A distinct line of demarcation can not be drawn between the civil and criminal practices as far the Adi concept of administration of justice is concerned. The prevalent customary laws of the Adis, however, could be termed with better definition as rules of tort or civil wrongs. There is nothing known as civil or criminal law in stricto sensu. The customary laws are primitive rules of conduct inter se as these are in operation from the time of ancient memory. The customary law with its primitive origin, includes both the law of crimes and civil laws. Therefore, the customary laws are laws of wrongs and more appropriately it could be termed as tort. In case of other offences, whether civil or criminal, as we term to-day, the practices are that the person aggrieved or injured proceeds against the wrongdoer by an ordinary civil action and recovers compensation in the shape of pecuniary damages if he
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succeeds. However, in rare cases, some sort of physical punishment along with fine are also inflicted in case of some heinous offences, which could be distinctly separated from a civil wrong.

According to Diamond

"A widespread conception that in primitive law there is no separation between crimes and civil injuries. But it is not so; the distinction is universal, from the time when civil and criminal law are first found until the end of primitive law. In the earlier period of tribal history the difference is far easier to observe, and far more important than in the days of mature law; but towards the end of the period of primitive law, when the criminal and civil law are undergoing a great transformation, they do for a time approach one another closely, and it is from this stage that the misapprehension is derived."²

The distinction between crimes and civil wrongs is roughly that crimes are public wrongs and civil wrongs are private wrongs. According to Blackstone "wrongs are divisible into two sorts or species, private wrongs and public wrongs. The former are in

1. Nigam, R.C., - "Law of Crimes in India" (Vol-I); P-5 (quoted from "Ancient Law" - by Henry Maine).

infringement or privation of the private or civil rights belonging to individuals, considered as individuals, and are thereupon frequently termed civil injuries; the latter are a breach and violation of public rights and duties which affect the whole community considered as a community; and are distinguished by the harsher appellation of crimes and misdemeanours.\(^3\)

There are certain overt acts which are looked upon with disapprobation by the majority in a closed society because such acts tend to reduce the sum total of human happiness. The aim of law is to conserve such human happiness. Any such overt act may be called wrongs. This type of wrongs may be of three types—moral wrong, civil wrong and criminal wrong. This analysis of public misconduct inviting punishments from the law enforcing agencies was succinctly presented by Prof. Samsul Huda in his Tagore Law Lectures as criminalistics. Depending upon the degree of differences of such wrongful civil tendencies by a few against the bulk of the society, the wrongs are classified as such. The acts or evil tendencies which are not so serious enough to attract the notice of law but only disapproved by the society may be designated as moral wrong e.g. resort to lying, disobedience to parents, teachers and other loco parentis. In cases of acts which are somewhat serious than the moral wrong but not so serious enough and which could be indemnified or compensated by the wrongdoer to the sufferer are termed as civil wrong or tort. But the other wrongs which are serious enough to attract the notice of the law and the sentiment of the bulk of the society is such that mere compensation is not enough to mitigate

\(^3\) Commentaries III. P-2.
the injury caused by the offence and wrongdoer is put to corporeal punishment alongwith compensation to the sufferer. The concept underlying the corporeal punishment is to deter the wrongdoer or the like minded not to repeat such overt act or to refrain from doing such act. Such type of offences are categorised as crime.

The practices of customary laws almost all over the whole world confirm that there is no such classification of offenses known to the societies practising customary laws. The concept of justices, customary laws and practices are not different from the system as stated above. According to the Adis, any such act, conduct or behaviour of a person which directly come into conflict with their social, cultural and religious belief and thereby cause injury to the person or property and which tend to disorganise the social sentiment and structure are viewed as more serious than a offence against person or vice-versa. Moreover, the degree of offense is measured by the combination of extenuating circumstances and the status of individual in the society keeping in view the social and community interest. Therefore, the customary laws of the Adis are community based.

It seems that the basis which determines the nature of Adi law, the principles which are followed in dispensing justice and the matrix of punishment, all are directed towards sole objective that is for preservation of the age old customs, practices, traditions and usages. According to them to follow a custom is to follow a law and to deviate from it is to effect a breach of law.
An offence, particularly when the commission or attempt of which invites punishment, is an injury caused to the society as a whole including the person actually injured. Therefore, the impulsive reaction for retaliation or redressal of such an overt act is cast on the society itself. Whenever society undertakes to retaliate or to redress such an offence unitedly with the consensus of the majority of the society, the process gives rise to the formation of an institution. In a society predominantly practising customary laws, there is no such definite shape or forum of such institution for administration of justices. There is no such specific place or location for holding court by such institution and the members constituting the institution are not named. Each and every adult and prudent member of the society is considered to be the member and magistrate or adjudicator of such institution. Unlike the modern system of administration of justice it does not have any definite procedure or other adjuncts or rules for court functioning like the application of limitation stipulations.

Though modern and civilized systems came into existence and had replaced the primitive practices, yet, there is hardly any legal order in the world where one does not witness parallel customs existing side by side, of which one is tribal and the other is non-tribal. The colonial administration of the British also gave due weightage to such indigenous institutions in different countries. Such systems are described as one of the "indirect rule" and defined as a system of governance by which the controlling power encourages, amongst its dependent
people, the fullest possible use of their own dynamic institutions as instruments of local self-government on lines consistent with modern requirements.  

This definition suggests a balance between "dynamic institutions" of sense of the soil and "modern requirements" of the state. But the modern requirement of the state, i.e. modern law and code has little effect unless it is based upon the psychological, intuitive, moral and ethnic concepts of the people to whom the code is to apply.

As we have mentioned above, "indirect rule" is still applicable in some particular tribal areas in India. As per the Report of the "Committee on Special Multipurpose Tribal Blocks", there were forty-three blocks, though there are several hundreds now, which are distributed throughout the country. The Report dealt with the different Tribal Block in Assam, Andhra Pradesh, Bihar, Bombay, Madhya Pradesh, Manipur, Orissa and Tripura. The aim and objective of the committee was to examine the functioning of the various traditional tribal councils. In the Assam Block, the hills, which come under the Sixth Schedule of the Constitution, District Councils have been established to manage the affairs of the district in the interest of the tribes and to a considerable extent according to their customary laws and functions. In Arunachal Pradesh (then NEFA) also the tribal councils play a vital role in

6. Published by the Ministry of Home Affairs, 001 in 1960, PP-156-165.
administration of justice.

The Government of India Act, 1919, which emerged out of Montague-Chelmsford Report, kept out of its purview the typically backward areas, and further authorised the Governor-General to declare any territory in British India to be backward areas. The tribal areas in Assam were declared as "Backward Areas" in 1921 under Section 52A of the Government of India Act, 1915-19. As a result, the administration of these areas continued to be carried on as hitherto by Regulations made under the provisions of the Government of India Act, 1915. The only significant change, introduced by the Government of India Act, 1935, was to authorise division of tribal areas of Assam into "Excluded" and "Partially excluded" areas. Further evidence of the government's intention to ensure the administration of tribal areas according to their own customary laws was the application of the provision of the Assam Frontier (Administration of Justice) Regulation, 1945 which provided for adjudication of a vast majority of disputes and cases in accordance with the prevailing traditional codes and customs of the tribal communities. The Regulation recognised the age old authority of village councils, and the village headmen.

9. As per the provision of Government of India (Excluded and partially Excluded Areas) Order, 1936 issued under the provisions of Section 91(1) of the Govt. of India Act, 1935.
and chief, insofar as these institutions helped and contributed to the continuance of indigenous legal systems. The Act of 1945 as well as the Constitution of India per se ensured the control of the political administration of tribal areas by the tribal Inter-se. The Report of the North-East Frontier (Assam) Tribal and Excluded Areas Sub-Committee also stated that -

On the principle that the local customary laws should be interfered with as little as possible and that the tribal councils and courts should be maintained. We recommended that the people should have full power of administering their own social laws, codifying or modifying them. At present the Code of Criminal Procedure and the Civil Procedure Code are not applicable to the hill districts though officials are expected to be guided by the spirit of these laws. In practice, criminal cases, which are not of a serious nature like murder and offences against the state, are left to the tribal councils or chiefs to be dealt with in accordance with custom. Usually offences are treated as matters for the payment of compensation and fines are inflicted.  

10. Hansaria, B.L., - Sixth Schedule to the constitution P-A-196.
Besides that, the North-East Frontier Agency Panchayat Raj was introduced in 1967. It envisaged a four tier scheme of administration for the erstwhile North-East Frontier Agency. The Panchayat Raj, in some respects, marked a departure from the tribal customs and cultures, but nevertheless it was in consonance with the tribal spirit of basic democracy.

Throughout the Arunachal Pradesh the village councils work within the general framework of the Assam Frontier (Administration of Justice) Regulation of 1945, which recognises their importance and authority and gives them many powers.\textsuperscript{11}

The Regulation of 1945 provides that both civil and criminal justice shall be administered by the political officers, Assistant Political Officers and the village Authorities.\textsuperscript{12} From 1st September, 1965 the nomenclature of the Frontier Divisions of the NEFA and the Political Officer respectively were changed as indicated below.\textsuperscript{13}

\textsuperscript{11} Elwin.V, - Democracy in NEFA (1965), P - 20.
\textsuperscript{12} Section 2 of the Regulation I of 1945 define "Political Officer" and "Assistant Political Officer" as Political Officer includes and Additional Political Officer and so far as the Lakhimpur Frontier Tract is concerned, the Deputy Commissioner of Lakhimpur; and "Assistant Political Officer" includes, so far as that tract is concerned an Assistant Commissioner or an Extra-Assistant Commissioner in the District of Lakhimpur appointed in this behalf by the Governor.

\textsuperscript{13} Arunachal News - Independence Day Number 197, Vol.No. - 7, No. - 4; p-10.
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With the above changes the administrative set-up has also been changed. The Deputy Commissioner is made the administrative head of a District. The major Sub-Divisions are put under the charge of Additional Deputy Commissioners. Other Sub-Divisions are headed by Assistant Commissioners or Extra-Assistant Commissioners, while the Administrative Circle are under the charge of Circle Officers.
(1) JUDICIAL HIERARCHY

Throughout the Arunachal Pradesh the village councils work within the general framework of the Assam Frontier (Administration of Justice) Regulation of 1945, which recognizes their importance and authority and gives them immense power to settle all kinds of disputes both civil and criminal in nature.\textsuperscript{14}

All the village councils of Arunachal Pradesh have certain features in common. They all derive their authority from ancient times and the fact that they are the expression of the will and power of the whole people. They enjoy not only the social support but also the supernatural sanctions.\textsuperscript{15} Village councils of all the tribal people are judicial as well as the political units to control and to protect the villagers and are considered as a basic unit for administration of justice of each and every village.

Village Councils are known differently among different tribes such as Khabang of Adis in Siang Districts, Mele of Akas of East Kameng District, Buliang of Apatani of Lower Subansiri District, Khoong of Tangsang of Tirap District, Naorthum of Noctes of Tirap District, Wanga of Wangao of Wancho of Changlang District, Pharai of Mishmi of Lohit District, Jang of Sherdugpem\textsuperscript{14, 15.}

\textsuperscript{14} Ibid.
\textsuperscript{15} Elwin.V, - Democracy in NEFA (1965), p - 18.
of Kameng Districts etc. Out of all these councils, Kebang of the Adis are said to be more organised and democratic in nature and it is considered as an original court for all kinds of disputes.

Judicial hierarchy prevalent among the Adis may be categorised as follows:

A. Jurisdiction of Kebangs - (I) Kebang
   (II) Bengo Kebang
   (III) Bengo Bengo Kebang

B. Jurisdiction of Civil Courts
   - (I) The Circle Officer
   (II) The Extra-Assistant Commissioner
   (III) The Assistant Commissioner
   (IV) The Deputy Commissioner

C. Jurisdiction of Criminal Courts
   - (I) The Extra Assistant Commissioner
   (II) The Deputy Commissioner

D. Jurisdiction of Court of Appeal/Revision etc. with Original Writ Jurisdiction.
   - (I) The High Court.
   - (II) The Supreme Court.

16. Introductory address by Dr. P.C. Dutta, Director of Research, Govt. of Arunachal Pradesh, in the Departmental Conference-Cum-Seminar of the Directorate of Research, Govt. of Arunachal Pradesh held at Zero, from 12th to 14th July, 1984.
A(I) Kabang: The institution of Kabang is a part and parcel of the Adi Society, - popularly and uniformly subjected to its forum, authority and rules. It is the tribal council, which is a collective body, constituted of all responsible members of an Adi village or area, organised into a democratic form in every unit for common purpose in that society. This social institution is of primitive origin and coming down through generations since time immemorial. It is a body of local self-government, administering the ever all affairs of its own jurisdiction or its own administrative area. As per the census of 1981, there are 129 villages in the East Siang District and each village has a Kabang. 17

According to N. Mitkong 18, generally "Kabang" means any work of common people for common purpose. But judicially, Kabang is the Court of tribal justice.

The origin of Kabang, of the Adis is shrouded in mystery. Henry Maine, tracing the evolution of the State, attributes its origin to the village council. According to him:

"It is village council, sometimes owing a responsibility to the entire body of villagers, sometimes disclaiming it, sometimes overshadowed by the authority of an hereditary chief, but never alto-


gather obscured. From this embryo have sprung all the famous legislatures of the world, the Athenian Ekklesia, the Roman Comitia, Senate and Prince, and over own Parliament, the type and over own Parliament, the type and parent of all collegiate sovereignties (as Austin would call them) of the modern world, or in other worlds of all Governments in which sovereign power is exercised by the people or shared between the people and the king."

The village council is considered as the embryo of the modern administrative set-up. Regarding the origin of this basic institution there are several fables among the different tribes of the Adis.

Among different groups of the Adis different beliefs are there relating to the origin of the Kehang. But, it is almost impossible to trace out the origin and the gradual development of the Kehang. Enquiry on the evolution of such system among the Adis leads to an inconspicuous age of myth. In fact, the Adis have such a myth explaining the existence of the Kehang in their society which starts with Tani (ABOTANI) the first Hemosapiens who is the ancestor of the Adis and some of their neighbouring tribe like the Nishis, the Apatanis, the

Hill Miris etc.

The village council, which is considered as an administrative structure of the Adis is essentially democratic; autocracy in any form has not been known to them and in the absence of a distinct class of nobility, oligarchy has remained equally unknown. There is, in a true sense, a Government by the people and for the people.20

The functions of the Kebang may be divided into threefold like any other village council, administrative, developmental and judicial.21 Here, we shall deal with the judicial function of the Kebang only.

Generally, all the adult members of the village are its members and they participate in the sessions of the Kebang. In practice, however, the participation of woman in the Kebang is very limited. The deliberation of the Kebang are guided by the elders of the councils, who are known as the Kebang-Abua (council fathers). According to traditional practice, elderly, experienced and matured orators of the society are regarded and respected as Kebang-Abua. They were neither elected nor selected but became such by an imperceptible process of acceptance based on their performance or promises of performance. The best of them is called Mekok who enjoys a little

more powers and respect with regard to the Kabang decision and verdict. No pleader are allowed to appear in any case before the village authorities.22

Generally, there is no fixed place for holding the sessions of the Kabang. Traditionally it is held at dare or Koshup, which is located in the central place of the village.

Every society, advanced or backward, undergoes change as its structural framework changes. The Kabang has also been undergoing changes since long, especially after the British penetration into the Adi land. Previously, the Kabang was largely dominated by the priests, whose services are often required.23 But during the British days the authority of the priests declined as the British administrators appointed officials Game as the headman for every clan in a village. The Game were given red coats instead of pay and being recognised by government, they gained a certain amount of authority. The British also introduced a few new officials and representatives of their government like Political Interpreters, Political Assistance, Jamadar etc. According to Luthra, the functions of the Political Interpreters were two fold: first, to interpret the Administration's policies to the people, particularly in the remoter areas and secondly, to provide a representative of the Administration at the discussions held by rival parties to adjudicate local disputes and crimes and to help disposal of

22. Section 56(i) of the Assam Frontier (Administration of Justice) Regulation, 1945.
criminal and civil suits in accordance with the judicial powers delegated to the local bodies.24

The Kebang considered as the court of the people, interprets their laws of customs. All disputes between clans, families and individuals over lands, water, properties, possessions, rights and liberties are decided in the Kebang. Civil and criminal cases like money suit, mortgage, debt, non-clearance of dues, misappropriation, realisation of compensation, encroachment of landed properties, causing injury, divorce, elopement, adultery, rape, theft, cheating and murder are taken up in the Kebang. As per Section 19 of the Regulation the Kebang/Village council may try any case involving any of the under mentioned offences in which the person or persons accused is or are resident within their jurisdiction:

i) Theft, including theft in a building.

ii) Mischief, not being mischief by fire or any explosive substances.

iii) Simple hurt.

iv) Criminal trespass or house trespass.

v) Assault or using criminal force.

According to Section 20 of the Regulation the Village Council may impose a fine not exceeding Rs.50/- for any offence within its jurisdiction and may also award payment in restitution or compensation to the extent of the injury sustained, such fines and payments may be enforced by distrain of the property of the offender.

The decision given by the Village Council on any dispute was considered decisive and was respected by all the members of the community.

A Village Council of the Adis mainly deals with civil and criminal matters, though there is no watertight differences between civil and criminal practices. Civil matters are mostly related to the property and family laws; its ownership and transfer etc. The ownership of land is acquired chiefly by three ways.\(^{25}\)

1) cleaning of plot of land from its natural state of jungles;

ii) by alienation or,

iii) by inheritance.

In the preceding chapter, we have dealt with the law relating to inheritance of immovable properties. We now turned to the law relating to land acquired by cleaning the jungles. The land under jungles may either belong to the village as a whole or to a particular individual. If it belongs to the village community, then the rights would be acquired subject to restrictions imposed by the Kehang. If it belongs to an...

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individual, then normally, it is expected that jungle-clearer becomes a tenant of the owner. But among the Adis, the custom is slightly different. In the case of Kijum Padu, one Hogda Lollen's grand-father sold his entire jhum lands, both hilly and slope to one Pojum Padu. Kijum Padu had been cultivating the hill slope, including the disputed land, since 1957. He did jhuming at first, but gradually developed wet-rice-cultivation plots from year to year. Pojum Padu claimed the land by right of purchase. Kijum Padu claimed it as he cleared it from the jungle stage and made it fit for W.R.C. The Deputy Commissioner held that—

"If a plot of W.R.C. was developed by any individual or another's jhumkheli, the ownership vests on the opener of the W.R.C. plots, because there was trouble to develop W.R.C. plots and those who volunteered to open W.R.C. plots on forbidden land were considered pioneer. In that context Kijum Padu is considered to be the rightful owner of the disputed plot ............... Normally, even if it was conceded that Pojum Padu was the lawful owner of the disputed plot, he was bound to compensate Kijum Padu for development of this land. I can not allow anyone to take advantage of his doubtful ownership to grab a plot of land developed by another person with his sweat."
Though the D.C. delivered his judgement in favour of Kljun Padu, yet he ordered Kljun to pay £100/- to Pojua Padu to settle the dispute amicably as there was some doubt raised in the chicken examination relating to the lawful ownership of a portion of the disputed land as per the customs of the Adis.26

Besides that, if a man clears jungle from another man’s plot of land through mistake and brings it under cultivation, the former will get a portion of such land as decided by the Kabang.27

From the facts, it is observed that in case of use and occupation and of improvement of the occupied land, the Kabang has given greater importance than the rights acquired by inheritance or transfer.

The mode of transfer of landed property are sale, gift, mortgage, exchange and lease etc. But there are some restriction, viz -

(a) that transfer by a member of the Adi tribe can be made only to an another member of the same tribe and not to any other persons, and

(b) a villagers can not transfer his land to a person who is not permanent resident in that village. These two restrictions are self preservatory custom prevalent among the Adis from time immemorial.

26. Kljun Padu vs. Ponjum Padu; Memo No. 56/Jdl. 3/10/21 dt. 11.5.77.  
27. Pitkar Modi vs. Talon Janch, case No. HT/97/79 dt. 9.2.82.  
Kabang decision dt. 15.10.79.
Customs relating to transfer by mortgage, lease, exchange are to some extent vogue among the Adis. Generally jhum land is transferred as well as permanent cultivation land. House-sites, however, are not transferable in any case. If a person abandons his house-site, he loses all right over it and any needy person may occupy it.

In case of transfer of landed properties by sale, price is usually paid in cash. But sometimes, price was paid partly in cash and partly in mithun. Another case was found where, for the loan money repayable at 30% interest in time, debtor sold away his land to the creditor. Sale prices ranged from Rs.166/- to Rs.1300/- per aswa.28

Execution of sale deed is not essential. Sale is completed by delivery of possession after receipt of the sale-price. In some cases, sale deed is executed in presence of Kebang. Registration is unknown.

Transfer by means of gift is popular among the Adis, usually, in favour of prospective heirs mostly the sons. Generally, the son would have in any case inherited the plot after death of the father. But when a son becomes married, the father usually gives him the share of land that would have passed on to him as inheritance, and the son lives in a separate establishment. This is a sort of inheritance in anticipation, but in legal purchase, it can only be called a gift intervivos. According to 28. Field Study conducted by the Research Deptt., Mauhati High Court.
the statutory law of transfer, however, acceptance of a gift does not generally deter the donee from inheriting a share in the residual property after the donor's death. But, in case of a gift to a heir-apparent as mentioned above, the donee does not again get a share in the residual property by inheritance. This kind of gift may be classified in the class of "onerous gift", where the gift is associated with a burden - the burden of losing the share of inheritance after the death of father.

In case of exceptions, a gift may be made to daughter, wife or members of the non-Adi or resident of other villages. For example, one Shri Benudhar Betan was born out of the wedlock of an Assamese father and Padam mother. During the life time of his father, they were outside the purview of the Adi customary law, and they socially ostracized. The father died and mother, along with Benudhar, returned to her father's family. As she was not entitled to inherit her father's property, the gift of landed property made to Benudhar by his maternal uncle and he was accepted by the villagers as Benudhar accepted the life and custom of the Padams. Nobody, not even prospective heirs, objected to the gift, and even to a subsequent sale of a part of the property by Benudhar.

According to Adi customs a gift may be conditional, thereby limiting or restricting the power of alienation to some extent in certain cases. In the case of Mrs. Kamlova, where the father gifted his land to his married daughter, the gift was
nullified by the Kebang when she sold the said plot of land to a third person. The nullification was confirmed by the D.C. because the gift was made to deprive the male-heir. 29

Among the Adis, land system is peculiar. Every piece of land is claimed to devolve, by custom, to one family or other. Once the territory of a particular tribe or sub-tribe was settled, the clans fixed up their own boundaries by natural barriers or dividers. The territory of the village was then divided among the pioneer families. Each family cleared the forest within its own allotted parcel of land carried on jhum cultivation. Such cultivation was shifted from one plot to another plot of land within its own family territory. Areas not fit for any cultivation was kept as family reserve forest. If people from other village clears jungles of such vacant land with a view to settle down there, then serious disputes arises between two villages. In Jomlo village case, the petitioner Jomlo village constituted of about 140 houses and situated on the bank of river Ite of East Siang district. On the other hand, the other party i.e. Mori village is comprised of only 64 houses and situated on the other bank of the river Ite. Being neighbours, few persons of Mori village occasionally used to cultivate 13 plots of land belong to the Jomlo village. When dispute arises, the Kebang held in the year of 1955 decided that the Ite river should be the boundary of the two villages and restrained the villagers of Mori village from

crossing the Its river. But inspite of the Kebang decision, 
the villagers of Mori village occasionally crossed the boundary 
of Its river for cultivation purposes. Then the villagers of 
Mori village called for a second Kebang on 18/5/85 which upheld 
the decision of the first Kebang. Against the decision of 
Second Kebang villagers of Mori village appealed before the 
D.C. West Siang, who made the decision of the second Kebang 
final and absolute by order dated 20/6/86. Then the villagers 
of Jomlo made a petition before S.A.C., Along, who divided the 
disputed area in two halves by his order dated 25/3/87. Again 
on Appeal, D.C. by his order dated 30/5/89 fixed separate 
boundary for Jomlo village and declared the disputed land as 
government khas land. Against the order of D.C. the villagers 
of Jomlo made an appeal before the High Court, Guwahati under 
Section 50 of the Assam Frontier (Admn. of Justice) Regulation 
1945 and Article 227 of the Constitution of India, which is 
subjudiced.

In another dispute between villagers of Rime and 
Nyorak, the Kebang on 7-2-79, made it clear that Rime villagers 
must take permission of Nyorak villagers to shift the site of 
their habitation of forest waste land with Nyorak boundaries.

Study reveals that there is no common land reserved for 
the village community as a whole; except the hunting grounds 
in the high mountains. Ordinarily, hunting ground, burial

30. Office of the D.C. West Siang, Along, No.JK/9430/LMD 
dt. 18/5/85.
31. Civil Revision No.247/89, Jomlo village vs. Mori Village.
ground, fishing zone are owned individually though free hunting is allowed to anyone of the same clan. In Tamu Tatin's case it is held that the level land is kept as hunting area for sine, where they can hunt, but cannot claim as sine's own land.\textsuperscript{32}

Once the village territory has been divided among the families, this descend to their heirs according to the customary law of inheritance. If anybody occupied other's land and construct R.C.C. house for residential purposes, the authority allowed such possession and ordered to pay market value of the land to the original owner on the ground that the unauthorised construction of the house of the other party is difficult to remove.\textsuperscript{33}

Generally, a vacant land or waste land of one family can be transferred by sale. But, at present to encourage wet-rice cultivation, the \textit{Kebang} allows the person to acquire rights over another person's waste land, if the former opens up and improves the latter's land for W.R.C. by spending considerable money and labour.\textsuperscript{34}

\begin{flushright}
32. Civil Revision No. 5(H)/1979; Tamu Tatin & others vs. Yingku village. \textit{Kebang} decision dt. 10/2/75.
33. Mona Loya vs. Kage Loya; Civil Appeal No. 15/88 dt. 10/10/88.
34. Pitkar Modi vs. Talom Jomoh, Case No. HT/97/79 dt. 9/2/82; Lomo Bomjum vs. Benge Sora, Case No. H.T. - 86/80.
\end{flushright}
There is no marked differences between administration of criminal justice and civil justice. The same institution i.e. the village council has got the jurisdiction to administer both civil and criminal justices within the village and procedure followed in such cases are mostly same.

Most of the offences prevalent in the Adi society are of socio-political and socio-economic in nature. Some kinds of offences like theft, adultery, assault, kidnapping are common amongst them. Definition of the crimes are differed from those of the crimes define in the I.P.C. As per the Adi customary laws the definition of those above mentioned crimes are as follows -

**THEFT** - Taking away dishonestly any moveable property like bead necklace, brass bowl, cattle, food grains, mithun etc. without the owners consent is considered as theft. The thief when caught is subjected to the village council. The thief is forced to return the stolen articles and to pay a fine not exceeding the prevailing market value of a pig in cash or kind to the aggrieved person.

In I.P.C. treatment of the offences against property is very scientific and based on dishonest or fraudulent activities or disposition regarding the property. But the Adi customary law deals with property offences in a simplistic manner viz. theft only and punishment imposed upon the theft is only to pay the fine which is equivalent to the price tag of the article stolen.
As per the provision of the I.P.C., whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

But the conception of theft is different among the Adis. As Verrier Elwin stated if anyone stole a mithun and was caught, as he usually was, he was compelled to restore the original mithun or its equivalent and give another mithun as compensation. But the conception of theft is different among the Adis. As Verrier Elwin stated if anyone stole a mithun and was caught, as he usually was, he was compelled to restore the original mithun or its equivalent and give another mithun as compensation.35

In case of other moveable properties, the value of the stolen article will be decided by the Kabang, which may vary from clan to clan and village to village. On the other hand, theft of food by one in period of starvation for the sole purpose of satisfying his hunger is not considered as an offence.36

**Assault** - Assaulting and causing hurt, grievous otherwise, to a person with or without provocation is an offence and offender has to pay compensation to the person or the family of the person. If the injury is in finger, ear, teeth and eye, the compensation is a pig. Injury to the entire arm and leg causing disability to that limb, the compensation is a value of mithun.37

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On the other hand, as per the provision of the I.P.C., the assailant shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.  

**Murder** : Murder is compensated with the heaviest amount possible which is decided by the *Kabang*. In former days, inability to pay the compensation resulted in the selling of the person guilty of murder as a slave and the money derived from the sale was paid to the family of the deceased by way of compensation.  

**But as per provisions of the I.P.C., whoever commits murder shall be punished with death or imprisonment for life and shall also be liable to fine. On the other hand Adi customary law considered murder as the most severe crime and is compensated with the heaviest fines. Among the Ramos, one of the sub-tribe of the Adis, a murderer has to pay compensation to the family of murdered equivalent up to the cost of fifteen mithun.**  

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38. Section 352 of the I.P.C.  
On the other hand, the I.P.C. holds these offences as of most odious kind, and its section 302 prescribes outright punishment of death or life imprisonment and fine to one committing any of these offences.

Adultery: Among different societies, there are variations in the conception of adultery as well as weightiness of this offence. In olden days, as per Adi customs, if anybody committing adultery with the wife of a chief who happens to be the daughter of another chief is said to be punishable with death. But, if the offence is committed with a woman belong to a general class, the offender is liable to pay a simple fine.41

Kidnapping: Kidnapping is very common and is practised as one of the form of marriage by the Adis. As per the Adi Customary laws it is an offence and it makes the offender liable to pay the bride-price or a fine or both to the parents of the woman so kidnapped. Their union as husband and wife is recognised after the offender makes the payment of the demand put to him.

Section 366 of the I.P.C. in relation to kidnapping a woman comes into confrontation with the customary laws as it makes the offender liable to be punished with imprisonment of utter description for a term which may extend to ten years and fine. Moreover, among the Adis kidnapping is generally prevalent only in the form where a woman so kidnapped is compelled to marry any person against her will.

The crimes perpetrated by the slaves, women, children, idiots and animals are regarded as the responsibility of the head of the house-hold and he is to bear the responsibilities for the crimes done by his dependents. The relatives and clansmen may help him in the affairs of payment but there is no system to bear the joint responsibility for his action. However, all cases are not brought before the village elders for upright judgement keeping in view to take direct action for wrongs against the culprit or his group by the victim or his group but most of the major crimes are brought to the village elders for upright judgement. Although for the act of homicide they wanted to take blood revenge but it is not easy to implement this eye for eye tenet of primitive criminal justice and as such in the long run they are bound to give up that idea and wanted to bring it to the village elders for settlement and imposition of fine. The vengeance for a woman is taken by her husband and his agnate group and similarly the vengeance for a woman is taken by her husband and his agnate group and similarly the vengeance for a slave is taken by his master and the member of his master's family.

The common way of settling disputes or punishing crime has always been by multiple restitution and is applicable to almost every kind of offences. Such typical customs are observed by almost all the tribes of Arunachal Pradesh, who have generally been willing to comprise even a case of murder, provided sufficient compensation was paid. In many cases the compensation demanded was so heavy that the offender was completely ruined and his fellow-clansman had to help him out.

42. Deuri, R.K. - "Customary Laws of the Mishmis" - A paper read in the Seminar held at Ziro, from 12-14th July 1984 conducted by the Directorate of Research, Govt. of A.P.
In all kinds of cases the Kabang Abu introduces and moves the problems. Traditionally all the male members of the village are counted as members of the Kabang and everybody has right to participate in the Kabang proceeding and to give his suggestions. A man who does not participate and ventilate his thought in the Kabang is ridiculed by his friends as Mebal or emuch or impotent. All the members of the Kabang give patient hearing to the arguments forwarded by the speaker of both parties. But no writing procedure is prevalent there and decisions are not taken by a formal vote but discussion continues until general unanimity is achieved. On such discussion, the contending parties are backed by their fellow clansmen and supporters appear before the Kabang and try to convince the members. The Kabang members then proceed to compare both the arguments, analyses the merits and demerits. Sometimes they cite one or many such similar cases dealt earlier and their resolutions/decisions passed unanimously. They try to give logical proof to the present case whether it was a genuine one or not. If proved genuine, they offer suggestions for solutions to arrive amicable decision. If the charge is proved, the accused has to repair the injuries and pay compensation for the loss. If the charges are denied, or when contending party do not agree on the Kabang decision or when human discretion proves inadequate for deciding disputes, supernatural guidance is sought through varied ordeals. Generally when a case is undecided due to lack of proper evidence, witness and the decision is made by the Kabang is not agreeable to both the contending party, then the aggrieved and the accused parties seek permission
to perform certain rites in the name of Dowi-Ptto to get final verdict from him. These type of rites/orders as per the traditional and customary laws are known as Awh. There are many types of Awh practise in Adi Society, particularly relating to the disputes/effences like

(a) land and water  
(b) theft  
(c) ownership of animals  
(d) planted trees and bamboo  
(e) Agricultural implement  
(f) Expectant baby in the womb  
(g) Matrimonial matter etc.

The ordeals performed may be classified into following heads:

<table>
<thead>
<tr>
<th>No.</th>
<th>Type of ordeal</th>
<th>for which it is undergone</th>
<th>Scheduled time for getting result.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Marking ears of Mithun.</td>
<td>In all cases</td>
<td>2 years to 3 years</td>
</tr>
<tr>
<td>2</td>
<td>Pouring molten lead on palm.</td>
<td>In all cases</td>
<td>Just after performed.</td>
</tr>
<tr>
<td>3</td>
<td>Taking egg from the boiling water.</td>
<td>In all cases</td>
<td>3 days to 5 days</td>
</tr>
<tr>
<td>4</td>
<td>To eat a lamp of soil.</td>
<td>In case of disputes relating to land and water only.</td>
<td>Remain life long.</td>
</tr>
<tr>
<td>5</td>
<td>To beat plaintain tree.</td>
<td>Disputes relating to land and water only.</td>
<td>For generations to come.</td>
</tr>
<tr>
<td>6</td>
<td>To bury rice</td>
<td>In land and water cases only.</td>
<td>Next day or within 3 days.</td>
</tr>
<tr>
<td>7</td>
<td>Cutting one finger</td>
<td>Only in case of</td>
<td>Just after performed.</td>
</tr>
<tr>
<td>8</td>
<td>To drink blood of fowl.</td>
<td>In all cases</td>
<td>For life.</td>
</tr>
<tr>
<td>9</td>
<td>To bite teeth of tiger.</td>
<td>In abetment,cheating and giving unlawful statement including matrimonial matter.</td>
<td>For life.</td>
</tr>
<tr>
<td>10</td>
<td>To burn bamboo tube</td>
<td>Foetus of illegal intercourse.</td>
<td>After child birth.</td>
</tr>
<tr>
<td>11</td>
<td>To cut arrow tip of iron.</td>
<td>-de-</td>
<td>-de-</td>
</tr>
<tr>
<td>12</td>
<td>To burn leaves of bushes.</td>
<td>-de-</td>
<td>-de-</td>
</tr>
</tbody>
</table>

43. Negu, A. - Customary Laws of Adis and Its applicability in the Context of Indian Penal Code. - Paper submitted to the Seminar held on 14-7-84.
The findings of the superstitious court are considered final and bindings. But now such type of practices are discouraged, though still in practice in some remote areas.

Generally, practice of such oath and ordeals creates more disputes in the society. Because, when one has to undergo an ordeal he invite his or her maternal uncle to assist in the activities for collecting necessary materials, etc. This involvement of four household, which increased enmity amongst them. Moreover, the subsequent results of such trials are going out of the hands of the society. The killing of mithum, attack of diseases, biting of a tiger, bear and snake etc. within stipulated period of ordeals increased enmity among the families, clans and tribes. Now, all the complicated and undecided cases are referred to the higher Kebang i.e. Bogum-Bokang Keo or to the Deputy Commissioner for judgement.

The decision of the Keo is generally implemented by either party to the disputes spontaneously. The moshup ke or moshop bays communicate the decision to the public and help in implementation of such decision.

The proceedings of the village authorities need not be recorded in writing, nor shall it be necessary to examine by the Deputy Commissioner and Extra Assistant Commissioner and signed by the parties examined. But the Village authorities must report their proceedings before D.C. or E.A.E. in any way which appears suitable for them. 44

44. Section 32(b) of the Regulation of 1943.
The Kabang may appoint or the D.C. may depute one or more assessors to assist them in coming to a decision. Such person is known as Political Assistant, who will record the decision of the Kabang.

With the development of society and changing of time, the system and procedures of the Kabang are also changed gradually. At the first instance when the Adis were came into contact with the people of the plains of Assam during Ahom reign, their elders for the first time, were known as gams or gaon-burahs. During British rule, village chiefs were appointed as gams and were given red coats instead of any remuneration or honorarium. They also acted as intermediaries between the administration and the people. The seniormost gam was known as bargam. A gam owed his position and importance to the Government and would retain it on the pleasure of Government rather than to the mass people. As a result the autonomy of the Village councils bow down to the Government indirectly.

Besides, appointment of gam, the British Government also created some new post called Political Jamadar and Political Interpreters. The position of Political Jamadar was higher than the gam.

45. Pegu, N- The Mishing (Miris) of the Brahmputra Valley (1984); pp-45-56.
As per the provisions of the Regulation (I) of 1945, the village authority, i.e. the Kehang may impose a fine not exceeding Rs. 50/- for any offence which they are competent to try and may also order payment in restitution or compensation to the extent of the injury sustained. Such fines and payments may be enforced by distraint of the property of the offender. But in practice, it is observed that, the Kehang imposes penalty, sometimes more than Rs. 50/- which violates the Section 20 of the Regulation (I) of 1945. This deviation is permitted by the administration by para 7(a) of its Policy Introduction of 1959, for the ‘Powers and Functions of the Tribal Councils’ on the condition that when the compensation exceeds the value of Rs. 50/- the decision of the Kehang should be reported to the officer-in-Charge of the nearest administrative centre, i.e. the Deputy Commissioner. If he considers the award unjust or excessive may return the case to the Council for further consideration.

Although the Regulation (I) of 1945 has given some elbow rooms to the village councils, the Kehang can try all kinds of offences including murder according to their customary procedures. As per Paragraph 7(b) of the Instruction the village

47. Section 19 of the Regulation (I) of 1945.
49. "Powers and Function of Tribal Councils" issued by the Govt. of India, NEFA, Memo No. Jud. 150/58, dated Shillong, the 24th January, 1959.
council may deal with all cases involving criminal liabilities including heinous offence other than those against the state and can impose fine. If any person on whom a fine has been imposed by a village authority fails to deposit the amount within stipulated period, the village authority may send him to an extra Assistant Commissioner, having magisterial powers to be dealt with in such manner as he may deem fit, unless the accused person gives notice of his intention to appeal against decision. Such aggrieved party may appeal within seven days to the E.A.C., who on receipt of appeal shall try the case de novo.

On the other hand, Political Interpreter play an important role in the Adi rural administration. Their influence and power were further enhanced and consolidated by the practice of making them to represent the Government in settling disputes in the village Kehanga. Now-a-days also a Political Interpreter is considered as the plenipotentiary between traditional Kehanga system and modern administration.

The judicial system prevalent among the Adis is practical and simple and it try to maintain the traditional concept of justice and equity. As Roy stated that the Kehanga is more a board of arbitration, equally sympathetic to both the parties than a body of stern dispensers of justice which the offenders fear and try to evade. The idea of "judgement" in the legal

50. Section 23 of the Regulation (I) of 1945.
51. Section 24 of the Regulation (I) of 1945.
sense is absent. The elders of the villages, i.e. experts on "law" play a role of arbitrators not judges. Their function is to weigh the gravity of the commission i.e. to find out the value of the damage and to work out a formula for its reparation. Because Customary laws of the Adis have accorded exquisite value to human life even to that of an offender committing heinous crime and has got no prescription of its forfeiture. Recently, social Scientist Sri B. Banerjee, of the Directorate of Research, Government of Arunachal Pradesh stated that Kabang is democratic Court of the people and it considers death sentence below dignity of the human life.  

With the development of time the indigenous Kabang system has lost its originality due to various reasons. First, the appointment of political Jamadars, political interpreters, political Assistant infringing on the authority of the sena burhas and limited the jurisdiction of the Kabang.

Secondly, with the introduction of the senahip with red coat in the village leadership by the British Government, debilitated the position of Kabang Abus because of the patronage received from the Government. As a result he superseded the position and social respect of the Kabang Abus in the society as a whole.

Thirdly, the Assam Frontier (Administration of Justice) Regulation, 1945, had changed the basic character of the Kabang.

As per Section 5(1) of the Regulation, the Political Officer shall appoint such person or persons as he considers desirable to be the members of a village authority for such village or villages as he may specify and may modify or cancel any such order of appointment, and may dismiss any person so appointed. If the village authority was not so constituted for any village or villages, the Political Officer or an Assistant Political Officer nominated by him was to function as such.

**Fourthly**, introduction of superior traditional Court like *Bengo-Kebang, Benga Kehang* and modern appellate institution lowered the position of *Kebang*. Because people know that they had superior counts of appeal which could overrule the decision of the *Kebang*.

**Fifthly**, according to the North-East Frontier Agency Panchayat Raj Regulation, 1967 (Regulation 3 of 1967), the *area* members and *Anchal Samity* members play more important role in the village affairs than the traditional village elders.

**Sixthly**, the emergence of different political party system divided the villagers on the party line and it affect the unity of the village in general as well as the *Kebang* system also. Because, originally *Kebang* knows no political parties. They believe in a sort of a partyless, classless and casteless system of democracy in the village. But emergences of different political parties with their demagogues carry out propagandas which confuse the common villagers.

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54. Now, designated as Deputy Commissioner.
Thus, the village *Kebang*, the little republics having nearly everything they want within themselves and almost independent of foreign relations gradually lost its indigenous character and traditional procedures.

(ii) *Bango Kebang*:

The *Bango Kebang* covers an area of six or more villages. From the records it is found that just after independence of India in 1947, the *bango* system was introduced in the Adi areas. P.L. James, the then Political Officer of the Abor Hills District called a meeting of all the Adis at Pasighat and there he suggested that whole of the Abor Hills District should be divided into a number of divisions for the developmental works.55 Accordingly, the district was divided into *bangoos*, viz, Rego, Ramk, Paktu, Igo, Jigo, Lego, Kar ko, Nugong, Bogo etc. Later on, more *bangoos* were created and at present there are thirty four *bangoos* in Adi inhabited areas.56 The division of *bango* is mainly done on the basis of the areas inhabited by a sub-tribe or by big clan of the Adi tribe. The jurisdiction of a *bango kebang* is over a number of villages in a compact geographical area. The head of those villages are the members of the *Bango* and besides that it has also a secretary, who is put incharge of the bango office. Offences or disputes arise from intervillages dealt in the *bango kebang*. Sometimes *bango kebang* is invited to the *village kebang* also.

depending on seriousness of cases. Its function is not limited in the judicial, but also extended to administrative as well as political spheres also. The money realised as fines was utilised for the development of the bence area of a particular bence.

A (111) Bogen-Bokang Kebang:

Bogen-Bokang Kebang is the highest traditional organisation of Adis which exercise supreme authority over all various sub-councils/sub-khanges, introduced by the British administration. According to Sachin Roy it is a temporary council formed by all the Banges of the same tribe and is composed of influential elders having interest in the disputes. It covers the whole area of the Adi tribe and deals with problems involving sub-tribes or clan and is considered as a common forum of the Adis.

As we mentioned that it is introduced by the Britishers, it has no statutory sanction and recognition like the village kebang.

The Bogen-Bokang does not meet at any fixed date or there is not fixed place to hold such kebang. The first meeting of the Bogen-Bokang was held at Panzin in 1937 and second was at Pasighat area in 1938. Besides settling the disputes it interferes and discuss the Socio-religious and general problems of the Adis in general.

Thus the main function of the Borum-Bokang is to develop a unified practice of customary laws prevalent among the Adis and also tries to modify, rectify and reform these customary practices whenever necessary.

With the introduction of NEFA Panchayati Raj Regulation, 1967, the Block and Circle system of the administration overlapped with the Bango Kehang and Borum-Bokang Kehang. On the other hand, the modern setup of various administrative units and posting of civil officers shadowed the traditional tribal procedure of justice, under the new administrative setup local disputes unsettled by village Kehang are directly brought to the magisterial authority having civil power over the area. If the civil administrator failed to settle the disputes, the case may be sent to higher authority - District Magistrate. The District Magistrate then settle it in accordance with the National law. Thus, the disputes as well as law and traditions slipped down from the hands of the traditional jurisdiction to the civil jurisdiction.

The Bango Kehang and Borum-Bokang Kehang are recently came into being. Earlier, above the village level, there was no trace of a universal indigenous structure or mode of administration to look after groups of villages or communities of tribes or sub-tribes. So, the administration has created some posts like, Circle Officer, Extra-Assistant Commissioner, Assistant Commissioner in addition to Deputy Commissioner. As the Borum Bokang has not got the sanction of the society and no social or supernatural punishment is expected to be inflicted on the defaulters who fail to obey their decision. The defaulter then come under the purview of the usual penal laws and are punished accordingly by the Administration.
B. Jurisdiction of Civil Court.

In the matter of civil and criminal justice, the Deputy Commissioner is the superior authority as per the provisions of the Assam Frontier (Administration of Justice) Regulation-(I) of 1945. On the other hand, the Juthu is considered to be an original court in both civil and criminal matters. The pattern of territorial administrative jurisdictions above the village level are as follows:

(i) The Circle Officer.
(ii) The Extra Assistant Commissioner.
(iii) The Assistant Commissioner.
(iv) The Additional Deputy Commissioner.
(v) The Deputy Commissioner.

The Circle Officer and the Extra Assistant Commissioner.

The Circle Officer is vested with the charge of a group of villages, generally 30 to 40 in number and the Extra Assistant Commissioner is appointed at the head of Sub-divisions or in rare cases of certain important circle. Within these jurisdictions, the local bodies were given full power to decide judicial cases as permissible under the A.F. (Admin. of justice) Regulation of 1945. The Circle Officer and Extra Assistant Commissioner are vested with magisterial powers according to their knowledge and experience in the exercise of law. But they used these powers only when the merits of a case demanded trial by a regular court or when the local bodies decided to commit cases to the magisterial Courts.\(^{59}\)

\(^{59}\) Luthra, P.N., - Constitutional and Administrative Growth of the North-East Frontier Agency (1971); p-21.
The functions of the Circle Officers, Extra Assistant Commissioners etc. embraced a multi-purpose list. They acted as local heads for all subjects affecting their jurisdictions such as developmental work, maintenance of law and order, revenue work, community development schemes, socio-cultural affairs of the people etc. The prime position accorded to the Circle Officer, Extra-Assistant Commissioner etc. in respect of their jurisdictions has come to be known as the Single Line Administration. It enables the people to take their complaints to the highest authority in their area easily and can get justice immediately.

Although, the pattern of circles, sub-divisions and districts followed what existed in other parts of India, the duties allotted to the Circle Officer and the Extra Assistant Commissioner are strictly according to the local needs.

**The Assistant Commissioner:**

The function of the Assistant Commissioner is more or less like the Extra-Assistant Commissioner. He took the charge of the more important sub-divisions.

**The Additional Deputy Commissioner:**

The Additional Deputy Commissioner is posted as heads of vital sub-divisions close to the International border where overall development required to be accelerated. They are vested with the powers of the Deputy Commissioner to discharge duties effectively.
The Deputy Commissioner:

The Court of the Deputy Commissioner is considered as the highest court within the territory of a particular district. In the civil matters, the D.C. may try suits of any value under section-37 of the Regulation, but the Extra Assistant Commissioner may try suits not exceeding Rs.1000/- in valuation. As per section-38(1-6) of the Regulation, the D.C. and E.A.C. shall in which both parties are indigenous to the district try to persuade them to submit to arbitration by a Panchayat.

On the other hand, the village authority i.e. khang can try suits without limit of the value in which both the parties are indigenous to the district and live within their jurisdiction. Such cases must not be referred to arbitration as per provision of section-38 of the Regulation(1) of 1945.

In the District Court headed by Deputy Commissioner is the Chief Judiciary of the district and it deals with all the judicial matters of the jurisdiction and it settles cases in accordance with the principles of National Law. It accept the case which is not settled by the traditional khang. Sometimes to settle the dispute in the village level the D.C. himself presided over the khang.60 And against such order the aggrieved party may appeal before the High Court.

In any case, in the courts of the Deputy Commissioner or Extra Assistant Commissioner, the party must present the case of its own. No pleader shall be allowed to appear on behalf of the party, except with the permission of the Deputy Commissioner. Generally, such permission is not refused if the defendant at the time the cause of action arose, resident beyond the jurisdiction of the court in an area where the appearance of pleader is not restricted. 61

According to Regulation(I) of 1949, the Court of the Deputy Commissioner is the appellate court. Against the decision of the kahang, the aggrieved party may make appeal to the Deputy Commissioner or to the Extra Assistant Commissioner. If the party intended to make appeal then the kahang send the party to the D.C. or E.A.C. along with one member of the kahang and one independent witness. 62 The aggrieved party may make appeal to the E.A.C. for a suits whose value is not exceeding Rs. 500/- and to the D.C. in suits exceeding that value.

In this respect, the provisions of the Regulation(I) of 1945 is appears to be controversial. Because, Section-37 of the Regulation states that - "The Political Officer (Now redesignated as Deputy Commissioner) may try suits of any value. The Assistant Political Officers (Now redesignated as Extra Assistant Commissioner) may try suits not exceeding Rs. 1,000/- in value.

61. Section 56(2) of the Assam Frontier (Administration of Justice) Regulation, 1945.
62. Section 45(2) of the Assam Frontier (Administration of Justice) Regulation, 1945.
On the other hand Section-46(1) of the Regulation(1) of 1945 reads as - "Any person aggrieved by a decision of a village authority may appeal to the Assistant Political Officer (i.e. Extra Assistant Commissioner) in suit not exceeding Rs.500/- in value, and to the Political Officer (i.e. Deputy Commissioner) in suit exceeding that value." This anomaly should be removed and powers and duties of the E.A.C. should be mentioned specifically and elaborately.

The appellate court shall, if necessary examine the parties, and, if the decision of the kabang appears to be just, shall affirm and enforce the decision as its own or may try the case de novo or may refer to a Panchayat and then provisions of Section-38 of the Regulation shall apply in such case.63

Sometimes the party may directly approached the Deputy Commissioner for justice.64

In case in which neither or only one of the parties is indigenous to the district, the D.C. or E.A.C. may with consent of both parties, order that the case be referred to arbitration by a Panchayat as per provisions of Section-38(2) to (5) of the Regulation(1) of 1945, except that the D.C. and EAC shall give the parties an opportunity to object to the decision. As such objection must be made within ten days from the date of pronouncement of such decision. In such cases the decision of the D.C.

63. As per Section-46 of the Assam Frontier (Administration of Justice) Regulation, 1945.
64. Talon Tamut vs. Tayek Jerang; T.S. 11/1988, dated 1.5.89.
is final. As per Section-38(6) of the Regulation in case of objection, decision recorded shall be final and enforceable as if it was a decision of the court.

An appeal preferable to the D.C. may be presented to the E.A.C., who shall, if it is in order and presented in due time, endorse upon it the date of receipt and transmit it with the records of the case to the D.C.

In all the matter the court of the D.C. and E.A.C. shall be guided by the spirit, but shall not be bound by the letter of the Code of Civil Procedure, 1908, and shall follow, subject to any express provisions of these rules, the principles of the Indian Limitation Act, 1908, in disputes between persons who are not indigenous to the district.65

65. Section-52 of the Assam Frontier (Administration of Justice) Regulation, 1945.
C. Jurisdiction of Criminal Court:

The administration of criminal justice among the Adis is theoretically governed by the Regulation of 1945; i.e. the Assam Frontier (Administration of Justice) Regulation, 1945, but practically by the kebang which enforces the customary laws and enjoy more powers than given to it by that Regulation.

As per the Regulation(1) of 1945, criminal justice shall be administered by the D.C., the S.A.C. and the village authorities, i.e. kebang in case of the Adis. Here, the Deputy Commissioner is acted as District Magistrate in the Court of Session. He is the supreme authority of the District. On the other hand Extra Assistant Commissioner is acting as Judicial Magistrate, Executive Magistrate in criminal matter as well as Munsiff also in the civil matter.

The Deputy Commissioner is competent to pass any sentence warranted by law and the Extra Assistant Commissioner may exercise the powers not exceeding those of a Magistrate of the First Class as defined in the Criminal Procedure Code. In exercise of the powers conferred by the provision to sub-s.(2) Section-1 of the Code of Criminal Procedure Code, 1973, the Central Government applied to the (then) Union Territories of Arunachal Pradesh and Mizoram being tribal areas within the meaning of the explanation to the said proviso, with effect


67. Section-17 & 18 of the Regulation(1) of 1945.
from the 1st day of April, 1974, the provisions of the said Code, as mentioned in column(1) of the Schedule hereto annexed, to the extent, and subject to the modifications, if any specified in column(2) of the said Schedule:

**SCHEDULE**

<table>
<thead>
<tr>
<th>Provision of the Code applied</th>
<th>Extent of application and modification</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Section.2.</strong></td>
<td>To the extent the definitions contained therein apply for the interpretation of the provisions extended by this notification and those contained in chapter-VII, VIII and XI of the Code.</td>
</tr>
<tr>
<td><strong>Section.3.</strong></td>
<td>After Sub-§.(4), the following Sub-Section shall be inserted namely Sub-§.(5) notwithstanding anything contained in the foregoing provisions of this Section:</td>
</tr>
<tr>
<td>(i) any reference in such of the provisions of this Code, as applied to the Union Territories of Arunachal Pradesh and Mizoram to the Courts mentioned in table(1) below shall, until the Court of Session and Courts of Judicial Magistrate are constituted in the said Union Territories be construed as reference to the Court of Magistrate mentioned in the corresponding entry in column(2) of the table below.</td>
<td></td>
</tr>
</tbody>
</table>

**TABLE-I**

| Court of Session or Sessions Judge or Chief Judicial Magistrate | District Magistrate. |
| Magistrate or Magistrate of the First Class or Judicial Magistrate of the First Class. | Executive Magistrate. |
Though Arunachal Pradesh is now evaluated to the Status of Statehood, still these classifications are prevalent among them.

As per the Regulation(1) of 1945 the village authorities may try any case involving any of the offences like - theft, simple hurt, criminal trespass, assault etc. where person or persons accused is or are resident within their jurisdiction. But in practice, village authorities try all kinds of offences trifling as well as heinous offences as described in Section-2 of the Regulation. These are as follows:

(a) murder;
(b) culpable homicide;
(c) causing grievous hurt;
(d) rape;
(e) kidnapping;
(f) abduction in order to subject to slavery;
(g) disposing or buying of persons as slaves;
(h) habitual dealing in slaves;
(i) dacoity;
(j) robbery;
(k) rioting;
(l) house-breaking;
(m) theft of cattle;
(n) mischief by fire or any explosive substance;

any offence punishable under chapter-VI or chapter-XII of the Indian Penal Code, any offence punishable under the Arms Act, and any attempt to commit or abetment of any of the above mentioned offences.

68. Vide Notification No.Jud.25/74, dated 2nd April, 1974, the Chief Commissioner and the Additional Deputy Commissioner were appointed to be Executive Magistrate.
Chapter-VI of the I.P.C. deals with the crime/offences against the State, and chapter-XII deals with the offences relating to coin and Government stamps. But the customary laws of Adis is silent relating to these crime or offences, though the Regulation(1) of 1945 empowered the village council to deal with all types of crime and offences.

The principle of legality i.e. *nulla poena sine lege* and *nullum crimen sine lege* does not apply in some cases of Adi justice. According to the first principle, no person should be punished except in pursuance of a statute which prescribes a penalty. On the other hand, the second principle denotes that no conduct should be held criminal unless it is precisely described in a penal law. So, some crime for which no penalty is prescribed or crime which are not defined in the customary laws, the village council has no legal right to dispose such cases and punish the wrong-doer for such crime.

All Codes prescribed administration of punishment for various kinds of offences according to a certain standard depending upon the seriousness of the offence. The Indian Penal Code prescribe punishments to which the offenders are liable. are death, imprisonment of 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 offender. It is said that in the past, there was provision of death sentence in the
customary laws of the Adis, as Verrier Elwin stated in "Democracy in NEFA", where a Bari was took to the river and killed him there and threw the body into the water. But no such instance of passing death sentence against an offender has been reported till date.

In the criminal matter, the village kabang is considered as original court. Any party aggrieved by a decision of the kabang may appeal within seven days to 3.A.C., who on receipt of such appeal shall try the case de novo. An appeal shall lie from an original decision of the 3.A.C. to the D.C. The D.C. is vested with the power of District Magistrate and he is the Chief Judiciary of the District; as it deals with all the judicial matters of the jurisdiction and settles all cases in accordance with the principles of National Law or Indian Penal Code. The local cases unsettled by traditional kabang are brought before this Court and this Court entertain only those cases which are not settled by the traditional kabang. The D.C. may also entertain the cases directly where the other party is not indigenous to the State. In Amanullah's case, the D.C. of the West Siang District, Along, entertained the case and acquitted the accused of the charges against him under Section-302 I.P.C. and 201, I.P.C. and ordered to release him from the judicial custody.

All sentences of death, transportation or imprisonment for seven years or more passed by the D.C. shall be subject to confirmation by the High Court, and the proceedings of all cases in which any such sentence has been passed shall be submitted to the H.C. forthwith, and no such sentence shall be carried into effect unless so confirmed. When a sentence of death passed by the D.C. and is confirmed by the High Court, the D.C., shall, on receiving the order of confirmation, cause such order to be carried into effect by issuing a warrant in the form given in item No.XXXV of Schedule V of the Code of Criminal Procedure, 1898 and shall fix the time and place of execution and time fixed shall not be less than 21 or more than 28 days from the date of issue of the warrant. All such proceedings before the D.C. and the Z.A.C. shall be recorded in English only.

In the matter of evidence in both civil and criminal suits, the D.C. and the Z.A.C. shall be guided by the general principle of the Indian Evidence Act, 1872, (Act of 1 of 1872).

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71. Section 29 of the Regulation(I) of 1945.
72. Section 31(1-2) of the Regulation(I) of 1945.
73. Section 32(c) of the Regulation(I) of 1945.
D. Jurisdiction of Court of Appeal or Revision.

D(I) The High Court.

The High Court is the next Court of appeal or revision both in the cases of civil and criminal matters.

In the civil matter, an appeal lies to the Deputy Commissioner or High Court. Such appeal, if it is in order and presented in due time, the Extra Assistant Commissioner made an endorsement upon it and noted the date of receipt before transmission to Deputy Commissioner with records. The High Court on application or otherwise, call for the records of the proceeding of any original case or appeal decided by the Deputy Commissioner, and may pass such orders as it may deem fit. The High Court may entertain any such matter which is not appealable as per the provisions of Regulation I of 1945.

Relating to limitation and other conditions Section-51 of the Regulation provides that every petition of appeal under section-47 or 48 and every application under section-50 of the Regulation shall be accompanied by a copy of the order against which the appeal or application is made, and shall be filed within thirty days from the date of such order, excluding the time taken in procuring a copy of the order.

The High Court including the Court of Deputy Commissioner, Addl. Deputy Commissioner and Extra Assistant Commissioner shall

74. Section 49 of the Regulation I of 1945.
75. Section 50 of the Regulation - Powers of Revision.
be guided by the spirit, but shall not be bound by the letters of the Code of Civil Procedure, 1908, and shall follow, subject to any express provisions of those rules, the principles of the Indian Limitation Act, 1908, in disputes between persons who are not indigenous to the area.\[^{76}\]

The High Court may modify or amend the decree made by the original Court and for the purposes of execution, the decree be deemed to be the decree of the original Court. Decree against persons resident beyond the jurisdiction of the Court, if satisfaction cannot be obtained within the State (tract), shall be transferred for execution to a Court having jurisdiction.

In the criminal matter, an appeal shall lie to the High Court against sentences of three years' imprisonment and upwards, and sentences of death or transportation. Besides that, in other cases there shall be no right of appeal, but the High Court may entertain an appeal by special leave.\[^{77}\]

As per the provisions of the Regulation, an appeal may be made within thirty days from the date of the order appealed against, but in case of an appeal against the death sentence, it must be made with seven days from the date of the sentence, excluding the time taken in procuring a copy of the order.

The High Court may call for the proceedings of any officer subordinate to it and reduce, enhance or cancel any sentence.

\[^{76}\] Section 52 of the Regulation(I) of 1945.
\[^{77}\] Section 26 of the Regulation(I) of 1945.
passed, remand the case for retrial, but no offence shall be punished by a sentence exceeding that warranted by law. Also it may transfer any original case, pending or under trial before any Court to any other Court competent to try it, which is governed by the Regulation of 1945.

Following are the powers of the High Court incorporated in the Regulation of 1945 -

(i) It may confirm the sentence or pass any other sentence warranted by law;

(ii) It may annul the conviction and convict the accused or any other offence of which the Deputy Commissioner might have convicted him;

(iii) It may order a new trial on the same or an amended charge; and

(iv) It may acquit the accused person;

provided that no order of confirmation shall be made until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of. All sentences of death, transportation or imprisonment for seven years or more shall be subject to confirmation by the High Court, and the proceedings of all cases in which any such sentence has been passed shall be submitted to the High Court and without confirmation no such sentence shall be carried into effect. After getting the confirmation in the matter of death sentence, the Deputy Commissioner will carry the execution as per provisions of the Code of Criminal Procedure, 1898. 80

78. Section 30(2) of the Regulation of 1945.
79. Section 30(1) of the Regulation of 1945.
In the criminal matter, the High Court, the Deputy Commissioner and Extra-Assistant Commissioner are guided in regard to procedure by the principles of the Code of Criminal Procedure, 1898, so far they are applicable to the circumstances of the tract, new Arunachal Pradesh. 81

Apart from the provisions as stated above, the respective High Court shall have its original writ jurisdiction to entertain any matter under the provision of Article-226 and 227 read with Guwahati High Court Rules.

D(II) The Supreme Court:

So far the jurisdiction of Supreme Court is concerned the provisions to be adopted are similar to those in all other cases of any other states of the Union of India.

81. Section 32 of the Regulation.
(ii) **Criticism**

The Indian Penal Code, 1860 is mainly based on the Anglo-Saxon jurisprudence and accommodates fewer principles of tribal ideas regarding substantives and adjective criminology and penology. So, the implementation of the Code is considered difficult and outlandish in certain areas, where customs and usages run contrary to the IPC provision. The procedure followed according to the customary laws are flexible, quicker, cheaper and easier. On the other hand modern judicial system is much expensive and time consuming and beyond the reach of the poor tribal villagers to incur the expenditure of the court. Besides that, there is no scope of rehabilitating a criminal in society, whereas the tribal councils are much more sympathetic to a criminal also. Like any other codes of the World, I.P.C. also prescribed administration of punishment for various kinds of offences according to a certain standard depending upon the seriousness of the offence. It prescribes punishments to which offenders are liable, are death, imprisonment of the rigorous or simple kind for a definite periods, imprisonment for life, foreiture of property and fine etc. Compared to these, the tribal customary laws have prescribed fine, extermination from the village and in rare cases, foreiture of certain properties of the offender. Capital punishment is not known among the Adis. Customary laws have accorded exquisite value to human life even to that of an offender committing heinous crime and has got no prescription for its foreiture. Recently, a study conducted by Social Scientist B. Banerjee, reveals that the kahang, a
The democratic court of the people considers death sentence below the dignity of the human being. Besides the government of Arunachal Pradesh also discourages some earlier oath and ordeal prescribed by the customary laws. Paragraph 7(d) of the Government Policy Instructions reads as:

Customary awards passed by the councils (tribal councils) should be restricted to punishments, such as fines, banishment, performance of ceremonies or other punishments non-physical nature. Government can under no circumstances uphold any traditional punishment involving physical brutality.

Besides giving the power to administer civil and criminal justice, the Regulation also provide the police power to the village authorities. As such the kebang, may discharge the ordinary duties of police in respect of crime and can maintain peace and order within their jurisdiction. As per Cl.2 of the

82. The Sentinel - dated 11/5/89
83. OP-Cit - Paragraph 7(a).
84. Section 25 of the Indian Evidence Act reads as - "No confession made to a police-officer shall be proved as against an accused". The object of Sections-25 and 26 is of I.C.Act is to prevent the practice of oppression or torture by the police for the purpose of extracting confessions from accused person. Under these Sections, no confession made to a police-officer is admissible against the accused.
Section-6 of the Regulation the village authorities shall not be deemed to be police officers for purposes of Sections 25 and 26 of the Indian Evidence Act, 1872 or the Section 162 of the Code of Criminal Procedures, 1898. The Regulation empowered the village authorities to watch and report on any vagrant, or any bad or suspicious character found within their jurisdiction and may apprehend any such person if they have reasonable grounds for suspecting that he has committed or is about to commit an offence, and shall hand-over any person so apprehended to the Deputy Commissioner or an Extra Assistant Commissioner. According to the Regulation I of 1943, every Civil Police Station shall be under the control of the Deputy Commissioner. But the village authority may be considered as an original court having all the powers civil and criminal. The Dying Ering Committee Report, 1965, also recommended more powers and functions to the village authorities. It says:

The Committee would recommend specifically that the offences that the village authorities may try as enumerated in clause 19 of Regulation I of 1945 may be enlarged. For example, committing affray, offences relating to weights and measures, offences relating to public health, safety, evidence, decency and morals, wrongful restraints, of receiving stolen property, cheating, offences relating to marriage. The power to impose fine upto Rs. 50/- as defined in clause 20 of the Act may be enhanced to Rs. 100/-.

85. Section-6(1) of the Regulation I of 1945.
86. Section 78 of the Regulation I of 1945.
87. Dying Ering Committee Report, 1965, Para 6(a) and 11.
The Adi customary laws and judicial system are in operation in parallel streams with modern administration effectively in the stereotyped rural society. The Indian Penal Code was introduced in the year 1916 for the purpose of holding trials by regular courts of law if this became absolutely necessary.\textsuperscript{88} Besides that, the \textit{NEFA Panchayat Regulations, 1967}, which is enacted for this area with the provisions for various developmental works, remains silent about traditional customary laws, legal and judicial powers of the village council, which is contrary to the Regulation I of 1945. The Panchayat Raj was basically an adaptation of the already existing super-village system, the Gram Panchayat, Anchal Samiti and Zilla Parishad corresponding, in the main, to the \textit{kobang}, the \textit{Bango} and the \textit{Bokang} respectively. It is also found that after the introduction of Panchayat Regulation, a Panchayat member, as a village elder can also take an active part in the legal and judicial business at his village.\textsuperscript{89} Thus, the administration justice in the Adi area is legally govern by the Regulation of 1945, i.e. the \textit{Assam Frontier (Administration of justice)Regulation, 1945}, but practically the \textit{kobang} which enforces the customary laws enjoys more powers than given to it by that Regulation. Because as per Regulation, the village authority can impose

\textsuperscript{88} Notification No.4958 P, dated the 18th August, 1916.
a fine or penalty of $0.50/- only. But in practice the village council imposes penalty or fine, sometimes, more than $0.50/-. Because there is a practice of imposition of compensations of 10 - 15 mithuns, the prices of which may vary from $20,000/- to $30,000/- upon an accused who is held liable for culpable homicide.

Besides that some more lacunas are also there in the kebang system. The Adi customary laws are not yet codified, due to which sometimes kebang fail to recite the relevant rules or customary laws of the past, which directly effect the decision of the kebang. Moreover, sometimes the influential person of the village influenced the kebang decision. The cardinal principle of kebang procedure is to administer justice equally for all. The abe at beginning of the kebang procedure reflects this idea clearly. It recite -

"Let us not decide differently for different persons; let us be guided by reason and see that justice is done and a compromise reached that is acceptable to both the parties."

90. Assam Frontier (Administration of Justice) Regulation, 1945.
92. Ibid.
Sometimes the kabang has in spite of their knowledge and experience are also often found to support their clan or village members, irrespective of the issue involved. Moreover, the kabang has lost its originity after the introduction of two new posts as the political jamadars and the political interpreters, which infringed the authority of the geon burhas. With the passing of time, people shows less respect to the kabang decision as they know that they had superior courts of appeal which could overrule the decisions of the kabang. The educated Adi people preferred to follow modern judicial procedures. Because the Adi judiciary is practical and it serves in maintaining and establishing the traditional concepts of justice and equity without involving itself in lengthy legal procedures. So, there is little scope for manipulation of facts or rules prevailing in the society. Also punishment for some crimes, like murder, adultery, theft etc. are more severe than that of modern system. Moreover, previously there was a custom, as stated by Elwin that -

"If a man could not pay the compensation demanded by the tribal council, he might be taken by the complainant as a slave and many slavesto-day are descendents of people who lost their social position in this manner."95

Though Government of India is determined to abolish slavery in any society of India whether it be tribal or civilised, yet it is prevalent in some of the remote areas of Arunachal Pradesh including Siang District(s).

94. Talukder, A.C.-"Panchayati Raj in Arunachal Pradesh : A Study in Political Transition at the Grass-root level in East Siang District."

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 most of the codified laws in India which are mostly interested with the Anglo-Saxon concepts, were made by the foreign rulers. Critics and jurists tend to claim that these criminal laws are properly working in India and still befitting to tackle and regulate various human conduct. But on the other hand the hands of the customary laws are too short to regulate such a wide range of human criminal conduct and do not have extra-territorial jurisdictions. As per the Regulation I of 1945 a village council can exercise its jurisdiction within a very limited scope.

On the other hand, the court modern system has also its merit and demerit. It is too much expensive and time consuming and is beyond the means of the poor villagers to incur the expenditure of the court. Moreover, justice delayed is justice denied. There is no scope of rehabilitating a criminal in society in the Indian Penal Code. But a kebang may fulfil the obligation. It has been observed that any verdict, given by the kebang in respect of any dispute is normally accepted by the villagers. So it is desirable that this institution should be maintained. The life pattern of the tribal people is not an isolated one and kebang can be remodelled and assumed a form so that it can give justice to the greatest number. The customary law can codified to that extent so that it can cope-up with the changed circumstances of the society. Society is dynamic, therefore the law requires to
be dynamic to keep pace with changing circumstances of the society. Law should be remodelled to that extent, so that it can give a new order and can work more effectively through these indigenous institutions.