

Justice Administration in the Tribal Society of Arunachal Pradesh: Customary and Modern Laws in Practice

Dr. John Wangsa¹

Abstract: *This article delves into the workings of justice administration in the northeastern state of Arunachal Pradesh, India. The state has numerous tribal communities and each of them has its traditional (authority) institutions for justice delivery. The tribal communities of the state have integrated modern justice administration as part of the state's larger constitutional and administrative growth, through various Regulations and Acts. The article examines the relevance of traditional justice administration, exploring the interface between modern and traditional justice institutions based on observation and their co-existence. Further comprehending both the alterations and the enduring aspects. The traditional institutions hold significance in administering justice to a rural level of the tribe's larger population and the article emphasises the importance of sustainable utilisation and preservation of this indigenous establishment.*

Keywords: *Justice, Customary Laws, Modern Administration, Arunachal Pradesh, Tribal Society*

Introduction:

The notion of justice and the philosophical exploration of the concept of justice have consistently held considerable importance in the realm of political theory and practice. The idea of justice traces back to early thinkers such as Plato and Aristotle. Later, social contract theorists like Thomas Hobbes, John Locke, and Jean Jacques Rousseau argued that justice is a logical prerequisite for society. According to contractualists, justice holds no significance for individuals in the state of nature, its meaning only arises through the consent of a society. Consequently, they interpret the social contract as a mutually agreed-upon pact, wherein justice and society are intricately connected. According to John Rawls, justice is perceived as a virtue inherent in institutions or practices rather than attributed to individual actions. He asserts, "Justice is the first virtue of social institutions, just as truth is the first virtue of systems of mind" (Rawls, 1971).

¹ Guest Faculty (Political Science), N.T. Govt. College, Yachuli: Keyi Panyor, Arunachal Pradesh



The administration of justice comprises a set of regulations dictating the actions of individuals within a community or culture. In the context of India, the ancient justice systems adhered to principles found in the Smritis and Dharma Shastras. During the Vedic period, the primary objective of the law was to uphold "dharma," a concept encompassing both justice and moral behaviours (Suda, 1970). Later, the British Colonial Government introduced the institutional set-up of the legal system through written laws and judicial institutions. In contemporary India, the administration of justice is governed by the Constitution. The Indian Constitution embodies social justice through Fundamental Rights, Directive Principles of State Policy and judicial institutions. It grants relevant authorities the power to administer justice within the country.

According to the 2011 census, India is home to 8.6% of the total tribal population, comprising diverse tribal groups across the country. The Anthropological Survey of India identified 461 tribal ethnic groups in 1991 for the People of India series, with 74 of them categorised by the Government of India as Primitive tribal groups (Sharma, 2000). The northeastern states of India, post-independence, have witnessed distinctive politico-administrative development in their tribal populations. States like Nagaland, Mizoram and Meghalaya were formed with a focus on ethnic identity, with the objectives to protect and preserve tribal customs and traditions.

Arunachal Pradesh, formerly the North-East Frontier Agency (NEFA), emerged due to geopolitical strategic requirements and administrative convenience. Arunachal Pradesh is home to various tribes and sub-tribes, each of which upholds traditional self-governing structures (Swain, 2006). Each tribe and sub-tribe in Arunachal Pradesh speak its own dialect, which falls under the Tibeto-Burman and Sino-Tibetan language families. Consequently, these tribes often adhere to their own customary laws, rooted in oral traditions passed down through generations. The tribes, other than various sub-tribes of the state of Arunachal Pradesh, include the *Adi*, *Apatani*, *Akas*, *Galo*, *Idu-Mishmi*, *Kaman-Mishmi*, *Lisu*, *Memba*, *Monpa*, *Nyishi*, *Nocte*, *Sajolang (Miji)*, *Sherdukpen*, *Singpho*, *Tagin*, *Tangsa*, *Taraon-Mishmi*, *Tai-Khamti*, *Tutsa*, and *Wancho*. The state is also referred to as the 'Land of the Rising Sun' and the 'Land of the Down-lit Mountains'. The climate of Arunachal Pradesh is heavily influenced by its proximity to the Himalayas. The varying elevations within the state contribute to distinct climatic zones: higher altitudes exhibit alpine or tundra conditions, intermediate Himalayan regions experience milder climates and lower areas have warmer, more humid weather. Primarily an agricultural state, Arunachal Pradesh practices various farming methods such as Jhum farming, terrace farming and wet agriculture in different regions. Key industries in

the state include cane and bamboo, handloom production, power generation, and mineral-dependent sectors, albeit these constitute a small portion of the state's economy.

Traditional Administration of Justice:

Arunachal Pradesh, situated in the northeastern region of India, stands as a testament to cultural diversity with its predominantly tribal population. This state boasts a rich tapestry of ethnic groups, comprising numerous major tribes alongside several sub-tribes. Each of these tribal communities possesses unique cultural traditions, customs and individual identities that contribute to the vibrant social fabric of Arunachal Pradesh. The historical trajectory of Arunachal Pradesh reveals a gradual and relatively peaceful evolution in its political and administrative landscape. The presence of indigenous (traditional) institutions deeply rooted within the tribal societies has played a pivotal role in shaping the current governance (Justice administration) structures. These traditional frameworks have wielded considerable influence, guiding the state's political and administrative developments over time. Embedded within the social framework of Arunachal Pradesh, the indigenous institutions of the various tribes govern a wide array of socio-cultural, economic, politico-administrative and judicial matters based on the customary laws. These age-old institutions have evolved organically, adapting to the needs and exigencies of each distinct tribal group. Primarily rooted in the administration of village life, these institutions serve to regulate social norms, uphold customary practices, and safeguard against external threats. In essence, the genesis of these indigenous institutions lies in the collective endeavour to manage community affairs, maintain social cohesion and ensure the well-being of tribal societies. Their enduring presence highlights the resilience and adaptability of Arunachal Pradesh's tribal communities in the face of evolving socio-political dynamics.

The nomenclatures used to denote various traditional institutions exhibit diversity, reflecting their unique characteristics, despite sharing commonalities in their functions. In Arunachal Pradesh, these institutions often bear names such as Tribal Councils (Elwin, 1959), Tribal Village Councils, Traditional Village Councils or Village Authorities (Pandey Et al, 2010). While they may share roles and responsibilities, their titles vary, underscoring the distinctiveness of each institution. Scholars, early administrators and anthropologists have attempted to classify these institutions based on their structural and functional attributes. Rao (1976; 103) in his work described the traditional political institutions among the tribes of the northeast part of India. He classified those into three main types: (i) Authoritarian type of institution, among the tribes of Garos, Mizos, Singphos, Tai-Khamptis, Noctes, Wanchos, Konyaks, Changs, Semas, Kukis, Chins, Riangs, and Chakmas; (ii) Republican type, found in the Monpas, Akas, Sherdukupens, Adis, Angamis and the Nagas of Manipur; (iii) An intermediate model present among the Khasis and the Ao Naga



of Nagaland. Sinha (1988; 100) examines the political organisation of tribes of Arunachal Pradesh and states that the traditional authority can either be centralised in a single body serving as the village head or delegated to a select group of representatives establishing the council of elders, who act on behalf of the community and hold its faith or are retained collectively by the village community.

In conceptualising traditional self-governing institutions of Arunachal Pradesh, Talukdar (2002; 161-179), describes them as the age-old socio-political institutions within tribal communities responsible for maintaining order, resolving disputes, and overseeing the well-being of the village community. Broadly, the traditional institutions in the state can be categorised into several types, including Theocratic, Democratic or Semi-democratic, Republican, Chieftainship, individualistic and Gerontocracy systems. However, defining these socio-political structures under a single, clear-cut classification proves challenging due to their nuanced nature and multifaceted roles within tribal communities. These entities play pivotal roles in governance, social cohesion, and cultural preservation. Despite their classification attempts, the dynamism and complexity inherent in these institutions defy simple categorisation, highlighting the richness and resilience of tribal governance systems in the region.

The structural-functional attributes of traditional institutions, such as the *Kebang* among the *Adi* tribe and the *Buliang* of the *Apatani* tribe, showcase elements of democratic or semi-democratic practices. Similarly, the theocratic yet democratic nature is evident in the practices and proceedings of the *Tsorgen* of the *Monpa* tribe. On the other hand, traditional politico-administrative authority among the *Nocte* and the *Wancho* tribes exhibits a chieftaincy type of governance named differently. Among the *Tai-Khamtis*, the institution of *Mokachup* combines chieftainship with a theocratic essence within its nature. Conversely, the *Nyishi* tribe's *Bang Ngele* and the *Mishmis' Abbala* exemplify the gerontocracy system within their socio-administrative setup, where governance is largely influenced by the elders of the village. Their multifaceted nature defies simplistic classification, emphasising the intricate tapestry of governance systems across different tribal communities. These institutions not only reflect the unique cultural identities and historical legacies of each tribe but also emphasise the complexity inherent in traditional justice administrative structures. The tribal society of the state is patriarchal and henceforth, the female members of the tribes have very limited roles in decision-making and dispute settlements.

Traditionally, the socio-cultural, judicial, economic and religious aspects of tribal communities are overseen by the aforementioned institutions, guided by a set of customary laws that outline codes of conduct. The judicial functions of these institutions include civil matters, such as marriage, inheritance, land tenure,

farming, hunting and fishing, as well as criminal offences, including theft, elopement, burglary and even murder, which are now predominantly addressed through modern judicial administration. Adjudication is also based on customary laws, with punishment determined according to the gravity of the offence committed. Customary legal systems also incorporate rituals such as oaths and ordeals to establish innocence, with eyewitness testimony often serving as crucial evidence. Therefore, traditional priests often played a crucial role in the proceedings of traditional justice delivery. Furthermore, customary laws dictate the nature and severity of punishments. Penalties may range from fines in the form of livestock such as pigs, Mithun (*Bos Frontalis*), fowls, buffalo, or other valuable possessions, to more severe sanctions, including forfeiture of the accused's paddy fields or, in the early days, there was imposition of harsh punishments such as banishment from the village.

The Modern Administration of Justice and Its Development:

The tribal communities in the state were presented to modern administration as part of the political and administrative evolution of the region. The introduction of modern administration in northeastern India traces back to the era of the British Indian Government, following the first Anglo-Burmese war and the signing of the Treaty of Yandabo in 1826 (Bhattacharjee, 1994).

The administrative development of the state can be identified with the enactment of the Scheduled Districts Act of 1874. The primary goal was to institute a basic form of administration in the province of Assam. This Act provided distinct rules for the administration of justice in both civil and criminal matters (Luthra, 1971). During this time, the Inner Line Regulation, also known as "The Bengal Eastern Frontier Regulation I of 1873," was enacted to regulate interactions between tribal people and British subjects in the plains bordering the hills. Beyond the Inner Line, no British subject was allowed to enter without a formal pass from the relevant authority and violations of the Regulation were subject to conviction (Bose, 1997). The Inner Line Permit (ILP) is still a required document to enter the state.

The rules for the administration of justice in the frontier tracts were initially established in 1914 under the Scheduled District Act of 1874 and later under the Government of India Act of 1935. These rules were initially separate for the Sadiya Frontier Tract, Lakhimpur Frontier Tract, and Balipara Frontier Tract. They were eventually consolidated under the Assam Frontier (Administration of Justice) Regulation of 1945 (AFR-1945). This regulation of AFR-1945 recognised the traditional codes and practices of the tribal groups, as well as the age-old indigenous arrangements and the authority of village heads. It established the village authority with specific powers, appointed village-level officials called Gaon-Bura, and also

established other officials, namely; Political Officers and Assistant Political Officers in a hierarchical order for the administration of justice (Pandey, 2006). The institutions of Gaon-Bura and Gaon Buri, however, have been integrated with the set-up of the traditional institutions of various tribal communities of the state and hence became a significant part of the village councils and their deliberations.

Hence, concerning the administration of justice in North East India, when the British occupied these areas, they did not alter the traditional establishment's essential framework, which dispensed justice by customary laws, given that modern legal systems such as the Cr. P.C. and IPC were deemed inappropriate for the tribal society of the North East Frontier Tract (NEFA) and the continuation of the village headman and the longstanding indigenous village council was endorsed. The existing model of village self-governance was deemed worthy of continuation, resulting in a two-tier structure for the administration of justice in Arunachal Pradesh, where the executive and judiciary functions are merged. The issue of ambiguous judicial administration was resolved with the passage of the Arunachal Pradesh Court Act of 2021. This Act brought significant amendments to the AFR-1945 and ultimately separated the judiciary from the executive. The overarching goal of this Act is to establish a uniform and independent judiciary (Courts) for the entire state. Consequently, it synchronised village-level Courts with Subordinate Courts under the designation/nomenclature of 'Customary Court.'

Traditional (Customary Laws) and Modern Justice Administration in Practice:

The paper tries to comprehend the interrelationship between traditional (Customary) and modern Justice administration through certain parameters.

In terms of justice delivery by both the traditional and modern justice administration:

The tribal communities of the state recognize customary law as a regulatory source at the village level, group of villages and confederacy levels. They perceive decisions as outcomes of discussions and advice by members of their traditional authorities and consequently, people voluntarily adhere to decisions from clan heads, elders, Gaon Buras and tribal chiefs. The judicial decisions are based on the customary laws of the tribe or confederacies and most prominently, the fact that these judicial decisions heavily rely on the counsel and opinions offered by esteemed members of the traditional bodies. People believe that the decisions of the traditional institutions were not only fair but effective as well and the reason behind this effectiveness lies in the meticulous harmonisation of these rulings with deeply entrenched societal customs.

Yet, as a result of change and complexities in tribal societies, there are instances where the rulings handed down by traditional authorities might be swayed by self-interest or bias towards a particular group. The inherent ambiguity and interpretational flexibility of customary laws present difficulties in their implementation amidst the swift changes occurring within tribal communities. This ambiguity creates a loophole that can be exploited by individuals seeking to manipulate the system for personal gain, leading to inequities in the decision-making process.

Tribal people, at the same time, accepted the legal written laws provided by the formal institutional structures. It is noteworthy that severe offences (criminal crimes) are commonly recommended for adjudication within the modern justice administration, as outlined in AFR-1945. The modern justice system operates on the foundation of constitutional and statutory laws that govern the nation. It emphasises the principle of legal rationality, ensuring that every citizen is treated equally under the law, regardless of their societal standing or background. This commitment to equality fosters trust and legitimacy in the judiciary. However, the modern justice system encounters several challenges. The financial obstacle encountered by people from economically disadvantaged backgrounds is one significant restraint; people struggle to cover the costs associated with legal procedures. Whereas the traditional justice administration is much more affordable. Additionally, there is apprehension regarding the extended duration taken by the modern judiciary to dispense justice, which can worsen the difficulties experienced by those pursuing legal remedies.

In terms of differences or conflicts between the two institutions in the administration of justice:

There are noticeable distinctions in the operations of the two institutions, particularly concerning written laws versus customary laws and jurisdictional variations between the two institutions. At times, some cases are transferred between the traditional and modern administration, either by the people or within the institutions themselves, which seems to be more of a coordination between the two institutions; nonetheless, that depends on the particular cases. Both institutions operate within their domain and any perceived differences are largely dependent on individual preferences. The functional disparities that do exist between the institutions are acknowledged by both parties and efforts are made by each to function in synchronisation, fostering a sense of harmony between them. The occasional differences can be observed between the two institutions, which are primarily due to dissimilarities in their operational frameworks. Traditional authorities operate based on the tribe's customary laws, whereas modern justice administration relies on written legal and constitutional laws.

In terms of preferences when it comes to matters of justice administration:

Tribal people of the state prefer traditional justice institutions, particularly those hailing from rural village areas, citing several reasons such as their amiable nature, accessibility, cost-effectiveness and most importantly, the respect they have towards the age-old institutions which have socio-cultural importance. People perceive these institutions as not only efficient but also as creating a friendly environment. Moreover, they note the minimal expenses associated with the traditional village councils, which they view as a notable advantage. In addition to its socio-cultural significance, another factor contributing to the traditional institutions is their jurisdiction, recognised by regulations like AFR-1945 and its amendments. As a result, for any civil or minor criminal matters occurring within a village, people often seek recourse through the traditional bodies. The swift and straightforward decision-making process of the traditional authorities stands in contrast to the complex and lengthy procedures characteristic of the modern judiciary. Moreover, the physical distance between towns and villages, coupled with inadequate transportation and communication infrastructure, dissuades villagers from resorting to the modern judicial system. Furthermore, the considerable expenses associated with legal proceedings in modern courts further reinforce the preference for traditional institutions by the tribal population of the state.

Furthermore, people of the state, mainly from urban and semi-urban areas, favour the modern justice system due to its emphasis on providing justice through extensive legal frameworks and standardised structures. They appreciate the hierarchical system, which permits further appeals, thereby instilling a sense of confidence in the process and ensuring proper due process. These individuals value the organised and regulated environment of modern courts, where adherence to legal provisions is carefully observed to uphold principles of fairness and accountability.

Given the presence of both traditional and modern justice institutions, people of the state acknowledge the efficacy and importance of each for delivering justice. They understand that each institution possesses unique strengths and relevance depending on the circumstances and nature of the issues involved. As a result, their preference may vary, with certain cases requiring the utilisation of traditional bodies while others may call for intervention from modern justice systems. This adaptable approach enables them to select the most suitable institution based on the specific requirements of each situation and the particulars of individual cases. Their flexibility in transitioning between institutions underscores their practical approach to seeking justice, prioritising effectiveness and appropriateness over rigid adherence to any single institution.

Conclusion:

The present study seeks to explore the existence of two simultaneous institutions of justice administration in the state of Arunachal Pradesh. Being a tribal inhabited state, the tribal communities have had their governing arrangements since time immemorial. The study tries to understand the relevance of such traditional justice administration in the state, particularly in the context of the gradual integration of modern justice administrations. The people realised the importance of maintaining and preserving traditional institutions. The primary rationale behind this endorsement is the significant socio-cultural importance attributed to these institutions. People, time and again, articulate their views on sustaining these organic structures and reviving indigenous frameworks to ensure the effective functioning of village societies, which will not only serve as developmental mechanisms but also hold social and cultural significance. As societal and cultural dynamics evolve with modernisation, the importance of traditional institutions appears to diminish significantly. Preserving the invaluable heritage passed down by the tribe's forefathers proves essential for fostering a socio-politically harmonious environment. To bolster grassroots (rural) justice administration, the government may establish extensive collaborations with the tribal communities and their traditional justice institutions. Financial support could be allocated to endorse these traditional institutions, with stringent checks and balances to ensure optimal utilisation for collective goals. To enhance transparency and documentation, traditional institutions of the state can maintain written records, although some of the tribes do maintain them in writing as they have their script, involving literate members and encouraging educated youths to actively participate in this process. There are tribes in the state that have come up with such initiatives, along with the drafting of customary laws and amending them as per the requirements. This concerted effort can contribute to the sustainable preservation and effective utilisation of age-old indigenous assets in alignment with the needs of the community.

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