

## Preface

This deceptively slender monograph marks a significant contribution to our understanding of India's rich juristic-traditions. The hegemonic Indian legal mind thinks of legal pluralism in India to be exhausted by the *shastras* and the *sharia'h*; this study should help us interrogate this facile assumption. The monograph should also help the liberation of Indian legal consciousness from the constricted belief that what makes Indian law interesting is its interaction with the dominant traditions of the Western jurisprudence. Indeed, in so many ways the land system of Arunachal Pradesh, depicted here so richly, suggests that our legal heritage transcends the Anglo-American traditions. In many ways, this work should enable us to launch a new disciplinary undertaking : namely, a comparative jurisprudence of the Indian law itself.

The system of rights in land among the various ethnic groups in Arunachal is fascinatingly complex. Preeminently, land is not a commodity in the market overt, though transfer of interests, mostly by way of gift, within the group is not unknown. In a sense, the jhum cultivation system would seem not to encourage customary property rights in the cultivable plots of land. But the study demonstrates an extraordinary diversity. While the Nishis and the Hill Miris do not recognize a right in the first cultivator to cultivate the same plot of land at the end of a shifting cultivation cycle, the Adi system reserves such rights; ".....in its orbits of plots, the family moves on generation after generation." Among the Adis "the cultivation shifts, but not the plots."

Considerable diversity of jural relations also characterize the homestead rights. In the Hill Miri villages, for example, abandonment of a homesite allows another occupant full rights; in the Adi system the rights are not extinguished, but only put in abeyance, by abandonment. Heritability, not transferability, is the key feature of homestead rights; and for most groups, the village chiefs and councils retain power to allocate and re-allocate rights.

The complexity of jural relations is further augmented when we find that these rights, both in plots and homestead, are eminently recordable (being well demarcated and otherwise easily identifiable) and yet no formal record of rights exists. The study recommends the preparation of record of rights and suggests, contrary to common assumption, that the Arunachal tribal groups will be cooperative in such a venture. The deeper question, of course, concerns the very need and rationale for a record of rights, which carries the potential for bureaucratizing a system of jural and social relations which has, over millenia, survived and prospered without such devices.

The expansion of credit by the nationalized banks seems to support the plea for record of rights. But the problem here seems deeper because customary law does not allow mortgage of lands or homesteads and the banks do not seem to accept as "high class security" the word of the village or the clan or the chief as to the ownership of land; nor does the pledging of moveables quite satisfy the bank's notion of security. Surely, if a choice is to be made between changes in banking procedures and a process whereby the customary law of the people is to be extinguished, one would expect the more versatile "modern" banking systems to find more imaginative ways of solving their problem. To allow sale of lands by way of recovery of bank credit would most certainly destroy the fine and complex customary regimes, besides (as the study alerts us) abrogating a custom which "would result in exploitation" by non-tribals of the tribals.

Although the important domain of rights over forests is not the central focus of this study, it does indicate the need not to disturb the existing customary regimes under which all forest, and forest produce, belong to the people. The Apa Tanis, for example, through their "All Forest Preservation Committee" claim royalty on all forest produce removed even by the license-holders from the forest department. The relevant regulations do not, of course, recognize any such right in the people and insofar as they recognize the jhum land cultivators having rights to access to forest produce it is a limited recognition, not extending to its sale or transfer.

The British, naturally, extinguished in theory all rights of the people in forests but as a practical policy posed not to intervene in the existence and assertion of customary rights. The successor independent India's administration maintains virtually the same policy. However, the question must be raised whether the Indian State is at all justified in claiming absolute sovereign rights over forests or lands, a gesture which only benefited the colonial power. The Anchal Forest Reserve (Constitution and Maintenance) Act, 1975, which fosters people's participation in forest management (pp. 164-165) provides a salutary model of, what might be called, condominium rights of people and government over forests, and suggests on a model of how respect for tribal culture can be fostered throughout India.

Authoritative exposition of customary law is a daunting task, even for well-trained anthropologists. There is always a danger of stabilizing in verbal formulae highly complex, fluid and dynamic pattern of belief-behaviour nexus; or, the danger of facile positivization of the norms. What then becomes projected as customary law, very often tends to deprive the very people whose 'law' it is, of the richness of their own tradition and makes possible its cultural invasion by the "mainstream" law. This monograph, on the whole, avoids these dangers. It remains important that it be also so read.