

# Customary Law and Women: a study among the Bodos

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**Abstract** - Customary law consists of the indigenous customs of traditional communities. Every ethnic group in the North East has evolved its own discrete customary legal system of rules that are binding on its members. Unlike ordinary social habits and observances, the rules carry along with them local sanction for their breach. For the most part, the rules are unwritten, though efforts are now being made to compile them in unwritten form. Customary laws are not uniform across ethnic groups, one place to another place. Difference in the customary laws of ethnic groups can be traced to various factors as language, religion, proximity, origin, history, social structure & economy. In the present paper an attempt has been made to highlight the Bodo customary laws pertaining to Bodo women. Among the Bodos, the folk laws are still maintaining in a sophisticated manner. At present the community has their own autonomous council. The customary laws of the Bodos are looking after by the various social organizations. The customary law and traditional political institutions are recognized under the new system of the council.

**keywords** - Bodo, Customary Law, Women, Penance,

## 1. Introduction

Laws of the country have defined or have guidelines for protecting the lives and property of humans. Over a period of time, there have been attempts to enact gender sensitive laws, but those have not achieved the ends. Since colonial period onwards various legislations made attempts to 'emancipate' women from the clutches of superstitions and backward traditions.

Legal structures have been invoked in discussing and formulating justice for women. While reposing faith on laws and legal structures for addressing the questions of inequity, violence and other such issues women activist have also come to recognize the patriarchal nature of law, law makers and implementers. Law is and was not removed from society; culture and religion have led to critical engagement with law and which has led to the demand for reformulation of more gender just laws. In northeast the situation is made more complex by the presence of customary laws, the general legal apparatus, the Indian penal code and draconian laws, like AFSPA, which gives impunity to perpetrators of violence. This complex layering of legal systems has led to debates and also the need to address the question of new jurisprudence.

Assam is the abode of various ethnic groups such as Bodo, Rabha, Dimasa-Kacharis, Tiwa, Mising, Karbi and many others. Among them, the folk laws are still maintaining in a sophisticated manner. Most of these groups have their own autonomous councils. The customary law and traditional political institutions are recognized under the new system.

## 2. Social Offences (*baad*) in the Bodo Society

The Bodos or the Bodo-Kacharis constitute a very important section of the different ethnic groups and races settling in Assam with their distinctive cultural and linguistic traits. Racially they belong to the Mongoloid stock of the Indo-Mongoloids or Indo-Tibetans. S.K. Chatterji identified them as the Kiratas or Indo-Mongoloids. About the Bodos he writes...."the Bodos, who spread over the whole of the Brahmaputra Valley and North Bengal as well as East Bengal, forming a solid block in North-Eastern India, were the most important Indo- Mongoloid people in Eastern India, and they form one of the main bases of the present-day population of these tracts." (Chatterjee, 1974: 45)

The Bodo term for offences of a social nature is *baad* (offences). If some person does offence in the society particularly concerning moral immorality, he is treated as a guilty person and is obliged to perform penance (*udrainai*) with some strict social customs. The Bodo people maintain some strict principles of morality (Brahma: 1998). The following rules about offence are strictly observed by the Bodos-

- A person is taken as morally guilty, if he is engaged in illicit sexual relation with female relatives, such as mother, daughter-in-law, sister-in-law, niece, wife of the younger brother and any other close female relatives.
- If he touches the body of the wife of his younger brother or of the elder sister of his wife.
- Lastly, if he is involved in bestiality and sex relation with a bitch, a female pig or cow.
- Indulging in false accusation with the evil motive is also considered a social offence.

Traditionally the offences are divided into five categories 1. *Agorbaad*, 2. *Phongslod baad*, 3. *Daokhibaad*, 4. *Khaoalibaad*, and 5. *Khwulwbwdbaad*.

- *Agorbaad*: incest, i.e. illicit sexual relation between related person, physically assault on one's own mother, father, illicit sexual relation with a person belonging to a different religion.
- *Phongslod baad*: If somebody touches the body of a young girl of any cast; and if some one cuts the tail or leg of a cow then the penance must be performed under the seven bows method.

- Daokhibaad: This offence takes place if someone eats the meat left half-eaten by a tiger or a vulture. And if someone received money by cutting somebody else's hair.
- Khaoalibaad: If somebody uses the coins or utensils given with the dead bodies.
- Khaoalibaad: If someone deliberately accuses somebody and puts blames on some others without any reason, he must perform penance in a simple way.

If any person is convicted of charges of five categories as discussed above then he or she must perform penance under the Purification methods of the Bodos. The guilty person offers a chicken to *Bathwu Brai*. From the body of the sacrificed chicken some pieces of meat are detached and thrown to the sky with help of a bow and arrow. (Ibid: 1998)

### 3. Bodo customary law and women

Bodo women have sufficient freedom to move in the fields, farms and forests etc. The sex ratio is favorable and there is no female infanticide, no bride burning like the other parts of India. As Sidney Endle observes,

“Among the Kacharis women do not perhaps occupy the same influential position as seem to be enjoyed by their sisters in the Khasi hills, where something like a matriarchate apparently hold the field of social and domestic life. Still, with this interesting race the position of the wife and mother is far from being a degraded one” (Endle: 1990: 22). Endle goes on to say that the women in Bodo society enjoy in their social and family life enjoy ‘a large measure of freedom’.

What Endle says is founded on the social reality that he observed in the early decade (first decade) of the twentieth century. In Bodo society men and women are treated alike and there is high participation of women in ritual ceremonies and family affairs. Child marriage, *purdah* system, dowry, sati, prohibition of widow remarriage are not seen. In the Bodo society the socio economic set up, it is women who occupy dominant position rather than the men; consequently their social status is much higher. As per the evidence from the Bodo literature of Colonial Assam, we come to know that, Bodo women enjoy enough freedom to choose their spouse also. The first Bodo short story “*Abari*”, written by Late Ishan Mushahary in the year 1932 provides information of the status of Bodo women during Colonial period. *Abari* is the protagonist of the story and who is a differently abled girl. But she refuses to get married with a physically challenged person even under pressure of her family members. Because, she was confident enough that she could stand on her feet.

The customary laws among the Bodos related to marriage and inheritance of property allow some provisions for rights of women. The woman who is married can exercise right over the assets she carry with her from the parental house. Her husband or in laws cannot stake claim over such property. The Bodos have six kinds of marriage system. The sixth or last one is known as “*Donkha Habnai*” i.e. widow remarriage. Since the time immemorial this kind of marriage system is prevalent. As per the laws and customs relating to this kind of marriage, the ‘*dongkha*’ (groom) has no right on widow's property. But, sometimes, on the basis of agreement, he may enjoy some rights on such property. On the other hand ‘*dongkha*’ has to follow the widow's religion, tradition and other aspects of livelihood. When landed property is distributed among children after the death of parents, the girl child is also given a share.

**Divorce:** Divorce is allowed in the Bodo society. If both husband and wife desire divorce mutually then it is performed by tearing a betel leaf. This is called *pathwi lai bisinai* in Bodo. If the husband divorces without any reasonable ground he is to bear the responsibility of her livelihood for a certain period. Sometimes, it is observed that the question of divorce is put up in a big gathering of the public for the solution of the case.

### 4. The Brahma movement and its impacts

The spread of education and consequent political awareness among the Bodos along with Govt. policy to provide special privilege to the scheduled tribes led to the formation of the organization like “Bodo Kachari Chatra Sammilani” in 1919. This was preceded by a strong socio cultural movement among the Bodos of the then Goalpara in 1913 under the leadership of Gurudev Kalicharan Brahma along with a few prominent Bodo personalities joined hands to convene the first Bodo Mahasammilani. In that meeting regarding education of Bodo women the following resolutions were adopted-

*It was resolved that action plans for the Bodo women be taken up.*

*It was resolved that actions be initiated for the establishment of Primary and middle schools in the Bodo dominated areas. Even the Bodo girls should seek education in these schools.*

In 1925, at Rangia session, again a resolution was taken to impart education among the Bodos; the following was the resolution of the session

*It is resolved that both boys and girls must be provided educations equally, only than Bodo society can be progressed.*

In 1929, at Roumari village of Bongaigaon, the Bodo Mahasammilani has resolved a strong resolution to prevent the practices of the production of country liquor. The resolution was-

*“It was resolved that the selling and consumption of country liquor be stopped and volunteers would move from village to village to keep an eye on this, and even break the utensils used for making the country liquor.”* (Boro, The Brahma 2008)

But including all other agricultural activities, the wine productions of the Bodos have significant economic importance. Usually, a section of poor people have been using it as a source of earning. This kind of earning is generally made by women and their male counterpart assisted them. But, such kind of practice is hated by a section of learned Bodo people and other neighboring communities. Therefore, the Bodo Mahasammilani decided to prevent it. *Boroni fisa o' aiyen*, (1913,) the first book on customary law among the Bodos also cautions the people against the excessive drinking habit among the illiterate Bodos of South Goalpara in those days.

*Boroni pandulipi* is another book on the customary law meant for the followers of Brahma religion. This book on customary law has made the same provisions for rights of women in relation to marriage, social life and division of property. Some books on

customary laws have been published by Boro samaj in different districts. *Boro samajni sangbidhan arw nem khandi* is the most prominent among them as it tries to encode the customary law and practices as followed by the followers of Bathwu, Brahma and Bodo Christians. These books on the customary laws of the Bodos make specific provisions on the property rights of women, inheritance and division of ancestral property and marriage and divorce. For example, as specified in section 19 (Chapter 2) the Bodo woman has four types of property:

1. By Will
2. By way of donation
3. By way of marriage
4. Inherited from the family of her husband, who died without any offspring and property inherited from the parents. (Brahma: 2005: 34).

SECTIONS 22, 23, 24 of the book make provisions for inheritance, use and division of family and parental property. Like other books on Bodo customary law, the book makes specific provisions for punitive measure against those involved in violation of social law and discipline including those on the chastity and dignity of women.

**Witch hunting:** Among the Bodos witch hunt is a very recent phenomenon started at the middle decades of the 20<sup>th</sup> century. Although there are no written records of the prevalence of witches and witchcraft in the Bodo community, before 20<sup>th</sup> century there is no mention of witches among the Bodos. The earliest works on the Bodos by Rev. Sidney Endle has no mention of witch and the authorities of Bodo folklore also suggest that there is no mention of witches in folk tales. In Bodo witches are called *daina* and though *daina* are mostly women yet there are instances of male *dainas* as well. Nevertheless, belief in witchcraft continues to this day and the *daina* has always been victimized for any evil that befalls the community. At present it has become a convenient way to settle personal scores by framing a person as a *daina* and thereby ostracize and inflict harm with sanction of the entire village. In most of the cases of witch hunting it is observed that the villagers approach the *ojha* as immediate solution to their severe health problems and on failing of which, the *ojha* gives his provoking predictions causing the frenzy of accusing fingers at someone vulnerable, specially women allegedly declared to be a witch and haunt by the villagers collectively. Now a day's organization like ABSU (All Bodo Students Union), ABWWF (All Bodo Women Welfare Federation) etc. are campaigning and organizing awareness programs to stop such kind of beliefs and practices.

## 5. Conclusion

Folk law, customary law is one of the important aspects of folklore studies. In the North east, folk laws are part and parcel of the social fabric of the ethnic groups. They are maintaining it since time immemorial. It is seen that the studies on folk law within the ambit of folklore in the North east is scanty. However, various aspects of folk law are covered in tribal studies, cultural studies, law research, anthropological research and others. Folk law is the result of traditional wisdom and rooted in the traditional communities. Social folk customs of the ethnic groups of the north east has been one of the prime focuses of folklore research. In these studies, various folk laws are incorporated. It is important as our Constitution has put prime emphasis on customs and usages of ethnic groups by incorporating various provisions for the north east. The role of Autonomous Councils, Regional Council, Village Councils, traditional institutions are significant. Among the Bodos efforts are being made to find out the possibility of codification of customary laws. It is essential but difficult job. Because customary laws vary from one ethnic group to other, one place to another, one region to another, sometimes it varies from village to village. An interdisciplinary approach of folklore, anthropology and law can provide valuable inputs regarding codification of customary laws in the north eastern India.

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