1.1 Background of the Customary Laws

Law is one aspect of the system of social control which is an implicit part of every culture. Social control consists of all those practices engaged by the members of a society to reward and encourage culturally approved behaviour and to penalize and discourage culturally disapproved behaviour. Law is a part of the norm selecting and norm maintaining system relied upon by each society in itself-organization.¹

In every society, some individuals tend to deviate from normal social order. For a society to exist and function normally there must be some conformity among its members. In most societies, the people conforms the societal behaviour through internalization, or through learning of norms and values. But sometimes, people do not want to conform to the norms and values of their society. Every culture must have structural provisions for resolving conflicts of interest in an orderly fashion and for preventing conflicts from escalating into disruptive confrontations. This is when legal realm of the custom comes into action as customary laws.²

Customary Law is most commonly used to describe the largely indigenous law of the indigenous people especially the tribes in the European

² Ibid.
colonial territories. The basis of validity for these laws, which are similar to the custom of the western legal systems, lies in social practices accepted as obligatory.\(^3\)

Bekker\(^4\) observed that when lawyers write about customary laws they have professional concern to reduce the typically undifferentiated repertoire of principles, adages, maxims and anal folk proverbs of an oral tradition to a systemic code of rules. For this he exemplified court precedents, statutes, ethnographies and colonial commissions of enquiry so as to make use of them in the courts and legal practitioners. Such approach suffers because of defects in the rules which are abstracted from social context, and are frozen in precedents and other formal legal sources, their function is obscured as is their standing in relation to the reality of current social practice.

It must, however, be kept in mind that from an early date, the task of writing about customary law was mainly the task of anthropologists. In doing so, they took care to place law in its social context by developing a separate scholarly tradition. Schapera\(^5\) was one such a distinguished scholar as could be evidenced from his account of the customary laws of the various peoples of the Bechuanaland protectorate (now Botswana) which is considered a model of the gentry. He described Tswana law against a background to Tswana social and

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political institutions and the tensions between tradition and then influence of modern world. His work had been commissioned for use in the colonial courts.

Following closely the approach of Schapera, Holleman\textsuperscript{6} while writing sought to avoid pitfalls. As an anthropologist, Holleman explained the institutions of marriage and succession of a Shona people in Southern Rhodesia (now Zimbabwe) primarily with reference to their system of kinship. The works of both Holleman and Schapera are best considered as representatives of a high point in functionalist anthropology despite the fact that law and societies they described have long since succumbed to the forces of capitalism, underdevelopment, urbanization etc. not to mention such post colonial concerns as national unity and gender equality.

Among the third group of scholars who undertook such studies on customary law, Simons\textsuperscript{7} may be mentioned. He tried to show as to how social, economic and political policies regulated the status of women in South Africa. In doing so, he placed the law, be it customary, statute or precedent, in the historical framework of South African politics in the then existing Social context when colonial authorities were highly conscious of their “civilizing mission”, they sought to suppress bride wealth and polygamy on the ground that these practices degraded the position of women.

\textsuperscript{6} Holleman, J.F., Shona customary Law with reference to kinship marriage, the Family and the Estate, Cape Town and New York, Oxford University Press, 1952.
Later, when policies of segregation and apartheid came into force, the courts and government revived. African culture and with it the tradition of patriarchy. Griffiths\textsuperscript{8} analyzed the pluralist manner of state law and the various manifestations of customary law. This work is related to the theory of legal pluralism as about revealing new social practices. She stresses the dynamics of process and exposes the fallacy of certain conceptual destinations, such as, that between living and official laws and that between recognized courts and unofficial fora. Her other concern, a dominant theme in customary law today, is about gendered world in which individuals live. She explores the ways in which gender affects women’s access to law, how women explicit rulers (and contradictions between rules), and how they show for sympathetic fora.

Bennett\textsuperscript{9} in his work on ‘Sourcebook’ concedes the tenets of legal pluralism that aims at the law student and practitioner rather than the social scientist. He collected all the major legal and anthropological sources of customary law in South Africa and provides extensive commentaries upon them. Topics include the various tribunals applying customary law, choice of law rules governing application of customary and common law, marriage divorce, the status of women and children, and succession. A sub-text on the current debates about legal and cultural theory, comparative family law reform, and human rights runs through each topic. Paton,\textsuperscript{10} an eminent jurist, in his attempt to define, origin, nature, growth of customary law has said that

\begin{itemize}
\item Paton, Jurisprudence (4\textsuperscript{th} Edition), p. 191.
\end{itemize}
‘Custom in any early society was not only the main but also the only vehicle of legal development’. When man first started to live together constituting a society among themselves, they adjusted among themselves of their different individuals nature so that they might live in harmony. This was the beginning of creating social behaviour with various activities conducive to their diverse nature, such nature, which has the greatest possibility of acceptability by most of them gradually, became accepted law, which duly became customary laws on account of being practised repeatedly within and without that particular society or social group.

According to Fallers (1969), customary law has been used by most anthropologists for uncodified and unwritten rules. Pospisil (1971) is also of the opinion that customary law should be backed by the people’s conviction and that the society cannot function without it. Therefore it could be seen that anthropologists consider law as a means of social control which is found to be in existence in both simple and complex societies though the systems may vary. It is fact that law emerges from customs and usages through the passage of time. Custom is the major source of law and it regulates human behaviour in early societies when written laws were not in existence and again, the origin of custom lies in habit, i.e., when a group of people adopt a particular habit, it becomes a custom of that community.

In Anthropology, “Custom” refers to the totality of socially acquired behaviour patterns, which are supported by tradition and generally exhibited by members of society. For indicating this sense, the more current expressions are
‘culture’ and ‘tradition’, one area of anthropology in which expression ‘custom’ still has currency is the comparative analysis of legal and political systems in which it is distinguished from law. Customs is supported only by psychological constraint, when the individual violates the customs. In contrast, laws have the additional coercive support of specific individuals or groups who have an institutionally vested charge to enforce conformity.\textsuperscript{11}

However, it must be noted that customs is not law and is not imposed by state but when customs are recognized and get accepted then they attain the status of law. Law draws its strength from concepts of morality and morality is influenced by law but they are not identical. The former deals with the external action and the latter with the inner conscience of individuals.\textsuperscript{12}

Radcliffe–Brown says “In any social system the political institution, the kinship organisation, and the ritual life are intimately related and yet independent”. He writes: ‘In studying political organisation, we have to deal with the maintenance or establishment of social order, within a territorial framework, by the organised exercise of coercive authority through uses, or the possibility of use, of physical force.”\textsuperscript{13} According to him, there are two forms of sanctions: “There is first the sanction of moral coercion as distinguished from physical coercion; the individual who does wrong is subjected to open expressions of reprobation or ridicule by his fellows and thus is shamed.” Secondly, there are the various kinds of ritual or supernatural sanction. The

\textsuperscript{11} Stanley Wilkin, “Custom” in Encyclopaedia of Anthropology, 1976, p. 113.
\textsuperscript{13} Ibid. p. 4.
most direct of these is constituted by the unquestioned belief that certain actions bring misfortune upon the person who is guilty of them. “Therefore it can be seen that the habitual course of conduct of a given society is the customary law of that particular society”.¹⁴

Tribal customary law can be said to be a part of the study of tribal society because the existence of the tribal customary law is as old as the tribe itself. The term ‘tribal customary law’ can also be said to refer to tribal laws, which are more refined, logically accepted and more prevalent among today’s tribal societies. Therefore, customary rules or laws are to be understood in contrast to the written on modified rules of personal or public conduct or constitutional laws passed by certain legislative bodies or organisations. But human conduct is so varied and so unpredictable that every movement of conduct can hardly be put in written form to cover all the patterns of behaviour of individuals of a particular society. Besides, such rules and practices may undergo changes, modifications, alterations, etc. with the progress of times.

Customary laws thus include those rules, which are acknowledged and approved by the public opinion in the society and sanctioned by the will of community. It is thus apparent that customary laws existed even prior to the emergence of the nation or the state and which continue to exist along with the change of time.

¹⁴ Ibid, Pp. 4-5.
The primacy of the customary laws and practices is to maintain social order while prescribing rules of conduct for each individual, age and sex-wise. In tribal society it can be said that there is no well-defined societies. It can be said that there is no well-defined dimension between civil and criminal offences. The offences are primarily considered to be directed at individuals, group on the society as a whole. The customary law regulates the day to day of the tribal people in both the socio-cultural and eco-religions aspects. Harmony and disharmony, co-operation and conflict, conformity, observance of social norms and their occasional violence are easily observable in any functioning of socio-cultural unit. Violation of the standing customs generates indignation among the law abiding neighbour.

Should any disturbances occur due to non-observance of the customary rules and practices, society has some socio-cultural mechanism for the maintenance of equilibrium, social- order, tranquility and peace among the members. These socio-mechanisms are taboos, sanctions, social rituals, culture and supernatural public opinion, good sense and ethics of each individual. These are the unseen socio-ritual forces, which generally restrain the patterns of behaviour of individuals.\textsuperscript{15}

Customs and customary laws are not synonymous. There may be various customs without any legal authority but whereas the customary laws

\textsuperscript{15} Ibid.
have the sanctions of the bulk of the society and if not obeyed, such violator is to be punished.\textsuperscript{16}

Custom, like law, in its widest connotation, is a body of rules which regulates the conduct of human beings vis-à-vis each other and vis-à-vis the individual and the society as well.\textsuperscript{17}

It is now well recognised that in all early societies, custom has been not merely the main, but the only vehicle of legal development. Indeed, custom is coeval with the very birth of community itself. The moment man started leading some organised life, whether in small nomadic groups or in small settled or semi-settled ways; the stage was set for the evolution of customs. Today this merit reiteration for understanding of the origin and growth of customs. As human beings engaged themselves in multifarious activities, there emerged certain uniform patterns of human behaviour. These patterns are perpetuated either on account of belief in their propriety or on account of sheer necessity of living together. As men gained experience in group life, they learnt that a particular mode of behaviour or conduct was conducive to collective living while others were not so relevant in useful hence these needed to be rejected or dropped so that they went into disuse and ultimately get eliminated.

Universal recognition made modes of human behaviour well established and accepted. Simultaneously, as new individual and complex social needs arose, new patterns of human behaviour emerged. This dialectics gave endless

\textsuperscript{16} Pathak, Manjushree, Tribal Customs Law and Justice, Mittal Publications, New Delhi, 2005, p.4.
\textsuperscript{17} Diwan, Paras, Customary Laws of Punjab, Publication Bureau, Chandigarh, Punjab University, 1978, p.8.
impetus to the behaviour patterns, probably, this process continued in all human societies till they evolved a conscious law making machinery. It is dialectics of human dynamism which needs to be tempered in a society on the move which brings about deserved social changes that legal codes bring about social changes rather fast was understood than belatedly. But subsequently the need for codifying the customary laws was strongly felt and many societies formulated the codified laws.\textsuperscript{18}

As already mentioned, the words custom and customary though appear to be synonymous yet there are some distinction and it is necessary to define here clearly the sphere and the role played by each in the greater perspective of human culture. Though, in theory, there should be no difficulty in comprehending the distinctive role between customary law and custom. In practice, the distinction becomes blurred and one may be mistaken for the other. In its origin, customary law may appear to be only a differentiated form of general custom, and the basis of both custom and customary law seems to be prevalent. All customary laws are part of the social customs and as such without a specified social group it may vary from one region to another.\textsuperscript{19}

Unlike formal laws, customary laws are not made by any law making authority but are handed over by one generation to the succeeding generation through the social mechanism of cultural transmission. The customary law is composed of a large body of rules observed by communities, evidences by long


\textsuperscript{19} Pathak, Manjushree, op. cit.
usage and founded on pre-existing rules sanctioned by the will of community. It exists independently of the sovereign authority and forms the ground work of every system of legislation. These rules of conduct may have been based on utility, or may have arisen from social or communal necessity but these have always the express of tacit sanction of the people among whom the said common law prevails.  

What we mean by customary law is also to be accounted for. Customs are certain norms and the law is normative science, which lays down rules as to how human being ought to behave in the society. These norms are prescriptive and in no sense descriptive of human behaviour. “Norm is similarly in the pattern of response to specific stimuli revealed in the behaviour of the individual member of any society or sub-groups with a society. Custom is not homogenous, but perfectly unified bodies of rules of a particular society consist of number of more or less independent systems, which are adjusted to the another.  

On the other hand, a norm is an abstraction, not a reality. It is the abstracts average which presupposes variations with individuals severally. Hence, customary law would mean law that has formed into a norm or that section of the social customs which are characterized and differentiated from other customs in some society by their legal quality.

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21 Ibid, p. 49.
22 Ibid, p. 52.
In modern anthropological jurisprudence, it is universally assumed that all customs are law to the savage and that he has no law but his custom. Primitive men obey certain class of custom for purely social reasons. Religion, sanctions, supernatural penalties, group responsibilities and solidarity, taboo and magic are the main elements of jurisprudence of the savage society.\(^{23}\)

Though customs is an important source of law, its importance continuously diminishes as the different legal system grows. The shift from custom to legislation is the basic trend in the world legal history, that is, the shift from spontaneously-created law to man-made law. In the age of rapid technical growth, people are not prepared to wait for the slow growth of custom.

In some developing states, custom still plays a dominating role over the statutory rules. Operations of statutory law is restricted where there is a custom, or if there is a conflict between status and custom, the custom will prevail upon the statute law. Moreover, ancient customs are still an integrated part of modern law and the courts frequently have to deal with and take help of them.\(^{24}\)

The sociology of law attempts to establish a scene of social life as a whole and this covers a great art of sociology and political science. When law is to be explained, everyone is required to study the social facts, are necessarily entering the sphere of these social sciences. It explains law in terms of the

\(^{23}\) Ibid, p. 48.
\(^{24}\) Ibid, p. 49.
social life. Law is subject to the acceptance and the nature of the social life of the people.  

Customary laws give more weightage on the “collective interest” over the individual and the “collective interest” is linked “with their “we -group feeling”.

Many laws which are enacted in India have a base of customary law. There are a few areas where constitutional laws (including statutes) are complimentary to customary laws or other way round. But, India is a multi-racial, multi-religious nation. So, there are many areas where customary laws are conflicting among themselves as well as between customary laws and constitutional law. This conflict in legal pluralism is an inherent quality of multiculturalism.

The customary laws are operating with people’s active participation. The jurisdiction of custom law is, however, limited. Due to complex social interactions in modern times the customary law cannot settle many disputes, considering the aim of the constitution and the conflict of law among different customary laws, the constitution, in a subtle manner, tries to wipe out the customs, institutions of past historical bloc in order to shape a new national order.

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Ehrlich, one of the exponents of sociology school of jurisprudence gives a step a head to evaluate custom with greater emphasis to that of statue. He defines custom as the living ‘law of people’ based on social behaviour rather than the compulsive norms of the state. Norms, observed by the people, whether in matters of religious habits, family life, or commercial relations are law, even if they are never recognized or formulated by the norms of the state.²⁷

If custom is to be elevated to the status of law, it will have to pass through some special social or political mechanism, though jurisprudence recognises it as one of the sources of law. But some jurists like Austin did not recognise custom as ‘law’ until and unless it is recognised by a court of law.

According to Austin, the term ‘law’ means a set of rules laid down for the guidance of an intelligent being by an intelligent being having power over him. This definition includes the following objects:

(a) Laws set by god to his human creatures and
(b) Laws set by men to men

The first one is termed as law of nature or natural law and the second one is classified into law set by political superior, i.e., sovereign and is styled as positive law and others are not established by the sovereign authority, but are closely analogous to this, are forced by more opinion that is, by the opinion

²⁷ Pathak, Manjushre, op.cit., p. 47.
or sentiments held by an indeterminate body of men in regard to human conduct, which is termed as positive morality.28

Cultural anthropologists tend to use a definition that sees law as a special set of social norms and mores where violation sets in motion a procedure, which is mostly formal in nature, began by an individual, or a group of individuals acting together, who are recognised by other persons in a society to have the power, or the right and privilege, of establishing facts in a dispute, to make a finding of guilt, and to impose some type of punishment on guilty individuals or social groups.29

Radcliff- Brown (1952) has used the terms ‘law’ to include most if not all processes of social control and regarded it as conterminous with that of organised legal sanctions. He states that, “the obligations imposed on individuals in societies where there are no legal sanctions will be regarded as matters of customs and convention but not of law; in this sense some simple societies have no law, although all have customs which are supported by sanctions”.

Law is concerned with rules of conduct and the way which operate to secure respect for these rules. According to Pospisil (1971), “Law is conceived as rules or modes of conduct made obligatory by some sanctions which is imposed or enforced for their isolation by a controlling authority from man’s feelings or sense of right”

28 Ibid, p. 47.
Law contributes towards social order in human life by dealing with disputes that arise frequently before they lead to continuing social disorder by constant recriminations, the seeking of personnel revenge, or lasting feuds between individuals. A society cannot get on with its day to day affairs if it permits individuals to be law unto themselves, i.e., to take law into their own hands when they feel aggrieved or have a conflict with another person or group, and so that existence of law in a society can allow the individuals to deal with the new conditions of life experienced in societies changing to other ways of life. Evans- Pritchard states that “Within a tribe there is law; there is machinery for settling dispute and a moral obligation to conclude them sooner or later.”³⁰

Thus, we see that customary law plays an important role in tribal society, where the society, itself acts as the enforcing agent. The state has a definite role to play in formulating the new laws effecting customs. The unwritten laws of customary usages are ordinarily obeyed far more spontaneously.³¹

The fact is that no society can work in an efficient and proper manner unless laws are obeyed “willingly” and “spontaneously”; society and laws are interdependent and cannot operate in isolation. The law also cannot operate in vacuum. It has to reflect social attitudes and behaviour and also mould and cannot control the same to ensure that they flow into proper channels.

³⁰ Vitso, Adino, op.cit., p.2.
³¹ Pathak, Manjushree, op.cit. p. 52.
1.2 Salient features of customary laws

In modern society, custom has two elementary and unvarying characteristics. First, every custom is in some fundamental respect an exception from the ordinary law of the land. Secondly, every custom has limitation in its application. It does not apply to the generality of citizens, but only to a particular class of person or to a particular place. Although it must always be given a plurality of persons –for there is no such thing as a custom inherent only in one person the plurality must be restricted.

For validity of customs, as one of the source of law it must conform to undergo certain requirement, judicial tests. The said test as applied in case of just or reasonable law could be enumerated as under.\(^{32}\)

(a) Antiquity
(b) Continuance
(c) Peaceable enjoyment
(d) Obligatory
(e) Certainty
(f) Consistency
(g) Reasonableness
(h) Public pinion

Basing on the above points, the features of customary can be theoretically considered in the following manner:

(i) Customary law is the law of a group, while the law elsewhere has an individual oriented basis. This does not, of course, mean that tribal is

\(^{32}\) Ibid.
exclusively by group feeling or by a groupist philosophy – a caveat which several anthropologists have also entered. What is meant is that group life and communal living and a sense of belonging to a social unit are much more predominant in tribal life than law in non-tribal social institutions.

(ii) Secondly, customary law is deeply rooted in history and pays homage to the past. Like all other laws, customary law also changes but the change is gradual and imperceptible and it is not accompanied by the jolts that are usually experienced when by statute, a rule is changed substantially or by judicial decision a proposition is laid down in terms different from the position that had been understood on a particular point in the past.

(iii) Thirdly, tribal customary law is the special law applicable to a place where closely knit communities live together. This proposition emphasis not merely the identity of the group, its individuality, linkage with the past, attachment thereof, and integral association with a place. In fact, this aspect has been well recognised in the statutory provisions in India dealing with the law to be applied by tribal courts.\textsuperscript{33} Continuity is essential a characteristic of custom as its antiquity.\textsuperscript{34} May be it is established that a custom has an antiquity of 400 years or more. But if it has not been followed since then, this fact may be a sufficient indication that it has ceased to exist. Continuity of existence without interruption refers not to its active exercise but rather to claim to enjoy it.

\textsuperscript{33} Kusum and Bakshi, Customary Law and Justices in the Tribal Area of Meghalaya, The Indian Institute of Law, New Delhi, 1982, p. 63.

\textsuperscript{34} Diwan, Paras, 1978, op.cit.
(iv) Custom must not be unreasonable, immoral and contrary to public policy and law. Interpretation of custom should have doctrine of justice, equity and good conscience without which it cannot be enforced because it is bond on the test of morality, reasonableness and public policy. An example may be cited of the custom of the Reddys of Andhra Pradesh where a Reddy grandfather has the preferential right to marry his daughter’s daughter although he might turn around 50 or 55 by then. If a custom is barbarous, or repugnant to natural justice, equity and good conscience it must be rejected. But their lordships pointed out in the same case that is the assent of the community that gives a custom its validity, and therefore, barbarous or mild, it must be shown, to be recognised by the community whose conduct it is supposed to be relegated.  

(v) A valid custom has to be observed continuously. Abandonment of custom by the people is abrogated or repeated. In the words of Brown, “As the will of the community establish custom in the first instance, so the same community may, by the expression of its collective will as evidenced by not being in usage abrogate it”.  

To sum up, the salient features of customary law enumerated above, it is not suggested that everything in customary law is dominated by ‘Group’, philosophy. As has been pointed out by Malinowski, the assumption that the

35 Pathak, Manjushree, op.cit., p. 61.
36 Priyadarshini M. Gangte, op. cit., p. 16.
primitive individual is completely dominated by ‘group’ i.e., the thinking and opinion of the group is wrong.

The custom that has a legal binding is scrutinized to see if it is (a) ancient (b) continued, unaltered, uniform, constant (c) peaceable and acquiescent (d) reasonable (e) certain and definite (f) compulsory and not optional to every person to follow or not. This clearly shows that the custom should not be optional and uniform. The law is not optional but universal in the group. This is self-contradiction because the constitution does not assume optional personality.38

- flexible
- change and continuity
- legal also moral
- quick, less expense

The administration of the village is an ongoing process. The village administration continues to function under its own customary law and practices. Though the traditional village council has been replaced by village authority under the above discussed acts and regulation, reality shows varied pictures in the practice of customary laws and practice.

The present study is an attempt to study the various existing customary laws and practices of Ruangmei Naga tribe residing in the districts of

38 MC Arun, op.cit. Pp. 4-5
Tamenglong and Imphal districts. But the focus has been given to those areas of crime and penalty in the context of the tribe under study.

1.2.1 Wrong

An act or omissions which are wrong it opposes to any legal system, is mischievous in the eyes of the law. But all acts or omissions which are wrongful are not necessarily wrongs of which either penal or civil liability may visit to the doers.

In view of the natures and gravities of the wrongs, wrongs may be divided in two classes (i) the criminal wrongs and (ii) the civil wrongs.\(^{39}\)

The wrongs are said to be criminal, when it strikes at the society as a whole. To rob somebody of his property is a crime affecting the social structures of the society more than the person robbed of property.

Theft is a crime to the society as whole and also to the individual who is affected by the commission of the crime. The criminal wrongs are visited by penalty in the form of fine, confiscation, and imprisonment or such physical punishment like hanging, whipping, maiming, etc. criminal liability arises or, is fixed at the instance or, from the view point of “state” rather than the person wronged.

The wrongs are civil, when the wrongs are visited by civil liability in terms of compensation or damages.

\(^{39}\) Hijam, NK Singh, op. cit.
A civil wrong is an act or omission prohibited by any established law. Such an act or, omission is said to be civil wrong or, a tort when it infringes an absolute right of an individual or, a qualified right of an individual or, a public right entitled to an individual thereby ultimately resulting in some personal damages or injury to the person or the property of the individual. In other words, civil wrong is a wrong causing damage or injury to the person, reputation or property of individual other than the society or a state as a whole. Civil liability arises, only when the persons civilly wronged comes to the law court by a law suit. But such a law suit must be permitted by the common law on the legal system of that country. No civil liability is established or settled at the instance of the state or the society. It is a wrong only to the individual civilly wronged, but not to the society or the state as a whole. Here, the state has nothing to do with it.40

Sometimes, a wrong may be both civil and criminal at the same time. Such a wrong is termed as “felonious tort” or “criminal and civil wrong”. A felonious tort is usually visited by both criminal liability and civil liability. Rape is a felonious tort and in other words, it is a crime to the society rather than the individual raped and also a tort to the individual for damages or compensation for the mental agony, physical injury, loss of social status, etc. after rape.41

40 Ibid.
41 Ibid.
The criminal liabilities, the limits of which are manifestly available in the degrees and natures of the conducts of the criminal are to be dealt with by the various legal actions in the various forms.

Since the territorial tie remains in the background, wrongs against the state can hardly be recognized. The individual offended is somebody’s kin and so is the offender. The kins of the individual offended avenged themselves on the offender and the kins. It is a direct dealing without the whole society involving in. Kinship plays an important role than other factors like territory. But there are certain instances when the society has to intervene, especially in the cases where a breach of norm is likely to affect the whole society. All the members of the group try to find out the culprit.\(^\text{42}\)

1.2.2 Penalty

Every trial for a criminal act is followed by awarding of penalties to the party who is at wrong. The following are the penalties practiced amongst the Nagas under study.

1. Exile: This penalty may be given to an individual or the whole family of the culprit. Such a punishment is given in cases of murder and also repeated theft, couples who marry within the same clan are also expelled in Naga tribes, a woman who conceives out of wedlock and who cannot name the father of the child is also expelled from the village till child birth. This is the most severe form of punishment. The culprit or his

family may seek refuge in other villages and may appeal to the village court or authority to allow them to come back and settle in the village. The penalty may be for a period of 10 years even. Even in murder committed out of accident the culprit is expelled from the village till the annual rituals for the dead are completed.

2. Fine: Enforcement of fine as compensation for certain loss or punishment is seen among the various Naga tribes. The persons who committed certain crimes like theft is made to pay back whatever he has stolen in cash or in kind. Such a penalty is found in all the tribes under study. In cases like rape and or illegitimate child, the culprit is made to compensate the damage done to the victim and the child is born to the woman in the form of money or paddy. Fines are also enforced in case of murder.

3. Destruction of the culprit’s house: Such an act is destroying of the culprit’s house and properties are often come across in crimes like murder, theft and rape.

4. Disownment: Stripping off of any inheritance is observed in cases like divorce. If a woman is divorced on the ground of adultery, she has no more right over the family’s property (husband’s) as seen among the Naga tribes.

5. Public Humiliation: Public humiliation is often given to persons who commit rape, clan endogamy and adultery. Amongst the Naga tribes, the
rapist or the person who molests the girl/woman is humiliated and ridiculed in the public. An adulteress is dealt severely, stripped and driven away from her house. Instance of public humiliation are given to couples who practice clan endogamy. Among the Ruangmeis, one cloth item each of the couples will be burnt at the village gate (Raengh) and carried around for everyone to see and shun away from such an act. It is a matter of shame and disgust.

1.2.3 Oath and Ordeal

The evidences called for while deciding a criminal case is of two kinds: (i) Oath and (ii) Ordeal.

i) Oath: The person concerned has to take an oath (in the prescribed form) before the village elders or head and then he is supposed to submit the facts. It is believed that whatever the person says is the truth. If he tells a lies, the anger of God or Goddess will destroy or punish him.

ii) Ordeal: At times the offender is subjected to some torture before the declaration of the verdict of the panchayat: If the person escapes without injury, he is supposed to be non-guilty. In some cases, for example, the accused is asked to lick salt on fire, touch a red hot axe or put his hand in boiling water or oil. If he gets injured, he is believed to have committed the said crime. This is common with tribes all over India. The force behind this type of treatment is the strong belief in the sacred
spirits of the unknown world. They take it as guaranteed that God or the Supreme Being is the greatest judge.

The oath and ordeal serve as a means of voluntary submission of the accused to law. It is obeyed mainly because of the fear of the anger of the Supreme Being. The punishment or award, generally a fine in cash or in kind or both depending upon the seriousness of the crime and capacity of the person concerned, is embodied in the tribal law itself. This fine is generally utilized for giving of a commercial feast or as an offering to the supernatural powers to appease them.43

Oath takes place when dispute arises over any issue. It is solemn declaration of one’s position and stand, regarding any particular issue. There are so many ways by which an oath can take place. The difficulty is always to settle the formula of the oath and in process as much ingenuity of amendment is displayed as in the committee rooms more august assemblies.

There can be private or public oath. Thus, for example, if an issue was not settled, it could be proved by the oath on the water, by which the Khullakpas of the villages were to stay under water and one who came up first, had broken the law. People really believed that evil befell the person who has spoken wrongly.

43 L.P. Vidyarthi and Binay Kumar Rai, The Tribal Culture of India, New Delhi, Concept publishing company, 1985, Pp.199-200.
The customary laws are operating with people’s active participation. The jurisdiction of customary law is, however, limited. Due to complex social interactions in modern times, the customary law cannot settle many disputes. Considering the aim of the constitution and the conflict of law among different customary laws, the constitution in a subtle manner, tries to wipe out the customs, institutions of past historical bloc in order to shape a new national order.

The sociology of law attempts to establish a scene of social life as a whole and this covers a great part of sociology and political science. When law is to be explained, everyone is required to study the social facts, are necessarily entering the sphere of this social sciences.\(^{44}\)

1.3 Area of the study

The main aim of the present work is to study the customary laws and practices of Ruangmei tribe in Manipur. For this purpose, field works were conducted in different villages. Those who had the knowledge about the customary laws were sought out and interviewed. For the present study, the villages visited were Lwangmai (Noney), Pungringlwang, Raengkhung, Banhrwang, Rianglwang at Tamenglong district. The villages visited in Churachandpur District and Imphal District was Zeikhulwang, Neikanlong and Majorkhul.

The area focused for the present study is on crime and penalty where the enforcement of customary laws is clearly visible and often practiced.

1.4 Objectives of the study

1. To know the backgrounds, administrative structure and social institutions of a traditional Ruangmei village.

2. To know the structure and types of the customary laws or practices commonly current in Ruangmei society.

3. To study the scope, extent and effectiveness of the customary laws.

4. To study how far the state authorities or government honour the customary laws, vis-à-vis the place and validity of the customary laws in this modern days.

5. To study the scope and sustainability of the customary laws with a future perspective.

6. To study the historical importance of the Ruangmei customary laws or practices.

7. To study the Manipur Hill Areas Village Authority Act, 1956 vis-à-vis the customary laws and practices of the Ruangmei.

1.5 Methodology and organisation

For the present study primary sources in the form of interview were conducted to get the real picture of the society under study. For this purpose, field workers were conducted in different Ruangmei villages. Those people who had knowledge about the customary laws were sought out and interviewed. Case studies were taken. Secondary sources in the form of
published and unpublished literatures, articles, journals were referred to get the overall picture of the area under study.

The present study has been organised into seven chapters including the Introduction. The first chapter throws light on the discussion of customary laws. Various aspects on the customary laws are studied. The second chapter deals with traditional system of village administration are carried out. In the third chapter, an attempt has made to highlight the crimes and its penalties and social offences in the Ruangmei society. In the fourth chapter emphasis will be given on the custom of marriage and divorce in the Ruangmei society. The fifth chapter deals with the custom of inheritance and succession. The sixth chapters throw light on the custom of birth and burial ceremony which were performed by the Ruangmei society. The last chapter attempts to sum up the findings of the present research which will help in comprehending further development of the existing conditions of Ruangmei customary laws.