

CUSTOMARY LAW AND WOMEN IN NAGALAND: A GENDER LENS

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ABSTRACT

The customary law forms an important and central element in the social, economic and political life of the Nagas. This paper is an attempt to engage in a critical discourse of the customary law and asks the woman question in the Naga society by diving into women's rights and women in decision making roles. It questions male privilege which is consolidated via custom and practices erasing the voices and contribution of women. While Naga women have always been active participants and contributors in the development processes of the society, the ground picture depicts the absence of women in core institutions of decision making and leadership roles which is problematized in this paper because unless women's voices are heard and acted upon, there can never be gender equality but an inherent bias across various segments and levels of the society. The paper argues that unless Naga women are recognized as equal participants, contributors and change agents in the society, the goal and progress towards gender equality can never be achieved.

Keywords: *Customary Law, Women, Nagaland, Gender, Nagas, CEDAW, Beijing Platform for Action*

INTRODUCTION

The customary law forms an important and central element in the social, economic and political life of the Nagas. This paper is an attempt to engage in a critical discourse of the customary law and asks the woman question in the Naga society by diving into women's rights and women in decision making roles. It questions male privilege which is consolidated via custom and practices erasing the voices and contribution of women. While Naga women have always been active participants and contributors in the development processes of the society, the ground picture depicts the absence of women in core institutions of decision making and leadership roles which is problematized in this paper because unless women's voices are heard and acted upon, there can never be gender equality but an inherent bias across various segments and levels of the society. The paper argues that unless Naga women are recognized as equal

participants, contributors and change agents in the society, the goal and progress towards gender equality can never be achieved.

WOMEN'S RIGHTS AND EMPOWERMENT: INTERNATIONAL INSTRUMENTS

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted by the UN General Assembly in 1979 stands committed for the promotion of women's rights and to eliminate any form of discrimination that may obstruct women to

achieve their full potential by confronting cultural practices, customary laws or systems which impede women's rights. Article 5 of CEDAW specifically talks about the obligation of state parties to work towards the modification of social and cultural patterns of individual conduct in order to eliminate the "prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women." CEDAW also emphasizes upon the realization of all forms of equality between women and men by ensuring that women have equal access and opportunity in all spheres of life especially in political and public life including the right to vote and to stand for election, and the right to hold public office at all levels of government. It encourages all the UN member states to take every effort to promote the advancement of women across all sectors and address any legal or cultural barrier which could potentially threaten women's rights.

The Beijing Platform for Action (BPA) 1995 (UN Women) identified twelve key areas of concern for urgent action in order to promote gender equality and opportunities for women and girls, such as, women and poverty, education and training of women, women and health, violence against women, women and armed conflict, women and the economy, women in power and decision-making, institutional mechanisms for the advancement of women, human rights of women, women and the media, women and the environment, and the girl child.

While international instruments may call for the need to promote, uphold and safeguard women's rights, the *Gender Statistics 2019* report rightly strikes at the heart of women's empowerment, "participation in decision-making plays an important role in empowerment of women... Without the active participation of women in political life and decision making, the goals of equality, development and justice will remain only in paper," and unless women are given an opportunity to actively involve and participate in decision making institutions to decide on matters concerning their lives, it is only formidable that the praxis towards addressing the concerns in CEDAW or BPA will remain a distant dream.

NAGA WOMEN AND CUSTOMARY LAW

The customary law of the Nagas is protected under Article 371A whereby the Constitution provides a special provision to the State of Nagaland in matters related to, "(i) religious or social practices of the Nagas, (ii) Naga customary law and procedure, (iii) administration of civil and criminal justice involving decisions according to Naga customary law, and (iv) ownership and transfer of land and its resources."

While the customary laws in tribal societies play an instrumental role in the everyday day lives of its people, yet it can also become a barrier to women's autonomy and empowerment in implicit terms especially in matters concerning women's leadership and political participation. Scholars (Christina, 2002; Banerjee & Dey, 2012; Wouters, 2014) mention that among the Angami and Chakhesang Naga tribes, women were largely excluded in important deliberations and decision making forums which were dominated by elders (*Pehiimia*) of the village comprising of men; and the traditional governing system in the Naga society under the village council saw no participation of women; or seemingly democratic in terms of administration, the Angami villages held on to the traditionally set council of elders which managed all the legislative and judicial matters but without any representation of women.

Besides, Christina (2002) would argue that even the appointment of *Goanburas* were exclusively men, and further, women remained excluded even in the modern institutions of

democracy set up under the Nagaland Village Council Act. Such lack demonstrate how traditional notions of women as suited only for the ‘private’ sphere taking care of the home and family while men were meant for leadership and political authority in the ‘public’ sphere is upheld thereby obstructing women’s participation in governance (Nussbaum, 2003) and reflected in the poor number of women as political leaders. Zhimo (2018) highlights that the customary laws are deeply entrenched with patriarchal traditions and becomes very restrictive for Naga women, for instance, women are denied the right to property inheritance and women do not enjoy the right to keep their children in the case of divorce even when the women was not at fault and quite capable to look after the children.

Mukhopadhyay (2003) underlines that ‘women taking political office’ means not only creating an enabling mechanism for women’s entry into public office but also the recognition of women as legitimate political actors. A nuanced picture of Naga women’s political participation in electoral politics as voters and as political candidates in the Nagaland State Assembly elections from 1964 to 2018 is depicted in Table 1.1 and 1.2. It can be inferred that Naga women’s political participation as voters has been a steady rise and in terms of number there are many cases where women voters outdo the men voters. However, at a deeper level, it is observed that women have consistently remained an invisible minority as contesting candidates. From the 1st Nagaland State Assembly elections in 1964 to the 13th State Assembly elections in 2018, there were only 21 women contestants as opposed to 2303 male contestants. Further, no woman had ever won an Assembly election implying there are no women legislators in the State (refer Table 1.1 and 1.2). Such expressions not only give rise to questions such as, are women not good enough, why aren’t women represented at all, is there an underlying problem not visible but more systemic, etc, and it also depicts an underlying patriarchal bias in the society where women were seldom considered as rightful leaders or decision makers and hence their lack of representation as law makers and policy planners.

It is quite ironical that while the number of women making a move into politics is disappointing given the small number of women candidates, yet the mere act of contesting the elections is a significant and bold step by these women daring to defy customary practices and standing up to fight against all odds which literally means taking on male bastions of power in a patriarchal Naga society which remain hostile to women.

Table 1.1: Percentage of voters in the various Nagaland State Legislative Assembly elections (1964 to 2018)

General Election	Year	Percentage of Electors (voted) in elections		
		Female	Male	Total
1 st	1964	-	-	50.51
2 nd	1969	80.51	76.47	78.37
3 rd	1974	77.47	71.09	74.35
4 th	1977	74.48	82.21	83.26
5 th	1982	76.53	72.75	74.44
6 th	1987	86.02	83.29	84.53
7 th	1989	86.01	85.35	85.65
8 th	1993	91.05	91.98	91.53
9 th	1998	21.72	22.65	22.21

10 th	2003	85.98	89.56	87.85
11 th	2008	86.39	85.99	86.19
12 th	2013	91.33	89.09	90.19
13 th	2018	82.48	86.09	84.29

Source: Gender Statistics 2019

Table 1.2: Candidates contested and elected to the Nagaland State Legislative Assembly (1964 to 2018)

General Election	Year	Total no. of seats	No of contestants		Female		Male	
			Female	Male	No Elected	% won of total seats	No Elected	% won of total seats
1 st	1964	40	0	73	0	0	40	100
2 nd	1969	40	2	142	0	0	40	100
3 rd	1974	60	0	219	0	0	60	100
4 th	1977	60	0	204	0	0	60	100
5 th	1982	60	1	244	0	0	60	100
6 th	1987	60	3	211	0	0	60	100
7 th	1989	60	0	140	0	0	60	100
8 th	1993	60	1	177	0	0	60	100
9 th	1998	60	0	80	0	0	60	100
10 th	2003	60	3	222	0	0	60	100
11 th	2008	60	4	214	0	0	60	100
12 th	2013	60	2	187	0	0	60	100
13 th	2018	*60	5	100	0	0	60	100

*59 ACs Contested, 1 AC uncontested. Source: Gender Statistics 2019

It is interesting that women in Nagaland have voted in large numbers in the elections which is no exception even during the Lok Sabha (LS) elections with women voters gradually increasing from 50.37 per cent during the 5th general election (1971) to 82.69 per cent in the 17th general election (2019) (refer Table 1.3). However, in the long history of Nagaland, it was only twice that women had ever contested in the Lok Sabha parliamentary elections in 1977 and 1980. In 1977, Rano M. Shaiza contested and won the 6th Lok Sabha election becoming the first and only woman Member of Parliament from Nagaland. This shows that while there were high electors among women which can be considered as quite progressive, yet it also implicitly implies that Naga society does not yet visualize women leading the society as capable political leaders which is problematic.

Table 1.3: Percentage of voters in the general elections to the Lok Sabha, Nagaland (1964-2019)

General Election	Year	Percentage of Electors (voted) in elections		
		Female	Male	Total
1 st	NA	NA	NA	NA
2 nd	NA	NA	NA	NA

3 rd	NA	NA	NA	NA
4 th	1967	-	-	-
5 th	1971	50.37	56.82	53.77
6 th	1977	50.36	54.81	52.83
7 th	1980	64.59	63.31	63.90
8 th	1984	65.02	67.67	66.46
9 th	1989	75.70	73.93	74.71
10 th	1991	76.18	78.18	77.07
11 th	1996	85.47	90.92	88.32
12 th	1998	43.07	47.50	45.41
13 th	1999	75.29	76.67	76.10
14 th	2004	90.26	92.63	91.45
15 th	2009	89.29	91.19	90.24
16 th	2014	87.75	88.74	87.91
17 th	2019	82.69	82.44	83.00

Source: Gender Statistics 2019

In a patriarchal society, it is not easy for women to easily penetrate decision making institutions because traditionally men occupied positions of power and dominance in all traditional set ups suggesting that the voices of women were lacking in decision making in village and public affairs. A group of village elders known as ‘*pehiimia*’ consisting only of male members decided on matters of importance and significance among the Angami Nagas. Kazi (2011) mentions that across the South Asian region particularly in rural areas, cultural notions of men’s superiority over women in the field of politics and public life was quite common, and when patriarchy is more deeply entrenched it makes it all the more difficult for women to break away from such stereotypical norms.

WOMEN’S RIGHTS AND EMPOWERMENT

Goswami et al., (2005) states that many of the tribal women’s groups in the Northeast did not extend their support to the Women’s Reservation Bill due to the apprehension that even with reservation, for women it was almost impossible to win an election because the election outcomes were dependent on the support of the village councils which were highly patriarchal and would never support a woman candidate. This portrays the unequal social positioning of women and the lack of autonomy but also their exclusion from decision-making especially in communities governed by customary laws even though women have always played and continue to play key roles in all civil society movements of the region (Goswami et al., 2005).

The 73rd Constitutional Amendment Acts 1992 provides 33 per cent reservation of seats for women in the local bodies in both the rural and urban areas (Gender Statistics 2019). However, even such affirmative policy is complex when it comes to its implementation given the nature of the Naga society. As pointed out by Zehol (2006) and Kikon (2017), the tribal customary laws are inherently biased against women and disregard women as equal participants in traditional decision making bodies demonstrating the deep intersection of culture, patriarchy and customary law. Such observations do fall in line when there were strong protests in Nagaland in 2017 when the State government called for the civic body polls with the implementation of 33 per cent seat reservation for women but it was finally cancelled owing

to the opposition from the male dominant traditional tribal bodies against such a move countering that it is an infringement on the customary laws of the Nagas.

The *Nagaland Vision 2030* (2016) document explicitly calls for prioritizing the needs and issues of women for a sustainable and healthy future which can then translate into many other positive changes in the society, such as reduction of child mortality and women in managerial roles for water, fuel wood, climate-change etc.

Amongst the many civil society organizations working for the public good is the Naga Mothers Association (NMA) founded in 1984 which initially began as a fight against drug and alcohol abuse in Nagaland stands tall today fighting relentlessly for the rights and empowerment of Naga women (Gender Statistics 2019). Time and again it is the NMA which has been fighting to include women as decision and policy makers in the much required decision making institutions of the state. Nagaland has no woman heading the Village Councils (VC) or the Village Development Boards (VDB) except as members revealing the dominance of men in such vital administrative and development institutions at the grassroots. The *Gender Statistics 2019* highlights such gaps that only 1.13 per cent of the 1238 VDBs (2018-19) has female VDB Secretaries while 2804 women were serving as VDB members.

Hibo and Kikhi (2015) while discussing economic development for women empowerment in Nagaland, notes that rural women especially those who are economically poor tend to send the boy children to private schools and girl children to the Government schools. Furthermore, in rural areas, many girl children dropped out of schools to look after younger siblings, to help the family in domestic chores and in the agri-fields though such preferences were absent among educated urban women underlining the importance of education for women empowerment.

There has been some progress in both women's education and their employment in the past few years. With equal opportunity extended to both men and women in different areas and particularly in the field of education, the literacy rate among girls in Nagaland has been increasing. And an interesting development is how under the modern administrative system many Naga men do work under female leadership or headship in the line of duty which was nearly impossible in former times and such a change is partly attributed to education and the leadership qualities of women, and importantly education as an enabling mechanism for women to take up jobs, entrepreneurship and other economic activities was reiterated by Hibo and Kikhi (2015).

CONCLUSION

For any society to progress, it is a pre-requisite that equal opportunities should be extended to all its citizens without any prejudice irrespective of gender. Additionally, the state should provide an enabling environment especially to women to participate effectively in all spheres of life which will also strengthen their meaningful contribution to the society. Women's voices and concerns in the Naga society have remained unheard, underrepresented and subjugated for the longest time due to underlying biases and assumptions. While customary laws do provide and address a lot of life's complexities, yet any custom or law which hinders women's rights must be questioned and corrected, and in an urgent manner to achieve gender equality.

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