

## REEVALUATION AND REASSESSMENT ON THE CUSTOMARY LAW ON INHERITANCE OF THE BODO

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### **ABSTRACT**

*Every society has certain traditional rules whether it may be written or unwritten to distribute and transfer the properties both movable and immovable to the descendants during life time or after the death. Many of the tribes of the North-East India pursued their own customary law which has been handed down from one generation to another generation with regard to the distribution of the property. The Bodo also have been applied the old age customary law of inheritance to the division of property. The laws and customs of the Bodo in connection with the inheritance of property seem to be very fuzzy. But it is fact that they have well established traditional law of inheritance which governs the society. The force of customary law or traditional rules signified that litigations have been known to the Bodo even during remote past.*

**Key words:** *Bodo, Patriarch, Dongkha Habnai Haba, Son, Daughter, Adoptee.*

### **INTRODUCTION:**

The term 'Bodo' was for the first time applied by B. H. Hodgson (Hodgson:1847:1ff) as an ethnographical term to a group of languages to refer the Meches of Darjeeling district in 1847, which was confirmed by G. A. Grierson (Grierson:1903:1). It is originally a linguistic one, but very often used as a generic name of all the Tibeto-Burman (Bodo) speaking people of the Sino-Tibeto origin. They are the most primitive denizens of Assam. Racially, they belong to Mongoloid origin. Their language is a branch of Tibeto-Burman speech family. The Bodo, who are considered to be one of the earliest indigenous ethnos of Assam are known by diverse terms in various places throughout the North-Eastern India as well as in some parts of Indian sub-continent. The Bodo in North Bengal, Nepal and Bhutan are recognized as Mech or Meche, in between the Sonkos river and the Brahmaputra river are identified earlier as Meches and afterward Bodo, on the Kachari hills they come to be known as Kacharies, in Dimapur they are called Dimasa, in Tripura as Tripuri or Kok Borok and so on.. The branch of this language includes different tribes, such as Bodo, Kok-Borok, Mech, Garo, Rabha, Lalung,

Sonowal, Deori, etc. Bodo-Kacharis, popularly known as Bodo or Boro now constitute one of the largest indigenous tribes in Assam.

Customary law is the habitual course of conduct of a society and contains certain norms, practices and usages, mechanisms such as taboos, sanctions, social rituals, culture, public posture and ethics of each individual. Basic to the customary law is its acceptance by the community. It may be assumed that the need for building an ordered social life necessitated the human society to formulate some kind of social norms or rule of their own in every society. But, within the same society sometime it appeared that various drives and goals of different individuals came into clash with the rules of accepted standard and violated the social norms of the society. Controlling the violation of social norms by enforcing prescribed punishment by a socially recognised authority culminated in the growth of law in the society. These un-written laws that prevailed among the communities in their culture can be termed as customary laws (Bennett. T.W. and Vermeulen, 1980:206).

Customary law comprises customs that are accepted as legal requirements or obligatory rules of conduct; practices and beliefs that are so vital and intrinsic a part of a social and economic system that they are treated as if they were law. It has also been defined “as consisting of established patterns of behaviour that can be objectively verified within a particular social setting. G.P. Singh, while discussing about the Tribal administration of justice of North East India elaborately elucidated that the tribal customs, conventions, usages, ancient practices, ethical codes, precepts, fables, antecedents, taboos, royal edicts, etc constitute the main basis of law. In every tribal society there are customary laws relating to marriage, women’s property, divorce, inheritance and succession, household property, non performance or breach of agreement, debts, crimes and violence, defamation and assault, border or boundary disputes etc. that played their part in the evolution or development of science of law. The modern condition of a civil law developed out of the customs or customs of the middle ages, expressions of law that developed in a particular communities and slowly collected and written down by local jurists. Such customs acquired the force of law when they became the undisputed rule by which certain entitlements (rights) or obligations were regulated among the members of a community (Singh G.P., 2009 :199-200).

Customary law deemed to be as socio-legal system honoured as well as accepted by a particular community or tribe to control society, to safeguard people following the social norms. Unwritten and un-codified customary laws of different communities or tribes of North East India are still in existence and in operation, which have been orally transmitted to succeeding generation. Customary laws are more social in character, based on traditions and mythology, considered as the property of the community or people paying respect to it and abide by it. A customary law being expression of the positive will of the community initially or in the beginning, however

localized, is found to be unwritten. Soon as a customary law is reduced to writing, it remains extinct and ceases to be customary law any longer. The Bodos, an old Indo –Mongoloid group, living in North Eastern part of India, has well established customary law to deal inheritance.

In the society of the Bodo, after the demise of the head of the family, all the properties that belonged to the deceased head of the family would be under the control of the eldest son (Endle, 2010:32). The eldest son being the head of the family after the death of his father, he should live along with his widow mother, brothers and sisters and should look after them properly. When the younger brothers become mature and enter into family life the property of father is divided into equal share. The eldest one received one share and half and remaining will share reasonably among the brothers. Normally, the married daughter cannot claim any right on the property. When a man died without his male heir, the property goes to his eldest brother who makes some provision for the widow of the deceased man and daughters. However, it is also reported that the deceased person who do not have the male child, the property will be divided among the daughters who can enjoyed such properties even after the marriage (Brahma, 1992:33 & Brahma, 2006:19).

### **OBJECTIVE:**

The objective of the paper is to make a humble attempt to present a systematic, comprehensive and graphic description on the customary law on inheritance of the Bodo

### **METHODOLOGY:**

The methodology of the study is inter-disciplinary method. According the work is primarily based on field investigation i.e interview for collecting first hand data .The techniques of anthropological data collection i.e participation, observation, and interview methods are adopted. Historical method which based on primary and secondary sources is mainly adopted in this paper. The collected data -both primary and secondary have been analyzed both quantitatively and qualitatively whenever necessary. Comparative study is also made whenever it is necessary to bring an accurate picture of the subject.

### **RESULTS AND DISCUSSION:**

No serious research based study on the customary law on inheritance the Bodo has yet been made by any scholar by utilizing all the available sources. But some scholars have been brought to light on the subject matter in their respective works. However, still await thorough investigation and treatment within a wide canvas. In fact, the Bodo have well established tradition relating to law of inheritance which governs the society. Daughter has no

right on her fatherly property as she has to renounce her family lineage after the marriage. However, in certain cases daughter also enjoy parental property becoming inheritor where there is no male issue or male child. In the present society of the Bodo, no hard and fast rule is found for the inheritance of the parental property by a daughter.

### **Property of Father:**

The Bodo society is patriarchal. In such society, father is considered the all in all in the family since he is absolute authority over the family property and rights. The supreme and exclusive authority to deal with giving share of his properties to his family members including sons, brothers, daughters who so ever and also to dispose of it is totally in the hand of to father, the head of family (Boro, 2001:10 & Machahary, 2004:95). The family members are under the control of head of the family. The Bodo have been following the line of the father in matters of descent and the male children alone could become inheritor of the fatherly property. As a result of which all the property of the parent passes through male descendent only, however, in some exceptional cases female members or daughters also became the inheritor by receiving the parental property.

The property of the family is to be divided after the death of the patriarch among his sons equally or as decided by father before his death. The closest one to the father or the one who look after aged parents may get lion share or more share. It is the custom that no son has the right to claim some portion or whole of father's the property of the during the life time of the father. However, it is the right and duty of the father to give some portions of his property to the married son because he is allowed to live separately by bifurcating from the original family as separation is permitted by the Bodo society. The father (head of the family) has not merely a right to distribution or partitions his properties but he also retains the authority to effect the division of his property among his sons *inter se*. The head of the family, being a patriarch, may or may not be seeking advice from any of the family members regarding to the distribution of the property that belong to him. While exercising the power the opinion or dissent of the family members especially sons are immaterial but the father must act bona fide and should treat all his sons equally and should not cause any hurt to any member of the family by way of his conduct. He should not act unfair to his subordinate members of the family. During the life time of the patriarch, if he settled the matter relating to his property division among his sons or who so ever entitled to the property, there would be no problem after the death of the father except the authority to maintain the joint family (Gopinath Bargayary, 2016).

**Woman:**

Woman property right is implicitly recognized by the customary law of the Bodo. A female may inherit the property either from her parent side or from her husband side or from both sides. Woman property is included movable as well as immovable. Wife may not be entitled to get any share of the property of husband during the life time of the husband; however, it is the absolute right of the husband to give some portion of his property to his wife for the future security (Brahma, 1992:33). The Bodo keep some provision for the woman property right nevertheless at no time the quantum of her property may be anything but skimpy or small in quantity. But some property, not the immovable, like pig, fowls, duck etc. are came under the absolute control of the wife (Brahma, 1992:33) for the management of the family .It has been old age practice and still in continuity till date. Bodo woman who is the owner of property has full right of disposal but the consent of her husband is always predominant. And husband has the power to use the property of his wife.

A man who become polygamous by fulfilling all the social norms of the Bodo, in such case all the wives are entitled to receive equal share of property of their husband when the death of patriarch whether they are childless or not, does not matter. However, those wives ,whose marriages are outside the social norm and not approved by society, are debarred to entitle husband's property after the death of the husband. A woman who married to a widower by fulfilling all the social norms but she is childless, still then she may claim a share of property during the time of partition after the death of her husband for her future maintenance. In such case her husband's offspring of first wife shall not raise any objection to give a share of the property to the step mother (Boro Somajni Songbijid Arw Nemkhanthi, 2005:34 & Boro Somajni Nemkhanthi, 2001:8-9). According to R. N. Muhahary (Mushahary, 1986:237), a widow who owned a portion of her deceased husband's property has a right to confer to any one at her own will or she can dispose it. Generally the property which received from the deceased husband will be transferred to her children if they have the children as and when the children attain the age of maturity. It is also to be noted that after the death of the widow all the properties which owned by her will pass to her own heirs. Issueless widow who did not re-enter into the second marital life, may inherit the deceased husband's property only for her lifetime. After her death, relatives of her deceased husband family will inherit the property as she left no legitimate successor or inheritor.

If a widow married to another person under *Dongkha Habnai Haba*, the responsibility to take care the family including the children of the deceased husband as well as the property is fixed on newly married husband (Narzi, 2003:23.). All the sons of first and second husband have the benefit of equal right on the property. In the absence of male child, the daughters from first and second marriage are entitled to the property. After the death of

remarried widow and her husband (second) without any successor (no child born from first and second husband) the property is automatically goes to her first husband family, not to second husband family. If a widow run away or eloped with another person and enter into marital life again leaving her deceased husband house than she loses her right on the property of deceased husband. Her remarriage will lead to the forfeiture of the claim of maintenance as well as property right.

### **Son and Daughter:**

In the society of the Bodo, it is the son who inherits the family property. The eldest son is regarded as continuator of family lineage as well as religion or rites and rituals. After the death of patriarch, generally the eldest son inherits all the rights exercised by his father (Brahma, 1992:33). It is customary of the Bodo that eldest son do have complete right to the parental property. He used to received one share and a half and the remaining is divided among the other brothers equally.( Endle, 2010:32).It is also fact that all the sons are entitled to get equal share of parental property. The parent may decide with whom among their son will be alive and kicking during their old age. The son who takes the responsibility to care of the aged parent till death may receive an extra share than the other. (Mushahary, 1986:237 & Brahma, 2006:19 & Sen, 2009:126). Another interesting aspect of traditional law of inheritance among the Bodo is that, during the life time of patriarch a son cannot insist property from his father. Only after the death of his father he can only become heir of the property. Every so often a father may give a share of property to his married son when he is separated from his parental home to lead a separate new life with his wife and children.

Daughter has no right on her fatherly property as she is to renounce her family lineage after the marriage. So no claim can be done by married daughter on parental property (Endle, 2010:32). However, in certain cases daughter also becomes inheritor where there is no male issue or male child. It is remarked that in the absence of sons or any male heir in the family to inherit the parental property, daughters are allowed to enjoy the property of their father even after the marriage. Sometimes, the parent look for a suitable bridegroom and married their daughter in the form of matrilocal marriage which is known as *Garjia Lakhinai* in Bodo i.e. keeping the son-in-law in their own house (Brahma, 1992:33 & Brahma, 2006:19). Occasionally all the married daughters along with their husbands lived together in the house of the sonless parent. Daughters enjoy equal right on the parental property. When the family becomes bigger they may be separated and proportionately divided the property of the parent. But one of the daughters have to look after and take care the aged parent. (Pormeswar Brahma, 2016).

Today, rule of inheritance becomes flexible and rigidity is not seen so much in Bodo society. No hard and fast rule is found for the inheritance of the parental property by a daughter. It is the discretion of the father to give away his property to his daughter. Even after the death of father, the daughter also could get their share of property of the deceased father in some family. But in some family the son of deceased father do not give property to their sisters whether they married or not. In the eyes of the law the daughter also may claim the property of deceased father.

### **Minor:**

It is the primary concerned and duty of widow to look after her minor children. She supervises the property of deceased on behalf of the minor. After attaining the age of maturity if the son is there he can legally inherit the parental property, if not, the daughter may inherit; otherwise it goes to the nearest relatives (Vivekananda Narzary, 2016). Regarding the transfer of the property of the deceased to the next kin, Sekhar Brahma (Brahma, 2006:19) asserted that after the death of childless husband and wife, the property belong to them will be received by the nearest relatives. In general practice, the property of an issueless deceased person is always goes to the brother or brothers or relatives of the deceased whether they live in a joint family or not, it does not matter (Mushahary, 2004:95).

### **Adoptee:**

Law does not make any distinction between natural and adopted child. The right and obligation of both types of the children are all similar. An adoptee (adopted child) have equal right, equal obligation, equal duty, etc. towards the parents and family as well as in society like the natural child. In general rule of law, the adopted son or daughter is not need to have biological recognition but social recognition is mandatory for the person who is being adopted to inherit the property or family lineage of the adopter. It is clearly mentioned that adopted son or daughter is considered in every where as one's own biologically produced offspring.

Childless parent may adopt a son or daughter preferably son not only with the motives to take care them when they become old but to inherit property and perform last dead rites and rituals. Adoption is an old age tradition among the Bodo which is still prevalent and practiced by many parents who do not have their own offspring to fulfill their desire to have child. It is clearly affirmed that the adoptee is entitled to inherit the property belonging to the adopter (Brahma, 2006:19 & Brahma, 1992:71 & Brahma, 1989:8 & Mondal, 2011:180). Society has sanctioned both the sex of the adoptees (adopted male and female) to inherit the property of their foster father (Brahma, 1992:72 & Brahma, 1989:8). It is duty and obligation of the adopted person to take

care his or her adopter when they become old. Not only that the inheritor has to perform last rites of the parent, to take care the widow and the children including unmarried one of the deceased, to be made the payment of all the debt of the deceased parents. If inheritor failed to discharge the duty of inheritor to the best satisfaction of the society or he failed to perform the duty prescribed by custom and tradition or refused to abide the duty of inheritor fixed on him such as performing of last rites, repayment of debt if any etc., the property of the deceased pass to the next legitimate heir who can successfully perform the duty of inheritor.

### **QUESTION OF LEGITIMATE AND ILLEGITIMATE OF THE INHERITOR:**

The person who is born by performing all the norms of the marriage by the concerned parent is regarded as legitimate child. A child who is born within a law full wedlock is known as legitimate child since he or she is born after fulfilling all the social norms of marriage and that marriage has been approved and recognized by the society and the child is related to the parent by legitimate relationship. On the other hand, an illegitimate child is the child who is born without fulfilling of the social norms of marriage. In another word, a child born outside the law full wedlock or outside proper norms of marriage or born from the illegal sexual relationship is called illegitimate. The illegitimate child is related to his or her parent by illegitimate relationship. A natural son or daughter or legitimate son or daughter has absolute right and duty and privileges on the property of the father or family property as well as other individual and social obligations. As the illegitimate child falls outside the category of legitimate inheritor, he or she has not right to claim the property and could not be enjoy the benefit which enjoyed by the legitimate offspring. In the case of the Vaiphai tribe any male child whether he may be the eldest but could not inherit if he is illegitimate because he is born out of incestuous relationship or illegal marriage, considering him as illegitimate son in the matter of inheritance even though he may be the real blood of the ego. It comes to the notice that a genitor is not equated as a father who confront with the marital norms whereas the genitor knowing it void (Vaiphei, 2008:91-92). R. N. Mushahary (Mushahary, 1986:237), while writing about the law of inheritance among the Bodo, mentioned that no clear cut distinction is made among the sons by marriage, adoption or concubinage or concubine. But in many cases the question of legitimate and illegitimate comes up mainly at the time of the inheritance of the property and succession.

### **CONCLUSION:**

The Bodo have well established traditional law of inheritance which governs the society since ancient days. Daughter has no right on her fatherly property as she is to renounce her family lineage after the marriage. However, in certain cases daughter also enjoy parental property becoming inheritor where there is no male issue or male child. Today, rule of inheritance becomes flexible and rigidity is not seen so much in Bodo society. No

hard and fast rule is found for the inheritance of the parental property by a daughter. It is the discretion of the father to give away his property to his daughter. Even after the death of father, the daughter also could get their share of property of the deceased father in some family. But in some family the son of deceased father do not give property to their sisters whether they married or not. In the eyes of the law the daughter also may claim the property of deceased father. The property of childless couple will be received by the nearest relatives whether they live in a joint family or not, it does not matter. The force of customary law or traditional rules signified that litigations have been known to the Bodo even during remote past.

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