

# JUSTICE AND PUNISHMENT IN TRIBAL SOCIETIES

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## ABSTRACT

A society is a large group of individuals who share the same social territory, same political authority and dominant cultural expectation. Societies construct patterns of behavior for the smooth sailing of acceptable actions and to discontinue unacceptable. In the anthropological view point the term “primitive society” is used to refer the society with simple technology. Tribal society is also often referred as primitive society, pre-state society, folk society or even as simple society. Each and every society has some norms in the form of cultural behavior to regulate its individuals and to compel them to behave in conformity with the norms of the society.

The present paper will try to find out the different folk perceptions and practices about justice and punishment in different tribal societies of India.

## INTRODUCTION

In the early prehistoric days man use to lead a humble, isolated nomadic life in caves, rock-shelters, forests and in open station of river banks. They lived in small groups. They were then in a ceaseless war against the unconquerable natural environment. With the invention of agriculture and domestication of useful animals in the Neolithic age, men could get a new stability, safety and security in their lives. But some unforeseen problems cropped up in human life. In larger human groups conflicts and clashes gradually took the form of everyday affairs. In order to maintain the social harmony, some form of control was necessary for the early men. Thus different mechanisms were stabilized in human society to control its individuals and to compel them to behave in conformity with the norms of the society.

The aggregation of society is necessary to have a society but only when this aggregation is bounded together by common people of behavior can be said to be society. Societies exist within a definite boundaries and the members of the society interact in a network of social relations according to the common prevailing customs. A tribe is a homogenous ethnic group having a sense of identity based on common language and culture. They associated with a definite territory and well defined political boundary. Different other Indian terms like adivasi, vanya-jati, jana-jati, jana-jamity etc. also bring the same connotation. Tribal society is often referred as primitive society, pre-state society, folk society or even simple society. Sometimes, the word “tribe” is taken as a synonym of the term race but anthropologically “race” has a different meaning.

Man by nature is a fighting social animal. So, to think of a crimeless society is a myth. Truly speaking there is no society without the problem of crime and criminals. The conduct which are prohibited by the society through the different customs and codes are known as wrongful act. The wrongdoer committing against the prescribed customs and norms is punished for his guilt accordingly.

## Materials and Methods :

The data required for the present study are collected mainly from secondary sources. The secondary data are collected from different books, journals, reports, internet, newspaper etc. This paper is descriptive in nature.

## The Findings :

The primitive law is an unwritten law which has been sanctioned through local custom and traditions which are transmitted orally from generations to generations. Anthropological studies relating to jurisprudence consider the structure of primitive legal system, legal status, legal professionals and legal institutions in contrast to the ways in which law is actually applied and enforced at the local level. Anthropologists are particularly interested in low level ( micro-level ) perspective because it affords first hand evidence.

In brief, from the point of view of legal sanction behind the primitive law, scholars have made two broad typologies- Positive sanction and Negative sanction. In the primitive law, positive sanction are based on commonly approved customs and traditions which have integrative factors to bind together the clansmen or the villagers or members of the tribal society inhabiting the whole territory. For instance totemic exogamy (marriage outside the totem) is also commonly approved and sanctioned by the societies and the breach of which is considered the breach of law. On the

other hand, negative sanctions are concerned with negative, destructive and disintegrating factors prevailing in the society. For instance, if someone breaks the incest taboo or someone breaks the clan exogamy (marriage outside the clan) rule under these circumstances the council of elders fails to stop these activities, called negative sanctions. Most of the tribes have a judicial machinery to deal with disputes, breaches of peace and social offences at village level as well as community level. Among the tribes of central India viz. the Mundas, Santhals, Hos, Oraons, Gonds, etc. each village has a panchyat. Sexual offences among them are dealt with by the clan elders. In the villages having only one clan, the clan elders coincide with the village elders. In the village consisting of many clans, the population of several villages would be organized into clans units for the purposes of trial of sexual offences. Various cases of offences like repudiation of debt, adultery, theft or willful destruction of other's property, witchcraft and sorcery, etc. are usually dealt with at village level council. However, in case of inter-village disputes, the authority of the community level are informed and invited by the village leaders to settle the dispute. Thus, the political association to settle the dispute and award the punishment in case of inter-village differences are taken at the highest level known as territorial leadership. For example, the "Paraha Raja" head of the "paraha" is a union of a number of Oraonvillage (South Bihar). It is also found that among the Garos of North East India the disputes are decided in their village panchyat. Generally the "Nokma" or the village headman decides all the disputes. But if the nature of the complaint is complicated the "Nokma" reports the matter to the "Laskar" (Headman of a number of Garo villages). Among the Boro and Rabhasocieties of Assam the locally confined customary usages and practices or local laws are known as "Pandulipis" which are hardly printed. Since these are not co-ordinated homogenous set of laws, they differ in content and application from area to area. The Dimasakacharis of Assam "Kunang" (village headman) has considerable authority in the village affairs. During the process of trial the *Kunang* is assisted by an assistant headman called "Dilo". The *Kunang* assisted by *Dilo* and other village elders settles disputes and quarrels, cases of thefts, incest, elopements, etc. and judgments delivered are binding on the concerned parties. Inter village disputes are settled by the *Kunangs* and village elders of several villages.

In the tribal societies evidences called for while deciding a criminal case is of two kinds- oath and ordeal. In case of taking oath the person concerned has to appear before the council of village elders, who would then prescribe the nature of oath. It is believed that whatever the person says, is the truth. If he tells a lie, the anger of God or Goddess would destroy or punish him. As far as the form of oath is concerned it varies from tribe to tribe. Among the Malers (Central India) an accused is brought before the "JhandaGossaiya" and is asked to touch a knife placed at the sacred centre and while touching the knife, he is asked to say- "I will die if I tell a lie" and thereafter he narrates the incident in detail. However, among the Ho tribes of Jharkhand, an oath is taken in the name of "Singa Bonga" or "Hatu Bonga". The Santhals utter "Dharam Dharam" before they narrate the incident. Sometimes the offenders is subjected to some torture before the declaration of the verdict of the panchyat. If the person escapes without injury, he is supposed to be not guilty. In some cases, the accused is asked to lick salt or fire. If he suffers an injury he is believed to have committed the said crime. This is common among the tribes of all over India. The force behind this type of treatment is the strong belief in the sacred spirit of the unknown world. They take it as guaranteed that God or the Supreme Being is the greatest judge.

The punishment awarded to the accused is generally in the form of a fine in cash or kind of both, depending upon the seriousness of the crime and capability of the person concerned. The fine is usually spent in arranging a communal feast or as an offering to the supernatural powers for appeasing them. The SonowalKacharis of Assam used the "Namghar" (place of worship) to solve disputes of the villagers. The village elders deliver judgment and punish the offenders. Punishments depend upon the nature of offence range from imposition of fine in money which is deposited in the public funds or in kinds i.e. excommunication for serious crime. This type of serious punishment is also evident among the Santhals called "Bitlaha" which follows the sentence of formal excommunication from the tribe. Among the Adis of Arunachal Pradesh when human discretion proves inadequate for deciding disputes, supernatural guidance is sought through ordeals. Four such ordeals are practiced. If the guilt of a person, charged with theft especially, cannot be proved positively, he is made to pass through the ordeal of 'the egg in boiling water'. A large fire is kindled and a bamboo tube is placed on about a foot long, which is filled with water. When the water starts boiling, an egg is put into it. The accused sits by the side of the fire screen (*tali*) prepared by his relatives to protect him from the heat. When the water is in full boil he approaches the tube, covering himself from the heat of the fire with the *tali*, puts his hand into the tube and brings out the egg. It is believed if he is innocent, he will come out unscathed. In certain cases, he is required to prove his innocence by receiving drops of melted lead on his palm. This ordeal is known as "pagrangyolaamkisunam". Safer and remoter in effect is the ordeal which makes the accused swallow a piece of chicken meat specially sacrificed for that purpose and mixed with earth with the belief that if guilty, he will fall sick and die. Ordeals are directed by and undergone, under the supervision of the council but the council must get the consent of both the parties before prescribing it.

The concept behind punishment among the tribal societies is remarkable. The tribal societies believed that the punishment should be as compensate the aggrieved, to purify the offenders and to re-admit the guilty person after paying a fine on or after throwing a feast. Now it is also evident that some folks prefer to go to the law court instead of referring the disputes to the village council.

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