

Role of Traditional Judiciary in Maintaining Peace and Harmony in Tiwa Society

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Abstract: Traditional Judiciary is found in many tribal and small self-regulating societies, have survived and adapted to the cumulative impacts in establishment of the modern state and its national legal system. The primary role of the Traditional Judiciary is to maintain peace and harmony in local – usually village – communities. In practice, they often exhibit a distinctly restorative character in the management of disputes and conflict resolution on the basis that parties will have to continue to live together in relatively tight-knit and inter-dependent social settings. The modern administration of justice, law and order is a function of government retained by the tribal traditions of age old. It is within this realm that indigenous justice systems exist. Although there have been many efforts to limit the jurisdiction of traditional tribal justice systems, they retain the authority to determine the legal structure and forums to use in administering justice and to determine the relationship of the legal structure with other governing bodies. Among other tribes the Tiwas (Lalungs) are aboriginal tribe in North East India known for their traditional court *Pishar* system. This paper provides limelight on the traditional judiciary of the Tiwas rather than detailed expositions of complex, diverse and evolving informal systems. It is for dealing with conflict and disputes resolution at community levels.

Key words: *Tiwa, Tradition, Judiciary, Peace, Harmony*

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I. INTRODUCTION:

The Tiwa tribe by and large resides in villages both in hills and plains of North East India. Their legal system owes its origin to their ancestral kings, chiefs or rulers. The traditional judicial institutions based on customary laws prevailed traditionally from the past to the present. The system provides a broad view of Tiwa law, outlining how other indigenous peoples can draw on traditional precepts to control society. It forms an important part of the administration of justice in much of rural India, as principle of collective indemnity and social solidarity underlie the system. Some critics see them as conservative and unable to deliver justice in the modern social, economic and political climate; while others see them as prototypes of the kind of dispute resolution mechanisms that are desirable in modern society of modern political institutional set up. There are several reasons why traditional system of judiciary prevails in a modern India. Firstly, it is argued by traditional leaders themselves as well as by some academics that customary law, as the law of the majority of indigenous Tiwas administers justice, are part of their cultural heritage. Secondly, traditional courts are a useful and desirable mechanism for the speedy resolution of disputes; given their nature as an easily accessible, inexpensive (virtually free), simple system of justice. Thirdly, although there are shortcomings in the system, they are not beyond repair but may be made to adapt to changing needs and to the requirements of the state laws.

II. THE TIWA TRADITIONAL COURTS:

The traditional courts of dispute resolution among the Tiwa people are of three important categories- (i) *Raj Pishar* (court of *raja* or chiefs) (ii) *Gaonlia Pishar* (village court) (iii) *Barokhel Pishar* (clustering village court). The nomenclatures of the courts are made on the basis of its jurisdiction of courts; little bit different from hill to plain Tiwas, but three categories are observed and the organization of which is almost same as among some other tribes of Assam.

2.1. Raj Pishar:

The Tiwa society of where hitherto coroneted tribe hereditary *raja* sways his command. The *raja* for any sorts of settlement of an issue sits in royal palace on his traditional dress and with his royal officials. In this court *raja* takes an active part. Here the case is brought to the notice of him on the basis complaint lodged. Against an accused person he along with his officials sits in the palace to settle the case. They give patient hearing to both the parties and decide the penalty to be impounded on the wrong doers. The parties are to abide by the decision of the court where *raja* presents as chief judge. But the villagers respect the decision of the court if it appears to be impartial; if the decision is partial it can be appealed before the common gatherings of clustering village court. The villagers can make and unmake any decision if it is against the welfare of the villagers, even of his hereditary attainment of kingship. The principle that a decision must be made by consensus is also strictly adhered. Nominal role of *raja* in delivering justice stabilized traditional courts; the system was socialized, accepted and become monarchical democratic.

2.2. Gaonlia Pishar:

The *Gaonlia Pishar* is the traditional system of dispensing justice in Tiwa society. In a small Tiwa village generally there live people belonging to same clan. But in a large village there may have more than one clan. The delivery of justice to the same clan is more flexible. *Gaonlia Pishar* is a system where the people of one village sit together to give justice to the victim, on the basis of complaint brought to hold the court for giving justice. The aggrieved person submits a complaint narrating the details, generally to *Pisharmaji* or *Barika* of the village council. If the case is simple it is settled in the village council, if not the members of village council convene a meeting of family elders at a village institution, generally in the morning before the villagers set out for their works. After hearing both the sides verdict is declared by a member of the village council. In giving final decision the members of the village council consults and takes opinions from those present in the meeting. Once the verdict is given it is binding for both the parties. Anybody found violating or flouting is ex-communicated or ostracized from the village. The verdict of ostracize is the hard and extreme verdict of a *Gaonlia Pishar*.

2.3. Barokhel Pishar:

The *Barokhel Pishar* is predominant in Assam among the tribes as well as other communities as rural court resolving village problems. In this court if anybody commits wrong the complainer submit a complaint narrating the history of the activities of the wrong doer before the heads of all nearby villages. The elderly men of the villages gather to hear the dispute and decide penalty if necessary. Here besides elderly people of different clans of villages the common men and women participate. All members of the accused family are welcome to attend. After declaration of the judgment if the wrong doer contravenes the decision he/she may be ex-communicated from the village forthwith. Due to fear of ostracize nobody generally violate the decisions. The *Barokhel Pishar* is highest traditional court in the villages, decision of which is not appealable to any other traditional court, but have to abide by.

III. JURISDICTION OF THE TRADITIONAL COURTS:

- 1) Violation of any social norms and rules by anybody of the village.
- 2) Non-arranging the offerings of the fixed deities and rituals to the gods by a fixed person.
- 3) Any case which goes against the interest of the villager and no appeal lie to any authority.
- 4) Any act or attempt of torture or beating father or mother (it is a serious crime in the Tiwa society) and elders, brothers, sisters etc. of the village.
- 5) Cases of killing of caws, buffalos etc.
- 6) Hereditary property distributions or any cases of property relations.
- 7) Theft, robbery and such other anti-social activities.
- 8) Any cases in relation to marriage or going in illegal sexual relations.
- 9) Cases of violation of the decisions traditional courts or the village council.
- 10) Cases in relation to rituals, religion and ceremonies in the villages.

IV. SETTLEMENT OF MARRIAGE CASES:

In the case of the settlement of marriage the Tiwa people had strict rules to be followed. A girl of a clan can't marry the boy of the same clan for some tribes. Hence before settlement of any marriage the primary jobs of the villager are to see the clan to which they belong. The villager sees the bride and groom clan and then decides whether they can marry or not. As such the marriage between same clan is the strongest taboo among certain tribes. In present matrilineal marriages the oldest member of the clan whom the groom belong, performs the role as judge for settlement of marriage. He/she is to identify the clan of the bride and the groom and decide the marriage. Violating the social prohibition (taboo) of marriage may lead penalty. If a boy marries a girl

from his own clan the boy is to give a feast with pigs and rice bear to the villager and in some cases they are to pay fine in cash decided by the traditional court in addition to the feast. Nevertheless, with the passage of time the Tiwa society is changed a lot. The inter-tribal and inter-caste marriages are taking place having penalties imposed. Comparing to inter-caste marriage the inter-tribal marriage is usually accepted but in inter-caste marriages the traditional courts take strong offence, decide strongest course of penalty. In spite of having penalties both the marriages are going on now even in orthodox Tiwa society. The penalty decisions are obeyed because of ostracize, abide so to get rescued from the social sin supposed to be committed by offenders.

V. ROLE OF CUSTOMARY LAWS:

Customary rules and regulations are the unwritten or un-codified codes of conduct in Tiwa society. It acquires public sanction in due course because of its uninterrupted continuity for a long period of time. Customary law practices are universal in character. It has been observed in all societies savage or civilized, literate or illiterate. At the same time customary rules, regulations and practices are to be understood in contrast to the written or codified rules of personal or public conduct or constitutional laws passed by legislative bodies or organizations.

It appears that the customary laws are different in different Tiwa society. But it is closely related to the life of the people; it represents identity, forms the culture and maintains peace and security. Moreover, customary laws are associated with social inheritance, performs, succession and solutions.

VI. APPRAISAL OF THE SYSTEM:

The Tiwa people have a different way of looking at the offenders or deviants and their attitude is to be more considerate to the offender if he confesses before the elders to his committing the crime or offense. But the resolve becomes stronger against those offenders who belittle the elders or refuse to attend the traditional court. Many a time they have a navel way of punishing the deviant; they neither punish the person physically nor by imposition of any penalty, but he is made to offer public apology to the victim. Self esteem is a value than physical punishment or monetary penalty.

In Tiwa society there are rare examples of death sentence given by traditional courts. In modern democracy it is enforceable by law courts as serious crime. The merits of Tiwa traditional courts are that the judgments are made in consultation with collective approach and involved wide range of deliberations impartially. The objectives are not to convict and punish but to reincorporate the deviants into the social life. Only in the extreme cases the court resort to decision of ex-communication. Even while penalizing the person their economic capabilities are taken up. In cases, it is always a negotiation between contending parties.

The Tiwa society has a striking similarity with other dispute resolving institutions in terms of raising the case; constituting the court as per the requirement of the cases, process of cross examining the witnesses, using ordeals to establish the crime, referring to the earlier judgments given to arrive at final judgment. This lead the system becomes transparent. Even than now the traditional courts become relatively less effective than that of the past.

VII. CONCLUSION:

The traditional Tiwa system of providing justice and maintaining peace and harmony involves the initiatives of chiefs, his officials, traditional village councils etc. The system had both religious and coercive force to enforce the judgments and to exercise the authority to govern the people and management of affairs. The provision for any party dissatisfied with the verdict can appeal the higher make the system viable. The participation of villagers in the process makes it the traditional democratic institution of justice deliverance with the least delay in time. Even today Tiwa people have the traditional institutions which try to compromise and resolve the cases at the village level; rather approaching statutory law enforcing agencies of the modern democracy. For resolving cases there are supra-village organizations, be it at the level of clustering villages or a principality of a *raja* (ruler). The customs in the form of unwritten laws (now codified in some areas) that guide the justice is a key characteristic of the system. In flourishing present degraded system of justice delivery the tradition throw lights of reconciliation.

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