

Gender & Human Rights Implications
of the (Draft) Tripura State
Chakma Customary Law 2017

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Rajbari, Rangmati, Chittagong Hill Tracts
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Glossary

CADC	Chakma Autonomous District Council
CADC Code 1997	Chakma Customary Laws Code, 1997
CAT	Convention against Torture
CEDAW	Convention on the Elimination of Discrimination against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CHT	Chittagong Hill Tracts
CHT Regulation 1900	The main law for the administration of the CHT
Circle Chief	Hereditary Raja of administrative territory in Chittagong Hill Tracts known as a “circle”
CPC	Civil Procedure Code
Gobola	An anonymous complaint alleging social offence by someone
Gorba Kudum	A relationship in the nature of uncle-nephew, aunt-niece
Gozha	Clan
Gutthi	Sept or Sub-Clan
JSS	Major political party of indigenous peoples of CHT, under whose leadership the CHT Accord 1997 was signed
Jum	Swidden Cultivation, Shifting Cultivation, Swidden Field
Karbari	In the CHT, a Karbari is a traditional village chief, who is deputy to a Mauza Headman. In the TTAADC territory, a Karbari is a Chakma social leader and tribal judge, of various tiers, from panjayet level to state level
Khelya Kudum	A relationship in the nature of cousins of the same step, or even Grand Uncle-Grand Nephew
Land Commission	Chittagong Hill Tracts Land Disputes Resolution Commission; a quasi-judicial body formed to resolve land-related disputes in the CHT
MLA	Member of the Legislative Assembly
Panjayet	The lowest unit of social leadership among Chakmas in TTAADC territory
Patrilocal	Practice whereby a woman moves to the husband’s home after marriage (the converse is matrilocality, when the husband moves to the wife’s parents’ house)
Polyandry	Many husbands
Polygamy	Many marriages
Polygyny	Many wives

Regional Council	In the CHT, the regional council is the semi-autonomous authority above the hill district councils. In contrast, under the scheme of the 6 th Schedule to the Constitution of India, an autonomous regional council is a unit lower than that of the autonomous district council
Rejyo	Kingdom or State
Sagala	Chakma social unit in TTAADC area above the Panjayet and below the Suloani
Sinali/Sineli	Social offence involving pre-marital or extra-marital sexual relationship
Suloani	Chakma social unit in TTAADC area above the Sagala and below the Rejyo
Sur Kagoch	A document purporting to pronounce divorce
TSCCL 2017 Draft	draft Tripura State Chakma Customary Law 2017
TSCSC	Tripura State Chakma Social Council
TTAADC	Tripura Tribal Areas Autonomous District Council

**Gender & Human Rights Implications of
the (Draft) Tripura State Chakma Customary Law 2017**

by
Devasish Wangza¹
May, 2018

1. Introduction

This is an attempt to provide, in the very short period of about a week, a brief analysis of the human rights implications of the English language version of the draft Tripura State Chakma Customary Law 2017 (“TSCCL 2017 draft”), with a high focus on gender, along with other matters that have implications on the social integrity and cultural heritage of the Chakmas living in Tripura State, India. There are some divergences between the English and the Bengali drafts, but the author deals in this paper with the English version only.

The author also takes this opportunity to briefly mention matters related to environmental protection and ecology. Where possible, the author will cross-reference the discussion on customary personal law with comparable practices in the Chittagong Hill Tracts - where no codification has taken place - and the Chakma-inhabited areas of Mizoram State, including the Chakma Autonomous District Council (“CADC”) area - where the concerned laws have been codified and reproduced in the Chakma Customary Laws Code, 1997 (“CADC Code 1997”).

The urgency is on account of the fact that the draft might well be formally adopted in its current form, leading thereby, among others, to the subordination of the rights of Chakma women of the state, and the unintended inclusion of provisions that are contrary to international human rights standards. Thus this essay is an attempt to encourage retrospection, reflection and constructive debate, and most importantly, an opportunity for the Chakma people of Tripura State, including women, to put forward their views on the matter, before the draft is converted into law.

2. Legal Background

The legal background is narrated first, after which, an attempt is made to briefly describe the process of development of the current draft, to the extent known to the author. Henceforth the more substantive issues of the draft will be discussed.

The legal basis of the proposed adoption of the TSCCL 2017 draft is the 6th Schedule to the Constitution of India, which applies to autonomous district and regional councils in several states of Northeast India, including Tripura State (which has an autonomous district council, but no regional council).

Thus the Tripura Tribal Areas Autonomous District Council (“TTAADC”), the only district council in Tripura State, has powers to make laws with respect to several matters specifically referred to in the 6th Schedule, including: “the establishment of village or

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town committees or councils”;² “the inheritance of property”;³ “marriage and divorce”;⁴ and “social customs”.⁵ The subject matters included in the TSCCL 2017 draft appear to fall within the ambit of the aforesaid provisions of the 6th schedule, as applicable to the TTAADC within Tripura State.

It is well to note, however, that in order for such laws made by the TTAADC (and other such councils under the 6th Schedule) to be valid and effective, they must have the assent of the Governor of the state.⁶ The Concerned High Court will have jurisdiction over the suits and cases tried under the aforesaid laws as specified by the Governor, through orders.⁷ In addition, with the previous sanction of the Governor, the TTAADC (like other such councils under the 6th Schedule) may make rules regulating “the constitution of village councils and courts”, the procedure to be followed by them and the appellate district council, the enforcement of the concerned decisions and orders and other “ancillary matters”.⁸

It appears, therefore, that the role of the Tripura State Chakma Social Council (“TSCSC”) in framing draft laws will not have ended even after the TTAADC adopts the law and the governor of the state assents to it. This is because several details on the constitution of the different tiers of courts, the procedure they and the appellate district council are to follow, including on the enforcement of the courts’ decisions and orders, are expected to be included within Rules to supplement the mother law.

Some of the procedural and other details referred to in paragraph 4(4) of the 6th Schedule appear to have already been included in the TSCCL 2017 draft. It is, however, the opinion of this writer that such inclusion will not be sufficient to deal with the manifold exigencies that will arise in the process. The TSCSL would perhaps do well to also consider whether it ought to exclude some of the procedural matters from the TSCCL 2017 draft and have such matters dealt with more thoroughly and extensively in future Rules to be framed. On the other hand, if obtaining the necessary support of the TTAADC and the State Governor are difficult, then the retention of such provisions, as contained in the TSCCL Draft 2017, may be judicious. The existing and future political dynamics of the state can best be judged by the Chakmas of Tripura State themselves, rather than outsiders, including this author.

A crucial hurdle that the TSCSC will have to deal with, at the current juncture, is to have the TSCCL 2017 draft accepted by the TTAADC, followed by the assent of the state

² Paragraph 3(1)(e), 6th Schedule to the Constitution of India.

³ Paragraph 3(1)(h), 6th Schedule to the Constitution of India.

⁴ Paragraph 3(1)(i), 6th Schedule to the Constitution of India. The writer is unsure whether this sub-clause applies only to Meghalaya State or whether it also applies equally to Tripura State, along with Assam and Mizoram.

⁵ Paragraph 3(1)(j), 6th Schedule to the Constitution of India.

⁶ Paragraph 3(3), 6th Schedule to the Constitution of India.

⁷ Paragraph 4(3), 6th Schedule to the Constitution of India.

⁸ Paragraph 4(4), 6th Schedule to the Constitution of India.

governor, both of which are mandatory by law.⁹ It is the fervent hope of this writer that certain provisions that are discriminatory against women, along with other measures that have adverse human rights implications, or are otherwise inappropriate for the protection of the socio-cultural unity and integrity of the Chakmas of Tripura State, are revised, in consultation with a wider section of Chakma society within Tripura State, including women, before the law is formally adopted.

Before the background to the drafting of the TSCCL 2017 draft by the Chakma leaders is described, the issue of the formal process of the final adoption of the law, in this case, by the TTAADC will be discussed. Such adoption has to be followed by the assent of the state governor, as is required by the concerned constitutional and other legal provisions. It is important for the Chakma leadership of Tripura State to understand the nuanced challenges they may have to face in the process of formal legislation, both in the short term and over the long run. They may well benefit by learning about similar challenges faced by the Chakmas in other parts of the world, particularly in the Chittagong Hill Tracts in Bangladesh and in the Chakma Autonomous District Council (“CADC”) territory in Mizoram State, India

3. Challenges in the Process of Formal Legislation: Comparing Tripura, Mizoram and Chittagong Hill Tracts

The author would like to hope that the TSCSC realises that, even if the TSCCL draft is accepted, *in toto*, by the TTAADC and the state governor, the question of process still remains valid, as mentioned above in Chapter 2.

Furthermore it is well to realise that there is no certainty that either one of the two parties involved in the formal legislative process, the TTAADC and the State Governor, or both, may agree with the entire draft. If it is a legal matter, the TSCSL will have to be prepared to deal with it by presenting convincing legal arguments. And if it is a matter of politics, whether based on affiliation to party ideology or local exigencies, they will nevertheless have to face it by mustering their political acumen and strategy, and by forging necessary alliances.

The author was honoured to have had an opportunity of meeting the two recently elected Chakma members of the state legislative assembly, and is grateful for the courtesy and hospitality extended by them to the author during his recent visit. He has nothing but admiration for the vigour, humility and spirit demonstrated by the aforesaid leaders (Shantana Chakma, MLA, also the Minister for Social Welfare, and Shambhu Lal Chakma, MLA). He was also immensely gratified to meet senior social and political leaders of the Chakma, including Sroto Ranjan Khisa (political leader and journalist) and Niranjana Chakma (the immediate past and first Rejyo Karbari and a leading litterateur), Bimal Chakma (who facilitated several key meetings during my trip and who was a vital force behind the Chakma MLAs’ nominations and election) and Shanti Bikash Chakma (second time Rejyo Kabidang, and my chief host, who took so much trouble for my transportation, accommodation, comfort, safety and security), supported by Pradhir Talukder and Abhay Chakma.

⁹ Based on a meeting the writer had with Mr. Jishnu Dev Barman, the Deputy Chief Minister of Tripura State, in Agartala, on 14 May 2018, in the presence of Shambhu Lal Chakma, MLA, senior leader Bimal Chakma and Shanti Bikash Chakma, General Secretary of TSCCL, it would appear that the TTAADC is yet to formally adopt the TSCCL 2017 draft and forward the same to the State Governor for his assent.

He was also honoured to meet the Deputy Chief Minister, Jishnu Dev Barman, TTAADC Chairman, Dr. Ranjit Deb Barma, Minister Mevar Kumar Jamatia, Chief Whip Protima Bhowmik, MLA Ranjit Kumar Das, and prominent human rights activist, Anthony Debbarma. The writer had to contend himself by speaking on the telephone with MP Jiten Chowdhury, and by leaving a gift for Maharaja Pradyut Bikram Kishore Manikya, head of the royal household of Tripura (both were away from the state at the time).

This writer's understanding of the political dynamics of India, Tripura State and the TTAADC area is no more than rudimentary, and therefore he is no position to develop a sound opinion on them, let alone share it in public. However, based on his legal training of thirty-plus years, his experience as a Circle Chief with judicial responsibilities, including on customary law, for four decades, and his research in the field of customary law and justice administration concerning indigenous peoples in South and Southeast Asia, he is taking the liberty of expressing his opinion on the customary law draft of the Chakmas in Tripura State, and if in this he has overstepped the bounds of friendship and traditional bonds between him and the Chakmas of Tripura State, and/or made errors in legal, jurisprudential and factual matters, he seeks their forbearance and forgiveness, along with others who read this article.

Foremost, he would advise caution against "overloading" a written version of customary law in whose formalisation and amendment process the people concerned, in this case, the Chakmas of Tripura State, are not in control. This is because the formal legislative authorities concerned – the TTAADC and the State Governor (a representative of the Union of India) – may or may not agree with the Chakma leadership, during the current process of adopting the TSCCL 2017 Draft and in amending it in future, should such a need arise, and in adopting Rules to supplement the future Act.

Challenges of a similar nature are somewhat better manageable in the case of the CADC, Mizoram, because it is Chakmas themselves who form the membership of the CADC,¹⁰ whereas in the case of the TTAADC, Chakmas have only one member among thirty.¹¹ The situation in the Chittagong Hill Tracts may be considered to have greater or lesser challenges, depending on one's perspective, where an indigenous-majority regional council has the formal mandate to advise the national government on legislation for the region.¹² What cannot be challenged, however, is the fact that the CHT indigenous

¹⁰ The Chakma Autonomous District Council (CADC), with 24 members (20 elected, 4 nominated), is the autonomous authority that administers a part of the Chakma-inhabited territory of Mizoram State, India, which was formed on 29 April 1972, under the 6th Schedule to the Constitution of India. It has an area of over 686 square kilometres and a population of 45,000. The incumbent chairman is Buddha Lila Chakma and the Chief Executive Member is Shanti Jiban Chakma.

¹¹ The Tripura Tribal Areas Autonomous District Council (TTAADC), with 30 members (28 elected, 2 nominated) was formed in January 1982. Initially, it was formed under the 7th Schedule to the Constitution of India, but since 1985, with a constitutional amendment, it came under the purview of the 6th Schedule to the Constitution, through the 49th amendment. It has an area of 7,132 square kilometres. The incumbent chairman is Dr. Ranjit Debbarma and the Chief Executive Member is Radha Charan Debbarma. The sole Chakma and Marma members are Sandhya Rani Chakma and Sathai Mog, respectively.

¹² The legislative prerogative of the CHT Regional Council is laid down in sections 52 and 53 of the CHT Regional Council Act 1998. The regional council may ask the government to amend the CHT Regulation 1900 and other laws, ordinances and orders, if the latter are inconsistent with the Hill District Councils Acts 1989 (section 52). With regard to legislation concerning the regional council or the CHT, the government is to legislate on the basis of consultations with, and the suggests of, the regional council and the three hill district councils (section 53).

peoples have had a very uphill task in getting the national government to legislate on the basis of drafts prepared by the CHT Regional Council – the premier regional-level authority of the CHT – including on amendments to the British-time CHT Regulation 1900, and, in amending the CHT Land Disputes Resolution Commission Act 2001, which deals with the resolution of land disputes in the CHT with the authority of a civil court of law (and which was amended only as late as 2016, after long fifteen years!).¹³

The disadvantage in this respect is offset to some extent by the constitutional acknowledgement of the continued validity of customary law – which is as yet largely unwritten – supported by strong pronouncements of the Supreme Court of Bangladesh.¹⁴ In addition, the presence of the legally-sanctioned role of the traditional system of chiefs, headmen and karbaries, in the sphere of justice administration, and in land and revenue administration, provides an advantage that the CHT system has (somewhat like in the case of the CADC, although with differing structures and legal systems), which is not the case with the Chakmas of Tripura State. In any case, whether one sees the CHT situation in the legislative and judicial spheres as a “half-empty glass” or a “half-full glass”, the fact is that there have so far been no concerted moves to codify or otherwise formalise the customary laws of the CHT’s indigenous peoples. This writer is of the opinion that this state of affairs is justifiable both conceptually, and strategically, but whether a similar approach is applicable to the Chakmas of Tripura State can best be judged by the latter.

In the Chittagong Hill Tracts, from the strategic point of view, relying on oral traditions rather than a written and formalised code makes sense because the task of convincing the national government of Bangladesh to endorse drafts prepared by the CHT Regional Council has been extremely difficult and onerous, as evidenced by the so far futile efforts of the council to amend the CHT Regional Council Rules and the Land Acquisition law for the CHT, among others (although the much awaited amendment to the Land Commission law of 2001 finally happened after one and a half decades of perseverance!).¹⁵

Moreover, there is the whole question of the risks entailed in reducing the essence of nuanced principles of time-tested community-made laws into the formal language of a

¹³ Despite the provisions of the CHT Regional Council, mentioned in the above footnote, the CHT Regulation 1900 was only amended twice after the council was established in 1998. One amendment occurred in 2003, to establish courts at district level under the judiciary (hitherto civil servants were vested with civil and criminal justice administration), and the other, in 2013, to transfer authority over jum cultivation from the Deputy Commissioner to the Chairperson, Hill District Council. The CHT Land Disputes Resolution Commission Act 2001 was not amended until 2016, to incorporate the recommendations of the CHT Regional Council. For a discussion of the functions and challenges of the land council, see *ivRi t` evkxl ivq, creZ` P`EMtgi fig Ges creZ` emxi Awkvi l Huzn`*, (2q m6`-i Y), *gvij qv dvDfDkcb, mAvBicwW, ivOrgwU, 2017*

¹⁴ According to Article 152 of the Constitution of Bangladesh, the definition of law includes “any custom or usage having the force of law in Bangladesh (The Constitutions of India and Malaysia, among others, contain essentially similar provisions). In *Waggachara Tea Estate Ltd. v. Abu Taher & Others*, 36 BLD (AD)(2016), 36 and in *Government of Bangladesh v. Rangamati Food Products Ltd & Others*, 25 BLT (AD)(2017), 121, the Supreme Court of Bangladesh upheld the continuing constitutional validity of the CHT Regulation 1900 and the customary laws of the Chittagong Hill Tracts. In *Wagachara* case the court cited extensively from the UN Declaration on the Rights of Indigenous Peoples and referred to the hill peoples of the CHT as ‘indigenous’.

¹⁵ The CHT Land Commission had been effectively non-functional since its inception up to 2016. The approval of the government for the draft amendment Rules prepared by the council has been kept pending for several year. Similarly, a draft proposal of the council on amendments to the CHT Land Acquisition Regulation 1958, which was forwarded to the government for approval in 2017, is yet to be acted upon.

statute. Statutes, however well-drafted, often fail to give justice to the principles of oral customary law principles. In several jurisdictions worldwide, such inappropriately drafted statutes have also created difficulties in the process of implementation, through administrative or judicial processes, and otherwise. To phrase it otherwise, one may question: *why subject the self-determination right, as practised autonomously by the peoples concerned, to undue interference by the state by putting it into a “basket” that is held by the state, to the exclusion the people, about whom the law is all about?*

Then there is also the conceptual and moral issue of a people’s own genius in regulating its own affairs. If the state does not interfere in such spheres – and generally both the Indian and Bangladeshi states have not interfered with the practice of traditional customary personal laws of its indigenous peoples (dealing with inheritance, marriage, divorce and related family matters) – why risk bringing in its undue interference?

Customary law is one of the few tools that indigenous peoples have in their interface with the state and the outside world where they deal from a situation of strength and advantage, at least in pluralist legal systems such as in Bangladesh and India (as also Malaysia and large parts of Africa),¹⁶ It is therefore only rational not to subvert this state of affairs into a situation where the peoples become passive spectators in a process in which they have little or no control.

4. Background to the Drafting of the TSCCL 2017 Instrument

The very first time that this author came to know about the existence of the TSCCL 2017 draft, but not about its provisions, was three or four years ago, when he received an appeal from some Chakma women from Tripura State, perhaps by email, to support them in their endeavour to remove provisions from the then draft that were discriminatory against women. However, these communications simmered down, especially after this writer was informed, by whom he cannot recall now, that the ‘heat was off’, and that there was no impending urgency concerning the matter for the very near future.

It was only as recently as this writer’s last visit to Tripura State, on 11-14 May 2018, that he realised that a draft law had already been finalised, at least as far as the Tripura State’s formalised social leadership of the Chakmas was concerned (the TSCSC), with gender-insensitive provisions still looming large on the horizon. He was disappointed to see very few women representatives at the 2nd council of the TSCSC on 13 May 2018, with not a single woman speaker being included, and his fears began to rise. This was reinforced by the author’s unscheduled discussions on 14 May 2018 with a number of Chakma women

¹⁶ For a detailed discussion on the strengths of customary law in its interface with the state, see the following publications of this author (Raja Devasish Roy), “Challenges for Juridical Pluralism and Customary Laws of Indigenous Peoples: The Case of the Chittagong Hill Tracts, Bangladesh” in *Arizona Journal of International and Comparative Law*, Vol. 21, No.1, Spring, 2004, pp. 113-182; *Traditional Customary Laws and Indigenous Peoples in Asia*, Minority Rights Group International, London, March 2005; “Asserting Customary Land Rights in the Chittagong Hill Tracts, Bangladesh: Challenges for Legal and Juridical Pluralism” in Marcus Colchester & Sophie Chao (eds.), *Divers Paths to Justice: Legal Pluralism and the Rights of Indigenous Peoples in Southeast Asia*, Asia Indigenous Peoples Pact (AIPP) et al, Chiangmai, 2011, pp. 106-125; “Indigenous Peoples and International Human Rights – Plural Approaches to Securing Customary Rights” in S. Chao and M. Colchester (eds.), *Human Rights and Agribusiness: Plural Legal Approaches to Conflict Resolution, Institutional Strengthening and Legal Reform*, Forest Peoples Programme, Moreton-on-Marsh, 2012, pp. 61-78.

living in Agartala, who stated that they were totally unaware about the draft and its finalization by the TSCSC.¹⁷

However, unknown to the author, and to most Chakmas in the Chittagong Hill Tracts, the first version of the TSCCL 2017 draft had been already framed by 1998.¹⁸ This author was presented with a formal publication containing the latest draft on 12 May 2018 during his attendance at the TSCSC's second council in Jhorjhor.¹⁹ The author is now also in possession of an electronic draft of the law, entitled 'Chakma Customary Law 1998' (Chakma Oitijhobahi Ain-1998), which he obtained on 20 May 2018, and which appears to have been amended in 2011. On the same day, i.e., 20 May 2018, this author obtained yet another electronic version of the draft, containing an 'Introduction' by Niranjana Chakma, [the then] Rejyo Karbari, dated 10 December 2016, which also traces the process of drafting, vetting and amendments to the draft.

5. The Scope and Ambit of the TSCCL 2017 Draft

The scope and ambit of the TSCCL 2017 Draft is vast, highlighting customary rules on personal and family laws of the Chakma nation, such as marriage, pre-marital and extra-marital relations, divorce, adoption, social offences, judicial processes and formats of record-keeping.

Additionally, the draft goes far beyond matters that jurists would consider as 'law' from a practitioner's perspective. It includes social customs, traditions, taboos, rites, rituals and spiritual aspects of belief systems that many would consider to be more in the realm of subjects that anthropologists, sociologists, political scientists and scholars of other such disciplines are more familiar with than jurists and legal practitioners.

Moreover, the draft also includes, albeit to a modest extent, several beliefs related to the sustainable use of lands, water bodies, hills and ridges and other such landscapes, which would, the author believes, raise an ecologist and biodiversity enthusiast's adrenaline levels to unbelievable limits (so much so that he could not resist my temptation to make a brief facebook status on the subject of ecology related to the aforesaid practices and beliefs on 20 May 2018!).

In other words, the TSCCL 2017 Draft covers a wide range of social and environmental practices that were intertwined with the livelihoods and lifestyles of the Chakma people in the past, and are still very relevant to them, or at least to those sections that live in the rural areas and live off the land, whether that is in Tripura State, Arunachal Pradesh and other parts of Northeast India, the Chittagong Hill Tracts in Bangladesh or Rakhine State, Burma (Myanmar), where major segments of the world's Chakma population live.

¹⁷ Those present at the aforesaid discussion included Bina Chakma, Uttara Chakma, Dr. Antara Chakma and Sima Chakma.

¹⁸ In the formally published book, *Chakma Customary Law*, edited by Shanti Bikash Chakma, and distributed during the 2nd conference of the TSCCL held in Jhorjhor, Nutan Bazar, Gomati, Tripura on 13 May 2018, which was attended by this writer as a guest, the Preamble to the book (at page 7) states that "... the Chakma Law Sub-Committee was formed to draft and record the Tripura State Customary Law on 29th September 1998 at Khumulwng, Tripura, following a seminar [participated in by] ... Chakma social leaders, Chakma leaders and representatives of the intellectual section of Chakma population."

¹⁹ See the previous footnote for the full title of the book.

This author was particularly heartened to see the faithful reflection of several practices relating to social integrity, environment protection and marriage customs that are making a precarious existence in the far-flung frontier areas of the Chittagong Hill Tracts and are nowadays hardly known about in the urban and semi-urban settlements, beyond the bare basic levels. In fact, he believes, and which belief he shared in his interactions with his Chakma hosts in Tripura State during his recent visit, that this rich heritage of the Chakmas in Tripura State, with regard to their robust practices on ecology, social rites, language, literature, dance, drama and music, among others, would help revive and/or invigorate forays of the Chakmas of the Chittagong Hill Tracts in similar fields, where, in some respects at least, these practices have been, or are being, forsaken, or practised far more feebly.

The inclusion of provisions on wedding rites and other matters related to marriages in the TSCCL 2017 Draft were of special interest to the author.²⁰ Given that marriage rituals are losing much of their vigour in the Chittagong Hill Tracts, particularly in the urban areas, it is hoped that the Tripura Chakma law will help revive many eroded rituals and ceremonies in the Hill Tracts.

Many of the taboos on land use in Tripura State and the CHT are essentially similar. The taboos on *Haza*, *Deo Dhulon*, *Nil Sumo Gaat* and different types of *Harook* are also prevalent in the CHT, along with others, such as *Biyetra Bhide*, *Debeda Gawr*, *Seraak Daani*, *Naak Haat*, *Nawtanye Sora Thoom*, etc.

The following tables, Tables 1 to 4, refer to some of the ecology-related provisions of the TSCCL 2017 Draft. The tables are more or less self-explanatory and I shall not discuss them in a narrative manner.

Table 1
Taboos related to Protection of Salt Licks ('Haza')

Provision in Brief	TSCCL Draft Reference	Rationale	Remarks
Haza Prohibition against environmentally harmful use (including jum cultivation and inhabitation) of Haza and adjacent land, with beliefs of natural law sanctions.	S. 73(i)	A longstanding belief is that if anyone uses a Haza (Salt Lick) for jum, dwelling house, or excretes or urinates or spits on the same, misfortune, including leprosy, ring worms and/or fatal skin diseases will afflict him or her. If such taboos had not been in place, these Hazas would have been destroyed, depleted or degraded, and the wild animals deprived of a valuable source of food and nutrition (salt).	This is a taboo that facilitates the conservation of a Haza (whether or not the belief of natural law sanction actually befalls the perpetrator or not). Hazas are salt licks where wild animals (elephant, bison, Sambhur, deer, etc.) obtain their intake of salt. Beliefs such as these of the Chakma, and other indigenous peoples, have contributed to conservation and protection of ecology and the natural environment over the centuries. <i>These customs need to be researched into, collated, recorded and promoted, including through social and penal sanctions.</i>

²⁰ Particularly in sections 15 (Udo Lona), 16 (Sangoo Duor Ban), 17(1) (Bo Saa Jana/Bo Puch Gorana), 17(2) (Pur Banah), 19 (Dabha), 21 (Salikya), 23 (Bo Khoza), 25 (Jadan), 27 (Sumulong), 33 (Khana Sirana), 34 (Bo Gozanah), 35 (Jaamei Gozanah), 36 (Biye-Sud Bhanga), etc. The comparable provisions of the law applicable in the Chakma territory within Mizoram state, India, with less elaborate provisions, are contained in sections 24-31 of the Chakma Customary Laws Code 1997.

Table 2
Taboos related to Protection of Plants & Water Bodies (Deo Dhulon)

Provision in Brief	TSCCL Draft Reference	Rationale	Remarks
<p>Deo Dhulon Prohibition against environmentally harmful use (including jum cultivation and inhabitation) of <i>Deo Dhulon</i> and adjacent land, with beliefs of natural law sanctions.</p>	S. 73(ii)	<p><i>Deo Dhulon</i>, meaning the swings or hammocks of evil spirits, are protected on account of the taboos with accompanying sanctions (believed to be self-perpetuating without social sanctions).</p>	<p>The <i>Deo Dhulon</i> are used by wildlife (monkeys, squirrels, birds, reptiles and other creatures), whether or not too by spirits.</p> <p>Human interventions often hamper access of wildlife (and spirits?) to them.</p> <p><i>These customs need to be supported and strengthened.</i></p>

Table 3
Taboos related to Protection of Underground Caverns & Aquifers (Nil Sumo Gaat)

Provision in Brief	TSCCL Draft Reference	Rationale	Remarks/ Recommendations/ Suggestions
<p>Nil-Sumo Gaat Disruption of water of a Nil-Sumo Gaat (a natural flow of water from vertical channels that flow downward into a cavern, stream or aquifer) is believed to bring forth natural disasters and famines.</p>	S. 73(iii)	<p>Protection of aquifers and other water bodies for preventing landslides, soil erosion and depletion.</p> <p>Supply of adequate water for sustainable use by humans and wildlife.</p>	<p>This is a taboo that facilitates the conservation of a natural water flow into a stream or aquifer.</p> <p>The ecological health of hill forests and the livelihoods of swidden cultivating and forest-dependent communities is intertwined with the conservation of such landscapes.</p> <p><i>These customs need to be supported and strengthened.</i></p>

Table 4
Taboos related to Protection of Fragile Landscapes (Nil Sumo Gaat)

Provision in Brief	TSCCL Draft Reference	Rationale	Remarks/ Recommendations/ Suggestions
Monuchchoro Harook Inappropriate use of Monuchchoro Harook (Summit Land) believed to cause death in the family.	S. 73(iv)	Protection of Ecology & the Natural Environment	<i>These customs need to be supported and strengthened.</i>
Ek Mocche Bhidey Prohibition against inappropriate use of Ek Mocche Bhidey for fear of death of the family head.	S. 73(v)	As Above	As Above
Leza Samoogo Baach, Paah, Pakkon Harook, Pori Khola, etc. Prohibition against inappropriate use of certain types of land or water bodies for fear of natural sanctions.	Ss. 73(vi) 73(vii) 73(viii) 73(xiii)	As Above	As Above

Table 5
Punishment of Pouring Water under a Pipal Tree (Bot Gaach)

Provision in Brief	TSCCL Draft Reference	Rationale	Remarks/ Recommendations/ Suggestions
Pouring Water on a Bot Gaach Offenders of a Gorba Kudum illicit relationship are penalised by having to pour water on a Pipal Tree (Bot Gaach)s.	S. 73(iv)	Protection of Ecology & the Natural Environment. The Pipal tree gives shade to people. One species, known as the Bo Tree in Sri Lanka (<i>Ficus religiosa</i>) is the species of tree under which Gautama Buddha is believed to have attained enlightenment.	<i>This penalty may be extended to other social offences as well. It is a service to the community.</i> Several countries in Western Europe, and North America provide community service in lieu of punitive sentences to penal offenders.

6. Provisions of the TSCCL 2017 Draft that are Discriminatory Against Women

The author had stated at the beginning of this essay that there are provisions in the draft law that have negative implications on the rights of women, many of which are contrary to the provisions of the Convention on the Elimination of Discrimination against Women (CEDAW). This chapter deals with them, in chronological order. The discussion is aided, in the case of several of them, by an accompanying table, which reproduces the gist of the provision in summarised form, along with the rationale behind their existence, and/or the rationale behind their exclusion, along with suggestions and recommendations in several cases. The first of these are certain prohibitions related to childbirth, as reproduced graphically in Table 6 below.

Table 6
Prohibitions against Chakma Women concerning
Childbirth & Multiple Marriages on the Same Day & in the Same Year

Provision in Brief	TSCCL Draft Reference	Rationale	Remarks/ Recommendations/ Suggestions
Prohibitions concerning Childbirth Prohibition against a Chakma Woman giving birth in a home other than that belonging to her father, husband or husband's clan	S. 12(1)	In today's world of living in urban areas, and migration, there may be circumstances when childbirth in places not mentioned in S 12(1) be required For example, what harm is there if the woman gives birth in her muzi/jedei (maternal aunt)'s home?	The provision is more progressive than customs whereby a childbirth in the mother's father's home is prohibited, but it can certainly be made more progressive and consistent with human rights

Table 6 above mentions the prohibitions against a woman giving birth in a home other than that of her husband, or husband's clan or father. This is more progressive in some respects than some practices in the Chittagong Hill Tracts which forbid childbirth in a pregnant woman's father's house, except in a shed outside the main structure. However, this nevertheless creates difficulty and there is no good reason to hold on to this practice. The main issue should be that the place selected is based on the choice of both the spouses and has in mind safety, security and comfort of the mother-to-be.

Table 7
Prohibitions concerning the Marriage of Daughters in Certain Cases

Provision in Brief	TSCCL Draft Reference	Rationale	Remarks/ Recommendations/ Suggestions
<p>Prohibitions concerning Marriages of Daughters in certain cases</p> <p>Prohibition against two daughters being married off on the same day with no similar prohibition against two sons being so married.</p> <p>Similar injunction against a daughter being married in the same year that a son got married</p>	S. 16(6)	<p>These two provisions are contrary to the equality clauses of the Constitution of India and International Convention on the Elimination of Racial Discrimination (CERD) and are also otherwise Discriminatory against Women</p>	<p>These practices are rooted in a view that regards women as essential 'workers' within the family and therefore sought to prevent such loss of members of the 'work force'.</p> <p>It is unacceptable in today's world from basic human rights standards and perspectives, and contravene the provisions of CEDAW.</p>

Table 7 above mentions the prohibition against two daughters of a house being married off on the same day and another prohibition against a daughter being married off in the same year that a son was married in. The rationale is obviously that women of the household, whether a daughter or a daughter-in-law, are seen as work hands, and the prohibition seeks to prevent the reduction of such work hands from the family. In today's world, such a decision is best left to the decision of the family and not regarded as a social matter. In earlier times, particularly in communities dependent on jum or swidden cultivation, communities had close-knit relationships of families, and therefore, the integrity of a household affected the integrity of the whole village or community.

Table 8
Prohibitions against Widows Participating in Bo Tulana Etc.

Provision in Brief	TSCCL Draft Reference	Rationale	Remarks/ Recommendations/ Suggestions
<p>Prohibitions against Widows</p> <p>Prohibition against a widow participating in <u>Bo Tulana</u> [S. 26(1)] and in <u>fetching water for Sumulong Puzo</u> [S. 28(2)]</p>	S 26(1) S 28(2)	<p>This came to be in the belief that this would bring bad luck and cause the death of the bride (and/or groom).</p> <p>Such beliefs are not backed by our spiritual or religious (Buddhist) tenets.</p> <p>They are doubly discriminatory (because a widow has no husband) and are contrary to CERD.</p>	<p>It is interesting to note that this prohibition is not included in Bo Khoza (S. 23), although this is sometimes practised in the CHT, where it also includes the widower in the injunction.</p> <p>In both cases it is unacceptable.</p> <p>The incumbent Chakma Rani Yan Yan was received by her mother-in-law, the Late Rani Arati, although Rani Arati was then a widow.</p> <p>Many other Chakma families in the CHT are also likewise rejecting this practice, for both <u>widows</u> and <u>widowers</u>.</p>

Table 8 above mentions the prohibition against widows participating in *Bo Tulana* and in fetching water for the *Sumulong Puzo*, as mentioned in the TSCCL 2017 Draft and also compares these practices with similar taboos on widows and widowers in the Chittagong Hill Tracts against participating in *Bo Khoza* and *Bo Barey Dena*. The table itself deals with the issues quite substantively, and hence no further discussion is provided, except to say that the practices ought to be discontinued, and hence the matter excluded from the draft law.

Table 9
Polygyny (A Man having Several Wives at the Same Time)

Provision in Brief	TSCCL Draft Reference	Rationale	Remarks/ Recommendations/ Suggestions
<p>Polygyny A man having a wife is permitted, during her lifetime, to marry again, in cases where she is sterile, physically and/or mentally handicapped, or adulterous, in some cases with her consent, and in some cases, without it.</p>	<p>S. 39(3)</p>	<p>These provisions are contrary to the equal rights of women according to the Constitution of India and CEDAW.</p> <p>Although not as yet formally declared illegal in the CHT, the practice is frowned upon, and has virtually disappeared in urban and semi-urban areas. It happens in rare cases in rural parts of the CHT.</p>	<p>NB. Polygamy: means many marriages; Polygyny: means many wives; Polyandry: means many husbands.</p> <p>It seems that the Tripura Code has basically followed the provisions of the CADC Code of 1997 (S. 21)(where it incorrectly refers to ‘polygamy’ rather than ‘polygyny’).</p>

Table 9 above discusses, in some detail, the undesirability of including provisions on *polygyny* (a man having several wives at the same time). It appears to be based on the CADC Code 1997 (at section 2), which contains similar provisions. This practice is being increasingly rejected by Chakma society, both in the Chittagong Hill Tracts and Tripura State. *The provision ought to be excluded even if consensus cannot be reached. The matter can still be addressed by drawing upon oral customary law practices.* The matter ought to be discussed with the Chakma leadership in CADC too, along with other matters discussed in this article. *It is not as if anything that is not included in the written law ceases to exist as a custom or practice!* Incidentally, *Polyandry* (a woman having several husbands at the same time) is not known to have ever existed among the Chakmas. *Polygamy* means “many marriages” and includes both polygyny and polyandry.

Table 10
Prohibitions on Women concerning Dressing, Wearing & Washing Hair and Touching Food

Provision in Brief	TSCCL Draft Reference	Rationale	Remarks/ Recommendations/ Suggestions
A woman combing her hair while sitting on the door being a 'bad girl'	S. 71(5)	If the house is dark, she needs light, needs fresh air, what's wrong?	Patriarchal and discriminatory towards women, which are contrary to CEDAW, and of no value to present society, and should therefore be excluded completely.
A woman with hair loosened, or someone carrying an empty pitcher brings bad luck for a journey	S. 71(15)	Hairstyle is a personal choice How can one fetch water with a pitcher other than when it is empty?	Do
A woman touching food in the morning before washing her hands being ominous	S. 71(18)	Why can a woman not do so while a man can do so?	Do
Married woman bringing ill fate for her husband by washing her hair after mid-day	S. 71(24)	What of un-married women?	Do

The writer respectfully suggests that none of the matters referred to in Table 10 above are worthy of inclusion in a legal instrument in the present time on the ground that they are patently disrespectful of the identity and dignity of a woman and are also otherwise discriminatory. How a woman *dresses* or *wears her hair* is her individual right. The same in the case of a married *woman washing her hair*, whether it is before or after mid-day. Although indigenous peoples' collective rights are crucial to their survival as distinct nations and peoples, these must also be balanced against the individual rights possessed by members of an indigenous nation or people. It is with such matters in mind that the UN Declaration on the Rights of Indigenous Peoples states, in a preambular paragraph, the following:

“Recognizing and affirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as people”.

Similarly, whether a woman touches food in the morning before washing her hand, should not be taken as a fault, because if no similar injunction is placed upon a man, that is simply discriminatory and violative of both national and international human rights law.

Table 11
Disrespectful & Offensive Terminology: Coquetry & Virgin

Provision in Brief	TSCCL Draft Reference	Rationale	Remarks/ Recommendations/ Suggestions
'Coquetry' as the English translation of 'Sineli'	Ch. VIII	Whether this is etymologically correct is questionable. It is like "Fielding Mara", and men indulge in it too!	Imparts disproportionate blame on women. A woman who acts "coquettish" "... acts in a playful way that is intended to make men find her attractive" (Collins Dictionary). It is contrary to CEDAW, and should be excluded.
"Virgin"	S. 74(5)	???	Reference to "virgin" should be excluded as it is not socially acceptable in today's world as it is discriminatory against women.

Table 11 above draws attention to some terms (and there may be more in the draft that did not catch the writer's attention), namely, "coquetry" and "virgin", which are gendered and unacceptable in today's world. The term "coquetry" implicitly blames the woman for attracting a man's attention, whilst it is perhaps a universal truth for all societies for all times, that men indulge in it as much as women, and therefore women cannot be singled out for blame for such an act. A sineli offence is as much a woman's fault as it is a man's, and the punishment for such has never traditionally distinguished between the two sexes! Similarly, "virgin" is a word that is totally unacceptable in the 21st century, and it needs hardly be mentioned that any reference to it should be dropped.

Table 12
Grounds of Divorce against a Wife for "Not Looking After Husband's Parents"

Provision in Brief	TSCCL Draft Reference	Rationale	Remarks/ Recommendations/ Suggestions
Divorce on the ground that the wife does not look after the husband's parents	S. 75(xiii)	In a joint family, this responsibility falls upon the wife, whilst most husbands escape from this responsibility, which is unfair.	Suggest exclusion of this as a formal ground for divorce (the allegation can nevertheless be brought up in a divorce petition to the court). However, when any such complaint is made, the complainant should also be made to establish that he/she has carried out his/her share of the family responsibilities faithfully, especially considering that the parents are his/her biological parents (and only parents-in-law of the other spouse)

“Not looking after the husband’s parents”, as a ground of divorce against a wife, as discussed quite extensively, in Table 12 above, is clearly discriminatory against women, and hence, should be excluded. The responsibility for looking after the spouse’s parents should be borne by both wife and husband, whether living in the same house or not. Chakmas are generally *patrilocal*, in that the woman stays in the husband’s house, often including his parents. Thus a woman bears the honour and the burden of looking after her husband’s parents, while the husband has neither! If the husband had to look after his wife’s parents for even one-tenth of the period that his wife serves his parents, we might have had many more cases filed by women than men on this ground. Needless to mention, this ground ought to be excluded. Where particular cases of unkindness, disrespect or cruelty arise, these may be dealt with by the court according to the merits of the case.

Table 13
Grounds of Divorce against a Wife for “Degraded Character”

Provision in Brief	TSCCL Draft Reference	Rationale	Remarks/ Recommendations/ Suggestions
Divorce on the ground that the “wife’s character” is “degraded”	S. 75 (xv)	The ground is too vague, and appears to be based on patriarchal values.	Suggest deletion. The ground is valid only if it encompasses an extra-marital relationship, but should apply equally to both men and women and should not be limited to a vague assessment of “degradation” of “character”.

The “degraded character” of a wife as a ground of divorce, as mentioned in Table 13 above, with no corresponding ground for divorce against a husband, is clearly unfair, discriminatory and ought not to be included in the law. If it is retained as a formal ground, it should be made equally applicable to both husband and wife. If a survey were to be done among Chakmas, in Tripura State, or elsewhere for that matter, the writer would be surprised if the cases of infidelity on the part of husbands were not higher than that of the wives! Rather than focus on “character”, the concerned court can look at the actual occurrence of an act of infidelity, and that does not have to be included in the law, but can be invoked on the basis of oral customary law.

Table 14
Burden of Proof on Unmarried Mother to Determine Identity of Biological Father

Provision in Brief	TSCCL Draft Reference	Rationale	Remarks/ Recommendations/ Suggestions
Pregnancy outside of wedlock & Burden of Proof on woman to determine identity of biological father	S. 74(6)	Questionable whether this is fair and just.	Suggest re-phrasing to put the burden on society as a whole, the family concerned and the court.

The matter referred to in Table 14 above is problematic. If a woman fails to determine the identity of the biological father, in a pregnancy “out of wedlock”, in most cases, if not all, there may be cogent reasons for that. Among others, it may be because the father is a powerful or influential person and she fears to name him. In any case, she is guilty of a Sinali offence. To give her a bigger penalty than those who have not become pregnant is discriminatory. After all, she will now have to bear the stigma of a single un-married mother and may also have to look after the child.

Table 15
Forfeiture of a Wife of Husband’s Property in Case of Re-Marriage

Provision in Brief	TSCCL Draft Reference	Rationale	Remarks/ Recommendations/ Suggestions
Forfeiture of rights of divorced wife to property obtained from former husband, on account of re-marriage	S. 76 (vii)	This is justifiable where it concerns maintenance but not other property that the wife obtained because the divorce came upon due to the husband’s fault	Suggest amendment of this clause to refer only to property or cash payments related to maintenance. As the divorce happened due to the husband’s fault, it would be equivalent to condoning his past wrongdoing or revoking his punishment, just because his former wife remarried. Also, the second marriage may have taken place because of needs of social and physical protection for the woman, and/or any children and other members of her immediate family, rather than out of free choice.

Table 16
Forfeiture of Widow’s Rights in Certain Cases

Provision in Brief	TSCCL Draft Reference	Rationale	Remarks/ Recommendations/ Suggestions
Forfeiture of property rights of widow for re-marriage, pregnancy, “anti social and illegal activities” and “careless lifestyle”	S. 76 (vii)	Some of the grounds may be justified, depending on the circumstances, others are questionable, and “careless lifestyle” is arbitrary.	The entire section may be excluded. If circumstances lead to serious allegations of unseemly or outrageous conduct of the widow, the court may yet take up the matter on the basis of oral customary rules. “Careless lifestyle”, “anti-social and illegal activities” are too broad and arbitrary. Moreover, if no such restriction applies to widowers (males), then they should not apply to widows (females) either.

Table 15 refers to a situation that is unjust, as it deprives the wife of the property she received from her previous and estranged husband. If she received the property because of a divorce due to the husband’s fault, she should be allowed to retain it. She may well have been happier in the first marriage but for the fault of her first husband. She may be

going for a second marriage not out of free choice but due to needs of security (the social status of a divorced woman in Chakma society is not to be envied at all).

The grounds of forfeiture of property rights from a widow as mentioned in Table 16 above, including “anti-social activities” and “careless lifestyle”, etc. are also rather arbitrary and vague, and discriminatory (also because no similar restrictions apply to widowers). As mentioned in some detail in the above table, these provisions ought to be excluded from the draft.

7. Other Provisions of the TSCCL 2017 Draft that are Not in Accordance with International Human Rights Standards

There are other provisions contained in the TSCCL 2017 Draft that are not considered to be in conformity with international human rights norms and standards, or are otherwise inappropriate, and against the interests of social integrity and social advancement, as mentioned hereafter, and hence should be excluded from the draft.

Table 17
Prohibitive Degree Marriages

Provision in Brief	TSCCL Draft Reference	Rationale	Remarks/ Recommendations/ Suggestions
<p>Prohibitive Degree Marriage A man and a woman from the same Gozha-Gutthi (Sub-Clan or Sept), having a <i>Khelya</i> relationship, cannot marry unless seven generations have elapsed.</p>	39(ii)(b)	<p>The CADC Code of 1997 has identical provisions [S. 23(2)]</p> <p>Formally, this is the position in the CHT too, as no specific statute, order or judgment has ruled otherwise.</p> <p>However, in practice, post-5 Generations’ marriages are not uncommon in the CHT.</p>	<p>Whilst it is desirable to prevent or discourage close consanguinity marriages, 7 generations are considered by many to be too restrictive.</p> <p>Similarly, first cousin marriages on the maternal line is still allowed, which many disapprove of.</p> <p>Many have suggested that restrictions be imposed also in the female line, at least between first cousins (Pizanga/Moila & Jedenga-Moizanga Bhei-Boan Marriages).</p>

Bar against marriages between with ‘prohibitive degree’ relatives have been dealt with extensively in Section 39 of the TSCCL 2017 Draft, whose provisions are essentially similar to the comparable provisions in the CADC Code 1997 (esp. section 23). Table 17 above, however, only deals with marriages between *khelya kudum* cousins from the same *Gozha* and *Gutthi*, who can only marry if seven generations have elapsed.

This question actually came up in the Court of the Chakma Raja in Rangamati, some months back, where the author in his capacity as the Chief was asked to provide his ruling in a case brought by a Karbari from the Bohmong Circle (in an advisory capacity, since the parties’ place of residence is part of the Bohmong Circle). Since the issue often comes up before community judges and elders, the writer in his capacity as the Chakma Chief held a consultation workshop on 22 March 2018, which was participated, among others, by representatives of the CHT Regional Council, the Rangamati Hill District Council, major headmen’s organizations, NGOs and civil society and senior social leaders

(Goutam Dewan, Sudatta Bikash Tanchangya and Zuamlan Amlai), a summary of the discussions in which is given below.

The author briefed those present by clarifying that although the prohibition was up to the seventh generation until the marriage of Kumar Ramani Mohan Roy, brother of Raja Bhuvan Mohan Roy, in first decade of the 20th century. This marriage involved cousins of the same *Gozha* and *Gutthi* having crossed five generations, but less than seven generations, and this was allowed with the consent of the Chief and elders of the circle, and wherefore, the ban has come down to five generations. Moreover, community elders in different parts of the Chakma Circle, allegedly with the tacit support of the Jana Samhati Samiti (JSS; the leading regional political party of the CHT), have been known to have accepted several post-three generations marriages, although no formal ruling on the issue was given by the Court of the Chakma Raja.²¹ It may be of interest to historians and legal scholars alike to note the two different initiators of customary law reforms involved here; the royal family in the one case and community leaders in the other!

As of now, the proceedings of the above workshop have not been made public, and the Bohmong Circle matter too is left to be officially dealt with soon, but the writer nevertheless has no hesitation to share his views in this article.

Within the Chakma Circle, it is now settled that the bar does not extend beyond the fifth generation. However, since villagers have been sanctioning lower than five-generation marriages, it is the considered opinion of the author that the bar needs to be relaxed, albeit with certain guidelines as to what may constitute the general rule and what may be an acceptable exception. In the case from the Bohmong Circle, although the relationship had crossed four generations, the families, having been re-settled in their place from different parts of the Chakma Circle after the Kaptai Dam was built in 1960, were not aware of the clan relationship during the courtship period (it needed a Karbari from their previous village in the Chakma Circle to throw light on the matter). The writer is inclined to allow this marriage as one of the allowable exceptions, which was also the discreet advice of the octogenarian karbari!

In the case of Tripura State, this author would like to urge the leaders and elders to also use their prudence and wisdom, and thereby bring the bar down to the fifth generation as a rule, with allowable exceptions between the fifth to the third generation, depending upon: (a) the knowledge of the relationship among the parties and their families; (b) the nature of the social relations between the families of the parties; and (c) the role of the Karbari, the Panjayet members and social elders during the period of courtship and/or elopement, among others. *Five generations are not as close as one might think. I urge the reader to make a family tree with her or him at the point of the sixth generation. She or he will thereby realise that she or he is probably not even aware of the existence of many of the relatives of the sixth generation concerned, let alone the acquainted with then!*

²¹ This matter was also deliberated upon in *Nabin Sen Chakma v. Punya Jyoti Chakma* (Misc Case No. 01/2004 of the Chakma Raja's Court) and in an advisory Memo issued by the Chief through his memo dated 18/02/2015. Similar matters of bans on prohibitive degree were addressed through the Chakma Raja's memos and certificates dated 9 December, 2006 and 3 August, 2011.

Table 18
Custody & Paternal Identity of Child Born “Out of Wedlock”

Provision in Brief	TSCCL Draft Reference	Rationale	Remarks/ Recommendations/ Suggestions
Custody of child born of union involving a Gorba Kudum relationship will be decided by the social court	S. 74(13)	Society bears the responsibility of the welfare of a child born out of a socially unacceptable union	In such a case, and in all such cases, the decision on child custody should be based upon the best interest of the child, based on the Convention on the Rights of the Child. Precedent: Misc Case No. 02/1994; 02/2009; 01/2010; 2/2010; 02/2015; 01/2016; the Court of the Chakma Raja)
Maintenance for child born out of wedlock and her mother (kidnapping, elopement, adultery, etc.) to be borne by biological father	S. 74(22)	The rationale for such an arrangement is just and fair. Such an example is worthy of being emulated elsewhere, including the Chittagong Hill Tracts. However, a suggestion is made regarding the child’ paternal identity in the next column.	The child born out of wedlock is blameless and should therefore not have to bear the burden of being called a ‘jargo/jarbo puo’. The biological father may be officially acknowledged as the child’s legal father, unless the mother disputes it, or the court provides the name of some other person or provides other honourable and acceptable solutions. NB. Mizo society, it is said, used to traditionally consider children born out of wedlock as “Children of God”.

Unlike several other provisions of the TSCCL 2017 Draft, the provisions mentioned in Table 18 above are essentially humane and just, as mentioned above in the column on “Rationale”. They have only been included in this chapter as a matter convenience of discussion and the author’s view is merely that the humanitarian element already inherent in the provisions may be further strengthened by providing a choice to the mother to have her child’s biological father be named as her/his legal father. The decisive factor should be the best interests of the child, without looking into the matter of blame or fault, and to enable the child – who is blameless – to have a respectable identity, including paternity.

**Table 19
Punishments**

Provision in Brief	TSCCL Draft Reference	Rationale	Remarks/ Recommendations/ Suggestions
Punishment for “touching” Gorba Kudum may amount to the offence of “adultery”	S. 74(18)		The section refers to the female offender only, and should be gender-neutral and mention both. To consider mere touching as equivalent to actual adultery is going too far by today’s standards and should therefore be re-phrased.
Shaving of Head	S. 112(7)		Amounts to cruel, inhuman and degrading conduct, which do not conform to human rights standards, including the Convention Against Torture (CAT), and hence should be excluded.
Kuro Odhok	S. 112(7)		Do

The punishment for “touching” a Gorba Kudum, where it is considered “grave”, as mentioned in Table 19 above, which is being regarded as equivalent to adultery, is deemed to be too harsh. This is also another of the various matters that would best be dealt with, on a case by case basis, and not included in the law. Similarly, the punishments of shaving of the head and “Kuro Odhok” are also extreme, judged by today’s human rights standards, and are probably violative of the Convention against Torture, and hence should be excluded from the draft and discontinued.

**Table 20
Sur Kagoch**

Provision in Brief	TSCCL Draft Reference	Rationale	Remarks/ Recommendations/ Suggestions
“Sarasari or Sur Kagoch” (Heading)	Ch. IX S. 75 (Heading & in Text)	The concepts are confused. Sarasari is the act of divorce (the substance), while Sur Kagoch is merely one of the many ways to bring about a divorce (the process). Divorce through a “Sur Kagoch” is acceptable, but only if this is through mutual consent and is accepted by society.	Delete reference to “Sur Kagoch” from the headings. Add a separate section on ‘Sur Kagoch’ Qualify that it: (a) must be signed by both parties, based on their free will; (b) is accepted by a competent customary law court

The reference to “Sur Kagoch” as a synonym for divorce, as mentioned in Chapter IX and section 75, both in the heading and in the text, and reproduced in Table 20 above, is misinformed and incorrect. Divorce is the legal annulment of a marriage and the *Sur Kagoch* is merely one of the many ways such annulment may be achieved. It is confusing the substance with the process. The reference to *Sur Kagoch* as a synonym for divorce ought to be removed from both the heading and the text, and, as mentioned in the fourth column above, the conditions whereby a divorce may be achieved through a *Sur Kagoch* ought to be specified in a separate section under its name, clarifying, among others, that it may only be considered to be valid and legal if it is done with the mutual consent of the spouses.

Table 21
Infertility as Ground of Divorce

Provision in Brief	TSCCL Draft Reference	Rationale	Remarks/ Recommendations/ Suggestions
Infertility as ground of divorce	S. 75(vii)		<p>Infertility as a ground for divorce is problematic since such is a common affliction, for both males and females.</p> <p>Moreover, Chakmas are free to adopt children.</p> <p>It is suggested that this be excluded from the grounds of divorce, except where mutually agreed upon by the couple.</p>

“Infertility” as a ground of divorce, as mentioned in Table 21 above, at the instance of the spouse who is “not infertile” cannot be considered to be in consonance with current human rights norms, and should hence be excluded. As explained in the fourth column of Table 21 above, such a phenomenon may afflict any man or woman. If both of the spouses agree, they should be free to divorce, and society should accept it. But if the “infertile” spouse disagrees, the marriage should not be annulled at the instance of the spouse who is “fertile”.

Table 22
Punishment Contrary to Convention against Torture

Provision in Brief	TSCCL Draft Reference	Rationale	Remarks/ Recommendations/ Suggestions
“Shaving the Head” as a punishment for Illicit Relationship with a Gorba Kudum	S. 112 (7)	The aforesaid punishment comes from a period when human rights principles had not been framed.	This punishment is not in conformity with international human rights norms (including the provisions of CAT) and standards, and hence should be excluded from the law.

“Shaving the head” as a punishment for illicit relationship with a *Gorba Kudum*, as mentioned in Table 22 above, is a corporeal punishment that is not backed by current human rights norms, and hence should be excluded from the draft. The other sanction of “watering a Bot Gaach” [see section 73(iv) and Table 5 above] may be a more appropriate punishment, if necessary in conjunction with other sanctions.

There are other matters, which have not been mentioned above, which require revision. In particular, the prohibitions against certain *Gozhas* and *Gutthis* from engaging in certain conduct, or from refraining from such, ought to be excluded. They are not in conformity with the provisions of CERD.

8. Inappropriate Terms, Inaccurate Translation, Incorrect Spellings of Chakma Words, Etc.

In this section I will draw attention to various terms that I noticed in the TSCCL 2017 draft, in its English version, that ought to be changed, either because they are inappropriate in legal-social terms (at least as it appears to this author), or they are deemed to be incorrect translations of the original draft in Bengali, or because the original Chakma term concerned has not been spelt correctly in the Roman alphabet (at least as it appears to this author) on account of phonetics-related errors in their Roman script rendering.

The matter does not call for elaborate discussion, and hence the author thinks that it is best dealt with through the format of tables that identify the term or terms used in the draft, which require correction or improvement, provide suggested changes, and, justify the suggested changes, as necessary.

Table 23 (1)
Terms of TSCCL Draft 2018 (English Version) Suggested to be Changed

TSCCL Draft Reference	Existing Term	Suggested Term	Justification
Chapter 1 Preliminary S. 2(6)	Alchye	Alzhye	The pronunciation involves a “z” and not “ch” following accurate phonetic reproduction.
Chapter 1 Preliminary S. 2(14)	Barshabas	Barizebach	The term “Wah” is better, although of Burmese/Rakhine/Marma origin. “Wah” originates from the Pali term “Vassa” or “Wassa”, meaning rainy season.
Chapter 1 Preliminary S. 2(19)	Bhatmaja	Bhatmoza	The “z” is correct and “j” is incorrect. Following Chakma rules of phonetics, the “j” sound only occurs in the beginning of a word and never in the middle or at its end.
Chapter 1 Preliminary S. 2(30)	Bo-jamei gajhani	Bo-Jamei Gozani	The “z” is correct and “j” is incorrect. See row above.
Chapter 1 Preliminary S. 2(33)	Chabasal/ Chogasal	Sobasal/Sogasal	The “s” is correct, “ch” is incorrect (unlike in Bengali)

Table 23 (2)
Terms of TSCCL Draft 2018
(English Version) Suggested to be Changed

TSCCL Draft Reference	Existing Term	Suggested Term	Justification
Chapter 1 Preliminary S. 2(34)	Chabangi	Sabangi	The “s” is correct, “ch” is incorrect
Chapter 1 Preliminary S. 2(35)	Chagala Panjayet	Sagala Panjayet	The “s” is correct, “ch” is incorrect
Chapter 1 Preliminary S. 2(36)	Chakma/ Changma	Chakma/Sangma	The “s” is correct, “ch” is incorrect
Chapter 1 Preliminary S. 2(37)	Chakma Rejyo Parishod	Sangma Rejyo Porisod	In the Chakma language, Chakmas refer to themselves as ‘Sangma’, and not as ‘Chakma’. The “s” is correct, “sh” is incorrect
Chapter 1 Preliminary S. 2(38)	Chamini/ Monjheng	Samini/Monjheng	The “s” is correct, “ch” is incorrect

Table 23 (3)
Terms of TSCCL Draft 2018 (English Version) Suggested to be Changed

TSCCL Draft Reference	Existing Term	Suggested Term	Justification
Chapter 1 Preliminary S. 2(39)	Chandokani	Sandokani	The “s” is correct, “ch” is incorrect
Chapter 1 Preliminary S. 2(40)	Chidey Keim	Sidey Keim	The “s” is correct, “ch” is incorrect
Chapter 1 Preliminary S. 2(41)	Chhineli Mogoddima	Sineli Mogoddima	The “s” is correct, “chh” is incorrect
Chapter 1 Preliminary S. 2(42)	Chol	Sol	The “s” is correct, “ch” is incorrect

Table 23 (4)
Terms of TSCCL Draft 2018 (English Version) Suggested to be Changed

TSCCL Draft Reference	Existing Term	Suggested Term	Justification
Chapter 1 Preliminary S. 2(43)	Chumulong/ Chumulang	Sumulong/ Sumulang	The “s” is correct, “ch” is incorrect
Chapter 1 Preliminary S. 2(44)	Chumulong Pani	Sumulong Pani	“s” is correct, “ch” is incorrect
Chapter 1 Preliminary S. 2(45)	Chumulong- ajha	Sumulong-Ozha	“s” is correct, “ch” is incorrect; “zh” is correct, “jh” is incorrect
Chapter 1 Preliminary S. 2(46)	Do	Do	Do

Table 23 (5)
Terms of TSCCL Draft 2018 (English Version) Suggested to be Changed

TSCCL Draft Reference	Existing Term	Suggested Term	Justification
Chapter 1 Preliminary S. 2(49)	Davah	Dabha	There is no “v” sound in Chakma, as also in Bengali, unlike in Hindi/Urdu and English
Chapter 1 Preliminary S. 2(53)	Dant Vindeni Keim	Dat Bhindeni Keim	There is no nasal sound like “Dant” in Chakma, unlike in Bengali There is no “V” sound in Chakma, unlike in Hindi/Urdu
Chapter 1 Preliminary S. 2(57)	Duschya- Dujhi	Duchyah-Duzhi	In Chakma, it is “Duchyah” and there is no “s” sound in the word “zh” is correct, “jh” is incorrect
Chapter 1 Preliminary S. 2(58)	Ehjal	Ehzal	“z” is correct, “j” is incorrect

Table 23 (6)
Terms of TSCCL Draft 2018 (English Version) Suggested to be Changed

TSCCL Draft Reference	Existing Term	Suggested Term	Justification
Chapter 1 Preliminary S. 2(59)	Ekchan	Eksaan	The “s” is correct, “ch” is incorrect
Chapter 1 Preliminary S. 2(65)	Fara daja	Fara Dozha	“zh” is correct, “j” is incorrect
Chapter 1 Preliminary S. 2(66)	Funduri Chumo	Funduri Sumo	The “s” is correct, “ch” is incorrect
Chapter 1 Preliminary S. 2(70)	Ghile Kajoi Pani	Ghile Kozoi Pani	“z” is correct, “j” is incorrect

Table 23 (7)
Terms of TSCCL Draft 2018 (English Version) Suggested to be Changed

TSCCL Draft Reference	Existing Term	Suggested Term	Justification
Chapter 1 Preliminary S. 2(70)	Gojha	Gozha	“zh” is correct, “jh” is incorrect. “z” is also acceptable
Chapter 1 Preliminary S. 2(74)	Hamkhana	Khamkhana	“kh” is more appropriate than “h”
Chapter 1 Preliminary S. 2(75)	Helya Kudum	Khelya Kudum	“kh” is more appropriate than “h” here. “h” is mostly silent in Chakma, as in French
Chapter 1 Preliminary S. 2(76)	Hobong	Khobong	“kh” is more appropriate than “h”, as “h” is mostly silent in Chakma, as in French

Table 23 (8)
Terms of TSCCL Draft 2018 (English Version) Suggested to be Changed

TSCCL Draft Reference	Existing Term	Suggested Term	Justification
Chapter 1 Preliminary S. 2(86)	Kajoi Pani	Kozoi Pani	“z” is correct, “j” is incorrect In Tanchangya, “Kasoipani” is correct
Chapter 1 Preliminary S. 2(97)	Lajabhar	Lazobhar	“z” is correct, “j” is incorrect
Chapter 1 Preliminary S. 2(105)	Mudh	Mut	According to rules of spelling in Chakma, the consonant “t” can end without a vowel, but never a “d” or “dh”, unlike Bengali
Chapter 1 Preliminary S. 2(106)	Mujaliyye	Muzaliye	“z” is correct, “j” is incorrect

Table 23 (9)
Terms of TSCCL Draft 2018 (English Version) Suggested to be Changed

TSCCL Draft Reference	Existing Term	Suggested Term	Justification
Chapter 1 Preliminary S. 2(109)	Najar	Nazar/Nozor	“z” is correct, “j” is incorrect (unlike in Bengali)
Chapter 1 Preliminary S. 2(110)	Olonshal	Olonsal	“s” is correct, “sh” is incorrect (There is no “sh” sound in Chakma, unlike in Bengali, Hindi and English)
Chapter 1 Preliminary S. 2(127)	Sakkhi	Sakki	The aspirated “kh”, as in Bengali, does not occur in Chakma
Chapter 1 Preliminary S. 2(136)	Shalikye	Salikye	“s” is correct, “sh” is incorrect (There is no “sh” sound in Chakma, unlike in Bengali, Hindi and English)

Table 23 (10)
Terms of TSCCL Draft 2018 (English Version) Suggested to be Changed

TSCCL Draft Reference	Existing Term	Suggested Term	Justification
Chapter 1 Preliminary S. 2(137)	Sheel	Sil	“s” is correct, “sh” is incorrect (There is no “sh” sound in Chakma, unlike in Bengali, Hindi and English) (This sound is similar to that of “sila” in Pali)
Chapter 1 Preliminary S. 2(139)	Sijhi Jadan	Sizi Jadan	“z” is correct, “jh” is incorrect
Chapter 1 Preliminary S. 2(148)	Taja-tuloni	Taza-Tuloni	“z” is correct, “j” is incorrect

Table 23 (11)
Terms of TSCCL Draft 2018 (English Version) Suggested to be Changed

TSCCL Draft Reference	Existing Term	Suggested Term	Justification
S. 9(ii)	Chagala Panjayet	Sagala Panjayet	The “s” is correct, “ch” is incorrect
S. 11	Gojha	Gozha	“zh” is correct, “jh” is incorrect. “z” is also acceptable
S. 11	Bongsa/Wanga	Bongza/Wangza	This is how the words are pronounced in the CHT
S. 11	Chadongoh	Sadongoh	The “s” is correct, “ch” is incorrect

Table 23 (12)
Terms of TSCCL Draft 2018 (English Version) Suggested to be Changed

TSCCL Draft Reference	Existing Term	Suggested Term	Justification
S. 11	Chege	Segey	The “s” is correct, “ch” is incorrect
S. 11	Barchege	Bawr Segey	The “s” is correct, “ch” is incorrect
S. 11	Barbo	Borbuo/Borbo	This is how the word is pronounced in the CHT
S. 11	Laksar	Loksoero	A simpler spelling

Table 23 (13)
Terms of TSCCL Draft 2018 (English Version) Suggested to be Changed

TSCCL Draft Reference	Existing Term	Suggested Term	Justification
S. 17	Bo Cha Jana	Bo Sah Jana/Zana	The “s” is correct, “ch” is incorrect
S. 19	Davah	Dabha	There is no “V” sound in Chakma, unlike in Hindi/Urdu
S. 21	Shalikya Padana	Salikya Padanah	“s” is correct, “sh” is incorrect (There is no “sh” sound in Chakma, unlike in Bengali, Hindi and English)

Table 23 (14)
Terms of TSCCL Draft 2018 (English Version) Suggested to be Changed

TSCCL Draft Reference	Existing Term	Suggested Term	Justification
S. 23	Bo Hoja Jana	Bo Khoza Zana	“z” or “zh” is correct, “jh” is incorrect
Ss. 27, 28	Chumulong/ Chumulang	Sumulong/Sumulang	The “s” is correct, “ch” is incorrect
S. 40	Court Marriage	Delete	There is no such thing as “court marriage”. Marriages in India, other than for Muslims and Christians, follow customary law, or the Special Marriage Act 1954, and in Tripura State, the Tripura Recording of Marriages Act 2003 and the Tripura Recording of Marriages Rules 2006, but these are not “court marriages”

Table 23 (15)
Terms of TSCCL Draft 2018 (English Version) Suggested to be Changed

TSCCL Draft Reference	Existing Term	Suggested Term	Justification
S. 45(iv)(a)	Dhooti	Dhoodi	That is how it is pronounced in Chakma. The Doingnak in Burma (Myanmar) refer to “Sangma Dhoodi” and “Mogho Dhoodi” (longyi/lungi).
S. 45(iv)(a)	Pajjama, Punjabi	Delete	These are not part of the traditional attire of Chakmas
S. 45(iv)(a)	Hobong	Khobong	“kh” is more appropriate than “h”
S. 45(iv)(a)	Saj Kapor	Sach Kabor	According to Chakma Spelling Rules: (a) the “j” sound cannot end without a vowel (majye/hoshonto), but the “ch” sound can (b) the “p” sound (Palye Pa) can only be in the beginning of a word, but never at the end

Table 23 (16)
Terms of TSCCL Draft 2018 (English Version) Suggested to be Changed

TSCCL Draft Reference	Existing Term	Suggested Term	Justification
S. 49	Budhbaschy a Mile Puh	Butbajye Miley	Spelling follows pronunciation
S. 51	Bhat Maja Dena	Bhaat Moza Dena	Spelling follows pronunciation
S. 62	Gutti Bhat	Gutthi Bhat	The “h” is necessary
S. 64	Bala Sujona	Bala Suzana	Spelling follows pronunciation
S. 69	Sajoh Hur Roaster	Sazo Kuro Rooster	“K” is preferable to ‘h’ (h is usually silent in Chakma); But the sound of the “k” is different in Chakma from English or Bengali Rooster spelling corrected

Table 23 (17)
Terms of TSCCL Draft 2018 (English Version) Suggested to be Changed

TSCCL Draft Reference	Existing Term	Suggested Term	Justification
S. 60	Ehda Jurona Ehda Dagi Dena	Eda Zurona Eda Dagi Dena	Spelling follows pronunciation
S. 73(1)	Ahja	Haza	This “h” is silent (same as in “habileich”, “holodye”, “haar”, “horing”, etc.)
S. 73(iii)	Nelchumog gat	Nilsumo Gaat	Spelling follows pronunciation
S. 73(iv)	Manuschoro Ahruk	Monuchchoro Harook	Spelling follows pronunciation

Table 23 (18)
Terms of TSCCL Draft 2018 (English Version) Suggested to be Changed

TSCCL Draft Reference	Existing Term	Suggested Term	Justification
S. 73(v)	Ek Mosche Videy	Ek Mocche Bhidey	Spelling follows pronunciation
S. 73(vi)	Leja Samuga Bansh	Leza Samugo Baach	Spelling follows pronunciation
S. 73(viii)	Pakkon Ahruk	Pakkon Harook	Spelling follows pronunciation

Table 23 (19)
Terms of TSCCL Draft 2018 (English Version) Suggested to be Changed

TSCCL Draft Reference	Existing Term	Suggested Term	Justification
S. 73(xii)	Bar Nijesh Pore	Bor Nizeich Pore	Spelling follows pronunciation
S. 73(xiii)	Gonga Nijesh Pore	Gongima Nizeich Pore	Spelling follows pronunciation
S. 74(xiii)	Capital Punishment	Severe Punishment	“Capital Punishment” means the death penalty. What was meant was “severe punishment” in the Bengali draft (capital punishment is not appropriate, and nor within the mandate of the tribal courts).

Table 23 (20)
Terms of TSCCL Draft 2018 (English Version) Suggested to be Changed

TSCCL Draft Reference	Existing Term	Suggested Term	Justification
S. 77(2)	Alchye	Aalzye	Spelling follows pronunciation
S. 77(3)	Graveyard	Cremation Ground	Where burning is concerned, this is the preferred term in general usage
S. 77(4)	Mara Jeda Farok Gorana	Mora Jeda Farok Gorana	A simpler spelling
S. 77(5)	Mara Lamana	Mora Lamana	

Table 23 (21)
Terms of TSCCL Draft 2018 (English Version) Suggested to be Changed

TSCCL Draft Reference	Existing Term	Suggested Term	Justification
S. 77(6)	Gadi Tana	Gari Tana	Unlike Bengali (and Hindi/Urdu) Chakma has no sounds similar to “doi-shunno-raw”
S. 77(9)	Banduk Salami	Bonduk Salami	Spelling follows pronunciation
S. 77(15)	Chideyshal Ban	Sidesaal Bon	Spelling follows pronunciation

Table 23 (22)
Terms of TSCCL Draft 2018 (English Version) Suggested to be Changed

TSCCL Draft Reference	Existing Term	Suggested Term	Justification
S. 77(16)	Ahr Vaja	Haar Bhaza	Silent h. See Table 23(17) above
S. 77(17)	Chidey Batteyna	Sidey Batyena	Spelling follows pronunciation
S. 77(17)	Chidey Batteyna	Sidey Batyena	Spelling follows pronunciation
S. 77(19)	Agbara	Aakbara	According to Chakma spelling rules, there can be no vowel-less sound (majye/”hoshonto”) with “g” sound, but ok with “k” sound
S. 81	Ranney	Raanye	Spelling follows pronunciation

Table 23 (23)
Terms of TSCCL Draft 2018 (English Version) Suggested to be Changed

TSCCL Draft Reference	Existing Term	Suggested Term	Justification
S. 101	Bechala-chal	Besola Solana	Spelling follows pronunciation
S. 102	Gagala Kagoj	Gogola Kagoch Gobola Kaboch	A simpler spelling
S. 104	Chalan Dena	Salan Dena	Spelling follows pronunciation

9. Conclusion

9.1. Traditions versus Human Rights and Needs of Contemporary Chakma Society

During his address at the inaugural ceremony of the 2nd state-level conference of the TSCSC at Jhorjhor on 12 May 2018, the author stressed that in order to attain social progress, without weakening the identity and socio-cultural integrity of the Chakma people, it was important to continue age-old customs and practices that are wholesome, while discarding those that impinge on the rights of individuals and groups among the people.²² The writer referred to the wholesome tradition of Maleya, while contrasting it with unwholesome customs that forbade childbirth in houses not belonging to some specified range of relatives and similarly forbade the visits of the Raja to houses of ‘commoners’. The foregoing chapters dealt with some of these but there are others he did not discuss (at least other than in a passing manner), including injunctions against members of certain *gozhas* and *gutthis*, and people born on certain days, to act or refrain from acting in a certain way in certain circumstances. These practices should have no place in Chakma society today.

9.2. Savings for Unwritten Customary Law

When the issue of full or partial codification of the customary personal laws of the indigenous peoples of the Chittagong Hill Tracts was being debated, about a decade or so ago, this author’s opinion was that “the most reasonable approach would be to go for partial reform and only formalize those areas where customary law may be out of step with basic human rights standards. The rest is best left to be dealt with by the peoples concerned in the time-tested traditional manner.”²³ It was also his assessment that such a position had the most support within indigenous society.²⁴ In order to understand such a view it is important to realise that the legal system of Chittagong Hill Tracts is one in

²² A substantial part of the author’s speech at Jhorjhor on 12 May 2018 is available on youtube, courtesy of Gagan Chakma, at https://www.youtube.com/watch?v=nUIFIZzR2_0 (downloaded, 26 May 2018).

²³ Raja Devasish Roy, “Challenges for Juridical Pluralism and Customary Laws of Indigenous Peoples: The Case of the Chittagong Hill Tracts, Bangladesh” in *Arizona Journal of International and Comparative Law*, Vol. 21, No.1, Spring, 2004, pp. 113-182, at p. 147.

²⁴ *Ibid.*, p. 142.

which legal pluralism is practiced,²⁵ and wherein there is

“a generic recognition of customary law, without attempting to define what customary law is, thereby minimizing the risks of undermining and devaluing the contents of customary law, and providing the indigenous peoples an avenue to define or construct the content and nature of those rights.”²⁶

In fact the status of legal pluralism and recognition of customary laws is perhaps even stronger, in several respects, in tribal areas of Northeast India, including the TTAADC area in Tripura, to which the 6th Schedule to the Constitution of India applies. It is therefore only right that this prerogative of the indigenous peoples, in this case that of the Chakma people of Tripura State, is exercised judiciously.

In the circumstances, in addition to various suggestions made above, both in the tables and in the narrative, this writer would humbly suggest the following to be considered by the Chakma people of Tripura State.

There needs to be a strong savings clause, one which unequivocally states that the adoption of the TSCCL Draft 2017, which may be called a “Code” in the style of the CADC Code, *does not extinguish the vast body of customary law that has been practised by the Chakma people since time immemorial, except where they contravene international human rights standards.*

While section 7 of the TSCCL Draft 2017 does deal with this issue - referring to the statutory law or code as “Customary Law” and the hitherto prevalent unwritten customs, practices, conventions and usages as “unwritten Chakma Customary Law” – and implicitly retains the continued application of the oral tradition, the wording is not strong enough to clarify that the oral customary law principles are not extinguished. Given that there will be instances of conflict and tension between the written and the unwritten law, there may well be many instances when the Chakma people of Tripura State may wish to draw upon the traditional oral traditions to deal with cases and disputes as well as other exigencies that they face.

In other words, *whilst in certain matters certainty and precision are what is required, such as when dealing with the mandatory rituals and practices concerning marriages, in other matters, such as with regard to inheritance of property by heirs and successors other than spouses and children, child custody, social taboos other than those concerning personal law (marriage, divorce, maintenance, child custody, inheritance, etc.), among other such matters, a certain extent of ambiguity may be preferable.*

²⁵ Raja Devasish Roy, 2004, op. cit. (cited in previous footnote). See also, Raja Devasish Roy, “Indigenous Peoples and International Human Rights – Plural Approaches to Securing Customary Rights” in S. Chao and M. Colchester (eds.), *Human Rights and Agribusiness: Plural Legal Approaches to Conflict Resolution, Institutional Strengthening and Legal Reform*, Forest Peoples Programme, Moreton-on-Marsh, 2012, pp. 61-78.

²⁶ Raja Devasish Roy, 2012, op. cit. (cited in previous footnote). See also, Raja Devasish Roy, “Asserting Customary Land Rights in the Chittagong Hill Tracts, Bangladesh: Challenges for Legal and Juridical Pluralism” in Marcus Colchester & Sophie Chao (eds.), *Divers Paths to Justice: Legal Pluralism and the Rights of Indigenous Peoples in Southeast Asia*, Asia Indigenous Peoples Pact (AIPP) et al, Chiangmai, 2011, pp. 106-125. In the aforesaid article, this author wrote thus about the CHT system (at pages 123-124): “[The] CHT laws provide a simple and ‘blanket’ recognition to customary laws without defining (and perhaps thereby reducing) the rights concerned, rather than attempting to re-produce them in a written code. In this respect, *the risks of reducing and ‘freezing’ customary rights through formal codification*, which is different from simple ‘recognition’ may be a relevant, and important, distinction, to be borne in mind”.

9.3. *Separate Clustering of Personal Law Matters & Other Matters*

For easy comprehension, and more importantly, to aid the smooth operationalization of the law by courts and social leaders from village panjayet to state levels, grouping or clustering of different subject matters would be extremely useful.

If this is not possible during the current process of formal legislation, it may yet be achieved during subsequent rule-making, and perhaps even more importantly, by preparing easy-to-use handbooks for the karbaries, particularly those at panjayet and sagala levels, many of whom have little formal education.

Some social customs have been included in the appendices, e.g., Appendix 1, dealing with “Social Customs”. It may be considered whether other matters included in the main body of the law, such as *Birth Rites* (Chapter V), *Socials Customs and Manners* (Chapter VII), *Death Rites* (Chapter X), and *Religious Rites* (Chapter XI) would not be more appropriate for inclusion in the appendices, rather than in the main body. This would make the operational part of the code smaller and more manageable. The CADC Code 1997, in comparison to the TSCCL Draft 2017, is more succinct, although in the view of this writer, this too could have been made more brief.

9.4. *Rules to Supplement the Act*

The TSCSC would do well to start drafting Rules to supplement the Act, particularly on procedural matters and appeals, and also, whether through Rules or otherwise, to determine the interface with the district and sub-district magistracy, civil and criminal courts and the police.

9.5. *A Simple Process of Adjudication, Mediation & Arbitration*

In order to provide justice that does not tax the parties with regard to money, time and effort, and in order to ensure that litigants or parties before the tribal courts, along with their witnesses, are able to present their respective cases easily, confidently and without fear or shame, it is important to ensure that the process of litigation, record-keeping and so forth is not made unduly complicated.

In the Chittagong Hill Tracts, until today, adjudication of disputes is done in a simple manner, both in the tribal courts and in the governmental civil courts. The Chittagong Hill Tracts Regulation 1900 provides that:

1. The Administration of Civil Justice shall be conducted in the most simple and expeditious manner compatible with the equitable disposal of the manners or suits.
2. The officer dealing with the matter or suit will in the first instance endeavour, upon the viva voce examination of the parties, to make a justice award between them. Witnesses should not be sent for, except when the officer is unable without them to come to a decision upon the facts of the case.
3. The record shall contain the following particulars, namely, the name of the plaintiff, the name of the defendant, the nature of the claim or other matter in litigation, and abstract of the plaintiff’s case and abstract of the defendant’s case, an abstract of the depositions of the witnesses (where witnesses are examined), the ground of the decision, and the other signed and dated.²⁷

²⁷ Rules 1, 2 and 3, Rules for the Administration of the Chittagong Hill Tracts, framed under Section 18, Chittagong Hill Tracts Regulation, 1900.

The idea is that, litigants before the courts should not be subjected to complex procedures involving legal practitioners, in atmospheres that most rural tribal people would find alien, frightening or uncomfortable, costly and time-consuming. For this reason, the Civil Procedure Code 1908 (“CPC”) – which applies, with some variations, in India, Bangladesh and Pakistan – does not apply to the Chittagong Hill Tracts until today. Similarly, in many parts of Northeast India, which were previously recognized as *Excluded Areas* under the Government of India Act 1935 (which applied to Chittagong Hill Tracts, Mizoram and some other parts of Northeast India), the CPC either does not apply at all, or applies only in spirit, but not to the letter (such as in Nagaland), and for good reason.

In addition, Chakma karbaries in Tripura State may find the concepts of *arbitration* and *mediation*, as opposed to *adversarial litigation*, useful to resolve disputes before them. They may thus provide decisions that are “win-win” for all, rather than those that are “win-lose”.

Expounding on the non-adversarial nature of dispute settlement as exercised by the traditional indigenous courts of the Chittagong Hill Tracts, this writer has written thus:

These deliberations may involve methods that are more in the nature of mediation and arbitration, than adjudication, as these terms are generally understood...

In most cases, efforts are made to facilitate reconciliation, and apportion the fault, if any, rather than to impute fault only on one or other of the two parties. In the case of the latter, there is usually a clear “winner” and a “loser,” a situation that has the potential to give birth to further disputes among the former disputants and their families.²⁸

In the same spirit, rules, including on format of pleadings (applications by litigants) and limitations of time (“tamadi”), ought to be applied in a flexible manner oriented around the disadvantage suffered by individuals on account of education, economic status, inhabitation in a “remote” area, disability, etc. In the Chittagong Hill Tracts, the Statute of Limitations, e.g., is not applied in *toto*, as in the case of several indigenous peoples’ territories in Northeast India. The same applies to the process of hearings, as mentioned above. Having to go to court was regarded as an insult among Chakma society. That should no longer be true if Chakma social leaders act with equity, kindness, tolerance and wisdom.

9.6. Concluding Remarks

The vigour with which the Chakma people of Tripura State have united themselves and asserted their identity and their social and cultural integrity is a source of inspiration to Chakmas living elsewhere in the world, including the Chittagong Hill Tracts, Burma (Myanmar), Mizoram, Arunachal Pradesh, Assam and the Chakma diaspora in different countries.

²⁸ Raja Devasish Roy, “Challenges for Juridical Pluralism and Customary Laws of Indigenous Peoples: The Case of the Chittagong Hill Tracts, Bangladesh” in *Arizona Journal of International and Comparative Law*, Vol. 21, No.1, Spring, 2004, pp. 113-182, at pp. 131, 132.

In several spheres, including in literature and dance, they have secured their role as leaders. Their endeavours in the fields of music, drama and social traditions are robust, and have deep influences on the lives of Chakmas living elsewhere. It is to be hoped that their forays in the field of customary law will likewise be rewarded with success.

The presence of a Chakma member in the TTAADC, and two members in the State Legislative Assembly, with one holding a ministerial position, is clearly an opportunity that the Chakma people in Tripura need to grab. This writer sincerely hopes that the aforesaid people's representatives, with the guidance of the elders of the community, including the TSCCL, and in partnership with the progressive section of Tripura society from the different ethnic groups, including the Tripuri/Kokborok-speakers, will lead their people towards progress, in a just, fair and wise manner.