
The Vital Role Of Customary Law In Tribal Life

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ABSTRACT:

Social institution and customary laws practiced by the tribal were applicable to social institutions, such as marriage, marriage payment or bride-price, inheritance, divorce, birth-rites, death-rites etc and management of the natural resources as well. The present paper highlights the customs and laws practiced by the tribal communities but in the background of above context, in spite of effective customs and laws, the innocent tribals are denied natural justice with the introduction of modern laws restricting their access to the natural resources like land, water, forest etc .If any tribal community member violate customs and laws is punished by the traditional council. Generally the punishment depends upon the intensity of crime committed. Different types of punishments prevailing among tribal communities are warning, penalty in the form of cash or kind or both, example-communication/social boycott; elaborate feast, oath, ordeal etc. In such an alarming situation it is necessary to educate the tribes regarding their rights so that they can organized them to fight for their common cause.

There are about 450 tribes and sub-tribes constituting 6.87% of the total population of India. There is a qualitative difference in the socio-political and economic status across tribes in the north-east, the Himalayan borders and in other parts of the country. The tribesmen in India are stratified, from highly sophisticated tribes to tribes that live in abject poverty. Due to the ecological conditions, geographical outlay with hills, valleys and plains, tribesmen are sometimes isolated and often are enforced into isolation. This is partially due to poor means of communication, including mass communication. Advancement in Science and Technology has led to the socio-economic interdependence of the tribal with that of the non-tribal, and has to a certain extent resulted in the appropriation of their language, customary law and folklore.

Customary law means those rules and principles which are being observed in a particular community in actual practice for a long time where the memory of man rennet not to the contrary (Tiwari, 1999). It is most commonly used to describe the largely indigenous laws of the indigenous people especially with the tribes recognized by European powers in the colonial territories.

There is no universally accepted definition of a customary law. It can be described as a set of rules through which a tribe practises its culture and expresses its worldview. It is “an established system of immemorial rules which had evolved from the way of life and natural wants of the people, the general context of which was a matter of common knowledge, coupled with precedents applying to special cases, which were retained in the memories of the chief and his counsellors, their sons and their sons’ sons (sic), until forgotten, or until they became part of the immemorial rules...” (Bekker1989). It governs a person’s marriage, divorce, inheritance, child custody, etc as well as community relations such as tenurial rights over forests, lands, water bodies and other natural resources (Singh 1993).

The present paper highlights the customs and laws practiced by the tribal communities but in the background of above context, in-spite of effective customs and laws, the innocent tribals are denied natural justice with the introduction of modern laws restricting their access to the natural resources like land, water, forest etc. Thus, a customary law is the habitual course of conduct of a society and contains dos and don’ts based on its norms, practices and usages, mechanisms such as taboos, sanctions, social rituals, culture, public posture and ethics of each individual. These norms thus restrain their pattern of behaviour and regulate the social, cultural and religious aspects of the individual and the family (Visto 2003). Basic to the customary law is its acceptance by the community. The laws may begin as customs with localised application but are accepted slowly by the rest of the community through a gradual process over a long period if it feels that its introduction is good for it or does it no harm. They are mandatory and enforceable by the tribal chiefs while a custom is not enforceable (Narwani 2004).

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The customs and beliefs are found in all the societies’ through-out the world. In fact, there is no civilised race which has completely got over the code of customs, whatever its impact may

be, positive or negative. The custom and taboos are actually the part of the mechanism for maintenance of an orderly society. Among others, the most affected aspects of human behavior through customs and beliefs are the demographic variables, particularly nationality and population movement. The system of marriage, the form of marriage and the desire for offspring are some of the factors which are mainly regulated through social customs and beliefs.

Any study of the historical process of legal development must take into account the customary laws prevalent among the tribal population of India. It is important to make a distinction between law and custom as both are intimately connected to social formations. The term 'law' according to Pound is "social control through the systematic application of the forces of politically organized society (Brown, 1964). As the definition says, the sanctions enforceable by physical coercion of the state, where need be, have legal status. When people not socially recognized, have the privilege of using force indulge in such activities, it becomes gangsters. Custom on the other hand socially prescribed mode of behavior carried by tradition and enforced by social disapproval by its violation.

The customs of social control in tribal societies in different parts of India are divergent and need to be codified with reference to their customary laws. Social institution and customary laws practiced by the tribal were applicable to Social institutions, such as marriage, marriage payment or bride-price, inheritance, divorce, birth-rites, death-rites, etc and management of the natural resources as well.

TRIBAL CUSTOMARY LAW IN INDIA

The Indian Constitution guarantees protection to the Scheduled tribes in order to let them develop according to their own genius. In jurisprudence, an immemorial custom is not merely an adjunct of ordinary law but is also its constituent part. In this thinking, the unwritten tribal customary laws recognized as binding by their communities interact with the larger corpus of the law enacted and enforced by the formal State. This interaction often overlooks their role in the maintenance of Tribal solidarity and identity. That is why the present study on tribal customary laws focuses on the role they play not merely as traditional and normative rules of regulating their societies but also of keeping the tribe together. Specific to most tribal customary laws is their community dimension. This aspect evolved out of area-specific management of the natural resources or the environment that was their livelihood. Most such

practices helped their communities to be self-reliant and were cantered round agriculture, especially *jhum* that was their main subsistence. The forest was one more component.

Traditionally tribal villages and communities have their village chiefs to perform the specific socio-religious functions. The village chief is called by various names viz ‘Majhi’ ‘Patel’ ‘Chalki’ ‘Pradhan’ and ‘Mukkadam’. The ‘Baiga’, ‘Bhumia’, ‘Gaita’ and ‘Sirha’. Sirha acts as village priest and performs traditional rituals and rites during festive occasions for the tribal communities. Even in the present context of three tier Panchayat Raj System the traditional village councils are honored and settle disputes at the village and community levels in their respective hamlets. The old ‘Parha Panchayat’ of Oraons is famous but, has vanished. Besides, some socio-economic institutions like ‘Ghotul’ among the Murias, ‘Dhumkuria’ among the Orans had been highly recognized, allowing youth to learn their socio-economical and religious pattern of life and sexual training under disciplined institutionalized system. ‘Dhumkuria’ is now a legend, but Ghotul could be seen in Narayanpur District of Chhattisgarh State. Among the Muria tribes the taboo against sex relationship during the menstruation is most stringent. It is believed that the man who goes to menstruating women will die (Elwin, 1947)

In brief, the life and culture of the tribes are highly colorful and multi-dimensional, but they are distinct in character and in the presently they are in the transitory stage and thus are in the process of some significant the social changes, especially regarding taboos on sex relationship. The taboos on sexual intercourse are associated with the religious festivals, fast days, phases of the moon, economic and social life of the communities, beliefs and customs prevalent in the society when coitus has to be avoided. In general abstinence from taboo are insisted upon under broad sets of circumstances, during post partum period and on certain ceremonial and religious occasions. The main reasons for observance of restraint are uncleanness of women, lack of desire for sexual intercourse on the part of female during this period. In addition to these biological restrictions there are other restrictions associated with some social occasions (Jaiswal, 1979).

CONCLUSION

The customary laws and practices play a pivotal role and the dispute resolution mechanism is very effective among tribal communities. In the shade of modern panchayat Raj system the eight percent of tribal population inhabiting in the Indian peninsula practice their own

indigenous customs and laws in daily sphere throughout life in many forms for dispute resolution. Each tribe has their own set of customs and laws which regulate society and maintain peace, harmony and solidarity among them. If any community member violate customs and laws is punished by the traditional council. Generally the punishment depends upon the intensity of crime committed. Different types of punishments prevailing among tribal communities are warning, penalty in the form of cash or kind or both, ex-communication/social boycott; elaborate feast, oath, ordeal etc. ex. Among Gonds of Madhya Pradesh, Andhra Pradesh, Chhattisgarh and Jharkhand punishment for crimes like theft, loggerhead are simple warning or oath, for adultery and elopement one has to arrange elaborate feast and pay penalty in the form of cash or kind and in the cases like marriage outside the community (caste exogamy) the punishment is ex-communication from the village.

In such an alarming situation it is necessary to educate the tribes regarding their rights so that they can organized them to fight for their common cause. It is possible for them to launch a democratic struggle to define and promote their legitimate interests and they deserve the support of all others who believe in justice and equality. If there is delay in doing justice to the tribals we cannot rule out the possibility of the tribes getting inspiration from the extremist movement to further their cause. All those who want that the tribal should continue to be part of democracy have an obligation to help them in getting justice from the state and society.

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