

Indigenous Feminism and Women Resistance: Customary Law, Codification Issue and Legal Pluralism in North East India

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ABSTRACT

In this article the author intends to situate the concerns of women in feminist movement discourse and discuss the gender implication of customary law in the ethnographic milieu of North East India. Indigenous feminism, which developed out of a need to define the complexities arising through the interface between race, ethnicity, and gender, is a political and cultural movement that seeks equality. In recent years there is growing demand for gender parity and resistance to outmoded customary laws, which are replete with patriarchal tenets that deny indigenous /tribal women the basic jural-political and economic privileges and human civil liberties. Using the legal anthropological approach, it is argued that appraisal of gender perspective of customary law in northeast India can be best accomplished by reinterpretation of kinship rules and customs vis-à-vis rights issue of women in broader context of legal pluralism. In order to highlight the complex status syndrome of women in Northeast region and their struggle in the face of 'law-codification' and intruding hazards of state-legal domains, some case studies are cited to show enduring resistances of women organizations in the region.

Keywords: *Indigenous Feminism, Customary Law, Legal Pluralism, Law-Codification and Women of Northeast India.*

INTRODUCTION

In this article the author intends to situate the concerns of women in feminist movement discourse and discuss the gender implication of customary law vis-à-vis modern state laws in the ethnographic milieu of North East India. Located in Indo-Myanmar frontier, India's Northeast region comprises 'provincial states' of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Tripura and Sikkim. The region shares international borders with Myanmar (Burma), Bangladesh, Bhutan, Tibet (China) and Nepal. Geographically, apart from the Brahmaputra, Barak and Imphal valleys and some flat lands remaining two-thirds of Northeast India is hilly terrain, inhabited by tribes people.

Indigenous feminism, which developed out of a need to define the complexities arising through the interface between race, ethnicity, and gender, is a political and cultural movement that seeks equality. In recent years there is growing demand for gender parity and resistance to outmoded customary laws, which are replete with patriarchal tenets that deny women the basic jural-political and economic privileges and

human civil liberties. Using the legal anthropological approach, it is argued that appraisal of gender perspective of customary law in northeast India can be best accomplished by reinterpretation of kinship rules and customs vis-à-vis rights issue of women in broader context of legal pluralism. In order to highlight the complex status syndrome of women in Northeast region and their struggle in the face of intruding hazards of state-legal domains, some case studies are cited to show enduring resistances of women organizations in the region.

INDIGENOUS FEMINISM VIS-A-VIS GENDER DISCOURSE: EMERGING TRENDS

The term 'gender' relates to the socio-cultural and historical characteristics that determine how men and women interact and apportion their roles (FAO, 1994). In the 1990s the social scientists integrated women in 'development' sphere by focusing on 'gender' by stressing the socially determined roles of and relations between men and women. However, most legal instruments, including the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW), refer to sex, rather

than gender, as prohibited ground of discrimination (<http://www.fao.org/docrep>). Gender relations are the ways in which a culture or society defines rights, responsibilities, and the identities of men and women in relation to one another (Bravo-Baumann, 2000). The issue of gender with regard to the indigenous peoples has been implicitly addressed in the UN Declaration on the Rights of Indigenous Peoples. Sadly, the poor implementation of most global conventions in much of Asia indeed demands the need for a broad social acceptance of the need for reforms (Roy, 2005).

Gender discourse is interrelated with feminism. The concept of “gender” has been used in feminist theory to refer to the social construction of the differences between men and women since the early 1980s. Feminism implies a diverse collection of socio-political theories, political movements and moral philosophies, largely motivated by a concern for co-equal social role and position and rights of women vis-à-vis male members in a society. Feminism is thus the ideological foundation of women's liberation movement. Indigenous feminism is a political, social, and cultural movement that seeks equality. Indigenous feminism developed out of a need to define the complexities that arise for indigenous women (and men) as a result of the intersections of race, ethnicity, and gender. For example, indigenous feminism acknowledges the devastating consequences of colonization on indigenous peoples. The need to define an indigenous feminism resulted from the need to address various forms of structural oppression experienced by Indigenous people around the world. Indigenous women have argued that “feminism is actually an indigenous concept that has been co-opted by white women” (Smith, Andrea 2011). Indigenous feminism diverges from postcolonial feminism, because some scholars have argued that postcolonial theory in general has largely ignored the histories of colonialism (Byrd, 2011).

As regards tribal women, we find that their legal status is determined, to varying degrees, by several levels of law: international law, national law, customary law and norms of culture and social structure. Both national and international laws are however criticized by feminists for male-biases. Feminists have raised concerns that a state's reluctance to govern in areas traditionally seen as indigenous or tribal and leaving those areas of law to customary legal

systems, leaves women within those communities vulnerable to discrimination. Such incidence is indeed true relative to women in Asian countries including India.

WOMEN STUDIES: STATUS AND RIGHTS OF WOMEN IN NORTHEAST INDIA

Anthropologists and sociologists have uncovered the ideologies that reinforce male dominance in familial arena. Leela Dube has explained this ideology behind a very common tribal saying, "Man provides the seed while woman provides only the field" (Dube: 2001:71). Such discourses serve to place the ownership of woman in the hands of the man, and in a larger sense, the society itself, reinforcing the ideology behind the creation of a patriarchal society and the subordination of women to the dictates of male power (Dube:2001 119-120). Literary personalities and social scientists have moderately contributed toward woman studies in northeast India. The notion of ‘agency’ in the social, economic, legal and political structure of Assam is analyzed by Meeta Deka (2013). Author discusses the women's marginalized position in the economic arena and the inherent patriarchal relation of power in postcolonial scenario (2013: 97). In their study, Bidisha Mahanta and Purusottam Nayak (2013) have explored the extent of gender inequality in north-eastern states of India in four spheres of education, employment, health and political participation. The gender gap was estimated in the areas like literacy rate, enrolment rate, work participation rate, sex ratio, infant mortality rate, and life expectancy at birth and women's political participation etcetera. They found that the gap was narrow for the states like Meghalaya, Mizoram and Nagaland in respect of literacy rate. The gender gap in literacy was the largest for Arunachal Pradesh among north-eastern states. However it was far better than national figure. Similarly Meghalaya, Nagaland and Sikkim had done well in case of enrolment rate. Even in high school level the enrolment rate of girls was more than that of boys in those states. In Arunachal Pradesh and Assam however the gender gap was wide in enrolment rate at different levels of education. Gender gap in work participation rate was less in Manipur, Nagaland and Mizoram. The prevalence of women market in Manipur might be the cause of the low gender gap in the state. However the situation was worse in Tripura, Assam and Sikkim where tribal population were relatively lower in comparison

to other north-eastern states. Using mainly the female literacy indicator, Ira Das (2013) argued that the status of women in the states of northeast India is better than the status of women in rest of India. However, divergences occur. Infant mortality rate for female is high in Assam. In Assam and Nagaland, the female literacy levels are above average and the gap in literacy levels strikingly low; however, enrolment rates for girls are low than the national average (Das, Ira, 2013).

The gender issue in tribal societies is a complex phenomenon that needs to be addressed in the context of various domains such as family and kinship systems, marriage patterns, fertility, child mortality, literacy, sex-ratio, labour force participation, economic status recognized in household, religion, culture, and exposure to urbanization. Tribal women display considerable heterogeneity in terms of their role and status within the tribal community. It is noted elsewhere that the economic considerations as also religious factors too had bearing on fertility patterns in parts of Northeast (Das, 2015). A few empirical studies have focused on the multi-dimensional nature of gender inequality in India (Malhotra et al., 1995). While the effect of patriarchy on female autonomy and gender equality is seen as a powerful variable, social indicators such as female literacy and child mortality also affect fertility, and thereby indirectly affect women's marriage age, female educational share, and social development. Using demographic and economic data comparatively for all-India scenario Aparna Mitra has observed that in some of the north-eastern regions where the tribes constitute a majority in terms of total population, tribal women seem to fare better in terms of literacy rate, sex-ratio, work patterns and fertility rates (Mitra 2007).

Among the anthropological studies dealing with woman issues in Northeast India mention may be made of works on Khasi-Garo matriliney by Chi Nakane (1967); Garo family and kinship by R. Burling (1963); Garo kinship by M.C. Goswami (1998) and also D.N. Majumdar. Kinship among the Khasi and Lalung are studied by Nongbri (2004), Shyam Chaudhury and Das (1973) and Das (1985b).

Kinship studies of 'patrilineal societies' are conducted by B.B. Goswami, D. Danda (1978), and N.K.Das (1993). Among a few studies which deal with customary law and especially legal anthropology, mention may be made of

numerous studies of anthropological survey of India (Das 1993, Singh 1993), Law Research Centre of Gauhati High Court (Goswami 1981, J.N.Das 1987), and Northeast Social Research Centre. Among a few PhD studies on customary law mention may be made of Das (1985a) and Melville (2004). Marak and others have also studied customary law (Marak, K. R. 1997, Marak, Caroline. 1992). In 1985 S.K. Chattopadhyay brought out an important seminar volume 'Tribal Institutions of Meghalaya', which dealt with matriliney, land rights, chieftaincy and impact of sixth schedule. In a 1997 publication this author had surveyed the status and land rights of the tribal women in North-East India (Das, 1997). The volume 'Gender Implications of Tribal Customary Law', edited by Melvil Pereira, et al (2017) is a pioneering exercise. This valuable monograph includes empirical studies contributed by several local scholars, such as Tejoswita Saikia, Dolly Kikon, Sunumi Changmi, Toli Achumi etcetera.

This volume includes this author's essay 'Customary Law, Anthropological Jurisprudence and Gender Issue: Situating Women of Northeast India in Feminist Discourse'. In her critique titled 'What do the Gender Ideologies in Khasi and Naga Societies Reveal?' in this volume, anthropologist Lucy Zehol has argued that Khasi and Naga women respectively are denied political role and political participation in their respective localities.

Dolly Kikon, the Naga social anthropologist, in her monograph 'Life & Dignity: Women's Testimonies of Sexual Violence in Dimapur (Nagaland)', highlighted the existence of sexual violence within the supposedly secure confines of the home. Author says that the impunity and sexual violence have become entwined in a way that both have seeped into the veins of Naga society today.

With firsthand accounts of rape survivors, her monograph examines how a general culture of impunity has further perpetrated crimes against women in Nagaland – the voiceless victims traumatised for life and the perpetrators going blameless. The monograph is published by North Eastern Social Research Centre, Guwahati. Its director Dr. Melvil Perreira observed that 'Context' and 'Culture' against which the monograph is set calls to act (Morung Express News, Dimapur24 January, 2016; <http://morungexpress.com/violence-against-women-in-a-culture-of-impunity/>).

TRIBAL LAWS, CODIFICATION ROUTE AND STATE LAWS: INTRUSION OF LEGAL PLURALISM

In postcolonial era, the Indian nation-state generally endorsed the legacy of 'indirect rule' of the past and continued with a decentralized format of tribal governance by safeguarding the customary laws. The need for decentralization and devolution of power led to introducing self-governing autonomous institutions, such as autonomous councils under sixth schedule, panchayati raj institutions (Assam-Arunachal Pradesh) and safeguarding the customary laws and 'tribal institutions' through Article 371A (Nagaland), Article 371G (Mizoram) and Article 371 C (Manipur). Two main founding features of 'indirect rule' of colonial regime in Nagaland were gaon-buras and dohashis (village elders and interpreters of tribal laws), who were institutionalized under the postcolonial setup. Dohashis functioned in district offices as the official adjudicators. Their courts now called as Customary Law Courts were called Dohashi-courts (Das 1993:98).

While collecting data for his PhD during the 1980s, this author had collected from the DB Court in Kohima printed leaflets which had elucidated some customary laws pertaining to household and village affairs within Angami territory (Das 1993: 159). Author was informed that codification of customs is a complicated issue as different localities have their own laws, which are modified gradually. In recent decades, however, some state governments of the northeast and Gauhati High Court have attempted to 'codify' and 'document' aspects of custom and law. Codification is a contentious issue as it implies a desire for homogeneity of sorts. The Mizoram government has codified parts of Mizo laws. In Meghalaya, the government initiated the process of codification in 2005 and installed a codification committee. The Law Research Institute at Gauhati High Court is engaged in a documentation process through publication of a series of brief reports on the tribes of North East. Those who oppose codification argue that there are acute variations from village and village and region to region within a tribe, hence any 'codification' will disregard the many vital elements of customs and practices. While others, such as late Pukron Kikhi, a former DB, argues that 'certain standardization of customary law at the level of the larger tribe or in inter-tribe context' may be helpful especially in dealing with disputes

pertaining to inter-village marriages and inter-village land disputes (Pereira 2009: 284).

MATRILINEAL MEGHALAYA STATE: CUSTOMARY LAW, MODERN LAW AND RISING CONFRONTATION

Northeast India presents kinship systems of three principal types: patrilineal, matrilineal and bilateral. We have referred to some patrilineal scenario above. Here the author will focus on matrilineal tribes of Meghalaya, who are facing the challenges of codification and legal pluralism variously. In Meghalaya, among both Khasis and Garos the youngest daughter (khatduh in case of Khasis and Nohkhrum among the Garos) inherits ancestral property. In Garo society, because of the presence of cross-cousin marriage, a Garo prefers his son marrying the daughter of his sister, who has inherited the property of the family of his birth. Clan and lineage are main structural features of matrilineal tribes. As regards the descent group formation, while among the Garo the localized lineage is expressed in terms of the village; among the Khasi, on the other hand, the lineage is crucial for identity of household/ family, the iing. Among the Garo the village theoretically consists of the members of the two localized lineages, as represented in the headman and his wife respectively. Nakane (1967) observed that in societies of the household- lineage type (Khasi), a functional unit is demarcated in the first place by common property and residence, which cuts off clearly other members who may be included by the descent principle. In matrilineal tribes the property is owned by the woman, but the controlling power and authority over it are in the hands of the man (Das, 1989: 122).

The Garo are noted for the high status and power held by women. The Garo society however is different where land is divided into akhing land where members of a particular clan or mahari have usufruct rights. Each akhing land is commonly owned, but increasing adoption of settled form of agriculture is threatening the system. Individual growers are producing ginger and cashew nuts and claiming permanent possession of common lands. Thus, it is only a matter of time when that land is to be converted into private ownership (Patricia Mukhim, 2005).

Property rights and status of being Garo is acquired through birth in Garo family. However, this customary practice has come to be modified through a state legislation creating conflict in

society. This legislation now provides legal recognition to any person born of a non-Garo mother and a Garo father as a Garo. This legislation called the Garo Hills Autonomous District (Codification of Customary Laws) Bill, 2009 has received governor consent so it stands authenticated (The Shillong Times, 5 August, 2014).

Among the Khasi and Jaintia tribes the women have exclusive property rights at the level of family and lineage. Soon after the creation of the Meghalaya state, the Government constituted a Land Reforms Commission which recorded three types of land in Khasi-Jaintia Hills: Government land; Ri Raid land (community land) and Ri-Kynti or private land. Theoretically indeed women own land and possess clear land titles, but male leaders on their behalf play crucial role in the sphere of land management of different categories of land. In political sphere however, it is male members (affiliated to matrilineage /matri-clan) who have the authority. The ruler of a Khasi State belongs to Syiem clan and the Electoral College selects the Syiem. It is reported that in due course the Syiem and his immediate family members and the Bakhrav started staking claim to more land than they could use (Patricia Mukhim, 2005). Male superiority in political sphere of 'traditional' Khasi polity and 'modern' Autonomous District Councils (of Khasi and Jaintia Hills) remains an inherent challenge to matrilineal system. Such occurrence of legal pluralism is visible in numerous actions initiated by the statutory Autonomous District Council leading to regular clashes.

How the 'codification' (introduction) of the 'Khasi Social Custom of Lineage Bill, 1997' has become the bone of contention on part of the male stakeholders in Meghalaya is a fascinating case study. The male members in Khasi Hills spearheaded by Syngkhong Rympei Thymmai (Home-Hearth-Restructured) – a Khasi Men's Rights Movement, having 3,000 members, have opposed this 1997 Bill. Syngkhong Rympei Thymmai (SRT) was founded in Shillong on 14 April 1990. SRT has vehemently questioned the provision of the 'Khasi Social Custom of Lineage Bill, 1997' that bars sons, in the absence of daughters, from inheriting family property (The Telegraph, 15 December, 2013). A number of organisations, including the influential Khasi Students Union and others have opposed the measure arguing that instead of codifying an 'outdated system' of matrilineal

succession, Khasis should 'modernise' their kinship system. They have proposed that only children of two Khasi parents should be regarded as Khasi. Khasi scholars feel that although Christianity never directly interfered in the practice of matriliney (Nongbri, 2011) the Christianity does exert strong patriarchal orientation and thus help consolidate the authority of the father.

DUAL INHERITANCE, MATRIFILIATION AND GENDER PARITY IN ZOUNUO-KEYHONUO NAGA TRIBE

Among several Naga tribes of Nagaland including some sections of Angami, Chakhesang, and Pochury the married daughters enjoy certain privileges over agnatic paternal property which includes land. Unlike women among many Naga tribes, the Zounuo-Keyhonuo (called Southern Angami in official parlance) women enjoy considerable economic rights, which may be briefly discussed here. Basically structured around bilateral kinship ideology, the patrilineal Zounuo-Keyhonuo system recognizes jural statuses and roles through membership in descent groups such as thenu, sarra and putsanu (translatable as clan/lineage/sub-lineage), which are products of an inter-generation genealogically-segmentary process, elsewhere elaborated in authors' 1993 monograph based on his PhD thesis (Das 1985a, 1993: 118-119). Four clans (Zherima, Rochuma, Kirhazuma and Pavoma) in Viswema occupy distinct territories ('thenu-districts'), whose 'sovereignty' over forest and arable field areas, water resources, fishing areas, dzulye (water-channels) and the clan gates are recognized. The pithimi or 'elder' representing lineage/clan ensure due compliance of customary rights and obligations in relation to private and common properties and exploitation of natural resources, for jhuming and hunting. Among the Pithimis of Viswema, one senior elder is declared as razou-pithi (village-headman) and another is nominated as Sechomi in the village judicial assembly (chape), to coordinate the proceedings informally. Revisit to Zounuo-Keyhonuo village Viswema in 2009 and 2011 demonstrated that despite the vibrant presence of statutory village council and a village development board, survival of the customary institutions, and status and roles of pithimis have not been weakened. Customary laws and kinship based economic activities remain intact, though there have been some challenges to tribal institutions in recent past.

In Viswema a woman (as daughter or sister) benefits from two types of transfer of land, including gifts from father and mother, jointly and discretely. Thus, in Viswema exists a dual inheritance pattern, of the two categories being Pazuopu and Tepumi-Kitsa. Of these two, the pazuopu category of land is essentially a matrilineally inherited property which is transmitted only in the female line (from mother to daughter successively over generations). The author has discussed actual cases of Pozuopu transactions in his 1993 monograph. A revisit to Viswema village in 2011 further confirmed that Pazuopu inheritance right is still enjoyed by Viswema 'daughters', though there are some opposition to this tradition in some clans. At marriage a woman not only brings her pozuopu land but also a part of father's own landed property, called tepumi-kitsa. She also brings tenumi-shiephro, which includes movable articles such as cattle (cow and pig), ornaments, clothes and paddy. If a daughter is the only child she inherits bulk of the parental property including the parental house, though some part of property, specially the land and water-channel, should be transferred to the 'patrilineage kayie' estate, which is maintained at the lineage level. If a couple dies without a child and no child is adopted by them then the land inherited from paternal (agnatic) line goes back to the patrilineal kayie estate, and the pozuopu land goes back to the affinal kins, Omuni (Das 1993: 70-71).

F. K. Lehman (1997), in his review of Zounuo-Keyhonuo monograph of N.K.Das (1993) finds it striking that, "in spite of fairly strict agnatic descent as the principle of the clan and lineage organization, daughters inherit, though in a manner less irrevocable than do sons. Moreover, while on the one hand a woman is said to be transferred to membership of her husband's lineage, on the other she retains a distinct claim on some of the land and other property of her natal family as well as on possible residence there, so that 'we find a nice instance of a principle common to asymmetrical marriage systems namely, that the more a woman seem to be transferred at her marriage, the more it is because what is really transferred is her status as a member of an affinal lineage, a principle Edmund Leach was unclear about with regard to Kachin, Lushai, and Lakher instances'" (F.K. Lehman, 1997, *Anthropos*, 92 (1-3), 233-235).

Thus, in this patrilineal Naga tribe, we find that recognition to dual pattern of filiations gives rise

to the bilateral extension of kinship ties. This dual inheritance system indeed provides a comparatively comfortable position to womenfolk. However, it is reported that in recent years married women are 'persuaded' to ignore their rights over parental landed property and indeed there are some litigations reported (Das 2017a).

'PATRIARCHAL' CUSTOMARY LAWS AND WOMEN PROTESTS

There have been persistent protests seeking gender equality in various states of Northeast India in recent years. It is observed that the interface of customary law with modern state law in North East India is linked to lopsided development in the form of sidelining the women issue (Pereira, Melvil, 2009). It is observed that the Naga women have been particularly marginalized in terms of political/electoral participation in Nagaland which is denied by citing the customary laws. Naga tradition and culture prohibit women's participation in the decision-making process right from the village council to the State legislature. This can be interpreted as a case of 'patriarchal' prejudice. In order to provide justice to Naga women, the Nagaland State Women Commission sometime ago asked the Nagaland Government to amend discriminatory customary laws in regard to inheritance, maintenance, property and land rights in order to maintain gender equality. The commission recommended and also asked the government to appoint woman Dobashis and Gaon Buras, as both the offices are under the State Government (The Assam Tribune 7 august 2011; www.assamtribune.com/scripts/detailsnew).

According to Monalisha Changkija (2004) the system as it exists today is biased, discriminatory, obsolete, and inimical to the welfare, uplift, development and progress of Naga women. Even when state seems to support the women by way of statutory efforts to protect the rights of women, such attempts are frustrated because the women are often reminded by mighty 'Naga Peoples Organisations' of the constitutional provision which provides a 'blanket shield' to Naga customs and laws (which are male-centered). In Nagaland's numerous non-statutory public organizations (Naga Non- State Forums), have been active in citing the constitutional 'shield' of Naga customary laws, and thus vehemently opposing the implementation of 'women quota'

that is 33% women reservation in various fields including civic polls (<https://www.facebook.com/wethenagas/posts/345184742200567>). The Naga women leaders have challenged the customary laws that have denied them right to be part of political bodies whether traditional or modern. They have protested against Nagaland's numerous non-statutory public organizations/ Naga Non- State Forums (Das 2018).

DISCUSSION AND CONCLUSION

The struggle for gender parity has been a mirage, especially in tribal societies, where customary laws are replete with gender discriminatory rules pertaining to inheritance, marriage, divorce, property, and political participation.

Over the decades, the UN has become the pivotal forum where indigenous peoples' rights, including civil liberties to womenfolk are given shape and expressed in declarations, covenants, and other instruments that form an important component of international law and international human rights law. However, the constitutional provisions pertaining to the gender issue and various legal stipulations in country like India still remain detrimental as residual patriarchal prejudices prevail and predominate (Das 2017b). In India's northeast region, the very constitutional provisions meant for retaining indigenous norms and rules of justice have become major obstacle, as we discussed above. It is felt that, the structural inequality of women and their social exclusion need to be addressed through legal channels, as many woman activists are insisting. More and more women need to be allowed to redraw their roles and help reframing local customary rules as per modern needs, in order to achieve their equality. The women activists of northeast protesting such discriminations have raised the rights-based questions to install an equitable structural distribution of power. There is urgent need to sustain such protests more effectively.

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