



A STUDY ON CUSTOMARY LAWS AND JUSTICE SYSTEM OF THE TAI-PHAKE TRIBE OF NORTH-EAST INDIA

Sanjay Barman^{1*}, Amitabh Malla Buzar Baruah²

Abstract:-

Customary Laws are a set of laws that based on the customs, traditions, social norms of a particular community. It is practiced in many countries around the world basically by the indigenous people. These customary laws are often conjunction with civil, common, and religious legal systems. It is seen that the content and features of customary laws regime vary by society to society and country to country. It is said that laws are the codified rules which are based on society. More or less the modern laws always depend on customary laws. In ancient times, there was no advanced laws and judiciary system. During that time, customary laws played a vital role in every ground and judgement was given as per the customary laws. It is observed that customary laws have been playing an important role in today's world also. Particularly in the tribal society, these customary laws are considered as the soul of their laws and judiciary system.

Keywords: customary laws, tradition, norms, judiciary, society .

^{1*}Ph.D Research Scholar, Gauhati University, Guwahati, Email: sb5468136@gmail.com

²Assistant Professor, Ajmal Law College, Hojai. Email. rkybaruah@gmail.com

***Corresponding Author: Sanjay Barman**

^{*}Ph.D Research Scholar, Gauhati University, Guwahati, Email: sb5468136@gmail.com

DOI: 10.53555/ecb/2023.12.7.363

Introduction:-

Customary laws refer to those rules and regulations which are practicing by different communities since ancient times. It has been passing from one generation to another. It is also known as indigenous laws. These customary laws may start as customs with its localized application which are accepted gradually by the rest of the community when the members of the community feel that its introduction is good for it or does it no harm. It is the habitual course of conduct of a community that contains “do and don’t” based on its customs, norms and practices and the various mechanisms such as taboos, sanctions, social rituals, culture, public posture and ethics of individuals. Thus these norms restrain their pattern of behaviour and regulate the social, cultural and religious aspects of the individual and the family. The indigenous people especially the tribes recognized these customary laws for smooth running of their society. It is basically mandatory and enforceable by the Chief of the tribe in the presence of senior tribal people. It is an inevitable part of their life. Because in every foot step of their social life, it guides them. Both reward and punishment are applicable for the followers and offenders of these laws. It governs individual’s life, their marriage, family, bride-price, divorce, birth-rites, death-rites, inheritance, death penalty, child custody etc. Along with that, social institutions are also guided by these customary laws. And the society applies these laws through the social institutions.

The present paper highlights the customs and laws practiced by the Tai-Phake tribe of North-East India. The Tai-Phake is a tribal community who has been living in North-East India particularly in Dibrugarh and Tinsukia district of Assam and in Arunachal Pradesh. They are a migratory tribal group who entered North-East India in the year of 1775. It is a very organized tribal group having own language, literature, culture, social norms, customs and also well established villages. It is very interesting to see how their ethnic identity and customary laws are still observed and practiced in today’s modern complex society. In this present time also, their society is governed by the customary laws. They belief that regulating customary laws keep them United and it will maintain the social solidarity as well as it will help them to preserve their ethnic identity.

Discussion:-

Laws and justice system of the Tai-Phakes:- Tribal laws are always based on social customs. Social customs are the primary source of various laws related to the tribes. As like the other tribal communities, in the Tai-Phake society also has a

well organized laws and justice system and all kinds of laws and its related punishment are found in a very elaborate code, i.e. ‘*Thamachat*’. Regarding this, G.C. Sharma Thakur has mentioned a brief account of *Thamachat* in his book, “The Tai-Phakes of Assam.” This *thamachat* guides the Tai-Phake society by providing general principles of social behavior and a penalty for the offences. Although tai-phakes are very peace loving and religious minded people, but more or less their society is also not free from crimes or other types of offences. Here, we have mentioned certain laws along with the punishments associated with is as follows :-

(a) The offences and penalties associated with the theft are as follows:-

(i) If a man steals one cow/bullock, s/he have to pay fine of five cows/bullock for this.

(ii) If a man steals one horse, s/he have to pay fine of two horses to the householder.

(iii) If a man steals one elephant, s/he must pay a fine of one elephant to the householder.

(iv) If someone steals one goat, s/he must pay fine of fifty goats for this offence.

(v) If a man steals one pigeon or one duck or fowl, then Dr the offender have to pay fine of one hundred pigeons or one hundred ducks or one hundred fowls for this.

(vi) If a man steals a fishing net, s/he must pay fine of five times the price of the net.

(vii) If a man steal a tree, then the offender have to pay fine trice of the value of the tree.

(viii) If someone steals paddy from the stock of paddy store, then the thief must have to return the whole amount of the stolen paddy along with the fine Rs. 42.00.

(ix) If someone charge anybody as a theft without any evidence and if the case doesn’t become valid, then the fine for bring false charges of thief against anybody is Rs. 30.00

(x) If someone steals one deer, then the offender must pay Rs. 42.00 as a fine.

(xi) If someone steals one kitten, then the theft must have to pay Rs. 2.00 as a fine.

(xii) If someone steals one chicken, then the fine is Rs. 1.00.

(xiii) Leaves of five *tokoutrees* must pay as a fine if a man steal *onetokou* leaves.

(xiv) If a rich man steals half mound of rice or sesame, then he must pay five mound of rice/paddy/sesame as a fine, Moreover, if a poor man steals one mound of paddy/ rice, then the fine will be two mound of paddy/ rice.

(xv) If a man steals any weaving implements, the offender has to pay Rs.70 as a fine.

However, if a man steals a fruit or two fruits from the garden, no fine will be imposed upon the

offender if the offender is in sick and he does it in dire necessity.

(b) The following penalties are given in the case of assaulting and causing hurt to a person with or without provocation:-

(i) In the case of assaulting a minor by an elderly person, the fine will be Rs. 42.00 and if the elderly person assault a minor with one kick in his back, then the elderly person must pay fine of Rs. 14.00.

(ii) If a man beat a person and he gets injured, then the offender has to pay Rs.28.00 as a fine to the victim.

(iii) If someone assaults an old man, the payable fine will be 300.00.

(iv) When two brothers make quarrel against each other and if anyone of them get injured, then as a punishment the offenders' face will be smeared with ashes in the presences of all the villagers.

(v) If a man breaks someone's leg or hand, then the offender must pay a fine of Rs. 42.00.

(vi) If two or more persons attack one person, then the offenders have to pay Rs.98.00 as a fine. If the victim is injured by an eye or if his teeth is broken, then an additional amount of Rs. 98.00 has to be paid as fine.

(vii) If a man gets angry and attacks another man, then his belonging is seize.

(viii) If a man assault a sick person, then the offender has to pay Rs. 42.00 as a fine.

(c) The following provisions are applicable in terms of marital relationship:-

(i) If a married woman presents flowers or anything else to another man without her husband's knowledge, then the woman is considered guilty and in this case the woman is punished based on the seriousness of the case. As a punishment, she is scolded by the village elders publicly.

(ii) If a married woman keeps illegal relation with other three men except her husband, then punishment is only given to the first man. Because they believed that the other two men committed the wrong only seeing the first man.

(iii) If a man gossiping with another's wife in a lonely place, then the offender must pay gold more than one *tola*. The woman will to return the presents, if any, given by this.

(iv) If the would be husband goes for trade for a long period of time and if he will not return within six years, then the would be wife can get marry another man. And after returning if the would husband claims that due to certain reason, he was unable to return, in this case his complaints will not be considered as valid.

(v) If a married woman invites another man to a lonely place, then the woman will be considered as

offender. In this case, the woman is scolded publicly by the village elders as a punishment.

(vi) When a marriage is fixed with the eldest son of a family, but unfortunately he dies before marriage; in this case the younger brother from the groom's family can give marriage proposal to the girl with whom the marriage was fixed, and if the girl's family accepts the proposal, then they can get married with each other.

(vii) If a boy from sub-clan makes sexual intercourse with a girl from the major-clan, then the boy have to pay Rs. 140.00 as a fine. Moreover, if the boy from sub-clan forcefully make sexual intercourse with a girl from major-clan without her consent, then the all property of the sub-clan boy will be seizes by the girl's father.

(viii) If a boy from major-clan makes sexual relationship with a girl from sub-clan after fixing his marriage with another girl, then the boy will marry the girl from sub-clan, but if the father of the girl with whom marriage negotiation took place already, demands the amount of paddy equal to the weight of the girl of the sub-clan. If the boy unable to pay such a big amount, at that moment, he will be allowed to pay half amount of the paddy.

(ix) To get second wife, it is necessary to take consent from the first wife. However, it will not be necessary when the first wife remain barren for eight years. If the husband brings the second wife without any consent from the first wife, then the second wife will be kept in a separate house.

(x) When a child born due to illegal sexual relationship with one's own daughter, then the father has to bear all responsibility for its upbringing. And if a child born due to illegal relationship between the headman and the maid servant, then the headman has to pay a fine to be determined by the meeting of the village elders. This fine may be vary from person to person.

(xi) When a servant makes sexual intercourse with the daughter of his master, the servant should be treated as son-in-law. The same thing will be applicable for the maid servant also. When an honorable man makes sexual intercourse with his maid servant, then the man must accept the maid servant as his wife.

(d) The laws related to property and its inheritance are mentioned below:-

(i) If a son sells his paternal property without consenting his father and if the father detects this case, then he gets back the property by providing double price to the buyer.

(ii) If a person is going to get marry with a widow whose already have a child and the person also has a child from his first wife, in this case the property he earns from second wife after his marriage will

be divided equally into five parts, where one part will be go to the hands of children of the first wife, second part will be go to the hands of the children of his second wife and the remaining part of the property will be reserve for the children born to the widow in the second marriage. And the property which he earn after the death of his first wife and before the marriage with the second wife will be go to the children of first wife. Ultimately, after the death of first wife, when a man marries for second time, then after his death the property is shared equally among the sons and daughters of the first wife. The children from the second wife will be the inherit of that property which are belonging to their mother. However, if there is no property of their mother, then they will be inherited by those property which their step father earned after their mother's marriage with him.

(ii) The all paternal property from the same parents will be shared among the sons and daughters. After the death of the parents the whole property will be divided into 10 equal parts and one parts will be given to the eldest son. The remaining property is again divided into 10 equal parts and one part is provided to the second son. Again the rest of the property is divided into 10 equal parts and one part is given to the third son. In this way, the remaining property is divided equally in one tenth which is given to the rest of the sons and daughters.

(iii) When a women gets married with another man after the death of her husband, then the property is divided into five equal parts where four parts are distributed among the children of her first husband and the remaining one part is given to the widow.

(e) Various laws related to different kinds of cases:-

(i) If someone kills a man by the direction of another person, then both the actual murderer and the advisor of that crime must have pay a fine of this offence. Here, the actual murderer has to pay a fine double than that of the adviser of the crime.

(ii) While felling a tree, if a man is killed in spite of the warning of woodcutter, then, in this case the woodcutter will not be responsible for this accident.

(iii) If someone hired an animal from another person and if this hired animal doesn't work as recommended by the owner of the animal, then the owner should replace the animal. If he doesn't do so, then half rent will be provided to him. Moreover, if the animal is lost in day time, then, full rent will be provided to the rentor and if the animal is lost during night, then half rent will be provided to the rentor.

(iv) The rentee should not be treated roughly. If the husband who is living separately from his wife borrows some amount of money, but he unable to repay it at time as per the contract, then his wife

can't force his to repay it. She shouldn't ask her husband to repay the loan. Only the borrower is responsible for the same.

(v) If a man brings a servant on contract basis and if the servant dies before the expiry date of the contract, then the master has to pay the full amount to the father or guardian of the servant. If the father or the guardian files a case for not getting the amount from the master, then owner has to pay the contracted amount with Rs. 42.00 in addition.

(vi) If the father dies as a debtor, then his inheritors have to repay the debt.

(vii) When the standing crops are damaged by someone's cattle, in this case equal amount of compensate will be given to the owner of crop for the damaged. However, if the crop is damaged by calves, then no compensation will be imposed.

(viii) If a portion of land of another person lying on the boundary of one's land is seized illegally, then the encroacher will have to pay Rs. 14.00 as a fine. Moreover, the encroacher has to pay the proportionate amount of paddy to the owner of the land for occupying his land illegally.

(ix) If a man is killed by an elephant or an ox or a horse, then as a fine the animal will be confiscated. But if the man riding the animal gives warning or if the animal makes any sound of warning, then neither any fine will be provided by the man nor the animal is confiscated.

(x) If the guest dies after taking rice beer, meat and fish in someone's house, then the host will not be charged as murderer of the guest.

(xi) A creditor gets double amount of his credit from the debtor when the debtor fails to repay the amount even after lapse of the grace time. In this case, the creditor may apply force over the debtor to realize such amount.

(xii) If a man borrows some amount of money or gold from another person and if he will fail to return it in the given time, then a sum of addition amount may be charged.

(xiii) If a man borrow something from another person, but later on the borrower denies about it, in this case the judgement should be decided by taking ascertained from the relatives of the borrower whether the borrower is poor or rich & whether the borrower has any outstanding debt with any body.

(xiv) Just after taking a loan from a money lender, if the borrower falls ill and if the lender takes away his property instead of his money, then the lender will not be punished. But if the lender falls ill and he takes away the borrower property, then he will be guilty.

(xv) Regarding mortgage, if a person returns the mortgaged property in the due time, then no interest should be taken. But if the owner of the mortgaged property can't take back his article on or before the

stipulated date, then the mortgagee will acquire the possession of the article.

(xvi) After the expiry of 10 days, a bonded labour or a serf can't returned to his parents and if the bonded labour dies within seven days from the date of his purchase, in this case the purchaser has to receive half of the selling price of the serf or the bonded labour.

(xvii) If a person takes a loan from another person but he is unable to repay the amount in the given time, in this case he may provide some articles in lieu of the amount. But he will be deprive even he repays the original loan later on.

Apart from these, in the *Thamachat*, there are other things also included i.e. causes of quarrel, types of witness etc. There are fifteen causes of quarrel mentioned in *Thamachat* which are mentioned below:-

- (i) If someone sells other's property secretly.
- (ii) If someone makes illegal activity but s/he denies having made a mistake.
- (iii) If someone make sexual intercourse illegally.
- (iv) On the basis of distribution of property.
- (v) Due to the disagreement between husband and wife.
- (vi) Gaming is another cause of quarrel.
- (vii) Disagreement among the family members on distribution of household property.
- (viii) Encroachment of someone's land.
- (ix) If someone deceived someone.
- (x) If someone betrayed someone.
- (xi) Taking back again after giving in good faith.
- (xii) Giving and taking loan.
- (xiii) Borrowing.
- (xiv) Refunding.
- (xv) Unable to divide something between two.

In the case of a quarrel between individuals, who will be the judge or who can give the judgment, in this regard, in the book "*Thamachat*" has mentioned about the following persons who can be act as judge or can give their judgment:-

- (i) A king, (ii) An intelligent as well as wise person, (iii) A person who never tells a lie, (iv) The village headman or Gaon-Burha, (v) A man of status, (vi) A well known person, (vii) A person who doesn't lose temper.

Moreover, regarding the witness, *Thamachat* says that the following persons aren't considered as witness :- (i) Self, (ii) Alcoholic person, (iii) Old and infirm man and woman, (iv) Tired person, (v) Minor, (vi) Black smith, (vii) Betrayer, (viii) Proud person, (ix) Goldsmith, (x) Stupid person, (xi) Talkative person, (xii) Pregnant woman, (xiii) The persons whose profession is dancing and

singing, (xiv) One's brother or relatives, (xv) Person who loses his temper easily, (xvi) Carefree free man without any obligation, (xvii) Poorman, (xviii) Boatman, (xix) Stammer.

Here, it is also mentionable that individual's status is very much important for being a witness. As for example, when two man quarrel with each other, then only a man from equal status becomes witness. When two poor man quarrel with each other, in this case only a poor person can stand as witness. When two rich man quarrel with each other, then only a rich man should stand as witness. The judge never act as witness. When the statement of both sides appears to be true then passing of the judgment should be withheld at least for one week. However, in this case, there is a provision that when any witness falls sick in the meantime, then the judge may decide the case in the favour of the person whose witnesses were not suffering from any illness during this period of seven days.

These are the system of law and justice that has been exercising in their society. But with the course of time, the amount of payable fine has been changed. However, from the above data, it is cleared that the Tai-Phake society possess an written legal code where many of these laws don't take place in the Tai-Phake society at present. During observation, it is seen that some laws become invalid due to its few applicability. As we have mentioned above that Tai-Phake is a peace loving community, and that's why crime, theft and assault rate is very less in their society. They are also very religious minded people and they strictly follow the principles of Buddhism. This is one of main cause that prevent them from committing any crimes, offences and assault etc. Still today, these code allow the village elders to apply their conscience in dealing with the legal matters. However, regarding the disposal of the property, although the legal code includes detailed rules about it, but yet in practice the Tai-Phakes don't adhere strictly to the code.

Conclusion:-

In conclusion, we can say that the customary laws and practices play a pivotal role in administering Tai-Phake society and it acts as a very effective mechanism of dispute resolutions. In this study, it is cleared how customary laws have been playing an important role in their society since ancient times. But at present, it becomes very important to educate the Tai-Phakes regarding their constitutional and human rights so that they can organise themselves to fight for their common cause.

Bibliography

1. Gohain, Paimthee. (2009). *Tai Phake : Samaj aru Sanskriti*. Poy Foundation, Namphake.
2. Phukan, Supriti. (2015). *Tai Phakes : A Historical and cultural Study*. EBH Publishers (India), Guwahati.
3. Narwanig, G. S. 2004. *Tribal Law in India*, Rawat Publication, New Delhi.
4. Singh, K.S.(ed).1993. *Tribal Ethnography, Customary Law and Change*. Concept Publication company, New Delhi.
5. Thakur, G. C. Sharma. (2013). *The Tai Phakes of Assam*. B. R. Publishing Corporation, Delhi.
6. Visto, Adino.2003. *Customary Law and Women*. The Chakhesang Nagas, Regency Publication Company, New Delhi.