CHAPTER - 1

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A Background

Customary law is considered to be the oldest law having its subsistent relevance. It is still prevalent in different parts of the world. For some societies it is a source of law while for others it is law per se. Customary law is a dynamic law. It is not a static law as such, even though, it is too rigid to be easily changed. In this world of ethnic pluralism and diverse socio-cultural ethos and practices, customary law varies from society to society and from age to age. According to C.K. Allen, Custom is the first and most essential law. Most of the customs are recognised not because the courts or legislatures give them sanctity of law but because they are treated as such law by the community as a whole and people feel themselves bound by them. Savigny opines that custom per se is law. It does not require state recognition to become law. This conceptual understanding of custom as said to be already law in itself, according to historical school, is different from that of the analytical school wherein its main priests like John Austin argued that customs are not law until so declared by the sovereign. Custom is considered only as a source of law until it is being recognised by the state or its instrumentalities. This view of the analytical school stands more relevant as human societies are now governed under the new modern state system. This is an impact of basic structural transformation from that of the old traditional law and system of governance to a new contemporary law and system of governance. An appropriate synthesis of the two systems is essential in the present approach.

Article 27 of the United Nations Declaration on the Rights of the Indigenous Peoples, 2007 (Geneva) provides that states shall establish and implement in conjunction with indigenous peoples concerned a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples’ law, traditions, customs and land tenure systems to recognise and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process. This Article clearly aims to strengthen and develop the indigenous laws and customs by giving due cognizance. The U.N. Declaration is a clear indication of the objective approach of the apex world body in safeguarding and promoting the various customary laws of the (indigenous) peoples around the world.

British India paid respect to the customary laws, traditions and cultures of the Indian tribals and more particularly that of the North East tribals. The Frontier Regulation - II of 1880 excluded the tribal peoples including the Nagas from coming under the purview of ordinary laws (usual laws) as it may be unsuitable and complex to them. The British Government throughout their reign in India actively pursued the policy of “non interference” thereby giving simultaneously maximum autonomy to the tribals like the Nagas. The earliest move of the British Government in this direction found reflection in the Scheduled District Act of 1874. The Act recognised that the “underdeveloped tracts” which among others included the Naga (Hills) District, the Lushai (Hills) District, The Garo (hills) District etc. as a part of the erstwhile province of Assam created in the same year, needs to be treated differently
with regard to enforcement of the procedures of ordinary laws. The Government of India Act, 1919 popularly known as Montague Chelmsford Reforms, 1919 was brought into force. The matter relating to the administration of the tribal areas of the North East was dealt with in the background of the Montague Chelmsford Report. The report stated that there were certain backward areas to which the reforms could not apply and that these tracts should be administered by the Governors. These areas were inhabited by the tribals and it was referred as “Backward Tracts”. The Governor General in Council may declare any territory in British India to be a backward tract and may by notification with such sanction as aforesaid direct that this Act shall or shall not apply to that territory subject to such exceptions and modifications as may be prescribed in the notification. The Government of India Act, 1935 was enacted after the recommendation of “Simon Commission Report, 1930”. The report contented that there were certain backward areas to which the reforms could not apply and that the typically backward tracts should be administered by the Governors. It may be noted that it was not backwardness alone but their distinctive nature in race (mongoloid), history, polity, culture, customs and traditions that induced the policy of non-interference. The Simon Commission Report, 1930 thus upheld the spirit of the Government of India Act, 1919 as far as the tribals are concerned. The term backward tract was abandoned by this Act and new terminologies such as ‘Excluded Areas’ and ‘Partially Excluded Areas’ were introduced therein. The Government of India (Excluded and Partially Excluded Areas) Order, 1936 classified the Excluded and Partially Excluded Areas as follows³.

Excluded Areas

A. The North East Frontier (Sadiya, Balipara and Lakhimpur) Tracts,
B. The Naga Hills District,
C. The Lushai Hills District,
D. The North-West Frontier Province,
E. The North Cachar Hills Sub-division of Cachar District.

Partially Excluded Areas

A. The Garo Hills District,
B. The Mikir Hills (in the Nowgong and Sibsagar Districts),
C. The British portion of the Khasi and Jaintia Hills District other than the Shillong Municipality and Cantonment.

Section 52 A(2) of the Act Provides that the Governor-General in Council may by notification direct that any Act or legislation shall not apply to the territory in question or any part thereof or shall apply to the territory or any part thereof subject to such exceptions or modifications as the Governor-General thinks fit. This provision directly enabled the North East tribals to be governed by their own customary laws and systems without much interference from the British regime. Section 92 of the Act further provides that no Act of the Central or Provincial legislatures could apply to the Naga Hills District unless the Governor so directed. This is another positive measure the British Indian Government had taken to safeguard and promote the various traditions, cultures and customary laws of the Nagas. As aforesaid, the Naga Hills District along with the North-East Frontier
Tract, the North West Frontier Province, the Lushai and North Kachar Hills formed Excluded Areas within the province of Assam from 1st April, 1937. Thus, the Act, like other hill areas, excluded the Naga Hills from the general constitutional arrangements. This, however, was opposed by many as a policy of segregation and isolation but to no avail. Armed with the provision enumerated above, the British administration encouraged the Naga people to deal both civil and criminal matters by their own customary laws through the agencies of their indigenous institutions and village courts except those which were of heinous nature. Simpler regulations and techniques were devised according to the exigencies.

The independence of India opened a new chapter for the development of the tribals in India according to their own genius. In India and more particularly in North East states, customary law has not yet lost it sanctity, value and utilities. In fact, most of the tribal societies (indigenous peoples) in this region are rather still embarked with their native laws and systems. The problems of administration of justice in tribal areas of the North Eastern region attracted serious attention of the Constituent Assembly. A Sub-Committee of the Constituent Assembly called the North Frontier (Assam) Tribals and Excluded Areas Sub-Committee was constituted with late Lokapriya Gopinath Bordoloi as its Chairman. The Committee reported that uniform and general administration which prevailed in the plains should not be introduced in these tribal and excluded areas due to the special circumstances of the region. The special circumstances arose from the distinct way of life of the tribal people, their system of governance, their customs, their attachment to and dependence on land and forests, their peculiar mode of cultivation and the manner
in which criminal and civil disputes were resolved. The Sub-Committee further recommended as regard to the administration of criminal and civil justice, "On the principle that the local customary laws should be interfered with as little as possible and that the tribal councils and courts should be maintained, we recommend that the hill people should have full powers of administering their own social laws, codifying or modifying them". The Constituent Assembly adopted the Draft Rules with necessary modification for administration of tribal areas in Assam submitted by the Sub-Committee. It incorporated in the Sixth Schedule to the Constitution wherein Article 244(2) declares that the provisions of the Sixth Schedule shall apply to the administration of the tribals in the states of Assam. The old terminologies like Excluded Areas and Partially Excluded Areas as used during the days of the British India are now called Autonomous Districts.

The late Pandit Jawaharlal Nehru as the first Prime Minister of India, while announcing the government of India’s decision in the Lok Sabha on the 1st of August, 1960 to create the state of Nagaland, said, "We have not the slightest desire to interfere in the tribal customs and usages of the Nagas or in their distinctive ways of life". The constitutional arrangement provided by the British Government were allowed to be continued with much more elaborate provisions and scope under the Sixth Schedule of the Indian Constitution especially as regard to the North East tribals. The Naga Hills were administered as Scheduled Areas under the provisions of Sixth Schedule to the constitution. Article 244(2) provides that the provisions of the Sixth Schedule shall apply to the administration of tribal areas in the state of

4. A Study of Administration of Justice Among the Tribes and Races of North Eastern Region by Law Research Institute, Eastern Region, Gauhati High Court, Guwahati, 1987, p.69.
Assam and other North Eastern areas. The Sixth Schedule divides the tribal areas into Part-A and Part-B. In Part-A of the table appended to paragraph 20, it includes (i) the United Khasi-Jaintia Hills District, (ii) the Garo Hills District, (iii) the Lushai Hill Districts, (iv) the Naga Hills District, (v) the North Cachar Hills and (vi) the Mikir Hills. In Part-B of the Schedule, it includes (i) the North East Frontier Tract, including the Balipara Frontier Tract, Abor Hills District and Misimi Hill District and (ii) the Naga tribal areas. The provision of Sixth Schedule of the constitution was also extended in the Boro areas in Assam. It has been lately extended in the tribal districts of Tripura. As per Paragraph 12 of the Schedule, the Governor may by public notification direct that the provisions of any Act of Parliament or of the legislature of Assam shall apply or shall not apply with such modifications or exceptions as he may specify in the notification. This clearly signifies that no law which is not suitable to the governance of the tribal society and against the application of their customary laws should be applied in such scheduled areas. Subsequently, the Constitution (thirteenth Amendment) Act, 1962 was passed which inserted a new Article 371-A that led to the creation of Nagaland state in 1963. This Article provides for the following, notwithstanding anything contained in the constitution:

(a) No Act of Parliament concerning the following matters, shall apply to the state of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides -

(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,

(iv) ownership and transfer of land and its resources.

Hence, it can be said that the process of providing a happy synthesis and growth of the Naga people within the frame of their own laws and customs rests with themselves. Article 371-G was also inserted by the Constitution (Fifty third Amendment) Act, 1986 to give effect to a Memorandum of settlement on Mizoram signed by the Government of India and the Government of Mizoram with the Mizo National Front which envisaged among other things the conferment of statehood on the Union Territory of Mizoram. The same constitutional recognition and safeguards conferred to the state of Nagaland under Article 371-A was also accorded to the state of Mizoram. Besides this, the Jaintia-Khasi combined with the Garos have formed the state of Meghalaya whereas the tribals of North East Frontier Tracts have formed the state of Arunachal Pradesh.

As abovestated, the British regime gradually included the territories of all the tribals of North Eastern region under the erstwhile province of Assam, the state of Manipur and Tripura. The British regime was extended in Manipur in the year 1891 AD. In the process, the Tangkhuls and many other tribes were put within the state of Manipur. This is basically for the convenience of control and supervision of the tribal territories by the Britishers. The year 1896 AD is a landmark in the history of the Tangkhuls. Because, Revd. William Pettigrew, an American Baptist Missionary, came in Tangkhul territory in the said year with the gospel of Jesus
Christ and the spread of education began therefrom. The state of Manipur, with the coming of British rule, experienced for the first time a new dimensional change in polity and governance. The British Government through its political Agents and with the active assistance of the Darbars who are appointed by the Maharajah of Manipur began to take control and duly supervised the administration of the hill areas in Manipur in the early part of the twentieth century. Manipur at that point of time was divided into three parts. The British Reserved Area (now the entire Imphal Municipal area), the valley Area (all other valley districts) and Hill Areas (now Ukhrul district, Senapati district, Tamenglong district, Churachandpur district and Chandel district). The disputes among the tribesmen in the hill areas were decided amicably by the village Headmen and Councillors according to their customary laws. But only in serious cases, the disputes were referred to the Political Agents and Assistant Political Agents, meaning, although British Government through its Political Agents and Manipur Darbars controlled and supervised the administration of the Manipur hill areas, the territories of such indigenous peoples did not form part of the then British India. In a much later stage, the Manipur State Hill Peoples (administration) Regulation, 1947 was first introduced in the hill (tribal) areas of Manipur by the Maharajah. The Act attempted to bring some changes in the village administration and beyond. But it shortlived as it became unpopular due to non incorporation of the basic structures of the tribal customary laws into the said Act.

Long after the independence of India, Manipur obtained statehood in the year 1972. There are altogether nine districts in Manipur and out of which five are hill (tribal) districts. Neither the Fifth nor the Sixth Schedules of the Indian
Constitution is extended in the hill areas of Manipur. Nevertheless, the hill (tribal) districts in the state of Manipur are accorded with special constitutional provisions under Article 371-C. Article 371-C provides that the President may, by order provide for the creation of a Committee of the Legislative Assembly of the state of Manipur, consisting of the members of that Assembly elected from the hills areas of that state. It further provides that the Governor of the state of Manipur is vested with special responsibility to secure the proper functioning of the Committee and to make an annual report to the President regarding the administration of the hill areas in the state. The Union Government may give direction to the state as to the administration of the said areas. Manipur became a full fledged state in the year 1972 under the North Eastern Areas (Reorganisation) Act, 1972.

The President of India, in exercise of the powers conferred by clause 1 of Article 342 of the Indian Constitution and after consultation with the Governors and Rajpramukhs of the states concerned was pleased to make the order called the Constitution (Scheduled Tribe) Order 1950 bearing C.O. No. 226. The Tangkhuls are one of the 29 Scheduled Tribes being recognised under this Presidential Order. There are, as of now, not less than 31 recognised tribes in Manipur including Paomei and Kharam tribes who were also recently accorded recognition as Scheduled Tribes by the President of India. The objective reason for granting special constitutional provision to the state of Manipur under Article 371-C is to protect, safeguard and promote the interest of the tribals. The President of India vide his Order No. G.S.R. 317(E) dated the 20th June, 1972 in exercise of the powers conferred by Article 371-C made an Order called “The Manipur Legislative Assembly (Hill Areas

7. Published in the Gazette of India, Extraordinary, 1972, Part-II, Section 3(1), p. 817
Committee) Order, 1972. According to Paragraph 2(c), “Hill Areas” means the areas specified in the First Schedule. The areas specified in the First Schedule are Manipur North (Senapati district), Manipur East (Ukhrul district), Manipur West (Tamenglong district), Manipur South (Churachandpur district) and Chandel, Chakpikarong and Tengnoupal now under Chandel district. The areas covered by these districts are scheduled hill (tribal) areas. “Hill Area Committee” under Paragraph 2(d) means the Hill Areas Committee constituted by paragraph 3 of the Order. According to Paragraph 3(1), there shall be a Hill Areas Committee of the Assembly consisting of all the members of that Assembly who for the time being represent the Assembly constituencies situated wholly or partly in the hill areas of the state. This means that Hill Areas Committee constituted by the members of the Legislative Assembly (MLAs) from the tribal community are conferred with the right to deal with any of the scheduled matters when it comes for legislation in the Assembly. As per paragraph 4(1), all scheduled matters in so far as they related to the hill areas shall be within the purview of the Hill Areas Committee. According to sub-paragraph 2, every Bill other than a Money Bill, affecting wholly or partly the hill areas and containing mainly provisions dealing with any of the scheduled matters shall after introduction in the assembly, be referred to the Hill Areas Committee for consideration and report to the Assembly. If any question arises whether a bill attracts the provision of this sub-paragraph or not, the question shall be referred to the Governor and his decision thereon shall be final. Subparagraph 3 also provides that Hill Areas Committee shall have the right to consider and pass resolutions thereby recommending to the Government of the State any legislation or executive action affecting the hill areas with respect to any scheduled matter. “Scheduled matters”
as per paragraph 2 (f) of the said Order means the matters specified in the second schedule to the Manipur Legislative Assembly (Hill Areas Committee) Order, 1972.

The items included in the said Second Schedule are:

1. Development and economic planning within the plan allocations for the hills areas.

2. Constitution and powers and functioning of District Councils in the hill areas.

3. The allotment, occupation, or use or the setting apart of land (other than any land which is a reserved forest) for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interest of the inhabitants of any village or town situated within the hill areas.

Provided that nothing in this item shall apply to land acquired for any public purpose or the acquisition of land, whether occupied or unoccupied, for any public purpose in accordance with any law for the time being in force authorising such acquisition.

4. The management of forest not being a reserved forest.

5. The use of any canal or water course for purposes of agriculture.

6. The regulation of the practice of jhum or other forms of shifting cultivation.

7. The establishment of village committee or councils and their powers, and any other matter relating to village administration.

8. Public health and sanitation.

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9. The appointment or succession of Chiefs or Headman.
10. The inheritance of property.
11. Marriage and divorce.
12. Social customs,
13. Any other matter which the Assembly may by resolution declare to be a matter which shall come within the purview of the Hill Areas Committee.

All these provisions of law clearly manifest the constitutional safeguards to develop and promote the interests of the tribals in Manipur. The Constitution has conferred the Hill Area Committee a vital role and authority in the legislative processes in the State Assembly in respect of the hill (tribal) areas as regard to scheduled matters including land laws, marriage laws, law of succession and inheritance, and other social customs. As aforesaid, most of the central and state made laws are not applied in the hill (tribal) areas of Manipur. They have been predominantly governed by their own customary laws since time immemorial. It may herein be reckoned that the Manipur State Hills Peoples (Administration) Regulation, 1947 was first introduced in the hill areas of Manipur. After the independence of India, the Manipur (Village Authorities in Hill Areas) Act, 1956 was enacted and enforced as a substitute of the former Regulation (1947). It has been found that the two Acts are quite unpopular and being rejected by the tribals because the Acts do not reflect the basic structures of their good customs. The Criminal Procedure Code, 1973, the Civil Procedure Code, 1908 and other enacted personal laws of India are not applied in this tribal region. Nevertheless, the Criminal
Procedure Code is applied in spirit though not in letter when it comes to certain criminal matters that cannot be settled by customary laws.

The critical questions arises whether or not the customary laws are adaptable to the changing needs, ideals and aspiration of the contemporary tribal society in North East India and more particularly in the state of Manipur? Can the prevailing customary laws of the Tangkhuls be still regarded as dynamic with legal efficacy to ensure effective administration of law and justice?

Despite the available constitutional provisions for making suitable laws for the tribals in Manipur on the aforesaid scheduled matters, there appears to be a lack of endeavour towards this end by the Manipur State Assembly. It is also equally true that there has neither been an adequate legal literature nor a legal research having attempted to testify the validity of customs, its relevances and prospects for further development. There are a very negligible number of cases having customary cognizance and importance in the existing judicial institutions of the state. The *Tangkhul* society like other fellow tribal societies is now a part of the state of Manipur. Here, exclusivity in the matter of village governance and other administrative affairs has ceased and a new structural hierarchy of administration has come into place. The emergence of modern state and society has ostensibly diminished the importance of some customary laws. This is the problem at hand. This is due to the onslaught of structural-transformation of the society as well as the rapid change of the peoples’ mindset, ideal, need and aspiration. This new dimension necessitates a new look and a new approach towards the prevailing
customary laws of the tribals of the North East and more particularly that of the tribals in Manipur. A new orientation of the native customary laws have become really imminent. In that perspective, the Tangkhul (Naga) customary law is taken as a fit case for the present critical investigation. This challenging reality has inspired this researcher who is also an insider with a sense of responsibility and keen interest in making an attempt to find out what really is customary law (including the different branches of customary laws), its subsistent relevances, prospects for development and necessary legal recognition with special reference to the Tangkhul society.

It is to note that the present area of investigation is a very vast one. The present work is only a piece of that vast unresearched field of Tangkhul customary laws. The researcher in this piece of work makes only a modest effort to tread a little pathway, leaving thereby the greater part of the untrodden realm of insight to future researchers.

The Tangkhuls and their land

The Tangkhuls are one of the major tribes of North-East India belonging to Naga Community. They are mainly found in the state of Manipur and Nagaland in India and Somra hills in neighbouring Myanmar. Basically, the Tangkhuls belong to the great Mongolian race which is now spread all over the world. The Tangkhuls, ethnically and linguistically, are of the Tibeto-Burman group which is the sub-family of Sino Tibetans. Today, Ukhrul (Hunphun) language remains as a standardized common dialect of the entire Tangkhul society. In Manipur Tangkhuls are mainly found in native Ukhrul district and scarcely in the adjoining district of Senapati and
Chandel. The population of the Tangkhuls in Imphal, the capital city of Manipur is also considerably high. The gross population of Ukhrul district as per Hill House Survey Report, 2007-2008 (DC Office, Ukhrul) is 1,17,616 (one lac seventy-one thousand six hundred and sixteen). The overall population of Tangkhuls in India is approximately two lacs.

There are theories and/or traditions as regard to the origin of the Tangkhuls. One such tradition is that the earliest home of the Tangkhuls was the upper reaches of Huangho and Yangtze rivers which lie in the Zinjiang province of China. Huangho river is now known as yellow river. Several groups of people including the Tangkhuls dispersed from this place to different directions due to hardship of life over there. It is said one group moved towards east and south-east to be known as Chinese, another group moved south-westward and came to be known as Tibetans, and still another group moved southward to become the tribes of Tibeto-Burman which includes the Tangkhuls and other Naga sub-tribes. That was between 10,000 BC to 8000 BC. T. Luikham opines that at some point of time Tangkhuls were living at Hsawnghsup now known as Thaungdut in Myanmar before they came to the present habitat. Tangkhuls call this place as Samsok. Thaungdut is situated on the west bank of Chindwin river in Myanmar. His view on this historical fact stands quite reasonable and acceptable inasmuch as Tangkhuls' migration from Samsok to the present habitat is being supported by a Tangkhul folk song which reads thus,

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Oh! milung kathui kaleida thuithoilo?

Oh! Samsok marok leida thuithoi.

Shokvaoa leida shokngavao

Meichailungli mei shokngayar

Rungatak leida mi shokngayar

Hunphun wunga kharara

Translated to English:

Oh! whence come thou originally?

Oh! we originated from samsok

We call and gather all our kindreds at shokvao

We make fire at Meichailung

We distribute at Rungatak

Hunphun (Ukhrul) Chief the eldest.

This suggests that Tangkhuls who basically migrated from China were settling at Thaungdut (Samsok) before they came to this present habitat more than 2000 years before. Manipur is one of the states of India bordering Myanmar. She lies between latitude 23.80°N; longitude between 93.03°E and 94.78°E covering a geographical areas of 22,327 sq. km. Manipur is a gateway of India to South East Asia. This geographic situation influenced the course of her history and cultural development. It is a country of blue mountains and green valleys. She is bounded in the North by Nagaland, in the east and in the south by Myanmar, in the south-west by Mizoram and in the west by Assam. Basically, the state of Manipur has three major

12. Statistical Handbook of Manipur, 1992, p.3
ethnic groups. The *Meiteis* of the valley, the *Nagas* and *Kukis* of the surrounding hill areas. They are predominantly Mongoloid and speak Tibeto-Burman languages since prehistoric times. As aforesaid, there are nine administrative districts in Manipur and Ukhrul district is the home of the Tangkhuls.

*Ukhrul* is one of the biggest hill districts of Manipur. It is the district headquarter as well as the capital town of the *Tangkhuls*. This beautiful mountainous terrain curves out across the international boundary line that separates Myanmar from India. This land with its exotic fauna and flora and other scenic beauty offers attraction to many domestic and foreign tourists. Ukhrul district occupies a geographical area of 4,544 sq.kms. It is bounded by Myanmar in the East, Nagaland in the North, Chandel and Thoubal districts in the South and Senapati and Imphal East in the West. A border district stretching about 200 kms. of international boundary, Ukhrul also offers great scope for international border trade and serves as a gateway to South-East Asia. It is one of the most naturally blessed districts where mineral wealth like chromite, limestone, serpentine, salt, copper, nickel, magnesium etc. which are yet to be exploited are abundantly available. *Shirui lily*, *khayang* water fall and ancient *Khangkhui cave* are some of the famous domestic and foreign tourists attractions for the region. In 1946 Mr. Kingdon Ward who came to Manipur (Naga Hills) for botanical collections on behalf of the Newyork Botanical Society had made a sensational discovery of the famous *Shirui lily* which bagged prestigious merit prize of 1948 Royal Horticultural Society flower show in London. “*Lilieum Macklinae Sealy*” is the internationally known botanical name of the *Shirui lily* named after the maiden name of the wife of its discoverer, Kingdon
ward. This lily which is found only in the Shiroi peak of Ukhrul district, Manipur is never-ever found in any part of the world. This is where its unique beauty lies. The important river (Kong) found in the district are Iril, Ihang, Thoubal kong, Chingiaroi kong, Chingai kong, Chamu kong, Maklang kong, Taret kong, Tuyungbi kong, Chatrik kong and Makukong. Ukhrul has a sub-tropical monsoonal high land temperate climate, that is, wet and mild summer, and dry and cold winter. There are also notable mountains such as; Khayangphung, Shirui Kashong peak and Kachauphung. Traditionally Tangkhul society was divided into seven zones. These are, Kamo (south), Raphei (north), Somra (east, north-east), Kaikhang (south-east), Kharao (west), Khaorui (south-west) and Kathur (north-east). Today, Ukhrul district is divided into five administrative sub-divisions. These are; Ukhrul sub-division, Chingai sub-division, Kamjong sub-division, Phungyar sub-division and Kasom Khullen sub-division.

According to Khasim Ruivah, the Tangkhuls used to live in a well defended and well defined territory of their own. In the days of yore, each village was politically an independent unit, headed by a village Headman or Chief with a council of elders. In those days, it was completely isolated not only from the rest of the world but also from its neighbouring villages. Before the British occupation of Manipur in 1891, the Tangkhul Nagas lived peacefully in their land following their own customary law, culture, tradition and religion without interference from outside. Each village had its own definite land having its own definite boundary. There was less social communication between the different villages. They were socially and administratively isolated from each other. They had village states like the city states

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of the ancient Greece. The administrative and social systems of each and every village was organised and formulated by the village council constituted by the elders of the village. All the conventional systems were strictly guarded and enforced for smooth and peaceful community life\textsuperscript{14}.

\textit{Tangkhuls} are deeply rooted to democracy. Even though the seat of village headman known as \textit{Awunga} in native is hereditary, all decisions of the village are taken democratically. The social life of the \textit{Tangkhul} Nagas was based on socialistic pattern of society. Socialist democracy is significantly found in the village mechanism of governance. This socialist democracy is in fact considered to be the purest form of democracy. Elwin Verrier supported this position when he says\textsuperscript{15}, “Every Naga follows the dictates of his own will, a form of the purest democracy which it is very difficult indeed to conceive as existing even for a day; and yet that it does exist here is an undeniable fact”. A high order of social welfare system was practised by the \textit{Tangkhul} Nagas in their village states. There was no class system in \textit{Tangkhul} society. Everyone was equal in the eyes of law and customs. There has been no oppression and suppression to the poor and needy by the rich and wealthy people. Instead, the poor and needy people received the support of rich and well to do people. In \textit{Tangkhul} village, there were well organised societies of youths. In small villages there was single unit of youth society but in big villages there were units of youth societies in different sectors of the villages which varied according to the size of the villages. The traditional institution of such young people is called \textit{Longshim} which is also commonly known as \textit{morung} by Nagas. In the olden days, the \textit{Tangkhuls} believed in \textit{Ameoa}, the supernatural God of the universe. Their ancient

\textsuperscript{14} Arang M.C., Cultural Accounts of Tangkhul (Nagas), Imphal, 1999, p.7.
\textsuperscript{15} Verrier Elwin., The Naga in the Nineteenth Century, Oxford University Press, 1961 London, p.525
religion was known as ameoyan. They sacrificed animals before Ameoa, a spirit god, to please it and atone their sins. As aforesaid, the Tangkhuls, however, came to a radical socio-religious transformation with the coming of Christianity in the year 1896 A.D. by one Revd. William Pettigrew, an American Baptist missionary.

The objectives of the study

The main objectives of the present piece of work are;

1. to critically analyse and derive a comprehensive understanding of the Tangkhul customary laws and its subsistent relevances and irrelevances in modern Tangkhul society. In other words, it means the need to study the merits and demerits of the existing Tangkhul customary laws in legal perspective.

2. to identify the basic structures of customary law.

3. to identify the need and challenges in developing the Tangkhul customary laws in line with other tribals customary laws. The present study emphasises on some of the suitable modes of developing the customary laws. The present unwritten form of customary laws unless modified and developed into some concrete form will lose its viability in the long run.

4. to concisely understand about the Tangkhuls.

5. to study and understand the general concept of customary law with more clarity and
6. to analyse and find out the impact of Christianity upon the viability of Tangkhul customary laws since 1896 A.D.

The Research Methodology

Methodology is a pre-requisite in any scientific inquiry. Different methods are applied in any research work. Research methodology is a systematised investigation to gain new knowledge about the phenomena or problems in question. In its wider sense, methodology includes the philosophy and practice of the whole research process. It provides the standards which the researcher use for integrating data and reaching conclusion. The nature of legal issues and the subject matter of law is radically different from other sciences. Therefore, the content of the propositions and explanations is also different. The methodology of legal studies involves their own rules, interpretations and criteria for admissible explanations as well as research designs, data collecting techniques and data process routine. In most of the legal investigations, qualitative data has to be analysed. One needs to seek access to adequate data for one's investigation, and analyse the same on the basis of the study of related literature. In the present work, the researcher judiciously analyses the available datas by studying the related literatures.

The topic for this investigation has been selected in view of the hard fact that the Tangkhul customary law which is still predominantly governing the Tangkhul society needs to be critically analysed and reoriented in such a manner most suited to the changing needs, ideals and aspiration of the contemporary society. Meaning, customary law must be developed. While developing it, basic structures of good
customary laws are not to be destroyed in random. The other reason for selection of this work is that no legal research has ever been carried out on this topic which is otherwise so imminent in the transitory period of the North East Tribals including the Tangkhul society. It is equally true that university legal researchers have so far neglected adequate research work in the field of customary law. Minimal attention in the said research field has been given. The absence of central and state Acts without equally having a well developed customary laws and/or indigenous laws in the Manipur hill (tribal) areas has created a vacuum that needs to be taken care of at the earliest. The researcher duly applied both doctrinal and empirical methods in the course of investigation. Towards that end, the researcher analysed the case laws (decisions taken by competent courts) that are found relevant and appropriate to the underlying issues. By applying empirical method, materials are collected and used from the primary sources which includes seminars, workshops, consultative programmes, interviews and group discussions. Materials collected from secondary sources such as published works, compilations, journals and magazines are also being used in the work. Materials from past research work in the related field are utilised whenever found relevant. The researcher being an insider and also a member of Drafting Committee for compilation of Tangkhul customary law has a great advantage in understanding the topic and the problems of research with more propensity and clarity. The researcher attempts to judiciously analyse the available materials by studying the related literatures. In the course of the investigation, an endeavour is being made through legal reasoning and rational deduction keeping in view the social ethos, social values and utility of customary laws. Law being one of the instruments of social change, a society needs a good law to bring a vibrant
society. Customary law being dynamic and an instrument of social change, it must be adaptive to such changing social realities. For this purpose, the researcher has adopted the following hypothesis to be tested.

"Development of customary law will only ensure effective administration of law and justice in modern Tangkhul society"

In the present inquiry, the validity and authenticity of many customary laws is being verified and the defective customary laws identified after necessary inquiry and jurisprudential test. It has been judiciously examined by taking into consideration the different modes for development of customary laws in the present day context. Most of the customary laws are still in unwritten form despite very few compilation work has been carried out in some branches of customary laws. The present study attempts to identify the need and inclination to make codification of customary laws by competent authorities as an effective tool of customary law development. Codification work poses a number of problems. One such problem is the variation of customary laws between different tribes. Hence, intensive study of such varied tribal customary law is mandatory before codification. The aim to codify customary law is to make such laws more universal, efficacious and in tune with the changed situations. Another mode of development of customary law is that the state and/or other competent authorities may make laws for the tribals by way of legislative enactment on the basis of the customary laws. For instance, such relevant Acts can be enacted as regard to constitutional and administrative matters of the villagers in hill areas of Manipur. There are some reliable mode of developing the existing customary laws in conformity with the changed scenario.
Law and society are not divisible as watertight compartments. They are interlinked to each other. The need for a new law, a change in existing law and the difficulties that surrounds its implementation cannot be studied in a better manner without the sociological inquiry. Law is an important variable in any social investigation. Any researcher finds it very difficult to do anything in sociological research if one does not know at least the basis of law, legal system and legal institutions. Similarly, a legal researcher cannot do justice to the legal inquiry if one does not know about the mechanics of social research methods. In the present critical legal research, the researcher studies the existing customary laws as well as other relevant laws, the present societal needs and finds out the defects in the existing (customary) laws. The present inquiry cannot include the Tangkhuls of Myanmar for want of security, resources and time.

Chapterisation

The topic of the present investigation is divided into seven chapters:

Chapter 1 is an introductory part of the thesis. It briefly deals with the North East tribals of India vis a vis their customary laws since the regime of British India. It precisely examines the constitutional safeguard and cognizance on customary laws. It briefly describes the Tangkhuls and their land. It outlines the need and importance of customary law in contemporary Tangkhul society. It streamlines the area of the present study. It also stress the methodology adopted in the inquiry and the objective of the study. Chapter 2 deals with the general concept of custom; its origin, classification, essenticals and jurisprudencial test of customary laws, proof of customary law, importance and transformation theories of custom into customary
law and Customary International Law. Chapter 3 contains an in-depth emphasis on the Tangkhul customary laws on constitutional and administrative matters. This chapter provides the analytical information of both the pre-Christian and post-Christian customary laws. The traditional citizenship system, principles of equality and freedom, the village governmental organs etc are critically analysed herewith. This chapter also outlines some basic principles of administrative law vis a vis the Tangkhul concept of (customary) administrative laws. The emergence and working of Tangkhul Naga Long (an apex Tangkhul socio-cultural body) and its constitution are also analysed in this chapter. Chapter 4 dwells upon the analysis of some basic elements of criminal jurisprudence as per Tangkhul customary law. Chapter 5 deals with customary laws on civil matters comprising of the family matters (marriage, adoption, minority and guardianship, maintenance, succession and inheritance), transfer of property (exchange, sale, mortgage, lease, gift) and customary land holding system. Chapter 6 presents the legal position of the Tangkhul customary law in India and the need for its development and recognition. The concluding Chapter 7 gives an appraisal of the inquiry and analysis of the findings, evaluation of the hypothesis along with the recommendation made on the basis of the findings.