



MULTICULTURALISM AND PLURALISTIC JUSTICE DELIVERY SYSTEMS IN ARUNACHAL PRADESH

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ABSTRACT

This paper is to discuss about the multicultural practices of Arunachal tribal and pluralistic Justice Delivery Systems in Arunachal Pradesh. How the Traditional Justice Systems and Formal Courts are working parallel with each other. After that, researcher will adumbrate the constitutionality of the Traditional Justice Systems of Arunachal Tribal. Why and how the Pluralistic Justice Delivery Systems is viable for Multicultural society. Approach of this research paper is doctrinal and reflection of qualitative empirical data collected by the researcher from 13th June 2013 to 20th April 2018. Tools for data collection were focus group discussion and participatory observation from Arunachal Pradesh.

Keyword: - Multiculturalism, Pluralistic Justice Delivery Systems, Tribal, Traditional Justice Systems, Constitution of India, Arunachal Pradesh.

1) Introduction:-

As, we are well aware about the features of Indian Constitution. Where, the concept of multiculturalism has been imbibed by the framer of the Indian Constitution. Where, the decisive multiculturalism of Indian cooperative federalism has been appreciated by the doyen of jurist globally. But, how those multiculturalism has been continued till now in India and particularly in Arunachal Pradesh. Arunachal Pradesh comprises of

26 Major Tribes and more than 100 sub-tribes. Every tribe has their own unique cultural identity and they celebrate their cultural identity through festivals. Therefore, every tribal community of Arunachal has their own unique customary laws. And there are different tribal institutions, who administer those tribal institutions and interpret the customary laws. The custom has been recognized as law under Article 13 clause 2 Sub-Clause (a) of the Indian Constitution and the Gaon Burah's Institutions has been working under 1945 Regulation, which is also saved under article 372 of the Indian Constitution.

2) **Objectives of the Study: -**

2.1 To gauge through the parallel working of the Traditional Justice Delivery Institution and formal courts in Arunachal Pradesh.

2.2 To find out the constitutionality of the Tribal Justice Delivery Institutions of Arunachal Pradesh.

2.3 Find out the viability of the Pluralistic Justice Delivery Systems in Multicultural society.

2.4 And to find out scope for further research

3) **Working definition: -**

3.1 Multiculturalism: - State or society, where different people live together with diverse cultural practices by maintaining social harmony.

3.2 Pluralistic Justice Systems:- State or society, where different mode has been existing to resolve their disputes e.g. Formal Courts, Lok-Adalat, Gram Nyayalaya, Mediation, Traditional Justice Systems in tribal areas etc. where, the diverse society co-exist and they prefer their culture, custom and tradition to bind themselves in resolving their disputes.

3.3 Gaon Burah's:- Administrator of the Traditional Justice Systems and Interpreter of the Customary Laws

4) **Discussion**

India is known for diverse cultural heritage and every state has been known for their diverse cultural practices. Every cultural practices leads to a traditions and customs. Therefore, in Indian Constitution. There is a Sixth Scheduled for North east

India. Which protects the cultural practices and self determination of the tribal peoples of North East India.

Historically, Arunachal Pradesh got its statehood day on 20th February 1987. Before that, Arunachal Pradesh were regulated under 1826 (Yandaboo Treaty), 1836 Bengal District Act and 1873 Bengal Regulation. Later on, Arunachal Pradesh was known as Chin Hills till 1914 and regulated under Chin Hills Regulation 1896. After that, in 1914 the tribal land was segregated from Assam to form North East Frontier Tract “NEFT” and in 1936 the NEFT was administered under the Governor u/s 91 (1) and 92 of the Govt. of India Act 1935.

In 1945, the British India has enacted a regulation to protect the tribal Justice Systems, so that tribal can administer and interpret their customary laws. In 1956, the Govt. of India has brought North East Frontier Areas (Administration Regulation) Act of 1954 and the NEFT has been renamed as North East Frontier Agency “NEFA”. Till 1987 the Arunachal Pradesh was known as NEFA. And the Arunachal Traditional Justice Delivery Systems has been continued and regulated under The Assam Frontier (Administrative Justice) Regulation 1945. And the Arunachal Tribal has been protected by Eastern Bengal Regulation 1873 and The Chin Hill Regulation 1896.

In 2000, the Guahaty High Court Bench has been set up at Naharlagun, Arunachal Pradesh and as per the Judicial Service Rule 2006. The regular court has started functioning in Arunachal Pradesh. Subsequently, on 24th January 2014 Guahaty High Court has directed all the Executive Officers and Gaon Burah’s (Administrator Traditional Justice Systems and Interpreter of Customary Laws) to transfer all the pending cases to regular courts. Since, the judicial power under 1945 Regulation of the Gaon Burah’s (Traditional Justice Delivery Systems) has been ceased to operate from 16th September 2013. But, the Gaon Burah’s Institutions are working effectively in Arunachal Pradesh. Below head, I will discuss, why Gaon Burah’s Institutions are working effectively and how Formal Courts judicial officers are in dichotomy.

Multicultural society and Pluralistic Justice Delivery Systems in Arunachal Pradesh

Arunachal Pradesh is a land of tribal people and sustained by the echo of multicultural society. In every district, you will find different dialogue and different festival. Presently, there are 21 districts and co-exist by Tribal namely Apatani, Adi, Aka, Galo, Tagin, Tutsa, Tangsa, Singhpo, Wancho Nocte, Idu-Mishmi, Miju Mishmi, Digaru Mishmi, Khampti, Monpa, Memba, Sherdukphen, Lisu, Tagin,

Nyishi, Puroik etc and Non-tribal all over from India. Tribal people practice and follow their Indigenous faith religion and some has been started following the religious principles of Christian, Hindu, Buddhism and Islam. Interestingly, within family, you can find different religious followers. But, they bind themselves through social mechanism to follow their customary laws in marriage ceremony, adoption, inheritance or any type of disputes. Since, they treat, crime as torts against their clan or community and disputes as their property. Therefore, every disputed party approach first to their Tribal Justice Delivery Institutions and they perceived that, the formal courts are interfering their property by registering FIR (First Information Report) through police Station or Criminal Complaint.

Since, time immemorial the Arunachal tribal has been continuing their tribal justice delivery systems by different names and they are the expert of their customary laws. Namely Ngowang is a name of the institution in Naga tribes live in Tirap and Longding, Tra in Singphos, Khaphua/Khapong/Khapo in Tangsa, Ngajowa (Wancho), Buliang (Apatani), Kebang in Galo and Adi, Mele in (Hrusso/Aka), Abbala (Idu Mishmi), Tsorgen (Monpa), Jung (Sherdukpen), Mokechap (Kamti), Abbala in Idu Mishmi, Pharai/Khatai in Miju/Digaru Mishmi, Mokchup in Khampti, Wangcha in Wancho, Nyelee in Nyishi to settle yallung and bharak (dispute).

Above indigenous tribal justice delivery institutions have been administered by person, who is expert in interpreting customary laws. For example, Nyegam (Administrator of Nyelee and interpreter of customary laws) and Gindung (Peace Messenger for both parties) in Nyishi. But, the word Nyegam and Gindung has been conceptualized by the British India as village headman under 1873 regulations, 1896 regulations and 1945 regulation and Govt. of India through Assam has conceptualized as Gaon Burah's (Old/head man of Village) and Gaon Buri's (Old/head women of Village). During the touch with the British India. The British India has enacted many regulations to maintain peace relationship with the Arunachal Tribal. Presently, The Assam Frontier (Administrative Justice) Regulation 1945 is in operative.

The formal courts have started working actively from 2013 through the appointment of the judicial officers based on eastern and western parliament of Arunachal Pradesh.

Total Strength of the Judicial Officers in Arunachal Pradesh (2017)

<u>Gauhati High Court Permanent Bench Naharlagun, DistPapum Pare Arunachal Pradesh</u>	
Western Zone/Division	Eastern Zone/Division
<i>Covers 11 Districts</i>	<i>Covers 10 Districts</i>
1) District and Session Court Yupia, Papum Pare	1) District and Session Court, Tezu, Lohit
2) Additional District and Session Court, Bomdila West Kameng	2) Additional District and Session Court, Pasighat East Siang
3) Additional District and Session Court, Basar Lower Siang	3) Chief Judicial Magistrate, Roing Lower Dibang Valley
4) Chief Judicial Magistrate	4) Judicial Magistrate First Class, Yinkiong, Upper Siang
5) Chief Judicial Magistrate	5) Judicial Magistrate First Class, Khonsa, Tirap
6) Chief Judicial Magistrate Yupia	
7) Chief Judicial Magistrate, Seppa east kameng	
8) Judicial Magistrate First Class, Yupia, Papum Pare	
9) Judicial Magistrate First Class, Aalo west Siang	
10) Judicial Magistrate First Class, Tawang, Tawang	

Dichotomy in Parallel working of Traditional Justice Institutions of Tribal and Formal Courts.

Before, the establishment of the formal court in Arunachal Pradesh. The Traditional Justice Delivery Institutions of Arunachal tribal was only the first and the last resort for resolving disputes. That might be compoundable or non-compoundable. After the coming of British India, those Tribal Justice Delivery Institutions were conceptualized under Assam Frontier (Administrative Justice) Regulation 1945, as Village Headman. And carried on by Govt. of India and Govt. of Arunachal Pradesh as Gaon Burah (Village Headman). And Govt. had limited the power of Gaon Bura's to resolved the disputes to compoundable and civil nature. And the aggrieved party can appeal to the Gauhati High Court Only. So, this trend continued till now, even though there is limitation on Gaon Burah's. But, as per the request of the police officers, panchayats, elite people of the community, executive magistrate, disputed

parties and effected parties. Even, Gaon Bura's resolved disputes relating to heinous crimes, murder and as per 1945 regulation, there is no cap on monetary disputes.

So, the dichotomy in Parallel working of Traditional Justice Delivery Institutions of Tribal and Formal Courts. Erupt on 24th August 2015, when the Additional Deputy Commissioner Sagalee Sub-Division, Dist. Papum Pare Arunachal Pradesh notified that the power of Gaon Burah's under Assam Frontier (Administrative Justice) Regulation 1945 has been ceased to operate Vide Order NO. JUD-09/9/2014/6804. Yupia January 2014. Based on the Gauhaty High Court WP © No. 5873 of 2006 and order dated 16th September 2013. And all the pending cases before executive magistrate shall transfer to regular courts.

Based, on the cited notification and order. All the pending cases has been forwarded to regular courts. But, the real dichotomy started. Once the trial courts judge has been acknowledged that, as per 1945 Regulation. All the cases tried by the Gaon Burah's Institutions shall be appealable only to Gauhaty High Court and Trial Court cannot hear the cases resolved by the Gaon Institutions.

Based on my observation and focus group discussion with Gaon Bura's, Judicial Officers, Executive Magistrate, Police Officers, Panchayats Members, Disputed Parties and Legislature. Presently, all the tribal people approach first to Gaon Bura's Institutions to resolve their disputes. Main reason for opting Gaon Burah's institution to resolved disputes is due to economically viable, Easy to access, more transparent, more binding, no technicalities, no third party, socially mechanized and maintain peace and harmony in the society. Since, they have to live together in same area.

The constitutionality of the Tribal Justice Delivery Institutions of Arunachal Pradesh. There is no direct provision, which protect the Gaon Burah's Institutions of Arunachal. But, there are many regulations, which recognized the Gaon Burah's institutions and those regulations has been saved and protected under Article 372 of the Indian Constitution. Even, by looking into the socio-economic scenario of Arunachal Tribal. The State Govt. has never conducted any consultative empirical work to review the 1945 Regulation. And even Gauhaty High Court Assam has directed and ceased the Assam Frontier (Administrative Justice) Regulation 1945. Whereas, it's the work of legislature to revisit the 1945 Regulation.

After, reflecting the multicultural society of co-existed by 26 major tribe and more than 100 sub-tribe. Let the Pluralistic Justice Delivery Systems of Arunachal tribal continued till

the all district established their District and Session Court. And it is viable for multicultural state like Arunachal to continue their Traditional Justice Systems.

5) **Conclusion:-**

As per the above discussion, historically, Arunachal Tribal Justice Delivery Institutions got unique recognition from British India and later on by Govt. of India. Based on emic perspective, the Gaon Burah's are very effective in resolving disputes. Therefore, the Assam Frontier (Administrative Justice) Regulation 1945 is still operative in Arunachal Pradesh. Since, there are two District and Session court for 21 District. It is not possible for two District and Session Court, Judge to cover largest state of North East India having 83,743 Square KM and 26 major tribe. and even, judicial officers cannot understand tribal dialogue and customary laws. Since, the Assam Frontier (Administrative Justice) Regulation 1945 is saved under Article 372 of the Indian Constitution and Arunachal Tribal are also protected by Eastern Bengal Regulation 1873. Even, there are many national and international laws. Which recognized the essence of the Tribal Customary Laws and their Justice Delivery Institution. And even overweight the textual record, if custom has been prevailing in the society. Coherently, let the Gaon Burah's institutions continue their works under 1945 regulation. Till the state Govt. established District and Session Courts in every district. After all, there is always option for the aggrieved party to appeal before Gauhaty High Court, Permanent Bench, Naharlagun. Meanwhile, the State Govt. should initiate empirical research work to compile the multicultural customary laws and the effectiveness of the traditional justice institutions of Arunachal Tribal.

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