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## Book Review

Asoka Kumar Sen, *From Village Elder to British Judge: Custom, Customary Law and Tribal Society*, New Delhi, Orient Blackswan, 2012, XV+231.

by

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In this book, Asoka Kumar Sen emphasizes that indigenous custom was not a colonial creation, as has sometimes been held, but the product of pre-colonial socio-economic dynamics. Unpacking the conversion of pre-colonial indigenous custom into colonial customary law among the four major Adivasi communities in today's Jharkand – the Munda, Santal, Ho and Oraon - this study focuses on the Ho of Singhbhum.

Asoka Kumar Sen studied the Village Papers from the Record Room in Chaibasa during the 1990s to collect details of the functioning of village and district courts, where custom was transformed into customary law. This led him into 'the domain of ideology, values and attitudes' inherent to the Adivasi communities that informed the 'native' or 'inside' story, which is missing in oft-used colonial sources. The book includes seven chapters, of which the first seeks to appropriate the notion of custom as defined jurisprudentially and officially, as well as what the indigenous people meant by it. As the notion of custom is integral to socio-economic studies, the second chapter explores the evolving socio-economic structure from early times to the advent of British rule. The latter introduced jural ideas and institutions which were exotic to the Adivasis, and necessitated the formation of a new court system, as described in Chapter 3. The fourth chapter elaborates on the process of dispute settlement among the Ho that constituted the basis of the transformation of their customs into customary law. Court cases and

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judgements formed a corpus of legal principles, and Chapter 5 examines the codification of customary law as attempted by the British, and documented by gazetteers, reports and archives. The final chapter and the conclusion examine both the causes and the content of social change among the tribals and show that, in terms of inheritance for example, legitimization worked more or less within customary norms.

In Chotanagpur, general law was substituted by recognized and notional customs to be governed by the indigenous Manki-Munda system under the superintendence and control of an omnipotent district head. Lexicons, prepared by administrators and missionaries, contained such terms as *dastur/dostur*, meaning custom or ways of people, habit, or usage, and *niyam* to designate rule. There was an agreement at lexical, legal, social and administrative levels that custom stood for practices and usages of pre-legal indigenous societies. In the case of the Ho, memories of villagers regarding their original village founder served as evidence to determine *khuntkatti* rights of the founder's clan over the land and provided details of continuity and change in village life. Drawing on sources such as Henry Maine's work in *Ancient Law and Village Communities in the East and West*, and *The Origin and Growth of Village Communities in India* by Baden-Powell, the book reconstructs an image of pre-colonial collective life. In doing so, it critiques stereotyped imaging of a social group that remains immutably stagnant with such essentialist imputations as homogeneity, egalitarianism and self-sufficiency. Even more importantly, the author argues that custom was a process of self-representation. But the indigenes did not consider custom to be changeless. With mutability of custom in mind, administrators tried to classify it into 'old undated' and 'old dated'. The former stood for usages come down from pre-colonial times, while the latter, though referred to as old, in fact denoted a British-day custom. In 1821, for example, on the intervention of the British, the Hos were forced to enter into an agreement with the chiefs of Porahat, Seraikela and Kharsawan, whereafter a rent of eight annas per working plough was imposed on them. In the same vein, the statement that custom had been kept intact does not refer to the original Ho system but to the one interpreted and recreated by Wilkinson in 1837. As Asoka Sen puts it: 'The native voice was inscribed within imperial discourse, but it is constrained, regulated, and ultimately appropriated'.

The study emphasizes that since pre-British times the Adivasis of tribal Bihar had gradually developed their socio-economic customs around a specific territory. They were governed by the family and *killi* (clan) as well as by village elders and heads. Being essentially patrilineal, they did not allot property to women. Marriage was fixed by family elders, and payment of bride price was the reputed and normal practice. Though joint family ownership was the ideal, fissures in joint families had surfaced, leading to the concept of individual families and family ownership of land.

The study also highlights the impact of critical historical forces on indigenous societies during pre-colonial times, and how this helped them remake their ideas and institutions. Indigenous communities were gradually conditioned to experience shrinkage of family size and migration from the original village, but what survived

these changes was the patrilineal concept of inheritance. The change from shifting to settled cultivation, and to a rural life as peasants, made land a crucial item of property both at the family and clan levels, which had not been the case during the migrant stage. Over time, the Hos developed a social governance of resources as also modified institutions of family, killi (clan) and hatu (village). There was an agreement at legal, social and administrative levels that custom stood for practices and usages of pre-legal indigenous societies, which set them apart from the mainstream society governed by formal law.

The book shows that the Hos faced a changed social scenario while traversing a long period of pre-colonial and colonial pasts. Homogeneity woven around close ties at the family, clan and village levels considerably waned. Growing individualism and property consciousness sapped their religious worldview. Notions of patriarchy and social leadership, centered around the chiefs (Munda/Manki) and social elders, were seriously threatened by the revendications of youth, by gender assertions and by migrations. Internal dynamics, created by historical forces, compelled the community to bring about necessary changes.

This fascinating and well documented historical account shows how the Adivasi societies in Chotanagpur, who had shared rather similar value systems as hunters and gatherers, have lost these values with the development of agriculture and the imposition of property rights in land. This study also importantly document Scott's (1985) 'everyday forms of resistance', by which Scott refers to acts of peasants and other subalterns which display a 'calculative rationality' in negotiating the terms of their subordination. Certainly, the Hos practiced a kind of 'rightful resistance' when negotiating their rights with the British. They recognised the colonial structures of power and domination, but worked within those structures to articulate their claims. One may note that on this point, Santal folktales sometimes portray the British judge as an inarticulate puppet that astute Adivasis (compared to jackals) are able to dupe through their mimicry of the colonial order.

Deploying jurisprudential, sociological, and anthropological approaches, the book offers an account of social dynamics, contradictory colonial legal viewpoints, continuity and change in indigenous customs, the role of law and the court system in bringing about social change.