

**A CRITICAL STUDY OF DIMASA CUSTOMARY LAWS AND  
INSTITUTIONS WITH REGARD TO MARRIAGE, DIVORCE,  
INHERITANCE AND JUSTICE ADMINISTRATION**

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It is to certify that Ms. Sevika Hasnu, UID No. SF0221026, is currently pursuing Master of Laws (LLM) from National Law University and Judicial Academy, Assam. She has completed her dissertation titled, "A Critical study of Dimasa Customary Laws and Institutions with regard to Marriage, Divorce, Inheritance and Justice Administration" under my supervision. The dissertation is an original research work and suitable for final submission in partial completion of Master of Law, One Year Degree Course at NLUJA, Assam.

I wish her all the very best in all her future endeavors.

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## **DECLARATION**

I, Ms. Sevika Hasnu, UID No. SF0221026, pursuing Master of Laws (LL.M.) from National Law University and Judicial Academy, Assam, do hereby declare that the present dissertation titled "A Critical study of Dimasa Customary Laws and Institutions with regard to Marriage, Divorce, Inheritance and Justice Administration" is an original research work and has not been submitted, either in part or full anywhere else for any purpose, academic or otherwise.

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I am also thankful to my father for giving me support and encouragement throughout my career , to my mother who was always my pillar of strength because of her unconditional love and support I have been able to reach this stage and to my sister who always believed in me any my capabilities.

## **PREFACE**

Many tribal communities have their customary laws. Most of these laws have been followed on the basis of version made by their forefathers. Dimasa have also customary laws for governance. The village administration among Dimasa's is run by following customary laws. Like in other tribal communities in the region , among the Dimasa community application of science and technology and knowledge based society is gradually taking root, however, they are not free from certain dogmas for which some of them stick to the old belief and superstitions. Despite the obvious challenges of education and the ongoing process of establishment of modern scientific temperament they have been sustaining the age old traditional institutions created under customary laws. Such institutions have great significance.

The traditional justice dispensing system under the Dimasa customary laws had been a very effective tool to maintain peace and harmony among the Dimasas since time immemorial. The presence of such effective system had helped control the menace of anti-social activities and elements in their areas. However, some provisions of the Dimasa customary laws may have not kept pace with the contemporary legal rights and remedies due to lack inherent scope for evolution and growth to the extent that old belief and customary laws and it value system might have become either obsolete or irrelevant. Therefore, it is the inspiration of some section of Dimasa community that some modification or amendment of Dimasa customary laws and institutions ought to be discussed/ tabled at relevant level of governance in consonance with contemporary legal value system. It is aspired that customary laws are to be sustained by making a fine balance between preservation of age old value systems and modern legal values which is egalitarian and inclusive based constitutional spirit of gender equality.

However, abrupt modifications/ amendments without making proper study on the subject is not suitable. So in depth study through systematic investigation is required for any modification or effective implementation of the provisions of customary laws in tune with the changing scenario.

My gratitude to my respective guide Dr. Thanzakhup Tombing, who has been constantly inspiring me with his timely and valuable guidance and instruction which helped me exclusively in the preparation of the dissertation.

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1955- Hindu Marriage Act

1956- Hindu Succession Act

1955- North Cachar Hills Autonomous District (Administration of Justice) Rule

1973 -Criminal Procedure Code

## TABLE OF ABBREBIATION

ASDC	Autonomous State Demand Committee
BTC	Bodoland Territorial Council
CPC	Civil Procedure Code
CRPC	Criminal Procedure Code
DHAC	DimaHasao Autonomous District Council
DSU	Dimasa Student Union
EC	Executive committee
GB	Gaonbura
IPC	Indian Penal Code
LICI	Life Insurance Corporation of India
KAAC	Karbi Anglong Autonomous Council
NCHAC	North Cachar Hills Autonomous Council
NCHSF	North Cachar Hills Indigenous Student Forum
SDCC	Subordinate District Council Court

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## **CHAPTER- 1 INTRODUCTION**

### **1.1 INTRODUCTION**

Customs are existing in the society prior to the birth of court and law. As legal custom grow so also custom diminished its importance. It is so because as an instrument of development of law it gives a way to legislation and precedents. Even now custom has not lost its law creating efficacy wholly. Customary law is defined as law that is built on custom. The expression Customary Law has two key words - Custom and Law. "Custom can be defined as a set of rules that achieve the force of law in a society because they are observed continuously and consistently for a long time". And by the term "Law we mean a set of rules of conduct, action or behaviour of persons which are enforced by the State". A Customary law is a system of rules which has been established traditionally from people way of life and their natural needs. It is a matter of common knowledge, linked with precedents and it retained in the memories of the chieftain and his adviser , their sons and their descendant until it became the part of an obsolete rules.

In India customs have importance even today. Among Hindus, marriages are permitted according to the procedure established by customs .So is the case of the tribal in North Eastern states. Customary law has been defined variously by different scholars. Some important definitions of customary law are as under-

As stated by Carleton Kemp Allen, custom is the foremost important law.<sup>1</sup> Most of the customs are acknowledged not because the legislatures or courts give them importance but because they are treated by the section of people as a whole and people feel themselves obliged by law.<sup>2</sup>

A Customary law is a body of norms, practises, and beliefs that are regarded as mandatory rules of conduct.. It is an evolving body of norms that have been continuously and uniformly observed since time immemorial and is an ever changing and communally agreed principle. Among indigenous peoples, the most distinctive features are their unique customary law, cultural patterns and social institutions. British India showed respect for the tribal people of India, notably those of the North Eastern region, and their customary laws, traditions, and cultures. A custom should be binding and have legal sanction or recognized by the court of law. Hence a custom to be called a Customary Law should have legal sanction.

One of Assam's major tribal groups and a member of the Great Kachari group is the Dimasa tribe of the Mongoloid group. The term "Kachari" according to Edward Gait is a name given to the people by the outsiders.<sup>3</sup> "The Kacharis in the Brahmaputra valley refer to themselves as 'Bodo' or 'Bodo fisa' (sons of the Bodo)". But in the North Cachar Hills (presently Dima Hasao) they called themselves as "Dimasa", "a son of the great river".<sup>4</sup> The Dimasa are also described as "Hill Kachari" by the Christian missionaries. The people who belong to Mongoloid group were called Kirata in the Sanskrit scripture and the term Kachari was given to them by the neighbouring Hindus in subsequent times. The Dimasa's can be classified from the Indo-Mongoloids who are believed to have moved to the north eastern region from Tibet in ancient history comprising of North Himalayas and North China, which is presently known as Tibet. This proposed that the Dimasa emerged from Tibet. It is possible that the Dimasa and their associates had their pre-Assam habitat in Tibet. With the arrival of the Tai-Ahom in the thirteenth century, the history of Dimasa Kachari's tribe started to become ingrained

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<sup>1</sup>Allen, C.K., Law in the Making, Oxford University Press, Oxford, Reprint 1975, p.84.

<sup>2</sup> Aggarwal, Nomita., Jurisprudence (Legal Theory) Central Law Publications, Allahabad, 4th edition, 2000, p. 120.

<sup>3</sup> Gait, Edward A History of Assam published by Amar Prakash Jaswanta Road, panbazar Guwahti-1

<sup>4</sup> ibid

in the accounts of the Buranjis. The Dimasa are a significant ethnic group in North East India and one of the largest Indigenous tribal clans. The Dimasas are frequently referred to as the descendants of a large river, where "Di" stands for water, "Ma" for big, and "Sa" for children.

According to 2011 census the total Dimasa population is 2,62,413. Majority of the Dimasa people lived in Dima Hasao district. They have a sizeable population in “Cachar district of Karimganj, Silchar, East and West Karbi Anglong, Nagaon, Hojai district of Assam and Dimapur in state of Nagaland”. Geographically, the Dimasa’s have termed themselves as Hasaosa, Hawarsa, Dembrasa and Dijuwasa as they speak different dialects in different places respectively. “Geographically, the Dimasas have termed themselves in the following manner - people of Dima Hasao district of Assam as Hasao-sa, those of Cachar as Hawar-sa, those of Nagaon, Hojai and Lanka in Assam as Dembra-sa and those of Karbi Anglong of Assam and Dimapur of Nagaland as Dijuwa-sa ; accordingly they speak dialects of Hasao, Hawar, Dembra and Dijuwa respectively.” Besides, “they are also known by further names based on geographical locations, such as Hamri, Walgong and Sema, of places Hamri, Walgong and Semkhor, respectively (in Dima Hasao)”. Majority of the Dimasa are Hindus and few are converted to Christianity . According to Edward Gait in his book “A History of Assam”, Hinduization in Dimasa started at Maibang and slowly it preceded rapidly in Khaspur <sup>5</sup> .The official conversion of a Dimasa towards Hinduism and the Kshatriya caste took place in the year 1790. As per Chetry, in his unpublished paper on the ecological significance of the traditional beliefs and practices of Dimasa, he stated that the process of Hinduisation of the Dimasas, most probably started from 1526 A.D., and it was the year in which the capital of Dimasa kingdom was shifted from Dimapur in the state of Nagaland to Maibang in Dima Hasao district. According to him, Madan Kumar who was the general and son of Detcha or Dersongpha adopted the Hindu name of Nirbhaynarayana after establishing himself at Maibang in 1540 A.D “This is unquestionably the first instance of a tribal king using a non-tribal name, and it set a standard for other Dimasa kings to follow.”<sup>6</sup>The Dimasa and

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<sup>5</sup> ibid

<sup>6</sup> Bhattacharjee, J. B (1984): ‘State Formation in Pre-Colonial Tribal Northeast: A Case Study of The Dimasa State,’ NEHU Journal of Social Science and Humanities, Vol. II, No. 3, pp.3-27

Ahoms have been at war for a very long time. The Ahoms were defeated and enslaved by the Dimasas in the early years. However, as a result of the Ahom's persistent attacks on the Dimasas, they eventually had to flee Dimapur. Around 1750, the Dimasa kingdom relocated to Khaspur (now in the Cachar region), where the Dimasas came under Hindu influence. Under ancient Hindu those not fully Hinduized implies pristine community member shall practise the religion of animism. This however does not include community members (Dimasa community) who have not converted to Christianity. Thus Dimasa people used to govern through their own traditional institutions. The Dimasa's kinship system followed bilateral clan system. The clan system were originated by King Krishnachandra Narayan around 1800 AD in Dimapur. The clan system is very much related to marriage system in Dimasa. The Dimasas follow the rules of exogamy and any violation leads to ostracism. The majority of the Dimasas practise monogamy. Divorce is allowed but the incidence is not of greater significance. Widow remarriage is allowed by the society. The Dimasa society also has a great influence in law of inheritance. For the purpose of inheritance it may be either be ancestral or self-acquired property. A village council is constituted for settlement of dispute. Administration of justice are mostly settled at a village council which consist of 'Khunang' as village headman, 'Delik' as second headman, 'Habaisgao' as third Headman, prominent village elders and youth. The elderly women are called upon to participate in a trial only when women are involved in the dispute.

Under pristine Dimasa customary laws village council or the village committee plays the role of judiciary and thus administer justice. The village council through meeting frame rules for governance which are binding upon all irrespective of their status. In general, everyone is treated equally under the law. It was the village council which deals with administration of criminal justice. Therefore in every aspect of life their respective village society was involved in administration of justice.

As per the Sixth Schedule of the Indian Constitution, tribal customary laws were also given a significant amount of autonomy under the Indian Constitution of Article 244 and Article 244 A. The Indian Constitution's Sixth Schedule is essential for administering tribal areas, particularly in the States of Assam, Meghalaya, Tripura, and

Mizoram. “It is based on the recommendations of the "Bordoloi Sub-Committee," also known as the North-East Frontiers (Assam) Tribal and Excluded Areas Subcommittee”. The Sixth Schedule was created with the intention of creating a separate administration for the indigenous people in order to give them the maximum autonomy for safeguarding their unique traditions and customs. The only places in the state of Assam with a pluralistic legal system are the districts of “Karbi Anglong, Dima Hasao (formerly North Cachar Hills), and Bodoland Territorial Council”.

The justice system under the Autonomous District Council Court is utterly based on the traditional customary law and applied the Indian Procedural Code only in the spirit but not by their letter. In these areas, the tribal communities are allowed to govern according to their respective customary laws making pluralism a prominent feature of the legal system. These customary Courts make their decisions based on the principles of justice, equity, and good conscience.

## **1.2 STATEMENT OF THE PROBLEM**

The research aims to understand the interface of Dimasa customaries law and its implication on the Dimasa women and children in matters pertaining to marriage , divorce, succession and inheritance . The Dimasa society has a strong patriarchy system. This research is an attempt to bring some clarity on the rights of women and children under the Dimasa Customary Law. Patriarchal society views women as subordinate to men and as a result women have been denied equal rights in terms of custody of the child ,divorce and inheritance under Customary Laws. Access to and ownership of property enhances women’s status and position in any community or society. But in a Dimasa society women are deprived of the immovable property and right of ownership except for movable property . In the event of a divorce, mothers are not entitled to receive custody of the male child excluding the female child. Recent situations where child custody has been granted to the father while keeping the child's best interests in mind have changed this position. The most difficult and complicated issue is custody which has negative social, religious, economic, educational, and legal effects. The purpose of

this research is to ascertain the social, religious, and legal context, as well as the extent to which the law and judicial system have benefited women and children.

### **1.3 REVIEW OF LITERATURE**

Numerous works dealing with customary law have been examined to give the study a fruitful outcome.

- For the history of the Dimasa's Uttam Chand Barman book titled "The Dimasa and the ancient history of India Volume-1" has been referred which has thrown some light on the history of Dimasa .
- Also Edward Gait (1926) in his book "A history of Assam also has been referred where the process of Hinduisation was probably started at Maibang and Khaspur among the royal family. It is from the year 1790 the Dimasa became Hindus.
- Nalindra Kumar Barman in his book "The Queen of Cachar or Herambo and the history of the Kachchharri (1972) also give an account of the administration of rules at Hidimbapur (Dimapur), Maibang and Cachar and the origin of the male clan or sengpong".
- B.N.Bordoloi (1984) in his monography,the Dimasa Kachari of Assam has presented a detailed historical account of the Dimasa .He stated that in the year 1790 at Khaspur, the Dimasa King Krishna Chandra and his brother Gobinda Chandra publicly accepted Hinduism.

- A book on “A handbook of Dimasa Customary practices (Autonomous District Council, Dima Hasao District, Haflong), Nunisa (2004) has attempted to codify the tribal customary practices of the Dimasa. It is a small handbook which gives a detailed view on marriage, administration of justice, patriarchal system and divorce
- Another book of customary practices written by Maiphal Kemprai Phonglo in his book Customary Law and Practises of the Dimasa an aboriginal ethnic tribe of North East India also give a detailed information on marriage, divorce, inheritance and administrative laws.
- The books which are referred and reviewed for the study of practices of Customs and Customary Laws by V. D. Mahajan’s book titled Jurisprudence & Legal Theory (2006) who has described Custom to be the oldest source of law-making. He has also asserted that study into ancient law indicates how customs that arose spontaneously in response to circumstances governed people's lives in prehistoric societies.
- A book on Autonomous District Council by L.S Gassah which gives a detailed study on North Cachar Hills Autonomous Council. It provides a detailed study on the power function of the District Council. Further, it gives a systematic analysis of how to uphold tribal people traditional customs, rights and practises in accordance with the “6th Schedule of the Constitution of India”.

#### 1.4 RESEARCH AIM

The aim of the research is to study the historical background of the customaries law relating to marriage, inheritance, succession, divorce under 6<sup>th</sup> Schedule of the Constitution of India and its impact on the present Dimasa society in administration of justice. A legal study on customary laws of Dimasa will also help in providing speedy justice to the concerned parties and it will also help to reduced the workload of judiciary. It is for safeguarding and preservation of the tribal culture and custom under the sixth schedule.

## **1.5 RESEARCH OBJECTIVE**

- To understand the apparent gap in approach of formal legal justice system vs customary institution in urban and remote village which are inhabited by the Dimasa and the need to revamped customary institution in consonance with formal legal system and its value.
- To study the Dimasa customary marriage ceremony and its juristic importance in the light of the “Sec 7 of Hindu Marriage Act, 1955”.
- To study the nature and types of disputes that can be resolved in the tribal Court and various punishment awarded to the accused in the civil cases as per the customary law.
- To explore the changing significance of customary laws in the present Dimasa Kachari society as a whole.

## **1.6 SCOPE AND LIMITATION**

The present research will help us to know the present social and cultural traditions of a Dimasa community . The Dimasa’s are the ancient inhabitants of Assam and have rich cultural heritage. This research will help us to understand the customary law cases from a different perspective. Customary law is given primary importance and traditionally practiced by the Dimasa community members mostly in rural areas than urban areas. The customary laws shows various aspect of problems in the areas of social institution, like inheritance, divorce and custody of a child which will be highlighted.

The present research was confined to the customary practises and its various judgment given by the Dima Hasao Autonomous Council Court. The majority of the customary laws and court decisions rendered by the autonomous district councils have not yet been published online. As a result, gathering such material required a lot of effort,

and little was eventually retrieved. Additionally, this research will only use sources from books, articles, journals and websites.

### **1.7 RESEARCH QUESTION**

The research questions of the study are as under-

- How the plurality of the legal system introduced the proprietary right of the Dimasa men and women under the customary law in their access to property related matter?
- What are the role of village council in the past and at the present scenario?
- Whether the village council has any discretionary power like the formal court?
- How the rural and urban gaps pertaining to the applicability of customary law of Dimasa and the right emphasis in Hindu marriage act' 1955 be reconciled?

### **1.8 HYPOTHESIS**

The customary laws and traditions are passed down from generation to generation and still play a significant part in a community till today. "The Dimasa Autonomous District Council plays a significant part in the socio- political life of the Dimasa and gives the community's credibility on customary law". Customary laws of the Dimasa like most other customary laws, have a certain loopholes on women as they are subjected to many disadvantages in society like women cannot inherit ancestral immovable properties nor can adopt a male child after divorce . The statutory legal provisions are required so that women's position can be improved in terms of socio-economic status, including their property rights

### **1.9 RESEARCH METHODOLOGY**

The present research is based on both empirical and doctrinal research. The primary data were collected through fieldwork. The secondary data were compiled from books, journals, published works and other reports from libraries. It aims to understand a depth study on the issues relating to advantage of women in socio- religious rites. There are also few drawbacks where women are not given equal rights in terms of immovable property and custody of children. Such instances can be seen in the Dimasa Community. A primary data was also collected through personal interviews from the subordinate judge. It has been found that the customs and traditions followed in the community are still prevalent in both rural and urban areas. The research will also focused on women's right over property and custody of a child among Dimasa communities to understand their position in the patriarchal society.

#### 1.10 CHAPTERISATION

The dissertation is proposed to be divided into eight categories. The overview of the proposed eight chapters are as follows:-

Chapter 1 outlines the introduction of Dimasa history followed by research problem, literature review, aims and objectives, scope and limitation, research questions, methodology and chapterization of the research paper.

Chapter 2 deals with the origin and sources of Dimasa customary law

Chapter 3 describe how Hinduization originated among the Dimasa community.

Chapter 4 deals with the constitutional provision of the Sixth schedule of the Constitution of India regarding the protection of tribal people. It will explained on the constitutional safeguard concerning the rights of tribal people and also deals with the national commission for scheduled tribes. It will also discussed on tribal administration of justice under the Autonomous District Council in Dima Hasao District.

Chapter 5 is regarding (a) Law relating to marriage and divorce. In this chapter it will highlight the background of the Dimasa marriage system and its different stages. It will also highlights about divorce system known as 'Gaolaiba'.

Chapter 6 deals with Inheritance laws and succession including law of will, gift, stridhan and its succession .It will also discuss on law of adoption and maintenance of child and old parents.

Chapter 7 deals with administration of justice relating to civil matters .

Chapter 8 deals conclusion and suggestion of the research on the topic where some points have been highlighted .

## **CHAPTER 2 ORIGIN AND SOURCES OF DIMASA CUSTOMARY LAW**

The customary laws of Dimasa originated in the form of dictates and guidelines given by the ancestors and these have been followed since then. Like Shruti in Hindu jurisprudence, the rules have been passed from mouth to mouth throughout the ages. The Dimasa customary rules have been followed and the societies have been governing till today. Customs and usages are after all man made and they are accepted in the society by the necessity of particular time. Customary law is unwritten law and has validity and enforceability. It occurs organically as a community expands. A customary practice becomes a tradition if the entire community has adopted it. “Imitation plays a dominant role in the transformation from habits to laws that also exemplify the values of a society”. By maintaining social order they became a stabilizing force in the community”. When a custom is acknowledged and put into use by the state to administer justice, it is referred to as a law in legal practise. This means that a custom can only be made legal by a state if it gives sanction.

In other words the state enforces a custom and at the same time punishes the disobedience through the court and tribunal established by it. The Austinian school emphasises that custom cannot become positive law until it is acknowledged by a court or specified in a legislation since it views law as the sovereign's command backed by sanction.<sup>7</sup>The Historical School of Savigny,

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<sup>7</sup> Bandyopadhyay, P.K., 1994, ‘Importance of Customary Law’, in Central India Law Quarterly, Vol.VI: 1: 91-100.

on the other hand, maintains that “custom is the primary means by which law develops and asserts that rather than being created from the bottom of the society law evolves from the top”. Customary law is followed because it is convenient, beneficial, advantageous to society and is reflective towards societal norms and values.<sup>8</sup>

In conventional “Indian jurisprudence and Hindu law however custom has always been regarded as an essential source of law and the right of a community to conduct itself by its own customary practices and laws has been treated as inviolable”. As stated by Barpujari, “The British rulers of India also acknowledged this right of the communities and recognized that Indians should be authorized to govern themselves by their own laws as regards to family, marriage and inheritance” .<sup>9</sup> Initially in the year 1872,” a legal statute formally approved and provided legal right to customary law in the form of the Indian Evidence Act”. Customary law is still an essential part of the entire India. This is established by the express language of “Article 13(3)” of the Constitution of India which expressed that the term “law” includes customs and usages having the force of law with the proviso that such custom or usage having force of law cannot violate any of the fundamental rights bestowed by the Constitution.<sup>10</sup> Despite that not all customs have the legal validity. The "jurists" have established several requirements or standards that a custom must meet in order to be recognized legally. These are the tests of “antiquity, prolongation, peaceful enjoyment, mandatory force, reliability, reasonableness and conformity with statutory law”.<sup>11</sup> The enforcement of customary law differ from one tribe to another. The importance of custom in tribal areas can be seen from the fact that not only the private affairs but also the power of village authorities were governed by custom in tribal areas.

## **2.1 ESSENTIAL VALUES OF CUSTOMARY LAW**

Customary Laws have certain essential values for the tribal communities which may be described as follows:

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<sup>8</sup> *ibid*

<sup>9</sup> Barpujari, I., 2007, ‘Protecting Bioresources through Informal Mechanisms: Role of Customary Practices and Laws’, in GeneNewsGene Campaign Magazine, July

<sup>10</sup> Pandey, Dr. J.N. Constitutional Law of India with the Constitution (Ninety Eight Amendment) Act, 2012 , 50<sup>th</sup> Edition, Central Law Agency , Allahabad

<sup>11</sup> Krishnan, B.J., 2000, ‘Customary Law’, Seminar, No. 492, August, <http://www.mdia-seminar.com/semjBrame.html> (accessed on January 10,2009).

i) Firstly, “the tribal societies do not have codified laws but were bound by numerous uncodified usages that specify rules of conduct to individuals and manage human behavior and day-to-day life”. The members respect and adhere to the customary laws , “if they become essential to their heritage”. By upholding social order they became a guiding force in their societies.

ii) Secondly, Customary laws serve as the guardians of tribal values and are essential to the tribal identity because they set rules, enforce them and penalize violators.

iii) Thirdly, Customary Laws command obedience since disregarding them will involve some kind of penalty whether imposed in the realm of conscience or by the collective will of the group or the community.

iv) Fourthly, customary Laws are deeply rooted in history and pays homage to the past. Thus customary laws have deep intrinsic historical values.<sup>12</sup>

v) Fifthly, all the essential of the customary law such as the rules and regulations that govern marriage, property rights and other aspect of social life are the part of the culture of a community expressed in the form of laws. They give it a physical form to defend its worldview and sense of morality.

vi) The Dimasa Customary laws are not awarded capital punishment for any kind of crime in the Dimasa society.

Customary legislation thus becomes integral to the nation's history and culture. It can be characterised as a system of regulations that, after many years of constant and regular observance, acquire the status of law in a society. It is the entire set of a tribe's traditions that have been passed down from one generation to the next. They serve as the protectors of its ideals and are fundamental to its identity since they establish the rules, carry out the enforcement procedures, and penalise offenders.

## **2.2 THE DIMASA CUSTOMARY PRACTISES DURING DIMASA KING REIGN**

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<sup>12</sup> Kemprai Phonglo, Maiphai Customary Law and Practises of The Dimasas, an Aborginal ethnic tribe of North East India,First Edition ,2021 published by Panchajanya Books,Bamunimaidan,Guwahati

In ancient times “the Dimasa King was the fountain head of the Dimasa society in the administration of justice” .All major offences were tried and punished under his orders and other minor offences were tried and settled by the Head of the village called “Khunang” and “Mouzadar” at the higher level of trial Court.<sup>13</sup> The punishment given by the king were extremely harsh. The accused who commit murder were beheaded ,right hand are chopped off, amputation of the nose as corporal punishment were practiced for misdeeds such as adultery and rape.<sup>14</sup> During the period of Kingship rule, though no detail record about the procedure of administration of justice was found, yet it is certain that during that period also Dimasa were governed by separate rules which are evident from the reference made by Sir Edward Gait about ‘Kacharir Niyam’<sup>15</sup>. However whether such village council which discharges the judicial function was existed during kinship rule or not is untraceable. Historical record hardly speaks clearly about existence of such village council during kingship days. In general, during the reign of kings, history reveals that the power of governance was concentrated in the hands of the ruler the king.

### 2.3 ORIGIN OF THE DIMASA SOCIETY

Though it seems difficult to trace their history from antiquity we can trace the early migration of the Dimasas from their ancestral land. The period before the Dimasas occupied the Dhansiri Valley and its adjacent areas and established their capital at Dimapur may be called the period of their early migration and consolidation in the Brahmaputra Valley. Family was the basic unit of Dimasa society. Usually the eldest male member was the head of the family and he received obedience and respect in the family. This generated a social atmosphere in which the same feelings towards the patriarch became ingrained in their culture. This was eventually extended to the society at large. The tribal setup of community or kin-based organization of society and economy such as hunting and cultivation required an able leader. The method of cultivation pursued by the Dimasas was largely dependent upon the geography of the land. Before the advent of the Ahoms the Bodo tribes including the Kacharis practiced, except in some selected areas shifting dry- rice cultivation in the Brahmaputra Valley which included ahu and bao.

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<sup>13</sup> ibid

<sup>14</sup> ibid

<sup>15</sup> Edward Gait, A History of Assam, 1926, Second Ed., Reprint (Bina) 2001, Bina Library, Guwahati, p. 300. While discussing the history of Kacharis, Gait mentioned the reference of ‘Kachari Niyam’ or rules which imply that some Niyamor rules were there which were followed by the Kacharis.

Among the indigenous tribes it was the Kacharis who knew how to irrigate their lands. A stable governmental authority maybe said to begin among the Dimasas when the Mels (assemblies) began to select a leader who possessed both physical and mental skill. In their society roles and tasks were legitimized by traditions and customs. Usually the ablest of man was vested with leadership which was mostly economic and military in nature. Such leader assumed a distinct position in the society because of his military prowess and able leadership skills. A noteworthy feature of the Dimasa polity was the association of the indigenous elements in the work of governance. The leader was assisted by assemblies called 'Melma' and 'Melcha' .The former was a state panel which was represented by heads of seventeen clans called Sengphongs while the latter was the body of officials and military personnels. As population increased due to natural process of procreation, population became dispersed and consequently the number of villages also increased. There was a need of a functionary who could manage the village affairs. In each village the eldest member came to be elected as the headman called Khunang. A circle of forty villages were put under the jurisdiction of Semdi-khunang. While the Agya-khunang presided over disputes in connection to social and economic affairs in concurrence with popular consent, the Semdi- khunang decided disputes in matters related to male and female clans. Their supreme body of social judiciary, called Agya- khunang, the respectable speaker disposed of the major cases not according to what he thought the best, but in accordance with the verdict of the assemblage.<sup>16</sup> In the pre-state Dimasa society the bonds of affiliation was racial affinity and kin ties. Archaic collective institutions like Kin, Clan, Mels, Family and Village existed among the Dimasa as long as before state came into being and formed the traditional basis of socio-polity formations.

While the formal assembly was then held among the village elders. The Khunang possesses both executive and judicial power. At the time of celebration of community festival in the village, the main guidance is given by the Khunang. This is one of the executive power of the headman. Judiciary powers of the Khunang consist of trying of cases, maintenance of law and order in the village etc. A formal meeting among the village elders is held for the election of a Khunang in a village according to the unanimous decision of the village elders in that meeting. A senior most person of age and experience is elected to the post of Khunang. An assistant village headman

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<sup>16</sup> Barman, N.K., The Queens of Cachar or Herambo and the history of the Kachchhari, IV, V, Bijoypur (Borkhola), Cachar, 1992, p.71

which is called “Delik” or “Daulathu” in Dimasa language is also elected. His duties is to assist the Khunang when he discharges his duties. Delik is the next senior most person in the society. Next to Delik is “Habaisagao”, who act as a spokesperson in the village administration. Besides these three members there are other village officials like Pharai, Mantri, Hangsebukhu and Jalairao exist in remote areas of Dima Hasao District. Except “Jalairao” a young adult member of the village, the other officials have become non existent in the present day of the Dimasa society. Any male married person may be elected as Jalairao because it is the lowest rank in the traditional village system.

The five officials at the top, namely Khunang, Delik, Daulathu, Habaisagao and Pharai constitute the senior group because of their experience and ages, on the other hand Mantri, Hangsebukhu and Jalairao these three officials constitute the junior group. The senior group is the traditional recruiting authority of the members of the junior group. The senior group has the virtual control over the latter. The khunang is the chairperson of the traditional village council and in fact his authority is undisputed so far as the affairs of the village are concerned. He is respected by one and all in the village. The traditional village council adjudicates disputes and resolves cases of theft, incest, elopement and other minor crimes. The judgments delivered by the village council headed by Khunang are binding on the concerned parties . If in any cases women are involved, the elderly women are also invited to the trial court of the village council. The Khunang along with the other officials of a few villages sit together to settle inter village disputes.

An important feature of the authority of the Khunang is that no community function in a Dimasa village can be performed without the prior permission of the Khunang. The Khunang is recognized by the autonomous district council in the Dima Hasao as the most important headman of a village. In addition to the duties of a Khunang authorised by the traditional village council the district council specially that of Dima Hasao has entrusted him with some responsibilities like the collection of houses tax and agricultural tax, maintenance of birth and death register , maintenances of records of arms in the village etc. The Khunang is also entrusted with the duties to supervise the execution of all developmental programs means for the village by the District council. It has been noted that the additional responsibilities now shouldered by the Khunang is not making any harm in his way of discharging his traditional functions of the village council.

This has rather increased the powers and functions of the traditional village council in an indirect manner.

## **2.4 ORIGIN OF DIMASA CLAN SYSTEM**

According to Mr. Sunaram Thaosen, in the beginning, the Dimasas did not have any clans. He assumes that following the Hindu system of lineage or Gotra the clans were created in a later stage. He is of the opinion that the Dimasas had only seven Sengphong (male clans) when they were ruling at Dimapur and while they were ruling at Maibang five more clans were added raising the number of male clans to twelve in total.<sup>17</sup> As regards Thaosen's statement that the Dimasas had no clans at the beginning, B.N. Bordoloi stated that a clanless tribal society cannot be thought of because of the fact that the existence of exogamous clans is the main essence of tribe and exogamy is one of the main obligations.

According to Nirupama Hagjer at the beginning there were seven Senphongs and seven Julus when the Dimasas were ruling at Dimapur. During their reign at Maibang five more Sengphongs and five more Julus were added. However, she admits that during the reign of Krishnachandra at Khaspur there were forty male clans and forty two female clans.<sup>18</sup>

According to Dipali Dande, there had not been any matriclans among the Dimasas while they were ruling at Dimapur. She is of the opinion that during the Dimasa reign at Maibong king Samdhikhunang created matriclans to stop Dimasa men marrying girls belonging to other tribal communities inhabiting in and around Maibang.<sup>19</sup> There are many people belonging to the Naga, Kuki, Hmar etc. tribes in the Dima Hasao district. Attracted by the local beautiful girls belonging to the tribes quoted above, some Dimasa men married them and after marriage they were accepted in the Dimasa fold. The Dimasa ruler was not in favour of this and to discourage this sort of union, he convened

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<sup>17</sup> Bordoloi, B.N. & Sharma Thakur, G.C. : Tribes of Assam part II, Tribal Research Institute, Guwahati, 1988; p.41.

<sup>18</sup> *ibid*

<sup>19</sup> Dande, D.: Among the Dimasas of Assam, New Delhi, p.49

a meeting of the Dimasa man introduced for them matriclan system. The king also declared that any marriage between a Dimasa man and a girl without matriclan or Julu would be considered illegal. As matriclan system is absent among other tribes, a check to unrestricted intra-tribes marriage had been put into operation.

At present existence of clans the Dimasas have 40 (forty) male clans called Senphong and 42 (forty two) female clans called Julu or Jaddi. The male clans and the female clans are exogamous and between the boys and girls of the same clan whether be it patriclan or matriclan, and however distantly related no marriage can take place.

In the remote tribal areas the customary laws of the state have more significance and fewer efficacies in urban areas. The village council through meeting frame rules for governance which are binding upon all irrespective of their status. As a rule all are equal in the eye of law. In one sense it can be said that principles of rule of law are followed. It is, therefore clear that so far as the Dimasa society is concerned, the traditional village council is not lessening its importance along with the modern political structure of the Autonomous District Council.

These customary practices are still considered to be legally justified in the settlement of cases between the disputing parties .

## CHAPTER 3 ORIGIN OF HINDUIZATION AMONG THE DIMASA COMMUNITY

In the early part of the Kachari kingdom, the historians had to depend on the coins to trace its origin of Hinduization. A study on the aspect reveals that a rare silver coin was discovered in the name of a king named Viravijaya Narayana (1502A.D.-1520A.D.).The coin confirms that a Dimasa ruler had minted this coin. As Observed by Rhodes and Bose,"...we can deduce that in the early sixteenth century, a Dimasa ruler had adopted the Hindu religion, and a Hindu name, Viravijaya Narayana, a name appropriate to a king who had success on the field of battle. It's like 18ly that some Brahmins who had travelled to India from elsewhere influenced the king to abandon his tribal beliefs and strike coins as a symbol of his supremacy."<sup>20</sup> Discovery of this coin points to the fact that influence of Hinduism on the Dimasa royal family had started since early part of the sixteenth century.

According to W.W. Hunter, "*It is a universal tendency of all partially-civilized tribes in India to accept Hinduism, thereby to increased their superiority over the surrounding barbarians.*" <sup>21</sup>Maybe for that reason the Kacharis were found to introduce some of the Hindu rites and rituals in their religious functions. According to M.N.Srinivas, "*Sanskritisation is a process by which allow Hindu caste or tribal or other groups to change its customs, ritual and ideology and the way of life in the direction of a high caste.*"<sup>22</sup>. He argues that Sanskritization is a unilineal process in which non-caste and low caste groups deliberately adopt high caste

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<sup>20</sup>“ Rhodes,N.G.and Bose,S.K.,A History of the Dimasa-Kacharis:As Seen Through Coinage,Kolkata,2006,p-57”.

<sup>21</sup> “Sen,Gouri,LifeintheKachariKingdomatKhaspur,Silchar,2003,”

<sup>22</sup> “Srinivas,M.N.,SocialChangeinModernIndia,NewDelhi,1995,p-2.”

practises and customs to acquire high caste status. It can be deduced that the process of transformation of the Kachari people may be considered to be the beginning of attaining Sanskritisation. Influence of Sanskritisation is also evident from the change of names of the Dimasa kings that started from the early part of the sixteenth century. Investigation also reveals that from that period the tribal kings started accepting Hindu names as evident that in the early sixteenth century a king adopted a Hindu name “Viravijaya Narayana”.<sup>23</sup> Research also reveals that in 1559 A.D., son of king “Detsung” who became the first Dimasa-Kachari king of Maibang adopted the Hindu name “Nirbhoy Narayana”. According to U.C. Guha, “Dukadao adopted the Hindu name as “Govinda Chandra Narayana”.<sup>24</sup> The inscription of “Hara-Gauri” or “Shiva-Shakti” on the coins minted at the time of the first Kachari king of Maibang proves his high regard for Hinduism and Gods and Goddess of Hindu region.

The Kachari kings of Kaspur formally accepted Hinduism in 1790 A.D. Influence of Bengali Brahmins who settled down in the plains of Cachar helped in the propagation of Hinduism in the Kachari kingdom. According to Barpujari, *“Notwithstanding the Heramba rulers proclivity towards Hinduism, the orthodox Brahmins continued to treat them as untouchables on the ground that their genetic mother was non-vedic in her creed”*.<sup>25</sup> Therefore, the crafty Brahmanas suggested to Krishna Chandra, the Dimasa king to undergo the ritual of Hiranyagarbha ceremony for getting a proper place in the Hindu society”.<sup>26</sup> Raja Krishna Chandra decided to comply with the suggestions of the Brahmins and accordingly in 1790 A.D, he performed a ceremony known as Hiranyagarbha. In this ceremony, a big copper-made cow was built and both Krishna Chandra and his younger brother Govinda Chandra secretly entered into that copper-made cow. After emerging out of it, they were declared to have taken rebirth as pure Hindu. They pronounced certain mantras and immediately the Brahmin priests recognized them as Hindus. At the close of the ceremony, the Brahmins divided the plaited gold among themselves, in the feast which followed the ceremony. Both Krishnachandra Narayan and Govinda Chandra Narayan served water to the Brahmins. The high officials of the Kachari kingdom and other respected persons of the society were also converted to Hinduism in the same process. The Brahmins considered them as Kshatriyas and awarded the title “Barman”. In this way, formal

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<sup>23</sup> “Rhodes, N.G. and Bose, S.K. A History of the Dimasa-Kacharis: As Seen Through Coinage, Kolkata, 2006”

<sup>24</sup> Guha, U.C., Cachar Iti Britta, Agartala, 2006

<sup>25</sup> Barpujari, S.K. (ed.), History of the Dimasas: From the Earliest Times to 1896 AD., Haflong, 1997

<sup>26</sup> Barpujari, S.K. (ed.), History of the Dimasas: From the Earliest Times to 1896 AD., Haflong, 1997

conversion of the Dimasa Kacharis to Hinduism took place with the celebration of Hiranyagarbha Mahadana ceremony at Khaspur.

### **3.1 HINDUISATION PHASE**

In line with the “Hinduisation the Dimasa kings at Maibang embrace Hindu rituals and ceremonies to validate and impose their claim to royal power”. “Hinduisation” was specially frequent and intense in medieval times and its new institutions, the temples acted as “Hinduisation agent”, especially once it obtained regal patronage.<sup>27</sup> Apparently, it also contemplated a “Kshatriyaisation” procedure as the case of the “Ahoms, Koch and Dimasas” would suggest.<sup>28</sup>

### **3.2 ROYAL LEGITIMATION AND RITUAL DISPLAY**

The Dimasa kings of Maibang adopted ritualistic ways of royal legitimation during the Middle Ages were: (i) “systematic and wide range settlements of the Brahmans and their alliance in the royal court, (ii) the framing of folklore and ancestry by Brahmanas establishing the relationship of Dimasa royalty with the greater Hindu tradition which helped in strengthening and legitimizing the rule of a royal genealogy (iii) adoption of Hindu titles and sobriquet (iv) issue of coins and inscriptions, (v) patronage to Sanskritic languages and, (vi) ceremonial display which includes public displays of ostentatious religious ceremonies, transformation of tutelary deity into the Hindu pantheon, construction of temples, patronage of Hindu gods and goddesses, ritual of Hindu rites and pilgrimages to Hindu holy places”. The Hinduization of the state and society was sparked by the Brahmanas in all of these instances. The "paraphernalia of the state" were redefined at Maibang and the Dimasa monarchs were given a clear status as "patrons" of the Hindu culture.

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<sup>27</sup> “Ancharlott Eschmann, Hermann & G. C. Tripathi, *The Cult of Jaganatha and the Regional Tradition in Orissa*, Manohar Publications, New Delhi, 1978, p. 79”

<sup>28</sup> “Buragohain, Ramesh., '*Cross-Currents of the Hinduisation Process in Medieval Assam*', PNEIHA, Tenth Session, Shillong, 1989, p. 177”

### 3.2.1 BRAHMANICAL INFLUENCE

The process of state formation and state-structure began its pivotal phase at Maibang when the impact of Brahmanical religion made a indentation into the Dimasa political system.<sup>29</sup> Bengali settlements started in the Dimasa state while the capital was still at Maibang.<sup>30</sup> Tradition goes that during the course of his migrating southwards Nirbhaynarayana under whose leadership Dimasas migrated to Maibang came under the influence of a Brahmana who predicted a good fortune. When Nirbhaynarayana was announced as the Dimasa Raja he accepted the Brahmana as his Dharmadi Guru. Since then, Brahmanas have served as spiritual leaders and have been given the title of Rajpandit". The king was significantly influenced by the Brahmanas. The "Dharmadi Guru", who served as the Raja's chief advisor and served as the state's official interpreter of Hindu law, was always a "Bengali Brahmana". Every evening in the royal court, he interpreted the "Bhagavata" and recited to the people. The rulers extended an invitation to "Brahmanas" to establish themselves in the state. For the benefit of the temples and the "Brahmanas", the Rajas bestowed "devottar" and "brahmottar" lands. "The religious benefactors, particularly the "Brahmanas", who started receiving land grants on a considerable scale in the fifth and sixth centuries, were given influence over the agriculturist in the tribal areas."<sup>31</sup> This custom appears to have started during the Dimasa period at Maibang. The growing number of Brahmanas in the Dimasa state had a significant impact on the Dimasa royal family, who adopted Hinduism. The establishment of the "Brahmanas", their deep relations to the royal family, and the distribution of "debottar" and "brahmottar" lands all contributed to the spread of the Hindu brahmanical religion in the Dimasa state. Several "Brahmana" families were brought into the state by "Gopichandra" (1745–57), who also provided them with estates for their maintenance. "Eleven Brahmanas" carried out his coronation in accordance with the Vedic edict. Sanskrit also gained popularity as the influence of the "Brahmanas" grew. The Dimasas religion was distinct from Hinduism. Hereditary priests did not exist as a distinct class, and they did not perform any sacramental duties. According to Fisher, "Those were performed by elders in the family, and by the ministers of state and high public functionaries, on great public

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<sup>29</sup> Barpujari, S.K., History of the Dimasas [From Earliest Times To 1896 A.D], p. 145"

<sup>30</sup> Hunter, W. W., A Statistical Account of Assam, Volume 2, Spectrum Publications, Delhi, 1998 [1878], p. 400"

<sup>31</sup> Sharma, R. S., Early Medieval Indian Society, Orient Longman, Kolkata, 2003, p. 26

event."<sup>32</sup>As the "Brahmanas" power increased, they rose to the status of a privileged class in the state. The process of "Hinduizing" the royal family increased as the "Brahmanas" influence and control over the state grew stronger.

### 3.2.2 FRAMING OF GENEALOGY

In order to give their family a sense of antiquity and legitimacy, early mediaeval kings claimed to be descended from the solar and lunar lineages. The creation of a genealogy was not a responsive step made by the Dimasa rulers; rather, it was made possible by "Brahmana intelligence".The "Brahmanas" created a genealogy that linked "the Dimasa bloodline to Hidimba", the demon who wed "Bhima", the protagonist of the epic, in an effort to elevate both the person of the king and his lineage. They regarded "Ghotatkach", the son of "Bhim" and "Hidimba", as being their first king. They were granted a status through the Hindu rites. The Dimasas acquired the name "Hidimba Kacharis" as a result, giving them a new identity. This designation was chosen to emphasize their kinship to "Hidimba", "Bhim's" wife. A complete list of 103 monarchs, from "Ghototkoch to Gobindanarayan", is provided in the genealogy of the Dimasa kings known as "Herambarajyamala." According to U.C. Guha, "the names of several Dimasa kings reported in the Buranjis and other historical sources, such as Khunkhara, Detsung, Hormeswar, Satrudaman or Pratapnarayan, Bhimdarpo, Harischandra, Sandikari, etc., do not match those of Dimasa kings in Rajamala".According to W. W. Hunter , "the exception of Suradarpa, Dharmadhvaj, Kartikchandra, Ramchandra, Harichandra, Lakshnichandra, Krishnachandra and Gobindachandra", the entire list is a brahmanical fabrication created to proclaim the significance and direct lineage of the dynasty.<sup>33</sup> Whatever the Brahmanas' motivations for delivering the list, it gave the Dimasa rulers a genealogy that showed how they were related to the Epic heroes. The Dimasas were referred to as "Hidimbacha" (children of

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<sup>32</sup>Fisher, Capt., 'Memoir of Sylhet, Kachar and the adjacent districts'. Journal of Asiatic Society of Bengal (JASB), JL-1840-IX, p.831

<sup>33</sup> Hunter., A Statistical Account of Assam, p. 403

Hidimba) after “Hidimba”, the mother of “Ghotatkoch” and the wife of “Pandava prince Bhim”. Myths and tales were combined as part of the Brahmana effort to exalt the Hindu heritage of the Dimasa rulers. . Because it was clear that the kings would not revert to previous practises and customs once an association with a certain Hindu dynasty of pure descent was established, this Brahmana's praising guaranteed the Dimasa royal family dominion in the realm in perpetuity. Subsequently, the Dimasa state adopted the name “Heramba-rajya”, as seen in their coins, inscriptions and documents.<sup>34</sup> According to Romila Thapar, “in situations of repeated warfare or in new land settlements, genealogy has become a point of reference for legal rights and sanctions”. The genealogies seem to document the transition from simpler monarchical regimes like tribes and oligarchies to more complicated ones like monarchies. The Brahmanas genealogy of the Dimasa state appears to have provided the legal and religious sanction for their political power beginning with their dominance at Maibang. The Dimasa polity evolved into an Indian-style monarchy with the Raja serving as its head and supreme ruler. As Hindu legends are frequently used in inscriptions and on coins, the monarch has come to acquire a inalienable sanctity, which only serves to enhance his prestige.

### **3.2.3 ADOPTION OF HINDU TITLES AND EPITHETS**

The establishment of a new centre of administration at Maibang led to the adoption of Hindu names and titles by the ruling class. In 1540, Madan Kumar settled in Maibang and adopted the Hindu name “Nirbhaynarayana”. Without a doubt, “this is the first instance of a tribal monarch using a non-tribal name, setting a precedent that other Dimasa rulers would follow”.<sup>35</sup> The change in the practice of rulers in adopting Hindu name suggests that by that time Hinduism had come to influence the Dimasas, if not the whole tribe, at least the royal family.<sup>36</sup> As the surnames "Pala" and "Varman" were popular in a prior era and an earlier era, it appears that "dhvaj" and "narayan" were favored appendages of princes and nobles of North-East India between the 13th and 16th centuries.<sup>37</sup> The suffixes "dhvaj" and "narayana" were added to the names of the “Kamata, Koch, and Ahom monarchs”, most likely as a result of Hindu influence. The addition

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<sup>34</sup> Bhattacharjee, J. B., *Social and Polity Formation in Pre- Colonial North East India*, Har-Anand Publications, New Delhi, 1991, p. 140

<sup>35</sup> . Barpujari., *History of the Dimasas [From Earliest Times To 1896 A.D]*, p. 45

<sup>36</sup> Devi, Laxmi., *The Ahom-Tribal Relations (a political study)*, Lawyers Book Stall, Guwahati, (1968), 1992, p. 103

<sup>37</sup> Barua, K. L., *Early History of Kamarupa*, Second Edition Lawyers Book Stall, Gauhati, 1966, pp. 180-181

of such words to the titles of the Dimasa rulers also established a precedent. The coins that the monarchs of Dimasa minted are proof of this transition. “Nirbhaynarayana” identifies himself as "Gedemba Vamsaja," which means "belonging to an elevated clan," on one of his coins. “Meghanarayana”, the following king, adopted the titles "Herambeswar" (Lord of Heramba) and "Worshipper of Ranachandi." We learn a new revelation—that “Yasonarayana” belonged to the "Hachengsa-Vamsaja"—from a silver coin of his dating to the year 1505 Saka (1583 A.D.) (one belonging to the “Hachengsa” clan). It indicates that “Hachengsa” is a member of the Dimasas gotra (family).<sup>38</sup>

When the Dimasa monarchs started using high sounding titles as a proclamation of their military prowess after each military victory, a new precedent was established in the Dimasa empire. “Jasanarayana” adopted the name “Pratapnarayana” in honour of his triumph over the Ahom army. In 1612, he repelled the Mughal invasion and adopted the name “Indrapratapnarayana”. After a significant territorial conquest or a notable victory, it was common to adopt high noble titles. Such titles were adopted either because they were highly esteemed at the time or because their kingdom comprised a portion of Gaur.<sup>39</sup> The assumption of epithets did definitely bestow on the state and its rulers an iconic status.

### **3.2.4 ISSUE OF COINS**

While ruling no coins were issued by the Dimasa rulers at Dimapur. It was from the time of their rule at Maibang that the kings began to introduce coins and inscriptions. In Assam no coinage is known before the third quarter of the 15<sup>th</sup> century A. D. The earliest coins were issued from Tripura by the king “Ratnamanikya” in 1467.<sup>40</sup> The history of Koch coinage dates to the period 1555. The rulers of the Dimasa must have been motivated to issue silver coins by the custom at the time. In fact, there was a strong connection between the coinage of the “Dimasas, Koch, Tripura, and Jayantia kingdoms”. The weight standard was a copy of the Bengal standard, while

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<sup>38</sup> Goswami, Govinda Kunja., 'Two coins from Cachar', *Indian Historical Review* (7///?;, Vol. II, No. 3, p. 616

<sup>39</sup> Acharyya, N. N., *A Brief History of Assam*, Omsons Publications, New Delhi, 2005 [1987], p. 42

<sup>40</sup> Gupta, Parmeswar Lai., *Coins*, National Book Trust, India, 2006, p. 168

the early Dimasa coins were imitations of the contemporary “Cooch Behar and Bengal coins”.<sup>41</sup> Native leaders in North East India either adopted the Bengal Sultans' coinage weight standard or that of the ancient Hindus. The Dimasa coins' legends are strikingly similar to those used by Koch monarchs. They have a devotion to a deity on the obverse in the name of the king and the date on the reverse. Hindu mythology were written on the coins in Bengali and Sanskrit. The “Koch coins” legends are extremely similar to the one on “Nirbhaynarayana's” coin. The name of the mint does not appear on Dimasa coins, in contrast to Bengali kings' coinage. According to S K Bose, “the inspiration for coinage must have originated in Tripura, which was already influenced by Hinduism”.

The first monarch to produce silver coins with the date 1481 Saka was “Nirbhaynarayana (1559 A. D)”. The coin's significance comes from the fact that it is the earliest monetary that the late-medieval ruler of Cachar ever issued.<sup>42</sup> First king to mint silver coins with a 1481 Saka date was “Nirbhaynarayana (1559 A. D)”. The coin's significance stems from the fact that it is the first example of a coin produced by the late-medieval Cachar king.

The monarchs of Dimasa minted coins to commemorate significant occasions like military conquest, coronations, or for use in commerce, similar to the Hindu states in pre-colonial India. There is no proof that traders or merchants in the Dimasa state ever issued currency. The sole authority to issue coins belongs to the kings. However, they never had their pictures engraved on those coins. The majority of the coins produced at the time of the earliest Hindu rites were likely given to the Brahmanas as a gratitude for their good and to guidance ensuring that they continued to offer prayers for good prosperity.”<sup>43</sup>

It is from coins that we came to know about “Jasanarayana” (1583-1613) took control over “Sylhet” as specified by the term “Srihattavijayina' or 'Conqueror of Sylhet”. In 1602, "Pratap Singha, the Dimasa king Jasanarayana," who had defeated the Ahom ruler, assumed the title "Indrapratapnarayana" and issued a coin . "Kirtipur" (city of victory) was the new name of his capital in honor of his victory over the Ahoms. The custom of issuing coins, which started in the

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<sup>41</sup> Jahar, Acharjee., 'Two Early Un-known Coins of Kachar', Numismatics Society of India (NSI), No 17, Part II, 1980, p. 24

<sup>42</sup> Acharjee., 'Two Early Un-known Coins of Kachar', NSI, p. 25

<sup>43</sup> Rhodes, N. G, Bose, S. K., A History of the Dimasa-Kacharis As Seen Through Coinage, Library of Numismatic Studies, Dhubri (Assam), 2006, p. 35

middle of the 16th century, persisted until "Govindachandra, the last king of Cachar" continued till the 18th century. At least in the beginning, there wasn't any monetary use for the Dimasa coins. The demand for coins as currency in Cachar was apparently very small during most of the period of the history of the state, and it was only during the 16th and early 17<sup>th</sup> centuries that coins were struck in numbers sufficient to make any economic impact. <sup>44</sup>

### **3.2.5 ISSUE OF INSCRIPTION**

From the time of their rule at Maibang, "the Dimasa kings began to issue inscriptions which were mostly religious in nature". Grants for copper plates were rare, but there is evidence of one that "Kirtichandranarayana" issued a copper plate in 1858 Saka (1736 A.D.), when "Maniram Laskar" was appointed "Uzir of Borkhola". "The earliest date of the stone inscriptions of the Dimasa king is 1498 Saka (1576 A.D.) and it was issued by Meghanarayana probably on the occasion of the accession of the Raja to the throne as well as to commemorate the construction of a gateway (Singhadwara) to the capital complex at Maibang". From this the growth of prose literature in the Dimasa court can be determined from the beginning. The evidence of inscription can be acquired from the "Conch Shell of Birdarpanarayana" portrayed the "ten incarnations of Lord Vishnu" that was carved in Saka 1593 (1671 A.D.).<sup>45</sup>

"Meghanarayana's" stone inscription contains the earliest indication of Bengali usage in the Dimasa state.<sup>46</sup> The inscriptions on the coins issued by the Dimasa kings specified the growing use of Sanskrit and Bengali. "Jasanarayana" issued "two coins in Saka 1505 (1583 A.D.) and 1507 (1585 A.D.)" and the language used is "Sanskrit".

### **3.2.6 POPULAR DIMENSION OF HINDUISATION**

It is a universal tendency of all partially civilized tribes in India to obtain Hinduism to strengthen their position over the surrounding tribes. "Hinduism, on the other hand, has little

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<sup>44</sup> Ibid., p. 20

<sup>45</sup> Ibid., p. 39

<sup>46</sup> Barpujari., History of the Dimasas [From Earliest Times To 1896 A.D], p. 146

influence over communities that are completely primitive”.<sup>47</sup> The indigenous people did not seem to be much impacted by Hindu rites, the traditional Hindu rituals were followed only by the Dimasa royal family and aristocracy. The influence of the “Brahmanas”, was however, limited primarily to the royal and aristocratic families and the extension of their activities to the common people was not considered much necessary because they knew that the laymen simply followed the examples of their king and nobles.<sup>48</sup>

“The non-receptive nature of the Dimasas in this matter may be more due to the fact that the King was considered as their representative bound by traditions rather than a divine authority having sanctity around him”. As a result, “the king was not regarded as superior to the people. Further the Dimasas were already akin to their traditional system of priesthood and therefore there was no need for the Dimasa to seek the services of the Brahmanas”. The rite of sacrifices was abandoned by the Dimasa kings after the “Suradarpa reign and the Dimasa royal family began to follow Vedic rituals”. However, the indigenous groups continued to practice their ancestral religion, which included offering animal sacrifices to their gods as a core element. Hinduism is permeated with “the concept of Swarga" (Heaven) and Narak" (Hell). As a result “the ritual specialists (Brahmanas) played a dominant role in performance of the rites for purging a Hindu of all his sins so that he is entitled for a position in 'Swarga' after death”. Additionally, it contributed to Brahmana dominance among Hindus. There is no such distinction among the Dimasas. “There is just one world of the dead, known as Damra, where all men, regardless of wealth or poverty, proceed after death, according to their ancient religious beliefs”. “The Dimasas' adoption of the title "Barman" shows that at least some part of the indigenous population was Hinduized and received education in Bengali and Sanskrit”. They constituted the aristocrats among the Dimasas.

### **3.3 SIGNIFICANCE OF HINDUISATION**

The Hinduization process, which began at Maibang, affected the Dimasa kings' outlook on religion and materially influenced their conceptions of the legitimacy of state power. “New roles

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<sup>47</sup> Acharyya., A Brief History of Assam, p. 320

<sup>48</sup> Moshahary., 'Aryanisation and Hinduisation of the Boros', PNEIHA, p. 170

and tasks assumed by the Dimasa rulers were in line with the Hindu ideas of kingship and they were legitimized by the Brahmanas who worked as catalysts of change”. While Hinduism was influencing the royalty, “the socio-cultural life of the indigenous elements still had the vestige of their ancestral beliefs”. This to a significant extent caused a cultural breach between the indigenous elements who remained outside the royal house's sphere and the royal house who adhered to "Hindu customs. However, “the Dimasa state, which had emerged from a tribal base, got accustomed to that of an Indian state structure as the Hindu ideals among the Dimasa kings at Maibang were expanded”.

Therefore the era of “Dimasa rule at Maibang was a significant phase in the cultural history of the region”. The former“ tribal state of the Dimasa was transformed into a Hindu state through the Hinduization of the state and culture at Maibang, which altered the nature of the Dimasa state and brought about numerous cultural changes”.

## **CHAPTER 4 CONSTITUTIONAL PROVISION UNDER THE SIXTH SCHEDULE**

The position of the “Customary Law of Dimasa living within the areas in Assam are mentioned in the “Sixth Schedule of the Constitution of India”. “Articles 244(2) and 275(1) of the Indian Constitution deals with the Sixth Schedule of the Constitution of India,1950”. In Assam there are three Autonomous council provided under “Sixth Schedule namely Dima Hasao Autonomous District Council (DHAC), Karbi Anglong Autonomous Council(KAAC) and Bodoland Territorial Council (BTC)”. The Dimasas are the dominant tribe in the Dima Hasao district among a heterogeneous population. Various tribes like the Jeme Nagas,Rongmei Naga,Hmar,Kuki,Mizo,Khasi etc are also found to be permanent habitants.<sup>49</sup>The tribal population of the state is 38,84,371 which is 12.4% of the total population .Assam's tribal population makes up 3.72 percent of all tribal people in the nation. The Major tribes of Assam are Bodo (35.1%), Mishing(17.52%), Karbi(11.1%), Rabha(7.6%), Sonowal Kachari(6.5%), Lalung(5.2%), Garo(4.2%) and Dimasa tribes(3.2%). <sup>50</sup>Dimasa tribe are lowest in Assam .According to Prof. Gassah, the Sixth Schedule was aimed at ‘promoting closer contacts and

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<sup>49</sup> Das, Dr Girindra Nath Das Tribal Tradition and evelopment in the Hill areas of Assam, first edition,March 2006

<sup>50</sup> Kongkari ,Sion and Jena,Bratindi,Functioning of Autonomous Councils in Sixth Schedule Areas of North Eastern States,Report published in 2016

intercourses between the tribals and non-tribals' and at the same time, the constitutional provision was made for 'ensuring the protection of interests of the tribals and their lands and also ensuring autonomy to shape their lives as they desire, was to be followed.....'<sup>51</sup>. Prof. Gassah, who is an eminent scholar and authority on issues relating to the Sixth Schedule, has emphasized his "argument in the backdrop of the British policy of segregating the tribals and the non-tribals and preventing their 'emotional integration which the newly adopted constitution has attempted to do away with and therefore, guaranteeing that 'adequate safeguards shall be provided for the minorities, backward and tribal areas and other backward classes.'" Prof. Gassah has mentioned that "the Sixth Schedule was put in place broadly guided by three major considerations which were firstly, in order to maintain the distinct customs, socio-economic and political culture of the tribal people of the region and to ensure autonomy of the tribal people to preserve their identities." Secondly, "to prevent the socio-economic exploitation of the tribal people by more advanced neighboring people of the plains and thirdly, to allow the tribal people to develop their own administration according to their own genius".

#### **4.1 RECOMMENDATION MADE TO THE BORDOLOI SUB COMMITTEE FOR SEPARATE AUTONOMOUS DISTRICT**

To report on the North East Frontier (Assam) Tribal and Excluded Areas, "the Bordoloi Sub Committee was established". Its chairman was Shri Gopinath Bordoloi, and its other members included Shri J.J.M. Nichols Roy, Rup Nath Brahma, A.V. Thakkar, and Mayang Nokcha, who was later replaced by Shri Aliba Ingti.<sup>52</sup> Considering the distinctive nature and efficacy of governance and administration of justice the Sub Committee was in a favour of sustaining laws and institutions for tribal people. The committee was of the opinion that the "customary laws of tribal people should be interfered with as little as possible". It recommended that "the hills people who are tribal, should have full powers of administering their own social laws. It had been recommended that the tribal council and courts should be maintained by codifying and modifying it."<sup>53</sup> The people of the North Cachar Hills residents sent their representatives to meet

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<sup>51</sup> Gassah, L.S.,[ed.],(1997) The Autonomous District Councils; Omsons Publications, New Delhi;p2

<sup>52</sup> Hansaria,B.L., Sixth Schedule to the Constitution , Universal Law Publishing House, Haryana, 2016 p7

<sup>53</sup> Report of the Sub Committee of Constituent Assembly on North East Frontier (Assam) and

with the Bordoloi-Sub-Committee members to express their demands. Additionally, they requested the right to maintain their own laws and local autonomy. The Tribal Council of the N.C.Hills urged that the beggar system and forced labour be abolished and that everyone's right to practice their own traditions and customs be guaranteed. "There should not be any outside involvement in their daily local administration and the local officers must be selected from among the local inhabitants". The Bordoloi Sub-Committee, taking into view the backwardness of the tribal peoples and their attitudes, recommended that "*All the tribes of Provinces other than Assam, whether living in the plains or in the Partially Excluded Tracts, should as a whole be treated as minority*".<sup>54</sup> It further recommended that "the areas of the North-East Frontier should be classified into two regions as Autonomous Region and Non-Autonomous Region".

"The Lushai, Karbi, North Cachar, Khasi and Jaintia Hills should all be included under the Autonomous Region while the Sadiya, Balipara and Tirap Frontier Tracts and the Tuensang region of the Naga Tribe should be included under the Non-Autonomous region". It was suggested that a "Regional Council or Local Council be established for each Frontier tract to manage the administration of non-autonomous regions". The "Bordoloi Sub-Committee" wanted to grant the Governor of Assam some extraordinary powers due to its observation of the strategic significance of the Frontier Tracts. On the basis of the report, "the Bordoloi Sub-Committee advised that a separate Administrative set up for the overall development of the backward tribal people and to promote them more autonomy and self-rule in the form of Autonomous District Council or Regional Council to represent the people of the state".

#### **4.2 MEMORANDUM SIGNED BETWEEN THE GOVERNMENT AND NORTH CACHAR HILL DISTRICT**

The Central Government and the Assam Government signed a Memorandum of Understanding (MOU) for a United Mikir and North Cachar Hills. In 1952 "a new district United Mikir and North Cachar Hills was established but on 2<sup>nd</sup> February, 1970" North Cachar Hills was separated and it formed a separate fully independent district. Thus the two Autonomous District

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Excluded Areas as appended in the book Sixth Schedule to The Constitution of India written by Justice B.L. Hansaria, Second Edition, 2005, Universal Law Publishing Co., pp. 231-232.

<sup>54</sup> *ibid*

Councils became full-fledged separate districts with their respective head-quarters at Diphu and Haflong . On April 29, 1952, the North Cachar Hills area received its own Autonomous Council in accordance with the “Sixth Schedule of the Indian Constitution, as suggested by the subcommittee led by Gopinath Bordoloi”. It was the Bordoloi Sub-Committee which recommended hill districts of Assam to meet the demand of the hill leaders.

These recommendations which are accepted by the Constituent Assembly are incorporated into the draft Constitution of the Sixth Schedule. The district councils was set up by the Sixth Schedule of the Constitution, while conferring autonomy to the hill tribal region envisaged that laws should be framed as per the customary law and any modification will be made according to changing times. Observing the nature and the complicity of the procedure prescribed under Code of Criminal Procedure, the Sub Committee was also of the opinion that if the offence is not heinous then procedure of trial should not be conducted by following the provisions of Code of Criminal Code, instead the customary court or the local courts should be empowered to try all the cases except those which are under special laws. The tribal court or the customary law courts should be invested with full powers including revisional and appellate power to deal with criminal and civil matters.<sup>55</sup>.“No laws made by the parliament or state legislatures are applicable until the Governor with a notification to that effect orders and make the same applicable”.

#### **4.3 ESTABLISHMENT OF NORTH CACHAR HILL DISTRICT COUNCIL**

The North Cachar Hills District Council was established on April 29, 1952 and was later renamed on 13th September, 1995 as “North Cachar Hills Autonomous Council”. “The North Cachar Hills Autonomous Council are governed under the Assam Autonomous Districts (Constitution of District Councils) Rules, 1951”.No law of the Central and the State Government can be executed without the approval of the District Council. The District Council is also empowered to establish the village courts and village council. However, its nature and composition differs from place to place.The North Cachar Hills Autonomous District

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<sup>55</sup> Report of the Sub Committee of Constituent Assembly on North East Frontier (Assam) and Excluded Areas as appended in the book Sixth Schedule to The Constitution of India written by Justice B.L. Hansaria, Second Edition, 2005, Universal Law Publishing Co., pp. 231-232.

(Administration of Justice) Rule, 1955 is followed for the governance of Dimasas people. Rules governing the marriage and divorce, inheritance, succession, adoption, maintenance are derived from the customary laws. The “North Cachar Hills Autonomous Council” authority has the power to make laws on the subject and it is important to serve the objective of the concept of providing special administrative set up under “Sixth Schedule to the Constitution of India”. The Constitution has provided different guidelines for administration of justice in the sixth schedule areas according to the customary law prevalent among the tribal people.

In the year 1995, the “Autonomous District Councils” were renamed by dropping the word ‘District’ as a fall out of the MoU signed on 1st April 1995 in a tripartite meeting held in New Delhi with the representatives of the autonomy movement organizations such as Autonomous State Demand Committee (ASDC), Dimasa Student Union (DSU) and North Cachar Hills Indigenous Student Forum (NCHSF) on the one hand, the Union and State governments on the other. Under the new names, the new councils were named as “North Cachar Hills Autonomous Council”. In “North Cachar Hills District” of Assam, the administration of justice is as per “The North Cachar Hills Autonomous District Rules (Administration of Justice), 1955”. “The Council underwent another name change on 30th March 2010 and under the new nomenclature, the Hill district is known as “Dima Hasao Autonomous Council”. “The Autonomous Councils are governed under the provisions of the Sixth Schedule (Article 244) of the Constitution of India following the recommendations of the Bordoloi subcommittee”. The Constitution, power and functions of the District Council are discussed in brief as under-

### **I. Constitution of the Autonomous District Councils**

As per the Sixth Schedule, “each District Council is a body corporate with the names of its respective District Council and Regional Council having perpetual succession and a common seal with the right to sue and to be sued. Each autonomous district must have a district council with a maximum of 30 members, of which the governor may nominate not more than four members and the remaining members must be elected by adult suffrage.”<sup>56</sup>The elected members

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<sup>56</sup>Sub-Paragraph (1) of Paragraph 2 of the Sixth Schedule.

of the “District Council” shall hold office for five years from the date of appointment. The Governor can extend the term for maximum one year in some special circumstances.<sup>57</sup>

## **II. Power and Functions of the Autonomous District Council**

The District Council shall have various power in the field of legislative, executive, judicial and financial functions. They are discussed as under-

### **i. Legislative Function**

The District Council shall have power to make laws with regard to-

- a) The occupation or use of land, other “than any land which is a reserved forest for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town”.
- b) “The management of any forest not being a reserved forest”;
- c) “The use of any canal or water course for the purpose of agriculture”;
- d) “The regulation of the practice of jhum or other forms of shifting cultivation”;
- e) “The establishment of village or town communities or councils and their powers”;
- f) “Any other matter relating to village or town administration, including village or town police and public health and sanitation”;
- g) “The appointment or succession of Chiefs or Headmen”;
- h) “The inheritance of property”;
- i) “Marriage or divorce”; and
- j) Social custom.<sup>58</sup>

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<sup>57</sup>Sub-Paragraph (6A) of Paragraph 2 of the Sixth Schedule.

<sup>58</sup> ibid

## **ii. Executive Function**

For the autonomous district, the District Council may establish, construct, or manage primary schools, dispensaries, markets, cattle , ferries, fisheries, roads and waterways. Additionally, it has the authority to impose language and instructional standards on elementary schools under its jurisdiction.<sup>59</sup>

## **iii. Judicial Function**

The District Council is authorised to constitute village and District council courts for the trial of suits and cases according to the customary law where both the parties belong to scheduled tribes.<sup>60</sup>All disputes and cases that can be heard by a village council court and the subordinate district council court are appealed to the district council court. The Governor may, “for the trial of suits or cases arising out of any law in force in any autonomous district or region being a law specified in that behalf by the Governor, or for the trial of an offences which is punishable with death or transportation for life, or imprisonment for a term of not less than five years under Indian Penal Code or under any law applicable to such district for the time being, confer on the District Council having authority over such district or on courts constituted by such District Council or on any officer appointed in that behalf by the Governor, such powers under the Code of Civil Procedure, 1908, or as the case may be, the Code of Criminal Procedure, 1973, as he deems appropriate, and thereupon the said Council, court or officer shall try suits, cases or offences in exercise of the powers so conferred.<sup>61</sup>No other court except the High Court and the Supreme Court of India shall have jurisdiction over such suits or cases decide by the District Council Court.<sup>62</sup>

## **iv. Financial Function**

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<sup>59</sup> ibid

<sup>60</sup> ibid

<sup>61</sup> ibid

<sup>62</sup> ibid

The District Council have the power to levy and collect taxes on lands and buildings, and tolls on person's resident.<sup>63</sup>The District Council for an autonomous district also has the power to levy and collect all or any of the following taxes within such district

- a) Taxes on professions, trades, callings and employment;
- b) Taxes on animals, vehicles and boats;
- c) Taxes on the entry of goods into a market for sale therein, and tolls on Passengers and goods carried in ferries; and
- d) Taxes for the maintenance of schools, dispensaries or roads.<sup>64</sup>

The District Council may also make regulations to provide for the levy and collection of any of the taxes and every such regulation shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.<sup>65</sup>

The royalties accruing each year from the licenses or leases for the purpose of prospecting for, or the extraction of, minerals granted by the Government of the State in respect of any area within an autonomous district as may be agreed upon between the Government of the State and the District Council of such district shall be made over to that District Council.<sup>66</sup>

The idea behind the creation of the Sixth Schedule was to setup a separate administration for the tribal so that the maximum autonomy can be provided to the tribal to safeguard their distinct custom and traditions .The Dima Hasao Autonomous District Council was also set up with a full-fledged autonomy power to legislate and administer on subject like customary law, land revenue ,trade and commerce etc assigned under the sixth schedule of the Indian Constitution.

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<sup>63</sup> ibid

<sup>64</sup> ibid

<sup>65</sup> ibid

<sup>66</sup> ibid

The India Constitution recognized the administration of justice in its customary system and left to the Dimasa community the governance and administer their land.

## **CHAPTER 5 LAW RELATING TO MARRIAGE AND DIVORCE**

The meaning of marriage differs from one person to another and from one time to another. For example, in ancient times, a marriage meant a condition in which a woman was given to a man almost as property, and often as a part of a social, political or business arrangement of some sort. For much of human history, marriage had been a permanent institution that, once entered into could not be dissolved except by the death of one of the spouses. However, in the modern world, marriage is a vastly different thing. On the up side, it is now more of a gathering of equals, rather than the subjugation of one to the other. On the

downside, marriage often becomes much more temporary than it had been in the years past.

The meaning of marriage can be looked at from legal perspective. Legally, marriage is a binding contract between the two parties that join together their income, possessions and lives. Marriage is recognized by the state, and it can be dissolved only through the legal process of divorce.

In a Dimasa society marriage is considered to be a sacrament religious activity. It is the accepted form of a union of two consenting adults (male and female). They have their own system of marriage giving importance to their clan organization.<sup>67</sup> Under Customary laws of Dimasa, “marriage may be considered as both sacrament as well as a social institution”. According to Haston and Hanks, “Marriage is the approved social pattern whereby two or more persons of opposite sex establish a family”.<sup>68</sup> Nuntberg, defines “Marriage consists of the rules and regulations which define the rights, duties and privileges of husband and wife.”<sup>69</sup> Marriage ceremony under the customary law is a process of social recognition between the couple. It is a patrilocal society where a Dimasa bride stays with her husband family after marriage. Dimasa follow monogamous type of marriage from the earlier days. The concept “monogamous” implies marriage to only one husband or wife at a time. Monogamous means the practice or belief in monogamy.<sup>70</sup> “Monogamous means the practice or belief in monogamy”. It is a patriarchal type of society where the head of the family is a male and the family lies with the father. There is no system of child marriage. Cross-cousin marriage is allowed among the Dimasa. Endogamy is practice in the Dimasa society while exogamy is prohibited. Sidney Endle was of the opinion that “the sub-tribes like Bodo, Dimasa, Rabha Kacharis were in early times strictly endogamous”. Though members of all these sub-tribes might freely eat and drink together, inter-marriage was strictly forbidden<sup>71</sup>. In the Dimasa society, existence of male and female clans makes the Dimasa marriage complex due to

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<sup>67</sup> L.K.NUNISA A HANDBOOK OF DIMASA PRACTICES ,pp7

<sup>68</sup>Uberoi , Patricia2002. ‘Family, Kinship and Marriage in India’, in Student’s Britannica, India. Vol.6, Encyclopedia Britannica Private Ltd, New Delhi, pp.145-155.

<sup>69</sup> *ibid*

<sup>70</sup>The New Webster’s Dictionary of the English Language – International Edition by Lexicon International – Publishers Guild group – New York. 1994.

<sup>71</sup>Sidney Endle, The Kacharis, Low Price Publication (reprint) 1990, p. 29.

the non-acceptance of the same clan in the society. No matter how distantly connected they may be, male and female clans are not allowed to marry inside the same patrilineal or matrilineal. Due to lineal relations, two adults cannot marry. Cross-cousin marriages are permitted as long as the male and female clans exogamy laws are not violated. The Dimasas follow the rules of exogamy too rigidly and any complex violation of these rules lead to ostracism. However in present days inter caste marriages are existing despite the procedure for recognition of marriage is tough. In such case those inter caste marriages are recognized only by holy rituals by the Dimasa priest. The Dimasas also do not allow any boy or girl to marry a non – Dimasa. However all such restrictions on marriage seem to have passed away long since and the whole subject has nowadays become a mere study for antiquarian interest<sup>72</sup>. It is observed that if a Dimasa youth marry a girl belonging to other caste whom they are allowed to remain in the society after performing certain rituals of penance or purification. The marriage recognized after following those formalities. The Dimasas avoid matrimonial alliances with other tribal and non tribal communities. Child marriage is unknown to the Dimasa society. While the marriageable age for boys varies from 18 to 30 years, the marriageable age for girls varies from 15 to 25 years. As a general rule, the wife should be younger from the point of view of age. But this does not stand in the way in selecting one's life partner. Marriage is a universal institution which is found in every era and in every society. Marriage by negotiation is the prevailing practice among the Dimasas. But the consent of the boys and the girls is always taken into consideration. Widow Remarriage or remarriage of a divorced woman is allowed by the Dimasa society provided the rules of exogamy are maintained intact. Section 2(2) of the Hindu Marriage Act'1955 and Section 2 (c) of the Hindu Succession Act'1956 have left the door open for the recognition of tribal customary laws and practices of Scheduled Tribes. Custom can be defined as the established or common usage of a particular society. Customary Marriage therefore is celebrated in accordance with the Custom of a particular society, usually it is custom of the community or ethnic group that is observed in a customary marriage. Thus Dimasa marriage without Khunang or Gaonbura is indispensable as he is the social head of the village in the Dimasa society

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<sup>72</sup> id

## **5.1 PROCEDURE AND STAGES IN DIMASA CUSTOMARY MARRIAGE**

The marriage performed under the customary laws of Dimasa may be classified into eleven different stages which have been found to be practiced in Dima Hasao district. These are:

### **1. SANDI DANSEGBA**

In order to obtain the bride's and her parents' consent, the boy's parents must first approach the bride's parents. If permission is granted, the groom's party must provide 1 kg of salt wrapped in seven ropes as a sign of choosing a bride.

### **2. LAOTAI LANGBA**

It is known as the offering of dry gourd full of rice beer to the bride family .At the time of discussion the bride's price which is called "Kalti" is also determined. There is a system among the Dimasa that the bridegroom's family must pay Kalti to the bride's family .. It confers legality on the marriage. The bride's parents or guardians demand Kalti at an exorbitant rate . The matter is discussed for a fairly long time among the elderly persons gathered there and the bride's price is decided .The Kalti, now-a-days varies from Rs. 200.00 (Rupees two hundred ) to500.00 (Rupees five hundred) depending on the economic conditions of the bridegroom's family. Although the Dimasa of the Cachar district have somewhat relaxed the custom but in Dima Hasao district it is still maintaining this custom. Although kalti is not considered as a bride price it is regarded as a sign of respect to her jaddi or jilik(matri clan) . The value varied depending on the social status her jaddi enjoyed in the society.The word "Dowry" and "Bride Price" are used in the same wordbut they do not imply the same meaning as dowry is defined as "the property, cash etc handed by a bride to her husband before marriage whereby"bride price" refers to a amount of coins such as Rs 300/- (three hundred) that the bridegroom pays to the bride's family either before or at the time of the wedding.The amount of coins that is paid during marriage to the eldest daughter is lowest but the amount paid to the youngest daughter is highest .Therefore the Kalti amount is not fixed , it is decided on the economic condition of the family.

### **3. GILIM GASA NAIBA**

The bridegroom party visits the bride's residence during the last phase before the wedding to see whether the bride has any issues with her health or not which is termed as Gilim Gasa naiba.

### **4. SAMLAIJU NAIBA**

The night before the marriage day the bride party go to the bride groom place and enquired whether they have prepare three kinds of items as curry to be served to bride party on the day of marriage. This is called samlaiju naiba.

### **5. KALTI RIBA**

On the day of marriage the bridegroom party first go the bride residence early in the morning and offer Kalti (bride price) to the parents of the bride and two married male youth of the bride groom party bow down to all the elder relatives of the bride and village elders as a mark of respect to the bride party from the bride groom party.

### **6. KHORONG RUBA**

The second step on the day of marriage is khorong ruba or removal of fence. The bride party is required to construct a fence on the way as a symbolic protection from the enemy .The bridegroom party proceeds towards the fence and request the bride party to remove the fence with dry gourd full of diluted rice beer. The bride party rejects the request for giving such diluted rice beer because they consider that rice beer can only be given by the enemy and not by marriage party. Thereafter the bridegroom party offers a gourd full of pure rice beer and request cordially saying that they are not enemy but they are bridegroom party so that they should remove the fence. Then the bride party remove the fence and allow the bridegroom party to come in for marriage.

## **7. KHAMREN KHAMBA**

Thereafter sitting arrangement in order of father clan and mother clan and rank of relationship is made for both bridegroom party as well as for the bride party .The arrangement is known as Khamren Khamba.

## **8. DAMAN KHILIMBA**

Then the bridegroom is brought to the bride residence for a marriage ceremony accompanied by his assistance called Qaoya and four others clad in full traditional attire and four open umbrella on the head of the bridegroom .The marriage ceremony is conducted in the bride courtyard. The bridegroom takes blessing from his parents, bride parents ,village headmen and both relatives from the parents side according to the rank of relationship from eldest to youngest onwards.

## **9. PHERA TANGBA**

It is a return journey from the bride place after one day as decided on the marriage .Here the bride return to the bridegroom place .Thereafter both the bride and bridegroom bow down and seek blessing from the parents and elders before leavingthe bride place .

## **10. KHEL HABRIBA**

After the marriage is completed when the bride return to bridegroom place ,both need to performed a ritual on any favourable day by worshipping the God /Goddess .This ritual shows that the bride has taken her husband surname by performing the ritual.

## **11. PHERASA**

After phera tangba comes pherasa which mean a return journey to the bride place after three days. In this return journey the married couple must be accompanied by two or three person.

Thus Married women from different matriclan groups are not allowed to share a residence or use the same clothing, accessories, or cosmetics in Dimasa society. Therefore, a married woman lives separate with her husband in a newly built house that is either adjacent to her home or next to her in- law house. In the Dimasa community, there is no dowry system. However, the bride's mother provides her with clothing and other home items typically used by women who live in separate accommodations. As a result, the Dimasa family is a neolocal family.

## **5.2 STATUTORY MARRIAGE**

They are eight categories of marriage in Dimasa society that are considered valid. They are as follows:

### **1. KAOLAIBA**

It is a marriage by elopement. It is an irregular marriage. It is not an approved form of marriage under Dimasa customary law. However, if such incidence takes place then the society calls meeting and try them and if found otherwise permissible then solemnizes the marriage. If a boy and a girl elope and get married somewhere, then both have to pay the fine as fixed under the law which depends on the economic condition of the family. Thus on payment of the prescribed fine the society approves the marriage after completing the religious ceremony. Only after payment the rituals are allowed to be performed for recognition of the marriage. Marriage by elopement must not be within the prohibited degree .If it is under prohibited degree they must be separated or excommunicated .Khaolaiba is not appreciated in the dimasa society.

### **2. HAB-LABA**

This is another type of marriage which is very rare. Generally this type of marriage is opted by the poor families

### **3. LAIHIBA /JUKHU BANDOLA**

It means to bring .It is a marriage between a widow and widower.

### **4. HAB RIBA**

This is less expensive and less elaborate type of marriage.The rites are limited and marriage also takes place inside the house.

### **5. JUKHU GAOLEM**

It a type of marriage which is less expensive with less duration time i.e direct marriage process unlike Habriba and Jukhuba

### **6. DISINGBA/JUKHUBA**

It is a fully fledged marriage which is arranged by the parents through negotiation with rules and regulation .In case of marriage by negotiation the boy's family take the initiative. The boy's family when they think of negotiation for marriage with a family ,first of all they send an information to that family that on a certain fixed date in the morning or in the evening that they are going to meet the elder persons of that family for some important purpose. When they come they are welcome with warm invitation.The elder persons are expected to be present at home on that date. If the girl parents have no objection they fixed a date on which date they will declare whether the proposal is accepted or not. But in Cachar district the form of marriage is known as Prajapati.In this form of marriage the daughter is given to the bridegroom by the father or

guardian of the girl without any sort of ceremony. The only required rites to be performed are the exchange of garland by both the bride and the bridegroom and recitation of mantras of the marriage on the occasion. This form of marriage is also not much seen among the Dimasas in Cachar district.

## **7. REGISTERED MARRIAGE**

Registered marriage solemnised before the court of law is subject to approval of the society under Bodo customary laws. The marriage is to be solemnised in presence of the members of the society. The marriage solemnised before the Marriage Officer needs to be socially solemnised afresh for social approval or recognition of the society. If someone ignores the society and solemnise the marriage somewhere then the party concerned is punished with a fine.

## **8. WIDOW REMARRIAGE OR NOH JAPHINBA**

Widow remarriage and remarriage of a divorced women are allowed in a Dimasa society. A younger brother can marry the widow of the deceased elder brother but the elder brother cannot marry the widow of the deceased younger brother. Similarly a man can marry the younger sister of the deceased wife but not his wife elder sister. Only a few rituals are observed in such re marriages in presence of the village elders and few relatives. The marriage of a widow is known as “Banjik Laihiba”.

### **5.3 MODERN CHANGES IN HINDU MARRIAGE AT THE PRESENT**

The Hindu marriage system has undergone considerable changes due to the influence of English education and western culture. The following are important among them:

1. **Marriage is not held compulsory:** Formerly marriage was considered to be compulsory for both male and female in Hindu society. But due to the influence of western culture many men and women do not regard marriage to be necessary this day. Some people do not enter into matrimony due to economic difficulties.

The modern educated Hindu girl is not ready to accept slavery of the male. She marries for love and if it is not there she refuses to marry. The educated girls, who are working, refuse to marry if they do not get suitable match. Both the modern men and women do not believe in the ancient religious values and therefore do not regard the marriage to be necessary.

**2. Breaking the taboos of Sagotra and Sapraava marriages:**

According to the ancient tradition the marriage of person belonging to the same gotra and pravara is prohibited. The field of the choice of a mate is very much restricted by this. Therefore, at present educated person are gradually violating this prohibition. It has also been rejected by law.

**3. Opposition to child Marriage:** The custom of child marriage was very much in practice in medieval India. Now child marriage has become illegal after the passing of Sarada Act. Another factor leading to the disappearing of child marriage in Hindu society is the high increase in women's education. On the other hand the boys also are not in favour of early marriage because of life settlement in carrier.

**4. Permission of Inter-caste Marriage:** Formerly inter-caste marriage was not allowed in Hindu Society. Now it has been legally permitted. With the increase of education and the democratic ideal of equality and liberty inter-caste marriages are not treated to be sign of forwardness.

**5. Prohibition of Polygamy:** In earlier limes, in order to get a son a man was allowed to marry several women. Polygamy has been declared illegal by the Hindu Marriage Act of 1955. Now no one is allowed to marry a second time while the former spouse is alive.

**6. Permission of widow Re-marriage:** Due to the untiring efforts of many social reformers and educated persons widow re-marriage is now permitted in Hindu society. As a matter of fact, its incidence is now in increase.

**7. Provision of divorce:** The Hindu Marriage Act of 1955 has introduced noted changes in the Hindu marriage system by allowing divorce under contain specific circumstances.

The above mentioned changes in the Hindu marriage system are indication of progress on the one hand and disorganization on the other. The rise of the age of marriage, the increase in the incidence of divorce and intern mantel sex relationships and sign of indicative or disorganization in Hindu marriage, on the other hand changes such as prohibition of polygamy the restriction of child marriages, the permission of widow re-marriage and freedom in the choice of partner are healthy indication of progress.

#### **5.4 Prohibited Degree of Marriage**

The same prohibitions on relationships that apply to civil marriage also apply to customary marriage. Because of this, customary law prohibits marriages between certain people based on affinity or consanguinity.

##### **1) CONSANGUINE MARRIAGE**

4Usually marriage is prohibited between blood relations. Marriage between the same patriclan and same matri clan is an offence against the Dimasa society and strictly prohibited. In Dimasa society a man/woman is not allowed to marry of the same blood relationship no matter how remote he/she is . However, if a marriage is conducted with the same clan he /she is punished by banishment or ostracism from the village known as “Razi niphrang nigerba or Dimasa Samaj niphrang nigerba”.

##### **2) BIGAMY MARRIAGE**

One cannot remarry without divorcing the first husband/wife hence marrying another person while his/her spouse is still alive or not legally divorced is void. If a man lives with another woman while he is married he is directed/ordered by the village authority to give up the other woman.If however he do not obey the order of the village authority he is

dismissed from the village and have to pay a “Dai” fine as directed by the village court.

### **3) POLYGAMY MARRIAGE**

According to Dimasa custom a man can have only one wife at a time as the custom imposes monogamy. A Dimasa man cannot marry unless he divorces his wife. Thus where a man lives with another woman as his wife without divorcing his wife such marriage is void and liable for heavy penalty.

## **5.5 DISSOLUTION UNDER CUSTOMARY LAW MARRIAGE**

Contrary to statutory weddings, which can only be dissolved by the courts, customary marriages are not subject to strict regulations on divorce. Rural areas have historically used customary methods to terminate customary law marriages without the need for any formalities. The families play a significant role in both the development of customary marriages and their dissolution. Customary Law Marriages may be dissolved in court through judicial intervention or by non judicial methods.

### **A. Non Judicial Method**

The non judicial method where a party do not take the help of the Courts for the dissolution of the marriage but by reimbursing to the opposite party to dissolve the marriage in a informal manner at the village court in the presence of gaonbura or village headmen. They are as follows:

### **B. By Refund of the Bride Price**

The bride money is reimbursed to the husband or his family if the wife does not want to continue the marriage. The marriage is said to have terminated once the bride has been reimbursed and approved. It's is important to remember that the onus lies on the party

who alleged the renunciation claim to prove that the husband has given up the right in order to reimburse the bride price. In the past, this non-judicial method was common in rural areas. This refund of bride price is applicable in the rural areas on the presence of the Gaonbura and other elder members of the village.

### **Judicial Divorce Method**

In the event of an unsettled matrimonial dispute, either party are at liberty to move the Family Court to dissolve the marriage if they believe they can no longer maintain their marriage. The Family Court may exercise original jurisdiction to dissolve the Marriages if there is no Customary Court in the tribal area. However, the states with a Customary Court have jurisdiction to dissolve the marriages if it lies within the jurisdiction.

## **5.6 DIVORCE UNDER CUSTOMARY LAW**

Divorce was unknown to general Hindu Law as marriage was regarded as an indissoluble union of the husband and the wife. Divorce literally means the legal ending of a marriage or separation. In Dimasa it means “Gaolaiba” or “Garlaiba”. In the other way it puts the marriage to an end, parties revert back to their unmarried status and are once again free to marry. To obtain a divorce, the aggrieved person or persons must appeal to the khunang, the traditional village. The khunang, after discussing the pros and cons of the appeal for divorce in the traditional village council, finalizes whether the dissolution of the marriage should take place or not. When a divorce takes place, the Kalti (bride price) is forfeited. The village council actually decide whether the kalti is to be refunded or not. If a woman is found guilty, she has to repay the kalti to the husband. On the other hand if the husband is found to be guilty he cannot demand the repayment of the kalti. The question of repayment of the kalti is mutually settled if the divorce takes place by mutual consent. A divorcee can remarry again without disobedience to rules of exogamy.

## **5.7 DIVORCE DURING THE DIMASA KING REIGN**

Divorce is very rare in the Dimasa society while it is hardly seen during the reign of Govinda Chandra kingship who was the last ruler of Dimasa King. The married women were generally loyal to the in-laws and of course to the husband during his reign. Usually, all the important family matters, both the husband and the wife were found to take decisions jointly. But in case of any critical situation concerning conjugal rights, members of the family along with the members of the society at large tried to remove the misunderstanding between the husband and the wife. Divorce is permitted only on specific reason such as adultery, maladjustment, insanity, physical torture, impotency etc<sup>73</sup>. In case, all these efforts failed to remove the misunderstanding either or both the concerned couple were free to appeal for divorce to the traditional Khunang (village headman) along with village elders who generally permit divorce on the basis of the merit of the case. The khunang discusses the issues with the village elders and attempt to reach a conclusion for the disputed parties.<sup>74</sup> Whether the dissolution should take place or not. If it is unavoidable then divorce is permitted. Among the Dimasas, if the divorce takes place because of the husband's fault, he has to pay fine, but if the wife was in fault, she has to pay fine too. Kalti (token of price) becomes forfeited when a divorce takes place between the two parties. If both parties agree to the divorce, a fine is settled upon.

## **5.8 DIVORCE IN THE PRESENT DAYS**

The Dimasa tribe approves for divorce. Both men and women have the legal right to terminate their marriage. Due to the high levels of community stability and bonding, divorce is a highly rare in the Dimasa community. The village council grants divorce if there are reasonable plausible grounds.<sup>75</sup> The grounds of divorce are extra marital relation, cruelty,

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<sup>73</sup> Maiphal Kemprai Phonglo, Customary Law and Practices of the Dimasa, an aboriginal ethnic tribe of N. East India

<sup>74</sup> Traditional system of the Dimasa published by Vivekananda Kendra Institute of Culture, Guwahati

<sup>75</sup> Arifur Zaman, Village Council and Administration of Justice: A Study Among the Dimasa Kacharis of Assam

torture nature and so on. As per customary law of the Dimasa in divorce cases, the following fines are imposed:

(1) The divorce proposal is not immediately accepted when a husband wants to separate from his wife, and they are given a month to resolve things out if they want to continue the relationship. However, if the husband still desires a divorce after a month has passed, the couple must sign a statement in front of the "Raji" (community), and the husband must give half of his possessions to his wife.

(2) On the other hand, if the wife propose a divorce before the husband she would also be granted a month to work out their differences. However, if she still decides to want a divorce after a month has passed and she has a valid reason, she will do so by jointly signing a divorce petition with her husband in front of the "gaonburah " and the entire neighbourhood. According to customary law, she would also receive half of his husband's property..

However, this condition does not apply if the woman is adamant about divorcing despite having no genuine reason , this clause will not be applicable. The woman herself may sometimes exclude her husband from this clause. The term "Dai Sumaiba" is a fine payable by the husband to the Village council which amounts to Rs 1000/-.

## **5.9 DIVORCE ON CERTAIN GROUNDS**

### **a) Illegitimate Child**

The lady is required to pay a fine of Rs. 501/- to the village council in the event that an illegitimate child is born as a result of an illicit sexual relationship. If the guilty male is responsible then he must reimburse the woman which amounts to Rs. 1001/-.

## b) **ADULTERY**

In the Dimasa culture, adultery is rare as it is hardly seen in rural areas. If a Dimasa woman commits adultery and is discovered, her husband will divorce her and she will not receive any of his property. Similarly if a husband commits adultery, husband has to provide maintenance if they are legally separated. But in some case it is up to his wife to decide whether or not she wants to dissolve the marriage or not. Most of the Dimasa wives have a tendency to be sympathetic. However, he must pay a "Dai Smaiba" a nominal fine of Rs. 100 to the "Gaonbura" who is a village headmen.

## c) **ILLCIT RELATION**

Clan incest and other illegal sexual offences that fall under the prohibited categories are deemed illicit relations and are therefore punishable offences. The accused person, whether male or female, who committed this type of offence is immediately expelled from the society.<sup>76</sup>

However during research it has been found that divorce is hardly granted. The Khunang tries to reconcile the parties by giving many suggestions. The village council keeps on trying not to grant divorce. But if there is no option then only

divorce is granted. Also after divorce, as per the custom, the male child custody is given to the father and female child to the mother. The divorced husband and wife could also remarry after performing social customs as per the customary law.

## **CASES RELATING TO DIVORCE**

### **Divorce**

#### **1) Shri. Jutil Hojai v. Smti. Kabita Barman (2016)**

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<sup>76</sup> ibid

In this case, the petitioner Shri. Jutil Hojai, R/O Topodisa, Haflong, got married to Smti. Kabita of Punikhal, Dholai on December 2013 and a son was born out of Wedlock on 5<sup>th</sup> June 2014. The petitioner filed a divorce petition in the Court of Judge Subordinate N.C.Hills Autonomous Council Court, Haflong against his wife Smti. Kabita Barman pleading that his wife left for her home to Silchar for Appearing her B.A.exam which was left pending due to her marriage with him. But after the completion of her exam, she refused to come back to her husband home stating that she will stay with her infant son in her parental house at Punikhal, Cachar. The Court issued summon to both the parties to appear in person before the Court in which the petitioner Shri. Jutil Hojai came along with his witnesses and documents but Smti. Kabita Barman did not appear for which she was given another notice with the warning that the warrant of arrest may be issued against her or ex-parte decision may be taken in regard to the case if she does not respond or appear before the Court. Eventually, Smti. Kabita Barman appeared before the Court and stated that her husband mistreated her thus she cannot live with him in such misery.

After hearing both the parties, the Court held that the only solution for settling the case is to dissolve the marriage. Regarding their son, the child shall stay with his mother until attaining 3 years and in between the said period, the petitioner can give visits to his child whenever he desires. When the child turns 3 years, the mother has to give back the child to his father for good as per the customary rule.

The Court further held that respondent Smti. Kabita Barman can claim all her assets brought along with her during marriage and the petitioner shall not forbid her from taking away her “Stridhan” (women property). Thus, Divorce was granted.

**2) Smti. Dipona Kemprai v. Shri. Denham Dipusa (2015)**

The fact of the case is that Smti. Dipona Kemprai had ties knot with Shri. Denham Dipusa on May 24, 2006 as per Dimasa rites and customs. Smti. Dipona Kemprai gave birth to a female child named Bonitha Dipusa out of wedlock on November 26, 2007. After 7 years of marriage, Shri. Denham Dipusa fled for Nagaland and never came back. Thus, the petitioner Smti. Dipona Kemprai seeks for divorce in the Court of Judge Subordinate N.C.Hills Autonomous Council Court, Haflong. The respondent did not even turn up during the Court proceedings. In his absence his mother Smti.Subola Dipusa along with his uncle Shri. Ramendra Nunisa represented him and was present in the Court proceeding and it is legal as per Dimasa customs. Dimasa customary law states that “if any of the party in a case could not avail himself/herself in a case, then his/her closest relatives will represent him/her.” Later on it came to know that the petitioner husband was arrested by Nagaland police in the case of road accident. When both the parties were asked about their decision on the petition filed then the petitioner claim that the respondent always failed to protect and maintain the family during their cohabitation. On the other hand, the respondent alleged that his wife is a tempered woman due to which there was always a quarrel in between them even in petty issues.

After hearing both the parties, the Court held that both the parties are irreconcilable and thus continuation of marriage is out of question. Thus, marriage was declared as dissolved. Regarding one time alimony as claimed by the petitioner, the Court held that the respondent have no capacity to contribute any kind of maintenance as

he is unemployed and does not possess any property of his own. Thus, the respondent need not pay any maintenance fees to the petitioner but in future, if his daughter faces any kind of ill health or financial crisis then the respondent shall Willingly help his daughter as a dutiful father. Further, the Court held that the petitioner shall not prevent the respondent or his relatives from visiting the child.

### **3) Pradip Kemprai vs Binota Kemprai (2021)**

The present case for dissolution of marriage was instituted by the petitioner who is a resident of Gunjung against the defendant .Both the parties belonged to the Dimasa indigenous community. From the examination of all the evidences it was found that the parties to the suit were already separated by the customary laws provided under the Dimasa customs.And that the defendant is living separately with all the children .And also the cause of separation was because the petitioner repeatedly committed adultery .It was also decided that on the date of separation the petitioner shall make no claim over the children nor the ancestral property The defendant was looked after by her brother in law and her children shall receive all the property rights of the petitioner.The court looking into the matter found justified of the decision taken by the Gaonbura of Mahur Wapu and upheld the judgment made in the court of the same. The court also accepts the plea made by the family of the defendant to make free of any future liabilities towards the petitioner including death rites unless the defendant changed her decision.Thus the court declared that the petitioner and defendant are no longer considered husband and wife in the society.

### **4) Abijit Bodo vs Debonika Barman (2020)**

This is the cases filed under section 28 of “the Special Marriage Act, 1954 R/W section 13B of the Hindu Marriage Act, 1955” praying for a decree of divorce by mutual consent. According to the petitioners their marriage was duly solemnized on 30.03.2017 under the

provisions of the Special Marriage Act, 1954 in the office of the Marriage Officer, Dima Hasao, Haflong. Accordingly, the Marriage Officer, Haflong issued a certificate of marriage to the petitioners to the aforesaid effect. According to the petitioners they got married in haste and on the spur of the moment. However due to very deep temperamental differences they have not been able to live together as husband and wife. Both the petitioners had asserted that they have been living separately from the very next date of their marriage till the date of filing and presentation of the present application on 17.06.2020. According to the petitioners, “before filing of the present application for divorce by mutual consent, they have been living separately for more than one year and further that they have not been able to live together. According to them their marriage has irretrievably broken down”. Accordingly “both the petitioners have mutually agreed that their marriage should be dissolved by a decree of divorce by mutual consent”. Though the court made sincere and serious attempts to bring about a settlement of the dispute between the parties, both the parties reiterated and reaffirmed their stand and assertion that they cannot live together as husband and wife and that their marriage has broken down irretrievably. The District court after hearing both the parties stated that “both the parties have been living separately for a period of more than one year; and further that they have mutually agreed that the marriage between them should be dissolved” .In the particular facts and circumstances of the present case including the fact that all efforts of conciliation to reunite the parties and to settle the differences failed and further that “there is no likelihood of success in that direction by any further efforts coupled with the reason that the parties do not have any children, the present petition for divorce by mutual consent was allowed by waiving the period of six months as specified in section 13B(2) of the Hindu Marriage Act, 1955 and under section 28 (2) of the Special Marriage Act, 1954”. Accordingly, the marriage between the parties are dissolved by decree of divorce by mutual consent.

##### **5) Debeshwar Sengyung vs Sonali Hojai (2019)**

This is the cases filed under “section 28 of the Special Marriage Act, 1954 R/W section 13B of the Hindu Marriage Act, 1955” praying for a decree of divorce by mutual consent. According to the petitioners their marriage was duly solemnized on 04.04.2018 under the provisions of the Special Marriage Act, 1954 in the office of the Marriage Officer, Dima Hasao, Haflong. Accordingly, the Marriage Officer, Haflong issued a certificate of marriage to the petitioners to the aforesaid effect. However due to very deep temperamental differences they have not been able to live together as husband and wife. According to the petitioners, “before filing of the present application for divorce by mutual consent, they have been living separately for more than one year and further that they have not been able to live together”. According to them “their marriage has irretrievably broken down”. Accordingly “both the petitioners have mutually agreed that their marriage should be dissolved by a decree of divorce by mutual consent”. Though the court made sincere and serious attempts to bring about a settlement of the dispute between the parties, both the parties reiterated and reaffirmed their stand and assertion that they cannot live together as husband and wife and that their marriage has broken down irretrievably. The District court after hearing both the parties stated that “both the parties have been living separately for a period of more than one year; and further that they have mutually agreed that the marriage between them should be dissolved”. In the particular facts and circumstances of the present case including the fact that all efforts of conciliation to reunite the parties and to settle the differences failed and further that there is no likelihood of success in that direction by any further efforts coupled with the reason that the parties do not have any children, the present petition for divorce by mutual consent was allowed by waiving the period of six months as specified in “section 13B(2) of the Hindu Marriage Act, 1955 and under section 28 (2) of the Special Marriage Act, 1954”. Accordingly, the marriage between the parties are dissolved by decree of divorce by mutual consent.

### **Cases relating to prohibited marriage**

#### **1) Pramita Kemprai vs Subhankar Hojai (2019)**

This is the case which was appeal to the Gauhati High Court. Both the petitioner and the respondent got married on 26.04.2016 at a temple and thereafter, a deed of marriage had been executed before the Notary Public, Diphu on 28.04.2016. Shortly thereafter, the respondent had instituted a proceeding in the Court of learned Judge Subordinate, North Cachar Hills Autonomous Council Court, Haflong for declaration of his marriage with the appellant-review petitioner as null and void on the ground that they fall within the prohibited degree of relationship for marriage. The learned Judge Subordinate, North Cachar Hills Autonomous Council Court, Haflong had dissolved the marriage between the parties with the grant of an alimony of Rs. 70,000/- to the appellant-review petitioner. Aggrieved by the said impugned, the appellant-review petitioner had preferred the appeal, in Gauhati High Court .The High Court upon consideration of the matter had, inter-alia, found that no reasonable opportunity was granted to the appellant-review petitioner to put forward her case in an effective manner. It had been found that the learned Judge Subordinate, North Cachar Hills Autonomous Council Court had, on the basis of the suggestion of the Mauzadars and her superior, granted divorce, thereby, surrendering and abdicating the judicial power vested on the said Court. The only ground urged in this review petition on behalf of the review petitioner is that there is no jurisdiction vested in the Court of Judge Subordinate, North Cachar Hills Autonomous Council Court, Haflong to try the matter of divorce in view of separation of judiciary in the North Cachar Hills District, now renamed as Dima Hasao District. On the other hand, the respondent has submitted that no interference is called for as the Judge Subordinate, North Cachar Hills Autonomous Council Court, Haflong is vested with the jurisdiction to try the matter of divorce between the two parties involved herein as both are tribals belonging to the Dima Hasao District. In support of the submission, it has referred to the Sixth Schedule to the Constitution of India, more particularly, to Paragraph 4 and Paragraph 5 thereof, and to the provisions of the “North Cachar Hills Autonomous Districts (Administration of Justice) Rules, 1955”. From the Preamble and the provisions of the 2009 Act, it is clear that the applicability of “the provisions of the 2009 Act is subject to the provisions of Paragraph 4 and Paragraph 5 of the Sixth Schedule”. According to “Article 244(2) of the Indian Constitution”, the administration of tribal areas in the states of Assam, Meghalaya, Tripura, and Mizoram is subject to the requirements of the Sixth Schedule”.The Supreme Court of India had ensure that “the judiciary be separated from the executive in the district of North Cachar Hills on the basis of the suggestion to be given by the

High Court and to appoint the required number of Judicial Officers” . It has been prescribed, inter-alia, that” the District Council for an autonomous district in respect of areas within the district may constitute village councils or courts for the trial of suits and cases between the parties all of whom belong to Scheduled Tribes within such areas”. Both the parties belong to “Scheduled Tribes” and are residents of North Cachar Hills District and the subject-matter of the suit between them is divorce. It is established that the Subordinate District Council Court has not been divested of its original jurisdiction in any manner from conducting the trial of suits and cases between the parties all of whom belong to Scheduled Tribes within its territorial jurisdiction. As a corollary, the Court of Judge Subordinate, North Cachar Hills Autonomous Council is vested with the jurisdiction to try the divorce proceeding between the review petitioner and the respondent, both of whom belong to the Scheduled Tribes and are residents within the territorial jurisdiction of the said Court, to the exclusion of any other Court in the North Cachar Hills District. In view of the above, the High Court does not find any merit in the submissions advanced on behalf of the review petitioner and, thus, the present review petition being devoid of merit was stands dismissed.

## **CHAPTER 6 LAW OF INHERITANCE AND SUCCESSION UNDER DIMASA CUSTOMARY LAW**

### **6.1 RIGHT OF INHERITANCE**

The purpose of this chapter is to get a general understanding, as to what are the Inheritance law and succession under the Customary law. Firstly, the term Property is defined to be something one received from an ancestor under the laws of intestacy. It is a property that a person receives

by bequest or devise.<sup>77</sup> An inheritance is an “estate descended to the heir immediately on the death of the ancestor by virtue of his right or representation as a descendant”. It is cast upon by the latter by operation of law. Inheritance is an estate of the deceased property which casts on the heir.

Further, a very clear meaning of the word Property is given in the following case of, **RC Cooper v. Union of India** where the Supreme Court has given a very extensive definition of Property which means the highest right a man can have to anything being that right which one has to lands or tenements.....and signifies a beneficial right to or a thing considers as having the money value especially with indication to transfer or succession, and of their capacity of being acquired’.<sup>78</sup>

Ancestral Property are basically inherited from the “paternal ancestors”. Certain customary laws of the Dimasas, which are followed since time immemorial are govern through the transmission of property. With respect to inheritance the Dimasa’s have both matrilineal and patrilineal system of inheritance. The rights over property are determined by old-age customs, though there are considerable changes in a recent times. The Dimasas are patriarchal and adhere follow the patrilineal system, i.e., descent is traced through male lineage only but the mode of inheritance of property is unique. Among the Dimasa tribe, all immovable properties are inherited by the son and movable properties are inherited by the daughter in the earlier days but it has changes in today’s times as both are equally allowed to inherit .

Dimasa’s have been settling their disputes pertaining to succession to property in terms of customary laws. According to customary law, equigeniture is the process through which the father's properties are distributed equally among the sons, known as "Basa Hainribain," and the mother's properties are distributed equally among the females, known as "Busu Han riba." Here, the term "equal" refers to the number of plots owned by the individual rather than the division of land by its measurement. Dimasa society live in a patriarchal society. The practice of will for distribution of properties is not practiced. A declaration of parents in front of the relatives is the only method of distribution of property. The father or in his absence the surviving eldest

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<sup>77</sup> Bryan A Garner, Black Law Dictionary’, 9th Edition, 2009, A Thomson Reuters Business, p853

<sup>78</sup> AIR 1970 SC 564.

son becomes the custodian of the family property. Usually all the powers in the family are held by the father who is the guardian of all the family members. Like Karta in Hindu law the father or the guardian is armed with powers like maintenance, partition and disposal of the property. The property may be classified in the following three heads namely Paternal property, Maternal property and common property.

#### **i) PATERNAL PROPERTY**

Paternal property is acquired from the parents by virtue of his birth.

However, under Dimasa customary laws, no one can be the custodian of the family property during the life time of father nor can claim by birth. In case of inability on the part of the father to maintain the family, usually the eldest son represents the family and as such becomes the custodian of the family property. But he cannot dispose the same according to his will. The paternal property includes land, house building, weapons, valuable cattle like buffalo, clothes worn or use by male person, iron box (sandhuk) and all other valuable assets<sup>79</sup>. It has been found that the son's who performs as the head of the family gets more share of paternal property. The daughter can never inherit the paternal property even if there is no son in the family. If a man does not have any son at his death, his property will be inherited by the nearest male relative of the father clan. Male properties are inherited by the sons more or less equally but the youngest son may get larger share or the son /daughter with whom parents live. The son who attends the final rites and stays with the parents in their old age is entitled to inherit the parents remaining property and the house. When there are no males in the family, the inheritance are transferred to the paternal uncle, paternal cousins, and distant clan relatives in order.

The inheritance of male property is coupled with certain duties and obligation. The youngest son may only inherit the larger share of property but also assumes the responsibility to maintain aged parents. The daughters do not inherit any landed property. However, these days in some of the localities, it has been seen that in time

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<sup>79</sup> B.N Bordoloi, The Kacharis of Assam

with the changing phenomenon the daughter also devolves the share of ancestral property.

### ii) **MATERNAL PROPERTY**

The daughters inherit the mother's property. The maternal property consists of jewellery, clothing, "khailims" (cane baskets), and the looms and other accessories which are used by the mother. Even if there isn't a daughter in the family, the son can never inherit the matrimonial property. In this situation, the closest female relative who belonged to the same clan of the deceased woman inherits the deceased maternal property.

The maternal property is inherited by her daughter only after her death. The eldest daughter acquires the authority to distribute it amongst her sister.

### iii) **COMMON PROPERTY**

The common property is shared by the sons and the daughters equally. It consists of money, paddy, traditional clothes worn by both male and female, cooking utensils, brass-metal dishes, bowls and the other household equipments<sup>80</sup>. If the family does not have any sons then the whole common properties are inherited by the daughter more or less equally. Similarly if the family does not have daughter the whole property are inherited by the sons equally. Any son or daughter with whom the parents live can get large share of common property. At the time of "distribution of property among the sons and daughters, a valuable property is kept in the name of the parents". This is perhaps to make the "parents" life secure from being vanished in their old age. Sons and daughters inherit the common property equally.<sup>81</sup> At present the common property is equally shared in today's times.

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<sup>80</sup> Maiphal Kemprai Phonglo, Customary Law and Practices of the Dimasa, an aboriginal ethnic tribe of N. East India

<sup>81</sup> Goswami, M.C. 1986. The Customary Laws of the Dimasa of Assam. Guwahati: Law Research Institute, Eastern Region, Gauhati High Court

On the other hand, if a couple does not have children, then any “close paternal relatives to whom they wish to leave their property or the person who will perform at their funeral will inherit it”. As long as the widow doesn't get married again to outsider, she can benefit from her husband's estate. A widow who is eligible for marriage among the Dimasa is permitted to remarry her deceased husband's brother, making him the father of children conceived from his deceased brother. With regard to the inheritance by the adopted children, the adopted son's are eligible to inherit his parents' assets. Only adoption from within the clan, ideally from within the lineage, is permitted. The interesting fact of the customary law of inheritance of property among the Dimasa's is that as soon as person inherits the real estate of a deceased person, he is liable to pay off all the debts of the deceased even if the amount of debt is more than the value of the real estate inherited by him. By no means he can get rid of his responsibility towards the deceased parents according to the customs. But the process of the division of property between male and female is limited among other tribes of the north eastern region.

## **6.2 RIGHT OF SUCCESSION OF PROPERTY**

According to the Webster dictionary the term “succession means the order in which or the conditions under which one person after another succeeds to a property, dignity, title or throne”. The traditional Hindu Law of Succession was different in two main schools namely Mitakshara and Dayabhaga Schools. The Dayabhaga School emphasises only on one mode of succession which is that, there is no right by birth or through survivorship though a joint family and coparcenary property are recognised. . In Mitakshara, joint property will follow one and the property which is separate will follow another course of succession.<sup>82</sup> Under Dimasa Customary law the father has absolute power with regard to partition of family property. Father decides who will get how much share of property. Usually the father gives equal share of his property to all of his

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<sup>82</sup> . Mayne's, ‘Hindu Law and Usage’, 16th Edition, 2009, Bharat Law House, New Delhi, p959

sons. Sydney Endle was of the opinion that father's property is broken up into equal shares<sup>83</sup>. Normally the property under Dimasa is devolved in the following order:

1. On the death of the father the property is devolved by son or sons.
2. If the person concerned has no son but has only daughter then the property is devolved by the daughter.
3. If the person concerned has no descendent then the property is devolved by the widow alone if the widow is alive. The widow enjoys the property till her death. But if the widow gets remarried to other person without making the properties in her name then the widow ceases to enjoy the property of her husband and the same is devolved by the nearest relatives of the person concerned. Instances of taking the property back by the parents in untimely death of the person concerned is also found to be practised. In such case the property is taken by the parents if the widow gets remarried to other person.
4. In absence of any heir the property is devolved by brother of the person concerned. If the person concerned has also no brother then the same is devolved by the paternal uncle.

## **CASE STUDIES RELATING TO SUCCESSION**

### **1. Armanjit Thaosen vs Lt Nonda Thaosen (2019)**

This case was instituted by the petitioner under Sec 372 of the Indian Succession Act 1925 for granting succession certificate in respect of the debts and securities of deceased Lt. Nonda Thaosen. It has been stated that the petitioner is the nephew of Lt. Nonda Thaosen and that the wife of the deceased also has expired. The deceased during his lifetime was holding LICI (Life Insurance Corporation of India) Policies with LICI Haflong, Branch and the sum total amounts to Rs 2,98,050/- . It is averred that during the lifetime the deceased did not make any will or letter of administration in respect of debts and securities. Subsequently the deceased left behind his son who is six years old as

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<sup>83</sup>Sidney Endle, The Kacharis (Bodo), Low Price Publication, New Delhi, (Reprint), 1990, p. 32.

his sole heir and legal representative. The court interacted with the petitioner and all other who were presence .The petitioner has agreed that out of

Rs 2,98,050 /-an amount of Rs 2,00,000/- only be kept in fixed deposit in any nationalised bank in the name of the minor till he attains majority. The petitioner also has agreed to do the needful to open a “bank account” in the name of the minor .The petitioner is to keep the balance amount which may be defrayed or spent towards the maintenance ,support, education etc of the minor Master Jasmanjit Thaosen. The court looking into the matter decided that as there was no objection from any quarter seeking to contest the petition and as agreed by the petitioner to keep Rs 2,00,000/- in fixed deposit in the name of the minor till he attains majority. The petitioner being the nephew of the deceased is entitled to obtained succession certificate in respect of the debts and securities left by the deceased .However the authorities of LIC are directed to ensure that out of the aforesaid amount of Rs 2,98,050/- only, an amount of

Rs 2,00,000 be kept in fixed deposit in any nationalised bank in the name of the minor .

### **6.3 MAINTENANCE**

In Dimasa society, the “head of the family is expected to maintain all the members in the family”. In Dimasa it is term as “Khuraki”. Maintenance is the right available to an individual to get from another the basic necessities like food, clothing,shelter and also education,.medical attendance and expenses for marriages in the case of an unmarried girl. The person who inherits his father's wealth is responsible for supporting his sisters unless she get married and also to look after a widow and other family members during his lifetime. Same obligations apply to an adopted son who receives his adoptive father's property. A son is morally obliged to maintain his aged parents if they are unable to maintain themselves”.<sup>84</sup>Besides food, clothes and shelter, land can also be gifted to the widow by her husband’s family members in case if she does not remarry. Thus, her grown up son, who inherit his deceased father’s properties is under obligation to maintain her. But, if there is none on the side of her husband’s to maintain her then she may go back to her parental house, where

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<sup>84</sup> idd

her father is under a moral obligation to maintain her.<sup>85</sup>Maintenance is not granted by any civil court but it is mutually decided by both the parties.<sup>86</sup>A divorced wife is not entitled to receive any maintenance and separate residence from her husband.<sup>87</sup>But if the husband is a defaulter then the wife is entitled to maintenance or one-time payment or payment in installments or compensation with property.In case of desertion, the wife is entitled to receive maintenance from the husband .If a man leaves his parental family after divorce then the responsibility of maintaining his children and wife goes to him not his parents.After divorce, if a son or daughter of a man stays with his former wife then he is to provide maintenance but if she lives apart from the children then she is not entitled to receive maintenance from her husband.When the divorced wife leaves her husband's family then she is look after by her kin members. An unmarried daughter is maintained by her parents.<sup>88</sup>

## **CASES RELATING TO MAINTENANCE**

### **1) Trina Haflongbar vs Utpal Daulagupu (2019)**

This case is filed under Section 125 of Cr.P.C, 1973 by Smti. Trina

Haflongbar against her husband Sri Utpal Daulagupu. The applicant case in brief is that the petitioner is the legally married wife of the respondent and their marriage was solemnized on 16/04/2012 as per Hindu Rites & Rituals in presence of friends and relatives .That soon after the marriage the petitioner and the respondent live together at the husband place at Maibang .That both the parties were living as husband & wife happily from the day of their marriage.That the respondent is a Govt. employee (Battalion) by profession and receiving monthly salary of Rs. 33,000/- only and presently posted at Maibang.That out of their wedlock the petitioner gave birth to a baby boy on 06/04/2012 and a baby girl on 29/07/2017.That from the date of their marriage till the birth of baby girl they were living happily though the respondent

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<sup>85</sup> idd

<sup>86</sup> idd

<sup>87</sup> ibid

<sup>88</sup> ibid

doesn't stay with them all time because of his duty but he was always in touch with the family and shows care, love and affection to his family. That soon after the birth of baby girl the respondent started behaving weird and shows least interest to petitioner and the children. That the petitioner started doubting the respondent for his behaviour of having extra marital affairs and her doubts was cleared when she was totally avoided and got to know he was living with another lady. The respondent started torturing the petitioner mentally and physically & very often on being asked by the petitioner about the extra marital affairs. That the cause of action arose on February 2019 when the petitioner was totally avoided and was given a choice of either living with the respondent accepting his another lady or to completely leave him and with no other option the petitioner left the house of the respondent and started living at her parental house at Gunjung. That the petitioner is unemployed and has to look after her two children. The Sub divisional judicial magistrate directed that respondent shall pay monthly maintenance of Rs.8000/- (Rupees Eight thousand only) as a maintenance for both the petitioner and her two minor children born out of the wed lock till completion of loan repayment and thereafter to pay monthly maintenance of Rs.10000/- (Rupees Ten Thousands only) for both .

#### **6.4 SUCCESSION BY ADOPTED CHILD AND ILLEGITIMATE CHILD**

Under Dimasa customary laws the adopted son has the right of inheritance of the adoptive father if he was ceremonially included as family member. However, if there is no other successor of the property then the adopted son inherits the property even though he was not included in the family as full blood family member. However, at present this custom has no significance as the attitude of the people has changed. Since child is adopted by those who do not have their own child, the share of property is generally given to the adopted child. Thus the adopted son is also provided the share of property. If anybody takes second wife during the life time of his first wife, and if he has already children out of the wedlock of the first marriage, but again marry another

woman and have children, then all his sons will get their respective shares of their paternal property. But they would however get the share of their maternal property only of their respective mother.

## **6.5 THE CONCEPT OF STRIDHAN (WOMAN'S PROPERTY) AND ITS SUCCESSION**

As regards to property rights of women are concerned, Manu has talked about the concept of Stridhana. The word "stridhana is derived from stri means woman and dhana means property". It means literally "woman's property". Daughter, like that of succession of Stridhan under Hindu law, has every right to inherit the property of her mother. However this must be earned or accrued by the woman. The following properties may be regarded as woman's property:

**1. Property acquired by virtue of will:** If anybody gives property to a woman by executing a will then such property becomes her exclusive property and thus becomes woman's property.

**2. Property acquired by virtue of gift:** The property given as a gift also becomes woman's property as it is the property over which the donee acquires exclusive right of ownership. Therefore such property is also regarded as woman's property.

**3. Property received from her parental house:** The property received from paternal house as the successor of the family property is also treated as woman's property. If there was no other successor in the family as a result of which the daughter becomes the sole successor and thus acquires property; then in such case the woman only has the exclusive control over the property.

Under Dimasa Customary law, “Woman’s property is devolved by the daughters”. The female property is inherited by “daughters equally, although the youngest daughter tends to get a bigger share”. If a man dies leaving no son, the male property goes to the man’s nearest male relative, but not his daughter. In the absence of a daughter, the “female property goes to the nearest female relative of the mother, not the sons”. However in today’s scenario equal property is distributed among the children in urban areas. The son also has right of inheritance over the property of his mother. Like the father in ancestral property the mother also has the right to decide the share to be given to the heirs. In case of death of the owner without any descendants then such property is inherited by her husband if the husband is alive and if husband is also dead her paternal relatives inherit the property.

## **6.6 GIFT AND WILL**

The practice of Gift and Will are prevalent among the Dimasa. Any movable or immovable property can be gifted by way of gift by parents, relatives, clan man or by the village property owner.<sup>89</sup> One who owns personal property can also make a “Will of his/her property to person whom he/she likes”. A Will cannot be challenged if it is made in the presence of the witnesses or in writing who is the absolute owner of the property. All types of property can be executed by a will if a testator desires except ancestral property and village land. A Will cannot become void unless it is revoked by the owner during his/her life time.<sup>90</sup>

**6.7 LEASE** - Property can be leased out by its owner for specific time period. So far as land is concerned, only periodic patta land can be leased out. But, ritualistic items cannot be given or taken on lease. The lessee can use the land during the period of lease and payment can be made either in cash or kind or by any other means as decided between the parties. The lessee cannot further mortgage nor sub-lease such land.

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<sup>89</sup> Nunisa, Longkeshwar, A handbook of Dimasa Customary Practices (North Cachar Hills Autonomous Council, Dimasa Hasao, Haflong, Assam, 1st edn., 2013).

<sup>90</sup> *ibid*

**6.8 ADOPTION-** Adoption is prevalent and recognized in Dimasa society though seldom practised. A childless spouse, maiden, divorced wife, widow or any female can adopt a child. The person adopting a child should have the capacity and also the right to take in adoption. For valid adoption, the parents must give their child freely to the adopting families. . No ceremony is required to be performed for adopting a child.<sup>91</sup>A childless couple can adopt a boy of his patriclan. The adopted son can perform all the rituals of his adopted father. He is also entitled to inherit half of his property leaving the other half to the collateral relation of the deceased. But, if the adopted son belongs to different patri clan then he is debarred from participation in the worship of clan-god of his adopted father because even after adoption, his original patriclan remains unchanged. Adoption of a girl child is very rare in Dimasa society because of the very important reason that two women of different matri clan cannot remain in the same house. Naturally, it limits the possibility of adoption of a girl. The girl has to be from the matri clan of her adopted mother. An adopted child is treated equally with other children.<sup>92</sup>

## **6.9 STATUS OF WOMEN IN THE DIMASA SOCIETY**

The Dimasa society welcomed both the newborn boy and girl equally. Among the Dimasas, women occupy an important role in the socio-economic sphere and they are allowed to engage in all kind of activities.<sup>93</sup>Aged women are highly respected and they usually remain socially active. The elderly Dimasa women become „Hojaijiks’ (midwife) and „Baruajik“ (adeh) and without their presence no important social function can take place.<sup>94</sup>The Dimasa society pays much respect to individual freedom such as social, political and religious. But, women enjoy such freedom only to a limited extent. In Dimasa society, female can neither become the village head nor are they allowed to take part in the election of any village officials. They also cannot become a priest or diviner. The domain of women is mainly restricted to the domestic world. However, they have more or less equal rights with men in the observance of religious

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<sup>91</sup> ibid

<sup>92</sup> ibid

<sup>93</sup> Barooah, Jeuti (Dr.), Customary Laws of the Dimasas of North Cachar Hills in Assam: With Special Reference to their Land Holding System (Law Research Institute, Guwahati High Court, Guahati, 2007).

<sup>94</sup> ibid

rites.<sup>95</sup>Presently, Dimasa women have stepped out from the four corners of the walls and go for different types of vocational training which will help them to engage in various income generating activities. They have become aware of their rights and are organizing themselves to move away from the deep-rooted social taboos, superstitions, belief, prejudices and traditions against them. Women belonging to different economic strata have also come out of their shells of subordination and sufferings and have taken up jobs in various Government departments and other sectors to overcome poverty, discrimination, exploitation and lower status. In the field of education, Dimasa women seem to have already outstripped their male counterparts.<sup>96</sup>

Thus in most of the communities the society is of a patriarchal society and male member were known as the heir of in context of succession and inheritance by birth and women had less place. However, in practice, sometimes the heir would fail to carry out these responsibilities and daughter were left with the responsibilities to look after the family.

## **CHAPTER 7 ADMINISTRATION OF JUSTICE RELATING TO CIVIL MATTERS**

Dimasas have their own social laws and customs for administration of justice. Dimasas have been following certain rules to resolve disputes in the society. These rules have been followed throughout the ages and the societies have been following. In the past years before the establishment of court, the administration of justice was held in village where disputes are mostly settled at the village council. The village council court settled all kinds of civil,

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<sup>95</sup> ibid

<sup>96</sup> ibid

matrimonial and criminal cases. The village council court consists of “Khunang” (village headman), “Delik” (second headman), “Habaisgao”(Third Headman), prominent village elders and youth. Elderly women are invited to participate in the trial only when women are involved in the dispute. Cases are resolved from the house of Gaonbura. Inter village disputes are settled by the khunangs and village elders of several villages.<sup>97</sup>For the settlement of dispute in the village court, an aggrieved party has to file a complaint to the village Gaonbura. Complaint has to be filed through 9 plantain leaves along with cash, which must be in odd digit like Rs. 11,21,31,41, 101 etc. There is no fixed amount for filing a complaint. After filing a complaint, a village council will be seated at Gaonbura house and hear both the parties. After hearing both the parties, the court will fix the date for settlement of dispute and pronounce judgment. <sup>98</sup>The judgment delivered by the village council shall be binding on both the parties. <sup>99</sup>If any party fails to comply with the decision passed by the village council then fine may be re-imposed but if it fails repeatedly then the defaulter shall be excommunicated from the village depending on the gravity of the crime. <sup>100</sup>Fine and compensation are the usual penalties imposed by the traditional village councils. The amount of fine or compensation is calculated on the basis of total numbers of clans i.e., 40 male clans and 42 female clans. Hence, the wrongdoer shall be liable to pay a fine of Rs.40/- or Rs.42/- at the lowest, Rs.40+42 or Rs.40x2 or Rs.42x2 or Rs.82x2 and so on. In case, if the imposed fine is not paid then shall be excommunicated from the society or even banished.<sup>101</sup>Death sentence cannot be passed by the village court.

## **7.1 PRESENT SYSTEM OF ADMINISTRATION OF JUSTICE**

After independence District Council was established in “1952 in N.C.Hills district and in accordance with the provision of sub paragraph 4 of the paragraph 4 of the sixth schedule to the Constitution of India, and make its own rules for administration of justice” .These rules are

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<sup>97</sup> Bordoloi, B.N., Thakur, G. C. S., et.al., Tribes of Assam (Part I) (Tribal Research Institute, Assam, Guwahat, 1<sup>st</sup> edn., 1987).

<sup>98</sup> ibid

<sup>99</sup> ibid

<sup>100</sup> ibid

<sup>101</sup> Nunisa, Longkeshwar, A handbook of Dimasa Customary Practices (North Cachar Hills Autonomous Council, Dimasa Hasao, Haflong, Assam, 1<sup>st</sup> edn., 2013).

called “North Cachar Hills Autonomous District ( Administration of Justice) Rules of 1955”. There are customary rules and traditions in every society .The disputes are mostly settled according to customary laws by the traditional law enforcing social institution.Rules governing the marriage and divorce, inheritance and succession, adoption, maintenance are derived from the customary laws. The disputes are solved at different levels. At the first level disputes are tried by the village council .Sometimes the khunang with his council solved the cases. In the village council any civil and petty criminal cases are solved. The village council can also impose fine and decide the compensation.

At the second level dispute are solved in the subordinate autonomous council court .The cases are solved according to the Rules of Administration of Justice,1970 .This court settles both appeal as well as fresh cases.

At the third level cases are settled in the Autonomous Council Court. It is exclusively an Appellate court which takes cases after the subordinate Autonomous Council Court judgment. After that cases it may go to High Court and Supreme court.

Accordingly the then Subordinate District Council court which is above the village level court and District Council Court which is an appellate court at the top of District Council Judiciary was established. Thus the judicial system of N.C.Hills was divided into three distinct categories viz

- i) Village Court
- ii) The Subordinate District Council Court renamed as Subordinate Autonomous Council Court
- iii) District Council Court as Appellate court renamed as Autonomous District Council Court

## **7.2 CONSTITUTION OF VILLAGE COUNCIL**

For each village a village council is established under the District Council's jurisdiction. Each village council is composed of not less than seven and not more than nine members. Two third

of the member of the village and one third are nominated by the Executive committee(EC). The duration of the village council is five years from the date of its first meeting, unless dissolved earlier by the District Council.<sup>102</sup>The village court for each village or a smaller body consisting of not less than three members of the Council on this behalf sits as the village court. In a village court the village headmen called Khunang has the power to try the cases .The Khunang is assisted by the other member called Delik who is the second assistant headmen and Habaisgao third assistant headmen while trying the cases. But the Khunang has the power to punish the offender to pay fines. A village court tries suits and cases in which both the parties belong to Schedule Tribes and reside within the jurisdiction.The nature of the cases are “civil and miscellaneous nature falling within the purview of tribal laws and customs , criminal cases falling within the purview of tribal laws and customs and offences of petty nature such as theft,simple assault and hurt etc”.Some of the common civil offences which have come up for decision before the village council include public nuisance, eve-teasing,boundary disputes between neighbours, disputes involving agricultural land ,defamation, etc .In civil case a village court has the power to award all costs as well as compensation to those against whom the suit is instituted. A village court has the power to order attendance of the accused and the witness to be examined and to impose fine not exceeding Rs 25/- on any person.

Under the village court there is “Sengpong Biasagin Jilik Bisagingini khamba” or “Chalish Khamba” which is 40 male clan and 42 female clan to represent the traditional village court.This is a clan system to assist the Gaonbura and the other assistant village headmen while resolving the dispute .If the trial cannot be solved by the village court then the case will proceed to higher court that is mouzadar court where he act the presiding judge .Mouzadar court consist of one presiding judge where he can take help of three or more mouzadar if the case are complicated. At the village level Appellate authority is the Mouzadar .He hears the parties and their witnesses .He settle disputes with two or three gaonburas or village headmen.If dissatisfied with the judgment of the gaonbura or mouzadar the disputing parties may appeal before the subordinate District Council Court (SDCC) at Haflong. Thereafter the Appellate authority is the High Court .At times the High Court also refers or transfer the cases

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<sup>102</sup> Barooah, Jeuti (Dr.), Customary Laws of the Dimasas of North Cachar Hills in Assam: With Special Reference to their Land Holding System (Law Research Institute, Guwahati High Court, Guahati, 2007).

of other tribal council to the autonomous Council Court. It has been prescribed, inter-alia, that the District Council for an autonomous district in respect of area within the district may constitute village councils or courts for the trial of suits and cases between the parties all of whom belong to Scheduled Tribes within such areas, other than suits and cases to which the provisions of sub-paragraph (1) of Paragraph 5 of the Sixth Schedule apply, to the exclusion of any court in the State, and may appoint suitable persons to be members of such village councils or presiding officers of such Courts, and may also appoint such officers as may be necessary for the administration of the laws made under Paragraph 3 of the Sixth Schedule. A Village Court has been vested with the jurisdiction to try suits and cases of the natures prescribed therein in the 1955 Rules in which both the parties belong to Scheduled Tribes and are residents within its jurisdiction. The Village Court is the foremost court of justice under the customary law. It prevails in all the tribal villages of North-East. The village court resolved disputes in accordance with the customary law of the village. If the aggrieved person is not satisfied with the decision of the village court then the party can further appeal to Subordinate Autonomous Council Court or Autonomous Council Court followed by the High Court and Supreme Court of India. The Constitution, power and functions, and procedure of the village courts are as under- Rule 6 of the North Cachar Hills Autonomous District (Administration of Justice) Rules, 1955 deals with the constitution and jurisdiction of the village court. It reads as under-

1. The Village Council for each “Village or a smaller body consisting of not less than three members of the Council in this behalf shall sit as the Village Court. Provided that where the Village Council sits itself as a Court, the quorum to constitute a Court shall be three members or one-fifth of the total number of members of such Council, whichever is greater. Provided further that until a Village Court is constituted under the rule, such Chief Village Authority as may be appointed by the District Council shall exercise the powers of a Village Court constituted under these Rules”.

2. A village court's jurisdiction shall extend its hearing and trial of lawsuits and cases that arise within the village's territorial limits.

2. **Powers and Functions:** The following are the power and functions of the village court-

i. “The Village Court shall try suits and cases of the following nature in which both the parties belong to a Scheduled Tribe and resides within its Jurisdiction:

a. Cases of civil and miscellaneous nature falling within the purview of village or tribal laws and customs;

b. Criminal cases falling within the purviews of tribal laws and customs; and offences or petty nature such as petty theft and pilfering, mischief and trespass of petty nature, simple assault and hurt, affront and affray of whatever kind, drunken or disorderly, brewing, public nuisance and simple cases of wrongful restrain. The Village Court shall not be competent to try offences in respect of which the punishment of imprisonment is obligatory under the Indian Penal Code.

ii. A Village Court shall not be competent to pass a sentence of imprisonment in any criminal case but shall have power to impose a fine for any offence. It is competent to try up to a limit of Rs. 50/- (Rupees Fifty only). It may also award payment in restitution or compensation to the aggrieved or injured party in accordance with the customary law.

iii. In civil case, Village Court shall have the power to award all costs and compensation to those against whom unfounded or vexatious suits and cases have been instituted before the court.

iv. A Village Court shall have power to order attendance of the accused and the witnesses to be examined in the case and to impose a fine not exceeding Rs. 25/- (Rupees twenty-five only) on any person willfully failing to attend when so ordered.

v. If any person, on whom a fine or any payment has been imposed by a Village Court, fails to deposit the amount at once or within such time as the Village Court may allow then the Court shall report the matter to the District Council for necessary action to pay the fine or dues in such manner as it may deem fit unless the accused person gives notice to appeal against such decision”.

### **3. Procedure of the Village Courts**

- i. "The Village Court shall try all suits and cases in accordance with the customary law of the village.
- ii. The Village Court shall try all cases in an open court in the presence of at least three witnesses and of the complainant and the accused, and shall decide the issues by a simple majority of votes. After hearing both the parties and their witnesses, if any, it shall pronounce a decision forthwith.
- iii. Except where a Village Court otherwise decides, only verbal notice is required to be given by the Village Court to parties to ask suit and their witnesses and for a fixed day not exceeding eight days from the day it is given. If a case is postponed then it shall be fixed for a day not exceeding fifteen (15) days from the date of the order of postponement and the case may be subsequently adjourned for a period not exceeding seven (7) days at a time on good cause shown. The order shall be made known to the person concerned or to some adult members of his family, and failing this, shall be openly proclaimed at the conspicuous place where he is or was known to be reside , or shall be communicated to him or any member of his family by a written notice in sufficient time to allow him to appear.
- iv. The proceedings of a Village Court need not be recorded in writing but the Subordinate Autonomous Council Court may require a Village Court or Courts to report its or their proceedings in any way which appears to it suitable.
- v. If a person is not satisfied with the decision of the village Court then may file an appeal to the Subordinate Autonomous Council Court from a Village Court within the Jurisdiction of the Court concerned against any order or sentence in a criminal case, or against any decision in any other case, provided the appeal is preferred within sixty days of the conviction or sentence or decision of the Village Court, excluding the time for getting copies of the order or decision appealed against. The justice system under the North Cachar Hills district is fully based on traditional customary law and applied the Indian Procedural Code only in spirit but not bound by the letter of the Code. In these areas, the tribal communities are allowed to govern according to their own customary laws making pluralism a prominent feature of the legal system. Decisions rendered in these Courts are based on the principle of Justice, Equity and Good Conscience. Punishments are mainly in the nature of fines, confiscation of properties,

and exile from the village. The common punishment for severe crime such as murder is expulsion from the village. There is absence of death penalty”.

Dimasa Customary law also follow a ritualistic oath to administer justice whenever justice cannot be dispensed due to lack of proper evidence or proof then oath taking process known as “Smai-dangba” is adopted. In such case, the person taking the oath shall keep one of his/her leg in the river and the other on the ground along with a tiger tooth and burning wood declaring that he/she agrees to lose everything in this world with an unnatural death and that be caused by the God Himself. In oath taking case, the wrongdoer shall be liable to fine as fixed by the village council courts. Oath is usually pledged by both the parties at forenoon from outside the village in the presence of village elders.<sup>103</sup> The practice of oath taking is neither welcomed nor is a popular phenomenon in the society as it is believed by many that oath taking process affects a party.

## **CASES RELATING TO EX COMMUNICATION FROM THE VILLAGE**

### **1) Brightly Paslein and ors vs Shri Bishnusingh Bathari (1999)**

It is a suit relating to excommunication and an appeal to higher authority. This was an appeal against the order passed on appellant brother in law Sri Barlish Puisen by the mouzadar of Harangajao mouza on 16.12.1998 in respect of a miscellaneous case between gaonbura of Boro- Lokha village, smti Aibriti Teriang and Sri Barlish Puisen of the same village. The initial case was related to damage of properties by a cow and subsequent killing of the cow belonging to Shri Barlish Puisen. Due to seriousness of the case and other allegation the G.B of the village prosecuted the case. The mauzadar settled the case and he passed the order to excommunicate Sri Barlish Puyisen from the village within 21 days from the date of the issue

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<sup>103</sup> Nunisa, Longkeshwar, A handbook of Dimasa Customary Practices (North Cachar Hills Autonomous Council, Dimasa Hasao, Haflong, Assam, 1<sup>st</sup> edn., 2013).

of notice dated 22.12.1998 . After hearing both the parties and the witnesses the court found that the accused person was disloyal to the village elders and social disciplines. However the punishment by excommunication was too serious and recesses in comparison to his guilt. So the village court appealed to the judge of the subordinate court. The Judge Subordinate court revoked the earlier punishment order of 16.12. 1998 passed by the mouzadar of Harangajao mouza with immediate effect.This judgment came on 10.5.1999.

### **7.3 CONSTITUTION OF SUBORDINATE DISTRICT COUNCIL COURT**

There is one subordinate District Council Court (SDCC) at Haflong. “The Court shall be presided over by one or more Judicial Officers as may be prescribed and appointed by the District Council with the approval of the Governor. if there is more than one judicial officer than such Judicial Officer as may be nominated by the District Council shall act as a President and Recorder of the Court. Provided that the Chief Executive Member or a Member of the Executive Committee or any Member of the District Council shall not be eligible to hold office as such judicial officer. The District council with prior approval of the Governor may constitute an additional subordinate District Council Court or Courts. It is empowered to exercise such powers as defined under Criminal procedure Code, 1898 (CRPC).It has original jurisdiction in all suits and cases which fall within the area of the jurisdiction of SDCC. While trying criminal case it has the power to pass any sentence authorized by any law for the time being in force.<sup>104</sup>The jurisdiction of the said Court extends to the hearing and the trial of suits and cases arising within the North Cachar Hills Autonomous District.A Subordinate District Council Court has been vested with the original jurisdiction in respect of all suits and cases in which both the parties do not fall within the local jurisdiction of the same Village Court, but within the areas under the jurisdiction of the Subordinate District Council Court, subject to restrictions provided under Rule 23. Rule 23 has provided the kinds of suits and cases which the Subordinate District Council Court is not competent to try and Rule 24 states that until such time as the Governor deems fit to invest the Subordinate District Council Courts with such powers by notification in the Official Gazette, such suits and cases referred to in Rule 23

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<sup>104</sup> ibid

shall be tried and dealt with by the then existing courts of the Deputy Commissioner and his Assistants. The Court of Judge Subordinate, NC Hills Autonomous Council Courts, Haflong is a Court constituted under the provisions of 1955 Rules..The jurisdiction of the Court extends to the hearing and trial of suits and cases arising within the North Cachar Hills Autonomous Districts. The Subordinate Autonomous Council Court or Additional Subordinate Autonomous Court while hearing the appeal may either decide the appeal after perusal of the records of the case or may try the case. The Executive Committee of the District Council shall provide the Subordinate Autonomous Council Court with such clerical staff as may be required to enable the Court to keep all necessary records and registers and to issue summons in the name of the Court. The conditions of service of Judicial Officer of the Subordinate Council Court and the staff appointed therefore shall be regulated by the rules or order made or issued, as the case may be, under Rule 15 of the Assam Autonomous Districts (Constitution of District Councils) Rules, 1951”.

**Powers and Functions:** The power and functions of the Subordinate Autonomous Council Court are as follows-

- i. “The Subordinate Autonomous Council Court has original jurisdiction to try all suits and cases in which both the parties belong to a Scheduled Tribes who resides within the jurisdiction of the Court and also in cases and suits referred to it by village court under Rule 18.
- ii. The Subordinate Council Court shall be competent to try all suits and cases in which both the parties belong to a Schedule Tribe or Tribes who is a resident within the Jurisdiction of the Court, other than the suits and cases referred to in Rule 23.
- iii. The Court shall not be competent to try the following suits and cases: -
  - a. To which the provisions of sub-paragraph (1) of paragraph 5 of the Sixth Schedule to the Constitution apply, unless the Court has been authorized by the Governor to exercised such powers for the trial of particular class or classes of cases and suits specified in that behalf by the Governor as required under the said sub-paragraph (1) of paragraph 5 of the Sixth Schedule;

- b. One of the parties must not belonging to Schedule Tribes;
- c. In respect of offences-
- Under Sections 124-A, 147 and 163 of the Indian Penal Code;
  - Under Chapter X of the same Code in so far as they relate to the contempt of a lawful authority other than authority constituted by the District Council;
  - Of giving or fabricating false evidence, as specified in Section 193 of the same Code, in any case triable by a Court other than a Court constituted by the District Council under these rules.
- iv. Unless specially empowered by the Governor by notification in the Gazette, the Subordinate Council Court shall not be competent to exercise powers in-
- a. Cases relating to the security for keeping the peace and good behavior similar to those contemplated under Section 107 of the Code of Criminal Procedure, 1898;
  - b. Case relating to the security for good behavior from persons disseminating seditious matter similar to those contemplated under Section 108 of the same Code;
  - c. Cases relating to the security for good behavior from vagrants and suspected persons similar to those contemplated under Section 109 of the same Code;
  - d. Cases relating to the security for good behavior from habitual offenders similar to those contemplated under Section 110 of the same Code;
  - e. Urgent cases of nuisance or apprehended danger similar to those contemplated under Section 144 of the same Code;
  - f. Disputes as to immovable property of the nature similar to that contemplated under Section 145 of the same Code;
  - g. Cases in which public servant, who is not removable from his office save by or with the sanction of the Government of Assam or some higher authority is accused of any offence

alleged to have been committed by him while acting or purporting to act in the discharge of his official duty”.

### **Procedure of the Subordinate Autonomous Council Court**

The procedure of the Subordinate Council Court is similar with that of the District Council Court as aforementioned. “In criminal cases, the Subordinate Council Court or Additional Subordinate District Council may, subject to the provisions of the Constitution and of these rules, passed any sentence authorized by any law for the time being in force. Whenever such a Court is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment difference in kind from, or more severe than that which it is empowered to inflict it may record the opinion and submit its proceedings to the competent Court.

An appeal shall lie to the Autonomous Council Court from the decision of the Subordinate Council Court in any cases, both civil and criminal, within 60 days of the date of order, excluding the time required for obtaining a copy of the order appealed against. The appeals shall be accompanied by a copy of the order appealed against and a clear statement of the grounds of appeal”.

## **CASES OF LAND DISPUTE**

### **1. Shri. Nani Gopal Gorlosa v. Shri. Monjoy Thaosen and others (2014)**

This case of land dispute was instituted in the Court of Judge Subordinate N.C.Hills Autonomous Council Court, Haflong by Shri. Nani Gopal Gorlosa against Shri.Monjoy Thaosen and others.

The fact of the case is that as per village records and the neighbouring land owners, the disputed land was a barren area where no paddy or any kind of agriculture could be done due

to its infertility and nobody had thought of occupying the said land. The plot was actually a road towards Semkhor village located near Maibang during early 1980's which was used by the inhabitants of Gidingpur village and neighbouring villages before the construction of the present Semkhor road. In 1986, i.e., after the construction of Mahur bridge, Shri. Nani Gopal Gorlosa intended to own the land. He had shown an order copy from the "Settlement Officer Revenue Dept. N.C.Hills Autonomous Council" where it had been recorded that land measuring 1 Bigha 7 Kathas under Dag Nos. 31 & 32 situated at surveyed Gidingpur village was awarded to Shri. Nani Gopal Gorlosa.

Confusion arose when Dag Nos. 31&32 did not mention anything about the disputed land. As per the land records it had been recorded under Dag No. 14. Thus, the land remained ownerless according to the office records all these years. So, unknowingly and with no tortuous intentions, few unemployed Dimasa youths occupied the barren land as the land had remained unmanned for all these years according to the statements of the respondent and elders of Gidingpur village. Now, the main issue was that the second party denied to vacate the land as they have already build houses. Thus, taking into account all the facts, the Court had decided that the respondent be allowed to reside on the disputed land despite lack of proper documents on the condition that they pay some amount of compensation to the petitioner for the part of land which is being hold by the respondent party individually. The Court held that the occupants being unemployed be allowed to dwell in the land.

## **2. Nonjoy Langthasa vs Bipul Hakmaosa (2022 )**

The present case of land dispute was instituted on 28<sup>th</sup> December 2020 by the petitioner resident of Langting ,Dima Hasao district .The land in question was situated at the border of two villages Gangdangbra and Hasin of Langting and since the matter is of land which fall under the jurisdiction of N.C. Hills Autonomous Council Court.

The petitioner of village Gangdangbra holds the occupation of the land previously owned by his father who is the son of Lt. Khogendra Langthasa bearing A.K Patta

No.43, dag No 59. The presently occupied land by the petitioner borders the land by one Sri Puranjoy Langthasa son of Lt.Khogendra Langthasa of Langting. Now it was evident to the court that the petitioner is the son of the elder brother of Sri Puranjoy Langthasa ie both of them were blood relatives of Lt.Khogendra Langthasa. Sri Puranjoy Langthasa now settled at Haflong sold off the land in various parts to numerous people among which was the respondent .The respondent portion of land fell on the border to the land of the petitioner. The petitioner while knowing about the sale of the bordering land is a disputed region ,his uncle never consulted him, before the sale.On contrary Shri Puranjoy Langthasa stated that he sold his part of land and that there is no dispute of the border land. He also stated that the land measurement and documents in actual do not match but he settled what he got in actual and not according to the documents. The court has no other option but to assume that the previous Patowaris assigned by the Revenue department did not measure properly or they measured in haste during the survey.

The court came to the conclusion that the documented measures be kept aside and new border be issued by the present Patowary in the presence of the court itself. Both the parties were made to agree on the new borders and the case be settled. The respondent were ordered to apply new land measurements at revenue department, N.C.Hills Autonomous Council . The respondent if he wished can demand for compensation appropriate to the land he has lost to the petitioner from Sri Puranjoy Langthasa.

### **3. Gaonbura(GB) vs Niten Thaosen and ors (2001)**

There was one case of alleged encroachment of land in Longkhar village located at Maibang. The accused ,village elders, mouzadar of Maibang ,West circle and many youth of the Khalimdisa village maintained that the disputed site falls within the boundary of Khalimdisa. From the statement of both the parties it was revealed that both the parties were very rigid in claiming the disputed site to be within their respective village boundary .Considering the intensity of forceful attitude of both the

parties and nature of the case the court on 28.05.2001 contemplated to bring the parties to an amicable solution with a fresh agreement giving a portion of disputed area to Khalimdisa and the other portion to Longhkar village.

#### **4. Bidya Haflongbar vs Kamansing Haflongbar and ors (1999)**

This is a case of land dispute between two parties of the same village. The case was heard for several times on different dates and it was revealed that the accused had cultivated more than their allotted patta land. The judge decided the case in favour of the complainant and directed the accused to stop cultivation beyond their allotted land. The court further warned that any party deviating from this decision should have to pay a penalty of not less than Rs. 500/- only or be dealt with severely as per law. The Court also directed the revenue officer, N.C.Hills Autonomous Council to settle the disputed land within 30 days time and report to the judge.

### **7.4 CONSTITUTION OF DISTRICT COUNCIL COURT**

This Court is the highest court of appeal under the North Cachar Hills Autonomous District Council. The composition, powers and functions, and the procedure of the Autonomous Council Court are reads as under-

**Constitution:** The Court shall consist of one or more Judicial Officers as may be prescribed by the District Council with the approval of the Governor. The Judicial Officer as may be nominated by the District Council. The Chief Executive Member or a Member of the Executive Committee or any members of the District Council shall not be entitled to hold office as Judicial of the Autonomous Council Court. The Autonomous Council Court shall ordinarily sit at Haflong. The Court may sit at such other place or places as may be directed by general or special order by the District Council for the disposal of a particular case specified in the order. The conditions of service of Judicial Officers of the Autonomous Council Court shall be regulated by the Rules or Order made or issued, as the case may be, under Rule 15 of the Assam Autonomous Districts (Constitution of District Councils) Rules, 1951. The DCC is a

court of appeal in respect of all suits and cases triable by the SDCC. The DCC may enhance, reduce, cancel or modify any sentence or finding passed by such court or remand the case for retrial. The DCC has the power to order that any offence can be inquired or tried by another village court of the SDCC. It has the power to transfer the cases from one village court to another village court or from one village court to the SDCC. It has the power to transfer or try before itself. The DCC may act either on the report of the lower court or on the application of a party interested or on its own initiative.

**Powers and functions:** The following are the powers and functions of the Autonomous Council Court –

- i. It has jurisdiction to try all suits and cases triable by the Subordinate Autonomous Council Court and the Additional Autonomous Council Court.
- ii. The Court may call for and examine the record of any proceedings of the Subordinate Autonomous Council Court or Village Court and may enhance, reduce, cancel or modify any sentence or finding passed by such Court or remand the case for retrial.
- iii. The Court may adjudicate any civil case arising within its jurisdiction provided that both the parties belong to the Scheduled Tribe or Tribes and reside within the District.
- iv. In criminal cases, “the Autonomous Council Court or the Governor may direct an appeal to be presented to the Autonomous Council Court from any order passed by the Village Court or Subordinate Autonomous Council Court within 90 days from the date of order appealed against, excluding the time that is needed for obtaining a copy of the order.
- v. If it appears to the Autonomous Council Court that-
  - a. Fair and impartial inquiry or trial cannot be held in any Village Court or the Subordinate Autonomous Council Court; or
  - b. Some question of law, tribal or otherwise, of unusual difficulty is likely to arise; or
  - c. Such an order is expedient for the ends of justice or is required by any provisions of these rules or any law applicable to the case, it may order that any-

- Offence be inquired into or tried by another Village Court of the Subordinate Autonomous Council Court;
- Particular case or cases be transferred from one Village Court to another Village Court;
- or from one Village Court to the Subordinate Autonomous Council Court”; and
- Particular case be transferred to and tried before itself.

### **Procedure of the Autonomous Council Court**

- i. **Criminal case:** In criminal cases, the procedure of the Autonomous Council Court shall be in the spirit of the Code of Criminal Procedure, 1898, so far as it is applicable to the circumstances of the district and not inconsistent with these rules. The chief exceptions are –
  - a. “Where a Court constituted under these rules requires, in course of the discharge of its functions, the service of the regular police which is at the disposal of the Deputy Commissioner then the Court may send a requisition for such services to the Deputy Commissioner who will generally comply with such requisition unless he considers the compliance to be possible for any special reason;
  - b. Summons on any person residing outside the jurisdiction of the North Cachar Hills Autonomous District or on a person who does not belong to a Scheduled Tribe shall be issued by a Court through the Deputy Commissioner of the District;
  - c. A note of all the case proceedings that are tried before them must be kept by the Court in the forms prescribed . In case, if a sentence of imprisonment of not less than three months is imposed then full note of the evidence and proceeding must be kept;
  - d. There shall be no preliminary enquiries by regulars or village police unless the Court thinks fit to direct one;
  - e. Recognizance to appear need not be taken unless it seems necessary to the Court;

f. Examinations and proceedings of the Court shall be in English or in any of the recognized languages of the District;

g. It shall not be necessary to examine witnesses upon oath or affirmation unless the accused so desires. It shall suffice if the Autonomous Council Court at the commencement of any trial, informs the accused that, if he so requires, the witnesses, will be put an oath. It is, however, optional for the Court to put witnesses on oath or affirmation but when taken, witness must state correct statement or else shall be punishable for giving false evidence

ii. **Civil case:** In civil case, the procedure of the Autonomous Council Court shall be guided by the Code of the Civil Procedure, 1908, in spirit but not bound by the letters of the Code, in all matters which are not covered by the recognized customary law or usages of the District. In all civil cases, the Autonomous Court shall adjudicate according to law, justice, equity and good conscience consistent with the circumstances of the case.

The SDCC and DCC are established as per provision of the Autonomous Council. However the village court are yet to be constituted formally. Village court are functioning according to customary norms.<sup>105</sup> A District Council Court is a Court of appeal in respect of all suits and cases triable by the Subordinate District Council Court, apart from other powers vested in it by the 1955 Rules.

Under the provisions of the Assam High Court (Jurisdiction over District Council Courts) Order, 1954, the High Court has extensive jurisdiction over the afore-mentioned three classes of Courts, as have been outlined therein including the powers of appeal and revision”.

All the court are important in playing an indispensable role in the village administration as well as in the maintenance of law and order in the Dimasa society .The Dimasa customary law was given constitutional recognition by virtue of insertion of Article 244 to the constitution of India with sixth schedule provision for the Dimasa tribal areas. Therefore the autonomous district council make laws and the village court also has been established under the direct supervision of the district council .<sup>106</sup>

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<sup>105</sup> ibid

<sup>106</sup>Phonglo, Maiphal Kemprai, Customary laws and practices of the Dimasas and aboriginal ethnic tribe of North East India, First Edition ,2021

## **CHAPTER 8 CONCLUSION AND SUGGESTION**

The Customary laws and practices of the Dimasa tribe were handed down from generation to generation, continue to play an important role in the life of the community, with the people identifying more closely with these laws than the centrally administered laws and laws made by the state government. The research reveals that this holds true to a large extent, with the main strength of customary law lying in the

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fact that it emanates from within the community, and closely intertwined with its culture, beliefs and value systems. As seen in many of the cases, justice in the customary is immediately and efficiently delivered, with very little time elapsing between the commission of the offence and delivery of verdict, unlike the modern law courts where justice delayed very often becomes justice denied. During the British rule when they came to know about the customary laws and practises of the indigenous tribe they preserve it by granting special right by forming the Sub Committee on the North East Frontier(Assam) Tribal and Excluded areas under the Advisory Committee on Fundamental rights , Minorities and tribal and Excluded areas. This arrangement continued until the sixth schedule to the constitution of India where the Dimasa were given the autonomy in regard to political affairs. Under this provision an autonomous District Council was established on 29<sup>th</sup>April , 1952 for the promotion and protection of these customary law and practices. Since then N.C.Hills Autonomous District Council has been passing a number of laws on the custom and tradition, thereby protecting the Dimasa tribal identity and preservation of culture . But the law as passed by the NCHADC is operative within the district itself only and not outside the district.

In tribal society, customary law has been in practices since time immemorial with its sole object to maintain peace and harmony within the community and to preserve social as well as religious practices based on the concept of ethics and interpretation of the supernatural belief. Thus, customary law is not a single body of law but it is an adaptive, flexible and evolving body of norms that governs the behaviour of Communities. The Constitution of India has provided a special provisions under Articles 244 (2) and 244 A in response to the demand of recognizing the customary law.Among the tribal, the sense of administration of justice are well aware and they dispensed justice through customary law. They have their own codes and ethics and are adhered to by every member of the society very strictly. Deviation from the prescribed norms was regarded as a violation of law governing the society and is punished sternly. Sometimes, the malefactor is exiled from the village or ostracized from the society depending upon the gravity of the offence. Customary justice is the bi-product of natural justice and good conscience. Infact in rural areas the Dimasa community depend mainly on the village council court as they hardly approached the court. Principles of

democracy is also followed in selecting Gaonbura which is the main institution having all the powers of village council. The principles of natural justice, rule of law, equity and good conscience occupy a dominant place under the customary laws.

The customary laws of Dimasa's needs to be preserved and on sustaining those institutions the existing positive laws of the nation will not be affected. Rather it will contribute a lot. The simplicity of procedural laws under customary law will lessen the number of litigation in civil matters and accordingly relieve the court in as much as the litigants will prefer it. The system of quick disposal of cases under Dimasa customary laws is encouraging. The dispute of title is settled in a two or three years which would have otherwise taken years together to settle under strict provisions of civil laws in India. Therefore such provisions and mechanism needs to be preserved and sustained for speedy disposal of cases.

However, certain laws need to be modified. The law of inheritance, custody of a child and succession particularly with regard to right to property of women needs changes to keep pace with the changing situation. If the society aspire change the law should be changed. So it can be concluded that Dimasa's have their own customary laws for their governance. Customary laws of Dimasa's contain some beneficial and effective mechanism which are very helpful for speedy and efficacious justice delivery system. It makes the people aware of the law and enforcing the law is very important for ensuring justice to all. Certain customary laws of Dimasa's have become out dated and people also have abandoned to follow. Such laws need to be modified. No doubt many factors brought changes in Dimasa Customary practises as well as in social customs but the basic principles of customary law are still remain unchanged in the rural Dimasa villages. This can be done by bringing adaptation laws or by bringing validating statute.

My suggestion as to customary laws are there should be certain modification to bring change in the customary law . If the customary practises have to be continue with modification it is important to strengthen the roles and responsibilities of the post of village court , mouzadar court and council court to give more powers by the North Cachar Hills autonomous District Council. Otherwise it will no longer take time to

extinct and lost its importance in the coming years. The official honorarium should be given to all the personnels of the Dimasa traditional village council and as with the passage of time and their living standard should also be upgraded by providing economic support. The appointment should be made on free and fair election based on their education, knowledge, wisdom, experience and age by the concerned villagers or the concerned authority. These customary courts should be given the power to entertain petition as its original jurisdiction and appeal against the decision of the village council. Provisions of law should be kept in the statute in such a way that the Customary Law Court while deciding the case, shall be guided only by the spirit of the provisions of Code of Criminal Procedure and the laws of Evidence Act, but it shall follow the provisions of customary laws and principles of equity and good conscience. The Customary Law Court shall encourage the conciliation and mediation proceeding. Offences which may be tried by the village council should be specified by making separate schedule of offences and its punishment in the statute and to that effect the punishments for major offence should be amended if required. Penalty of fine imposed by the tribal court is in proportionate. The penalty of fine is inequitable in comparison with crime committed in other acts and regulation and its amendment is the need of hour. In tribal societies, women share with men in all domestic tasks as well as in

earning bread but in the matter of decision making process, whether family, village or societal forums, women are not allowed to involve, thus strengthening patriarchy which is totally biased, obsolete, and inimical to the welfare, development and progress of our society and state; and that is needed to be altered. Women should be allowed to participate in decision making process keeping in view the constitutional provisions of non-discrimination. Women rights and freedom are always challenged in most phase of life under customary law. In many tribal customary laws, women have no right to inherit the paternal property and even if they inherit conditions were imposed infringing their rights. Such rights should be amended by giving equal rights to both men and women. The concept of custody also need to be altered by proving that both male and female child should be given to the mother if the child is a minor as the care for the health of the child is better rendered by the mother although the father can provide better directions as to the course of education except in exceptional

circumstances.Children below the age of seven years should not be exposed to choice making between the parents as the process itself is cruelty to the child.These need to be altered.The customary practises should not be within the Dima Hasao district it should be also outside the district such as Cachar,Karbi Anglong, Nagaon , Karimganj, Dimapur in the state of Nagaland where Dimasa tribe resides so that they can govern and continue to practise the same customary law and tradition according to their adoption and changes.

Thus Tribal customary laws are oral in tradition, more research are required for preserving tribal culture, tradition and customary law should be encouraged or else they will be lost forever. Last but not the least, custom and usage should not act as a bar for the new and future generations in rectifying and moulding the customs which are opposed to public policy. Let the past experience be added to the knowledge of the present and future generations but not bind them because past is the beginning of the journey and not the end.

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