

**SEMINAR ON CONSTITUTIONAL RIGHTS OF TRIBES AND INDIGENOUS PEOPLE OF  
NORTHEAST INDIA**

**Under NALSA (Protection & Enforcement of Tribal Rights Scheme, 2015)**

**Organised by Arunachal Pradesh State Legal Services Authority (APSLSA)**

**In collaboration with**

**Studio Nilima: Collaborative Network for Research and Capacity Building.**

A Seminar on Constitutional Rights of Tribes and Indigenous people of North-East India was organized by the Arunachal Pradesh State Legal Services Authority (“APSLSA”) in collaboration with Studio Nilima: Collaborative Network for Research and Capacity Building (“Studio Nilima”) on 31.08.2019 at the Banquet Hall, Niti Vihar, Itanagar, Arunachal Pradesh.

The panel members for the seminar included Shri Apurba Kr. Sharma, Sr. Advocate and Executive Chairman of the Bar Council of India; Hon’ble (Retd.) Justice B.P. Katakey, Former Judge of the Gauhati High Court; Hon’ble Mr. (Retd.) Justice B.K. Sarma, Former Judge of the Gauhati High Court; Shri Nilay Dutta, Sr. Advocate, Advocate General of Arunachal Pradesh, and President of Studio Nilima; Shri T.T. Tara, Advocate, Former Addl. Advocate General of the Govt. of Arunachal Pradesh; Shri Budi Habung, Member Secretary, APSLSA.

The seminar saw around 350-370 participants, including judicial officers, government officers, advocates, students, community based organisation (“CBO”), members of the Gauhati High Court Bar Association, human rights organisations and students organisations. Amongst present were representatives from Arunachal Pradesh Indigenous People’s Association; the Delinquent Organisation; Lardik Kare, Secretary General of Tagin Cultural Society; Tallo Asung and Tilyang Santi, members from AWAZ; Ali Pingam, Protocol Officer, Adi Baane Kebang; Komol Noroh, Secretary, Adi Baane Kebang; Mongol Yomso, Chief Advisor, Adiland Upright Forum; Marngu Kadu, Galo Welfare Society; Tajom Potu, Arunachal Pradesh Women’s Welfare Society (“APWWS”) among others.

The Seminar began with the Lighting of a Ceremonial Lamp by the chief guest and dignitaries.

This was followed by a welcome address by **Shri Budi Habung, Member Secretary of APSLSA**. In his welcome address, Shri Budi Habung discussed the slow and troubled process of the separation of the judiciary which was started in the year 2010. Cases are generally transferred to the Judicial Officers for trial. However, for cases decided under the Regulation Act of 1945, the appeal could not be taken up by the judicial courts as a result of which all cases from this time remained without any remedy or forum. Currently there are 26 Judicial Officers posted all over the state, and as their numbers have increased, as of 2015 all cases have been directed to Judicial Officers for disposal. These Judicial Officers make use of the Civil Procedure Code, as well as the Code for Criminal Procedure for civil and criminal cases respectively. The problem of cases pending from orders passed under the Regulation Act persisted. This matter was settled by a 2015 judgment of the division bench of the Gauhati High Court which was incidentally headed by Hon'ble (Retd.) Justice Mr. B.K. Sarma who is a Chief Guest of the Seminar. By the same judgment, the State Government had been directed to amend the Regulation Act of 1945, pursuant to which the State Government released a notification in the same year, and as a result, the Deputy Commissioners are taking up matters especially against the decisions of the village authority under the Regulation Act of 1945. He pointed out that an amendment of the Arunachal Pradesh Civil Code Act is still pending since 2010. Advocates, administrative officers, goan buras and the public are severely lacking in their knowledge and understanding of the Regulation Act of 1945 and its present status. It is his hope that through this seminar most of the doubts on the Constitutional protections and Regulations Act 1945 will be clarified. Echoing the thoughts of some speakers in the following speeches as well as the audience he pointed out that Article 371H is severely lacking in ensuring protection to the people of Arunachal Pradesh. He concluded by thanking the panel for their presence as well as members of civil society who were attending the conference. He remarked about the essential role that civil society has to play in bringing positive transformations to the State.

This was followed by a **Felicitation Ceremony** for the Chief Guest and the dignitaries.

Opening remarks were made by **Shri T.T Tara, Advocate, Former Addl. Advocate General of the Govt. of Arunachal Pradesh**, who provided a comprehensive analysis of constitutional rights of indigenous people and the indigenous rights movement by focusing on three aspects: international, national, as well local. He kindly circulated his speech amongst the audience which we are also in receipt of and which has been attached as

Annexure I to this report. Internationally, he said, the quest for self-determination and rights of indigenous people set in motion with the International Labour Organization Convention No. 107 or the Indigenous and Tribal Populations Convention of 1957, and Convention No. 169 or the Indigenous and Tribal Populations Convention of 1989. In 2007, after years of discussion between governments and indigenous people from across the world, the United Nations General Assembly (“UNGA”) adopted the UN Declaration on the Rights of Indigenous People (“UNDRIP”) (A/REAS/61/295), which now serves as a common framework for the realization of the rights of indigenous and tribal people. Even though India has ratified Convention No. 107 of 1957 and it voted in favor of the UNDRIP, the Indian government rejects the term ‘indigenous people’ insisting that all Indians are indigenous people and is particularly hostile to any reference to the rights of indigenous people to autonomy, self-governance or self-determination. This is even as Indian laws provides safeguards of varying degrees to specific communities.

Shri. T.T. Tara enumerated five types of Constitutional Safeguards for Indigenous people in the Constitution of India. Firstly, education and cultural safeguards enshrined in Art.15(4), Art. 29, Art. 29, Art. 46, Art. 350; secondly, social safeguards in Art. 23 and Art. 24; thirdly, economic safeguards enshrined in Art. 244 and Art. 275; fourthly, political safeguards enshrine in Art. 19(5), Art. 164, Art. 330, Art. 334, Art. 337, Art. 341, Art. 342, Art. 243, Art. 371A, Art. 371B, Art. 371C, Art. 371F, Art. 371G and Art. 371H; fifthly, service safeguards enshrined in Art. 16(4), Art 16 (4A), Art 164(B), and Art. 320 (4). Besides this there are provisions regarding the rights of Schedule Tribes (“ST”) in the Constitution of India. He also mentioned several special programs and enactments in India available for the Indigenous people of India. He believes that a lot has to be done to achieve the constitutional rights guaranteed to the tribes and indigenous people. He further stated that the safeguards to the people of Arunachal Pradesh, a state fully inhabited by indigenous people, are found in regulations and acts such as The Bengal Eastern Frontier Regulation, 1873 (“BEFR 1873”), The Chin Hills Regulation, 1892, The Assam Frontier (Administration of Justice) Regulation, 1945, The Balipara/Tirap/Sadiya Frontier Tract Jhumland Regulation, 1947 etc. He emphasized that even though Arunachal does not come under the 6<sup>th</sup> Schedule, the people of Arunachal Pradesh draw their protection from Article 244(1).

On the issue of the fear regarding tinkering with Art. 371H, he expressed his firm conviction that these pre-constitutional and constitutional laws and provisions which protect indigenous

people cannot be easily abrogated unless the basic requirements of Art. 13 and Art. 368 r/w 7<sup>th</sup> Schedule of the Constitution of India.

This was followed by an address by **Shri Apurba Kr. Sharma**. Shri Sharma expressed his emotional attachment with the people of Arunachal Pradesh and his concern for the rights of the people of North East and their quest to secure legal recognition, reservation, protection of their rights on land, water, and other resources. He pointed out that the gross negligence and abuse of the rights of indigenous people require discussion of their constitutional rights in order to eliminate discrimination and marginalization faced by the people of the North East. He firmly affirmed that this is a systematic problem exacerbated by other factors. With scientific and socio-economic progress, the biggest threat left to be addressed for indigenous people are indigenous people themselves. Right of indigenous people are often fixed in paradoxical situations like rights of indigenous people versus other national interests- individual liberty versus social control, democracy versus national security, socialism versus capitalism etc. In such paradoxical situations, rights of the indigenous people cannot be protected, it becomes a situational, relational concept. It is therefore incumbent on policy makers, academics, politicians to adopt an appropriate and human approach in ensuring the rights of indigenous people. This is more important because there are more than 700 ethnic groups in India that are officially recognized as Schedule Tribes, with a very large concentration belonging to the North East. The judiciary has a very active role in ensuring the rights that the Constitution and Rule of Law has provided to the people of the North East by ensuring an impartial and efficient justice delivery system. The members of the Bar Council of India and the legal fraternity have a special role to play in ensuring the enforcement of the various efforts to protect indigenous people in the various spheres of their development. At the same time, it is our duty to spread awareness about Constitutional rights. Lack of knowledge and awareness thereof results in denial of rights to the indigenous community. He assured that as a fellow North Easterner and a member of the Bar Council, all possible help will be extended by the Bar Council of India whenever and wherever rights are infringed. He expressed his gratitude to APSLSA and Studio Nilima for organizing this conference and wished for a successful conclusive outcome.

**Hon'ble (Retd.) Justice B.P. Katakey** spoke next. He began his speech by addressing the Preamble to the Constitution of India, and our inability to have achieved the objectives enshrined in the Preamble- that of Justice irrespective of social, economic and political

conditions. It is poor people who form the largest diaspora of those subjected to criminal cases. Poor and simple people usually suffer in these situations, in order to uplift them we need safeguards and special conditions in the Constitution. The criticisms extended to reservations and other kind of protections are made without any knowledge of the social and economic status of the people.

On the subject of Customary Laws, he pointed out that by virtue of Art. 13, customary laws are void if they are opposed to the provisions of the Constitution. How is one to ascertain which custom is valid and which isn't? Amendments to the Constitution such as The Constitution (First Amendment) Act, 1951 and The Constitution (Ninety- Third Amendment), 2005 allows states to make special provisions for the Scheduled Tribes. Everyone has the right to equal opportunity, however we need to level the playing field first. Rights given are not absolute, they are subject to reasonable restrictions. In the case of Arunachal for example, even as Indian Citizens have the right to reside anywhere in India, not everyone has the right to purchase property here. Having said that, he pointed out that the provision of Article 371H does not materially affect the common people's rights.

Justice Katakey explained land rights in Arunachal Pradesh. The system of Land Possession Certificate ("LPC") was introduced around 1988. LPC is permission to possess a certain plot of land. This was till the formulation of the Arunachal Pradesh (Land Settlement & Records) Act of 2000. Chapter 3 of the act deals with the title of the land- all land is public unless land has been allotted in favor of community, individual or village. This is different from the case in Meghalaya wherein tribals are exploited by the rich indulging in coal mining, and therefore in a case filed by Dimasa Students Union the Supreme Court held that having regard to the land system of the state, not only the land but everything beneath the land is also owned by the land owner. Nowhere else does one find this kind of provision, minerals belong to the State, individuals do not have rights over minerals. In the 2000 Act, there were two types of allotment- for agricultural and housing purpose, done by the District Magistrate and the other was allotted by the State Government for industrial purposes or any purposes of public use. The 2000 Act therefore envisages allotment for only these enumerated purposes, and is completely silent on the rights of those who have the LPC. Only after the 2018 amendment, Section 88 has been inserted as per which people with LPC outside notified areas shall be entitled to ownership rights on 'terms and conditions that may be prescribed', which is very interesting phrasing. Therefore, Section 88(1) says that a person with LPC is entitled to land,

however, his rights will be determined in a manner 'to be prescribed'. A person with LPC therefore is to file an application seeking title, the rights to be given to him are to be prescribed by rules, but currently no rules exist. The person cannot have any rights other than what has been listed in the LPC, and till the whole application is processed he cannot claim right over the land. Land allotment after the 2018 amendment was expanded to any entity for permissible use of land- this might encourage setting up of industries over the land provided people get ownership.

Further he discussed the rights of people who have inhabited the forest for time immemorial. Pt. Nehru had said that tribal rights as well rights of the people in forest have to be respected. However, he asked, have these rights been respected and have forest dwellers not been subjected to ill treatment, have any forest villages been constituted under the provisions of the 2006 Act. The time has come to give effect to forest rights. Till 2000 Act there was no way to confer rights over individual who was possessing land for any purpose like housing, agriculture, but by 2018 amendment provisions were made for conferring of land right to LPC. However, this cannot work unless relevant rules are made, the 2002 rules replaced by the 2012 rules now need to be amended to confer benefit of Section 88(1) of the 2018. He concluded by expressing his gratitude and his objective to hear everyone at the seminar and learn.

In his address **Hon'ble Mr. (Retd.) Justice B.K. Sarma** commended the work of Studio Nilima and NALSA. He quoted a few of his favorite quotes to describe the work of Studio Nilima- Middleton had said "the deeds of charity we have done shall stay with us forever, only the wealth we have so bestowed do we keep the other is not ours" , he further quoted "charity begins at home but there is no reason that it should not go abroad"- this is what Nilay Dutta and his team under the umbrella of Studio Nilima have done. He quoted Pt Nehru on tribal rights, who had called upon everyone to protect tribal rights and allow them to grow at their own pace and asked if this has even been implemented.

India as a nation is in highest consideration of indigenous people in the world, they are identified as adivasis, who have a population of nearly 8.43 crores, nearly 8.2% of the population of the country according to the 2001 census, and who live in about 15% of the country's radius. These adivasis are generally considered to be indigenous people, or original inhabitants or scheduled tribes. However, the term 'schedule tribe' ("ST") is not coterminous

with the term adivasis. ST is an administrative term used for the purposes of administering certain specific constitutional privileges, protections and benefits for sections of people considered historically disadvantaged and backward. The Constitution seeks to secure for all its citizens, amongst other things, social, economic justice, equality and assures the dignity of each individual. In general usage, the word tribe is used to denote a primary aggregate of people living in a village under a headman or a chief. The unnecessary moralistic overtones can be minimized by the use of the word 'tribal society' which is to be preferred over 'primitive society', and at the same time the word 'tribe' has become a practical term denoting a territory defined practical unit, similar to the original Latin use of the word which described political divisions or partition of the Roman State. On the meaning of the term 'tribe', he said, it is a term used to describe certain social groups, scholars dislike the term because it lacks a precise meaning and has been applied to many widely different groups, additionally, many people referred to as tribes find the term offensive or inappropriate. Some other definition quoted are "a tribe is a collection of families bearing a common name, speaking a common dialect, occupying or professing to occupy a common territory and is not usually endogamous though originally it might have been so"; "a tribe is a group of people in a primitive or barbarous state of development acknowledging the authority of a chief an usually regarding themselves as having a common ancestor"; "a tribe is a group united by a common name in which the members take pride by a common language, by a common territory and by a feeling that all who do not share their name are outsiders, 'enemies' in fact"; according to Majumdar "a tribe is a social group with territorial affiliations, endogamous, with no specialization of functions, ruled by tribal officers, hereditary or otherwise, united in language or dialect, recognizing social distance from the other tribes or caste, following tribals traditions, beliefs and customs illiberal and naturalization of ideas from alien sources."

What are the attributes of a tribal community? In a nutshell, the attributes of tribals are: Tribal live in an isolated area as culturally distinct groups, tribal trace their origin from the oldest ethnological section of the population, they follow primitive methods of occupations such as hunting, gathering of minor forest produce and therefore they are backward economically as well as educationally. These are relevant so far as constitutional rights are concerned. He stated that unless we recognize the ancestral humanity we will be failing our duty to provide protection to those communities. Even though Article 370 has been tampered with and even as groups here have an apprehension that Article 371 which provides

protection to some states including North Eastern states will also face a similar situation, it is my view that these apprehensions are misplaced. Article 370 is a temporary provision which continued for 70 years. The principle difference is that Article 370 is a temporary provision and Article 371 is a special provision.

The final speech of the seminar was delivered by **Shri Nilay Dutta, Senior Advocate** and the **Advocate General of Arunachal Pradesh**. He dealt with the constitutional rights of tribes in the north-east in general and with the situation in Arunachal specifically. He asserted that Constitutional rights are rights vested within the Constitution. On the issue of Customary rights, they will have to be established before and accepted by a competent court of law. The feeling in a particular tribe as regards existence of a custom is not enough. Within the constitutional framework, the custom will have to be accepted by the court of law. Moreover customary law being a law, within the meaning of Art. 13(1) has to comply with other provisions of the constitution and therefore it cannot be violative of the fundamental rights of the citizens.

The Constitution in its entirety came into force from 26.01.1950. Evidently on the said day some laws already existed in force. These laws are protected under Art. 372 which ensures that these laws will continue subject to other provisions of the constitution and can remain till they are amended, repealed or otherwise are dealt with by a competent legislature or a competent authority. The concept of competency however is itself subject to different interpretations. The Parliament and the State Legislatures were authorized to make laws in accordance with the procedures laid down in alignment with Part 3 of the Constitution. Their respective law-making jurisdictions are defined in the lists of the Seventh Schedule.

In order to find out the rights of tribals and indigenous people of the North East and particularly of Arunachal Pradesh, Mr. Dutta pointed out that North East India does not include Sikkim for the purposes of his speech since Sikkim came to India on very different terms and those terms may not be appropriate to understand the present position of the North East. Further, we need to be careful how we deal with the concept of tribes, since there is a distinction between indigenous people and indigenous community. As indicated by Justice Sarma there is always a difference between tribes and tribal community. The subject framed says 'tribes' and 'indigenous people' and therefore his speech be understood within the concept as laid down.

When the British came to India, they came as a trading company- the East India Company. They were given a remand by the British crown according to which they were allowed to enact laws, administer the areas under the dominance as well as collect revenue. By the time when governance was ultimately taken over by the imperial crown, there was a collectorate established in Rongpur, and people of Rongpur within present day Bangladesh were subject to taxes by the British administration. This caused dispute between the Garos and the zamindars of the area. Due to such friction three thanas from Rongpur- the thanas of Goalpara, Dhubri and Kukurbari, were separated and put under administration of the Chief Commissioner of the North East Frontier- a separate administrative unit at that time, which was exempt from the laws applied in the Bengal Presidency- administered through the Sadar Diwani Adalat for civil justice and Sadar Niyamat Adalat for criminal administration. The Chief Commissioner was to administer this area under rules of equity and good conscience, which is basically a non-regulatory form of administration. Subsequently, The Regulation X of 1822 came into play, which laid down the foundation of the administration of the North East Hill Tribe by the British.

The administration over the tribes of North East expanded through the Khasi and Jaintia hills, right up to the Naga Hills, and in between came the Garo Hills Acts. As the area increased, the non-regulated administration, which was a very centralized administration on behalf of the Chief Commissioner, developed into the Province of Assam under the Governor. Same procedure was being followed where Governor was the fundamental authority, acting on his own discretion. This however was not the case in Bengal, wherein they continued the original mode of administration, through the Bengal Code. The North East at that time, the Garo, Khasi and Jaintia Hills and Naga Hills was out of this particular set of administration. The British expanded its area of governance and influence with the help of treaties and suffrage. This is particularly true to the state of Arunachal Pradesh at that point in time wherein their chiefs had their own individual suffrage with the British. As it progressed into Arunachal Pradesh, Manipur and Mizoram, the system envisaged in Regulation 10 of 1822 continued- centralized administration under peace and good governance devoid of formal laws of Bengal Code. The British did not trouble the internal administration of the hills of North East. Having paid some amount of levies as a way of suffrage, the respective chiefs continued with their own administration in so far as tribes are concerned. Ultimately in 1874 with the application of the Schedule District Act few frontier tracts were consolidated, and

placed under the operation of Assam Frontier Regulation of 1880 under which a notification was issued in 1940 which ensured that there will be three frontier tracts, which were then named as:

- (1) Central and Eastern Section, which was later converted into Sadiya Frontier Tracts,
- (2) Lakhimpur Frontier Tract, which in 1943 was merged with a part of Sadiya Frontier which gave rise to the Tirap Frontier Tact,
- (3) The Western Section was known as the Balipara Frontier Tract and was later divided into Sela Sub- agency and Subansiri area.

The Montagu-Clemsford Report was released in 1918, on the basis of which the Government of India Act 1919, came into existence. This was the first time that these three tracts were named as 'backward tracts'. Later came the Simon Commission which was entrusted with the responsibility, amongst other things, to go through the question of governance of these North East areas. Provincial government was envisaged and that's when it was thought that there will be representations from various communities. As the Simon Commission continued their enquiries with the chiefs of the North East, it came to light that in place of representation in the provincial ministry, the chiefs were more definite that they wanted that the traditional rights of land, their traditional customs and their traditional way of living were to be protected. It was therefore recommended by the Simon Commission that the phrase 'backward tracts' be replaced with two different categories: (1) Excluded Areas, and (2) Partially Excluded Areas, in the Government of India Act of 1935. The 'excluded area' were to be excluded from the Bengal Code or any other law framed for the purpose of governance of the mainland, and a centralized form of governance under the Governor wherein he exercised his own discretion of peace and good governance be continued. The 'partially excluded' area meant the areas where the law could prevail subject to modifications by the Governor. Therefore the Governor was given what is called 'special responsibilities'. In the present system of administration in Arunachal Pradesh under Art. 371H, there are also 'special responsibilities' of the Governor, which was a concept simply transferred from the Government of India Act of 1935- the special responsibilities of the Governor in the partially excluded areas has been incorporated in the new constitution after the British left as special responsibilities on the part of the Governor. Therefore, when one talks about Art 371H we have to go back to understand what was the special responsibility of the Governor wherein he could on his own discretion over-ride the decisions of the provincial ministry.

Shri. Dutta clarified that just because there have been changes in the way of administration under Art. 370, it will not automatically affect the administration under Art. 371 which come into play in the North East. This is for the reason that Art. 371 has a background and a history different from Art. 370, and Art. 371 provision is a special provision which is distinguished from the provision of Art. 370 which was a temporary provision. By virtue of this, as per the Constitution of India, the normal procedure of amendment under Art. 368 will need to be followed to amend these- which means 2/3<sup>rd</sup> majority of members in both the houses present and voting as distinguished from the provisions of amendment of Art. 370.

At the time when the provision for a new Constitution was being discussed, there was a federal form of government in the Center as well as a provincial form of government in the Provinces. Merely by the virtue of a law being made by the federal or provincial government, the law did not ipso facto apply to parts of the North East, and a machinery was provided under the special responsibilities of a Governor that he could modify the law laid down by the provincial or federal ministry and could direct the application of those laws with such modifications. Therefore, at that point in time, a time when the Constituent Assembly was meeting to discuss what would happen to the North East, the Governor had wide powers under the Government Act, 1935. In exercise of such powers, the Governor used to lay down the Rules of administration of justice and police, in various areas of the North East region. Resultantly there were various rules of administration of justice and police. Arunachal Pradesh also had this special law with respect to administration of justice and police which continues by virtue of Art.372. In the process of separating the executive and the judiciary under the guidance of the Supreme Court, changes are being incorporated in the field of administration of justice, and now separation of judiciary and administrative responsibilities are being introduced. At one point in time, rule of administration of justice demanded that both the administrative and judiciary would function under the same hand, this position has changed. Over time however, what is interesting is that pre-constitutional rules and regulations remain protected under Art. 372 unless they are amended by a competent legislature. It is necessary therefore that there has to be a competent enactment to either make this process redundant or to separate them. Despite this, since it is the direction of the Supreme Court, the separation continues but there might be a day when this will have to be relooked into by a Constitutional bench of the SC because it affects the basic feature of the Indian Constitution- that of the separation of judiciary and the executive, vis a vis the interpretation of Art.372 itself.

Rules of administration of justice are also present in Nagaland, Meghalaya, Mizoram and Manipur. The Constituent Assembly had to decide how administration would run in this part of the country, and therefore they laid down the table under 6<sup>th</sup> Schedule, after the Bordoloi Commission Report. The 6<sup>th</sup> schedule would apply to the states included in Part A. As per para 18, for those states mentioned in para B, a special notification must come from the Governor. North East Frontier Tract (later NEFA) was included in part B, but the Governor did not pass any notification under para 18. Therefore, even though 6<sup>th</sup> Schedule could have been applicable in Arunachal Pradesh, it wasn't and the 1935 rules and 1945 regulations continued to be in force.

The Tuesang frontier division was separated from the area and NEFT became NEFA. In 1972 came the union territory of NEFA after the North East Area Re-Organisation Act. In 1975, the first legislative assembly came and thereafter in 1986 the Union Territory was converted into the State of Arunachal Pradesh. The situation in Arunachal was that it was no longer a tribal area under the 6<sup>th</sup> schedule, it became a state. He said, if the classification of this area is ever challenged in a court of law, it will be very difficult to establish this area as a tribal area since tribal area is defined under the 6<sup>th</sup> Schedule which comes under Article 244 (2). If we want to go to Art. 244 (1) then the entire concept of Arunachal Pradesh governance will require to be re-examined. As on today, it is not a tribal area within the meaning of para 20 of the 6<sup>th</sup> Schedule, which is the only provision which defines a tribal area. Otherwise we will have to fall back upon Art. 244 (1) making it a part of the mainland India, all mainland India laws will apply irrespective of whether it is made for tribal area or not. Interestingly, in the entire North East, we have some areas where the 6<sup>th</sup> schedule applies and certain areas where the 6<sup>th</sup> Schedule does not apply. Arunachal Pradesh is not included in the sixth schedule, Nagaland is no longer included, Manipur has never been in the sixth schedule, it applied to certain areas of Mizoram, 70% of the area of Tripura comes under the Sixth. schedule as a result of a treaty.

With respect to Art.371H, one must remember that it emanates from the Government of India Act and it doesn't do much except give some special responsibilities to the Governor in so far as the law and order situation is concerned where he acts on his own discretion. Recently when there were violence in Arunachal Pradesh, there were questions raised whether the Governor should exercise his special responsibility to override the decision of the State

Government, this was the nearest we have ever come to the exercise of power under Art.371H.

In view of what was discussed above Shri. Dutta felt that there are two important protections found in pre-constitutional laws which are protected under Art. 372. Firstly, the Bengal Eastern Frontier Regulation, 1873, which talks about the Inner Line Permit in Regulation 2 and that no right can be acquired in land or its produce in Regulation 7 by a person without Inner Line Permit and special consent of the local authorities. Secondly, the Chin Hills Regulation of 1896 which vests power in the District Magistrate to direct removal by order, from any area, of any person not being a native of the area. Therefore, Arunachal Pradesh has these protections to its indigenous tribes even though it is not under the Sixth Schedule. Mr. Dutta pointed out that though these two regulations are protected by Art. 372, a challenge may arise that these statutory provisions violate the fundamental rights under Part 3 of the Constitution and for that one needs to be prepared.

On the rights of tribes and the indigenous population of the other states, there is Art.371B for Assam. However the committee which was supposed to be made under Assam Legislative Assembly Members by an order of the President has never been created. Art. 371 C for Manipur, wherein a committee of the Legislative assembly is studying the rights of the tribals and the indigenous population. Arunachal Pradesh has special responsibilities given to its Governor under Art 371H, taken from special responsibilities from the Government of India Act of 1935. Nagaland has Art. 371A which came in 1952, Mizoram has Art. 371E which came in 1986, and Sikkim has a special provision under Art. 371 F. Nagaland's concept is the best protection which protects the Naga customary rights and the Naga way of living from the operation of any act of the Parliament. The said Art.371A also assures the rights of the Naga people on their land and any resources, mineral or otherwise even, below the surface of the land. Interestingly Art.371E in the state of Mizoram does not include the resources in the land. It is evident that when we talk about the rights and privileges of tribes and indigenous people of North East, only Nagaland has something very solid followed by Mizoram, asserted Shri. Dutta.

The deliberations were followed by a very exciting interactive session where questions were raised on various aspects and which were answered to by the Panel members. These questions included a further deliberation on Inner Line Permit vis-à-vis the issue pertaining to

Permanent Resident Certificate. As regards the Permanent Resident Certificate, it was pointed out by the Panellists that the concepts of native vis-à-vis non-native would be required to be considered under the Chin Hills Regulations. The inter-State boundaries were drawn very hurriedly by the British administration before they left the country which resulted in various non-native persons residing in Arunachal Pradesh when the line was drawn. Great restraint is therefore required while dealing with this issue.

As regards the Inner Line Permit, an apprehension was raised that since BEFR is only a Regulation and not an Act, whether the same can be negated as was done for Article 370 of Constitution of India. It was clarified by the Panellists that as already indicated above, any amendment of the Special provisions would require the procedure laid down under Article 368. No political, social or economic reasons exist to amend or repeal the BEFR and the same has been clarified by both the State Government as well as the Central Government. In any case, the matter is presently sub-judice before the Supreme Court of India. It was also pointed out that in British India, laws were always called Regulations and the amendment therefore if done, must be by way of legislative action and not by administrative notifications.

As regards questions pertaining to Land laws, it was pointed out that with the amendment in 2018, effort has been made to confer land rights to the people of Arunachal Pradesh. It has been stipulated that land possession Certificate holders will be entitled to get ownership which however will be subject to framing of the Rules. It was accepted by the Panellists that there has to be stricter accountability of the process of verifications of the Inner Line Permits and they suggested that digital mechanism ought to be formulated for making such verifications efficient and workable.

On the issue of tribal women's rights for inheritance of immovable property, it was agreed upon that if such customary law has been incorporated in the Statutory law, the same can be judicially reviewed by the appropriate Petition before the Court. As already indicated in course of deliberation, Customary laws cannot be in derogation of the Constitutional principles within the meaning of Part III of Constitution of India. It was suggested by Shri T. T. Tara that since the Customary system does not allow girl child to inherit property, the matter requires consideration by the Legislature or judicial forums backed by appropriate study and research.

At the end of deliberation and questions and answer session, the proceedings were closed after Vote of Thanks was delivered by Shri Dani Belo, Deputy Secretary, Law & Judicial cum OSD, APSLSA.