

Administration of Justice and Customary Law among the Shertukpen of Arunachal Pradesh

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Abstract

This present endeavour seeks to examine the customary laws and traditional institution, administering such laws among the Shertukpen of West Kameng District of Arunachal Pradesh. The customary laws are the traditional unwritten laws, which are transmitted orally from preceding generation to succeeding generation continuing from time immemorial. In recent times, the customary laws have assumed particular significance in indigenous societies brought under the traditional court for dispensation of justice. The Shertukpen, one of the important tribes of Arunachal Pradesh, traditionally have their own and the unique customary laws governed their socio-cultural life. They have an elaborate "Tukpen Village Council", the supreme authority of the Shertukpen Tribe. The paper tries to focus about the customary laws and practices in relation to their socio-cultural life, marriage, family, divorce, inheritance, maintenance, adoption, dispensation of justice, which regulated the entire life of the people. It also helped to understand the functioning of the village council and dispensation of justice, imposition of fines in the cases of various natures as well as the contemporary changing trend of customary laws due to various impinging factors.

Keywords: Customary law; Shertukpen; Tukpen village council; Gaon burha; Administration of justice.

Introduction

Customary law refers to any rule of action which is observed by a man, a law or rule which they have set for themselves and to which they voluntarily confront their action. Customary law is unwritten law which has been sanctioned through local customs and traditions, which are transmitted orally from generation to generation since time immemorial. Customary law is backed by customs and traditions and its social sanction is related not only to religious practices but also to jurisprudence, philosophy and various other social traditions. The customary law is very much associated with oath and ordeals,

particularly in dispensation of justice. Thus according to Salmond customary law is "any rule of action which is actually observe by men when a custom is firmly established, it is enforced by the state as law because of its general approval by the people" (Cited in Paranjape, 2008:144).

Customary law should be promoted by the public convictions and that the society cannot function without the influences of it. Modern law, as it is a known fact that emerges from customs and usages through the passage of time. Custom is the major source of law and it regulates human behaviour in pristine societies where written laws are not in fashion. Custom is however not law and is not

imposed by state but when customs are recognized and get accepted then they attain the status of law. It can therefore be considered as oldest form of unwritten law established by usages. The expression of customs and usages signify any rule which have been continuously and uniformly observed for a long time and it has obtained the force of law amongst any local area, tribe or any ethnic group. This helps any tribe to protect their tribal identity also. Justice delayed justice denied is the common notion of the modern court of law of the sophisticated people of sophisticated society. But in the tribal states of the North Eastern part of India, application of customary law is prevalent under the sixth schedule of Indian Constitution. Here, justice is comparatively inexpensive, easy and quicker and moreover equally accessible to all, irrespective of social status and economic condition.

It would not be out of place to mention that all modern Civil Laws developed from the ancient customary laws. Customary laws developed amongst the members of the communities slowly and gradually. Consequently, the customary laws and the practice stood the test of time in the long run and thus took its appropriate position of undisputed rules monitoring certain right, entitlements and obligations of the people in the tribal communities. The customary law relating to different social and economic life of the people varies greatly from population to population and even within the same population. In the age-old traditional system of the tribes, every aspect of the people's life is regulated by the customary system. Their family, marriage, divorce, kinship, guardianship, descent, inheritance, succession, right over land, forest right, fishing authority, and transfer of land, sale, lease and civil and criminal cases etc., are all governed and trialed according to their customary laws. Breach of customary law is considered as punishable offence for which village council acts as a traditional court with definite name and function exists in every tribal society. The regulatory mechanism is controlled by the village council through the customary laws. The procedure of the trial in the village council varies from tribe to tribe. Most of the disputes are settled in a single sitting. Customary laws thus include those rules, which are acknowledge and approved by the public opinion in the society and sanctioned by the will of the community. It is thus apparent that customary laws existed even prior to the emergence of the nation or the state and which continue to exist along with the change of time.

Earlier Works and Micro Field

In the recent years, the subject, "customary law"

of the tribal community attracts the attention of various social scientists, anthropologist, sociologist as well as the legal authority particularly in the North-Eastern States. In the age-old traditional system of the tribal communities of the North-Eastern States, every aspect of the people's life is regulated with some customary practices. Significant ethnographic work on customary laws as one of the integral aspects of primitive legal system had been conducted by stalwart scholars like Malinowski(1951), Hobel (1954), Haimendorf (1962), Pospisil (1963), Evans-Pritchard (1965), Stack and Lyell (1973), Mazumdar (1980), Bordoloi (1984), Das (1987), Roy and Rizvi (1990), Dutta (1991), Nakha (1993), Maitra (1993), Singh(1993),Singh (1995), Kilikdar (1998), Mitkong (2002), Vitso (2003), Cardozo (2006), Medhi and Barpujari (2006-07), Barooah (2007), Endle (2007), Fernandez & Barbora (2008), Zaman(2009), Barpujari(2011), Barooah (2012), Zaman(2013), Zaman and Upadhaya(2015),et al. The customary laws of many tribes have changed due to improved communication system, modern education, westernization and conversion to Christianity. Their outlook has gained impetus and no more characterised by isolated *jhum* cultivation. Another major factor which has an impact on traditional way of life of the tribal community is the presence of migration of large number of settlers from outside.

Every indigenous community of Arunachal Pradesh has their own system of administration of justice carried out by the concerned village council in accordance with their customary laws. The present study is carried out among the Shertukpens of Rupa and Shergaon of the West Kameng District of Arunachal Pradesh.

The People

The Shertukpen are one of the important tribes of Arunachal Pradesh. They are Buddhist by religion, belongs to Lamaistic sect of Tibetan Buddhism of the Mahayana School. They are mostly concentrated in the Shergaon, Rupa, Jigaon and Thungrao villages of the Rupa circle of the West Kameng District of Arunachal Pradesh. This indigenous group has a dialect of their own known as *sanjee ngook* and *thungee ngnok*. The Shertukpen society is divided into two broad groups or moieties, viz., *thong* and *chao*. The *thongs* occupy a superior position in their society. Moiety endogamy is strictly followed which is divided into number of exogamous clans (*skits*). Marriage by negotiation is the most preferred type among them though at present time marriage by mutual consent and love is in vogue. They practiced symmetrical cross cousin marriage, i.e., both cross

cousin and parallel cousin marriages are preferred by them. Marriage payment or bride price locally known as *suphak* is prevalent among them which are one of the customary practices among the aforesaid society. The Shertukpen society is patrilineal and residence after marriage is patrilocal. Though primogeniture is the prevalent form of inheritance of property and eldest son generally assumes all the responsibilities of the family after the death of the father, still male equigeniture is the most preferred form among them. The main occupation of the Shertukpens is agriculture and they practice both shifting and wet cultivation, which include terrace and wet paddy cultivation. They are also expert hunters and use bows and arrows for the same. They have a well established customary council of elders known as *bulu* headed by one or two *thug-bo* (elderly male member of the village) along with the other local members called *thumi*. The council settled all the village disputes and the offender are fined in cash or in kind. Other than this there is also a supreme village council introduced by the community named Tukpen Village Council which is headed by the *gaon burha* (elderly elected member of the village) as approved by the village authority.

Hypothesis

The Shertukpen have a well knitted system of pristine legal system and have great faith in their traditional council for dispensation of justice through the customary laws. But due to the influence of modern codified law enacted by the government through constitution of India as well as various other factors like impact of modernization and influences of neighboring so called advanced modern civilization, the rich cultural heritage of the Shertukpen and their customary laws are undergoing changes. Still in some of the matters like in civil cases rather than in major criminal cases, the influence of customary law is very much prevalent in their society till to date.

Objectives

The following are the main objectives of the present study:

- (a) To understand how customary laws are related to various socio-cultural aspects like marriage, family, divorce, inheritance maintenance, guardianship, adoption, right on resources including land and forest, dispensation of justice and regulated their way of life of the Shertukpen tribe;
- (b) For understanding the functioning of the village

council and dispensation of justice in the cases of various nature among the Shertukpens;

- (c) To analyze the gravity of crime and the quantum of punishment;
- (d) To explore the changes in customary laws, their perspective and problems and the factors responsible for such changes.

Methodology

In anthropological research among many of its components, methodology of data collection is of utmost importance to carry out the research work in a proper way. Methodology is referred to as the procedure, rules, techniques and stages of conducting experiment and gathering data. It also endeavours the logical, scientific and systematic approaches to the study. Again in Anthropological research environment field work plays an important role for gathering empirical data and no other ways are considered as a replacement for it. Realizing the socio cultural significance of the pristine customary laws, one of the important aspects of the daily life of the Shertukpens, the present investigation has been taken for systematic study.

The study is exploratory in nature and realizing its importance in the socio cultural life of the people under study certain standard anthropological methods was adopted to collect authentic data. At the initial stage intensive library work was undertaken in order to know well about the subject matter. Thus in this study to gather the secondary information, various books, journals, newspapers, article, unpublished materials, office records was consulted. To collect the primary data different methods was adopted like observation, survey schedule, structured and unstructured interviews, concrete case study, etc.

The quantitative information in relation with demographic outline etc., of the village was collected through a household survey schedule by visiting each and every household of the two villages. In addition to these schedules, the qualitative data was collected through anthropological field methods like non-participant and quasi-participant observation method, unstructured interviews, case study methods, etc. The non-participant observation method was used for collecting information regarding the socio cultural life of the people under study, customary laws related to family, marriage, divorce, maintenance, inheritance, adoption, justice delivery system on both civil and criminal cases, oath and

ordeals, and practices associated with them as well as other aspects related with the day to day life of the people. Again the quasi- participant observation method was used for collecting data by attending the rites and rituals of different places of worship as well as household and community levels rituals, marriage ceremonies and festivals observed by the people under study.

Interview method was used to know about the concept of the people regarding their customary laws, role and duties of the village council's members, etc. This method was helpful know about the gender discrimination for which women section will be interviewed. In this study, case study method was used to have an intensive idea on certain specific situation and also the changes percolating in the pristine customary laws of the people, factors responsible for such changes and their impact on the socio cultural life of the people etc. Genealogical method was used to trace whether the portfolio of the head of the village council are succeeded in terms of hereditary or in other ways.

Moreover, the investigator visited different houses of the villages, take part in formal and informal level meetings, so that it can provide ample opportunities to gather information through informal chats with the people. Whenever necessary, the data that was obtain from one technique and / one informant, was cross check through alternative and / or other informants. To have an authentic idea in relation with the customary laws of the Shertukpens of those particular villages, information was collected from the village council's members and the *gaonburahs* along with the other expert members on their tradition and customs, who are integrally related with the different activities of the village council in their day to day life. Again some of the reputed scholars, academicians, social workers and religious head, etc., was also interviewed to have an idea about the continuation of the traditional aspects of the Shertukpen customary laws as well as the recent changes amongst the people of aforesaid study areas.

Results and Discussion

Administration of justice is unique in its function and structure among the Shertukpen and governed by the age old customs and tradition, differ from the rest of the communities of Arunachal Pradesh. All the Shertukpen inhabited villages, except Shergaon comes under the Tukpen Village Council (TVC), the highest authority of the Shertukpen. The Rupa TVC has its judicial and administrative jurisdiction over

fifteen villages. Besides, this Rupa TVC, every village has its council, headed by the *gaon burahs* (The head of the village council). The pretty disputes are settled within the village, and those cases that were not settled are referred to the Tukpen Village Council. Such complex cases are kept pending for *chatpu-nesey* (a traditional conference of the village elders held at an interval of three years). In each three years interval the TVC organise the conference, where all those pending cases settle by the council. It is to be mentioned here that if the aggrieved or accused person is not satisfied with the judgment of the *gaon burhas* in the village council, he or she may suit the case to TVC for review. Accordingly the TVC review the case and settled the case by pronouncing a fresh judgment, which is mandatory for both the parties.

Villagers in the village forum elect members of the TVC. The TVC is chronologically classified with ranks viz., *gaon burah* (The village headman), *barso* (village elders), *jungme* (members) and *kachungpa* (chowkider), etc. All adult individual are become the members of the council. Active members are selected from the primary members. The villagers for filling up the gap propose the name of the new member. The term of the active members are for full life span. So the total active members are not reshuffled in the same time. Selection of new members is required due to death or any cause of termination from membership. In the full session of the village council new active members are selected if required so.

Selection of *gaon burha* is most vital event in the Shertukpen community. *Gaon burhas* is generally selected from among the active members only. Wise, cool tempered, impartial and well versed in customs and traditions are the essential qualities of a *gaon burha*. The TVC settles most of the disputes under their jurisdiction. As the TVC is responsible for the village peace, so the council tries a variety of cases for peaceful settlement. The civil and criminal cases such as boundary disputes, disobeying or breaking the village rules, theft, assault, adultery, illicit relation, divorce etc., are settle by the council.

After receiving suit the TVC fixed a date in consultation with *gaon burhas* and venue for the settlement of the dispute. Accordingly the *kachungpa* announced the message to the villagers at evening when he patrols the village regarding the meeting and venue. On the appointed date all the council members, village elders and *gaon burhas* of different villages attend the meeting. The TVC have their unique systems of sitting arrangement. The *gaon burhas* and elderly members constitute one bench and the members of the council constitute the other bench. Before the council the complainant and accused

arbitrate on the subject matter. Then the council heard the witnesses. After hearing both the disputant parties and their witnesses the members arrived into a consensus judgment, which they sent to the higher bench constituted by the *gaon burhas* and elderly persons for approval. Normally the bench approved the judgment, but in some cases if the bench is not satisfied with the judgment, they may sent it back to the member's bench for review. After reviewing the judgment, again sent to the *gaon burhas* bench for approval. After getting the approval the verdict is passed and pronounced for public and is mandatory for both. The guilty may offer prayer for pardon and to minimize the fine, as he cannot afford the prescribed fine. The *gaon burhas* have the power to minimize the fine if found necessary looking at the economic ground of the guilty person. This is the most important part of the council system. This flexibility nature of the council makes it more convenient and participatory in the Shertukpen society. Before minimizing the imposed fine, they consult the future consequences on similar cases. Thereafter the person found guilty has to pay the fine and to make him free from all allegations, the council offer a traditional *khada* (fine).

On the other hand, if the case is complex, to avoid any conflict between both the parties, the council does not permit to attend the meeting. The disputed parties are asked to stay in relative's house nearby the venue of the meeting. The council chooses a mediator to mediate between the two parties. As per custom, they choose a mediator from the third clan to avoid any partiality, i.e., neither from the complainant clan nor from the accused clan. The mediator is sent to the complainant to hear the grievances and he directly comes to the council meeting and conveyed the same. Again he is sent to the convicted person to hear the defensive statement and the mediator convey the same to the council. On the basis of the information of the mediator, the council alter prolong discussion arrive into a unanimous judgment which is binding for the both. The guilty person has to pay the fine imposed by the council at the spot.

Nature of Offence

Divorce

Customarily divorce is permissible among the Shertukpens. Though, the practice of divorce is very rare in the society because of their strong social bondage and social cohesion. The village council approves divorce on sufficient reasonable ground. The grounds of divorce are maladjustment, extra

marital relation, disobedience nature, and so on.

As per customary law of the Shertukpen in divorce cases the following fines are impose:

1. *Aih-mat Ru* (price of woman) i.e. Rs. 10,000/- for *Thongs* and *Chao-mat toh khan Ru* (price of woman) i.e. Rs. 5,000/- for *Chaos*.
2. *Mih-mat toh khan* (divorce fine), Rs. 10,000/- for *Thongs* and *Chao-mat toh khan* (divorce fine), Rs. 5,000/- for *Chaos*.

Here it is interesting to note that, this is applicable if the divorce woman has her child. On the other hand, if the woman is adamant on divorce without any genuine reason as judge by the council, this clause is not applicable. Some time the woman herself pardons her husband from this clause.

3. *Oboh-usu Sontong* (A fine in honour of the heads of the council) i.e. Rs. 5,000/-
4. *Lungpu chik umm*, (A fine payable to TVC), i.e. Rs. 1,500/-
5. *Yamlung zogn-khan* (A fine for humiliation), Rs. 1000/-
6. *Leaso* (Compromising fine), Rs. 1000/-

Illegitimate Child (Dflow)

In case of an illegitimate child (*Dflow*) born out of illegal sexual offence, the woman has to pay a fine amounting Rs. 3,000/- to the village council. If the man responsible is identified then he has to pay the fine on behalf of the woman.

Adultery

The case adultery is not very uncommon among the Shertukpen society. If a Shertukpen woman is indulged in adultery and caught red handed, she has to pay a fine i.e. *lungpu chick khrim* of Rs. 1,500/- and has to pay an amount of Rs.1,000/- as *yamlung zognkhan*. On the other hand if the victim husband seeks divorce, he has to pay the *ru* to his wife i.e. Rs. 10,000/- as *mih-mat ru*.

Illicit Relation

Illicit relation i.e., clan incest or illegal sexual offence within the prohibited degree, are considered as punishable offence. In illicit relation *chick- khrim* i.e. Rs. 1,500/- is imposed on each. Moreover, the boy has to pay a fine of Rs, 5,000/- as *Oboh-usu Songtong*.

Law of Marriage

In the Shertukpen society, marriage is endogamous

but they follow the clan exogamy. As per customary law if any Shertukpen marry from outside the Arunachal Pradesh and within the country, a marriage registration fee of Rs. 3,00/- has to be remitted to the council. But in case of marriage with a foreigner, a fine of Rs. 3,000/- along with marriage registration fee of Rs. 3,000/- are payable to the council. No fine is prescribed when a marriage takes place between a Shertukpen and a man or woman of any Arunachali tribes.

Land Encroachment, Act of Lawlessness, and Violation of Customary Law

In the Shertukpen society for the cases of land encroachment, act of lawlessness, and the defaulter of *khikkzizi*'s duty (traditional priest), the offender has to pay the fine called *Oboh-usu Sontong* i.e. Rs. 5,000/-

Breach of Taboo

According to their customary rule the Shertukpens are tabooed for three days in every month, i.e. 8th, 15th, and 30th day of the month according to Chinese calendar. During these three days they are tabooed to work in the field, hunting and fishing which is known as *duchhin*. In case of violation of *duchhin* the violator has to pay a fine of Rs. 1,500/- as *Lungzu chik-khrim* and Rs. 1,50/- as *duchhin bhuh khan*.

Theft

The theft cases are very rare among the Shertukpen. It has been observed that the village people do not locked their door while working in the field. Even though the cases of theft are not reported. The thefts cases are considered as minor offence for which a minimum fine is imposed on the offender. A fine of Rs. 1,50/- is imposed for the act of minor theft.

Transfer of Land

1. According to the customary law, restriction is imposed on transfer of land to the non-tribals and outside their own community.
2. The Shertukpens are the absolute owners of their permanent plots, which they can transfer through sale, gift, etc. But, the owner is expected to discuss with his clan members before disposing the land.
3. The jhum plots belong to an individual and the owner exercises absolute right over the land. So, individual can transfer this plot if the owner of

the plot abandons it, it will remain fallow and no other person can cultivate there without the owner's permission. On the other hand, the jhum plots are heritable. Once it is occupied, the successor of the occupant inherits it generation after generation.

4. The transfer of land is very rare in the Shertukpen society.
5. Exchanging of the land among Shertukpen is practised. But due to variation in value of the land, exchange is done only after judging the value of the land to be exchanged by the parties concern.

Mode of Inheritance

Certain customary laws of the Shertukpens, which are followed since time immemorial, govern the transmission of property. The Shertukpens are patriarchal and follow the patrilineal system i.e., descent is traced through male line only.

1. Among the Shertukpen all movable and immovable properties are heritable. The movable property consists of livestock, household belonging, cloths, ornaments, domestic utensils, agricultural implements and so on. The immovable property includes the house, cultivable land and the areas reserve for fishing, collection of honey, etc.
2. For the distribution of property, the clan members are informed and distribution is done in the presence of the witness.
3. According to customary laws, equigeniture is the method, where the properties are equally divided among the sons. Here equal does not imply partition of land by measuring it but by the number of plots owned by individual.
4. At the time of distribution of property among the sons, a valuable property is kept in the name of the parents, which is locally known as *gaizi*. This is perhaps to make the parents life secure in their old age.
5. The son who live with the parents in their old age and performs the last rite entitled to inherit the *gaizi* and the house.
6. The household belongings, agricultural equipments, cooking utensils and ornaments are equally divided among the sons.
7. The practice of will for distribution of properties is not practised. A declaration of parents in front of the relatives is the only method of distribution of property.

8. In the family where there are no sons, the order of inheritance goes to the paternal uncle, then to the paternal cousins and to the distant clan relatives.
9. In sonless family, if a clan member perform the last rite of the deceased, he is entitled to get a share from the deceased's property, which is known as *siaramdo*.
10. In no case daughters are entitled to inherit the parental property. But they get a handsome property, i.e. ornaments, utensils, livestock and clothes in the form of gift at the time of marriage.
11. The daughter-in-law inherits the mother's ornaments.
12. Personal garments are generally placed in the grave along with the dead body. Any surplus garments that the deceased may leave behind are divided among the sons.
13. If the parent desires they can live with the daughter and son-in-law, whereby they inherit the *gaizi*.
14. According to customary laws, the parents can give a plot of land to the daughter, there are two systems under which land is given as gift and locally known as *heirochibba* and *phokgochibba*. Among the Shertukpen of Rupa both types of the gifts are non-returnable but among the Shertukpen of Shergaon, *phokgochibba* is returnable after the death of the daughter to whom the gift was made.
15. A widow can enjoy the husband's estate as long as she lives without remarriage with any outsider. Among the Shertukpen, a marriageable widow is allowed to marry her deceased husband's brother and thereby he become the father of children born out of his deceased brother.
16. The adopted son is entitled to inherit his adoptive parents properties provided the adoption is done on the basis of the customs. Adoption is allowed only within the clan and preferably within the lineage.

Conclusion

In conclusion it is worth to mention that, the traditional village council of Shertukpens is still functioning actively and they have great faith in their customary laws. The judgment of the village council is very much respected in the society. Therefore the people have good faith over their traditional justice

delivery system. The justice is based on customary laws, which are traditionally established and are followed since time immemorial. Therefore, the Shertukpen people do not approach the modern court of law. The justice delivery system among the Shertukpen is not burdened with cumbersome formalities, as it is in case of modern court of law, which is expensive and time consuming. There is a common saying that justice delayed is justice denied, but it is not applicable in the justice delivery system of Shertukpen. It is because justice is quick, cheap and perceptible. Moreover, due to the flexibility nature, the advantage lies on its economic consideration, by minimizing the fine as deem fit for the offender. The villagers become confused while approaching the Modern Court of Law, due to its formalities, time span and moreover they cannot afford the expenses required to suit a case. However, when serious crimes like murder, homicide, rape, etc., is committed, the matter is referred to and decided by the modern statutory law court. In this case they approached the nearby Deputy Commissioner's Court of the West Kameng District, located at Tawang. There is a Political Interpreter (P.I), preferably from their own community or a person belongs to Arunachali tribe, who has an adequate knowledge regarding the customary rules of the land as well as their dialect intervenes between the government authority and the aggrieved party. The cases related with disputes are therefore settled in accordance with the customary rules of the community. Again, from the present field study among the Shertukpens evident that it is high time to salvage the customary laws and rules for the future generation, which are gradually distorting due to outside influence. But at the same time, it should keep in mind that, the customary laws which are against the public policy, and which are hindrance to the development are to be modified to lead the society to aspired direction, so that development can be achieved.

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