

Judicial Approach to Naga Customary Laws

Ms. Loino K Sumi

Student, Law, Amity Law School

Abstract

This paper analyses the development, constitutional recognition and contemporaneous significance of Naga customary laws in the Indian Legal system. This includes examining the historical development of these overturn laws and customs of their maintenance by tribal authorities and village councils. This research also shows the specific protection under Article 371 A applied to the Naga customs, land and social activity at of the nagas. It also deals with the human rights violation stemming from patriarchal customs and lack of procedural protections is key to its discussions. By studying influential naga tribes and their customs a study embodies the many softness of the customary administration .

In the final analysis it promotes a framework that combines cultural identity which goes well with the ideals of equality, justice and dignity of the constitution.

Chapter 1: Introduction

Nagaland became India's sixteenth state in 1963 after the Naga People's Convention brought the government to heel around their 16-Point Memorandum back in 1960, which separated the state from Assam. The Indian government took these demands seriously enough to insert them into the Constitution with the Thirteenth Amendment, promulgated in 1962 and incorporating Article 371A. And so it was that what originally began as a search for local political and cultural recognition came to have real, lasting constitutional sustenance. The fact that Article 371A so differentiates Nagaland. Parliament, unlike most other states, can't simply pass whatever law it wants for Nagaland — unless Nagaland's own Legislative Assembly agrees along the way. That's a pretty strong instrument for the state, allowing people influence over their system of politics, land, customs, culture and identity. In some sense, Article 371A just works as a safety net atop all the usual constitutional protections. Actually, the best recipe for Nagaland is to mix political autonomy with cultural autonomy. But figuring out how to integrate this model into India's larger legal framework is difficult. The tricky part comes when Naga customary law intersects with the Union's statutory laws and constitutional requirements. It's not a theoretical-only question — it's a real-world problem requiring practical, practical effort that respects both the state's sovereignty and its people. Keep, one thing in mind: Courts can't interfere with the political decisions that Nagaland makes by itself, but everything that the state does, it derives from Article 371A and the Constitution. That means our courts can step in where those powers are exercised. This paper examines the actions of courts towards this latest legal situation in Naga society, considering how some of the new legal issues emerged as times changed and other social and legal questions arose.

Nagaland being a state located in the northeastern region of India is popularly referred to as the 'land of festivals' where Hornbill festivals are one of the most famous festivals of the land. The state of Nagaland is a 16,579 sq km area with a population of 1,988,636 according to the 2001 census, as per very recent 2011 census data, the Nagaland population was 1,978,502. There are 17 officially recognized tribes, each of which has its own customs and practices. These tribes are also influenced by their own traditions,

cultures, language and way of living. Customary laws are generally unwritten, which are rules and practices beliefs that have been established and accepted by communities for generations. Naga customary laws are additionally unwritten laws in this area and have been continued since time immemorial and handed from one generation to the next. When any person has suffered 'wrong' or has done any wrong according to the custom or belief of a particular community, the community prefers to seek solution of which would come from the culture or common beliefs of the people with respect to customary laws and practice which are interpreted in the sense by either the chief or elders in community¹. These written customary laws which have been ineffective according to Article 371 A of the Indian constitution, 1950. Although the Indian constitution provides for fundamental rights and duties it recognizes the distinct culture and tradition of the tribal groups and protects the traditions these communities hold in each of these people. Article 371 A of the Indian constitution provides various provisions with regard to Nagaland allowing the state to enforce their laws on a variety of matters including Naga customary laws.²

Article 371 A: The eastern Nagaland peoples organisation (ENPO), which is the highest organ representing some of the Naga tribes in six eastern districts of Nagaland. These groupings consist of eight Naga tribes namely Konyak, Khiamniungan, Chang, Sangtam, Tikhir, Phom, Sumi and Yimkhiong who constitute more than 30% of the Naga population and have 20 out of 60 seats in the legislative assemblies. Due to lack of development and neglect in these tribal areas these organisations have been for a long time calling for a separate state now instead of splitting the state the centre proposed FNTA (Frontier Nagaland Territorial Authority) for financial assessment and decision making while preserving the geographical integrity of Nagaland.

Chapter 2: Historical development of Naga customary laws

Tribal Institutes and village council participation in Naga customary laws. There are several definitions of customs according to many philosophers or scholars, etc. But different scholars may have their own definition for customs. J.W. Salmond defined customs as "customs are the embodiment of those principles which have commended themselves to the national conscience as principles of truth, justice, and public utility."³ The political and social life of the Nagas has been controlled by customs and usages from the beginning in all cultural and societal history. The village councils and the tribal institutions are what had to do with the governing organization known as hoho. Every adult male member of the village was responsible for both the administrative and defense functions of the village. As a boy, a man would study in Morung learning customs, folklore, folk songs, politics, and everything else involved in being a brave warrior. The highest body, the village council, was responsible for negotiating and settling disputes with the members of this council together with the administration of public affairs and their implementation through policies. Personal issues such as divorce, marriage, adoption, inheritance, and property claims among family members were settled by the elders of the clan, while an appeal from the judgment of the heads of the clan brought before the village council, it being final and binding on all. The compensation included animals such as pigs, cows, buffalo, mithun, etc., which were offered as compensation to both the village council and the victim. In severe instances such as murder or theft, the criminal was removed

¹ Cain, Tes Newton, The incorporation of customary law & principle into sentencing decision in the South Pacific region, in Anita Jowitt and Dr Tes Newton Cain (eds.), *Passage of Change: Law, Society and Governance in the Pacific* (The Australian National University Press, 2010), p. 166.

² Article 371 A. Indian constitution amended by constitution (13th amendment) Act 1962.

³ J.W.salmond, *jurisprudence, or the theory of law* (stevens and Haynes, London, 1902), 137

from the village after taking all his property away. As compensation, the criminal's confiscated property was divided between family members of the victim. Naga society did not punish anyone with capital punishment for any sort of crimes here. Removing the belongings of the criminal/murderer was the ultimate punishment for committing the crimes. When the British occupied the Naga hills in 1881, modifications were made to the Nagas' customary and administrative system. Under British rule, there were two additional institutions of government and society to the area: 1) Dobhasi (DB) and Gaonbura (GB). For the administration of the British government and to communicate with the Nagas, the British appointed Dobhasis⁴ to assist in language interpretation, and this led to the establishment of the Dobhasis customary court. Dobhasis comes from Hindi and Assamese language meaning "Dho Basha." Dho means two and basha means language. So, Dobhasis is the name given to an officer who speaks two languages, that's the language of the Naga tribe, and the language of the British. The British also had gaonburas in the villages as an instrument of British administration, which resulted in the rural police being created as a statutory body under the regulations of the administration of justice and police establishment in Naga hills district 1937. GBs were allocated to capture the culprits and to punish accordingly, depending on the village practices. For civil matters, the village councils and the GBs had unlimited jurisdiction over the same persons, but in criminal matters, they could not attempt a case for a grievous crime because, as the legal authority for criminal offenses, only the British had that power, and trials and punishment were determined according to the customs. However, the development of Naga customary law had significant significance for tribal institutions and village councils. Most of these laws are unwritten and can be categorized into customary based on long customs. It isn't made by any legislative body. It is a natural development of life. Tribal institutions preserve these customs and promote their persistence. They are the collective will of the tribe, which legitimizes these traditions. The legal bodies for customary laws tend to be village councils. It is they who form and define these laws. It does this by village discussions and decisions. While these laws remain not written down, they become laws over time. The village council updates these customs as societal context evolves. It can give these laws flexibility. The power of these councils is widely accepted. This is because they are about the community and its common set of values. For justice itself, village councils also play their part, but under customary law. They engage in mediation to resolve land, family, and petty disputes, rather than adversarial proceedings. This way, it is an easy and timely system of justice. The disputes will be settled in a short period of time, and people do not need to seek justice from other sources like courts of law. Tribal councils, meanwhile, help create customary law. Issues concerning different villages or tribes that they cover. They make sure that different tribes act as though the ones responsible for customs are united. This aids in establishing a structure of governance. Such institutions keep the interests of the tribe at other levels. In addition, they protect the continuity of customary law even in the current period when other laws are being developed or amended. Statutory recognition of the customs and practices of the Naga ancestors followed in the administration of village and settlement of disputes by the British during its tenure in office were continued after Indian independence. As per Article 371A of the Constitution of India, Naga customary laws and procedure, religious and social practices were incorporated into the constitution of India in 1963, thus making the Naga customary law (in theory) constitutional. The administrative governance and administration of justice by the Naga underwent a complex development in the years of British imperialism, and ultimately

⁴ The term "Dobhasis" originates from Hindi and Assamese language meaning "Dho Basha." The word "dho" means two and the 'basha' means language. Therefore, Dobhasis is the name given to an officer who knows two languages i.e. the naga tribe and the language of the Britishers.

the Constitution of India itself. And therefore, the history of the Nagas, their administration and adjudication of disputes is their own. In the context of this work, it might be argued that it was necessary to begin by the granting of Dewany of Bengal to Sir Robert Clive in 1765, which provided for the East India Company "superintendence of all laws and the collection of all revenues in the Presidency of Bengal." That gave authorities the control of North-East, and thus the territories around the North-East area came under the governance of the people at Fort William. Thus the present State of Nagaland itself came under the greed of the British. If nothing else, the evidence and reports of British officials indicate that the Naga territories were annexed to help guard the British subjects of the land boundaries between the Naga and British forces following the Nagas' raids. In addition to losing sovereignty of the Nagas, the British occupation of the Nagas led to the introduction of written laws to the land, which led on one hand to the present-day state of governance and administration of justice and, on the other hand, to the political state of affairs in the State for the Nagas.

Chapter 3: Conflict between the Naga customary laws and the fundamental rights

The clash of the naga customary law and the essential rights. -special provisions in respect of state of Nagaland-

1. Notwithstanding anything in the Constitution,-a. No legislative act of Parliament in respect of
 1. Religious or social practices of the Nagas
 2. Naga customary law and procedure
 3. Administration of civil and criminal justice involving decisions based on naga customary law,
 4. Land and its resources tenure shall apply to the State of Nagaland, unless the Legislature of Nagaland acquires the same by resolution.”

Intersection of Naga customary laws and the Fundamental Rights enshrined in Constitution of India is very complex and intricate legal discourse, the source for which is the contradiction between cultural sovereignty and constitutional sovereignty. Centuries in age, Naga customary laws govern the social structure of marriage, inheritance, landholding activities and dispute resolution. Naga tribes are not only legally bound to these customs, they are part of who they are and who they are going to be. The constitutional recognition of such customs under Article 371A itself is a conscious gesture to keep indigenous traditions in the fold and a respect for Indian society's pluralism. Nonetheless, this protectionist apparatus paradoxically complicates the confrontation of such traditions with the Fundamental Rights enshrined in Part III of the Constitution. At the center of the issue is a question of whether or not practices of cultural significance, however profound and deeply rooted in our culture, can be maintained when they are violated from the ground up in the pursuit of universal rights such as equality, liberty, and dignity. Basic rights, especially those of persons below. Justice, non-discrimination and personal freedom – these principles are encapsulated in Articles 14, 15 and 21 of the Bill of Rights. Instead, many Naga customs, particularly as applied to gender functions and inheritance, tend to mirror patriarchal habits that may appear incompatible with rights enshrined in the constitution. In many Naga tribes, for example, women are forbidden from inheriting ancestral property or participating in village councils, which gives rise to concerns about gender equality and equal protection under the law. This dichotomy poses a serious dilemma for the judiciary, which needs to tread upon very precarious territory between honouring cultural diversity and maintaining constitutional morality. Constitutional morality, which emerged from judicial interpretation, holds that all laws and practices must be consistent with the fundamental principles of the

Constitution. However, in the Naga customary law context, courts have historically been wary and deferential, in line with the contextual and historical conditions of the society and society of the region. The judiciary has typically refrained from meddling with customary practices if that poses a clear and flagrant violation of Fundamental Rights. In addition, the principle also introduces complexity to this argument — namely, that of legal pluralism. The country's legal system supports multiple sources of law, including the personal laws and customary practices, thus acknowledging the variation of its population. Particularly, Naga customary law operates as a parallel legal system in such remote and rural settings, where village councils and tribal institutions are a vital component to government in the form of power and mediation. These institutions are more accessible to, and culturally salient to, the local population than formal courts. But their decisions themselves are not often subject to the same procedural safeguards and standards as those enforced by constitutional law, potentially leading to inconsistencies and violations of rights. Another aspect of this tension is the issue of consent and community versus the right of individuals. Naga customary laws tend to be community-oriented and more about collective harmony and social cohesion; individual autonomy is a minor consideration. Although this technique is good for maintaining social order, this approach may kill off dissenting voices and marginalize those in a vulnerable community. In this context, social pressure or normal sanctions can sometimes erode an individual liberty right to freedom of expression. In addition, as the society changes, the customary practices must continue to be evaluated as per modern values and human rights principles. An important reason why this situation is arising is, an escalating need for reform and inclusion in customary law as education, globalization and rights consciousness of the Naga population on the rise. Civil society groups, including women's groups, have led this movement in advocating for changes that reconcile customs with constitutional standards. This internal drive to reform is important because it represents the change in practices and values that is occurring within the community, as opposed to forces from outside of the community. In facing this tension, a compromise must be found, a resolution that neither negates the importance of customary acts nor jeopardizes the fundamental right. Discussion among chiefs, law experts and policymakers can lead to harmonizing the structure of customary customs and constitutional legislated norms towards a form of legal order. Codification of certain components of customary law, which require modification without excluding discriminatory provisions, may also be a remedy. Moreover, sensitization and legal awareness programs, where these two groups would have different views on how to respect cultural values from law, may strengthen the individual to demand their rights. In short, the clash between Naga customary laws and Fundamental Rights is not merely a legal matter, but one of an inherent struggle between tradition and modernization in a heterogeneous society like ours. It demands a carefully controlled mix of respect for cultural identity and loyalty to constitutional values. The way forward will involve a legal system which is inclusive of everyone, which values justice, equality, and dignity, respecting the rich culture of the Naga people

Chapter 4: Customary law and human rights concern

Relationship between Naga customary law and modern human rights

This chapter will focus on the relationship between the Naga customary law and the modern human rights principles, the Naga laws are covered under Article 371A of the Indian constitution though there are some customs that, when seen from the perspective of equality, justice, and fundamental rights, might be a cause for concern. The confluence of Naga customary law with modern human rights is a complex and dynamic nexus in the Indian legal system that mirrors the tension between cultural freedom and constitutional

authority writ large. Traditional Naga customs based upon traditional custom and community culture dictate the social, economic, and political life of many Naga tribes, such as land ownership, inheritance, dispute resolution, and society behaviors. These customs are not legal procedures, but a representation of the identity, values and the historical continuity of the Naga. Acceding this uniqueness, the Indian Constitution provides special protection in Article 371A of the Indian Constitution which grants the authority that no Act of Parliament dealing with religious or social customs, customary legal conventions, or land ownership applies to Nagaland except with the approval of its Legislative Assembly. This constitutional protection highlights India's desire to protect traditional indigenous ways of life while respecting its diversity. But this acknowledgment also raises a complex question when these customary practices are considered as part of modern human rights principles, particularly with respect to those enshrined in Part III of the Constitution of India, which ensures equality, liberty, dignity, and justice to all citizens. Both systems—customary law and constitutional law—function at the intersections of harmony and conflict in a way that requires careful and nuanced consideration to minimize the danger to cultural identity and fundamental rights. Naga customary law is largely unwritten and passed down orally for generations, thus, flexible as well as ambiguous in its application. Traditional forms of government administer it primarily through village councils and tribal bodies that derive legitimacy from community acceptance over formal statutory authority. They are key to the function of society, dispute resolution and cultural maintenance. Their processes focus on repair, restoration and communal harmony instead of adversarial litigation, which is central to the strict legal structure. This approach, which places the community at its heart, is viewed as being easier, faster and culturally fitting, particularly in rural and tribal areas. But no codification and no standardized process can create disparities and possible abuse of power. Unlike formal courts, customary institutions might not always follow principles of natural justice, including the right to a fair hearing, an impartial decision making and appeal remedies. It raises fundamental questions about accountability and fairness, especially when individual rights are implicated. The tension between Naga custom and modern human rights is most stark in regions of conflict between tradition and constitutional obligations. Gender equality is one of the biggest topics of concern. Many Naga tribes also adhere to the notion that 'customary' laws limit women's rights when it comes to (among others) inheritance, possession of property and membership in decision-making councils. Women are normally excluded from owning ancestral land in which the land is primarily owned by men, often through male lineages and where their place in the village councils is either restricted or absent from councils of the villages. Such practices are entrenched in classical ideas of social structure and gender roles, but are completely at odds with principles of equality and non-discrimination represented against the backdrop of gender relations contained in Articles 14 and 15 of the Constitution. The suppression of women from political and economic participation violates their rights and restricts the fullness of the development of the society. There has been opposition from tribal groups to introducing the reservation of women in local government organizations in Nagaland, claiming that this will impinge customary practices covered under Article 371A. This contention also demonstrates the difficulty of reconciling the long-standing and entrenched cultural traditions with the new human rights standards. Another point of contradiction is the dispensation of justice under the customary mechanisms. In village councils the dispute settlements rate are speedy and good, but the procedures are not necessarily congruent to the contemporary legal process. There is typically unsystematic application of rules and decisions may be affected by social structures or community demands. Lacking legal representation and the use of official evidentiary rules can also be a disservice to certain people, especially members of the underprivileged communities. And the notion of

the common interests can override individual interests - and this makes outcomes that go against the rules of justice and fairness. In criminal cases, customary practices might involve punishments that are not officially established, or standardized in any single case. The situation brings out the issue of arbitrary and proportionate penalties. However—this type of procedure may violate the right to life and freedom in accordance with Article 21 which requires any deprivation must be just, fair and reasonable. The Indian judiciary has played an important role in resolving these conflicts, but its approach has been one of caution and restraint. Courts generally see cultural diversity as a significant issue and respect the autonomy that Naga customary law, under Article 371A, enjoys. It's also been stressed — and that no custom can subvert the core structure of the Constitution or trample on the basic rights. It has been in such circumstances that the principle of constitutional morality has been proposed to provide a framework, whereby all laws—including custom—are supposed to conform to the fundamental values of the Constitution. Court intervention should be confined to cases of direct infringement of fundamental rights and when possible judges are called upon to balance tradition with modernity. This perspective draws on an understanding that too forced the changes on it may be met with backlash and may delegitimize the legal system. Along with judicial intervention there is now an increasing conception of the need for internal reform within Naga society. Change is also being catalyzed by civil society organizations, women's organizations, educated youth who push for greater inclusion and respect for human rights. Through these movements they are trying to recontextualize customary laws in line with constitutional principles while allowing them to remain rooted in local customs. For example, there have been efforts to get women to play a more significant role in the local governance function while raising awareness of gender equality. These are necessary, as there are reforms that only emerge from community-based, locally based reforms that are likely to have traction that will stand the test of time, particularly among those with a desire to create reforms from within the locality. You can hardly underestimate how much impact education and awareness have in this process by which tradition blends with modernity and a better informed/modern society is created. The notion of legal pluralism becomes important in comprehending the nexus between the law of Nagaland and contemporary human rights. Legal pluralism is the existence of multiple legal systems within a single state system. In India it is apparent not just in Nagaland, but in other parts of the country with different cultural and religious traditions. While legal pluralism grants diversity and flexibility it also makes common rules and rules difficult to enforce since it is difficult to achieve universal justice and equality as a consistent principle. Indian Constitution tries to mediate these contrary interests by acknowledging customary laws while respecting fundamental rights. But this equilibrium is not static and needs to be constantly worked on to counter the changing social conditions through negotiation (and change in reaction to change in social reality). One path forward could be towards harmonization of customary law in line with human rights provisions. We need to ensure the coherence of customary law as well as human rights principles. That is, they do not mean destruction of traditional systems by eliminating outdated customs and laws, instead they should be gradually reformed and assimilated with it, or modified for the time being done over time. Codification of specific aspects of customary law is likely to reduce ambiguity and promote uniformity in its execution, as part of a general approach to establishing law and common procedure. Indeed, there will be tension when it comes to codifying the law so it should not be taken lightly – either an impasse in dynamic practice or enforced rigidity on organically flexible organisations. So, participatory process involving community leaders, legal actors, and civil society, are required to realize the effective and culturally sensitive reforms. Dialogue between indigenous institutions and formal legal systems also may encourage mutual understanding and collaboration. Another

critical aspect of harmonization for this purpose is the inclusion of human rights principles into practices as customary via reinterpretation as opposed to replacement. For instance, traditional ethics of fairness, respect, and community well-being can be reflected and harmonized within modern notions of equality and dignity. Focusing more on the principles than the particular practices enables a pathway bridge between the two systems. Not only do these efforts keep a cultural integrity, they encourage a more equitable and inclusive society. Naga customary law and its contemporary counterpart are dynamic and multifaceted in that they tend to complement one another and conflict one another; Naga customary law and modern human rights. Although both of these systems are critical in safeguarding the cultural identity and independence of the Naga people, modern human rights are to provide for justice, equality, and dignity to all individuals. The solution lies in how one and the other can coexist without conflicting with traditional values or constitutional rights. This will take a careful balancing act of judicial interpretation, community involvement and a progressive response based on reform. While society continues evolving the legal system itself must move towards both this and the changes brought on by contemporary events—but one remains rooted in its original pillars. Ultimately the goal should be both to establish a legal system with regard to cultural sensitivity and constitutional integrity, that every person's rights must be protected and their dignity do not erode on a national scale the rich cultural heritage of the Naga people.

Chapter 5:

In the state of Nagaland, there are 17 officially recognised tribes out of which the Sema, Ao, Ilotha and Angami tribe are known to be the most common and major tribes of the state.

The Sema tribe

The Sema tribe speak a common dialect known as the sumi dialect. The sumi community follow a chieftain system of governance. The chief of the village was the absolute authority. The Sema region was originally divided into two ranges namely: 1. Aphuyami and 2. Azoumi. These ranges are presently situated in Zunheboto district. Both ranges consisted of a small number of villages, presently the Sema community residing in Zunheboto district are called "eastern sumi" and the sumi community residing in Dimapur district are called "western sumi."

In the earlier days and even now the Sumi villages are ruled by the chief called 'Akukao.'

Akukao was the one and only chief that exercised the absolute authority over the village proceeding as well as the administration. The eldest son of the chief succeeds after his father.

After planning the establishment of the new village the chieftain while surveying the land, positions an egg in the upright position and then lights the fire with 'amikula' it was believed that if the smoke of the fire go up right, it indicates a good omen and thus indicates that it was a blessing and sign from the Almighty, even in the case, in search of water resources, an egg was kept in the similar manner, placed upon the water source and the village site is cleared for housing and cultivation. After that the village boundaries were demarcated by river, hills etc and then it lead to the establishment of a new village, before these rituals or clearing of the village site was taken place, it was mandatory to seek the permission of the chief of the village and only then these rituals were taken place and also the establishment of the new village was to be informed to the neighbouring villages and to the chiefs of the neighbouring villages. The chief's role was one of the most important in the sumi community as he was known to be head of the tribe, he was followed by a group of people who were loyal to him. In the Sema custom a chief's son can establish a new village with the permission of his father. "They include the friends of the chieftain in his

fathers village, the dependants of his father also known as “müghemi”⁵ and also thieves, orphans, runaways, or broken men that he can generally pickup”⁶. Being the chief of the village, meant that he would reserve the plot the land that he fancied for himself but at the same time he gave a part of it the müghemi(orphan) to cultivate every year. The chief also enjoyed free labour from his village and müghemi to work for his field. However, the chief’s right to order and demand the müghemi to work in his field varied from village to village. The power and the capacity of a Sema chief to command free labour from his subject was explained as:

“Every grown male of the community over which he was chief, including his own brothers were expected to do a certain amount, usually from four to sixteen days in the year, for one half of which, in some village, the chief must give a nominal payment of a little salt and a small piece of meat to each of the workers. In some villages where the chief had great personal ascendancy the amount of work which has to be done by his villagers is very much more than sixteen days.”

In some villages like the philimi and rotomi villages, the right to free labour from the whole village did not exist and in some of the Dayang valleys, the labour on the chiefs is not done either because he is not regarded as entitled to it, or because he has not the strength of character to enforce it.

The chief settled all type of dispute arising in the village with the assistance of chochomi. Chochomi was described as a per-eminent man who serves as a sort of herald, whom the chief sends to run errands in the other villages and acts as a deputy to manage the affairs of his own when the chief is elsewhere or otherwise employed. Chochomi was appointed by the chief of the village, not bases on the clan representation but on the caliber of the person. In regard to settlement of disputes, the elders of the village were asked to attend , because the opinion of the old men very much necessary to come to a conclusion, or to provide a solution. As such a young chief would require the opinion of the the elders and the chochomi, the decision that were taken in such sitting was final and binding to all. In the Sema culture, different type of punishment were given for the different type of offence committed:

Breach of custom

In case where a person commits a breach of custom that affects the whole community, such as breaking a taboo, the delinquent would be fined, such kind of fine may be taken in cash or in kind but it was usually in the form of a live pig, however in the case where the breach of customs were very serious such as hurting the other person, or is an habitual offender, the property of the guilty was confiscated and given to the aggrieved party or sometimes it was ostracised from the village.

Modesty of women

In case of the violation the modesty of the women, the Sema customs defines the modesty of wome, namely:

1. Removal of clothes of a women by force
2. Manhandling the breast of a women
3. Engaging in forcible sexual act

⁵“Müghemi” in Sema dialect means an ‘orphan.’ When a chief adopts an orphan and the orphan pays an homage to the chief calling him father, the orphan becomes ‘anukeshiü (meaning the orphan becomes the son of the chief)

⁶ J.H. Hutton, the Sema nagas (directorate of art and culture, govt. Of Nagaland, Nagaland, 3rd edition, 2007)

In cases like this the property of the offender or offenders were confiscated. In cases where the offender does not have a property, he becomes a family of the victim, he thus has to work for the victims family and serve them for the rest of his life.

Rape

For the offence of rape, the rapist was expelled from the village for 7 years or his property was confiscated or heavy fine was imposed on him, whatever was decided by the chief.

Sexual promiscuity

Ostracism after being publicly shamed was the punishment in case of sexual promiscuity (shupu-salha' in Sema dialect). Both the man and the woman (woman's hair is chopped as well) would be stripped naked and they would be taken around the village and then ostracized from the village in case of the commitment of sexual promiscuity.

Killing of an unborn child

The punishment for killing an unborn child or the baby killed during pregnancy was considered a serious crime. Heavy fine were imposed and it was considered as an insult to the village. If the baby was mauled by mistake or killed by mistake, time limits were set and expelled from the village. However, if both the families amicably resolved the issue, the matter ends there.

Lying or Breach of Promise

The Sema custom did not impose any penal punishment as such upon a person who broke a promise or fail to fulfill his words or make a false declaration but he was branded as a liar or cheater. A person branded a liar or cheater loses the trust of the people and his words were not trusted by the people in the future. A person who by his lies creates misunderstanding or disharmony in the society was fined heavily and awarded penal punishment in accordance with the custom or as the village authority so decides.

The Ao tribe

There was no unity among the Ao villages and so no universal law existed among them. Unlike other tribes, the Ao tribe did not speak common dialect. The Ao dialect maybe broadly categorised into three groups of dialects, such as - (i) Mongsen, (ii) Chungli and (iii) Changki dialects.⁷ All the villages of the Ao region spoke either Chungli or Mongsen dialect. Changki village was the lone village which spoke changki dialect. Thus, the Aos were also broadly known to each other as "Mongsener" and "Chunglir" clans. Most villages were divided in two khels : "Mongsen" and "Chungli" khels, thus, the people of the respective khel spoke and followed their own dialect and custom. However, there were some villages which consisted of only a single dialect speaking people. As for instance, the Mongsenyimti and Chungtia villages consists none but Chungli and mongsen clans respectively, speaking their own dialects and following their own customs. While there were villages which consisted of two khels but spoke a single dialect, for e.g., Aliba and Mokokchung villages consisted of Mongsen and Chungli Khels but spoke only Mongsen dialect. Sangratsu village consisted of two khels speaking Mongsen dialect in Mongsen khel and Chungli dialect in Chungli khel. The Aos though spoke different dialects; their customary practices did not differ much from each other. Each, Khel had its own council of elders and a dispute at the preliminary stage were settled by the khel council of elders. Thus, " khel " for most purposes was the social unit and the village the political unit for all the Nagas.

⁷ At present times also the Ao tribe still speaks the three dialects i.e. Mongsen, Chungli and Changki.

The system of administration and judiciary of the Ao tribe was parliamentary type. However, there was no separation of powers between administration and judiciary in the Ao villages. All organs of government was controlled by the same authority i.e the putu Menden ⁸(also Known as Village Council) and senso⁹ In the village disputes whether it was between clans or between individuals were settled by the council of elders (Menden). Both the civil and criminal disputes were settled by the council of elders after hearing both the parties. However, there was no written argument and judgment. Everything was in oral. The parties and witness of both parties were summoned and heard before passing the judgement. The council of elders discussed among themselves and also took suggestion and advice from the senior elderly men of the village before declaring the final judgement. The judgement was delivered on the same sitting of the hearing of dispute and the judgement was final and binding

Homicide

Most civil disputes and even criminal offences were settled by the payment of cow or a pig. But for certain offences particular punishments were assigned. In case of homicide whether by accident or deliberate, the relatives of the deceased despite the rage to take the life of the slayer, the Village Council would allow them only to confiscate all the properties of the murderer and wreck his house. The murderer would then be ostracized from the village and his relatives were branded as 'murderer's relatives. Thus, in that way, the Village Council prevented further bloodsheds and made the party contented for their rage of revenge.

Theft

For the offence of theft, the value of the property stolen had to be compensated by the thief or by his parents or kith and kin and a pig paid to the Menden. The descendants of the thief are reminded of their ancestor's act of theft through out one's life with impunity of such incident.

Habitual Offenders

A habitual offender was ostracized from the village who after repeated Punishments and warnings commit the offence again. In cases of injury or hurt, the aggrieved party is always in lex talionis however in such cases the Menden adjudicates by imposing fine like a pig or cow upon the guilty which was given to the injured party as compensation. It was usual custom of the Aos that a pig is to be paid to the Menden for settlement of any dispute and it is borne by the guilty party.

Hurt, Dispute between two Villages and Dispute between Clans

Dispute between two villages were settled at a meeting of elders of both the sides. A bigger and powerful village would be invited to arbitrate and enforce its findings in cases which cannot be settled in such meeting. Should one of the parties do not agree and the powerful village fails to enforce its findings, war was the only alternative way for the settlement of dispute. In some disputes (e.g., between clans, seniority in the village formation, etc.) in which the parties were not satisfied with the decision of the Menden, the matter is referred to a village which was older than the parties village. The disputes within the village in most of the cases were settled by the Menden of the village. However, in the nature of cases which the Menden could not settle the parties were instructed to take oath and so leave the decision to Providence.

The Angami tribe

In the Angami tribe the villages were divided into a pedigree or groups of villages. The villages were divided roughly into five groups, namely, (i) Khonoma, (ii) Chakroma, (iii) Kohima, (iv) Viswema or

⁸ One 'putu' is equal to about 30 years. The assembly house of the putu menden us called "Tatar Salang" in Ao dialect.

⁹ "Senso" is a Chungli dialect. It is composed of all the adult members in the village.

Dzünokehema and (v) Kezami or Kezama. Each village was further divided into numerous "khels". The khels were predominantly structured by the clan. Like the Ao tribe the village was the centre of social, cultural and political activity. However, among the Angamis, since the khels were largely structured by the clan, the khel was, in fact, practically the centre of social, cultural and political activity. The clan in social, cultural and political activity of the village was thus described as:

"Although the village may be regarded as the unit of the political and religious sides of Angami life, the real unit of the social side is the clan. So distinct is the clan from the village that it forms almost a village in it self, often fortified within the village in its own boundaries and not infrequently at variance almost amounting to war with other clans in the same village."¹⁰

Each group spoke different dialect however Tenyidie dialect was commonly spoken by the Angami people.

Disputes of all types ranging from trivial disputes to serious crimes were initially brought before the Khel council elders. The council of elders was composed of elderly man from the clans of the Khel. Such elders had profound practical experiences in custom and practices of the clan and the village as a whole. They attained such position and hold office not by possessing wealth, property or by inheritance but by knowledge, wisdom and intelligence acquired over years. Such virtues were gained not through schooling but learnt from their predecessors and carried down from generation to generations. In the Angami region, the Thevo at the Khel and the Peyumia at the village played a prominent role in adjudication of disputes. However, as stated hereinbefore their authority was nominal and his verdict might not be obeyed even by an individual.

Breaking of Taboo

Punishments for offence were awarded in accordance with the custom. However, no distinctions in fines were drawn in the punishment of offences between a purely social sanction and a definitely magico-religious sanction. Offences such as the breaking of taboo would be punished with a fine paid to the Village Council or to the clansmen, unless the circumstances were aggravated by some untoward consequences, when banishment, a favorite punishment with Angamis, for a longer or shorter duration of time would be inflicted. The banishment from the village was considered as the severest punishment.

Theft and Offences against Women

In cases of theft, seven times the value of the stolen property was made to be paid by the thief to the owner of the property together with the stolen property if recovered. If the thief was too poor to pay the seven times value of the stolen property out of his property he was beaten up by the kindred of the owner of the property without mercy and interference from the thief's kindred or the council elders.

The same punishments of beating were awarded in cases of offences against women. Both the offender and his kindred were labeled with ignominy which was carried to the offspring of the offender and his kindred.

Homicide

There were three degrees of homicide recognized by the Angamis, namely (i) accident, (i) fight, (ii) stealth or treachery.

Accident: In cases of homicide by accident, the offender was punished with ostracization from the village for seven years. All his immovable properties were confiscated and put for auction in the village. However,

¹⁰ J.H. Hutton, The Angami nagas 109 (directorate of art and culture, govt of Nagaland, Nagaland 3rd edition, 2003)

in homicide by accident, the offender's relatives were allowed to auction the offender's immovable properties at a lower price than its real value. The offender was allowed to take away his movable properties including cattle.

Fight: Public meetings were held to decide the matter in cases of homicide in a fight. On being proven guilty the offender was ostracized from the village for seven years and all his properties were sold in auction. Besides, he and his kindred were branded by the name "themu" (Murderer), an ignominy which would be passed on to his offspring.

Stealth or treachery: Homicide by stealth or treachery was the most heinous of all forms of homicide among the Angamis. The act of such crime was not committed in an open fight but out of the rage of revenge. The guilty party in such homicide was punished with ostracization from the village for a minimum of seven years or up to a whole generation. Thus, it was evident that the severest punishment even in the cases of homicide was banishment from the village and not capital punishment. However, if the parties are from different clans or villages the case develop into an ad infinitum and turns to a vendetta. The ultimate solution of which was war.

The lotha tribe

The villages in the Lotha region were independent unit of villages with a priest called "Puti" elected by the people as the chief of the village. The Lotha tribe was divided into three ranges. Those ranges were leagues of villages formed for the purpose of war and defense with the neighboring tribes of Aos and Semas. The superior village dominated the rest of the villages of such a league. The three ranges were namely, Upper, Middle and Lower ranges. The Upper range was composed of all the villages above the Doyang River. The Middle range was composed of the villages above the Changki Village" (Ao village), while the lower range was composed of all the villages in the plain areas bordering Assam. The Lotha tribe spoke a common dialect among all the villages called 'Lotha dialect.

In the Lotha tribe, like the Aos and the Angamis, a Village Council of elders was elected representing all the clans of the village. The council of elders was the body which made laws, policy and settled disputes for the village. A chief was elected from among the council of elders, who headed and advised the council in matters of disputes settlement.

Among the Lothas, like other Naga tribes, dispute between members of the village were adjudicated by the elders. Disputes between members of the same clan were settled by the elders of the clan and in cases of dispute between clans there was always an effort made by both the clan's elders to adjudicate and compromise the matter between the parties at the earliest before the matter becomes worst. Disputes which could not be settled by the clan elders were brought before the council of elders (Tongti-chochang) and the Puti. The verdict of the council of elders headed by the Puti was final and contempt or disobedience of it attracted heavy penalty (pig, cow, etc.) and even expulsion from the village or the clan. On the day decided for hearing, both parties with their witnesses are heard and the verdict declared according to the custom and practices of the village. Any party failing to appear on the date fixed for hearing were fined heavily. Adjournment of the matter was rare and not heard of. Once a date was fixed for the hearing, the parties were bound to appear and it was usual that the parties would always appear without fail for they prefer to appear at any cost rather than pay a cow or a pig as fine. During the proceedings of the trial strict decorum was maintained. Anyone violating the rules of decorum by making noise or interrupting the proceeding was fined heavily. The parties had to speak by himself and no pleader was permitted to plead on behalf of him. The adjudication of dispute by the elders amongst the Naga tribes was instant and

judgment was delivered immediately after the trial proceedings. The Lotha tribe practiced the same procedure of instant judgment. Of course, the verdict was declared by the Puti, however, the verdict declared by him was after thorough consultation with the council of elders.

The panorama of the adjudication of dispute in the village may be described as:

"In the case of disputes within the village both sides are summoned before the elders, and what sounds like the prelude to a free fight takes place. The Parties, all the witnesses, and most of the spectators talk at once at the top of their voices.

However, after much shaking of fists and stamping, and solemn affirmations from the one side that they will never pay such a big fine, and from the other that they will never accept such a small one, a settlement is arrived at. Each side goes in company with the elders to the other's house and drinks "madhu" (rice beer) and promises not to quarrel again. This is regarded as binding. In the olden days if one party would not pay the fine agreed on, the other party simply went and looted his property and took it."¹¹

The nature of punishment was compensation in most of the cases and the compensation was so high that it amounted to almost the whole wealth of a person and that deterred a person from committing a crime.

Murder

There were two types of punishment for murder. Firstly, if the murderer was not apologetic or repentant then he was left at his own fate at the hands of the victim's family. Secondly, the murderer was ostracized from the village after confiscating all his properties.

In the first case when a murder would happen in the village, the council of elders would immediately assemble for a meeting to discuss and to take up the matter at the earliest. They would then investigate the matter and if there was no deep-rooted cause or no hatred or enmity (or homicide by accident) in the past between the two parties, the elders would go to the murdered family and asked for forgiveness and if the reply was negative, then they avenged with the same murder and the case was settled. But the matter did not end there and even if the avenger was taken, the murderer and his family would not be allowed to take or draw water from the village tank before fresh water rains in the village and also would not receive or eat anything from the murderer by the murdered family for the fear of 'mmyok.

In the second case, a murderer was punished by ostracizing him out of the village after confiscating whole of his property. The confiscated property was divided among the rest of the village other than the clan of the murdered man, who could not touch any of it. Besides, the relatives of the victim were forbidden to eat with the murderer. If they did so, it was believed that their teeth would fall off.

Theft

A thief convicted of the offence of theft had to pay a pig or a cow or both to the elders of his clan members for defaming the clan's reputation and honour and return the stolen articles to its owner.

Where in cases of theft settled by the council of elders, the convicted thief had to pay a huge cow or pig to the council of elders as fine and fee for the settlement of the case and swear that he would never commit the crime again. The Lothas also practiced a similar custom like that of their neighbor (the Aos) by selling off the convicted thief as a slave if he or any of his relatives could not pay the fine and return the stolen articles. This however, happens in rarest of rare case and was seldom practiced. No punishments, other than fining or selling into slavery or expulsion from the village were inflicted on the fellow villagers, but a man of another village who broke the village emung (Rules) was put in the stocks and had to be ransomed

¹¹ J.P. Mills, The Lotha Nagas (Directorate of Art and Culture, Govt. of Nagaland, Nagaland, 1980), 101.

by his friends." In some cases of theft and other petty offences that create nuisance in the society, the Lothas punished the offender by making him sleep in a bed of nettle leaves while the Aos put the offender in a small cage, a person hardly can move called "süki" made of wood which cause itching and skin allergy.

Elopement and Moral Laxity

In the case of the elopement and moral laxity, the cases were as far as possible settled within the two clans or families concerned with mutual understanding or with small fines. But if the case could not be settled by the elders of the clan, the matter was brought before the chief and his council, and then it would be settled according to the custom that would naturally involve fines of pig or cow from both the parties. All such cases were heard in public and the judgment was instant.

Chapter 6

The constituent assembly to the constitution of India constituted the advisory committee, the advisory committee was constituted for representing the fundamental rights, minorities and tribal and excluded areas. It was formed on 27th February, 1947, on the north- eastern frontier(Assam) and it was also known as the bordoloi committee. Shri Gopinath Bordoloi, who was then the premier of Assam served as the chairman of the committee along with four other members. Shri Mayangnokcha was the member representative of the naga hills, he was later replaced by Shri Aliba imti after he was assassinated by the naga indigent group. However later on shri Aliba Imti could also not continue because of the threats from the naga insurgent group and so the naga hills remain unrepresented in the process of drafting the 6th schedule.

The objections were raised by different members of the assembly for adding naga hills in the sixth schedule and for giving substantial autonomy to naga hills in regard to their political affairs.

Shri kuladhar chalia opposed the apricots power given to the naga hills and stated

“The nagas are very primitive and simple minded people and they have not forgotten their old ways of doing summary justice when they have grievance against any person. If you allow them to rule us or, run the administration , it will be a negation of justice or administration and it will be something like anarchy.... It is said that they are very democratic people; democracy in in the way of taking revenge; democratic in the way they first take the law into their own hands. And it is threatened by some that they are so democratic that they will chop off our heads¹². Despite many members of the assembly like shri kuladhar , shri brajeshwar Prasad opposing the power given to the people of the naga hills, prominent figures like Dr B.R Ambedkar, shri Gopinath bordoloi and Rev J.J.M. Nicholas Roy who deeply understood the problem of the tribal people answered the opposition and ultimately the sixth schedule was enacted.

After the adoption of the sixth schedule of the constitution, it lead to some consequences :

1. Division of naga areas into naga hills and naga tribal areas,
2. North eat frontier agency (NEFA)
3. The naga hills tuesang area

1. Divison of naga hills -naga hills district and naga tribal area

After the adoption of the sixth schedule in the constitution of India the Naga hills were divided into two areas i.e the naga hills district and the naga tribal area, the naga hills district contained the Angami areas, and the Naga Tribal Area included the Tuensang areas and Mokokchung areas. According to para.1 of the

¹² Constituent assembly debates on Tuesday, the 6th September, 1949 (volume IX)

Sixth Schedule (as first enacted)¹³ the tribal areas under each item of Part-A of the table appended to paragraph 20 of this Schedule shall be an autonomous district. However, in the Naga Hills District, none of the District Councils were constituted nor had been established, which meant that the provisions of paragraph 19 of the Sixth Schedule (which are analogous to Section 92 of the Government of India Act, 1935) was applied in the Naga Hills District for the protection and preservation of status-quo relating to tribal land and customs. In the Naga Tribal Area of Tuensang District and Mokokchung areas, which is a tribal area falling under Part-B of the table appended to paragraph 20 of the Sixth Schedule, it was left to the Governor to apply the provisions of Sixth Schedule to that area by issuing a publication notification with the previous approval of the President of India vide paragraph 18(1) of the Sixth Schedule; no notification was issued. Therefore, the said area was administered by the Governor in his discretion, as an agent of the President under sub-paragraph (2) of paragraph 18 of the Sixth Schedule. Therefore, in theory the whole State of Nagaland was part of the Sixth Schedule to the Constitution at the commencement of the Constitution, but in fact no part of the State of Nagaland was ever governed by its provisions. Though, in both Naga Hills District and Naga Tribal Area different provisions (paragraphs) of Sixth Schedule were applied, however, both paragraphs (i.e. 18 and 19 of the Sixth Schedule) debarred the application of the laws enforced in other parts of the country. In the Naga Hills, the provisions of Sixth Schedule gave the Governor broad legislative and executive powers.

2. North -east frontier agency

In 1954, the North-East Frontier Areas (Administration) Regulation was established to restructure the administrative divisions of the areas specified in Part-B of the table attached to paragraph 20 of the Sixth Schedule of the Indian Constitution. These areas collectively became known as the North East Frontier Agency (NEFA). Under Section 2(c) of this Regulation, the term "Naga Tribal Area" was revised to "Tuensang Frontier Division." Additionally, Section 4 amended the titles for executive officials as outlined in the Rules for the Administration of Justice and Police in the Naga Hills District; it substituted "Commissioner" with "Governor," changed "Political Officer" to "Deputy Commissioner," and modified "Assistant Political Officer" to "Assistant to Deputy Commissioner." As a result, this Regulation marked a shift from British colonial terminology to an Indian governance framework. The titles for government and administrative officials that were introduced during this period have remained consistent up until now.

3. The Naga hills -Tuensang area

The second amendment to the Sixth Schedule was enacted to create an administrative entity known as the 'Naga Hills tuensang area .'This newly defined area includes both the Naga Hills District and the Tuensang Frontier Division, following the implementation on of the Naga Hills-Tuensang Area Act, 1957. Consequently, item No. 4 in Part-A of the table associated with paragraph 20 of the Sixth Schedule, which explicitly referred to the Naga Hills District, was eliminated. In addition item No. 2 in Part-B was replaced with "the Naga Hills-Tuensang Area. According to Section 3 Clause (a) of this Act, a new sub-paragraph (2B) was added after sub-paragraph (2A) in paragraph 20 of the Sixth Schedule. This new provision outlines that the boundaries of the Naga Hills-Tuensang Area are now included what was formerly designated both the Naga Hills District and the Naga Tribal Area.

The definition states: (2B) The Naga Hills-Tuensang Area shall encompass those regions which were recognized as the Naga Hills District and the Naga Tribal Area at the commencement of this Constitution.

¹³ Sixth schedule to the constitution of India.

Furthermore, sub-paragraph (3) indicates that a statement will be included after "administrative area," specifying "(other than Naga Hills-tuensang area). The provisions and aims set for this act clarify that governance over the naga hills- tuensang area is to be administered by the governor on behalf of the president, while remaining separate from the North east fortier administration. Additionally this act amended both the argumentation of parliamentary and assembly constituencies order 1956 and certain sections within the representation of peoples act, 1950. Ultimately this legislation aimed to revise paragraph 20 of the India's sixth schedule to consolidate nagas within a unified administrative framework.

Chapter 7: Conclusion

The state has a moral and practical responsibility to deliver a responsive framework that safeguards individual and social rights through the criminal justice system. This includes the supervision and coordination across a number of components of the system. It is the state's job, wherever an offense is committed or suspected, to carry out comprehensive investigations and to make sure that offenders are punished adequately. The state must build a vast system of courts, prosecutorial services, law enforcement agencies, and police forces for effective exercise of this duty. For example, India has written some important policy instruments such as the Code of Criminal Procedure (1973), the Indian Penal Code (1860), and the Indian Evidence Act (1872) to guarantee effective justice administration. Importantly, the legal process needs to be in tune with established law in all respects with respect to order. That adherence ensures equitable treatment, transparency, and respects the constitutional protections of essential human rights. Part XXI lists particular provisions, but Article 371A in particular, speaks to the commitment to justice on a regional level, but this provision, being a specific regional condition, is more likely referred to in Part XXI. The Indian criminal justice system implemented by government is to deliver justice to victims and punish the offenders legally. It has three main parts: law enforcement agencies, judicial adjudication authorities, and correctional or rehabilitation institutions. The focus is on crime control, punishment, and justice for the victims of crime. Its role is to make and enforce laws, to investigate crimes effectively. Section 53 of the Indian Penal Code of 1860 contains the description of punishment in different forms. Among them are fines, capital punishment, life sentences, rigorous or simple imprisonment, as well as property confiscation. All of these penalties serve to enforce rule of law and social order on the part of the criminal justice system. The Indian criminal justice system is an example where elements of both adversarial and inquisitorial models are blended into a quasi-adversarial and quasi-inquisitorial model. In such a hybrid model the prosecutor has to prove their case beyond a reasonable doubt while keeping the accused innocent until proven guilty. During the trial proceedings, the judge's task is largely observational — deciding merely based on what was presented before him. Investigative agencies make inquiries; prosecutors handle legal proceedings; judges handle adjudication tasks.

The Indian criminal justice system incorporates elements from various models. Naga customary law features Village Courts that address specific civil and criminal cases within their respective jurisdictions. At the district headquarters, District Customary Courts, commonly referred to as Dobashi Customary Courts (DBs), handle both civil and criminal issues within their assigned areas. Importantly, these courts do not function as appellate bodies for the Dobashi Courts located in other blocks or ranges within the same district. Appeals originating from Dobashi Customary Courts may be submitted to the Deputy Commissioner and their Assistants.