

**Legal Awareness Series – 4**

*Tribal Customary Laws in Northeast India:  
Gender and Class Implications*



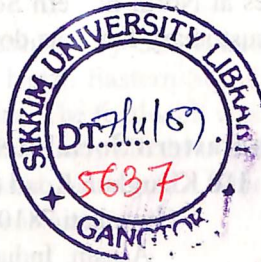
**Walter Fernandes  
Melville Pereira  
Vizalenu Khatso**

0.50954  
T P08-CL  
05637

**North Eastern Social Research Centre, Guwahati  
2008**

**Legal Awareness Series – 4**

***Tribal Customary Laws in Northeast India:  
Gender and Class Implications***



**Walter Fernandes  
Melville Pereira  
Vizalenu Khatso**

16

**North Eastern Social Research Centre, Guwahati  
2008**

## Acknowledgements

This booklet is a summary of a study on the gender implications of the customary law done in 2004-05. It was funded by the National Commission for Women which has published the report in its entirety in book form. We are grateful to NCW for its support.

During the study we were assisted by Gita Bharali, Anamika Deka and the rest of the staff of North Eastern Social Research Centre. We are grateful to all of them. The fieldwork was done by Sangeeta Tete (Adivasi), Rekha Saikia (Aka), Mhaleno Zhashiimo (Angami), Kakoli Khersa (Dimasa) and Merikka D. Shira (Garo). We are grateful to them for their assistance.

We dedicate this booklet to all 500 respondents and their families, the tribal leaders and others who allowed us and our investigators to interview them and gave them much of their precious time to discuss what they thought was a theme with major implications for their identity.

Guwahati  
February 2008

Walter Fernandes  
Melville Pereira  
Vizalenu Khatso

# **Contents**

	<b><u>Theme</u></b>	<b><u>Pages</u></b>
	Acknowledgements	
1.	Chapter 1: Customary Law in Northeast India	1
2.	Chapter 2: Modernisation and the Family Sphere	6
3.	Chapter 3: Customary Laws and Interface with Society	16
4.	Chapter 4: Search for Solutions: The Customary Law Today	24
5.	Chapter 5: Conclusion: Recommendations Based on the Study	29
6.	References	38

## ***Chapter 1 : Customary Law in Northeast India***

This book on the gender impact of the interface of tribal customary laws of Northeast India with modernity is a summary of a study done in 2004-05. Its starting point, based on past studies, was that the encounter of the tribal traditions with modernity without adequate preparation can have a negative impact on their communities in general and on women in particular. Since modernity has both positive and negative impacts, one cannot either stop it unconditionally or impose it on the tribal communities without measures to counter its possible ill effects. Without such a precaution, the changes that modern inputs introduce, far from benefiting the tribe in general and women in particular, can result in the deterioration of their status. Starting from this hypothesis the effort in this study was to find out whether this interface has improved women's status or has resulted in its deterioration.

### ***The Background of the Study***

That was the background of this attempt to understand the processes that result in the improvement or deterioration of tribal women's status. Studies on *Modernisation and Changing Women's Status* (Fernandes and Barbora 2002) and *Social Change in the Northeast* (D'Souza and Khekhrieseno 2002) had indicated that modernisation of the tribal societies without measures to counter its ill effects can result in class formation and strengthen patriarchy. In other words, modernisation is not negative in itself but it has negative impacts when it is imposed on an individual or a community without preparing them to face it. This hypothesis was tested in the present study in order to suggest possible measures to counter the possible ill

effects of modern inputs if some of them went against gender equality. This theme is basic to the Northeast in which many tribes are re-asserting their identity through a return to their customary law.

To a great extent it is in reaction to the real or perceived ill effects of the encounter with the formal law whose worldview is different from that of their customary law. Most tribal traditions were community-based and accorded a relatively high status to women without considering them equal to men. Most modern land laws, on the contrary, are individual-based and ownership is by and large with men. Past studies indicate that because of this interface with the formal law many tribes that consider their customary law intrinsic to their identity go back to it with a fundamentalist interpretation, especially on the gender issue. They re-interpret it from a male perspective alone, accept exclusively individual ownership of land and justify it in the name of their customary law. Thus the tradition-modernity interface can go against women and result in class formation in their egalitarian societies (Fernandes and Pereira 2005: 27-29).

With this starting point the effort in the study was to identify the impact on women of the tradition-modernity interface and of the trend to go back to the customary law. It was a comparative study of five tribes that are at different stages of the interface and live under a variety of legal systems. The Dimasas of Assam and the Garos of Meghalaya come under the Sixth Schedule that recognises community ownership (CPRs) but they have to interact with the individual-based formal laws (Bordoloi 1984). The Aka of Arunachal Pradesh are close to their tradition and are governed by their customary law but the Sixth Schedule does not apply to them. So there is a hiatus between their social and legal realities. Article 371A of the Constitution recognises the customary law of the Angami of Nagaland (Barooah 2002) but there are indications that because of their interface with modernity men interpret it in their own favour. The *Adibasi* whose ancestors came from Jharkhand, Chattisgarh and other regions of Eastern India as indentured labour to work in the tea gardens of Assam, have for all practical purposes lost their customary law and even their tribal identity (Sharma and Kar 1993: 133-135). They are

trying to regain it. The demand for a scheduled tribe status that ended in violence on November 24, 2007, is linked to this effort.

An understanding of this variety was important in order to analyse the changes that have occurred among these tribes and the evolution of their customary law in response to them. In this study the evolution of the customary laws and the processes of modernisation were situated in the context of their demographic, educational and occupational status, all of which have a gender dimension. For example, the sex ratio, educational status and occupational pattern are indicators of women's status. In order to understand their role in the family and society, special attention was paid to women's role in children's upbringing, health care, discipline and education. Their role in agriculture and handicrafts production gave one new insights in their role in the family decision-making processes and economy.

In every component the researchers tried to look at their tradition and the changes that have occurred in them in recent decades. The methodology was adapted to this need. During its first two months the focus of the study that began in November 2004, was on the secondary data of the Northeast and of these five tribes. Based on this background and prior knowledge based on visits to these areas, five villages were chosen for each tribe, some of them remote and others close to a road. The assumption in this choice was that the remote villages are relatively close to their tradition and that it would facilitate a comparison of the impact of various degrees of exposure to modernity.

In order to get a good grasp of the situation, individual interviews were combined with group discussion and participant observation. The sample was not individuals but families from which one person was chosen as the main respondent. The experience of past studies in the Northeast as well as in the rest of India shows that in a rural set up it is not possible to interview an individual without the respondent's family members as well peer group intervening during the discussion. Besides, the interview in the presence of the family also becomes a reflection on the theme and turns the discussion on themes like the customary law into an awareness building exercise on its gender implications.

**Table 1.1: The Tribes, Villages and the Sample of the Study**

Tribe	Aka		Adibasi		Angami		Dimasa		Garo		Total		Total
Gender	M	F	M	F	M	F	M	Fe	M	F	M	F	
<b>Arunachal Pradesh West Kameng District (Aka)</b>													
Palizi	11	9	0	0	0	0	0	0	0	0	11	9	20
Baliphoo	11	9	0	0	0	0	0	0	0	0	11	9	20
Thrizino	11	9	0	0	0	0	0	0	0	0	11	9	20
Sakrin	10	10	0	0	0	0	0	0	0	0	10	10	20
Bhalukpung	10	10	0	0	0	0	0	0	0	0	10	10	20
<b>Assam Tinsukia District (Adibasi)</b>													
Konapathar	0	0	8	12	0	0	0	0	0	0	8	12	20
Khatalguri	0	0	7	13	0	0	0	0	0	0	7	13	20
Khatangpani	0	0	5	15	0	0	0	0	0	0	5	15	20
Pengree	0	0	7	13	0	0	0	0	0	0	7	13	20
Phuphulajan	0	0	7	13	0	0	0	0	0	0	7	13	20
<b>Nagaland Kohima District (Angami)</b>													
Phesama	0	0	0	0	10	10	0	0	0	0	10	10	20
Jakhama	0	0	0	0	11	9	0	0	0	0	11	9	20
Viswema	0	0	0	0	10	10	0	0	0	0	10	10	20
Khonoma	0	0	0	0	11	9	0	0	0	0	11	9	20
Jotsoma	0	0	0	0	11	9	0	0	0	0	11	9	20
<b>Assam N.C Hills District (Dimasa)</b>													
Thereh	0	0	0	0	0	0	10	10	0	0	10	10	20
Choto Waphu	0	0	0	0	0	0	12	8	0	0	12	8	20
Baojen	0	0	0	0	0	0	12	8	0	0	12	8	20
Gidingpur	0	0	0	0	0	0	10	10	0	0	10	10	20
Jembru	0	0	0	0	0	0	10	10	0	0	10	10	20
<b>Meghalaya Garo Hills District (Garo)</b>													
Jampara	0	0	0	0	0	0	0	0	10	10	10	10	20
Dilma A.Pal	0	0	0	0	0	0	0	0	10	10	10	10	20
Dagal	0	0	0	0	0	0	0	0	10	10	10	10	20
Dadenggre	0	0	0	0	0	0	0	0	10	10	10	10	20
Jengjal	0	0	0	0	0	0	0	0	10	10	10	10	20
<b>Total</b>	<b>53</b>	<b>47</b>	<b>34</b>	<b>66</b>	<b>53</b>	<b>47</b>	<b>54</b>	<b>46</b>	<b>50</b>	<b>50</b>	<b>244</b>	<b>256</b>	<b>500</b>



Thus, a balance was kept between the individual and the family. While interviewing the 500 main respondents, the views of their peers and family members were not ignored. The investigators were instructed to write their views separately under "field notes" or in other forms. These views were used extensively in the report. Moreover, one had to be aware that the views of men and women differ on most issues particularly on a sensitive issue like the gender implications of the customary law. To ensure that the views of both were got a more or less equal number of men and women were chosen as the main respondents. The sample included 244 men and 256 women (Table 1.1).

The work in each village began with three group discussion sessions, for men, women and the youth. A single session was held for young men and women since the latter were not inhibited by the presence of men of their age. The purpose of group discussion was to establish rapport with the village and understand its structure. It also made the individual interviews more effective since the respondents knew the purpose of the study. After the fieldwork in January-February 2005, the data were computerised and tabulated. The data gaps were checked in March-April by going back to four tribes but not to the same village. The earlier findings were counter-checked also by interviewing a few tribal leaders. The report was written from June to August 2005 and finalised in September 2005.

## **Conclusion**

This introductory chapter gives the background of the study on the interface between the tribal customary laws and modern inputs. This chapter has already given some indications of changes. That analysis will be continued in the remaining chapters in order to see up to what extent modernisation of their traditions has affected women's status and class division among the tribes studied.