

Customary Law and Gender Inequality: A Case Study of Pangwala Tribal Community of Western Himalaya

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Abstract: India is considered to be an anthropological laboratory because of its regional, religious, ethnic, racial and linguistic diversities. Tribal population is an integral part of the India's social fabric and has the largest concentration in our country. The present study is an attempt to the customs, and customary laws of Pangwala mountain community related to inheritance of the property. The study is primarily based on the Rawaj -i-Am (District wise statement on custom) and Wajib-ul-arz (village –wise statements of custom). Some legal cases, both decided and pending in the courts to examine the customs and customary laws that exist among the Pangwala are considered for the study which is more contemporary and exploratory in nature. The study reveals that Pangwal had patriarchal, Patrilineal or patrilocal custom law descent of the social group, inheritance of property, and succession of chieftainship is all in the male line, marriage is patrilocal and authority in the family is strongly patriarchal.

Key Words: Customs, Gender injustice, Pangwala, Western Himalaya

Introduction

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 (Fernandes and Bharali, 2008). 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...” (Bekker, 1989). When human beings live in groups, it is but natural that they should form harmonious group, life and confirm to certain patterns of human behavior. By experience man learns that a particular mode of behavior or conduct is conducive to collective living. In course of time, a pattern of behavior emerges, and by consistent adherence to it, it achieves spontaneous and conscious following by the members of the group. When this stage is reached, the pattern of human behavior is called usage.

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).

Regardless of its formal status, most tribes regulate their community and social affairs according to the customary law and treat it as integral to their culture and basic to their identity.

This law reinforces the tribe's age-old traditions and binds it together through normative rules by regulating the social and personal relations of its members. Through the institutions such as the village council based on it, the leaders manage the internal affairs of the village (Fernandes and Bharali, 2008). Culture is a community's expression of its worldview i.e. its interpretation of the reality around it or what can be called its philosophy, expressed through its customs, social relations and organization, language, rituals, festivals, dress, ornaments and arts. It culminates in its identity. Both the customary law and culture have changed over time (Fernandes, Pereira and Khatso 2005).

As social scientist Mayne puts it, “A belief in the property of the imperative nature of a particular course of conduct, produces as uniformity of behavior in following it and uniformity of behavior in following a particular course of conduct produce a belief that it is imperative or proper to do so, when from either cause or from both cause, a uniform and persistent usage has mould the life and regulated the dealing of a particular class of community, it becomes a custom.”

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). Sometime the customary law becomes basic to its identity (Cobo 1986). Therefore we can say that customary law 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: 17). In the others words we can say that customary law in its widest connotation is a body of rule which regulated the conduct of the human beings vis-à-vis each other and vis-à-vis the individual and society (Diwan, 1978).

The social life of Pangwala tribe mostly depends upon the customs and traditions prevailing in this region. They are closely linked with their ancient culture and customs. These tribes have their own way of life as a result of which they develop certain customs and laws to settle their dispute. Among the Pangwal tribe affairs of the community were carried out on the common consent and the village and family deities were guiding hand. Disputes of all types including marriage, adoption, inheritance and divorce among the families were settled by the village panchayats.

Objective of the study

To study the customs and customary laws of Pangwala mountain community related to inheritance of the property.

Data base

The study is primarily based on the secondary data. The secondary information related to different customs and customary laws have been collected from Rawaj -i-Am (District wise statement on custom) and Wajib-ul-arz (village -wise statements of custom). Some legal cases, both decided and pending in the courts to examine the customs and customary laws that exist among the Pangwala are considered for the study which is more contemporary and exploratory in nature.

Property Inheritance System under Customary Law

Inheritance in Pangwal community is not governed by Indian 1956 Succession Act or any other Act enacted by the Government of India or Himachal Pradesh Government but by the local customs and customary laws. Patrilineal system is prevalent in the Pangwal Community. All moveable and immovable property whether ancestral or self acquired devolves through the male line. The mode of inheritance can be generalized as follows:

1. When deceased is survived by sons, property is inherited by son or son of predeceased son.
2. When the deceased leaves behind no son but is survived by daughters and widow, his property will go to widow and not to daughter whether they are married or unmarried. Widow can retain ownership only up to her life time and on her remarriage or death the property returns to her husbands, brothers or their sons. In case of their predeceasing, generally Wajib-ul-Arz (customary law village-wise statement) do not allow disposal of the land by widow by way of sale, gift, mortgage etc. However, instances are there where the widows

have alienated their property by way of sale gift, mortgage etc. This happens because of lack of clarity of customs.

3. When the deceased is survived by more than one widow and has no son or daughter, property will be inherited by all the widows in equal shares but they retain land only up to their remarriage or death as explained above.

4. When the deceased land owner has kept son-in-law during his life time in his house, there are instances of mutations having been done in favors of daughter of the deceased but local customary law (Wajib-ul-Arz) does not approve it. The general practice in such case is that the property is gifted by different ways to the daughter or son-in-law during one's life time. Likewise widow can also keep son-in-law after husband is no more, and she can also alienate the land in favor of her daughter or son-in-law (Gharjowai) by way of gift.

5. When a woman has acquired property through gift or purchase, her property will go to the daughter. When she is survived by neither son nor daughter her property will return to the source from where it came as a gift and in case of purchase it will go to husband if he is living at the time of her death and to the brother of her husband if he has predeceased before his brother.

6. There are many instances of cases of inheritance by unmarried daughters also in the valley but this happens so when the deceased has neither son nor widow/widows. The inherited property, however, remains with the daughter up to her marriage. But she continues to retain property if she keeps husband for herself at her parent's home. In this case eventually property of the daughter on her death will go to her son and in case of no sons to other male members of her father's family (Bharti, 1995).

As has already been discussed that the Pangwala community in their personal matters they are governed by rule of customary jurisprudence. Under the Hindu Personal Law relating to Hindu Marriage Act, 1955 section 2(2) specifically excludes certain scheduled tribes.

Inheritance in Pangwal is not governed by Hindu Succession Act, 1956; rather it is determined by local tribal customary law which is patrilineal in nature. Immovable property like land moves only in the male line and most of the time females do not inherit it. Only instances like when the person dies leaving behind no son but is survived by daughters and widow his property will go to the widow. But overall Pangwala tribe inheritance law is patriarchal in nature.

A case of inheritance in 2012 involving Ratto d/o Pan Dei and Sunni Ram, the resident of Village Sach, Pargana Sach, Pangi, District Chamba vs. Karam and Raj Singh s/o Sh. Smt. Pan Dei and Sh. Sunni Ram, the resident of Village Savh, Pargana

Sach, Pangi, District Chamba (Himachal Pradesh Govt. 2012.

In this particular case two brothers after the death of their father distributed the property of their father between each according to the Pangwal customs regarding the inheritance. This is normal process as depicted in the document of Pangwal tribal customary law. But in this particular instance the daughter of the deceased filed a case in the court of judicial magistrate. Magistrate refused to Pangwal customary laws especially regarding inheritance are patriarchal in natures which are unjust towards daughters and wives in terms of their inheritance rights. But the penetration of modernity has made Pangwal society aware about the Indian Legal system which is far more just towards women in terms of their inheritance rights except the authenticity of customary law. The Magistrate upholds the right of the daughter of the deceased as a legitimate shareholder in the inheritance process. But still this case is an exception rather than a normal rule. Majority of inheritance cases are resolved according to the customary laws of Pangwal society. This case is clear example in Pangwal community.

Matter of matrimony

In the matter of matrimony, the members of Pangwal tribe are governed by customs of Pangi. The custom permitted a member of Pangwal tribe to meet the girl after his engagement with her, visit her house and even establish physical relations too. But the custom does not say anything if the engagement does not result in marriage. But the tribals invoke legal assistance to solve the matter if compensation given to them according to the customary law is inadequate. The custom with regard to matrimony states that in case of broken engagement all the expenses done by the family of the girls for this purpose and Izzat of the girl have to be restored by the boy's family in monetary terms. These people take it as an offence and do not accept this. Although this custom may seem barbaric but in a primitive society the relationship between male and female is formed on the basis of

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wild interactions. But this practice does not mean that if a girl refuses to marry a boy, then her character is ruined. Rather she is free to choose again the boy of her own choice. Their concept of Izzat is not related with the physical relations of the women rather it is related with social dignity of the families. But with education spreading in Pangi valley this custom is witnessing a gradual decline.

But if the members of the community find that the customs are not followed to their satisfaction and if the same causes mental agony, harassment and cause social stigma to them they look forward for the solution to the civil court of justice. In this regard the case of Bhadari Nath s/o Sh. Baldev r/o Village Guwadi, Pargana Sach, Tehsil Pangi, District Chamba (H.P.) vs. (1) Hari Singh s/o Sh. Chatter Bhuj r/o Village Shour Pargana Sach, Tehsil Pangi, District Chamba (H.P.) (2) Sh. Vijay Kumar s/o Sh. Hari Singh r/o Village Shour Pargana Sach, Tehsil Pangi, District Chamba (H.P.), can be cited as an example.

Concluding Remarks

Pangwal had patriarchal, Patrilineal or patrilocal custom law descent of the social group, inheritance of property, and succession of chieftainship is all in the male line, marriage is patrilocal and authority in the family is strongly patriarchal. All issues of succession are governed by Wajib-ul-Arz (Local custom) and very rare. Cases are resolved legally. All movable or immovable property develops through the male line. When a deceased is survived by son property is inherited by son. In case the deceased person leaves behind no son and survived by widow with daughter, his property will go to the widow. In such kind of instances one of the daughters among others stays at her parents' home after marriage with her husband. After the death of widow, daughter and her husband becomes the owner of property. With the passage of time eventually the property will go to their son after their death (grandson of the man who himself does not have sons.