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Land, Gender and Dispute Resolution Mechanisms

Abstract

The Constitution of India strives to protect and preserve minority cultures within the framework of the Constitution. The Fifth and the Sixth Schedule were incorporated in this regard that concerns with tribal autonomy, administration and welfare. Nagaland as a primarily tribal area was granted greater autonomy in their traditional governance by recognizing their social and cultural practices that include customary law and procedure exclusively under Art. 371 (A) of the Constitution when Nagaland Statehood was inaugurated on December 01, 1963 on the basis of 16th Point Agreement.

Under the Article, no Act of parliament will be applicable to the State of Nagaland on matters relating to religious or social practices of the Nagas, Naga customary law and procedure, administration of civil and criminal justice involving decisions according to Naga customary law, ownership and transfer of land and its resources, unless the Legislative Assembly of Nagaland by a resolution so decides.

Art. 371 (A) remains the source of constitutional recognition of customary law and institutions which provide for parallel system of both customary and formal law in the State thereby making pluralism as a fundamental feature of legal system in Nagaland.

This pluralism is not without its share of challenges. The operation of both law in the society resulted in many instances of overlapping of the legal system compounded by the question of which law to prevail in case of a conflict, as a definite demarcation for functioning of both systems remains absent. For example, lack of clear interpretation of the provision in Article 371 (A) of the Constitution also leads to clashes between the Union and the State in matters of land and resources that create tensions in the federal structure of the country. The unequal treatment of women under prevailing customary laws despite statutory laws with provisions for gender equality are also major concerns that are being voiced. Moreover in some cases in criminal matters the accused parties are sometimes punished under formal law as well as penalized according to customary law by their communities.

However, the existence of customary law is very fundamental and crucial for Naga culture and identity and for dispute settlement in the state with its easy accessibility, inexpensive and speedy justice delivery in a language that the tribal understands. In this backdrop, the thesis made a humble attempt to explore the interface between the customary and formal law in the state of Nagaland in areas of land, gender and dispute resolution mechanisms.

The thesis also incorporated empirical study, and has concluded that both customary and formal law system of justice delivery becomes relevant in the judicial sphere in the state and that a harmonious relationship between the two systems of law be maintained and their domains clearly demarcated for greater benefits of the society in pursuit of justice.