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## Customary Laws in Northeast India: A Search for Identity and Local Governance

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### ABSTRACT

India has a varied multi-ethnic societal structure resulting in a different regional politics, governance and political processes. This has ensued in complex legal system where there are different personal laws for different religions and communities. Personal laws in India refer to those laws that apply to individuals based on their religion or community. These laws, also known as family laws, are laws that are based on scriptures, customs and religious texts. With reference to northeast India, personal laws have come to embody politics of identity to a large extent. Northeast India is a region marked by a large number of heterogeneous tribes who have their distinct identities shaped by unique geographical, historical and political factors. This set of unique identities have been historically protected and preserved in the form of respective customary laws. Unless it affected basic human rights on matters of criminal jurisdiction, even the colonial administration did not interfere with them. The current legal arrangements in place in the region are an amalgamation of colonial and post-colonial government policies and measures which went in making special provisions for the region by insertion of the Sixth Schedule in the Constitution. Their right to govern themselves as per the customary laws had been recognized during the colonial period and later by the Constitution of India which largely ensured non- interference from the state. The Northeast region is characterised by indigenous governance systems which embody distinctive political values, radically different from

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those of the mainland. This paper would try to connect the existence of customary laws with the politics of identity and local governance in Northeast India. It would further try to explore the main contours of the debate centering around uniform civil code against the backdrop of the complex cultural landscape of the region.

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## Introduction

The nature of North east India is by bounded by its unique geographical location. Surrounded by foreign territories like Bhutan, Tibet-China, Burma, and Bangladesh on the north-south and the east except for a long narrow passage in the west which connects the region with West Bengal and the rest of India, this region has developed composite social, cultural and political features. This region comprises of seven states: Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura. In the seven states of North East India, the percentages of tribal population vary significantly (Ali & Das, 2003). This area which is inhabited by a multitude of ethnic groups display a dual mixture of characteristics. On the one hand it very often transcends the state by upholding a different idea of nation challenging the Indian state constructed idea of nationhood. The 'nation' here is defined in ethnic terms and legitimised in the name of having heritage, language, culture, classlessness, enemy, and similar conditions of subjugation (Roy, 2005). On the other hand, they seek recognition from the state and connects to be integral part of it. This enables us to look into the historical geography of the region and as to how this acts as the constitutive part of the politics of identity within the state of India. Shared historical and political consciousness of belongingness in a bigger imagined ethnic native land could be represented as identity of ethnic origin of people living inside the state of India. This could be present in demand for the Scheduled Tribe (ST) status while authenticating themselves as the old tribal group of people or could also be present in the form of larger or greater homeland demands, which could be states within the union of India or a separate sovereign state. Both the aspirations work on relatively similar connected history (Sharma, 2021, p. xx).

Customary laws are established social practices which are implemented as the mode of social control and social sanction amongst many tribe societies of North East India. It has been found that modernisation has introduced both positive and negative impacts among the tribes in this region. It has resulted in a new identity search among most tribes of the Northeast because of a feeling that modern institutions devalue their culture. This search is expressed, more than elsewhere, in the demand for the recognition of their customary law (Fernandes, Pereira, & Khatso, 2005). More often than not, customary



law and modern legal system have led to inherent tensions and challenges for tribal communities trying to adapt to changing circumstances. This paper will attempt to investigate as to how personal law in the form of customary laws have defined identity of the people of this region. It would further argue that though the region is inhabited by heterogenous tribes who find stability in their undisturbed social customs, there has been various attempts made by the framers of the national Constitution to assimilate the tribal identities to the mainstream.

### **Genesis of personal laws in the North East**

The region accounts for just less than 8 per cent of the country's total geographical area and little less than 4 per cent of India's total population. It is hugely diverse within itself, an India

in miniature. Of the 635 communities in India listed as tribal, more than 200 are found in the North East (Bhaumik, 2009). India's North East is a British imperial construct subsequently accepted

by the post-colonial nation-state. It emerged in British colonial discourse as a frontier region, initially connoting the long swathe of mountains, jungles and riverine, tropical marshy flatlands located between the eastern limits of British-ruled Bengal and the western borders of the Kingdom of Ava (Burma). As the British consolidated their position in Bengal, they came into contact with the principalities and tribes further east (Bhaumik, 2009, p. 4). As they became firmly entrenched in Assam and their commercial interests expanded, they began to feel the need for a stable frontier. In 1873, the Inner Line Regulations were promulgated, marking the extent of the revenue administration beyond which the tribal people were left to manage their own affairs subject to good behaviour. Seclusion of the hills enhanced the cultural and political distance between them and the plains. The Colonial administration rarely interfered with these laws even in the criminal matter unless it infringes the basic human rights. The policy of non-interference expressed in different legislative acts and in the recommendation of various commissions. The Assam Frontier Tracts Regulation 1880, the Scheduled District Act 1874, The Assam General Clauses Act, 1915, the Montague- Chelmsford Reforms-1919 and Simon Commission, all adopted the policy of non- interference with the customary laws and practices of the tribes inhabiting North – East India. Their right to govern themselves as per the customary laws has been recognized during the colonial period and later by the Constitution of India under Sixth Schedule, which largely ensure non- interference from the state. Post independence, the part of the Indian constitution was created, vested with the provisions for the creation of the autonomous regional and the district councils. The autonomy provisions were fairly extensive, covering powers to draft laws for local



administration, land, management of forests and customary laws, education and health administration at the grassroots.

The explanation of the formation of different kinds of culture and social systems is still inadequate in the North East (Chaube, 1999). In view of this as well as to bring stability to the region, special provisions were made in the constitution through Article 244 and Sixth Schedule in the Constitution. The protection of customary laws of such northeastern ethnic groups is guaranteed in this way. It gives the tribals freedom to exercise legislative and executive powers through an autonomous regional council and autonomous district councils (ADCs). The ADCs are

the districts within the state to which the central government has given varying degree of autonomy within the State Legislature. The tribal areas in the four states of Assam, Meghalaya, Tripura and Mizoram have been constituted as autonomous districts. In the case of Mizoram, Article 371G of the Constitution specifies that no act of Parliament which impacts the religious or social practices of the Mizo ethnic group can apply to Mizoram unless agreed to by the state Assembly (Deuskar, 2023).

### **Politics of the North East**

The people of northeast India are composed primarily of five races that entered the area at different periods of history: the Austrics, the Negroids, the Kiratas, the Dravidians and the Aryans. The Austrics came from Indochina. They include the Khasis and the Jaintias of Meghalaya and the Morans of Assam. These people prefer women as managers of property and accept the leadership of women in the family. The Negroids, who came from south and south-west China, are the present Nagas of Nagaland. They have shown a tremendous love for freedom and have developed strong village institutions. Men and women are accorded equal rights, but the latter are discouraged from participating in politics, fighting and hunting. The Kiratas, people of Mongolian origin, are known today as the Bodos and their language is Bodo. They are found in Assam, Tripura, Meghalaya, North Bengal and Bangladesh and are an important political force in the region. Over the centuries the ethnic cauldron of northeast India has been kept boiling by the contradictory processes of assimilation and preservation of ethnic identity. Today a number of tribes and castes dominate education and administration, among them the Khasis in Meghalaya, the Hindus in Assam, and the Bengalis in Assam, Meghalaya, and Tripura. In 1935 the colonial government saw an advantage in giving political recognition to each tribe by distributing certain administrative and electoral privileges. This was strengthened under the 1950 Constitution of independent India as discussed earlier (Singh B. P., 1987). Thus, since pre independent India, personal laws in the region was kept undisturbed.



It is one of the lessons of history that whenever the State has tried to reorganize the community in its own bureaucratic image-like regrouping villages in Mizoram and Nagaland after independence, or prescribing a language of its choice over the population of a State as was done during the first phase of British rule or later in 1960s in Assam—there have been more problems and the objective of orderly progress has given way to disorder and violence. Similarly, the efforts of

certain groups of people to go back to the past practices in dress, food and reading habits in the name of caste, tribe and culture as has been witnessed in certain areas of Assam, Manipur and Tripura in recent years are bound to fail. For the people of the region have already tasted the fruits of science and technology and would not remain long concerned merely with historical nostalgia or in rumination for antique values. In parts of the North East, including Assam, Manipur and Tripura, language has sometimes served as the basis for ethnic identity. In the hill regions, the absence of a common language has actually forced evolving generic identities to developing lingua francas like Nagamese. Political expediency and the constant realignment of ethnic groups have also helped create new identities. The ethnic imbalance in power-sharing has often caused retribalization, which in turn has limited the growth of local nationalisms that could challenge the Indian state. After fighting India for fifty years, Naga nationalism remains an incomplete process due to at least three major splits within the separatist movement. Each of these splits—and the clashes that followed—followed tribal divides, leaving behind so much bad blood that all unity efforts to bring the factions closer have failed miserably (Bhaumik, 2009, p. 34). The trend has been no different in Mizoram or Manipur. The Kuki's demand for a separate homeland that has pitted them against the Nagas and has driven some smaller clans away and led to the emergence of a separate Zomi identity.

In another instance, L Thangmawia, a member of Mizoram's Legislative Assembly from the Mizo National Front said, in his personal view, that the Uniform Civil Code among Mizos was impossible. Thangmawia pointed out that personal practices of tribal communities and sub-tribes are different among themselves and as compared to others, just as there are variations among Hindus. With more than 220 ethnic groups, the country's North East is considered to be one of the most culturally diverse regions in the world. In Mizoram, Nagaland and Meghalaya, where there is public opposition to the Uniform Civil Code (North east live digital desk, 2023). In its draft report on the Uniform Civil Code, the 21st Law Commission upheld that it was neither necessary nor desirable at this stage.



## Involvement of Gender Politics

With diversity among the customs and practices of tribes, the question of gender forms a major part of the discourse. Personal laws of most tribal communities' function from patriarchal assumptions. In the matrilineal society like Khasi, Garo, Jaintia of North eastern states even though

women are supposed to be controlling the society in anyways but it is men who holds almost all important platforms. This matrilineal society theoretically is controlled by women but in reality it is men who takes all major decision be it in social or political. Women are just a mere subservient and enjoy same status as any other tribal women. In this matter Laloo, while talking about the political structures of the Khasis points out that "This *Dorbar Shnongis* an assembly of all adults' males which functions under an elected headman or chief called *Rangbah Shnong*. The *Dorbar Shnong* looks after the welfare of the people and takes charge of the customary practices and imposes discipline among its members. It is through the *kuror* matri-clan participation that the political system developed among the Khasis. In this society a *knior* uncle assumes an important function. He is the sole decision maker and carries out the legal and religious rites in the *Dorbarkuror* clan *Dorbar*".

The world view on the concept of matrilineal society is where women are believed to play at the top level higher to the men. But in fact, men are consulted in all important issues and in fact it is the *Dorbar* who takes the final decision for the welfare of the society. No women representation is seen in this organization even though women are supposed to be the one to running the organization if it is a matrilineal society (Laloo, 2014). Furthermore, the village Council and the elders continue to interpret their customary law in favour of men. Toda women, known to be the most pampered tribal women, get a very kind treatment from the male-members and are never made a target of social contempt. But still they are debarred from ritual ceremonies and sacred duties, which occupy the foremost place in Toda culture. They are even prevented from cooking at least whenever food contains milk as an ingredient.

The state policies of development have resulted in the concentration of economic power in the hands of male elites leading to economic imbalance affecting women. In this complex situation however, women are staking their claim for better political participation. They do not view UCC as solution to their problems. The choice between them is to navigate between tribal customary laws and the formal judicial system (Fernandes, Pereira, & Khatso, 2005). From another angle in 2017, the Nagaland government's decision to hold municipal elections with 33% reservation for women in the state, following a court order, resulted in widespread disturbance, deaths and eventually the resignation of then chief minister TR Zeliang. Naga groups saw the order as a



challenge to their customary law. This had provided a reality check for those advocating a uniform civil code (Choudhry, Khosla, & Mehta, 2016) .

## Conclusion

The paper has tried to problematize personal laws with the identity base of the north eastern region. According to different scholarly contributions in order to understand the society in Northeast India, yet in spite of its trans-border historical and cultural experiences and connections, it has also been manifesting developments that contest for the recognition of identities within the state. Time and again culture which is a way of life has affected the way personal laws are treated with respect to different contenders. Customary laws form the very essence of the existence of people in the region. The laden phrase “identity politics” in the north east has come to signify a wide range of political activity and theorizing founded in the shared experiences of injustice of members of certain social groups. Tribal groups in this region have their own identity construction. They can provide a framework for local self-governance and decision making at the community level allowing tribes to manage their affairs in tandem with the given framework. Successive governments have to keep this in mind while making policies.

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