CRIMES CUSTOMS AND JUSTICE IN TRIBAL INDIA

A Teleological Study of Adis

MANJUSHREE PATHAK

The social landscape of the north-east India presents a great ethnic variety comprising of seven states having different castes and creeds nourished by varied and vivid customs, culture, language and religion. One of such tribes is Adi (Abor) of Arunachal Pradesh, whose peculiar customs and customary practices attracted the curious Britishers in the early nineteenth century. The most significant feature among them is customary law which plays a predominant role in the administration of justice. This legacy of customary justice has its origin in their very social setup and subsequently has the sanction in the later stage by the formulation of Regulations. The Constitution of India accommodates these provisions thereby giving approval and sanction. With the change of social setup and socio-economic development, the ideology and concept of the Adis has also undergone considerable changes.

This book is the outcome of a deep study of the customary practices of the Adi Tribe of Arunachal Pradesh. Dr. (Mrs.) Pathak has adequately documented the progressive realisation of the substantive steps of evolution of the procedural application of normative and reformative judicial moves keeping in view both the civil and criminal aspects in the pluralistic society. The customary laws affecting both person and property of the Adi society has been graphically delineated both for the periods before and after Independence. The canvass of study has been found to be composite enough to accommodate many splendoured social syndromes of this ancient tribal group.

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By
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MANJUSHREE PATHAK

Preface

The State of Arunachal Pradesh, which was born as the youngest State of the Union of India, is best known for its colourful natural panorama, traditional costumes and customs, vivid but varied habitats and habitations, enchanting and uneclectic culture and religion. It is not only unique in its geographical and climatic conditions, but still enjoys a significant and an extra-ordinarily privileged constitutional position. The region is faraway from development and there are certain areas which are till to-day inaccessible. The state is very scarcely populated with hills and snow capped mountains, deep gorges, quick running rivers, deep forests with varied flora and fauna. The entire population are predominently tribal, but signifies a great many variations relating to their custom, culture, language and ethnic beliefs.

The constitutional privileges and the principles underlying the Sixth Schedule, *inter alia*, lays down that nothing shall be imposed on them in the name of administration or law and they should be allowed to develop along the lines of their own genious and their traditional arts and culture should be encouraged. The administration and development should be handed down to their own people after making them fit by necessary training. The over-administration and sending of too many outsiders to their Territory should be minimised or avoided and the implementation of programme should not be in rivalry but through their own social and cultural institutions. The result of administration and welfare should not be measured in terms of money invested but by human character involved in the process. The above constitutional provisions and the principles as followed in the case of Arunachal Pradesh has given rise to two conflicting observations. The most dominating opinion is that, as is commonly held today, the tribals should further be

allowed to remain in isolation without disturbing their traditional art and culture and they should be left for their development in their own way. The other opinion is also equally logical and weighty which is of the view that the Constitutional as well as extra-constitutional provisions have stood as a barrier against all modern possible attempts having made for the socio-economic development of the region. The provisions for keeping the tribal people in isolation has no doubt served a good purpose by safeguarding their traditional arts and culture and save them from the exploitation of greedy land grabbers and crafty and scheming outsiders. But, on the other hand, it is also doubted very often that there has not been any emotional integration of these people with the national mainstream which is considered to be a paramount need of the moment, because of the volatile situation all along prevailing throughout the international boundary and frequent threats held and claims made by the Chinese across the border.

Apart from this aspect the other outstanding feature so far the administration is concerned is that the administration of justice both civil and criminal are predominently dispensed with by the traditional village councils and law and procedure applied are mainly customary in nature. The only basis by which the administration of justice is being enforced, is regulated by the provisions of the Assam Frontier (Administration of Justice) Regulation of 1945. The other laws of crime as in force in India today and the Code of Civil Procedure has its application only in spirit not in letters.

Under the above peculiar circumstances, I undertook to make study in-depth relating to the concept of justice of the Adi people (Abor) of Arunachal Pradesh. It would perhaps appear to be obnoxius to say that how two tiers of legal system can function parallel under a single constitutional canopy. But from our study it has been revealed that even such systems are also very aptly possible. But thing to ponder over is if the custom and customary laws fall sort of taking the cognizance of a new type of offences and to accommodate changed circumstances of a modern society. For the elite sections of the Adi, particularly the new generations that are coming up, the vanity of discarding the old and to welcome the new has become the prominent and respect as well as strict adherence to traditional and customary

institutions are sharply falling down as they know very well that there are other higher authorities, for example the Court of the Deputy Commissioner, for both civil and criminal cases, the High Court and the Supreme Court for appeal and revision. As a result, at present the Adi society is now somewhat arrived at a staggering point. By the evolution and the growth of population, an Adi society is now gradually emerging into a heterogenous one. On the other hand, a homogenous society is said to be the breeding ground of custom and customary laws. According to the majority of the Adi people, the prevailing provisions are still adequate to serve their purposes which they demand to be cheaper, quicker and easier than the courts of Law. Their systems are very integral to their life and society, culture and religion and both are so inter-laced that one can not be segregated or single out from the other. If this system is replaced, altered or modified by any modern system, the very sanctity and charm of the customary character of the system shall be lost, which they can not allow to be so. They are not even positive with the view that codification of customary law and procedure will preserve their age old tradition and thereby making the system more fixed and certain. According to them such operation will rob the soul of their sentiment and religious belief and there will remain nothing except the corpse.

There was a day when all the societies in this world were in nudity. Through transformations and reformations only they achieved the present state of high standard of modern and civilized status. Therefore, if the Adi people expect speedy and quicker all-round development and wish to keep pace with the fellow brethren of the Union, if not world, must come forward to accept all modern and scientific systems which are responsible for their well-being. Therefore, an attempt has been made to scrutinise and to evaluate such possible methods that even within the limits of their given conditions there may be various ways and means out for accommodating all the necessary machineries in their administration, so that by following a middle path the target of development and equality in all respect in the truest sense could be achieved.

MANJUSHREE PATHAK

Tables and Maps

TABLES

MAPS

Abbreviations

A.F.	Assam Frontier.
A.I.R.	All India Reporter.
Bom.	Bombay.
C.P.C.	Civil Procedure Code.
Cr. P.C.	Criminal Procedure Code.
C.R.	Civil Revision.
Cr. L.J.	Criminal Law Journal.
D.C.	Deputy Commissioner.
G.L.R.	Gauhati Law Reporter.
E.A.R.	Extra Assistant Commissioner.
H.C.	High Court.
I.P.C.	Indian Penal Code.
I.E.A.	Indian Evidence Act.
Jdl.	Judicial.
N.E.F.A.	North-East Frontier Agency.
N.D.C.	National Development Council.
P.C.	Privy Council.
R.C.C.	Reinforce Cement Concrete.
S.C.	Supreme Court.
Sects.	Sections.
U.T.	Union Territory.
U.S.	United States.
W.R.C.	Wet Rice Cultivation.
Vs.	Versus.

1

Introduction

The social landscape of the North-East India, consisting of the states of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura, presents a grand mosaic of various colourful ethnic groups. Though this area has undergone considerable changes since independence, it is still far behind in keeping the pace of development particularly in the area of education, transport, and communication and industrialisation. After independence all efforts of development under the successive Five Year Plans have been geared-up to develop this area also with the rest of the country.

Arunachal Pradesh, the land of dawn-lit mountains of India's easternmost frontier is 83,743 square kilometres in area with a population of 6,31,839.[1] This geographical landmass was formerly known as North-East Frontier Agency (N.E.F.A.) and was administered as a part of Assam, when it was conferred the status of Union Territory after the re-organisation and named Arunachal Pradesh on January 21, 1972 with the coming into force of the new amendment of the Constitution.[2] This marked the cessation of a period during which this area was constitutionally a part of Assam administered by the Central Government through the Governor of Assam as the agent of the President of India.

(i) Rules and Administrative Orders applicable to the Tribal Areas

The administrative evolution of the territory may be traced

back to the Government of India, Foreign and Political Department Notification of 1914, which provided that the Assam Frontier Tracts Regulation, 1880 would extend to the hills inhabited or frequented by Abors (now known as Adi), Miris, Mishmis, Singphos, Khampties, Bhutias, Akas and Daflas. The Hill areas were separated from the then Darrang and Lakhimpur District of the province of Assam by issue of Notifications under the Assam Frontier Tracts Regulations, 1880[3] and three Frontier tracts came into existence which was collectively known as North-East Frontier Tracts. These tracts were:

(*i*) The Central and Eastern Section.
(*ii*) The Western Section.
(*iii*) The Lakhimpur Frontier Tract.

The matter relating to the administration of these areas was dealt in the background of the Montague and Chelmsford Report[4] of 1919. The Report stated that there were certain backward areas to which the reforms could not apply and that these tracts should be administered by the Governors. It was mentioned that political reform could not be applied to these areas whose people were primitive and "there was no material on which to found political institutions". But the British Government tried to limit exclusion of these areas as much as possible both in its legal extent and its degree. With their end they estimated the degree of backwardness of each of the tracts, which were subsequently renamed as:

(*i*) Sadiya Frontier Tract,
(*ii*) Balipara Frontier Tract, and
(*iii*) Lakhimpur Frontier Tract.

And recommended varying degrees of exclusion. To implement the recommendations of the Montague-Chelmsford Report, the Government of India Act, 1919, inserted section 52A in the Government of India Act, 1915.[5] The Government of India Act, 1935, gave up the terminology of the backward tracts and described the areas either as "Excluded Areas" or "Partially Excluded Areas".[6] The powers of the Provincial Legislature were not to extend to these areas. As per the provisions of the

Act, the excluded areas were to be administered by the Governor himself in his discretion, and the partially excluded areas were to be his special responsibilities, having power to override advice of the Ministers in his individual judgement, whereas in matters within Governor's discretion advice of the Ministry has not been considered necessary. The Act also empowered the Governor to make regulations for the peace and good governance of these areas subject to prior sanction of the Governor General.

The Government of India (Excluded and Partially Excluded Areas) Order, 1936, classified the Excluded and Partially Excluded Areas as follows:

I

EXCLUDED AREAS

A. The North-East Frontier (Sadiya, Balipara and Lakhimpur) Tracts.
B. The Naga Hills District.
C. The Lushai Hills District.
D. The North-West Frontier Province.
E. The North Cachar Hills Sub-Division of Cachar District.

II

PARTIALLY EXCLUDED AREAS

A. The Garo Hills District.
B. The Mikir Hills (in the Nowgong and Sibsagar Districts)
C. The British Portion of the Khasi and Jaintia Hills District other than the Shillong Municipality and Cantonment.

The Act conferred discretionary power to the Governor. "Discretion" means when it is said that something is to be done within the discretion of the authorities according to the rules of reason and justice. It should not be arbitrary, vague and

fanciful but legal and regular. Discretion, when conferred upon executive authorities, must be confined within clearly defined limits. Sound discretion always guided by law and governed by rule.

Till 1954, the administration of this area was under the control of the Ministry of External Affairs, Government of India and after it was taken over by Ministry of Home Affairs, Government of India. The aforesaid Frontier divisions became Districts and the Political Officers came to be known as Deputy Commissioners since 1965.

Promulgation of the North-East Frontier Agency Panchayati Raj Regulation of 1967 laid the foundation of an indigenous representative Government in the territory.[7]

The Agency Council, which had been at the apex of the Panchayati Raj System in the North-East Frontier Agency was replaced by Pradesh Council on 20th January 1972 and declared as a Union Territory, Arunachal Pradesh headed by an administrator of the rank of Chief Commissioner. From that day the provisions of the Sixth Schedule of the Constitution of India which provided for the Administration of NEFA by the President through the Government of Assam as his Agent ceased to apply.

On 15th August 1975, the provisions of the Government of Union Territories Act 1963 were applied to Arunachal Pradesh and Pradesh Council was transformed into a Legislative Assembly and the Councillors were appointed as Ministers. The rank of the Chief Commissioner had been upgraded to the rank of Lieutenant-Governor and the process of raising this administrative unit as Union Territory was completed.

(ii) Constitutional Provisions governing Administration of Justice in the Tribal Areas

At the time of framing of the Constitution, great care had been taken to ensure the realisations of the aspirations of the people of this area and that the psyche of the simple citizens of NEFA are steadily assimilated with mainstream of the country. To assist the Constituent Assembly in this regard, the Advisory Committee on Fundamental Rights, Minorities and

Tribals etc. appointed two sub-Committees, namely the North-East Frontier (Assam) Tribal and Excluded Areas sub-Committee and the Excluded and Partially Excluded Areas (other than Assam) sub-Committee to examine the matter in detail. Dealing with the social and economic life of the tribal people, the joint report of the two sub-Committees stated:

"Certain features are common to all these areas (whether in Assam or elsewhere) yet the circumstances of the Assam Hill Districts are so different that radically different proposals have to be made for the areas of this province. The distinguishing feature of the Assam Hills and Frontier Tracts is the fact that they are divided into fairly large districts inhabited by single tribes or fairly homogeneous groups of tribes with highly democratic and mutually exclusive tribal organisation and with very little of the plains which is so common a feature of the corresponding areas, particularly the partially excluded areas of other provinces.

As regards the features common to tribal areas in other Provinces the Assam hillman is as much in need of protection for his land as his brother in other Provinces. He shares the backwardness of his tract and in some parts the degree of illiteracy and lack of facilities for education, for medical aid and communications. Provision is necessary for the development of the hill tracts in all these matters and we have found it necessary to recommended constitutional safeguards of various kinds."[8]

Factors justifying separate treatment were:

(*i*) The distinct social customs, religious beliefs and tribal organisation of the different tribal people.

(*ii*) The fear of exploitation by the people of the plains on account of their superior organisation and experience of business, and

(*iii*) necessity to make suitable financial provisions for these areas for unless suitable provisions were made or powers conferred upon the local councils themselves, the provincial government may not, due to the presence

of the plains people, set apart funds for the development of tribal areas.

On the basis of these factors the sub-Committee had recommended some provisions for the well-being of tribal people. The recommendations of the sub-Committees were:

(*i*) The local customary laws should be interfered with as little as possible and the tribal council and courts should be maintained and, accordingly, the hill people should have full powers of administering their own social customs.

(*ii*) There should be local councils with powers of local Boards and of legislation and administration over land, village forest, agriculture and village and town management for general, in addition to the administration of tribal or local laws.

The Constituent Assembly adopted the recommendations of the two sub-Committees, with minor modifications. The Constitution sought to protect the autonomy of the tribal areas in four basic ways:

(*i*) by creating district councils for autonomous tribal districts;

(*ii*) by giving administrative and legislative powers in specified matters to district councils;

(*iii*) by providing for the non-application of the laws of the state of Assam to these areas unless the district council decided to apply an Act; and

(*iv*) by empowering the Governor not to apply any Act of Parliament or an Act of the Legislature of the state to an autonomous district.

The special provisions made for the tribal people of Assam had been justified by B. R. Ambedkar, the Chairman of the Constituent Assembly. According to him:

". . . the position of the tribals of Assam was somewhat analogous to that of the Red Indians in United States who

are Republic by themselves in that country and were regarded as a separate and independent people."[9]

Dr. Ambedkar apparently had the Indian Reorganisation Act (1934) of the United States in mind, but the Constitution of India, in fact, went far beyond the scope of the United States' Act, which assured the control of the political administration of tribal areas by the tribal themselves.

Accordingly, provisions are made in the Constitution of India to give effect to the aforesaid aims and objectives in order to safeguard the cultural, social and economic identity of the tribal people of the North-East including the other tribes of the Union of India. Specific provisions have been made under Articles 15(4), 29, 30, 46, 244(A), 330, 332, 334, 335, 338, 339, 340, 342, 366 (25), 371(B) and under the Sixth Schedule of the Constitution.

The Article 15(4)[10] has been incorporated by the first Constitutional Amendment as the Government felt it just an expedient to protect the interest of the tribe by providing a special provision for discrimination on the ground of religion, caste, race, sex or place of birth. Again a special provision under Article 330 against the provisions of Article 16 has been provided to safeguard the scope of employment of tribal people.

In the Part III of the Constitution of India the provision of Article 29 has been laid down to safeguard and conserve the language, script and culture of various communities and tribes. The provision of Article 30 has been aimed at attaining the very object of conserving the identity of minorities read with the provision of Article 29.

In the Part IV delineating the Directive Principles of State Policy, the Constitution lays down certain directives to the Government to be followed in the governance and making law by the State. Under this provision, utmost care has been taken to promote the educational and economic interest of tribal people.

By the insertion of a new Article 244A in the Constitution the protection of tribals has got a new incentive. Again the North-East India (Reorganisation) Areas Act, 1971 and the

Constitution (22nd) Amendment, 1969 provides for the provision of Sixth Schedule and also for the formation of Autonomous State comprising certain tribal Areas in Assam. This constitutional umbrella has removed the earlier motive powers to the government.

In Part XVI of the Constitution certain special provisions relating to certain classes has been laid down in Articles 330, 332, 334, 335, 338, 340 and 342. The provision of Article 330 is meant for reservation of seats to the House of People. By the Constitution Twenty-Third Amendment Act, 1969 the provisions of the Article 10 has been excluded and made applicable to the State of Arunachal Pradesh under the provisions of Sections 2 and 3 of that Act.

Similarly, the provision of Article 332 applies to the reservation of seats in the Legislative Assembly of the States. But the provisions of the Articles 330 and 332 were limited by thirty years. Probably, the makers of the Constitution had foreseen the probability of development of tribal people within this period of thirty years till 1980 and their special representation in House of the People and in the Legislative Assembly would not have been necessary. But unfortunately, the pace of development of the tribal communities was far behind the expectation and the provisions are being extended from time to time.[11]

Apart from this provision of representation in the House of People and in the State legislature, provisions have been made to reserve certain post of services (employment) for the tribal people under the Article 334.

To investigate the operation and implementation of the constitutional provision in safeguarding the interest of the tribal people, the makers of the Constitution rightly provided the post of Special Officer under Article 338. The main duty of such Officer was to investigate the implementation and benefit given to the tribal people and to report such development to the President of the Union to be laid before the Parliament.

By the Article 339 provision has been made for appointment of Commission to report on the administration of Schedule areas and Schedule Tribes if the President feels it necessary after the expiry of the ten years of the commencement of the Constitution. Besides the foregoing provisions, the Constitution rightly provides the scope of declaring some tribe as Scheduled

Tribes by the President in consultation with the Governor of such respective State under Article 342. In exercise of the said powers, the President issued the Constitution (Scheduled Tribes) Order, 1950. The said Article further provides that the Parliament may by law include or exclude any such specified schedule tribe in or from the list of such schedule tribe. In this context the Supreme Court held that whether a particular person is member of the scheduled tribe so declared by the President under Article 342 is essentially a question of Law.[12] Article 366, Clause 25 defined Scheduled Tribes as "Scheduled Tribes" means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to his Scheduled Tribes for the purposes of this Constitution.

Under this specification no other codified personal laws are applicable to such Scheduled Tribes, unless the Central Government by notification in the Official Gazette directs that any of the enactments shall apply to them also.[13]

The Sixth Schedule of the Constitution of India gives detailed direction and guidance in the governance of the tribal areas including Arunachal Pradesh. The provisions of the Sixth Schedule includes the special power of the Governor with the Regional and District Councils. The Schedule includes various provisions relating to the representation of people in the Regional and District Councils, this power and duties including making of laws etc. It also provides the judicial system and administration of justice, the matter like land, matrimonial affairs, inheritance and succession, social customs, village administration, utilisation of forest products and minerals, appointment of village Chief or Headman, regulation of markets, taxation of various items, trade licence and business etc., are also incorporated in this Schedule. The primary object of the schedule is to give effect in safeguarding the cultural, social and economic independence of the tribal people making separate provisions and keeping them in isolation from being influenced by the culture and economic pressure of the majority of the national mainstream. According to Jawaharlal Nehru,[14] the first Prime Minister of India, there were five principles enshrined in the Constitution of India for protecting the interest of the tribal people of the North-East region and in particular the

NEFA (now the State of Arunachal Pradesh). Those principles in nutshell are:

(*i*) To help development of personality, genius in their own way and to avoid imposition of anything which are foreign to them and conversely, to encourage their own traditional part and culture.

(*ii*) Government and administration should be in the hands of their own people and employment of expertise and outsiders should be restricted to the least possible extent.

(*iii*) Rights over land and forests pertaining to those tribal areas should be maintained undisturbed.

(*iv*) The implementation of plans and administration of various schemes should be through their own way and institutions befitting their own art and culture and nothing should be done adverse to that idea.

(*v*) Keen observation is to be made towards the development of moral and human character, not towards the official statistics or the amount of money invested.

(iii) Post-Constitutional Developments and the Adi Society

The separate constitutional status and the unique privileges given to the Scheduled Tribes are no doubt an achievement of the very object of democratic socialism, equality, integrity and fraternity as enshrined in the Preamble, Part III and Part IV of the Constitution of India by keeping the tribals in isolation from the rest of the country and providing safeguards to save and protect their culture, religion and ancestral land from being grabbed by the outsiders with their own way of life style and self-Government. The idea to keep them in seclusion was an upright thought particularly at the time when the constitution was on the anvil. It is an undeclared acceptance that there is a continuous organised unrest throughout the entire North-East which was exploited prior to the coming of the Constitution. The problem started simmering invisibly soon after the commencement of the Constitution in the then composite state of Assam. If it is viewed politically it is quite open for one's observation that the Government of India too followed the policy of divide and rule following the Britishers. The tribals in

the North-East are mainly pertain to the hills and border regions and they are kept aloof from the mainstream of population of the country even after four decades of independence of India. The result today is that there is no emotional integration in the entire North-East India; each tribe, race or the religions and linguistic groups raising their narrow issues for their separate home land possibly with a ulterior secessionist motive. This state of affairs is definitely against conservation the national unity and integrity. The responsible government has a constructive role to play. It is felt that this sort of condition will be taken care duly by the special provisions for the cultural and economic identity of the tribes as might be foreseen from the political sagacity as reflected in the tenor of the Constituent Assembly debate.[15]

If the heterogeneity of the tribes in North-East and their colourful varied cultural and social life could also be traced in other countries in the world; for example—there are some tribes in the Himalayan region in the Republic of China, we can also mention the Vasian tribes of USSR, but there is no such provisions to keep them secluded from the national mainstream though they are maintaining their social, cultural and religious identity. We can see everywhere in other countries oneness of all the population so far the context of national syndrome is concerned. But India is an exception, though we feel proud that we can exercise and retain unity in diversity, the sovereignty of India is still experiencing occasional tremors. The application of principal laws of the land still lacks unformity in application within the territory of India. This is a question to be pondered over and requires deeper application of mind. Those areas where the laws of land have no application or have partial application with certain modifications vulnerable by its geographical locations like Jammu and Kashmir and some of the border States of North-East India.

In areas like NEFA, Verrier Elwin's philosophy, which has been the Government of India's philosophy for nearly a century, has kept them isolated from the rest of India. . . . It was argued by its supporters that it saved the tribals from exploitation by civilized people. Regarding outside exploitation, the arrangement was tolerably adequate, but it failed to protect them from the exploitation which was in-built in their own primitive tribal

organisation. Arguments about philosophy and culture apart, the borders can be saved only if the border people know that they are Indian and that they are defenders of the farthest outposts of this land. And this they can feel only when they are a part of India's national life and when they derive their vital breath from its stream of consequences. So far they have been out of this current and this image of India is that of a distant neighbour whose inhabitants periodically invaded their areas in order to exploit them. This image must change.[16]

But such state of affairs is still a matter of controversy for the new generation at present. Among the elitist and educated Indians there is a perpetual resentment against the policies laid down in the Constitution and also the way of governance of those areas inhabitated by the tribals, particularly the North-East India. Accordingly to them it is unfortunate to keep a considerable number of tribals numbering more than forty millions isolated as unassimilated elements within the Union of India. They want to justify their opinions that the constitutional privileges available to them were meant for transitional period say thirty years at the most. It was expected that the process of assimilation of the tribes with the mainstream of population would be completed within that stipulated period and these would have been unification of all the territories of the union and uniformity in the application of laws particularly with a Uniform Civil Code as envisaged in the Article 44 of the Constitution. But the constitutional provision has turned into political weapons both in the hands of the tribals as well as in the hands of the ruling party. Moreover, the benefits which are available under this special status to the tribal are being reaped by a few elite from the tribals and exploiting their own fellow men.[17]

The system of law in the state of Arunachal Pradesh possesses certain important and interesting features, deserving attention and scrutiny not only from the anthropological point of view but from the legal point of view. There are some twenty major tribes each having separate customs and culture. They are so many in number and so varied in texture that to give a satisfactory introduction to them would be a great task, involving question of time and tome.

Therefore, our study shall remain confined to a particular

tribe of Arunachal Pradesh earlier known as the 'Abors' and presently known as "Adi". The administration has accepted the new terminology. Nowadays, despite official discontinuance, it is a familiar term used to designate the people who live between the Suvansiri and the Dibang rivers in the state of Arunachal Pradesh. But the term Abor had wider significance:

> ". . . the word Abor was used in two senses. In the broader sense, meaning independent, unruly, savage and so on, it was applied to all the hill tribes round the Assam Valley. In its narrower sense, it was applied particularly to the tribes of the Southern slopes of that portion of the Himalayan ranges that lies between Dibang and Suvansiri rivers. Now-a-days, however, it is used only in the restricted sense and designates the Adis only".[18]

The name of this tribe has surely a nexus with their way of living and social set-up as they like to live a way of life free from restraints. A few decades ago particularly at the advent of the British conquerers the Adi Society was at a different stage than they are today. At that time they considered the law enforcing agencies as their enemies and law was considered as a trap. During British rule, there were several conflicts with this tribe. The Adis made frequent attacks on the plain villages throughout the 19th century and their hostility with the British administration culminated in the murder of Williamson and Gregorson with 42 of their followers in 1911. They were prone to certain behaviour and occasionally indulged in crimes like theft, kidnapping, inter-village wars (clan fight), slavery etc.

The tribes of Adis are mainly inhabitated in the east and west Siang districts. They may be divided into three main groups —Gallongs, Padoms and Minyongs, each of which can again be sub-divided into a number of sub-tribes. Among them, the unit of social organisation is the patrilineal family. The family is nuclear. When a man marries, he sets up his own home. The place for the unmarried young persons is the bachelor dormitory, known as *mosup*. Matrimonial alliances are generally settled by the male parents, though a young boy and a girl are at liberty to select their own life companions. For the first five

or six years of marriage, the wife continues to stay with her parents till the first child birth and after that she is entitled to setup a separate household.

Marriage customs of the Adis are very interesting. The bride-price required to be paid is sufficient number of squirrel[19] along with other gifts. A poor man may give 30-40 squirrels but the rich are required to present 200 to 300 squirrels.[20] In the Adi society, polygamy is fairly common, but polyandry is also in practice among some sub-tribes. They are strictly exogamous, but in some areas inter-clan marriages are also prevalent.

The law of inheritance is the patriarchal in most of the clans. But in the life time of the father no son can inherit the property of the father. On the death of the father, the property is equally divided among the sons. Generally, widows and daughters do not inherit anything unless specifically ordained.

The socio-administrative structure of the Adi society evolved a highly developed democratic institution which is known as *Kebang* or village council. The functions of the Kebang is threefold (*i*) judicial, (*ii*) administrative, and (*iii*) developmental. Under the first head, it settles the disputes within the village boundaries and the award or punishment inflicted by it are binding on the other party. On the administrative side, it looks after all the maintenance works of the village. In the developmental side it cooperates with the Government officials in all developmental works within the area.

An important feature of many Adi villages is the dormitory club or *Mosup* for boys and men, which organises the youth of the tribe. Such dormitory club for the young unmarried ladies are known as *Rasheng*. All the public appeals of the community are processed and conducted here. In the socio-administrative set-up *Kebang* is in first tier and the *Mosup* in the 2nd tier. Generally, *Mosup* boys enforce the judgement passed by the *Kebang*. The *Mosup* and *Rasheng* are central institutions where boys and girls get practical training in the traditional mode of life.

Apart from the Buddhist tribes in the Kameng district and parts of Siang and Lohit districts, there is a very general appreciation in the neutral and disinterested working belief in the Supreme Cause who is just, benevolent and good. *Donyi-Polo*, the Sun-Moon God is regarded as the chief divinity and

worshipped by the Adis. The old religion is till a power for good and has not yet been touched by the other systems, even Tibetan or Burmese, Buddhism have had little effect on the non-Buddhist tribes and there is almost non-existent of Hindu or Christan influence.

Since independence, the courts in civil as well as criminal practices are working in Arunachal Pradesh like those of other states and Union Territories of the Union of India. The laws dealing with the crimes are the Indian Penal Code (1860) the Criminal Procedure Code (1973) and the Indian Evidence Act (1872) etc., as usually put into operation. But in some areas of Arunachal Pradesh these laws are not followed in letters but in spirit and that too with the help of customary laws which play an important role in dispensing justice. Both the civil and criminal offences have peculiar nexus with the particular groups or clans and not individuals, as in other parts of Indian milieu subjected to the jurisdiction of the three major criminal Acts. If offence is committed by an individual against an individual, it is treated as an offence by a clan against the other clan.

"Even today if a man, guilty of an offence, can not pay the compensation demanded, his clansmen may club together to pay it, not so much out of kindness but because the other party may penalise them equally with the actual offender."[21] This fear of collective retribution is peculiar to the Adi society.

The entire legal order of the Adi society could be termed as a quasi-judicial and offences, both civil and criminal, could be termed as tort. Any violation of law is taken up by the society through the *Kebang*. The Kebang settles the dispute within the village boundaries and considerable powers have been given to them under the Assam Frontier (Administration of Justice) Regulations of 1945. Inter-village disputes resulting from clan rivalries are settled by the inter-village councils. For this purpose, villagers are grouped together into what are known as *Bangos*.

Here, the judiciary is simple pragmatic and shorn of the rigours of Anglo-Saxon jurisprudence. Every offence or wrong is considered in terms of concrete damage or injury, if any, caused by it and redress is given in the form of adequate compensation. But it is difficult to classify these customary laws in well defined legal categories due to its elastic characteristics.

So we are to see whether presence of such systems are attributory or redundant in nature with regards to offences. Because those customary laws sometimes appear to be derogatory or repugnant to the laws of the land. As we know that, custom must not be repugnant to the public policy and laws of the land which are found to be in force at the particular time.[22]

(iv) Teleological Logistics

There have been a number of approaches towards development in every parts of India for the upliftment of the society by raising the standard of living, nutrition, education, communication etc. In spite of all these efforts all along these seven or eight five years plans some sections of these tribes in some remote areas are still in mediaeval stage indulging some inhuman institution like—slavery, human sacrifice etc.

In pursuance of the constitutional commitment of the Government to ameliorate conditions of the tribal communities various attempts have been made to study their culture, customs and way of life. Most of them are anthropological and empirical approach towards life and society of different tribes. They wish to study a society as it is, with no commitment or desire to change it. Our desire is to study the society of a specified tribe because we want to use law to make certain far reaching changes in its power structure and to find out how best we can do it. It is our considered opinion that our understanding of societies is permanently relevant to our understanding of law, whether at the stage of enactment or at the stage of implementation. Once we admit the relevance of law to society, the next step is clearly to explore all aspects of this relationship specially if we wish to understand how law works, when it serves, how it is understood, why it fails and how to find out another set of effective laws to substitute the earlier one. Notwithstanding instrumentalities of law like the three major criminal enactments and also the Constitution of India, there are certain areas where the law is not working uniformly and smoothly. In some areas customs, superstitions, religious beliefs and agnostic rituals are still predominant to law. The aberrations of regional imbalances, social disparities and even state callousness must have certain reasons for which the law of the land either has

been ignored or the authority has failed to enforce the law uniformlly. The alibi of relation of tribal distinctiveness had had its innings.

In the light of the above circumstances, we propose to study the Adi concept of justice from socio-legal point of views. The Adis are sensitive by nature, proud of their heritage and naturally they have their own aspirations laced with vanity. An objective approach towards their life style, custom, culture, religion, belief will probably be an interesting and useful help for our project. It will give us a peep into their inner world and help us to gather correct and fuller knowledge regarding the concept of justice of those people.

The research methodology of teleological calculus that has been adopted for our study of the Adi society vis-a-vis the customary laws and concept of justice will help in arriving at some juristic determinants and perhaps will illuminate adequately the relationship of almost a medieval society to the norms of modern day jurisprudence.

Adi concept of justice is judged by the customs, usages, customary laws, culture, religion and by the accepted social norms of the Adi people. So, to make an attempt to study the concept of justice of the Adi people includes the study of their customs, customary laws and their socially accepted norms. This study covers studies of their customs and customary laws from the grass-root to the present state of affairs at a stretch including the area of its operation, institution, procedures and development to mitigate the changed circumstances and new types of social and human problems.

While investigating the multi-faceted variables of the Adi concept of justice emphasis has been laid on the following social axioms:

Firstly: Law is the instrument to regulate the society and interactions of the human conduct. Customary laws and the procedures followed in a society in transition, ordinarily binds the activities of the members of the society keeping in view the larger issues in the perspective.

Secondly: The forum, procedure and an enforcement of customary justice are in pari pasu with the concept of

justice, equity and good conscience dictum. Any departure or deviation in exercising its jurisdiction must conform to the broad outlines of social justice.

Thirdly: Whether the Adi society will loose their cultural, social and religious identity if the customary law is replaced by the enacted law—can we think of changes in the Constitution of India?

Fourthly: Whether codification of the customary laws will protect the originality, certainty and clelerity of customs or it will lose the very natural charms and its sanctity?

NOTES & REFERENCES

1. *Statistical Hand Book of Arunachal Pradesh 1984*, Director of Economics and Statistics, Government of Arunachal Pradesh.
2. The Constitution (Twenty Seventh) Amendment Act, 1971. As per Section 7 of the North Eastern Areas (Reorganisation) Act. 1971 (Act No. 81 of 1971).
3. Vide Notification dated 25.9.1914, under the Assam Frontier Tracts Regulations, 1880.
4. During the World War I (1914-1919), India under the leadership of Mahatma Gandhi extended all assistance to the British Government. They believed that the British would introduce responsible Government or "Swaraj" in India after the war. Instead of granting greater freedom and responsible Government, the British Government introduced a mild dose of reforms known as Montague-Chelmsford Reforms of 1919. These were given effect to in 1920. The Reforms created an Executive Council and a Legislative Council in every province. It recognised for the first time the right of the elected representative of the people to have a voice in the administration of the province. The Governor, however, controlled the more important departments of the administration under the name of reserved subjects.
5. The Governor-General in Council may declare any territory in British India to be a "Backward Tract" and may by notification with such sanction as aforesaid direct that this Act shall apply to that territory subject to such exceptions and modifications any may be prescribed in the notification.

   Where the Governor-General in Council has by notification directed as aforesaid, he may, by the same of subsequent notification, direct that any Act or the Indian Legislative shall not apply

to the territory in question or any part thereof or shall apply to the territory or any part thereof. Subject to such exceptions or modifications as the Governor-General thinks fit, or may authorise the Governor for Council to give similar directions in respect of any Act of the local legislature. Vide Sec. 52A (2) of the Government of India Act, 1935.

6. The new terminology "Excluded Areas" and "Partially Excluded Areas" were introduced in "The Government of India Act, 1935" as per the recommendation of "Simon Commission Report, 1930". The Report contended that there were certain backward areas to which the Reforms could not apply and that the typically backward tracts should be administered by the Governors and these areas were termed as "Excluded Areas" and the remaining areas were termed as "Partially Excluded Areas", where the Governor in Council could direct that any Act of the provincial legislature shall not apply subject to such exceptions or modifications as the Governor may think fit.
7. Regulation 3 of 1967 promulgated by the President in the eighteenth year of the Republic of India. It provides powers to the Governor for the constitution of Anchal Samitis, Zilla Parishads and Agency Council in the North-East Frontier Agency. Functions of an Anchal Samiti was to provide the health, safety, education, comfort, convenience or social or economic well-being of the residents of the area, Zilla Parishad shall advise the Governor on all the matters concerning the activities of the Gaon Panchayats and Anchal Samitis situated within the Districts. The Agency Council consulted the Governor in various matters relating to the overall policy of NEFA.
8. Report of the sub-Committee, pp. 771-772.
(B. Shiva Rao, *The Framing of India's Coustitution*).
9. B. L. Hansaria, *Sixth Schedule to the Constitution of India—A study*, p. 14.
10. First Constitutional (Amendment), 1951.
11. Article 334 of the Constitution amended and the words "thirty years" substituted by the words "forty years" by the Constitution (Forty-Fifth Amendment) Act, 1980.
12. Bhaiya Ram Munda *vs.* Anirudha Patar (1970), 2 SC. 825, AIR 1971, SC 2533.
13. In Dashrath *vs.* Guru (1972) Orr. 78, it was held that Bathudis are members of Scheduled Tribe and codified Hindu Law down not apply to them.
14. Verrier Elwin Foreword, *A Philosophy of NEFA*, (2nd end).
15. B. Shiva Rao (Ed.) *op. cit.*, Vol. III, pp. 683-713.
16. Radhakrishna, "Gandhian Social Workers in Border Areas" in Ram Rahul *Social Work in the Himalaya*, pp. 59-64.
17. B. P. Singh, *The Problem of Change—A Study of North-East* pp. 132-133.

18. Sachin Roy, *Aspects of Padam Minyong Culture*, p.12.
19. In Adi language, squirrel is known as *Lipo*.
20. The reason behind this custom is perhaps to know the ability of the would-be groom, which will prove his hunting capacity in trapping this little animal.
21. Sachin Roy, *op. cit.*p. 223.
22. Article 13 of the Constitution of India.

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