



# Judicial Administration of the Kuzhami Chakhesang Nagas till 1947

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Abstract

Traditional system of justice was based on customs and usages in early Chakhesang Kuzhami Naga Society. Though it was unwritten, the system was simple and efficient based on natural justice. It delivered impartial and speedy justice in every kind of disputes which arose within their community. Even after the society came under the control of the British Raj, the same system was continued exempting the application of technical procedural laws which was introduced in other parts of India. After India got independence in 1947, the constitution which came into force in 1950 inserted articles which acknowledge and recognised the whole realm of Naga Customary law. Though some kind of change and development took place gradually with the passage of time, yet the traditional system of justice in the Kuzhami villages which was solely based on the customary laws prevailing in the society was retained. This paper endeavour to study the customary traditional judicial administration of the Chakhesang Kuzhami Nagas, the authority responsible for delivering justice, the shifts that took place with the advent of the British government and also on how the customary court and its system was retained. The paper also endeavours to preserve and maintain the traditional values and norms which mould individual personality and determined social relationship in the society.

**Key words:** Customary law, Kuzhami Chakhesang Nagas, Traditional justice, British Colonial Rule, Village Council.

## Introduction:

Judicial administration is an essential part of any kind of society to function efficiently and effectively. Its primary role is to protect rule of law and ensure supremacy of law. It acts as the guardian of individual rights; settle any kind of conflicts and disputes in accordance with the prevailing law. The scholars of the history of Greek believed that public administration of justice originated in a pre historic habit of settling dispute between individuals by voluntarily waiving self help and resorting to arbitration which gradually developed into a system under which the parties were denied the rights to seek realization of their claims by private force and compelled to submit their cases to authorities designated and empowered to try the claims and hand down binding judgments. (Wolf, 1946). India has a unique legal history stretching back to the Neolithic era (7000 BC to 3300 BC) even before the early vedic ages. There had been a civil and criminal adjudication protocol to follow that spanned from the Bronze Age to the Indus valley civilization. The proof may be found in ancient literature such as the Vedas, Smritis and Upanishads (Mandal, 2023, ). Progress for any civilization requires a supportive system of peaceful living which requires effective law and order system. Therefore history proved that every society had their respective judicial system which has gradually evolved and developed with the passage of time.

The Chakhesangs are a major ethnic group inhabiting the North East Indian state of Nagaland. The name Chakhesang was created as an acronym from the names of three ethnic groups: the 'chakru' (chokri), 'Khezha' (kuzhami) and southern Sangtam (now pochury). The Kuzhami are a part of the Chakhesang Nagas of Phek District, settled in the

mountain ranges in the southern-eastern part of Nagaland. (Lohe, 2010, p.17) They belong to the Mongoloid race which is evident from the greenish birth mark on the buttocks of every new born, identical with the Mongolian. Like any other society, the Kuzhami Chakhesang Nagas practiced and followed their own judicial system. The system has gradually evolved with the annexation of Naga Hills by the British government, the introduction of institutions like Dobashis (DB) and Goan Burah (GB) and the Village Council. Keeping in view the need to bring about change in the existing laws and order, the Kuzhami Chakhesang Nagas have embraced and updated their judicial practices.

In order to understand better the actual practice followed, and the shifts which have taken place with time, the study of the village structure and organization and the authorities who were responsible for administering justice become essential. The villages in the Kuzhami Chakhesang Nagas like any other Naga village was a self contained unit having cultivable lands, forests, water sources and a chief along with its council to protect the residents from outsiders. ( Rizvi & Roy, 2006, p. 36).

### **Village structure and organization:**

The village compose of a group of clan exogamous patrilineages following common customs and practices, having characteristics of a particular culture, exercising territorial supremacy, maintaining its own form of democratic governance, economically self sufficient and protecting the territorial boundaries of the village. The clans are the backbone of its social structure. Each clan is divided into various sub groups known as “ciikie.”(Lohe, (2010), p. 53) Every clan has got their own representative whose duty is to ensure that all the members are socially acceptable by the society and also to represent the clan at the village level. Every village has a chief priest called as” mewu” who is installed by the oldest male among them after the set up of their village (CPO, (2020), p. 19). The village priest has to maintain all the religious norms and keep themselves pure in order to prosper economically, spiritually and be victorious in warfare. The village priest (Mewu) and Clan Representative (Ciisemi) occupied the highest position in the village hierarchy. They were responsible for maintaining law and order, performing religious rituals and were involved in decision making.

### **Traditional practice of judicial system before the annexation of the Naga Hills:**

Prior to the arrival of the British in the Naga Hills, the Kuzhami Chakhesang Nagas followed a judicial system which was simple, efficient and strictly adhered to. Even after the Chakhesang Nagas, earlier known as the Eastern Angami came under the British control, yet the territory inhabited by them had been categorized under the Administrative zone ‘B’ (Sema, 1992, pp. 22-24). Therefore the British did not bring any significant changes in the administrative system for a long time. Realising that peace, harmony and solidarity of the citizen depended on the proper functioning of the administration of justice; this responsibility was considered to be one of the most vital function of the village priest and Clan Representatives. They settled all kinds of conflicts and disputes whenever they were entrusted with, within their village jurisdiction. These included, criminal cases related with abduction, murder, theft, house breaking, assault and civil cases like bribery, defamation, destruction of crops and cruelty to animal according to customary definition. They could never try a case in partiality but had to adhere to the prevailing customary laws of the village. The village priest and Clan Representatives were considered to be the fearless exponents of what is right and legal. The judgement pronounced by the village priest and clan representatives were final and no authority existed above them (Lohe, (2010).

In the case of inter-village disputes, it was settled by the respective village chief priest, clan representatives and an able warrior. It could not be settled by any other organisation since it involves the prestige of the whole village. In the 16<sup>th</sup> century till the end of head hunting war in 19<sup>th</sup> century, there was a traditional system of peace mediation between every two warring villages or groups by the peace mediator though it was not mandatory. The most abled personalities were installed as peace mediators of inter village war. It was considered to be a strict taboo to kill the peace mediators and were regarded highly and honoured among the people in their respective villages (CPO, (2020), pp. 50-51).

### **Changes brought about in the traditional system of justice with the advent of British:**

The independent Chakhesang Kuzhami Naga villages were never dominated by any foreign country before the annexation by the British in the later part of 19<sup>th</sup> century. As the British gradually penetrated into their environment, they found the customary laws of the people unique and distinctive. Though there were no written records of the law, it was found to be strong and rigid by nature. The Nagas were left to administer the villages according to their customs and traditions with only ‘Loose Control’ (Rustmoji, 1983) The British found the native leaders of the villages to be the most influential persons such as, the village chiefs, village elders and headman of clans who were appointed as the leader of the village by virtue of age seniority, wisdom, courage and honesty. Therefore the British administrator appointed them as

Goan Burah (GB) and those leaders who had language proficiency in Assamese or Hindi or Bengali were appointed as Dobashis (DB). Achumi, (2012) stated that the Dobashis acted as liaison between the Naga community and their rulers. They were appointed in order to help them in administration and for settlement of cases in the villages according to traditional customary law. The creation of these two institutions also developed cordial relations between the hill people and the British government. They also played a major role in assisting the colonial government in expanding territories in the Naga Hills (Khutso, etal. 2021, p. 197.) The British administrators were aware that the political structures of the Naga villages were based on kinship, therefore, the Goan Burahs (GBs) were appointed as clan representatives (*ciisemi*). Most of the GBs under the British government were appointed through the selection of the village elders, however, few of them were appointed on the recommendation of the administrative officers based on their good character, outstanding personality, special assistance and services rendered to the British government. Thus it is evident that the coming of the British brought about changes in the politico-judicial and political structure of the Chakhesang Kuzhami Nagas.

The Dobashis were the interpreter cum political agents of the government and receive their regular pay along with one red woollen blanket each. However, the Goan Burah were not government agents thereby, they possess superior power and prestige in the village. After the introduction of the institution of Goan burah (GB), there was transfer of power from the village chief priest (*mewu*) and Clan representatives (*ciisemi*) except those appointed as GBs. The *mewu*'s powers and functions became limited to religious ritual only, whereas, the GBs became the sole authority in the political and judicial administration of the village until the villages set up the village council. They preside over the meetings of the village general assembly and settled all the criminal, civil and customary cases which are brought to them. They were empowered to summon the appeal cases of civil matters and to adjudicate such cases; to summon and try the criminal cases and settlement of such cases; to act as advisors of customary law and to conduct the village customary court and act as the custodians of customary law. (CPO, 2020). The process and procedures followed for settlement of cases or disputes are known as 'teshe'. It can be '*kaju teshe*' (land dispute), '*ciikie teshe*' (heritage dispute), '*prisa teshe*' (money disputes) etc. Generally, the cases are tried in the village open court known as '*Enhube*' however, most of the land and water disputes cases are held at the place of disputes. The complainant has to verbally inform the Head GB. Then he summons his colleagues and fixes the time and date. Unless the subject matter of the case is urgent in nature, the trial is usually fixed at a convenient time of the judges as well as both parties of complainant and respondents. On the day of trial, it is the custom of the Chakhesang Kuzhami Naga that the complainant has to provide '*hazi*' (local rice wine) or tea to the judges if the case gets settled in the morning. But if it takes the whole day, the complainant has to provide heavy lunch consisting of rice, meat and '*hazi*' or tea. Before they start settling the disputes, both the complainant and respondents also have to pay a certain amount of money as court fees which varied village from village. (Lohe, 2010). Thus the GBs enforce local customs in civil and legal rights but the customary laws were generally enforced by social approval. They were also given the authority to settle inter-village disputes cases. It was also the responsibility of the GBs to maintain all the rules pertaining to law and order as adopted by the village general assembly.

In 20<sup>th</sup> century, the "Rules for Administration of justice and Police in Naga Hills, 1937" was promulgated which gave more power to the GBs. It recognised the customary authorities like the GB, the headman and the chief of the villages as a statutory organ of the government by empowering them with a dual power of rural police and a first class magistrate for arrest and trial of cases which are not heinous in nature. Henceforth, the village level court can try and settle all civil cases with petty criminal cases but the major heinous criminal cases have to be reported to the nearest police station or administrative headquarters immediately. The traditional custom and procedure of the practiced village court was further strengthened under this rules. (CPO, 2020).

## Conclusion:

India got independence from the control of the British Raj on 15<sup>th</sup> August 1947 after been under their colonial rule for approximately 89 years. The enormous task of drafting free India's constitution was taken up by the constituent assembly with the help of the British government in the years from December 1946 to December 1949. It came into force on 26<sup>th</sup> January 1950 which is celebrated as Republic day. The final draft constitution has 315 articles and 13 schedules (Fadia, 1991,p. 72). In 1962, by the Constitution (Thirteenth Amendment) Act article 371-A, clause (1), sub-clause (a) was added to the constitution of India with special reference to the state of Nagaland. This article clearly states that notwithstanding anything in the constitution, no act of parliament in respect of the following shall be applicable in the state unless the Nagaland Legislative Assembly by a resolution so adopted it so. They are: (1) Religious or social practices of the Nagas; (2) Naga customary law and procedure; (3) Administration of civil and criminal justice involving decisions according to Naga customary law and (4) ownership and transfer of land and its resources. The Nagaland Village council Act was enacted in 1978 which led to the formation of village council in every village. The old traditional body of village administration was transformed into a democratic institute of village council with a tenure of five years thereby the power was transferred to village council but the Goan Burahs (GBs), being the ex-officio members of the council, the same traditional of village court and procedure is maintained in village council court. The government of

India thus recognises the Naga customary laws and its procedures and gave them the privilege to establish their own traditional system of court to try and settle all kinds of cases. The institution of Dobashis ((DB) and Goanburah (GB) were retained even in the Chakhesang kuzhami Nagas villages and continue to play an important role in administering justice in their area. All these events, shifts and development denote that both the British and Indian authorities recognised and acknowledged the value and practicability of the judicial customary law of the Naga which was based on natural justice.

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