergence leads to significant legal conflicts and raises critical questions on access to justice, uniformity in the application of legal principles, and cultural integrity. As Ralf Michaels points out, these conflicts due to parallel legal systems cannot be easily resolved by taking refuge in hierarchical orderings or delimitation stratagems. The resolution of conflicts becomes even more difficult as the underlying principles of these parallel systems are at odds. The modern legal framework, established through formal legislative processes, aims to deliver justice through codified laws, standardized procedures, and state institutions, emphasizing uniformity, individual rights, and procedural justice. In contrast, the customary norms followed in these traditional village courts privilege community participation, preservation of social harmony, and restorative justice.⁴⁶

When a dispute is brought to the traditional bodies for adjudication, the Village Courts apply the Khasi Principles of Justice and decide the matter in accordance with customary norms.⁴⁷ While these practices are constitutionally recognised under the Sixth Schedule of the Indian Constitution, they often conflict with the constitutional guarantees of equality, liberty, and due process under Part III.⁴⁸ For instance, in the case of *Khasi Hills Autonomous District Council vs State of*

⁴⁴ S. Bareh, *The Constitution and Customary Institutions in Meghalaya* 112 (Oxford University Press, New Delhi, 2010).

⁴⁵ B.Z. Tamanaha, "The Folly of the 'Social Scientific' Concept of Legal Pluralism" 20(2) *Journal of Law and Society* (1993).

⁴⁶ *Supra* note 4.

⁴⁷ Jangsan Sangma, *Law of Administration of Justice in Meghalaya* (1st edn., 1973).

⁴⁸ The Constitution of India, Sixth Schedule, paras. 3 and 4.

*Meghalaya*⁴⁹, the High Court of Meghalaya struck down the orders of eviction issued by the Village Dorbar and headmen against villagers who had married a non-tribals. The court in this case held that such actions lacked statutory backing and violated the fundamental rights of the citizen under Articles 14 and 21 of the Indian Constitution. This case succinctly demonstrates how the co-existence of traditional and modern is not always harmonious, and while the Sixth Schedule endeavours preserve, protect, and promote customary law, these customary laws sometimes collide or are even direct contradiction with the constitutional guarantees of equality, liberty, and due process.

Another area of contention is land laws. Land holds a central place in Khasi identity, with customs preventing its alienation to non-tribals. The United Khasi-Jaintia Hills District (Transfer of Land) Act, 1953, enacted by the District Council, prohibited the transfer of tribal land to non-tribals without prior sanction. This law sought to protect tribal communities from exploitation by outsiders. After Meghalaya attained statehood in 1972, the new state Government enacted several statutes regulating land transactions, the most significant being the Meghalaya Transfer of Land (Regulation) Act, 1971. Unlike the 1953 Act, which was enacted by the District Council under the Sixth Schedule, the 1971 Act represented a direct exercise of state legislative power. It effectively amended the framework of landholding by transferring regulatory authority from customary institutions and District Councils to the state government. Nevertheless, the underlying objective of both Acts remained the same—safeguarding tribal land and preserving the cultural, social, and economic integrity of indigenous communities.⁵⁰ The distinction between the 1953 and 1971 frameworks became clearer in judicial treatment. In *District Council of United Khasi & Jaintia Hills v. Sitimon Sawian*,⁵¹ the Gauhati High Court (Shillong Bench) examined the competence of the District Council under the Sixth Schedule and held that the Council lacked legislative power over land transfers. The Supreme Court affirmed this view in 1971, striking down Section 3 of the 1953 Act as void, on the

⁴⁹ WP(C) No. 163 of 2016.

⁵⁰ The Meghalaya Transfer of Land (Regulation) Act, 1971 (Act No. 12 of 1972) (Meghalaya).

⁵¹ AIR 1971 SC 2184.

ground that land transfer fell outside the legislative competence of District Councils under the Sixth Schedule.⁵² This case illustrates how attempts by District Councils to codify and enforce customary principles through legislation frequently face constitutional scrutiny, resulting in jurisdictional clashes between traditional authority and the Indian constitutional framework.

Similarly, the case of *Shri. Smek Marboh & Ors. v. The Khasi Hills Autonomous District Council & Ors.*⁵³ further illustrates the recurring tension between traditional institutions of governance under Khasi customary law and the formal legal system introduced through colonial and post-colonial legislation. The dispute centred on the status of certain villages under the Khyrim Syiemship, specifically Lumkseh, Mawkduk, Mawkynring, Kyr deng, Lumdiengngan, and Wahmyntait. The appellants, all headmen of these villages, claimed that their villages were “full-fledged” entities independent of the Sordar of Raid Tynring and that they enjoyed ownership rights over their lands in accordance with the Ri-Raid system of land tenure. The respondent, however, asserted continuing authority over these villages, including entitlement to compensation for lands acquired for the Shillong Bye-Pass project.

This case highlights the interplay between the dual legal systems of Meghalaya. On the one hand, customary institutions such as the Syiem and Sordar exercise traditional authority over land and administration, deriving legitimacy from long-standing practices and community recognition. On the other hand, the modern legal system, represented here by the Land Acquisition Act, 1894, and the jurisdiction of the High Court, imposes statutory processes for determining questions of title, compensation, and jurisdiction. The High Court dismissed the writ petition, reasoning that determining village status and customary land rights involved complex factual questions that could not be adjudicated summarily under Article 226 of the Constitution. Instead, such matters were better suited for a Reference Court under Section 30 of the Land Acquisition Act, which could assess documentary and oral evidence to decide competing claims to compensation. This case underscores the inherent contradiction in the values that guide the traditional and modern legal

⁵² AIR 1971 SC 1580.

⁵³ LQ/MegHC/2014/81 (Meghalaya High Court).

systems of the Khasi Hills. Customary law in the Khasi Hills emphasizes community control and the authority of traditional leaders, whereas the modern legal system prioritises documentary proof, procedural regularity, and statutory remedies. The High Court's inability to recognise customary practices directly, instead deferring to statutory processes, highlights the larger structural tension between the Sixth Schedule's recognition of tribal autonomy and the overarching supremacy of the formal Indian legal system.

Thus, the *Sitimon Sawian* and *Smek Marboh* cases highlight the practical limitations of the Sixth Schedule and the tension between traditional and modern legal systems, as well as the inherent contradictions in their core values and principles. These cases highlight that although customary law enjoys social legitimacy and constitutional acknowledgement, its enforcement ultimately depends upon the willingness of modern courts to accommodate oral traditions, community practices, and indigenous understandings of ownership, but only when they fit within the neat parochial boundaries of the Western-based legislative frameworks.

5. Challenges of Harmonizing Legal Pluralism

While it is possible to recognise the existence of multiple legal systems in Meghalaya, each with its own source of authority, determining whether legal pluralism has positive or negative effects is a distinct and separate matter.⁵⁴ The co-existence of traditional and modern courts in Meghalaya is a clear example of Legal pluralism in practice. While both systems have their advantages, conflicts between them are inevitable, particularly when customary practices clash with constitutional values. The Meghalaya High Court has acknowledged that the lack of clear codification or standardization of customary laws often leads to contradictions and arbitrary decisions by the traditional authorities in the state.⁵⁵

Courts have consistently upheld the need for traditional institutions to adapt to modern legal norms, particularly in matters relating to

⁵⁴ S. Larcom, "Problematic Legal Pluralism: Causes and Some Potential 'Cures'" (2014), available at: <https://core.ac.uk/download/pdf/42338201.pdf> (last visited on June 5, 2025).

⁵⁵ Khasi Hills Autonomous District Council v. State of Meghalaya, WA No. 2 of 2015 (Judgment dated 13 Jan 2016).

fundamental rights.⁵⁶ One of the key challenges in harmonizing legal pluralism is resolving jurisdiction overlaps between traditional and modern courts. The sixth schedule empowers tribal communities to handle disputes according to their customary practices. However, when such disputes involve matters governed by constitutional law, conflict arises regarding which legal system has the authority. For instance, in the case of *T. Cajee vs U Jormanik Siem*⁵⁷, the Supreme Court clarified that the powers of the traditional authorities under the Sixth Schedule are not absolute. While the Constitution grants tribal councils the autonomy to govern their internal affairs, the actions of these traditional bodies are still subject to constitutional review.

Another challenge of harmonizing legal pluralism is ensuring procedural fairness and accountability in traditional courts. Customary courts often guided by Dorbar rules, focus on reconciliation and community harmony rather than strict adherence to modern legal norms.⁵⁸ While this approach is effective in local contexts, it can raise issues concerning due process and transparency. Ensuring that these courts uphold fairness and accountability while maintaining their culture relevance is a significant concern.

The Meghalaya High Court in the case of *State of Meghalaya vs Dorbar Kur Nongkhlaw (2019)* emphasized the need for greater transparency and fairness in the functioning of traditional courts. The court ruled that while the traditional institutions have the right to resolve disputes according to local customs and traditions, their decisions must align with principles of natural justice and constitutional rights. The case highlights the need to strike a balance between preserving local customs and traditions and upholding Constitutional protections for tribal citizens of India.⁵⁹

The news reports in local dailies highlight a growing division within the Khasi community over the conflict between traditional authorities and constitutional institutions. The suspension of two Syiems has sparked a debate, particularly in the case of the Syiem of Myllem. The District Council acted by suspending the Syiem and appointing an acting

⁵⁶ *Stanislaus v. State of Madhya Pradesh*, AIR 1977 SC 908.

⁵⁷ AIR 1961 SC 276.

⁵⁸ Interview with the Local Dorbar, April 26, 2025.

⁵⁹ *State of Meghalaya v. Raja Dorbar Kur Nongkhlaw*, CRP No. 12 of 2023 (Shillong, judgment dated 24 Oct. 2025).

Syiem in his place. However, when the acting Syiem attempted to assume his role, he was blocked by some myntries (ministers) and supporters of the deposed Syiem. They argued that, according to tradition, the Syiem must be elected by his Dorbar (traditional council), and therefore, the acting Syiem appointed by the District Council lacked legitimacy. This incident reflects the underlying tensions between traditional Khasi governance structures and modern constitutional authority.⁶⁰

The Meghalaya High Court in the case of *Khasi Hills Autonomous District Council v. the State of Meghalaya*⁶¹ has directed the state government to introduce a suitable and comprehensive law to resolve a dispute regarding the powers of Rangbah Shnong (village headman) due to inconsistencies in customary laws, practices, and legal provisions enacted by autonomous district councils across the state.⁶² In this case, the petitioners who married a non-tribal were evicted from their homes by the Village Dorbar of Pamrakmai and were denied residential certificates, and the dorbar justified its actions on the grounds of customary law. The court held that the Rangbah Shnong and the Village councils could not act in a manner that violated the fundamental and legal rights of the residents. It emphasized that customary practices cannot override constitutional rights.⁶³

The above case highlights the conflict between customary law and constitutional rights in Meghalaya. While the Sixth Schedule of the Indian Constitution grants autonomy to tribal areas, this judgment underscored the necessity for traditional systems to operate within the broader framework of constitutional guarantees. This ruling paved the way for legislative reform to settle the ambiguity surrounding the role of headmen and their authority over the community. Further, this ruling also reaffirmed that while customary law and practices are

⁶⁰ “Supreme Court Upholds Syiem of Myllem’s Suspension,” *The Shillong Times*, 11 Aug. 2002; “Hima Myllem fails to take decision on Supreme Court order,” *The Shillong Times*, 17 Aug. 2002.

⁶¹ (2016) 01 MEG CK 0003.

⁶² “No Respite for Headmen, Justice Sen’s Order Remains in Force,” *The Shillong Times*, available at: <https://theshillongtimes.com/2016/01/14/no-respite-for-headmen-justice-sens-order-remains-in-force/> (last visited on June 5, 2025).

⁶³ *Supra* note 55.

important, they cannot supersede constitutional protections, particularly fundamental rights such as equality and personal liberty.⁶⁴

6. Conclusion

The legal landscape of the Khasi Hills in Meghalaya offers a compelling case study in navigating the delicate balance between preserving cultural identity and adhering to constitutional governance. The co-existence of traditional and modern legal systems, enabled by the Sixth Schedule of the Indian Constitution, underscores the vision of a pluralistic framework that seeks to honour the unique heritage of tribal communities while integrating them into the broader national framework. However, the practical realities of this coexistence reveal significant challenges, necessitating an urgent re-evaluation of how these systems can operate harmoniously.

The traditional justice systems, deeply rooted in Khasi customs and practices, emphasize community-centric principles such as restorative justice and social harmony. These systems thrive on the cultural and social legitimacy conferred by the people and provide a sense of ownership and relevance to local populations. At the same time, the modern legal framework, with its codified laws, procedural justice, and emphasis on individual rights, offers standardized mechanisms to address disputes, ensuring alignment with constitutional values and fundamental rights. While these systems can complement one another, their intersection often leads to conflicts and contradictions, particularly when jurisdictional overlaps occur, or when customary practices clash with constitutional guarantees of equality and personal liberty.

One of the most significant challenges is addressing the inherent jurisdictional ambiguities between traditional and modern institutions. In *T. Cajee vs Jormanik Syiem*⁶⁵, it was highlighted that while the Sixth Schedule empowers tribal communities to govern themselves, their decisions remain subject to constitutional review. This dual oversight has often resulted in tensions, with traditional authorities feeling undermined and constitutional institutions perceiving customary practices as inconsistent with the principles of

⁶⁴ Ibid.

⁶⁵ *Supra* note 57.

natural justice. These tensions manifest in real-world disputes, such as suspending traditional leaders like the Syiem, revealing a deeper struggle for legitimacy and authority between the traditional councils and modern governance structures. Another critical issue is ensuring procedural fairness and transparency in traditional courts. While these courts often prioritize reconciliation and social harmony, their informal procedure can sometimes overlook principles of natural justice, resulting in arbitrary or inconsistent outcomes. The Meghalaya High Court, in multiple judgments, has emphasized the need for traditional institutions to operate within the bounds of fairness, accountability, and constitutional rights, signalling the importance of aligning customary practices with broader legal norms and constitutional principles.

The plurality of laws in the Khasi Hills of Meghalaya, while necessary for the protection of tribal identity and cultural preservation, often creates conflicts around jurisdiction, legal principles, and social legitimacy. From the above examples, it is evident that legal pluralism ought to be carefully harmonised to eliminate any contradictions between the two parallel adjudication systems. This requires carefully designed legislative reforms that ensure the preservation of the customary laws of tribals and that they do not contravene their Constitutional rights as Indian citizens. This can be achieved through constructive dialogues among all relevant stakeholders, including civil society, traditional chiefs, civil servants, Autonomous District Councils, and the state government. These reforms need to be in line with the international norms and protections guaranteed to the indigenous peoples, like the United Nations Declaration on the Rights of Indigenous Peoples (2007)⁶⁶, International Labour Organization Convention 169 concerning Indigenous and Tribal Peoples,⁶⁷ and Article 27 of the International Covenant on Civil and Political Rights⁶⁸. Moreover, this challenge is not unique to Meghalaya. For instance, the Nagaland Bar Association has opposed the Rules for the

⁶⁶ UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295 (13 Sept. 2007).

⁶⁷ International Labour Organization, *Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries*, 27 June 1989, 1650 U.N.T.S. 383.

⁶⁸ International Covenant on Civil and Political Rights, art. 27, 16 Dec. 1966, 999 U.N.T.S. 171.

Administration of Justice and Police in Nagaland (Fifth Amendment), Rules 2025. The rules propose the formation of a formal three-tiered structure for “Customary Courts,” consisting of Village Courts, Subordinate District Customary Courts, and District Customary Courts. The Bar Association argues that the proposed structures outlined in the Amendment are not indigenous to Naga culture and have no basis in the customary adjudicatory processes and systems used by the State’s various tribes.⁶⁹ Beyond India, such legal pluralism can be found in Bolivia. The Bolivian Constitution is applauded for being inclusive and plurinational and for having strong protections for indigenous cultural rights. The 2009 Bolivian Constitution formally recognises the indigenous adjudication mechanism as part of its pluralistic legal order and grants indigenous peoples the authority to resolve their disputes according to their customs.⁷⁰ In addition, the 2010 Law of Jurisdictional Demarcation⁷¹ establishes clear boundaries on what can be adjudicated by state legal systems and indigenous legal systems, and reserves serious offences like homicide or corruption to be tried by the state courts, and permits the customary courts to adjudicate disputes involving community issues. The challenges of legal pluralism in the Khasi Hills can be better resolved by making a comparative study of these pluralistic legal systems and learning from their experiences and limitations. Thus, we conclude that despite these current challenges, the dual legal systems in the Khasi Hills offer an opportunity for a unique synthesis of tradition and modernity. The richness of Khasi customs and the flexibility of their oral traditions provide a foundation for

⁶⁹ “Nagaland Bar Association Opposes Customary Courts Amendment,” *EASTMOJO*, available at: <https://eastmojo.com/nagaland/2025/06/10/nagaland-bar-opposes-customary-courts-amendment> (last visited on 10 June 2025).

⁷⁰ María-Paula Barrantes-Reynolds, *Legal Pluralism in the Constitution of Bolivia of 2009: Between Multiculturalism and Plurinationalism* (2016) (Ph.D. thesis, University of Leicester), available at: <https://hdl.handle.net/2381/37599>. (last visited on February 10, 2025).

⁷¹ Ley de Deslinde Jurisdiccional [Law of Jurisdictional Demarcation], Ley No. 073, 29 Dec. 2010, *Gaceta Oficial del Estado Plurinacional de Bolivia* No. 0209 (30 Dec. 2010) (Bol.), available at: <https://www.lexivox.org/norms/BO-L-N73.html>. (last visited on February 10, 2025).

evolving these practices to meet contemporary legal standards. Legislative reforms can play a pivotal role in clarifying jurisdictional boundaries, codifying essential aspects of customary laws, and establishing mechanisms to ensure that. Traditional courts operate transparently and equitably. Such measures would reduce conflicts and strengthen the legitimacy of traditional institutions in the eyes of their communities and the broader legal framework.

Ultimately, the path forward requires a collaborative approach that respects the cultural distinctiveness of the Khasi people while upholding constitutional values. Traditional and modern institutions must engage in dialogue to create a cohesive legal framework prioritizing justice, equity, and accountability. By fostering such integration, the Khasi Hills can serve as a model for managing legal pluralism in other tribal and culturally diverse regions, demonstrating how tradition and modernity can coexist to enrich the justice system and empower communities. This synthesis of legal systems will preserve the Khasi people's unique identity and contribute to a more inclusive and effective governance structure that respects diversity while ensuring fairness and the rule of law for all.