

Historical Dimension of Legal Pluralism in Manipur

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Because of the social pluralism, Manipur like any other society in the developing/third world countries faces a state of legal pluralism. The term 'Legal Pluralism' refers to the situation in which two or more laws interact (M. B. Hooker, 1975, p. 6). The two or more laws do not necessarily refer to the native law(s) and colonial laws as being employed in many literatures on the plurality of law. This may be a situation where the enacted laws and customary laws interact and out of the interaction arises a conflict of law. In Manipur the customary laws of different ethnic groups and the enacted laws either of State legislature or of Parliament are the main elements in the pluralism. The colonial laws of the British which were imposed in those 56 years of colonial period were modified or enforced as part of the enacted laws. The state judicial system is just the continuation of the British notion of the system. The administration of justice is more or less similar to that of colonial period.

There is still the triangular conflict of laws in the state. The tribal customary laws are still prevailing in the hill areas of Manipur and Meitei customary laws in the valley. The enacted laws also exert pressure on the individuals as to their behaviour, act and omission. The rights and duties are defined by the three sets of law. Moreover, the plurality of law is more complicated with the differences among the tribal customary laws. This legal pluralism has certain historical dimension. In this paper, a brief historical outline is attempted by the author. And taking macro-level units, the paper shall deal with pre-colonial, colonial and post-independence period of Manipur and the picture of legal pluralism thereof.

II

The State of Manipur consists of three broad ethnic groups of people viz. Kuki, Meitei and Naga. All the three speak Tibeto-Burman languages. Of the three, Meitei is demographically, economically and socially the most superior. They inhabit mainly in the fertile valley while the tribals (both Naga and Kuki) in the surrounding hill areas. Broadly speaking, the Kukis are in the southern part of the State and the Naga in the northern part. The Kuki comprise more than 14 tribes while the Naga more than 13 tribes. In the 1971 census, the Kuki has 14.96% of total state population and the Naga 10.3% of the population. The Meitei cover the

Bamons, Meitei, Loi and Yaithibi, and the Pangan. The Pangan partly follow the Meitei customary laws and partly the Quranic laws. They constitute 6.62 % of the State population in 1971 census. The Loi and Yaithibi, otherwise termed as Scheduled Castes, are the exterior castes to the Hindu world of the Meitei, its having practically only two castes : the Bamon and the Kshatriya Meitei. They constitute only 1 % of the population. Despite their caste position, they are subject to the Meitei customary laws. Their behaviour and interactions are determined by the said laws. The Bamon, who came from outside Manipur, were Meiteinized by giving Meiteinized surnames such as Aribam, Hanjabam, Kongbrailatpam etc. There are about 49 such surnames (W. Ibohal Singh, 1986:607). Looking in the Sanskritisation model of M. N. Srinivas, the Bamon undergo the process in the Kshatriya-model as the Meitei being the dominant caste in Manipur Hindu Universe. They all are subject to Meitei customary laws with slight modification/alteration. Though there was certain immunity to some sort of penalty forms, they were not immuned altogether. The caste-immunity which was prevailing in Indian core societies was not fully noticed in this State because of the fact of 'minority' population of the Bamons, their foreign origin ; and above all, the caste in the varna model could not be developed.

The Meitei established its state in/around 33 A.D. (the year is still debatable). The sources of Meitei law were certain codified laws such as Loina-Sinlon, royal declarations, the Loiyamba Shinyen (written constitution) of 1110 A. D. and the customs. The lone legal report is Cheitharol Kumbaba which describes certain cases and their remedies (The Kumbaba describes other historical events too). The customary laws are still prevailing in the state even in the criminal proceedings of certain crimes. The trend of Meitei law was influenced by the adoption of Hinduism as well as by the British colonialism. It is, however, noticed that the Meitei main stream could not be wiped out and hence resulted in a legal pluralism even in the Meitei group. Among the Meitei, it is obviously observable that the law of in-coming Hinduism, the traditional legal codes and rules, the imposed colonial law (or statutes in Post-independence period) are interacting and they all play as one of the social conditions of human actions.

III

The tribal societies were satellites to the core kingdom of the Meitei. The pre-colonial period witnessed the centripetal force of these societies towards the core politics. But the Manipur hill tribal chiefs enjoyed fairly large measure of autonomy and authority in the management of their internal affairs (Ksh. Shyamkanhai Singh, 1982). The Meitei kings did not interfere them in such affairs. The administrative guidance or supervision was done through the office of Lambus. The Meitei superiority was symbolized by the annual and occasional tributes to the Meitei king. The amount and the kinds of such tributes differed from tribe to

tribe. Some of them are shown in the following table, basing on N. Ibobi Singh (1968 p. 171) :

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| I | Tangkhol | 1. One pot of cotton, ginger and pulses.
2. Clothes (at Coronation of Raja). |
| II | Marring | 1. One pot of Kumna, a herb.
2. Two pieces of iron ores.
3. One pon of chillies.
4. One Chi (heap) of arums.
5. Clothes (at Coronation). |
| III | Anal | 1. One Chi of arums.
2. One Chang (20 seers) of Sesamum.
3. One husking pillar.
4. One pon of tobacco and pines.
5. Clothes (at coronation). |
| IV | Kabui | 1. One Chi of arums.
2. One pon of cotton, and sesamum, tobacco, chillies, Heirabob (a fruit) ginger. |
| V | Chothe | 1. One Chi of arums.
2. Four Kairem Phis (a cloth).
3. One chang of sesamum.
4. Ten brooms.
5. Ten Huitri's (an implement for cleaning the cotton).
6. Baskets.
7. Tongs. |

During the reign of Garibniwaz (1709-1748), the administration of tribal areas was controlled and supervised by a separate department of Haomacha Loisang or Haoba Loisang. The Lallup system of tax paying in the form of labour by males above 16 years of age (E W Dun, 1886, 1981 p 26) was also extended to the hill peoples (See Ksh S Singh, op. cit; but quoting N Khelchandra, N Ibobi has opined that the Loisang was 'first established during the reign of Raja Irengba (984-1074)'. The Loisang was subsequently reorganised by Raja Charairongba (ibid., p. 116 f.n.)

The colonial period of the history of Manipur is marked with the defeat of the Meitei kingdom to the hands of Britain in 1891. With it, Manipur hill tribal areas were divided into five sub-divisions, viz., Mao, Ukhrul, Tamenglong, Langnoupal and Churachandpur. There was one Lam Subedar and seven Lambus in each of them. Till 1919, the hill areas were directly administered by the Political Agent of Manipur; but in October 1919 the power was transferred to the President of Manipur State Darbar. He should be a British I. C. S. officer, and was directed by the British India Government. He had been assisted by four S. D. O.s of Imphal, Ukhrul, Tamenglong and Churachandpur. The sub-divisions were reorganized in 1930 to form two sub-divisions, viz. south hill sub-division, and north hill sub-division. Again, in 1933, three sub-divisions were created in lieu of the two-Sadar sub-division, Ukhrul sub-division, and Tamenglong sub-division. The direct management was continued upto August 9, 1947 (Ksh. S. Singh op. cit).

The relationship of the tribal societies to the core political changes did not mean much to its internal legal systems. The latter had their internal autonomy. Though the core hand of administration was extended by Meitei kings through Lambus or by Britishers through President of Manipur State Darbar, the internal administration of justice was done by the Khullakpa and his men. Among Koirengs, a Naga tribe, the functionaries are/were Khullakpa, Luplakpa, Thakvar, Yupal, Potsang, Meitei Lampu, Lapu, Lapi (G. Kabui. 1987: 77). In almost all tribal societies, these Khullakpa, Luplakpa and Lampu were hereditary officers. Some historically important tribes were entitled to another hereditary office above the aforementioned viz. the Ningthou (the king). Maram tribe is one of such tribe. Besides the three (four in case a Ningthou was) officers, other officers were elected/selected. The legal officers should try both civil and criminal cases. The proceeding was based on the social customary laws. The traditional oath and ordeal played a good part in deciding the cases. They differed from one village to another. The substantive part of the law too had several differences from one society to another. The form and quantum of penalty were treated differently and even the definition of crime differed from a law to another.

IV

The Meitei society, in its comparatively more differentiated political structure, differentiated the process of adjudication from other aspects of the social system. There was a hierarchy of courts. The lowest 'court' was the Leikai-level council of elders. A leikai is the unit of the socio-political structure, the sub-unit of which is Konlup. The council tried petty crimes, cases of torts, defamation, breach of promise etc. There was no formal rule to conduct such trials, rather it was done on convention and public opinion. Singlup, besides its multidimensional social objectives, had certain legal sanctions. A singlup is leikai-level association.

The higher authorities were Cheirap, Garod, Paja. Above all, the highest appellate authority was the king who should decide the case in a royal sitting. Cheirap was the chief court. It consisted of 13 members including the Yubaraj. The Garot/Garod was essentially a military court, which tried military personals or the cases where one party was or involved such a personel. However, it is often seen, other cases of both civil and criminal nature were also taken up in the court. The court had eight members. Paja/Pacha was a special court to try cases relating to women and their problems. Previously, the head of the court was the principal queen but during the reign of Garibniwaz, the court was placed under an office of Pacha Hanba. "The method employed by the Paja in the decision of cases of disputed paternity were simple, and resemble those in vogue in Ancient Arabia" (Hodson. 1808, 1972 p. 92). From Paja the undecided cases could have been transferred to the Cheirap (See N. Ibobi, op. cit; Hodson, op. cit). In the colonial period, the court of Paja/Pacha was abolished and two

courts were established viz., the court of the political Agent and the court of the Assistant to the Political Agent. In these courts, British Indian laws were introduced. The cases beyond the jurisdiction of lower order and higher order of Meitei courts were tried in these courts.

The Meitei customary law had been slightly changed and/or modified with the great pressure of Hinduism during the reign of Churachand. During his times, Hinduism could have attained the climax. The Brahma Sabha tried the cases - both civil and criminal - that had been related to the concept of "Dharma" or 'Ashram'. All the matters of sacraments were examined by the Sabha. Though the Hindu 'custom' (if there is any such) had been developed only in the 18th century and re-enforced by Bhaigya-chandra, it could have exerted pressure on the Manipuri behaviour including 'Haos' and 'Pangans'.

The conflict of law was obviously seen in the colonial period. Each legal system claimed and counter claimed its superiority over others. In 1893, one Hijaba was killed by Okrumba because the former had illicit relations with the latter's wife. But Okrumba was sentenced by Bor Saheb on the legality of the murder (Cheitharol Kumbaba : 505). But such a homicide had been taken to be non-culpable. The injured husband had full right to kill the adulterer. It is thus observed in one case of 1870 A.D. The servant of Haobam Katawan was killed by one Mutuwa because the former had illicit relation with his wife. The latter was not sentenced, but his wife was sentenced to Khun'goinaba in the Sana Keithel (C. K. p. 391). But the British did not control the process of adjudication in Meitei court system. Till very late period, traditional oath and ordeal were done in deciding knotty cases. Some instances can also be looked. In the alleged adultery of one Sijagumayum man, who was a Bamon, with one Nahengbam Ninggol, the man denied any such commitment. The case was decided by the ordeal of "Sana-Lupa Lak'naba" in front of Sri Govinda ; the case went to the man's favour (C. K. p. 465 ; 1884 A. D.). In the similar fashion, the case of detection of a child's paternity, one Kong'grailatpam, a Bamon, vs. one Apujam (C. K. p. 474 1887 A. D.) was decided. The tradition of such oath and ordeal is still prevailing in to-day's Manipur (in both Meitei and tribal societies).

Qualitatively the post-independence statutes are the British rules and laws of the then period. By virtue of Merger Agreement, 1949, the State of Manipur was a part of India. "Under the State Merger Order, 1950, the Manipur (Courts) Act 1953 was enacted and the Act made Cr. P. C., I. P. C. and Indian Evidence Act applicable to the tribal areas of Manipur" (G. K. Gori 1984 p.29). But the customary laws of the tribal peoples were safeguarded by the Manipur (Village Authorities in Hill Areas) Act 1956 which gives a single tier system of tribal self government and Rules of 1957. The offences listed in the schedule of the Act are tried in the Village Authorities. But "The village council and the Village Authority co-exist in all Koireng villages-theoretically. But pra-

ctically both of them have been combined into one. Many of the village authorities are made to function in the traditional style and not according to the statutory provision" (G. Kabui, op. cit. pp. 85-86). In the Tangkhul society even to-day, "...all quarrels, differences, disputes, etc. within the clan are settled by the elders of the clan. In case of failure the matter is referred to the village court which naturally deals with all cases within the village. Disputes can also be settled by compromise.....Land disputes are mostly settled by oaths." (M. Horam, 1977 ; 86-87).

The Manipur Land Reform and Land Revenue Act, 1960 and the Rules thereof are not yet extended to the hill areas of the State. Hence the land-tenure in the five districts of Manipur is governed by the customary laws. The customary laws of land differs from a tribe to another. "In the northern region, where terraced cultivation prevails, the terraced fields belong to individual household.. The right over the terraced fields are, therefore, permanent, heritable and transferable. The individual households do not pay any rent to anybody" (S. K. Gosh. 1987 ; 144). The Thadou Kuki, on the other hand, has a different custom. They practise shifting cultivation. "...The area to be jhumed each year is selected by the chief....After the area is selected, it is the duty and power of the chief to distribute the plots among the individual cultivators.. So all that the cultivator gets is only the crop he grows, and no right over land" (Ibid : 144-5).

To a large extent, the Meitei customary laws are replaced by the enacted laws except in certain areas. The proceedings of personal laws such as in Nupi Chenba, Phadok'naba, Khainaba of adoption are still within the ambit of customary laws. The Indian Penal Code is applicable to Meitei. The customary law also prevails over it in respect of certain offences. Meitei adulteress is still punished by the Leikai-level adjudication or Singlup though she is not punishable under Sec 497 I P C. In spite of legal statutes of prostitute, a prostitute is still liable to punishment in the eyes of living law. Again, under Sec 509 I P. C., a man shall be liable for his act of uttering, gesture or so to insult the modesty of a woman. But 'eve-teasing' is not a prima facie offence in customary concept of crime, rather decent 'eve teasing' is part of Meitei socialization. A boy is encouraged to tease girls in the Meitei cultural system.

The low crime index of females can be partly explained in terms of conflict of law. Because of their status and expressive roles, females are customarily immuned to jail, exile or other forms of punishment except Khun'goinaba. Thus people are expected not to report of female offenders. The courts in the state have low frequency of female offenders except under East Bengal and Assam Excise Act. The rule of female immunity applies to the tribal societies, too.

VI

From the above historical outline, it is obvious that the legal pluralism in Manipur is historically deep rooted. This situation

is also a creation of ethnic plurality. Again, at another level, it is a question of interaction between native laws and 'modern' law. Such situation is reported from African societies and other third world countries. Burmese, Thai, Malay cases can be mentioned in South East Asian experience. The Indian Penal Code was conflicted with Burmese Customary law in the colonial period while in Malay case it was between Adat and Islam. The Thai experience was between long established custom and modern statutory law which served as means of social change. Here, it can be noted in the lines of Max Rheinstein, "Law is not a body of rules that can be unified or modified at will by government fiat. It is the part of a society's set of norms of behaviour that it regards as sufficiently important to be enforced through the power of the state, that is, through policemen, prison guards, sheriffs, or the public hangman" (in Geertz, 1963 pp. 224-5). The customary laws in Manipur cannot be regarded as the traditional relics of those bygone past, it still forms a dynamic part of living law.

It is, however, true that the modern law should be introduced in order to have a common code of conduct and/or behaviour. Law is, no doubt, a special form of social control and as society changes, the controlling mechanism must be adjusted accordingly. The Meitei and tribal customary laws should be adjusted to the enacted laws but this should not also hurt the people's sentiments. To minimize the demarcation between the elements, the enacted laws should not be shaped as 'imposed' laws. For a clear picture of such legal engineering, the first and foremost need is a detail study of all the customary laws prevailing in the state. As the pluralism is not between two sovereign countries but between the different groups of a single state, a compainitive study of these elements shall lead to a general principle of professedly universal application. Unless a microscopic detailed study is done, any sort of unification of these laws shall be injustice to the societies involved.

The existing criminal adjudicature is negatively valued because of its long process and 'unwanted' results. The customary laws involve less legal expertise but the redress is vivid to the eyes of the parties. Those who are habituated to the customs see the state judicial machineries as playgrounds of corrupt minds. They like to punish the criminals as soon as possible. The long process and time-consuming judicial process is being said as "the buffalo which goes to the direction, the stick directs". The people must be encouraged to come to these institutions ; first of all, these institutions should be reformed so that any litigation or proceedings can be disposed of as soon as possible.

Again, the traditional legal institutions cannot be wiped out suddenly so the modern institutions should play their roles as well. The interpretation of law should not always be done on the basis of stare decisions strictly. There should be provided a room for the local context prior to the unification of law. Otherwise, the legal pluralism may exist for another century with full experts on each front.

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