

## PROGRESSIVENESS OF NORTH EASTERN MARRIAGES AND SUCCESSION

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### **Introduction and Customary practices according to Indian Law:**

India has progressed rapidly in the fields of science and technology in the past decade. The country has also created many progressive laws towards the upliftment of society and also abolished many orthodox laws which were detrimental to the society. India has a fully codified marriage law which is liberal and allows the practice of customary laws for people who wish to practice and follow their own customs. To further encourage this, Section 7 allows customary marriages for communities and tribes who do not follow the essential practices of Saptapadi and Homa. There have been cases in which courts have legalized marriages which did not include the compulsory practices of Saptapadi and Homa in the ceremony, for example in the case of *S. Nagalingam v. Sivagami*, the judge, K.G. Balakrishnan stated, "'Saptapadi' was held to be an essential ceremony for a valid marriage only in cases it was admitted by the parties that as per the form of marriage applicable to them that was an essential ceremony."<sup>1</sup> There was a state amendment post this case which led to the legal validity of the practices of *Suyamariyathai* and *Seerthirutha* under section 7A of the Hindu Marriage Act.

### **Sexism within the country:**

Within India there exists a deep-rooted patriarchy when it comes to marriages. Almost, every form of Indian marriages has some form of sexism. The sexism begins from the moment the groom proceeds to meet his prospective bride. For example, many communities require the girl to dress up in a 'respectable' manner when her prospective husband visits her home, adding to this, she is also supposed to serve him some form of food. This is where the entire process of sexism begins, a woman's role in society is only to cook and serve the husband food and she is

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<sup>1</sup> *S. Nagalingam v. Sivagami* AIR 2001 SC 3576.

supposed to dress up to please her husband. Practices such as Kanyadan, which is the gifting of the daughter by her father for marriage is also very prevalent in India.

Ironically, the practices of Saptapadi and Homa which are mentioned in the Hindu Marriage act are sexist in itself. In a much controversial article, Mitali Saran brought out the forms of sexism which exist within the practice of Saptapadi. She exemplified the way the roles of the husband and the wife are decided while taking the so called 'seven holy steps' or Saptapadi. The vows of the bride when condensed is to care for, and look after the husband and his whole entire family, including the infants and the really old people, for the rest of her life, and to do all the household chores, and to bear and raise the children, and regularly cook the husband delicious food, and to help increase his wealth, and to never sleep with anyone else, and to do her best in pleasing him and also to support the husband in everything he does.<sup>2</sup> While the husband's role is too to earn some money for the wife and the kids.<sup>3</sup> Although Saran might be extreme in her perception and interpretation of these customs, this type of role pegging to a man and woman is extremely sexist which most of the times favors the male.

### **Progressive tribes in India:**

As aforementioned the court has only codified a practice happening in the south of India which is namely, Suyamariyathai and Seerthirutha. These practices may not be sexist but the main reason the courts have codified this practice is due to the fact that it occurs widely in Southern India. Currently the least form of sexism in marriages occurs in the North East of India. Especially in the Khasi tribe, a very prominent tribe in Meghalaya. This tribe is one of the few tribes left in India who actually follow a matrilineal structure, meaning property descends from generation to generation through women. Has the judiciary or the Government of India not codified some of these practices only because it does not adhere to the traditional standards of a Hindu Society?

The Khasi tribe in India, is a matrilineal tribe. This exogamous culture's wedding practice promotes least sexism if not no sexism, compared to other practices in India. A Khasi cannot marry two sisters but can marry the sister of his deceased wife.<sup>4</sup> After the divorce the mother

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<sup>2</sup> Saran, M. (2017). *Mitali Saran: I take this man/woman with a pinch of salt*. [online] Businessstandard.com. Available at: [http://www.business-standard.com/article/opinion/mitali-saran-itake-this-man-woman-with-a-pinch-of-salt-114120600014\\_1.html](http://www.business-standard.com/article/opinion/mitali-saran-itake-this-man-woman-with-a-pinch-of-salt-114120600014_1.html).

<sup>3</sup>Id.

<sup>4</sup> Winstedt, R. (1932). Mother-right among Khasis and Malays. *Journal of the Malayan Branch of the Royal Asiatic Society*, 10(1), pp.9

has custody over the children. If by any chance the female members of the house die, the males will have to adopt a girl to perform the funeral and last rites; this girl will also become the head of the house.<sup>5</sup> The tribe is also strictly exogamous, marrying within the tribe is considered an offence and the offender can also be punished with a death penalty or confiscation of property.<sup>6</sup> Baudesson in his book *Indo- China and its primitive people* stated, "The children take her name, adopt her religion if they are the issue of a mixed marriage, and remain her property in case of divorce. Inheritance descends in the female line only. A woman is the principal figure in many of the domestic ceremonies and she retains at all times the right to select her husband."<sup>7</sup> The Khasis must be credited for taking special care of their customs, as till date whether movable or immovable the property is always inherited by the women.<sup>8</sup> Due to this difference in type of inheritance compared to the rest of India, the Hindu Succession Act does not apply to the Khasis, the Jaintias, the Garos and other north-eastern tribes.<sup>9</sup> But, the Hindu succession act was applied in a case which would have been unfair for women if the act was not applied.

#### **Case which adheres to the practices of the tribes:**

The case was *Bahadur v Bratiya*<sup>10</sup> and others, where the parties were siblings belonging to the Gaddi community of North East India, according to this custom, only men were allowed to retain the property and not women. When the property was split amongst the children, the plaintiff, the son contended that the judgement was contrary to the customary practice of their tribe. The Judge in this case, Justice Rajiv Sharma stated, "the law discussed hereinabove is that daughters in the tribal areas in the State of Assam shall inherit the property in accordance with the Hindu Succession Act, 1956 and not as per customs and usages in order to prevent the women from social injustice and prevention of all forms of exploitation..... the laws must evolve with time if society is to progress."<sup>11</sup> This also goes to depict the court's judgement in protecting the customary practices of the area.

In the case *Madhu Kishwar v State of Bihar*, although this case did not happen in the north east of India, it is important as the court went a step ahead in exemplifying the laws related

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<sup>5</sup> Id 11

<sup>6</sup> Id 12.

<sup>7</sup> Baudesson, H. (2010). *Indo-china and its primitive people*. Nabu Press.

<sup>8</sup> Lyngdoh, M. (2009). *The Festivals in the history and culture of the Khasi*. New Delhi: Radha Publications.

<sup>9</sup> Sinha, K. (1970). *Meghalaya Triumph of the Tribal Genius*. Delhi: Publication Division.

<sup>10</sup> *Bahadur vs Bratiya And Others AIR 2016 HP 58*

<sup>11</sup> *Bahadur vs Bratiya And Others AIR 2016 HP 58*

to Succession. In this case the plaintiff filed a petition regarding the unconstitutionality of a law laid down in the Chota Nagpur Tenancy Act 1908, which stated that property could only be inherited through the male line. This law was challenged by using article 32 of the Indian constitution which allows the Supreme Court to challenge any law laid down by a statutory body. The court in this case gave a landmark judgement which has been used as a precedent for many succeeding cases. The judge, Justice M.M. Punchhi stated, "Agriculture is not a singular vocation. It is, more often than not, a joint venture, mainly of the tiller's family members. Some of them have to work hard and the others harder still. Everybody, young or old, male or female, has chores allotted to perform; a share in the burden of toil. Traditionally and historically, the agricultural family is identified by the male head, but on his death, his dependent family females, such as his mother, widow, daughter, daughter-in law, granddaughter, and others joint with him have, under the Act, to make way to a male relative within and outside the family of the deceased entitled there under, disconnecting them from the land and their means of livelihood. Their right to livelihood in that instance gets affected, a right constitutionally recognized, a right which the female enjoyed in common with the last male holder of the tenancy. It is in protection of that right to livelihood, which the immediate female relatives of the last male tenant have the constitutional remedy to stay on holding the land so long as they remain dependent on it for earning their livelihood, for otherwise it would render them destitute."<sup>12</sup>

This judgement was used as a precedent for a case which occurred in Tripura, where the daughters of a deceased father sold his land to a lady Kajal Noatia. Later the three men namely Raybahadur and his friends tried to declare the land void stating that according to the Hindu Succession Act, only sons could inherit the property and in this case the daughter inherited the property. The court invoking Article 21 over Article 13 of the Indian constitution. They stated, "henceforth the tribal women of Tripura from all tribal groups or clan would succeed to the estate of their parent, brother, husband, son et al as heirs by intestate succession and inherit the property with equal share with male heir absolute rights as per the general principles of Hindu Succession Act, 1956 as amended and interpreted by the apex court and equally of the Indian Succession Act to the tribal Christians."<sup>13</sup>

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<sup>12</sup> Madhu Kishwar and others v. The State of Bihar and others (AIR 1996 5 SCC 125)

<sup>13</sup> Kajal Rani Noatia v Raybahadur Tripura and others 2015 1 TLR 815.

**Conclusion and reasons why the North-East law must be codified:**

Although, there has been no move by the Indian Government to codify or even pass an amendment to the section 7 of the Hindu Marriage Act, the Khasi Hills Autonomous District Council (KHADC) are trying to codify the law and make a Khasi Marriage Act, not only because it encourages equality but also to reduce the number of wives being deserted by men who take advantage of this system.<sup>14</sup> The Indian Government must pass a law to codify these practices as these North-Eastern Tribes, as the people of the north east have been fighting for segregation from India for a long time due to various reasons such as different identities, culture, etc. This may be the first step towards this separation. The law must also be codified for the betterment of the nation and for its development. Codifying some of these laws would also help in reducing the deep-rooted patriarchy and sexism existing within the country.

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<sup>14</sup> Act, K. (2017). *KHADC for a stringent Khasi marriage Act*. [online] The Shillong Times. Available at: <http://www.theshillongtimes.com/2012/02/23/khadc-for-a-stringent-khasimarrriage-act/>.