Before entering into the specific sphere of administration of Adi Customary justice dispensed by the village council, it would be profitable and pertinent to examine the various aspects of the Adi customs and customary laws prescribed by the Adi Society. An endeavour has been made to study and evaluate the various opinions, writings of jurists, judges and legal luminaries and decisions of courts particularly relating to the customs and customary laws.

Customs and customary laws are not synonymous. There may be various customs without any legal authority but whereas the customary laws have the sanction of the bulk of the society and if not obeyed, such violator is to be punished. The early history of mankind gives us proof that the human being was individualistic and nomadic and there was nothing known as group living forging into a society. In individualistic style of living no human being was dependent on any other and there was no need to regulate any style of living but the laws of nature. As Cicero stated:

"Justitiae initium est a natura perfectum.
Dienda quaedam in consuetudines ex utilitatis ratione venerunt. Postea res, et a nature profectas,
et a sensuetudine probatas, legum noetum et religie sanxit."  

But soon when the human race first learnt to live in groups, the surrounding situation compelled them to conform to certain patterns of human behaviour in consonance with their day-to-day affairs of life, to accommodate their interests, hopes, desires and wants, - both individual and collective. These behaviours needed to be harmonious, common and accepted by a definite majority, if not each and every one of the group, as a whole. By experiences and experiments the human being gradually learnt that a particular mode of behaviour and conduct was conducive and beneficial to collective living. On the march of time, some particular pattern of human behaviour emerged into use and by consistent adherence to it such behaviour achieved the status of some obligatory norms spontaneously and consciously followed by the members of the group. This is the stage where the custom first attained its existence which we call to-day, - the usage. Wayne says :

"A belief in the propriety or the imperative nature of a particular course of conduct, produces a uniformity of behaviour in following it; and a uniformity of behaviour in following a particular course of conduct produces a belief

1. "Justice has emanated from nature. Therefore, certain matters have passed into custom by reason of their utility. Finally, the fear of law, even religion, gives sanction to those rules which have both emanated from nature and have been approved by custom" - quoted from Principles of Hindu Law (1922) - by Nalla, P-66.
that it is imperative or proper to do so. When from either cause or from both causes, a uniform and persistent usage has moulded the life and regulated the dealing of a particular class or community, it becomes a custom.  

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 superiors, i.e. sovereign and is styled as positive law and other are not established by the sovereign authority, but are closely analogous to this are enforced by more opinion, that is, by the opinion or sentiments held by an indeterminate body of men in regard to human conduct, which is termed as "positive morality."

As per Austinian views, law is the express enactment by a sovereign or state and certain judicial decisions and it excludes

a large body of rules and customs, i.e. unwritten laws, which regulate the life and conduct of human society long before any regular political Government come into existence. As per this theory a custom can not become a positive law until it is recognised by a judicial Court. The moment a custom receives judicial recognition, it becomes part and parcel of the positive law. Austin would allow only persuasive value to custom. He categorically observed that, where no statutory law was available, the judge might look for guidance in any direction he pleased. Customary law was only one such quarter where he might seek guidance, without any obligation to follow it. Custom thus has only persuasive efficacy and is not law until pronounced upon by a Court as applied in a particular case. The operation of custom in society was considered as one of the formidable obstacles to the whole conception of Austinian Sovereignty. The jurists after him was critical about his concept of custom and law.

On the other hand, Halland, who has practically adopted Austin's definition of law differs from him in regards to his opinion that a custom becomes a law only when it receives judicial recognition. According to Halland, custom was law before it received judicial recognition and both customs and statutes are principles or rules which govern and regulate the life and conduct of human societies. The former have their foundation in the collective will

or common consent of the people, just as much as the latter have on the will or pleasure of a sovereign or a state. The objects and functions of both are alike, though the procedure is different. Customs and usages which have all the force of law, may sometimes even have greater force than statutory laws. As Salmond says:

"The law embodies those principles as they commend themselves to the incorporate community in the exercise of its sovereign power. Custom embodies them as acknowledged and approached, not by the power of the state, but by the public opinion of the society at large."

On the other hand, the exponents of Historical School of jurisprudence like Savigny etc. had different and divergent views regarding the origin of customs. According to the propounder of this School, custom is law per se. A custom carries its justification in itself provided it assumes the form of völksgeist. He stated that "law was found, not made." Only when popular customs in past articulated by lawyers, had fully evolved, could and should the legislature take action.

The view forwarded by Sir Henry Maine shows a marked departure from that of von Savigny's historical theories. According to him first came "Themis". The king awarded judgment inspired by the

7. The earliest notions connected with the conception of law or rule of life are contained in the Homeric Words as 'Themis'. 'Themis' appears in the late Greek Pantheon as the Goddess of justice. On the other hand in the Iliad it is described as assessor of Zeus.
Thenla as an agent, when a king decided a dispute by a sentence, the judgment was assumed to be the result of the divine inspiration from the themis and a breach of such judgment was punished. Such judgments when came to use took the shape of customs gradually. Such customs are followed by the mass as if the king imposed it. "Because people's will not impose liability upon themselves by their own will until they are compelled by some authorities." The savage is occasionally desirous of escaping his obligations just as is civilized man."

According to modern view of jurist, Maine's views of customs are not acceptable because history of evolution and investigation has established that custom is anterior to kings and courts. According to Paton "Custom is coeval with the very birth of the community itself." He advances his views on the limitation of custom, custom is practised when the society is mostly homogenous. When the society tends to become complex, the custom also becomes less effective and looses its force. The test of custom is continued observance and any custom ex hypothesi can not be suddenly created to meet a new problem. When any problem arose, some solution was found out. Custom is useful for situation that have already occurred. It can not be put into operation so far the unforeseen and future problems are concerned.

While refuting the Austinian view, custom as a 'positive morality' that until and unless a custom is expressly ratified by the Court, a custom can not have the force of law, and partially

accepting the views of historical School of Savigny with a demand for modification of that theory too and rejecting the view given by Maine that the custom is the creation of judicial technique the modern view of jurist like C.K. Allen is that the custom arises spontaneously from the actual social practices which acquires an imperative character through the forces of convenience, imitation and instinctive traditionalism. According to him custom is flexible, elastic and new elements are necessarily added to it by the process of scrutiny and interpretation.

Prof. Allen opined that ancient customs are still an integral part of modern law and the courts frequently have to deal with them. He stated that -

"The fallacy of the Austinian doctrine is in supposing that custom is not law until it has been pronounced upon by a court. The exact reverse is the truth. Custom is the first and most essential law."  

10. Allen, C.K. - Law in the Making (7th edn)-PP-145-147
The sociological view, so far the custom is concerned, is different. Ehrlich, one of the exponents of sociological school of jurisprudence, gives a step ahead to evaluate custom with greater emphasis than statute. 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 recognised or formulated by the norm of the State. He says:

"At present as well as at any other time the centre of gravity of legal development lies not in legislation, nor in juristic science, nor in judicial decision, but in society itself."  

According to Ehrlich's the main defect of the historical school was that it did not draw a distinct line between legal rules applied by the Courts and legal arrangements existing in society. Former one is artificial, a product of human reason and logic, on the other hand later one is spontaneous and natural.

The rules of law stand out from the rest in that these are felt and regarded as the obligations of one person and the rightful claims of another. They are sanctioned not by a mere psychological motive but by a definite social machinery of binding force. The ceremonial manners in which most transactions are carried out which entails public control and criticism adds more to their binding force.

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 recent expressions are "culture" and "traditions". But one area of anthropology in which the expression "custom" still has currency is the comparative analysis of legal and political system. Custom is supported only by psychological constraints which operate when the individual violates the custom and by the social disapproval which deviation from custom may precipitate. In contrast, laws have the additional coercive support of specific individual or groups who have an institutionally vested charge to enforce conformity.\(^{14}\)

In modern anthropological jurisprudence it is universally assumed that all customs are law to the savage and that he has no law but his customs. Primitive men obey a 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.

Relating to the origin and development of custom Roy opined that —

"It is impossible to ascertain the precise beginning or to discover the rudimentary growth of an ancient and long established custom. It is of such high antiquity that neither human memory nor historical research can retrace it. Indeed on its antiquity

\(^{14}\) Wilke, Stanley, - "Custom" in Encyclopedia of Anthropology (1976), P-113.
and immemorial practice depends the goodness of a custom. But though we are unable to trace the origin of a custom which is enshrouded in the mist of ages, yet we can ascertain the process by which a certain rule of conduct is generally established into a custom.¹⁵

Hindu jurisprudence also acknowledged and accepted custom as a just foundation of many laws in every system of jurisprudence. During the Sūtra period, the influence of custom upon law recognised by various Sutrákars. According to Gāutta, the most ancient of the Sutrákars, stated that -

"The Custom of countries, castes and families, which are not opposed to the sacred records have also authority."¹⁶

Though custom is an important source of law, its importance continuously diminish 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 an age of rapid technical growth people are not prepared to wait for the slow growth of custom.

¹⁶. Mulla - Principles of Hindu Law (1962) - P - 66
In some developing States, custom still plays a dominating role over the statutory rules. Operation of statutory law is restricted where there is a custom, or if there is a conflict between statute 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.

The primary function of modern judicial analysis is to examine the nature and reality of existing custom. The aim of the Court is not to invent new customs or arbitrarily to abolish those which are proved to exist in immemorial practice. Because, the custom does not derive its inherent validity from the authority of the Court and the 'Sanction' of the Court is declaratory rather than constitutive.

By drawing a difference between custom and judicial decision relating to customary law, Paton further says that a custom is law before adjudicated upon by a court, because, if approved, it will have retrospective effect. But this applies to all judicial decisions on the common law, whether founded on custom or not.

Customs is not homogenous, not perfectly unified body of rules of a particular society. In fact, customs and rules of a particular society is consists of number of more or less independent systems, which are adjusted to one another.

17. Collector of Madura - V- Mutttoo Ramaliagam, Privy Council 12 MIA 397 page 437
Depending upon the nature and observation, the customs are classified. Such classifications varies according to the different views of the different jurists. Blackstone\(^{20}\) classifies it into two:

- **General Customs**
- **Particular Customs.**

Particular customs are practised by the inhabitants of a particular local area, district etc. Such customs are confined to a particular locality, community only, it must have differed from general law of the land.

General customs are the universal rule of whole kingdom. For validity of a particular custom it must conform to certain judicial tests which are fully treated by Allen\(^{21}\) as follows-

1. The custom must not conflict with any fundamental principle of statute law.
2. The custom must have existed from time immemorial.
3. The custom must have been continuously observed and peaceably enjoyed.
4. It must be certain admitting no plural interpretation.
5. It must not conflict with other established customs.
6. Finally, it must be reasonable.

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\(^{20}\) Blackstone - Commentaries - P.67

In Hindu Law, the smritikars mentioned four types of customs:

(i) local custom,
(ii) family custom,
(iii) community or caste custom
and (iv) guild custom.

A local custom is a custom which prevails in a locality, in a geographical area not confined to an administrative division or district. In 1947 the Privy Council held that "It is undoubtedly that a custom observed in a particular district derives its force from the fact that it has, from long usage, obtained in that district the force of law."22

On the other hand, family custom is binding only on the members of the family. The Privy Council observed that custom binding only on members of family has been long recognised in Hindu Law.23

The Guild custom is not a part of personal law of the Hindus. This class of custom is connected with the traders and merchants.

Personal laws of the Hindus is mainly covered by caste or community custom which is binding on all the members of the caste or community. Most of the customary laws of Punjab is of this nature.

Customs of the Adi tribes are also community custom, it binds the community as a whole. Because the concepts of customs and tribe seem to go together. "Tribe" is a group of families who have a feeling of community through occupying a territory and following

similar customs. 24

We know, custom as a source of law, The words "Custom" and "Customary Law" 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 customs does not enjoy either the status or sanctity of law. Customary laws are part of the Social Customs and as such without a specified social group it may vary from one region to another. 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, evidenced by long usages and founded on pre-existing rules sanctioned by the will of the 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 or tacit sanction of the common consent of the people among whom the said customary laws prevail.

According to Austin, "Customary laws as being the rules of positive morality arise from the consent of the governed and not from the position or establishment of political superiors. But considered as moral rules turned into positive laws, customary laws are established by the State ....... established by the State directly, when the customs are promulgated in its statutes, circuitously, when the customs are adopted by its tribunals." 25

The Hindu laws as applicable in India today are nothing but the codification of most of the pre 1955 different customary laws relating to marriage, inheritance, adoption, guardianship etc. However, while codified, some modern concepts influenced by the occidental idea have also been incorporated in all these codes.

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 members of any society or sub-groups within a society." 26

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 the same society by their legal quality.

Besides normative elements, customary law should have socially sanctioned authority, and should be compulsive and regular.

Customary law or unwritten law plays an important role in an underdeveloped 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 willingly than our written laws or rather they are obeyed spontaneously.

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

In the Adi-Society the term "Law" in its pure legalistic sense is not known. So, there is no exact Adi equivalent for the term. For the administrative purpose the people used the word "Niyam", which has a very wide connotation and is more akin to "Custom" than to "Law". These "Niyams" are the norms, some systems or ways and means which are scrupulously followed or observed like gospels by the people.

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27. Art 371 E of the Constitution of India - provides for protection to the Naga customs.
28. Dr. Lewis, Primitive Society; Chapter on "Justice" - English edition, P-387.
29. Khodla, N., - "Courses on Research Methodology in Law" - Legal Research and Methodology (ILL) - P-605.
Those "Miyems" are uniform and spontaneous within certain clan or tribe but it is divergent and different among the entire society. Though they are different and divergent, this divergent and different "Miyems" could be termed as current and cross-current while the entire "Miyems" could be termed as under-current which is almost similar among all the tribes.

When several legal systems co-exist within the same political system, the situation is generally called "Legal Pluralism". All legal systems of a particular society do not exist as parallels to each other in most cases. But in some tribal society position is different and two or more legal systems exist and operate in parallels without any conflict with each other.

In the Siang districts pertaining to the Adis, statutory laws and different customary laws are operating in parallel.

A homogenous society is the breeding grounds of customs and a society which is predominantly heterogeneous, customs has little to do with its day to day functioning. Gradually the Adi Society, as it is to-day, is growing and becoming a heterogeneous one in the course of its development and modernisation. After the independence of India and more particularly marked from the Chinese aggression in 1962, when the North Eastern region attended to various problems both national and international, there is a marked change in the administration. By the coming of the constitution, Arunachal Pradesh including Siang districts were given separate constitutional status with the privileges that no law enacted by the union or the state

37. Willy, C.J. - Comparative Jurisprudence - Hunter & Witter(ed)
legislature shall be imposed or put in operation in this area and the administration will run according to the respective customary law and culture of these areas.

But from the stand point of national and international problems, and also for economic development and financial administration, to accommodate customary laws and to protect different social, cultural and religious interests and to mitigate the shortcomings of customary laws, certain legislations of both Parliament and the state legislature are put into operation for efficient and effective administration of the area. The system has given rise to legal plurality and have paved the path on the march of modernism. To-day, as evident from the pattern of societies all over the world, no society is singular or homogeneous. Moreover, certain foreign agencies, extenuating circumstances and new socio-political developments compel a society to give up their age old traditions and to accept the new ideas and ways of life. There are spontaneous exchange of human resources, science and technologies, art, culture, religion etc. As a result it is imperative and explicit that the society is growing pluralistic and obviously it is against the dominion of customary law and practices.
(1) Societal Jurisprudence and Judicial Boundaries.

The Adi have their own customary laws and their own way of administration of justice. They do not have any written law, but they are orally conversant with these. It seems that the basis which determine the nature of Adi Law, principles, which guide in imparting justice and the related basis of punishment, all are directed towards one aim as of preservation of the age old customs, practices, traditions and usages. Accordingly, to them to follow a custom is to follow a law and to deviate from it is to effect a breach of law. The very enforcement towards adherence to a custom, turns a custom into a law particularly when the custom is vitally connected with the display of standardized inter-personal relationship between the members of a society in any sphere of its activity that a slight breach is not only a strikingly alarming anachronism but also an irksome, incongruent and irreconcilable anathema to every one's sense of traditional reasoning. For them, the custom is as sacrosanct as an edict of law and the nature and the manner of dispensation of justice is based on it. As Sachin Roy stated -

"The rules of conduct that it enjoins on its members are mainly based on the ethical principles that have grown out of historical and economic circumstances which have conditioned the development of the society. There go to form the conscience of the members of the society individually and the group as a whole and as a simple standard is set up to which the society and individuals subscribe without any question and reservation."

According to Salmond,\textsuperscript{33} there is more than one reason for attributing to custom the force of law. First, customs frequently embody the embodiment of those principles which have commended themselves to the national conscience as principles of justice and public utility. And secondly, the law creative efficiency of custom is formed in the fact the existence of an established usage is the basis of a rational expectation of its continuance in the future.

But the Adi customary law is unique in its character and nature, which has kept them quite aloof from the traditional social more as practised in other societies in Gango-Brahmaputra vallies. Their customs and culture pattern in general corresponds to what is found among the Mongoleids of the South-Eastern Asia. It is characterised on the material side by abundant use of bamboo and cane, dwellings on hill slopes, costume and paucity of implements and tools etc.\textsuperscript{34} Again the dormitory system prevalent among the Adis have relevancy with the dormitory systems that of the hill tribes of South-Western and Central India, Orissa and Chotanagpur and Nagaland. These dormitory system have some common features, such as the partial or complete exclusion of women from the boy's dormitory, the disciplinary rigour and spirit of corporate life of the inmates, the period of novitiate that they have to pass through, the regulation of behaviour between the youth of the two sexes and the participation of the members in the socio-religious life of the tribe etc.\textsuperscript{35}

\textsuperscript{33} Salmond on Jurisprudence - edited by P.J.Fitzgerald (12th edn)

\textsuperscript{34} Roy,S, - Aspects of Padam Minyeng Culture, (1966) PP-254.

\textsuperscript{35} Guha, B.S, - Moshap Abang - (1964) PP.1-2.
Beside dormitory system, other forms of special mechanism of social control is village council. Village Council of Adis and Apatanis are highly developed in comparison to other tribes of Arunachal Pradesh. Again between the two, Kebang, the village council of the Adis are more effective than that of Buljiang, village council of the Apatani. The Buljiang seem to lack the centralised authority, where the Kebangs of the Adis possesses that characteristic. The village council, which we will discuss subsequently in separate chapter, plays an important role in the social, religious and cultural life of the Adis. The jurisdiction of the village council is too wide to cover the grave crimes like murder, kidnapping etc. It is possible to bring almost every kind of offence within their jurisdiction, except those offences committed against the State.

On the other hand customary laws of the Adis may extend to non-tribesman also, who are involved in disputes with, or offences against the tribal people, such offender gets all the facilities in such cases as guest citizen. An example cited by Verrier Elwin will give a clear picture that the Adi customary laws follow the natural justice strictly and spontaneously. One of the official interpreters visiting Jambo village of Siang Frontier Division (New situated at East Siang district), inhabited by Askings, was accused of spending a night with a girl there, as she had not gone

36. Against our questionnaires, Sri K.Parang, E.A.C.,Nabarlagun, has stated that the Adis do not have different laws to try an Adi and non-Adi in general.
To the Ranheng and two of her relations claimed to have witnessed the possible indiscretions connected with the escapade. A Kebang was held in which he was able to prove his innocence and each of the false witnesses had to pay him a fine of R.10/-.

According to the Regulation 1945, the village council may exercise its power to try criminal offences when the offender or offenders is or are resident within their jurisdiction on the following cases:

(i) theft, including theft in a building,
(ii) mischief not being mischief by tribe or use of any explosive substances,
(iii) simple hurt,
(iv) criminal trespass or house trespass,
(v) assault or using force

The regulations also gives immense civil powers to the council to try all kinds of suits without limit of value in which both the parties are indigenous.

Formerly, non-tribesman could also take the shelter of their customary laws, where tribesman are accused by the non-tribesman, except in the immediate neighbourhood of the Divisional head-quarters. With the introduction of the 1945 Regulation, a non-Adi

can not be tried by Adi customary laws, unless the non-Adi agrees to be tried as per the provisions of the Adi laws.  

As we have stated earlier that the customary law is the law of the land having its origin, continuity and sanction from the time immemorial created by the people of the land for their own use. But the hands of the customary laws are too short to regulate the wide range of human behaviour and do not have extraterritorial jurisdictions. Under such circumstances, according to some dignitaries of the Adi, enacted law shall be applied for control such crimes and to avoid jurisdictional limitations.

Customary laws of the Adis are dealt with the questions of marriage, divorce, succession, guardianship, adoption, maintenance and any religious usages or institutions, etc. It covers more or less all the aspects of the day to day life of the Adi. Any problem beyond the limit of their customary laws or any gaps in customary laws, which cannot be filled otherwise, must be filled by reference to the personal law of the litigating parties. But among the Adis there is no distinctly separate law as personal law. Their customary law is intermingled with the personal law. So, under the circumstances, they will have to see to other statute law of the nation. The rule of law become material only after exhausting the various methods to ascertain customs and when it is positively proved that there is no customary laws relating to that specific cases.

40. Statement of Shri K. Borang, E.A.C., Naharlagun.
41. Statement of Shri J.M. Tangu, IAS.
Though custom is an important source of law, its importance continuously diminished 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 an age of rapid technical growth people are not prepared to wait for the slow growth of custom.

In some under-developed states, customary law still plays a dominating role over the statute rule. The people of such states are obeying the unwritten laws of customary usages more willingly then the written codes. And ancient customs are still an integral part of modern law, and the courts frequently have to deal with them.

According to Allen:

"The primary function of modern judicial analysis is to examine the nature and reality of existing custom, not to invent new customs or arbitrarily to abolish those which are proved to exist in immemorial practice." 43

In modern society, custom has two elementary and unvarying characteristics. 44 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

43. Allen, C.K. - Law In the Making (7th Edn) - P-129.
44. Allen, C.K. - Law In the Making (7th Edn) - P-130.
persons or to a particular place. Although it must always govern 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 tests as applied in case of just or reasonable law, could be enumerated as under:

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

a. Antiquity:

A custom to be recognised as valid custom must have existed from time immemorial. But the English rule "that a custom, in order that it may be legal and binding must have been used so long that the memory of men runneth not to the contrary" is not applicable to Indian conditions. What is necessary to be provided is that the usage has been acted upon in practice for such a long period and with such invariability as to show that it has, by common consent, been submitted to as to the established rule of a particular district.\(^45\)

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45. Mt. Subhani Vs. Nawab, AIR. 1941, P.C. 21;
In ancient Hindu law also, the antiquity was one of the essentials for the recognition of custom. But there is no such fixed period for which it must have been in existence as it is in the English law. But the onus of proof of antiquity is upon the person who gets up the custom. A witness might testify not only to that which he had himself seen, but to that which he had been told by others who spoke of their own knowledge. But the tenure of human memory may be vary from time to time. In French law, time of memory was held to extend for one hundred years.

Customs and usages prevalent among the Adis are considered to be as old as the tribe itself.

b. Continuance:

As per general jurisprudence, essential of a custom is that it must have been practised continuously. Interruption within legal memory defeats the custom. Blackstone draws a necessary distinction between the interruption of the right and of the more possession of the thing over which the right is asserted.

"As if the inhabitants of a Parish have a customary right of watering cattle at a certain pool, the custom is not destroyed though they do not use it for ten years, it only becomes more difficult to prove, but if the right by anyhow discontinued for a day, the custom is quite at an end."\(^\text{46}\)

It means that if possession for some time is disturbed, but the claim to enjoy the custom is not abandoned, the custom continues.

A custom may be abrogated and if it is abrogated it ceases to exist. But the mere non-exercise of a discretionary right existing by custom, in certain cases, does not necessarily prove that the right itself has been abrogated by a different custom.\(^{47}\)

The fact is that a custom has not been exercised for a long period may be reason doubting its existence, though the fact can not be said to have put an end to it.\(^{48}\)

On the other hand, a custom can not be abrogated by a mere declaration. It is not open to an individual whose family or tribe had for generations followed a custom to give up that custom suddenly by making a declaration to that effect. The abrogations is to be inferred from continuous course of conduct.\(^{49}\)

c. Peaceable enjoyment:

The custom must have been enjoyed peaceably without any resistance or interference. If a custom is in dispute for a long time, in a Law Court, or otherwise, it negatives the presumption that it originated by consent, as most of the customs naturally might have originated.

\(^{47}\) 123, P.R.1879,124.P.R.1888,119. P.R.1884;52 Ind.Cas.869.  
\(^{48}\) 52,Ind.Cas.869.  
\(^{49}\) A.I.R.1934, Lah.371, F.B.
d. **Obligatory force**

The custom must have an obligatory force. It must have been supported by the general public opinion and enjoyed as a matter of right. Most of the customs in modern societies are non-legal and therefore not obligatory.

In *Kevalappara Kottarathil Kochummi Vs. Kevalappara Kottarathil Parvathi*[^50] it was held that in order to be valid, the alleged custom must be proved by testimony to have been obeyed from consciousness of its obligatory character. A mere convention between family members or an arrangement by mutual consent for peace and convenience can not be recognised as custom. In order that a custom should acquire the character of law the custom must be accompanied by the intellectual element, the *Opinio necessitatis*, the conventions on the part of those who use a custom that it is obligatory and not merely optional. In other words, the mark which distinguished custom in the legal sense from mere convention is, the *Opinio necessitatis*, the recognition that there is an authority behind it.[^31]

e. **Certainty**

A custom must be certain. This is purely a rule of evidence.

The Court must be satisfied that custom exists as a matter of fact or legal presumption of fact. In *Udara Saima Vs. Satya Swamineni*[^32] the Orissa High Court held that a custom in order to be recognised

by Courts, must be ancient, certain and reasonable and when in derogation of the general rules of law must be construed strictly. It is essential that it should be established to be so by clear and unambiguous evidence. It is only by means of such evidence that courts can be assured of the existence and of the fact that it possesses the conditions requisite for recognition.

1. **Consistency**

   Custom must not come into conflict with the other established customs. There must be consistency among the customs. It is, therefore, that one custom cannot be set in opposition to the other custom.

2. **Reasonableness**

   Another essential requisite of a valid custom is that it must be reasonable and immoral. In considering whether a custom is reasonable or unreasonable, the courts, however, should not be influenced or guided by modern ideas. Because it appears that some customs seem to be unreasonable to us may have been considered as eminently reasonable for the growth or well being of a caste or a tribe. It gives a good deal of discretion to the court in the matter of recognition of the customs. But there must be some standard. The reasonableness, will not be judged with every change in social conditions. A custom which is prejudicial to a class is beneficial only to a particular individual is repugnant to the law of reason.

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53. 51. Mad., I at page 25.
54. 45, Cal., 475.
J. Rustomji in his "A treatise on customary Law in the Punjab" has stated some instances of unreasonable customs. According to him a custom by which sweepers of Kasur, Lahore District, claimed a right to a half share in the carcases (or rather skins) of all animals dying within the town, without rendering any service in return, was held invalid on the ground that it was unreasonable (2 P.R. 1896).  

h. Immoral Customs

A custom to be valid must not be immoral. For example, an association of women to adopt girls with the view of bringing them up to prostitution is also immoral. A custom must not be contrary to justice, equity or good conscience or opposed to public policy as is the case with notorious Reddy custom 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 it 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 regulated.

In Ramachandra Vs. Pratan Singh it was held that if a right is claimed by virtue of a custom, all the essential characteristics of a custom bearing on it have to be established. Such customs must

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96. I.L.R. - 4, Bom, 545.
97. 1931, 132, Ind. cas. 739 (P.C.)
be established by the party who relies upon such customs.\textsuperscript{59}

After fulfilling these requirements a custom may be declared as valid. A valid custom is considered as a source of law and given the force of law. A detailed analysis of valid custom was disserted upon by Dr. P.V. Kane in his famous Lallubhai lecture delivered in 1944.

According to general principle, if the society has for a long time continued a practice which determined this rights and liabilities, and aroused expectations, and if it is not opposed to public or reason, there is no wisdom in disturbing or removing it. The only requirement is that the law should be definite and clear.

Customary laws of the Adis can be defined as the precedences and conventions laid down by their past ancestors with the sole objective of maintaining internal unity and peaceful living and preserving their social as well as religious ceremonies, rites and practices based on their concept of ethics and interpretation of the supernatural belief. They are conscious that these traditions have passed down from generation to generation without any alterations or amendments. Breach of these traditions is neither contemplated nor tolerated by any one as it is regarded as a crime against the society itself. And hence the offender becomes liable to punishment under the provisions of customary laws. The object of awarding the punishment is to compensate the aggrieved to the extent of his loss or damages, and to the shame or disgrace he has been subjected to in the society taking into consideration the capacity of the

accused to fulfil them. For instance, the loss of the aggrieved party is judged from the working capacity of the murdered fellow and the murderer is made to supply the man-power of which he had been the cause of depriving the party. In comparison to the statute law, it is severe and certain. In June 1962, the inhabitants of Yapuik, the Pailibos organised a hunt for a tiger which disturbed them and carried off one of their fellow men. In the course of hunt a member of the Aeo clan was accidently shot and killed by member of the Pailibos (Yabu clan). A Kehang was held and it was decided that the Yabus should pay compensation of five mithuns (of an estimated value of Rs.1,500) to the family of the dead man. In addition, it was agreed that two mithuns from each side should be slaughtered for a feast which would be enjoyed by both parties as well as by the gesba and other leading persons of the locality.

As per customary justice of the Adis, there is no clear differences between murder and culpable homicide. So, the compensation claimed for murder and culpable homicide are same.

On the other hand among some other tribes of Andaman Island, law was administered among them by the simple method of allowing the aggrieved party to "take the law into his own hands". Among some more advanced tribes who do not possess Courts, there may be traces of some general rule, but, in fact, while the death of the head of a family or other male of importance may be avenged by death, in other cases in the same tribe money is accepted, or perhaps, if the deceased is thought to have deserved this, no sanction whatever is imposed.61

On the other hand, the Indian Penal Code prescribes punishments to which the offenders are liable, are death, imprisonment of the rigorous or simple kind for a definite period, imprisonment for life, forfeiture of property and fine etc. Compared to these, the tribal customary laws have prescribed fine, extermination from the village and in rare occasions, forfeiture of certain properties of the offenders. It is said that in the past there was the provision of death sentence in the customary laws of some societies. But now it is abolished and customary law have accorded exquisite value to human life even to that of an offender committing heinous crime and for such crime prescribed heavy compensation to the aggrieved party.

It is observed that for centuries past the customary laws have met the legal requirements of the people of whole Arunachal Pradesh along with the Adi and regulated their day to day life, like working for village welfare, organising community hunting and fishing, construction of buildings and public utility, agricultural operation etc. Moreover, procedure and practices followed in administering the justice is cheaper, quicker and easier.

Through hundreds of years, the Adi people had developed their own pattern of life and standards of conduct, and codes to discipline them. A study of this customary laws in the background of legal basis, show that there are things which are good; elements which have a permanent meaning and value for all mankind, as well as, thing which are really bad. As for example, the customary laws are undoubtedly temperate, non-rigorous and compromising, for which they acclaim the highest applause. But it does not recognise the offences like strangulation of the defamed children, approving of child marriage and
slavery, taking of excessive bride-price, treating of womenfolk as economic asset etc. which are considered to be main loop-holes of their customary laws. Moreover, there is no provision of punishment in the customary laws pertaining to offences against the State. Also alcoholism and gambling, are yet to be brought under the legal perview, which are now growing in an epidemic proportion in almost all the parts of Arunachal Pradesh.
(iii) Matrix of Adi Social Justice

Custom is preserved within certain cluster of clan, group or tribe, even may be a family being nurtished by the spontaneous observance by these clan, tribe etc. Beyond this social matrix such custom may be unknown or misnomer and also may be opposed to some other social matrix.

The Adi customary laws and practices have been preserved intact all through the long years of their existence. The aim of these laws and practices has been to maintain internal peace, law and order, check crime and breach of their traditional customs and practices, ensure adherence to their religious beliefs and ritual practices. The broad principle in the enforcement of these laws has been to impart justice and redress the grievances by compensating the damages accruing from the loss of life, property and prestige rather than by awarding harsh or corporeal punishment to the offenders. For instance, a murderer (from within the tribe) or any member of his family or else—one of his lineage or clan was seldom killed in revenge for the crime or excommunicated but the family of the victim was given adequate compensation to compensate against the loss which if suffered by being deprived of the services of the erstwhile member. Likewise in case of other crimes involving loss of property or prestige, compensation through imposition of fine on the offender/oftenders is the basic theme.

The nature of Adi customary law can be comprehended on certain basis, which not only form its essential aspects but also project the nature of the law itself as follows:
One of the basis lies in the principle behind the composition of the village council. It is imperative as well as implied that the village council - for its members will have representatives from each of the lineage or clan to present it. A lineage or a clan of the Adi society is a closely knit kin-group with close kinship bonds and an individual is primarily a member of either of these groups and has to look forwards the other member for co-operation and support forwards his existence. Therefore, in case of any wrong done to him by the other group is not only a wrong done to the individual alone but also it is a wrong done to his kin-group as a whole, for which the whole of the kin-group is bound to take up the cudgels to defend its own interest as a whole, and more for redressal and sack to reform such wrong-doer.

Even to-day if a man, guilty of an offence, can not pay the compensation demanded, his clansmen may club together to pay it, not so much out of kindness but because the other party may penalize them equally with the actual offender. It was formerly a common practice in a case of murder for the clansmen of the murdered man to kill any member of the murdered man's clan, or if the compensation imposed by a council was not paid, to capture any fellow-clansman of the accused and hold him as a hostage against payment. So closely knit are the people by social and economic ties and so strong is the feeling, however vague, of some kind of corporate spiritual power in a village that the crime of one is often regarded as the crime of all. 62

It is observed that the first basis on which the Adi customary law exists is the preservation with the measure of collective responsibility of kinship bonds as determined by age-old customs and usages and in a way it becomes the preservation of same.

The second basis underlying the nature of customary law, though a natural corollary of the preservation of kinship bonds yet follows from the maximum degree of inter-action at the level of interpersonal relationships between the members of a kin-group - lineage or a clan. Any issue, with a potential discord, dissension or of creating serious wedge, that cuts across the close kinship bonds had to be resolved and subsided. Reconciliation or reappraisal is the key-note which guides and is uppermost in considerations towards the resolution of such issues. For damages, no doubt appropriate reforms and compensation will have to be made but besides these necessary steps in the form of a ritual or ceremonial feasting involving the individuals concerned alongwith the other members of the group, are also taken. This principle of "reconciliation" as necessitated by the preservation of kinship bonds when extended in similar manner to larger groups comprising a member of lineages or clan, since majority of these descend form a common ancestor gives the clue to the democratic and the decentralised character of the political system and its institutions.

With the passage of time and with the gradual increase in population thereby increasing the members of lineages and formation of clans through fission by way of endogamy, the preservation of kinship bonds along with the spirit of reconciliation always continued
to dominate as the guiding principles of resolution of inter-personal relationship which gradually extended beyond and covered other larger kin-groups. In this process of embracing larger groups the democratic and decentralised process continued to manifest itself and acquired the stamp of stability and permanence and assumed the shape of an institutionalised association, that is the political system as the kin-groups grew into a tribe. This is the probable hypothesis to explain the origins of the Adi political system.

The third basis lies in the nature and the category of the crime committed in the Society. Since it is the regulation of inter-personal relationships that there must conform to the prescribed manner of following the age-old and established customs and practices. Any deviation on the part of an individual in terms of the said inter-personal relationship is invariable at the cost of the other who also being the member of the same group is equally entitled to as much freedom and liberty as other to serve and pursue one's life again by observing the customs and practices on prescribed lines. Therefore, any hindrance or hurdle put in one's path of pursuit of life by any one else is not only a crime committed against one but also a sin as it is an infringement upon the well-recognised and well laid down customs and practices of the society which in other terms are almost the standards or ethical norms to be always kept in sight and borne in mind both for the individual and collective behaviour.
As per Adi belief behind every crime there is an malevolent spirit. In this connection, Sachin Roy stated that

"Between the aggressive evil and easily irritable custodian spirits, the Adis live a life of fear and doubt, appeasement and expiration. Though of a fine type of materially with all the advantages that it confers, these spirits both hostile and indifferent, are closely related to men; in fact men and spirits were progeny of the same forefathers."

Such spirits exercise behind a person and makes him commit some crime which is considered as a sin. Against such crime, there is always a strong and unanimous protestation from the members of the society as for them the commission of the crime (sin) means to incur the wrath of the supernatural power from which society as a whole can not escape. So, before any drastic consequences are to be faced by it, it unnecessarily undergo the botheration of collectively performing rites to appease the evil spirit or spirits behind the Crime. Indirectly it means that in the element of fear of super-natural wrath the society as a whole is also to suffer privations for which there is a collective and unanimous voice of dissent and disapproach and this voice or society's opinion is of paramount consideration and importance that none can dare to over-rule or side-track it. So the crime against an individual simultaneously become a crime against the society. Therefore, the crime has a contribution of two-fold characteristics.

One crime against individual in particular and secondly, crime against the society as a whole. In legal parlance the crimes of the first characteristics are the torts and those of the second characteristics are public crimes or crimes against the society. Hence, the Adi customary law has dualistic character, that it is both law of torts and law of crimes. Though always dualistic in character, some crimes are predominance over the law of torts, whereas in other cases, law of torts is the predominance over the laws of crimes. The later one is more pronounced in case of breach of taboo whether in the social, economic or religious activities. But it is never exclusive of one characteristics alone at the cost of the other.

The Adi concept of justice seems to be based on the basis of kinship bonds which is tied up with the religious, ethical and supernatural beliefs. A.S. Diamond also stated that when legal rules first came within our knowledge in the form of Ancient Codes, they are found invariably to mingle religious, civil and merely moral ordinances without any regard to the differences in their essential character.  

Such concept of law is still prevalent among some tribal people and though ethics have different motivations, is still remain as powerful force for the direction of human behaviour. Among the Adis, social cohesion and co-ordination is much more that of the other tribe of Arunachal Pradesh. Their laws are framed by the people, sanctioned by the council and promulgated by the President.

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64. Diamond, A.S., - Primitive Law (1950) P - 3.
Every decision is supposed to come from the people, the chiefs have no right but to approve and enforce it. Hence, the people proposes, the council sanctions and the president promulgates. 65

The procedure to administer the Adi justice is more democratic than that of other tribes, like, Apatani, Mishimi, Mishis (formerly known as Dafla) etc. Apatani villages lack a centralized authority, but the village affairs are managed in a somewhat informal manner by a council of clan representatives. 66 On the other hand, the principle behind the Idu sense of justice is that a person who has made others suffer unjustly should himself be made to suffer in return. The man who gratifies his own passion by insulting another should himself be shamefully humiliated. 67

At present, the general widening of the outlook of the indigenous people made possible by outside contact and resulting complexities of life in general, have made room to doubt - to what extent the customary law would meet the requirement of the people's present day need? Moreover, with the progress of time and development taking place, changes in the society, its norms and values are bound to change. The younger generation is become more conscious of their rights and liberties. The change in the outlook and the policy of the government brought the Adi Society close to the rest of the nation and their mind already ripe for acceptance of new ideas mostly in all respect.

(iv) **Problems of Codification**

Modern jurisprudence recognises the advantages of the transformation of well-developed and long established traditional and customary law into statutory form. It also accepts innovations on the substance of existing law. Bentham was the chief exponent of codification and on the other hand Von Savigny was the greatest antagonist. According to him "Law should be gradually developed by the silent internal forces of national consciousness with the least possible interference by the legislature." 68

The term "Code" is inapt, and derives from a time when little or no study had been applied to such of these documents as survived. According to Dismand - the word "Code" properly signifies a complete collection, whether made by a legislative act or not, of existing legal rules. In its essence it does not include an enactment of new rules. 69

Codification of law is inevitable to make it definite and certain and thereby putting limitation over the unlimited scope of interpretation. The need for codification was felt by the jurist of olden time also. As we can stress back its origin in Manus Smriti in Hindu Law in 200 B.C., Twelve Tables in Roman Law etc.

Though the Codes originated in statutory legislation, yet all of the rules comprised of that legislation were not necessarily entirely new. According to Ephorus - the Greek legislators, fixed the sanctions, and no longer left the punishments to be assessed by

the arbitrary will of the judge, which was considered as an important characteristic of the work of the early legislators. 70

As per the statement, codification often made law certain, what was uncertain. Secondly, in some cases of wrongs to which no definite sanction was attached, but which were punished by the judges according to their sense of what was fair in the circumstances, the legislation laid down a specific sanction. These specified sanctions are taken as guiding rules for the judge.

Contrary to the codification of law in the western countries as well as in Asia Minor, some customs and customary laws are still in unwritten stage and are enjoyed by privileged minority. Except this, there is no such thing as unwritten law in the world.

Though modern jurisprudence demand the codified law in all respects, still customary law i.e. unwritten law plays an important role in controlling a particular society. Likewise, customary laws of Adi people also considered as the common property of their society and they show great respect to it by instinctive obedience. But it is observed that due to absence of written laws, sometimes a decision of a Khabang becomes bias as many of the Khabang members fail to master their memories relevant to a particular case. So, for the sake of justice, it is most essential to compile and codify the customary laws in the context of the other statute of the union. Theoretically, it will not be a difficult problem to codify the Adi customary laws, because of the fact that these are still being practised by their society and receive due endorsement and obligation from the people.

70. Diamond, A.S. - Primitive Law (1900) - P.5.
Now, the question is how to co-relate the various customary law with the modern legal system. The values and cultural orientation of the people can not be overlooked as otherwise there will be resistance. Before the actual process of codification is taken up it is necessary to bring the various customary laws relating to person, and property of the people into record. But we should not forget that, though customary law has been regarded as the expression of the genius of a whole people, one of the conditions of growth of customary law is that it begins as the law of a very small locality and therefore, is distinctly local in character. Customary law being the expression of the positive will of the people in the beginning, however, localised, is bound to be unwritten. It has, therefore, been thought that, as soon as customary law is reduced to writing, it ceases to be customary any longer.

According to Henry Sumner Maine, there is any such thing as unwritten law. It is a matter of historical evidence, however, that the art of writing had been known in many instance long before it was employed in presssing or codifying customary law. The popular feeling that reduction of the law to writing tends to rob it of its customary nature, is unfounded. As a matter of fact, on conditions of social uncertainty and conflict, introducing elements of confusion into customary law, that the first step is taken to write it down. It has been trully said that writing may be used at some stage of the "judicial procedure" without destroying the character of the law as customary.


A paper presented in the Seminar on Customary Laws on 14.7.84.
Historically, when strong central government has not arisen, local popular justice had been administered according to their customary laws. In these contexts, law, religion and morality were all mixed together and it was difficult to ascertain what was obligatory, what was mandatory and what was merely directory.

In India the process of codification of customary laws began with the appointment of First Law Commission under the chairmanship of Lord Macaulay under the Charter Act on 1833. Macaulay stated before the House of Commons that:

"We propose no rash innovation; we wish to give no shock to the prejudices of any part of our subjects ................. Our principles is simply this uniformity where you can have diversity where you must have but in all cases certainty." 72

Due to his strong advocacy in favour of the sentiments of native subjects the Commission failed to recommend the codification of personal laws. The second law Commission also did not come up with the recommendation for codification of personal laws.

Only during the later part of nineteenth century the task of codification of certain provisions of personal law was taken on hand by the British ruler. The Britishers realized that the territories under tribal occupation had their specific problems which needed special administrative approach and accordingly recognised their age old customs and usages and their institutions to help, to contribute to the continuance of indigenous legal systems.

After independence, the Constitution itself upheld separate administrative provisions for the tribal areas according to their own customs and laws by codifying and modifying them which were prevalent in their society from the time immemorial. Such unwritten laws are modified gradually with the passing of time without notice of the society, due to which once the customary law may lose its originality. Moreover, such unwritten laws are not specific and certain and its application is more limited, which is not suitable to cope up with the increasing crimes and other legal problems.

Maine opined that -

"Now a barbarous society practising a body of customs, is exposed to some especial dangers which may be absolutely fatal to its progress in civilization. The usages which a particular community is found to have adopted in its infancy and if its primitive seats are generally those which are on the whole best suited to promote its physical and moral well-being; and, if they are retained in their integrity until new social wants have taught new practices, the upward march of society is almost certain. But unhappily there is a law of development which ever threatens to operate unwritten usage."

With the advent of jurisprudence, elsewhere in the world as well as in India, the most of the customary laws particularly laws of crimes and family laws are codified in order to avoid multiplicity of laws and to make them more modern, certain and uniform in order to make them more accommodative to the rapidly changing circumstances.

Public opinion from the elite section of the Adi group are in favour of codification of Adi customary law. According to them, codification of customary law shall not take away its originality and charm.

It is our considered opinion that codification of different legal systems of the world like Roman law, law of Italy, Greece etc. did not effect the administration of justice, rather it helped and streamlined the judicial procedure prevalent in those countries. Twelve Tables of the Roman Law and the Code of Hammurabi even the Napoelen Codes may be considered as examples for the modern legal system. Codification has come to stay and custom will have to take a back seat.

Like any other branches of law, it is also equally important to define all the crimes and punishment when custom is going to be codified. But among the Adis, there are no clear cut definitions about some offences as culpable homicide, rape, adultery, forcible occupation etc. Indian Penal Code define the offences like culpable homicide, murder elaborately and prescribed outright punishment of death or life-imprisonment and fine to one committing any of these offences. The Adi customary laws, on the other hand, makes one, whosoever commits any of these offences liable to be punished with a fine balancing with injury inflicted to be paid to the aggrieved party. These offences and punishment thereto are not defined separately. So, at the time of codification of the Adi law, firstly,

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all the offenses and punishment must be defined clearly and precisely after studying these cases elaborately. K.N. Llewellyn and Hoebel in their study of the customary law of the Cheyenne Indians of North America recognized the following three approaches in the process of codification.\textsuperscript{75}

(i) Study of abstract rules that form the legal codification, written or remembered;

(ii) Study of actual behaviour of the people; and

(iii) Study of principles abstracted from legal decisions.

So far the rules are concerned, there is no such hard and fast rule prevalent among the tribe and the rules that exist as customary law are absolutely unwritten. But from the actual practice and observance of these customary laws by the tribes can however be either consolidated or segregated in different branches of law and their procedures. For example, the marriage system is in the form of clan exogamy and tribe endogamy. Polygamy and polyandry though restricted among certain tribes and clan, yet largely in practice, though it shows an inclination towards the modernism. The land system and the right to holding of land are community base thereby limiting the individual rights than to collective rights. This system helps the tribe to keep the outsider excluded from land grabbing and also to maintain the homogenous nature of their society. Similarly one will see such unified and commonly practised unwritten rules which give a general standard of rules in every sphere of life relating to society, family, property and also to various offences; - which are definitely the graveness for codification of customary laws in a standardised and unified form and acceptable to all.

\textsuperscript{75} Llewellyn, Karl, N. and F. Adamsor - The Cheyenne Way - (1962) P-20.
Whatever may be the custom or the social obligation, the instinct in an individual mind is always in favour of individualism and the pattern of family life tends to be unitary. From the actual behaviour among the tribes in Arunachal Pradesh and in particular among the Adis, the system of society is community based. The law practised are customary laws, except a few enacted laws which are sparingly used. From the study, it has been gathered that each and every member of the society desire to have perpetual adherence to and solemnly declare to follow customary practices prevalent among them even to-day. However, one will come across the divergent views and opinion regarding the codification of customary law. Some are in favour of codification of customary laws keeping the sanctity of their culture in tact; some are greatly in opposition of any move towards such idea of codification. To bridge the gap between the two views would however be narrowed by the careful and gradual implementation of process of codification which shall always be in consonance and parity with the customary practices and endeavour must be made to plug the loop-holes that is inherent in codified law while custom is transformed to enacted law.

The institutions administering the justices according to the customary law are outside the pur-view of hierarchy and superintendence of any other courts. These unique institutions are in the practice of dispensing justices on the basis of the facts and circumstances of each case in hand. No rule of precedent has been followed. Decisions are instantaneous and binding. Whenever reference is made to the next appellate court, the appellate court also follows the customary laws mostly and takes the help of other enacted laws such as I.P.C., Cr.P.C., I.E.A., wherever necessary that to only in spirit not of letters.
But from the various practices, from the different decision of Courts, it has been observed that wherever the custom is falling short of;—there is a need to satisfy the public sentiment and the court whichever it may be, given its decision on the basis of justice, equity and good conscience. There has not been any social up-roar against any such decision delsaring it to be against the custom.

The steps taken in the State of Meghalay in this regard is laudable and may be followed in Arunachal Pradesh also similarly.

With the advent of time and development of jurisprudence, it is essential to codify the customary law in such form and manner, so that it can preserve the very nature of the customs and usages of the indigenous people of the land.

The stumbling problem faced in connection with codification is how to reconcile the variation of customary law in relation to the structure of the society or grant of interrelated societies. Customary law may vary within the same culture from area to area, from one kinship group to another, from one sub-culture to another. Among the Adis, customary laws relating to marriage, inheritance, succession, adoption, vary from one sub-group to another. So Codification of customary laws of one group with different sub-groups admits no standardised formula. Because in such cases due weightage must be given to all the sub-groups equitably if not equally. For such group, having separate sub-groups, codification must be done under separate heads, where there is diversity in customary laws.

The cross-cultural variation explicit among the tribes in the entire North-Eastern region is an admitted fact. Likewise, the
variation and diversity in culture, religion and anthropological differences are also there among the tribes of Arunachal Pradesh and the same conditions are also available among the different groups of Adis. These variations in dialect, culture, religion etc. are somewhat appears to be a prelude at the very first site. But minute observance would show that this divergent preludes is a spontaneous synchronized interlude forging into a single unified tribal base.

In view of the above and in consonance of the public opinion and every piece of legislation transforming customary law into enacted law should be left open for public debate and discourse in order to find out an amicable and saturated generally accepted code. If such legislation provides sufficient scope of wide interpretation and also the provision of saving clauses in order to facilitated necessary amendments, deletion, addition, alteration etc.

A society is dynamic. This dynamism is can not be obstructed even by the rigid rules of customary laws and practices. The custom of yester-years often forgotten, given away or left to disuse or conversely, these are used in a modified manner. Therefore, customs are also neither sacrosanct nor static. From this standpoint of view, it is feared that being overwhelmed by the up-coming of modernism, perpetual social and cultural changes, departure from the strict adherence of the rules of customs, and purversive pursuance and observance, the very originality and sacrosanct of the customary law shall one day be lost and a state of chaos and malign situation shall prevail among those tribes, if the customary laws are not codified in a systematic way soon in due course of time. It has already been experienced that many socio-cultural customs are either left being disused or totally forgotten.
In case of codification of customary laws care must be taken to uphold and keep the originality of the customary practices. If we referred to the codification of Hindu customary law of marriage, particularly three such special provisions could be found incorporated in the Hindu Marriage Act 1955, under Sections 2, 3, 4 and 7. Under Section 2 of the Act the Hindus are defined and consolidated under the word "Hindu" taking all the laws of Buddhists, Jains and Sikhs and all other Hindus and any other persons excluding Muslim, Christian, Parsi and Jew. Under Section 3 of the Act the provision of custom and usages has been incorporated with a wide scope of interpretation. On the other hand Section 4 restricts the use of customs which are against the public interest or which has not been accommodated in the said Act. According to the Section 7 of the Act, marriage may be in accordance with any customary rites or ceremonies belonging to the either party.

From the above provisions, it is crystal clear that codification of custom of Hindu marriage was neither against the sentiment of the Hindus nor injurious to the sacrosanct charm of the Hindu custom. Therefore, the codification of customary laws of the Adis is not an impossible task and such careful and logical enactments shall not harm or hurt the public life and sentiment of the Adis; rather such legislation shall ensure certainty and celerity of law and justices in general and also save the Adi society in cohesiveness and unity.

At present, if we look into the enacted legislations which are in operation in Arunachal Pradesh as a whole, we find three codes of those enacted laws upto 1.1.1981, published in the year 1982.

(i) The Arunachal Pradesh Code Volume - I
Regulations in force in the Union Territory of Arunachal Pradesh.

(ii) The Arunachal Pradesh Code Volume - II
Central Acts (up to 25.1.1980) In force in the Union Territory of Arunachal Pradesh.

(iii) The Arunachal Pradesh Code Volume - III
Acts made by the Arunachal Pradesh Legislative Assembly.

As statehood has been conferred on Arunachal Pradesh the power to make law has devolved on them for their better and smooth administration and also to give effect to the Directive Principles of State policies. Therefore, there is no impediment at present in front of them to transformed the customary law into enacted law by the people's representatives in a duly constituted Assembly.