DOES THE APPLICATION OF THE INDIGENOUS CONCEPT OF CRIMINALITY HELP TO ACHIEVE A RIGHT-BASED CRIMINAL JUSTICE SYSTEM? : A CRITICAL STUDY OF THE CUSTOMARY PENAL LAWS OF THE GARO AND SANTAL COMMUNITIES OF BANGLADESH

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Introduction of the Garo and Santal Community.

- **Garo Community :**

a. Tibeto-Burman Ethnic Group

b. Language : Tibeto-Burman

c. Mymensingh, Netrokona, Jamalpur, Sherpu and Sylhet

a. Matrilineal Society

b. Profession : Hunting and Jhum Cultivation

c. Population : Around 1,00,000

Introduction of the Garo and Santal Community.

▪ Santal Community :

a. Native from Nepal and India

b. Language : Santhali, an austroasiatic Langua

c. Location : Dinajpur, Naogaon, Rangpur, Bogura and Rajshahi

a. Exogamous Society

b. Profession : Hunting, tea-garden worker, digging soil or carrying load

a. Population : Around 2,00,000

A Short Overview of the Customary Penal Laws of the Garo Community

- The Garo Customary laws can be summed up in three words. These three words are – Asimalja, Dakmalja and Nima

- **Asimalja** : This word can neither be defined nor translated literally. According to the legendary story, Asi was a woman and Malja was her husband. They committed a grievous crime and subsequently both met with violent death. The word is so powerful that merely to pronounce it is enough to restrain any Garo from commiting any wrong or themselves to fall into temptation.

The activities which fall within the scope of Asimalja are:

1. Failure to observe the days of general purification or the ceremonies which regulate such functions.
2. to marry within the forbidden degrees of relationship-consanguinity
3. to marry within the forbidden degree of affinity. An ordinary son-in-law, i.e. who does not marry the heiress, may not marry his mother-inlaw, nor his wife's elder sister-in-law, nor the widow of his younger brother. The woman, on the other hand, cannot marry the widower of her younger sister.
4. to cut down the jungle or grove, Bamboo and wood.
5. to swear falsely touching the head of o n e ^

A Short Overview of the Customary Penal Laws of the Garo Community

Dakmalja : A literal translation of the word would be, " Thou shalt not do it". It embodies the Garo code of laws, laws which we would call moral, civil, criminal and penal. We would particularly focus on

- The moral laws and
- The criminal laws

The Moral Laws : Moral laws mean those which prohibit acts against morality. This branch is dealing with specially the sexual offences. Even a suspicion, if expressed, is chargeable and thus punishable

The activities which fall within the scope of moral laws are:

1. Amita or Adultery
2. MONGA-SALA; or seeking to seduce/Harrassment: By this the Garos mean all those acts, words and allurements which they use to tempt and seduce a woman.
3. SIKDRAA or to commit immoral act when a girl is in helpless position.
4. ALSALA or baiting by parents

A Short Overview of the Customary Penal Laws of the Garo Community

- Penal law : This part specifically provides the activities which are considered by the Garos as an offence.

The activities which fall within the scope of penal laws are:

1. CHONNIKANI or Contempt: This occurs when out of envy one speaks mockingly of another's physical or intellectual defect, of his financial position or manner of acting. Compensation is provided.
2. JEGRIKA SAIA or Wrangling, reproach: one must not use offensive words, for this might entitle the offended party to compensation if the case is brought up in a court. Not even a husband may offend against the law of good behavior in dealing with his wife; otherwise she or her relative may pull him to court.
3. ETALMIKANI or to pull one's leg :If a man pulls other man's leg in his absence and if the latter can prove with witnesses that he has actually uttered words of mockery at his absence.
4. K A 'DINGSTEKANI or ridicule
5. DOKGRIKANI or Beatings: it is a serious issue in Garos.
6. K A ' D O N A or i n t e n t t o k i l l
7. DENANI or Murder: There are legal or llegal homicides in this respect.
8. Robbery

Punishment

Asimalja

1. Monetary compensation.

2. The dead body of the perpetrator cannot be cremated according to the social rite

Dakmalja: Moral Law

1.Monetary compensation.

Dakmalja: Penal Law

1. Monetary compensation.

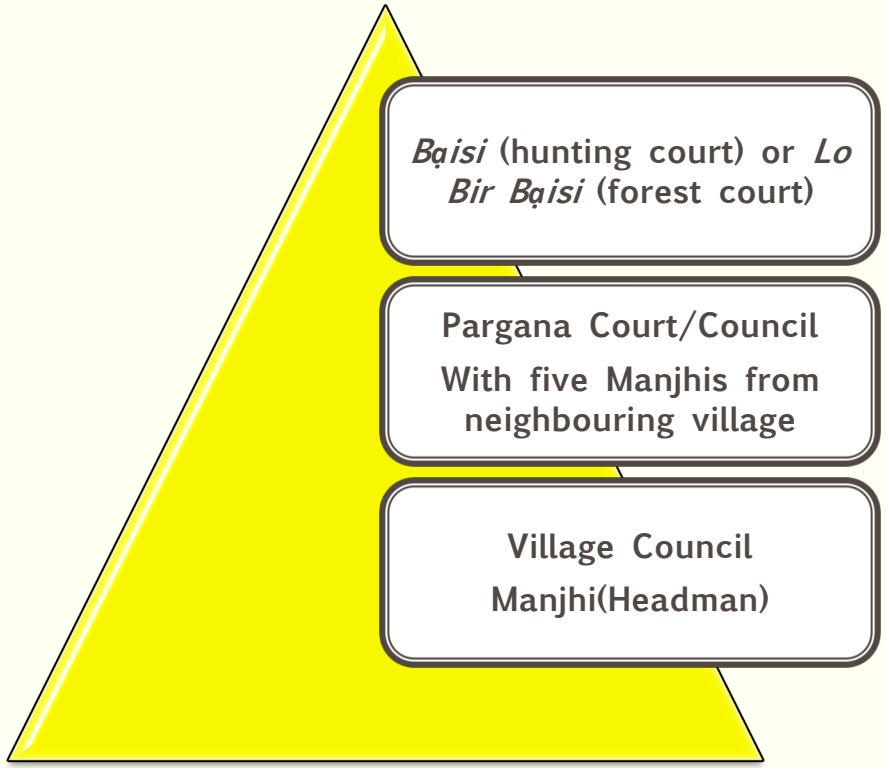
2. Repairing the property in expense of the perpetrator

3. Boycott by the whole community

4. **In case of false case .the offended person gets the compensation money**

A Short Overview of the Customary Penal Laws of the Santal Community

- The Santal has much organized criminal justice system comparing to the Garos . They have three different courts.



The offences in the Santals community can be summerized as:

1. sexual offenses
2. Conflicts over money
3. cases of evil eye, jealousy, and witchcraft
4. Murder, incest and breach of tribal endogamy

Punishment

Sexual offences

1. Monetary compensation. (Lajao Marao)

2. Cursing the offender and his family by the whole community by appearing at the offender's house

3. Bitlaha/ Outcasting by the whole community

Murder, incest and breach of tribal endogamy

1.Monetary compensation.

Killing the offenders

Minor offences

1. Monetary compensation.

2. Sometimes compemsations are not necessarily monetary but meal or drinks provided to the person present or to the whole clan. Or in the form of cattle or other animal.

The Recommended Significant Features of the Indigenous Criminal Justice system for the statutory penal law

1. Compensatory Justice System
2. Victim centered justice system
3. Nature in dealing with the sexual offences.
4. Criminal liability of the institution.
5. Mediation
6. Participation in social work.
7. Fine for the false complaint.

THE CONTEST BETWEEN THE STATUTORY PENAL LAW AND THE CUSTOMARY PENAL LAW OF BANGLADESH

The current Eurocentric criminal justice system of Bangladesh has some penal laws which unjustifiably criminalizes the Garo and Santal .

- As for example, Section 3(1) of the Parental Maintenance Act, 2013, says that each and every child is responsible to maintain his/her parents, non conformity would render him to be an offender. But As the Garos are matrilineal, and the females are responsible to maintain other family members. But this law criminalizes the Garo men.

- Another example would be the section 3 (4)(a) of The Domestic Violence (Prevention and Protection) Act, 2010, which says if the wife is not given his dower money or any other promised bridal gifts to which she is entitled , it will be an offence. In Santal marriages brideprice is given, but non-conformity always raises the civil claim not criminal as it is a Marriage law. Thus they are being overcriminalized in Bangladesh.

THE CONTEST BETWEEN THE STATUTORY PENAL LAW AND THE CUSTOMARY PENAL LAW OF BANGLADESH

- The Penal Code , 1860 in Bangladesh does not recognize the marital rape at all but the customary principle s of Garo Community do recognize forceful intercourses with wife as an offence .

THANK YOU