



A CONTEMPORARY ANALYTICAL STUDY OF SELECTED ISSUES OF LAW, GOVERNANCE AND CONFLICT MANAGEMENT IN THE CONTEXT OF THE STATE OF NAGALAND

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ABSTRACT

Northeast is a very important part of India. However, the conflicts and violence of five decades have brought a significant unrest in the social, economic and political system of the State. The constitution of India has awarded the special rights and identity to the State of Nagaland under the provisions of Article 371 A. However, even after the talks of establishing shared sovereignty, there are some issues of laws that could not be ignored. This paper focused on discussing the issues of laws associated with the customary laws of Nagaland and the Formal laws put forwards by the Government of India. Paper discussed two important issues associated with law-33% reservation of women in urban local bodies and implementation of land and building taxes. This study concluded that these two problems must be seen as two different issues in modern governance and must use different approaches to manage conflicts arising by these issues.

Keywords: Nagaland Customary Laws, Customary Laws, Women in Nagaland, Women reservations, land laws, land and taxes, modern governance, Naga people

Introduction

One the conflict takes place in the developing and contemporary world, it becomes protracted process. There are various countries situated in Africa and Asia that have undergone the decades of violence and armed conflicts in their areas. Other countries of the world have also witnessed significant incidences of struggle and conflicts. One significant reason of conflicts that have been witnessed in the contemporary nations and states is associated with the political violence. Colonization in India had lead to many struggles and conflicts that remained to be significant in the post-colonial period. One such significant struggle has been the Indo-Naga conflict that witnessed many decades of blood-shed, cruelty and disturbances.

The Northeastern region of India includes many states that have a significant number of tribal populations. These states have their own unique, ethnic, cultural, political, linguistic and economic heritage. Nagaland is one of the seven states of Northeastern region of India, which are also called as the 'seven sisters' including Nagaland, Assam, Manipur, Tripura, Meghalaya, Arunachal Pradesh and Mizoram. However, Northeastern part of India has been the most neglected and underdeveloped region of the country. This state has undergone the struggle of over five decades in order to preserve their culture, traditions and customs.

These people continue to search for their identity amidst of the economic and cultural crises. This has resulted in causing a significance impact on the tribes of Nagaland and also created issues with governance and conflict management in the state. The legal framework governing the land laws and rights of women are significantly associated with conflict management issues. Because of the continuous issues caused due to these two laws related to land and gender has given rise to the demand of many tribes to recognize their customary law. Women have often been the passive victims of the political conflicts, who also need important attention towards their rights, land rights and freedom. Therefore, this paper will focus on discussing the selected issues of laws related to gender issues and land laws and will discuss the governance of these laws and conflict management associated with them in the state of Nagaland.

Selected Issues of Law

The changes that has occurred due to the process of modernization in the tribes of the world, is mainly the change in the legal system. Evidences have shown that legal system and introduction of legal system in the tribes have positive as well as negative impact on these people. The legal system and laws have resulted in causing a social upheaval, as the people are now looking for a new identity search about their tribes. One significant reasons of this is that Tribes living in Nagaland has believed that modern institutions devalue their culture. Struggle and blood-shed in Nagaland are mainly because of their unique ethnic, cultural and political identity that these people want to keep intact. The various ethnic conflicts arise because these people believe that other cultures may overshadow their unique identity. One of the significant issues of law that has been identified in the case of Nagaland is their customary law associated with gender and land¹.

The armed conflicts had resulted in affecting thousands of people, and also resulted in the serious destruction of the infrastructure. But, this has mainly occurred due to the belief of the people, who perceive conflict as an effort of the other people to impose their culture on the people of Nagaland². Another reason of the conflict is to gain political and economic dependence and to have the legal system that is influenced by their customary laws. Therefore, the major issues of Law that are identified in the case of Nagaland are the interference of the Formal Law and Tribal Customary Law. Acknowledging their tradition and culture is the way of asserting their unique identity. Therefore the interference caused between the customs and traditions and the Formal law of the country is a significant issue of law in Nagaland. This could also be understood as the interference between the traditions and modernity, which has significant role to play in their identity re-assertion and conflicts that have been witnessed by the state. This issue of law is very significantly demonstrated in the gender issues and land laws.

Reservation and Land Rights of Women and Customary Laws in Nagaland

The role of men and women are important in the society, but the traditions and customs have not provided equal rights to men and women. People of Nagaland are still associated with the traditional idea of confining the rights and duties of the women to household activities and this traditional belief has significantly affected the attitude of men towards women. It was believed

¹ Fernandes W. "Tribal Customary and Formal Law Interface in North-Eastern India: Implications for Land Relations". available at siteresources.worldbank.org/INTINDIA/Resources/walter-fernandes-paper.doc retrieved on 9th Sept. 2007.

² Fernandes W, Pereira M, Khasto V. "Tribal Customary Laws in Northeast India". *North Eastern Social Research Centre*; 2008.

and customs and traditions are meant to safeguard the rights and well-being of women. However, such customs and traditions have resulted in creating stereotypes, prejudices and discriminations against women. Traditions and customs in Nagaland associated with women are mainly based on beliefs and myths³. The customs in the Nagaland have considered women to be subordinate to men and just to fulfill their household duties. Women are considered to be of lower status in the society.

Naga women are fighting for their land rights and rights to take part in politics. This has resulted in creating the clash between equal rights and traditional values. Nagas have their distinguished gender roles in the society and praised the concept of ensuring women safety. However, ensuring women safety is not translated as equality⁴. The Patriarchal society of Nagaland denies the basic rights women, which has also resulted in creating the issues of law. The major unrest caused in the state of Nagaland is mainly due to the reservation of women in the Urban Local Bodies (ULBs). The Constitution of India provides equal rights to men and women of the country. According to Women Reservation Bill (2008) and 73rd Amendment of Indian Constitution 33% of reservation is given to women candidates in Urban Local Bodies (ULBs). This provision given under this bill opposes the provision given under the Article 371 (A) that states:

“Notwithstanding anything in this constitution, no Act of parliament in respect of 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 resources, shall apply to the state of Nagaland unless the legislative assembly of Nagaland by a resolution so decides.”⁵

According to this provision the people in Nagaland have the right over their customary and traditional laws and no Act of Parliament have any rights to interfere in the decisions of Naga Customary law⁶. However, this has resulted in causing significant conflict in Nagaland, where

³ Xaxa V.” Women and gender in the study of tribes in India. *Indian Journal of Gender Studies.*;11(3):345-67 (2004).

⁴ Wouters JJ. Land Tax, “Reservation for Women and Customary Law in Nagaland”. *Economic & Political Weekly.* 4;52(9):20-3 (2017).

⁵ Parashar. U, Nagaland crisis: Clash of traditional values and women empowerment, *Hindustan Times*. Available at : <https://www.hindustantimes.com/india-news/nagaland-crisis-clash-of-traditional-values-and-women-empowerment/story-ITazq3LTTuRhp8EnTD7rpL.html> (In Press 2017).

⁶ Wouters JJ. Land Tax, “Reservation for Women and Customary Law in Nagaland”. *Economic & Political Weekly.* 4;52(9):20-3 (2017).

women are reluctant to earn their right of 33% in the ULBs. This reservation for women also interferes with the traditional system of governance in the state.

Another issue of law that has been identified to be associated with women in Nagaland is the inheritance of properties. According to tribal customary law of Nagaland, the daughter have the right to inherit the property of parents only if she is unmarried, but still she cannot sell off the property according to her needs or wishes⁷. One the daughter are married, they lose all the control or rights over the properties of the parents. Sons are considered as the sole owners of the properties of the parents, even if they are married or unmarried. This customary law can be considered as biased and discriminatory. However, the people of Nagaland consider that this tradition or custom of their community are significant for preserving their unique identify. But, such customs and laws have resulted in giving rise to gender discrimination that restricts the establishment of democracy in the country⁸.

The mélange of the frontal Naga tribal bodies, such Eastern Nagaland People's Organization (ENPO) and Naga Hoho that amendment in the Constitution and reservation given by the Legislative Assembly of Nagaland are considered as the 'alien rule'. This means that 'reservation', 'tax' and 'land and building'⁹ are considered as the alien rule by the Naga tribes and their leaders, which significantly affects the traditional way of life. The Naga tribal groups believe that reservation violets the customary laws and social traditions of equal treatment¹⁰

Land Laws of Tribal Community and Interference of Formal Law

Another issue of law is also associated with customary land laws. The land and customary laws in Nagaland are closely associated with the identity of the Naga people. However, with the modern governance practices and social changes the land relations of the people are being modified. Some of the other reasons of modifications in land ownership are due to immigration, violations and modern legal system. Although, these factors do not begin the conflict, but these factors are considered to the elements that enhance the existing conflicts related to land and land

⁷ Roselima, K K. "Customary Law and Women in North East India". *International Research Journal of Social Sciences* Vol. 3(9), 59-62, (2014). <http://www.isca.in/IJSS/Archive/v3/i9/9.ISCA-IRJSS-2014-163.pdf>

⁸ Vamuzo M. *Contemporary Challenges of Naga Women in Nation Building*. Trent University; (2011).

⁹ Wouters JJ. Land Tax, Reservation for Women and Customary Law in Nagaland. *Economic & Political Weekly*. 4;52(9):20-3. (2017).

¹⁰ Amer M. Political Status of Women in Nagaland. *Journal of Business Management and Social Sciences Research*. 2(4):91-5. (2013).

ownership¹¹. Initially the conflict related to land laws in Nagaland was many associated with the ‘outsiders’ that local people considered. Local people believed that these outsiders are controlling their lands and economy, alienating their livelihood and were also seen as a significant threat to their culture. The Naga people of Nagaland have been significantly dependent on their lands, agriculture and farming, as the main source of income and economic drive in the state. The interference of the Indian Government and Army in the state was considered to be a significant barrier to their livelihood and income. Therefore, the combination of the causes occurred that increased the resistance towards the formal law and changing modern governance in the state. The combination of causes resulted in the “economic demands with sub national and cultural resurgence”¹² that should compulsorily include the customary law.

Commercialization of the resources associated with the customary land laws was also a significant reason of conflict because the Indian government focuses on homogenizing the country and believes in applying equal laws and rules in every state. The modern governance practices involve the formation of the municipalities, towns and ULBs, which result in formation of land taxation. In the traditional manner the Naga people were the community land holders. Also the relationship between the land and tax and the municipalities is highly complex. The studies of Charles Chasie (2017) and Jelle J P Wouters (2017) have also postulated that opposition of women reservation in ULBs is not just because of violation of the traditional gender roles and customs, but significant opposition is done in order not to allow the modern institutions like municipalities and ULBs to encroach on the lands and resources of Naga people. “*The pivot around which Naga’s idea of sovereignty revolves, that lies at the heart of this controversy*”¹³

Naga people have the issue with the law and governance because they have enjoyed the unconditional ownership on their lands and resources. This has resulted in creating the conflict, as Naga people have “Ura Uvie” (our land is ours)¹⁴ perspective towards their lands and commercialization and taxes on land is an “abhorrent issue”¹⁵ that resulted in the Naga

¹¹ Fernandes W. Land laws, development and globalisation in northeast India. *Rethinking Economic Development in Northeast India: The Emerging Dynamics*. 3:212. (2017)

¹² Fernandes W. Land laws, development and globalisation in northeast India. *Rethinking Economic Development in Northeast India*, p. 21

¹³ Wouters JJ. Land Tax, Reservation for Women and Customary Law in Nagaland.p. 21 (2017).

¹⁴ Hausing KK. ‘Equality as Tradition’and Women’s Reservation in Nagaland. *Economic & Political Weekly*. 11;52(45):37. (2017)

¹⁵ Hausing KK. ‘Equality as Tradition’and Women’s Reservation in Nagaland. *Economic & Political Weekly*. 11;52(45):37. (2017)

nationalists and resistance movements against Central Government of India. The Nagaland Municipal Elections were objected by these people because of the imposition of the 15% tax on the actual values of the property and land. This 15% tax is also considered as the tantamount that is equal to paying income tax. Therefore, imposing income tax on the Naga people is also violation of the protection that is awarded to Naga people in relation to income tax and also entails the Naga people to be imposed with the status of “Homeless Refugees” on their own land of ancestors. This is because ULBs have the power of auctioning or seizing the land and property of the people, who fail to pay their taxes.

It has been found that GoN has omitted the power of ULBs to impose tax and have also shown the concern towards the provision of taxation of land. GoN has also addressed that that land tax and ownership problems can't be resolved by simplifying the tax and application of the complex bureaucratic powers in the state would be “illogical and unfair”¹⁶. Therefore, this significant issue associated with reservation of women and land and taxes are not two different issues. But, these issues of law are interconnected and associated with the modern governance activities. Since the initial period of the controversy, the Naga people have denied the rights of the modern state to impose taxes on people and significantly used the controversy of women reservation and women empowerment as the way of denying the modern governance practices and formation of bureaucratic structures in state¹⁷.

Governance and Conflict Management Related to Women Rights and Land Laws

The demand for the 33% of the reservation in ULBs has been a proactive struggle that is associated with the selected issue of Law in Nagaland. Though, the reservations of 33% have been awarded to women in Indian Constitution, but this provision has not been adopted by Nagaland. This Act was not adopted by the Nagaland because of its contradistinction with the Article 371 (A)¹⁸. However, the Legislative Assembly of Parliament are required to pass the resolution and must Interpret the provision given under Article 371 (A) in different manner. According to Article 1 of the Indian Constitution, India is the country, which is considered as the

¹⁶ GoN. “List of Recognised Naga/Scheduled Tribes Certificates,” No R-11011/16/2009-Tab, Kohima: Office of the Census Director, (2009) viewed on <http://dpar.nagaland.gov.in/list-of-recognized-nagascheduledtribes-certificates/> (Updated on 26 April 2016)

¹⁷ Wouters JJ. Land Tax, Reservation for Women and Customary Law in Nagaland. *Economic & Political Weekly*. 4;52(9):20-3. (2017).

¹⁸ ‘The Constitution of India with special reference to Article 371 (A)’. *The Morung Express*. Retrieved from: (2015) <http://morungexpress.com/the-constitution-of-india-with-special-reference-to-article-371-a/>

Union of State. Therefore, according to this every state is the part of Union and has to display respect towards every Act and laws. Also the issue associated with governance in Nagaland must focus that Indian Constitution also states that no tradition, custom and usage of the law of state of Nagaland must interfere with the Constitution of India¹⁹.

The concept of sovereignty can be considered as very significant in governance and conflict management in the state. Also, with references to the history of women's participation and peacemaking and participation in conflicts cannot be disregarded²⁰. There are several points to be considered while interpreting the Article 371 (A) in reference to rights of women in Nagaland. Though, this article prohibits the interference of Parliament in the decisions related to land ownership, civil and criminal system and customary laws. The main problem of resistance towards the provision of reservation or women is that Nagas had a historical distrust in the provisions and interventions of the Central government. However, the current demand for reservations should not be considered in negative manner. The modern techniques of governance in the political system are prescribed for better conflict management²¹.

It is important to understand the provision of reservations for women in the political system has not come from any Act of Parliament particularly, but it is the part of Constitution of India and defined under the Article 243T. According to this article, seats in the Municipality are reserved for the people from scheduled castes and scheduled tribes (271 T (1)). Section 3 of Article 271T states that one third of these seats must be filled by the direct election of Urban Local Bodies and must be given to women from that particular scheduled tribe²². According to the Constitution Bill (2009) 112th amendment of the Constitution introduced 50% reservation for Women in the /Urban Local Bodies (ULBs). Though, this bill is under consideration right now, 33% of reservation is still applicable.

This reservations and rights of women must also be considered according to the modern practices of political governance and institutions, which were not present in the traditional system. Urban Bodies, Towns and Municipalities were not present in the traditional system, but as they are

¹⁹ 'Nagaland Violence: Understanding the Constitutional Angle'. Academy GK Today. Retrieved from: https://academy.gktoday.in/article/nagaland-violence-understanding-the-constitutional-angle/#Constitutional_Issue (2017).

²⁰ Banerjee P, Dey I. Women, conflict and governance in Nagaland. *Policies and practices*.;51:17 (2012).

²¹ Vamuzo M. Contemporary Challenges of Naga Women in Nation Building. Trent University; (2011).

²² Article 243T of the Indian Constitution and its implications to Article 371(A), The Morung Express, available at: <http://morungexpress.com/article-243t-indian-constitution-implications-article-371a/> (Last modified Oct, 2016)

present in modern governance, the conflict management must include the strong Acts and laws passed through Legislative Assembly of Nagaland²³. One more concept that can be considered as significant for conflict management in Nagaland must be addressed. This important concept is “egalitarianism.”²⁴ This is also considered as the common presumption about the tribal societies located in Northeast or in any other part of India. This concept is based on the belief of “equality as tradition”²⁵. However, Nagaland is the state that displays inegalitarian discourse and unequal treatment towards tribal women, and which is clearly evident in the controversy surrounded against the 33% of the women reservation ULBs. The Federal government and the multilateral agencies are required to tie up the various developmental aids with the state of Nagaland. This is significant for establishing the inclusive democracy at the grass root.

It is also important to understand that women rights and land issues must be seen separately. Though, they have become the significant issues of laws in Nagaland, yet, women empowerment and development is the constitutional right that is awarded to every woman in the country, while establishment of ULBs and municipalities are the “modern entities” of governance. Also the formation of the municipalities and ULBs lie outside the Naga customary laws. Also, there are many historical examples, where the Naga women have taken an important role in making peace negotiations and resolving the conflicts. Such examples must be considered to determine that empowerment of women is significant for promoting peace in State.

Secondly regarding the taxes on land and building one major issue is associated with the alienation of the livelihood due to the transition of many communities to commercial entities. It should be understood that commercialization of land is very significant for converting the land from livelihood to commodities. Commercial approach cannot be considered as bad. However, one significant condition with this commercialization approach is to provide the surety to Naga people that this transition would be done without implementing any tax system and development of Nagaland must be only related to the development of its people. The constitution of India has safeguarded many rights of the people of Nagaland. Therefore, while safeguarding their land rights and benefit of another class must not be associated with their personal development.

²³ Manchanda R, Kakran S. Gendered power transformations in India’s Northeast: Peace politics in Nagaland. *Cultural Dynamics*. 29(1-2):63-82. (2017).

²⁴ Hausing KK. ‘Equality as Tradition’ and Women’s Reservation in Nagaland. *Economic & Political Weekly*. 11;52(45):37. (2017)

²⁵ Hausing KK. ‘Equality as Tradition’ and Women’s Reservation in Nagaland. *Economic & Political Weekly*. 11;52(45):37. (2017)

Government focusing on the benefit of the other class through Nagaland can result in further conflicts. The focus should not be placed on changing the society to the class society, by the new provisions and practices should reinforce “egalitarian” perspective to promote equality and well-being of all. The significant changes in the law are still required in references to the State of Nagaland²⁶.

Conclusion

Conflict in the state of Nagaland are significantly known by the people all over the world, because it has been the longest struggle that continued over five decades in the world’s history. The ethnic conflicts and conflicts related to achieving unique identity through gaining independence are significant that have resulted in many issues of laws. This paper focused on discussing the two selected issues of law. The first issue is associated with women reservation of 33% in the Urban Local Bodies and second is the issue associated with Land and Building taxes and inherent ownership of Naga people on their lands. These issues have been specifically selected, because these two issues are interdependent. Opposition of modern tax system and modern governance is done by Naga people as the ruse to deny reservation of women in order to oppose the formation of Urban Local Bodies that will take their inherent ownership and rights on their lands. Paper discussed comprehensive evidences from the literature and found that opposition of women reservation is not correct as it deny the formal rights that are awarded to every woman by the Constitution of India. However, opposition of Land and taxes cannot be considered as completely wrong, because of emotions of Naga people attached to their lands, also lands are the major source of their livelihood. Paper concluded that these two issues of law must be seen as separate problems in order to find resolution. Women empowerment is necessary for peace negotiations and preventing conflicts and land laws must be seen from different perspective considering emotions and rights of Naga people.

²⁶ Vamuzo M. Contemporary Challenges of Naga Women in Nation Building. Trent University; (2011).

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<http://www.isca.in/IJSS/Archive/v3/i9/9.ISCA-IRJSS-2014-163.pdf>

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