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INHERITANCE AND HUMAN RIGHTS IN HUNZA: A DOCUMENTATION, CODIFICATION AND STUDY OF CUSTOMARY LAW OF SUCCESSION

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ABSTRACT

This paper presents an anthropological inquiry about the customs related to inheritance in former Hunza State, and attempts to record, codify and analyse, in order to document the endangered tradition in active socio-economic transformation and understand the limits of such customs protecting human rights in the region. Even after four decades of the State desolution (1974) these customs are still in exercise on de facto grounds. This inquiry is the result of several attempts to know details, and explores a new area of anthropological research with a detailed understanding. This study reveals the customs in a codified structure, with some additional details, may be helpful for the readership to understand with reference to human rights. This paper unfolds the subject in three parts: the first part introduces the topic with the background description of the study, previous investigations and involved methodology; the second part deals with the documentation and codification of customary procedures involved in the transfer of inheritance, and focuses the attention on the inheritance rights of all family members; and the third part analytical elaborates the inheritance customs protecting the human rights. These customs generally appearing to protect the right of all surviving family members.

INTRODUCTION

The primary objective of succession is to keep property of every type to continue in the same family and lineage (Bekker and Kock 1992: 366). The patterns of succession normally help us in understanding the level maturity of any society in the careful handling of human rights. Such patterns are connected with the development of human intellect, which introduced the

diverse approaches and procedures in the transferring of property rights from one generation to the next. As a result of the experiences of many generations of Burushaski (Barbour 1921) speaking ethnic group, revealed a set of regulations in Hunza (Greenberg 1971) deeply rooted in the history (Dani 1989) and geographic connections, sometime dated even more earlier than the existing memory of the past (Hauptmann n.d.) and even before emergence of Islam in general and Ismaili tradition in particular (Hunzai, Faqir. M. 2004) in the extreme northern excesses of Pakistan. Hunza was a State became partially part of British Indian in 1891/92, joined Pakistan in 1947 and dissolved in 1974 (Hunzai, A. Jan. 2013), now part of greater Islamic Republic of Pakistan administered under the Province-like structure of Gilgit-Baltistan, and part of the active evolutionary process of development in this area on the major route between China and Pakistan (Kreutzmann 1991, 1993, 2006; Malik and Piracha 2006).

Previously, such customary regulations regarding the succession rights in Gilgit zone came under the attention following investigators. Amongst, Biddulph (1880 [Reprint 2001]: 82) is the first to notice a unique system of inheritance in Gilgit region. He discussed the division of property between the male successors according to the number of mothers, not based on the total number of male offspring. We can also find a similar information about Gilgit in the manuscript of Sardār Thākūr Singh (2010: 22-23). The additional information he mentions about the rights of unmarried daughters. Such daughters were given the right to take an equal proportion (to their brothers) from the property left by their father. But in the case if she chooses the option of marriage or passes away, the property shall be returned back to her brothers or the closest male in her family. In addition to this, Fida Ali Eṭhar (2002: 228-243) attempts to documents different aspects of the system of justice in Hunza from an emic perspective, and stresses on the reasons or logic behind the transfer of property through the paternal lineage. In the same regard, Holden and Chudhary (2013: 104-123) investigated a case of Bibi Sitara from Hunza, in comparison to Islamic Personal Law (Cheema 2012) in broader context of Pakistan. This study presents a unique decision of the honourable Chief Court, investigated the customary law of Hunza State in more detail and, reached the decision assuming the change in general thinking as the amendments of Mir Muhammad Nazim Khan (Hari Tham Khan of 1892-1938) in the tradition, as his enthronement was connected to Great Game (Huttenback, R. A. 1975). In addition to this recently Hakal (2018: 107-122) investigated the understanding to female segment of society regarding their inheritance rights and marked the contemporary phase in the initial stages of transformation from customary to Islamic approaches.

This research is an attempt to codify the tradition related to inheritance, and to establish an understanding about traditional considerations for the protection of human rights in Hunza. The research is based on past studies, inquiry of related historical events, investigation through interviews from different people, and the author's personal observations, being a member of this society, have collectively worked to codify the regulations surviving among the locals as the oral tradition and still exercised during the transfer of inheritance. This methodology may be called as self ethnography (Hakal 2018: 108-111).

Customary procedure of transferring inheritance

One of the objectives of this research is to codify the orally known customary procedure of succession from a father to his offspring. The transfer of all of the assets are normally brought under the below mentioned set of rules, can be distributed into eleven sections. The first section proposes the title of the draft of codified customary law, and mentions about its area of implementation. The second section helps us to understand the terminology with definitions in local cultural context. The third section let us understand the selection and role of the arbitrators. The fourth part clarifies about the right of land inheritance. It is followed by the fifth section, which codifies the kinds of inheritance. Sixth section in the list gives the details about the rights of the parents. This is followed by the seventh section helping us to understand the equal division of inheritance. The eight one in this procedure offers the options of selection or toss for parties. The ninth gives the limits during the selection of property. The tenth section explains the rules of tossing. And the last one mentions about the implementation of the decision.

Title

- a. These traditional regulations related to inheritance, preserved in oral tradition, now documented in proper order, may be called “Tribal Custom of Succession in Hunza”

The second section is comprised of the definitions of different terms in their local cultural and geographical context, keeping the removal of doubts in different portions of this document in view. It mainly includes the definitions of terms related to inheritance, kinship and kinds of assets.

Definitions

- a. “Arbitrator” means the arbitrator defined under section 3.
- b. “Brother” means the brother of all boys and girls, having same father, but same mother is not essential. It also express the meaning of tribal brotherhood.
- c. "Chuq" is the measuring unit of any product. One "chuq" is almost equal 10 kg. The cultivable land is also measured on this unit, as per the measured seed in "chuq" required for the cultivation.
- d. “Daughter” means the female child.
- e. “Daughter-in-law” means the wife of one’s son.
- f. “Dowry” means the dowry brought into the family by the daughter-in-law from her father’s home, during or after her marriage.
- g. “Father” means the real father of his children, holding the powers of control over his family as the head, owner of the land or property inherited from his forefathers or newly developed as a result of his own and/or the family’s efforts.
- h. “Field” means the plane fertile land, with cultivable ground and crops like wheat, barley, vegetables etc., can be cultivated easily.
- i. “House” means a constructed building, where a family can live under the roof.

- j. "Inheritance" means the inherited property and assets from predecessor, like the land for cultivation, orchards for fruits and wood, houses for dwelling and other miscellaneous assets, transferred in the lineage.
- k. "Maraka" means the Court of the King, comprised of members representing whole Hunza (Beg 1980 chapter 77).
- l. "Miscellaneous assets" means all the various assets, including flour mill, animals, pottery, cash, agricultural instruments, arms etc.
- m. "Mother" means the wife of father.
- n. "Orchard" means the land where the trees are brought up, with men's physical effort, and the trees like that of apricots, apples, etc. are grown beside the others trees for fire wood and construction requirements.
- o. "Party" means here each family group, headed by each son with his wife and children, in course of separation of joint family.
- p. "Sister" means the sister of all boys and girls, having same father, but same mother is not essential.
- q. "Son" means the male child.

Arbitrator plays a key role in the procedure of transferring the property from a father to his offspring. His role stops any kind of mishap and makes the decision more powerful in order to materialise it. This section of the document attempts to formulate the qualification required for any man to be an arbitrator, which can be drafted as below.

Arbitrator(s)

Any individual or a member of team, including the father of his children being dividing the inheritance during his lifetime, or the head(s) of clan or tribe¹, or anyone else helping the parties in resolving the issues of inheritance, is an arbitrator(s). The following conditions are necessary for a person or a member to be an arbitrator among the parties:

- a. he shall be impartial among the parties;
- b. he shall be accepted by all parties, to follow his words or decision(s);
- c. the nearest in relation, shall be preferred as an arbitrator;
- d. an individual who qualifies under sub-sections (a), (b) and (c) of the section (3); can be an arbitrator or a member of the team of arbitrators among the parties.

Rights of inheritance, here means the rights of an individual to receive the right of control of property from this father. All the male issues from a father have the right to inherit the property from him, but not that of daughters. However, during the reign of Nazim Khan it seems that the daughters without their brothers were granted the land of around "one chuq"—area where approximately 10 kg wheat can be cultivated and 80 kg of product can be received which was quota of grains for a female member for one year—as the Uthēngi by considering necessary under this clause iii. of sub-section c. of section 4. of this article. It do not seems here that he brought amendments in the tradition as it looks to be assumed by the honourable Court in the case of

¹ The definition and scope of tribe is explained by Biebuych (1966, 501-502), Fried (1975) and Piang (2008) and a brief note on tribes and tribal governance in Hunza is provided by Hakal (2018, 111-115)

Bibi Sitara (Holden and Chaudary 2013: 104-123). This is the problem to study that how many lands have been shifted back to their families after their death under the mention law.

Right of land inheritance

The right to inherit the land is the right of a son(s)—the male offspring(s)—not that of a daughter(s);

- a. in case of a single son, he will inherit all;
- b. in case where there are two or more sons, they will divide the land under section (7);
- c. in case where a father has only a daughter(s) then:
 - i. she or they are not entitled to inherit any land;
 - ii. the nearest in relation of her or their father are reserving the right to inherit the land and will be fully responsible for the protection of her rights; and
 - iii. in case, when it becomes very necessary for such a daughter to have a land and shelter, in situations like divorce or else, in this scenario, she can claim for a portion of cultivable land normally around “one chuq”, or if the keepers of her father’s land gift any piece of land, tree or any other asset, that belongs to her father’s called Uthēngi, she has the right to get maximum benefit from that only in her own life time and will be returned back after her death. (Note: brothers have also right to grant Uthēngi to their sisters.)

The property going to be shifted into the hands of next generation, can be classified into five kinds. They include houses locally called hakichang as plural, orchards or baseng, fields or buşay, other miscellaneous assets and the dowry brought by a daughter-in-law.

Kind of inheritance

Inheritance includes all the assets of combined family developed by any member or all members of the family jointly, can be classified in the form or kind of:

- a. house(s)/ ha (hakichang);
- b. orchard(s)/ basi (baseng);
- c. cultivable field(s)/ mal (buşai);
- d. miscellaneous assets; and
- e. the dowry brought by daughter- in-law.

The transfer of property is possible in both cases of lifetime of parents or after their death. If any situation that leads the family to separate in the lifetime of their parents, it is necessary to settle the rights of parents before.

Parents’ rights

The inheritance shall be divided among brothers by settling the rights of parents, first:

- a. in case of any dispute that leads towards the separation of father and son, in that scenario the cultivable fields shall be divided into two equal proportions between father and son(s), if he is healthy enough to practice agriculture;
- b. if he is not physically fit for the cultivation of land, and the father with their mother wants to live separate, in that situation he will not take the proportion of the cultivable land, but a portion of the production called “ighariki” and his offspring will give 24 chuq (1 chuq = approximately 10 kg) equal to 240 kg products in total: 120 kg of “Shiniki” means summer products and 120 kg of “Datuki” means winter products;
- c. if parents want to live with their children, then they will live with each son by turn for an equal interval of time;
- d. if they permanently settle with any one of them, the remaining son or sons will contribute their share in equal proportion, according to the figures mentioned in sub-section (b.) of this section.
- e. If the mother is alone and wants to live separately from children she will receive 80 kg (8 chuq) from her children annually.
- f. The other necessities will be managed by the son or sons themselves, if not reached to the demands of parents then the decision taken by the arbitrator(s) shall be the final.

The principles, guided by tradition, about the division of all the above mentioned kinds of property, in two different cases: first, is a normal case of one marriage of father and the second is a special case, if father has offspring from two or more spouses or marriages. The latter case is also applied on a man who has male offspring but willing to have another marriage without the consent of his first wife by threatening to divorce or by divorcing her. In this situation clause (i.) of sub-section (b.) of section (7.) is applied. It protects the women rights.

Making the divisions of inheritance

In case of more than one son from the first marriage:

- i. all kinds of inheritance, excluding the dowry of daughter- in-laws, shall be divided in equal proportion under the supervision of arbitrators, in accordance to the number of brothers, on which all brothers will unanimously agree; and
- ii. if anyone of them not agrees, the agreement shall be considered null and void, and the family or the arbitrator(s) will find another way of division, acceptable to all.

In case of second marriage or more, and having any son(s) from earlier wife:

- i. the land in the form of cultivable fields shall be divided between the son(s) and the father in equal proportions, and this son(s) is called kichatum.
- ii. Male offspring of the second wife, will divide only the remaining half proportion of their father among themselves.
- iii. If agreed in the light of clause (i.) of sub-section (b.) of section (7.), brothers from each mother will divide inheritance under the sub-section (a.) of section (7.).
 - a. All the miscellaneous assets shall be divided equally among the brothers.
 - b. All the assets being brought into the family by the daughter(s)-in-law in dowry shall not be divided among brothers, but it is the personal property of daughter(s)-in-law.

After the division of land, there are two options before the parties. The first and noblest way is the selection of property locally called damshi and the second, in case, if problems do not settled through the approach of choice for selection, then there is only the option of toss lefts.

Options

There are two options for parties either:

- a. they have to choose or select, with their own free will according to the limitations given under the section (9.); or otherwise
- b. the results come from the toss under section (10.) performed by the arbitration under the sub-section (b.) of section (10.), shall be the final decision and each party is bound to follow it.
If all agree for the selection, then there are some rules given by the tradition to handle the situation(s). Every brother has his own right according to his seniority in birth among the brothers.

Rules for the selection

- a. The right of eldest brother is in the selection of the best choice among the fields;
- b. brothers in the middle will select the best among the orchards; and
- c. the youngest brother has the right to select the best house or the house inherited from generations by the family.

If the situation not settled under article (9.), then there is only the option of tossing left, locally called phaū phal². This can be made also on the right of selection in case of the difference of numbers of brothers than that given in the ideal situation of three brothers.

Rules for tossing

Role of brothers or parties

- i. Each brother shall bring a symbol in material form like a broken twig, small stone, iron nail etc. which can represent him;
- ii. symbols shall be known among the brothers and shall be kept secret from the arbitrator(s); and
- iii. shall bring at one place.

Role of arbitrator(s)

- i. He (they) shall not keep any personal relation or sympathy with any party;
- ii. He (they) shall not present himself (themselves) at the time and place where symbols are being brought and placed; and
- iii. arbitrator(s) shall allow himself (themselves) to the place, and at the same moment he (they) shall randomly distribute the symbols by picking every symbol and placing on the proportion, made as a result of division under the section (8.)

This is the final decision, believed to be the decision of God called “Khudamo Phaū” literally means “the twig of the goddess”, it shall be accepted by everybody. If not, then the arbitrators will force them from all possible ways, and even if not resolved, the decision shall be referred to the Court of the King called Maraka, the decision taken by the King shall be the final.

Implementation of the decision

- a. The decision taken by the arbitrator(s) at the house level, the tribe or maqso level, according to the procedure given in this customary law, shall be acceptable for all parties;
- b. If in any new case the arbitrator(s) does not reach an acceptable logical conclusion for all, then the parties can approach the "Maraka" (Court of the King), the decision of the Court and the King shall be the full and final decision.

² Means literally throwing of twig, under this procedure the two States of Hunza and Nagir were distributed between Girkis and Maghlot.

Customs and human rights

The customs of inheritance in Hunza apparently appearing to be violating the women rights, and are against the general Islamic precepts (Cheema 2012) regarding inheritance (Zermina 2018) and, in this connection, currently Human Rights Ministry has initiated a campaign for the education of masses (Dawn September 14, 2018). However, the balance maintained by the customary laws in the protection of rights of all in South Asian societies is ignored here. It is here to protect the rights of individuals for their life time, ignoring the rights of family as a whole for a longer period of time.

Customs evolved in South Asia are always covering a scope of family and a longer span of time, mainly keeping the benefits of generations to come. Therefore, the rights of new generations is protected by guarding the children rights at the first, parents rights at the second and women rights are balanced by the responsibilities of tribe, in the scenario of non existence of any system of policing, introduced in Hunza after 25th September 1974. The customary system of justice in Hunza is appearing to be deeply rooted in history, and procedure of justice starts from the grass root level, and channelised from bottom to the top level through the tribal system of justice. Majority of the cases resolve themselves at the household level, if not settled then at the clan level, then at the tribe level and ultimately reaching the state level, which itself ensures the transparency in Justice system. Here, the procedure is not a lengthy one but the people by themselves involved in finding the justice in their customs.

In Hunza, married children are supposed to establish a new family unit by inheriting the currently available tangible and intangible assets. Therefore, their rights are at the first. If a man has children from two or more wives, then, all of the inheritance will be divided on number of wives not on the number of children under sub-section (b.) of section (7.). On one side it protects the rights of mother and on the other side the rights of children as they should not be discriminated by the second marriage of their father, and automatically discourages the polygamy. Besides this, in the scenario of one female child from father, her male cousins are responsible in custom for the protection her individual rights.

The second after children rights, are the rights of parents of dividing families. Which are normally settled before the division of assets in any family. The family disputes with father and children leading towards the separation from one another, in this scenario the parents have the right to demand for the fulfilment of their needs. If they need land, shelter, food or any other demand, it will be settled at first under section (6.) according to their needs. This is how parents rights are protected.

The most questioned part of inheritance customs of South Asia is about the women rights. In normal cases, daughters were not given the right to inherit against the right of protection in every matter. However, one need to understand the cultural setup of South Asian societies. In this connection, at the defining moments of the marriages of daughters, the land of the person

who asks for her is taken into consideration. As when she will get the charge of administering her separate family in future, she would be having the enough land to feed her domain of family. If she has not enough land to fulfil the needs of her family, then she was given land, fruit trees, house or any thing else as per her need. However, that will be returned to her brothers after her death. More than this, in a greater spectrum, the tribes own every daughter as the Silezin. The title of Silezin honours her as Sājō, means she is impartial in the tribe, and every man of the tribe is her brother. On any difficulty, she has the right to approach any one or all to get the favour of her brothers in any kind of injustice suffered by her. She will be defended at every platform by her brothers. She has the right to claim the shelter in any of her brothers' house, in case of any kind of difficulty she faces, and brothers are bound to do it. This is the right she holds is until the moment of turning the last slab over her grave. At her funeral, her tribe will honour her by attending it, and a brother holds the right to deliver her dead body to the soil, and will perform the rituals related to her. In case, if she spends her life with honour, remained the pride of her tribe, and the father's house if considers it with the support tribe, will construct a monumental place or a seat of chastity, which is called bōt, the monument is associated with her name which was called in Gilgit as sīlo-ei thali (G. Muhammad 1905: 102) and the particular women will be called Sīlī.

CONCLUSION

The tribal customs are normally considered impractical in modern capitalistic society, but mainly connected to agrarian cultures. Such customs are blamed to have violating the human rights. However, in an agrarian culture, such as that in Hunza, was more suitable to its time and was protecting the rights of all. Therefore, it still survive among the people of Hunza. Such customs primarily solves the issue of peaceful transfer of inheritance from earlier generations to the emerging new families. The key objective of such as customs appearing to keep the lands within the families for the longer period of time and to keep them safe for the generations to come. On one hand inheritance regulations in Hunza are not granting the land to female segment of society but helps to maintain the protection of women rights without any involvement of any of the external force. The system of justice seems to be exercisable at the grassroot level and leads to upper levels of justice if the justice not settled at lower levels justice. This gives us the idea of self justice based on the custom, grown as a result of experiances of many generations. Such traditions are always forcing us imaging a peaceful society and can be truly called as the law of the land.

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