



Examining Women's Role In Customary Laws: A Study Of The Lotha Tribe In Nagaland

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Abstract: Customary law constitutes a prominent part of the culture, especially in North East India ie the tribal society. There is also an interesting interest in the customary law of tribal societies. Customary Laws are the customs, traditional practices, and rules followed by the tribal society from time immemorial. It reflects and represents the distinct a unique features of a tribe because customary law differs from tribe to tribe. If we investigate the definition of customary law there is no accepted definition, Customary laws include principles or values rules, and code of conduct, and established economic practices. They are enforced by community institutions and can have sanctions attached. They are locally recognized. Orally held, adaptable, and evolving (Swiderska,2009). The present paper aims to study the customary laws relating to women's inheritance and marriage in the Lotha tribe in Nagaland. The primary source was collected through the interview method and for secondary source it was relied on studies that were conducted on similar papers relating to tribal areas. The Lotha society is patriarchal and patrilineal so according to Customary law dealing with property rights in traditional Lotha society it was the son who inherits the immovable property. Women had less say when it came to property inheritance. The daughters have no share in it. In the absence of sons to inherit the father's property, then the properties are divided among the father's immediate relatives. All properties are exclusively inheritable, both movable and immovable goods, according to the Lotha custom. Women can purchase any property by using the money given by their parents or self-earned money. Yet her sons can only inherit those properties. In no case or condition, these properties can be diverted back to her parents or to their family members. (Athungo,2015:140) Equality and equal treatment of genders have become universally accepted norms. The women's rights movement has gone through a long struggle to achieve this recognition. More efforts are needed to ensure the proper implementation of equality and equal treatment of genders. There is a question of whether customary law relating to gender should be discarded and given up in order to achieve gender equality.

Keywords: Customary, Women, Inheritance, Marriage, Lotha

Introduction:

In particular, the tribal civilization in North East India places a strong emphasis on customary law. The customary law of tribal communities is likewise of considerable importance. The conventions, traditional ways of life, and laws that have long been observed by tribal societies are known as customary laws. Since customary law varies from tribe to tribe, it reflects and represents the distinctive and exclusive traits of a tribe. Principles or ideals, standards of behaviour, and accepted economic practices are all included in customary laws. Institutions in the community enforce them, and they may come with penalties. They are well known

throughout the area. Orally delivered, flexible, and changing, it cannot be regarded as static. If we investigate the definition of customary law there is no accepted definition, Customary laws include principles or values, rules, codes of conduct, and established economic practices. They are enforced by community institutions and can have sanctions attached. They are locally recognized. Orally held, adaptable, and evolving (Swiderska et al., 2009).

Wipo (2013) According to the business dictionary customary law is defined as a “*traditional common rule or practice that has become an intrinsic part of the accepted and expected conduct in a community, profession, or trade and is treated as a legal requirement*”. Customary laws are also defined as customs that are accepted as legal requirements or obligatory rules of conduct; practices and beliefs that are regarded as significant and intrinsic parts of a social and economic system that they are treated as if they were laws.”

Customary Laws are an essential facet of the tribal societies of North-East India and it forms a basic component of their identity. The customary laws of many of the tribal societies in our country still have the power of law as recognized by the constitution of India. The Naga society is no exception to this. Nagas have their time-honoured laws and customs to adjudicate civil disputes and administration of justice. The customary law of Nagas (in general) and Lotha (in particular) with their diverse culture is unique from mainstream India. The traditional values are preserved mostly in the form of oral practices whereby written records are less evident.

The narratives of custom and tradition have always been constructed from the perspective of men, and women's perspectives are never considered significant. Women constitute a large portion of the economically active population engaged in agriculture in North-East India. Yet women often face gender-related obstacles. Customary law often includes gender discriminatory rules concerning marriage, divorce, property, and a host of other issues. With this background in mind, we shall look at the way customary law affects women in matters of inheritance and marriage in the Lotha tribe of Nagaland.

Lotha Naga:

Lothas are one of the sixteen tribes of Nagaland, the Lothas belong to the Mongloid stock with Tibeto-Burma group of language. The Lothas are medium brown in complexion and medium structure in height. The language that the Lothas speak among themselves is known as Kyong-yi¹, the Lothas have an oral tradition and their histories are known from their stories, legends which are been passed on from one generation to another (Ovung, 2012:20). There is no different dialect like the Ao's and the Rengma's Nagas, except a slight difference in the accent between the Liyo (lower range) and Nrung (upper range). (Mills, 1922:207) Wokha district is the home of the Lothas. In December 1973, it was given a separate district. Before it was one of the sub-divisions under Mokokchung district. Wokha town is named after Wokha village (Jamir, 2016:40). The Wokha district is divided topographically into three ranges; the upper range consists of Chukidong, Englan, and Phiro circles. The Middle range with Sungro, Aitepyong, Sanis, and Lotsu circles, and the Lower range with Baghty, Bhandari, Chanpang, and Ralan circles. The district is classified as rural having 111 recognized villages, the Wokha Town is classified as urban because it is the district headquarters (Ovung, 2012:20-21).

¹ Kyong-yi – Lotha language

They called themselves Kyon², there is a traditional belief that long ago the Lothas were living in China near the riverbank of Nankiang and from which they got the name “Kyong” which is derived from the name of the riverbank (Lotha, 1998:21).

The first Englishmen to visit the Lothas was Captain Brodie he marched along part of the Lakhuti range in 1844 and was given a friendly reception (Mills, 1922:2). There is a traditional saying that the Aos, the Lothas, Semas, Angamis, Rengmas and the Chakhesang traveled from Manipuri and gathered at Khezakhenoma³ and from there they spread to different places the Lothas assemble at wokha. The word Wokha is derived from two words the word “WO” means the number of people and “KHA” means counting. (Ghosh, 1979:1) The location of the Lothas which is in Wokha is filled with unique resources and it is been named the “Land of Plenty” (Jamir, 2016:46) The Lothas celebrate festivals like the other tribe named “Tokhu Emong” which is recognized by the Government of Nagaland and it is celebrated on 7th November every year. It is called the harvest festival of the Lothas. It is the time when the harvest is done the granaries are filled and the entire village takes part to enjoy the fruit of hard labor. During these festivals families, friends, and neighbors are invited to each other’s house. The festival is filled with songs, feasts, and dance. All the people are well dressed in their beautiful traditional attire and customs. During this festival, people forget their old enmity and create a new line of friendship. (Gosh, 1982:259) The village priest offers prayers for the village offers sacrifices to the people and calls for reconciliation between the people and the deities. The village priest asks the spirit for blessing for the coming year (Murry: 7).

The Lothas have an oral tradition and the facts and history are known from the stories, legends, and songs passed from one generation to another orally. The Lothas, Aos, and Semas are believed to have possessed in the past a Naga script which is said to have been written on the dried skin of an animal and was carried by their forefathers during migration through the Patkai ranges. Written on such skin, it was convenient enough to roll. But as this script was not kept under proper custody, the time came when it was eaten up by a dog. According to tradition, all the elderly people who had written them had died by that time, and owing to the loss of memory, the script could not be written again (Ghosh, 1979:31). With the arrival of the American Baptist missionaries towards the end of the 19th century, the Lotha language was reduced to writing in the Roman script (Ezung, 2014:4)

Women and customary law:

South Asia is identified across the world for its diverse ethnic groups, their numerous customs, and cultural practices which make this region unique in its sense. While there is heterogeneity across these groups when it comes to their cultural practices, the persistence of customary rights becomes a practice that acts as a commonality across communities. Such practices are primordial to the millions of communities living in the region. While these rights are layered with a rich history of belonging to a particular tribe, they are homogenous in a certain sense. Amidst its socio-cultural heterogeneity, these rights are discriminatory when it comes to women and their access to agencies of power which include a share in land, inheritance, and

² Kyon- which simply means “Man”

³ Khezakhenoma- A village situated in the south of Kohima

political assemblies. (Hazarika and Das,2019) Customary laws are composed of certain values and ways of life. They are immemorial and exist as common knowledge. They are based on precedents and are retained in memories. They act as powerful tools that impact and define the roles of women and men are often conducive to women and are highly oppressive.

To understand the Customary Law in the Lotha Naga society one must re-look at the evolution in the traditional society. The change from tradition to modernity has brought about unique changes in the tribal communities and their customary laws. In this juxtaposition of tradition and modernity, the community often falls prey to the customary laws and manipulates the laws favoring men for instance in a Lotha community when a person passed away, the five-day grieving period for females and the six-day mourning period for males was carried over from the naming of a child. The chanting implies that the youngster was subjected to gender job segregation from the moment of birth. It was argued that men are born with superior physical and mental qualities that women do not possess. Based on this, it was thought that women were incapable of performing things that men performed, and they were not even permitted to attempt them. The appropriation of time for the naming was based on the belief that while a woman possessed only five strengths a man possessed six strengths. So, (Murry 2021) states that When men sacrifice ten pieces women do nine, just less than ten.⁴

Women's role in decision making is effectively blocked by customs that give power to men, which may rationalize as 'tradition and culture.' As an outcome, women in Naga society have little skill or experience on matters regarding the administration of the society. Zehol (2006) states that the husband takes all major decisions inside and outside the family. In the absence of men, decision making may be subdued or even ignored. The wife maybe consulted and may even indirectly influence her husband. Thus, though patriarchy depends on their wives or mothers, it contrives to make the importance of motherhood invisible.

Marriage Law:

Marriage in tribal societies tends to be monogamous and usually involves bride-wealth exchanges. Marriage bonds are the basis of descent-group alliance, which occurred in the past within large clans among the Nagas on account of warfare and headhunting.

The Lotha tribe practices an exogamous⁵ marriage system. Generally, Lotha women do not have much choice about marriage. According to Mills, there were three Phratry⁶ divided into (Chibo⁷) which are in some cases further split up into mhitso⁸ and lit⁹. According to J.B.Mills book the Lotha consists of three major phratries which are Tonphyaktsirie¹⁰, Izumontserre¹¹, and mipongsandree¹² A man can take his

⁴ Khezakhenoma- A village situated in the south of Kohima

⁵ Exogamous is a marriage to a person belonging to a tribe or group other than your own as required by custom or law.

⁶ Phratry is a former kinship division consisting of two or more distinct clans with separate identities but considered to be a single unit.

⁷ Chibo- Clans.

⁸ Mhitso- Kindreds.

⁹ Lit- Tail.

¹⁰ Tonphyaktsirie- this phratry is divided into seven clans such as Jami, Kikon, ovung, patton,tsopoe and worore

¹¹ Izumontserre- this phantry is made up of the following: humtsoe, kithan, Mozhui, Ngullie, rangpang, sentying Ngullie, Shetri, Sungphi Ngullie

¹² Mipongsandree- there are ten clans in this phantry such as muri, othui, eni, thangwe eni, lapung, chorothui,ezong, tsangle,yanhang, moyoyanhang

wife from a phratry other than his own. Marriage between different members is allowed everywhere and it is common especially among the Southern Lothas, though it is viewed with a certain amount of disapproval by the conservative members of the tribe (Mills, 1922:87). Polygamy¹³ was allowed, was not restricted during olden days. But only a rich man can marry more than one wife, depending upon his wealth and influence. Having many wives was considered as prestige and capable of feeding many women on the other hand having many wives meant producing more children to support the family in economic production, especially for paddy fields which require human labor. The Lothas practiced the system of clan exogamy and tribal endogamy¹⁴. Marriage within the same clan was prohibited or it was taboo to get married within the same blood, if anyone was found violating it was punished under the law of the custom. As a patriarchal and patrilineal type of society, the Lothas follow the neo-local type of residence after marriage where the new couples move to the boy's house away from their parental home. As per the customary practices of the Lotha Naga, the couples are to get married only after 7th November i.e., Tokhu Emong¹⁵. A feast called "Lantso Lanku" in the Lotha language which means a formal feast was served signifying an engagement of bride and groom.¹⁶

The Lotha Naga has a very distinctive marriage practice which is the payment of bride price in the marriage system which, apart from the number of heads he could boast of, demanded that the groom earn his bride. The bride price represents the economic worth of the girl, as per the customary law Bride price is known as Erhantseen, and the equilibrium price is known as Hanlam¹⁷ in the Kyong language. The Halam pig is carefully chosen because it is thought that Hanlamso represents the couple's future. The Lothas before giving any bride price, Hanlam's "price of equilibrium" known as Hanlamvu which means "to carry back" is given three days before the wedding. During the course, a pig is killed and distributed to all the family members and relatives of the girl. It is a custom to give Hanlamso to the families of the bride without which marriage cannot be preceded. The pig for Hanlam is chosen very carefully and the best is selected for it is believed that the better the meat of the pig the better will be the future of the couple. The whole purpose of Halam was primarily to ensure that the bride and groom have the basic needs to begin a new independent life as a couple. Unlike the modern times there was no money-economy so people had no savings. According to Nienu, she says that marriage was termed as *oson-oki-etssow* which means 'to build granary and house' so, halam made it easier for couples to start a new life in a new house.

Without giving this Hanlam the bride and the groom are not considered husband and wife. It is only after giving the Hanlam that they are considered married couples. In case, a couples get married without the witness of the church members they are not considered husband and wife unless and until they give Hanlam. They are expected to give Hanlam before they have a baby if possible since it is seen as taboo if their children eat the Hanlamso. In this case, if the couples give hanlam after having children then they make sure their children do not eat the hanlam meat¹⁸.

¹³ Polygamy – Having multiple socially bonded sexual partners at the same time.

¹⁴ Endogamy is the practice of marrying or requiring to marry within one's own ethnic, religious, or social group.

¹⁵ Tokhu Emong- Festival of the Lotha Nagas

¹⁶ Interview on 5th September 2023

¹⁷ Hamlam- Bride price

¹⁸ As narrated by a respondent on 9th September 2023

In the modern time, Halam is no longer practiced in its uniqueness. It is no longer reared but the halam pig can be bought from anywhere. With the influence of modernity and the coming of British colonizers and American missionaries, the Lothas have also been embracing modern cultures.

Inheritance rights:

Naga considers customary law as intrinsic to their identity and an integral part of their tradition and culture. Nagaland is a multidialectal tribal state, therefore customary law is multifarious as well. The constitution of India was amended in 1963 and Article 371A¹⁹ was introduced to bring civil affairs in Nagaland under the tribal customary law. The Lotha society is patriarchal and patrilineal in nature so according to Customary law dealing with property rights in traditional Lotha society it was the son who inherits the immovable property. Properties are divided into two types moveable and immovable. The movable property includes agricultural tools, weapons, clothes, ornaments, livestock, and other items that are considered valuable. The immovable property consists of property such as houses, forests, and all forms of land. Women do not have inheritance rights over movable property and are poorly represented while making decision making in society. Women had less say when it came to property inheritance. The daughters have no share in it. In the absence of sons to inherit the father's property, then the properties are divided among the father's immediate relatives. All properties are exclusively inheritable, both movable and immovable goods. According to the Lotha custom women can purchase any property by using the money given by their parents or self-earned money. Yet her sons can only inherit those properties. In no case or condition, these properties can be diverted back to her parents or to their family members. (Athungo,2015:140) As per the customary law, women are generally excluded from inheriting any movable property, but she can enjoy the property if she is within the family, but as soon as she is married such honors stop to exist²⁰. In instances like the death of their husband, the widow holds the house, and the properties under the shelter of her sons if she does not marry again. But if she happens to remarry the properties of her former husband need to be surrendered and she must leave for her present husband's home with the only clothes she wears. In such cases, the surviving sons will share the property. But in modern times women can purchase land that is self-earned or purchased by the parents, and some parents have begun to give a share of their land to daughters. This is done by the head of the family that is the father to show his love and care for his daughter or daughters. As far as customary law is concerned there is inequality between men and women.²¹ There is discernment in the mode of inheritance rights for women.

Conclusion:

Equality and equal treatment of genders have become universally accepted norms. The women's rights movement has gone through a long struggle to achieve this recognition. More efforts are needed to ensure the proper implementation of equality and equal treatment of genders. With the coming of education and modernization, there has been some positive change but if we look at the case of Lotha women there are some

¹⁹ provides some safeguards to protect the religious and cultural way of life according to the traditional and customary law and usages

²⁰ Interview on 10th September 2023

²¹ Interview on 10th September 2023

areas where changes are needed and so there is a question of whether customary law relating to gender should be discarded and given up to achieve gender equality.

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