

ABOUT THE EDITORS



Prof Deepshikha Agarwal is a Professor at University School of Law and Legal Studies, Guru Gobind Singh Indraprastha University, with a teaching experience of over 25 years, and she has been ex-Dean of University School of Education. She has developed an interdisciplinary and multidisciplinary perspective while grooming the laws students in their formative years of graduation. Her main areas of interest are tribal studies, criminology, tribal medical and health system, with recent focus on study of denotified tribes of India. She has supervised many PhD thesis and is still mentoring PhD scholars in the areas of Sociology, Anthropology and Criminology. She has published

books in single authorship & has also contributed papers in edited books, and her research papers appear in renowned journals and conference proceedings. Her research work has been mainly on tribal communities, and she has worked extensively on tribes of Chhattisgarh and Rajasthan, with her major work on Murias of Bastar, Chhattisgarh. She has been part of UNICEF project on child immunization among tribal communities of India, a project under National Institute of Health and Family Welfare. She has presented papers in lot of national and international conferences, and she has also organized many conferences. She was closely associated with the World Anthropology congress in 2023, where she organized pre congress national and international events, apart from coordinating for the main event.



Dr. Zubair Ahmed Khan currently working as Associate Professor in University School of Law & Legal Studies (USLLS), Guru Gobind Singh Indraprastha University, New Delhi, India. He did his B.ALLB (hons.) from Faculty of Law, Jamia Millia Islamia, LLM (specialization in IPR and Business law) from Indian Law Institute, New Delhi. He completed & pursued his PhD in the area of biodiversity law and biopiracy from Guru Gobind Singh Indraprastha University. His specialization is in the field of Criminal Law, IPR and Corporate Law. He is recipient of Meadows National Award in the field of Legal Education in the year 2025.

Apart from participating and presenting papers in various seminars & conferences across the country & abroad, he has over 40 publications in reputed national & international journals having indexed with Scopus, Inderscience, IGI Globals etc. He also authored four edited books to his credit. He completed his Research Project titled "A Critical Study of Laws, Procedure and Action Related to Disposal Bio-Medical Waste Management in Delhi: Current and Post-Pandemic Challenges" as Co- Project Investigator with Institute of Objective Studies, New Delhi in 2023. He is also recipient of major research project titled "An Empirical Account of the Farmers' Rights Situation in India within the contours of Intellectual Property Regime: A Case Study of Northern India" with ICSSR.



Edition : 2026

CUSTOMARY LAWS & CUSTOMARY RIGHTS

PROF. DEEPSHIKHA AGARWAL
DR. ZUBAIR AHMED KHAN

CUSTOMARY LAWS & CUSTOMARY RIGHTS



Editors

Prof. Deepshikha Agarwal
Dr. Zubair Ahmed Khan

Lawmann's
NEW DELHI - INDIA

ABOUT THE BOOK

CUSTOMARY LAWS AND CUSTOMARY RIGHTS

ISBN NUMBER : 978-93-49586-73-4

All rights including Copyright reserved with Editors

EDITOR'S NOTE

In spite of our meticulous care, it is possible that some errors or omissions may have escaped unattended. It may be notified that this publications is being sold on the condition and understanding that information given in this book is merely for reference and must not be taken as having authority of or binding in any way on the editors, printers and seller who do not owe any responsibility for any damage or loss to any person, a purchaser of this publication or nor, for the result of any action taken on this basis of this work. For authoritative information, please contact the Department concerned or refer to the Gazette Notification. The Editor shall be highly obliged if mistakes are brought to their notice for carrying out corrections in next edition.

All Disputes will be subject to exclusive jurisdiction of Courts, Tribunals and Forums at Delhi only.

TABLE OF CONTENTS

Preface	I
Acknowledgment	III
About the Contributors	V
1. Absorbed Realities: How Advertisements Rewrite Cultural Imagination in Contemporary India	1
- <i>Prof. (Dr.) Ravinder Kumar and Anuja Saklani</i>	
2. Aligning Indigenous Customs in an Era of Modern Legal Systems: Ensuring Repressive and Restitutive Justice in Zo Society	19
- <i>L Do Sian Mung and Chinggelniang</i>	
3. Legal Frameworks Supporting Indigenous Entrepreneurship, Sustainable Economic Initiatives, and Customary Practices in Health and Well-Being	32
- <i>Gulista Zehra</i>	
4. Gender and Customary Rights: Protecting Indigenous Women's Land and Cultural Rights in India	48
- <i>Harshvardhan Goutam and Dr. Nitesh Saraswat</i>	
5. Reimagining the Proof of Custom: A Proposal For a Customary Practices Digital Library in India	67
- <i>Komal Rathee</i>	
6. Customary Law and Formal Legal Frameworks: A Socio-Legal Analysis of Barriers To Women's Inheritance Rights Among the Naga Tribes	84
- <i>Lopilo Humtsoe</i>	
7. Customary Law and Customary Rights	100
- <i>Ram Pandey</i>	

CUSTOMARY LAW AND FORMAL LEGAL FRAMEWORKS: A SOCIO-LEGAL ANALYSIS OF BARRIERS TO WOMEN'S INHERITANCE RIGHTS AMONG THE NAGA TRIBES

Lopilo Humsot^{*}

ABSTRACT

This paper investigates the interaction of formal legal frameworks with customary authority to understand the challenges to women's inheritance rights among the Naga tribes of Northeast India. While the Indian Constitution assures equality in property rights, in most Naga tribes, customary law, which is protected under Article 371(A) of the Indian Constitution, still controls landholding, inheritance, and dispute settlement. The two most important objectives of this study are to identify the socio-cultural factors through which customary authority restricts women's property rights and to examine how these parallel systems of laws impact women's entitlements to inheritance. The paper adopts a qualitative socio-legal method based on case studies, current literature, constitutional provisions, and secondary data with regard to Naga customs. The findings indicate that obstacles to women's inheritance rights are deep-seated in cultural and community systems, which ascribe greater importance to group identity and lineage continuity than to individual rights. The conclusion emphasizes that community-level conversation, reinterpretation of traditional norms, and increased representation of women in decision-making bodies are necessary for effecting lasting reform. Besides advocacy of constitutional rights, culturally appropriate strategies that respect Naga identity and advance gender justice should be adopted.

Keywords: Customary law, Legal pluralism, Inheritance rights, Naga women

^{*}Lopilo Humsot, Ph. D Scholar, Nagaland University

INTRODUCTION

In contemporary debates on gender justice and constitutionalism in India, women's rights to inheritance become extremely relevant. The right to property is necessarily and intimately connected with social status, political participation, and individual dignity; it is not simply an economic right. Besides reducing vulnerability and enabling effective participation in public life, controlling and possessing property and land raises women's bargaining power in households and communities. In this way, inheritance emerges as a key site where gender disadvantage is produced and reproduced, particularly for countries like India that have long-standing patriarchal social structures centered on property relations. Owing to the synergism of constitutional guarantees of equality and the prevalence of customary law, the inheritance rights of women in Northeastern India, specifically in the state of Nagaland, constitute a complex socio-legal issue. The Indian Constitution affords equal citizenship and equal rights to women as equal members of a nation, promoting equality before the law and prohibiting sex discrimination.

In Nagaland, however, through Article 371 (A), Naga customary law and its practices, which include matters of inheritance, land, and dispute resolution, receive constitutional status as an exception to the Indian mainstream, with a hybrid legal system where modern official and customary legal systems, and to a certain extent, their supremacy, coexist through the recognition of customary autonomy within the Indian Constitution. Land and property relations in most Naga tribes are regulated by customary standards based on kinship and lineage, as well as village government. These customs are largely patrilineal and patriarchal, granting men custody of ancestral lands and denying women their right to inherit. In Naga civilization, land represents not only an economic resource but also a symbol of political authority, clan continuity, and group identity. Land control determines membership in the village councils, access to local resources, and participation in decision-making processes. The exclusion of women from inheritance is thus often justified as necessary for maintaining cultural integrity, social order, and lineage continuation. These arguments subsume women's individual rights and constitutional rights under claims of male ancestry and group identity.

CUSTOMARY LAW & CUSTOMARY RIGHTS

In examining the challenges that affect women's inheritance rights among the Naga tribes, this study presents a socio-legal analysis of the interplay between the formal legal systems and customary law. It explores how women's rights are actually affected by the co-existence of different legal systems, including the sociocultural processes by which customary authority constrains women's rights to property. It is herein contended that the persisting custom of governance has systematically impeded the transformative power generated by constitutional guarantees, by positioning women's inheritance rights within broader debates surrounding legal pluralism, patriarchy, and the culture of self-rule. It is posited that the persisting legal plurality in the State of Nagaland has in essence rendered women's inheritance rights merely symbolic, requiring approaches that seek to work along or around these traditional systems while pushing the gender-related constitutional ideals.

LEGAL PLURALISM AND THE CONSTITUTIONAL FRAMEWORK

Indian Context

The phenomenon of the co-existence of multiple systems of laws within a single social, political, or normative order is referred to as "legal pluralism." Legal pluralism, which was a consequence of the colonial administrative policies, as well as the constitutional compromises after independence, is not an exception, but a basic characteristic of the governments in post-colonial states, such as the Indian state itself. The recognition of personal laws, customary laws of tribes, and community-based procedures for conflict resolution, apart from the official statute and the constitutional laws, are the most visible evidences of the diversity of the Indian laws. In theory, legal pluralism is often reasoned as the means to preserve minority cultures, accommodate the plurality of cultures, and enable self-rule in local circumstances. In fact, this accommodative approach is embodied in the Constitution of India, as the document provides for different legal systems to be applicable to tribal and religious groupings. Nonetheless, feminist and socio-legal scholars alike have long insisted that multiple legal systems could work conjointly to uphold social hierarchies rather than eradicate them, particularly with regards to matters that are deeply fundamental to patriarchy or religion. The status of access to justice is made more complex by legal plurality. In moving across diverse legal systems, individuals face the challenge of distinguishing between divergent commands, conventions, and fora, which carry specific social implications. The choice is not an easy one for women. Even as the legal status of their rights can

86

CUSTOMARY LAW & CUSTOMARY RIGHTS

be asserted as a right within court decisions, such an action can also entail corresponding societal drawbacks, such as punishment or exclusion from societal engagement. Because of such circumstances, women only have traditional spaces for which the outcomes can be influenced by patriarchy.

CONSTITUTIONAL RECOGNITION OF CUSTOMARY LAW IN NAGALAND

One of the most striking examples of legally entrenched plurality in India is Nagaland. Unlike other parts, Naga customary law enjoys explicit constitutional protection under Article 371(A) of the Indian Constitution; it is not applied informally or through judicial accommodation. This clause, in view of colonial domination, post-independence discussions, and demands for autonomy, is a political and constitutional response to the specific historical, cultural, and political experience of the Naga people. Article 371(A) provides that except with the concurrence of the State Legislative Assembly, no Act of Parliament relating to the Naga religious or social practices, Naga customary law and procedure, administration of civil and criminal justice including the award based on customary law, or the ownership and transfer of land and its resources applies to the State of Nagaland. This provision circumscribes the limit of the application of sex equality legislation under custom and exempts customary law from the Parliamentary legislation provision of automatic coverage. The attempt to preserve indigenous systems of government and preserve tribal identity from being disturbed by inroads from outside cultures is evident in the constitutional safeguarding of customary law. However, it also establishes a situation where those same customs, that do not respect the rights to freedom, remain insulated from being scrutinized under constitutional standards. This form of asymmetrical federalism gives prominent place to community cultural rights to the exclusion of individual rights within that community, as argued by scholars.

Article 371(A) and Customary Autonomy

In Nagaland, the discourse on women's rights has been centered on Article 371(A), particularly concerning inheritance and land rights. The provision is regularly invoked by the traditional leadership as an impediment to legislative initiatives that seek to ensure gender equity on the grounds that such measures will compromise traditional governance and cultural independence. Rather than being viewed as rights guaranteed under the Constitution, women's inheritance rights are perceived as imposed from outside, under the influence of "mainland" constitutional traditions.

87

CUSTOMARY LAW & CUSTOMARY RIGHTS

The Naga woman, in theory, has equal fundamental rights to those of men, but hardly ever are they made operational in situations which violate deeply embedded cultural values. The constitutional mandate for equality might well be an ideal for many Naga women. The prevailing jurisprudence in Nagaland is such that customary law has more legitimacy compared with constitutional and statutory laws in practice. Even as constitutional and statutory laws are perceived as alien and removed from reality, customary laws are perceived as more authentic and down-to-earth. In this scenario, questions regarding inheritance or land ownership are not directly resolved with the help of constitutional provisions.

LIMITED USE OF FORMAL COURTS

In practice, Naga women seldom resort to courts of law to challenge customary discrimination or to assert their rights to inheritance. This trend is due to a variety of interrelated factors. Illiteracy of the legal provisions is a key factor. Many women are ignorant of what their constitutional rights are and how to use them. In especially rural and remote areas, the legalese language of constitutional safeguards often remains something abstract and separated from life itself. Formal justice is further inaccessible due to economic limitations. Most women cannot afford the cost of time, transport, and attorney's fees in court cases. Women lack the independent economic means to pursue judicial recourse, as they are largely denied participation in the economy and in property-holding. The inaccessibility of court buildings, especially in the interior and hilly areas in Nagaland, is another factor. Aside from the aforementioned practical considerations, the main discouragement of the filing of suit is social circumstances. Going to court is perceived as going against the established custom of society. Going to court is perceived as challenging societal norms and practices, but it is merely an issue of the law. Women who have recourse to the assistance of the court risk being labeled as unfaithful or disturbing society members.

SOCIAL SANCTIONS AND COMMUNITY PRESSURE

Challenges to the usual rights of inheritance cause predominantly negative social consequences. Social consequences such as exclusion, lack of social support, and problems with family relations may be encountered by women who want to assert their rights. Feelings of social recognition and social belonging play a pivotal role in guaranteeing women's safety and prosperity within a closely knit social environment such as a village. The will to pursue legal action is seriously restrained by

94

CUSTOMARY LAW & CUSTOMARY RIGHTS

fear of being socially isolated. In fact, what may be more significant for most women is maintaining social harmony or public approval as a means of protecting constitutional rights. The possible gains associated with gaining legal accomplishments may, at times, be diminished or overbalanced with the expenses associated with alienation, such as the loss of social security, economic collaboration, and emotional assistance. The imbrication of personal life with the social institutions, as it is situated within, is illustrated within the above equation. Consequently, customary practices instead of constitutional courts are more likely to be applied in resolving conflicts related to land and succession. Personal claims for equality before the law as specified in the constitution are second to reconciliation, continued traditions, and preservation of social order.

CONSTITUTIONAL GUARANTEES AS ASPIRATIONAL NORMS

Because of such limitations, the constitutional guarantees of equality are more of an aspiration than the legal right of the Naga women in the matter of inheritance. The absence of support systems in the remote areas dilutes the effect of the Constitution's aspiration of equality and no discrimination in society. However, the constitution does not live in the real world of the people in the absence of accessible forums for the legal rights of the women. Such an incongruity between the reality of the situation and the ideal pursued by the constitution raises the question of the limitations of the Force of Law when there is, in effect, substantial customary power. Local power does not necessarily translate into national power when the latter conflicts with substantial conventions. "Theoretically, every woman, including those in Nagaland, is entitled to the strongest claims to equality, non-discrimination, and dignity guaranteed by the Indian Constitution." The role of women as owners of properties and as joint owners through inheritance is slowly recognized through judicial interpretations as a major step towards women's liberation. Nevertheless, application of these interpretations in relation to Nagaland's constitution, through Article 371A, remains limited in that customary law is protected.

SOCIO-CULTURAL BARRIERS TO WOMEN'S INHERITANCE RIGHTS

Patriarchy and Kinship Structures

In Naga society, patriarchy is deeply rooted in kinship and descent systems that give a high value to male power and continuity. The well-known system of patrilineal descent, wherein social status,

95

CUSTOMARY LAW & CUSTOMARY RIGHTS

of cropland, transfer of the ancestors' property, and settlement of all land-related disputes fall within the purview of customary law. It is the village assemblies and customary courts that have the mandate for such functions, which arises from custom rather than laws administered through the present-day state. Village councils play a significant role in regulating land relationships. The village councils handle issues concerning land usage rights, the allocation of agricultural lands, and the resolution of conflicts. Uncodified customary practices handed down through generations can be interpreted and practiced through customary courts and ensure the continuity of practices. Due to the importance of customary practices in the self-rule of the natives, the power of these bodies has been recognized within the Naga society. Lands mean a great deal to the Naga tribes culturally. Lands symbolize the continuity of clans through historical periods. Lands symbolize an ancestor's heritage. A person's social identity, which allocates them to the political community of a locality, gets established through their ownership of property. Taking part in the political administration of a locality, having beneficial rights to forest lands, water bodies, and so forth, gets allocated through ownership or recognized control of property. This implies that lands symbolize full social and political inclusion. As such, the absence of land ownership has profound implications. Marginalization beyond poverty can be attributed to the absence of land rights. They can lack visibility in the political realm of traditional settings, be excluded from village assemblies, or lack use of common property in such a manner, citizenship status within the ancient regime and the concept of land ownership in customary law are inexorably entwined.

CUSTOMARY INSTITUTIONS AND AUTHORITY

The authority of village councils and customary courts is also intricately linked to the control of land by custom law. Patriarchal systems in Naga society can also be noticed here, which is largely dominated by males. There is hardly any decision regarding the allocation, inheritance, and resolution of land disputes that is not decided by elderly males and the chiefs of lineages. As women do not have much say in the modulation or interpretation of custom laws, their absence from these bodies further consolidates their position of being leftist regarding land rights. Traditional institutions base their legitimate grounds on tradition and the need to maintain social peace. Opposition to customary land practices is often framed as a threat to social cohesion and cultural identity. As this framing of women's land rights as in opposition to traditional values, this narrative makes challenging gender-discriminatory conventions rather complex.

90

CUSTOMARY LAW & CUSTOMARY RIGHTS

PATRILINEAL INHERITANCE AND GENDERED EXCLUSION

Most of the tribes of Nagas have strict patrilineal inheritance practices, wherein the sons are the inheritors of their forefathers' property. As a thumb rule, daughters are not granted the right to inherit land as marriage is believed to transfer them to a different town or tribe. This notion generated from the concept that women are temporary members of the family they get born into, and after marriage, the husband's family is the ultimate allegiance. The inheritance of land by women is often considered a threat to the integrity of the clan's territory and the continuation of the clan itself. The fear is often expressed that the territory owned by women through inheritance can easily fall under the control of another village or clan through marriage. Customary law, therefore, gives more importance to the continued integrity of the male line of descent than to the rights of women. Customary law rarely grants women outright ownership rights, even when this would seem to reflect special circumstances, for example, when a household has no male heirs. Women are occasionally granted limited use rights, often under the supervision of male relatives. These arrangements continually reinforce the perception that women do not have autonomous power over property and are merely caretakers of the land, never owners themselves.

WOMEN'S LABOUR AND THE ABSENCE OF PROPERTY RIGHTS

Naga women are backbone to the family economy and to the agricultural production processes, in spite of the fact that they are denied the basic right to own property/land. They actively participate in the market operations, seed conservation, terrace farming, Shifting or Jhum cultivation, and rearing of cattle. In Naga civilization, women's labor plays a crucial role in subsistence farming.

However, their economic contribution is not recognized by customary law as a basis for rights in properties. Land work is not recognized in relation to other people as a form of work that should be owned, as in other economies. The gendered nature of traditional land rights, in which power and ownership lie in men independently of women's contribution, is evident in this non-correspondence between work and rights. "In traditional society, the emphasis of traditional practices is on patricentered guardianship over resources and territorial space. The position accorded women is that of dependents, whose safety is necessarily guaranteed through proximity to men, as opposed to guaranteed rights, while men's position involves creating them as practitioners of lineage continuity as well as family property guardians." Socialization practices.

91

CUSTOMARY LAW & CUSTOMARY RIGHTS

about the law. Most women are not familiar with their rights under the constitution and how they can benefit from them. By enhancing their awareness about the law, women can be empowered to understand their rights and negotiate the systems, whether formal or custom-based. Even if women do not access the formal legal system by filing a lawsuit, it would still help to raise awareness pertaining to the genuineness of their claim to inheritance. Thirdly, inclusive governance calls for more women to be represented in tribal decision-making organizations, village councils, and customary tribunals. The absence of women in such organizations limits the potential for gender-sensitive decision-making processes and perpetuates patriarchal interpretations of customary law. Increased female involvement can offer different perspectives and help create a more neutral understanding of inheritance customs. Fourthly, rather than the imposition of externally motivated solutions, state obligation should be to facilitate progressive reform. Unexpected legal actions run the risk of being resisted and can be seen as undermining authoritative custom. Incremental policy initiatives that foster communication, participation, and internal change can accommodate sustainable and socially acceptable change more effectively.

Ultimately, for the cause of women's inheritance rights in Nagaland, there has to be a careful balancing between the commitment to equality and justice and that to the principle of customary sovereignty. Not only is it important to ensure greater gender equity, but it is also essential to recognize women's equal stake in the land and in inheritance to ensure that the custom retains its validity and plasticity.

CUSTOMARY LAW & CUSTOMARY RIGHTS

REFERENCES

1. Agarwal B, *A Field of One's Own: Gender and Land Rights in South Asia* (Cambridge University Press 1994).
2. Agnes F, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press 1999).
3. Baruah S, *Beyond Counter-Insurgency: Breaking the Impasse in Northeast India* (Oxford University Press 2009).
4. Burman B K Roy, *Tribal Customary Laws of North-East India* (Mittal Publications 2009).
5. Chasie C, *The Naga Imbroglia* (Standard Printers 1999).
6. Kapur R, *Gender, Austerity and Human Rights* (Edward Elgar 2018).
7. Kikon D, *Life and Dignity: Women, Migration and the Care Economy in Northeast India* (Orient BlackSwan 2015).
8. Menon N, *Seeing Like a Feminist* (Penguin 2012).
9. Merry S E, *Human Rights and Gender Violence* (University of Chicago Press 2006).
10. Arora V, 'Gendered Citizenship and Customary Law in Northeast India' (2006) 40(46) *Economic and Political Weekly* 4843.
11. Biswas P, 'Autonomy and Identity in Northeast India' (2008) 43(13) *Economic and Political Weekly* 41.
12. Galanter M, 'Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law' (1981) 19 *Journal of Legal Pluralism* 1.
13. Griffiths J, 'What Is Legal Pluralism?' (1986) 24 *Journal of Legal Pluralism* 1.
14. Kevichisa N, 'Customary Law and Gender Justice in Nagaland' (2012) 47(44) *Economic and Political Weekly* 65.
15. Merry S E, 'Legal Pluralism' (1988) 22 *Law & Society Review* 869.
16. Shimray U A, 'Women's Rights and Naga Customary Law' (2004) 39(42) *Economic and Political Weekly* 4410.
17. Fernandes W, 'Women's Land Rights in North-East India' (2008) North Eastern Social Research Centre Working Paper.