



Customary Laws and Practices in North East India : Records and Reports Preserved in Law Research Institute (Lri), Gauhati

KEYWORDS

North East India, Tribal Community and Customary Laws, Sixth Schedule, Karbi Anglong, Dimasa tribe, Status of women.

M Parwez

Associate Professor, Department of History, AMU Aligarh - 202002

ABSTRACT *The North East India is home of more than 300 ethnic tribes, who have distinct identity shaped by the geographical, historical and political factors. These simple hill societies do not possess any codified law – necessary for social control. They administer themselves according to norms evolved within the respective societies usually termed as customary laws. The Colonial administration rarely interfered with these laws – even in the criminal matter unless it infringes the basic human rights. The policy of non interference expressed in different legislative acts and in the recommendation of various commissions. All these areas are governed according to sixth Schedule of Indian Constitution. The Law Research Institute, Gauhati High Court has contributed greatly in compiling such laws.*

The North East India is home of more than 300 ethnic tribes, who have distinct identity shaped by the geographical, historical and political factors. These simple hill societies do not possess any codified law – necessary for social control. They administer themselves according to norms evolved within the respective societies usually termed as customary laws.

The Colonial administration rarely interfered with these laws – even in the criminal matter unless it infringes the basic human rights. The policy of non interference expressed in different legislative acts and in the recommendation of various commissions. The Assam Frontier Tracts Regulation 1880, the Scheduled District Act 1874, The Assam General Clauses Act, 1915, the Montague- Chelmsford Reforms-1919 and Simon Commission, all adopted the policy of non interference with the customary laws and practices of the tribes inhabiting North – East India. The section 92 of the Government of India Act, 1935 provided that no Act of Central or Provincial Legislature should be applicable to the hill areas which were declared 'excluded areas' or 'partially excluded areas'

In the post independence period, in 1947 the 'Minority Committee' of the Constituent Assembly observed, "while a good number of superstitions and even harmful practices are prevalent among them, the tribes have their own customs and ways of life with institutions like tribal and village panchayats or councils which are very effective in smoothing the village administration. The sudden disruption of village customs & ways by exposure to the impact of more complicated and sophisticated manner of life is capable of doing great harm".¹ It further provide safeguards for protection of the tribal land- the main stay of their economy. B.R. Ambedkar also stated that tribes had their roots in their civilization and culture and advocated its continuance. Their right to govern themselves as per the customary laws has been recognized during the colonial period and later by the Constitution of India under Sixth Schedule², which largely ensure non interference from the state.

The Law Research Institute, Gauhati High Court has compiled several such customary laws and practices, which are of immense value from the point of view of historical ethnography. Some of these compilation and reports are :-

- i. The customary laws and Practices of the Dimasa of Assam
- ii. The Customary Laws and Practices of the Garos of Meghalaya
- iii. The customary laws and Practices of the Wancho of Arunachal Pradesh
- iv. The Customary Laws and Practices of the Mizo
- v. The customary laws and Practices of the Thankhul of Manipur
- vi. The Customary Laws and Practices of the Ao of Nagaland
- vii. The customary laws and Practices of the Riang of Tripura

- viii. The Customary Laws and Practices of the Pati Rabha of Assam
- ix. The customary laws and Practices of the Angami Nagas of Nagaland
- x. The Customary Laws and Practices of the Apatani of Arunachal Pradesh
- xi. The customary laws and Practices of the Tripuri of Tripura
- xii. The Customary Laws and Practices of the Thadou Kukis of Manipur
- xiii. The customary laws and Practices of the Chakma of Mizoram

These customary laws prevailing in these societies govern acquisition, disposition and inheritance of property. These laws also determine the status of woman within the societies particularly in respect of inheritance.

The Sixth Schedule Area (Two Hill Districts Dima Halao (North Cachar Hills) & Karbi Anglong) and Inheritance Laws

The Dimasa society is patrilineal. The proprietary rights of the family are vested in a male member and the sons can only inherit the paternal property. There are three types of property in the society i.e., firstly, the paternal property which consists of land, weapons, money, house, cattle, etc., secondly, the mother's property consisting of jewellery, clothes, looms and accessories and lastly, the common property mainly consisting of cooking utensils, brass metal etc.³ According to customary law, the paternal property (including land) is solely inherited by the sons, the maternal property by the daughters only and the common property is inherited by the sons and daughters equally. The sons can never inherit the maternal property even if there is no daughter in the family, in which case the property will pass to the nearest female relative. Similarly the daughter cannot inherit paternal property. The widow of a deceased husband can be guardian of the younger members of the family, but she cannot have any claim over the property of the dead husband.⁴ She can remain as guardian of the family although her eldest son is regarded as the actual head of the family. She is, though, entitled to be maintained by the inheritor if she stays in her husband's house without remarrying.⁵ Recently the North Eastern Social Research Centre, Guwahati conducted a survey in 9 villages where 106 Dimasa persons responded to the questionnaire out of which there were 43 women and 63 men.

Belongings that can be bequeathed to Daughters by the Dimasa Tribe⁶

Belongings	No. of Respondents
Ornaments/ jewellery	53
Utensils	31
Clothes	93
Baskets	00
Loom	08
Livestock	14

Land	01
House	00
Others	05
Not available	05
Not applicable	00

Among the Karbis, inheritance is patrilineal. All the sons inherit the father's land, but the eldest gets a larger share. The rest get equal shares from the remaining portion. However, the widow can inherit her husband's property in rare circumstances except in the case of remarriage according to customary law.⁷ However, Karbi women play important roles in the family especially in religious activities. After marriage the women retains her surname, partly maintaining her individual identity unlike in other parts of India. They are involved in economic activities like cultivation, cutting, weeding, clearing jungles for jhum or collecting fruits, tubers etc. But they are not allowed to attend the village court or partake food along with men in religious and community feasts. Among the settled agricultural groups whether Hinduised or not, women are forbidden to work the plough. This custom effectively means they do not participate in an important event of the agricultural cycle but perform other task such as planting, hoeing and weeding that are back breaking and involve bending in wet fields for long periods. They are not allowed to inherit landed property.⁸

Among the Lalungs, inheritance is matrilineal. The youngest daughter inherits the property of the mother. She remains in the original family house and the husband comes to live in her house. This system appears to be very similar to that of the Khasis and this is perhaps due to their location being adjacent to the Khasis.⁹ A survey of five villages gives a fair idea about the inheritance.

Status of Tribal Women: Reality

The various customs relating to tribal women's right to inherit property have been described above. The rules of inheritance show some influence of non-tribal tribal societies, where the parents often give a share, though not as a principle, to their married daughter and some rich Dimasa parents give a share of their landed property to the daughters by way of "gift" or as marriage dowries with the approval of the villagers.¹⁰ As discussed earlier, among the Dimasa, land can only be cultivated after the formal approval of the village elder (Gaon Burah) and people cultivate the land themselves in jhum system. After the 'jhuming' by the tribal men, and the forest is cleared, the women usually take over the plot for sowing seeds, manuring and even harvesting. Thus, women are involved to a great extent in the production system and have a fair amount of access to the land. The growing consolidation of land into individual ownership plots and the emerging commercial interest favour the men. This is undermining the women's status and the transition to individual ownership and the production system is more contested. In the wet cultivation (pani kheti) the sowing of seeds (usually paddy) manuring and harvesting of the crop used to remain in the hands of women¹¹ The preferred system of cultivation having greater access to woman in the production system was replaced by individual ownership of large chunk of land – often as absentee landlordism. They got 5 to 6 bighas of land under individual rights and have rented it out on a fixed rent basis, subverting the existing system but also producing tension within the community.¹²

As this transition became further intensified among the Dimasas, the access to land for women has become more contested. Thus, they are now being denied even participation in the production process. The State authorities and market forces have combined to introduce new forms of land ownership that encourage changes in the tribal land holding and land use patterns. The Dimasa villages in the district have been converting their collective land holdings into community coffee or tea plantation farms with the help of the Tea Board or Coffee Board. In some cases the granting of individual tenancy rights over the traditional land has been allowed to encourage the plantation crop. The individual tenancy is again in the name of the individual man thus whatever little

access the women had to the production process was taken away.

Similarly, the women are being deprived of land inheritance among the Karbis. In one of the famous cases,

Nunse Terand died leaving his widow Kaji Rongpi and two sons. After one year she remarried Mr Timung of a clan different from her husband's. She got a patta from the Assistant Revenue Officer in her name for the entire area of 6 bighas of land left by her deceased husband. The village elders sat in a session of the Mei and held that according to Karbi customary law, a widow remarrying a person of a clan different from her late husband's cannot inherit his property. Later the Assistant Revenue Officer revised his earlier order and issued a patta in the name of the two sons of the deceased.¹³

Again some of the rules of inheritance of Lalungs which favoured the youngest daughter have been changed, where Lalungs started having the married daughters and sons living in the same paternal homestead compound instead of the sons leaving the house of their birth. Thus, the tribe has introduced some patrilineal elements.¹⁴

In the tribal societies of the North East, the woman's role in the domestic as well as social sphere has been determined by her capacity to control or participate in the production process. However, due to the commercialization of agriculture and the play of market forces, the subsistence economy is being transformed leading to the emergence of class interests and appropriation of resources belonging to the community. These forces have greatly undermined the position of women depriving them from participation in the process and control of the production, which they used to control till recently. The Dimasa women, though not inheriting landed property, were able to control the production system to a great extent, but the changes are proving catastrophic for them. Moreover, traditional institutions are being transformed in such a manner that patriarchal rules get strengthened.¹⁵

With the growth of population and changing economic, political, geographical and sociological environment, these customary laws have also undergone changes which have received larger acceptance as well as judicial approval. These laws have been also modified under judicial intervention particularly by the Gauhati High Court adjudications. Although some of these cases have been reported in the All India Recorder (AIR) but most of such cases are unreported but have far reaching consequences in case of customary laws. The LRI is repository of several such cases and are of immense value. Some of these cases were :-

1. Wilson Reade Vs C.S Booth :- Whether a person born to a Khasi mother and English father was Khasi scheduled tribe or not. Gauhati High Court ruled that under the circumstances a son will become a Khasi as he has been accepted by the community as a 'Khasi'.¹⁶
2. A.S. Khongpai Vs Stanely D D Nichols Roy :- Question of contest of election from ST reserved constituency by a person born to an American Mother and a Khasi father. It was argued that the Khasi had been taking lineage from mother and in this instance the person was born to a non Khasi woman. The High Court held the person Khasi as he was accepted by the community at large.¹⁷
3. Similarly, The High Court ruled that the conversion to Christianity did not prevent youngest daughter from inheritance provided she has bear the expense on her own of religious performance of converted religion.¹⁸

Despite such affirmative action the modern society could not enable Khasi woman to participate in the Syiem Durbar, whereas they can be in state and Union legislatures.

The compilations of High Court Judgments, compilations of customary laws and reports can be great source of information for Historians, Anthropologists and Sociologists.ss

REFERENCE

M.C. Goswami, "The Customary Laws and Practices of the AO of Nagaland" Unpublished Report LRI,1981pp1-10 | The Constituent Assembly paid attention to the tribal areas of North Eastern Region and formed a sub-committee, called North Frontier (Assam) Tribal and Excluded Areas Sub-Committee under the chairmanship of Gopinath Bordoloi. The Committee reported that uniform administration prevailing in the plains should not be introduced due to special circumstances of distinct tribal life, social customs, dependence on land and forests and recommended that there should be least interference with the customary law. The draft submitted by the Committee was, adopted by the Constituent Assembly and incorporated in the Sixth Schedule to the Constitution. The Article 244(2) declared that "the provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam" The old terminology like "Backward Tracts", "Excluded Areas" and "Partially Excluded Areas" were dropped and instead these were called "Autonomous Districts". || Each Autonomous District could establish a District Council, which was given certain powers of legislation under para 3 of the Schedule. || See J N Das, A Study of Administration of Justice among the Tribes and Races of North Eastern Region, LRI, Eastern Region, Gauhati High Court, Guwahati, (rep.), 1990, pp. 69-70. || Cf. Unpublished Report on "the Customary Law of the Dimasa of Assam" ed., M C Goswami, Law Research Institute, Gauhati High Court, Guwahati, 1992, p. 5. || J N Das, A Study of Administration of Justice among the Tribes and Races of North Eastern Region, LRI, Eastern Region, Gauhati High Court, Guwahati, (rep.), 1990, pp. 41- 44. || Ibid. || Ibid. || Walter Fernandes and Sanjay Barbora, Modernisation and Women's Status in North Eastern India A Comparative Study of Six Tribes, North Eastern Social Research Centre, Guwahati, 2002, p. 146. || J N Das, "A Study of the Land System of North Eastern Region, Vol. I – Assam", unpublished report commissioned by Law Research Institute (LRI), Eastern Region, Guwahati High Court, Guwahati, 1982, pp. 138-40. || Modernization and Women Status, Op.cit,pp30-31 || J N Das, "Land System", op cit., || " The Customary Law of Dimasa", op. cit ,pp6-7 || Sanjoy Barbora, Walter Fernandes, "Modernisation and Tribal Women's Status in Northeast India", in Changing Women's Status in India : Focus on the North East, edited by same authors, North Eastern Social Research Centre, Guwahati, 2002, pp. 126-27. See also, J N Das, 'Land System', op cit., pp. 135-37. || Sanjoy Barbora, Ibid || Jeuti Barooah, " Property and Women's Inheritance Rights in the Tribal Areas of the North East " in Sanjoy Barbora, W. Fernandes, Changing Women's Status. Op. Cit. p. 112. || 16. "The Customary Laws of the Dimasa of Assam", op cit., p. 6. Even among the matrilineal Garo society most individual owners are men and patta are in the name of male. See, W. Fernandes & S. Barbora, Modernisation and Women's Status in North Eastern India A Comparative Study of Six Tribes, NESRC, Guwahati, 2002.p130. || Sanjoy Barbora, Walter Fernandes, op cit., p. 127 || AIR 1958 Assam, 128 | 27th Election Law Reports 196. See also N.M. Lahiri, " Matrinineal System in Meghalaya and Necessity for change in the present context of the Society", in Legislations in Changing Socieity, Ed. J Barooah, LRI, Gauhati,1996. | Ka Ngiep Vs Ka Ingie Myrbroh,. Gauhati High Court Unpublished Cases Vol 2. And Ka Niep Myrobh Vs Ka Jingie Myrbh (Civil Revision No.13 (H) of 1962.