

## The origin of Legal Pluralism: Legal Historical Investigation of the Naga Customary Law and its Constitutional Recognition

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### Abstract

The advent of colonial administration in the Naga country introduced structural changes in the customary administration and adjudication of disputes. Such changes were made through enactments by the colonial government, however, recognising the simple customs and usages of the tribal societies. Post Indian independence, the Sixth Schedule to the Constitution of India and Article 371A of the Constitution recognised the entire realm of Naga customary law. This article investigates briefly into the legal history of various colonial enactments and the adoption of the Sixth Schedule to the Constitution of India. The article attempts to study the origin of legal pluralism in the State of Nagaland through the legal history and conclude with the question of codification of customs and usages in contemporary time.

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### Keywords:

Customary law, Legal Pluralism, Sixth Schedule to the Constitution of India, Customary Courts, Administration of Justice, Settlement of Disputes.

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### 1. Introduction

The 16<sup>th</sup> State of the Union of India created by the State of Nagaland Act, 1962 as a result of the 16-Point Agreement, July 1960, is given an especial status under the Constitution of India under Article 371A, which is commonly referred as "Customary Freedom". The Nagas before the advent of the British administration lived in independent villages and were governed by customs and usages of the village. Such customs and usages were handed down from generation to generations solely by words of mouth and experiences at the Village Council meetings and at the Morung.<sup>1</sup> Post the establishment of British administration in the Naga country, the Britishers applied a dual law to bring the indigenous Naga people under their confidence. The internal village administration and adjudication of disputes<sup>2</sup> was left to be administered by the Village Council and the Chiefs according to the customs and usages of the respective village. While the external polices of the

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<sup>1</sup> "Morung" is the dormitory for boys.

<sup>2</sup> The subjects under village administration were like, collection of house tax, membership fee, fines, appointment of councilors, etc. The subjects under adjudication of disputes were like, disputes of land, marriage, paternity, theft, trot, assault, sexual promiscuity, properties, etc.

village, like trade, war, foreign polices, etc. were to be controlled and regulated by the Britishers. Thus, the practice of head-hunting and trade with neighbouring villages and States like Assam, Manipur, etc. were regulated by the laws of the Britishers. Head-hunting which was a prime traditional practice of the Nagas to gain pride and valour was declared a crime against the law and the villagers were punished heavily by the colonial officers for such crime. Thus, the seed of legal pluralism was cultivated in the legal and administrative system of the Naga country.

## 2. Customary Authorities and Courts

The Customary authorities consist of the Village Council, the Khel Elders Council and the Clan elders at the village level. They also perform judicial functions. Thus, both administration and judicial functions are centred in them, the Village Council being the apex body. The Village Council is composed of representatives from each clan of the village, who are called councillors ('*Samen*' in Ao Naga tribal Dialect) and from amongst them a Head is elected for a fixed tenure. The Head is only nominal, and the councillors take the policy-decisions collectively and unanimously. In all matters of dispute, the Clan elders and Khel Elders Council adjudicate the dispute between the parties as original court and an appeal lies before the Village Council Court. In those days, every village was independent and thus there was no appellate authority beyond the Village Council. Thus, the Village Council was the apex judicial and administrative authority.

The Naga customs and usages are based on good conscience and common sense. Both governance and administration of justice are governed by customs and usages. Every adult male member is a part of the village administration and thus, in the Naga society, from cradle to grave a man is a part of the village administrative machinery. In the administration of justice, the clan elders' is the first forum and the Village Councils' Court is appellate authority. The system of settlement of disputes is instant and speedy. Such rudimentary system of settlement of dispute is not based on the principle of *lex talionis* but satisfies both the parties. The conciliators settle every type of disputes by imposing fine on the guilty and awarding compensation to the victim. Even in heinous crime, under the Naga customary law there was no capital punishment and the offender is ostracized from the village after confiscating his properties. Such attached properties were given to victim or his relatives as compensation.

With the advent of British administration, changes in the administrative and judicial system of the Nagas took place by introducing the institution of *Gaonbura* (GB)<sup>3</sup> and *Dobhasis* (DBs)<sup>4</sup> into the Naga political and social life to assist them in the administration. The GBs were agents of the British administration and were given powers to apprehend offenders and report to the Deputy Commissioner (DC) in cases of heinous crime.<sup>5</sup> The GBs were also incorporated in the Village Council as members. The DBs were interpreters and also assist in the colonial administration. The Village Council, Clan elders, Headman or Chief of the village were statutorily recognised as

<sup>3</sup> The word '*Gaonburas*' means a village elder. The word "Gaon" is a Hindi word, meaning village and "Bura" is an Assamese word, meaning an elder or old man. The words are thus derived from Hindi and Assamese and are not indigenous Naga tribal dialect. The British administrators for their administrative convenience appointed Gaonburas from every village to assist them in the administration. The *Gaonburas* are given both civil and criminal powers in administration of the village.

<sup>4</sup> The term "*Dobhasi*" originated from Hindi and Assamese language meaning 'Dho Basha.' The word 'Dho' means two and the word 'Basha' means language. Therefore, *Dobhasis* is the name given to an indigenous tribal officer who knows two languages i.e., the Naga tribal dialect and the language of the Britishers. *Dobhasis* were used as interpreters by the British.

<sup>5</sup> Rules for the Administration of Justice and Police in the Naga Hills District, 1937, Rules 7, 9, 12 & 17.

customary authorities. These customary authorities were empowered with unlimited pecuniary jurisdiction in civil matters to decide disputes in accordance with the custom of the village.

At present time, the GBs are recognised as Rural Police<sup>6</sup> and empowered to apprehend offenders and report to the Deputy Commissioner in cases of serious or heinous offence. Customary Courts consists of the Dobhasi Customary Courts and the Village Courts and they try and decide both civil and criminal cases.<sup>7</sup> They both are original courts and have unlimited pecuniary jurisdiction in civil matters.<sup>8</sup> In criminal matters, the Village Court try and decide cases falling within the purview of tribal laws, customs and offences of theft, pilfering, mischief, trespass, assault, hurt, affray, drunkenness or disorderly brawling, public nuisance and cases of wrongful restraint and such other offences which may occur within the jurisdiction of the Village Court.<sup>9</sup> In criminal matters, the Dobhasi Customary Court has been given the power not exceeding those of a Magistrate of First Class as defined under the Code of Criminal Procedure, 1973.<sup>10</sup> Unlike the formal judicial courts, pleaders on behalf of the parties are not permitted to appear before Customary Courts. The procedures of proceedings are also uniform unlike the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973.

### 3. Regulation X of 1822

The Regulation X of 1822 laid down the foundation of legal pluralism, which was in force in the Bengal province when the Britishers set their foot in the Naga territory for the first time in 1832. From 1832 onwards until the formal annexation and imposition of colonial administration, the British controlled the Naga country from outside by military and punitive expeditions. Under the Regulation X of 1822, the Civil Commissioner was empowered with the administration of civil and criminal justice, the superintendence of police, collection of revenue, and every other branch of the Government. This Regulation thus laid a pattern of administration for the tribal areas of the North East India that was entirely different from other parts of India known as the “Non-regulated System.” Under the Non-regulated System, the powers of collectors, magistrates and judges were intensely centralized under a single powerful executive. This Regulation was enacted for bringing the administration within the reach of the tribal people through simple and personal procedure, however, it led to the commencement of a plural legal system that continued throughout the colonial period and retained post the Indian independence. Thus, this system laid the foundation of a system of administration in the North East India, which was different from other parts of India and ultimately the Sixth Schedule to the Constitution of India and the special Constitutional status.

### 4. Government of India Act, 1853 and Indian Councils Act, 1861

When the Britishers were trying to bring the Naga country under its control by adopting different diplomatic tactics like the Non-interference Policy<sup>11</sup> and control from outside, the Government of

<sup>6</sup> Ibid, Rule 2(a).

<sup>7</sup> Rules for the Administration of Justice and Police in Nagaland, 1937, Chapter-IVA, Rule 39 to 64.

<sup>8</sup> *Tekaba Ao and Anr. v. Sakumeren Ao and Anr.*, AIR 2004 SC 3674.

<sup>9</sup> Supra Note 7, Rule 45.

<sup>10</sup> Id., Rule 56.

<sup>11</sup> The Policy of Non-interference was adopted by the Britishers during the period 1851–1865. After several military expeditions to the Naga Hills (precisely ten military expeditions) the Nagas refused to relent to the Britishers and thus the Britishers decided to follow a completely different approach against the Nagas. This new approach was called the “Policy of Non-Interference.” According to the policy the Britishers were not to interfere in the political and social life of the Nagas. The policy thus ended military expeditions and wars with the Nagas. The policy however, encouraged trade with the Nagas so long as the Nagas are peaceful with the Britishers.

India Act, 1853 was enacted by the British parliament. As the legality of the Government of India Act, 1853 was questioned, the Indian Councils Act, 1861 was enacted which added more powers with the Governor General of India to make laws for the Non-regulation Provinces by virtue of Sections 25 and 42.<sup>12</sup> It maybe noted that during that period, the Naga Hills was not statutorily declared as a district of Assam or part of the British Empire. Thus, the law and policies which was applied in the Naga Hills were executive orders and resolutions passed in meetings of the Governor General in Council and executive correspondence between the Lieutenant Governor and the Governor General or between the Commissioner and the Lieutenant Governor. The Commissioner according to his good conscience exercised his independent judgement in matters of policy and judicial settlement of disputes. Government of India Act, 1853 and the Indian Councils Act, 1861, thus appended the powers of the Commissioner bestowed by virtue of Regulation X of 1822.

### 5. Scheduled District Act, 1874

On 6<sup>th</sup> February 1874, when Assam was declared as a province and put under a Chief Commissioner by taking away its management from the Lt. Governor of Bengal, the Naga Hills also came under the Chief Commissioner of Assam. In the same year when the Britishers under Captain Johnstone were preparing for the formal annexation of the Naga Hills, the Schedule District Act, 1874 was passed and Assam was declared as a Scheduled District. Thus, the Naga Hills which was under the jurisdiction of the Lt. Governor of Bengal came under the Chief Commissioner of Assam and became a part of the Province of Assam.<sup>13</sup> The Scheduled District Act, 1874 recognised that “the under-developed tracts” needs to be treated differently with regard to the enforcement of procedures of law applied in other parts of British India. The Scheduled District Act, 1874 recognised Naga Hills as ‘under-developed tracts’. The Scheduled District Act, 1874 was thus the first step taken by the Britishers to recognise statutorily and gave maximum latitude to the custom and usages in the political and social life of the Nagas. The Act enabled the local government, with the previous sanction of the Governor General in Council, to declare what normal laws should be applied to a Scheduled District, and until and unless such declaration was

<sup>12</sup> The relevant sections i.e. Sections 25 and 42 of the Indian Councils Act of 1861 is reproduced as follows:

“25. Legislation For Non regulation Provinces.—Whereas doubts have been entertained whether the Governor-General of India, or the Governor- General of India in Council, had the power of making rules, laws, and regulations for the territories known from time to time as "Non-regulation Provinces", except at meetings for making laws and regulation in conformity with the provisions of the said Acts of the third and fourth years of King William the fourth, Chapter eighty-five, and of the sixteenth and seventeenth years of Her Majesty, chapter ninety-five, and whether the Governor or Governor-in-Council, or Lieutenant Governor of any Presidency or part India had such power in respect of any such territories: Be it enacted, that no rule, law or regulation which prior to the passing of this Act shall have been made by the Governor-General or Governor-General in Council or by any other of the authorities aforesaid, for and in respect of any such non-regulation province, shall be deemed invalid only by reason of the same not having been made in conformity with the provisions of the said Acts, or of any other Act of Parliament respecting the constitution and powers of the Council of India or of the Governor-General, or respecting the powers of such Governors, or Governors in Council, or Lieutenant-Governors as aforesaid.”

“42. Restrictions on law-making Powers of Legislative Council.—The Governor of each of the said Presidencies in Council shall have power, at meetings for the purpose of making laws and regulations as aforesaid, and, subject to the provision herein contained, to make laws and regulations for the peace and good government of such Presidency and for that purpose to repeal and amend any laws and regulations made prior to the coming into operation of this Act by an authority in India, so far as they affect such Presidency: Provided always, that such Governor in Council shall not have the power of making any laws or regulations which shall in any way affect any of the provisions of this Act, or of any other Act of Parliament in force, or hereafter to be in force, in such Presidency.”

<sup>13</sup> Vide Notification: Government of India, Home Department Proclamation No. 379, Dated the 6th February, 1874; And Government of India, Home Dept. Notification No. 380, Dated the 6th February, 1874.

made under sections 5 and 5A<sup>14</sup> of the Act, any law made by the British Parliament could not be enforced in Scheduled Districts or could not be applied to the people living in such district.<sup>15</sup>

#### **6. The Assam Frontier Tracts Regulation, 1880 & Assam Frontier Tracts Regulation, 1884**

The Assam Frontier Tracts Regulation, 1880 was enacted to provide a separate treatment to those tracts inhabited by hill tribes by giving exclusive powers to the Chief Commissioner of Assam to remove any part of that area from the coverage or extend of the laws in force unsuitable in such tracts. In 1884 to remove the application of Criminal Procedure Code in the Naga Hills the Assam Frontier Tracts Regulation, 1880 was amended as the Assam Frontier Tracts Regulation, 1884 (Regulation 3 of 1884). Further, the said Regulations removed all such unsuitable laws with the tribal system in force in the Naga Hills. Thus, the application of Criminal Procedure Code was removed formally from the Naga Hills. The Civil Procedure Code was never applied in the Naga Hills. It was from this period the British introduced the institution of *Gaonburas* and *Dobhasis* for their administrative convenience and as an agent to facilitate their pluralistic policy of imperialism.

#### **7. Government of India Act, 1915-1919 & Government of India Act, 1935**

In 1918 the Montagu-Chelmsford Reforms examined the frontier region of Assam and reported that Constitutional reforms could not be applied to certain backward areas and that the Governor should directly administer those backward areas. The Montagu-Chelmsford Reforms also reported that the in the same laws cannot be applied that were applied in other parts of India. Thus, to implement the recommendations contained of the Montagu-Chelmsford Report, the Government of India Act, 1919 was enacted which inserted Section 52A in the Government of India Act, 1915. Consequently, the said Act changed the ‘under-developed tracts’ to ‘backward tracts’ and by a Notification in January 1921<sup>16</sup> the Naga Hills was declared as backward tracts.

On the recommendations of the Indian Statutory Commission (Simon Commission), in the Government of India Act, 1935 the “Backwards tracts” was changed to “*Excluded Areas – Excluded and Partially Excluded areas*” as the words “Backwards tracts” was criticized by Sir John Simon as ‘*nauseating*’ and Mr. Cadgan as ‘*misleading*’ in the House of the Commons. A separate chapter (i.e., Part III, Chapter-V) was incorporated in the Government of India Act, 1935 for the backward tracts. Section 92 of the Act, provided that “no Act of the Federal Legislature or the Provincial Legislature shall apply to an excluded area or partially excluded area, unless the Governor by public notification so directs.” On 3<sup>rd</sup> March 1936, the Government of India (Excluded and Partially Excluded Areas) Order, 1936 was promulgated by His Majesty in Council and amongst five others; Naga Hills was declared as an ‘Excluded area’. This arrangement continued until the Sixth Schedule to the Constitution of India was finally enacted in 1950.

<sup>14</sup> The relevant of the Scheduled District Act, 1874 are reproduced as follows:

“Sec. 5. Power to extend enactments to Scheduled Districts: - The Local Government, with the previous sanction of the Governor-General in Council, may, from time to time, by notification in the Gazette of India, and also in the local Gazette (if any), extend to any of the Scheduled Districts, or to any part of any such district, any enactment which is in force in any part of British India at the date of such extension.”

“Sec. 5A. Modification of enactments in their application to Scheduled Districts: - In declaring an enactment in force in Scheduled District or part thereof under Section 3 of this Act, or in extending an enactment to a Scheduled District or part thereof under Section 5 of this Act, the Local Government, with the previous sanction of the Governor-General in Council, may declare the operation of the enactment to be subject to such restrictions and modifications as that Government thinks fit.”

<sup>15</sup> P. Chakraborty, *Fifth & Sixth Scheduled to the Constitution of India* (Capital Law House, Delhi, 2011), 2.

<sup>16</sup> Government of India, Notification No. 5-G Dated the 3rd January, 1921.



## 8. The Rules for the Administration of Justice and Police in Naga Hills District, 1937

In 1937, the Governor of Assam by exercising his powers under Section 6 of the Scheduled District Act, 1874 passed “the Rules for the Administration of Justice and Police in Naga Hills District, 1937” to provide special status to the Naga Hills District for the administration of justice in accordance with the customs and practices of the Nagas. The said Rules, recognised GBs as Rural Police and empowered the Village Council, Headman, Chief and other village authorities to try and decide cases and disputes in accordance with the tribal customs and practices.

After independence of India and the statehood of Nagaland, the said Rules continued to be applied without any amendments, but in 1974 by the First Amendment to the Rules the nomenclature of the Rules was changed as “the Rules for the Administration of Justice and Police in Nagaland”.<sup>17</sup> In 1982, by the Second Amendment to the Rules the word “Dobhasis” was inserted in the Rules and was deemed to have been inserted with effect from 1<sup>st</sup> December, 1963.<sup>18</sup> The Third Amendment to the Rules in 1984 made major changes in the Rules by inserting a separate chapter dedicated to Customary Courts by which the Village Courts, Subordinate District Customary Courts and District Customary Courts were inserted in the Rules.<sup>19</sup> However, the Subordinate District Customary Courts are not constituted at present. The Third Amendment also inserted some procedures to be followed in filing of suits before the Customary Courts.<sup>20</sup>

## 9. Sixth Schedule to the Constitution of India

In the Constituent Assembly for the drafting of the Constitution of India, a Sub-Committee on the North East Frontier (Assam) Tribal and Excluded Areas (also called the Bordoloi Committee) was constituted under the Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas. In the Bordoloi Committee, Shri Mayangnokcha was elected as the member from the Naga Hills. But, he was assassinated by the Naga freedom fighters. Shri Mayangnokcha was replaced Shri Aliba Imti but he too could not represent himself in the sub-committee due to threat of assassination from Naga freedom fighters. The Naga Hills thus remained unrepresented in person during the process of draft of the Constitution and Sixth Schedule.

In the Constituent Assembly there was strong opposition to add Naga Hills in the Sixth Schedule to the Constitution of India. Shri Kuladhar Chalia vehemently opposing said:

“The Nagas are very primitive and simple people and they have not forgotten their old ways of doing summary justice when they have a grievance against anyone. If you allow them to rule us or, run the administration it will be a negation of justice or administration and it will be something like anarchy..... It is said that they are very democratic people; democratic in the way of taking revenge; democratic in the way they first take the law into their own hands. And it is threatened by some that they are so democratic that they will chop off our heads.”<sup>21</sup>

<sup>17</sup> The Rules for the Administration of Justice and Police in Nagaland (Amendment) Act, 1974 (7 of 1974). Received the assent of the President of India on 8<sup>th</sup> October, 1974.

<sup>18</sup> The Rules for the Administration of Justice and Police in Nagaland (Amendment) Act, 1982 (4 of 1982), vide Rule 2.

<sup>19</sup> The Rules for the Administration of Justice and Police in Nagaland (Amendment) Act, 1984 (1 of 1984), vide Rule 30. Also see, *Supra* Note 7.

<sup>20</sup> *Supra* Note 7, Rule 60 – 63.

<sup>21</sup> Constituent Assembly debates on Tuesday, the 6th September, 1949, (Volume IX).

Shri Brajeshwar Prasad opposing to autonomous power given to the Regional and District Council said:

“I am opposed to the District Councils and Regional Councils because they will lead to the establishment of another Pakistan in this country.....I will not jeopardise the interest of India at the alter of the tribal.”<sup>22</sup>

Despite such opposition, the Hill tribal people loving members like Shri Gopinath Bordoli, Rev. J.J.M. Nicholas Roy and Dr. B.R. Ambedkar who understand the tribal customs, usages and traditions defended the inclusion of Nagas in the Sixth Schedule and thus the Naga Hills was incorporated in the Sixth Schedule to the Constitution of India. Dr. B.R. Ambedkar answering to the opposition said as follows:

“The position of the tribals in Assam stands on a somewhat different footing from the position of the tribals in other parts of India...the tribal people in areas other than Assam are more or less Hinduised, more or less assimilated with the civilization and culture of the majority of the people in whose midst they live. With regards to the tribal in Assam that is not the case. Their roots are still in their own civilization and their own culture. They have not adopted, mainly or in large part, either the modes or the manners of the Hindus who surround them. Their laws of inheritance, their laws of marriage, customs and so on are quite different from that of the Hindus..... In other words, the position of the tribal of Assam, whatever may be the reason for it, is somewhat analogous to the position of the Red Indians in the United States as against the white emigrant there.”<sup>23</sup>

Dr. B.R. Ambedkar further while convincing the rest of the Constituent Assembly members for the adoption of Sixth Schedule to the Constitution of India said:

“Now what did the United States do with the Red Indians? So far as I am aware, what they did was to create what are called Reservations or Boundaries within which the Red Indians lived. They are a Republic by themselves. No doubt, by the law of United States they are citizens of the United States. Factually, they are a separate, independent people. It was felt by the United States that their laws and modes of living, their habits and manners of life were so distinct that it would be dangerous to bring them at one shot, so to say, within the range of the laws made by the white people for the white persons and for the purpose of the white civilization.”<sup>24</sup>

The adoption of the Sixth Schedule to the Constitution of India divided the Naga country into the ‘Naga Hills District’ and the ‘Naga Tribal Area’. The Naga Hills District was supposed to be an autonomous district under the Sixth Schedule (as first enacted) but no District Councils were constituted and thus the Naga Hills District was governed under paragraph 19 of the Sixth Schedule. While the Naga Tribal Area was left to be administered at the discretion of the Governor of Assam under paragraph 18 of the Sixth Schedule by issuing publication and notification with the previous approval of the President of India. Thus, theoretically the entire State of Nagaland was a part of the Sixth Schedule but practically no part of the State of Nagaland was ever governed the provisions of the Sixth Schedule to the Constitution of India.

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<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

## 10. North East Frontier Agency (NEFA)

For the readjustment of the administrative units (i.e. Balipara Frontier Tract, the Abor Hills District, the Misimi Hills District, the Tirap Frontier Tract, and the Naga Tribal Area), the North-East Frontier Areas (Administration) Regulation, 1954 was enacted and those areas<sup>25</sup> were collectively called North East Frontier Agency (NEFA).<sup>26</sup> By the said Regulation of 1954, the “Naga Tribal Area” was renamed as “Tuensang Frontier Division”. The said Regulation of 1954 also changed the terminology of administrative officers in the Naga Hills, namely, Commissioner as Governor, Political Officer as Deputy Commissioner, etc.

## 11. The Naga Hills-Tuensang Area

In 1957 the Naga Hills-Tuensang Area Act, 1957 was enacted to unite the Naga Hills Naga Hills District and the Tuensang Frontier Division as a administrative unit by the name ‘Naga Hills-Tuensang Area’. The said Act was enacted with the object to provide the Naga Hills-Tuensang Area administered by the Governor of Assam as an agent of the President and to amended the Delimitation of Parliamentary and Assembly Constituencies Order, 1956, and the Representation of the People Act, 1950.

## 12. Naga Peoples’ Front

While the Naga National Council (NNC) was at war with the Government of India fighting for sovereignty, some educated and peace loving Nagas in order to bring an early and lasting restoration of peace and harmony in the beleaguered Naga territory arranged a public meeting of all the 16 (sixteen) tribes of Nagaland at Kohima on 26<sup>th</sup> August 1957.<sup>27</sup> The outcome of the meeting was the formation of Naga peoples’ Front (NPC) with Dr. Imkongliba Ao as the President and a Negotiation Body to negotiate with the Government of India. In the third meeting of the NPC at Mokokchung in October 1959, a 16-Point Memorandum was drafted which was presented to the Government of India through General S.M. Srinagesh, the Governor of Assam. After two months, the then Prime Minister of India, Pandit Jawaharlal Nehru consented to meet the Naga Negotiation Body at New Delhi on 23<sup>rd</sup> July, 1960.<sup>28</sup> On 1<sup>st</sup> August, 1960 Pandit Jawaharlal Nehru announcing the 16-Point Agreement and the formation of the State of Nagaland concluded his speech by saying:

*“We have always regarded the territory inhibited by the Nagas as a part of independent India as defined in our Constitution. We look upon all these tribal people as citizen of independent India having all the privileges and obligations of such citizenship.”*<sup>29</sup>

After the conclusion of the 16-Point Agreement, during the transitional period (before the Statehood), the Nagaland (Transitional Provision) Regulation, 1961 was applied which provided

<sup>25</sup> Areas specified in Part-B of the table appended to paragraph 20 of the Sixth schedule to the Constitution of India and the North East Frontier Tract including Balipara Frontier Tract, the Tirap Frontier Tract, the Abor Hills District, the Misimi Hills District and the Naga Tribal Area.

<sup>26</sup> The first amendment to the Sixth Schedule was made as early as 26th January, 1954 under the North-East Frontier Areas (Administration) Regulation Act, 1954 which was made under Article 243 read with paragraph 18(2) of the Sixth Schedule to the Constitution of India.

<sup>27</sup> S.C. Jamir, *Naga Peoples Convention and 16th Point Agreement* (Bright Printers, Dimapur, 1st Edition, 2011), 8.

<sup>28</sup> *Id.*, at 72–75.

<sup>29</sup> *Id.* at 75.



for the formation of an “Interim Body” consisting of 45 (forty five) members elected from all the tribes. The Interim Body was empowered to make laws for the Village Councils, Tribal Councils, Range Councils, etc. Dr. Imkongliba Ao was the Chairman of the Interim Body and Mr. P. Shilu Ao was the Chief Councillor of the Executive Council.

### **13. Statehood of Nagaland**

For the creation of the State of Nagaland the parliament of India passed the State of Nagaland Act, 1962 by which the Naga Hills-Tuensang Area was converted into a separate State called “Nagaland” with effect from 1<sup>st</sup> December, 1963. Thus, on 1<sup>st</sup> December, 1963, the present State of Nagaland was born. At the birth of Nagaland there were three districts, namely, Kohima, Mokokchung and Tuensang. Subsequently, by the Constitution (13<sup>th</sup> Amendment) Act, 1962, Article 371A was inserted in the Constitution of India by which the 16-Point Agreement was brought within the framework of the Constitution of India.

Article 371A of the Constitution of India provides that “Notwithstanding anything in this Constitution, no Act of Parliament in respect of religious or social practices of the Nagas, Naga customary law and procedure, administration of civil and criminal justice involving decisions according to Naga customary law, 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 entire realm of Naga customary law is recognised by the Constitution of India and no laws of the Parliament of India are applicable in the State of Nagaland unless the Legislative Assembly of Nagaland passed a resolution for the extension and application of any Central laws in Nagaland.

### **14. Conclusion**

It maybe thus seen from the hereinabove discussion, that with the advent of the British administration, the administrative and judicial set-up underwent a notable change. The plurality of the judicial and administrative system and the diversity of customs and usages of the tribes in the state raise a question of codification. Custom and usages are not stagnant but they grow with time according to changes brought by the civilization. Thus, codification may stop the growth of customary law. However, in a diverse tribal society, particularly adjudication of inter-tribal personal matters and property disputes that faces conflicting customs or the dilemma of which customs to apply for the adjudication of disputes. Thus, in this context, it may necessitate a common code of custom. The Britishers may have also been faced with the same question while enacting special legislation for the North Eastern region of India. The examination of the colonial legislation vividly shows the avoidance of such a common code of customs. Similarly, post the Indian independence, the parliament of India has given special status and autonomy but not a code of customs. It is thus, observed from the history of legal framework that a common code of customs may be not advisable in a diverse tribal society. The Britishers adopted the same method of the Naga ancestors in adjudication of disputes, i.e. good conscience and common sense. Post Indian independence, neither the Indian parliament nor the State legislature has enacted any such adversarial legislation. The Supreme Court in *State of Nagaland v. Ratan Singh*<sup>30</sup> upholding the validity of the non-application of the Code of Criminal Procedure and Code of Civil Procedure held that:

<sup>30</sup> AIR 1967 SC 212; 1967 CriLJ 264; MANU/SC/0083/1966.

“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.”<sup>31</sup>

Thus, pluralistic system of administration and judiciary is recognised for over 200 years. This system is preferred because it is simple, speedy, instant, and cheap. It is non-adversarial, satisfies both the parties, and brings equilibrium in the society. The administrators and jury members are democratically elected and represented from all clans and sections of the society. The system thus appears perfect, however, with the growth of modern formal laws like gender justice and equality, animal rights, forest and environmental laws, intellectual property law and protection of traditional rights, the indigenous tribal people and societies should be made aware of such contemporary formal laws. Thus, like the example which our father of the Constitution, Dr. B.R. Ambedkar has taken from the native Red Indian of the United States while adopting the Sixth Schedule to the Constitution; a similar example like the Navajo Nation court system and the Navajo Common Law in the United States of America maybe compared in the administration and settlement of disputes in the North Eastern region particularly the State of Nagaland.

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<sup>31</sup> *Id.*, at Para 34.