

## **Gendered practice of Naga Customary laws: A Critical Analysis**

### **Abstract:**

The Nagas are culturally and linguistically a diverse society situated in the North-eastern part of India. One of the common characteristics that Nagas share in culturally diverse region is the practice of customary laws although each tribe differs in varying degree of its usages and practices. Overall customary law act as a keeper and binds the community together. However, customary laws are not always conducive to modern development especially with regards to gender rights. Under customary laws, the distribution of power, status and resources have always been male centred. It is a male dominated arena based on discriminatory rules that invariably pose a great constraint on women to progress equally in the society. Accordingly, against this background, the paper critically analyses Naga traditional and customary law practices from gender perspective and examine its implication on women rights. It evaluates some of its intricate dimension of gendered meaning attached to certain symbolic function in the traditional practices of the Nagas which inadvertently construct men as naturally superior and thereby resulted in the subjugation of women. Further, the paper attempts to address the impeding gender issues by offering feminist perspective of constructivist approach to culture as a means of alternative solution in the face of conflict between gender rights and customary laws.

**Keywords:** Gender, Customary Laws, Feminist Approach, Naga Society

## Introduction

The Nagas are culturally and linguistically diverse society situated in the North-eastern part of India. One of the common characteristics that Nagas share in culturally diverse region is the practice of customary laws although each tribe differs in varying degree in terms of its customary usages and practices yet shares a similar traditional values and cultural ethos. Overall customary law act as a keeper and binds the community together. Customary laws are central to Naga's identity and it is inextricably linked with traditional and cultural practices. In Nagaland particularly, Article 371 A provide special rights and provision to ensure protection of customary law practices and tradition of the Nagas due to its long held traditional and cultural system<sup>1</sup>. It is believed that customary laws have been emanated out of their customs, traditions and usages and they are unwritten sets of rules and code of conduct observed by a community (Zhimo, 2018). Therefore, customary law cannot be misinterpreted because it is a tradition of the people, where tradition emerges out of the practices of customs, lores, cultures, mores, and beliefs and law was framed according to these practices (Nshoge, 2009). And the various customary law practices which were prescribed for the Naga society were made effective with the help of the leaders, elders and representative that were appointed for dealing with matters relating to almost all customary laws (Vitso, 2001). However, customary laws are not always conducive to modern development especially with regards to gender rights. In many parts of the countries customary laws pose a serious threat to women's equality rights by enforcing gender discriminatory rules in spite of of constitutional equality guarantees (William, 2011). Customary laws and gender are seen as two opposing poles as far as women's rights are concern. Similarly, under customary laws in Naga society some of the elements governing rules and regulation such as inheritance and property rights, marriage, decision making, social relations disadvantages women and act as an obstacle for women to make progress equally with men in the society. Accordingly, against this background, the paper critically analyses Naga traditional and customary law practices from gender perspective and examine its implication on women rights. It evaluates some of its intricate dimension of gendered meaning attached to certain symbolic function in the traditional practices of the Nagas which inadvertently construct men as naturally superior and thereby resulted in the subjugation of women. Further, the paper attempts to address the impeding gender issues by offering feminist perspective of constructivist approach to culture as a means of alternative solution in the face of conflict between gender rights and customary laws.

The study is qualitative in nature and I employ formal and informal discussion with few women activist in Naga society and supplemented my analysis with articles, seminar research paper, book chapters, journals, books and newspapers related to gender issues in relation with customary laws in Naga society

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<sup>1</sup> Article 371 A States that no Act of parliament in respect of religion or social practices of the Nagas, Naga customary law and procedure, administration of civil and criminal justices involving decisions according to Naga customary laws, 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; See details: Chaube S.K.. 1973. *Hill politics in Northeast India* (First Edition): Orient Black Swan. New Delhi.

One of the most important emerging studies under customary laws is the growing awareness of the importance of gender as a factor in the study of customary laws in tribal communities in Northeast India. Women's invisibility and under-represented in public domains such as in the arena of legislative bodies, village council and other civil venues, the issues of inheritance, divorce, marriage and other host of domain have fuelled an interest in a critical feminist study of customary laws in academic discourse. Emerging studies in tribal society shows that all the forms and features of inequality are entwined in traditional settings which operate contrary to women's rights. As pointed out by Jamir (2012), traditional and cultural impediment works against women's access to power and right to participate in decision making bodies. The paper reiterates the importance of highlighting recurring issues facing women in the contemporary context by drawing historical accounts and empirical evidence. It challenges the patriarchal pattern of structural inequality prevalent in Naga society and question the role of customary law practices.

### **Gender bias existing in customary laws practices**

Under customary laws, the distribution of power, status and resources have always been male centred. Kate Millet defined this structure of power as patriarchy<sup>2</sup>. Naga customary law is structured based on patriarchal values which is characterised under the notion of male superiority. It is a male dominated arena based on discriminatory rules that invariably pose a great constrain on women to progress equally in the society. As points out by Longkumer (2020) that Naga woman is twice subjugated: first, by the patriarchal social system and secondly, by the stringent tribal laws and customs that restrict her participation in larger social activities by limiting her resources and opportunities. "This inaccessibly and lack of participation stems from tribal laws and customs that ironically defined and framed exclusively by male members/elders in society" (Ibid p- 8). Historical analysis of gender in Naga society shows that the presence of gender distinction in customary law practices creates a binary role towards men and women based on their sex differences. Such binaries resulted in unequal distribution of power between and men and women. In recent times, customary law practices have widened its scope in its usages and application. Customary laws are not only use to serve in preserving and sustaining the socio- cultural practices of the Nagas but it also plays an important role in protecting its resources and identity from external forces like the global capital market. However, under customary laws men alone have monopoly control over economic resources and political power. As (Ray, 2017) points out that male section of the tribal community started to appropriate economic resources and political power to the exclusion of women. This exclusion comes in the name of protecting its own community resources and identity. And tradition is often invoked and use as a code for preserving power by men despite women's being an active agent of player in sustaining and equally participating in protecting its identity and resources vis-a vis customary law practices. Kikon (2017) remarked that one of the sites where the naturalization of power, cultural practices and social hierarchies is played out is in the realm of customary law and practices.

### **Gendered practices of Naga Customary Laws**

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<sup>2</sup> See Details: Millet, Kate. 1970. Sexual Politics. Doubleday.

Gender permeates in every dimension of lives. And like any other society, Naga society is segregated along gender lines. Gender is not merely a description of difference between male and female but the term denotes more than that. It also includes the roles and responsibilities prescribed by social norms, values, customs, traditional practices and customary laws between men and women based on their sexed bodies. When such prescriptions are attached based on the differences between males and females, it may result in negative or positive impacts. Gender informs how men and women as a category created by society are supposed to act, supposed to behave, and what value is given to each can be separated according to one's gender. Studies on Gender have revealed that men and women have separate roles and that these roles are not equal (Mead, 1935)<sup>3</sup>. In such cases, gender also determines how power is distributed between the sexes in social, political, economic and religious affairs and as a result how women are exposed to several prejudices in these areas because of their very gender (Longkumer, 2017). In the case of Naga society, Gender is a central organising principle in the traditional social settings of the Nagas. The Nagas have varied traditional practices and they maintain strong adherence to it. And some of these traditional practices, beliefs, norms, customs and values which is passed down from generation to the next are sustained through customary laws. Customary laws are treated as sacred laws by the Nagas and till today when important matter arises customary laws are sought for taking important decisions, dispensation of justice, settling disputes etc. In this process gender needs to be perceived and locate from this traditional structure and understand its dynamic gender roles and relation that have taken shape over the years. It is pertinent that the traditional social settings are crucial in understanding the shaping of gender identities. As stated by Bounpui (2013), that gender has always been a basic differentiating factor that is reflected in the cultural norms that have assigned specific roles for men and women in Naga society. The traditional systems have a great influence on gender relations in Naga society and it determined gender relation to an extent that it delineated the roles of men and women (Jamir, 2014). Subsequently, Naga society is essentially built on the idea that men is naturally superior to women as Naga society is historically constructed based on the warrior values owing to Naga practice of warfare and hunting in the past. In this context, the indigenous educational system called *Morung*<sup>4</sup> is crucial in understanding the shaping of gendered role in Naga society. Prior to colonisation, this institution plays a significant role in which men and women were socialised into acquiring certain skill that classified them into masculine and feminine roles. This institution reveals an important gendered practice where men took part in learning the tactics of war, the art of fighting, wood cutting, manners, myths, legends, stories, folk songs, dance, carpentry, basket making, dao and spear making, spear, values of patriotism etc (Zetsuvi, 2014). It was deemed necessary for men to impart in such learning activities as Nagas were engaged in warfare culture and safeguarding the village and community were shouldered on men. In such practices men were constructed as warrior, a protector and a leader compared to women. The roles performed by men were grounded on the idea that man is the superior dominant figure which seems to be appropriated and upheld by the traditional system. On the other hand, the activities perform by women indicates the household domain as woman's space. They learnt the art of weaving, spinning, sieving, rice brewing, cooking etc. besides she also learnt the art of folkdance, folksongs, manners, ethical code of conduct etc (Nshoga, 2009). Under *Morung* system, women were not allowed to enter into men's

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<sup>3</sup> See details: Mead, Margaret. 1935. Sex and Temperament in Three Primitive Societies

<sup>4</sup> *Morung* is generally understood as an indigenous educational system of the Nagas. Both men and women have separate dormitory to impart cultural and traditional values of the Nagas. Each Naga tribes called this institution differently. It is known as *Arju* in Ao, *Ban'* in Konyaks, *Chumpo* in Lotha, *Renshe* in Rengma, , *Haku* in Chang, *Chethiche* in Chakhesang, *Pang* in Phom, , *Khiangyam* in Yimchungru, *Awikhuh* in Pochury, *Pon* in Khamniungan, *Apuki* in Sema, *Herangki* in Zeliang and *Singtang* in Sangtam (Nshoga 2009)

dormitory as women are considered weaker than men and it was considered taboo for a girl to take part into men's activities because it was historically believed that women bring bad omen during the time of war. Women were degraded by the roles they perform and subjugated to the belief that they are inferior to man. This practice is one such example that is prevalent in Naga society. However, there are numerous instances where the notion of women as a weaker sex is constructed through several practices sanctioned by traditional customary law practices. The binary role performed by men and women defines their masculine and feminine roles and supposedly construct men as superior in contradiction with women as "the weaker sex".

Moreover, the gendered practice which traditional system of the Nagas upheld the idea of man as superior to women is seen apparent in the symbolic function of rituals practices observed by the Nagas. In this section, this rituals practice is examined to understand the underlying practices of gendered meaning enmeshed in the traditional setting expressed through a specific form of ritual practices. According to Jeyaraja (2014) 'Ritual is a culturally constructed system of symbolic communication with societies cosmologies embedded in them'. Rituals are means of codifying and regulating the myths and customs of a community. In Naga society, rituals play an important role in the community and act as a tool to ascribe and govern social behaviours which has daunting effect on gender relations. The Nagas traditionally observed ritual practices that render gender differentiation in relation with two sexes (male and female). The beliefs and perceptions observed through rituals practices constructs men as the 'natural' superiority of men over women. For instance, when a baby is born, it is a compulsory practice that a ritual should be performed to observe a celebration for the birth of a child. So, according to a custom, when a baby girl is born, a ritual practice is performed to name her in 5 days whereas if a baby boy is born in the family a ritual is performed to give a name in 6 days (Jamir, 2012). It is believed that a man has 6 spirits and a woman has 5 spirits. This practice is observed in such a way that a boy child is believed to have more strength and is stronger than a girl child. It marks a symbolic function to give meaning to a child based on his/her sex. And thus, gender roles assignment is ascribed in relation with their sexes. In this ritual performance, a woman is distinctively constructed as less than man, which means that a woman is perceived as less significant or less able than man. In pre-Christian era, it was performed in such a way that when a baby boy was born a cock was sacrificed and a feast was performed to celebrate his birth. For a boy the feather of the cock was plucked, and if it was a girl child the feather of a hen was plucked in front of the house and a child's name was pronounced (Ibid). However, after Nagas embraced Christianity, it is performed in Christian ways. However, the meanings attached to gendered bodies which these practices generated had lived on. It marks a symbolic function to give meaning to a child based on his/her sex. And thus, gender roles assignment is ascribed in relation with their sexes. In this ritual performance, a woman is distinctively constructed as less than man, which means that a woman is perceived less significant or less able than man. In the contemporary context there is a consequence of such practices as they hierarchized the positions of men and women based on the perception held towards men and women. The meaning attached to this symbolic function varies from tribe to tribe but the common understanding of this practice is that man is natural superior than a woman. Such practices shaped peoples' perception over the years and eventually the notion of man as the superior essentially got incorporated even in the realm of politics in the present context. The contradiction of this gendered practice is that it devalues women's role while it values the role of men in Naga society. Consequently, the past old age practices are extrapolated to fit into the modern context where women bear the brunt of these consequences and experience maximum exclusion from various important roles in the society. Today, the seats of power and authority are concentrated on male members due to its past values placed on men.

## **Implication on Women in the Contemporary Context.**

The structural inequality operating in Naga society needs to be perceived from varied historical events that have shaped Nagas over the years. The gendered practices linked with patriarchal values in the traditional practices are deeply embedded in Naga society. On the other hand, Naga society has evolved over the years by adopting a new governance system under the Indian democratic principle, but Naga society has failed to adhere to gender equality in the new governance system. Gender distinction based on gender inequality of power and status continues to be incorporated in the modern structure of Naga society. In the post-independent India, state governance, which is a new concept for Naga society, has spiralled into traditional ways of arrangement, thereby reinforcing a patriarchal set-up where both units are represented by mostly male members.

In the contemporary age, women are faced with multiple discrimination. In the year 2017, a political crisis pertaining to 33% reservation in the Urban Local Bodies (ULB) reveals the overwhelming degree of women's discrimination in decision-making bodies and vice versa. This issue continues to be seen even in the year 2023 when ULB elections are about to take place, then a host of organisations led by men oppose women's reservation, which in turn is against women's leadership<sup>5</sup>. A section of male tribal members articulated that traditionally women were denied participation in the decision-making process as customary laws do not recognise it and render women as unequal and inferior to men. Men were adamant that implementing 33% reservation of seats would mean infringing Naga customary law. As pointed out by Yanthan (2017), such an opinion reflects an attitude of a deep-seated patriarchy in Naga society. Such is the current situation prevailing against women in Naga society.

In addition, women's denial of land ownership and property instigates a severe effect on women's position because in Naga society land is not only regarded as a source of economic production, but is also a basis of social relationships, cultural values, and a source of prestige and often power (UNDP 2009). In Nagaland, land constitutes an important source of assets as it also has a close tie with identity. However, women are restricted from being allocated land and women's only access to land is through the mediation of a male member of the family, her father, brother or husband (Sithou, 2015). This shows a gender inequality in terms of access to land and resources. Subsequently, women's denial of access to land inheritance and ownership is a major factor that contributes to women's discrimination. Women's lack of land ownership severely dampens their bargaining power within the household as well as in the society. As Agrawal (1994) argues that when women are denied access to land ownership and inheritance in property, it leaves a heavy burden on women because they have to manage the extra manual work, which results in the feminization of poverty, leading to vulnerable health and a low status of women in the society. Rudman (2009) also observes that, one of the most important aspects of customary law in relation to property is its power of succession. So, if women are not given property rights, women have no succession to power. This also applies to women in Naga society, where restriction of land rights to women prohibits their succession to power.

## **Politics of women on Gender rights: the case of the Nagas**

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<sup>5</sup> See details: Bureau, 2023. Nagaland civic polls with 33% women quota opposed. <https://www.thehindu.com/news/national/other-states/objecting-to-womens-reservation-three-associations-look-for-amendment-before-nagaland-civic-polls/article66606642.ece> accessed on 16.04.2023

In this section women voice from different background are taken into account to reflect their demands in order to understand how women are asserting their rights in the context of Naga society. Naga women have been raising their concerns over their exclusion in the decision-making bodies for many years but their voice became more visible during the issues erupted in 2017 pertaining to 33 women reservation in the Urban local bodies.

In Nagaland, women are organised through different women's wings of various tribes, the main sphere headed by Naga Mothers Association (NMA) which was formed in 1984. Naga women are famously known for their iconic role as peace makers which are a part of their traditional role in Naga society. In Nagaland, it was NMA that first articulated the idea of women's rights by questioning the zero representation of women in legislative bodies. They gradually evolved from traditional peace-making and progressed towards upholding women's interest which paved the way for seeking gender justice especially in the realm of political entity which continues to be a male dominated space. Their demand highlights the traditionally sanctioned exclusion of women in representative bodies. As Dzuvichu (2015) remarks that Naga women have been deprived of their rights and discriminated for generations, under the guise of certain customary practices and traditional practices. Moreover, another group from another women organisation like ENWO expressed that women are deprived of inheritance and land rights and not allowed to participate in decision making which is making it difficult for women to function as full citizens. Women strongly advocates gender equality and justice as women have been deprived of decision making in representational arena for centuries. While women have been making advances in many fields, women are restricted to participate in representational arena. They put forth the question of women's rights by exploring their position in representational system. In this context, the idea of representation is understood as an aspect of participation in decision making bodies in legislative bodies namely Legislative assembly, Municipal bodies, Traditional apex body and village council. Women activists from various organisations assert their rights based on gender equity and gender justice based on a idea of parity between men and women in representational bodies. Indeed, for Naga women activists engaging in women's reservation policy became their main agenda in mainstreaming the politics understanding of women rights. The exclusion of women from legislative bodies led to setting the goal for women's reservation as important instrument to uplift women in Naga society. An activist opines that "Reservation for women will make a pathway to correct historical anomaly."(EMN, 2017) Women's demand and activism over 33% reservations in urban local bodies (ULB) witnessed the form of new activism for Naga women that raises the question of gender issues which is putting men and women into battle and contest with each other. The resurgence of new activism for women that emerged as a fight for women's rights to participate in decision making is seen as a legitimate right for women as per the mandate of the Indian constitution.

It is interesting to observe that while women are asserting their rights, their agendas are grounded on feminist principles that challenge patriarchal norms and oppressive power which is an obstacle for women's emancipation. It is true that women's organisation like NMA plays an influential role in creating space for widespread of gender awareness in Naga society. Their agendas framed an important question in shaping women's rights.

### **Way forward**

This paper dealt with the issues of gender rights in the context of Naga society and questions the role of customary law in this process. Customary law practices impose difference between man and women by defining their roles and responsibilities which is not conducive to gender equality.

Traditions is a very problematic element in assuaging the rights of women because it doesn't recognise women's rights as an individual right. In spite of women's continuous efforts to bridge the gap of gender inequality, no measures have been taken up and women continue to suffer under the hands of male traditional leaders till this day. Agnes (1998) offers an insight that political grounding of women's rights is essential for evolving strategies which will effectively safeguard women's rights in a communally vitiated political climate. The important position of customary law in Naga society should be acknowledged fully in recognising women's rights. Thereby, systematic and sustained engagement with male traditional leaders needs to be initiated to bring a collective voice to examine on-going practice of customary laws in Naga society. Such intervention is important to minimize the dramatic disparities of power between traditional leaders and women, where women can engage themselves to create a space to participate and uplift their status under customary laws that would shape their lives. It is evident that Nagas are in the process of transformation, therefore, modern ideals and practices must be carefully examined and analysed to meet the changing modern times without obvious bias and discrimination based on any gender. There is a wide gap between constitutional remedies on women's welfare and the sanction of the customary laws in Naga society. Therefore, it is important that the traditional leaders under customary law should engage with the concept of customary law that protects women's rights and gender equality.

On the other hand, due to overwhelming subjugation of women under the guise of customary law practices, it is viewed that customary laws are often treated as villain and a problem that must be fixed and addressed. In such cases, there should be an engagement with customary laws to subvert this notion and entail a vision of customary law practices as part of solution and a devise a mechanism to address issues of achieving women's rights. In this juncture, the concept of engagement with customary laws should centre on rediscovering tradition, custom, and culture that values women in a given community and their role to protect women's rights. This approach was suggested by Himonga (2012), during his study on customary laws in Southern Africa that engages with customary law, to use the potential of customary law practices as a source of solution. Customary law is used to disadvantage women position. Yet, customary law has the power to empower women's rights and give them access to power. Central to this notion of engaging with customary rights and their culture (Himango, 2012). In this process, a dialogue framework is important to provide a home for this idea of engagement with customary laws. Besides, Susan Williams has also offered a feminist model of dialogue from "constructionist approach" to customary laws in the context of a pluralistic society. She insisted on paying attention to the culturally community interaction with the legal system which affects the status, power and resources of subgroups within the cultural community. She argues that incorporating traditional cultural norms into state legal system tend to strengthen traditional leaders who are overwhelming male as against more marginal or progressive elements in the community like women groups (Williams, 2011). Therefore, she observed that feminist theories that looks at democratic models is a promising approach and an important mechanism for dealing with these problems. She cites Anne Phillips' work that argue that dialogue is most promising because it recognises both difference and the possibility of intercultural understanding and can encourage internal transformation of the community (Williams, 2011). She also describes Seyla Benhabib's deliberative model of democracy to describe the interaction between majority and minority cultural groups and how it can give rise to workable solutions to some of these issues (Ibid, p-71). In such a way, through dialogical model between traditional leaders and women's activists, women's right could be formulated and framed in cultural polities. In this juncture, institutions like the state and the traditional legislative bodies must be fully mobilised in support to facilitate and promote the dialogue. Williams (2011) furthermore suggests that, dialogic model of democracy requires attention to the role of disruption and challenge

in preventing the reintroduction of domination and oppression. Such disruption and challenge is crucial and cannot simply be assumed—incentives and support for it must be built into the democratic structure. Thus, one important aim of accommodation in diverse cultural contexts should be to provide support for such challenge by women within the community's dialogue (Williams, 2011). The model of dialogue is important especially in the context of Naga society because there is no collective process of reasoned deliberation among traditional leaders, women activists, the state and the civil society. Therefore, in a model of dialogue the process of deliberation must be based on democratic principles and values that engage participants as equal citizens which would reshape cultural practice by integrating women's participation in the process.

## **Conclusion**

The paper reveals that the hierarchal gendered practice of Naga customary laws which is prevalent in the past still find its relevance in the present context which do not fit into today's gender rights narrative. Consequently, it hampers women to progress equally with men. Therefore, customary laws should be re-interpreted and evolve with time in recognising women rights. Since, gender issues has not taken up at the traditional level, it is important to reckon the importance of integrating gender rights from the very traditional level. The upholder and the guardian of customary laws should jointly work in retaining the same rights by giving room for women's spaces in order to maintain a just traditional way of life in Naga society. The central role of the purpose of customary laws should promote to uphold and sustain the practice of customary laws within the community where each and every person in the community should have a role directed to the betterment and for the welfare and wellbeing of the community.

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