



**PROCEEDINGS OF THE SEMINAR
ON
NAGA CUSTOMARY LAWS**



DIRECTORATE OF ART AND CULTURE
NAGALAND, KOHIMA, INDIA

*PROCEEDINGS OF THE SEMINAR
ON NAGA CUSTOMARY LAWS*

KOHIMA, NOVEMBER 21—23, 1974



DIRECTORATE OF ART & CULTURE
GOVERNMENT OF NAGALAND
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PROGRAMME

DATE	MORNING SESSION	AFTERNOON SESSION
November 21, 1974	Inauguration Inaugural Address : <i>Shri Vizol</i> Keynote Address : <i>Shri Huska Sumi</i> Chairman : <i>Shri R. H. M. D'Silva</i>	Need for the Compilation of the Naga Customary laws and Procedures. The Khiemnungan Nagas (Some Social Customs and Practices). Chairman : <i>Dr. M. Aram</i>
November 22, 1974	Naga Customary laws vis-a-vis the Advent of Administration. Codification of Naga Customary Laws Chairman : <i>Shri O. Kathipri</i>	The Ao Naga Customary Penal Code on Adultery. A Study on Institution of Marriage among Yimchunger Tribe. Chairman : <i>Shri V. K. Subramanian</i>
November 23, 1974	Our Constitution and Naga customary Laws Chairman : <i>Shri I. Sashimeren Aier</i> Review and Statement Chairman : <i>Shri L. L. Yaden</i>	Valedictory Session Chairman : <i>Shri I. Sashimeren Aier</i> Valedictory Address : <i>Mr. Justice D. M. Sen</i>

PREFACE

The Seminar on Naga Customary Laws was held at Kohima from 21st to 23rd November, 1974. This was jointly sponsored by the Thinkers Forum of Nagaland and the Directorate of Art and Culture, Government of Nagaland. More than forty participants consisting of law-makers, administrators, social workers, social scientists, researchers, scholars and intellectuals attended the Seminar.

Apart from illuminating speeches, seven papers were altogether presented in the Seminar. As to be expected divergent and conflicting opinions naturally found expression in the Seminar. But these were mainly on the manner as to how recording of the Naga customary laws should be done paving thus the way of formulating a common set of laws for the Naga Tribes in the future. This, I am sure, would not only help preserve the good values of the Naga Culture but would also render a scope as to how far the other Indian Communities can borrow from it and thus bringing about integration and synthesis. Hon'ble Justice Mr. D. M. Sen, however, opines against codification and says, "I am very much against codification. The moment you codify you make it final and firm and rigid. The societies, the tribal societies developing much faster than any other societies and you yourself do not know what are you going to retain and what are you not. So codification means binding yourself." For reason beyond our control the valedictory speech delivered by Mr. Justice Sen could, however, not be given in this book. This is sincerely regretted.

The aim of the Seminar was to provide a common forum to discuss the problems and prospects of administration of Justice facing the Naga people in their process of advancement and modernisation. And in the emergent situation how far the Naga Customary Laws can play its role was one of the main points that centered the discussions of the Seminar. A Statement of important issues arising out of the deliberations of the Seminar is also given in the book.

The papers presented in the book, it is believed, would at least provide a basis for further research in this field, and also would inspire the scholars and the Naga Public in general to help co-operate with the research project being taken up on this subject by the Directorate of Art and Culture, Government of Nagaland.

Let me acknowledge here my deep gratitude to the Seminar Administrators of the Government of Nagaland for their valuable contribution, guidance and co-operation in making this Seminar a success. My thanks are particularly due to Prof. B. B. Kumar in helping me in the organisation of the Seminar, first of its kind, on the subject,

and to Shri P. K. Bhattacharya both for assisting me in the organisation of the Seminar as well as compiling this volume. Due to various limiting factors omissions and commissions are sure to creep in the publication and for all these I crave the indulgence of the readers. Thanks are also due to Sarva-Shri Rongsen Ao, Rülilhou, C. M. Chang and Juba Ao for making the necessary arrangements for the Seminar, to Shri Rabin Bhattacharjee for designing the cover of the book, and to all the participants for their kind co-operation.

Kohima
September, 1976

M. ALEMCHIBA AO

GENERAL INTRODUCTION

The customary laws of any given society have, it goes without saying, been emanated out of their customs, traditions and usages. Since the dawn of human civilization a body of observances, norms and accepted religious and moral standard have regulated the relations between the members of each and every society. The codes of conduct evolved, taught and practised as such ultimately became the customary laws or in other words unwritten laws. This in the process gave rise to an enforcing authority which in its structure, system and name varied from society to society. Precisely speaking, the authority in some society came to be rested upon a body of elders while among others it rested upon the King, Chief, headman and so on. The laws thus came to be binding to the members of the society concerned and were passed on from generation to generation by words of mouths.

The customary laws of many of the tribal societies in our country still have the force of law as recognised by the Constitution of India. The Naga Society is no exception to this. They have their own time-honoured laws and customs to adjudicate civil disputes and administration of justice. This continued absolutely uninterrupted till the advent of the British in the political and administrative scene of the Naga territory beginning from the year 1866 preceded by the spread of Christianity. The British annexation of the Naga territory was initially motivated to check the incursions of the Nagas into the British territory. An administrative headquarters was thus established in 1866 in Samagutting (modern Chumukedima). In 1875, this was shifted to Wokha in order to protect the adjoining districts of Nowgong and Sibsagar in Assam from the inroads of the Nagas on the border of the British Indian territory. Finally, the headquarters was shifted to Kohima in 1878. Thus ushered an era of effective administrations in these hills which ever in its history were formed as a British district in 1881.

The gradual introduction of administrative measures and civil and criminal procedures brought in its wake by the British rendered, no doubt, some amount of conflicts with those of the customary laws, beliefs and practices of the Nagas. On the other hand, the converts, with the passage of time, began to develop a sort of disregard about their own customs and practices. The British Government, of course, all through their rule of nearly 70 Years, ending with the attainment of Indian Independence in August, 1947, pursued a policy of "non-interference" giving simultaneously maximum latitude to the Naga ways of life, customs and laws. The earliest move of the British Government in this direction found reflection in the Scheduled District Act of 1874. The Act recognised the fact that the 'under-developed tracts' which among others included the Naga Hills as a part of the erstwhile Province of Assam created in the same year, needs be treated differently with regard to enforcement of the procedures of usual laws. The Frontier Regulation II of 1880 also "Excluded" the tribal people including the Nagas from coming under such laws as may be unsuitable or complex to them. Then came the Government of India Act of 1919, which like other hill areas excluded the Naga Hills from the general constitutional arrangements. This was, however, opposed by many as a policy of segregation and isolation, but of no avail.

The Simon Commission, 1930, also upheld the spirit of the Government of India Act, 1919. Thus came the Government of India Act, 1935, Section 92 of which provided that no Act of the Central or Provincial Legislature could apply to the Naga Hills District unless the Governor so directed and so on. The exercise of the traditional laws by the Naga people was, thereupon, safeguarded once again. Nevertheless, from 1st April, 1937, the Naga Hills District along with North-East Frontier Tract, the Lushai and North Cachar Hills formed 'Excluded Areas' within the Province of Assam.

Armed with the Provisions enumerated above, the British Administrative Officers encouraged the Naga people to deal with crimes both civil and criminal through the agencies of their indigenous Institutions and village courts except those which were of heinous nature. Simpler regulations and techniques were devised according to the exigencies. The Deputy Commissioner, through his Assistants acted mostly as the Appellant authority. They tried cases with the help of the interpreters and village elders popularly known as *Dobhasis* and *Goanburahs* respectively, the classes that emerged during the British period who still hold sway in the administration of justice and allied affairs. They were usually selected from amongst those who apart from being well acquainted with customary procedures could converse in broken Assamese that provided the *Lingua Franca*. This they learned mostly as a result of their intercourse with the neighbouring Assamese people. Usually they exercised enough influence and power in their own villages. This system obviously proved very effective and in its process of evolution gave birth to another kind of Institution known as the *Dobhasi* Court which exists even on this day. Number of such Courts have rather increased with the passage of time and even now such Courts are functioning alongside the normal judiciary. As before, cases according to the Naga customary laws are tried in these Courts. The rules for the Administration of Justice and Police in the Naga Hills District, 1937, and the Assam Frontier (Administration of Justice) Regulation, 1945, also vested power to indigenous authorities to try cases according to the Naga customary laws. During the British regime, the Nagas by and large were thus allowed to continue with their ancestral laws and customs which also guaranteed security of their age-old land tenure system.

At any rate, however, intricacies of life were much the less during the earlier stages down to the British period compared to the modern stage the Nagas have reached. So also the British did not seek to bring about much changes than what was needed in the interest of their colonial pursuits. Every Naga village besides being an isolated but independent political and economic unit formed by itself a religious community, subordinate to none. The next units were the *Khels* (divisions of village) while the families were the fundamental units. Each village thus had its own political system ranging from democracy to secular chieftainship. The administration of justice according to the customary usages within the bounds of the village which, as it appears, acted almost like a State worked well. Not to speak of the Naga community as a whole consisting of 14 major tribes now and many more sub-tribes, cohesion and integration of the villages among the same tribe in this respect or otherwise hardly existed. Thus the customary laws that evolved through the ages not only differed from tribe to tribe but also from village to village of the same tribe.

The annexation of the Naga Hills by the British brought for the first time the different Naga villages and groups under a common administrative shadow, and that undoubtedly set the milestone towards the gradual breakdown of the corporate unit from village to tribe, and tribe to community and community to State (1963), nay the Nation. As a result of all these coupled with the opening and growth of the administrative centres followed by launching upon of various socio-economic development programmes after the Indian Independence, urbanization has come to stay as a natural sequel. And as it should be towns are peopled by the persons coming from different villages of the same tribe as well as different tribes. Besides there are also non-Nagas employed in Government services apart from being engaged in business and such other occupations. Barring the non-Nagas who may well be termed as the temporary residents and whose entry to the State is yet regulated under the Innerline Regulations of 1873, the growth of mixed population of the Nagas alone as such has brought us to a complex stage with regard to the applications of the customary laws to the satisfaction of the offenders and defenders. To elucidate, an Ao Naga resident of the Kohima town or for that matter a Sema or Lotha or any other Naga when tried for some offence under the Angami Nagas customary laws, often feels to have been denied of the provisions of the customary laws of his own tribe. The situation is same in other urban areas of the State. Negotiation between the elders of the parties generally bring about settlement of such dispute. But then this is a vacuum that has come up by itself to the emergent society. And how long it would be possible to bridge this gap in the manner it is being done today is the question that poses to be given serious thought of. Under the situation one, if desires, can take shelter under the Court of Law. But in that case the vitality of the customary laws renders useless, at least in this context. The solution is, therefore, to record the customary laws of the different tribes without much loss of time with an ultimate aim of formulating an uniform set of laws. This, once done, would certainly provide an additional force in securing the unity of the constituent tribes of the Naga Community. Despite everything attachment towards their respective customary laws yet seems to be very much a deep-rooted feature among the people. The obvious advantage, unlike the modern judicial system, is that justice under the customary procedures is cheap and immediate. Disposal of a case hardly takes a couple of hours and even less than that sometimes. Evolvement of an uniform set of laws within the matrix of the customary laws of all the tribes would, therefore, be more a welcome phenomenon under the emergent situation of life rather than anything else.

The independence of India opened a new chapter for the development of the tribal India according to their own genius. The late Pandit Jawaharlal Nehru as the Prime Minister of India, while announcing the Government of India's decision in the Lok Sabha on the 1st of August, 1960, to create the State of Nagaland, said, "We have not the slightest desire to interfere in the tribal customs and usages of the Nagas or in their distinctive ways of life." The constitutional arrangement provided by the British Government were allowed to be continued with much more elaborate provisions and scope under the Sixth Schedule of the Constitution of India. It recognised the *status quo* in respect of the land and customs of the Naga people. Earlier the nine-point agreement

drawn between Sir Akbar Hydari, the then Governor of Assam, and the Naga leaders also emphasised that all civil and criminal cases of the Naga Hills to be decided by the duly constituted Naga Courts on the basis of the Naga Customary laws. The Constitution (Thirteenth amendment) Act, 1962 provides *inter alia* that :—

- (a) no act of Parliament in respect of :—
- (i) religious and social practices of the Nagas,
 - (ii) Naga Customary law and procedure,
 - (iii) administration of civil and criminal justice involving decisions according to the Naga customary law,
 - (iv) ownership and transfer of land and its resources shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides.

Thus the process of providing a happy synthesis and growth of the Naga people within the frame of their own laws and customs rests with themselves. As integration is a dynamic and continuing process involving give and take what is necessary is to view the constitutional safeguards in a broader and deeper context so that we are not seized with static thinking. To grasp the matter in an analytical perspective, the first step is obviously the recording of the customary laws as I have said already. On the top of all, recording would preserve the laws from the ravages of time which has already shown some signs of erosion under the emergent stage of life.

The aspects of recording of the Naga customary laws have also been engaging the attention of the State Government for some time past. In the wake of this, the present Seminar, first of its kind, sponsored jointly by the Thinkers Forum of Nagaland and the Directorate of Art and Culture, Government of Nagaland, indeed afforded an opportunity for free and frank discussions regarding the object, limitation and scope of the Naga customary laws. Unfortunately, however, no summary report of what happened in the Seminar and what was spoken during the discussion hours of its sessions could be appended in this book for reasons beyond our control. So also the valedictory speech delivered by Hon'ble Justice Mr. D. M. Sen, could not be given in this book. The rest of the speeches and papers presented in the Seminar excepting the paper by Mr. J. K. Jha have been compiled in this volume. A statement summing up the salient points arising out of the deliberations was finalised at the review session which is also given in this book.

I take this opportunity of expressing our profound gratitude to all those who, in various ways, helped us in organising this Seminar too numerous to mention by name. Particular mention must be made of Professor B. B. Kumar, Science College, Kohima, without whose initiative and active co-operation the Seminar would not have been possible. Let me acknowledge here my deep gratitude to Mr. M. Alemchiba Ao, for the valuable guidance he has rendered to me in compiling the book. I owe a good deal to Mr. Rülilhou, and Mr. Juba Ao, who helped me in compiling the book. Our thanks are due to all the participants for their kind co-operation.

Kohima
September, 1976

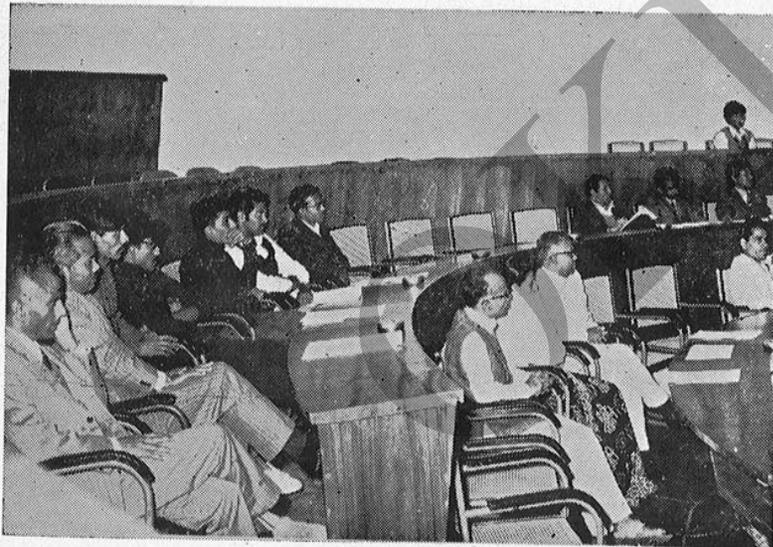
P. K. BHATTACHARYA

CONTENTS

	Page
PROGRAMME	iii
PREFACE	v
GENERAL INTRODUCTION	vii
I. SPEECHES	
Inaugural Address	—Shri Vizol, Chief Minister, Nagaland 1
Keynote Address	—Shri Huska Sumi, Minister of Law and Parliamentary Affairs, Nagaland 4
II. PAPERS	
The Need for Compilation of Naga Customary Laws and Procedures	—M. Alemchiba Ao 7
Our Constitution and Naga Customary Law	—M. Ramunny 14
Naga Customary laws vis-a-vis the Advent of the Administration	—S. R. Das 18
Codification of Naga Customary Law	—R. S. Bedi 26
The Khiemnungan Nagas (Some social customs and practices)	—L. L. Yaden 35
The Ao Naga Customary Penal Code on Adultery (Kilamet)	—S. Lima Aier 44
III. A Statement by the Seminar	47
IV. List of Participants in the Seminar	48



Shri Vizol, Chief Minister, Nagaland (sitting) is being requested to deliver the inaugural address.



A view of a session of the Seminar on the Naga Customary laws.

I
INAUGURAL ADDRESS
Vizol, Chief Minister, Nagaland

Friends,

I have been greatly honoured by the invitation to inaugurate the Seminar on 'Naga Customary Law' jointly sponsored by the Thinkers Forum of Nagaland and our Department of Art and Culture.

I must confess that I received the invitation with some surprise, for I have not taken an active part in a deliberation of this nature, where legal luminaries, anthropologists and administrators are participating for a dialogue on some important aspect of Naga way of life and Rules of Justice which need collection and codification to standardize procedures and practices. You will be disappointed if you expect from me any ready-made proposal or suggestion to the problem which you may discuss as I do not possess any credentials as a legal expert or an academician.

I do not propose to approach this subject purely from a technical angle. This, I will leave it to the legal luminaries like Justice Shri Sen, my esteemed colleague Shri Huska Sumi, and many other distinguished participants of the Seminar. I only wish to give my general expression to the need to see that our customs, which are noble, democratic and have stood the test of time for ages, are fully preserved.

Man as you know is a social animal. In order to live in society, he had to abide by certain norms and practices which slowly evolved in the society in which he lived. These make him tolerate his fellow beings, respect their rights, and fulfil his own obligations to society. These norms and practices later on developed into usages, which more or less acquired the force of law and subsequently became known as customary law.

Man also transgresses certain limits either calculatively or by ignorance ; that hurts the sentiments of others which needs to be removed. And this need has probably led to define limits, explain obligations and ensure rights.

Some thousands of years ago when we Nagas started living in villages and coming into contact with others, must have selected a few leaders to condition our lives and to guide our actions. Continuous use of such guidelines and advice of our elders must have become established as the correct attitudes and examples to be respected and emulated.

The Nagas deem individual freedom as very personal. While they respect the obligations imposed upon them by their societies and communities, they correctly balance it with their independence of action. This is a great feat of intelligence and wisdom and I feel no humility in saying that the Nagas, men and women, have been respecting their obligations and exercising their rights with great care and caution.

But there have been certain difficulties which have stood in the way of standardizing their practices. The foremost was their close knit societies and their isolation, first from the outside world and then from one another. In fact in certain cases even within one village different customs and different standards exist to correct the faults of their members. This diversity becomes more pronounced when we come to evidence the history of different crimes and infringements.

Moreover, nothing could be recorded. It is only the verbal traditions which have been accepted. But there are very few people who can correctly recall what happened a century ago or what the wise men of yore decided at a particular moment in a particular case. The details are normally forgotten or mixed up.

The time has come for these flaws to be removed. And I am extremely happy that this Forum will make an effort to find the difficulties which the codifiers of Naga customary law would encounter when putting the collected materials together.

I am fully aware of the magnitude of the problem specially when all the 16 tribes have been using different traditions in different situations. It is also possible that the codified customs which are desired to be uniformly applied may not satisfy all the tribes. But a bigger society requires bigger adjustments and larger sacrifices. I am sure, the Nagas, who have decided in their wisdom to accept one political roof in a State will rise to the call of the times and readily agree to accept a uniformity of law.

A custom is a rule which in a particular family, tribe or locality has from long usage obtained the force of law. The English rule that "a custom, in order that it may be legal and binding, must have been used so long that the memory of man runneth not to the contrary" does not apply to conditions in our country. A custom observed in a particular tribe or locality derives its force from the fact that it has, from long usage, obtained in that tribe or locality the force of law. It must be ancient, but it is not of the essence of this rule that is antiquity must in every case be carried back to a period beyond the memory of man. It will depend upon the circumstances of each case what antiquity must be established before the custom can be accepted. What is necessary to be proved is that the usage has been acted upon in practice for such a long period and with such invariability as to show that it has, by common consent, been submitted to as the established governing rule of the particular tribe to locality.

A custom to be recognised by a court should be :-

- (1) Ancient
- (2) Continuous and uniform
- (3) Reasonable
- (4) Not immoral, and
- (5) Certain.

The custom may be general, public or private—

- (1) General, e.g., customs common to a class of people living in the same locality or area or belonging to the same caste or community.
- (2) Public, e.g., any custom which is a matter of public interest.
- (3) Private, e.g., customs and usages relating to family or sub-clan of the locality.

Here in our state of Nagaland customs and usages are all unwritten. They differ from tribe to tribe and also from sub-tribe and locality wise. In the absence of any written record of these customs and usages it often becomes difficult to enforce it properly. After the introduction of the British legal system the problem has become all the more acute. Hence the need for early compilation of important customs and usages prevalent in Nagaland.

I feel our customs have all the ingredients to meet the requirements of codification. These have been tested throughout our existence and they have stood the test of the time. Admittedly, modern needs are varied; but for the villages and remote areas where the new civilization will take time to reach, these customary practices would be enough to help our societies to grow and flourish.

Societies cannot grow, rather cannot exist unless they have a Code of Conduct and behaviour, and Laws of Justice. And these laws should be clear and meant to help human beings. They may be harsh, firm and at times cruel. But they must be equal to the malady they are required to correct.

I am sure that this seminar would contribute a significant effort in this regard, and will provoke a discussion to underline the desirability and urgency of codification of our customary laws, which can guide the lives of our villagers without their having to run to costly courts and to seek advice from highly-paid advocates. Justice should be immediate, cheap and acceptable.

With these few words, I now have great pleasure in inaugurating the Seminar on Naga Customary Law; and wish you all success in your deliberation.

JAI HIND

KEYNOTE ADDRESS

Huska Sumi

Minister of Law and Parliamentary Affairs, Nagaland

At the outset, I thank the organisers of this Seminar for giving me an opportunity to give a keynote on Naga Customary Law. Before I take up the subject matter, allow me to say a few words about customary Law in general for our academic understanding.

Customary Law of a given society or community comprises the reasonable customs and usages observed as a right from immemorial antiquity. It is a habitual course of conduct observed uniformly and voluntarily by the people concerned. When they find any act to be good and beneficial which is agreeable to their disposition, they practise it and in course of time by frequent interaction and in multiplication and on account of its approval and acceptance by the community for generations, there is evolved a custom. It obtains the force of law on account of being used from time to time which the memory of man runneth not to the contrary.

Since customs as constituent parts of customary law grew spontaneously, customs and usages differ from place to place, depending on the variance of human habits and environmental requirements. If we examine closely, all the early societies had a discernible legal system regulating the conduct of the inhabitants.

The administration of Justice in the erstwhile Naga Hills prior to the introduction of British Administration was carried on according to local customs and laws as ordained by the Village Chiefs, Khel Chiefs and the Village Councils. During the British Administration also the ordinary Civil and Criminal duties were performed by the Village Chiefs, Gaonburas and Dobashis and other local Courts. More heinous cases were tried with the assistance of the local authorities, by the Deputy Commissioner's Assistants, who also disposed of appeals from the local authorities, and from whose decisions, both appellate and original, a further appeal lay to the Deputy Commissioner himself. After Independence also, the administration of Justice is being carried on substantially on the same lines.

We now turn to the rise and the way in which customs were protected and preserved by enactments, Section 52A of the Government of India Act, 1919, empowered the Governor-General-in-Council, or under his authority, the Governor-General-in-Council in respect of "backward tracts" which included the erstwhile Naga Hills District, to decide that any Act of the Indian Legislature or local Legislature shall not apply or apply with such modifications as they think fit. A similar position was maintained in Section 92 of the Government of India Act, 1935 and paragraph 19 of the Sixth Schedule of the Constitution of India up to November, 1957. Subsequently, the Constitution (13th amendment) Act, 1962, provides

special safeguards under Article 371A of the Constitution for Nagaland. No Act of Parliament shall apply to the State of Nagaland in respect of religious or social practices of the Nagas, Naga customary law and procedure and the administration of Civil and Criminal Justice involving decisions according to Naga Customary Law unless the Legislative Assembly of Nagaland adopts it by a resolution.

Thus, ample scope for application of customary Law in the administration of Civil and Criminal Justice is guaranteed under Article 371A of the Constitution of India. However, there are practical difficulties and some confusion in the implementation of the letter and spirit of the Constitutional provision. As we all know, Nagaland is a small but multidialect tribal State. So also Customary laws are multifarious. There is no identical set of customs for the Nagas as a community. There are about 14 major tribes and a host of others. Each and every tribe is maintaining a distinct and different set of customary practices and usages from any other tribe. As a matter of fact, customary law varies from village to village. Uniform application of customary laws in the state is now next to impossible.

It is an established fact, that customary laws shall continue and shall have to continue to play a very important role in the administration of Civil and Criminal Justice in Nagaland. If we accept this position, it is imperative that there should be uniformity in its application in the whole State of Nagaland. Unless there is a uniformity of law, it will not be possible to have a cohesive administration of Justice in the state. But uniform application can be done only when the law is made uniform. If this is to be achieved, a consolidated codification of customary laws is necessary. Varieties in customs and customary laws open up vast field for research. An effort in this direction has been pioneered by Shri Tajen Ao to study the growth of Ao customary law. It is rather unfortunate to note that no similar attempts have been made by any lawyers. The thinkers—both legal and non-legal have suggested that there should be a compilation of customary laws in Nagaland. Lawyers are constantly reminded of the force of customs in Nagaland Legal system. Its study has indeed been strangely neglected and it is comparatively recently that their interest in it has been awakened. The Thinkers Forum has taken a right step in this direction in organising a Seminar of Naga customary law.

Nevertheless, the recording of customary law is something one must get out and do. One cannot learn how to record it simply by talking about it. The Seminar may like to organise model recording sessions with a Village Chief, anthropologist, legal expert and a Court of session. The traditional bodies may be interrogated. A systematic questionnaire may be necessary for systematic interrogation. It is also useful to investigate customary laws unofficially. A social Anthropologist may live with people and spend more time on investigation. Collective questioning of informants, investigators is the most popular method in compilation of customary law. Once the compilation of the customs is done, it will be necessary to go into the relevancy and utility of the customs in the context of the present conditions and to establish whether it will be necessary or appropriate to modify them by legislation. It will be also necessary to find out whether the grounds which

permitted their existence and continuance are still relevant according to the present day requirements of the Naga community as a whole.

The object of this Seminar should be to record and preserve customary law, to provide a basis for study of Naga customary law which may be a guide for Courts at all levels. It is because of this urgent need that the discussion of the Naga customary law posed before this Seminar assumes particular significance for the Government of Nagaland. I hope the discussions in the Seminar will be objective and comprehensive and will in fact afford ample guidance to the Legislature of Nagaland in their task of turning customary laws into the statutory laws.

THANK YOU



Shri Huska Sumi, Minister of Law and Parliamentary Affairs is delivering the Key-note address.



A view of a session of the Seminar on the Naga Customary laws.

THE NEED FOR COMPILATION OF NAGA CUSTOMARY LAWS AND PROCEDURES

M. Alemchiba Ao

As in all other societies, the relations between the members of the Nagas are regulated by a body of observances, traditions, rules and accepted religious and moral standards. These standards of behaviour are not codified but merely inherent in the culture as manners and customs. Generally elders of the village are held to be specially skilled in knowledge of law and are regarded as repositories of Law in the absence of any written record.

There are more than 15 Naga Tribes in the State and a number of sub-tribes, each having a dialect entirely of its own. There are also differences in the standards of behaviour, practices, customs and procedures. It is, therefore, not possible to discuss in this paper the details of the customary rules and practices of the various tribes. However, we can examine some of the basic principles of the custom and how far these are relevant and applicable in the modern society.

For the convenience of study purpose Naga Tribes can be divided into two broad groups namely, (i) those having the institution of Chieftainship, (ii) those without it.

In a chieftainship society, the Chief plays a pivotal role in the affairs of the community and naturally there are differences in customary practices from the general pattern of non-chieftainship society, where no individual or group is recognised as a privileged class. The extreme diversity between different tribes is so apparent that one would be tempted to emphasise on it at first sight. Among the Konyaks, the Chief exercises great authority over his village. The Sema chiefs though exercises autocratic powers are not sacred as those of the Konyak Chiefs. This autocratic system seems to have little in common with the extreme democracy of the Angami Village or the intricate Constitution of an Ao village Council composed of elders representing clans and kindreds for fixed period. The divergencies on a closer examination are, however, less striking than one is tempted to suppose at first. Anyhow, without going into details on this point, I simply want to point out that inspite of an autocratic system prevailing among some tribes, the element of democratic character is always noticeable.

In the past village was their country and its organisation was their Government. There was no other organisation either social or religious beyond the limits of the village. A very loose form of political relations among some villages existed but this was more or less in the nature of peace treaty. For all practical purposes, the household was regarded as the unit of every organisation. This aspect should not therefore be ignored in our attempt to understand the customary laws of the tribes.

Land Tenure

Unlike in other parts of the country, the land generally belongs to the people, not the government and no plot is without an owner. The general pattern of land holding is as follows. Each tribe has a well defined territory. Within the tribal territory, every village has a well demarcated territory. The inter-village demarcations are permanent and undisputable. The village territory may be classified into two areas, viz :—(1) Primary or agricultural land and (2) Subsidiary or building and reserve land. The Village Territory may again be divided into four holdings :—

(1) Common Village Land

In every village in the subsidiary area, there are some plots which are specifically kept for public institutions like Moring and its premises, worshipping place and grave yard etc. In exceptional cases, there are plots in the primary areas also. The village land is the joint property of village and the right to use them rests with the village council.

(2) Clan Land

Almost every clan has sites for construction of houses etc. in the subsidiary and plots for cultivation in the primary areas. The eldest member of the clan is the custodian of the clan land and he exercises a titular right over the clan land. Every clan member has a right to use such land according to seniority of age with reference to the number of sites or plots available.

(3) Lineage Land

There are certain land in the village owned by a kin group, which neither can be termed as clan land nor as individual. To illustrate, I refer a case history from an Ao village. S is a man of Longkumer Clan having 5 unmarried sons. In 1920, S purchased 4 plots, his 5 sons got married and they are now having sons and grandsons, the male numbers alone being nearly 30. The 4 plots 'S' purchased have now become the joint property of his male descendants. The right to use his land is covered by the rules as in the case of clan land but this does not form a part of the land of the Longkumer Clan. Gradually most of the individual lands are coming under this categories.

(4) Individual Land

In all villages individuals have lands either inherited or acquired. The individual has absolute right over his land. He has a right to share of the produce of the land, to transfer holdings, to alienate and to grant rights of use to others.

Generally the various class of lands within the village territory are demarcated either by stone pillars or natural boundary like streams and rivulets. However, in many cases perishable things like trees are used as demarcating pillars. There are instances of disputes where prominent trees which were used as demarcating boundary decayed. Worst of all, there is no records of right over land. We see that a substantial population have moved

from rural to urban areas since 1960's in Nagaland. This population consists mostly of younger group. Those young men, who came out from the villages are not aware of the holdings of land of their father in the village. I have come across many men who do not know even the number of plots and area their fathers are holding now. There is, therefore, an inherent danger in the trends and recording of rights over land which has become a priority for the State Government.

It is relevant to cite an instance, that I came across in a village. W and S are brothers, W being elder. They jointly owned many plots and sites. S predeceased W having only one married son L, who is elder than two sons of W. L should have enjoyed the benefits of all the land after W's death. W sold out almost all the lands without informing L, who is in Armed Force outside the State. The days of honesty and integrity are gone and in the present circumstances whether the customary laws and procedures are sufficient enough to safeguard the individual interest particularly in vital matter like land, requires deeper examination. Further, without the basic data on land, programmes on land revenue, agriculture, forest, industry etc., will face insurmountable difficulty.

In the case of Chieftainship society, a good portion of the land within the village territory belongs to the Chief. It is his duty to see that plots are allotted to those persons who have no plot for cultivation.

Marriage

Monogamy is the socially accepted norm of marriage. Polygamy is, however, practised in the society where the Institution of chieftainship exists. In such society the Chiefs being a privileged class requires a privileged treatment in matters of having plural wives. Perhaps because of permission of polygamous marriage for the Chiefs, and because of presence of democratic elements in the society as stated above, the practice of polygamy is also extended beyond the limits of the recognised privileged class in the Chieftainship society. Thus we find the practice of polygamous marriage among the Konyaks and Semas. Polyandry is, however, unknown in Naga society.

Laws regulating marriage

(1) Exogamy

Marriage within the same clan is universally prohibited in Naga society. A boy can marry a girl from any clan other than his own. The rule of exogamy applies to the entire tribe. However, in the case of inter-tribal marriage, the rule does not apply, the name of the clans being different. The breach of the law of exogamy is regarded as a very serious social offence, because in fact, it affects the very social structure of the kinship groups. It affects the accepted pattern of kinship terminology. The children born, have to use a set of specific terminology to address the members of the father's clan and a different set of terminology for the members of the mother's clan. The children born out of an indogamous

marriage however, have to use the same terminology in addressing the members of the relations of mother's and father's side as belong to the same clan. Similarly the husband has to address the wife's father as father instead of the socially accepted term. In view of this social complications, the customary punishment for such crime is expulsion of the couple from the village. The question again is whether in the changed circumstances, when in many villages the enforcement of law and discipline is not so effective and forceful as in the olden days, the cruel element of primitive laws is relevant, requires considerations.

(2) Incest

There are also rules prohibiting incestuous union among some tribes both as to sexual intercourse and recognised marriage. The prohibited degrees for recognised marriage are in many cases three generations, though the boy and girl are of different clan. The punishment for the breach of rule of incest is, however, not so severe as that of breach of exogamy. This is rectified by paying a fine of a live pig to the village elders. Among some tribes like the Semas, marriage with mother's brother's daughter is preferred. Adultery is regarded as a punishable offence and sometimes it becomes a ground for divorce.

Divorce

Divorce is allowed and common. Incompatibility of temperament and adultery are the chief reasons of divorce. If the wife at the time of divorce can prove that a certain woman is responsible for alienating her husband's affections, her relatives can demand a fine from the intruder, who is then free to marry the man. If a woman is divorced for adultery she or her parents have to pay a fine to the injured husband. There is no ceremony connected with divorce but the property has to be divided up, and this is a complicated matter. The Custom varies somewhat in different villages even within the same tribe. Divorced persons can marry.

Adoption

Adoption is a rare practice in most of the Naga Society. It is always attended by a certain amount of ceremony. Adoption within the kindred presents no difficulties and generally needs no ceremony being not more than an arrangement by which one looks after another, in return for which he inherits his property under a verbal will; but such an arrangement is not regarded as an adoption from a different clan.

The feeling underlying the act of adoption seems to be a desire that the adopter shall not suffer a diminution by the death of the childless adopter, and for this reason, a boy from another clan is adopted. Generally adoption leads to involved property disputes, as there are many other relations from the clan, who will claim rightful share from the property of the adopter when he dies childless.

Principles of succession and inheritance

The customs regarding succession to property, movable or immovable and the right of

alienation are down to their smallest details the logical outcome of their whole social and economic system. The title to personal ownership i.e. the proprietary right rises in the first instance naturally out of creative or formative work. The man who first turns a piece of jungle or a plot of waste land into arable land becomes *ipso facto* the owner of that land even as he who shapes a piece of wood into an axe-handle becomes the owner of the handle. The right of ownership once acquired remains with the man until he himself disposes freely of it. There are clear cut customary rules regarding inheritance and the chances of interpretation of laws are much less than in regular Law. Inheritance is in the male line. Sons, brothers, brother's sons and so on, inherit in that order. Though a woman can possess property she can not inherit it. If a man with only a daughter and no sons were to give land and money to his daughter during his lifetime, those gifts would remain valid after his death, provided the girl had made her father even a nominal payment for the land. All property remaining undistributed at his death would go to his next male heirs, whatever his known wishes might be. A man cannot will his property away contrary to custom.

Administration of Justices

In its widest sense, the organisation of a Naga Village is a political organisation embracing on the one hand, the whole complex of institutions by which law and order are maintained in the society, and, on the other, all the institutions by which the integrity of the groups is maintained in relation to neighbouring communities of a similar kind and protect against attack from without. Thus this organisation includes the legal institutions by which the juridical rights of every member of the society are safeguarded and his juridical obligations enforced. The village Council acting as a court enables a wrong individual or group to bring a cause before it for adjudication. Cases like homicide and bodily injury, incest, adultery, seduction, rape, breach of laws of exogamy, theft, damage to property, slander etc. are brought to village court. The responsibility of the culprit for the wrongs committed are fixed considering the motive of the culprit.

Most disputes are settled by the payment of a cow or a pig. But for certain offences particular punishments are assigned. For instances—in the case of homicide, the customary practice was to demand the life of the slayer. If public opinion did not allow this to happen, the aggrieved party had to content themselves by looting the property from the murderer's house and driving him out of the village for a fixed period. Though this method of punishing homicide is customary among many tribes yet in practice the most serious injuries are now covered by a fine. For theft the value of the property stolen (among the Angami's seven times the value of the property stolen) had to be restored to the victim, whose property is also returned to him if recovered and a fine to the councillors. Further, the labelling of a man "thief" inflicts great shame on the culprit and his descendants could be reminded of the incident with impunity for ever.

In any case a "thief" conveys an excessive ignominy in Naga Society. While some punish a thief by exacting heavy fines, others stamped it with impunity for ever.

Disputes are settled by the village council or the chief and their advisers as the case may be. In deciding disputes, questions of customs are referred to the old men of the village and their decisions in regard to matters of customs are usually accepted. On points of disputed facts, the chief and his advisers or the village councillors as the case may be, will be usually in a position to know and determine, for even if they have no personal knowledge of the matter under dispute, their general knowledge of the circumstances on character of the disputants will enable them to form a pretty shrewd notion of the real facts.

Many disputes used to be settled by oath. The usual procedure being for each side to deposit an agreed amount as a Wager, together with a price of a pig or a fine, the fee of the elders for the part they play in the proceedings. In recent years this is not practised in most places.

From the few instances stated above and from experiences of other disputes on smaller matters settled by reasonable sort of compromise, we notice a distinction in the nature of administration of justice in Naga Society. In case of the breach of custom, which affects the whole community the delinquent would be fined and the fine is eaten by the Councillor or Chief as the case may be. The other form of punishment is compensatory in nature. When the case is of a personal injury to another the fine exacted from the delinquent is made over to the sufferer and a separate fine is given to the elders.

Conclusion

Apart from the academic exercises, the deliberations of this symposium will have an important bearing on our plan project of recording of customary laws with the ultimate aim of codification. Article 371 'A' of the Constitution of India has also provided special safeguards in matters of (1) religious and social practices, (2) Customary law and procedures, (3) Administration of civil and criminal justices involving decision according to Naga Customary laws, and (4) Ownership and transfer of land and its resources.

It is, therefore, necessary to keep these points in mind so that certain consensus are arrived at and guidelines suggested at the end of this symposium, which will help in our future programme.

I would like to suggest a few points for consideration of this seminar.

1. The complicated system of law and legal procedure is still beyond the comprehension of the people. Further the expensive system of litigation through one court after another is also a handicap for the poor people, who can not in most cases fight up to the last. Whereas under customary procedure immediate justice is delivered without involving any expenditure. In this respect the practice of customary laws has more advantages.

2. Head-hunters, as the Nagas were, the customary rules particularly in matters of discipline were very strict and punishment prescribed for the breach of the customs were in many cases cruel like expulsion from the village etc. In the changed circumstances when gradually more and more acts are passed in the State, the primitive elements of the customs should be discouraged.

In the Naga customs, a distinction is always made on the nature of the crime. If the crime is in the nature of inflicting injury to another person, the punishment is always compensatory. This element may be encouraged.

In view of the changed circumstances in the State, and in view of the inherent complications with the system, the rights over land all over the State are to be recorded as early as possible.

Though there are differences in details underlying fundamental principle in the custom is similar. It is, therefore, possible to localise similarities and common denominators are adopted. This will ultimately help in the process of making uniform laws in the State on Social and Religious practices, Customary Procedures, Ownership and Transfer of Land and its resources and administration of customary justices.

OUR CONSTITUTION AND NAGA CUSTOMARY LAW

M. Ramunny

To any forum like the present one which is discussing the welfare of the Tribal people, the constitution of our Republic is a heartening document.

I am extremely happy today as the sessional Chairman is Shri I. Sashimeren Aier. He has personally played an important role even before Independence. The safeguards in our Constitution for the tribal people, has been based on the liberal policies which had already taken root in the mind of the great leader Shri Jawaharlal Nehru. In his now famous letter written on 4th August, 1946, almost a year before Independence, to Shri Sashimeren Aier, and to Shri T. Sakhrrie, Nehru has said, "I see no reason whatever why an extraneous judicial system should be enforced upon the Naga Hills. They should have perfect freedom to continue their Village Panchayats, Tribal Courts etc., according to their own wishes. Indeed it is our wish that the judicial system of India should be revised giving a great deal of power to Village Panchayats." He discussed many other policy matters on tribal welfare in this letter. But since this seminar is concerned only with the customary laws, I have quoted only that paragraph.

We shall divide our examination of the problem of constitutional development and tribal laws into two parts. One, the pre-independent era and the other, the post-independent period.

An important feature of the historical policy of special arrangement for the administration and development of tribal areas, both in the British period and today, was the recognition that tribal areas required special arrangements for their administration and development and that some of them should not fall within the normal legislative provisions. From the earliest times, there were arrangements made by the British to see tribal areas do not come within the purview of the normal laws of the land.

Dr. Verrier Elwin has commented "The fact that the Naga area came under these regulations did not mean that it was separate from other parts of India; or that its inhabitants were receiving treatment different from that given to other tribal people. In actual fact the Nagas were in the same situation as many millions of others".

The province of Assam was created in 1874 in which was included the Naga Hills District. Previously it was under the jurisdiction of the Lt. Governor of Bengal. The most important and the earliest Act was the scheduled Districts Act of 1874 "which made special provisions for undeveloped tracts". A number of scheduled Districts were formed, one of which was Assam Valley itself including Sylhet. The Act enabled the Government to notify what laws should be enforced in these scheduled Districts. Assam Valley before long was descheduled and was taken out of this category. This kind of treatment to the 'undeveloped

tracts' recognised that the hill areas had to be treated differently. The elaborate procedures of normal laws were considered cumbersome and unnecessary. What was needed was a simple, personal, humane administration.

After recognising the necessity for simplification of legal administration, another step was taken in 1880. The Frontier Tracts Regulation II of 1880 provided for excluding operation of laws which were considered unsuitable in border areas. Cr. Pc. was considered unsuitable. C. P. C. had never been enforced in the hill areas.

Simpler regulations and technique of administering justice were devised. Village Councils presided over by the local Chief or Headman or chosen by the people themselves were encouraged. Lawyers were not admitted. The Village and Tribal Councils later developed considerably in these areas.

Further changes took place in 1919 when the reforms under the Government of India Act was enforced. According to this Act, the Governor-General in-Council was authorised to declare any territory in India to be a "Backward tract". It will be noticed that the 'undeveloped tracts' now changed to "Backward tract". But the intention was the same. These backward tracts were distributed in five provinces of British India covering a population of more than ten millions. Naga Hills was one of them. Within their boundaries, the Governor-General could direct that any Act of the Indian legislature would not apply or apply with modifications. In addition, the Governor-General could empower the Provincial Governors to give similar orders regarding Acts passed by local legislatures. Proposals for expenditure in these tracts did not have to be submitted to vote and no question about them could be asked without the Governor's sanction. It was protection to the administration also. In a modern democracy this may not have been acceptable.

Then came the Simon Commission in 1929. The members met the leaders of the various tribal people. The honourable members of this Commission took exception to the word "Backward". Sir John Simon is reported to have called it a 'nauseating' word while Mr. Cadgan described it in the House of Commons as 'misleading'.

Instead of "Backward tracts", the Commission proposed the establishment of "Excluded areas" which were of two categories, Excluded and partially Excluded. There has been a lot of misunderstanding about this word "Excluded". Both these categories were excluded from the competence of the Provincial and Federal legislatures where there was an enclave or a definite tract of country inhabited by a compact tribal population, it was classified as "Excluded Area". Where the tribal population was less homogeneous but was still undeveloped and substantial in number, it was classified as "Partially Excluded". The administration of the "Excluded Areas" was vested in the Governors acting in their discretion and that the "Partially Excluded" areas were under the control of the Ministers subject, however, to the Governor exercising his individual judgement.

The Simon Commission in its report has given their reasons for excluding the main tribal areas from the general constitutional arrangements. The report reads as follows: "The

stage of development reached by the inhabitants of these areas prevents the possibility of applying to the methods of representation adopted elsewhere. They do not ask self-determination but for security of land tenure in the pursuit of their traditional methods of livelihood and the reasonable exercise of their ancestral customs. Their contentment does not depend so much on rapid political advance as on experienced and sympathetic handling, and on protection from economic subjugation by their neighbours."

The scope of this seminar does not allow me to go into details about the report of the Commission on other aspects of administration, financial assistance, representation etc.

As a result of these reforms of the 1930's from the 1st of April, 1937, the Naga Hills District, the North East Frontier Tract, the Lushai Hills and the North Cachar Hills etc., became 'excluded areas' within the province of Assam and were administered by the Governor of Assam acting in his discretion, through the executive authority of the Province extended to them. This meant that no Act of the Central or Provincial legislature could apply to the Naga Hills District unless the Governor so directed and he was empowered to make Regulations for its peace and good government.

This was the situation on August 15, 1947. At the initial stages of independent India the same arrangement continued except that the discretionary powers of the Governor were withdrawn and henceforth he acted on the advice of his Ministers.

When the Constitution of India was promulgated in 1950, we find that the "Excluded" and "Partially Excluded" areas disappeared. Their place was taken by Scheduled or Tribal areas; while an elaborate list of communities known as Scheduled Tribes was later notified in a series of regulations. All the Naga groups were included in these lists.

Our Constitution continued the former arrangements but modified them and enlarged their scope. The relevant sections 91 and 92 of the Government of India Act 1935 had done nothing more than exclude the areas concerned from the operations of the legislatures and gave the Governor certain specific powers. But in the 1950 Constitutions of independent India, the Fifth and Sixth Schedules were more detailed and specific. The Fifth Schedule applied to areas and Tribal people throughout India; while the Sixth Schedule made specific provisions for the Hill Areas of Assam. According to the Fifth Schedule, laws will normally apply unless the Governor directs that they shall not do so. This is quite different to what it was before where the Acts will not apply unless the Governor directed that they should do so.

During the British period the Governor was authorised in a general way to make regulations for the peace and good government. Everything depended on the Governor and the imagination of the Secretariat to bring in regulations for the welfare of these people. But in the new Constitution, special attention was given to details, particularly to the transfer and allotment of land and the control of money-lending. While too much responsibility was put on the shoulders of the Governors who were very busy people, the Constitution of India provided for Tribal Advisory Councils, three-fourths of which had to be tribal people.

In the Sixth Schedule, the Hills districts of Assam came under a different arrangement. They were called Tribal Areas and enjoyed a certain measure of autonomy, particularly regarding their customary laws. A fairly large number of subjects were reserved to the District Councils under the overall control of the Governor acting in consultation with the Ministers. This Schedule was severely criticised by the tribal people as it did not carry sufficient autonomy. The powers of the District Councils included authority to protect the people's land, management of forests (except reserve forests), use of canals and water course, regulation of shifting cultivation, establishment of Village Councils, appointment of succession of Chiefs or Headmen, the inheritance of property, marriage laws and social customs. Any laws made must be submitted to the Governor and receive his assent before they could become effective.

In 1960 when the 16 point resolution for the formation of the State of Nagaland was put up to the Prime Minister, the 9th resolution said that each tribe shall have the following courts of justice—the Village Court, the Range and the Tribal Court. This was agreed as it fell in line with the thinking of the then Prime Minister, the Government of India and the Parliament and finally Article 371A of the Constitution, which was brought into force by the Thirteenth Amendment Act of 1962, stipulated the following :—

- "371A (1) Notwithstanding anything in this Constitution,
- (a) no Act of Parliament in respect of,
 - (i) religious or social practices of the Nagas,
 - (ii) Naga customary law and procedure,
 - (iii) administration of civil and criminal justice involving decisions according to Naga customary law,
 - (iv) ownership and transfer of land and its resources,

shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides."

The most important aspect of this provision in our Constitution is that the power for bringing in any of the laws regarding the above subjects passed by the Parliament into Nagaland has been given to the elected representatives of the State. Earlier in the British period, the entire power of bringing in laws or denying Provincial or Central laws to tribal areas, including Naga areas, was vested in a sole individual the British Governor. Later it was the Governor in consultation with the Ministers. But he could use his discretion. At one stage it was the Governor and the Ministers and today it is the people's representatives.

Thus we have seen that throughout the century the Administrators realised that in tribal areas their special customary laws had to be protected and preserved and different methods were adopted. Our own Constitution given by the people of India have finally left it to the people of the tribal areas to decide what they want to do with their customary laws.

It is now left to us to decide which laws have to be preserved and which customary laws have to be discontinued.

NAGA CUSTOMARY LAWS VIS-A-VIS THE ADVENT OF THE ADMINISTRATION

S. R. Das

It is generally remarked by the common mass that the tribal societies do not have any constitution because the Anthropologists and the other scholars have failed to throw light on the constitution which exists in each tribal society which is well organised, and which proves most effective. All societies at times appear to be chaotic, as when a mob riots, or when there is a hysterical rush from an impending crisis, but soon order is restored and society gets going again. Indeed, order rather than disorder is the rule of the world. Social order, as it is called, is obtained through regulation of human behaviour according to certain standards. All societies provide for these standards, specifying appropriate as well as inappropriate behaviours. Thus all the tribal societies also have their customary laws and usages which control the behaviour of the people and manage their internal affairs.

The customary laws, in fact, regulate the conduct of a society in their intercourse with one another. The customary laws may be defined as that body of laws which is composed of rules of conduct which the society itself feels bound to observe. Thus, the customary laws, which are essential for every society to regulate the behaviour of individual members, are found in every tribal as well as the non-tribal society.

For the purpose of our study of the Traditional Customary institutions and the Customary laws which exist in the various tribal societies in Nagaland, we may start from the 1874 in which year the erstwhile Province of Assam was constituted and the Naga Hills District was one of the districts of that Province to be administered by a Chief Commissioner. The portion of the Naga Hills which did not form part of the said Naga Hills District at that time was treated as a tribal area under the British Paramountcy.

Under Section 2 of the Assam Frontier Tracts Regulation of 1880 the Chief Commissioner notified in 1884, that certain enactments which had previously been in force in the Naga Hills ceased to be so. Under the Scheduled District Act, 1874, certain enactments were declared in force in, or extended to, the Naga Hills, or to the whole of the Chief Commissionership of Assam including the Naga Hills District. Under Section 6 of the Scheduled District Act, rules for the Administration of Civil and Criminal Justice and Police were also notified. It was also provided in the Assam General Clauses Act, 1915 that unless and until extended under the Scheduled Districts Act, 1874, or otherwise, no Act, in the absence of special provisions to the contrary shall come into in the Hill Districts including the Naga Hills District (Section 14).

After the Montague-Chelmsford Reform of 1919 the Naga areas within the Naga Hills District were categorised as "Backward Tracts" and accordingly the Governor of Assam

was given the responsibility to bring them under closer administrative control so that in due course the responsibility of administration could be transferred to the Provincial Government, (Sec. 52 of Government of India Act, 1919).

The Indian Statutory commission, 1930 commonly known as the Simon commission stated in its report that the Nagas asked for security of land tenure, freedom in the pursuit of their traditional methods of livelihood, and the reasonable exercise of their ancestral customs. So it was provided in Section 92 of the Government of India Act, 1935, that no Act of the Central or of the Provincial Legislature could apply to the Naga Hills District unless the Governor so directed, and the Governor in giving such a direction with respect to any Act might direct that the Act in its application to the area should have effect subject to such exceptions and modifications as he thought fit. The tribal customary institutions, the customary laws administered by them and the usages of the Naga people were safeguarded thereby.

The areas between the external boundary of the Naga Hills District and the international boundary between India and Burma were unadministered areas, their relation with the British Government of India being maintained by agreements and treaties with the chiefs. Under the Indian (Foreign Jurisdiction) order in Council 1902, the Jurisdiction over these territories was exercised by or on behalf of the British Government through the Governor-General-in-Council or some authority subordinate to him, namely, the Governor of Assam. Under the Government of India Act, 1935 these areas were treated as "Tribal areas" (vide Section 311); and the administration thereof was carried on by the Governor-General of India through the agency of Governor of Assam and the Deputy Commissioner of the Naga Hills District (vide Section 313). From 1947 these areas were administered under the provisions of the Extra-Provincial Jurisdiction Act, 1947 under which the Government of India extended the necessary laws, rules and orders to the tribal areas for the purposes of administration. This also safeguarded the tribal customs and usages.

In 1947, the Minority Committee of the Constituent Assembly observed inter-alia that "While a good number of superstitions and even harmful practices are prevalent among them, the tribes have their own customs and way of life with institutions like tribal and village panchayats or councils which are very effective in smoothing village administration. The sudden disruption of village customs and ways by exposure to the impact of a more complicated and sophisticated manner of life is capable of doing great harm". The Committee also suggested provision of statutory safeguards for protection of the tribal land which is the mainstay of the tribal economic life and for protection of the tribal customs and institutions. In the Constituent Assembly, Dr. Ambedkar stated that the tribals had their roots in their own civilisation and culture and he also advocated continuance thereof. So, in the Sixth Schedule to the Constitution of India, the District Councils of the autonomous districts of Assam were vested with the powers to make laws relating to land, forests other than reserved forests, shifting cultivation, establishment of village community, appointment or succession of Chiefs or headmen, inheritance of property, marriage and social customs etc. The Sixth Schedule thus provided for the protection of

land and customs of the tribal people. As District Councils were not established in the erstwhile Naga Hills District in pursuance of the provisions of the Sixth Schedule, the interim provisions of paragraph 19 of the said Schedule (which are analogous to those of Section 92 of the Government of India Act, 1935 quoted earlier) had the effect of maintaining the status-quo in respect of tribal land and customs in the Naga Hills District, whereas in the erstwhile Naga Tribal area, which now comprises the Tuensang District, the pre-constitution position in these matters were allowed to continue undisturbed by the President of India acting through the Governor as his agent under the provisions of paragraph 18 of the same Sixth Schedule.

The Nagaland (Transitional Provision) Regulation 1961 provided for the constitution of Village, Range and Tribal Councils in Nagaland. It also empowered the Interim Body to make bye-laws regulating the constitution of Village, Range and Tribal Councils, the powers exercisable by the said Councils in disputes involving breaches of customary laws and usages; and the powers exercisable in relation to such other matters as might be prescribed.

Prime Minister Jawaharlal Nehru while declaring in the Lok Sabha on the 1st of August, 1960 that the Government of India had decided to create the State of Nagaland, said, 'We have not the slightest desire to interfere in the tribal customs and usages of the Nagas or in their distinctive way of life.'

The Constitution (Thirteenth amendment) Act, 1962 provides inter-alia that :—

- (a) no act of Parliament in respect of :—
 - (i) religious or social practices of the Nagas,
 - (ii) Naga customary law and procedure,
 - (iii) administration of civil and criminal justice involving decisions according to Naga customary law,
 - (iv) ownership and transfer of land and its resources, shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides.

The Rules for the Administration of Justice and Police in the Naga Hills promulgated in 1937 continued to be in force in the Naga Hills District and in a portion approximately one-third of the erstwhile Naga Tribal area. In the year 1955, the Assam Frontier (Administration of Justice) Regulation, 1945 was extended to the whole of the Naga Tribal area already renamed as the Tuensang Frontier Division of the erstwhile North-East Frontier Agency in supersession of the 1937 Rules. Both the 1937 Rules and 1945 Regulation recognised the authority of the traditional tribal customary institutions in as much as they had been vested with unlimited powers to decide civil cases, but their powers in criminal matters had been limited to trial of certain minor offences specified therein.

The Rules for the Administration of Justice and Police in the Naga Hills District and also the Assam Frontier (Administration of Justice) Regulation, 1945 contain provisions

almost similar to those contained in the rules on the same subject applicable in the hill areas of Assam, namely :—

- (1) Rules for the Administration of Justice and Police in the Khasi and Jaintia Hills.
- (2) The Khasi Siemships (Administration of Justice) Order, 1950.
- (3) Rules for the Administration of Justice and Police in the Garo Hills District.
- (4) Rules for the Regulation of the Procedure of Officers appointed to administer justice in the Lushai Hills.
- (5) Rules for the Administration of Justice in the North Cachar Hills sub-division.
- (6) Rules for the Administration of Justice and Police in the Sibsagar and Nowgong Mikir Hills Tracts.

All these rules were framed on the basic principle that the administration of the tribal communities need simple codes and laws; and that in the formulation of such codes and laws, the local customs and usages should be given due importance. Indeed adjudication of a vast majority of disputes and cases both civil and criminal in accordance with the prevailing traditional code of the tribal communities has been provided for. The Indian Penal Code was, however, introduced in all the hill areas in the early part of nineteenth century for the purpose of holding trials by regular courts of law. The Rules and Regulations referred to above recognize the authority of ancient village councils, village headmen and their system of chieftainship which apply in varying patterns among various communities. Thus at the basic level of the village, the social, cultural and several legal affairs continue to be handled with complete freedom by the traditional village authorities.

Obviously, there is a difference between the powers exercisable by the tribal institutions under the statutory law in their capacity as statutory village authorities recognised under the said Rules/Regulations; and the powers vested in them by the customary laws under which they function, as a kind of a miniature Government of the respective villages or group of villages which are the oldest unit with a more or less democratic structure. In fact, they have efficiently managed these internal affairs including administration of justice, both civil and criminal in accordance with the customary laws and usages. These unions of the village communities are conducive to their happiness. They enjoy a measure of autonomy and have been successful in preserving the traditional cultural values of the Naga people. These institutions which have managed the village affairs for centuries have retained their vitality and power. Having been established in history and traditions, supported by social and religious sanctions, these councils represent the co-operative and communal temperament of the people. These tribal councils have been settling the disputes and other matters according to certain principles which are the customary laws of the respective tribes. Hence, instead of importing new basic concepts of law from outside, it is desirable to build up the legal structure on the solid foundation of the traditional customary laws of the Naga people particularly in view of the simple and easy method of their administration.

Here, I may well quote as an illustration, the story of a village merchant who had a very good horse which helped him in earning a good fortune. The horse once saved the life of the merchant from the hands of a band of dacoits by running very fast with him on his back through dense forests. While so running, the horse received serious injury which ultimately resulted in the loss of sight of both the eyes of the horse. As the horse was no longer useful to him the master turned the horse out of its stable. The poor horse, very weak and completely blind, started roaming helplessly in the village and while so roaming, it came unknowingly into a field which was meant for assembly of the villagers for settling disputes according to the traditional customary practice. The field had a pole with a bell at the top of it with a rope hanging from that bell to the ground the end of which was fastened with the pole. Anybody who had any complain to be submitted to the village authorities, would come to the field and ring the bell, upon which the villagers would assemble there immediately. The blind horse unknowingly started rubbing its neck against the pole and the rope, which resulted in the ringing of the bell. Thereupon all the villagers assembled there as usual. They recognised the horse and looking at its pitiable condition, the villagers called its master before the assembly, chided him for his ungratefulness to the horse and compelled him to take back the horse to the stable with a mandate that the horse should be fed and well treated by him till it met its natural death. This is how traditional institutions dispense justice according to the customary practice under which it is speedy and cheap, acceptable and easily available without any scope for the proverbial laws' delay.

A traditional customary institution tries above all to effect a reconciliation, restoration of harmony being deemed more important than rigid adherence to any set principles. It follows the customary law which is generally taken as a conventional measure of living as well as a guide. It is also an instrument for punishment of the wrong-doers.

Such traditional institutions e.g. Village Councils, differently named in different tribes and sub-tribes also differ their constitution. In some tribes these are hereditary and in some elected in a limited sense. Broadly speaking, there appears to be two main divisions, namely :

(1) village elders in Ao, Lotha, Angami and Kachcha Naga areas. The power of the chief although theoretically absolute is in practice limited, as he always has to appoint elders to assist him. With the stopping of tribal warfare and the spread of education the authority of the Chief has tended to decline. The village authority is still a very living force and controls practically every aspect of village life. These customary tribal institutions exercise the authority to enforce the customary rights and obligations of the members of the respective tribes or sub-tribes as the case may be.

The traditional method of Ao village Government has been the rule by elders elected from the various clans within the village. The members of the village are divided into age groups and a man remains a member of his particular age group throughout his life. Everyone without distinction must perform the work allocated to the group, and no one who has not worked his way up from the lowest group can become an elder. The elders are

elected by their respective clans from one age group and serve for a period which varies according to the custom of the particular village concerned. They then vacate office and new elders are elected from the next suitable age group. A new factor in village Ao government was introduced with the advent of Government. The council of elders was too large a body with whom to deal and through whom to transmit government orders and instructions to the village, so Gaonburas were appointed with the approval of the village. The Gaonbura is the intermediary between the village Government and the village.

The traditional method of Sema Village Government is ruled by hereditary Chiefs assisted by one or more elders (selected by the Chief) and who holds the position only at his pleasure. The Chief's relatives also exercise a varying amount of influence in the village. The Chief has been recognised by Government as the Gaonbura of his village. The Kuki village system is similar in essence to that of Semas, i.e., a hereditary Chief assisted by elders whom he may appoint and dismiss at his pleasure.

In the Lotha Naga area the village authority consists of Gaonburas selected by the village and approved by the Government, assisted by an informal council of influential men. The village organisation of the Angami Nagas are not fundamentally distinct from that of the Lothas, except that is more extremely democratic and the influence of the elder men is somewhat less.

As already stated these customary institutions administered justice according to the customary laws. But as far as I am aware no complete compendium of the customary laws is available not only in respect of the customary laws of the various Naga tribes, but in respect of any other tribes living in the hill areas of the North-Eastern Region of India. Eminent scholars and anthropologists have from time to time written some books which contain references to the customary laws of certain tribes. Some of the relevant books which I have since come across are mentioned below :—

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|-----------------------------------------------|------------------|
| (i) The Rengma Nagas
Laws and Customs. | — J. P. Mills. |
| (ii) The Ao Nagas
Laws and Customs. | — J. P. Mills. |
| (iii) The Angami Nagas
Laws and Customs. | — Hutton. |
| (iv) The Ao Naga Tribes
of Assam. | — W. C. Smith. |
| (v) The Nagas in the
Nineteenth Century. | — Verrier Elwin. |
| (vi) Nagaland District
Gazetteers, Kohima. | — Dr. H. Barch. |

While Verrier Elwin in his book "The Nagas in the Nineteenth Century" has furnished some details about the customs in respect of certain matters including marriage, funerals etc., the present position in respect thereof has been presented by Dr. H. Barih, in "The Nagaland District Gazetteers, Kohima". It appears the most common system of punishment is imposition of fines, the amount of which varies according to the nature of the crimes and offences. Even Criminal offences are treated as civil wrongs and accordingly disposed of following the principles of Tort consistent with the local circumstances. The General policy of non-interference in Customary laws etc. as followed by the Interim Government of Nagaland was accepted by the Government of the State of Nagaland in preserving the Naga Traditional institutions and the customary laws.

Dr. Barih has also stated that the traditional tribal councils have lost the vitality and colour they had in the past. They have now been invested with greater judicial and administrative powers under the present arrangement of the Government.

It is, however, necessary to review the composition, role and functions of the tribal customary institution in the light of the present circumstances and the advancement of the tribal people in all the spheres of their activities. What is significant in this connection is that the old political organisation or the kinds of social structure which had been built up in the past are being rapidly moulded by the demands of new ideas, which is true not only of the tribal people of Nagaland, but also of all citizens living in India. In certain matters the Courts have also given decisions about customary laws. For instance, it has been decided that even after conversion of a tribal to any religion other than his traditional tribal religion, he continues to be a tribal. The Election Commission of India also held that notwithstanding his or her marriage with a non-tribal he or she continues to be a member of his or her tribe so long as he/she continues to reside in the particular tribal area, follow the particular tribal way of life and customs and is regarded by the members of that tribe as member of their fold.

A study of Customary laws and traditional Institutions which administer them may be conducted under two separate heads, namely :—

1. (a) What are the various traditional tribal institutions which settle tribal disputes, their constitution ; and
(b) What procedures are followed by these institutions in the disposal of cases.
2. What Tribal Customary laws are followed in such disposals under Civil and Criminal sub-heads.

The customary laws in civil matters may be studied under the following further sub-heads :

- (i) Civil Offences.
- (ii) Social offences, i.e., not observing the customary ceremonials, not helping the village community in the collective activities of the village, marriage, slavery etc.
- (iii) Land ownership.
- (iv) Fishing and water rights.
- (v) Marriage, adoption, succession etc.

The customary laws in regard to criminal matters as long as they are not barbarous, and do not infringe on the basic rights of an individual as a human being may be continued. Customs like punishing a person with cutting of his hands, legs or practising of slavery should of course be discarded. As long as the customary laws do not infringe ordinary human considerations, all efforts should be made to accommodate them in the State's legal system.

But what of the method studying such customary laws ? In the inaugural ceremony of the Law Research Institute, Eastern Region, Shri K. N. Saikia, Advocate posed the following queries in regard to the research in the field of customary laws : "Shall the study be confined to the administrative and legislative growth and the growth of the laws ; or shall we take the laws and customs as we find them at present and analyse, bringing out the elements and expose them ; or shall we leave aside all these but concentrate on the philosophical bases of the laws we find and write a critique of the same ; or shall we study the effects of the laws on the society considered in light of the prevailing social ideals or norms ? This is the problem of method of study."

My humble suggestion is that we should study the various shades of customary laws of the tribes and sub-tribes analytically because this study of the traditional customary institutions and laws of the various tribes will prove fruitful to the simple tribal people, to anthropologists, to sociologists and to the criminologists as well as the Administrators.

In conclusion, I submit that the customary laws which are found to be still desirable, leaving out the degenerate ones may be codified by the State Legislature. Once the customs are codified they may be interpreted to suit the developing Naga Society from time to time.

CODIFICATION OF NAGA CUSTOMARY LAW

R. S. Bedi

Introduction

With the administrative and constitutional growth of Nagaland, time has come to compile and codify the Customary Laws. Customary laws have played a very significant role in the past in satisfying the needs and keeping the Naga Society together. But today times have changed. Education, economic development, Christianity and democratic institutions have introduced new values in the fast changing society. If the Naga Customary laws are not compiled and codified now, all that is best in the Naga Culture and social Institutions will be lost forever.

Growth of customs

In all societies the relations between the members of the Community are regulated by a body of observances, traditions, rules and accepted religious and moral standards. Forms of conduct pertaining to such aspects of Communal life as the personal relations between kinsmen, clansmen, members of the community; regard for human life; personal honour; Institutions such as rank, chieftainship, marriage, property inheritance, religious observances etc., constitute customs. Family quarrel, a law suit, or a breach of a marriage regulation, constitute other aspects of customs. There were times when the villagers did not question any rules, procedures and sanctions of such customs. But today the efficacy of such customs is being challenged.

The growth of customary laws begin with aristocracy and kingship in various forms in the primitive society. Then the real power passes from the king to a body of men who by reason of their descent and their power claimed to dominate the state. In other societies the monarchy is dispensed with and the authority is vested firmly and really among the aristocrats or the village elders. This change corresponded, according to Maine, to a change in the nature of law. The aristocrats or the class in whom the authority in respect of laws now vested could not claim the same direct inspiration which it was possible for the sacred person, the king, to claim. These aristocrats or the village elders therefore claimed not a direct inspiration from the gods, but a monopoly of the traditional knowledge of the laws which were handed down in their families from generation to generation. This therefore is the second stage in the evolution of the forms of law, namely the age of customary law.

Evolution of customary laws

Reasons for writing out the customary laws are various. The laws are recorded for the purpose of assisting the memory of the law-givers. But the important reason is the rise of democracy and introduction of new democratic institutions. As said earlier economic,

educational and political development has inspired people to know the law and to insist upon those laws being inscribed in a more or less public form. These codified laws are the manuals for the use and guidance of the learned men. According to Maine the codification is done when the art of writing becomes familiar to such people. In case of Nagaland when the Britishers came here they wrote a number of monographs and studied Naga Customs and Customary laws. However, these books do not contain all the details of the customary law and procedure. Indeed, these books did provide enough material for further detailed study of the Naga customary laws.

More than hundred years ago Christian Religion was introduced in Nagaland. This religion set in motion a process through which values of customs and customary rights changed. Primitive savage customs yielded place to benevolent and charitable customs.

British administrative officers introduced a number of regulations incorporating procedures through which the village authorities were allowed to try civil suits and criminal cases which were not heinous. These were rules for the Administration of Justice and Police in the Naga Hills District 1937 and the Assam Frontier (Administration of Justice) Regulation 1945. These rules and regulations vested powers in the village authorities to try cases according to Naga Customary Law, laid down the procedure and provided Appellant authorities in respect of civil and criminal Justice.

The old order has changed yielding place to the new. This is nowhere more prominent in Naga life than in the department of custom and customary law. The Naga customary laws have suffered from contact with a suzerain power. The Nagas had to adjust their laws in accordance with the laws of the State. The result was that in certain matters the old customs of the tribe have practically died out and new rules have come into existence.

The Nagas in the olden times had developed village Governments. Politically different villages were absolutely independent of one another though socially they are closely related. In course of time big and powerful villages started exerting their sphere of influence over other smaller villages. Each Naga village had a number of village officers who looked after the temporal affairs of the village. They formed the judicial council of the village. Cases of Sema, Konyak etc., were on different footing. They had Ahogs and village chiefs. These village courts could decide civil, criminal, religious and other such cases. In olden times punishments included death, mutilation, slavery, social ostracism, confiscation and fine. But today only fine has been left with the village authorities. Part of the fine is paid to the victim as compensation. In civil cases the village authorities could pass decrees and execute the same. In case of violation of any of the village rules the violator has to pay fine in cash or kind to the village authority which may be used for village welfare fund or spent by the village authorities.

Since the customary law has changed, a lot of new rules and acts have been introduced. It is therefore imperative that these customary laws and practices should be codified so that courts have manuals to guide them, students of law have books to depend on for learning

and research. This will also help villagers to remove ambiguity, confusion and ignorance. Codification will also help in bringing uniformity. Since ignorance of law is no excuse, codification will bring authentic law on book available to every villager.

Challenge of Codification

Now let us face the challenge of codification. Codification work poses a number of problems. Before the laws could be codified, first it has to be studied as to what are the existing customary laws. According to 1971 census Nagaland has 966 villages with a population of 5,16,449 with 16 major tribes. Naga customary laws are different not only between the tribes but even between the clans, villages and khels. Therefore, it is essential that the Naga Customary law should be collected village-wise. This type of work was done by Mr. Rattigan and later on he published "Digest of Customary Laws". It will be Herculean task to collect separate set of customary laws for each Naga tribe. The data has to be collected village or even khel-wise.

Naga customary laws developed in different political systems. Some tribes had monarchical society, while others had republican. Some were democratic and some were aristocratic and so on. Therefore, each set of Naga customary law evolved its own institutions, concepts and procedure. Now while compiling, we should take out the best from each tribe and bring out unified set of laws so that most of the general and similar laws could have universal application. But the unification should not be done at the cost of the tribes for whom the customary laws are being codified. The aim should be to make these laws more universal, efficacious and in tune with the changed times.

In olden times each village or clan or tribe developed their customary laws according to the local genius, local conditions, local politics, local temperament and peculiar tribal needs. The reasons for such narrow growth were, lack of communication, cultural and language barriers, suspicious and hostile attitudes. But today when Nagas are within one democratic political set-up and the Naga judicial system of laws and procedure have traversed a long way towards an enlightened society, the customary laws should conform to the changing needs. In the past, the evolution was due to experience and peculiar needs and through trial and error at the lowest level. Today the growth will be through codification, legislation, interpretation, judicial notice, precedents and case law. Therefore it is most essential, indeed, at this stage that these factors must be considered at the time of codification. Once the laws are codified, change will be difficult.

Essentials of usage and custom

Custom must be sufficiently defined for its application to be clear and undoubted. Usage should never be used as synonym for custom. It is used to denote what is done by people uniformly and consistently. It is also used to denote what is done uniformly and has been so done in a certain locality or by a certain trade for a period sufficient to make it probable that people in their contacts adopt it as an implied term. A usage will obtain

the force of law only when it is reasonable, unvariable and ancient in which case it becomes custom. Otherwise usage has no force of law. Where it is proved that an ancient custom could not have come into existence, the usage fails to protest any legal effect.

Family custom, however by its very nature, cannot have come into existence from time immemorial in the sense that the beginning of it is lost in antiquity.

While recording a custom the following essential characteristics must be examined. It must be of immemorial existence. It must be reasonable. It must be certain and it must be continuous. The reasonableness of custom is so very necessary that if it be against reason it has no force in law. If an alleged custom is unreasonable in its origin no usage or continuance can make it good. As to the element of certainty not only should its nature be certain but there should be certainty in respect of the locality where it exists and also in respect of the persons affected by it. Some definite limit must be assigned to the area wherein a custom is said to prevail and it must be defined by reference to the limits of some recognised divisions of land just as much as it may affect a particular body or a class of persons whose number may be fluctuating at different times. In short it must be :—

- (1) Immemorial
- (2) Reasonable
- (3) Without interruption, and
- (4) Certain in respect of its nature, locality and persons whom it is alleged to effect.

Such a custom must be compulsory and not optional.

A custom must not be illegal and immoral. Prostitution and slavery are the examples.

If a custom has been in existence for a long series of years it cannot be extinguished by non-users. On the other hand, a custom can be abrogated by consensus of opinion among the members of the community or tribe and if for a considerable period that feeling continues and such members do not follow the old rule, the old custom can certainly be abrogated. A long established custom cannot be abrogated by a mere declaration. Similarly, breach of custom in a particular instance needs not destroy it for all the time.

Tasks before the compiler and the investigator

The compiler has to keep in view that though persons carry their own customs with them wherever they go, it does not necessarily follow that they retain those customs unchanged after long residence amongst other tribes holding different customs. The compiler must record the changes so noted by him.

The compiler also must differentiate between a tribal or family custom and territorial custom. Territorial custom applies to all persons resident within a particular area irrespective of their tribe.

The compiler should not record the customs which are against the public policy, good conscience, equity and justice otherwise, even if they are compiled or codified, they will have no force of law if challenged in any court. Similarly the custom which is against any of the provisions of the Constitution of India will be regarded as void. Therefore he must not include such customs.

The second problem will be to record details of authentic customs. It is just possible that the informer himself is not aware of the correct custom. And if he is prejudiced he may misinform and mislead the investigator. It is also possible that he himself has not properly understood the implication of the customs. One has to be careful so as to avoid recording custom which ceases to have any force of law. The rule of custom must be established and held to be of binding force. The investigator must also record definite instances in order to be sure of the custom. He may collect deliberate and well considered opinions of the people living under and governed by the custom. The safest way is to contact the oldest living person of the village concerned who is well conversant with the customary laws and later gets this data cross referred and properly checked up with two other village elders. He must note down the subtle difference in the customary laws of different families, clans or villages as some laws are uniform within certain territory, others amongst a group of people.

The customary laws can be collected or verified with the help of special persons held to be repositories of, specially skilled in knowledge of, such laws. He may also collect and verify customary laws from the available documents and books where such laws have been described.

The investigator may also note connection of different norms with religion, myth, cult, organisation etc., if any. He also has to investigate various sanctions regulating the norms of social contact which may be positive or negative. In the former, observance of the social standards is approved by the community, the individual is rewarded, held in respect etc.; in the latter, their infringement is threatened with unpleasant consequences. Sometimes compliance with the standards is secured through informal social pressure, e.g., by the threat of ridicule, contempt, scorn, or ostracism, usually very effective forms of punishment. The observance of other norms is secured by supernatural, sociomagic sanctions, any violation being followed automatically by evil results, without any overt interference on the part of the community. The breaking of taboo often renders the offender "unclean", and may result in disease or even death, or a punishment may be inflicted by some supernatural power of spirit. Other norms are sanctioned by the organised reaction of the community, acting as a whole or through its authorities, or certain groups of individuals. Sanctions may be based on beliefs, moral precepts and actual institutions. In the case of ritual sanctions, investigator should note as to what type of actions involve their operation.

Compiler should give in detail definitions of various crimes and their appropriate punishments. He should make a separate study of civil wrongs and civil rights. In respect of criminal law he should classify and separate private law and public law. In this respect I will recall the words of Professor Radcliffe Brown—"In any society a deed is a public

delict if its occurrence normally leads to an organised and regular procedure by the whole community by the constituted representatives of social authority which results in the fixing of responsibility upon some person within the community and the infliction, by the community or by its representatives, of some hurt punishment upon the responsible person. This procedure, which may be called the penal sanction, is in its basic form a reaction by the community against an action of one of its members which offends some strong and definite moral sentiment and thus produces a condition of social dysphoria. The immediate function of the reaction is to give expression to a collective feeling of moral indignation and so to restore the social euphoria. The ultimate function is to maintain the moral sentiment in question at the requisite degree of strength in the individuals who constitute the community."

The investigator should also explain about fine and compensations for crimes, i.e., a law of tort. He may also record separately the criminal and civil procedure followed for trying cases. A special study of oath or ordeal in full details as to the ritual, wordings, number of lives to be included in the oath, etc., should be made. It is also required to describe the constitution of tribal courts, their composition, the reference to the presiding officer and their powers. He may also study the law of evidence (oral and documentary) and the value of circumstantial evidence. He should record separately village, social and sacred customs. Method of appointment and succession of the court judges and other law officers may also be recorded. He may also investigate the procedure of summoning the accused, the defendants and the witnesses.

In most societies, institutions exist which enable a wronged individual or group to bring a case before the constituted legal authority or before an informal tribunal of arbitrators. Legal procedure in the strict sense is concerned almost entirely with the breach of these norms which involve organised sanctions. Investigator should note what actions involve such sanction, and especially what happens in the case of homicide and bodily injury; incest, adultery, seduction, rape, and breach of the laws of exogamy; theft, the killing of other people's animals, damage to their property, etc.; slander, disturbance of the peace, revolt against communal authority, witchcraft and black magic. He should further inquire in to the responsibility of the culprit for wrongs committed voluntarily or involuntarily, accidentally, through carelessness, etc. He should find out if any distinction is made in the penalty according to the motives of the culprit, or are only the consequences of his act considered, other questions for investigation are. How far are women, children, idiots and animals regarded as responsible for their actions, and if they are not held responsible, does anyone else bear their responsibility? To what extent are the relatives of the man, his clansmen, members of the same association, age-set, of other social group, involved in joint responsibility for his actions? Is any distinction made according to whether the wrong affects a stranger or a member of the same community, or to the status, age or sex of the victim or culprit?

It should be noted whether all cases are brought before the authority or whether, in some types of wrong, the victim or his group takes direct action against the culprit or his group.

Does the payment depend on agreement, or is there a traditional tariff defining the payment to be made for all possible injuries? Does the amount vary with age, sex or status of the victim or culprit? Must compensation be paid in any special form, e.g., cattle, garden produce, women, slaves, etc.? What people are expected to contribute to, and what people can claim a share of the money? Who regulates the payment and what happens if it is not made?

Who initiates the prosecution—the plaintiff or the community through its agencies or Government? Where both occur, for what types of action are they respectively employed? How are culprits detected, arrested, summoned and brought, before the court; how are the proceedings conducted; what proofs of innocence or guilt are demanded; what regard is paid to evidence? How is judgement arrived at, and how pronounced, and are there any rights of appeal? If so, to whom? What kinds of punishment prevail, and to what crimes are they respectively applied? Where fines are imposed, what objects do they consist of? Who contributes towards them and who benefits from them, and in what proportion? Does the court share in the fines or claim fees? If the latter, who pays them? How is the judgement of the court enforced? Where there are subordinate courts, what kinds of cases do they deal with, and to what extent are their judgements binding or subject to appeal and revision by a higher court? Are there any ways in which disputants can settle their conflicts without reference to a tribunal, e.g., by regulated combat, payment of compensation, licensed plundering. Investigator should endeavour always to distinguish between major and minor offences. He should notice especially what are regarded as offences against the community as a whole and what against the individual, and indicate any differences in their respective treatment, sanctions, etc. Investigator may attend the trials and record all details of cases that come up for trial. He may note any rights of asylum for fugitive criminals, etc. What persons or places have power of sanctuary? Does the refuge protect against the agents of the law or only against private foes?

Where there is no central authority, with an organized system of justice, there may be persons or groups of persons whose authority may be accepted in the community. Such persons may be heads of a clan, lineage, or family, elders in the local community officials of religious cults, persons with magic or esoteric knowledge, or even a person recognised for his outstanding character, independent of recognised status. In all such cases the sanction for their authority should be investigated. It should be noted both in the cases of organized and unorganized systems of justice whether women as well as men hold positions of authority, and if so, what are sanctions for their authority.

Government should lay down statement of policy, instructions and directives and the principles for collection of data and recording of the customary laws to help the investigators in recording proper and desirable material. He should also be given questionnaire dealing with the subjects given in the Appendix I and II.

Other questions

There are a few other questions which have to be decided by the Government:

1. What law is to be followed when the parties belong to different tribes?

2. What law is to be followed when one of the parties is non-Naga?
3. What law is to be followed when the dispute is between two different villagers of the same tribe but following different customary laws?
4. Who may decide disputes between two or more villages?
5. Extent of powers and jurisdiction of the appellate courts to interfere in the proceedings and decisions of the tribal courts may be defined.
6. Police powers of the tribal courts may be defined, and they may be provided with requisite machinery.
7. Various forms of notices, summons, warrants, injunctions and court registers may be prescribed for the tribal courts.
8. What punishments or procedures to be followed when persons do not submit to the tribal courts, directions and decisions.

When all the laws have been recorded and compiled, an expert body of jurists should examine the entire mass of the customary laws so collected and advise the Government about the legal and valid customary laws. The Government should again place it before the respective tribal councils for approval. After their approval this may be codified through legislation. Also Government may cause necessary amendments in the rules of administration of Justice and Police in Nagaland.

APPENDIX I

Crime, their punishments and their compensation

Part I. Homicide

- i. Concepts of homicides
- ii. Definition of terms
- iii. Their punishment
- iv. Compensation

Part II. Hurt

- i. Concepts of hurt
- ii. Definition of terms
- iii. Their punishment
- iv. Compensation

Part III. Defamation of character

- i. Concept of defamation
- ii. Compensation
- iii. Definition of terms
- iv. Their punishment

Part IV. Marriage and divorce

- i. Concepts of marriage and divorce
- ii. Definition of terms
- iii. Their punishment
- iv. Compensation
 - a. Legality of marriages
 - b. Payment and distribution of bride wealth
 - c. Legitimacy of children

Part V. Violation of Rights in Women

- i. Concepts of such sex crimes
- ii. Definition of terms
- iii. Their punishment
- iv. Compensation

Part VI. Property Rights

- i. Ownership
- ii. Land Tenure
 - (a) Irrigation channels, (b) water rights, (c) fishing rights, (d) hunting rights and grazing rights
- iii. Inheritance

Part VII. Infringement of property rights

- i. Concepts of infringement of property rights
- ii. Definition of terms
- iii. Their punishment
- iv. Compensation

Part VIII. Laws of Adoption

Part IX. Sale and Loans

Part X. Pre-emption

Part XI. Gift

APPENDIX II

Part I. Customary Law and Procedure

- i. Jurisdiction and composition of Courts
- ii. Constitution and composition of Courts
- iii. Officers required to assist the Court
- iv. Powers of the Court
- v. Procedure for Civil Cases
- vi. Procedure for Criminal Cases
- vii. Forms of Oath/Ordeal
- viii. Procedure for Execution of Decrees
- ix. Law of Evidence
- x. Law of Wills

THE KHIEMNUNGAN NAGAS

(Some Social customs and practices)

L. L. Yaden

The basic foundation of the Naga society is at the village. For centuries together, before the coming of the British Govt. almost every village was an independent State with some exceptions particularly among the Konyaks, as such every Naga village was a village republic. Even to-day, every Naga village remains a village republic minus the previous independent status of the village State before. The political, economic, social and cultural activities of the Nagas are centred round the village and the sentiment of the people has been developed consciously or unconsciously within the village socio-economic structure.

The Naga customary laws are not in uniform and these customary laws vary from tribe to tribe, because of different social and customary practices adopted by each tribe as their respective culture. It should be our object to find out the proper channel to collect the materials on different tribal customary laws. This is to collect and record the existing customary laws and practices traditionally held by each tribe for centuries together both published and unpublished. When we speak of customary laws, we immediately infer in the line of the legal system of the British laws codified in the Criminal Procedure Code, Indian Penal Code and other laws; but the Naga customary laws when recorded and restated will be very simple, not legally complicated and will expedite efficient administration of justice in the courts. The customary laws will generally cover the following aspects, namely, (1) the system of village Govt. and its functions, (2) the religious and social customs, (3) significance of customs and ornaments, (4) inheritance of movable and immovable properties, (5) rights and obligation of villager, (6) inter-village treaty maintained between the villages, (7) method of cycle of jhuming and village jurisdiction, etc.

In this short paper, I have recorded some social customs practised within the Khiemnungan tribe living within Noklak administrative area under Tuensang district. This Khiemnungan tribe was known as Kalyo-Kengyu until 1950. It is one of the most active and light footed tribes among the Nagas; but having some peculiar social customs according to their traditions. It has grouped into three main clans, namely, Lam, Shiu and Meya and the formation of the clans within a Naga tribe is a common historical character in their society.

1. Belief

The Khiemnungans believe in one supreme God above all deities. They call Kooa the supreme deity. They regard that the sun and the moon are the representatives of God. They believe that the souls of the dead go to the other underworld through a tunnel on the

top of a peak called Sukey, which lies about 10 kilometers west of Noklak village and continue their life there as before. But at present many persons are converted into Christianity. Christianity has been accepted by these converts as much superior to the tribal religion having tremendous effect on their ways of life and progress. It really brings drastic changes in the outlook of a convert, who had been living in a secluded society clouded with superstition and other expensive ceremonies of primitive faith and belief.

2. Rites and Ceremonies

The Khiemnungans observe several seasonal rites and ceremonies. These celebrations are mostly related to jhuming cultivation and prosperity in life.

Ewam :

When new jhum is cleared and burnt, the villagers construct new jhum hut in the fields. It is taboo to make fire during the construction of the jhum hut and that no smoke should be produced by making fire, unless the hut is completed. As soon as the hut is completed, the villagers will perform this Ewam ceremony and after this fire can be made free in the fields. When the villagers complete construction of jhum huts in the fields, Ewam ceremony is performed in the respective fields by all on the same day by sacrificing pigs, chickens, etc. and ask blessing from God for a good harvest in the fields. The chief priest of the village goes to the field one day ahead of all the villagers and perform the first fire-making ceremony in one of the fields and announces others to perform the same on the following day. This general celebration of Ewam cannot be done unless it has been performed first by the chief priest one day ahead.

Chukhai Khan :

As soon as the sowing of seeds in the fields is completed, the villagers perform Chukhai Khan celebration in the fields by sacrificing either pigs or chickens to purify the seeds sown in the fields and perform rites asking for good harvest in bounty.

Cheetap :

When the millets will be ripe for harvest, the villagers go to their respective fields in a particular day chosen by the priest and harvest millets nominally just around the jhum hut and bring home for taste by observing some ceremonial rites. The villagers are free to harvest their millets in their respective fields after this celebration, but not before this celebration is performed by the priest.

Peeyam :

When village harvest would be over and collect the grains in the village granaries, the villagers perform Peeyam celebration asking from God of inexhaustible stock of grains in the granaries by killing chickens, so that there should be no scarcity of grains for the family till the next harvest.

Tsukhum :

When paddy plants start blooming and other vegetables bear fruits in the fields, the

villagers perform Tsukhum celebration at the village by sacrificing mithuns, buffaloes, cows, pigs, etc., feasting for six days with meat and drink ; but they do not dance till next Woo celebration is performed.

Woo :

The Khiemnungans remove skull of their deceased from the bamboo made coffins which are kept on a scaffold near the village in a year. They remove the skull on Woo celebration day killing cows, pigs, etc. All the relatives of the deceased assemble in the house of the deceased and really mourn for the dead. Early morning just before the sunrise, all the relatives of the deceased led by the eldest man of the clan who is also the priest of the clan go to the spot, where the dead body was kept before on the scaffold and remove the skull from it. The skull is wrapped with a piece of cloth and put into a small basket covered with leaves and some items of foodstuffs and ornaments offered to the soul of the dead. The skull of the cow or the pig killed on that day is also tied to the basket. The clan priest holding the basket containing the skull of the deceased wrapped properly and followed by the relatives of the deceased including women mourning aloud go in procession to the spot in the jungle and dump it along with skulls of other deceased relatives. Every clan in the village has a selected spot in the jungle either by the side of a big stone or big tree preserved for centuries together to collect the skull. The relatives in the mourning procession then return to the house of the deceased and have final feast of mourning rite with fresh meat and disperse.

Hookha :

This is the greatest annual festival of the Khiemnungan Tribe. They celebrate this by killing mithuns, buffaloes, cows, pigs, etc., and dance for days together. Both men and women dance together hand in hand in the houses of those men who have killed mithuns, buffaloes, pigs, etc., in several number purposely to celebrate this grand feast. This celebration is observed for 6 days at all the villages. Some villages extend the period more than 6 days. The traditional friendship and solidarity between men of equal means and status are declared on such occasion by exchanging legs of mithuns, cows, pigs, etc., and such friendship established on such occasion can never be broken arbitrarily by any one. This friendship can be declared between men of equal status from the same village or between men from different villages.

3. Dress & Ornaments

The Khiemnungans have no restriction or distinction for use of dress or ornaments like some other tribes. No dress or ornament is the perquisite right of any clan. Any member of a clan can wear any type of dress and ornament within his means if he can afford.

4. Dormitory

There are separate dormitories for boys and girls in different Khels. Those unmarried youngmen of a Khel or boys belonging to a clan in a Khel sleep in a separate dormitory, so also grown up unmarried girls sleep in a separate dormitory. The boys and girls begin their

intimacy in these dormitories. It is a taboo that a boy from a clan should visit a girl from his own clan in the dormitory. A boy or a girl may enjoy the favour of others also unnoticed by his or her boy or girl friend. When a girl becomes pregnant before the marriage, she has her abortion done with the help of an expert old woman, who practises such primitive abortion.

5. Marriage

The Khiemnungan marriage is one of the simplest and the most economic performances ever known. Normally the marriage ceremony is secretly performed at dead of night without the knowledge of the parents and unknown to most friends of the couple. There is no time to prepare for the marriage ceremony nor intimation is given to other relatives. There is some difference in performance of marriage ceremony between the people of Noklak and Pangsha under one group and that of the Panso group within the same tribe. Marriage between a boy and a girl is performed by them after having enough love affair and not with the knowledge and approval of the parents. The parents of a girl married to a boy do not know that their daughter is married and that they have a son-in-law ; because the girl is not supposed to disclose such news to her parents. The marriage ceremony is solemnised at dead of night before the cock crows. Exogamy is strictly observed for marriage in Khiemnungan society except at Wui village. When a boy and a girl from the same clan fall in love, such affair is regarded as a social offence bringing ill omen and misfortune to the village in form of a famine and other natural calamities. The people strongly oppose such incestuous marriage and expel the incestuous couple from the village. When a normal marriage is to be performed, the boy brings the girl to his house at dead of night along with 2 or 3 trusted friends of his and his girl ; but neither his parents nor her parents are invited for the occasion. One cock is killed at dead of night and the cock's blood is collected in two separate but small concave shaped tray made of green banana leaves by cutting the cock's throat. The couple dip their fingers separately one in each banana leaf tray containing the blood and declare their allegiance to each other in the presence of the those trusted friends. Thereafter, a little rice and the chicken are boiled separately and the members present there share the feast of the marriage. Thus the marriage is solemnised according to their long practised custom and tradition. When the cock crows, the girl goes back to her parents ; but the parents would not know that their daughter is married until some indication is shown by their daughter. It is a practice at all villages of the tribe that all the grown up girls should go to the jungles every early morning and collect firewood once before they have their morning meal. So from the morning following the marriage ceremony, the girl will start dumping the firewood in the house of her husband. This is the sure indication that the girl is married and that she has a husband. The parents of the girl will know that they have a new son-in-law.

Marriage ceremony among the Panso group of the same tribe is more simple than that of the Noklak and Pangsha group. Use of any form of fresh meat during the marriage night is strictly restricted on the ground that if fresh meat is served on the marriage night, the wife may in later days blame the husband and charge him, if misfortune befalls on the family

that he could no longer feed her with fresh meat as he used to feed her at the time of courting and marriage to persuade her to marry him. The boy simply goes near the house of his girl at night and waits for the girl to come out of her house. As soon as the girl comes out of her house, the boy holds her up and takes her to his house. There he feeds her with ordinary food along with boiled smoked meat as a token of their marriage ceremony. The girl goes back to her parents on the following morning, but the boy is to follow after her behind and take her back to his house again. This is a customary practice to maintain the prestige of the girl and also to test the love of the boy.

6. Divorce

The Khiemnungans strictly observe monogamy ; but a man can divorce his wife if he is not happy with her and marry another girl. A man, if he wishes can divorce and marry several times ; but he can have only one wife at a time. Similarly, a woman, if she wishes, can marry more than one after divorce. If a man divorces his wife at his own will against the will of his wife having affairs with another girl, he will have to give her half of all the household properties including livestock. The divorced wife also can impose a restriction on her husband binding him not to marry a particular girl, if she knows of such intimacy between her husband and a girl. It will be difficult for him to ignore such restriction according to the tribal custom. In case of violation of this restriction, the members of the clan belonging to the divorced wife will oppose it will be difficult for the man to stay at the village. The wife also can run away from her husband leaving all her children with her husband if she does not like to live with her husband any more. Even after marriage, a woman retains her relationship with her clan and she still remains a member of her clan. There is no fixed penalty for offence on adultery, whenever such offence is detected. The degree of penalty depends on the social status of the aggrieved husband. But such cases of adultery are not often taken up publicly, because of moral laxity in the society.

7. Inheritance

Inheritance is patriarchal. All immovable and movable properties are inherited from father to son. When a father dies, his son or sons inherit all the properties including the house ; but a daughter can inherit some household properties at the time of death of her father. When a man dies without leaving a son to inherit his properties except some daughters then most of the properties are inherited by the brothers of the deceased or cousins save those due to the living daughters.

The widow can remain in the same house after the death of her husband even if all the grown up children are married. In case a widow is young enough, she can marry again and in that case, she will have to vacate the old house and the same house will be claimed by the relatives of her deceased husband. The land is owned by the clan as a whole, by the group of families and by the individuals within one's own means. There is no restriction for sale or purchase of land and forests within the village.

As I have mentioned in my introduction, the study or the recording of the existing Naga customary laws or traditions vary from tribe to tribe requiring proper research by experienced

officers with the help of the experienced Naga village elders or ethnologists representing different tribes before these customary laws and traditions become history of the past. Today, Nagaland is in a state of ferment politically, economically, religiously, socially and culturally. These forces are directly moulding the basic foundation of the Naga society and drastic changes are affecting the social and customary laws of the Nagas and we have come to a stage where we are imitating the foreign culture. We may not be able to retain those good customary laws of the Nagas in future unless something is done at present. We have to retain those good customary laws of the Nagas to maintain peace and harmony in the society by reforming some savagely revengeful customs of some tribes and at the same time absorb those good customs and etiquette of the foreign culture.

Under Article 371A of the Constitution, special safeguards have been provided for Nagaland that no 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 according to Naga customary law,
- (4) Ownership and transfer of land and its resources shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides.

The above safeguards guaranteed in the Constitution will be meaningless and ineffective unless the Govt. exercise powers under these special provisions and pass legislations in the Assembly and enforce Acts, so that these Acts protect the fundamental rights of the Nagas.

The Rules for the Administration of Justice and Police in Nagaland have recognised other powers like the tribal court to hold courts and give decisions on cases affecting the customary laws of the respective tribes within a limit and these tribal courts had a tremendous effect before on the people during the British rule; because most of the cases except some serious criminal offences were tried by these tribal courts and the decisions of the tribal courts were binding on all. The Rules provide summary trial by the Magistrates in the presence of the parties involved; but at present many appeal petitions are filed in the higher courts against the decision of the lower courts. This has created a tendency in the lower courts to follow the proper procedure of investigations and such investigations take several years together in many cases and delaying proper administration of justice and ultimately denying justice to the aggrieved persons. There have been many instances of appeal petitions against the decisions of the tribal courts on customary cases and the aggrieved parties are preferring to settle their cases in the judicial courts in the absence of proper written customary laws.

The Rules of Administration of Justice and Police in the State have recognised the powers of the GBs, Chiefs, Headmen of the Khel and other recognised village authority and accordingly they can exercise police power and administration of civil justice within a limit; but the Nagaland Village, Area, Regional Council Acts do not specifically recognise the powers of the GBs, Chiefs, Headmen of the Khel and any other recognised village authority; but it has rather created confusion of the powers and functions of

the GBs, Chiefs, Headmen of the Khel and any other recognised village authority and delegated the powers to the Village Council and the Area Council. Enactment of these three layers of Councils in the district has created a stage of tussle for power in many Village Councils & Area Councils between the GBs, Chiefs and Headmen on one side and the new Members of the Village & Area Councils on the other directly infringing on the power of the GBs, Chiefs and Headmen recognised under the Rules of Administration of Justice and Police. The powers and functions of the village authority or the Village Council should be fully protected to maintain peace and harmony at the village. This is a legal process of centralisation of power not acting in conformity with the special safeguards provided under Article 371A of the Constitution. The Act and the Rules contradict in many sections requiring amendment in the interest of the society. The Supreme Court in their judgement on the Criminal Appeals No. 198 of 1965 and 29-32 of 1966 between the State of Nagaland and Ratan Singh, etc. made very important and historic declaration on the Rules of Administration of Justice and Police in force in the State. I quote the relevant extracts:—

“Laws of this kind are made with an eye to simplicity. People in backward tracts cannot be expected to make themselves aware of the technicalities of a complex code. What is important is that they should be able to present their defence effectively unhampered by the technicalities of complex laws. Throughout the past century the Criminal Procedure Code has been excluded from this area because it would be too difficult for the local people to understand it. Instead the spirit of the Criminal Procedure Code has been asked to be applied so that justice may not fail because of some technicality. The argument that this is no law is not correct. Written law is nothing more than a control of discretion. The more there is of law the less there is of discretion. In this area it is considered necessary that discretion should have greater play than technical rules and the provision that the spirit of the code should apply is a law conceived in the best interest of the people. The discretion of the Presiding Officer is not subjected to rigid control because of the unsatisfactory state of defences which would be offered and which might fail if they did not comply with some technical rule. The removal of technicalities, in our opinion, leads to the advancement of the cause of justice in these backward tracts. On the other hand, the imposition of the Code of Criminal Procedure would retard justice, as indeed the Governor-General, the Governor and the other heads of local Government have always thought.”

“We think that the exigency of the situation clearly demands that the Criminal Procedure Code should not apply in this area.”

“This backward tracts are not found suitable for the application of the Criminal Procedure Code in all its rigour and technicality, and to say that they shall be governed, not by the technical rules of the code but substance of such rules is not to discriminate this area against the rest of India.”

“The Rules have been purposely made elastic so that different kinds of cases and different situations may be handled not according to a set pattern but according to the

requirements of the situation and the circumstances of the case. In a backward tract the accused is not in a position to defend himself meticulously according to a complex code. It is, therefore, necessary to leave the judge free so that he may mould his proceedings to suit the situation and may be able to apply the essential rules in which our administration of justice is based untrammelled by any technical rule unless that rule is essential to further the cause of justice."

"The Rules of 1937 were designed for an extremely simple and unsophisticated society and approximate to the rules of natural justice."

"The attempt, of course, is to bring these territories under the Criminal Procedure Code applicable in the rest of India, by such stages as appear justified. As that stage is not yet reached little differences must exist but no discrimination can be spelled out from the difference. Article 371A of the Constitution itself contemplates a different treatment of those tracts and the differences are justified by the vast differences between the needs of social conditions in Nagaland and the various stages of development of different parts. We do not, therefore, consider that a comparison of these rules leads to any conclusion that there is likelihood of discrimination which would offend the Constitution."

"We accordingly hold that the Rules of 1937 continue to be in force and govern the trial of these respondents. The Code of Criminal Procedure admittedly does not apply there and the Additional Deputy Commissioner was, therefore, right in holding the trial under the Rules of 1937. It is obvious that in following the spirit of the Code and in applying the warrant procedure the Deputy Commissioner followed the right procedure and the High Court was in error in thinking that neither the Rules of 1937 nor any Rules applied to this area. We accordingly allow the appeals and set aside the order of the High Court. The trial of the respondents shall proceed under the Rules of 1937."

The recent Law Commission of India took note of the prevailing peculiar situation and the special provisions made under Article 371A of the Constitution and as such the new Code of the Criminal Procedure, 1973 enacted by the Parliament has not been made applicable to Nagaland except three Chapters therein. Section I(2) of the new Code states :

"It extends to the whole of India except the State of Jammu and Kashmir :

Provided that the provisions of this Code other than those relating to Chapters VIII, X and XI thereof, shall not apply—

- (a) to the State of Nagaland,
- (b) to the tribal areas,

but the concerned State Government may, by notification apply such provisions or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be, with such supplemental, incidental or consequential modifications, as may be specified in the notification."

Adequate constitutional and legal powers have been delegated to the State Government under Article 371A of the Constitution to enact laws in the interest of the Nagas and also choice given to the State Govt. under Section I(2) of the Code of Criminal Procedure, 1973 to apply such provisions or any of them, with such supplemental, incidental or consequential modifications to adjust with the peculiar situation. These were the legal views of the British Government in India before and the same views of the Government of India to-day also. Some ultra-modern views on this issue should not prejudice the fundamental interests of the Nagas. One decade has already passed since the formation of the State; but no tangible legislation appears to have been passed of far to protect the safeguards provided under Article 371A of the Constitution. I, therefore, submit the following suggestions for consideration by the seminar that—

1. A study team consisting of some experienced officers may be constituted to record the existing religious or social practices of the Nagas, Naga customary law and procedure.

2. A group of experienced village elders/ethnologists may be selected as co-opted members from each respective tribal unit who may be given a fixed honorarium at the time of recording and discussion.

3. The study team, when appointed, will initially record the existing tribal customary laws and traditions of each tribe separately. These recordings of the existing customary laws and traditions when completed should be formally discussed in a Council of the tribe inviting selected and experienced village elders, ethnologists in a central place convenient to them to obtain their general approval.

4. When these recordings of the existing customary laws and traditions of most of the major tribes in Nagaland are completed, the Govt. can consider the codification of the Naga customary laws either tribewise or in general taking into account of general agreement of different tribal customary laws.

Nagaland is in a state of evolution to-day. The Nagas have been enlightened and united through Christianity; but it has also adversely affected the culture of the Nagas and has made deep erosion into it requiring proper study and reform, so that the Nagas retain their good culture without being swallowed in the flood of the highly sophisticated international culture creating social and economic unrest in the society. When a nation or a community loses its culture, it also loses its identity and existence. It is, therefore, important to restate those good customs and traditions of the Nagas through some legislations to retain their ethnic identity and existence of their culture.

THE AO NAGA CUSTOMARY PENAL CODE ON ADULTERY (KILAMET)

S. Lima Aier

If we study the Aryan policy, they developed a healthy family life. The family was the foundation of the State. A number of families bound together by real or supposed ties of Kindred formed a clan, and a number of clans formed a tribe and the tribe was the highest political unit. So also among the Ao Naga community, family is regarded as an institution of solidarity and integrity bound by strict customs and traditions amounting to imposition of penal code in the event of evil infiltration affecting such solidarity and integrity. There are four stages liable to imposition of this punishment (Kilamet), which we shall discuss herein in ascending order.

When a boy attains his marriageable age, he looks for his matching girl friend from a family of an opposite clan as he cannot choose a girl from among his own clan. The moment he locates he starts courtship by paying frequent visits to the house of the girl performing the duties of a willing servant—fetching water, firewood and pounding paddy early in the morning or at night before his going to Kheti or after his return from Kheti. In this way he wins over the confidence of his in-laws giving the impression of his qualities of life. Eventually after a lapse of about a year, a formal engagement shall be made fixing the date of wedding. On this very occasion the boy has got to present a first class dao or 10 to 15 baskets of paddy as a token of engagement which is called senmen (dowry).

Having observed the above formality neither the girl nor the boy can refuse marriage under any circumstance: and breach of marriage on the appointed date shall be liable to punishment called Kilamet. If one of the parties refuses that party is said to have committed the crime of adultery in the eyes of customary law, and a fine of one pig is imposed which is called Kilamet for chikoti. The very purpose of this punishment is to maintain the sanctity of the institution of engagement in marriage.

If nothing goes wrong after the engagement ceremony, marriage is solemnised culminating in conjugal life of the couple. In course of this family life both the spouse are expected to lead a dignified married life. Any deceitful carnal connection and elopement with other persons by both the parties shall be deemed as commission of adultery liable to punishment under the said customary law. For instance, the husband cohabits with some other women either a married woman or a spinster, leaving aside his wife, he thereby commits an offence against his wife punishable under this section of law. Similarly, if the wife commits such an offence in the same manner with the husband of some other wife or a bachelor, she is also punishable under the same section of law.

There are two penal sections with regard to imposition of punishment. Firstly, on complaint from either side, the village court in session shall hear from both the complainants and the defendants. The court takes every precaution to establish the case with evidence and witnesses so as to give justice to both the parties. During the trial of the case, the court members examine whether the accused person has intention to divorce the legally married person by means of commission of that crime. If such commission of offence is incidental without intention of divorce by the accused, the court persuades the complainant for reunion of family life by pardoning the guilty one. If the parties come to this amicable agreement, a lighter punishment comes into force. The court pronounces the judgement by imposing a fine of one pig either on the wife or on the husband who momentarily betrayed the family. The other party which involved in the affairs with the legally married person also shall pay the same penalty to the court. Thus the court takes that kind of penal action on those guilty persons just to maintain the sanctity of marriage institution, aiming at normalizing the tendency of a broken family.

Secondly, in course of trial of the case, if evidence is established that the guilty person committed cohabitation and carnal connection with other persons with intention to divorce the legally married one, a very severe punishment shall be pronounced by the court. If the husband commits such an offence and offers to divorce his legally married wife, he will have to leave the house with his spear and the plate where he takes his food. He is not entitled to any household property including the house. Besides that he will pay a fine of seven pigs to the court. In case the wife happens to be the offender and offers for divorce, her hair shall be trimmed by the cousin sisters and aunts of the husband and she has to pay a fine of seven pigs. Subsequently she quits the house in shame.

In Ao Naga society, marriage within the same clan is a taboo. For example, a Jamir boy cannot marry a Jamir girl or a Aier girl cannot marry an Aier boy. In the past there were rare incidents when some unfortunate children were born consequent on sexual intercourse within the persons of the same clans. As those children would have no place in society there were instances of infanticide. In other words, such unwanted infants were put to death secretly.

The customary law prohibits formation of family within the same clan. By and large, upto now, except a very few cases, nobody tries to degenerate application of this law. If anybody violates this law one has to leave the village forthwith. They cannot live in other villages too because the same law applies to the whole community. No sooner does a family form within the same clan than such a family is banished at once. We are aware of the fact that good traditions of the past are fast eroding in recent years. However, law-breakers in this respect are few and far between. A few so formed families which can be counted in fingers are residing in the neighbouring villages of Assam which are non-Naga settlement.

My only suggestion in this particular case is that we should uphold the application of this customary law both in spirit and letter, because it is the sole synchronizing element between the Christian marriage and the traditional marriage. The then British Government also gave a serious thought on this with intention to minimize the quantum of fine thinking

that the punishment was too severe. However, having studied the pros and cons of the interpretation of the law in consultation with the DBs and village chiefs, the alien rulers too were convinced and fixed the rate of fine at Rs. 50/- which was indeed a huge amount. In those days that amount could purchase even ten numbers of cattle. This is a mere logical conclusion that the British imperialists upheld the operation of the customary law in the interest of their subjects.

The prevailing practice is that before the marriage is solemnised in the church, the boy with a few selected elders and his bosom friends go to the house of the girl to formally take over the girl. This party shall not enter into the house but they shall sit in the yard of the house where the girl's party had made fire. Similar selected male elders shall represent the girl. Both the members of the party shall sit around the fire and a special tea, preferably, with both meat and fish as snack shall be served. In course of taking the tea formal talks shall be delivered by the elders from the girl's side, implicating the formal handing over of the girl and the operation of the said customary law in the event of failing to lead a dignified married life by the couple. Subsequently, the members from the boy's side shall respond emphasizing on the Keynote of the law to avoid disgrace. Thus the parties after having observed this formality shall go to the church for final marriage solemnization.

Though Christianity is ousting many old customs and traditions from the community, the operation of this law shall remain as a synthesis. The functions of the church and the village court are well defined as to the line of action on the law-breaker in this regard. At all stages, the church can excommunicate the offenders from the church membership, but the village court is the competent authority to take appropriate legal action as per merit of the case as enumerated above. This customary law may be considered as a good law as it enshrines a refined moral conduct in a family and the community respectfully accepts the code having modified according to change of time.



Shri M. Alemchiba Ao, reading out the statement adopted by the Seminar on the Naga Customary laws.



Hon'ble Justice Mr. D. M. Sen, Gauhati High Court, delivering the Valedictory Speech.

The following is a Statement of important issues arising out of the deliberations of the Seminar organised jointly by the Directorate of Art and Culture, and the Thinkers Forum, Nagaland, on the Naga Customary Laws, held at Kohima,

From 21st—23rd November, 1974.

The Seminar is of the opinion that the Customary laws shall continue and shall have to continue to play a very important role in the Administration of Civil and Criminal Justice in Nagaland. Having accepted this, it is felt necessary that as far as practicable there should be uniformity both at the Tribal and the State Level in order to make the Administration of Justice cohesive. But uniform application can be done only when the law is uniform. The Customary laws are, however, different from different tribes and to formulate a uniform act of laws would certainly be a long term objective requiring special attention of the State Govt. in the interest of the people.

The Seminar therefore recommends as follows :—

1. Systematic collection/recording of the customs should be taken up as first step taking the village as a unit by a team of Officers.
2. The data so collected may be processed keeping in view of :—
 - (i) The point of similarity at the Tribal and State Level,
 - (ii) Points of divergence,
 - (iii) Relevance and utility of the Customs in the present circumstances,
3. Such reports should be scrutinised by each tribe and general approval obtained.
4. The material should be examined by an expert body consisting of Administrators, Social Scientists and legal experts in the context of legislation for codification.
5. In order to achieve this objective the Seminar urges the NEHU to provide sufficient number of Research fellowships for Naga students.
6. A High-power Advisory Board under the Chairmanship of the Chief Minister, Nagaland, may be constituted to review the progress of the Scheme and to provide adequate fund.

List of participants in the Seminar on Naga Customary Laws

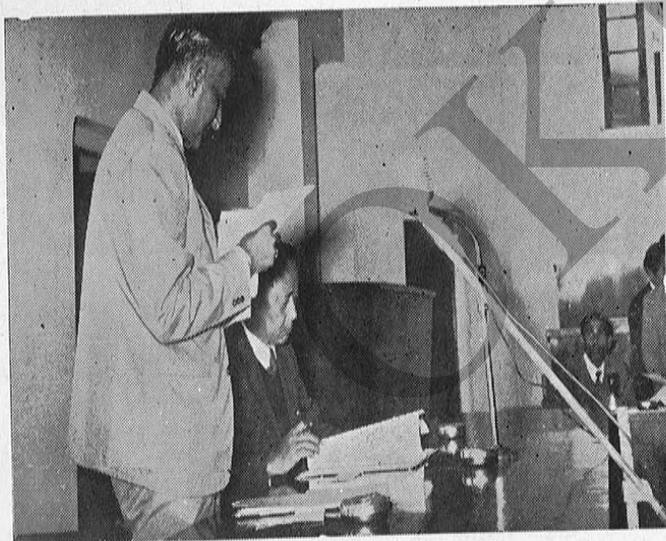
Kohima, November 21—23, 1974

1. Shri Vizol,
Chief Minister, Nagaland.
2. Shri Huska Sumi,
Minister of State, Law,
Nagaland.
3. Shri T. N. Angami,
Minister, Planning,
Nagaland.
4. Hon'ble Mr. Justice D. M. Sen.
5. Shri S. C. Dev,
Commissioner, Nagaland.
6. Shri I. Sashimeren Aier,
Development Commissioner,
Nagaland.
7. Shri. M. Ramunny,
Special Secretary to the Governor,
Nagaland.
8. Shri V. K. Subramanian,
Financial Commissioner,
Nagaland.
9. Shri R. H. M. D'Silva,
Principal, Adm. Training
Institute, Kohima, Nagaland.
10. Shri O. Kathipri,
Secretary, Art & Culture,
Govt. of Nagaland.
11. Shri L. L. Yaden,
Deputy Commissioner,
Kohima, Nagaland.
12. Shri M. H. Khan,
Secretary, Law,
Govt. of Nagaland.
13. Shri N. I. Jamir,
Secretary, Agriculture,
Govt. of Nagaland.
14. Shri I. Longkumer,
Secretary, P. W. D.,
Govt. of Nagaland.
15. Shri R. Ezung,
Joint Secretary, Animal Husbandry,
Govt. of Nagaland.
16. Shri T. Jayadev,
Chief Conservator of Forest,
Nagaland.
17. Shri C. Wati Aier,
Joint Secretary, Election,
Govt. of Nagaland.
18. Shri Samhugam,
P. P. S. to Chief Minister,
Nagaland.
19. Dr. M. Aram,
Director, Peace Centre,
Nagaland, Kohima.
20. Shri S. R. Das,
Deputy Secretary,
N. E. F. A.
21. Shri Kiremwati,
Principal, Science College,
Kohima, Nagaland.
22. Shri T. Chuba Ao,
Principal, Arts College,
Kohima, Nagaland.
23. Shri Alemchiba Ao,
Deputy Director, Art & Culture,
Nagaland, Kohima.

24. Shri S. Lima Aier,
Deputy Director, Census,
Nagaland, Kohima.
25. Shri Matsung Pongener,
Deputy Director, Industries,
Nagaland, Kohima.
26. Shri P. Moasosang,
O. S. D. NEHU,
Kohima, Nagaland.
27. Shri. R. S. Bedi,
E. A. C. Dimapur,
Nagaland.
28. Prof. Tali Alinger,
Editor, Gazetteers Unit,
Nagaland, Kohima.
29. Prof. B. B. Kumar,
Science College, Kohima,
Nagaland.
30. Shri K. K. Sema,
Extra Asstt. Commissioner,
Nagaland.
31. Shri Maputemjen Jamir,
Extra Asstt. Commissioner,
Nagaland.
32. Shri K. Peseyie,
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Directorate of Information &
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33. Shri P. K. Bhattacharjee,
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34. Shri Kezehol,
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35. Shri P. K. Bhattacharya,
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36. Shri Rülilhou Angami,
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Directorate of Art & Culture,
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37. Shri Rongsen Ao,
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38. Shri C. Akho Chang,
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A view of the Seminar on the Naga Customary laws.



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