



# Adoption in Naga Society: From Customary Laws to Modern Frameworks

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## **Abstract**

*Adoption in Naga society is a complex practice rooted in customary law and cultural tradition, yet it faces significant challenges when confronted with modern legal frameworks. This article analyzes the dual realities of adoption, where informal, kinship-based processes coexist with formal, state-regulated systems. One of the main motivations for traditional adoption is the preservation of family lineage and inheritance, particularly through the provision of a male heir. While this customary approach is effective in integrating orphaned children into the community and ensuring their welfare, its unwritten and tribal-specific nature leads to legal ambiguities, particularly concerning inheritance rights and official identity recognition.*

*This article explores the legal pluralism in Nagaland, examining how customary laws are constitutionally protected under Article 371A while also operating separately from formal Indian statutes like the Juvenile Justice (Care and Protection of Children) Act, 2015. Through case studies and a review of modern trends, including the shift in gender preferences and the rise of exploitative guardianship practices, the article highlights the vulnerabilities inherent in the traditional system. The analysis shows that despite the communal strength of customary adoption; a lack of codification and legal uniformity creates a precarious environment for adoptees. The article concludes with policy recommendations, including the codification of customary laws and the creation of a harmonized legal framework, to bridge the gap between tradition and contemporary child welfare principles, ensuring the rights and security of every adopted child in Naga society.*

**Keywords:** Adoption; Naga society; Customary law; Legal pluralism; Article 371A; Codification.

## **Introduction**

Adoption within Naga society is a multifaceted practice, deeply entrenched in its cultural traditions and customary laws. It presents a unique operational framework that diverges significantly from the formalized procedures and civil statutes that govern adoption in other legal systems. Unlike the often document-heavy processes elsewhere, Naga adoption primarily functions within established tribal norms, where the preservation of lineage and the fulfilment of social duties are paramount. This practice is largely informal and often lacks legal documentation, yet it holds profound cultural significance, profoundly shaping kinship relations, inheritance rights, and communal responsibilities within the Naga community.

One of the primary motivations for adoption in many Naga tribes is the societal imperative to provide an heir to families who lack male children. The presence of a son, whether biological or adopted, is considered critical for the continuity of family traditions and the secure transmission of ancestral inheritance. Beyond these concerns related to lineage, adoption also serves crucial humanitarian purposes, providing stable homes for orphaned children and ensuring that individuals without strong familial support receive the protection and privileges associated with belonging to a recognized household. This dual function highlights the intricate nature of adoption in Naga society, extending beyond mere legal or social obligation to encompass deeply personal and communal

welfare aspects.

Despite its long-standing acceptance and cultural embedment, traditional adoption practices face various legal and social challenges in the contemporary landscape. A significant issue that frequently arises is the conflict over inheritance rights and the legal recognition of adoptees, especially in situations where adoptive parents later have biological children. Furthermore, modern influences such as increasing urbanization, the involvement of non-governmental organizations (NGOs) in adoption processes, and evolving gender preferences have introduced new layers of complexity. These emerging factors necessitate a critical reassessment of customary practices to align them more effectively with modern legal frameworks, ensuring fairness and clarity for all parties involved. This article offers a comprehensive analysis of adoption in Naga society, delving into its cultural and legal dimensions, examining emerging trends, and exploring the challenges stemming from unregulated practices. The goal is to bridge the existing gap between traditional customs and contemporary child welfare principles.

### **The Conceptual and Legal Framework of Naga Customary Law**

The legal landscape of Nagaland is characterized by a unique system of legal pluralism, where traditional customary laws operate alongside the formal Indian legal system. This dual structure is not a recent development but a legacy of historical policies that continue to shape governance and justice.

#### **Historical Genesis of Legal Pluralism**

The historical roots of this legal dichotomy can be traced back to the British colonial administration, which adopted a policy of non-interference with the customary laws and practices of the Naga people. British administrative officers allowed Naga people to handle both civil and non-heinous criminal cases through their indigenous institutions and village courts. The colonial policy, while seemingly a benevolent act of cultural preservation, had the long-term effect of creating a lasting legal separation. It established a precedent for a dual justice system that differentiated between petty cases, which were left to tribal institutions, and "heinous" crimes, which fell under the purview of the formal legal system. This historical context is fundamental to understanding why the integration of customary and formal law remains so challenging today; the current legal landscape is not a modern creation but a continuation of a colonial-era compromise.

Following India's independence, this system continued with some variations. The Indian Constitution, through the Sixth Schedule, granted complete autonomy to the Northeast states in several matters, including self-governance and the administration of civil and criminal justice. This provision exempted these states from applying certain formal substantive and procedural laws of the Indian state. With the attainment of statehood in 1963, the Naga tribal customary laws received formal constitutional recognition. The Indian Supreme Court later upheld the validity of customary law in the case of *State of Nagaland v. Ratan Singh*, 1967 AIR 212 noting that such laws were designed for simplicity and that people in "backward tracts" should not be hindered by the technicalities of a complex legal code.

#### **Constitutional and Statutory Recognition**

A detailed analysis of Article 371A of the Indian Constitution reveals the constitutional bedrock of Nagaland's legal autonomy. Added by the 13th Amendment Act of 1962, Article 371A grants special provisions for Nagaland and protects Naga customary law and procedure. Crucially, it stipulates that no Act of Parliament concerning Naga customary law and procedure, the administration of civil and criminal justice according to Naga customary law, and the ownership and transfer of land and resources will apply to the state unless the Nagaland Legislative Assembly decides by a resolution to do so.

This constitutional provision is implemented through state-level legislation, most notably the Nagaland Village and Tribal Councils Act, 1978. This landmark legislation recognizes and integrates traditional Naga institutions into the formal governance structure. It empowers village and tribal councils, allowing them to play a crucial

role in local administration and dispute resolution in accordance with customary law. These councils, rooted in the rich cultural heritage of the Naga people, are the primary arbiters of justice in many villages.

### **The Unwritten Nature of Customary Law and its Implications**

The defining characteristic of Naga customary laws is their unwritten nature. They vary significantly from tribe to tribe and are largely based on oral traditions and community consensus. This unwritten and variable nature is both the system's greatest strength and its primary weakness. On one hand, it possesses inherent strengths, such as simplicity of procedures, affordability, and a preference for reconciliation and restitution over adversarial litigation. This makes justice accessible at the doorstep of the people, as tribal people generally prefer having their disputes determined by customary courts.

However, the lack of codified clarity is the direct cause of the inconsistencies and legal ambiguities that plague adoption cases. The absence of a uniform standard means that the legal status of an adopted child can be subject to different interpretations or even change simply by moving from one village or tribe to another. While this flexibility allows for community-centric solutions, it also creates a foundation of systemic uncertainty, particularly in complex matters like inheritance and identity recognition. This variability is a central issue that any attempt to formalize adoption procedures must address.

### **The Cultural and Social Significance of Traditional Adoption**

Adoption in Naga society is not merely a legal or humanitarian act; it is an intricate social process designed to preserve familial identity, secure heirs, and uphold communal responsibilities. This cultural depth underscores why any changes to adoption practices must be approached with sensitivity and an understanding of their profound impact on Naga social structures.

### **Lineage Continuity and Heirship**

One of the most powerful motivators behind adoption in Naga communities is the societal imperative to prevent the discontinuation of family lines. Many tribes consider it a fundamental responsibility to ensure that every household has a successor capable of carrying forward the family legacy, inheriting property, and undertaking crucial communal duties. This function is not solely based on humanitarian motives but is fundamentally driven by the need to sustain societal structures that dictate family identity and inheritance.

In instances where a family lacks a male heir, adoption becomes an essential mechanism for securing succession. The strong patriarchal leanings of many Naga tribes mean that inheritance of immovable property and land passed down by ancestors is typically reserved for male heirs.

Adopted sons are therefore expected to assume a wide range of responsibilities, from ritual obligations to the care of aging parents.

### **Reciprocity and Communal Validation**

Adoption in Naga society operates as a reciprocal social contract. An adopted child receives care, protection, and access to familial inheritance, while in return, the child is expected to fulfill family and social responsibilities. The legitimacy of the adoption is not derived from legal papers but from widespread community recognition. Tribal elders and community members actively validate the child's identity, ensuring their social acceptance within the existing kinship structures. This communal reinforcement is crucial as it strengthens the legitimacy of the adoption and helps to mitigate potential disputes, particularly when claims related to inheritance arise. The community's role in affirming the adopted child's place serves as a form of social documentation where legal papers may be absent.

The traditional Naga adoption model functions as a form of social insurance, protecting the community from the



destabilizing effects of a family line becoming extinct while also ensuring that vulnerable children find a stable home. This is why the cultural significance of adoption is not just about a family gaining a child; it is about the community maintaining its structural integrity. The two case studies of Puvezo and Aba, discussed in a later section, demonstrate how this system can break down when the reciprocal exchange is perceived to be violated or when the informal nature of the agreement conflicts with the biological family's claims.

### **Legal Ambiguities and Challenges in Practice**

Despite the deep cultural acceptance of adoption, its reliance on customary, uncodified laws have created several significant legal ambiguities and practical challenges. These issues often surface in disputes over inheritance, legal identity, and the jurisdiction of different courts.

### **Inheritance Disputes: The Battle for Ancestral Land**

Conflicts over inheritance rights remain prevalent, particularly when ancestral property is involved. While self-acquired property can often be transferred to an adopted child without issue, ancestral land typically requires explicit clan approval. This practice maintains lineage-based inheritance customs and often places adopted children at a significant disadvantage, especially if they are non-Naga or if the adoptive family later have biological offspring.

The case of Puvezo, as detailed in a study, provides a clear illustration of these limitations. Mr. Pukhucho, a childless man from Sohomi Village, adopted a boy named Puvezo and gifted him some ancestral properties. This arrangement was witnessed by the Village Council and the Additional Deputy Commissioner. However, after Mr. Pukhucho's death, when Puvezo claimed additional properties, other members of the adoptive family disagreed. The Village Court ultimately ruled that Puvezo was only entitled to the properties specifically gifted to him by his adoptive father,<sup>1</sup> highlighting the limitations on an adopted child's inheritance rights when not explicitly defined.

A more poignant case is that of Aba from Sechüma village. Against his brothers' wishes, Mr. Kevihozo adopted Aba, a non-local boy from Arunachal Pradesh. As Aba grew older, his behaviour became problematic, and after the death of his adoptive father he started abusing his adopted mother and attempted to claim his adoptive father's ancestral land and also tried to withdraw his deceased adoptive father's General Provident Fund (GPF) and pension benefits. After ignoring repeated warnings from his uncles to change his behaviour, Aba was formally expelled from the family and kinship circle. As a result, he was deprived of all family properties and lost his adopted title and clan identity.<sup>2</sup> This case underscores the vulnerability of non-tribal adoptees and the conditional nature of their acceptance and rights within the tribal framework.

The gendered dimension of inheritance further complicates matters. In many Naga tribes, women are not entitled to inherit landed property.

### **Lack of Standardized Legal Recognition**

Because adoption in Naga society heavily relies on customary practices rather than formal legal structures, adoptees frequently face challenges in obtaining official recognition. While village councils oversee adoption decisions, their rulings often lack codified legitimacy in formal legal settings. This absence of legal documentation poses significant difficulties for adoptees who require government-issued identity certificates or formal legal validation of their familial status. For instance, discrepancies in tribal adoption policies directly affect eligibility for indigenous certificates. Some tribes permit adopted individuals to claim indigenous identity,

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<sup>1</sup> Barooah, J. (Ed.). (2011). *Customary Laws of the Chakhesang Nagas of Nagaland: With special reference to their land holding system*. Law Research Institute, Eastern Region, Gauhati High Court. Labanya Press. p. 24. <sup>2</sup> Barooah, J. (Ed.). (2011). *Customary laws of the Angami Nagas of Nagaland: With special reference to their land holding system*. Law Research Institute, Eastern Region,

Gauhati High Court. Labanya Press. pp. 56–57.

whereas others restrict such claims unless an adoptee belongs to a recognized Naga tribe. This lack of uniformity creates substantial obstacles for adoptees seeking official documentation for education, employment, or property ownership, placing them at a distinct disadvantage.

The lack of a standardized legal framework creates a Catch-22 for adoptees. The customary system provides them with a social identity, but this identity often lacks the formal legal recognition required to access state-provided benefits and protections. This places them in a precarious position, caught between a strong communal identity that lacks legal force and a formal legal system that does not yet fully recognize their customary status.

### **The Role of Customary vs. Formal Courts**

Customary courts play a crucial role in overseeing adoption disputes within tribal villages, but their rulings frequently lack uniformity. Since judgments often rely on precedent rather than codified statutes, outcomes can vary significantly depending on local customs and communal consensus. This discretionary nature makes the resolution process unpredictable, especially in cases involving inheritance claims or legal status verification.

This reliance on communal consensus rather than codified law is a defining feature of the customary justice system. As noted in the case of Puvezo, the village court ruled based on a communal interpretation of his rights, rather than a rigid legal principle. While this aligns with tribal customs, it often leads to uncertainty and potential injustice when disputes arise.

In customary law, adoption is may be guided by oral traditions, verbal agreements, and community consensus, whereas formal law is governed by the Juvenile Justice (Care and Protection of Children) Act, 2015 and Adoption Regulations, 2022. Inheritance rights under customary practices are often restricted, particularly for ancestral property and typically require clan approval. These rights may be conditional based on the adopted child's behaviour and lineage. On the other hand, formal adoption secures inheritance rights for the child, which extends to both self-acquired and ancestral property unless otherwise specified.

When it comes to identity recognition, customary adoptions may rely on social and communal validation such as village approval but often lack formal recognition by the state. In contrast, formal adoptions are officially recognized by the state, with children receiving identification from agencies like CARA and being eligible for government IDs.

Dispute resolution in customary settings is more or less managed by village councils and elders, who base their decisions on precedent and communal consensus. However, in the formal system, disputes are settled in formal courts with rulings based on codified laws and established legal principles. Documentation under customary law tends to be informal or even non-existent, often relying on witnesses or verbal agreements, while the formal system requires standardized and mandatory paperwork, including adoption deeds and legal certificates.

### **Modern Currents: Shifting Demographics and New Vulnerabilities**

Adoption practices in Naga society are undergoing a transformation influenced by urbanization and changing societal values. These modern currents present both new opportunities and significant challenges, particularly concerning child welfare.

### **Gender Preference in Adoption**

A notable emerging trend, particularly in urban areas, is the increasing preference for adopting female children. While sons were traditionally adopted to continue family lineage, many adoptive families now believe that daughters remain more devoted to their adoptive parents, especially in their old age. This trend reflects evolving family dynamics and challenges the long-standing inheritance-based rationale behind traditional adoption

practices.

This trend has been highlighted by some reports from NGOs. A newspaper report from 2017 cited an NGO in Nagaland stating that 95% of individuals desiring to adopt a child requested a girl, citing a belief that a girl child is more capable of looking after their parents.<sup>3</sup> However, recent data from the Central Adoption Resource Authority (CARA) presents a more nuanced and, in some ways, contradictory picture. For the year 2020-2021, Nagaland registered 10 male adoptions and only 2 female adoptions through formal channels.<sup>4</sup>

This data discrepancy is a crucial point of nuance. The older NGO report likely reflects a trend in informal, kinship-based adoptions or the specific experience of a local agency, whereas the CARA data represents a small, formal, and legally sanctioned segment of the population. The very low number of total formal adoptions in Nagaland (12 in 2020-21) compared to the national average highlights the dominance of the informal system. Therefore, the shift in gender preference may be a trend primarily within the informal adoption sphere, a hypothesis that requires further investigation. The contradiction between the anecdotal reports and the formal data is itself more revealing than a single, cherry-picked fact, as it demonstrates the disconnect between informal and formal adoption channels in the state.

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<sup>3</sup> Eastern Mirror Nagaland. (17-09-2017). *Kevichüsa Foundation Introduces Citizenship Award*. Retrieved from <https://www.easternmirrornagaland.com/kevichusa-foundation-introduces-citizenship-award>.

<sup>4</sup> Central Adoption Resource Authority (CARA). (2021). *State-wise & Gender-wise Adoption Data (In-country) for the year 2020-2021*. Retrieved from <https://cara.wcd.gov.in/PDF/statistics/Inter-Country%20Adoption%20Data%20for%20the%20FY%202020-21.pdf>.

### **Informal Adoption and Child Exploitation**

A growing concern within Naga society is the informal adoption of children who are subsequently treated as household helpers rather than legitimate family members.<sup>5</sup> This form of adoption fundamentally lacks the core principles of genuine care, legal recognition, and inheritance rights. In such arrangements, children are brought into households under the guise of adoption but often end up performing domestic duties without the protections typically afforded to biological or formally adopted children. This blurs the line between adoption and child exploitation, denying the child basic rights and opportunities, including access to education, legal identity documents, and inheritance.

These arrangements often stem from illegal adoptions from unauthorized sources (hospitals, village leaders, from strangers, from poor families, unwed mothers, children's homes, etc).<sup>6</sup> In some cases, these practices can amount to child trafficking for the purpose of domestic labour. A managing director of a specialized adoption agency noted that in Nagaland, most adoptions are done illegally outside of official channels, and the "best interest of the child is totally neglected".<sup>7</sup> These practices expose children to significant vulnerabilities and underscore the urgent need for a clear distinction between genuine adoption and exploitative guardianship.

### **The Paradox of Declining Formal Adoption Rates**

Statistics indicate a decline in the number of orphaned, abandoned, and surrendered children registered on the CARINGS (Child Adoption Resource Information and Guidance System) portal in Nagaland. For instance, the number of such cases fell from 12 in 2020-21 to 4 in 2022-23, which is contrary to the national trend of a 24.3% spike in registered children on the portal over the same period.<sup>8</sup>

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<sup>5</sup> Morung Express. (06-04-2017). *Child adoption issues and problems: Background and reality in Nagaland*. Retrieved from



<https://www.morungexpress.com/child-adoption-issues-and-problems-background-and-reality-in-nagaland>

<sup>6</sup> Nagaland Tribune. (15-02-2024). *Decline in child adoptions in the State: Nagaland State Orientation Training on Adoption Regulations held*. Retrieved from <https://nagalandtribune.in/decline-in-child-adoptions-in-the-state-nagaland-state-orientation-training-on-adoption-regulations-held/>

<sup>7</sup> Ibid.

<sup>8</sup> Morung Express. (01-08-2023). *Number of orphans abandoned children fall in Nagaland: WCD*. Retrieved from <https://www.morungexpress.com/number-of-orphans-abandoned-children-fall-in-nagaland-wcd>

This paradox is attributed to Nagaland's strong communal system of collective responsibility. Traditionally, kinship-based adoption ensures that orphaned or abandoned children are absorbed into extended families rather than entering the formal institutional system. This communal safeguard significantly reduces the number of institutionalized adoption cases and highlights the effectiveness of the traditional system in providing a home for children, even while it struggles with secondary legal issues. However, as urbanization disrupts these traditional community support systems, the need for formalized adoption procedures becomes increasingly pressing.

### **Policy Considerations and Recommendations for a Harmonized Framework**

The complexities surrounding adoption in Naga society underscore the urgent need for a standardized framework that aligns traditional customs with modern legal protections. While customary laws remain central to adoption practices, the lack of codification and uniformity across tribes has led to inconsistencies in legal rights, inheritance claims, and identity recognition. The following recommendations propose a structured legal framework to address these challenges.

#### **Codification of Customary Adoption Laws**

Documenting and codifying tribal adoption practices is the most crucial step toward providing clarity and consistency. The unwritten nature of customary law, while enabling community-centric justice, is a direct source of legal ambiguity. Establishing a reference document that outlines adoption rights and obligations across different Naga tribes would effectively mitigate inheritance disputes and ensure the equitable treatment of adoptees.

A significant step in this direction is the newly proposed rules for Administration of Justice and Police in Nagaland Fifth Amendment Bill, 2025. This legislative action, which establishes a three-tier customary court system, demonstrates that the government recognizes the need for change and is already taking steps towards a more structured framework. This new system aims to strengthen traditional policing and administer justice according to indigenous Naga customary laws and practices.

#### **Creating a Unified and Harmonized Legal Framework**

A crucial next step is to create a symbiotic relationship between customary and formal law. This would involve creating a legal pathway for adoptees to receive official identity documentation without undermining traditional customs. For instance, an adoption validated

by a village council could be formally registered with a state-level authority, linking the two legal systems. This would provide adoptees with the legal security required to access government benefits while preserving the cultural validation of their place in the community.

#### **Enhanced Child Welfare and Community Education**

To address the issue of child exploitation disguised as adoption, robust child protection measures must be implemented. This requires a clear distinction between genuine adoption, which prioritizes the child's well-being, and exploitative guardianship practices, which treat children as domestic helpers. Community awareness programs are essential to educate families about formal legal adoption procedures and the importance of child

rights. Such programs can help prevent the misuse of customary adoption and protect vulnerable individuals from potential exploitation.

## Conclusion

Adoption in Naga society is a complex, culturally vital institution facing modern challenges. The traditional system, while effective in providing a home for children and preserving lineage, is prone to legal ambiguities and new forms of exploitation. The reliance on unwritten customary laws, while fostering a strong sense of community, creates a disconnect with the formal legal system, leading to precarious situations for adoptees, particularly concerning inheritance rights and legal identity.

A balanced approach that respects Naga customary law while implementing modern legal safeguards is the most viable path forward. By codifying tribal adoption practices, professionalizing customary courts, and creating a harmonized legal framework, Nagaland can address the inherent inconsistencies and vulnerabilities within its traditional system. The goal is to preserve the rich cultural heritage of Naga society while simultaneously securing the fundamental rights, legal identity, and inheritance entitlements of every child. This integration would ensure that adoption remains a respected and well-regulated institution that serves the best interests of both the child and the community.

