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A unique indigenous justice delivery system of tribes of eastern Himalayan region of India

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ABSTRACT. Almost all the tribes across the world have their own indigenous concept of rules, regulation and grievance redress system developed with the evolution of the community to maintain peace, justice and harmony. The indigenous people takes law as a way of life and understand it through experience and interactions. The objective of the current research was to study one unique justice delivery system to address non-criminal cases that cannot be dealt with normal procedure due to lack of evidence, witness and formal proof. The system is prevailing among the tribes of eastern Himalayan region of India. The phenomenological approach was used to study the system as it is *in situ*. The justice is delivered on the basis of unique system of decision making between two alternatives based on the shape of chicken liver. Involvement of spirituality and spirit make the system acceptable to both the complainant and defendant. The unique characteristic of the system is that it does not penalize the loser, instead the court pray for them and bless them for abiding the decision of the court in presence of the spirit. The justice delivery system aims to maintain harmony in the society as well as save the face of both the loser and winner. In the present system, the justice delivered may be not the just decision, but the loser accepts the decision considering it as the command of the god and spirit without keeping any grudges against the winner. The system demands participation of whole village irrespective of gender and ages, with fundamental aim of preserving the custom and hand down to the next generation.

1. INTRODUCTION

Indigenous communities share a very close and interdependent relationship with their local environment. Their culture, customs and rituals coevolved with the ecosystem. The knowledge-practice-belief complex [1] is reflected in all their activities. The material and the spiritual co-exist side by side in the indigenous community, complementing and enriching their culture and social systems rather than competing and contradicting [2]. The concept of rules, regulation and grievance redress system developed with the evolution of the community and command social acceptance and observance. A legal custom is the integral part of indigenous community and it operates as a binding rule of law, independently of any agreement on the part of those subject to it [3].

Local self government is an ancient concept having long history in India from the time of Rig Veda (about 1200 BC) [4]. The tribes of eastern Himalayan region has unique place in this regard and have own indigenous justice delivery system without too much emphasis on modern legal technicalities. Customary rights were recognized in this region as early as 1822 when the British introduced Regulation X to administer the tribal areas of the North East India [5]. Apart from the normal court and judicial system in India, the parallel indigenous justice delivery systems are operating in these tribal areas as a part of their tradition and culture. They have well defined village court systems where members of the courts are democratically elected or selected [5]. The tribal law as such is based on the values, mores and norms of tribes as directed by their customs, traditions and practices [6]. These laws are generally derived from customs, where customs in the current context is long-established statutory and rigid body acquired through common adoption or acquiescence [7].

Following the phenomenological approach, the main objective of the current study was to evaluate a unique justice delivery system on non-criminal cases prevalent among most of the tribes

of Arunachal Pradesh in eastern Himalayan region. It is a spiritual system based on mutual agreement and involves no penalty for the defeated party. And it is only applicable when all other procedure fails due to lack of witness and proof. The current research present the system as it is without making any attempt to comment on the system, rather attempt was made to understand the perception, perspective and understanding of the community about the particular system under study.

2. MATERIALS AND METHODS

Study Site

The study was done in West Siang district of Arunachal Pradesh, located between 93°57'-95°23' E latitude and 27°69'- 29 ° 27' E longitudes in the eastern Himalayan region of India. Two respondents from each of the villages of *Gori, Soi, Dirchi, Pagi, Bam, Nyadu* and *Regi* were selected as key informant. The main tribe of this area is *Adi* with further division into sub tribes. The *Adi* tribes are the largest tribe of Arunachal Pradesh (9% of total population of the state) inhabiting in 5 different districts and distributed over nearly 50 villages [8].

Methodology

The phenomenological approach was used to study the judicial system as the approach evaluates and analyses natural behavior and instinct, as the indigenous communities perceived it rather than imposing any sort of external value judgment [9]. The approach also helps to differentiate *noumena* (things as they are) from *phenomena* (things as we perceive them). So first hand information was collected through interactions and interview with village elders and priests.

3. RESULT

The court called *Kebang* (or *Keba*) consists of a selected village chief or head (called *Goanburahs*), village priest and some selected members. According to the key respondents, the current system of judgment under study is applicable when other procedure to reach a reasonable conclusion fails due to lack of witness or proof. The system does not address any criminal cases, and mainly focus on disputes over land, animals and other material belongings. The technique is believed to be linked with spirit and nobody usually dare to turn it down and questioning the judgment based on the system is tabooed. The judgment day is normally selected by the village priest (locally called *Dhondai*) consulting with *Goanburah* and village elders. At least one person from each household, mostly the head of the house, must gather in the community hall (*Dere*) to witness the *Kebang*. Women enjoy equal right to participate in the ritual. The parties, complainant and defendant, need to bring three or more chickens each and hand over to the members of the court. The village head and elders unanimously select odd number of persons (5 or more depending on number of the chicken collected) and distribute a chicken to each. Whole court kneels down and prays the spirits and request as well as demands their presence in the court for the day. Then the priest use to offer blood of chickens and eggs to the bamboo made idol of the spirits (Fig. 1). The *Goanburahs* addresses the court and apprise the members about the issue. As observer and witness of the proceedings, *Goanburahs* of nearby villages were normally invited. Both the parties need to sit together and offer prayer and takes oath to go by the decision of court.

The court consists of a three tier system (Fig. 2). At the top sits village council comprising the *Goanburahs* and the respected village elders including previous *Goanburahs* and learned persons. The three selected judges used to sit in some distance away from the council facing the audience. Maintaining a distance of 4-5 meters from the judges, the selected persons with chickens use to sit in a row. The position of audience is as depicted in the Fig. 2. A group comprising the judges, both parties and one member of council went out of the court room for a secret meeting. The parties were given choice to decide a symbol for each, either up-symbol or down-symbol. After selection and mutual agreement, the judges notes it down and group return to the court room and takes their respective position. The group is not supposed to utter a single word till the final procedure of the court. It is customary that nobody in the court room should know about the assigned symbol to each party. Now each person with chicken were asked to slice their respective chickens and watch the

shape of liver (either up or down) inside at its first appearance and note it down. Afterwards they hand over their observations to the judges. Now the judges declare and count the observations before the court. The observations were compared with assigned symbol to each party and the winner is declared based on the highest number of match. The council formally declares the result and case goes in favor of the winner. There is no penalty for the loser under this system, instead the whole court prays for them and blessed them for accepting the decision of court. Finally both the parties pray for each other and thank the spirit for its presence and decision. Both the parties never use to cultivate any grudges against each other. A grand feast is organized afterwards and all celebrate the occasion.

4. DISCUSSION

Apart from the normal modern government justice system, the contemporary tribal communities across the world use to have their own indigenous system. The later system represents holistic philosophy and world view of the aboriginal people and guided by customs and traditions [6]. The system under study may have evolved out of need to resolve such problems that cannot be solved by some logical decisions guided by some facts and figures, yet the justice need to be delivered to maintain peace and harmony in the community. Fundamentally, indigenous justice system has the foundation on concepts of restorative and reparative justice and the principles of healing and living in harmony with all beings and with nature [10]. In this system justice delivered may not be just decision, but the involvement of religion and rituals make parties especially the defeated one to accept it as grace. The whole court prays for the defeated party and blesses them for abiding to the decision of the court. The most unique about the system is the lack of penalty. Thus the systems keep the face of the loser upright and help him to remain as the integral part of the society. The tribal community avoids punishment in most of the cases and believes that punishment may appease the victim, but it cultivates the urge to avenge. Also imposition of penalty does not offer a reduction in future crime, neither it give sense of security and satisfaction to the victim. The system demands the participation and representation of all the household of the village irrespective of the gender and age. Involvement of all the households indicates social responsibility of the society. It also helps the coming generations to observe, understand and follow the system. The legal system of indigenous community has been based on the responsibilities of individual and group members towards the community [11]. Women participation is given due significance as they believe that women preserve the customs in better way and mother is best teacher to her children. Information, beliefs and customs are handed down orally or by examples to the next generations [6].

Several vital questions arises, like – (i) How do indigenous legal system complement the modern legal system and the universality of human rights?; (ii) How can we judge the indigenous system in a non-discriminatory manner that guarantee individual human rights, particularly for women and children?; (iii) Is the cruelty against the animals can be justified? and so on. But we didn't discuss these questions as we adhere to the phenomenological approach.

5. CONCLUSION

The most noteworthy about the indigenous system is their holistic philosophy and in depth understanding that developed or coevolved with their environment (both social and biological). The justice connects everyone involved with the problem and handles the problem in their entirety. The involvement of spirit or god, prayers and blessings avoid grudges and possibility of urge to revenge. We conclude that some future comparative study should be done on such subject to find innovative ways to maintain social harmony in a sustainable way.

Conflict of Interest

The current study does not support any cruelty against animals or birds by any means. It also does not intended to hurt religious or spiritual sentiment of any community or tribes.



Figure 1. The idol of spirits made up of bamboo with blood and eggs as offerings

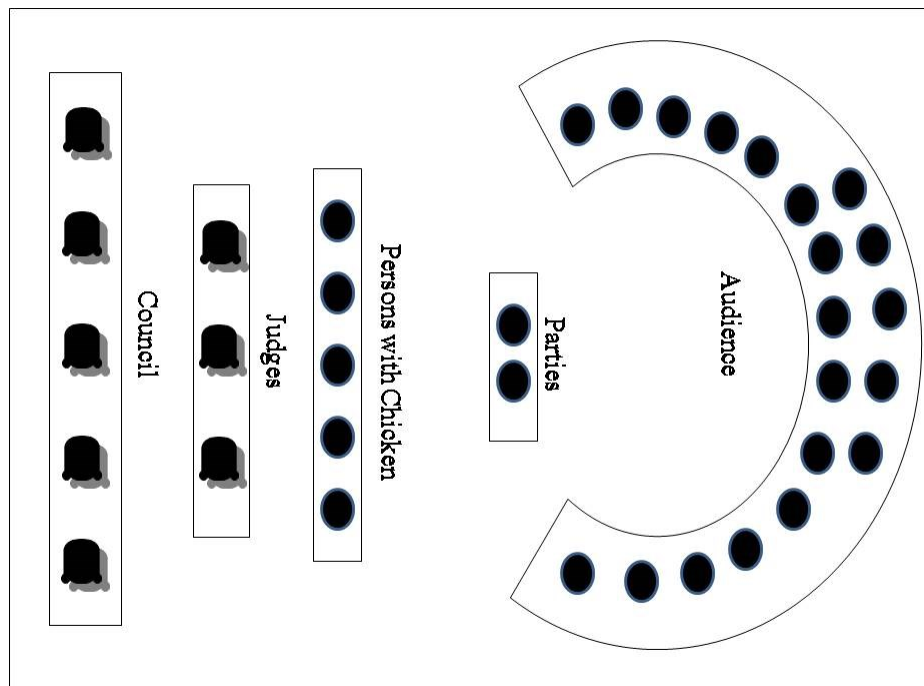


Figure 2. The Structure of the court (*Kebang*) for the special case under study

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