

Customary Law ; Dispute and Litigation Among the Garos

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1. Introduction

Traditionally law is regarded as the property of only the 'higher' cultures and civilizations. Anthropology of law avoids ethnocentric bias and has several advantages over disciplines like jurisprudence, political science, sociology etc. Firstly, it studies societies comparatively no matter how 'primitive' or 'civilized', and does not as a rule discriminate qualitatively in favour of one type of human society against another. Secondly, it conceives and studies human culture as an interrelated whole. Thirdly, modern anthropology does not concentrate upon the study of 'social forces' and the 'super organic' to the exclusion of the role of the individual. Both are taken into consideration. Fourthly, society is conceived as a dynamic phenomena so that the social role of law is not limited solely in maintaining the status quo. Fifthly, anthropology of law is a science of law and therefore empirical theories should be supported by all relevant facts available (Pospisil, 1971).

A legal authority which may be a council, a chief, a headman etc, law is being passed in which a dispute is solved. For the social anthropologists, the study of primitive law is a difficult task. Legal institution takes a fundamentally different form in primitive communities and law cannot be considered apart from the whole narrative system, the body of moral codes, rules of good behaviour. Laws are usually enacted by a legislature and enforced by a politically governed executive in whom authority is invested, is precise and sets out in detail the nature of the norm.

There is a distinction between the early law and the modern law. The former is conceived largely in kinship rather than in territorial terms while the latter, the public opinion remain an important deterrent from anti-social behaviour but it cannot rival force of communal in an aboriginal group. In a homogeneous native settlement, traditional law coincides with accepted ethical principles. For example, an Eskimo who has by chance eaten venison along with the flesh of the seals knows and feels that he has broken a taboo that involves his neighbours as well as himself in disorder.

Pospisil (1971) has defined customary law as 'a law that is internalized by a social group'. In primitive societies the growth of law is a slow and spontaneous process of usages and customs being given the sanction of time and force. There is no legislation in the sense of civilized society. Although some rare examples have been cited from America and Philippines where solitary cases of sudden legal reform as a result of the Chief's will have been reported by Redfield in his book *Transformation of the Primitive World*. There is however no sustained consensus and deliberate attempt at making or modifying law.

2. Scope of the Study

The scope of the study can be outlined in terms of the main assumptions on which the present study is based. It will be convenient to identify two main assumptions : one relating to the "Social change in Garo society, its form and pattern in Garo village, and the effect of these social change on the pattern of dispute and litigation among the inhabitants of a Garo village", and the other assumption dealing with "the social phenomena of dispute and litigation." In more elaborate term the two assumptions mentioned above can be put as follows :

- (a) In any social group, a community of persons, there will be both consensus as well as conflict among the members. In a village expectation and effort of every member will be to cooperate with all other members and for this purpose to conform to the norms, practices, law of the society. This notwithstanding, there will be occasion when there will be disputes and differences among the members of a village. In short, it can therefore be said that there is inevitability of disputes and differences among the people inhabiting a village.
- (b) The cause of such disputes and differences in any society and also in a village can be many. We can classify these disputes broadly under 3 categories: (a) dispute as a result of injury of loss of (i) property and (ii) personal safety, (b) dispute as a result of break in promises or contract between two persons or parties, and (c) dispute as a result of infringement of any social norms.
- (c) In every society for the settlement of the various forms of disputes (the three mentioned above), there are methods for the settlement of disputes in the form of (i) the authority (persons of a council) who will settle the disputes and (ii) the rules and procedures on the basis of which different types of disputes will be settled.
- (d) The authority for settlement of disputes can be those which are part of the social system like the village council or the village chief, and those which are established by law like courts.
- (e) A very important aspect of social life of a community can be studied by making an analysis of the forms of disputes and litigations that exist in the community at particular times.
- (f) In any society, and also among the Garo, as there are many forms of changes the nature of disputes also changes. These changes may be as a result of education, economic development, social contact, decrease in the effects of social control and increase of legal laws.

3. Methodology

For the study the following methods were used for the collection of data :

- (a) *Universe* : The Damalgiri village which is about 18 kms. from Tura, the capital town of the West Garo Hills, Meghalaya was selected as the universe of the study. In all there

are 24 households. The total population of the village consists of 115 souls of which 58 are males and 57 are females (census taken in Feb. 1984).

- (b) **Tools applied** : The tools applied for collecting data are (i) case study, (ii) focussed interview, and (iii) schedule.

4. Conclusion

After analysing the data collected the followings are the findings of the investigator :

The *NOKMA* (headman) always settle the disputes. But at times he with the consultation of the village elders will decide and pass the verdict. Three cases have been settled by the *NOKMA* of the village. They are (i) transferring of Nokmanship, (ii) desertation, and (iii) bathan or allowing the cows to graze the field. To compensate a victim affected a *DAI* or an amount of money is paid as fine which varies from case to case. No murder has taken place so far in the village and no specific punishment is given (if it takes place). Offences like fornication, seduction, adultery are very rare. Divorces do takes place and is settled by paying a *DAI* as compensation. Divorce among the Christian Garos is not permitted.

Customary law of the Garos as it is seen, the imposition of norm of behaviour for violation sanction or punishment are given by the village court. With the spread of Christianity, they have discarded some of the practices. For example, in the traditional society earlier polygamy was practiced. It was allowed only for the males and not for females. But now it is forbidden. The *NOKMA* holds the title to the a 'King land of the village community as the head of the clan, Suppose within a clan if there is any disputes, it is settled by the senior most maternal uncle and the case does not go to the *NOKMA*. At present the cases are tried in the court except the criminal cases.

Notes & References

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