

# Identity, Tradition and Gender: Rethinking the negotiated subjectivity of women in India's North Eastern States

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## ABSTRACT

Identity cannot be deciphered without delving into its derivative relationship with the social material and values in which it is situated. Social identities are predominantly rooted in customs, legal and institutional apparatuses configurations. Identity, thus, is a social construct and a product of institutional norms. Ethnic and gender identities are distinctively locational shaped through cultural norms that differentiate them from the others. Identities, nonetheless, have its own mechanisms to grow itself as a political body with distinct aspirations. Such aspirations are methodically constituted either through co-opting traditions, lineages, culture, or through conditions like the geographies and political episteme(s). The perplexing question is why the history of identities is bedridden with the story of disparaging representations, binaries, denials, and perennial disengagements. One such site is the story of gendered power relations, as it is replete with such deleterious conditions. The insignificance of women in the conception of societal systems, customs, and institutions of power indicates the need for a comprehensive deconstruction of stringent societal and customary norms and unravelling of the post-colonial legislative contradictions.

**Key Words:** Identity, Tradition, Modern, Women, Culture, Power.

## Introduction

The paper seeks to interrogate whether there is a continued negotiated subjectivity of women, particularly in India's northeast states. A study of women in the North Eastern Region (NER hereafter) of India in the context of two critical aspects can offer a nuanced understanding of the gender relations in the region. First, to study how the coercion of customary practices and laws deters women from accessing social equity and institutional power. And second, to explain how the societies facing ethnic (armed) and cultural contestations subsume several pressing existential concerns of women. It is the hypothesis of the paper that the customary laws and practices have been seen coming into conflict with the modern legislative and representative procedures, almost becoming a self-afflicting overlap. The problem is further complicated by the unresolved political violence and inter-ethnic conflicts. In other words, it is the hunch of the paper that women's subjectivity is often subsumed by the stringent norms of traditions and also by the everydayness of de-recognition and inability. Despite women's significant presence in the later conditions as a defender of collective rights and as a subaltern agency, women's actual representative presence public sphere calls for further interrogation as to why it happens. The paper makes an attempt to examine how women experience a continued process of alienation, evidently drifting them away from their mundane socio-political constitutions, and everyday gendered problems.

## The Case of Naga Women in India's North East Region

To substantiate the intricate image of women and their negotiated subjectivity, the paper shall discuss not only the women's negligible access but also the systemic 'tradition-based' denial in terms of their presence in the public sphere and (electoral) representation. It can be assumed that the realm of traditional norms often act as a barrier in overt and covert ways. For instance, the failure on the part of the Nagaland government to ensure women's reservation of seats as per the mandates of the constitution from contesting in Urban Legislative Bodies (ULBs) had been once termed by the Supreme Court of India as an 'ingenious method' and a 'move to thwart equality' (Baruah 2023). Instead of adhering to the call of the apex Court to follow the

mandates of the 74<sup>th</sup> Amendment Act, 1993, women's reservation was not implemented subsequently, leading to the deferring of ULBs elections in Nagaland in 2017 (Thomas 2023). The tribal bodies opposed women's reservation on the grounds that it was against the 'customary norms'. Subsequently, the state government went on to repeal the Nagaland Municipality Act, 2001, citing the powers mandated in Article 371A.

The denial of women's accessibility to representative institutions is termed by the apex court of India as a 'breach of the orders by the court' (ibid). Such a case of Naga women entangled in the tension of tradition and modernity constitute an interesting site of conflict between constitutionalism and cultural essentialism. The Nagas, located in the North Eastern region of India, are a culturally and linguistically diverse populace. Among the various characteristics observed within this culturally heterogeneous community is the prevalence of customary laws, *albeit* with a varying degree of application and implementation across different (sub) tribes (Wouters 2017). The customary laws, on the whole, serve as a unifying force and a preserver of community cohesion. Nevertheless, the compatibility of customary laws with contemporary development initiatives, particularly in relation to gender rights, is sometimes called into question (Ningreihon 2006). Nagaland attained its statehood with the enactment of the State of Nagaland Act, 1962. Since then, the State of Nagaland enjoys a Special Provision given by the Indian constitution under Article 371A. One of the provisions of Article 371A reads as follows,

no act of (Indian) Parliament in respect of religious or social practices of the Nagas, Naga customary law and procedure, administration of civil and criminal justice involving decisions according to Naga customary laws, ownership and transfer of land and its resources, shall apply to the state of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides (Bakshi 2022, 418).

For the state of Nagaland, customary laws occupy a constitutional position in its governance and the delivery of the justice system. Customary norms are practiced by various tribes in the region, although each tribe possesses different levels of customary and cultural appropriation. Customary law acts as a binding force and also as an administrative norm within the community, as in the case of Nagaland (Jamir 2018). It may not always be conducive to gender equilibrium. Social status, political power, and access to resources revolved around the terms and conditions set by male counterparts. As per the provisions of Article 371 A, the customary laws in Nagaland have special applications (Bakshi 2022). The settlement of disputes and administration of justice in Nagaland is regularly carried out through the customary courts, which have their own structure and authority. Such customary courts coexist with the formal laws whose interpretations are subjected to un-codified regimes of customary practices (Longkumer & Bokth 2020).

The tussle between the customary laws and women appears on the horizon when it comes to the issue of allocation of authority, prestige, and assets comes into play as it is considered to have historically favoured the males (Ao 2015). Not all traditions are non-discriminatory as its associate regulations and institutions may come into conflict with gender justice. For instance, the traditional and customary legal systems of the Naga community in India's northeast region may be studied to decipher the questions of cultural regimes and women (Jamir 2017).

The paper is keen to interrogate the nuances of identity and gender by further delving into the specified symbolic roles within Naga traditional customs, which advertently or inadvertently uphold male proprietary and superiority over women. Adopting a feminist approach rooted in cultural constructivism as a viable solution to navigate the clash between gender equality and traditional legal frameworks may provide an alternative to tackle persistent gender power asymmetry, which manifests in the forms of denial of actual representation, accessibility, and democratic manoeuvring of women in the public sphere.

### **The Paradox of Constitutionalism and Custom**

In post-colonial societies, basic features of the Indian Constitution like equality, justice, and non-discrimination often come into conflict with the customary norms. In Nagaland, traditional customary laws have neglected and subjugated women, especially in inheritance rights, political participation, and representation. As such, women have been coerced to live in a negotiated world of existence. The tenacity of these customary laws has created a paradox where the provisions provided in the Constitution are undermined by socio-cultural practices, leading to a negotiation of identity and rights for Naga women. Tribal laws vary among different tribes; however, Naga customs generally maintain patriarchal values that exclude women from making decisions or owning property. In a patrilineal inheritance system, only male descendants are entitled to landed property and culturally significant objects, such as war weapons and heirlooms. On the other hand, male family members decide what personal items, like ornaments women receive (Ao 2015). Divorce and marriage customs are equally discriminatory to women in the society. While women are subject to punitive restrictions and are unable to reclaim their property without male consent, men have the authority to unilaterally divorce their wives for minor infractions or infertility. While men are allowed to remarry without facing any repercussions, women may be expelled for adultery with just their clothing (Jamir 2018). Land in Naga society is more than economic capital. It is the basis for identity, political participation, and social recognition. Since land inheritance is customarily passed through the male line, Naga women are systematically excluded from ownership, despite their substantial contributions to agricultural labour and domestic life. This exclusion has far-reaching consequences: women lack decision-

making power, are unable to access government schemes tied to land ownership, and have limited agency in community affairs. The patriarchal bias in land ownership also restricts women's ability to seek legal redress. Customary courts and village councils, where disputes are often settled, are exclusively male and seldom consider women's perspectives. This structural marginalization is reinforced by the constitutional protection of customary law, making legal reform exceedingly difficult.

### Fixity of Customs and Restricted Access to Democratic Institutions

The provision under Article 371A of the Indian Constitution plays an important role in shaping gender relations by protecting the customary laws and ensuring the survival of the indigenous cultural practices of the Naga societies. Such protection also legitimizes patriarchal norms which exclude women from political participation, representation and decision-making (Jamir 2017). For instance, Naga women are often denied membership in village councils and tribal bodies. Women are not allowed to inherit village chieftainships or ancestral possessions. Although there are a few cases where the village chief is a woman, questions can be asked about how much support she receives from male villagers when it comes to decision-making or if she is merely just a symbolic representation. The exclusion of women from decision-making and representation due to customary laws and restrictions comes into conflict with the modern democratic institutions. This conflict was evident in the controversy over 33% of seat reservation for women in ULBs according to Article 243T of the 74<sup>th</sup> Constitutional Amendment. However, the Nagaland Municipal Act, 2001 omitted and rejected the reservation policy for women as the male-dominant political parties view it as against the customary laws of the Naga society. Through legal interventions, challenges by various women organizations and women activists, the Gauhati High Court, Kohima Bench, in a judgement in 2005, directed the Nagaland State Government to include the said provision in the Nagaland Municipal and Town Council Act, 2001. The provision was included in 2006. However, elections to ULBs could not be conducted in 2009 as there were protests and opposition to its implementation from Naga Hoho and other tribal bodies on the ground that it violated Naga customary laws and by citing Article 371A (Thomas 2023).

Wouters (2017) calls the underrepresentation 'negotiated subjectivity' of the women, as it is not merely institutional but also psychological. Naga women have internalized patriarchal and traditional norms, often exclude themselves from political participation, and some women's organizations were also involved in opposition to the implementation of 33% reservation of seats for women in ULBs (Ojha 2014). This is evident in the election result as from 1964 to 2023, only 24 women contested in the Nagaland State Assembly Elections, with only 2 women elected for the first time, Salhoutuonuo Kruse and Hekani Jakhalu, in 2023. However, women activists and organizations, notably the Naga Mothers' Association (NMA), challenged these oppositions and moved to the Supreme Court for the implementation of the 33% reservation of seats for women like any other states in the country arguing that customary laws must evolve to reflect democratic values, including gender equality (Kikon 2019). The resistance proved that Naga women are not merely subjects of tradition but active agents demanding reinterpretation of cultural norms and can work for their basic rights, like political participation and representation.

There was a continued protest and legal challenges by women activists and organizations. The election to ULBs, which was scheduled to be held in 2017, also failed. However, in 2023 Nagaland State Assembly passed the Nagaland Municipal Bill allowing the 33% reservation of seats for women (Baruah 2023). Thus, the long-awaited ULB elections were held in 2024, marking a significant milestone for women in political participation and representation. For the first time, there was an increase in female participation and representation in local governance in Nagaland, challenging the traditional customary laws and implementing the constitutional provision (Government of Nagaland 2024; Rai 2024).

Below is a comprehensive data table summarizing key statistics from the election:

### Nagaland ULB Elections 2024: Women's Representation Overview

| Metric                             | Value  | Source                           |
|------------------------------------|--|----------------------------------|
| Total ULB Seats Contested          | 278  | Nagaland Tribune[1]              |
| Total Women Candidates             | 198  | Nagaland Tribune[1]              |
| Total Women Elected                | 102  | Nagaland Tribune[1]              |
| • In Reserved Seats                | 83   | Nagaland Tribune[1]              |
| • In Unreserved Seats              | 8  | Nagaland Tribune[1]              |
| Percentage of Women Elected        | 36.7%  | Calculated from official data[1] |
| Youngest Woman Elected             | Nzanrhoni I. Mozhui, 22 (BJP), Ward 1, Bhandari Town Council | NorthEast Now[2]                 |
| Oldest Woman Elected               | Sibeule, 71 (NDPP), Ward 6, Peren Town Council               | NorthEast Now[2]                 |
| Total Candidates Elected Unopposed | 64 (including women)   | Nagaland Tribune[1]              |
| Total Voter Turnout                | 184,126 voters (81.66%)                                      | Nagaland Tribune[1]              |

| Metric                                 | Value  | Source  |
|--|--|---|
| Number of Municipalities/Town Councils | 24 (3 Municipal Councils and 21 Town Councils) | Nagaland Tribune[1]                             |
| Total Wards Contested                  | 214  | Nagaland Tribune[1]                             |
| Women Elected in Unreserved Wards      | 8  | Nagaland Tribune[1], NorthEast Now[2], NENow[3] |

\*Sources of the table

[1] Nagaland Tribune. (2024, June 30). *NDPP secures win in 152 seats in ULB election; 91 women make history*. Retrieved from <https://nagalandtribune.in/ndpp-secures-win-in-152-seats-in-ulb-election-91-women-make-history>

[2] NorthEast Now. (2024, June 30). *NDPP dominates Nagaland ULB elections 2024, secures 153 seats*. Retrieved from <https://www.nenow.in/north-east-news/nagaland/ndpp-dominates-nagaland-ulb-elections-2024-secures-153-seats.html>

[3] Demo.nenow.in. (2024). *NDPP dominates Nagaland ULB elections 2024, secures 153 seats*. Retrieved from <https://demo.nenow.in/north-east-news/nagaland/ndpp-dominates-nagaland-ulb-elections-2024-secures-153-seats.html>

In the ULB election, which was conducted on June 26, 2024, across 24 municipalities and town councils, out of 278 wards contested, 94 wards were reserved for women candidates. A total of 198 women candidates contested the elections from both reserved and unreserved wards. 102 women candidates won the elections, out of which 8 women secured seats in unreserved wards. This can be considered as the acceptance and support of women in political participation and representation, beyond the reserved wards. Satoli Z Swu, an old age woman, who has been elected as the village chief of Kiyevi village expressed that there are some things women can do where men cannot and vice versa and particularly, in conflict and peace process, women are like cool water if we humbly make use of the God gifted endowment (Morung 2023).

The increased political participation of women as both candidates and voters in the ULBs signifies a shift in the governance of the state, and that the Naga societies are slowly embracing the constitutional amendments and democratic principles. The inclusion of women and implementation of the 33% reservation of seats for women was possible due to the continuous challenges by women activists and women organizations like the Naga Mothers Associations. However, the challenges remain, and the long-term success still requires continuous support, capacity building, and sensitization efforts.

### Subjectivity, Resistance, and the Feminist Critique

The nationalist movements of the Naga have historically relied on the symbolism of cultural identity and collective struggle involving the participation of both men and women. However, the role of women has continued to be seen largely as auxiliary, where women served as caregivers, mediators, and logistical supporters, who were often consigned to the background despite their critical contributions (Manchanda 2001). Naga women's organizations such as the Eastern Nagaland Women Organization, Naga Women Hoho Dimapur, and Naga Mothers' Association have played important roles in various social conflicts, peace movements, and advocating gender rights, and campaigned against the Armed Forces Special Powers Act (AFSPA). One famous slogan of NMA was 'Shed No More Blood'. Yet their roles have been overshadowed by male-dominated institutions (Longkumer & Bokth 2020).

It is clear that a compromise is always being made by playing dual roles of preserving tradition while working for reforms. The Naga women have been keeping a balance between upholding customary laws and also embracing the mandates of the Indian Constitution and working for their rights. It seems there is an internal contradiction within women's movements in Naga society (Ningreichon 2006). As such, organizations like Naga Women Union, Manipur (NWUM) advocate for a change to bring women's inheritance rights. Subjectivity is a lived process continually negotiated through acts of resistance, compromise, and adaptation as the identity of Naga women is influenced by a variety of conflicting attachments such as those to gender, tribe, nation, and modernity (Kikon 2019). The historical exclusion of women's experiences within both nationalist and state-centered narratives is emphasized by feminist critiques of the Naga political sphere (Manchanda 2001).

Kikon's ethnographic research interrogate gendered violence with the traditional customary law and societal systems, challenging the romanticization of tradition compromising the rights of women, and thus advocating for a grounded reform (Kikon 2019). Similarly, Kire's literary work captures women's emotional and psychological worlds, bringing to public discourse the trauma, hope, and resilience Naga women endure in times of war and peace (Ao 2006). Naga women have also asserted their agency in transnational and digital spaces, where they contest local patriarchy as well as national political neglect. Organizations such as the Naga Mothers' Association and platforms like the Naga Women's Union have created avenues for articulating concerns around gender justice and indigenous rights (Manchanda 2001). In these arenas,



identity is not a passive marker but a strategic and mobilized force for social justice and political recognition (Jamir 2018).

The struggles of Naga women resonate with the experiences of other indigenous women globally. In Indonesia, for instance, the Customary Law of Lampung Pepadun systematically denies women equal inheritance rights. In Namibia, women often face obstacles in accessing community courts due to cultural norms and procedural ambiguities (UN Women 2022). These examples reveal how customary law can act as both a cultural repository and a site of gendered exclusion. Conversely, more progressive practices within traditional legal systems are also observable. Balinese customary law, for example, grants comparatively greater inheritance rights to women, suggesting that tradition can evolve to accommodate gender justice (UN Women 2022). Such comparative insights underline the potential for internal reform within customary frameworks rather than assuming a binary between tradition and modernity.

### Deconstructing Patriarchy for Inclusive Progress: An Epilogue

The implementation of 33% reservation of seats for women in ULBs and the election of women to the Nagaland legislative Assembly indicate a shift, bringing a change which reflects the decades of advocacy by women activists and women's organizations and growing support of the public for a gender-inclusive governance (Baruah 2023; Thomas 2023). The successful implementation of constitutional values and provisions over customary laws can be attributed to legal interventions. The age diversity among newly elected women candidates, Nzanrhoni I. Mozhui (22 years) of Ward 1, Bhandari Town Council, and Sibeule (71 years) of Ward 6, Peren Town Council, signifies a societal shift towards embracing women's leadership across generational lines (Ojha 2014). These developments have the potential to reshape policy priorities, institutional practices, and the everyday realities of governance. Nevertheless, institutional reform must be accompanied by broader cultural transformation. Legal victories, though crucial, are insufficient without parallel shifts in societal attitudes and normative frameworks. It is imperative for Naga society to critically reassess those aspects of customary law that hinder gender equality and to explore ways in which tradition can be harmonized with constitutional principles (Longkumer & Bokth 2020). Without confronting and transforming patriarchal norms embedded within cultural identity, discussions of social transformation will remain incomplete and ineffectual.

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