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# THE CONCEPT OF 'RIGHTS' IN TANGKHUL(NAGA) JURISPRUDENCE

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## ABSTRACT

This paper critically discussed the concept of rights in the *Tangkhul* society. Rights and duties are very similar in attributes to the customs and practices of the primitive *Tangkhul* society. *Tangkhul Nagas* are the tribals who live in northeast India. It has an origin pointed towards the Mongoloid people in central China. Customs are the sources of law in the *Tangkhul Naga* society. Tangkhul Nagas follow the religion of animism where there is one supreme God whom they worship in spirit, *Ameowa*. People believe and follow the command of *Sharva* (priest) who is the intermediary between people and God. The oral customs and traditions passed down the generations became the customary law which people tend to follow by their choice. The Tangkhul people codified the customs and practices into law by the reasonableness of the emerging society. The dos and don'ts are recorded in the codified law and people are inclined to follow it. Rights can be natural or moral and legal in nature. The ideas of rights create the legal persons. The legal personality can exercise its rights. In Tangkhul society, rights are similar to duties. It is like the concept of natural law at one point. It is the reason that gives them the choice to exercise their limits and participate in society. The command is from self-acceptance to the order of the divine. The lawmaker or lawgiver is not human, the sovereign is the *Ameowa*. It is their willingness to abide by the order given by the *sharva*. In Tangkhul society, the claim for the rights deprived is not in the hands of every person. It lies to *Shimva*, the head of every house. He decided to claim the rights in case they were violated. He has the right to approach the court. This study on the concept of rights in the Tangkhul society broadens the prevailing legal system of Tangkhul customary law. The comparative analysis with the jurisprudence of civilized nations helps to understand the necessity of customs and its importance.

## 1. INTRODUCTION

The *Tangkhul* people are an ethnic group native to the northeastern region of India, primarily residing in the Ukhrul and Kamjong districts of Manipur. They are part of the Naga tribes, which span across northeastern India and parts of Myanmar. The *Tangkhul* predominantly live in the Ukhrul(now bifurcated into Ukhrul and Kamjong) district in Manipur, but their presence extends to parts of Nagaland and Myanmar. They form one of the largest Naga tribes, with a significant population in the Ukhrul district. The primary language is the *Tangkhul* dialect, which belongs to the Tibeto-Burman language family. There are various dialects within the *Tangkhul* language, reflecting the tribe's diverse and widespread settlements. Every village speaks its own tongue. Traditional *Tangkhul* attire includes shawls, headgear, and ornaments. Men typically wear a cloth called "*ngapong*", while women wear skirts known as "*Kashan*". The significant festivals of *Tangkhul* include *Luir* Phanit (seed sowing festival), *Thisham* (sending away dead souls), and *Mangkhap* (festival after harvest), which celebrate agricultural cycles, community bonding, and cultural heritage. Music and dance are integral, with traditional instruments like the drum, gong, and flute. Their folk dances and songs often narrate stories of valor, love, and daily life. The *Tangkhul* are predominantly agrarian, practicing both terrace farming and shifting cultivation (*jhum* farming). They grow crops like rice, millet, maize, and vegetables. They are skilled in weaving, wood carving, and pottery. Their handwoven textiles are particularly famous. Traditionally, the *Tangkhul* practiced animism, worshiping natural elements and ancestors. Over the past century, Christianity has become the dominant religion due to missionary activities. Today, a significant majority of *Tangkhul* people are Christians, predominantly Baptists. *Tangkhul* society is organized into clans, with each village having its own unique identity and autonomy. The clan system plays a crucial role in social governance, marriage, and kinship. With modernization, there is a conscious effort to preserve their traditional culture, language, and practices. The *Tangkhul* people, with their rich cultural heritage and unique identity, contribute significantly to the diversity of the northeastern region of India. The *Tangkhul* Naga system of administration is often compared with the Greek city-state, every village is a republic ruled by the chief is assisted by *Hangva*<sup>1</sup>. The *Tangkhul* Naga follow the principles of democracy even though this concept is unknown to them. Nobody is above the law. Even the chief cannot violate the customs. The duties of the chief, *hangva*, and citizens are clearly defined, and follow the customs, which are very strict. People followed the custom which is unwritten and the violators were given befitting punishment. When the colonial British first encountered the *Tangkhul* Naga, they were

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<sup>1</sup> HORMI MAKANGWO, ORIGIN OF THE TANGKHUL NAGA AND THEIR CUSTOMARY LAW AND PRACTICES 110 (Soyao Makang and Brothers, Imphal 2017).

impressed so much that the British said “there is no need to sign an agreement with the Tangkhul Naga, their spoken word and promises are enough, the Tangkhul Naga are man of honor.”<sup>2</sup> This sentence indicates how the Tangkhul people were trusted by the British and were well disciplined.

## 2. ABOUT TANGKHUL NAGA

### 2.1. Origin of the Tangkhul Naga

The origin of Tangkhul Naga is still undefined. It is still in obscurity. The trace for its origin touches upon the other Naga tribes. ‘The problem of establishing the origin and history of the Tangkhuls(as also the Naga) is due to the non-existence of written script/s.’<sup>3</sup> According to Hodson in his book "Naga tribes of Manipur", he says that there are at least three theories for the origin of Tangkhul. First, they migrated from the valley due to heat and mosquitoes to the hill where they are settled now. Second, they originated from the *Makhel*, where the people came out from a cave. Third, he talks about the growth of the population of the older villages and spread across. However, he failed to mention the indigenous writers' claim of migration from Mongolia. *Tangkhul* people belong to the big clan of the Sino-Tibetan people and were the descendants of these people. *Tangkhul* belongs to the *Hau* groups of China, among the famous three groups of people, *Mao*, *Hau*, and *Chao*. ‘Nagas are the offspring of Mongolia.’<sup>4</sup> According to some Anthropologists, Paleontologists, and Archaeologists, it is said that the *Hau* people were living in Mongolia 200 B.C as stated by Wungnaosui. But they cannot answer the exact reason why people go away from Mongolia. Some theories try to answer why this quest. Firstly, it is because of the cruel ruler who loves war. Due to his interest in war, he forces people to be in an army and conquer other places. He taxed people heavily and the people could not tolerate the treatment of the king. Therefore, many people run away from the place. The second one is that the *Tangkhul* people went away from Mongolia because the land was not fertile and the continuous famine prevailed in the land. So, the people migrated from this place. Many people fled to *Khaki*<sup>5</sup>(China) and the *Tangkhuls* were among the people who fled from Mongolia. These people are scattered all over the south-east; Tibet, Korea, Japan, Thailand, Indonesia, and Malaysia. The exact year for the spread to all over these nations is unknown<sup>6</sup>. Naorem Sanaojaoba in his book “Origin and Myth of the Tangkhuls”, mentioned that the *Hau Tangkhul* first settled in the China *Zingjian Yunon*

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<sup>2</sup> *Id.*

<sup>3</sup> R VASHUM, A.S YARUINGAM, A.S SHIMREIWUNG, & YUIMIRIN KAPAI (EDS), ENCOUNTERING MODERNITY 34 (Chicken Neck, New Delhi, 2014).

<sup>4</sup> T LUIKHAM, WUNG (TANGKHUL) NAGA OKTHOT MAYONZA 23 (1961).

<sup>5</sup> In the early time, Tangkhul people knew China by this name. Many Tangkhul scholars like W.R. Shimray, T. Luikham, etc. used this nomenclature in their writing.

<sup>6</sup> WUNGNAOSUI RONRA SHIMRAY, HAU AWUN RAMSOM PHUNGPHAT 2 (2023).

province's Huang-ho and *Yangtze* riverside and the *Maxiong* mountains. Tangkhul people migrated from this place again for various reasons. Some valid arguments are

- (a) this place is not fertile, harvests are not surplus, and cannot get enough food for sustenance and survival. So, people move out in search of more fertile places;
- (b) in this certain period, it was the time the Great Wall of China was built. Gin Shi Huang ruled China in 221 B.C and he built the great wall. He used people and forced labor and many people died in the work. Additionally, the Yin and Shan dynasties attacked and people were scattered.

According to W. R. Shimray, he assumed that the Naga-Kuki-Mizo were living in the southeast of China in Yunon province Guizhou and Guangzil in 200 B.C. According to W.I. Singh in his book titled "The History of Manipur", Hau Tangkhul settled for a long time in *Tounghe* and *Tapaw* in the region *Samshok*(*Thaungdut* in Myanmar) in *Ava*<sup>7</sup>. This assertion is found in the writing of M.K. Shimray in his book titled "*Miwurlung*". Here he says that Hau Tangkhul people moved from Mongolia, passed through China, stayed in Myanmar for a long time, and settled at last in the present hill terrains, where Tangkhul is now. It is true that *Tangkhul* people settled in parts of Myanmar in the course of their migration. According to W.R. Shimray, there is still a remnant of settlement in the China riverbanks near *Taungdut*, *Tounghe*, and *Tapaw*. In folk songs, this place is indicated as *Marilung*, where *meri-shiren*(iron and steel) are found around 10 /11th B.C.

The generation belonging to the *Marilung* in *Samshok* are narrated in a folk song, as follows:

*'O kachili tunglo*  
*Ava samshokli tungtheiya*  
*Samsokli unngashang-shang,*  
*Shimraywo kharar-o*  
*Shokvao kaphungli shokngvao,*  
*Ngachang chihuili rom ungpheizai*  
*Mavalungli mei ungayar,*  
*Shimray mitun chungmeiya,*  
*O chisomsom, ngahong rara vashung*  
*Somra phunghui zangshunga. '8*

In English free translation, it means like this-

*'O where do you settle*  
*We settle at Ava Samshok*

<sup>7</sup> *Ava* is a local Tangkhul name for Burma(Myanmar).

<sup>8</sup> SHIMRAY, *Supra* note 6 at 6.

Move into *Samshok* clan by clan,  
*Shimraywo* the eldest one  
 We shout at the *Shokvao* mountain,  
 We eat the packages in the *Ngachang Chihui*,  
 We divide fire in *Mavalung*,  
*Shimray* has more descendants,  
 On that side, the wood we go  
 Till we reached the *Somra* hill tract.’

The folksong is about the migration from *Samshok*, Myanmar, and how the people scattered in the present *Tangkhul* areas. *Tangkhul* came to our present settlement from Myanmar in three ways: from *Kangkum* in the southern *Tangkhul* region, the second is from *Kongkan* in the east *Tangkhul* region and the third is from *Somra Ngachan* from the North *Tangkhul* region. People came into contact from these three sides and settled in the present Ukhrul and Kanjong districts and partly in the Burma *Somra* areas.

### 3. UNDERSTANDING THE TANGKHUL JURISPRUDENCE

The people in a particular place have a manner that is prevalent in society. From generation to generation these manners are passed on. Custom may comprise of all practices such as religion, perception, commandments, order, etc. So, the thinking and ideas of an individual can never be different or diverted from society. In a place where people settle, the chief of the place and his *hangva* make rules, and people follow and obey them. Certain rules exist to keep the *Tangkhul* society in order. According to T. Luikham in his book “*Okthot Mayonza*”, he wrote the ultimate product of *Wurtam*, the end for it as *riyan*. The creation to answer the need regarding the norms of *Tangkhul*. It is applicable to all *Wung*<sup>9</sup> places. ‘The *Tangkhul* people living under this *Riyan*<sup>10</sup> are *Luichumnao*<sup>11</sup>. Citizens who are living under *Riyan*, a strong one cannot oppress the weak, a rich cannot deprive the poor, a naughty one cannot rob or steal, and one should not hurt others, and follow a uniform law, to live a good and virtuous life together is the aim of *Riyan*.’<sup>12</sup> Here he categories *Riyan* into 5 parts-

1. *Shaiyan* (tax law)
2. *Khuyan/Khayan* (village law)

<sup>9</sup> *Wung*, here, refers to *Tangkhul*. In his book, he used this term instead or along with *Tangkhul*.

<sup>10</sup> *Riyan* is synonymous with the word constitution. It is a law that rules all the *Tangkhul* people according to him in this book.

<sup>11</sup> *Luichumnao* means the people who follow the same law or are protected by the *riyan*, equals with the word, citizens.

<sup>12</sup> LUIKHAM, *supra* note 4 at 107-108.

3. *Longyan* (union law)
4. *Shiyan* (law of crimes)
5. *Shongran* (penal law)

The above law that Tangkhul follows was true and it is more of a customary practice and not codified until this. It is oral tradition until the arrival of William Pettigrew brought education to the Tangkhul people at the beginning of the 20th century. Riyan is more of a concrete law specifically categorized to the need of understanding by the author. However, Wungnaosui R Shimray mentioned '*shiyam chikan*' as the law or ultimate rules or norms in his book. *Ameowawui shaar*: in the olden days, by *Tangkhul Hau shiyam-chikan* the ancestors, men, animals, birds, plants, and the whole universe feared the master *Ameowa Zinghungleng*, and lived religiously submitted to him. To do the will of *Ameowa*, good conduct, good conscience, good words, avoid bad things are the *shaar* (commandments) of *Ameowa*. Along with *shaar*, people are bound to perform *sharphahor* (rituals) for anything like war, housing, cultivation, etc to *Ameowa*. The other one is the *Angachayan*: literally it means law of nature. In any settlement of a village, the people of the village and the neighboring villages are bound by certain norms. The way they talk, meet, marriage, agriculture, hunt, travel, etc. and they respect each other and strictly follow all the norms. Moreover, living together with nature, animals, birds, and ecology the people follow the law of nature. To keep in equilibrium, they follow and live according to the order of nature. Eat, hunt, cultivate, etc. according to the seasons. The reason within the Tangkhul population is very clear that they follow the natural order and obviously, all the order and norms came through *Ameowa*. It is right to assert that Tangkhul follows natural laws and they belong to a natural law school.

### 3.1. Customs

In every early society, customs are the only source of law. Customs originate from the common consciousness, convenience, or necessity of the people. Custom is a practice by people over a long time that becomes a custom. Maine, Ihering, and Gray propounded that custom is based on decisions such as the judgment given by the kings or the judicial decisions. Late, the decisions became the custom. Salmond gives two reasons for the recognition of customs. First, the courts may accept customs as an authoritative guide because they are commended to the national conscience as a principle of justice and public utility. Second, the existence of an established usage is the basis of a rational expectation of its continuance in the future. Roman jurists laid down the tests for recognizing a custom as laws were reasonableness and antiquity. In India, the Indian constitution and the law court validate customs as laws. In the case of *Smt. Ass Kaur (Deceased)*

by *L.Rs vs Kartar Singh (Dead) by L.Rs. & Ors*<sup>13</sup>, the Supreme Court held in para 25

“25. As statutory law did not exclude the applicability of the customary law, the principle that customary law would prevail over the statutory law would apply. It was so found by the courts below.”

The court addressed arguments regarding the validity of customs, emphasizing that their legitimacy should align with principles of justice, equity, and good conscience. However, it differentiated between the mere applicability of a custom and its ethical justification, suggesting that customs lacking in these fundamental values might not be enforced, despite their traditional observance.

Customs are classified into (1) customs with sanction and (2) customs without sanction. The austinian term the customs which has no sanction as positive morality. Customs with sanctions are further classified into (i) conventional custom and (ii) legal custom. Conventional customs are the customs that govern the parties to agreements, treaties, or conventions. Legal customs are of two types (a) general customs and (b) local customs. General customs apply to the whole state. General legal customs are the customs that prevail throughout the territory of a state. Custom usually meant local usage in law. Local customs are limitedly confined to a particular place. In India, due to the diversity of the population local customs are further classified into geographical customs and personal local customs for the convenience of the people. In the Indian legal system, customs can be abrogated by the statute, and at the same time, a statute cannot prevail over custom.

#### 4. RIGHTS AND THE TANGKHUL CONCEPT OF RIGHTS

According to **Salmond**, rights are of two kinds: either moral or legal. A moral or natural right is an interest recognized by a rule of morality- an interest the violation of which would be a moral wrong, and respect for which is a moral duty. On the other hand, a legal right is an interest recognized and protected by a rule of law- an interest it is, and respect for which is a legal duty. Moral rights and legal rights coincide sometimes. Morals may not be in favor of someone's legal right but the laws that protect legal rights are influenced by public moral views and ideas. Positivists don't agree that there is such a moral or natural right, as rights are created by the positive law. “Right is something that is permitted to individuals in a society. Rights are concerned with interests and indeed have been defined as interests protected by rules of right, that is by moral or legal rules.”<sup>14</sup>

<sup>13</sup> *Smt. Ass Kaur (Deceased) By L.Rs vs Kartar Singh (Dead) By L.Rs. & Ors*, Civil Appeal 12395 of 1996.

<sup>14</sup> P J FITZGERALD, SALMOND ON JURISPRUDENCE 217 (Universal Law Publishing CO. Pvt. Ltd., New Delhi, 12th

**Holland** defines legal rights as the capacity residing in one man to control, with the assent and assistance of the state, the actions of others. He follows the ideas of Austin as the rights are derived through law.

According to **Austin**, right is a faculty which resides in a determinate party or parties by virtue by a given law and which avails against a party or parties other than the party or parties in whom it resides. A person can be said to have a right only when another or others are bound or obliged by law to do something or forbear in regard to him. It means that a right always has a corresponding duty.

According to **Diguit**, rights are not inherent or natural but are derived from social functions and duties. They exist to ensure that individuals fulfill their roles within society, thereby maintaining social cohesion and promoting collective welfare. Rights are correlated with duties. Rights are part of the objective law regulating social behavior to ensure harmony and cooperation within society. He criticizes the traditional concept of rights, often seen as inherent and individualistic entitlements. He argues that such rights are abstract and can undermine social solidarity by prioritizing individual autonomy over collective responsibilities.

**Kelsen** also says that there is no such conception as a right in law. Rights are legal norms prescribed by the legal system. Rights derive their validity from their creation according to the legal system's norms, independent of moral or natural law. Rights are part of a hierarchical structure of norms, with the Grundnorm at the top. Rights are relative to the legal system and can change as the system evolves. Rights can be claimed by an individual within the legal system, always tied to corresponding duties. According to Kelsen, rights can be claimed because it is a part of norms.

In **India**, the **Supreme Court of India** has observed in *State of Rajasthan v. Union of India*<sup>15</sup>, “In a strict sense, legal rights are correlative of legal duties and are defined as interests which the law protects by imposing corresponding duties on others. But in a generic sense, the word ‘right’ is used to mean an immunity from the legal power of another. Immunity, in short, is ‘no-subjection’.” The court is clear here that a right is an interest protected by the law and the right gives immunity to the holder of the rights and the other to incline with their duty toward the right.

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edn., 2007).

<sup>15</sup> *State of Rajasthan v. Union of India*, A.I.R 1977 S.C 1361.

So, if one has legal rights the other can be imposed with a duty to protect the right but at the same time legal rights come with legal duties.

Rights are created by customs in Tangkhul society. Rights properly so called are the creatures of law properly so called; real law give rise to real rights.<sup>16</sup>

#### **4.1. The Tangkhul Customary Law and the Concept of Right**

Tangkhul strictly adhered to the mores and norms of the ancestors. 'The conception of natural law as an order which commands human respect becomes possible only when man becomes conscious of his position in the universe when a law is no longer just a part of magic or religious rites but emerges as a separate concept.'<sup>17</sup> There is a concept of 'No war zone' or 'safe place' when war is fought and the losing parties can take shelter in those areas, or a thief or a murderer or a robber can take shelter in these places and no one can attack when they take shelter in such places. The customs practices in Tangkhul society are very far ahead of present humanitarian law. People strictly follow the norms of war, of agriculture, of marriage, of the forest, etc. The customs and practices of Tangkhul were solely oral traditions that negatively impacted the modern scholar and the colonization of both English and India caused the decline of culture to pass on. *Tangkhul wurtam* (customs) are mainly focused on social rights. The economic rights come after fulfilling the social rights. Starting from the divine order from Ameowa, the supreme God of Tangkhul, and the *wurtam*, customs prevailing since time immemorial indicate that people's will is the main source of custom. Studying the *wurtam* one by one, it is pertinent that people have the will to follow the norms and it is not the interest that is keeping the society intact. Interest can never be an element of rights in Tangkhul society. The practices of inheritance, marriage, war, etc. all have a divine intervention and people tend to accept the command of the divine law. They incline more onto will or choice of their own. They did not obey for the benefits they may get in return. It is complete acceptance of the norms. Thus, the *Tangkhul* people have followed the divine element with the power of reason that *Ameowa* is the virtuous one, and obeying his command can be the best way of existence.

##### **4.1.1 Sharra: The source of all Norms and Rules**

'*Shaar*' is a term in the Tangkhul dialect. 'It is a religious commandment'<sup>18</sup>. The creator of vegetation, animals, universe, and human beings, *Ameowa Zinghungleng*, doesn't want human

<sup>16</sup> FITZGERALD, *Supra* note 14 at 218.

<sup>17</sup> W FRIEDMANN, *LEGAL THEORY* 98, (Sweet & Maxwell, Fifth ed 1967, South Asian Edition 2019).

<sup>18</sup> SHIMRAY, *Supra* note 6 at 102.

beings to commit sinful deeds, wrong conscience, bad words, and others that *Ameowa* doesn't like. '*Shar*' is what *Ameowa* wants us to do. When anyone does bad things, sinful in nature is '*sharra*'. And whoever does such things or deeds has done against the law of *Ameowa*. The person who does not heed the '*sharra*' will die or gradually diminish away from the earth. So, people used to teach others not to commit anything that is considered '*sharra*' because it enraged *Ameowa*, and the consequences were not good. *Ameowa* commands in the commandments that he does not agree, which one will result in death is '*sharra*'.<sup>19</sup> *Sharra* is the commandment given to humans by *Ameowa*. So, here, the authority lies in *Ameowa* where *sharra* is a command with authority endorsed by *Ameowa*. Our ancestors take the word '*sharra*' with utmost seriousness and keep it sacred. Our forefathers believed that *Ameowa* cursed those who broke the '*sharra*'. *Sharra* is the top in a pyramidal concept where the rest of the laws are below it. *Sharra* is the law where the rules and norms take their authority in command. It is the most authoritative element in the Tangkhul jurisprudence.

*Sharra* is a theory of law that deals with what law is and what law ought to be. 'What law is' is the command of the *Ameowa* and 'What law ought to be' is the consequence of not keeping the command. *Sharra* changes its concept with time in modern society. Some Tangkhuls scholars say that *sharra* includes something that cannot be done as it against *Ameowa*, acts against the order of nature, against humanity, transgression to *Kameo*, breaking norms, violating human laws, something that is done can bring a curse to oneself, families, or villages, etc. And these all unacceptable practices and offenses are understood by the word *sharra* in Tangkhul jurisprudence. So, 'the law is' and 'the law ought to be' perfectly fit into *Sharra*. *Sharra* is the law and not obeying and keeping *sharra* comes with consequences which is what ought to be.

The things or actions which are '*sharra*', cannot be done or performed. 'Because it is the truth, and the truth is *Ameowa*'.<sup>20</sup> Keeping the *Shar* and living the will of *Ameowa* make a man, a powerful weapon like an edged sword. *Shar* helps us to preserve our culture, rituals, festivals, norms, and customs. If we do not keep and obey the *shar*, our manners, understanding, rites, norms, etc. won't be there. *Sharra* is used in almost all the ways of Tangkhul customs. It was forbidden to use the name *Ameowa* unnecessarily in ancient times. People take it very seriously, the name. Because of the fear of the name and greatness, they believe in *Ameowa*, they say other

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<sup>19</sup> HUIMI ZIMIK, THE TANGKHUL NAGA HAU PRIMITIVE RELIGION 43 (2013).

<sup>20</sup> SHIMRAY, *supra* note 6 at 102.

names such as 'Kazingung'<sup>21</sup> and 'Ngaleiwung'<sup>22</sup>. During quarrels or fights between one another, one cannot say "Ameowa na theiranu" which means "let Ameowa be our witness". Instead, people say "kazing ngaleina theiranu" means, "Let heaven and earth be our witness". People believe that using the name in vain enrages Ameowa and a curse falls upon the land. Our ancestors believe and obey the "sharra" and this is the cause for all the customs of Tangkhul.<sup>23</sup> People were religious in primitive times. The traditions and practices are passed down orally. Still, the concept of *sharra* is prevalent in Tangkhul society. It is compatible with all moral norms accepted by people in modern society. Some are found exactly in the lawbook of the nations.

#### **4.1.2. Tangkhul Customary Law and Natural Law**

Natural law has its foundation by the Greek thinkers. 'Man is a part of nature in a twofold sense: on the one hand, he is part of matter, part of the creatures of God and as such he partakes of experience; but man is also endowed with active reason which distinguishes him from all other parts of nature. As such he is capable of forming his will in accordance with the insight of his reason.'<sup>24</sup> As to *Tangkhul*, reason became a moral force to conform to the divine order. It resembles the stoics. 'To the Stoics, the postulates of reason are of universal force. They are binding on all men everywhere.'<sup>25</sup> *Sharra* is the product of reason in Tangkhul customs and legal jurisprudence. 'Reason orders his faculties in such a way that he can fulfill his true nature. When man, who is destined to be a social being and citizen, lives according to reason, he lives "naturally". The law of nature thus becomes identified with a moral duty.'<sup>26</sup> Tangkhul people listen to the natural calling of insects, animals, birds, etc. to work and plant crops. Here, duty and rights are more alike in the customs of the Tangkhul if we compare them with the Greek legal theory. Natural rights are from natural law theorists whereas rights derive from reason. If the rights of the Tangkhul people are to be studied in accordance with natural law, it can be said that rights exist through reason and it is one choice or will, that is the element of right.

#### **4.1.3. Tangkhul Customary Law and Positive Law**

On the other hand, we can study in the line of positivist thoughts. Right is an interest protected by law. The protector is the sovereign who commands with a sanction, which means the creator of the law is the sovereign and the law is a command with sanction. Kelsen Grundnorm plays a major

<sup>21</sup> Literally, it means 'king of heaven'.

<sup>22</sup> It means 'king of the earth'.

<sup>23</sup> ZIMIK, *Supra* note 19 at 43.

<sup>24</sup> FRIEDMANN, *Supra* note 17 at 99.

<sup>25</sup> *Id.* at 100.

<sup>26</sup> *Id.* at 99-100.

role in this discussion and it is understandable that there are many new ideas to be popped up in the study. In Tangkhul society, there is a norm that everyone follows. *Sharra* simply means a taboo or prohibited act. People are bound to obey this. It is a prohibition and the people disagree with an act that is wrong and punishable at the same time as it is against *Ameowa*. *Ameowa* punished whoever was breaking the norms, *sharra*, immediately or gradually. Here, *sharra* is the command sanctioned with punishment from the *Ameowa*, who is sovereign in the Tangkhul society. If the law and the right are interpreted in this way, the Tangkhul customary law is purely a positive law. But the creator of the law, the sovereign who commands with a sanction is not human. And protection of rights comes through his *sharva*(priest) or the chief of the village. *Ameowa* is a God, a supreme deity that rules the conduct of people through a priest, speaking, and commands to follow the *Shaar*. And like **Kelsen's** law theory, norms are under a grundnorm. Grundnorms is the source of all law and derived sanctions from the law itself. In this, Austin and Kelsen part ways as positivists. Every legal norm is enforced through grundnorms. Thus, in Tangkhul society the basic rules, customs, practices, and usages are under *sharra*. *Sharra* is the ultimate source of customary law. It is also the basic element for the source of rights and duties in Tangkhul customary law. Like the positivist, the law is a system of oughts in Tangkhul customs. So, legal rights are merely the duty as viewed by the person entitled to requirements fulfillment. Kelsen's pure law doesn't emphasize individual rights, and the same is true in Tangkhul's practices. *Sharra* can indicate both the duty and the right. If you obey the command of *Sharra*, you are protected by *Sharra* and only this can give you rights. Here, Kelsen's concept of 'grundnorms' is eminent in the study of '*Sharra*' of Tangkhul customs. Rights and duty are norms and are part of grundnorm. Right and duty are derived from *sharra* in Tangkhul custom.

#### **4.1.4. Rights in Tangkhul Society**

From the above, natural rights or moral rights and positive rights or legal rights can be ascertained in Tangkhul jurisprudence. The dictate of reason is moral rights. The moral rights are inherent in nature. If we follow the way of command, *sharra*, it gives us a legal right. The sovereign is obliged to protect the rights. The will right theory is where the concept of rights in Tangkhul jurisprudence lies. It is not the interest of the individuals but the will or choice to keep the command. Here in Tangkhul jurisprudence, the individual has a will that the present legal system cannot interfere with. The right emerges from a person's will. Through the dictate of reason, individuals decide from self; self-assertion, and self-expression. Rights are like a power over oneself, to do or not to do. *Sharra* plays a big role in understanding the concept of rights. It is a dictate or command over an individual internally. Sometimes, the events that occur to an individual, such as sickness or

death, control the minds of people to follow the dictates of reason to keep the *Shaar*. Duty was first done to get the right. Duties and rights go hand in hand. As John Rawls says about the duty of an individual that needs to be done according to the institution, it is part of justice. In Tangkhul society, it is the way a right was imparted to an individual.

“...natural duty is that to support and to further just institutions. This duty has two parts: first, we are to comply with and to do our share in just institutions when they exist and apply to us; and second, we are to assist in the establishment of just arrangements when they do not exist, at least when this can be done with little cost to ourselves. It follows that if the basic structure of society is just, or as just as reasonable to expect in the circumstances, everyone has a natural duty to do what is required of him. Each is bound irrespective of his voluntary acts, performance or otherwise.”<sup>27</sup>

In Tangkhul jurisprudence, a right is automatically imparted once we do the obligations or duties sanctioned by the *sharra*. Right is not the interest to be protected but is a choice that obliges oneself by the dictate of reason. It is the will of an individual to express his conscience and not a benefit of things to one's reason. Right is related closely to duty and obligation. It is a moral right with no enforceability. The continuous practices of norms became practice and people began to protect themselves through the legal system by accessing court. Thus, the court preserved the rights of individuals through the law. Only with the concept of coming together (social contract) by forming *Long* among the Tangkhul people, did the moral right become a legal right. The chief and the village council protect the rights of Tangkhul society by doing justice in case of violation. By keeping the *sharra*, a moral right becomes a legal right in Tangkhul jurisprudence.

## 5. Legal Personality in Tangkhul Jurisprudence

A person is used in a wide meaning. It is derived from the Latin word ‘*persona*’, which means mask worn by actors. So, A legal person is any subject matter other than a human being to which the law attributes personality.<sup>28</sup> Savigny defines a person as the subject or bearer of the rights. Gray defines a person as an entity to which rights and duties may be attributed. Holland says rights not only reside in but are also available against persons. Persons are the subject of duties as well as rights. A person is classified into two- a natural person, and a legal person. Natural person means human beings. Legal persons are those things that are treated as human beings for legal purposes. In Tangkhul society, everyone is a natural person. Everyone is equal in status. A slave has no

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<sup>27</sup> JOHN RAWLS, A THEORY OF JUSTICE 334 (Universal Law Publishing CO. Pvt. Ltd., New Delhi, 2nd reprint 2005).

<sup>28</sup> FITZGERALD, *Supra* note 14 at 305.

rights as he is like an object to his master. The master-slave relationship is not applicable in Tangkhl society. Everyone is capable of rights and duties but not everyone is a legal person. 'First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others. Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all.'<sup>29</sup> This excerpt is in consonance with Tangkhl society. The legal system under the *shiyān chikhan* does not recognize any person unless he is the *shimva*, head of the family. *Shimva* is a person who is the head of the family in a house. Mostly, the father is considered a *Shimva*. When the father grows old or when the father is no more, then the eldest son in the family becomes the *Shimva*. Not anyone in a family can complain about a particular matter or dispute to a village court or chief. According to the practices of Tangkhl, it is the duty of the *shimva* to address any issues to the chief or the village court. In the Tangkhl customary legal system, only the *shimva* has the authority to petition any legal matters to the customary court, particularly to the chief of the village. Or when a dispute of theft arises between two families, the matter is first consulted between the two *shimva*, and almost all the time, reconciliation is the solution. The authority of the reconciliation process solely lies in their hands. Whatever matters that cannot be solved will go to the clan leaders, known as *piba*<sup>30</sup>. If the dispute is from the same clan, then the *piba* decides for them. If it is between different clans, then the reconciliation process is done between *pibas* and several other clan elders, and a solution is brought. So the *shimva* plays a very important role in Tangkhl society and it is learned that he is the only legal person in every family. He is responsible for any issues that arise from his child, cattle, pets, etc. in the village. He is responsible for *shai*<sup>31</sup> to the chief of the village. Thus, it came with a responsibility to be the head and legal person of the house.

## 6. Access to Justice in Tangkhl Jurisprudence

Legal persons play an important role in accessing justice for the violations of rights. The right is compensated in the form of justice in case of violation. In the case of rape, the *shimva* of both parties will first try to resolve it through reconciliation and if it is solved between them, it is finished. Being the head of the family, they carry the rights of the whole family. In case they fail to resolve the problems among *shimva*, the victim *shimva* can approach the chief or village court. In this way, a case is brought to the village chief or court by the *shimva*. If anything happens to a

<sup>29</sup> RAWLS, *supra* note 27 at 60.

<sup>30</sup> *Piba* is the head of a clan in a particular village.

<sup>31</sup> *Shai* means a tax or tribute to the chief of the village.

person. One cannot directly approach to solve the problem to someone or the village court, it is only through the passage of *shimva* that the problem is solved. So for violations of any rights of a person, a legal person has the right to claim for them that is *shimva*. Raped, beaten, robbed, or hurt by someone, only through the *shimva* a case is initiated for justice. The way of legal procedures acceptable in Tangkhul society in the olden days is due to the behavior of the people. These ways of procedure to access justice are impractical in modern society. Thus, the legal personality is a very important matter to discuss for further study.

Justice is always in the form of restoration to society. Any offenders, who commit a crime will be restored back into society imposing a *shongran*<sup>32</sup>. This is the way a perpetrator of any crime is placed into their own life, forgiven by the victim, and redeemed by the village court or the chief of the village. Thus, the Tangkhul customary way of giving justice is restorative justice.

## 7. CONCLUSIONS

In a people's group like Tangkhul, it is hard to do such jurisprudential research. Written documents are scarcely available to us. Some written books and literature by foreigners are a narration of their visits and expeditions as travelers and agents to the colonial British. The tradition of passing cultural norms and customs through oral narration affects the availability of such norms. Some died along with the people and few common sayings of the ancestors survive. Some of these concerns may affect the understanding of the Tangkhul jurisprudence. But the present prevailing practices passed down from ancestors and the customs in use in day-to-day life help in preserving the culture and help to understand the philosophy of Tangkhul jurisprudence such as rights, duties, justice, property, land holding, persons, etc. which are legal concept necessary in understanding the legal jurisprudence. It is obvious from the research that the Tangkhul people migrated from Mongolia to China to Burma and finally settled in the present area in parts of northeast India and Myanmar. Tangkhul people are simple and have a high moral standard of life. Crimes do least occur rather they enjoy social solidarity. Most of the social day-to-day life is not in the study like the people concerned for the family when death occurs or participation in marriage or festivals or other rituals related to crowning the chief or *Amei* etc. Religion is very important in Tangkhul society. Customs and norms arise from faith in the supreme deity, that is *Ameowa*. *Sharra* is the commandment of *Ameowa* but it is rather a more broad concept. Customs is a source of law in jurisprudence. Tangkhul has its exact word '*wurtam*'. In our society, customs are accepted norms in the legal system. The Apex Court has accepted its prevalence in giving verdicts in a case. The

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<sup>32</sup> *Shongran* means a punishment or penalty imposed by the village court to an offender.

constitution of India has included customs in the definition of law. Tangkhul customary law is a local custom as it is confined only to the Tangkhul population. *Wurtam* is codified into a law book in Tangkhul society due to its necessity in the application and practices of the modern legal system. The necessity of its development, legal, and application; a custom must be certain, simple, stable, and uniformly applicable to all populations.

Rights are defined in different words: for Salmond it is the protection of interests, for Holland, as the capacity of individuals, for Austin as a faculty given by law, and for Kelsen, it is legal norms. In Tangkhul jurisprudence, rights can be defined as norms or capacity of individuals or self-expression to the dictate of reason, which he has to fulfill his duties to claim. It is a given by *Ameowa* on obeying or keeping *Sharra*. The concept of rights of Tangkhul jurisprudence more appropriately fits into 'will theory' rather than interest or benefit. As the rights come from the dictate of reason or command of the sovereign. It can be considered as command of the sovereign with sanction, command and sanction is in *sharra* and sovereign is the *Ameowa*. The legal theory falls into either positivists or naturalists. But the state is an essential element in law, this part way with positivists and joins with the natural law. *Sharra* has a vital place in *Tangkhul* jurisprudence. People live under the dictates of *sharra*. This is the supreme norm or law that governs the Tangkhul people. Not keeping *sharra* will affect the life of violators and not only the individuals but the people around him are cursed because of him. So the fear of breaking *sharra* is very great. It is similar to Kelsen's *grundnorm*. Which is at the top of all norms and laws. *Sharra* is 'law is' and 'law ought to be'. The concept of *sharra* is not of human ideas but it is from the supreme deity, *Ameowa*. The difference lies here, where Kelsen only works on what law is and the *grundnorms* is from law itself. Every person is equal in status yet it is through the *shimva*, that one's right is protected or justice is accessed only through the head of the family. Legal personality is one legal concept that needs to be studied properly.